

THE BANKING ACT, 2000

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SCHEDULE

SIGNED this 31st day of May, 2000.

ALHAJI AHMAD TEJAN KABBAH,
President.



No. 10



2000

Sierra Leone

The Banking Act, 2000

Short title.

Being an Act to provide for the licensing of persons carrying on deposit-taking business, the regulation of deposit-taking activities, the protection of depositors and to provide for related matters with a view to developing and promoting an efficient banking and financial system in Sierra Leone.

[15th June, 2000] Date of commencement.

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

PART I — PRELIMINARY

nence- 1. This Act shall come into operation on such date as the Governor may by statutory instrument fix; and different dates may be fixed for the commencement of different provisions of the Act.

ation. 2. This Act shall apply, where appropriate to the overseas operations of licensed institutions.

retation. 3. In this Act, unless the context otherwise requires —

“Central Bank” means the Bank of Sierra Leone;

“close relation” means spouse, parent, child, grandparent or grandchild, brother or sister;

Cap. 249. “company” has the meaning assigned to it in the Companies Act;

“demand liabilities” means liabilities which must be met on demand;

“deposit” has the meaning assigned to it in section 9;

“deposit-taking business” has the meaning assigned to it in section 8;

Cap. 249. “director” in relation to a licensed institution, includes any person, by whatever name he may be referred to, carrying out or empowered to carry out substantially the same functions as those carried out by a director of a company registered under the Companies Act, or a director of a cooperative society registered under the Cooperative Societies Act, 1977;

Act No. 6 of 1977.

“Governor” means the Governor of the Bank of Sierra Leone;

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

“licence” means an authorisation granted by the Central Bank under section 12 for the carrying on of deposit-taking business in Sierra Leone;

"Minister" means the Minister responsible for finance;

"net-worth" means shareholders' funds including paid-up capital and all reserves as well as capital surplus from revaluation of assets less any accumulated or unprovided for losses of a licensed institution;

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

"prescribe" means prescribe by statutory instrument;

"principal shareholder" means a person owning not less than twenty percent of the paid-up capital of the licensed institution concerned;

"time liabilities" means liabilities which are not demand liabilities.

4. (1) The Central Bank shall be responsible for the supervision of all licensed institutions. Functions of
Central Bank.

(2) The Central Bank shall keep under review the operation of this Act and developments in the field of banking which appear to it to be relevant to the exercise of its powers and the discharge of its duties.

(3) Neither the Central Bank nor any person who is a member of its board of directors or who is, or is acting as, an officer, servant or agent of the Central Bank shall be liable in damages for any act or omission in the discharge or purported discharge of the functions of the Central Bank under this Act unless it is shown that the act was done in bad faith.

PART II — LICENSING OF DEPOSIT-TAKING BUSINESS

5. (1) Subject to sections 7 and 47, no person shall engage in a deposit-taking business in Sierra Leone unless that person holds a valid licence issued by the Central Bank. Deposit-taking
business to be
licensed.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million leones.

(3) Any person who, not being a licensed institution solicits deposits, commits an offence and is liable on conviction to a fine not exceeding ten million leones.

(4) Where the Central Bank has reasonable grounds to believe that a person has contravened subsection (1), it may under a warrant issued by a magistrate enter any premises and examine the books, accounts and records of such person.

(5) In the exercise of its powers in subsection (4), the Central Bank may take copies of or extracts from any documents or records examined.

(6) Any person who intentionally obstructs the Central Bank in the exercise of the powers conferred by subsection (4) or (5) commits an offence and is liable on conviction to a fine not exceeding two million leones or to imprisonment for a term not exceeding one year or to both.

Meaning of
"licensed
institution."

6. (1) For the purposes of this Act "licensed institution" means an institution holding a valid licence issued by the Central Bank.

(2) All offices and branches in Sierra Leone of any licensed institution shall be deemed to be one institution and in the case of a licensed institution incorporated outside Sierra Leone it shall be deemed to be an institution separate from its head office and other branches or offices outside Sierra Leone.

Exempted
persons and
transactions.

7. Section 5 shall not apply to the acceptance of deposits by the Central Bank or any person specified in section 47.

Meaning of
"deposit-
taking
business".

8. (1) For the purposes of this Act, a business is a deposit-taking business if—

- (a) the person conducting it holds himself out as accepting deposits on a day-to-day basis; and
- (b) any other activity of the business is financed wholly or partly out of the capital of or interest on money received by way of deposit.

(2) Notwithstanding subsection (1), a business is not a deposit-taking business for the purposes of this Act if deposits are accepted only on particular occasions, whether or not involving the issue of debentures or others securities.

(3) For the purposes of paragraph (b) of subsection (1), all activities which a person carries on by way of business shall be regarded as a single business.

(4) In determining for the purposes of subsection (2) whether deposits are accepted only on particular occasions, regard shall be made to the frequency of those occasions and to any characteristics distinguishing them from each other.

9. (1) For the purposes of this Act, "deposit" means a sum of money paid on terms— Meaning of "deposit".

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment or receiving it; and

(b) which are not referable to the provision of property or services or the giving of security,

and references in this Act to money deposited and to the making of a deposit shall be construed accordingly.

(2) For the purposes of paragraph (b) of subsection (1), money is paid on terms which are referable to the provision of property or services or the giving of security if—

(a) it is paid by way of advance or part-payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;

- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

Eligibility to
apply for
licence.

10. (1) No person shall be eligible to apply for a licence under this Act unless that person is a registered company, a registered cooperative society or a statutory body.

Cap. 249. (2) For the purposes of this Act, "registered company" means a company incorporated or registered under the Companies Act and whose name has not been struck off the company's register; and "registered cooperative society" means a cooperative society registered under the Cooperative Societies Act, 1977 and whose name has not been struck off the Register of Cooperative Societies.

Act No. 6
of 1977.

Application
for a licence.

11. (1) Any registered company or registered cooperative society or statutory body wishing to carry on deposit-taking business in Sierra Leone shall apply to the Central Bank for a licence.

(2) An application shall be—

(a) in such form and manner as the Central Bank may determine;

(b) accompanied by—

- (i) a statement on the nature and scale of the deposit-taking business which the applicant intends to carry on, development plans for the business and particulars of the applicant's arrangements for the management of that business; and
- (ii) such other information or documents as the Central Bank may require for determination of the application.

(3) The Central Bank may, prior to the determination of an application, by notice in writing require the applicant to provide additional information or documents.

(4) Any information or documents required under subsection (3) shall be in such form as the Central Bank may direct.

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

12. (1) The Central Bank may, within ninety days of receipt of an application for a licence including any relevant information or documents that may have been requested from the applicant and after consultation with the Minister, grant or refuse to grant a licence. Grant or refusal of licence.

(2) In determining an application, the Central Bank shall take into account *inter alia*, matters relating to—

- (a) the character and fitness of the directors and officers or proposed directors and officers of the applicant;
- (b) the adequacy of the applicant's capital structure in relation to the nature and scale of the proposed deposit-taking business;
- (c) the financial position and financial history of the applicant;
- (d) the conduct of the affairs of the applicant in relation to the interests of depositors,

as set out in the Schedule.

(3) The Central Bank shall not grant a licence where—

- (a) it is satisfied that the grant will not be in the public interest; or
- (b) in the case of an applicant whose principal place of business is in a country or territory outside Sierra Leone and unless in addition to subsections (1) and (2)—

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

(4) Any licence granted under this Act shall be subject to such terms and conditions as the Central Bank may specify.

(5) Every licensed institution shall at all times conspicuously display its licence at its place of business.

(6) No person shall be granted or continue to hold a licence under a name which so closely resembles the name of the holder of an existing licence as would likely, in the opinion of the Central Bank, mislead the public.

13. (1) Where the Central Bank grants an application for a licence it shall give written notice of that fact to the applicant.

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

(3) Any applicant aggrieved by a refusal to grant a licence may appeal against the decision to a tribunal established under section 40.

14. (1) The Central Bank shall revoke the license of a licensed institution if it appears to the Central Bank that—

- (a) the licensed institution has failed to comply with any obligation imposed on it by or under this Act;

Notice of
grant or
refusal to
grant licence.

Revocation of
licence.

- (b) it has been provided with false, misleading or inaccurate information by or on behalf of the licensed institution or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director or other officer of the applicant;
- (c) the interests of the licensed institution's depositors or potential depositors are in any way threatened, whether by the manner in which the institution is conducting or proposes to conduct its affairs or for any other reason;
- (d) the licensed institution has insufficient assets to cover its liabilities to the public;
- (e) the licensed institution has ceased to carry on deposit-taking business in Sierra Leone; or
- (f) the licensed institution has failed at any time to comply with any of the requirements under sections 19 and 20.

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

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

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

(4) If in the case of any licensed institution, it appears to the Central Bank that—

- (a) a winding up order has been made against the institution; or
- (b) a resolution for its voluntary winding up has been passed,

whether in Sierra Leone or in any other country or territory, the Central Bank shall revoke its licence.

Restriction of
licence.

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

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

the Bank may restrict the licence instead of revoking it.

(2) A licence may be restricted—

- (a) by imposing such limit on its duration as the Central Bank thinks fit;
- (b) by imposing such additional conditions as the Central Bank thinks desirable for the protection of the licensed institution's depositors or potential depositors; or
- (c) without prejudice to subsection (4) of section 12, by imposing a limit and additional conditions.

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

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

- (a) require the licensed institution to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) include limitations on the acceptance of deposits, the granting of credit or the making of investments;
- (c) prohibit the licensed institution from soliciting deposits, either generally or from persons who are not already depositors;
- (d) prohibit the licensed institution from entering into any other transaction or class of transactions;
- (e) require the removal of any director, manager or other officer of the licensed institution;
- (f) specify requirements to be fulfilled otherwise than by action taken by the licensed institution.

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

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

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

(8) A licensed institution whose licence is restricted by the imposition of a limit on its duration may apply under section 5 for a new licence and, if that licence is granted, the restricted licence shall cease to have effect.

Notice of
revocation or
restriction.

16. (1) Subject to section 17, where the Central Bank proposes—

- (a) to revoke a licence;
- (b) to restrict a licence; or
- (c) to vary the restrictions imposed on a licence otherwise than with the agreement of the licensed institution concerned,

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

(2) If the proposed action is within paragraph (b) or (c) of subsection (1), the notice shall specify the proposed restrictions or, as the case may be, the proposed variation.

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

(4) Where—

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

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

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

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

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

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

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

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

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

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

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

Mandatory
revocation
and restriction
of licences.

17. (1) No notice shall be given under section 16 in respect of—

- (a) the revocation of a licensed institution's licence in any case in which revocation is mandatory under subsections (3) and (4) of section 14; or
- (b) the imposition or variation of an institution's licence in any case in which the Central Bank considers that the restriction should be imposed or varied as a matter of urgency.

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

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

(4) Subsection (4) of section 16 shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under subsection (1) of that section in respect of a proposal to impose or vary a restriction; but the Central Bank may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) A licensed institution to which a notice is given under this section, of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may, within the period of fourteen days beginning with the day on which the notice was given make representations to the Central Bank.

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

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

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

(8) Where a notice under sub-section (7) is of a decision to take the specific action in sub-section (6) paragraph (b) the notice under sub-section (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

(9) Where a notice of the proposed revocation of an institution's licence under section 16 is followed by a notice revoking its licence under this section, the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation and any pending appeal proceedings in respect of a decision implementing the proposal.

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

- (a) open a branch, office, sub-office, booth, agency or mobile unit in Sierra Leone and in the case of a licensed institution registered or incorporated in Sierra Leone may open a representative office, agency or branch office outside Sierra Leone;

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

- (b) close or change the location of an existing branch, office, sub-office, booth, agency or mobile unit.

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

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

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

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

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

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

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

sold, merged, consolidated or transferred, shall be deemed to be sold, merged, consolidated or transferred to the new institution or the new company incorporated in Sierra Leone, as the case may be, with effect from such date as the Governor, after consultation with the Minister, may specify by notice published in the *Gazette*.

(8) The Central Bank may, for good reason, revoke or vary the terms and conditions of an approval relating to any matter enumerated in subsection (3) and such action shall be communicated by the Central Bank to the licensed institution affected, which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

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

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

PART III — DUTIES OF LICENSED INSTITUTIONS

19. (1) Every licensed institution shall at all times maintain in Sierra Leone as separate unimpaired capital and reserves, such amounts as the Governor may from time to time prescribe.

Minimum
paid-up
capital.

(2) The Central Bank may, in prescribing unimpaired capital and reserves pursuant to subsection (1) prescribe minimum amounts that shall be subscribed and paid by licensed institutions on their capital stock.

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

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

Capital
adequacy.

20. (1) Every licensed institution shall at all times after a date to be notified in the *Gazette* by the Central Bank maintain a minimum capital adequacy ratio of fifteen percent.

(2) The Central Bank may prescribe a higher capital adequacy ratio with the prior approval of the Minister—

- (a) with respect to a particular licensed institution; or
- (b) generally with respect to all licensed institutions and for such period as the Central Bank may determine.

(3) The capital adequacy ratio shall be measured as a percentage of the capital base of the licensed institution to its risk-weighted asset base in accordance with the provisions of regulations which the Central Bank may from time to time prescribe.

(4) Any licensed institution which fails to maintain the level of capital adequacy determined under this section shall be liable to pay to the Central Bank on each day that the deficiency continues, a penalty of one half per mille of the difference between the capital adequacy that the institution should have maintained and the level of capital adequacy actually maintained by the institution; and unless such deficiency is remedied within ninety days after it has occurred, the Central Bank may prohibit the licensed institution concerned from granting loans or credits or from making investments or accepting deposits or from all such transactions.

Maintenance
of reserve
fund.

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

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

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

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

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

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

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

debenture, draft, bill of exchange, or any other evidence of indebtedness, or of any other obligation held by or owed to the licensed institution.

Foreign
currency open
position limit.

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

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

Publication of
balance sheet.

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

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

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

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

(5) Every licensed institution shall—

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

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

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

Alteration of constitution of licensed institutions.

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

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

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

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

Restriction on payments of dividends.

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

(3) No licensed institution shall declare or pay any dividend on its shares in any year if the level of capital adequacy of the institution is less than that provided in section 20.

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

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

Credit risk
exposures.

27. (1) No licensed institution shall —

- (a) grant any advance or credit or undertake any financial guarantee or indemnity to or in respect of any one person or group of persons; or
- (b) carry out any other transaction for any person or group of persons,

which constitutes in the aggregate a liability to the institution amounting to more than twenty-five percent of the net-worth of the institution; and in the case of an unsecured advance, credit, financial guarantee or indemnity, the institution shall not extend such facilities in the aggregate of more than ten percent of the net-worth of the institution.

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

(3) A licensed institution shall not—

- (a) grant any advance or credit facility against the security of its own shares;
- (b) grant or permit to be granted—
 - (i) unsecured advances or unsecured credit facilities to any of its directors whether such advances or credit facilities are obtained by its directors jointly or severally;
 - (ii) any advances or credit facilities in excess of two percent of the institution's networth to any firm or company or group of firms or companies in which any of that institution's directors or other officials is interested as a partner or guarantor or is one of the principal shareholders; and in the case of any unsecured loan or credit facility any amount which in the aggregate exceeds two thirds of one percent of the institution's networth;
- (c) grant or permit to be outstanding to its officials and employees unsecured advances or unsecured credit facilities which in the aggregate for any one official or employee exceed one year's emoluments of such official or employee;
- (d) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, except in so far as may exceptionally be necessary in the course of the deposit-taking operations and services of that institution or in the course of the satisfaction of debts due to it;

- (e) acquire or hold any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such share-holding as a licensed institution may acquire in the course of the satisfaction of debts due to it which share holding shall, however, be disposed of at the earliest suitable moment;
- (f) purchase, acquire or lease real estate unless it is necessary for the purpose of conducting its business, including provision for future expansion or housing its staff or in other exceptional circumstances where the approval of the Central Bank has been obtained.

(4) Notwithstanding paragraph (e) of subsection (3), a licensed institution ~~shall not be precluded~~ from the purchase and sale of ~~shares or stock upon the order~~ and for the account of a customer.

(5) Paragraph (e) of subsection (3) shall not apply—

- (a) in respect of any share-holding approved by the Central Bank in any corporation set up for the purpose of insuring bank deposits or of promoting the development of a money market or securities market in Sierra Leone or of development of financial institutions;
- (b) to all share-holdings in other undertakings the aggregate value of which does not at any time exceed twenty-five percent of the sum of the paid-up or assigned capital and published reserves of that licensed institution.

(6) Notwithstanding paragraph (f) of subsection (3), a licensed institution may secure a debt on any transferable real or other property and in default of repayment may acquire such property for resale by the institution as soon as possible thereafter.

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

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

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

(10) Any licensed institution which before the commencement of this Act entered into any transactions incompatible with the provisions of subsection (7) or (8) shall, so soon as may be after the commencement of this Act, submit a statement thereof to the Central Bank and shall, within one year from that date, finally liquidate all such transactions.

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

Licensed institutions to submit returns.

- (a) not later than twenty-one days after the last day of every month a statement in such form as may be determined by the Central Bank showing the assets and liabilities of the institution as at the close of business on the last day;

- (b) not later than twenty-one days after the last day of every month a statement in such form and detail as may be determined by the Central Bank, showing analysis of loans, advances and overdrafts granted by the institution during and outstanding at the end of that month;
- (c) not later than twenty-one days after the last day of every month a statement in such form as may be determined by the Central Bank showing analysis of doubtful and other non-performing loans;
- (d) in such form and within such time as the Central Bank may specify, such other particulars relating to loans, advances and overdrafts, as the Central Bank may determine.

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

(3) Any licensed institution which fails to comply with the requirements of this section shall be liable to pay to the Central Bank a penalty equivalent to the fair value of any actual loss or a maximum of ten million leones.

Production of
books of
accounts.

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

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

(3) If any information supplied or item produced is false in any material particular, the licensed institution or its affiliate or both as the case may be, commits an offence and shall be liable on conviction to a fine equivalent to the fair value of any actual loss or a maximum of twenty million leones.

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

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

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

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

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

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

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

(5) If a licensed institution fails to appoint auditors satisfactory to the Central Bank or appoints only one auditor or if the Central Bank is not satisfied with the auditors' report, the Governor shall appoint one or two auditors who shall submit an independent report on the licensed institution's annual balance sheet and accounts.

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

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

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

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

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

(9) The duties, powers and liabilities imposed and conferred by subsections (1) and (2) of section 29 in relation to examiners are hereby imposed and conferred also in relation to auditors.

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

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

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

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

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

- (a) require the auditors to undertake such further audit or provide such additional information or both as the Central Bank may consider necessary;
- (b) engage an independent auditor to audit either in whole or in part the accounts of the licensed institution.

PART IV — POWERS OF THE CENTRAL BANK

Examination
of licensed
institutions.

32. (1) The Governor shall cause an examination to be made of each licensed institution periodically or whenever in his judgment such examination is necessary or expedient, in order to determine whether the licensed institution is in a sound financial condition and that the requirements of this Act have been complied with in the administration of its affairs.

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

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

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

Cap. 249 (5) Without prejudice to the remedies in the Companies Act the Central Bank may deem any investigation of a licensed institution made thereunder as an examination made under this section for the purposes of section 34

Power of
Central Bank
to give
directions.

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

- (a) to prevent the affairs of any licensed institution being conducted in a manner detrimental to the interests of the depositors and other creditors or in a manner prejudicial to the interests of the institution; or
- (b) to secure the proper management of any licensed institution generally,

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

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

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

Banking
emergencies
and
liquidation.

(2) Where the Central Bank—

- (a) has been notified by a licensed institution of its inability to meet its obligations to its depositors or creditors or of the likelihood of the institution suspending payment;
- (b) is satisfied that a licensed institution has insufficient assets to cover its liabilities; or
- (c) is satisfied that a licensed institution is not carrying on its deposit-taking business in the interest of its depositors and creditors,
- (d) has revoked an institution's licence under the provisions of section 14;

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

- (i) direct the licensed institution to take such steps as the Central Bank may consider necessary for dealing with the situation;
- (ii) prohibit the receipt by the institution of any fresh deposits or grant of fresh or additional credit facilities or both;

- (iii) appoint a suitable person or persons to advise the licensed institution on the proper conduct of its deposit-taking business; and the remuneration of the adviser or advisers appointed by the Central Bank shall be paid by the licensed institution concerned in accordance with the terms of appointment to be determined by the Central Bank;
- (iv) require the removal of any director, manager or other officer of the licensed institution concerned;
- (v) suspend the operations of the licensed institution;
- (vi) make an application to the High Court for the conservation of the assets of the licensed institution or for its liquidation or winding up;
- (vii) revoke the licensed institution's licence.

(3) The Central Bank may—

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

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

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

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

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

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

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

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

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

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

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

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

(15) In the event of net withdrawals from demand and savings deposit accounts of any licensed institution exceeding ten per cent of its total liabilities on these accounts in any period of less than six consecutive working days, the Central Bank may, notwithstanding the provisions of the Bank of Sierra Leone Act, 1999 lend to the licensed institution, on terms and conditions specified by the Central Bank, an amount sufficient to meet in an orderly manner, any remaining demands for withdrawals from those accounts.

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

Power to
remove
directors or
other
managerial
persons from
office.

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

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

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

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

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

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

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

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

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

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

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

36. (1) The Central Bank shall —

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

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

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

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

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

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

(3) No licensed institution shall be required to maintain a higher percentage than any other licensed institution.

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

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

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

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

Minimum
uniform
business hours
and bank
holiday.

38. (1) The Central Bank may, after consultation with licensed institutions, at any time by notice published in at least one newspaper of general circulation in Sierra Leone, fix minimum uniform hours of business for the branches and offices of licensed institutions in any specified area.

(2) The Central Bank may, with the approval of the Minister, at any time by a notice published in at least one newspaper of general circulation in Sierra Leone, declare any day to be a bank holiday and no licensed institution shall transact any business with the public on a bank holiday.

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

PART V — GENERAL

Right of
appeal.

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

- (a) to revoke its licence otherwise than in a case in which revocation is mandatory under section 14;
- (b) to restrict its licence, whether generally or in a particular manner or to vary any restrictions of its licence; or
- (c) to give it a direction under section 34 or to vary a direction given to it under that section,

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

(2) Where—

- (a) the ground or a ground for a decision within paragraph (a) or (b) of subsection (1) is that mentioned in paragraph (a) of subsection (4) of section 16; or
- (b) the effect of a decision within paragraph (b) or (c) of subsection (1) of section 16 is to require the removal of a person as director, manager or other officer of a licensed institution,

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

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

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

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

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

Constitution
of Tribunals.

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

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

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

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

Determination
of appeals.

41. (1) On an appeal under subsection (1) of section 39, the question for the determination of the tribunal shall be whether, for the reasons given by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

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

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

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

- (a) the Central Bank shall, by notice in writing to the licensed institution concerned impose the restrictions, give the direction or make the variation on which it has decided;

- (b) the licensed institution may appeal again to the tribunal against the Central Bank's decision and on such appeal the tribunal may confirm the decision or give a further direction under paragraph (b) or (c) of subsection (2).

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

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

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

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

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

Costs,
procedure and
evidence.

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

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

- (a) the period within which and the manner in which such appeals are to be brought;
- (b) the manner in which such appeals are to be conducted, including provision for any hearing to be held in private, the persons entitled to appear on behalf of the parties and for enabling appeals to be heard notwithstanding the absence of a member of the tribunal other than the chairman;
- (c) the procedure to be adopted where appeals are brought both by a licensed institution and a person who is or is to be a director, manager or other officer of the institution, including provision for hearing the appeals together and for the mutual disclosure of information;
- (d) requiring an appellant or the Central Bank to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) requiring any person to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) enabling an appellant to withdraw an appeal or the Central Bank to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of such direction;
- (h) enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman of a tribunal; and
- (i) as to any other matter connected with such appeals.

(4) Notwithstanding any rules made under subsection (3), a tribunal shall have such powers, rights and privileges as are vested in the High Court of Justice or a Judge thereof at a trial, in respect of—

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

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

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

Further
appeals on
points of law.

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

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

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

Disqualification
of directors,
etc.

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

(2) No person who has been a director of, or directly or indirectly concerned in the management of a licensed institution which has had its licence revoked in accordance with section 14 or been

wound-up by a court, shall, without the express authority of the Governor, act or continue to act as a director of or be directly or indirectly concerned in the management of any licensed institution.

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

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

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

Abandoned
property.

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

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

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

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

(3) Any licensed institution holding any abandoned property, shall make a report to the Central Bank in such manner as the Central Bank may determine stating the nature of the property held and in the case of money, the amount of money.

46. (1) No person other than a licensed institution shall use any name which indicates or may reasonably be understood to indicate (whether in English or any other language) that that person is a licensed institution or is carrying on deposit-taking business.

Restriction on
use of banking
names.

(2) Every licensed institution shall use as part of its description or title the word "bank" or some one or other of its derivatives, either in English or in some other language.

(3) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million leones.

Exemptions.

47. (1) Subsection (1) of section 5 shall not apply to—

- (a) finance or acceptance houses;
- (b) discount houses or companies;
- (c) leasing and hire purchase companies;
- (d) loan societies;
- (e) venture capital funding companies;
- (f) osusu and friendly societies;
- (g) West Africa Monetary Agency;
- (h) West Africa Bankers' Association.

(2) The exemption of any organisation specified in subsection (1) may be subject to such restriction as the Governor may from time to time prescribe.

(3) The Governor may, after consultation with the Minister by statutory instrument amend the list in subsection (1) by adding any organisation or relaxing any restriction.

Offences.

48. (1) Where an offence under this Act is committed by a body of persons, then—

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

shall be deemed to have committed that offence.

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

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

49. (1) Any pecuniary penalty not specifically designated as a Civil fine, incurred and imposed under this Act shall be deemed to be a debt proceedings. owed to the Central Bank.

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

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

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

Protection of individual accounts from investigation.

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

Maintenance of secrecy.

- (a) with written authorisation of the depositor or other beneficiary or the heirs or legal representatives of such depositor or beneficiary;
- (b) for the purpose of the performance of his duties within his scope of employment in conformity with the provisions of this Act;

- (c) when lawfully required to make the disclosure by any court within Sierra Leone; or
- (d) under the provisions of any enactment for the time being in force in Sierra Leone.

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

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

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

Central Bank
to publish
consolidated
data.

52. The Central Bank may publish in whole or in part at such time as it may determine any information or data furnished under this Act; but no information or data shall be published which might disclose the individual affairs of a licensed institution or of a person whose interests are protected under section 50 unless the consent of every interested party has been obtained in writing prior to such publication.

Protection for
action taken
under this Act.

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

Regulations,
etc.

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

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

**Central Bank
to give
directions
generally.**

- (a) in the interest of banking policy;
- (b) to prevent the affairs of any licensed institution being conducted in a manner detrimental to the interests of the depositors or creditors or in a manner prejudicial to the interests of the institution; or
- (c) to secure the proper management of any licensed institution generally,

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

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

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

Act No. 11 of 1970. **56. (1) The Banking Act, 1970 is repealed.**

**Repeal and
savings.**

(2) Notwithstanding subsection (1)—

- Act No. 11 of 1970.
- (a) any licence granted under the Banking Act, 1970, which is in force at the commencement of this Act shall continue in force as if granted under this Act; and
 - (b) all rules, regulations, orders, notices, directives and instruments issued under the repealed enactment and in force at the commencement of this Act shall, unless they are inconsistent with any provision of this Act or until they are expressly revoked, remain in force.

2. BUSINESS TO BE DIRECTED BY AT LEAST TWO PERSONS

At least two individuals shall effectively direct the business of an applicant or a licensed institution.

3. COMPOSITION OF BOARD OF DIRECTORS

The Board of Directors shall include such number of Directors without executive responsibility for the management of its business as the Central Bank considers appropriate having regard to the circumstances of the licensed institution and the nature and scale of its operations.

BUSINESS TO BE CONDUCTED IN PRUDENT MANNER**4. (1) The applicant will conduct its business in a prudent manner.**

(2) An applicant shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain net assets which, together with other financial resources available to the applicant are of such nature and amount as are considered appropriate by the Central Bank and are—

- (a) of an amount which is commensurate with the nature and scale of the applicant's operation; and
- (b) of an amount and nature sufficient to safeguard the interests of its depositors and potential depositors, having regard to the factors mentioned in subparagraph (3) and any other factors appearing to the Central Bank to be relevant.

(3) The factors referred to in subparagraph (2) (b) are—

- (a) the nature and scale of the applicant's operations; and
- (b) the risks inherent in those operations and in the operations of any other organisations related to the applicant so far as is capable of affecting the applicant.

(4) An applicant shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature.

(5) For the purposes of subparagraph (4), the Central Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the applicant and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) An applicant shall not be regarded as conducting its business in a prudent manner unless it makes or, will make adequate provision for—

- (a) depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), and
- (b) liabilities which will or may fall to be discharged by it and for losses which it will or may incur.

(7) An applicant or institution shall not be regarded as conducting its business in a prudent manner unless it maintain or will maintain adequate systems of control of its business and records.

(8) The systems and records shall not be regarded as adequate unless they are such as to enable the business of the applicant to be prudently managed and the applicant to comply with the duties imposed on it under this Act; and in determining whether those systems are adequate the Central Bank shall have regard to the functions and responsibilities in respect of them, of the directors of the applicant.

(9) For the purposes of this paragraph "net assets", in relation to a company, means paid-up capital and reserves.

INTEGRITY AND SKILL

5. The business of the applicant is or will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

OTHER CRITERIA AS CENTRAL BANK MAY DETERMINE

6. Such other criteria as the Central Bank may, with the concurrence of the Minister, determine.

Passed in Parliament this 2nd day of May, in the year of our Lord two thousand.

J. A. CARPENTER,
Clerk of Parliament.

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

J. A. CARPENTER,
Clerk of Parliament.