

BANKING ACT, 1995

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FIJI

ACT NO. 1 OF 1995



I assent.

[L.S.]

K. K. T. MARA
President

[8 March 1995]

AN ACT

TO PROVIDE FOR THE REGULATION OF THE BUSINESS OF BANKING; PROVIDING FOR THE LICENSING AND SUPERVISION OF FINANCIAL INSTITUTIONS CARRYING ON BANKING BUSINESS, IN THE INTERESTS OF THE SOUNDNESS OF THE FINANCIAL SYSTEM AND TO MINIMISE DETRIMENT TO THE INTERESTS OF DEPOSITORS AND CREDITORS OF FINANCIAL INSTITUTIONS AND FOR PURPOSES CONNECTED THEREWITH.

ENACTED by the Parliament of Fiji—

PART I—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Banking Act, 1995.

(2) This Act shall come into force on a date appointed by the Minister and published in the *Fiji Republic Gazette*.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

"appointed day" means the commencement of this Act;

"auditor" means an auditor who holds a certificate of public practice issued by the Fiji Institute of Accountants or firm comprising such persons;

"bank" means any financial institution whose operations include the acceptance of deposits of money withdrawable or transferable by cheque or other means of payment transfer;

"banking business" means

- (a) the business of accepting deposits of money from the public or members thereof, withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and
- (b) any other activity recognised by the Reserve Bank as customary banking practice which a licensed financial institution engaging in the activities described in paragraph (a), may additionally be authorised to do by the Reserve Bank;

"company" means

- (a) a body corporate established under any written law relating to the formation and registration of companies;
- (b) a statutory corporation; and
- (c) a body corporate which is established, whether under a law relating to the formation and registration of companies or by any other method of incorporation, outside Fiji;

"credit institution" means any financial institution other than a bank;

"director" includes an individual occupying the position of director or alternate director of a company, by whatever name he may be called, and includes a member of a local board of a company whose head office is situated outside Fiji;

"financial institution" means any company doing banking business:

Provided, that for the purposes of this Act, unless the context otherwise requires, all offices and branches of a financial institution in Fiji shall be deemed to be one financial institution;

"licensed" means licensed under this Act to conduct banking business;

"manager" includes any person for the time being in charge of the principal or regional office in Fiji of any financial institution;

"non-resident controlled" means controlled by any means whatever, by a person not a resident of Fiji;

"officer" includes a director, manager or secretary;

"regulation" means the issuance of rules of conduct or the establishment of modes or standards of operation for uniform application to all institutions or functions covered;

"Reserve Bank" means the Reserve Bank of Fiji established under the Reserve Bank of Fiji Act;

"statutory corporation" means a body corporate established under any written law, other than a law relating to the formation and registration of companies;

"subsidiary" means a subsidiary within the meaning of Section 156 of the Companies Act;

"supervision" shall include not only the issuance of rules and regulations under this Act but also the overseeing to ascertain that regulations, rules, orders or directions are complied with, investigating or examining to determine whether an institution is conducting its business on a sound financial basis, and inquiring into the solvency and liquidity of the institution.

(2) A person is an "associated person" of a financial institution if—

- (a) that person directly or indirectly controls the management of the financial institution; or
- (b) that person owns directly or indirectly 20 percent or more in nominal value of the equity share capital, as defined in Section 156 of the Companies Act, of the financial institution; or
- (c) the financial institution directly or indirectly controls that person; or
- (d) the financial institution owns directly or indirectly 20 percent or more of the equity share capital, as defined in Section 156 of the Companies Act, of that person.

(3) A person shall be deemed to be conducting banking business if, by advertisement, he solicits money deposits, or offers to sell or place bonds, certificates, notes or other securities and uses or intends to use the funds so acquired, either in whole or in part, for advances, investments or in any other operation either authorised by law or by customary banking practice for the account and at the risk of the person placing such advertisement.

PART II—LICENSING OF FINANCIAL INSTITUTIONS

Restriction on carrying on banking business without a licence

3.—(1) No banking business shall, save as hereinafter provided, be carried on in Fiji except by a company which is a licensed financial institution.

(2) Any person who contravenes the provisions of this Section shall be guilty of an offence and liable to a fine not exceeding \$1,000 for each day during which the contravention continues.

Doing business without a valid licence

4.—(1) Whenever the Reserve Bank has reason to believe that any person is doing banking business without a valid licence granted under this Act, the Reserve Bank may examine, inspect, or investigate the books and records of such person.

(2) Any officer authorised by the Reserve Bank to conduct an investigation under subsection (1) of this Section may administer oaths to any such person or his agents and may compel the presentation or production of books, documents, papers or records necessary in his judgement to ascertain the facts relative to the true functions and operations of such person.

(3) Any person who fails or refuses to make available for examination books, documents, papers or records having been duly requested under sub-section (1) of this Section shall be guilty of an offence and liable to a fine not exceeding \$1,000 in respect of each day, from the inception of the unauthorised banking business.

(4) A person holding funds obtained by doing banking business without being in possession of a valid licence granted under this Act shall repay such funds in accordance with the directions of the Reserve Bank.

(5) Nothing in subsection (4) of this Section shall relieve any person from liability to criminal proceedings arising out of any contravention of the provisions of this Act.

Restriction on use of title "bank"

5.—(1) Except with the permission of the Minister, no person other than a bank shall use the word "bank" or any of its derivatives in any language in the description or title under which that person is carrying on business in Fiji, or make any such representation in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever:

Provided that nothing in this subsection shall apply to—

- (i) an association of banks or bank employees, formed for the protection of their common interests;
- (ii) any body (whether incorporated or not) that is formed or registered in any country other than Fiji under a name or title that includes the title "bank" or any of its derivatives that is authorised by the Reserve Bank to use such title or its derivatives in connection with the establishment or operation of a representative office in Fiji;
- (iii) any subsidiary of a licensed financial institution that is authorised by the Reserve Bank to use the title "bank" or any of its derivatives.

(2) The Reserve Bank may after consultation with the Minister and after giving such person an opportunity to state its case, direct any person to delete, within such time as the Reserve Bank shall prescribe, the word "bank" or any derivative thereof from the name, description or title under which it carries on business and to desist from making any such representation in any billhead, letter, paper, notice, advertisement or in any other manner whatsoever.

(3) Desistance from use of the word "bank" or any derivative thereof as described in this Section may be ordered where the circumstances described in subsection (1) of Section 30 apply *mutatis mutandis* or where usage of the term may, in the opinion of the Reserve Bank, be harmful or misleading to those dealing with the said person.

(4) The provisions of the Companies Act or any law to the contrary notwithstanding, where a person has not complied with a direction issued under subsection (2) of this Section and has not registered another name for itself within the period prescribed by the Reserve Bank, the Reserve Bank shall notify the Registrar of Companies to delete the word "bank" or any derivative thereof from the Register of Companies.

(5) Any person who contravenes the provisions of this Section shall be guilty of an offence and liable to a fine not exceeding \$1,000 for each day during which the contravention continues.

Minimum capital of a financial institution

- 6.— (1) Every financial institution licensed under this Act shall maintain—
- (a) if incorporated in Fiji, paid up capital and unimpaired reserves; and
 - (b) if incorporated outside Fiji, assigned capital and unimpaired reserves in Fiji;

in such minimum proportion in relation to its assets, liabilities or risk exposures as the Reserve Bank may specify from time to time.

(2) The Reserve Bank may specify the minimum amount of paid up capital or assigned capital and unimpaired reserves required to be held in Fiji by a financial institution for the grant of a licence under Section 9.

(3) The Reserve Bank may specify different minimum amounts or proportions of paid up or assigned capital and unimpaired reserves required to be held in Fiji under subsections (1) and (2) of this section for different financial institutions or classes of financial institutions:

Provided also that the minimum amount of paid up capital or assigned capital and unimpaired reserves required to be held under subsection (2) of this Section shall—

- (a) in the case of a credit institution, be not less than \$5(XX)(XX);
- (b) in the case of a bank, be not less than \$2(XX)(XX).

(4) The computation and form of the capital required to be held under subsections (1) and (2) of this Section shall be determined by the Reserve Bank.

(5) No licensed financial institution shall declare or pay any dividend or make any other transfer or remittance from profits if this would contravene the provisions of this Section or any specification made hereunder.

Ownership of a licensed financial institution

7.—(1) An individual together with his relatives within the second degree of consanguinity or affinity shall be allowed to own or control the exercise of up to 15% of the voting shares of a licensed financial institution:

Provided that—

- (i) if the ownership is through a company, the company may own or control the exercise of up to 30% of the voting shares of the licensed financial institution; and
- (ii) that the individual together with his relatives within the said degree and one or more companies which he or his relatives within the same degree control, shall not in the aggregate own or control the exercise of more than 30% of the voting shares of a licensed financial institution incorporated in Fiji which may be increased to 50% subject to the approval of the Minister.

(2) Subsection (1) of this Section shall not preclude the establishment in Fiji of branches, or subsidiaries incorporated in Fiji of 100% non-resident controlled financial institutions.

Application for licence

8.—(1) Any company desirous of commencing banking business in Fiji after the appointed day shall obtain a licence from the Reserve Bank.

(2) An application shall be made in writing in such manner as the Reserve Bank may specify and shall include—

- (a) for a company incorporated outside Fiji—
 - (i) an application, with supporting documents signed and filed by a duly authorised officer of its head office;
 - (ii) an authenticated copy of the instrument under which the applicant company is formed;
 - (iii) a statement of the address of its head office, and the name and address of every member of the board, and of its principal officers;
 - (iv) copies of the latest 3 audited annual balance sheets and profit and loss accounts of the company;
 - (v) full particulars of the business and objectives of the applicant;

- (vi) the location of the principal place of business and any other place in Fiji where it proposes to do business;
- (vii) the area to be served;
- (viii) a sworn undertaking of its head office through a duly authorised officer supported by an appropriate resolution of its board of directors that it will, on demand of the Reserve Bank, provide, in the currency specified by the Reserve Bank, funds necessary to cover all obligations and liabilities incurred in the conduct of banking business in Fiji;
- (ix) written confirmation from the banking supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the proposal to carry on banking business in Fiji; and
- (x) such other requirements as the Reserve Bank may specify;

(b) in case of a company incorporated in Fiji, the requirements in sub paragraphs (i) to (vii) and (x) of paragraph (a) of subsection (2) of this Section.

(3) Every application for a licence to carry on banking business shall be accompanied by payment of such fee as may be prescribed by the Reserve Bank from time to time.

(4) Any person who knowingly or recklessly furnishes any information which is false or misleading in any material particular in connection with an application under the provisions of this Section shall be guilty of an offence and liable to a fine not exceeding \$10,000.

Investigation of application for licence

9.— (1) A licence shall only be issued if the Reserve Bank is satisfied after conducting an investigation as deemed necessary and it is shown from the evidence submitted to it—

- (a) that all the requirements of existing laws and regulations to engage in the business which the applicant proposes to carry on have been complied with;
- (b) that the public interest and economic conditions, both general and local, justify the authorisation, and;
- (c) that the amount of capital, the financing, organisation, direction and administration, as well as the integrity and responsibility of the organisers and administrators reasonably assure the safety of the interests which the public may entrust to them and that the needs and convenience of the community it intends to serve are met.

(2) Within 90 days after the receipt of an application, or where further information has been required, after the receipt of such information, the Reserve Bank may, at its discretion with or without conditions, grant a licence or inform the applicant of its refusal to grant

a licence and in the event of refusal shall furnish the grounds upon which such refusal is based.

(3) In case of grant of a licence, the Reserve Bank shall cause the fact of grant of a licence to be advertised in any daily newspaper circulating in Fiji and in the Gazette.

(4) Notwithstanding subsection (2) of this Section, in the event the Reserve Bank is of the opinion that the granting of a licence under this Act would not be in the public interest, it may refuse to issue it.

Licence to be in writing

10.—(1) In granting a licence, which licence shall be in writing, the Reserve Bank may specify the terms and conditions which shall be complied with by the financial institution.

(2) Without limiting subsection (1) of this Section, in the case of a financial institution incorporated outside Fiji, the Reserve Bank shall require as a condition for the commencement of operations that there be filed with it a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Fiji upon whom any process, notice or direction may be served.

Conditions of licence

11.—(1) The Reserve Bank may, from time to time by notice in writing to a licensed financial institution—

- (a) in a case where a financial institution has been licensed or has been deemed to have been licensed, impose new or additional conditions of the licence;
- (b) vary or remove any condition, whether imposed on the licensing of the financial institution or under paragraph (a) of this sub-section, or add to any such condition.

(2) Without prejudice to the generality of its power under subsection (1) of this Section, the Reserve Bank may specify conditions that relate to any of the following matters—

- (a) capital in relation to the size and nature of business;
- (b) loan concentration and risk exposures;
- (c) incorporation and ownership structure;
- (d) separation of the business from other business and from other interests of any person owning or controlling the licensed financial institution;
- (e) liquidity and management of assets and liabilities;
- (f) provisioning for diminution in value of assets including provision for bad and doubtful debts, and provisioning for liabilities or losses which will or may arise;

- (g) granting of credit, review of asset quality and classification of loans;
- (h) internal controls and accounting systems; and
- (i) such other matters as may from time to time be determined by the Reserve Bank by notice in writing to a licensed financial institution.

Licensing of certain persons

12.—(1) Every person, that immediately before the commencement of this Act, was a licensed financial institution, or deemed to be a licensed financial institution, pursuant to the Banking Act 1983, shall continue to be a licensed financial institution as if that person had been granted a licence under this Act.

(2) If that person was licensed, or deemed to have been licensed, under that Act subject to any conditions, those conditions shall continue to apply, subject to Section 11, as if they had been imposed under Section 10 of this Act.

(3) Nothing in subsection (1) or subsection (2) of this Section limits any other provisions of this Act.

Display of licence

13.—(1) A copy of the licence granted under this Act shall be displayed and kept displayed conspicuously in a public area of all places of business of the licensed financial institution in Fiji.

(2) Every director and every manager of a licensed financial institution which contravenes subsection (1) of this Section shall be liable to a fine not exceeding \$1,000, such fine to be imposed by the Reserve Bank.

General powers of Reserve Bank

14.—(1) The Reserve Bank shall exercise general supervision and control over the carrying out of the provisions of this Act.

(2) The Reserve Bank may authorise any person to assist it in the exercise of its functions under this Act, either generally or in any particular case.

(3) Licensed financial institutions and where required by the Reserve Bank, any associated persons, shall be subject to the supervision, regulations, rules, orders or other directives of the Reserve Bank which may be issued in accordance with the provisions of this Act, of the Reserve Bank of Fiji Act, or any other written law.

Sanctions

15.—(1) Where a licensed financial institution or any of its officers has—

- (a) delayed the submission of reports or returns or publication thereof as required by law, regulation, rules, orders or other directives;

- (b) refused to permit an examination into the affairs of the institution;
- (c) in relation to any application or report required under this Act, or in conveying any information, data or returns required to be conveyed under this Act, made or caused to be made therein a false statement;
- (d) failed or refused to comply with, or violated any banking law, regulation, or any rules, orders or other directives issued by the Reserve Bank;
- (e) committed any irregularities in the conduct of the business of the institution; or
- (f) in the opinion of the Reserve Bank, been conducting business in an unsafe or unsound manner,

the Reserve Bank may impose on the licensed financial institution or its officer such sanctions as specified in subsection (2) of this Section as the Reserve Bank may determine, after taking into consideration the attendant circumstances such as the nature and gravity of the violation or irregularity.

- (2) The sanctions referred to in subsection (1) of this Section are as follows—
 - (a) to impose penalties for each type of violation in amounts as may be determined by the Reserve Bank to be appropriate, including an initial fine not exceeding \$5,000 and a further fine not exceeding \$1,000 for each day during which the contravention continues, and
 - (b) to direct the licensed financial institution to take any action or to do any act or thing whatsoever as may be specified by the Reserve Bank by notice in writing to that licensed financial institution.

Fee payable by a licensed financial institution

16.—(1) Every licensed financial institution shall pay such annual fee as may be determined by the Reserve Bank from time to time, on such basis as the Minister may approve, and as prescribed by regulation.

- (2) Without limiting subsection (1) of this Section,—
 - (a) different fees may be determined for different classes of licensed financial institutions;
 - (b) in determining such fees, the Reserve Bank may, with the approval of the Minister, have regard to the anticipated costs of the Reserve Bank in exercising its powers under this Act.

(3) The fee payable under this Section shall be paid upon the grant of the licence and thereafter on an annual basis.

Two or more financial institutions under the same ownership

17.—Where two or more financial institutions are under the same ownership, the Reserve Bank, for any of the purposes of this Act, may deem them to be a single financial institution in relation to their operation in Fiji.

Subsidiary companies of licensed financial institutions

18.—(1) In determining compliance or non compliance with any of the provisions of this Act by any financial institution applying for a licence under this Act, or any financial institution licensed under this Act, the Reserve Bank may take into account and have regard to the affairs of any body corporate which is or has at any relevant time been a subsidiary of the said institution.

(2) The powers exercisable under this Act may be exercised not only in relation to a financial institution applying for a licence under this Act or a financial institution licensed under this Act, but also in relation to any body corporate which is or has at any relevant time been a subsidiary of the said institution, and in case of exercise of such powers in relation to such subsidiary, like consequences shall apply as would apply if such powers were exercised in relation to a financial institution applying for a licence under this Act or financial institution licensed under this Act.

Persons debarred from management

19.—(1) In order to maintain the quality of management of licensed financial institutions and protect the soundness of the financial system and to minimise detriment to the interests of depositors and creditors, the Reserve Bank may pass upon and review the qualifications of any person who is elected or appointed as an officer or employee of a licensed financial institution incorporated in Fiji or appointed as an officer or employee of a licensed financial institution incorporated outside Fiji otherwise than as a director, and disqualify any persons found to be unfit.

(2) Where the Reserve Bank proposes to disqualify any officer or employee under subsection (1) of this Section, it shall give the licensed financial institution and the officer or employee written notice of its intention to do so, and shall specify the grounds on which such determination has been made.

(3) A licensed financial institution and any officer or employee in receipt of a notice under subsection (2) of this Section may within a period of 14 days beginning on the day on which the notice was given, make representations to the Reserve Bank.

(4) After giving notice under subsection (2) of this Section and taking into account any representations made under subsection (3), the Reserve Bank shall decide whether to—

- (a) proceed with the action proposed in the notice;
- (b) take some other action; or
- (c) take no further action.

(5) No notice need be given under subsection (2) of this Section in respect of a determination under subsection (1) where the Reserve Bank considers that any of the circumstances specified in subsection (1) of Section 30 of this Act have been met.

(6) For the purposes of subsection (1) of this Section, the Minister may consult the Reserve Bank in respect of any appointments by the Minister, of officers or employees of locally incorporated licensed financial institutions.

(7) Any person who—

- (a) has been a director of, or directly or indirectly concerned in the management of, a financial institution which has had its licence revoked in accordance with Section 21 or has been wound up by a court; or
- (b) has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty; or
- (c) is or becomes bankrupt or enters a scheme of arrangement or composition with his creditors,

shall not, without the written authorization of the Minister, act or continue to act as any officer or employee of any licensed financial institution or its subsidiaries.

(8) Any person disqualified under subsections (1) or (7) of this Section who continues, or purports to continue such activities, shall be liable to a fine not exceeding \$1,000 for each day during which the contravention continues, such fine to be imposed by the Reserve Bank.

Management of non-resident controlled licensed financial institutions

20.— Every non resident controlled licensed financial institution shall—

- (i) endeavour to place Fiji citizens in management positions in its Fiji operations within such time as may be agreed upon between the licensed financial institution and the Reserve Bank; and
- (ii) present to the Reserve Bank a program of training in order to place Fiji citizens in management positions in its Fiji operations as required by the Reserve Bank from time to time.

Revocation or suspension of licence

21.—(1) The Reserve Bank may revoke or suspend a licence issued under this Act—

- (a) for failure by the licensed financial institution concerned to comply with any directive issued by the Reserve Bank under this or any other Act; or
- (b) if, in the opinion of the Reserve Bank, the licensed financial institution concerned has ceased to carry on banking business; or
- (c) if the licensed financial institution concerned goes into liquidation, is wound up or is otherwise dissolved; or
- (d) in the circumstances specified in Section 30; or
- (e) if the licensed financial institution fails to commence banking business within the time specified by the Reserve Bank.

(2) Forthwith upon revocation or suspension pursuant to this Section, the financial institution whose licence is revoked or suspended shall cease to carry on banking business in any manner whatsoever unless and until such revocation or suspension is rescinded.

(3) A rescission of the revocation or suspension of a licence under subsection (1) of this Section may be effected by the Reserve Bank, either upon its own volition or upon application by the financial institution concerned, or by the High Court upon application by the said financial institution.

(4) In the event of application for rescission being made to the High Court, the Reserve Bank shall be entitled to be heard upon the hearing of such application, and to object thereto.

(5) The power to rescind a revocation or suspension shall be exercisable by the Reserve Bank or the High Court without any necessity for any fresh application for a licence being made by the financial institution concerned. Forthwith upon rescission of revocation or suspension the financial institution concerned may recommence banking business without any further or other formality or requirement than the fact of rescission except for such conditions as the Reserve Bank may see fit to impose in respect of such recommencement.

(6) Before revoking or suspending a licence under subsection (1) of this Section, the Reserve Bank shall give the licensed financial institution concerned notice, in writing, of its intention to do so, specifying therein the grounds upon which it proposes to revoke or suspend the licence and shall afford that institution an opportunity of submitting to it within 14 days a written statement of any objections it may have to the revocation or suspension and thereafter the Reserve Bank shall inform the institution of its decision on the matter:

Provided that no notice of intention to revoke or suspend a licence shall be required in the event of existence in relation to a licensed financial institution of any of the circumstances described in subsection (1) of Section 30 of this Act, but in such case, notice to be given shall comprise notice of revocation or suspension effective forthwith.

(7) Any licensed financial institution whose licence is revoked or suspended under this Section may appeal, within 21 days of the notification of the revocation or suspension, to the High Court, which may confirm, vary or reverse the decision of the Reserve Bank:

Provided that the revocation or suspension is not suspended pending appeal.

Alterations, reconstructions, arrangements and agreements

22.—(1) When any alteration is made in the memorandum or articles of association of a licensed financial institution or in any other instruments whereunder that institution was incorporated, the institution shall forthwith give the Reserve Bank full particulars, in writing, of such alteration, verified by a statutory declaration made by a director of the institution.

(2) Every licensed financial institution together with its subsidiaries shall in respect of its Fiji operations and, in the case of any such licensed financial institution which is incorporated in Fiji, also in respect of its overseas operations, give reasonable prior notice and consult with the Reserve Bank before carrying out any of the following transactions, and shall not, without the prior approval of the Reserve Bank -

- (a) make any arrangement or enter into any agreement for the sale or disposal of its business by amalgamation or otherwise;
 - (b) in the case of a licensed financial institution incorporated in Fiji, make any reconstruction of its capital;
 - (c) make any arrangement or enter into any agreement for the purchase or acquisition of the business of any other financial institution.
- (3) If the Reserve Bank considers that—
- (a) any alteration referred to in subsection (1) of this Section alters the constitution of any licensed financial institution in a manner detrimental to its depositors; or
 - (b) any transaction referred to in subsection (2) of this Section has been put into effect by any licensed financial institution without the required notice and consultation, or the Reserve Bank's approval;

it may exercise such of the powers conferred upon it by subsection (2) of Section 30 as may appear to it to be necessary in the interests of the soundness of the financial system and to minimise detriment to the interests of depositors and creditors of the licensed financial institution.

PART III - RESTRICTIONS ON BUSINESS

Restrictions on dividends

23.—No licensed financial institution incorporated in Fiji shall pay any dividend on its shares or make any other transfer from profits and no licensed financial institution incorporated outside Fiji shall remit any profits outside Fiji until all its capitalised expenditure including preliminary expenses, organisation expenses, share selling commission, brokerage and amounts of losses incurred (not represented by tangible assets), has been completely written off.

Restriction on advances, credit facilities and guarantees

24.—(1) A licensed financial institution together with its subsidiaries shall not, in respect of its Fiji operations and, in the case of any such licensed financial institution which is incorporated in Fiji, also in respect of its overseas operations:

- (a) make to any person, firm, corporation or company, or to any group of companies or of persons which group is under the control or influence of one and the same person, any advance or credit facility, or give any financial guarantee or incur any other exposure or liability on behalf of that person, firm, corporation, company or group so that the total value of the advances, credit facilities, financial guarantees and other exposures or liabilities in respect of that person, firm, corporation, company or group is at any time more than 25 per cent of that licensed financial institution's total capital as determined by the Reserve Bank;

Provided that this paragraph shall not apply to transactions between banks or between the branches of a bank, or to the purchase of telegraphic transfers, or to the purchase of bills of exchange or documents of title to goods, where the holder of those bills or documents is entitled to payment outside Fiji for exports from Fiji, or to advances made against those transfers, bills or documents;

- (b) make any advances or credit facility against the security of its own shares;
 - (c) make or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of \$3,000 or of 1 per cent of the sum of the paid up capital and published reserves of the licensed financial institution, whichever is the greater, or give any financial guarantees in excess of that amount without security, or incur any other liability in excess of that amount without security—
 - (i) to or on behalf of any one of its directors, whether the advances, facilities, guarantees or other liabilities are obtained by or on account of the director jointly or severally;
 - (ii) to or on behalf of any firm, partnership or private company in which it, or any 1 or more of its directors is interested as director, partner, manager or agent, or to or on behalf of any individual, firm, partnership or private company of whom or of which any one or more of its directors is a guarantor. For the purpose of this sub-paragraph, a private company shall have the meaning ascribed to it by the Companies Act, and a director shall include a wife, husband, father, mother, son or daughter of a director;
 - (d) make or permit to be outstanding to its officers and employees unsecured advances or unsecured credit facilities which, in aggregate amount for any one officer or employee, exceed one year's emolument of the officer or employee.
- (2) For the purposes of paragraph (a) of subsection (1) of this Section—
- (a) "control or influence of one and the same person" shall mean that the person holds and or has the power to vote a minimum of 51% of the voting shares or stock of the borrower, firm, corporation or company or a group of companies or of persons:

Provided that, the foregoing notwithstanding, a preponderance of evidence may prove "control or influence" if it can be shown that the person exercises a factual control in the policies of the borrower, firm, corporation or company or any group of companies or of persons;

- (b) total capital in relation to a licensed financial institution incorporated outside Fiji shall be the sum of the global consolidated issued paid up capital and published reserves of that licensed financial institution.

(3) In any or all of paragraphs (c) and (d) of subsection (1) of this Section, the expression "unsecured advances or unsecured credit facilities" means advances or credit facilities made without security, or, in respect of any advance or credit facility made with security, any part thereof which at any time exceeds the market value or in the case of non-marketed securities a valuation by the Reserve Bank of the assets constituting that security.

Prohibited activities

25.—(1) A licensed financial institution shall not, in respect of its Fiji operations, and, in the case of any such licensed financial institution which is incorporated in Fiji, also in respect of its overseas operations—

- (a) engage in any business other than the business specified in the licence;
- (b) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, or otherwise, have a direct interest in any commercial, agricultural, industrial or other undertaking, except as permitted under paragraph (d) of this subsection and except insofar as may be necessary with respect to such interest as a licensed financial institution may acquire in the course of the satisfaction of debts due to it; but all such interests shall be disposed of within a period of time as determined by the Reserve Bank;
- (c) acquire a subsidiary company, or operate via a subsidiary company, or permit a subsidiary company to operate, to carry out business in any capacity, without the prior written approval of the Reserve Bank;
- (d) without prejudice to the generality of powers conferred by subsection (2) of Section 11, acquire or hold to an aggregate value exceeding 25 per cent of that licensed financial institution's total capital as determined by the Reserve Bank, any part of the share capital of any financial, commercial, agricultural, industrial, or other undertaking except such shareholding as a licensed financial institution may acquire in the course of the satisfaction of debts due to it; but any such shareholding shall, however, be disposed of within a period of time as determined by the Reserve Bank;

Provided that this paragraph shall not apply to—

- (i) any shareholding, approved in writing by the Reserve Bank, in a subsidiary financial institution or in a subsidiary company formed by a licensed financial institution for the execution of nominee, executor or trustee functions or other functions incidental to banking business; and

- (ii) the acquisition and disposal of shares as a trustee or nominee, or the purchase and sale of shares upon the order and for the account of a customer;
 - (e) purchase, acquire or lease real property, except as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff, but, in the event of any debt due to a licensed financial institution which is secured upon any real or other property of the debtor becoming endangered, the licensed financial institution may acquire such property; but any such property shall be resold within a period of time as may be determined by the Reserve Bank.
- (2) For the purposes of paragraph (d) of subsection (1) of this Section—
- (i) total capital in relation to a licensed financial institution incorporated outside Fiji shall be the sum of the global consolidated issued paid up capital and published reserves of that licensed financial institution;
 - (ii) shareholding acquired or held by a licensed financial institution shall include share capital acquired or held by any subsidiary or subsidiaries of the said financial institution, whether or not the subsidiary or subsidiaries are licensed under this Act.
- (3) Except with the consent, in writing, of the Reserve Bank—
- (a) no financial institution shall open a new branch in Fiji; and
 - (b) no financial institution incorporated in Fiji shall open a new branch, agency or office in any place outside Fiji.
- (4) Every director and every manager of a licensed financial institution, which contravenes the provisions of any or all of paragraphs (a), (b), (c), (d) and (e) of subsection (1) or subsection (3) of this Section shall be liable to a fine not exceeding \$1,000 for every day during which the contravention continues, such fine to be imposed by the Reserve Bank.
- (5) The restrictions contained in paragraph (d) of subsection (1) of this Section shall not apply, where a licensed financial institution or a subsidiary or subsidiaries of a licensed financial institution acquires or holds any part of the share capital of any company or companies under an under-writing or sub-underwriting contract for a period not exceeding three months, or such other period as the Reserve Bank may approve in writing in any particular case.

PART IV - SUPPLY OF INFORMATION*Information to be submitted to Reserve Bank*

26.—(1) Any provision of law to the contrary notwithstanding, every licensed financial institution shall submit to the Reserve Bank in respect of the business and operations of that licensed financial institution and any associated person, in respect of its Fiji operations and, in the case of any such licensed financial institution which is incorporated in Fiji, also in respect of its overseas operations, and where specified, in consolidated form, in a form as may be prescribed and within such time as may be required—

- (a) a statement showing the assets and liabilities of the licensed financial institution;
- (b) (i) a balance sheet;
(ii) a statement of profit and loss; and
(iii) a statement of income and expenditure;
- (c) any such returns, data or information as may be required by the Reserve Bank in the proper implementation of banking and related laws, rules, and regulations.

(2) The Reserve Bank may vary the form of the statements and returns prescribed under subsection (1) of this Section and the dates as at which the information shall be submitted to the Reserve Bank.

(3) Every manager and every director of or licensed financial institution which fails to comply with the provisions of this Section shall be liable to a fine not exceeding \$5,000 for every day during which the default continues, such fine to be imposed by the Reserve Bank.

Confidentiality of information

27.—(1) No director, officer, or employee of the Reserve Bank, nor any person appointed under Section 14 of this Act shall publish or disclose to any person any information, returns or data whatsoever relating to the affairs of any licensed financial institution or other person which he has acquired in the performance of his duties under this Act or which relates to the exercise or possible exercise of powers conferred by this Act, except -

- (a) for the purpose of the performance of his duties or the exercise of his functions; or
- (b) when lawfully required to do so by any Court, or in connection with any proceedings for an offence against this Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) to the extent that the information is available under any other Act or in a public document; or

- (e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as relating to a particular person; or
- (f) in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Reserve Bank under this Act.

(2) No person to whom any information, returns or data is disclosed pursuant to subsection(1) of this Section shall disclose or use such information except—

- (a) in accordance with such conditions as may be specified by the Reserve Bank; or
- (b) as necessary or desirable in connection with the exercise of any function or power conferred by any enactment.

(3) Every person who contravenes the provisions of this Section is guilty of an offence under this Act and shall be liable to a fine not exceeding \$20,000.

Publication of financial statements

28.—(1) Not later than 4 months after the close of each financial year of each licensed financial institution, or such longer period as the Reserve Bank may permit, the licensed financial institution shall publish in the Gazette and in a daily newspaper published and circulating in Fiji, and exhibit thereafter in a conspicuous position in each of its offices and branches in Fiji, copies of its audited balance sheet and profit and loss account, including in consolidated form where required, and the full and correct names of the directors of the licensed financial institution; copies of the same financial statements shall be forwarded to the Reserve Bank.

(2) Every licensed financial institution together with its subsidiaries shall in respect of its Fiji operations and, in the case of any such licensed financial institution which is incorporated in Fiji, also in respect of its overseas operations, publish in the Gazette and in a daily newspaper published and circulating in Fiji, and exhibit thereafter in a conspicuous position in each of its offices and branches in Fiji, the audited balance sheet and profit and loss account of the licensed financial institution and its subsidiaries in such form and such time as the Reserve Bank may require; advance copies of the statements shall be forwarded to the Reserve Bank 30 days prior to publication.

(3) For the purpose of this Section, a licensed financial institution shall include the Fiji branch operations of a licensed financial institution incorporated outside Fiji.

(4) Every director and every manager of a licensed financial institution which contravenes the provisions of this Section shall be liable to a fine not exceeding \$10,000, such fine to be imposed by the Reserve Bank.

PART V - CONTROL OVER LICENSED FINANCIAL INSTITUTIONS

Assets of licensed financial institutions

29.—(1) In the event of a licensed financial institution becoming unable to meet its obligations or suspending payment or in the case of a licensed financial institution incorporated outside Fiji, in the event of its liquidation, bankruptcy or dissolution in its country of incorporation for whatever reason, the assets of the licensed financial institution in Fiji shall be available to meet the licensed financial institution's deposit liabilities and claims of creditors in Fiji in priority to all other liabilities of the licensed financial institution, which priority the Reserve Bank shall be empowered to protect and preserve.

(2) Unless otherwise authorised by the Reserve Bank, a licensed financial institution shall at all times hold assets (other than goodwill and intangible assets) in Fiji of a value of not less than the total amount of its deposit liabilities in Fiji.

Powers of Reserve Bank

30.—(1) Where—

- (a) a licensed financial institution informs the Reserve Bank -
 - (i) that it considers that it is likely to become unable to meet its obligations; or
 - (ii) that it is insolvent or about to suspend payment;
- (b) a licensed financial institution becomes unable to meet its obligations or suspends payment;
- (c) the Reserve Bank is of the opinion that a licensed financial institution -
 - (i) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors; or
 - (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment; or
 - (iii) has contravened or failed to comply with any of the provisions of this Act; or
 - (iv) has contravened or failed to comply with any condition attached to its licence;
- (d) the Reserve Bank has reasonable grounds to believe that any associated person of a licensed financial institution is -
 - (i) likely to become unable to meet its obligations; or
 - (ii) insolvent or about to suspend payment; or
 - (iii) subject to conditions described in paragraphs (a), (b) or (c) of this subsection;

- (e) the Reserve Bank considers it is necessary in the interests of the soundness of the financial system or to minimise detriment to the interests of depositors or creditors of the licensed financial institution to do so,

the Reserve Bank may exercise such one or more of the powers specified in subsection (2) of this Section as may, from time to time, appear to it to be necessary.

(2) The powers referred to in subsection (1) of this Section are as follows:

- (a) to require the licensed financial institution or any associated person forthwith to take any action or to do any act or thing whatsoever in relation to its business as the Reserve Bank may consider necessary;
- (b) to appoint a person to advise the licensed financial institution or any associated person in the proper conduct of its business, and to fix the remuneration to be paid by the licensed financial institution or the associated person to any person so appointed;
- (c) in cases of breach of any provision of this Act or directives under this Act, with the consent of the Minister—
 - (i) to assume control of, or appoint a person to assume control of, the business of the licensed financial institution or branch thereof in Fiji or any associated person whether, in the case of a subsidiary, it has been incorporated or acquired by the licensed financial institution prior to or subsequently to the assumption or control of the parent company;
 - (ii) to fix the remuneration to be paid by the licensed financial institution or the associated person to any person so appointed; and
 - (iii) to fix the duration of controllership and the term of office of the controller so appointed;
- (d) to present a petition to the High Court for the winding up of the licensed financial institution by the Court; and
- (e) to revoke or suspend the financial institution's licence.

(3) Where it is consistent with the considerations specified in subsection (1) of this Section to do so, the powers provided in subsection (2) may also be exercised over an associated person of a licensed financial institution in the interest of the effective administration of the group of which the licensed financial institution is a part.

(4) In the event of the Reserve Bank exercising the power specified in paragraph (c) of subsection (2) of this Section, the Reserve Bank shall cause to be published in the Gazette a notification of the fact of the assumption of control of the relevant licensed financial institution or any associated person.

Investigation of licensed financial institutions

31.—(1) Without prejudice to Section 30 of this Act, the Reserve Bank may, from time to time, investigate, with or without prior notice to the licensed financial institution concerned, the books, accounts and transactions of any licensed financial institution.

(2) Without prejudice to Section 30 of this Act, the Reserve Bank shall investigate the books, accounts and transactions of a licensed financial institution -

(a) if it has reason to believe that the licensed financial institution -

- (i) is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors;
- (ii) is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
- (iii) has contravened or failed to comply with, or may contravene or fail to comply with, any of the provisions of this Act;
- (iv) has contravened or failed to comply with, or may contravene or fail to comply with, any condition attached to its licence;

(b) if shareholders of the licensed financial institution (holding not less than one-third of the total number of issued shares of the institution) or depositors (holding not less than one-half of the gross amount of the total deposit liabilities in Fiji of the institution) apply to the Reserve Bank to institute an investigation and submit to the Reserve Bank such evidence as it may consider necessary to justify an investigation and furnish such security for the payment of the costs of the investigation as it may require; or

(c) if a licensed financial institution suspends payment or informs the Reserve Bank of its intention to do so.

(3) After the conclusion of the investigation, the Reserve Bank shall forward a copy of its report to the head office of the licensed financial institution concerned.

(4) Where an investigation is carried out pursuant to subsection (2) of this Section, the Reserve Bank may direct that all expenses incurred by or incidental to such investigation shall be defrayed—

- (a) by the licensed financial institution investigated;
- (b) if the investigation was made pursuant to an application submitted under paragraph (b) of subsection (2) of this Section, either wholly by the applicants or partly by the applicants and partly by the licensed financial institution in such proportions as may appear to the Reserve Bank to be just.

Control of licensed financial institutions by Reserve Bank

32.—(1) Where the Reserve Bank or some other person appointed by the Reserve Bank has assumed control of the business of a licensed financial institution or branch thereof in Fiji pursuant to paragraph (c) of subsection (2) of Section 30, the Reserve Bank or that person shall carry on all or any part of the business of the licensed financial institution and has, and may exercise in relation to the licensed financial institution, all such powers, rights, and authorities as may be necessary to carry on that business.

(2) For the purposes of carrying on the business of the licensed financial institution, the Reserve Bank or the appointed person has power to—

- (a) pay, in whole or in part, any creditor or class of creditors of the licensed financial institution;
- (b) make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the licensed financial institution;
- (c) compromise all calls, debts and claims subsisting, or supposed to subsist, between the licensed financial institution and any other person, and all questions relating to the assets of the licensed financial institution, and give a complete or partial discharge.

(3) The Reserve Bank or the person appointed by the Reserve Bank shall have all such powers, rights, and authorities as may be necessary for the purposes of the controllership such as but not limited to—

- (a) all the powers, rights, and privileges that the licensed financial institution has under any contract or otherwise;
- (b) in the case of a body corporate, all the powers of the members in general meeting and the Board of Directors of that body corporate.

(4) Where a licensed financial institution is declared to be subject to the control of the Reserve Bank or some other appointed person, the management of the licensed financial institution, shall on and after the date specified in the order, vest in the Reserve Bank or the appointed person.

(5) Where a licensed financial institution is declared to be subject to the control of the Reserve Bank or appointed person it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of its business, or to act as an officer or as the agent, or servant, of the licensed financial institution, except with the permission of the Reserve Bank or the appointed person and so far as that permission extends.

(6) Where an associated person of a licensed financial institution becomes subject to controllership, all references in this part of the Act to a licensed financial institution shall be read as references to that associated person.

(7) In any case where a licensed financial institution and one or more associated persons of that licensed financial institution are in controllership, the financial resources of the said licensed financial institution shall be available, at the discretion of the controller, to discharge the debts and obligations of the said associated person, and likewise the financial resources of the said associated person shall be available, at the discretion of the controller, to discharge the debts and obligations of the said licensed financial institution. In case of a plurality of associated persons, the debts and obligations of any of same may be discharged by the financial resources of any of same.

(8) In the case of controllership the controller, whether the Reserve Bank or some other appointed person, shall in relation to all matters pertaining to such controllership occupy the position of agent in regard to the licensed financial institution and any associated persons thereof subject to controllership.

Expenses of Controller

33.—(1) All costs, charges, and expenses properly incurred by the Reserve Bank or the appointed person or person assisting the appointed person in the exercise of functions and powers as controller (including such remuneration as may be approved by the Reserve Bank) shall be payable out of the property of the licensed financial institution which is subject to controllership in priority to all other claims, subject to the approval of the Reserve Bank.

(2) Costs, charges and expenses referred to in this Section shall include costs, charges and expenses in relation to all obligations duly entered into by a controller or person assisting the controller and shall not be limited to personal or out of pocket expenditure.

(3) The controller shall disclose to creditors the amount of such costs, charges and expenses, as are paid or payable under subsection (1) of this Section; the form and method of disclosure is to be subject to the approval of the Reserve Bank.

Advances for expenses

34.—(1) The Reserve Bank may advance out such amounts in respect of costs, charges, and expenses (including remuneration) due to, or incurred by the Reserve Bank or the appointed person, or person assisting the appointed person arising out of the assumption of control by the Reserve Bank or appointed person under the provisions of paragraph (c) of subsection (2) of Section 30 of this Act.

(2) All money so advanced to that person shall be refunded to the Reserve Bank out of money payable to that person, out of the property of the licensed financial institution which is subject to controllership, and the Reserve Bank shall have all the rights of the person to whom the advance was made to receive and recover that money.

Duty to deliver books and property to Controller

35.—(1) Every person having possession and control of any books, or records, or documents, or other property belonging to any licensed financial institution subject to controllership shall forthwith after it becomes subject to controllership, deliver or give possession of those books, records, documents, or other property to the Reserve Bank or the appointed person.

(2) Any person who fails for 7 days to comply with the provisions of subsection (1) of this Section, shall be liable to an initial fine not exceeding \$5,000 and to a further fine not exceeding \$1,000 for every day after the expiration of those 7 days during which the violation had continued, such fine to be imposed by the Reserve Bank.

(3) It shall not be a defence to any proceedings under this Section that the person in possession or control of any property is, or was, a trustee of the property for the licensed financial institution, or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

Offence to destroy, alter, or conceal records

36.—(1) Every person shall be guilty of an offence and liable to a fine not exceeding \$30,000 who—

- (a) with intent to defeat the purposes of this part of this Act, destroys, alters, or conceals any book, document, or record of, or relating to, a licensed financial institution that is subject to controllership or sends or attempts to send out of Fiji any such book, document, or record; or
- (b) fails or refuses to answer, to the best of that person's knowledge and ability, any question which that person may be asked by the Reserve Bank or the appointed person in relation to any such book, or document, or record, or any property, or wilfully gives a false answer to that question.

(2) If, in any prosecution for an offence alleged to have been committed under this Section it is proved that the person charged with the offence has destroyed, altered, or concealed any book, document, or record, or has sent, or attempted to send, out of Fiji, any such book, document, or record, the onus of proving that in so doing that person had not acted in contravention of this Section shall lie on that person.

Termination of Controllership

37.—(1) The Minister may, on the advice of the Reserve Bank, order that—

- (a) any licensed financial institution; or
- (b) any associated person of a licensed financial institution,

subject to controllership, shall cease to be subject to controllership.

(2) Any licensed financial institution or associated person of a licensed financial institution shall cease to be subject to controllership if a winding up order is made in respect of that licensed financial institution, or associated person, as the case may be, on the petition of the controller, upon the date of making of the winding up order.

(3) Any person aggrieved by the placing into controllership of a licensed financial institution may request the Reserve Bank to make a recommendation under subsection (1) of this Section.

(4) Where an order is made under subsection (1) of this Section, or a winding up order is made in respect of a licensed financial institution or associated person of a licensed financial institution -

- (a) that licensed financial institution or associated person shall cease to be subject to controllership on the date specified in the order; and
- (b) the appointment of any controller in respect of that licensed financial institution or associated person shall terminate on the date specified in the order.

(5) Where an order is made under subsection (1) of this Section—

- (a) every associated person of the licensed financial institution except any associated person specified in the order, shall cease to be subject to controllership on the same date as that applicable to the licensed financial institution;
- (b) the appointment of any person appointed as controller of an associated person shall terminate on the date specified in paragraph (a) of this subsection.

(6) Where the control of the business of any licensed financial institution or associated person has been terminated pursuant to the provisions of this Section, the Reserve Bank shall cause to be published in the Gazette a notification of the fact of the cessation of control.

Termination of appointment of Controller

38.—(1) The Reserve Bank may, with the concurrence of the Minister, terminate the appointment of a controller for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Reserve Bank.

(2) The appointment of a controller may also be terminated where the Reserve Bank is satisfied that it would be in the interests of the effective conduct of the affairs of the licensed financial institution in controllership or in the interests of maintaining confidence in the soundness of the financial system that the controller's appointment be terminated.

(3) A controller may resign by notice in writing to the Reserve Bank.

(4) Where the appointment of a controller is terminated or a controller resigns or dies, the Reserve Bank, with the concurrence of the Minister, may appoint a replacement.

(5) Where a controller resigns that controller shall continue in office until a successor is appointed.

Production of books, etc.

39.—(1) Subject to subsection (2) of this Section, for the purposes of an investigation under Section 31, a licensed financial institution shall afford the person carrying out the investigation access to its books, accounts and documents and such information and facilities as may be required to conduct the investigation, and shall produce to the person conducting the investigation such books, accounts, documents and other information as the person may require.

(2) So far as is consistent with the conduct of the investigation, such books, accounts and documents shall not be required to be produced at such times and such places as shall interfere with the proper conduct of the daily business of the licensed financial institution.

(3) Every officer of a licensed financial institution which fails to comply with the provisions of this Section shall be liable to a fine not exceeding of \$1,000 for each day during which the default continues, such fine to be imposed by the Reserve Bank.

Indemnity

40.—No director or officer or employee of the Reserve Bank and no person authorised or appointed by the Reserve Bank under Section 14 or 30 exercising any power or performing any duty under this Part and no person assisting any such director or officer or employee or person in exercising any such power or performing any such duty shall incur any personal liability as a result of anything done in good faith in the exercise of such power or the performance of such duty, whether such power or duty is exercised directly in relation to a licensed financial institution in controllership, or, necessarily, by reason of the fact of controllership, in relation to a company associated with such licensed financial institution.

Controller to comply with directions of Reserve Bank

41.—Every controller of a licensed financial institution shall comply with any directions given in writing by the Reserve Bank relating to the exercise of the powers of that controller under this part of this Act.

Considerations affecting exercise of powers by Controller

42.—(1) In exercising the powers conferred by this part of this Act a controller of a licensed financial institution shall have regard to—

- (a) the need to maintain public confidence in the operation and soundness of the financial system and to minimise detriment to the interests of depositors and creditors of the licensed financial institution;
- (b) the need to avoid significant damage to the financial system;
- (c) to the extent not inconsistent with the considerations referred to in paragraphs (a) and (b) of this subsection, the need to resolve as quickly as possible the difficulties of that institution;
- (d) to the extent not inconsistent with the considerations referred to in paragraphs (a), (b) and (c) of this subsection, preserving the position of creditors and maintaining the ranking of claims of creditors; and
- (e) the advice of the Reserve Bank.

(2) Every controller shall—

- (a) consult with the Reserve Bank, to the extent required by the Reserve Bank, as to the exercise of his powers; and
- (b) provide such reports as the Reserve Bank may require as to the state of the affairs and business of the licensed financial institution.

Moratorium

43.—(1) Where a licensed financial institution is declared to be subject to controller-ship, no person shall -

- (a) commence or continue any action or other proceedings, including proceedings by way of counterclaim, against that licensed financial institution;
- (b) issue any execution, attach any debt, or otherwise enforce or seek to endorse any judgement or order obtained in respect of that licensed financial institution;
- (c) petition or resolve to wind up that licensed financial institution;
- (d) foreclose, enter into possession, sell, or appoint a receiver of the property of that licensed financial institution or property in respect of which, the licensed financial institution has an equity of redemption;
- (e) exercise or continue any power or rights under, or in pursuance of, any mortgage, charge, debenture, instrument, or other security over the property of that licensed financial institution;
- (f) claim or recover, pursuant to any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of that licensed financial institution;
- (g) determine or forfeit any tenancy, distrain for rent, retake or re-enter any premises, or exercise or continue any power or rights under or in pursuance of any lease, against that licensed financial institution;

(h) exercise any right of set-off acquired prior to controllership against that licensed financial institution.

(2) Notwithstanding subsection (1) of this Section, an action or proceeding may be commenced or continued against a licensed financial institution for the purpose of determining whether any right or liability exists if the leave of the controller or the High Court is first obtained.

(3) Notwithstanding subsection (1) of this Section, a controller may waive the application in whole or in part of that subsection (except paragraph (c) of that subsection) to any creditor or depositor or class of creditors or depositors in respect of the whole or part of any claim of, or security held by, that creditor or depositor or class of creditors or depositors.

(4) Subject to the provisions of this Act, nothing in subsection (1) of this Section affects the existence of any security over the property of any licensed financial institution or its priority over other debts.

(5) Nothing in paragraph (a) of subsection (1) of this Section limits or prevents any person commencing or continuing any action or other proceedings, including proceedings by way of counterclaim, against a licensed financial institution in respect of any contract entered into, or obligation incurred, by that licensed financial institution after the date on which that licensed financial institution was declared to be subject to controllership.

(6) Nothing in paragraph (b) of subsection (1) of this Section limits or prevents any person issuing any execution, attaching any debt, or otherwise enforcing or seeking to enforce any judgement or order obtained against a licensed financial institution in respect of any contract entered into, or obligation incurred, by that licensed financial institution after the date on which that licensed financial institution was declared to be subject to controllership.

(7) The Reserve Bank, notwithstanding anything contained in this Section, may direct the controller to approve and authorise the making and carrying out of any financial arrangement between the licensed financial institution in controllership and any other person which, in the opinion of the Reserve Bank, is necessary having regard to the considerations set out in Section 42 of this Act.

*Controller may incorporate company under Companies Act to acquire
business of branch of foreign institution*

44.—(1) Where a licensed financial institution which is a branch of a body corporate incorporated outside Fiji is declared to be subject to controllership, the controller may -

(a) form and register a body corporate under the Companies Act or any other Act;

- (b) subscribe, as trustee for that body corporate for all or any shares of the body corporate;
- (c) allot all or any of the shares in that body corporate as fully or partly paid, as the case may be, up to the value, after deducting the value of any liabilities vested, of any property, rights, and assets vested in that body corporate pursuant to subsection (2) of this Section.

(2) The Minister may on the advice of the Reserve Bank order that the whole or any part of any property, rights, assets, and liabilities of any such branch relating to the business carried on by that branch shall vest in that body corporate on a date specified in the order and the property, rights, assets, and liabilities shall vest in that body corporate on the date specified.

(3) Nothing in subsection (2) of this Section shall reduce, extinguish, or affect any obligation or liability of a body corporate incorporated outside Fiji.

(4) Every body corporate formed and registered under subsection (1) of this Section shall, for the purposes of this part of this Act, be deemed to be a licensed financial institution subject to controllership as if that body corporate had been declared to be subject to controllership and the controller of it, in its capacity as a branch, shall be the controller of that body corporate as if that controller had been appointed pursuant to paragraph (c) of subsection (2) of Section 30 and the provisions of this part of this Act shall apply accordingly.

Vesting of property subject to security

45.—(1) The Minister may make an order under Section 44 of this Act vesting any property, rights, and assets of a branch in a body corporate formed and registered pursuant to that Section notwithstanding the existence, or the terms and conditions, of any security over that property, or those rights or assets in favour of any other person.

(2) Any property, rights or assets which are declared to vest pursuant to an order made by the Minister under Section 44 in the body corporate, being property, rights or assets subject to a security in favour of any other person, shall continue to be subject to that security.

Proof of vesting

46.—(1) No registrar, or any other person charged with the keeping of any books or registers, shall be obliged solely by reason of Section 44 of this Act to change the name of any body corporate referred to in that Section to that of any company formed and registered pursuant to that Section in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by the company—

- (a) executed or purporting to be executed by the company; and
- (b) relating to any property held before controllership by that body corporate; and
- (c) containing a recital that the property has become vested in the company, by virtue of controllership, shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Prohibition against removal of assets

47.—(1) Except with the consent of the controller, no person shall transfer or remove from Fiji any property or assets of any licensed financial institution which is declared to be subject to controllership.

(2) Every person who contravenes subsection (1) of this Section shall be guilty of an offence under this Act and liable on conviction -

- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000 or to both;
- (b) in the case of a body corporate, to a fine not exceeding \$250,000;

(3) Nothing in subsection (2) of this Section shall prevent the issue of an injunction or the making of any order to prevent any property or assets being removed from Fiji.

Controller may suspend payment of money owing

48.—(1) The controller of a licensed financial institution may, notwithstanding the terms of any contract, suspend in whole or in part, the repayment of any deposit, or the payment of any debt, or the discharge of any obligation to any person.

(2) The suspension by a controller in whole or in part, of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person pursuant to subsection (1) of this Section shall not constitute a breach or repudiation or termination of any contract entered into by the licensed financial institution with any person.

(3) Nothing in subsection (1) of this Section shall authorise the suspension by the controller of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation to any person where the obligation to repay the deposit, or to pay the debt, or the obligation, was incurred by the licensed financial institution or by the controller, after the date upon which the licensed financial institution became subject to controllership.

Sale of financial institution

49.—(1) Subject to this part of this Act, the controller of a licensed financial institution may sell or otherwise dispose of the whole or any part of the business undertaking of the licensed financial institution to such person and upon such terms and conditions as the controller thinks fit.

(2) Without limiting any other powers of the controller for the purposes of subsection (1) of this Section, the controller shall have power to -

- (a) form and register a body corporate under the Companies Act or any other Act;
- (b) subscribe for all or any of the shares of that body corporate;
- (c) transfer to that body corporate the whole or any part of the business undertaking of the licensed financial institution;
- (d) allot all or any of the shares in that body corporate to any person, credited as fully or partly paid, as the case may be, up to the value of the business undertaking transferred to that body corporate;
- (e) sell all or any of the shares, or the whole or any part of the business undertaking, of that body corporate to such person and upon such terms and conditions as the controller thinks fit.

(3) The controller shall not sell or otherwise dispose of—

- (a) the whole or any substantial part of the business undertaking of a licensed financial institution pursuant to subsection (1) of this Section;
- (b) any of the shares of any body corporate formed and registered pursuant to paragraph (a) of subsection (2) of this Section; and
- (c) the whole or any substantial part of the business undertaking of any body corporate formed and registered pursuant to paragraph (a) of subsection (2) of this Section, unless the controller has consulted with the Reserve Bank and the Reserve Bank, with the consent of the Minister, has given approval in writing to the sale or other disposition and the terms and conditions of it.

Consents not required under other Acts

50.—The provisions of any enactment or agreement requiring any consent, licence, permission, clearance or other authority shall not have any application in respect of -

- (a) the sale or other disposition of the whole or any part of the business undertaking of a licensed financial institution pursuant to Section 49 of this Act;
- (b) the sale or other disposition pursuant to Section 49 of this Act of any of the shares of any body corporate formed and registered pursuant to that Section; and
- (c) the sale or other disposition pursuant to Section 49 of this Act of the whole or any part of the business undertaking of that body corporate, being a sale or disposition to which the Reserve Bank has, with the consent of the Minister, given its approval under Section 49 of this Act:

Provided that this Section shall not apply to any consent, permission, clearance, or other authority required under the provisions of the Native Land Trust Act.

Sale of property or assets subject to a security

51.—(1) A controller may -

- (a) sell or otherwise dispose of any property or assets of a licensed financial institution pursuant to Section 49 of this Act; or
- (b) sell or otherwise dispose of property or assets of a licensed financial institution to any body corporate formed and registered pursuant to Section 49 of this Act; or
- (c) sell or otherwise dispose of any shares, or property or assets of a body corporate formed and registered pursuant to Section 49 of this Act,

notwithstanding the existence, or the terms and conditions, of any security over the property or those assets in favour of any other person.

(2) Where the controller of a financial institution sells or otherwise disposes of any property or assets of that institution pursuant to Section 49 of this Act, being property or assets subject to a fixed charge in favour of any person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the controller in selling or disposing of the property or assets.

(3) Where a controller of a licensed financial institution sells or otherwise disposes of any property or assets of that financial institution to any body corporate formed and registered pursuant to Section 49 of this Act, being property or assets subject to a security in favour of any other person, the property or those assets shall continue to be subject to that security.

(4) Where a controller of a licensed financial institution sells or otherwise disposes of any shares in a body corporate formed and registered pursuant to Section 49 of this Act, being shares which are subject to a fixed charge in favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the controller in selling or disposing of the shares.

(5) Where a controller of a licensed financial institution sells or otherwise disposes of any property or assets of a body corporate formed and registered pursuant to Section 49 of this Act, being property or assets subject to a fixed charge in favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the controller in selling or disposing of the property or assets.

Proof of transactions

52.—(1) The presentation to any registrar, or any other person charged with the keeping of any books or registers, of any instrument transferring or otherwise disposing of any property or assets of a licensed financial institution or any shares in, or property or assets of any company incorporated pursuant to Section 49 of this Act—

- (a) executed or purporting to be executed by or on behalf of the licensed financial institution or company; and
- (b) containing a recital that the transfer or other disposition of the property or assets of the licensed financial institution, or the shares in, or property or assets of, the company, is made pursuant to Section 49 of this Act -

shall, in the absence of evidence to the contrary, be sufficient proof that the transfer or other disposition is made under the authority of that Section.

(2) The presentation to any registrar, or any other person charged with the keeping of any books or registers of a certificate signed by the controller that the amount secured by a charge over any property or assets of a licensed financial institution or any company formed and registered pursuant to Section 49 of this Act has been paid shall, in the absence of evidence to the contrary, be sufficient proof that the amount secured by the charge has been repaid to the full extent of the entitlement of the person entitled to the charge.

Appointment of auditors

53.—(1) The controller of a licensed financial institution shall, subject to the approval of the Reserve Bank, appoint one or more persons (whether as individuals or as the members from time to time of any firm or firms) to be auditors of the licensed financial institution.

(2) Every such appointment shall be for a term not exceeding 2 years, but any person appointed as auditor shall continue in office notwithstanding the expiry of his term of office or his resignation as auditor, until a successor comes into office.

(3) Any person appointed as auditor shall be eligible for re-appointment.

(4) Any auditor may be removed from office at any time by the Reserve Bank with the concurrence of the Minister for disability, bankruptcy, neglect of duty, misconduct, or conflict of interest proved to the satisfaction of the Reserve Bank.

(5) Every auditor shall have right of access at all times to the books and papers of the licensed financial institution, and shall be entitled to ~~require from its officers and~~ employees such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(6) The auditor shall be paid such fees as are fixed by the controller with the approval of the Reserve Bank.

(7) Any person holding office as auditor of a licensed financial institution at the time that it is subjected to controllership shall cease to hold that office but may be appointed under this Section as auditor of the licensed financial institution.

Annual Report by Controller

54.—(1) The controller of a licensed financial institution shall, after the end of each financial year, prepare the annual accounts and a report on the conduct of the controllership and the affairs of the licensed financial institution and its associated persons in controllership.

(2) The report, together with the accounts and the auditor's report on them, shall be submitted to the Minister and the Reserve Bank, where it is not the controller, within 7 days after completion of the auditor's report.

(3) The report, accounts and the auditor's report on them shall within 14 days after submission to the Minister be filed with the Registrar of Companies.*

Controller may petition to wind up financial institution

55.—(1) Subject to this part of this Act, a controller of a licensed financial institution may, with the prior approval of the Reserve Bank -

- (a) in the case of a licensed financial institution which may be wound up under the Companies Act, petition under that Act to wind up that licensed financial institution;
- (b) in the case of a licensed financial institution constituted under any other Act, take such steps as are provided for in that Act for the winding up or dissolution of that licensed financial institution.

(2) The Minister, on the advice of the Reserve Bank may order that the licensed financial institution to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the licensed financial institution shall be wound up in the manner specified.

(3) Nothing in this Section limits or affects any other enactment which provides for the winding up, or dissolution, of any body corporate or any class of body corporate.

(4) In the winding up of a licensed financial institution or an associated person of a licensed financial institution, all amounts required to satisfy obligations incurred by the controller or person assisting the controller on behalf of the licensed financial institution or associated person shall be paid in priority to all other debts.

Application of certain provisions of the Companies Act

56.—(1) Sections 312 to 314, and 323 to 325 of the Companies Act shall apply to a licensed financial institution that is subject to controllership under this Act in all respect, and with such modifications as may be necessary, as if -

- (a) the licensed financial institution were a company being wound up under that Act; and

- (b) the controller of the licensed financial institution was the liquidator of the company; and
- (c) the date on which the licensed financial institution became subject to controllership was the date of commencement of the winding-up.

(2) Subject to subsection (3) of this Section, all the provisions of the Companies Act and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a licensed financial institution that is subject to controllership.

(3) Nothing in Sections 35, 127 to 133, 150 to 165, and Part VII of the Companies Act shall apply to a licensed financial institution that is subject to controllership.

References to Reserve Bank

57.—In the event of the Reserve Bank itself assuming controllership of a licensed financial institution, any references in this part of the Act to approval of, or direction to the controller by the Reserve Bank shall have no application.

PART VI - AUDIT

Approved auditor

58.—(1) Every licensed financial institution shall, subject to the approval of the Reserve Bank, appoint annually one or more persons (whether as individuals or as members from time to time of any firm or firms) to be auditors of the licensed financial institution.

(2) Every person responsible for carrying out the duties and functions of the approved auditor for the purposes of this Act, whether because of approval as an individual or as a member of a firm of auditors, shall be required to hold a current certificate of public practice issued by the Fiji Institute of Accountants.

(3) The duties of the approved auditor shall include making a report, a copy of which shall be sent to the Reserve Bank, upon the annual balance sheet and profit and loss account of the licensed financial institution and its subsidiaries in relation to the following matters

- (a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit;
- (b) whether, in their opinion, proper books of account have been kept by the licensed financial institution, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them;

- (c) whether the licensed financial institution's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns;
- (d) whether, in their opinion and to the best of their information and according to the explanations given them, the said accounts give a true and fair view—
 - (i) in the case of the balance sheet, of the state of the licensed financial institution's affairs as at the end of its financial year; and
 - (ii) in the case of the profit and loss accounts, of the profit or loss for its financial year;
- (e) in the case of a licensed financial institution submitting group accounts as required by the Reserve Bank, whether in their opinion, the group accounts have been properly prepared so as to give a true and fair view of the state of affairs and profit or loss of the licensed financial institution and its subsidiaries dealt with thereby; and
- (f) in any case in which the auditor has called for explanation or information from the officers or agents of the licensed financial institution and its subsidiaries, whether this is satisfactory.

(4) In case of a licensed financial institution incorporated in Fiji, the report of an approved auditor under subsection (3) of this Section shall be tabled together with the report of the directors of the licensed financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Reserve Bank.

(5) Every director and every manager of a licensed financial institution which contravenes the provisions of subsection (4) of this Section shall be liable to a fine not exceeding \$1,000, such fine to be imposed by the Reserve Bank.

(6) If a licensed financial institution fails to appoint an approved auditor under subsection (1) of this Section, or, at any time, fails to fill a vacancy for such auditor, the Reserve Bank may appoint an approved auditor and shall fix the remuneration to be paid by that institution to that auditor.

(7) No person having an interest in any licensed financial institution otherwise than as a depositor, and no director, employee or agent of any licensed financial institution shall be eligible for appointment as an approved auditor for that institution; and any person appointed as auditor to any licensed financial institution who subsequently acquires such interest or becomes a director, employee or agent of that institution shall cease to be auditor thereof.

(8) In the case of licensed financial institutions incorporated outside Fiji, the provisions of subsections (1), (2), (3), (6) and (7) of this Section shall be made applicable insofar as its Fiji operations is concerned.

Requirement that information be audited

59.—(1) The Reserve Bank may, by notice in writing to a licensed financial institution, require any information, data and returns which that licensed financial institution is required to supply pursuant to Section 14 or Section 26 of this Act to be audited by an approved auditor, on such terms as may be specified by the Reserve Bank.

(2) Every manager and every director of a licensed financial institution which fails to comply with the provisions of this Section shall be liable to a fine not exceeding \$1,000 for every day during which the default continues, such fine to be imposed by the Reserve Bank.

Reports from auditors or other appointed persons

60.—(1) The Reserve Bank may, by notice in writing to a licensed financial institution, require that licensed financial institution to supply the Reserve Bank with a report, prepared by an approved auditor or any other person appointed by the Reserve Bank, on such matters as the Reserve Bank may determine, which may include an opinion by the approved auditor or other appointed person on the licensed financial institution's liquidity, solvency and compliance with statutory provisions, and a review of the accounting systems and internal controls of the licensed financial institution.

(2) Every manager and every director of a licensed financial institution which fails to comply with the provisions of this Section shall be liable to a fine not exceeding \$1,000 for every day during which the default continues, such fine to be imposed by the Reserve Bank.

Disclosure of information by auditors

61.—(1) Every person who holds or at any time has held, office as required by any enactment, as an auditor of a licensed financial institution, shall disclose to the Reserve Bank information relating to the affairs of that financial institution obtained in the course of holding that office, if in the opinion of that person, -

- (a) the licensed financial institution is insolvent or likely to become unable to meet its obligations or is about to suspend payment; or
- (b) the licensed financial institution is carrying on its business in a manner detrimental to the interests of its depositors or of its creditors; and
- (c) the disclosure of that information is likely to assist, or be relevant to, the exercise by the Reserve Bank of its powers under this Act.

(2) Every auditor shall, before disclosing any information to the Reserve Bank under subsection (1) of this Section, take reasonable steps to inform the licensed financial institution of the intention to disclose the information and the nature of the information.

(3) No civil, criminal or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Reserve Bank pursuant to subsection (1) of this Section.

(4) No tribunal, body or authority having jurisdiction in respect of the professional conduct of any auditor shall make any order against, or do any act in relation to that person in respect of such disclosure.

(5) No information received by the Reserve Bank pursuant to subsection (1) of this Section shall be admissible in evidence in any proceedings against the auditor concerned.

Retention of cheques, etc., for 7 years

62.—(1) All cheques and bank drafts in the possession of the licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution and made payable at that institution shall be retained by that institution until the expiration of the period of 7 years from the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(2) This Section shall apply to cheques, drafts, bills and notes received by a financial institution either before or after the appointed day.

(3) No document to which this Section refers shall be destroyed under the implied authority thereof at any time after a demand for the delivery of the document has been made to the licensed financial institution by the person entitled thereto.

(4) It shall be sufficient compliance with the duty to retain imposed by subsection (1) of this Section if a copy of the document has been made by the financial institution on microfilm, microfiche, tape, disc, or electronic or photographic storage media, and is retained by the licensed financial institution for the same period as that document is required to be retained pursuant to subsection (1).

(5) Notwithstanding subsection (4) of this Section, no document shall be destroyed under the implied authority thereof at any time within 2 years after its date in the case of documents payable on demand or from its due date in the case of all other documents.

(6) Notwithstanding the provisions of any other written law, a copy of a document made pursuant to this Section shall be admissible in evidence in any legal proceedings to the same extent as the document of which it is a copy would have been admissible.

PART VII - NOMINATION OF ACCOUNTS

Interpretation

63.—In this Part of this Act, unless the context otherwise requires, the term 'nomination' means the nomination by any person (in this Part referred to as the nominator), pursuant to any enactment, of any person (in this Act referred to as the nominee or nominees) to whom any amount standing to the credit of the nominator in any account at the time of his death is to be paid on his death.

Application of Part

64.—(1) Except as provided in subsections (2) and (3) of this Section, this Part applies to every nomination whether made before or after the commencement of this Part.

(2) This Part does not apply to any nomination made before its commencement if the nominator died before the commencement.

(3) The revocation, before the date of commencement of this Part of a testamentary disposition shall not affect a nomination made before the date of that revocation; but if a testamentary disposition revoked before the date of commencement of this Part is revived or republished on or after that date of commencement, this Part shall apply in respect of any revocation of a testamentary disposition contained in the revived or republished testamentary disposition.

(4) In the event of any conflict between any provision of this Part and any provision of any enactment under which any nomination is made, the provisions of this Part shall prevail.

Effect of nominations

65.—(1) No nomination, or nominations in the aggregate, shall have effect in respect of any sum in excess of that, which is prescribed from time to time by the Reserve Bank.

(2) Subject to subsection (3) of this Section, every nomination shall have effect as if it were a specific legacy bequeathed by will.

(3) All money in any account that is subject to a nomination at the death of the nominator shall, notwithstanding the nomination, form part of his estate, and shall devolve and be subject to all claims against that estate, whether arising under any enactment or contract or otherwise, in the same manner and to the same extent as if it were a specific legacy bequeathed by will.

(4) It shall not be necessary to pay to the administrator of a deceased nominator any money in an account that is subject to a nomination by reason only that it forms part of the deceased nominator's estate pursuant to subsection (3) of this Section.

Revocation of nomination

66.—(1) Any instrument of nomination may be revoked in any manner by which a will or codicil may be revoked.

(2) Every instrument of nomination shall be revoked by operation of law in any circumstances in which it would be so revoked if it were a will or codicil.

(3) Without limiting subsection (1) or subsection (2) of this Section,—

- (a) every general revocation by a nominator of all former testamentary dispositions shall be deemed to include the revocation of the nomination, unless the nomination is expressly preserved;
- (b) every general testamentary disposition of the nominator's whole estate, or of the whole of his residuary estate, made subsequent to the nomination shall be deemed to revoke the nomination, unless the nomination is expressly preserved.

PART VIII - MISCELLANEOUS

Unclaimed Moneys

67.—(1) Every licensed financial institution shall, within 60 days after the end of each financial year, publish in the Gazette and in a daily newspaper published and circulating in Fiji a statement showing all accounts payable by the financial institution in Fiji in respect of which during a period of 10 years, or any longer period as the case may be, no transaction has taken place and no statement of account has been requested or acknowledged by the creditor.

(2) Every statement published under subsection (1) of this Section shall require the person to whom the account is payable, or his legal personal representative, as the case may be, to submit a claim to the licensed financial institution within 3 months from the date of publication in the Gazette.

(3) When any of the sums included in the statement published under subsection (1) of this Section remains unclaimed for a period of 3 months after publication of the statement in the Gazette, such sums, after deduction of the costs of publication, shall be paid to the Reserve Bank and shall be credited to the general revenue of the government and paid into the Consolidated Fund.

(4) Subject to subsection (5) of this Section, a licensed financial institution is, upon payment to the Reserve Bank of any sums due under this Section, discharged from further liability in respect of that amount.

(5) Where unclaimed moneys have been paid to the Reserve Bank under this Section and the Minister is satisfied that, but for subsection (4) of this Section, a person would be paid those unclaimed moneys by the licensed financial institution (or, if that financial institution is no longer carrying on banking business, by a licensed financial institution to which the business of the first mentioned licensed financial institution has been sold or disposed of), those unclaimed moneys shall be paid to that licensed financial institution and the financial institution shall thereupon pay those moneys to that person.

Application to National Bank of Fiji

68. Notwithstanding anything to the contrary contained in the National Bank of Fiji Act, the provisions of this Act apply to the National Bank of Fiji and any of its associated persons;

Provided that—

- (a) for so long as the majority of its shares are held by the government of Fiji, that bank together with its subsidiaries may, in the national interest and with the prior written approval of the Minister on each new, renewed, or restructured advance, credit facility, financial guarantee and other exposure or liability, exceed the limits provided for in terms of paragraph (a) of subsection (1) of Section 24 of this Act; and
- (b) Part VI of this Act shall apply to that bank and in the event of any contradiction or inconsistency between this Act and Part VI of the National Bank of Fiji Act, the provisions of Part VI of this Act shall prevail.

Application to Fiji Development Bank

69.—Any Section or subsection of this Act may, by order, be made applicable by the Minister to the Fiji Development Bank, after consultation with the Reserve Bank upon a finding by the Reserve Bank that the Fiji Development Bank is engaging as a part of its business in the acceptance of deposits of money from the public.

Non-application to unit trusts, etc.

70.—(1) Subject to the provisions of subsection (2) of this Section, this Act shall not apply to—

- (a) a unit trust within the meaning of the Unit Trusts Act;
- (b) a credit union within the meaning of the Credit Unions Act;
- (c) a co-operative society within the meaning of the Co-operative Societies Act.

(2) Notwithstanding the provisions of subsection (1) of this Section, the Minister may, by order, apply any provision of this Act to a credit union or a cooperative society, if the Minister is satisfied upon a finding by the Reserve Bank, that a credit union or a cooperative society is accepting deposits or granting loans aggregating to \$2,000,000 at any one time.

Disclosure of acquired knowledge

71.—(1) No person who has acquired knowledge in his capacity as director, manager, officer, employee or agent of any licensed financial institution, or when exercising any function or performing any duty under Sections 14, 30, 58, 59 or 60, shall disclose to any person any information in respect of a customer of that licensed financial institution except—

- (a) with the written authorisation of the customer or of his legal personal representative; or
- (b) for the purpose of the performance of his duties under this Act; or
- (c) in the course of any prosecution for an offence; or
- (d) in the course of any winding up of a licensed financial institution by the High Court; or
- (e) when lawfully required to do so under the provisions of any written law.

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

(3) Except in the performance of his duties under this Act, every director, manager, officer, employee or agent of a licensed financial institution shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the institution and of any clients of such institution that may come to his knowledge in the performance of his duties, and he shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy in respect of such matters and not to reveal such matters except as otherwise permitted under subsection (1) of this Section.

(4) Any person who contravenes subsection (1) or subsection (3) of this Section shall be liable to a fine not exceeding \$2,000, such fine to be imposed by the Reserve Bank.

Collection of penalties

72.—The Reserve Bank may levy and collect any fine imposed under this Act. In the event of any fine imposed under this Act not being paid the Reserve Bank may sue for same as a civil debt in a court of competent jurisdiction.

Defence where director, manager or officer prosecuted

73.—Any person who is proceeded against for an infringement incurring a fine under Sections 13, 15, 25, 26, 28, 35, 39, 58, 59 or 60 shall have a good defence to such proceeding, if he proves that the infringement was committed without his consent or connivance and that he exercised all due diligence to prevent the infringement as he ought to have exercised having regard to his position in the licensed financial institution in respect of which the infringement was committed.

Consent of Director of Public Prosecutions

74.—No prosecution for any offence under this Act shall be instituted without the consent in writing of the Director of Public Prosecutions.

Winding-up of licensed financial institutions

75.—Notwithstanding the provisions of any other written law, a licensed financial institution may not be wound up voluntarily without the prior written authority of the Reserve Bank.

Operation of Companies Act

76.—A licensed financial institution shall be subject to the provisions of the Companies Act, as well as to the provisions of this Act, save that, where there is any conflict or inconsistency between the provisions of this Act and the provisions of the Companies Act, the provisions of this Act shall prevail.

Exclusion from liability

77.—Neither the Reserve Bank nor any director, officer or employee of the Reserve Bank or person authorised to assist the Reserve Bank under Section 14 or person acting

as a director, officer or employee of the Reserve Bank shall be liable in any manner whatsoever for anything done or omitted to be done in good faith in the discharge or purported discharge of the functions and duties of the Reserve Bank under this Act.

Regulations, orders, etc.

78.—(1) The Reserve Bank may with the approval of the Minister make regulations in accordance with the provisions of this Act.

(2) For any breach of the regulations made under subsection (1) of this Section and for any breach of any rules, orders or directives made in accordance with the provisions of this Act, a fine not exceeding \$500 for every day during which the contravention continues may be imposed by the Reserve Bank: Provided that this provision shall not preclude the imposition of other penalties or sanctions in the Reserve Bank of Fiji Act or in any other written law.

Power of relaxation of application of provisions of this Act

79.—(1) The Minister, acting upon the recommendation of the Reserve Bank, may, compatible with the objective of this Act, by order published in the Gazette relax in whole or in part the application to any financial institution or class of financial institution of any provision of this Act, and any such order shall specify the nature, extent and duration of the relaxation and any of its conditions.

(2) The Minister acting upon the recommendation of the Reserve Bank, may, compatible with the objective of this Act, amend any order referred to in subsection (1) of this Section in whole or in part, whether by way of rescission in whole or in part of any order or by variation of the nature, extent and duration of the relaxation and any of its conditions.

Repeal

80.—The Banking Act (No. 15 of 1983) is repealed.

Passed by the House of Representatives this seventeenth day of February, in the year of our Lord one thousand, nine hundred and ninety-five.

Passed by the Senate this first day of March, in the year of our Lord one thousand, nine hundred and ninety-five.