

I Assent
J. M. A. Herdman
Governor
27th September, 1990

VIRGIN ISLANDS
No. 9 of 1990

An act to provide for the licensing and control of banking business and trust business and related matters.

[Gazetted 11th October, 1990]

ENACTED by the Legislature of the Virgin Islands as follows:-

Short Title. **1.** The Act may be cited as the Banks and Trust Companies Act, 1990.

PART 1
Preliminary

Interpretation. **2.** (1) In this Act-

“auditor” means a person who-

- (a) is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a current member in good standing of one of those institutes; or
- (b) possesses such other qualification in accountancy as the Governor in Council, by order approves and is in good standing with respect to such qualification;

“authorized agent” means a person designated as authorized agent by a bank or trust company under paragraph (b) of subsection (1) of section 9;

“bank” means a person carrying on banking business;

“banking business” means the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or similar account money that is repayable by cheque or order and is capable of being invested by way of advances to customers or otherwise but does not include the receiving on savings, deposit or similar account money which is paid by one company to another at a time when-

- (a) one is the subsidiary of the other; or
- (b) both are subsidiaries of another company;

“financial year” means, in relation to a licensee under this Act-

- (a) the period not exceeding 53 weeks at the end of which the balance of the licensee's account is struck; or
- (b) If no such balance is struck, or if a period in excess of 53 weeks is used, then, a calendar year;

"Governor" means the Governor in Council;

"Inspector" means the Inspector of Banks, and Trust Companies appointed under subsection (1) of section 15;

"license" means a licence granted under subsection (3) of section 4;

"licensee" means a company holding a licence under this Act;

"Registrar" means the Registrar of High Court;

"trust company" means a company carrying on trust business;

"trust" means the legal relationship created *inter vivos* or on death by a person, known as a settlor or grantor, when assets have been placed under the control of a person, known as a trustee, for the benefit of a person, known as a beneficiary, or for a specified purpose or when a person declares that he holds assets as trustee for the benefit of a beneficiary or a specified purpose and-

- (a) the assets constitute a separate trust fund and are not part of the trustee's own estate;
- (b) title to the trust assets stand in the name of the trustee or in the name of another person on behalf of the trustee; and
- (c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law;

"trust business" means the business of-

- (a) acting as a professional trustee, protector or administrator of a trust or settlement;
- (b) managing or administering any trust or settlement; and
- (c) company management as defined by the Company Management Act, 1990.

No. 8 of
1990.

(2) For the purposes of this Act and subject to subsection (5), a company is deemed to be a subsidiary of another if-

- (a) that other, either-
 - (i) is a member of it and controls the composition of its board of directors, or
 - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company that is the other's subsidiary.

(3) For the purposes of subsection (2), the composition of a company's board of directors is deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(4) For purposes of subsection (3), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied-

- (a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in subsection (3);
- (b) that a person's appointment to the directorship follows necessarily from his appointment as a director of the other company; or
- (c) that the directorship is held by the other company itself or by a subsidiary of it.

(5) In determining whether one company is a subsidiary of another-

- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
 - (i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity, or
 - (ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity;are to be treated as held or exercisable by the other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(6) For the purposes of this Act-

- (a) a company is deemed to be another's holding company if the other is its subsidiary; and
- (b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

PART II Licenses

**Requirement
for licence.**

3. (1) No person shall carry on banking business, and no trust company shall carry on trust business, from within the Virgin Islands, whether or not such business is carried on within or outside the Virgin Islands, unless the person or the trust company, as the case may be, has obtained a license under this Act for the purpose.

(2) No company incorporated in the Virgin Islands shall carry on banking business or trust business within or outside the Virgin islands unless the company has obtained a licence under this Act for the purpose.

Application for licence 4. (1) A licence is obtainable by making application therefor to the Governor in the prescribed form.

First Schedule Second Schedule (2) An application under subsection (1) shall contain the particulars set out in the First Schedule and shall be accompanied by the fee prescribed in Part I of the Second Schedule.

(3) The Second Schedule may be amended by an order made by the Governor and an order made under this subsection shall be subject to affirmative resolution.

(4) If the Governor is satisfied that an application to carry on banking business or trust business is not against the public interest and that the applicant is a person qualified to carry on banking business or trust business, he may grant the application and issue to the applicant a licence subject to such terms and conditions as the Governor thinks fit.

(5) A decision to refuse to grant a license, other than a license in respect of a business in existence at the date of the commencement of this Act, is final and is not subject to any appeal.

(6) The Governor shall cause notice of the grant of a license under this Act to be published in the *Gazette*.

(7) A license issued under this Act shall be prominently displayed on the premises where the business is carried on.

Duration of licence. Second Schedule. 5. A licensee issued under this Act is valid until the 31st December of the year in which it is issue and is renewable during the month of January in the following year upon payment of the fee prescribed in Part II of the Second Schedule.

Exemptions. No. 10 of 1989. 6. (1) A person who is licensed under this Act is not required to be licenced under the Business, Professions and Trade Licenses Act, 1989 to carry on banking business or trust business.

No. 8 of 1990 (2) This Act does not apply to a person licenced under the Company Management Act,1990

Existing Businesses. 7. A person who at the commencement of this Act is carrying on banking business or trust business has a period of three months to comply with the trust provisions of the Act.

Notification of change in particulars of Licensee. 8. Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall, as soon as possible thereafter, inform the Governor of the change.

Principal office and authorized agents. 9. (1) A license shall not be granted to any person unless the person designates, and notifies to the Governor-

(a) a principal office in the Virgin Islands; and

(b) by name, two individuals, approved by the Governor and the Inspector, to be that person's authorized agents in the Virgin Islands.

(2) The functions of an authorized agent are to act as an intermediary between the licensee and, as the case may be, the Governor or the Inspector, except that in the absence or inability of one authorized agent to act, the other authorized agent may carry out the functions of both authorized agents under this subsection.

(3) It shall be a condition of every license granted that the licensee shall forthwith notify the Governor in writing of any change of-

- (a) its principal office in the Virgin Islands; or
- (b) any of the persons designated as an authorized agent pursuant to paragraph (b) of subsection (1).

(4) Where the Governor has approved a person under paragraph (b) of subsection (1) as an authorized agent, he may in writing revoke the approval.

Types of licences. 10. (1) A license issued under this Act must be in one of the following categories-

- (a) a general banking license, for the purpose of carrying on banking business within and outside the jurisdiction of the Virgin Islands without any restrictions on that business;
- (b) a restricted Class I banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11;
- (c) a restricted Class II banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11 with the further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence;
- (d) a general trust licence, for the purpose of carrying on trust business without any restrictions; and
- (e) a restricted trust licence for the purpose of carrying on trust business with the restriction that the licensee shall not undertake trust business for persons other than those listed in any undertaking accompanying the application for the licence.

(2) There may be listed in a schedule to the application for a general trust licence the name of any company engaging in trust business being a subsidiary of the company applying for a general trust licence together with a description of the particular type of trust business being carried on or to be carried on by the subsidiary and the Governor may, upon granting the general trust licence to the applicant company, include in the licence the name of each subsidiary to be included in the licence together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary.

Limitation on restricted banking licences No. 8 of 1984.

11. The holder of a restricted Class I banking licence shall not-

- (a) take deposits from any person resident in the Virgin Islands other than another licensee or a company incorporated under the International Business Companies Act, 1984;
- (b) invest in any asset that represents a claim on any person resident in the Virgin Islands except a claim resulting from-
 - (i) a transaction with another licensee; or
 - (ii) the purchase of bonds or other securities issued by the Government, a statutory corporation or a company in which the Government is the sole or majority beneficial owner; or
- (c) without the written approval of the Governor, carry on any business in the Virgin Islands other than the business for which the restricted Class I banking licence has been obtained.

Capital Requirements.

12. (1) No general banking licence shall be granted to a company unless the company-

- (a) has a fully paid-up capital of not less than \$2,000,000, or its equivalent in foreign currencies, or such greater sum as the Governor, by order, determines; and
- (b) has deposited or invested the sum of \$500,000 in such manner as the Governor, by order, prescribes.

(2) No restricted Class I banking licence or restricted Class II banking licence shall be granted to any company unless the company:-

- (a) has a fully paid-up capital of not less than \$1,000,000, or its equivalent in foreign currencies, or such greater sum as the Governor, by order, determines; and
- (b) has deposited or invested the sum of \$500,000 in such manner as the Governor, by order, prescribes.

(3) No general trust licence shall be granted to any trust company unless the trust company-

- (a) has a fully paid-up capital of not less than \$250,000 or its equivalent in foreign currencies, or such greater sum as the Governor, by order, determines; and
- (b) has deposited or invested a sum of money as may be specified by the Governor but not to exceed \$100,000, in such manner as the Governor, by order, prescribes.

(4) The Governor may, on the recommendation of the Inspector, require a licensee to increase its fully paid-up capital to such greater amount as the Governor may determine for the nature of the banking business or trust business being, or sought to be, undertaken

**Surrender of
Licene**

13. (1) A licensee that has ceased to carry on the business in respect of which its licence was granted may apply to the Governor to surrender its licence if the licensee.

- (a) produces evidence that it has repaid all deposits and has transferred all trust assets held or administered by it; or
- (b) being a company, is being wound up voluntarily and produces evidence that it is solvent and is able on demand to repay all its other deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Governor may thereupon approve the surrender.

Cap. 243.

(2) In the case of an application under paragraph (b) of subsection (1) the Attorney General May apply to the court for an order that the licensee be wound up, either by the court or subject to the supervision of the court, and where the court so orders the provisions of the Companies Act relating to the winding up of a company by or subject to the supervision of the court, *mutatis mutandis*, apply.

**PART III
Transferability of Shares and Beneficial Interests**

**Shares not to be
issued or
transferred
without
approval.**

14. No shares or other interests, whether legal or equitable, in a bank or company shall be issued, transferred or otherwise disposed of without the prior written approval of the Governor, except that the Governor may exempt any bank or trust company from the provisions of this section, subject to such terms and conditions as the Governor considers necessary.

**PART IV
Administration**

**Inspector of
Banks & Trust
Companies.**

15. (1) The Governor shall appoint a public officer to be known as the Inspector of Banks and Trust Companies for the purpose of ensuring the proper administration of this Act.

(2) The functions of the Inspector are-

- (a) to maintain a general review of banking and trust company practice in the Virgin Islands;
- (b) where he thinks fit or when required by Governor, to examine by way of the receipt of regular returns or in such other manner as he thinks fit the affairs or business of any licensee carrying on business within or outside the Virgin Islands for the purpose of satisfying himself that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying on its business in a satisfying manner, and to report to the Governor the results of such examination;
- (c) to assist in the investigation of any contravention of the laws of the Virgin Islands that he has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers;
- (d) to examine accounts and audited annual accounts forwarded to him under section 17 and to report his findings to the Governor; and
- (e) to examine, and make recommendations to the Governor with respect to, applications for licences.

(3) In the performance of his functions under this Act and subject to the provisions of section 24, the Inspector may at all reasonable times-

- (a) have access to the books, records, vouchers, documents, cash and securities of any licensee;
- (b) request any information, matter or thing from any person whom he has reasonable grounds to believe is carrying on banking business or trust business in the Virgin Islands in contravention of section 3; and
- (c) demand of the authorized agent of the licensee any reasonable information or explanation for the purpose of enabling the Inspector to perform his functions under the Act.

(4) For the purposes of subsection (3), the Inspector shall have access to the name or title of an account of a depositor of a licensee or to the settlor, name or title or a trust, only under the authority of any order of the court made on the ground that there is no other way of obtaining the information required by him.

(5) The Inspector, with the written approval of the Governor, may authorise in writing any other person to assist him in the performance of his functions under this Act.

(6) The Inspector may, if it appears to him that there is reasonable ground for suspecting that there is a contravention of this Act or that a contravention is likely, apply to the court for an order authorising him to take such action as he considers necessary in the interests of the depositors, the beneficiaries of any trust, or other creditors and to preserve any assets of the bank or trust company that is the subject of the order.

**Use of word
“bank”, etc.**

16. (1) No person, other than a licensee, shall except with the approval of the Governor-

- (a) use or continue to use the words “bank”, “savings”, “savings and loans”, “trust”, “trustee”, “trust company” or “trust corporation”, or any of their derivatives, either in English or in any other language, in the name, description or title under which that person is carrying on

business from within the Virgin Islands, whether or not the business is carried on within or outside the Virgin Islands;

- (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on banking business or trust business; or
- (c) in any manner solicit or receive deposits from the public.

(2) No company incorporated in the Virgin Islands shall, except with the approval of the Governor, be registered, or continue to be registered, by a name which contains “bank”, “savings”, “savings and loan”, “trust”, “trustee”, “trust company” or “trust corporation” or any of their derivatives, either in English or in any other language, in the description or title under which the company is carrying on business within or outside the Virgin Islands.

(3) The Governor may, before giving his approval under subsection (1) or (2), require the production of such references and such information and particulars as may be prescribed.

(4) The Governor may withdraw any approval given under subsection (1) where he considers it to be in the public interest.

(5) The Governor may refuse to grant a licence to a bank or trust company or, if the bank or trust company is already in possession of a licence, he may revoke the licence if, in his opinion, the bank or trust company is carrying on or appears likely to be carrying on banking business or trust business, as the case may be, under a name that is-

- (a) identical with that of any other person whether within or outside the Virgin Islands, or which so nearly resembles that name as to be calculated to deceive;
- (b) calculated to suggest falsely the patronage of or connection with some person, whether within or outside the Virgin Islands; or
- (c) calculated to suggest falsely that the person-
 - (i) has special status in relation to or derived from the Government,
 - (ii) has the official approval of or acts on behalf of the Government or of any department, branch, agency or organ of Government, or any officer thereof, or
 - (iii) is recognized in the Virgin Islands as a national or central bank or trust company.

Accounts

17. (1) Every licensee shall have its accounts audited by an auditor annually or at such other periods as the Governor or the Inspectors may require.

(2) The accounts shall be forwarded to the Inspector within 3 months from the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Inspector.

(3) Where a licensee changes its auditor, the Inspector may require the former auditor to explain the circumstances that gave rise to the change.

Certain approvals required.

18. A licensee shall not change its name or operate outside the Virgin Islands any subsidiary branch, agency or representative office without the prior written approval of the Governor.

Number & approvals of directors.

19. (1) A licensee shall at no time have less than two (2) directors.

(2) A licensee shall, before the appointment of a director or other senior officer, apply to the Governor for his written approval of the appointment.

(3) Notwithstanding subsection (2), the Governor may exempt a licensee from the requirements specified in that subsection but such an exemption-

- (a) *ipso facto* lapses if the director or senior officer becomes bankrupt, makes an arrangement or composition with his creditors or is convicted of an offence involving dishonesty; and
- (b) may be revoked by the Governor.

Specific powers of Governor

20. (1) Where the Governor is satisfied that a licensee-

- (a) has ceased to carry on banking business or trust business;
- (b) has gone into liquidation or is wound up or is otherwise dissolved;
- (c) has made any arrangement or composition with its creditors;
- (d) is unable or appears likely to become unable to meet its obligations as they fall due;
- (e) is carry on business in a manner detrimental to the public interest, the interests of its depositors or interests of the beneficiaries of any trust, or to the interests of other creditors;
- (f) has contravened any provisions of this Act; or
- (g) has failed to comply with a condition of its licence,

he may take any of the actions set forth in subsection (2).

(2) The actions that the Governor may take in pursuance of subsection (1) are:

- (a) revocation of the licence;
- (b) imposition of new or additional conditions upon the licensee;
- (c) the substitution of any director or officer of the licensee;
- (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Inspector thereon within three (3) months of such appointment;
- (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs who shall *mutatis mutandis* have all the powers of a person appointed as a receiver or manager of a business appointed under the Bankruptcy Act; or
- (f) the requiring of the taking of such action by the licensee as the Governor thinks fit.

Cap. 9.

(3) Notwithstanding subsection (1) of section 26, a licensee may within seven (7) days from the date of a decision taken under subsection (2) apply to the Governor for a reconsideration of his decision if that decision involves the revocation of a license.

(4) A person appointed under paragraph (d) or (e) of subsection (2) or whose appointment has been extended under paragraph (b) of subsection (5) may at his discretion and in any case within three (3) months from the date of his appointment or of the extension of his appointment, as the case may be, prepare and furnish a report to the governor and the Inspector of the affairs of the licensee and may make recommendations thereon.

(5) The Governor may, on receipt of a report under subsection (4)-

- (a) revoke the appointment of the person appointed under paragraph (d) or (e) or subsection (2);
- (b) extend the period of appointment of the person appointed under paragraph (d) or (e) of subsection (2);
- (c) subject to such conditions as the Governor may impose, allow the licensee to reorganise its affairs in such manner as the Governor approves; or
- (d) revoke the license and instruct the Attorney General to apply to the court for an order that the licensee be forthwith wound up by the court; in which case, the provisions of the Companies Act relating to the winding up of a company by the court apply mutatis mutandis for the purpose of giving the necessary effect to this provision.

Cap. 243.

(6) Whenever the Governor revokes a licence under paragraph (a) of subsection (2) or paragraph (d) of subsection (5) or under subsection (5) of section 16, he shall cause notice of the revocation to be published in the *Gazette* and may also cause notice to be published, whether within the Virgin Islands or elsewhere, in such newspaper or other publication as he may think fit in the circumstances.

Attorney
General may
apply to Court.

21. The Attorney General may, upon being instructed by the Inspector or in any case in which a licensee or a person who has at any time been a licensee is being wound up voluntarily, apply to the court for leave to intervene on behalf of any interested party if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors, and the court may make such order as it shall consider appropriate.

Power
of search.

22. (1) If a Judge or Magistrate is satisfied by information on oath, whether oral or written, given by the Inspector or a person authorised by the Inspector that-

- (a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises, or in any vehicle, vessel or aircraft specified in the information; or
- (b) any documents, cash or securities that ought to have been produced under subsection (3) of section 15 and have not been produced are to be found at any premises, vehicle, vessel or aircraft specified in the information, he may issue a search warrant authorising the Inspector, together with any other person named in the warrant, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or the vehicle, vessel or aircraft.

(2) The Inspector or any other person authorised by a warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or who he has reasonable grounds to believe to have recently left or to be about to enter those premises, or that vehicle, vessel or aircraft, and may seize any document, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under subsection (3) of section 15, except that no female shall, in pursuance of any warrant issued under this section be searched except by a female.

(3) Where by virtue of this section a person has power to enter any premises, or a vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

PART V
Miscellaneous

Power of
Inspector
to require
insurance

23. The Inspector may require a licensee to effect a policy of insurance with a reputable insurance company against-

- (a) losses arising out of claims of negligence or breach of duty by the licensee or any employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Inspector may from time to time stipulate,

in such amount and of such a nature as the Inspector may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, canceled or not renewed, the licensee shall immediately notify the Inspector and shall cease to carry on its business until the insurance has been reinstated or replaced.

Privilege of information and gateways for justifiable disclosure 2/1995

24. (1) Any information, document, record, statement or thing made or disclosed to the Inspector, Registrar, Director of Financial Services or any person acting under their authority in the course of discharging any duty or exercising any power under this Act or the regulations concerning any licensee or any applicant for a licence is absolutely privileged and shall not be disclosed except as provided in subsection (2).

(2) The restriction on disclosure in subsection (1) does not apply when the disclosure is made-

- (a) to the Governor, the Minister or a public officer approved by the Minister;
- (b) to any person for the purpose of discharging any duty or exercising any power under this Act or the regulations;
- (c) on the order of a Court of competent jurisdiction for the purposes of any criminal or civil proceedings;
- (d) on request by:-
 - (i) a high ranking officer of a competent authority in an international organisation recognised by the Governor; or
 - (ii) a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Governor,

for the purpose of legal assistance in the investigation of any criminal activity.

- (e) for the purposes of enabling or assisting a foreign regulatory authority in a country or jurisdiction approved by the Governor in discharging duties or exercising powers corresponding to those under this Act or the regulations. Provided that in a disclosure made under paragraph (d) or (e) the authority receiving the disclosure shall be required not to transmit any information, document, record, statement or thing disclosed to any other person except with the prior written consent of the Governor.

(3) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not less than \$5,000 and not more than \$50,000 for each offence.

Recovery of costs. 2/1995

24A. Where assistance to a foreign regulatory authority is provided in accordance with the provisions of the Act the resulting cost of that assistance shall be borne by the foreign regulatory authority requesting the assistance in a similar manner to a claim for costs submitted to the Court.

Offences

25. (1) A licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Governor or the Inspector is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or both.

(2) Any person who operates a banking business or a trust business in contravention of section 16 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding one year or both; and in the case of a continuing offence to a fine not exceeding \$10,000 for each day during which the offence continues.

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which the advertisement appears or to which such advertisement is directed is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or both.

(4) Where a limited liability company is convicted of an offence against subsection (3), every director and every officer concerned with the management of the company is liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

(5) Any person who-

- (a) fails to comply with a request made of him by the Inspector or by any other person acting under this Act;
- (b) assaults or obstructs the Inspector or other person in the performance of his functions under this Act;
- (c) uses any insulting language to the Inspector or other person in the performance of his functions under this Act;
- (d) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent the Inspector or other person from performing his functions under this Act; and
- (e) contravenes any provision of this Act for which no punishment is specifically provided.

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or both.

Appeals

26. (1) An appeal lies to the High Court from any decision of the Governor:-

- (a) revoking a licence under subsection (5) of section 16 or under paragraph (a) of subsection (2) or paragraph (d) of subsection (5) of section 20;
- (b) withdrawing any approval under subsection (4) of section 16; or
- (c) requiring a licensee to take certain steps which the Governor may specify under section 20.

(2) An appeal against the decision of the Governor shall be by motion.

(3) The following procedure applies to appeals from the Governor-

- (a) the appellant within 21 days after the day on which the Governor has given his decision shall serve a notice in writing, signed by the appellant or his solicitor, on the Attorney General of his intention to appeal and of the general grounds of his appeal except that any person aggrieved by a decision of the Governor may upon serving notice on the Attorney General apply to the court within 14 days after the day on which the Governor has given his decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the court upon hearing of the application may extend the time prescribed by this section as it deems fit;
- (b) the Attorney General shall, within 21 days of receiving the notice of appeal, obtain a copy of the Governor's decision and transmit to the Registrar without delay a copy thereof together with all papers relating to the appeal, except that the Governor is not compelled to disclose any information if he considers that the public interest would suffer by such disclosure and a certificate given by the Governor under the Public Seal is conclusive that disclosure is not in the public interest;
- (c) the Registrar shall set down the appeal for hearing on such day as is convenient, and shall cause notice of the hearing to be published, in such manner, as the court may direct; and
- (d) the court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the court thereon to the Governor.

(4) An appeal against a decision of the Governor shall not operate as a suspension of the decision of the Governor.

- Immunity.** 27. No liability attaches to the Governor, the Inspector or any person acting under the authority of the Governor or the Inspector for an act done in good faith in the discharge or purported discharge of his functions under this Act.
- Regulations.** 28. The Governor may make regulations generally for carrying the purpose and provisions of this Act into effect, and specifically, for the following purposes:
- (a) prescribing anything by this Act authorized or required to be prescribed
 - (b) controlling the form of advertising by licensees; and
 - (c) exempting any person or business, or class of person or business from any provision of this Act.
- Directions.** 29. Without limiting or affecting section 28 the Inspector may, from time to time, issue by publication in the *Gazette*, directions with relation to such matters as he may think fit and appropriate and failure by any licensee to comply with such directions shall be taken into consideration when any action is proposed to be taken under section 20.
- Repeal.**
No. 17 of 1972 30. The Banking Ordinance, 1972 is repealed.
- Commence-
ment** 31. The Act comes into operation on such date as the Governor by proclamation published in the *Gazette* appoints.

FIRST SCHEDULE

[section 4 (2)]

PARTICULARS TO BE SPECIFIED IN APPLICATIONS

Every company applying for a licence under this Act shall furnish in writing to the Governor the following particulars which shall accompany the application.

- (1) Name of applicant
- (2) Address in the Virgin Islands of principal office of applicant and, in the case of a company incorporated in the Virgin Islands, its registered office,
- (3) The names and addresses of all directors.
- (4) The names and addresses of all shareholders.
- (5) The name and addresses of all officers and managers.
- (6) Names and addresses of solicitors, if any, to the applicant, together with a letter from the solicitors confirming that they act for the applicant.
- (7) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming they act for the applicant.
- (8) Evidence of the proper incorporation of the company in the Virgin Islands or in the country of incorporation as the case may be.
- (9) Evidence in writing that the applicant itself or some person directly or indirectly connected with the applicant is possessed of solid and practical experience in banking business or trust business, as the case may be.
- (10) The following:-
 - (a) an undertaking in writing to provide and set apart a fully paid up capital before or at the time it commences business, such as the Governor may in his absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Governor; and
 - (b) the guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligations of the parties to it are governed exclusively by the law of the Virgin Islands and that the court of the Virgin Islands only shall be the forum for these purposes.
- (11) Character references in writing, together with such other evidence as the Governor may require, that neither the applicant nor any director or officer of the applicant has a criminal record either in the Virgin Islands or elsewhere.
- (12) Annual accounts of its holding company, if any, for the preceding three (3) years and thereafter annually duly audited and certified by an independent auditor.
- (13) Names of all subsidiary companies of the applicant with addresses of their registered offices.

- (14) A copy of the act, charter, certificate of incorporation or memorandum of association and articles of association, as may be appropriate, verified by an affidavit sworn by a director, secretary and duly authenticated as follows:
 - (a) in the case of a company incorporated in the Virgin Islands, notarized; and
 - (b) in the case of a foreign company, certified and authenticated under the public seal of the country, city or place under the laws of which such company has been incorporated.
- (15) References, including one from a bank or trust company.
- (16) Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.
- (17) Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

SECOND SCHEDULE

Part I

[Section 2 (2)]

FEES FOR THE GRANT OF A LICENCE

- (1) If a licence is granted on or before the 30th day of June in any year:
- | | |
|---|-------------|
| (a) a General Banking Licence | \$20,000.00 |
| (b) a Restricted Class I Banking Licence | \$16,000.00 |
| (c) a Restricted Class II Banking Licence | \$16,000.00 |
| (d) a General Trust Licence | \$10,000.00 |
| (e) a Restricted Trust Licence | \$ 300.00 |
- (2) If a licence is granted on or after the 1st day of July in any year:
- | | |
|---|-------------|
| (a) a General Banking Licence | \$10,000.00 |
| (b) a Restricted Class I Banking Licence | \$8,000.00 |
| (c) a Restricted Class II Banking Licence | \$8,000.00 |
| (d) a General Trust Licence | \$5,000.00 |
| (e) a Restricted Trust Licence | \$ 150.00 |

Part II

[Section 5]

FEES OF THE RENEWAL OF A LICENCE

- | | |
|---|-------------|
| (a) a General Banking Licence | \$20,000.00 |
| (b) a Restricted Class I Banking Licence | \$16,000.00 |
| (c) a Restricted Class II Banking Licence | \$16,000.00 |
| (d) a General Trust Licence | \$10,000.00 |
| (e) a Restricted Trust Licence | \$ 300.00 |

Passed the Legislative Council this _____ day of _____, 1990.

(Sgd) K. L. Flax
Speaker

(Sgd) Hugh A. Hodge
Clerk of the Legislative Council