

ACT

Supplement to the Sierra Leone Gazette Vol. CXXXII, No. 49

dated 18th October, 2001

THE OTHER FINANCIAL SERVICES ACT, 2001

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SCHEDULE

SIGNED this 30th day of September, 2001.

ALHAJI AHMAD TEJAN KABBAH,
President.

LS

No. 7



Sierra Leone

2001

The Other Financial Services Act, 2001

Short title.

Being an Act to make provision for the licensing, regulation and supervision of institutions carrying on financial activities other than banking and for related matters.

/

/ Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I—PRELIMINARY

- Application. 1. This Act shall apply to the whole of the Republic of Sierra Leone and the overseas operations of financial institutions licensed under this Act.
- Interpretation. 2. In this Act, unless the context otherwise requires—
- “acceptance” means confirming or assenting to liability under a bill of exchange or other negotiable instrument;
- “affiliate” means a firm associated with another generally as its subsidiary;
- “Central Bank” means the Bank of Sierra Leone;
- Act No. 10 of 2000. “close relation” has the meaning assigned to it in the Banking Act, 2000;
- Cap 249. “company” has the meaning assigned to it in the Companies Act;
- “credit services” includes—
- (a) the giving of any advance, loan or any other facility, such as discounting of bills with or without security and whether in connection with the sale of goods or not whereby the person to whom the same is given has access directly or indirectly to the funds of the person giving the same;
- (b) the giving of a guarantee in relation to the obligations of any person; and
- (c) the giving of an underwriting commitment or indemnity to the effect that upon the happening of an event in relation to a person a certain sum of money would be paid or certain obligations would arise;

Act No. 10 of
2000.

“deposit” has the meaning assigned to it in the Banking Act, 2000;

Act No. 10 of
2000.

“deposit-taking” has the meaning assigned to it in the Banking Act, 2000;

“development banking” includes carrying on the business of—

- (a) providing capital, loans and other credit facilities to be utilized for agricultural, industrial, commercial or other economic development purposes, in particular the acquisition of productive assets, such as land, buildings and equipment;
- (b) refinancing development loans provided by other lending institutions; and
- (c) accepting time deposits;

“director” in relation to a licensed financial institution, includes any person by whatever name he may be referred to, carrying out or empowered to carry out substantially the same functions in relation to the direction of a licensed financial institution as those carried out by a director of a company registered under the Companies Act, or a director of a co-operative society registered under the Co-operative Societies Act, 1977;

Cap. 249

Act No. 6 of
1977.

“discount” means the purchase or sale of a bill of exchange or other negotiable instrument prior to maturity;

“exposure” includes equity, debentures, bonds and credit facilities;

“factoring” means the business of acquiring debts due to any person;

“financial activity” means engaging in any of the following—

- (a) deposit taking;
- (b) provision of credit services;
- (c) leasing;
- (d) supplying of goods by way of hire-purchase;
- (e) factoring or debt administration;
- (f) dealing in, acceptance or discounting of, bills of exchange or promissory notes;
- (g) purchase of government or other securities;
- (h) development banking;
- (i) buying and selling of foreign currencies;
- (j) any other type of financial intermediation.

“financial intermediation” includes the receipt of deposits for the purpose of lending money or discounting negotiable instruments or acquisition of assets for leasing or on hire purchase basis;

“Governor” means the Governor of the Central Bank;

“group” in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

“hire-purchase” includes bailment of moveable assets to another person with the understanding that the bailee becomes the absolute owner on completing the payments;

“leasing” includes letting or sub-letting moveable assets on hire for agricultural, industrial or commercial use, where the lessor is the owner of the property, regardless whether the letting is with or without an option to purchase the property but does not include the business of hire-purchase;

“licence” means an authorisation granted under sections 6 and 7;

“licensed financial institution” means a financial institution holding a valid licence issued by the Central Bank to carry on wholly or partly any one or more financial activities;

and all the offices and branches in Sierra Leone of such institution shall be deemed to be one institution and in the case of an institution incorporated abroad it shall be deemed to be an institution separate from its head office and other branches or offices abroad;

“merchant banking” means the receiving of deposits on deposit account, the provision of finance, consultancy or other advisory services relating to corporate and investment matters, making or managing of investments on behalf of any person and accepting and discounting bills of exchange;

“Minister” means the Minister responsible for finance;

“owned funds” means shareholders’ funds including paid-up capital and all reserves as well as capital surplus from revaluation of assets less any accumulated or unprovided-for losses of a licensed financial institution;

“person” includes any individual, association or body of individuals, firm or company and any juridical person;

“place of business” means any branch, agency, office or booth of a licensed financial institution including a mobile office open to the public;

“principal shareholder” means a person owning more than twenty percent of the paid-up capital of the entity concerned.

- (c) accompanied by such additional information as the Central Bank may reasonably require for the determination of the application.

5. No person shall be eligible to apply for a licence under this Act unless that person is— Eligibility for licences.

Cap. 249.

- (a) a company whose name has not been struck off the register of companies under the Companies Act;

Act No. 6 of 1977.

- (b) a society registered under the Co-operative Societies Act, 1977 and whose name has not been struck off the Register of Co-operative Societies; or

- (c) a statutory body.

6. (1) The Central Bank shall, within ninety days of receipt of an application for a licence and all other relevant information and after consultation with the Minister, grant or refuse to grant a licence. Grant or refusal of licences.

(2) In determining an application, the Central Bank shall take into account—

- (a) the character and fitness of the promoters, directors and officers or proposed directors and officers of the applicant as stipulated in the Schedule;
- (b) the feasibility and viability of the applicant's business plan;
- (c) the adequacy of the applicant's capital structure in relation to the nature and scale of the proposed business;
- (d) the financial position and financial history of the applicant; and
- (e) the public interest.

(3) The Central Bank shall not grant a licence to an applicant whose principal place of business is in a country or territory outside Sierra Leone, unless in addition to the provisions of subsections (1) and (2) —

- (a) the relevant supervisory authority in that country or territory issues a statement to the Central Bank that it is satisfied with respect to the prudential and overall management of the applicant; and
- (b) the Central Bank is satisfied as to the nature and scope of the supervision exercised by that authority.

(4) Subject to this Act, where the Central Bank is satisfied with an application, it shall grant a licence to the applicant subject to such terms and conditions as it may specify.

(5) A licence issued under this Act shall indicate the type or types of financial activity for which an institution is licensed and in the case of an institution intending to accept deposits from the public, it shall be expressly stated in the licence.

(6) A licensed financial institution shall not carry on any financial activity for which it is not licensed.

(7) A licensed financial institution shall not carry on any other business which is detrimental to the financial activity for which it is licensed.

(8) Where the Central Bank refuses to grant a licence it shall issue a written statement to the applicant stating the reasons for its decision.

Existing
financial
institutions.

7. (1) Notwithstanding the provisions of this Act or any other law, any registered company, co-operative society or other statutory body in existence before or at the commencement of this Act carrying on any financial activity shall, within a period of ninety days after the commencement of this Act apply to the Central Bank for a licence to operate as a licensed financial institution.

(2) Pending the determination by the Central Bank of an application under subsection (1), the applicant may continue to carry on the financial activities in which it had been engaged immediately before the commencement of this Act.

(3) Where the Central Bank intends to refuse to grant a licence to an applicant under subsection (1), it shall serve notice of intent on the financial institution which shall have a period of thirty days from the receipt of the notice to make such representations as it considers appropriate to the Central Bank.

(4) Where the Central Bank refuses to grant a licence to an applicant, it shall notify the applicant accordingly.

(5) Subject to subsection (8), where the Central Bank has served a notice of intent to refuse an application on an applicant, the applicant shall, from the date of receipt of the notice—

- (a) cease every financial activity;
- (b) submit to the Central Bank a time-bound program for the completion, winding-up or transfer of its existing obligations in respect of any financial activity being carried on.

(6) Where at the commencement of this Act a financial institution does not meet the requirements for eligibility for a licence under this Act, that institution shall—

- (a) cease all financial activities;
- (b) submit to the Central Bank a time-bound program to discharge its existing obligations.

(7) The Central Bank may modify any programme submitted to it by a licensed financial institution pursuant to subsections (5) and (6) and issue such direction as it thinks fit and the institution shall comply.

(8) Where the licensed financial institution fails to comply with any direction issued by the Central Bank under subsection (7), the institution and every director, executive, partner, manager or other officer of that institution who fails to take all steps necessary to secure compliance by the institution with those directions shall be liable to pay to the Central Bank a penalty of not less than five million leones and two million leones, respectively.

(9) Without prejudice to subsection (3), where a notice of intent to refuse an application is served under this section, the applicant shall have a right of appeal to a tribunal to be constituted in accordance with section 40 for that purpose.

(10) An appeal under subsection (9) shall be made within a period of 28 days after the service of the notice and conducted in accordance with such procedures as may be prescribed under section 42.

(11) An applicant shall have a further right of appeal to the High Court on any point of law.

Exemptions.
Act No. 8 of
2000.

8. (1) The prohibition in section 3 shall not apply to institutions licensed under the Banking Act, 2000.

(2) Notwithstanding anything contained in this Act, the Governor may by statutory instrument exempt any particular financial institution or groups of financial institutions from any of the requirements of this Act as to licensing.

(3) For the purpose of this Act "licensed financial institution" includes all offices and branches in Sierra Leone of such institution and in the case of an institution incorporated abroad it shall be deemed to be an institution separate from its head office and other branches or offices abroad.

Display of
licence.

9. Every licensed financial institution shall at all times conspicuously display its licence at its place of business.

Revocation of
licence.

10. (1) The Central Bank shall revoke the licence of a licensed financial institution if it appears to the Central Bank that -

- (a) the licensed financial institution has failed to comply with an obligation imposed on it by or under this Act;
- (b) it has been provided with false, misleading or inaccurate information by or on behalf of the licensed financial institution, in connection with an application for a licence, or by or on behalf of a person who is or is to be a director or other officer of the licensed financial institution;

- (c) the interests of the licensed financial institution's depositors or potential depositors are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason;
- (d) the licensed financial institution has insufficient assets to cover its liabilities to the public;
- (e) the licensed financial institution has ceased to carry on deposit-taking business in Sierra Leone; or
- (f) the licensed financial institution has failed at any time to comply with any requirements under sections 16 and 17.

(2) For the purposes of paragraph (e) of subsection (1), a licensed financial institution shall be deemed to have ceased to carry on deposit-taking business in Sierra Leone if it appears to the Central Bank that the institution—

- (a) has not accepted a deposit in Sierra Leone in the course of carrying on deposit-taking business within a period of twelve months beginning with the day on which the licence was granted; or
- (b) having accepted a deposit or deposits, has subsequently not done so for a continuous period of more than six months.

(3) In the case of a licensed financial institution whose principal place of business is in a country or territory outside Sierra Leone, if it appears to the Central Bank that the relevant supervisory authority in that country or territory has withdrawn from that institution an authorization corresponding to the licence granted by the Central Bank under this Act, the Central Bank shall revoke the institution's licence.

(4) Where it appears to the Central Bank that—

- (a) a winding-up order has been made against a licensed financial institution; or

- (b) a resolution for the voluntary winding-up of a licensed financial institution has been passed,

whether in Sierra Leone or in any other country or territory, the Central Bank shall revoke the licence of that licensed financial institution.

Restriction of
licences.

11. (1) Where it appears to the Central Bank —

- (a) that there are grounds on which its power to revoke an institution's licence is exercisable; but
- (b) the circumstances are not such as to justify revocation,

the Central Bank may restrict the licence instead of revoking it.

(2) A licence may be restricted —

- (a) by imposing such limit on its duration as the Central Bank thinks fit;
- (b) by imposing such additional conditions as the Central Bank thinks desirable for the protection of the licensed financial institution's depositors or potential depositors.

(3) A limit on the duration of a licence shall not be such as to allow the licence to continue in force for more than two years from the date on which it is imposed; and such a limit may, in particular be imposed in a case in which the Central Bank considers that the licensed financial institution should be allowed time to repay its depositors in an orderly manner.

(4) The conditions imposed under this section may in particular —

- (a) require the licensed financial institution to take certain steps or refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

- (b) include limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the licensed financial institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit the licensed financial institution from entering into any other transaction or class of transactions;
- (e) require the removal of any director, manager or other officer of the licensed financial institution;
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensed financial institution.

(5) Any condition imposed under this section may be varied or withdrawn by the Central Bank; and any limit imposed on the duration of a licence may be varied but not so as to allow the licence to continue in force for more than two years from the date on which the limit was first imposed.

(6) A licensed financial institution which fails to comply with any requirement or contravenes any prohibition imposed on it under this section shall be liable to pay to the Central Bank, a penalty of not less than three million leones.

(7) The fact that a condition imposed under this section has not been complied with shall be a ground for the revocation of the licence in question but shall not invalidate any transaction entered into during the period of restriction.

(8) Where a licensed financial institution's licence is restricted by the imposition of a limit on its duration, that institution may apply under section 4 for a new licence and if the licence is granted, the restricted licence shall cease to have effect.

12. (1) Subject to section 13, where the Central Bank proposes to—

- (a) revoke a licence;

Notice of revocation or restriction of licences.

- (b) restrict a licence; or
- (c) vary any restriction imposed on a licence otherwise than with the agreement of the licensed financial institution,

the Bank shall give to the institution concerned written notice of its intention to do so.

(2) If the proposed action is to restrict or vary any restriction imposed, the notice shall specify the proposed restrictions or as the case may be, the proposed variation.

(3) A notice under subsection (1) shall state the grounds on which the Central Bank proposes to act and give particulars of the licensed financial institution's rights under subsection (5).

(4) Where—

- (a) the ground or a ground for a proposed revocation or for a proposal to impose or vary a restriction is that it appears to the Central Bank that a criterion in the Schedule is not or has not been fulfilled, or may not be or may not have been fulfilled in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director, manager or other officer,

the Central Bank shall give that person a copy of the notice mentioned in subsection (1) together with a statement of his rights under subsection (5).

(5) An institution given notice under subsection (1) and a person given a copy of the notice under subsection (4) may, within a period of fourteen days commencing with the day on which the notice was given, make representations to the Central Bank.

(6) After giving a notice under subsection (1) and taking in to account any representations made under subsection (5), the Central Bank shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the institution's licence, to restrict its licence instead;
- (d) if the proposed action was to restrict the institution's licence, or to vary the restrictions on a licence, to restrict it or to vary the restrictions on a licence in a different manner.

(7) The Central Bank shall give the financial institution and the person mentioned in subsection (4) written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and particulars of the rights conferred by subsection (9) and section 39.

(8) A notice under subsection (7) of a decision to revoke or restrict a licence or to vary the restrictions on a licence shall, subject to subsection (3) of section 39 have the effect of revoking the licence, restricting the licence or varying the restrictions in the manner specified in the notice, as the case may be.

(9) Where the decision notified under subsection (7) is to restrict the licence or to vary the restrictions on a licence otherwise than as stated in the notice given under subsection (1), the licensed financial institution may, within a period of seven days commencing on the day on which the notice was given under subsection (7) make written representations to the Central Bank with respect to the restrictions and the Bank may, after taking these representations into account, alter the restrictions.

(10) A notice under subsection (7) shall be given within a period of 28 days commencing on the day on which the notice under subsection (1) was given; and if no notice is given within that period the Central Bank shall be treated as having at the end of that period given a notice under subsection (7) to the effect that no further action is to be taken.

(11) Where the Central Bank varies a restriction on a licence with the agreement of the licensed financial institution concerned or withdraws a restriction consisting of a condition, the variation or withdrawal shall be effected by written notice to that institution.

(12) The Central Bank may omit from the copy given to a person under subsection (4) and from a notice given to him under subsection (7) any matter which does not relate to him.

Mandatory
revocation
and restriction
of licences.

13. (1) No notice shall be given under section 12 in respect of —

(a) the revocation of a licensed financial institution's licence in any case in which revocation is mandatory under subsections (3) and (4) of section 10; or

(b) the imposition or variation of a licensed financial institution's licence in any case in which the Central Bank considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any case as in subsection (1), the Central Bank may by written notice to the licensed financial institution revoke the licence or impose or vary the restriction.

(3) The notice shall state the reasons for which the Central Bank has acted and, in the case of a notice imposing or varying a restriction, particulars of the rights conferred by subsection (5) and section 39.

(4) Subsection (4) of section 12 shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under subsection (1) of that section in respect of a proposal to impose or vary a restriction; but the Central Bank may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) A licensed financial institution to which a notice is given for imposition or variation of a restriction and a person to whom a copy of the notice is given by virtue of subsection (4) may, within a period of fourteen days commencing on the day on which the notice was given make representations to the Central Bank.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5), the Central Bank shall decide whether

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Central Bank shall, within a period of twenty eight days commencing on the day on which the notice was given under subsection (2), give the licensed financial institution concerned written notice of its decision under subsection (6); and except where the decision is to rescind the original decision, the notice shall state reasons for the decision.

(8) Where a notice of the proposed revocation of a licensed financial institution's licence under section 10 is followed by a notice revoking its licence under this section, the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation and any pending appeal proceedings in respect of a decision implementing the proposal.

14. Every licensed financial institution shall notify the Central Bank of the location of its principal place of business, branch or agency in Sierra Leone.

Notification of principal place of business, etc.

15. (1) Subject to prior written notification to the Central Bank, a licensed financial institution may—

Opening, closure, merger or consolidation of branches of licensed financial institutions.

- (a) open a branch, office, sub-office, booth, agency or mobile unit in Sierra Leone and in the case of a licensed financial institution registered or incorporated in Sierra Leone may open a representative office, agency or branch office outside Sierra Leone;
- (b) close or change the location of an existing branch, office, sub-office, booth, agency or mobile unit.

(2) Before the closure or change of location of a place of business of a licensed financial institution, the Central Bank shall ensure that the institution provides opportunity to depositors who do not want their accounts transferred to another branch or office or the branch relocated, to withdraw their funds.

(3) Subject to prior written application to and approval of the Central Bank—

- (a) a licensed financial institution may, other than in the ordinary course of its business, sell the whole or part of its assets in Sierra Leone to another licensed financial institution;
- (b) one or more licensed financial institutions may merge or consolidate with each other or with other licensed financial institutions, as the case may be;
- (c) a licensed financial institution may, where its principal place of business is in a country or territory outside Sierra Leone, convert itself into a company incorporated in Sierra Leone.

(4) Upon receipt of a written application for approval of one of the matters enumerated in subsection (3), the Governor shall cause an investigation to be made to determine whether or not the public interest will be served by approval of that application.

(5) On the basis of the investigation and after consultation with the Minister, the Central Bank shall notify the applicant of its decision within ninety days after receipt of the application.

(6) An approval may be subject to such conditions as the Central Bank may think fit; and if the application is refused, the Central Bank shall issue a written statement of the reasons for its decision.

(7) If an application involving any matter enumerated in subsection (3) is approved by the Central Bank, then the assets, liabilities, rights and obligations of the licensed financial institution or institutions submitting the application, to the extent that those

assets, liabilities, rights and obligations are intended in terms of the application to be sold, merged, consolidated or transferred, shall be deemed to be sold, merged, consolidated or transferred to the new institution or the new company incorporated in Sierra Leone, as the case may be, with effect from such date as the Governor, after consultation with the Minister, may specify by Government Notice.

(8) The Central Bank may, for good reason, revoke or vary the terms and conditions of an approval relating to any matter enumerated in subsection (3) and such action shall be communicated by the Central Bank to the licensed financial institution affected.

(9) The Central Bank shall, before any revocation or variation pursuant to subsection (8), notify its intention to take such action to the licensed financial institution concerned and shall give that institution an opportunity to submit reasons why the approval should not be revoked, within thirty days from the date of such notice.

(10) The Central Bank may, having considered the reasons, if any, submitted by the licensed financial institution concerned, confirm in writing the revocation or variation in the terms of its approval or withdraw the revocation or the variation.

PART III—CAPITAL AND LIQUIDITY REQUIREMENTS

16. (1) Every licensed financial institution shall at all times maintain in Sierra Leone as separate and unimpaired minimum paid-up capital and reserves such amount as the Central Bank may from time to time prescribe. Minimum paid-up capital.

(2) The Central Bank may prescribe a higher amount of unimpaired capital for any licensed financial institution as the Central Bank may think fit.

(3) No licensed financial institution shall decrease its capital reserves by repurchasing its own shares or distributing reserve assets without the prior written approval of the Central Bank.

(4) The Central Bank may, after consultation with the Minister, allow a licensed financial institution such time or extension of time to comply with requirements of minimum paid-up capital as the Central Bank may consider appropriate.

Capital
adequacy.

17. (1) Every licensed financial institution shall at all times maintain a minimum capital adequacy ratio as the Central Bank may from time to time prescribe.

(2) The capital adequacy ratio shall be measured as a percentage of the capital base of the licensed financial institution to its risk weighted assets in accordance with regulations issued from time to time by the Central Bank.

(3) The Central Bank may prescribe a higher capital adequacy ratio for any licensed financial institution as the Central Bank may think fit.

(4) Any licensed financial institution which fails to maintain the level of capital adequacy prescribed under this section shall be liable to pay to the Central Bank on each day that the deficiency continues, a penalty of one half per *mille* of the difference between the capital adequacy that the institution should have maintained and the level of capital adequacy actually maintained by the institution, and unless such deficiency is remedied within ninety days after it has occurred, the Central Bank may prohibit the institution concerned from engaging in any form of financial activity.

Restriction on
ownership of
shares.

18. No individual shall—

- (a) own more than 10 percent of the shares of any licensed financial institution without prior approval of the Central Bank; or
- (b) own more than 5 percent of the shares of any licensed financial institution without prior notification to the Central bank.

19. (1) Every licensed financial institution which is in the deposit-taking business shall be limited to accepting saving deposits from individuals and time deposits only.

Restrictions
on deposits.

(2) The maximum aggregate amount of deposits which may be accepted by a licensed financial institution from any single depositor and outstanding on any day shall not exceed twenty-five per cent of its published net owned funds.

(3) The Central Bank may by regulations modify the limitations specified in this section with respect to a particular licensed financial institution or category of licensed financial institutions.

20. (1) Every licensed financial institution shall maintain a reserve fund into which shall be transferred out of its net profits for each year before it declares any dividend and after it has made provision for any taxes, the following amounts -

Maintenance
of reserve
fund.

- (a) where the amount of the institution's reserve fund is less than 50 percent of its paid-up capital, an amount which shall not be less than 50 percent of the institution's net profit for the year;
- (b) where the amount of the institution's reserve fund is 50 percent or more, but less than 100 percent of its paid-up capital, an amount which shall not be less than 25 percent of the institution's net profit for the year.

(2) A licensed financial institution shall not appropriate any sum or sums from the balance in its reserve fund unless prior approval is obtained from the Central Bank for the purpose, which may be granted for such amount and subject to compliance with such conditions as the Central Bank may determine.

Local assets.

21. (1) At the close of business on any day, the assets in Sierra Leone of every licensed financial institution, including any licensed financial institution whose principal place of business is in a country or territory outside Sierra Leone, shall not be less in value than an amount representing such percentage of its liabilities payable at or through its branch or branches in Sierra Leone as may be determined by the Central Bank from time to time.

(2) For the purposes of subsection (1) —

- (a) the percentage so determined shall not exceed eighty-five percent;
- (b) assets in Sierra Leone shall include, without limitation, currency, bonds, notes, debentures, drafts, bills or other evidence of indebtedness or other balances and obligations payable in Sierra Leone or in the Sierra Leone currency;
- (c) liabilities payable at or through its branch or branches in Sierra Leone shall include, without limitation, acceptances but exclude paid-up or assigned capital, accrued expenses and amounts due and other liabilities to other offices or branches of, and wholly owned subsidiaries of, the licensed financial institution outside Sierra Leone;
- (d) marketable securities shall be valued at principal amount or market value, whichever is lower, and the Central Bank may determine the value of any non-marketable bond, note, debenture, draft, bill of exchange or any other evidence of indebtedness, or of any other obligation held by or owed to the licensed financial institution.

Foreign
currency open
position limit.

22. (1) Every licensed financial institution shall maintain such maximum limits on its open positions in foreign currencies, precious metals and precious stones as the Central Bank may prescribe.

(2) Any licensed financial institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty of not more than ten million leones.

23. (1) Not later than three months after the expiry of each calendar year, every licensed financial institution incorporated in Sierra Leone shall, in respect of all business transacted by it, and every licensed financial institution whose principal place of business is in a country or territory outside Sierra Leone shall, in respect of all business transacted through its branches in Sierra Leone, prepare in respect of that year a balance sheet as of the last working day of that year, and the profit and loss account of that year in a form consistent with international accounting standards. Publication of
balance sheet.

(2) The documents required under subsection (1) shall be under the joint signatures of the chief executive and a majority of the directors of the licensed financial institution incorporated in Sierra Leone or of the local chief executive and the next most senior officer of the principal office in Sierra Leone, in the case of a licensed financial institution whose principal place of business is in a country or territory outside Sierra Leone.

(3) The balance sheet and profit and loss account shall be audited in accordance with international auditing standards.

(4) Not later than four months after the expiry of each calendar year, every licensed financial institution shall submit to the Central Bank a copy of its audited balance sheet and profit and loss account, together with the auditor's report thereon and the long form audit report.

(5) Every licensed financial institution shall --

- (a) exhibit conspicuously throughout the year in its place of business in Sierra Leone a copy of its latest audited balance sheet prescribed in subsection (1) together with the full and correct names of all persons who are directors of that institution, as soon as it is available;
- (b) publish a copy of that balance sheet in at least one newspaper of general circulation in Sierra Leone.

(6) Any licensed financial institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty of not less than three million leones.

Credit risk
exposures.

24. (1) No licensed financial institution shall undertake any exposure to a single person or a group of related persons or to any industry which exceeds such percentage of its net worth as may be prescribed by the Central Bank.

(2) In the case of transactions between licensed financial institutions, an aggregate of credit exposures and other financial guarantees or intermediates to any single licensed financial institution or group of licensed financial institutions shall not, otherwise than with the written approval of the Central Bank, exceed 30 percent of the net-worth of the institution undertaking such exposures or 30 percent of the net-worth of the institution to or in respect of which such facilities are extended, whichever of the two amounts is lesser.

(3) A licensed financial institution shall not—

(a) grant any loan, advance or credit facility against the security of its own shares;

(b) grant or permit to be granted—

(i) unsecured advances or unsecured credit facilities to any of its directors or their close relations whether such advances or credit facilities are obtained by its directors or their close relations jointly or severally;

(ii) any advances or credit facilities in excess of two percent of the institution's net-worth to any firm or company or group of firms or companies in which any of that institution's directors or other

officials is interested as a partner or guarantor or is one of the principal shareholders; and in the case of any unsecured loan or credit facility any amount which in the aggregate exceeds two thirds of one percent of the institution's net-worth;

- (c) grant or permit to be outstanding to its officials, employees or their close relations unsecured advances or unsecured credit facilities which in the aggregate for any one official, employee or close relation exceed one year's emoluments of such official or employee;
- (d) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade except in so far as may exceptionally be necessary in the course of the deposit-taking operations and services of that institution or in the course of the satisfaction of debts due to it.
- (e) grant any loan, advances or credit facility to its holding company, subsidiary or affiliate without prior approval of the Central Bank unless such loan, advance or credit facility—
 - (i) is fully secured;
 - (ii) is subject to loan criteria or terms and conditions not more favourable than those ordinarily applicable for granting such facilities to the public; or
 - (iii) has been approved by the Board of Directors of the institution or a committee of the Board of Directors.

Cap. 249 (4) In the application of the limitation of subsection (1), if the Central Bank determines that the interests of a group of more than one individual, partnership, private company as defined in section 27 of the Companies Act or other association of persons corporate or unincorporated, are so interrelated that they should be considered as a unit, the total indebtedness of that group shall be combined and deemed to be in respect of a single person.

(5) A licensed financial institution shall not be deemed to have contravened subsection (1) solely by reason of the fact that the combined indebtedness exceeds that limitation at the time of the determination; but the licensed financial institution shall dispose of the indebtedness of the group in the amount in excess of the limitation within such reasonable time as shall be allowed by the Central Bank.

(6) For the purposes of paragraphs (b) and (c) of subsection (3), the expressions "unsecured advances or unsecured credit facilities" mean, advances or credit facilities made without security, or in respect of security, any part thereof which at any time exceeds the market value of the assets constituting that security or where the Central Bank is satisfied that there is no established market value, the unsecured value as established on the basis of a valuation approved by the Central Bank.

(7) Any licensed financial institution which has, before the commencement of this Act, entered into any transactions incompatible with the provisions of subsection (4) or (5) shall, so soon as may be after the commencement of this Act, submit a statement thereof to the Central Bank and shall, within one year from that date, finally liquidate all such transactions.

(8) The Central Bank may by regulations modify the limitations in this section with respect to a particular licensed financial institution or category of licensed financial institutions as the Central Bank may think fit.

25. (1) Every licensed financial institution shall maintain at all times such amount of liquid assets as may from time to time be determined by the Central Bank and published in the *Gazette* Minimum liquidity requirements.

(2) The amount so determined shall be expressed as a percentage which such assets shall bear to the deposit liabilities of each licensed financial institution.

(3) The Central Bank may prescribe different liquidity ratios for different categories of licensed financial institutions as the Bank may from time to time think fit.

(4) For the purposes of this section, "liquid assets" shall consist of freely transferable assets, free from any charge or lien, and of all or any of the following classes—

- (a) notes and coins which are legal tender in Sierra Leone;
- (b) balance in current account with the Central Bank;
- (c) Government securities maturing within ninety-one days;
- (d) inland bills of exchange and promissory notes which are eligible for rediscount at the Central Bank, subject to such limitations in amount as the Central Bank may determine;
- (e) such other assets as may be specified by the Central Bank.

(5) Any licensed financial institution which fails to hold the minimum liquid assets as determined by the Central Bank shall be liable, in addition to any other penalty, to pay to the Central Bank such interest as the Bank may specify, subject to a ceiling limit of ten percent on the deficiency which exists.

(6) The Central Bank may further direct that during a period of any deficiency the licensed financial institution shall discontinue or limit in a manner specified in the direction, the granting of credit or the making of investments and shall not distribute dividends to its shareholders.

Restrictions
on sale or
transfer of
shares.

26. (1) No licensed financial institution shall engage in the sale or transfer of its shares having a paid-up value of 5 per cent or more of its total paid-up share capital without the prior approval of the Central Bank.

(2) A licensed financial institution shall submit to the Central Bank for approval any arrangement or agreement which that institution intends to enter into for the sale of its assets and liabilities or its business.

Restrictions
on payment of
dividends.

27. (1) No licensed financial institution shall pay any dividend on its shares out of its net profits until it has completely recovered all its capitalised expenditure and accumulated or unprovided-for losses.

(2) For the purposes of subsection (1), "capitalised expenditure" includes preliminary expenses, share-selling, commissions, brokerage losses incurred by the licensed financial institution and any other items of expenditure not represented by tangible assets.

(3) No licensed financial institution shall declare or pay any dividend on its shares in any year if the level of capital adequacy of the institution is less than that provided for in section 17.

(4) Where a licensed financial institution declares or pays any dividend in contravention of subsection (1) or (3) the institution and every director of that institution shall be liable to pay to the Central Bank a penalty of not less than three million leones and one million leones, respectively.

(5) No director shall be liable to pay the penalty if he proves to the satisfaction of the Central Bank that the contravention was committed without his consent or connivance by a person other than himself and that he exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

Alteration of
constitution of
licensed
financial
institutions.

28. (1) Every licensed financial institution shall, within 28 days of the date of approval by its shareholders or Board of Directors as the case may be, of any alteration in its Memorandum of Association or in any other document representing its constitution, furnish to the Central Bank the particulars of such alteration for approval by the Central Bank.

Cap. 249. (2) Notwithstanding anything contained in the Companies Act or in any other enactment, no application for registration or confirmation of an alteration in the Memorandum of Association or any other document representing the constitution of a licensed financial institution shall be entertained without the approval of the Central Bank.

(3) Approval for such alteration shall not be granted by the Central Bank unless it is satisfied that the proposed alteration is not detrimental either to the interests of the licensed financial institution's depositors or other creditors.

(4) Any licensed financial institution which fails to comply with the requirements of subsection (1) shall be liable to pay to the Central Bank a penalty of not more than ten million leones.

PART IV—RETURNS, ACCOUNTS AND APPOINTMENT OF AUDITORS

29. (1) Every licensed financial institution shall submit to the Central Bank—

Institutions to submit returns.

- (a) not later than twenty one days after the last day of every month a statement in such form as may be determined by the Central Bank showing the assets and liabilities of the institution as at the close of business on the last day;
- (b) not later than twenty one days after the last day of every month a statement in such form and detail as may be determined by the Central Bank, showing analysis of loans, advances and overdrafts granted by the institution during and outstanding at the end of that month;
- (c) not later than twenty one days after the last day of every month, a statement in such form and detail as may be determined by the Central Bank, showing analysis of doubtful and other non-performing loans;

- (d) in such form and within such time as the Central Bank may specify, such other particulars relating to loans, advances and overdrafts, as the Central Bank may determine;
- (e) in such form and within such time as the Central Bank may specify, such other returns, data, information, explanation or particulars as the Central Bank may prescribe.

(2) The Central Bank may, upon receipt of a statement pursuant to paragraph (c) of subsection (1), fix a time limit for accounting as income rather than cash received, earnings on doubtful or other non-performing loans.

(3) Any licensed financial institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty of not more than five million leones.

Books of
accounts.

30. Every licensed financial institution shall keep books of account and all such proper records as the Central Bank may require from time to time in relation to all its transactions or operations.

Production of
books of
account.

31. (1) Any person duly authorised by the Governor shall, for the purpose of examining them, have access to and make copies where necessary the accounting records, credit files, minutes books and any other record and document and the cash and securities of any licensed financial institution; and such person shall be entitled to request any director, auditor, officer or other employee of the institution an explanation or information he may consider necessary for the proper performance of his duties under the law.

(2) If any minutes books, accounts, cash, securities, documents and vouchers are not produced or information is not supplied in accordance with subsection (1), the defaulting institution or its affiliate or both, as the case may be, shall be liable to pay to the Central Bank a penalty of not less than three million leones.

(3) If any information supplied or item produced is false in any material particular, the licensed financial institution or its affiliate or both as the case may be, commits an offence and shall be liable on conviction to a fine of not more than ten million leones.

32. (1) Every licensed financial institution shall appoint annually, auditors, who shall be professionally qualified persons satisfactory to the Central Bank and whose duties shall be to audit and submit a report on the institution's annual balance sheet and accounts, to the shareholders of such institution incorporated in Sierra Leone or to the head office of such institution incorporated outside Sierra Leone.

Appointment and duties of auditors.

(2) The auditors shall, in every report state whether in their opinion—

- (a) the balance sheet is full and fair and properly drawn up;
- (b) the balance sheet exhibits a true and correct statement of the licensed financial institution's affairs;
- (c) the auditors have called for any explanation or information from the officers or agents of the licensed financial institution and whether the explanation or information is satisfactory.

(3) The report of the auditors shall be read together with the report of the Board of Directors of the licensed financial institution at the annual general meeting of shareholders or members of each licensed financial institution incorporated in Sierra Leone and shall be transmitted to the head office of each licensed financial institution incorporated outside Sierra Leone; and a copy of the report including the balance sheet and profit and loss account shall be submitted to the Central bank.

(4) A licensed financial institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty of not less than five million leones.

(5) If a licensed financial institution fails to appoint auditors satisfactory to the Central Bank or appoints only one auditor or if the Central Bank is not satisfied with the auditors' report, the

Governor shall appoint one or two auditors who shall submit an independent report on the licensed financial institution's annual balance sheet and accounts.

(6) The remuneration of the auditors, whether appointed by the licensed financial institution or by the Governor, shall be paid by the institution and in the case of an auditor or auditors appointed by the Governor the remuneration shall be determined by the Governor.

(7) No person having any interest in any licensed financial institution otherwise than as a depositor, and no director, officer or agent of any licensed financial institution, shall be eligible for appointment as an auditor to such institution; and any person appointed as auditor to any licensed financial institution who shall, after the appointment acquire any interest or become an officer or agent of such institution shall forthwith cease to be an auditor for the licensed financial institution.

(8) If the auditors, in the course of the performance of their duties are satisfied that—

- (a) there has been a serious breach or non-observance of the provisions of one or more sections of this Act;
- (b) an offence involving fraud or dishonesty has been committed;
- (c) the capital fund of the licensed financial institution has fallen below fifty percent due to any loss incurred;
- (d) serious irregularities have occurred, including irregularities jeopardising the security of the creditors; or
- (e) the claims of creditors are not fully covered by realizable assets,

they shall immediately report the matter to the Central Bank with full particulars thereof.

(9) The duties, powers and liabilities imposed and conferred by subsections (1) and (2) of section 31 shall be deemed to have been imposed and conferred on auditors appointed under this section.

33. (1) At least once in every year, the auditors of a licensed financial institution shall submit to the institution a statutory audit report and a long-form report in a manner as may from time to time be determined by the Central Bank. Auditors' report.

(2) The licensed financial institution shall submit to the Central Bank within such time as the Central Bank shall determine, copies of the auditors' report submitted to the institution under subsection (1).

(3) The auditors shall state in the statutory audit report whether—

- (a) the accounts give a true and fair view of the state of affairs of the licensed financial institution and its results for the period under review;
- (b) they were able to obtain all the information and explanations required by them for the efficient performance of their duties;
- (c) the licensed financial institution's transactions are within its powers; and
- (d) the licensed financial institution has complied with the relevant provisions of this Act.

(4) The Central Bank may at any time at the expense of the licensed financial institution—

- (a) require the auditors to undertake such further audit or provide such additional information or both as the Central Bank may consider necessary;

- (b) engage an independent auditor to audit either in whole or in part the accounts of the licensed financial institution

PART V—POWERS OF CENTRAL BANK

Examination
of licensed
financial
institutions.

34. (1) The Governor shall cause an examination to be made of every licensed financial institution periodically whenever in his judgement such examination is necessary or expedient in order to determine whether a licensed financial institution is in sound financial condition and that the requirements of the law have been complied with in the administration of that institution.

(2) The Governor shall, at least once every year cause an examination of the head office of a locally incorporated licensed financial institution and principal branch or office of a licensed financial institution whose principal place of business is in a country or territory outside Sierra Leone, to ensure that the provisions of this Act are complied with.

(3) For the purpose of determining the financial condition of a licensed financial institution and its compliance with the law, the Governor may at any time cause an examination to be made of any affiliate of the licensed financial institution in Sierra Leone to the same extent that an examination may be made of the licensed financial institution.

Cap. 249. (4) In any investigation of the affairs of a licensed financial institution under section 133 or 135 of the Companies Act, only persons nominated by the Central Bank shall be appointed to conduct an investigation; and notwithstanding any provision of the Companies Act, the Central Bank may direct inspectors to furnish it with a copy of the report and to report to it on any additional matters.

(5) Immediately following the conclusion of an examination, a copy of the report thereon shall be sent to the head office of the licensed financial institution concerned with such directions as the Governor may consider necessary.

(6) The Governor may order that all reasonable expenses of and incidental to an examination shall be paid by the licensed financial institution.

35. (1) Where the Central Bank is satisfied that—

Powers of
Central Bank.

- (a) to prevent the affairs of any licensed financial institution being conducted in a manner detrimental to the interests of its depositors and other creditors or in a manner prejudicial to the interests of the institution;
- (b) to secure the proper management of any licensed financial institution generally;
- (c) to secure compliance with the provisions of this Act by a licensed financial institution; or
- (e) to safeguard the public interest,

it is necessary to issue directions to licensed financial institutions generally or to any licensed financial institution in particular, it may from time to time, issue such directions as it thinks fit, and the licensed financial institutions or the particular licensed financial institution, as the case may be, shall be bound to comply with such directions.

(2) Where a licensed financial institution fails to comply with the directions issued by the Central Bank under this section, the institution and every director, chief executive, partner, manager or other officer of that institution who fails to take all steps necessary to secure compliance by the institution with those directions, shall be liable to pay to the Central Bank a penalty of not more than five million leones and one million leones, respectively.

36. (1) A licensed financial institution which thinks that it is not likely to be able to meet its obligations to its depositors and creditors or is about to suspend payment shall forthwith notify the Central Bank in writing of that fact.

Emergencies
and
liquidations.

(2) Where the Central Bank—

- (a) has been notified by a licensed financial institution of its inability to meet its obligations to its depositors or creditors or of the likelihood of the institution suspending payment;
- (b) is satisfied that a licensed financial institution has insufficient assets to cover its liabilities;
- (c) is satisfied that a licensed financial institution is not carrying on its deposit-taking business in the interests of its depositors and creditors;
or
- (d) has revoked a licensed financial institution's licence under section 10,

the Central Bank may, after consultation with the Minister do all or any of the following—

- (i) direct the licensed financial institution to take such steps as the Central Bank may consider necessary for dealing with the situation;
- (ii) prohibit the receipt by the licensed financial institution of any fresh deposits or grant of fresh or additional credit facilities or both;
- (iii) appoint a suitable person or persons to advise the licensed financial institution on the proper conduct of its deposit taking business; and the remuneration of the adviser or advisers appointed by the Central Bank shall be paid by the licensed financial institution concerned in accordance with the terms of appointment to be determined by the Central Bank;
- (iv) require the removal of any director, manager or other officer of the licensed financial institution concerned;

- (v) suspend the operations of the licensed financial institution;
- (vi) make an application to the High Court for a conservation of the assets of the licensed financial institution or for its liquidation or winding up;
- (vii) revoke the licence of the licensed financial institution concerned.

(3) The Central Bank may—

- (a) by notice published in the *Gazette*, pursuant to a decision under paragraph (v) of subsection (2) order the licensed financial institution to suspend all business, except as determined by the Central Bank, for a period not exceeding six months, and that any obligations of the financial institution shall be unenforceable in any court of law for that period;
- (b) amend the order.

(4) Pursuant to a decision under sub paragraph (vi) of subsection (2), the Central Bank may make an *ex parte* application to the High Court for the conservation of the assets of the licensed financial institution or for its liquidation or winding up.

(5) When petitioned by the Central Bank, the High Court may appoint a conservator nominated by the Central Bank, for the preservation of a licensed financial institution and the protection of its depositors; and the remuneration of the conservator shall be determined by the court on the recommendation of the Central Bank and paid by the licensed financial institution.

(6) For the period of the appointment, the conservator shall take into his control and may, on application to the High Court be vested with any property of the licensed financial institution; and the conservator shall have in relation to the property, the same powers as are conferred on liquidators under the Companies Act.

(7) A conservator shall be placed in charge of the management of the licensed financial institution, with a right to exercise any powers of that institution in order to conserve its assets or improve its management.

(8) The conservator shall prepare a plan for either the licensed financial institution's resumption of deposit-taking business or its merger or consolidation with another licensed financial institution, unless liquidation or winding up appears unavoidable.

(9) A conservator shall, subject to the supervision of the Court and the technical advice of the Central Bank, pay due regard to the interests of the depositors and other creditors, as well as the potential contributories of the licensed financial institution.

(10) The Central Bank may, at the request of the conservator initiate or amend an order under subsection (3) or extend it until the date the Central Bank approves the plan prepared under subsection (8).

(11) Upon approval of such a plan by the Central Bank, the Court shall order the licensed financial institution and its directors, officers, employees and servants to implement it.

Cap. 249. (12) Notwithstanding the provisions of the Companies Act, the Central Bank shall nominate any receiver or liquidator of a licensed financial institution being wound up in Sierra Leone; and the Central Bank may represent the interests of depositors on any committee of inspection or in any litigation.

Cap. 249 (13) Notwithstanding the provisions of any enactment, the permanent cessation of operations or the liquidation and withdrawal of a major portion of the assets in Sierra Leone by a licensed financial institution shall be deemed for all purposes to be the winding-up of a company under the Companies Act; and the shareholders of the company whose branches and offices in Sierra Leone are being wound up shall be deemed to be rateably the shareholders of the licensed financial institution itself.

(14) Notwithstanding the provisions of any enactment, the claim in liquidation of the depositors of a licensed financial institution shall have priority over all other claims other than those specified in sections 202, 240, and subsections (1) and (5) of section 249 of the Companies Act and the payment of secured claims of Sierra Leone creditors. Cap. 249.

(15) In the event of net withdrawals from demand and time deposit accounts of any licensed financial institution exceeding ten percent of its total liabilities on these accounts in any period of less than six consecutive working days, the Central Bank may, notwithstanding the provisions of the Bank of Sierra Leone Act, 2000 lend to the licensed financial institution, on terms and conditions specified by the Central Bank, an amount sufficient to meet in an orderly manner, any remaining demands for withdrawals from those accounts. Act No. 3 of 2000.

(16) Any credit outstanding under subsection (15) shall be secured by assets having a face value of twice the amount of the credit, and shall be repayable within five years.

37. (1) Where the Central Bank is satisfied that—

- (a) the association of any chairman, director or chief executive (by whatever name called) or other officer of a licensed financial institution with the institution is or is likely to be detrimental to the interests of the institution or its depositors or creditors, or otherwise undesirable;
- (b) to prevent the affairs of a licensed financial institution being conducted in a manner detrimental to the interests of its depositors and other creditors or in a manner prejudicial to the interests of the institution; or
- (c) to secure the proper management of any licensed financial institution, it is necessary to do so,

Power to remove directors or other managerial persons from office.

it may, for reasons to be put in writing, order the removal from office, with effect from such date as may be specified in the order, any chairman or director or chief executive (by whatever name called) or other officer of any licensed financial institution.

(2) Subject to subsection (3), no order under subsection (1) shall be made unless the chairman, director, chief executive or other officer has been given reasonable opportunity of making a representation to the Central Bank against the proposed order.

(3) If, in the opinion of the Central Bank any delay would be detrimental to the interest of the licensed financial institution or its depositors or other creditors, the Central Bank may, at the time of giving the opportunity for representation to be made to it or at any time thereafter and pending the consideration of the representation, if any, order that—

- (a) the chairman or, as the case may be, director or chief executive or other officer shall not, with effect from the date of the order—
 - (i) act as such chairman or director or chief executive or other officer of the institution;
 - (ii) in any way, whether directly or indirectly, be concerned with, or take part in the management of the institution; or
- (b) any person authorised by the appropriate authority shall act as such chairman, director or chief executive of the institution.

(4) Where any order is made in respect of a chairman or director or chief executive or other officer of a licensed financial institution, he shall cease to be a chairman or, as the case may be, a director or chief executive or other officer of the licensed financial institution and shall not in any way, whether directly or indirectly be concerned with or take part in, the management of the licensed financial institution or any other licensed financial institution for such period not exceeding three years as may be specified in the order.

(14) Notwithstanding the provisions of any enactment, the claim in liquidation of the depositors of a licensed financial institution shall have priority over all other claims other than those specified in sections 202, 240, and subsections (1) and (5) of section 249 of the Companies Act and the payment of secured claims of Sierra Leone creditors. Cap. 249.

(15) In the event of net withdrawals from demand and time deposit accounts of any licensed financial institution exceeding ten percent of its total liabilities on these accounts in any period of less than six consecutive working days, the Central Bank may, notwithstanding the provisions of the Bank of Sierra Leone Act, 2000 lend to the licensed financial institution, on terms and conditions specified by the Central Bank, an amount sufficient to meet in an orderly manner, any remaining demands for withdrawals from those accounts. Act No. 3 of 2000.

(16) Any credit outstanding under subsection (15) shall be secured by assets having a face value of twice the amount of the credit, and shall be repayable within five years.

37. (1) Where the Central Bank is satisfied that—

- (a) the association of any chairman, director or chief executive (by whatever name called) or other officer of a licensed financial institution with the institution is or is likely to be detrimental to the interests of the institution or its depositors or creditors, or otherwise undesirable;
- (b) to prevent the affairs of a licensed financial institution being conducted in a manner detrimental to the interests of its depositors and other creditors or in a manner prejudicial to the interests of the institution; or
- (c) to secure the proper management of any licensed financial institution, it is necessary to do so,

Power to remove directors or other managerial persons from office.

(7) A conservator shall be placed in charge of the management of the licensed financial institution, with a right to exercise any powers of that institution in order to conserve its assets or improve its management.

(8) The conservator shall prepare a plan for either the licensed financial institution's resumption of deposit-taking business or its merger or consolidation with another licensed financial institution, unless liquidation or winding up appears unavoidable.

(9) A conservator shall, subject to the supervision of the Court and the technical advice of the Central Bank, pay due regard to the interests of the depositors and other creditors, as well as the potential contributories of the licensed financial institution.

(10) The Central Bank may, at the request of the conservator initiate or amend an order under subsection (3) or extend it until the date the Central Bank approves the plan prepared under subsection (8).

(11) Upon approval of such a plan by the Central Bank, the Court shall order the licensed financial institution and its directors, officers, employees and servants to implement it.

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(12) Notwithstanding the provisions of the Companies Act, the Central Bank shall nominate any receiver or liquidator of a licensed financial institution being wound up in Sierra Leone; and the Central Bank may represent the interests of depositors on any committee of inspection or in any litigation.

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(13) Notwithstanding the provisions of any enactment, the permanent cessation of operations or the liquidation and withdrawal of a major portion of the assets in Sierra Leone by a licensed financial institution shall be deemed for all purposes to be the winding-up of a company under the Companies Act; and the shareholders of the company whose branches and offices in Sierra Leone are being wound up shall be deemed to be rateably the shareholders of the licensed financial institution itself.

(14) Notwithstanding the provisions of any enactment, the claim in liquidation of the depositors of a licensed financial institution shall have priority over all other claims other than those specified in sections 202, 240, and subsections (1) and (5) of section 249 of the Companies Act and the payment of secured claims of Sierra Leone creditors. Cap. 249.

(15) In the event of net withdrawals from demand and time deposit accounts of any licensed financial institution exceeding ten percent of its total liabilities on these accounts in any period of less than six consecutive working days, the Central Bank may, notwithstanding the provisions of the Bank of Sierra Leone Act, 2000 Act No. 3 of 2000. lend to the licensed financial institution, on terms and conditions specified by the Central Bank, an amount sufficient to meet in an orderly manner, any remaining demands for withdrawals from those accounts.

(16) Any credit outstanding under subsection (15) shall be secured by assets having a face value of twice the amount of the credit, and shall be repayable within five years.

37. (1) Where the Central Bank is satisfied that— Power to remove directors or other managerial persons from office.
- (a) the association of any chairman, director or chief executive (by whatever name called) or other officer of a licensed financial institution with the institution is or is likely to be detrimental to the interests of the institution or its depositors or creditors, or otherwise undesirable;
 - (b) to prevent the affairs of a licensed financial institution being conducted in a manner detrimental to the interests of its depositors and other creditors or in a manner prejudicial to the interests of the institution; or
 - (c) to secure the proper management of any licensed financial institution, it is necessary to do so,

it may, for reasons to be put in writing, order the removal from office, with effect from such date as may be specified in the order, any chairman or director or chief executive (by whatever name called) or other officer of any licensed financial institution.

(2) Subject to subsection (3), no order under subsection (1) shall be made unless the chairman, director, chief executive or other officer has been given reasonable opportunity of making a representation to the Central Bank against the proposed order.

(3) If, in the opinion of the Central Bank any delay would be detrimental to the interest of the licensed financial institution or its depositors or other creditors, the Central Bank may, at the time of giving the opportunity for representation to be made to it or at any time thereafter and pending the consideration of the representation, if any, order that—

- (a) the chairman or, as the case may be, director or chief executive or other officer shall not, with effect from the date of the order—
 - (i) act as such chairman or director or chief executive or other officer of the institution;
 - (ii) in any way, whether directly or indirectly, be concerned with, or take part in the management of the institution; or
- (b) any person authorised by the appropriate authority shall act as such chairman, director or chief executive of the institution.

(4) Where any order is made in respect of a chairman or director or chief executive or other officer of a licensed financial institution, he shall cease to be a chairman or, as the case may be, a director or chief executive or other officer of the licensed financial institution and shall not in any way, whether directly or indirectly be concerned with or take part in, the management of the licensed financial institution or any other licensed financial institution for such period not exceeding three years as may be specified in the order.

(5) Any person appointed as chairman or director or chief executive under paragraph (b) of subsection (3) shall —

- (a) hold office at the pleasure of the Central Bank subject to such conditions as may be specified in the order and for such period, not exceeding three months as the Central Bank may specify; and
- (b) not incur any obligation or liability for anything which is done or intended to be done in his capacity as such chairman, director or chief executive.

(6) No person removed from office under subsection (1) shall be entitled to claim any compensation for the loss or termination of office.

38. (1) The Central Bank shall —

- (a) carry on any deposit-taking business of which it has assumed control under this Act in the name and on behalf of the licensed financial institution concerned for such period as the Central Bank may determine;
- (b) furnish the Minister with a report on its conduct of such business at monthly intervals during the first three months after it has assumed control of the business and thereafter at intervals not exceeding three months until it relinquishes its control of the business;
- (c) publish in the Gazette and a newspaper of general circulation in Sierra Leone, a notice of the assumption or relinquishing of its control of such business.

Assumption of control of deposit-taking business by the Central Bank.

(2) The Central Bank shall be entitled to be paid by any licensed financial institution whose business is carried on by it under this Act all expenses reasonably incurred by it in connection with the carrying out of the business; and without prejudice to any other

remedy of the Central Bank against that institution, the Central Bank shall, while it is in control of that business have the right to reimburse itself in respect of such expenses out of the funds of the institution.

(3) The remuneration for the staff of the licensed financial institution concerned shall be fixed by the Central Bank in consultation with the representatives of the institution.

PART VI—GENERAL

Right of
appeal.

39. (1) A licensed financial institution which is aggrieved by a decision of the Central Bank—

- (a) to revoke its licence otherwise than in a case in which revocation is mandatory under section 13;
- (b) to restrict its licence, whether generally or in a particular manner or to vary any restrictions of its licence; or
- (c) to give it a direction under section 36 or to vary a direction given to it under that section,

may appeal against the decision to a tribunal established under section 40.

(2) Where—

- (a) the ground or a ground for a decision within paragraph (a) or (b) of subsection (1) is that mentioned in paragraph (a) of subsection (4) of section 12; or
- (b) the effect of a decision within paragraph (b) or (c) of subsection (1) of section 12 is to require the removal of a person as director, manager or other officer of a licensed financial institution,

the person to whom the ground relates or whose removal is required may appeal to the tribunal against the finding that there is such a ground for the decision or, against the decision to require his removal.

(3) The revocation of a licensed financial institution's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—

- (a) until the end of the period within which an appeal can be brought; and
- (b) if such appeal is brought, until it is determined or withdrawn.

(4) The tribunal may suspend the operation of a restriction or direction or a variation of a restriction or direction pending the determination of an appeal in respect of a decision imposing or varying the restriction or giving or varying the direction.

40. (1) Where an appeal is brought under section 39, there shall be constituted by the Chief Justice a tribunal which shall hear and determine the appeal. Constitution of tribunals.

(2) The tribunal shall consist of a chairman and two other members appointed by the Chief Justice after consulting the Minister.

(3) The chairman shall be a person of not less than ten years' standing as a legal practitioner in Sierra Leone and the other two members shall be persons with proven experience in accountancy and banking respectively.

(4) Members of a tribunal shall be paid such fees and allowances as the Minister may determine.

(5) Fees, allowances and other expenses of a tribunal, shall be a charge on the Consolidated Fund.

41. (1) On an appeal under subsection (1) of section 39, the question for the determination of the tribunal shall be whether, for the reasons given by the appellant, the decision appealed against was lawful or justified by the evidence on which it was based. Determination of appeals.

(2) On an appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that—

- (a) where the decision was to revoke a licence, the tribunal may direct the Central Bank to restrict it instead;
- (b) where the decision was to impose or vary any restrictions, the tribunal may direct the Central Bank to impose different restrictions or to vary them;
- (c) where the decision was to give or vary a direction the tribunal may direct the Central Bank to give a different direction or to vary it in a different way.

(3) Where a tribunal gives a direction to the Central Bank under paragraph (a), (b), or (c) of subsection (2) the Central Bank may decide what restrictions should be imposed or how they should be varied or, as the case may be, what direction should be given or how a direction should be varied and—

- (a) the Central Bank shall, by notice in writing to the licensed financial institution concerned impose the restrictions, give the direction or make the variation on which it has decided;
- (b) the licensed financial institution may appeal again to the tribunal against the Central Bank's decision and on such appeal the tribunal may confirm the decision or give further direction under paragraph (b) or (c) of subsection (2).

(4) On an appeal under paragraph (b) of subsection (2) of section 39, the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision requiring the appellant's removal was lawful or justified by the evidence on which it was based.

(5) A decision by the tribunal on an appeal under paragraph (b) of subsection (2) of section 39 that a finding in respect of the appellant was not justified shall not affect any revocation or restriction wholly or partly based on the finding; but on an appeal under paragraph (b) of subsection (2) of section 39 the tribunal may confirm or reverse the decision to require the removal of the appellant.

(6) Notice of a tribunal's decision together with a statement of its reasons, shall be given to the appellant and to the Central Bank; and unless the tribunal otherwise directs, the decision shall come into operation when the notice is given to the appellant and to the Central Bank.

(7) Notice of a tribunal's decision on an appeal under paragraph (b) of subsection (2) of section 39 shall also be given to the licensed financial institution concerned and, where the determination is to reverse a decision to require the removal of the appellant as manager, controller or director of a licensed financial institution, the decision shall not come into operation until notice of the decision has been given to that institution.

42. (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

Costs,
procedure and
evidence.

(2) On an appeal under subsection (2) of section 39, the licensed financial institution concerned shall be entitled to be heard.

(3) Subject to subsection (4), the Minister may, after consultation with the Attorney-General and Minister of Justice by statutory instrument make rules with respect to appeals under section 39; and the rules may in particular make provision for—

- (a) the period within which and the manner in which such appeals are to be brought;
- (b) the manner in which such appeals are to be conducted, including provision for any hearing to be held in private, the persons entitled to appear on behalf of the parties and for enabling appeals to be heard notwithstanding the absence of a member of the tribunal other than the chairman;
- (c) the procedure to be adopted where appeals are brought both by a licensed financial institution and a person who is or is to be a director, manager or other officer of the institution, including provision for hearing the appeals together and for the mutual disclosure of information;

- (d) requiring an appellant or the Central Bank to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) requiring any person to attend and give evidence or produce documents in his custody or under his control and for authorizing the administration of oaths to witnesses;
- (f) enabling an appellant to withdraw an appeal or the Central Bank to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of such direction;
- (h) enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman of a tribunal; and
- (i) as to any other matter connected with such appeals.

(4) Without prejudice to any rules made under subsection (3), a tribunal shall have such powers, rights and privileges as are vested in the High Court of Justice or a Judge thereof at a trial, in respect of—

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and
- (c) the issue of a commission or request to examine witnesses abroad.

(5) A chairman or member of a tribunal shall not be liable to any action or suit in respect of any matter or thing done by him in the performance of his functions as such chairman or member.

43. Every licensed financial institution and its holding company or subsidiary shall at all times conduct their business in a prudent manner and in accordance with the best standards and practices of corporate governance and sound financial management.

Licensed financial institutions to conduct business in prudent manner.

44. (1) A licensed financial institution or other person who has appealed to a tribunal may appeal to the High Court on any question of law arising from the decision of the tribunal; and an appeal on such question shall also lie at the instance of the Central Bank.

Further appeals on points of law.

(2) If the High Court is of the opinion that the decision was erroneous in point of law, it shall remit the matter to the tribunal for re-hearing and determination by it.

(3) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with the leave of the Court of Appeal or of the court or judge from whose decision the appeal is brought.

45. (1) Without prejudice to anything contained in any enactment relating to companies, partnerships, firms or business associates, any person who is a director, manager or other officer concerned in the management of a licensed financial institution shall cease to hold office—

Disqualification of directors, etc.

- (a) if he becomes bankrupt or suspends payment or compounds with his creditors; or
- (b) if he is convicted of an offence involving dishonesty or fraud.

(2) No person who has been a director of, or directly or indirectly concerned in the management of a licensed financial institution which has had its licence revoked in accordance with section 10 or been wound-up by a court, shall, without the express authority of the Governor, act or continue to act as a director of or be directly or indirectly concerned in the management of any licensed financial institution.

(3) Except with the consent of the Central Bank, no licensed financial institution incorporated in Sierra Leone shall have as a director any person who is a director of another licensed financial institution.

Cap. 249 (4) Notwithstanding anything contained in the Companies Act or in the memorandum and articles of association of any licensed financial institution, every licensed financial institution shall inform the Central Bank of any change in its board of directors.

(5) Any licensed financial institution or person who contravenes this section shall be liable to pay to the Central Bank a penalty of not more than ten million leones in the case of a licensed financial institution and a penalty of not more than three million leones in the case of a director, manager or other officer of a licensed financial institution.

Abandoned
property.

46. (1) Any property held by a licensed institution shall be presumed to be abandoned if the owner has, within a period of ten years immediately after the date of deposit or payment of funds towards the purchase of shares or other interests or the issuing of instruments or the date upon which funds held in a fiduciary capacity became payable or capable of being distributed or the expiration of the period for which the safe deposit box was rented, as the case may be—

- (a) not increased or decreased the amount of the deposit or funds;
- (b) not increased or decreased the principal or accepted payment of principal or income in respect of funds held in a fiduciary capacity;
- (c) not had any correspondence with the licensed financial institution concerned regarding such property;
- (d) not otherwise indicated an interest in the property as evidenced by a memorandum concerning them by the licensed financial institution.

(2) The property referred to in subsection (1) shall include—

- (a) any general deposit (savings or matured time deposit) made in Sierra Leone with that licensed financial institution together with any interest or dividend thereon excluding any lawful charges;
- (b) any funds paid in Sierra Leone towards the purchase of shares or other interests in a licensed financial institution together with any interest or dividend, excluding any lawful charges;
- (c) any sum payable on cheques or on written instruments on which a licensed financial institution is directly liable;
- (d) any personal property and any income or interest thereon held in a fiduciary capacity for the benefit of another person;
- (e) any contents of a safe deposit box upon which the rental period has expired and concerning which notice has been sent by registered post to the last known address of the owner and to which the owner has failed to respond within three years.

(3) Subject to subsection (4), any licensed financial institution holding any abandoned property, shall make a report to the Central Bank in such manner as the Central Bank may determine stating the nature of the property held and in the case of money, the amount of money together with a proposal for disposal of such property.

(4) A licensed financial institution shall publish a list of owners of abandoned property in at least one newspaper of general circulation in Sierra Leone prior to submitting the report under subsection (3).

47. Nothing in this Act shall authorise the Minister or the Central Bank to enquire, or cause an enquiry to be made into the affairs of any individual customer of a licensed financial institution.

Protection of individual accounts from investigation.

Maintenance
of secrecy.

48. (1) No person who has acquired knowledge in his capacity as director, manager, officer, employee or agent of any licensed financial institution, or as its auditor, inspector, conservator or liquidator, shall disclose to any person the identity, assets, liabilities, transactions or other information in respect of a depositor except—

- (a) with written authorisation of the depositor or other beneficiary or the heirs or legal representatives of such depositor or beneficiary;
- (b) for the purpose of the performance of his duties within his scope of employment in conformity with the provisions of this Act;
- (c) when lawfully required to make the disclosure by any court within Sierra Leone; or
- (d) under the provisions of any enactment for the time being in force in Sierra Leone.

(2) Nothing in subsection (1) shall prevent a licensed financial institution from providing to a person upon a legitimate business request a general credit rating, a copy of which shall be provided to the subject of the rating upon request.

(3) Except in the performance of his duties under this Act or otherwise permitted under subsection (1), every director, manager, officer, employee or agent of a licensed financial institution shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the institution and of any of its customers that may come to his knowledge in the performance of his duties.

(4) Any person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding three million leones or to imprisonment for a term not exceeding two years or to both.

Central Bank
to give
directions
generally.

49. (1) Where the Central Bank is satisfied that—

- (a) in the interest of financial policy;
- (b) to prevent the affairs of any licensed financial institution being conducted in a manner

detrimental to the interests of the depositors or creditors or in a manner prejudicial to the interests of the institution;

- (c) to secure the proper management of any licensed financial institution generally,

it is necessary to issue directions to licensed financial institutions generally or to any particular licensed financial institution, it may from time to time issue such directions as it thinks fit and the licensed financial institutions or institution, as the case may be, shall comply with such directions.

(2) The Central Bank may, on representation made to it by any licensed financial institution affected by the direction or on its own motion, modify or cancel any direction issued under subsection (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

(3) Any director, manager or other officer of a licensed financial institution who fails to take all steps necessary to secure compliance by the institution with those directions, shall be liable to pay to the Central Bank a penalty of not more than three million leones.

50. Notwithstanding the provisions of any law to the contrary, the Central Bank shall have supervisory authority in all matters relating to the financial activities for which financial institutions are licensed under this Act.

Supervisory
authority of
Central Bank.

51. (1) Any person who, in connection with an application for a licence wilfully or knowingly gives any information which is false or misleading in a material particular commits an offence and is liable on conviction to a fine of not less than three million leones or imprisonment for a term of not more than two years or both.

Offences.

(2) Where an offence under this Act is committed by a body of persons—

- (a) in the case of a body corporate, any person who at the time the offence was committed was a director, manager or other corporate officer of that body corporate; or
- (b) in the case of a firm, every person who at the time the offence was committed was a partner or officer of that body,

shall be deemed to have committed that offence and shall be proceeded against and punished on conviction under the provisions of this Act.

(3) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that—

- (a) the offence was committed without his knowledge or consent; or
- (b) he took all reasonable precaution and exercised all due diligence to prevent the commission of the offence.

Protection for actions taken under Act.

52. No suit or other legal proceeding shall lie against the Central Bank or official or agent of the Central Bank for any act done in good faith or purported to be done in pursuance of this Act, or against any director, officer, employee or agent of any licensed financial institution for any act done in good faith or purported to be done by him under this Act.

Regulations.

53. The Governor may, by statutory instrument, make such regulations, rules or orders, as may be required from time to time for the purpose of giving effect to this Act.

SCHEDULE

(Section 6)

DIRECTORS ETC. TO BE FIT AND PROPER PERSONS

1. Every person who is, or is to be, a director, manager, or other officer of an applicant for a licence or of a licensed financial institution must be a fit and proper person to hold the particular position which he holds or is to hold.
2. In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with

which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors of the licensed financial institution are, or are likely to be, in any way threatened by his holding that position.

3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has

- (a) committed an offence involving fraud or other dishonesty;
- (b) contravened any provision made by or under any enactment appearing to the Central Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence or soundness of judgement.

PASSED in Parliament this *14th* day of *August*, in the year of our Lord two thousand and one.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.