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THE COMMERCIAL AND ADMIRALTY COURT RULES, 2020

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No.



2019

Sierra Leone

A BILL ENTITLED

The Commercial and Amilalnty Court Rules Act, 20202 Short title.

Being an Act to provide for the licensing of persons carrying on banking business, the regulation and supervision of banking activities, financial holding companies and subsidiaries, the protection of depositors and to provide for other related matters

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

PART I – PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires -

"administrative penalty" includes -

- (a) fines, including interest, payable to the Central Bank under this Act,
- (b) the removal from office of any director, officer or employee by the Central Bank;
- (c) withdrawal of any privilege normally accorded to banks or financial holding companies by the Central Bank;
- (d) withdrawal of a "fit and proper" person's status previously accorded by the Central Bank; or
- (e) such other sanctions as the Central Bank may by regulations, directives or guidelines prescribe;

"advisor" means a person appointed by a written order from the Central Bank to advise the chief executive of a bank or financial holding company;

"affiliate" means-

- (a) a body corporate of which the bank or financial holding company is a subsidiary;
- (b) a subsidiary of the bank or financial holding company; or
- (c) a body corporate which is controlled by the same entity which controls a bank or a financial holding company.

"agent" means a person that is engaged by a bank or a financial holding company to provide specific financial services on its behalf or a person that is engaged by the Central Bank to provide specific services;

"applicant" means a body corporate;

"associate" means a body corporate over which a bank or financial holding company has the power to participate in its financial or operating decisions but which does not control or jointly control its governance policy;

"bail-in" means write-down of the liabilities of a bank or conversion into equity with-out the consent of shareholders or creditors and specifically excludes insured and secured claims;

"bank" means a body corporate licensed by the Central Bank to carry on banking business in accordance with this Act;

"banking business" or the business of banking includes-

- (a) accepting deposits from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order, or by any other means;
- (b) the financing whether in whole or in part or by way of short, medium or long term loans or advances; or
- (c) any other financial activities prescribed by the Central Bank;

"beneficial owner" means a person or body corporate that enjoys the benefit of ownership even though the title of the property owned is in another name;

"branch" means an office of a bank that is not separately incorporated through which a bank may be permitted to engage in banking business;

"bridge bank" means temporary national bank established to take ownership of part or all of an institution to bridge the lapse between failure and final resolution;

"bridge institution" is an institution established by the government or the Central Bank for a temporary period for the purpose of resolving a bank in official administration, or to an asset management vehicle established by the government for the purpose of acquiring, managing, and disposing of problem assets of a bank as part of the resolution of the bank;

"capital base" means the sum of tier 1 capital and eligible amount of tier 2 capital, prescribed by the Central Bank;

"capital adequacy ratio" means the ratio expressed as a percentage of the adjusted capital base to the risk weighted financial exposure;

"capitalised expenditure" includes preliminary expenses, share selling commission, brokerage losses incurred by the bank and any other item of expenditure not represented by tangible assets;

"Central Bank" means the Bank of Sierra Leone;

"chief executive" means a person who is responsible, subject to the authority of the Board of directors of a body corporate, for the conduct and management of the day to day business of that body corporate;

"close relative" means spouse, son, daughter, step son, step daughter, brother, sister, father, mother, cousin, nephew, niece, aunt, uncle, step sister, step brother, grandparent or grandchild;

"control" "controlling shares" or "shareholding" mean a relationship wherein a person or a group of persons acting in concert, directly or indirectly-

- (a) owns 50% or more of the voting shares of a body corporate;
- (b) has power to appoint or remove the majority of the Board of directors of a body corporate;
- (c) has the ability to exert a significant influence on the management or policies of the body corporate; or
- (d) has the ability to direct the activities of the body corporate as to affect the financial returns on any investment made with such body corporate;

"Court" means a Court of competent jurisdiction;

"credit exposure" means the amount at risk from a claim or transaction of a bank, whether on or off-balance sheet, and whether contingent or actual, including extensions of credit facilities, credit openings, letters of credit, credit commitments, advances, guarantees, acceptances, debt securities, as well as investments by a bank;

"corporate group" means a company and the affiliates or associates of that company;

"deposit" means a sum of money paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at an agreed time under the legal and contractual conditions applicable and not referable to the provision of property or services or the giving of security;

"Deposit Protection Fund" means a deposit protection fund set up to provide for the accumulation of financial contributions from banks and branch offices of foreign banks for eventual compensation of deposits held in banks and branch offices of foreign banks and for their management;

"director" in relation to a bank, includes a person carrying out or empowered to carry out substantially the same functions as those carried out by a director of a company registered under the Companies Act, 2009 or a director of a cooperative society registered under the Cooperative Societies Act, 1977;

"direction" means a legally binding directive of the Central Bank issued to a specific bank, all banks, financial holding company, or any particular group thereof, in the implementation of this Act;

"emolument" means salaries and allowances other than performance related earnings;

"employee" means staff of a bank or financial holding company;

"examination" includes the carrying out of on-site, off-site, credit reporting and any other examination as may be determined by the Central Bank including the Anti-MoneyLaundering Act, 2012 or any other law;

"executive officer" means-

(a) the chief executive officer, chief financial officer, chief operating officer, chief risk officer, chief internal auditor, chief compliance officer, and chief accounting officer of a bank; and

(b) any other person who participates or has authority to participate in major policy making or functions of the bank, whether or not such person has an official title or receives compensation for such actions, and is designated as an executive officer by the Central Bank;

"exempted persons" means persons to whom the restrictions on the conduct of banking business and deposit-taking does not apply including friendly societies whose total deposits remain less than an amount prescribed by the Central Bank;

"financial exposure" in relation to a bank or financial holding company or with respect to a person means, the aggregate of the loans, advances, placements, and credit facilities including off-balance sheet obligations given to that person, and the value of the holdings by that bank or financial holding company of shares and debentures and other debt securities issued by that person;

"financial holding company" means a body corporate or an entity that confirms and controls a bank;

"financial company" means a person, including a bank that primarily engages in one or more of the permissible banking activities referred to in section 16 and any other activities as prescribed by the central bank;

"financial group" means a bank, financial holding company, financial company and its subsidiaries, affiliates and associates, as the case may be;

"finance leasing" means a contract between two parties whereby a lessor gives the lessee possession and use of a specific asset (or portfolio of assets) in consideration for payment of rentals over a given period in which the lessor retains ownership or title with the intention to transfer ownership of these assets to the lessee upon termination of the finance lease;

"fit and proper person" means a person who is suitable to hold the particular position which that person holds or is to hold with regard to -

- (a) the probity, competence and soundness of judgment of the person for purposes of fulfilling the responsibilities of that position;
- (b) the diligence with which that person fulfils or is likely to fulfil those responsibilities;
- (c) whether the interest of depositors or potential depositors of the entity are threatened, or likely to be, in any way threatened by the person holding that position;

(d) the integrity and the qualifications and experience of the person are appropriate for the position in the light of the business plan and activities of the entity which the person serves, or is likely to serve, taking into account the size, nature and complexity of the institution; and

(e) any other criteria that may be stipulated by the Central Bank;

"financial institution" means an institution subject to regulation and supervision by the Central Bank under this Act or any other enactment;

"financial services" means any service, including banking business, prescribed as such by the Central Bank;

"foreign bank" means a bank licensed in another country;

"foreign financial holding company" means a financial holding company registered or authorised in another country;

"foreign supervisory authority" means the relevant supervisory authority in the country where the foreign bank has its principal place of business;

"home supervisory authority" means the supervisory authority in the country in which the bank or financial holding company is licensed or registered;

"independent director" means a director who is free of management and shareholders influence and whose judgment will be exercised for the sole benefit of the bank or financial holding company and who has no perceived or actual conflict of interest arising from relationships with the bank, financial holding company and with bank and financial holding company-related parties whether present, past or future and other relevant facts and circumstances;

"insider" means a director, key management personnel, all other employees or significant shareholder of a bank or financial holding company;

"insolvent or insolvency" means a bank or financial holding company that is unable to meet its obligations as they fall due or the value of its liabilities exceeds the value of its assets;

"key management personnel" includes the chief executive, deputy chief executive, chief operating officer, chief finance officer, board secretary, treasurer, chief internal auditor, the chief risk officer, the head of compliance, the head of anti-money laundering functions, the head of internal control functions, chief legal officer, chief technical officer, manager of a significant business unit of a bank, or financial holding company or any person with similar responsibilities;

"licence" means an authorisation granted by Central Bank to a body corporate for the purpose of carrying out banking business;

"management letter" means a formal letter from the auditor addressed to a financial institution on the weaknesses identified in the operations of that financial institution during the audit;

"minimum paid-up capital" includes-

- (a) initial funds required to start-up a bank; and
- (b) the operational start-up costs, as may be prescribed by the Central Bank but excludes expenses incurred in employing capital;

"money" means any regulated and generally accepted medium of financial exchange, as prescribed by the Central Bank, which can be used as a legal tender for the repayment of debt; a store of purchasing power, a standard of value and a unit of accounting measure;

"net-own funds" means the sum total of share capital that has been -

- (a) paid-up;
- (b) free reserves but excludes revaluation reserves; and
- (c) the statutory reserve fund subject to netting out accumulated losses, goodwill and unwritten-off capitalised expenditure including pre-operating expenses and deferred tax;

"non-financial company" means a person that primarily engages in commercial, industrial or agricultural activities;

"non-interest banking" means the practice of banking business in conformity with Islamic finance;

"non-performing asset" means a credit exposure or asset classified as non-performing by the Central Bank;

"non-preferential" means upon terms no more favourable than those which would be offered under prevailing conditions to all clients and customers of a bank or financial holding company;

"official administrator" means a person appointed by the Central Bank to carry out official administration of a bank or financial holding company as prescribed under this Act;

"off balance sheet transactions" includes contingent assets, contingent liabilities in the form of letters of credit, guarantees, bids, bonds and indemnities;

"paid-up capital" includes minimum capital, additional fully paid-up shares, and the capitalisation of income surplus;

"person" includes an individual, a body corporate or association of body of persons whether or not incorporated;

"prescribe" means prescribed by regulations, rules, directives or guidelines issued by the Central Bank;

"place of business" means any branch, agency, office, outlet, cash point, mobile office, or booth of a bank that is open to the public;

"public interest" includes a right or advantage which ensures or is intended to ensure the general benefit of the people of Sierra Leone;

"purchase and assumption" means an agreement in which a part or -the whole of the assets of the fail-ed bank are purchased and all or some of the liabilities are assumed by an acquiring bank;

"receivership" means the process of revoking the charter of a failing bank and appointing a receiver-

- (a) to continue with the closing function of a failed institution;
- (b) to liquidate the failed institution's remaining assets; and
- (c) to distribute any proceeds of the liquidation to the Central Bank, to the failed institution's customers who had uninsured deposit amounts, to general creditors, and to others with approved claims;

"resolution" means the process of -

- (a) valuing a failing institution;
- (b) marketing the failing institution to healthy institutions;
- (c) soliciting and accepting bids for the sale of some or all of the institution's assets and assumption of deposits (including some liabilities);
- (d) determining which bid is least costly to the deposit insurance fund; and
- (e) working with the assuming institution through the closing process (or ensuring the payment of insured deposits in the event there is no acquirer);

"related person" means a bank or financial holding company's subsidiaries, affiliates and any party including-

- (a) their subsidiaries, affiliates and special purpose entities that the bank or financial holding company exerts control over or that exerts control over the bank or financial holding company;
- (b) the bank or financial holding company's controlling shareholders, Board Members, senior management and key staff and their direct or related interests; and
- (c) their close relatives as well as corresponding persons in affiliated companies;

"representative office" in relation to a bank incorporated overseas means premises from which the banking business or other financial activity of the overseas bank are promoted in any way;

"registration" means an authorisation granted by a Central Bank to a financial holding company pursuant to this Act;

"regulation" means a legally binding directive adopted by the Central Bank and applied to all banks in the implementation of this Act;

"resident non-executive director" means non-executive director residing in Sierra Leone;

"significant shareholding" means a direct or indirect holding in a bank or financial holding company which represents 5% or more of -

- (a) the paid-up capital;
- (b) the voting rights; or
- (c) which makes it possible to exercise a significant influence over the management of the bank or financial holding company in which a holding subsists;

"significantly under-capitalised" means a capital position that is less than 50% of the capital adequacy ratio requirements prescribed by the Central Bank;

"statutory reserve fund" means the statutory reserve fund required to be maintained by a bank or financial holding company under subsection (1) of section 30;

"subsidiary" means a body corporate over which another body corporate has control;

"Tier 1 Capital" means permanent shareholders' equity in the form of issued and fully paid-up shares plus all disclosed reserves, perpetual non-cumulative preference shares and retained earnings, less goodwill and any other intangible assets, as may be prescribed by the Central Bank;

"Tier 2 Capital" means general provisions which are held against future and current unidentified losses and are freely available to meet losses which subsequently materialize, and includes subordinated debt, cumulative and redeemable preferred stock, revaluation reserves on fixed assets, and any other form of capital, as prescribed by the Central Bank;

"under-capitalised" means any capital position below the Minimum Capital Adequacy Ratio requirement; and

"unsecured advances or credit facilities" means-

- (a) loans or credit facilities made without security,
- (b) part of loans or credit facilities made in excess of the market value of the security pledged; or
- (c) loans or credit facilities which the Central Bank deems that no market value exists for the security pledged.

Application. 2. This Act shall apply to -

- (a) banks;
- (b) financial holding companies; and
- (c) subsidiaries, branches and the overseas operations of banks and financial holding companies.

Companies Act, 2009. 3. (1) This Act shall be read together with the Companies Act, 2009 (Act No. 5 of 2009).

(2) The Companies Act, 2009 shall not be derogated from except expressly provided for in this Act.

Conflict or inconsistency. 4. Where there is conflict or inconsistency between this Act and any other Act, this Act shall prevail.

Objective and functions of the Central Bank. 5. (1) The Central Bank shall be the sole body responsible for the licensing, supervision, regulation and resolution of banks including-

- (a) all matters relating to deposit-taking of banks and financial holding companies; and
- (b) the responsibility for promoting the safety and soundness of the financial system and protecting the interests of depositors.

(2) The Central Bank shall have all functions, powers and duties imposed on it by this Act.

PART II- LICENSING

6. A person shall not be eligible to apply for a licence to carry out the business of banking or otherwise solicit deposits from the public in Sierra Leone unless he is a limited liability company - Eligibility to apply for a licence.

- (a) incorporated under the laws of Sierra Leone;
- (b) registered under the laws of Sierra Leone as a subsidiary of a foreign bank.

7. (1) A person who wishes to engage in the business of banking or otherwise solicit deposits from the public in Sierra Leone shall apply to the Central bank to be licensed for that purpose. Application for licence.

(2) An application for a licence under subsection (1), shall be made in writing to the Central Bank and shall be in the form that the Central Bank may prescribe and shall be accompanied by-

- (a) evidence of payment of the prescribed non-refundable application fee;
- (b) a certified true copy of the applicant's -

- (i) certificate of incorporation in the case of companies incorporated under the laws of Sierra Leone or certificate of registration in the case of companies registered under the laws of Sierra Leone as a subsidiary of a foreign bank;
- (ii) Memorandum and Articles of Association; and
- (ii) any other relevant document required by the Central Bank;
- (c) the names, address, occupation of persons who would hold significant shares, directly or indirectly, in the proposed bank and the respective values of such shares, as well as those of their corporate affiliates;
- (d) a complete organisational structure of the group including all direct and indirect affiliates and associates of the applicant and the nature of their relationship to the group where the applicant is or will be a member of a corporate group;
- (e) particulars of the directors or persons concerned with the management of the proposed bank, including their background, certified financial position, business interests and performance of the business under their control or management;
- (f) feasibility reports including business plan and financial projections for the first 5 years, audited financial statements and annual reports for the past 2 years;

- (g) the authorised capital, including the amounts that have been paid up;
- (h) a list of proposed significant shareholders stating their names, addresses and respective shares;
- (i) an affidavit disclosing the name, nationality, place of residence, business and professional history for the past 10 years, and audited financial statements for the past 3 years if applicable for each person who would be a director, executive officer or significant shareholder of the proposed bank;
- (j) evidence of any conviction by a court of law for offenses punishable by imprisonment or involving fraud or dishonesty;
- (k) any personal bankruptcy filings, suspension of payments to or compounding with creditors;
- (l) evidence of any disqualifications or suspensions by a competent authority from practicing a profession;
- (m) evidence of any past or present involvement in a managerial function of a body corporate or other undertaking that is or has been subject to insolvency proceedings;
- (n) evidence of any removal from the position of director or executive officer at any bank or other financial company ordered by a competent authority;

- (o) the written approval of a relevant Central Bank in a foreign country or territory confirming that it exercises global consolidated supervision over the bank in the case of an applicant whose principal place of business is in another country; and
- (p) such other particulars as the Central Bank may require.

(3) An application may be withdrawn by notice in writing by the applicant at any time before its approval.

(4) An applicant shall provide the Central Bank with particulars of any changes in the information provided to Central Bank under this Section as soon as the applicant becomes aware of such change.

(5) In determining an application under subsection (1), the Central Bank shall take into account, amongst other things, the following -

- (a) whether the significant and controlling shareholders, beneficial owners, directors and key management personnel or proposed directors and proposed key management personnel of the applicant are fit and proper persons;
- (b) the extent to which the legal, operational, managerial and ownership structure of an applicant and its financial group could hinder effective supervision;
- (c) whether the applicant meets the prescribed minimum paid-up capital;

- (d) the sources and legitimacy of the applicant's minimum capital;
- (e) the financial position and financial history of the applicant; and
- (f) whether the interest of potential depositors will be detrimentally affected by the manner of the applicant's corporate governance arrangements including accounting, risk management, internal control systems and records.

(6) A person who transacts banking business without a valid licence under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding 10 years or to a fine which is equivalent to twice the amount of deposits collected in contravention of this Act or to both.

(7) The Central Bank may instruct a person who contravenes subsection (1) to immediately terminate any deposit-taking activities and repay the funds so raised.

(8) Where the Central Bank has reasonable grounds to believe that a person has contravened subsection (1), it may, under a warrant issued by a Magistrate, enter any premises and examine the books, accounts and records of that person and take copies of or extracts from any documents or records examined.

(9) A person who intentionally obstructs the Central Bank in the exercise of the powers conferred by subsection (7) or (8) commits an offence and is liable on conviction to a fine.

8. (1) The Central Bank may grant or refuse an application for a licence under section 8 based on its assessment of -

Grant or refusal of licence.

- (a) the character and fitness of the directors and executive officers or proposed directors and proposed executive officers of the applicant;
- (b) the identity, financial resources and reputation of existing or proposed significant shareholders of the applicant;
- (c) the adequacy of the applicant's capital structure in relation to the nature and scale of the proposed banking business;
- (d) the financial position and financial history of the applicant;
- (e) the quality of the applicant's risk management, internal controls and internal and external audit systems;
- (f) the likely conduct of the affairs of the applicant in relation to the interests of depositors,
- (g) the extent to which the proposed corporate structure of the applicant and its affiliates may hinder the effective supervision and regulation of the bank; and
- (h) the impact on the banking system more generally of the issuance of the licence.

(2) In addition to the criteria outlined in subsection (1), where the applicant is a subsidiary of a foreign bank, the Central Bank may grant a licence under section 7 where -

- (a) the home Central Bank issues a statement to the Central Bank indicating that -

- (i) it has consented to the establishment of a subsidiary in Sierra Leone by the foreign bank; and
 - (ii) it is satisfied with the prudential and overall financial management of the foreign bank;
- (b) the Central Bank is satisfied as to the nature and scope of the supervision exercised by the home Central Bank, including consolidated global supervision.
- (3) A licence granted under subsection (1) shall-
- (a) be in writing;
 - (b) be valid for such period as may be specified by the Central Bank;
 - (c) not be transferable;
 - (d) be subject to such terms and conditions as the Central Bank may specify, including restrictions regarding the nature and extent of activities in which the bank may be engaged; and
 - (e) such fee, including an additional fee for late payment as may be prescribed by the Central Bank.

(4) The Central Bank shall communicate its preliminary decision to grant or refuse an application for a licence under section 8 within 90 days and its final decision not later than 180 days from the date of receipt of complete information.

(5) Where the Central Bank grants or refuses an application for a licence under subsection (1) it shall give notice in writing to the applicant-

- (a) of the grant; or
- (b) in the case of a refusal, the reasons for its decision.

(6) Where a person is dissatisfied or aggrieved with a decision of the Central Bank under paragraph (b) of subsection (5) may petition the Central Bank in writing for a review within 10 days of the decision.

(7) The Central Bank shall publish a list of all persons licensed under this Act, including its branches and subsidiaries.

Revocation
of licence.

9. (1) The Central Bank may revoke a licence granted under paragraph (a) of subsection (5) section 8 if it is satisfied that -

- (a) the licensee has failed to fulfill or comply with the terms and conditions stipulated in the licence;
- (b) the licensee has failed to comply with any obligation imposed on it by this Act;
- (c) the licensee has provided false, misleading or inaccurate information in connection with an application for a licence;
- (d) the interests of depositors or potential depositors are threatened, whether by the manner in which the licensee is conducting or proposes to conduct its affairs or for any other reason;
- (e) the licensee has become insolvent;

- (f) the licensee has failed to raise its capital to the levels necessary to rectify its significant under-capitalisation or its financial position continues to deteriorate before the end of the periods specified in paragraph (a) of subsection (1) of Section 67;
- (g) the licensee or person in the senior management, in a situation where the crime is committed with the acquiescence of the licensee is convicted of money laundering and terrorist financing activities or any other financial crime;
- (h) the licensee has failed to commence business within 6 months from the date of the licence;
- (i) the licensee has ceased to carry on business; or
- (j) any serious crime.

(2) Where in the case of a subsidiary of a foreign bank, it appears to the Central Bank that the home Central Bank has withdrawn its consent required to be issued under subparagraph (i) of paragraph (a) of subsection (2) of section 8, the Central Bank may-

- (a) restrict transactions between the bank and the financial holding company; or
- (b) revoke the licence of the subsidiary foreign bank.

(3) Where the Central Bank revokes a licence granted under section 8 the Central Bank shall-

- (a) place the bank or financial holding company in receivership.
- (b) immediately publish notice of the revocation of the licence on its website or any other media that may be deemed appropriate;
- (c) immediately notify the Deposit Protection Fund of the revocation of licence of a bank or financial holding company.

Restriction of licence.

10. (1) The Central Bank may restrict, instead of revoking a licence, where it is satisfied that notwithstanding the grounds on which its power to revoke a licence is exercisable but the circumstances are not such as to justify revocation.

(2) The Central Bank may, in restricting a licence under subsection (1), impose conditions-

- (a) requiring the licensee to refrain from pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) limiting the acceptance of deposits, the granting of credit, the making of investments, or the opening of subsidiaries or branches by the licensee;
- (c) prohibit the licensee from soliciting for deposits;
- (d) prohibit the licensee from entering into any other transaction or class of transactions;
- (e) require the removal or replacement of any director, manager or other officer of the licensee;

- (f) such other conditions as it considers appropriate.

(3) The duration of the restriction of a licence imposed by the Central Bank under subsection (1) shall not exceed 2 years from the date on which it was imposed.

(4) Where the Central Bank restricts a licence under subsection (1), the Central Bank shall notify the licensee of the restriction in writing indicating that the licensee may, within 30 days, make representation in opposition to the restriction to the Central Bank.

(5) Where a licensee fails to comply with the requirement undersubsection (2) or contravenes any provision under this section the Central Bank may revoke the licence or impose such other administrative penalty as may be appropriate.

11. (1) A person other than a bank licensed under this Act shall not use or continue to use the word 'bank' or any of its derivatives either in English, French or any other language in the description or title under which the person is carrying on business.

Restriction on use of word 'bank'.

(2) A person shall not be granted or continue to hold a licence under a name which so closely resembles the name of the holder of an existing licence as is likely, in the opinion of the Central Bank, to mislead the public.

(3) This section shall not apply to -

- (a) financial holding companies which operate as a bank; and
- (b) any registered association of banks, financial holding companies, banks and financial holding companies' employees formed for the protection and advancement of their mutual interest or in furtherance or promotion of education and training of personnel for financial companies.

(4) A person who contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 10 years or to a fine which is equivalent to twice the amount of deposits received in the contravention or to both fine and imprisonment.

Display of banking licence.

12. (1) A licensee shall display conspicuously at its head office and branches or office of its agent, copies of its banking licence or registration for the information of the public.

(2) Where a licensee fails to comply with the requirement under subsection (1) the Central Bank may impose such administrative penalty as may be appropriate.

Powers regarding unauthorised banking business.

13. (1) The Central Bank may inspect or cause to be inspected, the records of any person if it has reasonable grounds to suspect that the person is carrying out the business of banking without a valid banking licence issued under this Act.

(2) Upon carrying out the inspection if it is found that there is evidence to prove that the business of banking was carried out partly or wholly without a licence, the inspecting officials may seize the relevant records to facilitate prosecution.

Repayment of monies by unauthorised persons.

14. (1) Where the Central Bank is satisfied that a person has accepted deposits in contravention of section 13, the Central Bank shall direct that person to repay all the deposits obtained and all profits accruing to that person or assets acquired as a result of the illegally obtained monies or deposits, including any interest or other amounts which may be owed by that person in respect of those deposits or monies-

- (a) to the respective persons from whom deposits have been obtained;
- (b) in the manner and in accordance with the instruction of the Central Bank; and

(c) within the period of time imposed by the Central Bank.

(2) A person who refuses or fails to comply with a directive under subsection (1), shall be deemed to be unable to pay its debts, or adjudged bankrupt and the Central Bank may appoint a liquidator.

15. (1) The Central Bank shall prescribe the minimum paid-up capital requirements for banks and financial holding companies. Minimum paid up capital.

(2) A bank or financial holding company shall, pursuant to subsection (1), -

- (a) maintain a minimum paid-up capital as prescribed by the Central Bank;
- (b) submit to the Central Bank additional funds to address the deficiency in the capital, where its minimum paid-up capital has been impaired by way of losses.

(3) A bank or financial holding company who fails to comply with this section is liable to administrative penalty.

16. (1) A bank shall not carry on any other businesses except- Permissible activities.

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (d) hire purchase
- (e) investment in financial securities excluding capital instruments for their own account;

- (f) money transmission services;
- (g) issuing and administering means of payment including debit cards, traveler's cheques and banker's drafts
- (h) guarantees and commitments -
 - (i) trading on own account or for account of customers in -
 - (i) money market instruments;
 - (ii) foreign exchange;
 - (iii) transferable securities;
- (j) participating in securities issues and provision of services related to such activities;
- (k) advice to undertakings on capital structure, acquisition and merger of undertakings;
 - (l) portfolio management and advice;
- (m) keeping and administering securities;
- (n) credit reference services;
- (o) safe custody services;
- (p) non-interest banking;
- (q) digital financial services; and
- (r) such other services as may be prescribed by the Central Bank .

(2) The Central Bank may by notification restrict the permissible activities of banks in general, any class of banks or any individual bank or remove the restriction so imposed as it may deem necessary and appropriate.

(3) A bank shall seek prior written approval of the Central Bank to introduce products that are derived from the permissible activities specified under paragraphs (p) and (q) of subsection (1).

(4) A bank which fails to comply with this section is liable to an administrative penalty.

17. (1) A bank shall not open, close, relocate its head office or branch unless on prior written approval of the Central Bank.

Opening, closing, relocation, appointment and dismissal.

(2) A bank shall not appoint, suspend or dismiss an agent which carries out banking business on its behalf without a no objection from the Central Bank.

(3) A bank licensed under this Act may with prior written approval of the Central Bank carry on banking business outside Sierra Leone only through a separately capitalised subsidiary company or representative office.

(4) A bank or financial holding company who contravenes this section is liable to an administrative penalty.

18. (1) A bank or financial holding company incorporated outside Sierra Leone shall not set up a representative office in Sierra Leone unless it has obtained the written approval of the Central Bank.

Representative office.

(2) An application to setup a representative office under subsection (1), shall be made to the Central Bank in such form as may be prescribed and shall contain such information and supported by such documents as the Central Bank may require, including permission from the home Central Bank.

(3) A representative office shall not transact banking business in Sierra Leone.

(4) A person who contravenes this section is liable to an administrative Penalty.

Approval
required for
appointments.

19. (1) A bank or financial holding company shall not appoint—

- (a) chief executive or deputy chief executive;
- (b) executive director or deputy executive director;
- (c) Board member or key management personnel;
- (d) agent who carries on banking business on its behalf; or
- (e) any other officer as the Central Bank may determine,

unless prior written approval of the Central Bank is obtained.

(2) Where there is any change in the appointment of the chief executive, deputy chief executive, executive director, Board member, key management personnel, agent and any other officer under subsection (1), the bank or financial holding company shall promptly notify the Central Bank.

(3) A chief executive, deputy chief executive, executive director and any other officer that the Central Bank may determine, of a bank or financial holding company shall after the appointment reside in Sierra Leone

Qualification
for appoint-
ment.

20. (1) A person shall not be appointed chief executive, deputy chief executive, executive director, Board member, key management personnel, agent or other officer of a bank or financial holding company if he -

- (a) is certified by a medical practitioner to be a person of unsound mind;
- (b) has been declared insolvent for 7 years or has entered into agreement with another person for payment of the debt of that person and has suspended payment of the debt;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) has been a Director or key management personnel of any institution that has been liquidated otherwise than for voluntary reasons or has had its licence revoked;
- (e) is under the age of 18 years;
- (f) is a Director or board member of another bank or financial holding company, unless that person has obtained written approval of the Central Bank;
- (g) is declared not to be a fit and proper person by the Central Bank;
- (h) has been removed from office by the Central Bank; or
 - (i) has been banned by a professional body to which the person belongs.

(2) A bank or financial holding company that becomes aware of circumstances that may disqualify a chief executive, deputy chief executive, executive director, director, Board member or key management personnel, agent or other officer concerned in the management of that bank or financial holding company shall immediately notify the Central Bank.

(3) Where a person is subject to disqualification under this section he shall immediately cease to hold office or act as such and the bank or financial holding company concerned shall immediately terminate his appointment.

(4) A person who, at any time during the preceding 12 months, has served in a management position with the central bank shall not serve as a director or executive officer of a bank or financial holding company, without obtaining the prior approval of the Central Bank.

(5) A governor, deputy governor or director of the Central Bank shall not serve as a director or executive officer of a bank or financial holding company, during the one-year period immediately following the date on which the person ceased to occupy the position with the central bank.

(6) A person who has been a director or has been directly or indirectly concerned in the management of a bank who has had its licence revoked in accordance with this Act shall not serve as a director of another bank or financial holding company without the express approval of the Central Bank.

(7) Except with the consent of the Central Bank, no bank or financial holding company incorporated in Sierra Leone shall have as a director a person who is a director of another bank.

(8) A person who on the date of the coming into operation of this Act is an executive officer or director of a bank or financial holding company shall not, within 30 days after the coming into operation of this Act remain an executive officer or director of that bank unless the person satisfies the conditions specified in section 20.

(9) A bank or financial holding company shall immediately notify the Central Bank on becoming aware of circumstances that indicate that a director or executive officer may not satisfy the requirements of subsections (1) to (7).

21. (1) A person shall on appointment as chief executive, deputy chief executive, executive director, Board member or key management personnel, agent or other officer declare to the Board of Directors- Disclosure of interest.

- (a) any professional interests or the offices he holds as manager, director, trustee or by any other designation; and
- (b) his investment or business interests or that of his spouse or any close relative, in firms, companies and institutions as a significant shareholder, director, partner, proprietor or guarantor.

(2) A chief executive, deputy chief executive, executive director, Board member, agent or officer shall declare to the bank or financial holding company any changes in his business interests or holding of offices as and when they occur.

(3) The bank or financial holding company shall immediately place before its Board of directors all declarations made pursuant to subsection (2).

(4) A chief executive, deputy chief executive, executive director, Board member, agent or key management personnel who has any direct or indirect interest in a proposed credit or other facility to be given to any person by that bank or financial holding company or in a transaction that is proposed to be entered into with any other person, shall as soon as practicable declare the nature and extent of his interest in the proposal to the bank's or financial holding company's Board of directors.

(5) In deciding whether to grant a proposed credit facility referred to in subsection (4) the bank or financial holding company shall take into consideration a declaration made under subsection (4).

(6) A chief executive, deputy chief executive, executive director, Board member, agent or key management personnel shall not attend or participate in a board meeting where a proposal for a credit or other facility in which he has direct or indirect interests is being determined.

(7) A proposal in which a chief executive, deputy chief executive, executive director, Board member, agent or key management personnel has interests, directly or indirectly, shall be considered and decided upon by the bank's or financial holding company's Board of directors and not by any delegated authority.

(8) A chief executive, deputy chief executive, executive director, Board member or key management personnel who contravenes this section shall be declared by the Central Bank not to be a fit and proper person as defined by this Act.

PART III - CORPORATE GOVERNANCE

Corporate
governance
rules.

22. (1) The Central Bank may by statutory instrument make rules regarding matters of corporate governance for banks and financial holding companies that the Central Bank considers necessary or appropriate to ensure sound operation including -

- (a) the scope and nature of the duties of directors;
- (b) the requirements for audit committees and other specific committees of a Board of Directors;
- (c) the responsibilities of key management personnel;
- (d) risk management;
- (e) internal audit; and
- (f) internal controls and compliance.

(2) The Central Bank shall review the corporate governance structure and regulations of banks and financial holding companies including issues relating to -

- (a) alteration of constitution;
- (b) composition of the Board of directors;
- (c) duties of the Board of directors;
- (d) duties of the directors to report;
- (e) appointment of internal auditor; and
- (f) corporate secretary.

(3) A bank or financial holding company shall, within 28 days of the date of approval by its shareholders or board of directors of any alteration to its memorandum of association or of any other document representing its constitution, submit the particulars of the alteration to the Central Bank for approval.

(4) Approval for the alteration shall not be granted by the Central Bank unless it is satisfied that the proposed alteration is not detrimental to the interests of the bank or financial holding company's depositors.

(5) Notwithstanding anything contained in any legislation relating to companies 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 bank or financial holding company shall become effective without the written approval of the Central Bank.

(6) A bank or financial holding company which fails to comply with the requirements of this Section shall be liable to an Administrative Penalty.

(7) A bank or financial holding company shall be governed by a board of directors that meets the following requirements -

- (a) not less than five and not more than 9 members, majority of whom shall be resident in Sierra Leone;
- (b) not less than 50% excluding the Chairman should comprise non-executive directors;
- (c) not more than 40% excluding the Chairman should comprise executive directors;
- (d) not less than 10% should be independent non-executive directors; and

(8) The board shall be chaired by a resident non-executive director.

(9) Directors shall be fit and proper persons as defined in this Act.

(10) The board of directors of a bank or financial holding company shall be responsible for providing strategic direction.

(11) The board of directors of a bank or financial holding company shall be responsible for ensuring that -

- (a) a sound risk management culture is established throughout the bank or financial holding company and its subsidiaries;

(b) policies and processes are developed for risk-taking that are consistent with the risk management strategy and the established risk appetite;

(c) uncertainties attached to risk measurement are recognised;

(d) appropriate limits are established that are consistent with the bank or financial holding company's risk appetite, risk profile and capital strength and that are understood by and regularly communicated to relevant staff; and

(e) key management personnel take steps necessary to monitor and control all material risks consistent with approved strategies and risk appetite.

(12) The board of directors of a bank or financial holding company shall set suitable risk appetite levels to define the level of risk the bank or financial holding company is willing to assume.

(13) The board of directors of a bank or financial holding company shall be responsible for ensuring that the business of the bank or financial holding company is carried on in compliance with all applicable laws and safe and sound practices.

(14) The board of directors of a bank or financial holding company may establish such committees necessary to implement its duties.

(15) The board of directors of a bank or financial holding company shall not delegate its responsibility for the safe and sound operation of the bank or financial holding company.

(16) The board of directors of a bank or financial holding company as a group or each director individually shall immediately report in writing to the Central Bank if they have reason to believe that the bank or financial holding company -

- (a) may not be able to properly conduct its business as a going concern;
- (b) appears to be or is likely in the near future to be unable to meet all, or any of its obligations;
- (c) has suspended or is about to suspend any payment of any kind;
- (d) does not, or may not be able to meet its capital requirements as prescribed under this Act;
- (e) is engaged, exposed or involved in an event which is likely to have a material adverse impact on the bank or financial holding company; or
- (f) violates or is about to violate a law or regulation.

(17) Any individual director who acts in accordance with this Section shall make his or her intention known to the board of directors in writing prior to reporting to the Central Bank.

(18) Where the board of directors or a director fails, omits or neglects to report to the Central Bank any matter required to be reported under this Section, the Central Bank may remove any or all such directors.

(19) Notwithstanding sub section (18) the board of directors or each director who violates the provisions of paragraph (a) of subsection (16) shall be liable to an administrative penalty.

(20) A bank or financial holding company shall have an internal auditor, appointed by its board of directors who shall operate independently of the board of directors and report to an audit committee.

(21) The internal auditor shall be a certified chartered accountant or certified internal auditor.

(22) The internal auditor shall be given access to management to discuss matters relevant to its functions and shall have the right, upon request, to obtain from the bank or financial holding company any information or documentation which he shall require.

(23) The internal auditor shall be responsible for -

- (a) monitoring the bank or financial holding company's systems for internal controls, applicable policies and procedures;
- (b) reporting non-compliance with policies, procedures or applicable laws or other irregularities to an audit committee at least quarterly, and more frequently when necessary;
- (c) assisting and cooperating with the external auditor, referred to in subsection (1) of section 111, in the performance of its duties; and
- (d) performing such other duties as may be assigned to the internal auditor by the board of directors or an audit committee.

(24) A bank or financial holding company shall have a corporate secretary, appointed by its board of directors, who shall be accountable to the board of directors.

(25) The corporate secretary shall be an executive officer suitably qualified.

(26) The corporate secretary shall be responsible for advising and guiding the board of directors on matters of ethics and good corporate governance.

PART IV -REGISTRATION OF A FINANCIAL HOLDING COMPANY

Financial holding companies not to function without licence or registration.

23. (1) A person shall not function as a financial holding company except granted a licence under section 8 and registered as a Financial Holding Company under section 25. to function

(2) Where the Central Bank does not grant an application for licence to a financial holding company under section 8 or register a financial holding company under section 25, it shall be unlawful for

- (a) a person to operate as a financial holding company;
- (b) a bank to become a subsidiary of a financial holding company;
- (c) a company to acquire direct or indirect ownership or control of any voting shares of any bank where, after such acquisition, such company will directly or indirectly own or control more than 5% of the voting shares of such bank;
- (d) a company, including a financial holding company, to acquire all or substantially all of the assets of a bank; or

(e) a financial holding company to merge or consolidate with any other financial holding company.

(3) Notwithstanding subsection (2) the Central Bank may exempt a bank or financial holding company from the application of subsection (2) where such bank or financial holding company is subject to supervision and regulation that is satisfactory to the Central Bank, including supervision on a consolidated basis, in its home jurisdiction or another jurisdiction in which it has substantial operations.

(4) An exemption under subsection (3) may be made subject to such terms and conditions as the Central Bank considers appropriate.

(5) The Central Bank may by statutory instrument make regulations, rules and issue guidelines for the regulation and supervision of financial holding companies.

24. (1) A financial holding company shall not -

- (a) carry out any business other than financial services;
- (b) directly or indirectly control any member of a financial group whether through establishment, acquisition or otherwise.

Restrictions on activities of financial holding companies.

(2) A financial holding company may invest in banks and any other financial institutions as may be determined by the Central Bank.

(3) The Central Bank may by statutory instrument prescribe rules relating to the maximum -

- (a) percentage of shares of a class or the maximum value of ownership interests that may be acquired or held;
- (b) aggregate value of the shares and ownership interest of the activities permissible for financial holding companies.

(4) The Central Bank may exempt a financial holding company from the restrictions under subsection (1) if that financial holding company is

- (a) a foreign bank;
- (b) a foreign financial institution; or
- (c) a foreign financial holding company, where the Central Bank is satisfied that the permitted activities of the foreign bank, foreign financial institution or foreign financial holding company are adequately regulated and supervised and do not present unacceptable risks to any bank in Sierra Leone.

Registration of financial holding company.

25. (1) An application for the registration of a financial holding company shall be made in writing in such form, accompanied by such non-refundable fee as may be prescribed by the Central Bank and supported by the following -

- (a) a certified true copy of the applicant's Certificate of Incorporation, Memorandum and Articles of Association and board resolution in respect of its application;
- (b) the capital resources, including original sources and capital structure of the proposed financial holding company;

- (c) the names, address, occupation, business and professional history, certified financial positions, and corporate affiliations of persons who will hold or ultimately benefit from significant shares, directly or indirectly in the proposed financial holding company and the respective values of the shares;
- (d) the organisational and managerial structures, including a complete diagram of the group of companies controlled by the proposed financial holding company, identifying all direct and indirect affiliates and associates and the nature of their relationship to the financial holding company;
- (e) the particulars of the significant or controlling shareholders, beneficial owners, directors and key management personnel of the proposed financial holding company, including their qualifications and experience, business and professional history, certified financial position, business interests and performance of the business under their control or management;
- (f) the feasibility reports, including a business plan and financial projections for the first 5 years and areas of intended activities;
- (g) the audited financial statements for the past 3 years or for such lesser period as the entity has been in existence;
- (h) the measures and structures that the company intends to adopt to ensure that its business is conducted in accordance with sound corporate governance principles;

- (i) for each Director, key management personnel or significant shareholder of the proposed financial holding company, an affidavit disclosing convictions, if any, for offences by a court of competent jurisdiction, personal bankruptcy filings, disqualifications from practicing a profession, or past or present involvement in a managerial function of a body corporate or other undertaking subject to insolvency proceedings, if any;
- (j) particulars of any change in the information provided to Central Bank under this Act as soon as the applicant becomes aware of such change;
- (k) the sources and legitimacy of the applicant's minimum capital; and
- (l) any other information or documentation that the Central Bank may require.

(2) The Central Bank, in determining whether to register an applicant as a financial holding company under subsection (1), shall -

- (a) take into account the information referred to in subsection (1), and in particular whether the person or persons controlling the proposed financial holding company are such as to prejudice the interests of depositors and other customers of the bank; and
- (b) determine whether the legal, operational and managerial structure of the applicant and the ownership of shares by the person or persons controlling the proposed financial holding company, will hinder effective

supervision under this Act or would be likely to prejudice the interests of depositors and other customers of the bank.

(3) An application for registration under subsection (1) shall not be approved by the Central Bank, unless it is satisfied that the -

- (a) significant or controlling shareholders, beneficial owners, directors and key management personnel are fit and proper persons;
- (b) proposed significant shareholders are suitable and the ownership and managerial structure of the proposed financial holding company will not hinder effective supervision, including supervision on a consolidated basis;
- (c) capital of the applicant is adequate and the original sources of capital are acceptable and do not include borrowed funds;
- (d) applicant's arrangements for corporate governance, including, but not limited to, accounting risk management, and internal control systems and records, are adequate;
- (e) feasibility report is based on sound analysis under reasonable assumptions; and
- (f) applicant is a body corporate that controls a bank.

(4) The Central Bank may attach conditions to the registration of a financial holding company and may at any time vary, remove or add further conditions to the registration as the Central Bank considers necessary for the purposes of this Act.

(5) Where the Central Bank proposes to vary or add further conditions under subsection (4), the Central Bank shall give notice of its intention to the financial holding company and the financial holding company may within 30 days make representation to the Central Bank.

(6) The Central Bank shall decide on an application for registration as a financial holding company within 6 months after receipt of the completed information and documents under subsection (2).

(7) Where the Central Bank rejects an application under subsection (1) he may provide reasons in writing to the applicant.

(8) Where a person is dissatisfied or aggrieved with a decision of the Central Bank in respect of this Section the person may petition the Central Bank in writing within 10 days of receipt of the decision for a review.

(9) The Central Bank shall publish a list of all registered financial holding companies and their subsidiaries.

(10) Registration under this Act shall be subject to such other terms and conditions as the Central Bank may by statutory instrument prescribe.

Withdrawal
of registrat-
ion by the
Central
Bank.

26. (1) The Central Bank may withdraw the registration of a financial holding company where-

- (a) the financial holding company has failed to comply with any obligation imposed on it by or under this Act;
- (b) the financial holding company fails to comply with the conditions of its registration;
- (c) the financial holding company ceases to meet the requirements for registration as a financial holding company;

(d) the Central Bank determines that the registration was granted based on false or inaccurate information;

(e) the Central Bank determines that the financial holding company is or is likely to be insolvent; or

(f) the parent company of the financial holding company loses its authorisation to carry out banking business in its home jurisdiction or proceedings for bankruptcy, insolvency or an arrangement with creditors is initiated.

(2) Where the Central Bank intends to withdraw the registration of a financial holding company, the Central Bank shall give notice of its intention to the financial holding company and the financial holding company may within 30 days make representation in its defence to the Central Bank.

(3) Where the registration of a financial holding company is withdrawn it shall -

(a) require divestiture of any bank controlled by that financial holding company in Sierra Leone and restrict transactions between any bank in the country and the financial holding company, its affiliates and associates;

(b) place the financial holding company in official administration or receivership;

(c) notify the Deposit Protection Fund of the withdrawal of registration of a financial holding company; and

- (d) publish details of such withdrawal on its website or any other media as the Central Bank deems appropriate.

PART V - CAPITAL AND RESERVES

Capital adequacy.

27. (1) A bank or financial holding company shall maintain capital adequacy ratio as prescribed by the Central Bank both on a solo basis and a consolidated basis.

(2) The Central Bank may prescribe a higher capital adequacy ratio with respect to -

- (a) a particular bank, if it is satisfied that the bank has insufficient capital to shield itself against risks arising from the business activities of that bank; or
- (b) all banks, for a period that the Central Bank may determine, if it is satisfied that the conditions in the financial system so warrants.

(3) A financial holding company shall ensure that there is adequate distribution of capital within different entities of its group according to allocation of risks.

(4) The capital adequacy ratio shall be measured as a ratio of the capital base of a bank or financial holding company to its risk-weighted asset exposure.

(5) The Central Bank may define the eligible capital, categories of risk assets, appropriate adjustments and additions to risk weights for the purpose of calculating the ratio.

(6) The Central Bank may also prescribe capital buffers with respect to a particular bank or financial holding company.

(7) In determining the percentage for the minimum capital adequacy ratio, the Central Bank shall in each case have regard to-

- (a) the nature, scale and risk of the bank or financial holding company's operations and other available financial resources; and

- (b) the amount and nature of net-own funds of a bank required to protect the interests of depositors and potential depositors.

(8) The Central Bank may by statutory instrument prescribe other prudential measures that it considers necessary or appropriate.

(9) A bank who fails to observe the capital adequacy ratio prescribed by the Central Bank may be prohibited from-

- (a) advertising for or accepting new deposits;
- (b) granting credit and making investment; or
- (c) paying dividend to shareholders.

(10) A financial holding company who fails to observe the capital adequacy ratio prescribed by the Central Bank may be prohibited from paying dividend to shareholders.

(11) The Central Bank may require a bank or financial holding company to draw up, within a specified time, a capital restoration plan acceptable to the Central Bank.

(12) A bank or financial holding company who contravenes this section is liable to an action under sections 66 and 67.

Additional capital

28. (1) The Central Bank may require a bank to maintain additional capital as it considers appropriate in respect of risks which have not been adequately transferred or mitigated through transactions entered into by a bank or financial holding company.

Capital adequacy on consolidated basis.

29. The Central Bank shall require a bank or financial holding company to calculate and maintain the minimum capital adequacy ratio on a consolidated basis.

Statutory reserve fund.

30 (1) A bank or financial holding company shall maintain in a statutory reserve fund of such amount as may be prescribed by the Central Bank.

(2) A statutory reserve fund to be maintained by a bank under subsection (1) shall comprise the following amounts which shall be transferred out of its net profits for each year before it declares any interim or final dividend and after it has made provision for any taxes -

- (a) where the amount of the statutory reserve fund of the bank is less than 50% of its paid-up capital, an amount which shall not be less than 50% of its net profit for the year;
- (b) where the amount of the statutory reserve fund of the bank is 50% or more, but less than 100% of its paid-up capital, an amount which shall not be less than 25% of its net profit for the year; and
- (c) where the amount of the statutory reserve fund of the bank is equal to 100% or more of its paid up capital, an amount equal to 12.5% of its net profit for the year.

(3) A bank or financial holding company shall not appropriate a sum from the balance in its statutory reserve fund except with prior approval of the Central Bank.

(4) A bank or financial holding company which fails to maintain a statutory reserve fund is liable to an administrative penalty.

31. (1) Subject to subsection (2) of section 30, a bank shall not declare or pay an interim or final dividend on its shares until it has-

Restrictions on declaration and payment of dividend.

- (a) completely written-off all its capitalised expenditure;
- (b) made the required provisions for non-performing loans and other deterioration in asset value; and
- (c) satisfied the minimum capital adequacy ratio requirements and any other capital ratios specified by the Central Bank.

(2) Where the payment of any interim or final dividend would result in withdrawal of any part of the general reserves due to inadequacy of the profit for the year or where the statutory report of the auditors on the annual accounts of the bank is not satisfactory, the bank shall obtain prior written approval of the Central Bank before it declares any dividend on its shares.

(3) A bank shall not pay a dividend and bonus on its shares without the prior approval of the Central Bank.

(4) Where a bank declares or pays any interim or final dividend in contravention of this section, every director of the Board of the bank is liable to an administrative penalty.

(5) A director of the bank shall not be liable to pay the penalty if he proves that the contravention was committed without his consent or connivance or that he exercised all due diligence to prevent the contravention having regard to all the circumstances.

PART VI - LIQUIDITY

Maintenance
of liquid
assets.

32. (1) A bank or financial holding company shall at any such time and in respect of any such period as the Central Bank may require to submit to the Central Bank a report on its liquid assets and the Central Bank shall prescribe one or more liquidity requirements for banks and financial holding companies in the form of regulations, rules, directives or guidelines.

(2) A bank shall maintain at all times the amount of liquid assets that may be determined by the Central Bank.

(3) The minimum liquidity requirements shall be expressed as a ratio of a bank's liquid assets to its deposit liabilities.

(4) The Central Bank may prescribe a higher liquidity ratio with respect to a particular bank, if it is satisfied that the business activities of that bank, including the operation of subsidiaries, so require.

(5) A bank who fails to hold liquid assets in accordance with directives or guidelines issued under this Act is liable to an administrative penalty.

(6) The Central Bank may during a period of liquidity deficiency direct that a bank or financial holding company shall discontinue or limit in a manner specified in the directive, the granting of credit, making of investments or capital expenditure and not to distribute dividends to its shareholders.

(7) The Central Bank may require a bank or financial holding company to furnish within a specified date such information and in such form as it may deem necessary to ensure compliance with the requirements of this section.

(8) A bank or financial holding company who fails to furnish the information required under this section is liable to an administrative penalty for each day during which the default continues.

(9) The Central Bank may under subsection (8) levy on the non-compliant bank or financial holding company or its directors or chief executive, or all or any of them, an administrative penalty for each day during which the deficiency continues.

(10) The Central Bank may prescribe provisions on maintenance of liquid assets for financial holding companies

33. At the close of business on each day, the assets of every bank in 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. Local asset.

PART VII - OWNERSHIP AND CONTROL

34. (1) A bank or financial holding company that is a member of a financial group shall provide to the Central Bank, biannually or at such other times as the Central Bank may prescribe, a complete description of its organisational structure including- Reporting of Group structures

- (a) direct and indirect affiliates;
- (b) the nature of its relationship with the other members of the financial group; and
- (c) any other information the Central Bank may require.

(2) A bank or financial holding company shall report to the Central Bank, any changes to the organisational structure of the financial group of which it is a member, within such time as may be prescribed by the Central Bank.

35. (1) A person shall not directly or indirectly, alone or in concert with one or more persons- Acquisition, sale, disposal, or merger.

- (a) acquire significant shares in a bank or financial holding company;
- (b) hold or increase ownership interest in a bank or financial holding company in excess of 5% or such amount as may be prescribed by the Central Bank;
- (c) sell or dispose of any shares in a bank or financial holding company to any other person; or
- (d) enter into an agreement or arrangement which will result in a change in the control of a bank or financial holding company,

without the prior written approval of the Central Bank.

(2) A bank or financial holding company shall not enter into any arrangement or agreement that would result in -

- (a) the merger or restructuring of the bank or financial holding company;
- (b) a change in controlling interest of a bank or financial holding company;
- (c) the sale or disposal by merger of its business of banking or any proposal for reconstruction;
- (d) the establishment or acquisition of a subsidiary or of any other mode of operation in or outside Sierra Leone, without prior written approval from the Central Bank.

(3) A bank or financial holding company shall, for the purposes of obtaining an approval under subsection (2), submit a written application to the Central Bank.

(4) The Central Bank shall, in determining whether or not to grant an application for approval of a bank or financial holding company to enter into an arrangement or agreement under subsection (2), consider -

- (a) whether the transaction is in compliance with this Act;
- (b) whether the transaction is in the public interest;
- (c) the impact of the transaction on financial and managerial resources and the future prospect of the bank or financial holding company; and
- (d) the impact of the transaction on the functioning and stability of the overall financial system and the conduct of effective supervision.

(5) The Central Bank shall notify the applicant under subsection (3) in writing of its decision to grant or refuse the application within 60 days after receipt of the application and where additional information is required by the Central Bank, the time for notification of decision to the application may be extended by 21 days.

(6) Where the Central Bank is satisfied that a person is in contravention of subsection (2), it may annul the transfer, sale, merger or reconstruction of the bank or financial holding company.

(7) In addition to powers under subsection (5) the Central Bank may suspend voting rights, prevent the distribution of dividends or terminate the exercise of pre-emptive rights.

36. (1) A bank or financial holding company shall not acquire or hold part of the share capital of any small or medium scale industry or agricultural enterprise without the prior written approval of the Central Bank.

Acquisition of shares in small and medium scale industries or other business.

(2) Without prejudice to subsection (1), a bank or financial holding company may hold or acquire share capital of any small or medium scale industry or other business, subject to the approval of the Central Bank and to the following conditions-

- (a) the shareholding by the bank or financial holding company is in small or medium scale industry or agricultural enterprise;
- (b) the shareholding by the bank or financial holding company in any small or medium scale industry or agricultural enterprise shall not be more than 10% of the bank's or financial holding company's net own funds and shall not exceed 40% of the paid-up share capital of the company, the shares of which are acquired or held; or
- (c) the aggregate value of the equity participation of the bank or financial holding company in all non-financial institutions does not, at any time exceed 20% of its net own funds provided that a bank may hold shares acquired in the course of the satisfaction of any debt owed to it.

(3) A bank or financial holding company shall within 21 days of the acquisition of any shareholding pursuant to this section give full particulars thereof to the Central Bank.

(4) A bank or financial holding company who fails to comply with the provisions of this section is liable to an administrative penalty for each day during which the default continues.

PART VIII - RESTRICTIONS ON LENDING

37. (1) A bank or financial holding company shall not -
- (a) undertake one or more secured credit exposures to or in respect of a single person or group of connected persons; or
 - (b) carry out any other transaction in respect of any one person or group of connected persons, or any one sector of the economy,

Limits on exposure to single person or group.

which constitutes in the aggregate a liability to the bank amounting to more than 25% of its net own funds or a lower percentage that the central Bank may prescribe.

(2) A bank or financial holding company shall not undertake an unsecured credit exposure which in the aggregate constitutes more than 10% of its net own funds.

(3) For the purpose of this section, 2 or more persons constitute a group of connected persons where -

- (a) a direct or indirect control relationship exists among them; and
- (b) as a result of the structure of their relationship the other person is ultimately responsible for or benefits from the credit exposure outstanding.

(4) The Central Bank-

- (a) may provide guidance for banks in determining whether a connection exists among a group of persons; and
- (b) shall, where it is uncertain that a connection exists, determine if a connection exists on an individual basis based on the facts and circumstances of a group of persons.

(5) The total of a bank's or financial holding company's credit exposures shall not exceed the percentage level of net own funds prescribed by the Central Bank having regard to the risk and vulnerability of the financial system.

(6) In the case of transactions between banks, the aggregate of credit exposures and other financial guarantees or indemnities to any single bank shall not, except with the written approval of the Central Bank, exceed 30% of the net own funds of the bank undertaking such credit exposures or 30% of the net own funds of the bank to or in respect of which such facilities are extended, whichever of the two amounts is lesser.

(7) A credit exposure under subsection (1) shall not be considered as secured unless it is adequately secured by collateral having a market value that exceeds the outstanding amount of the credit exposure throughout its term.

(8) In computing credit exposure to a single borrower or group of connected persons, the following assets which may be held as collateral shall be deducted-

- (a) cash deposit;
- (b) lien on term deposit with the bank or financial holding company;
- (c) market value of treasury bills, government securities, bank securities; and
- (d) any other security as approved by the Central Bank.

(9) Credits extended to the subsidiaries of the recipient bank shall be taken into account in the calculation of the exposure limit.

(10) A bank or financial holding company whose capital adequacy ratio is less than the ratio prescribed by the Central Bank shall not receive any loan from any bank or financial holding company except with the approval of the Central Bank.

(11) A bank or financial holding company shall within 5 working days-

- (a) report to the Central Bank where -
 - (i) the grant of a credit exposure to a single person or group of connected persons in the aggregate exceeds 10% of the net own funds of the bank or financial holding company; or
 - (ii) a credit exposure exceeds the limit set by this section; and
- (b) provide a written plan for remedying the violation within a timeframe prescribed by the Central Bank.

(12) The aggregate borrowing of a bank or financial holding company, local and foreign shall not exceed the percentage of that bank's or financial holding company's net owned funds as may be determined by the Central Bank from time to time.

(13) Where a bank contravenes any of the provisions of this section, the bank and every director of its board is liable to an administrative penalty.

(14) A director or chief executive of a bank shall not be liable to the penalty in subsection (13) if he proves that the contravention was committed without his consent, connivance or that he exercised all due diligence to prevent the commission of the contravention having regard to all the circumstances.

Exposure limits on a consolidated basis.

38. The Central Bank shall apply the credit exposure limits under section 37 to a single person or group on a consolidated basis to a -

- (a) bank and the subsidiaries of a bank; and
- (b) financial holding company and the subsidiaries of a financial holding company.

Restrictions on transactions with an affiliate.

39. (1) A bank or financial holding company shall not grant or permit to be outstanding a credit exposure in respect of an affiliate of that bank or financial holding company except on terms which are non-preferential in all respect including credit worthiness, term, interest rate and the value of the collateral.

(2) A bank or financial holding company shall not take a credit exposure in respect of an affiliate if the aggregate of the credit exposures to the affiliates of the bank or financial holding company exceeds 25% of the net own funds.

(3) Without prejudice to subsections (1) and (2), the Central Bank may by order set a specific limit on credit exposure to an affiliate on an individual basis having regard to the circumstances of the bank or financial holding company.

(4) A bank or financial holding company which contravenes this section is liable to an administrative penalty.

(5) A director or key management personnel of the bank or financial holding company who contravenes this section is personally liable to an administrative penalty.

Restriction on purchase or transfer of certain assets from affiliates and insiders.

40. (1) A bank or financial holding company shall not purchase or transfer a non-performing or low quality asset from any of its affiliates and associates director, key management personnel, shareholders or from any of their related persons or group of related persons or their related interests without the written approval of the Central Bank.

(2) A transaction carried out in contravention of this section is void and a director or key management personnel of the bank or financial holding company who contravenes this section is personally liable to an administrative penalty.

41. (1) A bank or financial holding company whose capital adequacy ratio is less than that prescribed by the Central Bank shall not take any placement or receive any deposit from any bank or financial holding company except with the express written approval of the Central Bank.

Restrictions on inter-institutional placements.

(2) Placements between banks which are members of a financial group shall be subject to restrictions on transactions with an affiliate under section 40.

(3) A bank or financial holding company which contravenes this section is liable to an administrative penalty.

42. (1) A bank or financial holding company shall not -

- (a) grant or permit to be outstanding a credit exposure to insiders and their related interests except on terms which are non-preferential in all respects including credit worthiness, interest rate and the value of the collateral;

Restrictions on exposures to insiders and their related interests.

- (b) take a credit exposure in respect of insider and their related interests if the aggregate of all credit exposures to the insider and its related interests would exceed 10% of the net own funds of the bank or financial holding company; and

- (c) take credit exposures in respect of insiders and their related interests if the aggregate of all such credit exposures would exceed 20% of the net own funds of the bank or financial holding company.

(2) An unsecured credit exposure to insiders and its related interests shall not exceed 5% of the net own funds of the bank or financial holding company.

(3) Subject to subsection (7) of section 37 a credit exposure shall not be considered as secured unless it is adequately secured by collateral having a market value of at least 120% of the outstanding amount of the credit exposure throughout its term.

(4) The Board of directors of the bank or financial holding company shall be the only authority to approve or sanction any credit exposures of the bank or financial holding company to any insider or their related interests.

(5) When calculating capital adequacy, credit exposures that are in excess of the limits of this section shall be deducted from capital.

(6) A bank or financial holding company who contravenes this section is liable to an administrative penalty.

Limits on exposures to insiders on a consolidated basis.

43 The limits on credit exposures to insiders and their related interest under section 42 shall be applied on a consolidated basis to-

- (a) bank and its subsidiaries ; and
- (b) financial holding company and its subsidiaries.

Requirements for lending to insiders and their related interests.

44. (1) In considering an application for credit facility to an insider under section 42 a bank or financial holding company shall satisfy itself that-

- (a) the person to whom the credit facility is given has credit worthiness which is not less than that normally required by the bank or financial holding company for other persons to whom credit facilities are given and any collateral which is provided has been evaluated on the

same terms and procedures normally required by the bank or financial holding company for other persons to whom credit facilities are given;

- (b) the terms and conditions of the credit facility are not less favourable to the bank or financial holding company than those normally offered to other persons not related to the bank or financial holding company; and
- (c) the advance of the credit facility is in the interest of the bank or financial holding company.

(2) The credit facility shall be approved by all other directors of the Board of the bank or financial holding company at a duly constituted meeting of the board where not less than three quarters of all the directors of the Board of the bank or financial holding company are present and the approval shall be recorded in the minutes of that meeting.

(3) The management of a bank or financial holding company shall report to the Board of directors and to the Central Bank each credit facility to an insider or their related interests and each credit facility shall be classified according to the directive on asset classification.

(4) A bank or financial holding company who contravenes this section is liable to an administrative penalty.

45. (1) A lending on preferential terms to employees of a bank or financial holding company shall be part of a formally approved employment package or employee benefits plan.

Restrictions on lending to employees.

(2) A bank or financial holding company shall not grant to any of its employees any unsecured advances or credit facilities, the aggregate amount of which exceeds 2 years' total emoluments of the officer or employee.

(3) The aggregate amount of all loans on preferential terms, both secured and unsecured, by a bank or financial holding company to employees shall not exceed 20% of the bank or financial holding company's net own funds.

(4) A bank or financial holding company who grants advances or credit facilities in contravention of this section is liable to an administrative penalty.

(5) When calculating capital adequacy, any credit exposures that are in violation of this section shall be deducted from capital.

Restriction on establishment of subsidiary company.

46. (1) A bank or financial holding company shall not establish a subsidiary company without the prior written approval of the Central Bank.

(2) A bank or financial holding company who contravenes subsection (1) is liable to an administrative penalty shall divest the subsidiary within such period as may be specified by the Central Bank, failure of which the licence of the bank may be revoked or the registration of the financial holding company withdrawn.

Limits on investment in respect of subsidiary companies.

47. (1) The equity capital invested by a bank or financial holding company in its subsidiary shall not exceed 15% of the net own funds of the bank or financial holding company.

(2) Where a bank or financial holding company has more than one subsidiary company, the aggregate of equity capital invested in all the subsidiary companies by the bank or financial holding company shall not exceed 25% of its net own funds.

(3) The aggregate amount of credit exposures including the credit facilities which a bank or financial holding company may take in respect of its subsidiaries, shall not exceed-

- (a) 25% of the bank or financial holding company's net-own funds where the bank or financial holding company has only one subsidiary company, or

- (b) 35% of the bank or financial holding company's net-own funds where the bank or financial holding company has more than one subsidiary company.

(4) In a determination on an application by a bank to invest or increase its equity interests in a financial company, the Central Bank shall consider whether -

- (a) the investment would expose the bank or its depositors to undue risk;
- (b) the investment would hinder effective supervision of the bank on a consolidated basis; and
- (c) the bank has adequate financial and managerial resources and internal controls to monitor and control any risk arising from the investment.

(5) A bank or financial holding company who contravenes this section is liable to an administrative penalty.

48. (1) A bank or financial holding company shall not grant any advances, loans or credit facilities including guarantees against -

Restrictions on exposure and investment.

- (a) the security of its own shares;
- (b) the shares of its holding company;
- (c) the shares of any of its subsidiaries or the shares of any of the subsidiaries or its financial holding company; or
- (d) the shares of the subsidiaries of its financial holding company.

(2) A bank or financial holding company shall not issue shares that are paid for by funds borrowed from that bank.

(3) A transaction carried out in contravention of subsections (1) and (2) shall be void.

(4) A Director of a bank or financial holding company who contravenes subsections (1) and (2) is liable to an administrative penalty.

(5) Subject to subsection (7), a bank may acquire or hold part of the share capital of any financial company, the aggregate value of which shall not exceed a percentage to be determined by the Central Bank, of the net own funds of that bank or financial holding company.

(6) A bank or financial holding company shall only purchase, acquire or lease real estate for the purpose of furthering its own business or providing amenities for staff the value of which shall not at any time exceed twenty-five (25%) of the net own funds.

(7) Subsection (5) shall not apply in respect of a shareholding in any corporation set up for the purpose of insuring bank or financial holding company deposits or of promoting the development of a money market or securities market or of development of financial companies.

(8) Notwithstanding subsection (5), a bank or financial holding company shall not be excluded from the purchase and sale of shares or stock upon the order and for the account of a customer.

(9) Notwithstanding subsection (6), a bank or financial holding company may secure a debt on any transferable real or other property and in default of repayment may acquire such property for resale by the bank or financial holding company within a specific timeline as prescribed by the Central Bank.

(10) In the application of the limitation of subsection (5), if the Central Bank determines that the interests of a group, constituting more than one individual, partnership, private company, 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.

(11) A bank or financial holding company 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 bank or financial holding company shall dispose of the indebtedness of the group in the amount in excess of the limitation within such a specific time as prescribed by the Central Bank.

(12) A bank or financial holding company which before the commencement of this Act entered into any transactions incompatible with subsection (1) shall as soon as the commencement of this Act, submit a statement to the Central Bank and shall, within one year from that date, finally liquidate all such transactions.

49. The Central Bank may make regulations, rules and issue directives and guidelines for the regulation of credit exposures. Regulation of credit exposures.

50. (1) The Central Bank shall make rules and issue guidelines on non-performing assets, provisioning and loan write-offs. Asset classification, provisioning and write-offs.

(2) A bank or financial holding company shall maintain and implement a proper policy of non-accrual of interest on non-performing loans and provisioning for bad debts and other exposures.

(3) An asset or financial exposure of a bank or financial holding company shall not be written off or waived fully or partially, without the authorisation of the board of directors and the prior written approval of the Central Bank.

(4) A bank or financial holding company which fails to comply with this section is liable to an administrative penalty.

Open foreign exchange positions. 51. (1) The Central Bank may require a bank or financial holding company to periodically report their open foreign exchange position on a currency by-currency basis or overall open position, in such form and supported by such documents as may be prescribed by the Central Bank.

(2) A bank or financial holding company shall maintain the maximum limits on its open position in foreign currencies, precious metals and precious stones as may be prescribed by the Central Bank.

Power to impose prudential limits. 52. The Central Bank may impose or vary prudential limits on a bank or financial holding company as it may consider necessary.

PART IX - SUPERVISION AND CONTROL

Regulations, directives, and guidelines. 53. (1) The Central Bank shall make regulations, rules and issue directives and guidelines applicable to banks and financial holding companies.

(2) Without prejudice to subsection (1), regulations, rules directives and guidelines issued by the Central Bank shall include regulations, rules directives and guidelines relating to prudential regulations, accounting standards, corporate governance standards, licensing requirements and non-interest banking.

Information and periodic returns 54. (1) For the purposes of regulating banks or financial holding companies under section 55, the Central Bank may require a bank or financial holding company to submit, at such intervals and in such form as the Central Bank may specify, information and periodic returns on one or more of the following -

- (a) assets and liabilities and financial position on an individual basis and where applicable, on a consolidated basis;
- (b) information required for statistical purposes;
- (c) a bank's or financial holding company's offices and branches;

(d) such information that a bank or financial holding company is complying with this Act; and

(e) any other information or returns as the Central Bank may consider necessary.

(2) The Central Bank may enquire and request for clarification of any information submitted under subsection (1).

(3) The Central Bank may require persons and institutions including significant shareholders, service providers, customers and any other person to supply in such form as the Central Bank may from time to time direct, information relating to matters affecting a bank, financial holding company or the financial system as a whole.

(4) A bank or financial holding company shall report to the Central Bank, immediately it becomes aware, of any material information or development concerning -

- (a) changes in the activities, structure and overall condition of the bank or financial holding company particularly where there is an existing or likely failure to meet its responsibilities under this Act;
- (b) the suitability of a major shareholder or a party that has a controlling interest or any development that may affect compliance of directors and key management personnel with this Act.

(5) The Central Bank may require a bank or financial holding company to take corrective measures within a specified time to address any deficiency contained in the report submitted to it by a bank or financial holding company under this section.

(6) A bank or financial holding company which fails to comply with any of the requirements under this section including -

- (a) non submission;
- (b) incomplete submission;
- (c) delayed submission;
- (d) inaccurate submission; or
- (e) submission of false information, data, statements or returns,

shall be liable to an administrative penalty, for each day during which the non-compliance continues.

(7) This Section shall also apply to all branches, agents or offices of a bank or financial holding company.

Power of Investigation and examination.

55. (1) Notwithstanding the power to request a bank or financial holding company to submit information and periodic returns under section 54, the Central Bank may carry out investigation and examination or scrutiny into any specific matter relating to the operations of a bank or financial holding company.

(2) The Central Bank may carry out an investigation and examination under subsection (1), at such intervals as it considers appropriate taking into account its evaluation of the risks posed by the institution.

(3) A person authorised by the Central Bank to carry out an investigation under subsection (1) shall -

- (a) have right of access to a bank or financial holding company's books and records including documents, minutes books, customer files, personnel files, cash and securities records and electronic information files and it shall be the duty of the bank or financial holding company to cooperate and assist the person authorised to carry out this function;

- (b) have a right to call upon any director, key management personnel or any other employee of the bank or financial holding company to provide him with such information and explanation as he may consider necessary and it shall be the duty of director, key management personnel or other employee to comply.

(4) A person who fails to comply with this section or obstructs an authorised official from performing his duty, commits an offence and is liable upon conviction to a fine or to a term of imprisonment of 2 years or both the fine and imprisonment.

56. (1) A person authorised by the Central Bank to carry out an investigation and examination under subsection (1) of section 55, may, request for copies of any record, file or document relevant to his investigation. Access to records.

(2) A person who requests for copies of records, files or documents under subsection (1) shall take reasonable care to protect the files, documents and records in his custody or possession.

57. (1) The Central Bank may authorise qualified auditors or other officials to verify the accuracy of any file, document or record requested from a bank or financial holding company under section 55. Verification of information

(2) A bank or financial holding company shall provide access and facilities to an auditor or other official authorised or to carry out verification under subsection (1).

58. (1) Where an examination has been conducted by the Central Bank under section 55, the Central Bank shall furnish a copy of its report to the bank or financial holding company and give the bank or financial holding company an opportunity to submit its comments on the report and to take any remedial action as the Central Bank may specify. Examination report

(2) A bank or financial holding company shall not disclose an investigation report under subsection (1) or any portion of it to an unauthorised person, including anyone not officially connected with the bank as an officer, director, employee, attorney, auditor, independent auditor or parent holding company, without the written consent of the Central Bank.

Resolvability assessments, ex-ante resolution plans and follow-up action.

59. (1) The Central Bank may after examining a bank or financial holding company's comments under section 58 undertake resolvability assessments and draw up ex-ante resolution plans that should require the bank or financial holding company to take remedial action as the Central Bank may specify, including submitting a recovery plan in line with the criteria set by prudential guidelines issued by the Central Bank under this Act.

(2) Where a bank or financial holding company fails to take remedial action as specified by the Central Bank under subsection (1), every Director of the Board of the bank or financial holding company is liable to an administrative penalty.

(3) A Director shall not be liable to an administrative penalty under subsection (2) if he proves that the contravention was committed without his consent or connivance or that he exercised all due diligence to prevent the contravention having regard to all the circumstances.

Confidentiality.

60. (1) All statements and other information furnished by a bank or financial holding company including its officers and agents past and present, to the Central Bank under this Act shall be deemed secret and confidential.

(2) All statements and other information furnished by other supervisory authorities or institutions, its officers and agents past and present, to the Central Bank, under this Act shall be deemed secret and confidential.

(3) All statements and other information furnished by key management personnel and employees of a bank or financial holding company's parent company, subsidiaries, affiliates and associates past and present to the Central Bank, under this Act shall be deemed secret and confidential.

(4) The confidentiality requirement under this section shall not apply where the Central Bank is -

- (a) satisfied that it is in the national interest, for the Central Bank to use any information in its possession to compile and publish statistical data, and anything relevant thereto; or
- (b) required by statutory duty or a court order to furnish any such statement or information.

(5) A statement and other information furnished by a bank or financial holding company under this section may be used by the Central Bank for the purposes of-

- (a) issuing establishment and operating permissions;
- (b) supervision of activities of a bank or financial holding company;
- (c) monitoring compliance of this Act; or
- (d) reviewing administrative decisions of the board of directors of a bank or financial holding company.

61 (1) Notwithstanding section 60 the Central Bank may, on obtaining assurances of confidentiality -

- (a) give to or receive from another Central Bank, financial regulator, supervisor, resolution authority, deposit insurance scheme or other authority in Sierra Leone or of a foreign country with functions corresponding to its functions under this Act, information deemed secret and confidential under section 60.
- (b) enter into cooperative arrangement or memorandum of understanding with other supervisory and resolution authorities, other financial sector regulators and stakeholders in Sierra Leone or of a foreign country for the exchange of information deemed secret and confidential under section 60.

Mutual Cooperation in exchange of confidential information.

62. (1) The Central Bank may, based on its findings of an investigation and examination conducted under section 55 or information otherwise at its disposal, take action where it determines that a bank or financial holding company, a director, executive officer or significant shareholder of a bank or financial holding company -

- (a) has failed to adhere to any prudential requirements prescribed under this Act;

Power to take action.

- (b) no longer possesses sufficient capital to meet its obligations towards its depositors and creditors;
- (c) has failed to maintain the prescribed minimum capital adequacy ratio under section 27;
- (d) has violated any condition or restriction attached to a licence issued or registration granted under this Act;
- (e) has been conducting its business in a manner considered by the Central Bank to be unsafe, unsound or detrimental to the interest of its depositors and creditors;
- (f) has compromised the interest of its depositors and creditors due to excessive risk-taking or poor risk management;
- (g) has failed to comply with the provisions pertaining to liquidity under section 32;
- (h) has assets that are not likely to meet its obligations in terms of maturity;
- (i) is unable to reliably perform its activities, due to impaired balance between revenues and expenses;
- (j) has assets that have deteriorated in such an extent as to weaken its financial structure;
- (k) has not established its internal audit, internal control and risk management systems or cannot operate these systems efficiently;
- (l) is not being adequately supervised by other supervisors relative to the risks attached to its activities;
- (m) has hindered effective supervision on a consolidated basis; or

- (n) has failed to comply with any provision of this Act or of regulations, directives or rules issued under this Act;

(2) The Central Bank may, where it determines that any one or more of the situations in section (1) exist -

- (a) issue a written warning to a bank or financial holding company, its chief executive, directors or key management personnel;
- (b) require a bank or financial holding company to cease an unsafe or unsound practise;
- (c) conclude a written agreement with a bank or financial holding company providing for a program of remedial action;
- (d) impose administrative penalties on a bank or financial holding company, its directors, key management personnel and employees for each day that an unsafe or unsound condition continues;
- (e) require the restructuring of the ownership of the bank or financial holding company;
- (f) require the restructuring of the range of activities that a consolidated group may be engage in;
- (g) prohibit a bank or financial holding company from further lending or taking further credit exposures, including investments, or capital expenditure;
- (h) require the bank or financial holding company, or any of its subsidiaries, to suspend for a specified period of time, alter, reduce, or terminate any activity that has caused material losses to the bank or financial holding company;
- (i) restrict or prohibit transactions with affiliates;

- (j) require a bank or financial holding company to divest itself of or liquidate any subsidiary;
- (k) restrict payment of bonuses or compensation to any director or key management personnel;
- (l) prohibit a bank or financial holding company from paying dividend on its equity capital or rights, issue or bonus shares to shareholders or to any person claiming under their authority;
- (m) suspend or remove from office the chief executive of a bank or financial holding company or restrict the chief executive's powers;
- (n) suspend or remove any or all of the directors, key management personnel of bank or financial holding company or restrict their powers;
- (o) appoint an advisor;
- (p) prohibit a bank or financial holding company from receiving fresh deposits or renewing the existing deposits;
- (q) revoke the licence of a bank and appoint a receiver;
- (r) withdraw the registration of a financial holding company;
- (s) require a bank or financial holding company to take such remedial action as the Central Bank may specify; or
- (t) require a bank or financial holding company to take such further action as the Central Bank considers necessary.

(3) The powers of the Central Bank to take action under this section shall be in addition to any other specific actions or administrative penalties that may be imposed by the Central Bank under this Act.

(4) The Central Bank shall notify a bank or financial holding company immediately it initiates measures under this section against that bank or financial holding company.

(5) The Central Bank shall notify the Deposit Protection Fund immediately it initiates measures under this section against a bank.

63. (1) The Central Bank may where it considers it necessary, appoint by written order issued to a bank or financial holding company a competent person as advisor to the Chief Executive at the expense of the bank or financial holding company, to improve its affairs. Appointment of advisor.

(2) A written order appointing the advisor under subsection (1) shall set out detailed terms of reference and timelines for the discharge of the advisor's duties.

(3) The Central Bank may, before issuing an order under subsection (1) give a hearing to the bank or financial holding company unless it considers that the consequent delay in action would not be in the interest of the bank or financial holding company.

(4) A bank or financial holding company which has been issued an order under subsection (1) shall comply with the order and extend full cooperation to the appointed advisor in discharging his responsibilities.

(5) An advisor appointed under subsection (1) shall be entitled to attend the meetings of the board of directors of a bank or financial holding company, its committees, participate in their deliberations and get his views recorded in the minutes of the meetings, but he shall not have any right to vote on any resolution.

(6) An advisor appointed under subsection (1), shall hold office for such period as may be specified by the Central Bank and his tenure may be extended or curtailed at the discretion of the Central Bank.

(7) An advisor appointed under subsection (1) shall furnish the Central Bank with a status report on the concerned bank or financial holding company as frequently as may be determined by the Central Bank.

64. (1) Where the Central Bank has determined that a Chief Executive Director, key management personnel, other employee or shareholder of a bank or financial holding company has -

Sanctions against errant chief executives, etc.

- (a) violated this Act, regulations, rules or directives made under the Act;
- (b) violated any condition or restriction attached to a licence issued or registration granted by the Central Bank;
- (c) engaged in an unsafe or unsound banking practice.

the Central Bank may take one or more of the following actions -

- (i) issue an order to that person to take such remedial action as the Central Bank may specify within a stated period of time;
- (ii) impose an administrative penalty on that person for each day that the violation continues provided that any fines shall be of similar amount for entities with comparable total assets for the same type of violation;
- (iii) require that person to reimburse the bank or financial holding company for losses caused by such violations;
- (iv) prohibit that person from direct or indirect exercise of voting rights attached to shares of the bank or financial holding company;
- (v) suspend or remove that person from office or restrict the powers of that person;
- (vi) prohibit the payment of dividends to that person; or
- (vii) suspend or remove any or all of the directors on the board of the bank or financial holding company.

(2) Where the Central Bank determines that a Chief Executive, Director, key management personnel or employee of a bank or financial holding company-

- (a) has wilfully or repeatedly violated an order made by the Central Bank under section 62;
- (b) has engaged in an unsafe or unsound practice that has resulted in material loss to the bank or financial holding company or financial gain to that person; or
- (c) has conducted its affairs in a manner detrimental to the interest of its depositors and creditors, the Central Bank may, in addition to its power to take action under section 62, take any one or more of the following actions-
 - (i) direct the dismissal of that person from the bank or financial holding company;
 - (ii) prohibit that person from serving in or engaging in the banking business for a stated period;
 - (iii) impose administrative penalties on that person for each day that the violation continues; and
 - (iv) require that person to dispose of all or any part of his direct or indirect interest in the bank or financial holding company or cease to hold a significant interest in the bank or financial holding company.

65. (1) Where a bank or financial holding company which maintains a capital adequacy ratio in compliance with the capital requirements under Part V has incurred or is likely to incur material losses within any financial year, the Central Bank may take the following actions-

Prompt corrective action for adequately capitalised banks and financial holding companies.

- (a) prohibit the bank or financial holding company from declaring and distributing any dividends which are, in the opinion of the Central Bank, likely to cause it not to comply with the capital requirements prescribed in Part V; and
- (b) undertake more frequent inspection of that bank or financial holding company.

(2) In addition to the action that may be taken under subsection (1), the Central Bank may require the directors or key management personnel of a bank or financial holding company to provide written explanation detailing the cause of losses incurred or is likely to be incurred by the bank or financial holding company and the measures to be taken to rectify the problem and avert future losses.

(3) The Deposit Protection Fund shall be notified immediately the Central Bank initiates action under this section.

Prompt corrective action for undercapitalised banks and financial holding companies.

66. (1) Where a bank or financial holding company is undercapitalized, the Central Bank shall take the following actions -

- (a) order the bank or financial holding company to submit to the Central Bank within 45 days an acceptable capital restoration plan and to restore the bank or financial holding company to capital adequacy within 180 days of making the order;
- (b) prohibit the bank or financial holding company from declaring and distributing any dividends which are, in the opinion of the Central Bank, likely to cause it not to comply with the capital requirements in Part V;
- (c) undertake more frequent inspection of that bank or financial holding company; and

- (d) prohibit the bank or financial holding company from awarding any bonuses or increments in the salary, emoluments and other benefits to any director or key management personnel.

(2) In addition to the action that may be taken under subsection (1), the Central Bank may require the Directors or key management personnel of the bank or financial holding company to provide written explanation detailing the cause of the losses and the measures to be taken by the bank or financial holding company to rectify the problem and avert future losses.

(3) Where a bank or financial holding company has been ordered by the Central Bank to submit a capital restoration plan and to inject more capital and it fails to comply and implement this order the Central Bank shall do one or more of the following -

- (a) prohibit the bank or financial holding company from opening new branches;
- (b) restrict the bank or financial holding company from engaging in new business;
- (c) impose restrictions on growth of assets or liabilities of the bank or financial holding company; or
- (d) restrict the rate of interest on all interest earning deposits payable by the bank or financial holding company to the rates that the Central Bank shall determine.

(4) In addition to the action that may be taken under subsection (3) the Central Bank may-

- (a) direct the removal of officers of the bank or financial holding company responsible for noncompliance; and
- (b) require the bank or financial holding company to take any other action that the Central Bank may deem necessary to rectify the capital inadequacy.

(5) The Deposit Protection Fund shall be notified immediately the Central Bank initiates action under this section.

Prompt corrective action for significantly undercapitalised banks and financial holding companies.

67. (1) Where a bank or financial holding company is significantly undercapitalised, the Central Bank shall take the following actions-

- (a) enter into an agreement with the Board of directors of the bank or financial holding company to rectify the significant undercapitalisation within 90 days and to restore capital adequacy within 180 days or within a shorter period that the Central Bank shall require;
- (b) prohibit the bank or financial holding company from declaring and distributing any dividends which are, in the opinion of the Central Bank, likely to cause it not to comply with the capital requirements in Part V;
- (c) undertake more frequent inspection of that bank or financial holding company;
- (d) prohibit the bank or financial holding company from awarding any bonuses or increments in the salary, emoluments and other benefits to all directors and key management personnel; and
- (e) prohibit the bank, or financial holding company from engaging in new off balance sheet transactions.

(2) In addition to the actions that may be taken in subsection (1), the Central Bank may require the directors or key management personnel of the bank or financial holding company to provide a written explanation detailing the causes of those losses and the measures to be taken by the bank or financial holding company to rectify the problem and avert future losses.

(3) The Central Bank may take such action that may have a positive impact on -

- (a) governance;
- (b) cash availability;
- (c) bank operations and expansion.

(4) Where at any time-

- (a) before the end of the period specified in paragraph (a) of subsection (1), the financial position of a bank or financial holding company continues to deteriorate; or
- (b) after the period specified in paragraph (a) of subsection (1) a bank or financial holding company has failed to raise its capital to the levels necessary to rectify its significant undercapitalisation, the Central Bank may appoint an Official Administrator or revoke the licence of the bank or withdraw the registration of the financial holding company.

(5) This section shall not preclude the Central Bank from taking action under any other provision of this Act prior to the expiration of the respective time period under paragraph (a) of subsection (1).

(6) The Deposit Protection Fund shall be notified immediately the Central Bank initiates action under this Section.

PART X - RESOLUTION OF BANKS AND FINANCIAL HOLDING COMPANIES

68. (1) The Central Bank shall be the resolution authority for banks licensed or registered under this Act. Resolution authority.

(2) The Central Bank shall, exercise its powers and perform its functions in relation to a bank in resolution, have regard to and seek to promote the stability of the financial system, protect depositors, maintain the continuity of systemically important financial services, while minimising or avoiding reliance on public funds for any losses.

(3) The Central Bank shall, in exercising its powers and performing its functions in relation to a financial holding company in resolution, have regard to and seek to minimise any adverse impact on the interests of shareholders and creditors of other members in the group of companies of which the financial holding company in resolution forms part.

Decision by Central Bank to place in resolution.

69. (1) Where in the opinion of the Central Bank, a bank or financial holding company is failing or likely to fail, the Central Bank may make an order in writing placing a bank or financial holding company in resolution and notify the bank or financial holding company accordingly.

(2) An order made by the Central Bank under subsection (1) shall be published in the Gazette.

(3) In making a decision to place a bank or financial holding company in resolution under subsection (1) the Central Bank shall consider whether -

- (a) the bank or financial holding company has violated this Act or any regulation, rule, directive or guideline issued under this Act, or has engaged in any unsafe and unsound practices, in such a manner as to weaken the condition of the bank or financial holding company and seriously jeopardise depositors' interests or dissipate the bank's or financial holding company's assets;
- (b) prompt corrective action for an undercapitalised bank or financial holding company under sections 66 and 67 has failed;
- (c) a bank or financial holding company has become insolvent or that it may reasonably be expected to become insolvent within the next 60 days;
- (d) there is reasonable cause to believe that the directors, key management personnel, or significant shareholders of a bank or financial holding company has engaged or is engaging in illegal activities in such a manner as to jeopardise depositors' interests;

- (e) a bank or financial holding company is in an unsafe or unsound condition to transact business and the directors or key management personnel of a bank or financial holding company are unable to promptly improve its condition;
- (f) a bank or financial holding company has failed, in any manner, to cooperate with the Central Bank or its examiners to perform its supervisory responsibilities, including concealment or failure to submit for inspection any of the bank's or financial holding company's books, papers or records;
- (g) the directors, key management personnel, employees, or significant shareholders of a bank or financial holding company has failed to comply with an order of the Central Bank under sections 62, 64 or 65.

70. (1) The Central Bank shall have the power and authority to manage and control the affairs of a bank or financial holding company and to exercise any of the powers of the governing body and the shareholders of the bank or financial holding company or any of the powers and functions set out in sections 74 and 75 for an official administrator appointed by the Central Bank

Central Bank to manage and control affairs of banks or financial holding companies in resolution

(2) Notwithstanding the generality of subsection (1) the Central Bank shall -

- (a) facilitate a bail-in as a means to achieve continuity of essential functions within the terms and conditions as prescribed in the prudential guidelines issued by the Central Bank.
- (b) appoint an official administrator under section 74;
- (c) establish a separate asset management vehicle for a bank or financial holding company;

- (d) prohibit a bank or financial holding company from offering shares to existing shareholders, where the Central Bank is of the opinion that-
- (i) it is necessary to maintain the financial stability of a bank or financial holding company, or
 - (ii) the existing shareholders are no longer suitable to maintain a significant capital position in a bank or financial holding company; or
 - (iii) there has been a failure to comply timely with a remedial measure under this Act requiring an increase in the bank's or financial holding company's capital.
- (e) carry out recapitalisation by new shareholders and the official administrator shall -
- (i) if not already carried out in accordance with Section 69, determine the extent of losses and prepare the bank's or financial holding company's financial statements covering the amount of such losses through the bank's or financial holding company's profits, reserves and, if necessary, capital;
 - (ii) if necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding any other law to the contrary;
 - (iii) determine the amount and type of funding needed to bring the bank or financial holding company into compliance with all capital requirements;
 - (iv) cause the bank or financial holding company to issue additional shares in

the amount necessary and carry out the sale of shares by the bank or financial holding company and purchase of such shares by new investors.

71. (1) The Central Bank may carry out the restructuring of a bank, including the merger, transfer and sale of a bank's assets and liabilities, without the approval of its creditors or shareholders.

Restructuring, including merger, transfer and sale.

(2) The Central Bank shall transfer the assets and liabilities to a bridge institution, asset management vehicle or any other institution appointed by the Central Bank for a temporary period, for the purpose of acquiring, managing or disposing of assets and liabilities of a bank undergoing restructuring under subsection (1) as part of the resolution of that bank.

(3) The Central Bank may by statutory instrument, make regulations setting out the requirements for licensing bridge institutions, asset management vehicles or other institutions, their governance structure, sale, disposal, dissolution or termination.

(4) A bridge institution, asset management vehicle or other institution appointed by the Central Bank under subsection (1) shall, subject to the direction of the Central Bank approve the restructuring of the assets and liabilities of a bank through arrangements with the creditors, including a reduction, modification, rescheduling and novation of their claims.

(5) The Central Bank may, subject to this section and to credit exposure limits under section 35 approve or decline a merger of a bank with another bank or the sale of a bank's assets to another bank.

(6) A bridge institution, asset management vehicle or other institution to which the assets and liabilities of a bank undergoing restructuring is transferred has the same rights and shall be subject to the same obligations as those that the bank may have had or to which it or by which it may have been bound immediately before the transfer.

72. (1) An official administrator appointed under section 74 may, in accordance with the inventory of the bank's assets and liabilities prepared and delivered to the Central Bank by the official administrator under subsection (2) of section 79 and with the approval

Mandatory restructuring of liabilities and shares.

of the Central Bank, restructure the liabilities and shares of a bank or financial holding company without the approval of creditors or shareholders.

(2) The Central Bank may approve mandatory restructuring under subsection (1), including a bail-in resolution approach, if the Central Bank is satisfied that the restructuring, either alone or combined with recapitalisation, will restore the bank to viability.

(3) In approving mandatory restructuring, the Central Bank shall also consider the extent to which the restructuring will maximise the value of a bank, minimize losses to creditors and other stakeholders, preserve its going-concern value for the benefit of creditors and other stakeholders and avoid or mitigate any severe disruption in the stability of the financial system.

(4) The restructuring of liabilities shall follow the order of priorities that would be applicable in liquidation, except that the Central Bank may exempt classes of senior unsecured debt if it determines them to be systemic or of strategic importance that would justify differential treatment from other unsecured senior debt.

(5) Mandatory restructuring shall not apply to secured debt.

(6) As part of the restructuring of liabilities, debt may be restructured directly or converted to equity.

(7) New shareholders by virtue of debt equity conversion shall be subject to fit and proper assessments as prescribed in this Act.

(8) The securities and company law shall not apply in transactions relating to conversion of debt to equity.

(9) Where the Central Bank is of the opinion that it is necessary to restructure a bank's or financial holding company's liabilities and shares for the orderly resolution of the bank or financial holding company under this Act, the Central Bank may by written order-

- (a) cancel some or all of the shares of the bank or financial holding company;

- (b) by notice to a party to an agreement under which an amount is or may become payable by a bank or financial holding company under an agreement, reduce, up to zero, the amount that is or may become payable to such party; or

- (c) convert any unsecured liabilities of a bank or financial holding company in a way that results in the liability being substituted with a shareholding in the bank or financial holding company or in a bridge institution.

73. (1) An action under this section shall not by itself give rise to any right by a party to, or a person who holds an interest in any agreement. Claims of affected persons.

(2) In taking an action under this Part in relation to an institution in resolution, the Central Bank shall treat claims of creditors or shareholders of the institution that would have the same ranking in liquidation under section 102, unless it determines that it is necessary to treat them differently to effect the orderly resolution of the designated institution thereby containing the potential negative impact of such restructuring on financial stability or to maximize the value of claims for the benefit of all the institution's depositors and creditors as a whole.

PART XI - OFFICIAL ADMINISTRATION

74. (1) The Central Bank may by notice in writing appoint a person to be the official administrator of a bank in resolution with specified powers and functions. Official administrator.

(2) A notice in writing appointing a person to be the official administrator under subsection (1) shall -

- (a) specify the grounds upon which it is adopted and such decision shall be promptly notified to the bank subject to official administration;
- (b) be effective at the time specified in the decision or, if no time is specified, at the time notice is given under sub section (1);

- (c) have legal force and effect of an enforceable court order requiring law enforcement authorities to provide assistance.

(3) A bank may remain in official administration for a period not exceeding 6 months and the period may be extended by the Central Bank only once, for a period not exceeding 6 months.

(4) The Central Bank may remove the official administrator before the end of the period specified in paragraph (a) of subsection (2) and appoint a replacement.

(5) The Central Bank shall ensure that the bank remains under the control of an official administrator appointed under subsection (1), during official administration,

(6) An official administrator appointed under subsection (1), shall have an obligation to report to the Central Bank and not to the board of directors.

(7) The official administrator shall have no financial interests or relationship nor engage in any transaction with the bank or specialised deposit-taking institution in official administration.

(8) Where an official administrator engages in any transaction involving the bank or specialised deposit-taking institution in official administration contrary to subsection (7), the Central Bank shall set aside the transaction, terminate the appointment of the official administrator with immediate effect, and appoint a new official administrator.

(9) The Central Bank shall notify the Deposit Protection Fund in advance of the commencement, suspension or cessation of official administration of a bank.

(10) Where applicable the Central Bank shall immediately notify the supervisor of a financial holding company of the commencement, suspension or cessation of official administration of a bank.

Powers of
official
administrator.

75. (1) As of the effective time of the appointment all powers, functions and responsibilities of the bank's shareholders, directors and key management personnel shall be vested in the official administrator unless the official administrator requests the

shareholders or directors or key management personnel to carry out any activity required under this Act.

(2) Any action or decision taken by or on behalf of a bank under official administration shall be null and void, unless taken by or under the authority of the official administrator.

(3) An official administrator shall have full and exclusive powers to manage and operate a bank under official administration in accordance with regulations, directives and guidelines of the Central Bank.

(4) An official administrator may take any action as necessary or appropriate to carry on the business of a bank under official administration, to preserve and safeguard its assets or to implement a plan of action with respect to the bank that has been approved by the Central Bank.

(5) An official administrator shall have the power to set out principles for valuation of assets and liabilities in accordance with guidelines of the Central Bank

(6) An official administrator may request any information from the existing or previous directors, senior managers or shareholders of a bank in official administration, its subsidiaries, affiliates or any third parties who hold information that may be necessary to carry out his functions

(7) An official administrator may employ, at the expense of a bank under official administration, independent attorneys, accountants and consultants to assist the official administrator, on such terms as the Central Bank shall approve.

(8) An official administrator shall, upon appointment, immediately suspend the payment of any dividends or other form of capital distribution to shareholders as well as any payment to directors other than for salaries or services provided to the bank.

(9) An official administrator shall have unrestricted access to, and control over, the properties, offices, assets and the books of account and other records of the bank subject to official administration.

(10) An official administrator may secure the properties, offices, assets, books and records of a bank and may take all necessary or appropriate steps aimed at such purpose.

(11) An official administrator may, if necessary request law enforcement officials to assist him, if necessary, use force, to gain access to any premises of the bank and to gain control over and to secure properties, offices, assets, books and records.

(12) Directors, key management personnel and employees of the bank shall cooperate fully with and assist the official administrator and shall make available to the official administrator all records and documentation pertaining to the bank in official administration and any additional information or report requested by the official administrator.

(13) A person who fails to comply with subsection (12) or otherwise obstructs an official administrator in the performance of his functions under this Act shall be liable on summary conviction to a fine or to serve a term of imprisonment not exceeding 2 years or both.

Central Bank oversight of official administrator.

76. (1) The official administrator shall act in accordance with instructions and guidance given by the Central Bank at any time in the course of an official administration and shall be accountable only to the Central Bank for the performance of duties and the exercise of powers as official administrator.

(2) An official administrator may delegate any of his powers or duties to other persons, in accordance with the instructions issued by the Central Bank.

Moratorium and effect of official administration on proceedings.

77. (1) The Central Bank may impose a moratorium suspending some or all payments by a bank in official administration including restrictions on all forms of lending and capital expenditure except payments to central clearing counterparties and to payment settlement and clearing systems.

(2) No legal action may be commenced against the bank in official administration without prior written approval of the Central Bank.

(3) The Central Bank may impose a stay on all legal actions against a bank in official administration, including restrictions

on all forms of lending and capital expenditure, except payments to central clearing counterparties and to payment, settlement and clearing systems

(4) Where a person is dissatisfied or aggrieved with a decision of the Central Bank the person may petition the Central Bank in writing for a review within 10 days of the decision.

78. (1) No right or obligation of a third party under any contract to which the bank in official administration is a party may be terminated, accelerated or modified solely because of the appointment of the official administrator or any action taken by the official administrator. Third party rights or obligations.

(2) Notwithstanding subsection (1) no performance of payment and delivery obligations under a recognised clearing, settlement, or payment system right or obligation of a third party under any contract to which the bank in official administration is a party may be terminated, accelerated, or modified solely because of the appointment of the official administrator or any action taken by the official administrator.

79. (1) Not later than 30 days after his appointment the official administrator shall prepare and deliver to the Central Bank an inventory report of the assets and liabilities of a bank in official administration. Inventory and plan of action to resolve bank.

(2) An inventory report under subsection (1), shall -

- (a) itemize the assets and liabilities of a bank in official administration according to their risk profiles and classify the non-performing loans;
- (b) propose a plan of corrective actions including recommendations for capital increase or any other course of action designed to minimize disruption to depositors and preserve the stability of the financial system.

(3) Not later than 90 days after his appointment, the official administrator shall prepare and deliver to the Central Bank a report on the financial condition and future prospects of a bank in official administration.

(4) A report on the financial condition and future prospects of a bank in official administration under subsection (3), shall include an assessment of the amount of assets likely to be realised in a liquidation of the bank.

(5) An official administrator shall promptly provide any additional report or information requested by the Central Bank.

Capital increase by existing shareholders.

80. (1) On the basis of the report under subsection (3) of section 79 the official administrator may -

- (a) with the approval of the Central Bank, increase the capital of a bank in official administration, through the issuance of new shares;
- (b) determine the extent of losses of a bank in official administration and prepare the financial statements covering the amount of such losses through the bank's profits, reserves and, if necessary, capital; and
- (c) notify existing shareholders of the amount of additional capital needed to bring the bank's capital into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares by submitting binding commitments equal to the full amount of additional capital needed within 5 working days of such notification.

(2) Existing shareholders of a bank in official administration shall have no pre-emptive or other rights to purchase additional shares issued except as provided under paragraph (c) of subsection (1).

Removal of directors and key management personnel.

81. (1) An official administrator may, with the approval of the Central Bank, remove any or all directors and key management personnel and appoint their replacement.

(2) Replacements under subsection (1) may only be approved by the Central Bank if they are determined to be fit and proper persons as defined by this Act.

82. (1) Where an official administrator has reasonable cause to believe that significant shareholders, directors, key management personal, attorneys, accountants or other professionals have engaged or are engaging in illegal or fraudulent activities punishable by imprisonment, it shall immediately recommend to the Central Bank that civil action be instituted against such person seeking damages and restitution.

Misconduct by Shareholders, directors, ect.

(2) The Central Bank shall report any criminal findings to the relevant authorities for criminal prosecution against such persons.

83. (1) The official administrator shall receive such remuneration as shall be determined by the Central Bank.

Expenses of the official administrator.

(2) All costs and expenses incurred on account of the official administration shall be borne by and charged to the bank in official administration.

84. (1) An official administration shall terminate at the expiry of the terms specified in the notice appointing the official administrator or any extension of the term of such appointment.

Termination of official administration.

(2) An official administration shall be terminated prior to the expiration of the term in the notice of appointment of the official administrator if the Central Bank determines that-

- (a) official administration is no longer necessary because grounds for appointment of the official administrator have been remedied; or
- (b) the bank in official administration cannot be rehabilitated.

(3) Where an Official Administration is terminated the Central Bank shall appoint a receiver to liquidate the bank.

(4) Within 14 working days of the termination of the appointment of a receiver under subsection (3), the official administrator shall prepare and submit to the Central Bank a final report and accounting of the official administration.

(5) An official administrator shall not acquire significant shares or accept appointment as a director, key management personnel or any other office or position in the bank in official

administration for a minimum period of 2 years after the end of official administration.

“No creditor worse off” rule.

85. (1) The Central Bank or its agents shall not take any resolution action in relation to a bank or financial holding company that would result in a creditor or shareholder of that bank or financial holding company receiving less than the creditor or shareholder would have received if the bank or financial holding company had been wound up.

(2) Failure to comply with subsection (1) shall not invalidate the action taken, but shall entitle the affected creditor or shareholder to monetary compensation representing the difference between the value the affected creditor or shareholder actually received in resolution and what they would have received if the institution had been wound up.

(3) As soon as practicable after a bank or financial holding company ceases to be in resolution, the Central Bank shall obtain a valuation of the assets and liabilities that were dealt with in resolution action, to determine whether a creditor or shareholder of the bank or financial holding company received in respect of resolution action, less than it would have received if the bank or financial holding company had been wound up and if so, determine the amount of the shortfall.

(4) Any shortfall determined under subsection (3) shall be paid to the affected creditor or shareholder from recoveries from the resolution action or from a resolution fund.

(5) A valuation under this section shall be carried out by a valuation expert that meets such requirements as the Central Bank may by statutory instrument prescribe.

Costs of resolution.

86. The Central Bank may recover from a bank or financial holding company in official resolution, including after the bank or financial holding company ceases to be in resolution, the amounts that the Central Bank or its designated agent reasonably and properly incurs in exercising its powers and performing its functions in relation to the resolution of the bank or financial holding company.

Review of resolution decisions of Central Bank.

87. (1) A person aggrieved with a decision of the Central Bank in respect of the revocation of a licence or any decision relating to the appointment of an official administrator, receiver or other

resolution measure may file a claim in the High Court within 14 days of the final decision of the Central Bank.

(2) In any proceedings under subsection (1), the High Court shall-

(a) take the public interest into consideration and shall have regard to the critical importance of-

(i) maintaining financial stability;

(ii) permitting the Central Bank to discharge its functions in an expeditious and efficient manner.

(b) focus its enquiry as to whether the defendant acted in bad faith or in violation of any of this Act and the plaintiff in each case shall have the burden of establishing this standard.

(3) Any action under this Act by the Central Bank or its officials, the official administrator or receiver that is the subject of any court proceedings shall be allowed to continue unrestricted notwithstanding the challenge or appeal before the court.

(4) Where the Court finds that the defendant has acted in bad faith or in violation of this Act, the court shall be restricted to monetary compensation to the plaintiff and will be considered as full redress for the plaintiff in respect of the actions complained of.

PART XII - RECEIVERSHIP AND LIQUIDATION

88. (1) Where the licence of a bank is revoked pursuant to section 9 the Central Bank shall appoint a receiver who shall take possession and control of the assets and liabilities of that bank. Appointment of receiver.

(2) Where a receiver is to be appointed to take possession and control of the assets and liabilities of a bank under subsection (1), the Central Bank shall notify the Deposit Protection Fund in advance of its decision.

Qualification and compensation of receiver.

89. (1) A receiver may be a person or an official of the Central Bank who meets the qualifications prescribed by the Central Bank.

(2) The Central Bank may dismiss a receiver and appoint a replacement.

(3) The receiver shall receive such remuneration as shall be determined by the Central Bank.

(4) All costs and expenses incurred by the receiver and experts engaged by him shall be paid from the assets of the bank in receivership.

(5) Payments to the receiver may be made on a current basis if in the judgment of the receiver there are sufficient liquid assets.

(6) Any monies owing to the receiver at the end of the term of receivership shall be paid from the proceeds from the sales of the bank's assets in accordance with the priority set out under section 102.

Notice and registration of receivership.

90. (1) The appointment of a receiver by the Central Bank under subsection (1) of section 88 shall be effective as of the date of the appointment unless otherwise expressed by the Central Bank.

(2) The receiver shall immediately post in each place of business of the bank in receivership, a notice specifying that -

- (a) the effective date and time of possession of the bank in receivership by the receiver;
- (b) authorisation of persons to engage in financial transactions of the bank in receivership have been withdrawn;
- (c) persons who previously had authorisation to give instructions on behalf of the bank in receivership with respect to payment or transfer of the bank's assets or assets managed by the bank are no longer so authorised; and
- (d) the licence of the bank in receivership has been revoked.

(3) The receiver shall publish the notice referred to in subsection (2) for 4 consecutive weeks in at least one daily newspaper of national circulation and submit copies of the publication to the Central Bank within 2 days of such publication.

91. (1) The receiver shall act in accordance with regulations, instructions and guidelines issued by the Central Bank at any time in the course of the liquidation and shall be accountable only to the Central Bank for the performance of duties and the exercise of powers as receiver. Central Bank oversight of receiver

(2) The receiver shall report each month to the Central Bank on the progress of the receivership in such form as may be prescribed by the Central Bank and provide any other information upon request of the Central Bank.

92. (1) Upon appointment the receiver shall become the sole legal representative of the bank and shall succeed all the rights and powers of the shareholders, directors and key management personnel of the bank in receivership. Powers of receiver.

(2) Notwithstanding subsection (1) shareholders, directors and key management personnel may be instructed by the receiver to exercise specified functions for the bank in receivership.

- (3) The rights and powers of the receiver shall include-
- (a) holding title to the books, records, and assets of the bank in receivership;
 - (b) managing, operating and representing the bank in receivership;
 - (c) marshalling assets and claims of the bank in receivership;
 - (d) transferring or disposing of assets of the bank in receivership;
 - (e) subject to the approval of the Central Bank, suspending or limiting the payment of debts of the bank in receivership;
 - (f) hiring specialists, experts or professional consultants;

- (g) administering the accounts of the bank in receivership;
- (h) collecting the debts due to the bank in receivership and recovering goods owed to it by third parties;
- (i) taking action to collect from directors and officers of the bank in receivership, lawyers, auditors and any other third parties including holding companies who may have contributed to the failure of the bank;
- (j) initiating or defending legal proceeding and executing relevant instruments in the name of the bank in receivership; and
- (k) taking any other action necessary for the efficient liquidation of the bank in receivership and to obtain the maximum amount from the sale of its assets.

(4) A receiver shall not take any deposits.

(5) Within 90 days from the date of appointment, the receiver may make payments to other creditors of such amounts as in his opinion may appropriately be used for that purpose; provided, however, that creditors who are similarly situated shall be treated in the same manner.

(6) The receiver may, upon the prior written approval of the Central Bank and according to its guidelines -

- (a) sell the assets or arrange for the assumption of liabilities of a bank in receivership on fair terms;
- (b) dispose of assets and liabilities of the bank in receivership, including deposit liabilities through a purchase and assumption transaction; or
- (c) organise a restructuring of the assets and liabilities of the bank in receivership or

continue viable or necessary operations through a bridge institution.

(7) Deposit liabilities may be acquired by a bank or bridge institution established by the Central Bank for a temporary period of not more than 2 years for the purpose of resolving the bank in receivership.

(8) The Central Bank may extend the temporary period of existence of a bank or bridge institution under subsection (1), but any such extension shall not exceed 3 years followed by a further extension of one year.

(9) A receiver may request any information from the existing or previous directors, senior managers, shareholders, employees and its subsidiaries and affiliates or any third parties of a bank in receivership who hold information that may be necessary to carry out their functions.

(10) The Central Bank shall approve or decline a merger of a bank in receivership with another bank, or sale of substantially all the assets of a bank in receivership to any one bank, based upon the criteria in section 35.

(11) Notwithstanding anything contained in this Act, a receiver shall not make any payments to an insured depositor unless and until the Deposit Protection Fund has completed pay-outs and any re-claims to insured depositors as the case may be.

(12) Where the Deposit Protection Fund makes payment to an insured depositor which falls short of the deposits made by the insured depositor the receiver may make payment in relation to the shortfall.

93. (1) Where a receiver has taken possession of a bank in receivership - Effects of receivership.

- (a) any term, statutory, contractual or otherwise on the expiration of which a claim or right of the bank would expire or be extinguished, shall be suspended;
- (b) the calculation of interests and penalties or obligations against the bank shall be

suspended and no other charge or liability shall accrue on the obligations of the bank;

- (c) all legal proceedings against the bank are stayed and the exercise of any right on the assets of the bank shall be suspended;
- (d) no right of a third party can be exerted over assets during the liquidation and no creditor may attach, sell or take possession of any assets of the bank as a means of enforcing his claim or initiate or continue any legal proceeding to recover the debt or perfect security interests.

Taking control of bank in receivership.

94. (1) A receiver shall have unrestricted access to and control over the offices, books of account, records and other assets of the bank in receivership, its subsidiaries and its financial holding company.

(2) At the request of the receiver, a law enforcement officer or officers shall assist the receiver to gain access to premises or control over records of a bank in receivership.

(3) A receiver shall take any of the following actions to secure the property, offices, books, records, and assets of a bank in receivership in order to prevent their dissipation by theft or other improper action -

- (a) changing the locks and limiting access to the new keys on external entrances to the offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets of a bank in receivership;
- (b) changing or establishing access codes to the computers of a bank in receivership and granting access only to a limited number of trustworthy employees;

- (c) issuing new photo identification passes for entrance of authorised employees and controlling the access of others to the premises of a bank in receivership;
- (d) cancelling authorisations of persons to engage the financial responsibility of a bank in receivership and issuing new authorisations, as appropriate, and notifying third parties;
- (e) informing correspondent banks, financial holding companies, registrars and transferagents of securities and external asset managers of the assets of a bank in receivership, that persons who previously had authorisation to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorised and that only the receiver and persons authorised by the receiver have such authority;
- (f) suspending the payment of capital distributions in general and payment of any kind to directors, key management personnel, and significant shareholders of a bank in receivership; provided, however, that base compensation may be paid to directors or key management personnel for services rendered in their capacity as directors or key management personnel of the bank; and
- (g) any other action that it considers necessary.

(4) A person who willfully interferes with a receiver's access to or control over the offices, books of account, other records, and other assets of a bank in receivership for which he has been appointed commits an offence and is liable on summary conviction to a fine or to a term of imprisonment not less than one year but not exceeding 5 years.

(5) A receiver shall furnish the Deposit Protection Fund with such information and reports in the form and manner as may be determined by the Institution with the approval of the Central Bank.

Inventory of assets and new financial position. 95. (1) A receiver shall, within 30 days of taking possession of a bank in receivership -

- (a) make an inventory of the assets and property of the bank and transmit a copy thereof to the Central Bank, which shall make a copy available for examination by the public.
- (b) establish a new financial position for the bank, based on a determination of liquidation values of the bank's assets.

(2) Liabilities shall be deemed due and payable and interest shall cease to accrue as of the date of the appointment of the receiver.

(3) Un-matured liabilities shall be discounted to present value at the rate of interest determined by the Central Bank.

Repudiation of contracts. 96. (1) Within 30 days from the date of appointment, a receiver may repudiate any non-performed or partially performed contract, to the extent that the fulfilment of such contract is considered to be burdensome for the bank in receivership and the repudiation would promote the orderly administration of the bank's affairs and protect depositors' interest.

(2) Any liability arising from a repudiation under subsection (1), shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.

(3) In case of repudiation of a lease contract of immovable and movable property, the owner shall be given 30 days' notice of the receiver's intention to repudiate the contract.

Avoidance of pre-receiv-ership transfer. 97. (1) A receiver may set aside the following transactions affecting the assets of a bank in receivership and recover the assets from the transferee or other beneficiary of the transaction if detrimental to the interest of depositors and other creditors -

- (a) gratuitous transfers to, or to persons related to, affiliates, insiders or key management personnel of the bank made within 5 years prior to the effective date of the receivership;

(b) transactions with affiliates, insiders or key management personnel of the bank conducted within 5 years prior to the effective date of the receivership;

(c) gratuitous transfers to third parties made within 3 years prior to the effective date of the receivership;

(d) transactions in which the consideration given by the bank considerably exceeded the received consideration, made within 3 years prior to the effective date of the receivership;

(e) a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors;

(f) any act done with the intention of all parties involved to withhold assets from bank creditors, or otherwise impair their rights, within 5 years prior to the effective date of the receivership;

(g) transfers of property of the bank or financial holding company to, or for the benefit of, a creditor on account of a debt incurred within one year prior to the effective date of the receivership which has the effect of increasing the amount that the creditor would receive in a liquidation of the bank: provided, however, that payment of deposits in an amount equal to or less than an amount to be determined by the Central Bank, in the case of banks per depositor or for such amounts as may be determined in accordance with the Deposit Protection Act shall not be subject to this provision; and

(h) any attachment or security interest, except one existing 6 months prior to the effective date of the receivership.

(2) Any action to set aside a transfer under this section shall be taken by the receiver within one year following the effective date of the receivership.

(3) Notwithstanding anything contained in this section, the receiver may not set aside a payment or transfer by a bank in receivership if it was made in the ordinary course of business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the receivership.

(4) Notwithstanding anything contained in this section, the receiver may not set aside a payment or transfer by a bank in receivership or made pursuant to any power of an official administrator under this Act.

(5) A receiver may recover property or the value of property transferred by a bank in receivership from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set aside under this Act.

(6) A receiver may order that notice of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such notice takes his title or interest subject to the rights of the bank to recover the property.

Obligations of lessors of bank premises and utility providers.

98. (1) A parent company, subsidiary, affiliate or associate of a bank that provides management company services may not alter, refuse or discontinue such services to a bank in receivership, acquirer bank, bridge bank because of its receivership or because the bank has failed to pay services prior to receivership.

(2) A lessor of a bank premises, provider of utility services including, without limitation, a company that supplies electricity, natural gas, water or telecommunication services, internet services, may not alter, refuse or discontinue such services to a bank in receivership, acquirer, bridge bank or asset management company of a bank or because the debtor has failed to pay for services prior to its receivership.

(3) Upon request of a lessor of a bank premises, service provider or a utility provider, a bank in receivership shall place a security deposit in a bank as a condition to the lessor's, service provider or utility company's duty to continue to provide services during the receivership, and any such deposit shall not be required in an amount greater than the cost of services provided to the bank in receivership, acquirer, bridge bank or asset management company during the month immediately prior to the effective date of the receivership.

99. (1) Irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognised as such by the Central Bank shall be legally enforceable and binding on third parties even upon a decision revoking the licence and appointing a receiver but only if the transfer orders become irrevocable before such decision takes effect.

Protection of payment, clearing, and settlement systems.

(2) Where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system after the decision revoking the licence and appointing a receiver takes effect and the transfer orders are carried out on the day of such decision, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the decision before the transfer orders became irrevocable.

(3) No provision authorising the setting aside of contracts and transactions entered into before the appointment of a receiver takes effect shall be applied in such a way as to require the unwinding of netting by a payment or securities settlement system recognised as such by the Central Bank, except however the preservation of such netting shall not prevent the ability of the receiver to recover assets directly from the transferee or beneficiary.

(4) For the purposes of this section -

- (a) a transfer order entered into, a money or securities settlement system becomes irrevocable at the time defined by the regulations of that system; and
- (b) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders

which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

Determination of claims.

100. (1) The procedure relating to the validity and priority of claims, liquidation of bank assets, return of bank customer's property and sale of bank assets shall be in such transparent and commercially reasonable manner as shall be prescribed by the Central Bank.

(2) Subject to subsection (3) no set-off shall be allowed with respect to claims acquired towards the bank in receivership after the appointment of a receiver takes effect or within 3 months before such decision.

(3) Claims against a bank in receivership arising from deposits shall be set-off against any sum due from a depositor to the bank or financial holding company as of the date on which the licence is revoked and the receiver is appointed -

- (a) automatically, if such sum is matured or past due; or
- (b) at the option of the depositor, if the sum is not matured or past due.

Claims relating to eligible financial contracts.

101. (1) In determining the rights and obligations between a bank in receivership and its contractual counterparties, effect shall be given to the termination provisions of eligible contracts between the bank and its contractual counterparties.

(2) The Central Bank may order a period of temporary stay on the exercise of the termination provisions of eligible contracts under subsection (1), subject to such safeguards as the Central Bank shall prescribe to facilitate liquidation of the bank while at the same time minimizing disruption to the markets for eligible financial contracts.

(3) The net termination value determined in accordance with an eligible financial contract between a bank in receivership and its contractual counterparties shall be a claim of the bank on the counterparty or shall be admitted after its validation as a claim of the counterparty on the bank.

(4) The Central Bank shall prescribe the types of contracts that shall qualify as "eligible financial contracts" under subsection (2) and which may include a master agreement covering more than one type of contract.

(5) For the purposes of this Section-

"net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

102. (1) In any liquidation of a bank in receivership, the assets of the bank shall be available to meet its liabilities according to the hierarchy of creditors' claims that are available to satisfy unsecured claims.

Priorities in payment of claims.

(2) Claims allowed to be paid under subsection (1) shall be as follows-

- (a) necessary and reasonable expenses incurred by the receiver and the Central Bank, including professional fees under Part XII;
- (b) insured deposits to the extent of any amount guaranteed to be repaid under the deposit;
- (c) uncollateralised credit to a bank by the Central Bank and guarantees by the Government and advances guaranteed by the Government
- (d) uninsured deposits;
- (e) wages or salaries earned by an employee not later than 180 days before the appointment of the receiver, as may be specified by the Central Bank except for wages and salary earned by a director or key management personnel and any variable compensation component;
- (f) compensation of employees not covered under item (h);

- (g) credits extended to the bank by the Central Bank until the appointment of the receiver;
- (h) credits extended to the bank after the appointment of the receiver;
- (i) statutory amounts owed to the Government or to a municipality, unless the Government or municipality consents otherwise;
- (j) unsecured credits extended to the bank prior to the appointment of the receiver;
- (k) subordinated debt.

(3) Treatment of deficiency claims or under collateralized claims, secured by collateral or for which collateral has been pledged shall be as outlined in the prudential guidelines.

(4) Where the amount available for payment for any class of claims is insufficient to provide payment in full, such claims of that class shall be reduced in equal proportions.

(5) After payment of all claims filed, the remaining allowable claims that were not filed within the time specified by receiver for filing, shall be paid.

(6) Any proceeds remaining after all claims of depositors and other creditors have been paid shall be distributed among the shareholders of the bank in accordance with their rights.

Final report of receiver to Central Bank.

103. (1) Where the proceeds from the sale of assets of a bank in receivership have been distributed the receiver shall provide a report to the Central Bank that includes a statement of income, expense, sources and the period of receivership.

(2) Any assets of a bank in receivership that is of immaterial value that the receiver has been unable to sell or where the costs of sale would exceed the amount expected to be received in the sale may be abandoned by the receiver or given to a charitable institution that promotes public health or education.

(3) The creditor of a bank in receivership shall have no claim against an asset under subsection (2).

104. The Companies Act or any other enactment relating to corporate insolvency or liquidation shall not apply to the winding up and liquidation of an insolvent bank. Relationship with other enactments.

105. Where a receiver has sufficient reason to believe that any shareholder, director, key management personnel, attorney, accountant or other professional is engaged or engaging in a criminal or fraudulent activity in relation to the business of a bank in receivership that receiver shall- Miscellaneous receivership provisions.

- (a) notify the Central Bank immediately; and
- (b) institute a civil action to claim damages and restitution.

106. (1) Notwithstanding anything to the contrary in the Companies Act, or any other law relating winding up a bank shall not be voluntarily wound up unless the Central Bank certifies in writing that the bank is able to meet its obligations in full to the depositors and creditors as they accrue. Voluntary winding up.

(2) Where the Central Bank, at any stage of the voluntary winding up considers the bank unable to meets its obligations to depositors or creditors in full the Central Bank shall appoint a receiver to wind up the affairs of that bank in accordance with this Act.

(3) The Central Bank shall issue regulations, rules or guidelines for the winding up of a bank under subsection (2).

PART XIII - ACCOUNTS AND AUDIT

107. (1) A bank or financial holding company shall cause to be kept proper accounting records with respect to all transactions of that bank or financial holding company - Maintenance of accounting records.

- (a) in such form and detail and in accordance with internationally accepted accounting standards and such standards as may be prescribed by the Central Bank;
- (b) in a manner that gives an accurate and reliable account of its transactions and the accounts prepared from the records shall give a true

and fair view of its state of affairs and its results for the accounting period.

(2) Accounting records required to be kept by a bank or financial holding company under subsection (1), shall be kept at its Head Office of the bank or financial holding company for a period of not less than 10 years.

(3) Where the accounting records kept by a bank or financial holding company with respect to all its transactions, are prepared and kept in such a manner that, in the opinion of the Central Bank, have not been properly prepared and kept, or where a bank or financial holding company renders returns in accordance with the provisions of section 54, which in the opinion of the Central Bank are inaccurate, the Central Bank may appoint a firm of qualified accountants to prepare proper accounting records or render accurate returns, as the case may be, for the bank or financial holding company and the cost of preparing the accounts and rendering the returns shall be borne by that bank or financial holding company.

(4) A bank or financial holding company which contravenes this Section is liable to an administrative penalty.

Financial statements.

108. (1) A bank or financial holding company shall prepare audited financial statements in such form and detail in accordance with such accounting standards as shall be prescribed by the Central Bank.

(2) A bank or financial holding company shall prepare, at the expiration of each financial year, in respect of the business transacted by it with reference to that year audited financial statements on a solo or consolidated basis.

(3) A financial statements required to be prepared by a bank or financial holding company under subsection (1) shall be approved by the board of directors of the bank or financial holding company and signed by at least 2 directors of the bank or financial holding company.

(4) A bank or financial holding company which fails to prepare a financial statement in accordance with this section is liable to pay an administrative penalty.

109. (1) Unless otherwise authorised in writing by the Central Bank a bank or financial holding company shall not later than 3 months after the end of its financial year - Display of financial statements.

- (a) cause to be published on its website and in at least 3 daily newspapers with a nationwide circulation;
- (b) exhibit in a conspicuous position in each of its offices and branches; and
- (c) forward to the Central Bank, copies of the bank's or financial holding company's duly signed audited financial statement.

(2) A published financial statements of a bank or financial holding company shall disclose in detail, administrative penalties as a result of contravention of this Act and any policy guidelines in force during the financial year in question and the external auditor's report shall reflect such contravention.

(3) The financial statement of a bank or financial holding company shall bear on its face the report of an approved external auditor and shall contain statements on such matters as may be specified by the Central Bank.

(4) A bank or financial holding company which fails to comply with any of the requirements of this section is in respect of each such failure liable to an administrative penalty for each day during which the non-compliance continues.

110. The Central Bank shall lay down the guidelines to be followed by banks in respect of accounting policies, practices, presentation of annual accounts, financial statements and disclosure of information in the annual accounts. Guidelines on accounting standards.

111. (1) A bank or financial holding company shall appoint at an annual general meeting a person approved by the Central Bank, in this section referred to as "the approved external auditor," to serve for a period of time as may be determined by the Central Bank. External Auditor.

(2) The Directors of a bank or financial holding company may appoint the first external auditor of the bank or financial holding company or an external auditor to replace an external auditor who is for any reason unable to act pending ratification or the appointment

of a new auditor at an annual general meeting or until the Central Bank appoints a new auditor under subsection (5)

(3) The duties of the approved external auditor shall be to prepare for the shareholders, a report upon the financial statements of the bank or financial holding company and every such report shall contain statements as to the matters and such other information as may be prescribed by the Central Bank.

(4) For the purpose of this Section, the approved external auditor shall be an auditor who is -

- (a) a member of a professional accountancy body registered in Sierra Leone;
- (b) approved by the Central Bank;
- (c) resident in Sierra Leone; and
- (d) not disqualified by law from being appointed as an auditor for a body corporate.

(5) A person shall not be eligible for appointment as an external auditor, or retain his appointment as an external auditor, unless that person declares any interest that he has in the bank or financial holding company or with its significant shareholders or directors, to the Central Bank and the Central Bank shall determine upon such declaration whether such interest will compromise the auditor's independence as an auditor of the bank or financial holding company.

(6) Notwithstanding subsection (5) the Central Bank shall not approve an external auditor's appointment if the bank or financial holding company, a director or significant shareholder has an interest in any business or activity of the external auditor which is likely to compromise the auditor's independence as an auditor of the bank or financial holding company.

(7) Where a bank or financial holding company -

- (a) fails to appoint an approved external auditor under this section; or

- (b) at any time, fails to fill a vacancy for such person, the Central Bank shall appoint a suitable person for that purpose and shall fix the remuneration to be paid by the bank or financial holding company to such auditor.

(8) An auditor of a bank or financial holding company shall have a right of access at all times to the accounting records including computerised and manual files, vouchers, reports and other documents such as minutes book, files and other relevant documentary evidence, cash and securities of a bank or financial holding company and shall be entitled to require from directors, managers and officers of the bank or financial holding company such information and explanation as he thinks necessary for the performance of the duties of an auditor.

(9) The report of the external auditor shall be read together with the report of the board of directors of the bank or financial holding company at the annual general meeting of the shareholders of the bank or financial holding company and 2 copies of each report together with the auditor's analysis of bad and doubtful advances in a form specified by the Central Bank shall be sent to the Central Bank.

(10) Where an external auditor appointed under this section, in the course of his duties as an auditor of a bank or financial holding company, is satisfied that -

- (a) there has been a contravention of this Act or regulation or directive prudential standard or that an offence under any other law has been committed by the bank or financial holding company or any other person; or
- (b) the bank or financial holding company is insolvent or there is a significant risk that the bank or financial holding company losses have been incurred by the bank or financial holding company which materially reduce its capital funds; or
- (c) material weakness exists that threatens the safety and soundness of the bank or financial holding company; or

- (d) any irregularity which jeopardises the interest of depositors or creditors of the bank or financial holding company, or any other irregularity has occurred, he shall immediately report the matter to the Central Bank.

(11) An external auditor shall forward to the Central Bank 2 copies of the management reports on the bank or financial holding company's activities not later than 3 months after the end of the bank or financial holding company's financial year.

(12) A Report submitted by an external auditor under subsection (11) shall not be construed as a violation of the external auditor's professional duty of confidentiality nor constitute grounds for liability for civil damages.

(13) An external auditor who acts in contravention of or fails deliberately or negligently to comply with any of the provisions of this section commits an offence and is liable on conviction to a fine.

(14) A bank or financial holding company shall notify the Central Bank of the termination of the appointment of its external auditor.

(15) A bank or financial holding company shall comply with a request of the Central Bank that the appointment of an external auditor be revoked.

(16) A bank or financial holding company which fails to comply with this section shall be liable to an administrative penalty.

Special audit.

112. (1) The Central Bank may at the expense of a bank or financial holding company -

- (a) require an external auditor to undertake a further audit or provide additional information or both as the Central Bank considers necessary; or
- (b) engage an independent external auditor to audit the whole or part of the accounting records of the bank or financial holding company.

113. (1) An external auditor of a bank or financial holding company shall submit to - External auditor's report.

- (a) the bank or financial holding company, and
- (b) the Central Bank, at least once in year, a statutory audit report and a long form audit report.

(2) An external auditor shall state in the statutory audit report under subsection (1), whether or not -

- (a) the accounts give a true and fair view the state of affairs of the bank or financial holding company and its results for the period under review;
- (b) the external auditor was able to obtain all the information and explanation required for the efficient performance of the external auditor's duties;
- (c) the bank or financial holding company's transactions are within the powers of the bank or financial holding company; and
- (d) the bank or financial holding company has complied with the provisions of this Act and any other relevant legislation.

(3) The external auditor shall submit a long form audit report on the accounts and the affairs of the bank or financial holding company generally and in addition comment on the matters to be specified in directives made by the Central Bank.

114. The Central Bank may periodically or as it considers it necessary, arrange meetings between the Central Bank, a bank or financial holding company and its external auditor to discuss matters relevant to the Central Bank's responsibilities which have arisen in the course of the statutory audit of that bank or financial holding company including relevant aspects of its business, its accounting and internal control systems, and its annual financial statements and management letter. Meeting with external auditor.

Termination
of external
auditor's
appointment.

115. (1) An external auditor of a bank or financial holding company shall cease to act as an external auditor if -

- (a) the Central Bank requests the bank or financial holding company in writing to revoke the appointment of the external auditor
- (b) the external auditor or a member of the external auditor's firm or establishment becomes a director of that bank or financial holding company;
- (c) the external auditor resigns by notice in writing to that bank or financial holding company;
- (d) the external auditor ceases to qualify under subsection (4) of section 111 for appointment as auditor of a bank or financial holding company; or
- (e) the external auditor is otherwise removed by a decision taken at an annual general meeting of that bank or financial holding company or
- (f) the external auditor has served out the maximum period prescribed by the Central Bank for external auditors.

(2) A bank or financial holding company shall comply with a request of the Central Bank that the appointment of its external auditor be revoked.

(3) An external auditor who does not comply with provisions of this Section commits an offence and is liable on summary conviction to a fine or to a term of imprisonment of not less than one year or both.

PART XIV - MISCELLANEOUS

116. (1) Where a person is dissatisfied or aggrieved with a decision of the Central Bank he may petition the Central Bank in writing within 10 working days of the said decision for a review. Review of
decisions of
Central Bank.

(2) The Central Bank shall make a decision on a petition under subsection (1) within 6 months after receipt of complete information and accordingly inform the petitioner of its decision.

117. (1) Except as otherwise provided in this Act any person who contravenes any provision of this Act or statutory instruments made under this Act commits an offence and shall be liable on conviction to a fine or to imprisonment for a term not exceeding 2 years or both the fine and imprisonment. Offences.

(2) Where an offence under this Act is committed by a body of persons, then in the case of a -

- (a) body corporate, any person who at the time the offence was committed was a director, manager or officer of that body corporate;
- (b) firm, every person who at the time the offence was committed was a partner or principal officer of that firm; or
- (c) partnership, every person who at the time the offence was committed was a partner, shall be deemed to have committed that offence and shall be liable to an administrative penalty;

(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 connivance; or
- (b) he took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

(4) Notwithstanding anything contained in this Act or any other law, the Central Bank may compound any offence punishable under this Act by accepting such sums of money as it thinks fit, not exceeding the maximum fine to which a person would have been liable if he had been convicted of an offence under this Act.

(5) Where an offence under this Act has been compounded no proceedings shall be instituted or continued against such person.

Maintenance
of secrecy.

118. (1) A person who acquired knowledge in his capacity as director, manager, officer, employee or agent of a bank or financial holding company, or as its auditor, inspector, potential bidder, administrator, receiver or liquidator, shall not disclose to any person the identity, assets, liabilities, transactions or other information in respect of depositors and any other customer except -

- a) with written authorisation of the depositors and any other customer or the heirs or legal representatives of such depositors and any other customer;
- b) for the purpose of the performance of his duties within his scope of employment in conformity with this Act;
- c) when lawfully required to make the disclosure by a court of competent jurisdiction; or

(d) under any law in force in Sierra Leone.

(2) Except in the performance of his duties under this Act a director, manager, officer, employee or agent of a bank or a financial holding company shall during or after his relationship with the Central Bank preserve and aid in preserving secrecy with regard to all matters relating to the affairs of a bank or financial holding company and of any of its customers that may come to his knowledge in the performance of his duties.

(3) A defaulting customer who refuses to pay his debts to a bank shall not be covered under this section.

(4) The duty of confidentiality imposed under this section shall not apply where a customer -

- (a) issued with a credit card or charge card by a bank, has had the card suspended or cancelled by that bank by reason of default in payment, and the bank discloses information related to the name and identity of the customer, the amount of indebtedness and the date of suspension or cancellation of the credit card or charge card to another bank or institution that is issuing credit cards or charge cards in Sierra Leone;
- (b) is declared bankrupt or in case of a company is insolvent and or being wound up;

- (c) has died and the information is required by the appointed personal representative of the deceased or the testamentary executor solely in connection with the succession to the estate.

(5) A person who contravenes this section commits an offence and is liable on conviction to a fine or imprisonment for a term not exceeding 2 years or both fine and imprisonment.

Publication of data by Central Bank.

119. (1) Notwithstanding anything contained in this Act the Central Bank may publish information obtained by it from a bank in a consolidated form as it considers fit and in the public interest.

Immunity of Central Bank.

120. (1) The Central Bank, its officers, board members, employees, or agents, shall not be liable for, or in respect of, any loss or damage suffered or incurred by any person arising from a decision taken or action performed in absence of bad faith in the exercise of a function, power or duty in terms of this Act.

(2) The Central Bank shall indemnify its officers, Board members, employees, or agents, for any legal costs they incur in defending a legal action under subsection (1).

(3) This section shall not be applicable where the action or claim arises out of the negligence or a wrongful act of the Board members, employees or agent of the Central Bank.

(4) The Central Bank shall seek reimbursement for any outlays in defending against claims where the court ultimately makes a finding that the Central Bank did not act in bad faith".

121. (1) Property held by a bank shall be presumed to be abandoned if the owner has, within a period of 5 years immediately after the date of deposit or payment of funds towards the purchase of shares or other interests or the issuing 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 a safe deposit box was rented, as the case may be-

Abandoned property.

- (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 bank concerned regarding the property;
- (d) not otherwise indicated an interest in the property as evidenced by a memorandum concerning them by the bank.

(2) The property referred to in subsection (1) include -

- (a) a general deposit (demand, savings or matured time deposit) made in Sierra Leone with that bank together with an interest or dividend excluding any lawful charges;

(b) funds paid in Sierra Leone towards the purchase of shares or other interests in a bank together with interest or dividend excluding any lawful charges.

Minimum uniform business hours and bank holiday.

122. (1) The Central Bank may, after consultation with banks, at any time by notice published in at least one newspaper of general circulation in an affected community, fix minimum uniform hours of business for the branches and offices of banks in any specified area.

(2) The Central Bank may, at any time by a notice published in at least one newspaper of general circulation in an affected community or communities, declare any day to be a bank holiday and directing that no bank shall transact any business with the public on a bank holiday.

(3) A bank holiday shall not necessarily be a public holiday.

Civil proceedings.

123. (1) A pecuniary penalty not specifically designated as fine incurred and imposed under this Act shall be deemed to be a debt owed to the Central Bank.

(2) A pecuniary penalty referred to in subsection (1) which has not been paid to the Central Bank may be sued for and recovered in a court by the Central Bank.

(3) In any suit under this section, production of a certificate signed by the Governor giving the name and address of the defendant and the amount of the pecuniary penalty due shall be sufficient evidence of the amount owed by the defendant.

124. Unless otherwise provided in this Act, the Central Bank may by statutory instrument prescribe a schedule of penalties for violation of this Act. Schedule of penalties.

125. (1) The Banking Act, 2011 is hereby repealed. Repeal and savings.

(2) Notwithstanding subsection (1)-

(a) a licence granted under the repealed Act, which is in force at the coming into operation of this Act shall continue in force as if granted under this Act;

(b) all regulations, rules, guidelines, orders, notices, directives and instruments prescribed or issued under the repealed Act and in force at the coming into operation of this Act shall, unless they are inconsistent with any provision of this Act or until they are expressly revoked, remain in force;

(c) a bank in existence before or at the commencement of this Act carrying on banking business that is incompatible with this Act shall within a period of 90 days after the coming into operation of this Act regularise its activity to the satisfaction of the Central Bank to bring it in conformity with this Act.

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide for the licensing of persons carrying on banking business, the regulation and supervision of banking activities, financial holding companies and subsidiaries, the protection of depositors and to provide for other related matters.

The Bill is divided into 14 parts-

Part I - Preliminary - provides for the interpretation and definitions of certain terms and expressions in the Bill and the application of the Act.

PART II- Licensing - deals with eligibility for a banking licence and related issues of application, grant or refusal of licence.

PART III-Corporate Governance Rules- gives a guide on governance structure and principles

PART IV-Registration of a financial holding company - prohibits financial holding companies from operating without licence or registration.

PART V - Capital and reserves - deals with capital and statutory reserve fund.

PART VI - Liquidity - deals with the maintenance of liquid assets.

PART VII - Ownership and control - deals with group structures; acquisition, sale, disposal and merger.

PART VIII - Restrictions on lending - regulates credit exposures.

PART IX - Supervision and control - deals with the power of the Central bank to investigate and examine banks and financial holding companies and to take prompt corrective action.

PART X - Resolution of banks and financial holding companies - deals with the resolution and the authority of the Central Bank to control affairs of banks and financial holding companies; place in resolution, including mandatory restructuring, including merger, transfer and sale.

PART XI - Official administration-deals with the official administration and powers of official administrator.

PART XII-Receivership and liquidation-deals with qualification, appointment, compensation and powers of receiver including the Central Bank oversight of the receiver.

PART XIII - Accounts and audit - deals with matters relating to maintenance of accounting records, guidelines on accounting standards and the external Auditor.

PART XIV- Miscellaneous deals with issues relating to the review of decisions of Central Bank, offences, publication of data by Central Bank, immunity of Central Bank, civil proceedings, schedule of penalties, repeal and savings.

MADE this 31st day of May, 2019.

JACOB JUSU SAFFA
Minister of Finance

Freetown,

SIERRA LEONE.

MAY, 2019.