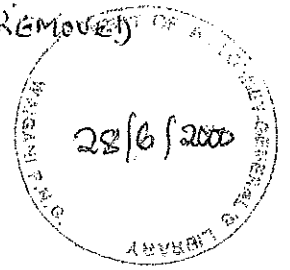


NOT TO BE REMOVED



No. 2 of 2000.

Banks and Financial Institutions Act 2000.

Certified on : 07-06-00

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2000.

Banks and Financial Institutions Act 2000.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2000.

AN ACT

entitled

Banks and Financial Institutions Act 2000,

Being an Act to make new provision for the licensing and regulation of banks and licensed financial institutions, and to repeal various Acts and to make consequential amendments to various Acts, and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C(*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments* it is declared that this law relates to a matter of national interest.

2. PURPOSE OF THIS ACT.

The purpose of this Act is -

- (a) to make provision for promoting the general stability of the financial system in Papua New Guinea; and

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- (b) to make provision for regulating Authorized Institutions; and
- (c) to protect the interests of depositors of Authorized Institutions; and
- (d) to regulate the use of certain names and descriptions; and
- (e) to confer upon the Central Bank certain functions and powers with respect to regulating Authorized Institutions; and
- (f) for related purposes.

3. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

“administrator” means a person appointed by the Central Bank to take control of an Authorized Institution’s business;

“Authorized Institution” means either -

- (a) a bank; or
- (b) a licensed financial institution;

“associate”, in relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, a body corporate means -

- (a) a relative of the person; or
- (b) any body corporate of which that person is a director; or
- (c) any person who is an employee or partner of that person; or
- (d) where that person is a company -
 - (i) any director of that company; or
 - (ii) any subsidiary of that company; or
 - (iii) any director or employee of any such subsidiary; or

(e) where that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person;

“bank” means a body corporate licensed as a bank under this Act;

“banking business” means -

- (a) the business of taking money on deposit and using that money -
 - (i) to lend to others; or
 - (ii) to finance any other activity of the business, wholly or to a material extent, out of the capital or interest on money received by way of deposit; or
- (b) such other financial activities prescribed by the regulations for the purposes of this definition;

“Board” means the Board of the Central Bank;

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“body corporate” includes a statutory corporation;

“Central Bank” means the Bank of Papua New Guinea;

“chief executive” means -

- (a) in relation to an Authorized Institution, a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the Authorized Institution; and
- (b) in relation to an Authorized Institution whose principal place of business is in a country or territory outside Papua New Guinea, also includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of its business in Papua New Guinea;

“deposit” means a sum of money paid on terms -

- (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 and the person receiving it and which terms are not referable to the provision of property or services or the giving of security; or
- (b) as prescribed by the regulations for the purposes of this definition,

and references in this Act to money deposited and to the making of a deposit shall be construed accordingly, but a deposit does not include -

- (c) a sum paid by the Central Bank or an Authorized Institution; or
- (d) a transaction exempted under Section 8;

“depositor” means a person entitled to repayment of a deposit, whether made by him or not;

“deposit advertisement” means any advertisement containing -

- (a) an invitation to make a deposit; or
- (b) information which is intended or might reasonably be presumed to be intended to lead directly or indirectly to the making of a deposit;

“director” -

- (a) with respect to companies registered in Papua New Guinea, has the same meaning as in Section 107(1)(a) of the *Companies Act 1997*; and
- (b) with respect to a body corporate incorporated outside Papua New Guinea, means any person, including a member of a board, who occupies a position appearing to the Central Bank to be analogous to that of a director of a company under Section 107(1)(a) of the *Companies Act 1997*; and

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(c) with respect to any other body corporate, means a person who occupies a position appearing to the Central Bank to be analogous to that of a director of a company under Section 107(1)(a)

Companies Act 1997;

“external administrator” means any of the following:-

- (a) a liquidator or interim liquidator;
 - (b) a receiver, manager, or receiver and manager (other than a statutory manager); or
 - (c) any other form of administrator or person having an analogous role under the laws of any place,
- and expressions used in this definition have the same meanings as they have in the *Companies Act 1997*;

“former Act” means the *Banks and Financial Institutions Act* (Chapter 137) repealed by this Act;

“Governor” means the Governor of the Central Bank;

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

“holding company” has the meaning given to it by Subsection (2);

“indirect controller” means either -

- (a) a person or persons in accordance with whose directions or instructions the directors of the Authorized Institution or any holding company of the Authorized Institution or any shareholder controller of the Authorized Institution are accustomed to act or are under an obligation, whether formal or informal, to act; or
- (b) a person or persons declared by the Central Bank to be an indirect controller for the purposes of this Act;

“insolvent”, in relation to a body corporate, means that the body corporate is not able to pay all its debts as and when they become due and payable and a body corporate will be deemed insolvent where it is unable to pay any sum due and payable with respect to a deposit;

“licence” means a licence granted under Section 10 to conduct a banking business;

“licensed financial institution” means a corporation licensed as a financial institution under this Act;

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“manager” means, in relation to an Authorized Institution, a person (other than a chief executive) who, under the immediate authority of a chief executive or director of the Authorized Institution -

- (a) exercises managerial functions; or
- (b) is responsible for maintaining the accounts or other records of the Authorized Institution;

“net assets” means paid-up capital and reserves;

“officer”, includes a director or employee of the body or entity;

“officer of the Central Bank” means the Governor, Deputy Governor or an employee of the Central Bank;

“prudential matters”, in relation to an Authorized Institution means matters relating to the conduct by that institution and any group of which it is a member of any of their affairs --

- (a) in such a way as -
 - (i) to keep itself in a sound financial position; and
 - (ii) not to cause or promote instability in the Papua New Guinea financial system; and
- (b) such that they are conducted with integrity, prudence and professional skill; and
- (c) which ensure compliance with the relevant obligations placed on the institution by or under this Act;

“prudential standard” has the meaning given to it under Section 27;

“related company” has the meaning given to it by Subsection (2);

“relative”, in relation to a person, means -

- (a) the person’s spouse; or
 - (b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person; or
 - (c) a parent or remoter lineal ancestor of the person; or
 - (d) a son, daughter or remoter lineal descendant of the person;
- or
- (e) a brother or sister of the person;

“shareholder controller” means a person who, either alone or with any associate or associates has a stake in -

- (a) an Authorized Institution; or
- (b) a holding company of an Authorized Institution, of more than 15%;

“stake” means the aggregate of the voting power that a person controls in a body corporate at general meeting;

“statutory manager” means either the Central Bank or an administrator;

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“subsidiary” has the meaning given by Subsection (2);
“this Act” includes the regulations and prudential standards made under this Act.

(2) For the purposes of this Act, the question whether a body corporate is subsidiary or holding company or a related company of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Companies Act 1997*.

4. APPLICATION OF COMPANIES ACT 1997.

The requirements of this Act in relation to a body corporate are in addition to and not in derogation of or substitution for the requirements of the *Companies Act 1997*, but in the case of a conflict between a provision of this Act and a provision of the *Companies Act 1997* the former provision prevails.

PART II. - FUNCTIONS AND POWERS OF THE CENTRAL BANK.

5. FUNCTIONS OF THE CENTRAL BANK UNDER THIS ACT.

(1) The principal function of the Central Bank under this Act shall be to promote the general stability and effective working of the financial system in Papua New Guinea.

(2) The Central Bank shall have the powers conferred on it by this Act and the duty generally to supervise the institutions authorized by it in the exercise of those powers.

- (3) The functions of the Central Bank under this Act include –
- (a) the protection of the interests of depositors and potential depositors; and
 - (b) the collection and analysis of information in respect of prudential matters relating to Authorized Institutions; and
 - (c) the encouragement and promotion of the carrying out by Authorized Institutions of sound practices in relation to prudential matters; and
 - (d) the evaluation of the effectiveness of carrying out of those practices.
- (4) Without limiting the generality of this section, the Central Bank shall –
- (a) be responsible for supervising compliance with the provisions of this Act; and
 - (b) promote, encourage and enforce proper standards of conduct and sound and prudent business practices amongst Authorized Institutions including by the issue of prudential standards; and

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- (c) suppress or aid in suppressing illegal, dishonorable or improper practices of Authorized Institutions.

6. POWERS OF THE CENTRAL BANK UNDER THIS ACT.

The Central Bank has all the powers of a natural person to do, in Papua New Guinea or elsewhere, all things necessary or convenient to be done for or in connection with the achievement of its functions under this Act.

PART III. - PROVISIONS RELATING TO THE CARRYING ON OF BANKING BUSINESS.

7. ONLY AUTHORIZED OR EXEMPT PERSONS TO CARRY ON BANKING BUSINESS.

- (1) A person is guilty of an offence where -
 - (a) the person carries on banking business; and
 - (b) the person is not a body corporate; and
 - (c) there is no order in force under Section 8 determining that this Subsection does not apply to the person.
- (2) A body corporate is guilty of an offence where --
 - (a) the body corporate carries on any banking business; and
 - (b) the body corporate is not the Central Bank; and
 - (c) the body corporate is not an Authorized Institution; and
 - (d) there is no order in force under Section 8 determining that this Subsection does not apply to the body corporate.

8. EXEMPTIONS.

(1) The Central Bank may, by order published in the National Gazette, determine that -

- (a) Section 7 does not apply to the acceptance of deposits by specified persons; or
- (b) specified transactions do not constitute a deposit for the purposes of whether a deposit is taken in the course of conducting banking business,

during the period while the order continues in force.

(2) Before any exemption under Subsection (1) shall be granted the Central Bank shall be satisfied that appropriate safeguards exist to protect depositors who -

- (a) deposit money with persons specified in any order pursuant to Subsection (1)(a); or
- (b) enter into transactions specified in any order pursuant to Subsection (1)(b).

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- (3) An order made under this section -
- (a) - may be expressed to apply to -
 - (i) a particular person or to the persons included in a class of persons; or
 - (ii) a particular class of transactions; and
 - (b) may specify the period during which the order shall remain in force; and
 - (c) may be made subject to such conditions as are specified in the order.
- (4) Without limiting the generality of this section, the conditions imposed under this section may relate to any one or more of the following:-
- (a) the amount of the deposit;
 - (b) the total liability of the person accepting the deposit to his depositors or any other creditors;
 - (c) the circumstances in which, or the purpose for which, the deposit is made;
 - (d) the identity of the person by whom the deposit is made;
 - (e) the number of or the amount involved in transactions of any particular description carried out by the person accepting the deposit or the frequency with which he carries out transactions of any particular description.
- (5) A person is guilty of an offence where -
- (a) the person does, or fails to do, an act; and
 - (b) the act results in a contravention of a condition to which an order under this section is subject.
- (6) The Central Bank may, by order published in the National Gazette, vary or revoke an order under this section.

9. CERTAIN ACTIVITIES CONFINED TO BANKS.

Only a bank may carry on the business of -

- (a) accepting money on deposit that is repayable on demand by cheque drawn by the depositor on the borrower; or
- (b) paying and collecting cheques drawn by or paid in by depositors; or
- (c) such other financial activities prescribed by regulations.

10. LICENCE TO CARRY ON BANKING BUSINESS.

(1) A body corporate which desires authority to carry on banking business shall apply in writing to the Central Bank for a licence as either a bank or a licensed financial institution.

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- (2) The application under Subsection (1) shall -
- (a) be in a form prescribed by the Central Bank; and
 - (b) include the matters specified in Schedule 1; and
 - (c) include such other information or documents as the Central Bank may require; and
 - (d) be accompanied by the application fee (which is not refundable) specified in Schedule 6.

(3) Where an application has been made, the Central Bank may grant the body corporate a licence to carry on banking business as a bank or a licensed financial institution where it is satisfied with regard to the criteria set out in Schedule 2.

(4) At any time after receiving an application and before determining it, the Central Bank may by written notice require the applicant or any person who is or who is to be a shareholder controller, indirect controller, director, chief executive or manager of the applicant to provide additional information or documents.

(5) A licence shall be in writing, and the Central Bank shall give the body corporate written notice of the granting of the licence.

(6) Where the Central Bank grants a licence under this section the Central Bank -

- (a) shall cause notice of the licence to be published in the National Gazette, and
- (b) may cause notice of the licence to be published in any other way it considers appropriate.

(7) A licence may be granted subject to conditions which may be revoked or varied in accordance with this Act.

(8) A licence is personal to the Authorized Institution and is incapable of being transferred.

11. REFUSAL OF APPLICATION.

(1) Where the Central Bank proposes to refuse an application for a licence it shall give the applicant written notice of its intention to do so, stating the reasons why it proposes to act and giving particulars of the applicant's rights under Subsection (2).

(2) An applicant may make written representations within 28 days of receipt of the notice under Subsection (1).

(3) Where representations under Subsection (2) are made the Central Bank shall take them into account before reaching a decision on the application.

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(4) Where the Central Bank refuses an application it shall give written notice of that fact to the applicant.

(5) Any notice under Subsection (4) shall be given before the end of the period of six months beginning on the day on which the application was received by the Central Bank or, where the Central Bank has under Section 10, required additional information or documents in connection with the application, before the end of whichever of the following first expires -

- (a) the period of six months beginning with the day on which the additional information or documents are provided; or
- (b) the period of 12 months beginning with the day on which the application was received.

12. MINIMUM CAPITAL.

(1) A licence shall only be issued where the net assets of the applicant are not less than the relevant amount specified in Schedule 3.

(2) Where the relevant amount specified in Schedule 3 is increased pursuant to the power in Section 55, every Authorized Institution shall, within one year, bring its net assets up to the increased amount.

(3) An Authorized Institution licensed under the former Act shall, within one year (or such further time as prescribed by the Central Bank) from the date of commencement of this Act, bring its net assets to the relevant amount specified in Schedule 3.

13. DIRECTORS, CHIEF EXECUTIVES AND MANAGERS OF AUTHORIZED INSTITUTIONS TO BE FIT AND PROPER.

(1) An Authorized Institution shall ensure that -

- (a) the criteria specified in Schedule 2; and
- (b) any relevant prudential standards,

are fulfilled when appointing and continuing with the appointment of persons as directors, chief executives and managers.

(2) The Central Bank may, at any time, by notice in writing served on -

- (a) any person who is or is to be a director, chief executive or manager of an Authorized Institution; or
- (b) the Authorized Institution concerned,

require that person or the Authorized Institution (as the case may be) to provide the Central Bank, within such time as may be specified in the notice, with such information

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or documents as the Central Bank may reasonably require for determining whether that person is a fit and proper person to hold the particular position which he holds or is to hold.

(3) The Central Bank may serve a notice of objection to a director, chief executive, or manager (as the case may be) and the Authorized Institution concerned, stating the person concerned is not a fit and proper person to hold that particular position.

(4) Before serving a notice of objection under Subsection (3) the Central Bank shall serve the person and the Authorized Institution concerned with a preliminary written notice stating that the Central Bank is considering the service on those persons of a notice of objection, and such notice shall -

- (a) specify the reasons for which it appears to the Central Bank that the person in question is not or is no longer a fit and proper person; and
- (b) specify the action proposed by the Central Bank; and
- (c) give particulars of the rights conferred by Subsection (5).

(5) A person or the Authorized Institution to be served with a notice under Subsection (3) may, within the period of 28 days beginning on the day on which the notice under Subsection (4) is served, make written representations to the Central Bank, and where such representations are made the Central Bank shall take them into account in deciding whether to serve a notice of objection.

(6) After giving a notice under Subsection (4) and taking into account any representation made under Subsection (5) the Central Bank shall decide whether -

- (a) to proceed with the action proposed in the notice under Subsection (4); or
- (b) to take no further action; or
- (c) to impose other conditions or additional conditions on the person holding that particular position.

(7) A notice of objection under this section shall specify reasons why the Central Bank is not satisfied that the person is fit and proper.

(8) Subsections (4) and (7) shall not require the Central Bank to specify any reason which would in the opinion of the Central Bank involve the disclosure of protected information or disclose information which would be prejudicial to a third party.

(9) A notice under Subsection (3) shall be given -

- (a) within the period of 28 days beginning the day on which the representation under Subsection (5) was made to the Central Bank; or

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- (b) where no representation was made to the Central Bank under Subsection (5), within a period of 42 days beginning the day on which the notice under Subsection (4) was given.

14. CONDITIONS ON LICENCE.

(1) The Central Bank may at any time by notice in writing served on an Authorized Institution -

- (a) impose conditions or additional conditions on a licence of the Authorized Institution; or
(b) vary or revoke such conditions.

(2) The conditions referred to in Subsection (1) must relate to prudential matters.

(3) A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations.

(4) Without limiting the generality of this section, the conditions imposed under this section may do any one or more of the following:-

- (a) require the Authorized 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) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
(c) prohibit the Authorized Institution from soliciting deposits, either generally or from persons who are not already depositors;
(d) prohibit the Authorized Institution from entering into any other transaction or class of transactions;
(e) require the removal of any directors, managers or chief executives.

(5) An Authorized Institution which fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section is guilty of an offence.

15. REVOCATION OF LICENCE.

The Central Bank may revoke the licence of an Authorized Institution where it appears to the Central Bank that -

- (a) any of the criteria specified in Schedule 2 are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of the Authorized Institution; or
(b) the Authorized Institution has failed to comply with any obligation imposed on it by or under this Act; or

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- (c) the Authorized Institution has failed to comply with any condition imposed on the licence; or
- (d) a person has become a shareholder controller or an indirect controller of the Authorized Institution in contravention of Section 20 or has become or remains a shareholder controller or indirect controller after being given a notice of objection by the Central Bank under this Act; or
- (e) the Central Bank has been provided with false, misleading or materially inaccurate information -
 - (i) by or on behalf of the Authorized Institution; or
 - (ii) in connection with an application for authorization; or
 - (iii) by or on behalf of a person who is a director, chief executive or manager of the Authorized Institution; or
- (f) the interests of depositors or potential depositors of the Authorized Institution are in any other way threatened, whether by the manner in which the Authorized Institution is conducting or proposes to conduct its affairs or for any other reason; or
- (g) the Authorized Institution -
 - (i) has not accepted a deposit in Papua New Guinea in the course of carrying on banking business within the period of 12 months beginning with the day on which it was licensed; or
 - (ii) having accepted a deposit or deposits as aforesaid, has subsequently not done so for any period of more than six months; or
- (h) where in the case of an Authorized Institution whose principal place of business is outside Papua New Guinea the relevant supervisory authority in that country or territory has withdrawn any licence or authorization corresponding to that conferred by the Central Bank; or
- (i) any of the following has occurred with respect to the Authorised Institution:-
 - (i) a composition or arrangement with creditors has been made in respect of the Authorized Institution;
 - (ii) a receiver or manager of the Authorized Institution's undertaking has been appointed;
 - (iii) possession has been taken, by or on behalf of the holders of any debenture secured by a charge, of any property of the institution comprised in or subject to the charge;
 - (iv) it has ceased to carry on business, gone into liquidation or has been wound up or dissolved or if anything having an analogous effect has occurred in the place of incorporation of the Authorized Institution; or

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- (j) in the case of an Authorized Institution whose principal place of business is outside Papua New Guinea or is incorporated elsewhere, anything having an analogous effect to the events in Paragraph (i) has occurred.

16. NOTICE OF CONDITIONS AND REVOCATION.

(1) Where the Central Bank proposes -

- (a) to revoke a licence; or
- (b) to impose a condition or additional conditions on a licence; or
- (c) to vary or revoke the conditions imposed on a licence otherwise than with the agreement of the Authorized Institution concerned,

the Central Bank shall give to the Authorized Institution concerned no less than 28 days prior written notice of its intention to do so.

(2) Where the proposed action is within Subsection (1)(b) or (c), the notice under that subsection shall specify the proposed conditions or the proposed variation, as the case may be.

(3) A notice under Subsection (1) shall state the reasons why the Central Bank proposes to act and give particulars of the Authorized Institution's rights under Subsection (4).

(4) An Authorized Institution which is given notice under Subsection (1) may within a period of 28 days beginning on the day on which the notice was given make written representations to the Central Bank.

(5) After giving a notice under Subsection (1) and taking into account any representations made under Subsection (4) the Central Bank shall decide whether -

- (a) to proceed with the action proposed in the notice; or
- (b) to take no further action; or
- (c) where the proposed action was to revoke the Authorized Institution's licence, to impose conditions on its licence instead; or
- (d) where the proposed action was to vary conditions on the Authorized Institution's licence, to vary the conditions in a different manner.

(6) The Central Bank shall give the Authorized Institution 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.

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(7) A notice under Subsection (6) of a decision to revoke or impose conditions on a licence shall have the effect of revoking the licence or imposing conditions on the licence or varying conditions in the manner specified in the notice, as the case may be.

- (8) A notice under Subsection (6) shall be given -
- (a) within the period of 42 days beginning on the day on which the representations under Subsection (4) were made to the Central Bank; or
 - (b) where no representation was made to the Central Bank under Subsection (4), within a period of 28 days beginning on the day on which the notice under Subsection (1) was given.

17. CONDITIONS AND REVOCATION IN CASES OF URGENCY.

- (1) No notice need be given under Section 16 in respect of -
- (a) the revocation of the licence of an Authorized Institution where it appears to the Central Bank that -
 - (i) a winding up order has been made against the Authorized Institution in Papua New Guinea; or
 - (ii) the Authorized Institution is insolvent or there is a significant risk that the Authorized Institution will become insolvent; or
 - (iii) in the case of an Authorized Institution incorporated outside Papua New Guinea, an event has occurred in respect of it outside Papua New Guinea which corresponds to Subparagraphs (i) or (ii); or
 - (b) the imposition or variation of conditions on the licence of an Authorized Institution in any case which the Central Bank considers that the conditions should be imposed or varied as a matter of urgency in order to protect the interests of depositors.

(2) In any case to which Subsection (1) applies, the Central Bank may by written notice to the Authorized Institution immediately revoke the licence or impose or vary the conditions on the licence.

(3) A notice under Subsection (2) shall state the reasons for which the Central Bank has acted and particulars of the rights conferred by Subsection (4).

(4) An Authorized Institution to which notice is given under this section may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Central Bank.

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(5) After giving a notice under Subsection (2) and taking into account any representations made in accordance with Subsection (4) the Central Bank shall decide whether -

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

(6) The Central Bank shall, within the period of 28 days beginning on the day on which the notice was given under Subsection (2), give the Authorized Institution concerned written notice of its decision under Subsection (5), and except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(7) Where a notice under Subsection (6) is a decision to take action specified in Subsection (5)(b), the notice under Subsection (6) shall have the effect of imposing the condition or making the variation specified in the notice and with effect from the date on which it is given.

(8) Where the notice of the proposed revocation of an Authorized 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 under Section 16.

18. SURRENDER OF AUTHORIZATION.

(1) An Authorized Institution may, by notice in writing to the Central Bank request approval to surrender its licence.

(2) The Central Bank may accept a request under Subsection (1) where it is satisfied that the surrender would not be contrary to the interests of depositors of the Authorized Institution.

(3) The surrender will take effect on such date as may be specified by the Central Bank by notice in writing to the Authorized Institution.

(4) The Central Bank shall publish notice of the surrender in the National Gazette.

19. PUBLICATION OF NAMES OF AUTHORIZED INSTITUTIONS.

(1) The Central Bank may, from time to time, publish a list of -

- (a) Authorized Institutions; or
- (b) exempted persons and transactions and any conditions attached to such exemptions pursuant to Section 8.

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(2) The Central Bank shall include a list of Authorized Institutions and exempted persons and transactions and any conditions attached to such exemptions pursuant to Section 8 when delivering annual reports to the Minister as required by the *Central Banking Act 2000*.

(3) Where an Authorized Institution proposes to change its name it shall give written notice to the Central Bank of the proposed name for the Central Bank's consent.

(4) Where the Central Bank consents to a change of name, it shall publish that fact, together with the Authorized Institution's new name, in the National Gazette.

PART IV. - OWNERSHIP AND CONTROL OF AUTHORIZED INSTITUTIONS.

20. OBJECTIONS TO SHAREHOLDER CONTROLLERS OR INDIRECT CONTROLLERS BY THE CENTRAL BANK.

(1) No person shall become a shareholder controller or an indirect controller of an Authorized Institution incorporated in Papua New Guinea or increase his stake in the Authorized Institution beyond the maximum specified by the Central Bank pursuant to Subsection (2) unless -

- (a) he has first notified the Central Bank in writing of his intention; and
- (b) the Central Bank has notified him in writing that there is no objection to his becoming such a controller or increasing his stake.

(2) The Central Bank, when notifying a person under Subsection (1)(b) that there is no objection to his becoming a shareholder controller of or increasing his stake in the Authorized Institution may specify a maximum stake that the person is permitted to acquire.

- (3) The Central Bank -
- (a) may specify the information that a notification under Subsection (1)(a) shall contain; and
 - (b) may require by notice in writing such further information and documents as it may reasonably require, once a notification has been received.

(4) Any notification under Subsection (1)(a) shall lapse, where the person has not become a shareholder controller or indirect controller or increased his stake within one year from the issuing of a notice of no objection under Subsection (1)(b).

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(5) The Central Bank shall not issue a notice of no objection under this section in respect of a notification to acquire a stake in a bank until the expiry of the periods referred to in Section 21(5).

21. OBJECTIONS BY THE MINISTER IN NATIONAL INTEREST.

(1) Where -

- (a) a notification specified in Section 20(1)(a) is a notification of intention to become a shareholder controller or indirect controller of a bank; or
- (b) a notification specified in Section 20(1)(a) is a notification of intention to increase a stake in a bank beyond that permitted under Section 20; or
- (c) the Central Bank becomes aware that a person has become a shareholder controller or an indirect controller of a bank or has increased his stake beyond that permitted under Section 20, in either case without the required notice under Section 20(1)(a),

the Central Bank shall promptly notify the Minister.

(2) After receiving a notification from the Central Bank under Subsection (1), the Minister may direct the Central Bank to issue a notice of objection to the person in respect of the stake referred to in the notification where it appears to the Minister that to do so would be in the national interest.

(3) The Minister may give reasons for a direction under Subsection (2).

(4) The Minister may direct the Central Bank to require such further information and documents as he may reasonably require in connection with the matter from the person which is the subject of the notification.

(5) Any direction under Subsection (2) shall be given before the end of the period of three months beginning on the day on which the notification from the Central Bank was received by the Minister or, where the Minister has directed the Central Bank under Subsection (4) to require additional information or documents in connection with the matter, before the end of whichever of the following first expires -

- (a) the period of three months beginning with the day on which the additional information or documents are provided to the Minister; or
- (b) the period of six months beginning with the day on which the notification was received by Minister.

(6) The Central Bank shall promptly serve a notice of objection on that person where directed by the Minister.

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(7) A notice of objection served under this section shall have the effect of terminating any right to make representations under Section 22.

22. NOTICE OF OBJECTION.

(1) The Central Bank may serve a notice of objection under this section on a person who has given a notification under Section 20 unless the person satisfies the Central Bank that -

- (a) the person concerned is a fit and proper person to become a shareholder controller or an indirect controller of the Authorized Institution or to increase his stake in the Authorized Institution, and
- (b) the person is likely to assist the Authorized Institution to fulfill the matters set out in Schedule 2 and the relevant prudential standards; and
- (c) the interests of depositors or potential depositors of the Authorized Institution would not in any other manner be threatened by the person becoming or being a shareholder controller or indirect controller of, or increasing his stake in, the Authorized Institution.

(2) Before serving a notice of objection under this section, the Central Bank shall serve the person concerned with a preliminary notice setting out its intention to serve a notice under Subsection (1), and the reasons why it is not satisfied.

(3) A person served with a notice under Subsection (2) shall have a period of 28 days in which to make written representations to the Central Bank, and the Central Bank shall take into account any written representations received by it under this subsection.

(4) A notice of objection under this section shall set out the reasons why the Central Bank is not satisfied, except that such a notice may not include information, the disclosure of which would be prejudicial to a third party.

(5) Where a person has -

- (a) become a shareholder controller or an indirect controller, under Section 20; or
- (b) has increased his stake beyond any maximum stake specified under that section,

without having first notified the Central Bank, the Central Bank may serve him with a notice of objection.

(6) The Central Bank may require by notice in writing such further information and documents as it may reasonably require for the purpose of deciding whether to serve a notice under Subsection (5).

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(7) A notice of objection under Subsection (2) shall be given before the end of the period of three months beginning on the day on which the Central Bank received the notification under Section 20 or, where the Central Bank has required additional information or documents in connection with the matter under that section, before the end of whichever of the following first expires -

- (a) the period of three months beginning with the day on which the additional information or documents are provided to the Central Bank; or
- (b) the period of six months beginning with the day on which the notification was received by the Central Bank.

(8) The periods referred to in Subsection (7) shall be extended as necessary by up to 56 days, from the day on which the preliminary notice served under Subsection (2) was served.

(9) The periods referred to in Subsections (7) and (8) shall, in the case of a bank, not expire before the end of the appropriate period referred to in Section 21(5).

23. NOTIFICATION OF INTENTION TO INCREASE THE STAKE.

(1) Where a person who already is a shareholder controller, and who has not received a notice of objection under Section 22, wishes to increase his stake in the relevant Authorized Institution beyond that permitted under Section 20, he shall notify the Central Bank under Section 20 of his intention.

(2) Upon receiving the notice of intention referred to in Subsection (1), the procedures set out in Sections 20 and 22 shall then apply but with respect to the increased stake which is mentioned in that notice of intention.

24. OBJECTIONS TO EXISTING SHAREHOLDER CONTROLLERS AND INDIRECT CONTROLLERS.

(1) Where it appears to the Central Bank that a person who is a shareholder controller or an indirect controller of an Authorized Institution does not or no longer meets the requirements set out in Section 22(1) to be such a controller, it may serve him with a written notice of objection to him being such a controller.

(2) Before serving a notice under Subsection (1), the Central Bank shall serve a preliminary notice, setting out its reasons for considering that the person is not or is no longer fit and proper to be a shareholder controller or an indirect controller of that Authorized Institution.

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(3) A person served with a notice under Subsection (2) has a period of 28 days in which to make written representations to the Central Bank, and the Central Bank shall take into account any written representation received by it under this subsection.

(4) A notice of objection under this section shall specify the reasons why it appears to the Central Bank that the person is not or is no longer a fit and proper person to be a shareholder controller or indirect controller.

(5) The Central Bank is not required to specify any reason in a notice issued under this section, where this would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

25. CONTRAVENTIONS BY SHAREHOLDER CONTROLLER AND INDIRECT CONTROLLER.

(1) Subject to Subsection (2), a person who contravenes this Part by failing to give the notice required by Section 20(1)(a) or 23(1), is guilty of an offence.

(2) A person is not guilty of an offence under Subsection (1) where he shows that he did not know of the acts or circumstances by virtue of which he became a shareholder controller or indirect controller, or increased his stake in the Authorized Institution beyond the maximum permitted by the Central Bank, but where any person becomes a shareholder controller or indirect controller or increases his stake without such knowledge and subsequently becomes aware of the fact he is guilty of an offence unless he gives the Central Bank written notice of the fact within 14 days of becoming aware of that fact.

26. REMEDIAL ORDERS.

(1) The powers conferred by this section are exercisable where a person has contravened this Part by becoming or continuing to be a shareholder controller or indirect controller or increasing his stake beyond the maximum specified by the Central Bank pursuant to Section 20(2) after being served with a notice of objection to his becoming or remaining a shareholder controller or indirect controller or increasing his stake beyond the maximum specified by the Central Bank pursuant to Section 20(2).

(2) Where a person contravenes this Part by becoming or continuing to be a shareholder controller or increasing his stake beyond the maximum specified by the Central Bank pursuant to Section 20(2), the Central Bank may, by notice in writing served on the person concerned including any associate, direct that any specified shares to which this Section applies shall, until further notice, be subject to restrictions as notified by the Central Bank including all or any of the following:-

(a) any transfer of, or agreement to transfer, those shares or, in the cases of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;

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- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment shall be made of any sums due from the institution on the shares, whether in respect of capital or otherwise.

(3) Where a person contravenes this Part by becoming or continuing to be an indirect controller, the Central Bank may, by written notice to that person, require that person to take such steps as are necessary to ensure that the person ceases to be an indirect controller.

(4) A copy of the notice served on the person concerned under Subsections (2) and (3) shall be served on the Authorized Institution to whose shares it relates and, where it relates to shares held by an associate of that person, on that associate.

(5) Without prejudice to Subsection (2) or (3), where a person contravenes this Part, the National Court may, on application by the Central Bank, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.

- (6) Orders of the National Court under Subsection (5) may include -
- (a) in the case of a shareholder controller -
 - (i) an order directing the disposal of shares; or
 - (ii) an order restraining the exercise of any rights attached to shares; or
 - (iii) an order prohibiting or deferring the payments of any sums due to a person in respect of shares held by the person; or
 - (iv) an order that any exercise of rights attached to shares be disregarded; or
 - (b) in the case of an indirect controller, an order to ensure the person ceases to be an indirect controller.

(7) Subsection (6) does not, by implication, limit Subsection (5).

(8) In addition to the powers of the National Court under Subsections (5) and (6), the Court -

- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
- (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.

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(9) The National Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

(10) The National Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

(11) This section applies -

- (a) to all the shares in the Authorized Institution of which the person in question is a shareholder controller which are held by him or any associate of his and were not so held immediately before becoming a shareholder controller of the Authorized Institution; and
- (b) where the person in question became a shareholder controller of an Authorized Institution as a result of the acquisition by him or any associate of his of shares in another body corporate, to all the shares in that body corporate which are held by him or any associate of his and were not so held before he became a shareholder controller of the Authorized Institution.

PART V. - PRUDENTIAL SUPERVISION OF AUTHORIZED INSTITUTIONS.

27. CENTRAL BANK MAY MAKE PRUDENTIAL STANDARDS FOR AUTHORIZED INSTITUTIONS.

(1) The Central Bank may, in writing, determine standards, known as prudential standards, in relation to prudential matters to be complied with by -

- (a) all Authorized Institutions; or
- (b) a specified class of Authorized Institutions; or
- (c) one or more specified Authorized Institutions; or
- (d) shareholder controllers; or
- (e) indirect controllers; or
- (f) the group of which the Authorized Institution is a member.

(2) A prudential standard may impose different requirements to be complied with in different situations or in respect of different activities.

(3) The Central Bank may, in writing, vary or revoke a prudential standard.

(4) The Central Bank shall circulate to all Authorized Institutions and shall publish in such manner as it thinks fit, each prudential standard, and any variation or revocation of such standard.

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(5) Where the Central Bank considers that a prudential standard or any variation or revocation of a standard contains commercially sensitive or confidential information -

- (a) the Central Bank is not required to circulate or publish that information under Subsection (4); but
- (b) the Central Bank may include some or all of that information in the circulation or publication under Subsection (4) where the Central Bank considers it appropriate to do so.

(6) A failure to comply with this section does not affect the validity of the action concerned taken by the Central Bank.

PART VI. - INFORMATION AND INVESTIGATION.

28. CENTRAL BANK TO BE SUPPLIED WITH CERTAIN DOCUMENTS.

(1) An Authorized Institution shall supply the information specified in Schedule 4.

(2) Any proposed alteration to the Act, charter, deed of settlement, constitution or other constituent document of the applicant shall be submitted to the Central Bank for approval.

(3) An Authorized Institution which fails to supply the information or give a notice required by this section, is guilty of an offence.

29. POWER TO OBTAIN INFORMATION AND REQUIRE PRODUCTION OF DOCUMENTS.

(1) The Central Bank may by notice in writing served on an Authorized Institution -

- (a) require the Authorized Institution to provide the Central Bank, at such time as may be specified in the notice, with such information as the Central Bank may reasonably require for the performance of its functions under this Act; and
- (b) require the Authorized Institution to provide the Central Bank with a report by an accountant or other person with relevant professional skill on any matter about which the Central Bank has required or could require the Authorized Institution to provide information under Paragraph (a).

(2) The accountant or other person appointed under Subsection (1)(b) shall be a person nominated or approved by the Central Bank, and the Central Bank may require his report to be in such form as is specified in the notice.

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- (3) The Central Bank may -
- (a) by notice in writing served on an Authorized Institution require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified; and
 - (b) authorize an officer or agent of the Central Bank, on producing evidence of his authority, to require any such Authorized Institution to provide him forthwith such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the Central Bank may reasonably require for the performance of its functions under this Act.
- (4) The Central Bank shall have power to require the production of the documents referred to in Subsection (3) from any person who appears to be in possession of them, but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.
- (5) The power under this section to require an Authorized Institution or other person to produce any documents includes power -
- (a) where the documents are produced, to take copies of them or extracts from them and to require that Authorized Institution or person, or any other person who is a present or past director, chief executive or manager of, or is or was at any time employed by or acting as an employee of, the Authorized Institution in question, to provide an explanation of any of them; and
 - (b) where the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (6) Where it appears to the Central Bank to be necessary or desirable in the interests of depositors or potential depositors in an Authorized Institution, it may also exercise the powers conferred by Subsections (1) and (3) in relation to -
- (a) any body corporate which is or has at any relevant time been -
 - (i) a holding company, subsidiary or related company of that Authorized Institution; or
 - (ii) a subsidiary or a related company of a holding company of that Authorized Institution; or
 - (iii) a holding company of a subsidiary of that Authorized Institution; or

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- (iv) a body corporate in the case of which a shareholder controller of that Authorized Institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 15% of the voting power at a general meeting; or
- (b) any other business including a partnership or joint venture of which that Authorized Institution is or has been at any relevant time a participant.

(7) The Central Bank may by notice in writing served on any person who is or is to be a director, chief executive or manager of an Authorized Institution require him to provide the Central Bank, within such time as may be specified in the notice, with such information or documents as the Central Bank may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(8) The Central Bank may exercise the powers conferred by this section in relation to any person who is a shareholder controller or indirect controller of an Authorized Institution where it appears to the Central Bank to be necessary or desirable in the interests of protecting depositors or potential depositors.

(9) The Central Bank may exercise the powers conferred by this section in relation to any person where the Central Bank considers there is a contravention or a reasonable likelihood of a contravention of this Act or regulations made under this Act or a prudential standard.

(10) A person who, without reasonable excuse, fails to comply with a requirement imposed under this section is guilty of an offence.

(11) Nothing in this section shall compel the production of a document which is subject to legal professional privilege.

30. RIGHT OF ENTRY TO OBTAIN INFORMATION AND DOCUMENTS.

(1) An officer or agent of the Central Bank may, on producing where required, evidence of his authority, enter any premises occupied by a person on whom a notice has been served under Section 29 for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by that section.

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(2) An officer or agent of the Central Bank may, on producing where required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under Section 29 for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice, but the Central Bank shall not authorize a person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) A person, who intentionally obstructs a person exercising rights conferred by this section is guilty of an offence.

31. INVESTIGATIONS ON BEHALF OF THE CENTRAL BANK.

(1) Where it appears to the Central Bank desirable to do so in the interests of the depositors or potential depositors of an Authorized Institution, the Central Bank may appoint one or more competent persons to investigate and report to the Central Bank on —

(a) the nature, conduct or state of the Authorized Institution's business or any particular aspect of it; or

(b) the ownership or control of the Authorized Institution,

and the Central Bank shall give written notice of any such appointment to the Authorized Institution concerned.

(2) Where a person appointed under Subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate —

(a) the business of any body corporate which is or has at any relevant time been —

(i) a holding company, subsidiary or related company of the Authorized Institution under investigation;

(ii) a subsidiary or related company of a holding company of that Authorized Institution; or

(iii) a holding company of a subsidiary of that Authorized Institution; or

(iv) a body corporate in the case of which a shareholder controller of that Authorized Institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 15% of the voting power at a general meeting; or

(b) or any other business including a partnership or joint venture in which that Authorized Institution is or has been at any relevant time a participant.

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(3) Where a person appointed under Subsection (1) decides to investigate the business of any body by virtue of Subsection (2) he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a director, chief executive, manager, employee, agent, banker, auditor or lawyer of a body which is under investigation (whether by virtue of Subsection (1) or (2)), any person appointed to make a report in respect of that body under Section 29 and anyone who is a shareholder controller or indirect controller in relation to that Authorized Institution -

- (a) to produce to the persons appointed under Subsection (1), within such time and at such place as they may require, all documents relating to the Authorized Institution concerned which are in his custody or power; and
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give;

and those persons may take copies of or extracts from any documents produced to them under Paragraph (a).

(5) The foregoing provisions of this section shall apply to a former Authorized Institution as they apply to an Authorized Institution.

(6) For the purpose of exercising his powers under this section a person appointed under Subsection (1) may enter any premises occupied by a body which is being investigated by him under this section, but he shall not do so without giving prior notice in writing unless he has reasonable cause to believe that where such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(7) A person exercising powers by virtue of an appointment under this section shall, where so required, produce evidence of his authority.

- (8) A person who -
- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under Subsection (4); or
 - (b) without reasonable excuse fails to attend before the persons appointed under Subsection (1) when required to do so; or
 - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an Authorized Institution which is under investigation or a body which is being investigated by virtue of Subsection (1) or (2); or

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(d) intentionally obstructs a person in the exercise of the rights conferred by Subsection (6),
is guilty of an offence.

(9) Nothing in this section shall compel the production of a document which is subject to legal professional privilege.

32. INVESTIGATIONS OF SUSPECTED CONTRAVENTIONS OF THIS ACT.

(1) Where the Central Bank has reasonable grounds for suspecting that a person is guilty of contravening this Act, the Central Bank or any duly authorized officer or agent of the Central Bank may by notice in writing require that or any other person -

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Central Bank may reasonably require for the purpose of investigating the suspected contravention; and
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such document or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Central Bank for that purpose; and
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Central Bank or a duly authorized officer or agent of the Central Bank may take copies of or extracts from any documents produced under this section.

(3) An officer, or agent of the Central Bank may, on producing where required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under Subsection (1) for the purpose of obtaining the information or documents required by the notice, putting the questions referred to in Subsection (1)(c) or exercising the powers conferred by Subsection (2).

(4) A person, who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by Subsection (3) is guilty of an offence.

(5) Nothing in this section shall compel the production of a document which is subject to legal professional privilege.

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33. OBSTRUCTION OF INVESTIGATIONS.

A person who knows or suspects that an investigation is being or is likely to be carried out -

- (a) under Section 32; or
- (b) into a suspected contravention of this Act,

is guilty of an offence where he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation, unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

34. FALSE AND MISLEADING INFORMATION.

(1) A person, who knowingly or recklessly provides the Central Bank or any other person with information which is false or misleading in a material particular, is guilty of an offence where the information is provided -

- (a) in purported compliance with a requirement imposed by or under this Act; or
- (b) otherwise than as mentioned in Paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Central Bank for the purpose of exercising its functions under this Act.

(2) A person, who knowingly or recklessly provides the Central Bank or any other person with information which is false or misleading in a material particular is guilty of an offence where the information is provided in connection with an application for authorization under this Act.

(3) A person, who knowingly or recklessly provides any person appointed under Section 32 with information which is false or misleading in a material particular, is guilty of an offence.

35. DUTY TO GIVE INFORMATION.

(1) An Authorized Institution is under a duty promptly to provide the Central Bank with any information in its possession where the Authorized Institution knows or has or having reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Central Bank of its functions under this Act in relation to the Authorized Institution; and
- (b) that the withholding of the information is likely to result in the Central Bank being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to the Authorized Institution.

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- (2) A person who is or has been -
- (a) a director or chief executive or manager of an Authorized Institution; or
 - (b) an auditor of an Authorized Institution; or
 - (c) an auditor of a body corporate in the Authorized Institution's group; or
 - (d) a person appointed to make a report under Section 29 or 32, is under a duty promptly to inform the Central Bank of any matter where he has reasonable grounds for believing that -
 - (e) the Authorized Institution is insolvent, or there is a significant risk that the Authorized Institution will become insolvent; or
 - (f) an existing or proposed state of affairs may materially prejudice the interests of depositors of the Authorized Institution.
- (3) In relation to an auditor under Subsection (2)(b) or (c), this Subsection (2) applies to any matter of which he becomes aware in his capacity as auditor and which relates to the business or affairs of the Authorized Institution and any group of which it is a member.
- (4) No duty to which a person specified in Subsection (2) may be subject shall be regarded as contravened by reason of his communicating in good faith to the Central Bank, whether or not in response to a request made by the Central Bank, any other information or opinion, which is relevant to any function of the Central Bank under this Act.
- (5) A person, who contravenes this section, is guilty of an offence.

PART VII. - POWER TO TAKE CONTROL OF AN AUTHORIZED INSTITUTION.

36. CONSEQUENCES OF INABILITY OR FAILURE OF AUTHORIZED INSTITUTION TO MEET OBLIGATIONS.

The Central Bank may take control of the business of an Authorized Institution or appoint an administrator to take control of the business of an Authorized Institution where -

- (a) the Authorized Institution informs the Central Bank that the Authorized Institution considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or
- (b) the Central Bank considers that the Authorized Institution is likely to become unable to meet its obligations or is about to suspend payment; or

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- (c) the Authorized Institution becomes unable to meet its obligations or suspends payment; or
- (d) the Authorized Institution fails to implement or observe or breaches a prudential standard or a condition imposed on its licence such that, in the opinion of the Central Bank, the interests of the depositors of the Authorized Institution are materially threatened.

37. STATUTORY MANAGERS - TERMINATION OF CONTROL.

(1) Where the Central Bank assumes control of the business of an Authorized Institution or appoints an administrator of the business of an Authorized Institution, the Central Bank shall ensure that either it or an administrator of the business of the Authorized Institution has control of the business of the Authorized Institution until -

- (a) the following conditions are satisfied:-
 - (i) the deposits of the Authorized Institution have been repaid or the Central Bank is satisfied that suitable provision has been made for their repayment; or
 - (ii) the Central Bank considers that it is no longer necessary for it or an administrator to remain in control of the business of the Authorized Institution; or
- (b) the Central Bank considers that the Authorized Institution is insolvent and is unlikely to be returned to solvency within a reasonable time, and the Central Bank has applied for the Authorized Institution to be wound up under the *Companies Act* 1997.

(2) Before finally terminating control of a statutory manager of the business of the Authorized Institution, the Central Bank shall -

- (a) ensure that directors of the Authorized Institution have been appointed or elected under the constitution of the Authorized Institution at a meeting called by the statutory manager of the Authorized Institution in accordance with the constitution of the Authorized Institution; or
- (b) appoint directors of the Authorized Institution by instrument in writing; or
- (c) ensure that a liquidator for the Authorized Institution has been appointed.

(3) Where the requirements in Subsections (1) and (2) are satisfied, the Central Bank may by instrument in writing terminate control of the business of the Authorized Institution by a statutory manager.

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(4) Where a director is elected or appointed under Subsection (2), the director takes office on the termination of the control by the statutory manager of the business of the Authorized Institution.

(5) Where a director was appointed by the Central Bank, he holds office until the next annual general meeting of the Authorized Institution, subject to any terms and conditions imposed by the Central Bank on the director's appointment, a director was appointed or elected under the constitution of the Authorized Institution, the constitution governs the appointment.

38. POWERS AND FUNCTIONS OF STATUTORY MANAGER.

(1) A statutory manager has the powers and functions of the directors of the Authorized Institution (collectively and individually), including the board's powers of delegation.

(2) A statutory manager may, for the purposes of this Part, require the Authorized Institution or a person who has, at any time, been an officer of the Authorized Institution to give the statutory manager any information relating to the business of the Authorized Institution that the statutory manager requires.

(3) An Authorized Institution or any other person who fails to comply with any requirement to give information under Subsection (2) is guilty of an offence.

(4) A statutory manager may on any terms and conditions that he considers appropriate, sell or otherwise dispose of the whole or any part of the business of the Authorized Institution.

39. LIABILITIES AND DUTIES OF STATUTORY MANAGER.

(1) Where an Authorized Institution incurs any loss because of any fraud, dishonesty, gross negligence or wilful failure to comply with this Act by the statutory manager, the statutory manager is liable for the loss.

(2) A statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, gross negligence or wilful failure to comply with this Act.

(3) Where the statutory manager is an administrator of the business of the Authorized Institution, the administrator must provide details of the loss in a written report to the Central Bank, but failure to do so does not make the administrator liable for the loss.

(4) A statutory manager is not to be taken to be a director for the purposes of Sections 107, 348 and 350 of the *Companies Act 1997*.

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40. ADMINISTRATOR IN CONTROL - ADDITIONAL DUTIES.

(1) A person who is an administrator of the business of an Authorized Institution shall give to the Central Bank a written report showing how the control of the business of the Authorized Institution is being carried out where the Central Bank requests that such a report be provided to it.

(2) A person who is an administrator of the business of an Authorized Institution shall on the termination of his appointment, give to the Central Bank a written report showing how the control of the business of the Authorized Institution was carried out over the period of the administrator's appointment.

(3) The Central Bank may give an administrator of the business of an Authorized Institution a direction relating to the control of the business of the Authorized Institution and may alter such a direction and where a direction (including an altered direction) is given to an administrator, the administrator shall -

- (a) act in accordance with the direction; or
- (b) immediately provide to the Central Bank information relating to the control of the business of the Authorized Institution and request the Central Bank to alter the direction.

(4) Where an administrator of the business of an Authorized Institution requests the Central Bank to alter a direction and the Central Bank after considering the request confirms the direction, the administrator shall act in accordance with the direction.

41. TERMINATION OF APPOINTMENT OF ADMINISTRATOR.

(1) Where an administrator of the business of an Authorized Institution contravenes a requirement under this Act, the Central Bank may terminate the appointment of the administrator.

(2) The terms and conditions of the appointment of the administrator may provide for termination in circumstances in addition to those mentioned in Subsection (1).

(3) This section has effect subject to Section 37.

42. EFFECT ON DIRECTORS OF STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF AN AUTHORIZED INSTITUTION.

(1) The directors of an Authorized Institution cease to hold office when a statutory manager takes control of the business of the Authorized Institution.

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(2) A director of an Authorized Institution shall not be appointed or elected while a statutory manager is in control of the business of the Authorized Institution unless the appointment is made under Section 37(2).

(3) Where a person who ceased to hold office under Subsection (1), or a purported director of the Authorized Institution appointed or elected in contravention of Subsection (2), purports to act in relation to the business of the Authorized Institution while a statutory manager has control of the business of the Authorized Institution, those acts are invalid and of no effect.

43. EFFECT ON EXTERNAL ADMINISTRATOR OF STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF AN AUTHORIZED INSTITUTION.

(1) The appointment of an external administrator of an Authorized Institution is terminated when a statutory manager takes control of the business of the Authorized Institution.

(2) An external administrator of an Authorized Institution shall not be appointed while a statutory manager is in control of the business of the Authorized Institution unless the Central Bank approves the appointment.

(3) Where a person who ceased to be the external administrator of an Authorized Institution under Subsection (1), or a purported external administrator of the Authorized Institution appointed in contravention of Subsection (2), purports to act in relation to the business of the Authorized Institution while a statutory manager has control of the business of the Authorized Institution, those acts are invalid and of no effect.

(4) The Central Bank shall inform the external administrator of an Authorized Institution that a statutory manager will take control of the business of the Authorized Institution as soon as possible after the decision that a statutory manager will take control of the business of the Authorized Institution is made, but failure to inform the external administrator does not affect the operation of this section.

44. EFFECT ON LEGAL PROCEEDINGS OF STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF AN AUTHORIZED INSTITUTION.

(1) A person cannot begin or continue a proceeding in a court against an Authorized Institution while a statutory manager is in control of the business of the Authorized Institution unless -

(a) the court grants leave on the ground that the person would be caused hardship if leave were not granted; or

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(b) the Central Bank consents to the proceedings beginning or continuing.

(2) A person intending to apply for leave of the court under Subsection (1)(a) shall give the Central Bank at least 10 days notice of the intention to apply, and the Central Bank may apply to the court to be joined as a party to the proceedings for leave.

(3) In this Section, a reference to a proceeding against an Authorized Institution includes a reference to a cross-claim or third party claim against an Authorized Institution.

45. STATUTORY MANAGER BEING IN CONTROL NOT GROUNDS FOR DENIAL OF OBLIGATIONS.

(1) Subject to Subsection (2), the fact that a statutory manager is in control of the business of an Authorized Institution is not a ground for any other party to a contract to which the Authorized Institution is a party -

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under that contract; or
- (c) to close out any transaction relating to that contract.

(2) The Head of State, acting on advice, may by regulation prescribe circumstances under which Subsection (1) does not apply.

46. COSTS OF STATUTORY MANAGEMENT.

The costs incurred by the Central Bank (including costs in the nature of remuneration and expenses) of being in control of the business of an Authorized Institution, or of having an administrator in control of the business of an Authorized Institution, are payable from the funds of the Authorized Institution and are a debt due to the Central Bank.

47. CENTRAL BANK TO GIVE NOTICE OF STATUTORY MANAGEMENT.

Where the Central Bank appoints a statutory manager or terminates his appointment the Central Bank shall publish notice of that fact in the National Gazette, but failure to publish such a notice does not affect the validity of the act.

48. POWERS OF CENTRAL BANK TO APPLY FOR AUTHORIZED INSTITUTION TO BE WOUND UP.

(1) The Central Bank may apply to the National Court for an order that an Authorized Institution be wound up where the Central Bank considers that the Authorized Institution is insolvent and could not be restored to solvency within a reasonable period.

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(2) The winding up of an Authorized Institution is to be conducted in accordance with the *Companies Act 1997* or any other law under which Authorized Institution is incorporated or is taken to be incorporated.

PART VIII. - SURVEILLANCE OF DEPOSIT ADVERTISING.

49. INVITATIONS TO MAKE DEPOSITS.

(1) Regulations may be made for the issue, form and content of deposit advertisements.

(2) Regulations under this section may make different provision for different cases and, without prejudice to the generality of Subsection (1) may –

- (a) prohibit the issue of advertisements of any description (whether by reference to their contents, to the persons by whom they are issued or otherwise); or
- (b) make provision with respect to matters which must be, as well as matters which may not be, included in advertisements; or
- (c) provide for exemptions for any prohibition or requirements imposed by the regulations.

50. ADVERTISEMENTS.

(1) Where the Central Bank is of the opinion that any advertisement issued in connection with banking business makes a statement or any representation that is false, misleading or deceptive, the Central Bank may, by notice in writing served on the person or persons who arranged the advertisement, require them to withdraw or, as the circumstances require, remove, and to cease issuing such advertisements and the person or persons served with such a notice shall, accordingly, comply with that notice.

(2) Subject to Subsection (3), a person, who issues or causes to be issued an advertisement, the issue of which is prohibited by regulations or by this Part or which does not comply with any requirements imposed by regulation or by this Part, is guilty of an offence.

(3) A person whose business it is to publish or to arrange for the publication of advertisements is not be guilty of an offence under this section where he proves –

- (a) that he received the advertisement for publication in the ordinary course of his business; and
- (b) that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control; and
- (c) that he did not know and had no reason for believing that publication of the advertisement would constitute an offence.

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51. FALSE OR MISLEADING INDUCEMENT TO MAKE A DEPOSIT.

(1) A person who -

- (a) makes or attempts to make a statement, promise, forecast or information which he knows or ought reasonably to have known to be misleading, false or deceptive or dishonestly conceals any material facts; or
- (b) recklessly makes or attempts to make (dishonestly or otherwise) a statement, promise or forecast or disseminates information which is misleading, false or deceptive,

is guilty of an offence where he makes or attempts to make the statement, promise or forecast or disseminates the information or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce another person -

- (c) to make, or refrain from making, a deposit with him or any other person; or
- (d) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

(2) For the purposes of this section, exempt transactions under Section 8(1)(b) shall be included in the definition of deposit.

PART IX. – SECRECY.

52. SECRECY.

(1) In this Part -

“officer” means -

- (a) the Governor, the Deputy Governor or any other member of the Board; or
- (b) an officer of the Central Bank; or
- (c) any other person engaged by the Central Bank to perform services for the Central Bank; or
- (d) any other person who, because of his employment, or in the course of that employment -
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents.

“produce” includes permit access to;

“protected document” means a document given or produced (whether before or after the commencement of this Act) under, or for the purposes of, this Act, and containing information relating to the affairs of any person other than a document that has already been lawfully made available to the public;

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“protected information” means information, data or forecasts disclosed or obtained (whether before or after the commencement of this Act) under, or for the purposes of, this Act, and relating to the affairs of any person other than information that has already been lawfully made available to the public.

(2) Subject to this section, a person shall not, except for the purposes of this Act, directly or indirectly disclose to any person, any protected information or protected document acquired by that first-mentioned person.

(3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, where the person to whose affairs the information or document relates and, where different, the person from whom the information or document was received, agrees in writing to the disclosure of the information or the production of the document, as the case may be.

(4) It is not an offence where the disclosure of protected information or the production of a protected document by a person occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the Central Bank to perform its functions or exercise its powers.

(5) It is not an offence where the disclosure of protected information or the production of information of a protected document by the Central Bank occurs when the Central Bank is satisfied that the disclosure of the information, or the production of the document -

- (a) will assist the Central Bank to perform its functions or exercise its powers; or
- (b) is to the Minister or the relevant Department; or
- (c) will assist another financial supervisory agency, whether in Papua New Guinea or elsewhere, to perform its functions or exercise its powers, provided that the Central Bank is satisfied that the information or document is subject to a secrecy provision no less stringent than that set out in this Act.

(6) It is not an offence where the disclosure of protected information or the production of a protected document is under compulsion or obligation of law.

(7) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document to the Central Bank.

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(8) Subsection (2) does not prohibit a person from disclosing information, or producing a document, where the information, or the information contained in the document, as the case may be, is in the form of a statistical summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

(9) Every person who contravenes this Part is guilty of an offence.

PART X. - MISCELLANEOUS.

53. POWER TO MAKE REGULATIONS.

The Head of State, acting on advice, may make, amend or vary regulations which-

- (a) are not inconsistent with this Act; and
- (b) prescribe all matters that by this Act are -
 - (i) required or permitted to be prescribed; or
 - (ii) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and
- (c) provide that an offence may be prosecuted either summarily or on indictment;
- (d) provide penalties for offences against the regulations, not exceeding -
 - (i) K100,000.00; or
 - (ii) imprisonment for a term not exceeding two years; or
 - (iii) both such fine and imprisonment.

54. OFFENCES AND PENALTIES.

(1) A person convicted of an offence against any of the sections listed in Part 1 of Schedule 5 is liable to a fine or imprisonment or both as listed in Part 1 of Schedule 5.

(2) A person convicted of an offence against any of the sections listed in Part 2 of Schedule 5 is liable to a fine or imprisonment or both as listed in Part 2 of Schedule 5.

(3) A person who contravenes any other provision of this Act is liable to a fine or imprisonment or both as listed in Part 3 of Schedule 5.

(4) Where a person does or fails to do an act in circumstances that give rise to the person committing an offence against this Act, the person is guilty of an offence against this Act in respect of -

- (a) the first day on which the offence is committed; and

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- (b) each subsequent day (if any) on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

55. POWER TO AMEND SCHEDULES, ETC.,

The Head of State, acting on advice, may, by regulation amend the monetary amounts specified in the Schedules or in Section 53.

56. PROSECUTIONS AND OTHER ACTIONS.

(1) The Central Bank may -

- (a) prosecute any offence by a person against this Act, by summary prosecution or by prosecution as an indictable offence as the case may be; and
- (b) commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting the offence.

(2) Any prosecution or action commenced by the Central Bank in relation to an offence committed under this Act shall be heard by the National Court.

(3) Notwithstanding Section 524 of the *Criminal Code Act* (Chapter 262), following a committal for an offence under this Act the Central Bank is authorized to present an indictment against the accused, and a copy of any such indictment shall be served on the Public Prosecutor and the Public Prosecutor may withdraw the indictment within 14 days of service of the indictment on him.

(4) In any prosecution or action brought under this Act by the Central Bank or against the Central Bank, the Court may award costs against any party or claimant other than the Central Bank, which costs may be recovered by the Central Bank as a debt to the Central Bank.

(5) In any action brought by the Central Bank under this Act, the Court may, on application by the Central Bank whether as interlocutory or final relief, order a person to cease any activity until further order.

(6) Any order made by the Court under Subsection (5) shall be made on condition that the Central Bank is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.

(7) Any fine, to be paid by a person as a result of an action or prosecution by the Central Bank shall be paid to the Central Bank and, in addition to any other remedy, may be recovered by the Central Bank as a debt to the Central Bank.

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57. INJUNCTIONS AND OTHER ORDERS.

(1) Where, on the application of the Central Bank or the Public Prosecutor, the National Court is satisfied -

- (a) that there is a reasonable likelihood that a person will contravene this Act; and
- (b) that any person has been guilty of any such contravention and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining and /or prohibiting the contravention as the Court deems appropriate.

(2) Where, on the application of the Central Bank or the Public Prosecutor, it appears to the National Court that a person may have been guilty of such a contravention as is mentioned in Subsection (1) the court may grant an injunction restraining him from disposing of or otherwise dealing with any of his assets while the suspected contravention is investigated.

58. LIABILITY OF DEFAULTING OFFICERS.

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any officer of the body corporate, or any person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of the offence.

59. PROTECTION FROM LIABILITY AND INDEMNITY.

(1) Subject to Subsection (2) the Central Bank, every member of the Board, every officer of the Central Bank is not subject to any liability to any person in respect of anything done or omitted to be done, in the exercise or performance, or the purported exercise or performance, of powers, functions or duties conferred or imposed on the Central Bank, the Board, a member of the Board or an officer by or under this Act.

(2) Subsection (1) does not apply to an act or omission in bad faith.

(3) An officer and every member of the Board of the Central Bank shall be indemnified by the Central Bank in respect of any liability arising from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.

(5) The indemnity conferred by Subsection (1) extends to legal costs incurred in defending a proceeding.

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60. FEES PAYABLE BY AUTHORIZED INSTITUTIONS.

- (1) -An Authorized Institution shall, within 14 days after the date on which a licence is granted, pay to the Central Bank -
- (a) in the case of a bank, the banking licence fee specified in Part 2 of Schedule 6; or
 - (b) in the case of a licensed financial institution, the financial institution licence fee specified in Part 3 of Schedule 6.
- (2) Every Authorized Institution shall pay to the Central Bank on or before 1 January in each year -
- (a) in the case of a bank, the annual banking licence fee specified in Part 4 of Schedule 6; or
 - (b) in the case of a licensed financial institution, the annual financial institution licence fee specified in Part 5 of Schedule 6 .
- (3) Fees are debt due to the Central Bank and if not paid within 14 days of the due date the Central Bank may appropriate from any deposits held by the Authorized Institution with the Central Bank sufficient funds to meet the debt.

61. LOCATION OF PLACES OF BUSINESS.

- (1) Unless specified in its licence, an Authorized Institution which -
- (a) opens a new place of business; or
 - (b) changes the location of a place of business; or
 - (c) closes a place of business,
- without the prior approval of the Central Bank is guilty of an offence.

(2) An Authorized Institution incorporated in Papua New Guinea, which opens a new branch, agency or office or subsidiary outside the country without the approval of the Central Bank, is guilty of an offence.

62. FALSE STATEMENTS AS TO STATUS.

- (1) No person other than an Authorized Institution or a person specified in Section 63(5) shall -
- (a) describe themselves as being an Authorized Institution, or authorized as a bank or as a licensed financial institution; or
 - (b) hold themselves out as to indicate or to be reasonably understood to indicate that they are authorized or licensed under this Act.
- (2) No person shall falsely state, or do anything which falsely indicates, that they are entitled although not an Authorized Institution to accept a deposit in the course of carrying on a business which for the purposes of this Act is banking business, unless that person is exempted under Section 8 and then only to the extent of that exemption.

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63. RESTRICTION ON THE USE OF THE WORD "BANK".

(1) Subject to this section and to Section 65, a person shall not, without the consent of the Central Bank -

- (a) use the word "bank" or any of its derivatives, or any other word indicating the transaction of banking business (whether in the English language or in any other language), in the name, description or title under which that person carries on business in the country; or
- (b) make any representation that he is, or hold himself out to be, a bank.

(2) A licensed financial institution may seek the prior written consent of the Central Bank to use the description "merchant bank" and its derivatives with respect to its corporate finance activities but shall not use the description in connection with its other activities.

(3) Subsection (1) does not apply to an association of banks or of bank employees formed to promote their respective mutual interests and not purporting to carry on banking business.

- (4) The Central Bank may at any time -
- (a) impose conditions or additional conditions on a consent; or
 - (b) vary or revoke such conditions on a consent; or
 - (c) revoke a consent.

(5) Subsection (1) does not apply to the Central Bank, the Rural Development Bank, a bank or any other person or class of persons determined by the Central Bank from time to time.

64. RESTRICTION ON USE OF CERTAIN WORDS AND EXPRESSIONS.

(1) Except with the consent in writing of the Central Bank, no Authorized Institution may use the expression "Central", "National", "Papua", "New Guinea", "Papua and New Guinea", "Papua New Guinea", "Reserve" or "State", or an expression of a similar meaning (whether in the English language or in any other language), in the name, description or title under which it carries on business in the country.

(2) Subsection (1) does not affect the operation of the *Rural Development Bank Act* (Chapter 139) or the *Central Banking Act 2000*.

(3) Where the Central Bank for any reason considers that the use of a name or description by an Authorized Institution carrying on business in the country is undesirable or misleading, the Central Bank may prohibit the use of that name or description by an Authorized Institution by notice in the National Gazette.

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(4) Where a person applies for authorization under this Act it shall give notice to the Central Bank of any name it is using or proposes to use for the purposes of or in connection with any business carried on by it for the Central Bank's consent.

(5) Any person that uses an expression, name or description in contravention of Subsection (1), or of a notice under Subsection (3), is guilty of an offence.

(6) It is a defence to a charge of an offence against Subsection (1) where the Authorized Institution proves that it had not had a reasonable opportunity of taking whatever steps were necessary to change its name or abandon the use of the expression, name or description.

- (7) The Central Bank may at any time -
- (a) impose conditions or additional conditions on a consent; or
 - (b) vary or revoke such conditions on a consent; or
 - (c) revoke a consent.

65. RESTRICTION ON ESTABLISHMENT OR MAINTENANCE OF REPRESENTATIVE OFFICES OF OVERSEAS BANKS.

(1) A person, other than an Authorized Institution, is guilty of an offence where -

- (a) the person carries on banking business in a foreign country; and
- (b) the person establishes or maintains an office in Papua New Guinea wholly or partly in connection with the carrying on of that business outside the country; and
- (c) the Central Bank did not consent, in writing, to the establishment or maintenance of that office.

(2) The Central Bank may, at any time, by notice in writing served on the person referred to in Subsection (1) -

- (a) impose conditions, or additional conditions, on a consent; or
- (b) vary or revoke conditions imposed on a consent; or
- (c) revoke a consent.

(3) An Authorized Institution is guilty of an offence where it undertakes any of the following, except to the extent there is in force any order under Section 61 permitting the undertaking -

- (a) opens or establishes, whether on its own account or in conjunction with others, a branch or representative office;
- (b) incorporates or establishes an interest in any business, whether on its own account or in conjunction with others.

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(4) A person is guilty of an offence where the person has been given a consent under this Section and the person contravenes a condition to which the consent is subject.

66. RESTRUCTURING OF AUTHORIZED INSTITUTIONS.

(1) It is an offence where -

(a) an Authorized Institution -

(i) enters into an arrangement or agreement for:

(A) any sale or disposal of its business or a material part of it by amalgamation or otherwise; or

(B) the carrying on of business in partnership with another person; or

(ii) effects a reconstruction of the Authorized Institution; and

(b) the Central Bank did not give prior consent in writing.

(2) Any arrangement, agreement or reconstruction referred to in Subsection (1), and any such sale or disposal or acquisition in pursuance of any such arrangement or agreement, entered into -

(a) without the prior written consent of the Central Bank; or

(b) that is not in accordance with any condition attached to such consent,

is void and of no effect.

(3) The Central Bank may withhold its consent unless the Authorized Institution satisfies the Central Bank that the arrangement agreement or reconstruction would not be contrary to the interests of depositors.

67. UNCLAIMED MONEYS.

(1) In this Section -

“authorized officer” means the Departmental Head or an officer of the Department authorized by him to act under this section;

“unclaimed money” means all principal, interest, dividends, bonuses, profits and sums of money legally payable by an Authorized Institution but in respect of which the time for the taking of proceedings for recovery has expired, and includes moneys to the credit of an account (other than an account in the name of an infant) that has not been operated on by deposit or withdrawal period for a period of not less than seven years.

(2) For the purposes of the definition of “unclaimed money” in Subsection (1), the debiting to an account of a fee for keeping the account is not a withdrawal, and the crediting to an account (other than a savings bank or passbook account) of interest payable by a bank on the account is not a deposit.

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(3) Each Authorized Institution shall, within three months after 31 December in each year, deliver to the Governor a statement of all unclaimed money in its hands as at that 31 December.

(4) A statement under Subsection (3) specify -

- (a) the name, and the last-known address, of each person to whom an amount of unclaimed money is payable, or the owner of each account, as the case may be; and
- (b) the office or branch of the Authorized Institution at which the last transaction took place, and the date of the transaction; and
- (c) where the person concerned is known to the Authorized Institution to be dead, the names and addresses, so far as they are known to the Authorized Institution, of his legal representatives.

(5) The total amount shown in a statement under Subsection (3) shall -

- (a) be paid by the Authorized Institution to the State at the time of the delivery of the statement; and
- (b) be credited to the Unclaimed Money Fund kept under the *Unclaimed Moneys Act* (Chapter 326); and
- (c) subject to Subsection (7), be paid into the Consolidated Revenue Fund after payment to the State.

(6) Subject to Subsection (7), on payment to the State of an amount of unclaimed money under this section an Authorized Institution is discharged from further liability in respect of that amount.

(7) Where an amount of unclaimed money has been paid to the State under this section and the Governor or an authorized officer is satisfied that, but for Subsection (6) a person would be paid that amount by the bank by which it was paid to the State (or, where that Authorized Institution is no longer carrying on banking business, by an Authorized Institution to which that business of that first-mentioned Authorized Institution has been sold or disposed of), the amount shall be paid to the Authorized Institution and the Authorized Institution must then pay it to him, and the Public Account is, to the necessary extent, appropriated for the purposes of any payment under Subsection (7).

(8) An Authorized Institution that contravenes or fails to comply with this section is guilty of an offence.

(9) The Central Bank or an Authorized Institution may apply to the National Court for a declaration that any moneys are not unclaimed moneys within the meaning of this section.

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68. POWERS ABOUT MONEY OF DEPOSITORS WHO HAVE DIED.

(1) Where a depositor of an Authorized Institution dies, the Authorized Institution may apply an amount not exceeding K500.00 (or such other amount prescribed by regulation) held by the Authorized Institution that was deposited or paid up by the deceased person -

- (a) in payment of the deceased person's funeral expenses or debts; or
- (b) in payment to the executor of the deceased person's will; or
- (c) in payment to anyone else who is, in the Authorized Institution's opinion, entitled to the amount,

having regard to the laws of probate or accepted customary practice for the administration of deceased estates, the amount may be applied without production of probate, of the will or letters of administration of the estate.

(2) No action lies against an Authorized Institution for acting, or failing to act, under Subsection (1).

69. NON-BUSINESS DAYS.

(1) In this Section, "Authorized Institution" includes the Central Bank.

- (2) Where in the opinion of the Central Bank it is in the public interest that -
- (a) Authorized Institutions; or
 - (b) a particular Authorized Institution; or
 - (c) a particular branch of an Authorized Institution,

should remain closed on a day that is not a public holiday the Central Bank may, by notice in the National Gazette, declare that day to be a non-business day for Authorized Institutions, or for the particular Authorized Institution, or for the particular branch, as the case may be, and every Authorized Institution, or the particular Authorized Institution, or the particular branch, as the case may be, shall remain closed on that day.

(3) An Authorized Institution is not compellable to make a payment or to do any other act on a day that is a non-business day in relation to it by virtue of Subsection (2), or at a branch on a day that is a non-business day in relation to the branch by virtue of that Subsection, and any obligation otherwise to make a payment or do any act on such a day shall be deemed to be an obligation to make the payment or do the act on the next day that is not a public holiday or such a day.

70. ANNUAL REPORT.

The annual report required to be delivered by the Central Bank to the Minister pursuant to the *Central Banking Act 2000* shall include an account of policies pursued with respect to the discharge of its functions under this Act and details to any changes to policies which were adopted since the previous report.

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71. DEPOSITOR PRIORITY.

(1) Where an Authorized Institution becomes unable to meet its obligations or suspends payment, the assets of the Authorized Institution are available to meet that Authorized Institution's liability to individual depositors up to a maximum of K10,000.00 in each case (or such other amount prescribed by regulations) and in priority to all other liabilities of the Authorized Institution.

(2) For the purposes of this section, to the extent assets are insufficient to meet the liabilities of those depositors they shall rank with respect to each class of depositors specified in Subsection (1), *pro rata*.

(3) The priorities specified in this section apply despite any law to the contrary in Papua New Guinea or any other place in which the Authorized Institution is incorporated or constituted.

72. CENTRAL BANK TO FURNISH INFORMATION TO THE MINISTER.

Where the Central Bank is required by this Act to publish a notice in the National Gazette the Central Bank shall do so as soon as practicable, and at the same time furnish a copy of the notice to the Minister.

73. DATE OF COMING INTO OPERATION OF PRUDENTIAL STANDARDS.

A -

- (a) prudential standard; or
 - (b) any consent or refusal; or
 - (c) any other notice or determination,
- under this Act by the Central Bank comes into operation -
- (d) unless Paragraph (e) applies, on the day on which the relevant prudential standard, consent, refusal, notice or determination is made; or
 - (e) where the prudential standard, consent, refusal, notice or determination specifies a later day as the day on which it is to come into force, on the day so specified,
- and continues in force until it is revoked.

**PART XI. - REPEAL, AMENDMENT, SAVING AND
TRANSITIONAL PROVISIONS.**

74. REPEAL AND AMENDMENT OF ACTS.

Subject to this Part -

- (a) the *Banks and Financial Institutions Act* (Chapter 137) is hereby repealed; and

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(b) the *Securities Act 1997* is amended in Section 1 in Paragraph (f)(iii) of the definition of "debt securities", by adding after the word "bank" the following:-

"or licensed financial institution"; and

(c) Section 104 of the *Central Banking Act 2000* is hereby repealed.

75. SAVING OF REGULATIONS.

Regulations made under the former Act, to the extent that they -

(a) were in operation immediately before the coming into operation of this Act; and

(b) are not inconsistent with this Act,

are, on that coming into operation, saved and continue in operation as if they were regulations made under this Act and may be amended or repealed.

76. SAVING OF LICENCES, ETC.,

All licences, instruments, authorities, approvals, permits and directions made under the former Act, to the extent that they -

(a) were in operation immediately before the coming into operation of this Act; and

(b) are not inconsistent with this Act,

are, on that coming into operation saved and continue in operation as if they were licences, instruments, authorities, approvals, permits and directions made under this Act until they expire or are otherwise terminated according to law.

77. REFERENCES TO FORMER ACT, ETC.,

A reference in any law or in any instrument made under or in relation to the former Act or a provision of the former Act shall, on and after the coming into operation of this Act, unless the context otherwise requires, be read and construed as a reference to this Act or to the corresponding provision of this Act.

78. ACTIONS NOT TO ABATE.

Where immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the former Act, it -

(a) does not, on the commencement of this Act, abate or discontinue or in any way be affected by a provision of this Act; and

(b) may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

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79. **DIFFICULTIES WITH SAVING OR TRANSITIONAL PROVISIONS.**

Where a difficulty arises in respect of the saving or transitional provisions in this Part, the Head of State, acting on advice, may, by regulation -

- (a) make such modifications to those provisions as may appear necessary during the transition to the provisions of this Act from the provisions of the former Act; and
- (b) make such incidental, consequential and supplementary provisions as may be necessary or expedient for the purpose of giving full effect to those transitional provisions,

and any such modifications or provisions made by the Head of State, acting on advice, have and are deemed always to have had the same force and effect as if they had been enacted by way of an amendment to this Act, and on publication of the Regulation in the National Gazette, this Part is amended accordingly.

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SCHEDULES.

SCHEDULE 1.

Sections 10 and 13.

APPLICATION REQUIREMENTS FOR AUTHORIZATION

1. The applicant's plan of operations and its means of implementing it including its plans for operating a branch network throughout Papua New Guinea.
2. The names and curriculum vitae of the applicant's shareholder controllers, indirect controllers, directors, chief executives and managers.
3. Particulars of the applicant's arrangements for the management of the business.
4. A copy of the Act, charter, deed of settlement, constitution of the body corporate, or other document by which the body corporate is or is to be constituted.

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SCHEDULE 2.

Section 13.

CRITERIA FOR AUTHORIZATION.

Directors, Chief Executives and Managers Must Be Fit and Proper Persons

1. Every person who is, or is to be, a director or chief executive of an Authorized Institution must be a fit and proper person to hold the particular position which he holds or is to hold.
2. In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to -
 - (a) his probity,
 - (b) his competence and soundness of judgement for fulfilling the responsibilities of that position;
 - (c) the diligence with which he is fulfilling or likely to fulfill those responsibilities; and
 - (d) whether the interests of depositors of the Authorized Institution or proposed Authorized Institution are, or are likely to be, in any way threatened by his holding that position.
3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has -
 - (a) committed an offence involving fraud or other dishonesty or violence; or
 - (b) been engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice in the provision of banking business, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts; or
 - (c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting banking business; or
 - (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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Business to be Conducted in a Prudent Manner

4. Every Authorized Institution must or, as the case may be, will conduct its business in a prudent manner.
5. An Authorized Institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain capital resources of such nature and amount as are considered appropriate by the Central Bank, and which are sufficient to safeguard the interests of its depositors, and commensurate with the nature, scale and risks of the Institution's operations and the operations of any other body corporate in the same group capable of affecting the Institution, as determined by the Central Bank.
6. An Authorized Institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its actual and contingent liabilities, to the times at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Central Bank to be relevant.
7. For the purposes of Section 3 above the Central Bank may, to such extent as it thinks appropriate, take into account as assets of the Authorized Institution any facilities available to it which are capable of providing liquidity within a reasonable period.
8. An Authorized Institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provisions for depreciation or diminution in the value of its assets (including provisions for bad or doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which it will or may incur.
9. An Authorized Institution will not be regarded as conducting its business in a prudent manner unless it limits or, as the case may be, proposes to limit, its exposure, direct and indirect, to the risk of loss, as may be defined by the Central Bank, to any person and such limit shall be no more than shall be prescribed by the Central Bank.
10. An Authorized Institution will not be regarded as conducting its business in a prudent manner unless it limits or, as the case may be, proposes to limit, its exposure, direct and indirect, to risk of loss to persons who are related to the Authorized Institution in such a manner that they may be in a position to influence the Authorized Institution, and such risk and such relationship may be defined by the Central Bank, and such limit shall be no more than shall be prescribed by the Central Bank.

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11. For the purposes of determining the amount of the risk of loss to the person referred to in Sections 9 and 10, account must also be taken of any exposure to the risk of loss to any other person, where the financial soundness of the first person may be linked to that of the other, as may be further prescribed by the Central Bank.
12. An Authorized Institution shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.
13. Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the Authorized Institution to be prudently managed and the Authorized Institution to comply with the duties imposed on it by or 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 any of the directors of the Authorized Institution.

Integrity and Skill

14. The business of the Authorized Institution must be carried on with integrity and the professional skills appropriate to the nature, scale and risks inherent in its activities.

Applicants Incorporated Outside Papua New Guinea

15. Without limiting the circumstances in which the Central Bank may refuse an application by a body corporate to become a Authorized Institution, the Central Bank in the case of a body corporate which is not incorporated in Papua New Guinea may allow the application to proceed if:
 - (a) the relevant supervisory authority in that place informs the Central Bank that it is satisfied with respect to the prudent management and overall financial soundness of the body corporate and any group of which it is a member; and
 - (b) the Central Bank is satisfied as to the nature and scope of the supervision exercised by that authority.

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SCHEDULE 3.

Section 12.

MINIMUM CAPITAL

For the purposes of Section 12 of the Act, the prescribed minimum net assets is –

- (a) in the case of a bank - K15,000,000.00
- (b) in the case of a licensed financial institution – K1,500,000.00.

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SCHEDULE 4.

Section 28.

PROVISION OF INFORMATION

Lodgement of Returns

1. Not later than six months after the end of its financial year, every Authorized Institution must submit to the Central Bank its audited financial statements together with such other information as may be prescribed by this Act or requested by the Central Bank from time to time.
2. The financial statements and any other information required by the Central Bank must be supplied despite anything to the contrary contained in any law including the *Companies Act 1997*.
3. An Authorized Institution shall publish its financial statements and make them available to the public together with such other information referred to in Section 1.

Notification of Change of Directors, Chief Executives, Managers and Auditors

4. An Authorized Institution must give written notice to the Central Bank if any person has become or ceased to be a director, a chief executive, manager or auditor of the Authorized Institution.
5. A notice required to be given under paragraph 4 above must be given before the end of the period of 14 days beginning with the day on which the Authorized Institution becomes aware of the relevant facts.
6. The Central Bank may by a notice in writing wholly or partly dispense from the obligation imposed by Section 5 for any Authorized Institution whose principal place of business is outside Papua New Guinea.

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SCHEDULE 5.

Section 54.

PENALTIES FOR OFFENCES AGAINST THIS ACT

*Part 1. – Sections which carry a Fine Not Exceeding K100,000.00 or Imprisonment
For a Term Not Exceeding Two Years, or Both.*

- Section 14 – Conditions on Licence.
- Section 25 – Contraventions by shareholder controllers and indirect controllers.
- Section 28 – Central Bank to be Supplied with certain documents.
- Section 29 – Power to obtain information and require production of documents.
- Section 30 – Right of Entry to obtain information and documents.
- Section 35 – Duty to give information about Authorized Institutions.
- Section 38 – Powers and functions of statutory managers.
- Section 50 – Advertisements.
- Section 52 – Secrecy.
- Section 53 – Power to make regulations.
- Section 61 – Location of Places of Business.
- Section 62 – False statements as to status.
- Section 64 – Restriction on use of certain words and expressions.
- Section 65 – Restriction on establishment or maintenance of representative offices of overseas banks.
- Section 66 – Restructuring of Authorized Institutions.
- Section 67 – Unclaimed Moneys.

*Part 2. – Sections which carry a Fine Not Exceeding K500,000.00 or Imprisonment
For a Term Not Exceeding Ten Years, or Both.*

- Section 7 – Only authorized or exempt persons to carry on banking business.
- Section 8 – Exemptions.
- Section 31 – Investigations on behalf of the Central Bank.
- Section 32 – Investigations of suspected contraventions of this Act.
- Section 33 – Obstruction of investigations.
- Section 34 – False and misleading information.
- Section 51 – False or misleading inducement to make a deposit.

Part 3. - General Penalty

1. A person who contravenes any provision of this Act is guilty of an offence.

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2. A person who commits an offence against this Act for which there is no specific penalty provided, is liable to a penalty of:
 - (a) a fine not exceeding K500,000.00; or
 - (b) a term of imprisonment not exceeding 5 years; or
 - (c) both a fine not exceeding the amount specified in Paragraph (2)(a) and a term of imprisonment not exceeding the term specified in Paragraph (b).

3. Where an offence against this Act is of a continuing nature, a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in Section 2, not exceeding K5,000.00 per day for each day after conviction that the person continues to commit the offence.

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SCHEDULE 6.

Sections 10 and 60.

PRESCRIBED FEES

Part 1:

Application Fee for Licensed Financial Institution	K15,000.00
Application Fee for a Bank	K25,000.00

Part 2:

Licence Fees for Bank	K25,000.00
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Part 3:

Licence Fees for Licensed Financial Institutions	K15,000.00
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Part 4:

Renewal Licence Fees for Banks	K25,000.00
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Part 5:

Renewal Licence Fees for Licensed Financial Institutions	K15,000.00
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I hereby certify that the above is a fair print of the *Banks and Financial Institutions Act 2000* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Banks and Financial Institutions Act 2000* was made by the National Parliament on 5 April 2000 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.