

LAWS OF GUYANA

OFF-SHORE BANKING ACT

CHAPTER 85:06

Act

6 of 1986

Amended by

29 of 1991

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Note
on
Subsidiary Legislation

This Chapter contains no subsidiary legislation.

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OFF-SHORE BANKING ACT
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**CHAPTER 85:06
OFF-SHORE BANKING ACT**

6 of 1986 **An Act to enable certain banking and other businesses to be carried on from within Guyana in foreign moneys, securities and properties for foreign customers.**

[14TH JUNE, 1986]

**PART I
PRELIMINARY**

Short title. 1. This Act may be cited as the Off-shore Banking Act.

Interpretation. 2. In this Act –

“auditor” means an auditor described in section 51 and includes a partnership of auditors;

“Bank” means the Bank of Guyana;

“business” in relation to a licensee means the off-shore banking business of the licensee;

“director” means a director within the meaning of section 40;

“licensee” means a body corporate that holds a subsisting licence under this Act to carry on off-shore banking business from within Guyana;

c. 81:01

“non-resident” means a person who is not “resident in Guyana” within the meaning of the Income Tax Act;

“off-shore banking” has the meaning given that expression in section 3;

“prescribed” means prescribed by regulations;

“share” in relation to a company includes stock of the company.

PART II OFF-SHORE BANKING

Off-shore
banking.

3. (1) Off-shore banking means—

- (a) receiving from non-residents foreign funds through—
 - (i) the acceptance of foreign money deposits payable upon demand or after a fixed period or after notice;
 - (ii) the sale or placement of foreign bonds, certificates, notes or other debt obligation or other

foreign securities; or

(iii) any other similar activity involving foreign money or foreign securities; and

(b) using, either in whole or in part, the foreign funds so acquired for—

(i) loans, advances and investments, and

(ii) the activities of the person carrying on that business,

for the account of or at the risk of that person.

(2) Subject to such regulations as may be made in that behalf, off-shore banking includes the acceptance in trust of—

(a) amounts of money in foreign currencies or in foreign securities or both;

(b) foreign personal or movable properties; or

(c) real or immovable property outside Guyana,

from persons who are non-residents to be administered, managed or invested or otherwise dealt with for the benefit of persons who are non-residents and includes any activities related, incidental or ancillary thereto.

(3) Off-shore banking also includes, for the purpose of this Act, any other activity, which the Bank may, by regulations, declare to be an activity related or ancillary to an activity described in subsection (1) or (2).

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Off-Shore Banking

Prohibition.

4. No person may engage in off-shore banking from within Guyana without a licence under this Act.

Issue of licence.

5. No licence may be issued under this Act to any person other than an eligible company or qualified foreign bank.

Eligible company.

6. A body corporate is an eligible company if—

c. 89:01

- (a) it is incorporated or continued under the Companies Act as a company limited by shares;
- (b) its objects or business activities are restricted to off-shore banking from within Guyana;
- (c) its memorandum and articles of association are acceptable to the Bank; and
- (d) its authorised and paid up capital accords with the requirements of section 22.

Qualified foreign bank.

c. 85:01
(repealed)

c. 85:03

7. A qualified foreign bank means—

- (a) a foreign bank that upon the commencement of this Act is licensed under the Banking Act and after the 20th March, 1995, under the Financial Institutions Act;
- (b) a foreign bank with prescribed minimum capitalisation and assets that is not licensed under the Banking Act upon the commencement of this Act and thereafter,

c. 85:01
(repealed)

c. 85:03

under the Financial Institutions Act; and

- (c) a financial institution, approved by the Bank, that is directly or indirectly a wholly owned foreign subsidiary, within the meaning of Part V, of a foreign bank.

Power of Minister to give direction as regards other activities of off-shore companies.

8. (1) The Minister may give to off-shore companies directions as to other activities, apart from off-shore banking, that may be engaged in by off-shore companies and such companies shall give effect to any such directions.

(2) The off-shore companies shall provide such facilities to the Minister as will enable him to verify any information furnished in pursuance of this section.

LICENSING REQUIREMENTS

Application requirements
c.89:01

9. (1) Notwithstanding the provisions of the Companies Act, no company may be incorporated under that Act for the purpose of doing off-shore banking from within Guyana unless its incorporation has been consented to by the Minister.

c. 89:01

(2) Notwithstanding anything in its memorandum or articles of association, no company incorporated under the Companies Act before the commencement of this Act has capacity to do off-shore banking from within Guyana unless its memorandum and articles of association are, or are amended to be satisfactory to the Minister.

Contents of Applications

10. (1) An applicant for a licence under this Act to do off-shore banking from within Guyana shall apply in the prescribed form and –

- (a) show that it is an eligible company or a qualified foreign bank;

- (b) give the names and addresses of its directors;
- (c) give particulars of the off-shore banking it proposes to do from within Guyana; and
- (d) provide such other information of a financial or other nature as the Minister may require in any general or particular case.

(2) An application for a licence by any eligible company shall be accompanied by a certified copy of the memorandum and articles of association of the applicant.

(3) An application for a licence and all documents submitted pursuant to this Act in support of the application shall be signed by the directors of the company making the application.

(4) An application for a licence by a qualified foreign bank shall be accompanied by the prescribed documents.

Tentative
applicants.

11. (1) Any person who intends to apply for a licence under this Act or to incorporate an eligible company may submit a proposal to the Minister for a licence, and the Minister may indicate whether or not a subsequent application based on the proposal would be favourably received by him.

(2) Nothing done by the Minister under subsection (1) precludes him from later refusing, on grounds of public policy, an application for a licence that was based on a proposal considered by him pursuant to subsection (1).

Examination
of applicants.

12. (1) On receipt of an application from an eligible company for a licence under this Act, the Minister may cause such investigation to be made of the applicant company, its financial circumstances, and any associates or affiliates of the applicant company, within the meaning of Part V, as the Minister considers necessary in the public interest.

(2) In particular, the Minister may require an examination to be made of—

- (a) the financial status and history of the applicant company and any of its directors, associates or affiliates within the meaning of Part V;
- (b) the character and experience of the directors thereof;
- (c) the adequacy of its capital for the purpose of the business it intends to carry on;
- (d) the needs of the persons it intends to serve; and
- (e) its earning prospects and its prospects as an employer.

Duty to issue
or refuse
Licence.

13. (1) It shall be the duty of the Minister to issue or refuse a licence under this Act to an applicant—

- (a) within three months of the receipt of the application; or
- (b) if additional information is required by the Minister, within fourteen days of the receipt by him of that additional information.

(2) When the Minister is of the opinion that it is in the public interest to do so, he may issue a licence under this Act to the applicant upon payment of the prescribed fee.

Refusal of licence.

14. (1) When the Minister refuses a licence under this Act it is his duty to inform the applicant of the grounds of his refusal.

(2) Where the Minister states that the refusal is in the public interest, he need not state any other ground.

Licence and conditions.

15. (1) A licence issued under this Act shall show the kinds off-shore banking to be done from within Guyana by the licensee.

(2) A licence under this Act is subject to such conditions as the Minister may specify in respect of the kinds of off-shore banking to be done by the licensee from within Guyana.

(3) A licence under this Act remains valid until revoked pursuant to this Act, but it is a condition of every licence that an annual fee be paid by every class of licensee in the amount and at the time prescribed.

(4) It is a condition of a licence under this Act that the licensee will notify the Bank of the creation by it of any subsidiary company within the meaning of Part V and that it will notify the Bank whenever it opens a place of business outside Guyana.

(5) Subsection (4) shall not apply to a licensee that is a qualified foreign bank but the licensee shall not, without notifying the Bank of its intention to do so, create any subsidiary company within the meaning of Part V to carry on off-shore banking from within Guyana.

Other special
conditions.

16. (1) It is a condition of a licence under this Act
that—

- (a) any voting shares of the licensee's capital will be in registered form;
- (b) the licensee will not, without the approval of the Minister—
 - (i) enter into a merger, amalgamation or consolidation;
 - (ii) transfer, otherwise than in the ordinary course of its business, the whole or any substantial part of its assets or liabilities;
 - (iii) change its name from that set out in its licence;
 - (iv) alter its memorandum or articles of association; or
 - (v) transfer any of its shares;
- (c) the licensee will not knowingly in the course of its business accept any deposit on trust or for the account of a beneficial owner who is a resident of Guyana as a customer for any of its off-shore banking services; or
- (d) the licensee that is a qualified foreign bank will, in the manner and to the extent prescribed, separate its off-shore banking activities from its other activities in Guyana and keep separate records of its off-shore banking activities and will permit and

assist in an audit of all its undertakings in Guyana by auditors approved by the Bank.

(2) Before giving an approval to any matter mentioned in subsection (1), the Minister may carry out such of the investigations specified in section 12 as he thinks fit.

(3) Paragraphs (a) and (b) of subsection (1) and subsection (2) shall not apply to a licensee that is a qualified foreign bank.

Display of licence.

17. A licensee shall display in a conspicuous place at each place where it does business a copy of its current licence under this Act.

Revocation of licence.

18. (1) The Minister may revoke a licence if the licensee—

- (a) does not within six months after the issuance of its licence commence business;
- (b) fails to comply with a condition of its licence;
- (c) is in breach of any duty or obligation imposed upon it by this Act or commits an offence under this Act; or
- (d) ceases to carry on business under its licence.

(2) When the Minister intends to revoke a licence under subsection (1) it shall be his duty to give the licensee notice of his intention and a reasonable opportunity to show

cause why the licence should not be revoked.

(3) The Minister shall give notice in writing to the licensee of the revocation of the licence.

Appeal of
revocation
of licence.

19. (1) Any person who is aggrieved by the revocation of licence by the Minister under section 18 may, within fourteen days of the giving of the notice under section 18(2), appeal against the revocation to a judge in chambers of the High Court, whose decision thereon is final.

(2) The Minister may, pending an appeal under subsection (1) of any person aggrieved by the revocation of a licence, suspend the operation of the licence in relation to any existing business of the licensee, pending the determination of the appeal.

(3) Where the Minister revokes a licence and there is no appeal or where there is an appeal and the appeal is disallowed, the notice of the revocation shall be published in the *Gazette* and in a daily newspaper circulating in Guyana.

Misleading
name.

20. No licensee may be granted a licence under a name that so closely resembles the name of an existing bank, trust company or other company carrying on business in Guyana or elsewhere as would in the opinion of the Bank mislead or confuse the persons for whom it intends to provide any or all of its services.

Service on
licensee.

21. (1) Before a licensee does any off-shore banking from within Guyana it shall deposit with the Bank—

- (a) a duly executed instrument that appoints the Bank as its agent for the acceptance of service of documents in any action arising out of the operations of the licensee; and

- (b) a certificate setting out the name and address of any person in Guyana to whom documents related to the licensee and served on the Bank are to be forwarded.

(2) It shall be the duty of the Bank to ensure that all process, instruments and other documents served on it pursuant to subsection (1) in respect of a licensee are forwarded within ten days to the person named in a certificate described in paragraph (1) (b) in the case of that licensee.

FINANCIAL OBLIGATIONS

Capital.

22. (1) A licence may be issued under this Act to a company when –

- (a) the capital stock of the company is at least two million dollars; and
- (b) capital to an amount of not less than one million dollars has been paid up in cash.

Reserves.

23. (1) Subject to subsection (2), a licensee shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is paid transfer to the fund a sum equal to not less than fifteen per cent of those profits wherever the amount of the reserve fund is less than the issued and paid-up capital of the licensee.

(2) Subsection (1) shall not apply to a licensee for whom it is shown to the satisfaction of the Bank that the aggregate reserves of the licensee are adequate in relation to its business.

Dividends.

24. A licensee shall not declare or pay a dividend if there are reasonable grounds for believing that—

- (a) the licensee is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realisable value of the licensee's assets would thereby be less than the aggregate of its liabilities and capital accounts.

TRUST ACTIVITIES

Separation
of trust
assets.

25. It shall be the duty of a licensee in carrying out its business—

- (a) to keep all assets held in trust separate from its other assets; and
- (b) to keep separate from those of its other accounts the assets of each trust account unless they are properly identified as the property of the trust account, but subject to section 26.

Common
trust fund.

26.(1) A licensee may, in the course of its business, establish, maintain and administer one or more common trust funds and may subject to subsection (2), invest assets held in trust accounts in a common trust fund.

(2) The assets of a trust account may only be invested in a common trust fund if the instrument creating the trust expressly permits the investment and the consent in writing of any co-trustee is obtained to the investment.

(3) A common trust fund is a trust that operates by the process of pooling funds from a number of participants in

the trust who share, as beneficiaries under the trust, in the income or other gains derived from the acquisition, holding, management or disposal of assets acquired for the trust.

Declaration
of trust.

27. (1) Every common trust fund of a licensee shall be established, administered and maintained in accordance with a written declaration of trust in a form approved by the directors of the licensee.

(2) A certified copy of a declaration of trust and any amendments to it shall be deposited with the Bank; and any person interested in the trust fund to which the declaration relates, as beneficiary or otherwise, is entitled upon request to be supplied with a copy of the declaration at the expense of the licensee.

(3) A licensee may sell assets held by it in a trust account to another trust account held by it if—

- (a) the transaction is fully disclosed to the parties who have an interest in those accounts and their prior consent obtained to the transaction;
- (b) the transaction is fair to both accounts; and
- (c) the transaction is not prohibited by the terms of the instruments creating the trusts.

Trust funds
awaiting
disposition.

28. (1) Subject to subsection (2) a licensee holding trust funds awaiting investment or distribution shall not hold those funds uninvested or undistributed any longer than is reasonable for the proper management of the account.

(2) Unless it is contrary to the terms of the

instrument establishing the trust, the trust funds described in subsection (1) may be held in the commercial or savings department of the licensee subject to such conditions as may be prescribed.

Contents of
declaration
of trust.

29. A declaration of trust establishing a common trust fund shall, subject to or in addition to other prescribed provisions, contain provisions relating to—

- (a) the manner in which the common trust fund is to be administered;
- (b) the investment of powers of the licensee with respect to the common trust fund, including the nature of the investment to be made by the common trust fund;
- (c) the allocation and apportionment of income, profits and losses of the common trust fund;
- (d) the terms and conditions governing the admission or withdrawal of investments for participation in the common trust fund;
- (e) the auditing and settlement of accounts of the licensee with respect to the common trust fund;
- (f) the basis and method of valuing assets in the common trust fund;
- (g) the basis on which the common trust fund may be liquidated or interests therein may be disposed of;
- (h) the expenses to be charged for

management of the common trust fund; and

- (i) such other matters as are necessary or proper to define the rights of participants in the common trust fund.

Dealing with trust assets.

30. Subject to the terms of the instrument creating the trust, the assets comprising the funds of the trust may be sold, converted, re-invested, exchanged, transferred or otherwise changed or disposed of at any time by the licensee administering the trust.

Interest in common fund.

31.(1) Each trust account that participates in a common trust fund has a beneficial interest in so much of the common trust fund as is proportionate to the amount of that participation.

(2) An interest in a common trust fund is not negotiable or assignable but an interest in the fund may be disposed of in the manner provided by the declaration of trust or as may be prescribed in the absence of any provision relating thereto in the declaration of trust establishing the fund.

Status of licensee as trustee.

32. The licensee in the carrying out of its trust business has all the powers, rights, duties and obligations applicable to trustees, but subject to any requirements under this Act.

ABANDONED PROPERTY

Abandoned property.

33. (1) Property of the following kinds held or owing in the course of its business by a licensee in respect of which no activity has been evidenced for a period of ten years is abandoned property —

- (a) any general deposit, that is, a demand, saving or matured time deposit, made with the licensee together with any interest or dividends but exclusive of legal charges;
- (b) funds that were paid towards the purchase of shares or other interests in a licensee;
- (c) any sum payable on cheques or other instruments on which the licensee is liable;
- (d) intangible personal property or movables and any income or increment thereon held in trust; and
- (e) the contents of a safe deposit upon which the lease or rental period has expired and in respect of which the licensee has, by registered mail to the latest known address of the lessee, given notice of its intention to deliver the contents into the custody of the Bank and the lessee has failed to respond within a period of one year.

(2) Activity is evidenced in respect of the property described in subsection (1) if the owner thereof has—

- (a) within ten years of the date of deposit increased or decreased the amount of the deposits or presented a passbook or other record for the crediting of interest in respect of the deposit;

- (b) within ten years of paying funds for the purchase of shares or other interest mentioned in subsection (1) (b), increased or decreased the amount of the funds or presented a document or book for the crediting of dividends in respect thereof;
- (c) within ten years of establishing a trust, increased or decreased the principal or accepted payment of income in respect of any funds held in a fiduciary capacity; or
- (d) within ten years of making the last deposit, inquiry or communication concerning any item mentioned in subsection (1), corresponded with the licensee concerning the item or otherwise indicated an interest in the items as evidenced by a memorandum about them by the licensee.

Disposal of abandoned property.

34. (1) A licensee shall, once in each financial year, report to the Bank all its holdings of abandoned property within the meaning of this Act and shall, from time to time, deposit with or convey to the Bank in the prescribed manner all abandoned property.

(2) When a licensee has deposited with or conveyed to the Bank any abandoned property, the licensee is relieved from any liability to the beneficial owners thereof to the extent of the value of the property deposited or conveyed to the Bank.

(3) Within thirty days after reporting to the Bank

pursuant to subsection (1), the Bank shall publish in the Gazette a notice of the name of the owner and particulars concerning the abandoned property and shall mail a copy of that notice to the beneficial owner of the property, at his latest known address; but, with the approval of the High Court on application thereto, the Bank may be exempted from mailing the copy of the notice to the owner.

Sale of
abandoned
property.

35.(1) The Bank may sell at public auction any property that has been conveyed to it under section 34 after the expiration of thirty days from the date of publication of the notice referred to in section 34(3) and the mailing of the copy of the notice to the owner, as the case may be.

(2) The public auction may be held after such reasonable advertising of the sale as the Bank considers suitable.

Payment to
Consolidated
Fund.

36. (1) The Bank shall pay into the Consolidated Fund all moneys received by it as abandoned property and the proceeds of the public auction of any abandoned property less, in each case—

- (a) such amount as the Bank considers necessary to reserve for the payment of claims later made and approved by the Bank; and
- (b) amounts deducted by the Bank for reasonable expenses incurred by it in connection with the publishing and mailing of notices, service charges and the sale of abandoned property.

(2) Where the Bank properly pays to the claimants of abandoned property any amount in excess of the amount reserved under subsection (1) (a) for the payment of claims, it shall be reimbursed the amount of the excess from the Consolidated Fund.

Claims against property.

37. (1) A person who claims a beneficial interest in any abandoned property deposited with or conveyed to the Bank may make a claim for the value thereof within the prescribed time and in the prescribed manner.

(2) When the Bank is satisfied that a claimant is entitled to the abandoned property, the Bank shall deliver up the property, or make payment for the value thereof, as the case requires.

Refusal to pay claims.

38. (1) When the Bank admits or refuses a claim under to section 37, it shall forthwith notify the claimant of its decision.

(2) A person aggrieved by a refusal of his claim for abandoned property by the Bank may, within twenty-one days of receiving notice of the refusal, appeal the decision to a judge in chambers of the High Court who may make such order thereon as he considers equitable.

Offence re abandoned property.

39. A licensee that fails to report to the Bank any abandoned property in its possession, or fails to deposit with or convey to the Bank any abandoned property as required by this Act, shall be guilty of an offence and liable on summary conviction to a fine of three thousand dollars.

**PART III
ADMINISTRATION OF LICENSEES**

DIRECTORS

Meaning of director.

40. For the purpose of this Act—

- (a) “director” means an individual occupying the like position and performing the like functions of a director under the

an advance or loan from the licensee if, in either case, the interest of the director is not a substantial interest.

(3) A declaration by a director of a licensee that he is interested in any advance or loan that may, after the date of the declaration, be made by the licensee is a sufficient declaration of interest in relation to any advance or loan made after the declaration if—

- (a) the declaration specified the nature and extent of the interest; and
- (b) the interest of the director is not different in nature from, or greater than, the nature and extent so specified in the declaration at the time any advance or loan is made.

Declaration of interest.

44. (1) A director of a licensee who holds any office or has any interest in any property whereby, directly or indirectly, his functions under this Act are likely to be in conflict with his personal interest shall declare the nature, character and extent of that office or interest to the directors at a meeting thereof.

(2) A declaration required under this section shall be made—

- (a) at the first meeting of the directors that is held after the acquisition by the declarant of that relevant office or interest; or
- (b) if the declarant was not at that time a director, after he becomes a director.

Recording declaration.

45. A director of a licensee who has declared any interest referred to in section 43 or 44 shall—

- (a) cause the declaration made by him thereunder to be brought up and read at the next meeting of the directors after it was given; and
- (b) cause the declaration to be recorded in the minutes of the meeting, at which it was made or read or both.

Offence.

46. A director of a licensee who contravenes section 43, 44 or 45 shall be guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for twelve months or to both.

Insider
information.

47. (1) A person who has acquired confidential information concerning a licensee—

- (a) as a director, officer, employee, or auditor of the licensee;
- (b) as a custodian of the licensee; or
- (c) as an employee of the Bank,

shall not disclose that information to any person except as permitted under subsection (2) or use that information for any personal benefit not related to the duties through which the information was acquired.

(2) Subsection (1) shall not apply to the giving of confidential information:—

- (a) when the information is a general credit rating of a person that is supplied by a director, officer or employee of the licensee following a *bona fide* business request;
- (b) when the information is given with

the written authorisation of the beneficiary or his legal representative;

- (c) when the information is lawfully required to be disclosed by an order of the High Court;
- (d) when the information is lawfully disclosed pursuant to any other enactment.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for twelve months or to both.

(4) In this section “confidential information” means information concerning the identity of a depositor, settlor or beneficiary of a trust, or concerning the assets, liabilities, transactions or other information in respect of depositor, settlor or beneficiary of a trust.

AUDIT AND INSPECTION

Financial
statements.

48. (1) A licensee shall, in respect of its business, submit to the Bank in prescribed form—

- (a) not later than twenty-one days after the end of each three month period, a quarterly statement of the assets and liabilities of the licensee; and
- (b) within such time as the Bank may determine, such other returns as the Bank requires.

(2) The Bank may require a licensee to submit such further information as it considers necessary for the proper

understanding of any statement or return furnished by the licensee pursuant to subsection (1); and the further information shall be submitted within such time and in such manner as the Bank requires.

(3) The Bank may cause to be prepared and published in the *Gazette* consolidated statements aggregating all the figures, in the quarterly returns of licensees.

Confidentiality.

49. (1) No statement, return or information shall be required by the Bank with respect to the affairs of any particular customer of a licensee.

(2) No statement, return or information furnished or submitted by a licensee in respect of its business shall be communicated or disclosed to any person other than –

- (a) the bank, the Minister and such public officers and other persons as may be prescribed;
- (b) any person authorised by the Minister in writing when the information is required for the investigation of any offence or the prosecution of any person therefor; or
- (c) as provided in the case of a return made under section 48(3).

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for twelve months or both.

Publications of balance sheets.

50. (1) Not later than four months after the close of its financial year or such longer period as the Minister may allow, a licensee shall publish in the *Gazette* and in a daily newspaper circulating in Guyana, and exhibit thereafter in

each of its offices and branches in Guyana, and forward to the Minister, copies of its balance sheet and profit and loss account and the full and correct names of the directors of the licensee.

(2) The balance sheet and the profit and loss account shall bear on its face the certificate of an auditor.

(3) When a licensee is a qualified foreign bank this section applies in respect only of the off-shore banking done by the licensee.

(4) A licensee that contravenes this section shall be guilty of an offence and liable on summary conviction to a fine of three thousand dollars for each month during which the offence continues.

Qualified
auditor.

51. An auditor is a person who is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Bank as a reputable auditing association.

Annual
auditing.

52. (1) The annual balance sheets and accounts of a licensee shall be audited at least once in every financial year by an auditor appointed by the licensee from a list of auditors maintained and published by the Bank.

(2) It shall be the duty of the auditor appointed pursuant to subsection (1) to submit a report to the shareholders of the licensee and to the Bank.

(3) The report of the auditor shall state whether the auditor has obtained all the information and explanations he needed and in addition state whether in his opinion the balance sheet and accounts exhibit a true and correct view of the assets and liabilities of the licensee as at the date of the statement, and the income and expenditure of the licensee for

the year then ended.

(4) It shall be the duty of the auditor to note in his report any instances where the operations of the licensee might not in the opinion of the auditor be in compliance with the requirements of this Act, the regulations, the conditions of the licensee's licence or its memorandum or articles of association.

(5) The report of the auditor shall be read with the report of the directors to the shareholders at the annual meeting of the licensee.

(6) A copy of the report of the auditor shall be displayed by the licensee in a conspicuous place at its offices in Guyana and shall be published by the auditor in the *Gazette*.

(7) If the Bank has reasonable grounds for not being satisfied with the annual report of an auditor appointed by a licensee, the Bank may appoint another auditor to make an independent report.

(8) When a licensee fails to appoint an auditor pursuant to this section, the Bank may appoint an auditor who has all the powers of an auditor appointed by the licensee to carry out an audit.

(9) The remuneration of an auditor shall be paid by the licensee to which he is appointed and, if the auditor is appointed under subsection (8), his remuneration shall be such amount as the Bank determines.

(10) In the case of a licensee that is a qualified foreign bank this section applies only in respect of the off-shore banking done by the licensee but subject to the conditions of its licence.

Prohibited
auditors.

53. No person may be appointed an auditor of a licensee if he—

- (a) has any proprietary interest in the licensee;
- (b) is a director, or agent of the licensee or of an affiliate of the licensee, within the meaning of Part V; or
- (c) is an officer or employee of the Bank.

Examination
by Bank.

54. (1) When the Bank has reasonable grounds to believe that a licensee is not in a sound financial condition or that it is not acting in compliance with this Act, the Bank may apply to the High Court for an order to examine the affairs of the licensee.

(2) The High Court may, having regard to the purposes of this Act, grant an application under subsection (1) subject to such conditions as the High Court considers appropriate in all the circumstances.

Powers of
examiners.

55. (1) Subject to subsection (2), a licensee shall produce for an examiner appointed under section 54 by the Bank, at such time as the examiner fixes, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally and shall give the examiner such information concerning its affairs and business as he may request.

(2) An examiner may not have access to, nor shall he be given access to, the name or the account of any depositor or the name of any settlor or beneficiary of a trust, if the deposit agreement or instrument creating the trust, as the case may be has directed that it be kept secret.

Access by
court order.

56. Notwithstanding section 55(2), the High Court may, on the application of the Bank order the production of information protected under that section if the court is satisfied that it is required in the public interest by the examiner for the proper performance of his functions under this Act and that there are no other lawful means of acquiring the information.

Offence
and penalty.

57. If any of the matters referred to in section 55 are not produced, or the information relating thereto is not given to the examiner by the licensee, the licensee shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars and, in addition, to a further fine of five hundred dollars for each day during which the offence continues.

Remedial
action.

58. (1) When the Bank is of the opinion that an examination of a licensee indicates that the licensee is carrying on its business in an unlawful manner or is in an unsound financial condition, the Bank may –

- (a) require that the licensee immediately take such remedial measures as the Bank considers necessary; and
- (b) with the approval of the Minister –
 - (i) appoint a person, who in the opinion of the Bank, has had training and experience in the business of the licensee concerned to advise the licensee on the action to be taken to remedy the situation; or
 - (ii) suspend the licence of the licensee for a period not exceeding three months.

(2) A person appointed under subsection (1)(b)(i) shall be paid by the Bank such remuneration as the Bank may determine, which remuneration shall be charged to the licensee concerned.

OFFENCES

Unlicensed
off-shore
banking.

59. (1) A person who does off-shore banking from within Guyana during any period in which he does not hold a subsisting licence under this Act shall be guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars.

(2) A person who holds any funds obtained from doing an off-shore business from within Guyana during any period in which he did not hold a subsisting licence under this Act shall repay those funds in accordance with the direction of the Minister.

Misleading
advertising.

60. (1) A licensee that engages in advertising practices that are likely to mislead concerning—

- (a) the relationship of the licensee with the Government of Guyana, the Bank or any department or office thereof;
- (b) the true interest rate paid on deposits or charged on credit;
- (c) the true returns on the management of investments;
- (d) the insured or guaranteed status of deposit or other liabilities or of investments managed by it; or

- (e) the financial condition of the designated institution,

shall be guilty of an offence and liable on summary conviction to a fine of three thousand dollars.

(2) A licensee shall, in respect of its business, furnish the Bank with copies of all its advertisements—

- (a) six months after the first issue of its licence under this Act; and
- (b) thereafter at six-month intervals.

False statement and obstruction.

61. A director, officer, employee or agent of a licensee who with intent to deceive—

- (a) makes any false or misleading statement or entry in a book, account, record, report or statement of the licensee or omits a statement or entry that should be made therein; or
- (b) obstructs—
- (i) the carrying out by an auditor of his proper function under this Act, or
- (ii) the examination of a licensee as required pursuant to this Act,

shall be guilty of an offence and liable on summary conviction to a fine of two thousand dollars or imprisonment for five years or to both.

GENERAL

Extending

62. At the request of a licensee, the Bank may extend

time. the time within which any document or information required from the licensee under this Act shall be sent to the Bank.

Publication of information. **63.** (1) Subject to subsection (2), the Bank may publish any information furnished to it under this Act.

(2) No information concerning the business of a licensee shall be published by the Bank that might disclose the individual affairs of a licensee or of a person whose interest is protected by section 49 or 55(2) without the prior written consent of all persons whose interests might be disclosed by the publication.

Business days, etc. **64.** (1) All licensees shall be obliged to remain open for business during the prescribed hours on days on which they are not required to be closed under subsection (2).

(2) The Bank may by notice declare the days on which licensees are to be closed to business whether or not those days are public holidays.

(3) Any private obligation that may only be fulfilled at the premises of a licensee and that falls due on any day or at a particular hour on which the licensee is closed to business under this section shall be deemed, for the purposes of that private obligation, to fall due on the first business day after the expiration of the day on which the licensee is closed.

Regulations. **65.** Subject to negative resolution of the National Assembly, the Bank may, with the approval of the Minister, make such regulations as are necessary for the purpose of this Act and, in particular, may make regulations—

- (a) respecting the operation of common trust funds;

- (b) respecting the information to be recorded in relation to trust accounts of licensees;
- (c) prescribing the manner of proving that a licensee is not controlled by residents of Guyana;
- (d) approving the manner of using, investing or managing any property or funds outside or within Guyana by a licensee; and
- (e) in respect of such acts, matters or things as are required by this Act to be prescribed.

Use of "bank" in names.

66. (1) Subject to subsection (2), no person other than a licensee may, without the approval of the Bank, use the word—

- (a) "bank" or any of its derivatives in any language; or
- (b) any other word indicating the doing of off-shore banking from within Guyana,

in the name, description or title under which that person carries on business or intends to carry on business in Guyana or make any representation to that effect in any bill head, letter paper, notice or advertisement.

(2) Subsection (1) shall not apply—

c. 85:01 repealed.

- (a) to a bank licensed under the Banking Act or after the 20th March, 1995 under

c. 85:03

the Financial Institutions Act.

- (b) to a company that is applying for a licence under this Act as a licensee;
- (c) to such person as the Bank may exempt from the provisions of subsection (1).

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

**PART IV
WINDING UP LICENSEES**

Voluntary winding up.

67. (1) Except with the prior written approval of the Bank no licensee may be wound up voluntarily.

(2) Approval for a voluntary winding up of a licensee may be given by the Bank only if it is satisfied that—

- (a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and
- (b) subject to subsection (3), the winding up has been approved by the holders of at least two-thirds of the outstanding voting shares of the licensee.

(3) Where the Bank finds in respect of a licensee that there is imminent danger of its insolvency and certifies to the Minister the existence of an emergency, the Minister

may waive the requirement for shareholder approval of the winding up of the licensee voluntarily if—

- (a) the winding up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and
- (b) the deposit liabilities of the licensee to be wound up are to be assumed by that other licensee.

Voluntary winding up started.

68. When a licensee receives the approval of the Bank to its voluntary winding up, the licensee shall—

- (a) cease to do business immediately and retain only such staff as is necessary for an orderly winding up;
- (b) repay its depositors and other creditors; and
- (c) wind up all operations undertaken before the receipt of the approval to wind up.

Notice of winding up.

69. (1) Within thirty days of the receipt of the approval of the Bank to the winding up of a licensee, a notice of voluntary winding up, which shall contain the prescribed information, shall be sent by the licensee, in the prescribed manner or by personal service, to the depositors and creditors of the licensee and other persons having any interest in its funds or other property.

(2) The notice described in subsection (1) shall also be published in the *Gazette* and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound up.

Settlement
of claims.

70. (1) The approval of the Bank to the voluntary winding up of a licensee shall not adversely affect the rights of a depositor or other creditor of the licensee to settlement in full of his claim nor the rights of any person having an interest in the funds or property of the licensee to settlement of that interest.

(2) All claims made by persons described in subsection (1) shall be settled by the licensee concerned within such time as the Bank may determine.

Distribution
of remaining
assets.

71. (1) The assets of a licensee being voluntarily wound up that remain after settlement of the claimants described in section 70 are to be distributed among the shareholders of the licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a licensee may be made—

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee has deposited with the Bank sufficient funds to meet any liability that could arise under that claim;
- (b) before any funds that are payable to a depositor or other creditor who has not made his claim have been deposited with the Bank; or
- (c) before any funds or property held by

the licensee that could not be returned, in accordance with section 70, to the persons who have an interest therein have been deposited with or transferred to the Bank, together with the relevant records.

Interruption
of winding up.

72. (1) If the Bank determines that the assets of a licensee that is being voluntarily wound up are not sufficient for the full discharge of the obligations of the licensee or that the completion of such a winding up is being unduly delayed, the Bank may seize the management and control of the licensee by posting a notice to that effect on the premises of the licensee and by putting officers of the Bank into the offices of the licensee.

(2) When the Bank seizes the management and control of a licensee under subsection (1) it shall immediately begin proceedings for the compulsory winding up of the licensee or its reorganisation, in accordance with this Act.

Seizure in
other cases.

73. (1) Notwithstanding section 72, upon giving prior notice to the Minister, the Bank may seize the management and control of a licensee in any of the following circumstances, namely—

- (a) when the realisable value of the licensee's assets is less than the aggregate of its liabilities and capital accounts or the licensee's financial condition suggests that it will shortly be in that circumstance;
- (b) when its business is being conducted in an imprudent manner or is not being conducted in accordance with this Act;
- (c) when the licensee refuses to submit to

inspection of its records or operations by an auditor appointed under section 52 or an examiner appointed under section 54; or

- (d) when its licence has been revoked or suspended under this Act.

(2) A seizure of the management and control of a licensee under this section is effected by placing a notice to that effect on the premises of the licensee and by putting officers of the Bank into the offices of the licensee or by designating officers of the licensee to be officers of the Bank or by both such measures.

(3) A licensee aggrieved by a seizure under this section may institute proceedings in the High Court for recovery of the administration and control of the institution; and the High Court may make such order in respect thereto as to it seems just and consistent with the purposes of this Act.

Duty of Bank.

74. Within thirty days after the Bank has seized the administration and control of a licensee under this Act, the Bank shall begin proceedings in the High Court—

- (a) for the compulsory winding up of the licensee; or
- (b) for the re-organisation of the licensee.

Power of High Court.

75. Proceedings under section 74 in respect of a licensee may be by way of application to the High Court which thereupon may order—

- (a) the compulsory winding up of the licensee;

- (b) the re-organisation of the licensee subject to such terms and conditions as the court may determine; or
- (c) the return of the management and control of the licensee to its shareholders, directors and officers subject to such safeguards or conditions, if any, as the court may consider necessary for the purposes of this Act.

Notice of application.

76. (1) After the Bank makes an application to the High Court under section 75 in relation to a licensee, it shall forthwith give notice of the application—

- (a) to the directors and shareholders of the licensee; and
- (b) to the depositors and other creditors of the licensee.

Appointment of custodian.

77. (1) If the High Court orders the compulsory winding up or re-organisation of a licensee pursuant to an application under section 75, the High Court shall appoint a custodian to be responsible to the Court and to supervise the winding up or re-organisation of the licensee.

(2) The Bank or other suitable person may be appointed as the custodian under subsection (1).

(3) If the Bank is not appointed custodian, it may contribute to the fees payable to the custodian appointed under this section as remuneration for his services.

Functions of custodian.

78. (1) In respect of the licensee for which he has been appointed, the custodian has the exclusive power and duty to manage and control the affairs of the licensee.

(2) Without limiting his powers or duties under

subsection (1), the custodian may, in respect of the licensee for which he has been appointed –

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ staff;
- (d) execute any instrument in its name;
- (e) initiate, defend and conduct in its name any action or proceeding to which the licensee is or might be a party;
- (f) end the seizure of the licensee by restoring it to its directors and shareholders; and
- (g) re-organise or wind up the licensee in accordance with this Act.

Inventory of assets.

79. (1) After assuming the management and control of a licensee, the custodian shall forthwith make an inventory of its assets and forward a copy of the inventory to the Registrar of the Supreme Court.

(2) The copy of the inventory forwarded to the Registrar shall be kept available at all reasonable times for the inspection of interested persons.

Effect of seizure.

80. When the administration and control of a licensee is seized under this Act –

- (a) any statutory, contractual or other

term or condition on the expiration of which a claim or right of the licensee would expire or be extinguished is extended by six months from the date of the seizure;

- (b) an attachment or lien, other than a lien that was in existence during the six months immediately preceding the seizure, is vacated and no attachment or lien, other than a lien created by a custodian in the application of this Act, attaches to any of the assets of the licensee during the period the seizure continues; and
- (c) a transfer of any assets of the licensee that is made after or in contemplation of its insolvency or seizure with intent to effect a preference is void.

Execution
against assets.

81. No execution may be returned against the assets of a licensee whose administration or control has been seized under this Act except such as the High Court may order in respect of an execution effected pursuant to a judgment that was rendered before the seizure for an amount not exceeding five thousand dollars.

Re-organisa-
tion.

82.(1) Where the re-organisation of a licensee has been ordered by the High Court, the custodian shall develop a plan of re-organisation and deliver a copy thereof to each of the depositors and other creditors of the licensee who under the plan would not receive full restitution or payment of their claims.

(2) The copy of the re-organisation plan shall be accompanied by a notice requiring that objections to the plan be delivered to the custodian not later than thirty days after the last of the copies have been delivered under subsection

(1).

(3) If within the time limited therefor by subsection (2) the custodian does not receive objections in writing to the re-organisation from persons who in the aggregate hold at least one-third of the total amount of deposits and other liabilities of the licensee, the custodian may carry out the re-organisation plan referred to in subsection (1).

(4) When an objection to the re-organisation plan is received from one-third or more of the persons described in subsection (3), the custodian shall submit further re-organisation plans in like manner until such time as fewer than one-third of the persons described in subsection (3) object within the time limited therefor or he may refer the matter back, at any time, to the High Court for further directions.

(5) The High Court may extend the time limited by subsection (2) and upon cause shown may exempt the custodian from delivering the plan to some or all of the persons mentioned in subsection (1).

Contents of
plan.

83. A re-organisation plan developed by the custodian of a licensee shall so far as it is practicable do so—

- (a) be equitable to all classes of depositors;
- (b) provide for bringing in new funds to establish adequate ratios between—
 - (i) capital and deposits; and
 - (ii) liquid assets and deposits; and

- (c) provide for the removal of any directors or any officer or employee responsible for the circumstances that led to the seizure of the licensee.

Modification
of plan.

84. If, in the course of the re-organisation of a licensee, it appears to the custodian that circumstances render the plan or its execution undesirable, he may apply to the High Court for an order –

- (a) to modify the plan; or
- (b) to wind up the licensee compulsorily;

Compulsory
winding up.

85. (1) Where the High Court under section 75 or 84 orders the compulsory winding up of a licensee, the custodian appointed therefor by the Court may, subject to subsection (2), perform the functions of the licensee.

(2) The custodian of a licensee described in subsection (1) may not without an order of the High Court to do so –

- (a) sell any assets or transfer any property of the licensee that has a value exceeding one hundred thousand dollars;
- (b) create a security interest in any asset or property of the licensee in favour of a creditor who extends new credit to the licensee;
- (c) compromise or release any claim the amount of which exceeds one hundred thousand dollars; or
- (d) pay any claim other than one in respect of an obligation incurred by

the custodian in the exercise of his winding up functions before the schedule referred to in section 91(c) has been approved by the High Court.

Termination of employment.

86. Subject to any law of Guyana governing conditions of employment, the custodian of a licensee that has been ordered by the High Court to be compulsorily wound up shall terminate not later than nine months after the order of the High Court—

- (a) any employment contract of the licensee;
- (b) any contract for services to which the licensee is a party; and
- (c) any obligations of the licensee as a lessee of property.

Right of lessor.

87. A lessor of any property referred to in section 86—

- (a) shall be given notice of not less than ninety days of the intended termination of the obligations of a licensee thereunder;
- (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and
- (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.

Settlement of trust

88. It shall be the duty of a custodian of a licensee

accounts. that has been ordered to be wound up to take such action as is necessary to terminate all the trust functions of the licensee and to settle its trust accounts.

Statement
of account.

89. (1) Within sixty days after the granting of an order for the compulsory winding up of a licensee, the custodian shall deliver a statement of account to any depositors and other creditors, lessees of safe-deposit boxes and any bailors of property held by the licensee.

(2) The statement of account is a statement of the nature and amount for which a claim of a person described in subsection (1) is shown on the books of the licensee.

(3) A notice specifying that any objection to the statement of account is to be made on a date specified in the notice, not being later than sixty days after the delivery of the notice, shall accompany the statement of account and invite the lessees of safe-deposit boxes and bailors of property to withdraw their property from the licensee in person.

(4) The High Court on application of the custodian for cause shown may exempt the custodian from delivering a statement of account to any person mentioned in subsection (1).

Contents of
box.

90. (1) When the contents of any safe-deposit box maintained by a licensee that is being compulsorily wound up have not been withdrawn before the expiration of the period specified in a notice under section 89, the safe-deposit box may be opened in the manner specified by the custodian of the licensee.

(2) The contents of a safe-deposit box opened under subsection (1) and any unclaimed property held by the licensee as trustee, together with any inventories pertaining thereto, shall be turned over to the Bank and held by it for ten years unless sooner claimed by a person entitled thereto.

(3) On the expiration of ten years from the day any property was turned over to the Bank under subsection (2), the property becomes abandoned property.

Claims.

91. (1) Not later than ninety days after the last day specified in the notice for filing claims against a licensee being compulsorily wound up, the custodian shall—

- (a) reject any claim of which he doubts the validity;
- (b) determine the amount, if any, owing to each known depositor or other creditor and the priority of his claim under this Act;
- (c) prepare for filing with the High Court a schedule of the actions proposed to be given for the purpose of the compulsory winding up of the licensee;
- (d) notify each person whose claim is allowed in full; and
- (e) publish, once a week for three consecutive weeks in the *Gazette*—
 - (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection; and
 - (ii) the date, not being earlier than thirty days from the date of the publication, on which the custodian will file that schedule

with the High Court.

Objections.

92. (1) Within twenty days of the filing of a schedule under section 91, a depositor or other creditor or shareholder of the licensee concerned, or other interested person, may file with the High Court any objection he has to any action proposed in the schedule referred to in section 91 (c).

(2) After notice served on the custodian and such interested parties as the High Court may require, the High Court shall hear the objection and make such order thereon as it considers just in the circumstances.

(3) When the High Court allows an objection, the order shall set out the manner in which the schedule referred to in section 91(c) is to be modified.

Distribution
of assets.

93. (1) When a schedule has been filed under section 91 in respect of a licensee, the custodian may make a partial distribution to the claimants against the licensee whose claims are distributed or allowed by the High Court, if the custodian establishes an adequate reserve for the payment of disputed claims against the licensee.

(2) As soon as practicable after all objections against the distribution proposed by the custodian have been heard and determined, final distribution of the assets of the licensee concerned shall be made by the custodian.

Priority
of claims.

94. (1) The following claims have priority against the general assets of a licensee being compulsorily wound up under this Act—

- (a) firstly, the necessary and reasonable expenses incurred by the custodian in carrying out his functions under this Act.

- (b) secondly, the wages and salaries of the officers and employees of the licensee that accrued during the three months immediately preceding the seizure of the licensee under this Act;
- (c) thirdly, any money owing to the Government of Guyana;
- (d) fourthly, the fees and assessments owing to the Bank;
- (e) fifthly, the savings and time deposits in amounts not exceeding five thousand dollars respectively: and
- (f) sixthly, the other deposits.

(2) After payment of all other claims against the licensee, with interest at such rate as the High Court determines, all remaining claims against the licensee that were not filed within the time limited therefor under this Act may then be paid.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the custodian on a *pro rata* basis among the claimants in that class.

Left over
assets.

95. The assets of a licensee being compulsorily wound up that remain after the final distribution to claimants pursuant to section 93 shall be distributed by the custodian among the shareholders of the licensee in proportion to their respective rights.

Abandoned
funds.

96. (1) Any funds of a licensee being compulsorily wound up under this Act that remain unclaimed after the final distribution under section 93 and not subject to distribution under any other provision of this Act shall be deposited with the Bank by the custodian of the licensee.

(2) Funds deposited with it under subsection (1) shall be held by the Bank for ten years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the ten years referred to in subsection (1) in respect of any funds, those funds remaining unclaimed become abandoned property.

Completion
of winding
up.

97. (1) When all the assets of a licensee being wound up have been distributed or dealt with as required by this Act, the custodian shall render an audited statement to the High Court.

(2) If the High Court is satisfied with the audited statement rendered by the custodian in respect of a licensee being wound up, it may by order direct the Registrar of the Supreme Court to strike off the name of the licensee from the register of companies under the Companies Act and publish notice thereof in the *Gazette*.

c. 89:01

(3) When its name is struck off the register of companies the licensee is thereupon dissolved and its licence under this Act is revoked.

PART V

SPECIAL TAXING PROVISIONS

Control of
licensee.

98. (1) A licensee is controlled by another company or by an individual, trust or government, if at the relevant time it is effectively controlled directly or indirectly by that other company, individual, trust or government—

(a) through being an associate of that

- other company, individual, trust or government;
- (b) through being an affiliate of that other company;
 - (c) through the holding of shares of an incorporated or unincorporated body, but subject to subsection (2);
 - (d) through the holding of membership in an unincorporated body;
 - (e) through voting trusts or other agreements relating to the voting of shares;
 - (f) through the holding of a significant portion of the outstanding borrowing of an unincorporated body;
 - (g) through management control of an unincorporated body; or
 - (h) through any other similar or dissimilar means.

(2) A company is controlled by a person if shares of the company that carry voting rights sufficient to elect a majority of the directors of the company are held, directly or indirectly, other than by way of security only, by or on behalf of that person.

(3) When used to indicate a relationship with any person "associate" means—

- (a) a company of which that person

beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than thirty per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase those shares or convertible securities;

- (b) a partner of that person acting on behalf of the partnership of which they are partners;
- (c) a trust or estate in which that person has a substantial beneficial interest or in respect of which he serves as a trustee or in a similar capacity;
- (d) a spouse or a child of that person; or
- (e) a relative of that person or of the spouse of that person if the relative has the same residence as that person.

(4) For the purpose of this Part—

- (a) one company is affiliated with another company if one of them is the subsidiary of the other or both are subsidiaries of the same holding company or each of them is controlled by the same person;
- (b) if two companies are affiliated with the same company at the same time, they are affiliated with each other at

that time.

(5) A company is the holding company of another if that other company is its subsidiary.

(6) A company is a subsidiary of another company if it is controlled by that other company.

TAX EXEMPTIONS

Exemption
from tax.

99. (1) Except as provided by this Part, no income tax, capital gains tax or other direct tax or impost shall be levied in Guyana upon the profits or gains of a licensee in respect of the off-shore banking it does from within Guyana.

(2) Except as provided by this Part, no income tax, capital gains tax or other direct tax or impost shall be levied in Guyana in respect of any dividends or earnings attributable to the shares or securities of a licensee that are beneficially owned by another licensee or by a non-resident.

(3) Except as provided by this Part, no estate, inheritance, succession or similar tax or impost shall be levied in Guyana in respect of any shares, securities or assets of a licensee that are beneficially owned by a person who is a non-resident.

(4) Except as provided by this Part, no tax, duty or impost shall be levied upon the increment in value of the property or other assets in Guyana of a licensee.

Transfer of
assets.

100.(1) Except as provided by this Part, no tax, duty or other imposts shall be levied upon a licensee, its shareholders or transferees in respect of the transfer of all or any part of its securities or other assets to another licensee or to a non-resident.

(2) Where a person who is a non-resident or a licensee transfers shares of a licensee that are held by that person or licensee to another person who is a non-resident or to another licensee, the transfer is exempt from the payment of any tax, duty or impost thereon.

(3) Except as provided by this Part—

- (a) no income tax or capital gains tax; and
- (b) no other direct tax or impost,

shall be levied or collected in Guyana in respect of any dividends, interests or other returns from any shares, securities, deposits or other borrowing of a licensee or any assets managed by a licensee if the dividends, interest or other returns are in respect of shares, securities, deposits or other borrowing or assets beneficially owned by a person who is a non-resident; but the onus of establishing ownership lies upon the licensee.

Withholding
tax re
dividends, etc.
c. 81:01

101. Notwithstanding any provision of the Income Tax Act, no licensee shall withhold any portion of any dividend, interest or other returns payable to any person in respect of any borrowing of the licensee or in respect of that person holding shares or securities of the licensee.

Trust property
exemption.

102. When a trust is established by a settlor who is a non-resident in favour of another person who is a non-resident, the trust is exempt from any tax, duty or impost in Guyana if the funds of the trust consist solely of foreign currency or foreign securities and the trust is under the management of a licensee.

Tax on profits.

103. (1) By way of income tax but in lieu of other taxes on income, there shall be levied and paid to the Commissioner General of the Revenue Authority upon the profits and gains of a licensee, in each financial year, tax at the following rates—

- (a) 2½% on all profits and gains up to ten million dollars;
- (b) 2% on all profits and gains in amounts exceeding ten million dollars but not exceeding twenty million dollars;
- (c) 1½% on all profits and gains in amounts exceeding twenty million dollars but not exceeding thirty million dollars; and
- (d) 1% on all profits and gains in amounts exceeding thirty million dollars.

(2) The profits and gains of a licensee in respect of the business done by it in any financial year shall be determined by the Bank from the statements and returns received by it under this Act.

(3) A licensee that feels aggrieved by a determination of the Bank under this section may appeal the determination to the Board of Review and section 82 of the Income Tax Act shall apply *mutatis mutandis* in respect of that appeal.

c. 81:01

Tax agreement.

104. (1) Notwithstanding section 103, a licensee and the Minister may enter into an agreement determining the amount to be paid as income tax in lieu of other taxes on income by the licensee in respect of the business it does from within Guyana.

(2) An agreement under subsection (1) may not provide for any amount in lieu of other taxes if it would result in the licensee paying less tax than it would if it were to pay tax pursuant to section 103.

Guarantee, etc.

105. (1) When in the opinion of the Minister it is in the public interest to do so, the Minister may by agreement give such assurance or guarantees regarding the future taxing of a licensee as it may require before commencing to do off-shore banking from within Guyana.

(2) An assurance or guarantee referred to in subsection (1) is subject to affirmative resolution of the National Assembly.

Service fees,
etc.

106. (1) When a tax levied in Guyana is in the nature of a service charge or utility charge for a service provided by the Government of Guyana, a licensee is not exempt from that charge under this Part.

(2) A service or utility charge includes a charge or fee levied or imposed for the issuance of any incorporation, registration or licence required in Guyana.

Stamp duty.
c. 80:03

107. (1) Nothing in this Part shall be construed to exempt a licensee from the duty imposed under the Stamp Duties (Management) Act in respect of any instrument within the meaning of that Act that is executed or made in Guyana in the course of doing business from within Guyana and that is liable to the duty imposed under that Act.

(2) Notwithstanding any enactment to the contrary, an instrument described in subsection (1) is not invalid or incapable of being received in evidence by reason only that it is not stamped in accordance with the law for the time being in force.

Customs duty.
c. 82:01

108. The Minister may by order exempt a licensee from all or so much of any duty payable under the Customs Act in respect of any goods imported by the licensee in respect of its business as the Minister considers expedient, if the licensee satisfies the Minister that the goods concerned are not being made or manufactured in Guyana, are essential as equipment or fixtures for doing business from

within Guyana and are not merely goods that will be used up or expended in the ordinary course of business.

Employee
benefits.

109. (1) Where the Minister is satisfied that a licensee shall use the services of specially qualified persons in order to do its business effectively from within Guyana and that—

- (a) it is unable to acquire those services in Guyana; and
- (b) it is unable to retain or hire those services from outside Guyana without special tax benefits being made available,

the Minister may authorise an off-shore benefit provision for the employment of those specially qualified persons.

(2) An off-shore benefit provision is one whereby a prescribed percentage of an employee's or contractor's salary or fees from a licensee—

- (a) is exempt from income or other tax in Guyana;
- (b) may be paid in a foreign currency in a trust account without being liable to income or other tax in Guyana as to the amount paid or any earnings thereon: or
- (c) may be paid in some other prescribed manner without being liable to income or other tax in Guyana,

c. 81:01

notwithstanding any provision of the Income Tax Act.

**PART VI
HINTERLAND PROJECT**

Approval
of schemes.

110. (1) An off-shore company that intends to engage in activities concerning a hinterland project shall submit a scheme for development and utilization of the resources of Guyana for the approval by the Minister.

(2) The Minister may, by order approve the scheme subject to such conditions as he may think fit to impose.

(3) Where any person contravenes any condition imposed under subsection (2), the Minister may revoke any approval given for engagement in activities in a hinterland project and make such consequential order as he thinks fit.

Modification
of laws.

111. (1) Where a scheme has been approved under the preceding section the Minister may, by order which shall be subject to negative resolution of the National Assembly, direct that the written laws mentioned in subsection (2) shall not apply or shall apply with such modifications, adaptations, qualifications and exceptions as he may specify in the order in relation to the off-shore company.

(2) The written laws referred to in subsection (1) are the following:

c. 81:01

(a) the Income Tax Act;

c. 81:02

(b) the Income Tax (In Aid to Industry) Act;

c. 89:01

(c) Companies Act.

Definitions.

112. For the purpose of this Part the expressions-

“hinterland project” means any project in the hinterland of

Guyana relating to mining, agriculture or tourism or relating to the development or exploitation of such other natural resources of Guyana as may be notified by the Minister in the *Gazette*; and

c. 89:01 “off-shore company” means a company which is incorporated under the Companies Act, the objects of which are to engage in activities of a hinterland project in Guyana by using foreign moneys for the carrying out of such project.

PART VII

MISCELLANEOUS AND CONSEQUENTIAL

Application
of Companies
Act.

113. (1) The provisions of the Companies Act relating to the winding up of a company shall not apply to a licensee.

c. 89:01

(2) Division B of Part VI of the Companies Act shall not apply to a licensee.

Insolvency
Act.
c. 12:21

114. The Insolvency Act shall not apply to a licensee.

Non-applica-
tion of
provisions of
Act to qualified
foreign bank.

115. The provisions of this Act set out hereunder shall not apply to a licensee that is a qualified foreign bank ---

- (a) sections 20 to 24;
 - (b) sections 41 to 45;
 - (c) Part IV.
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