FALKLAND ISLANDS

Banking Ordinance 1987

(ORDINANCE No. 13 OF 1987)

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FALKLAND ISLANDS

Banking Ordinance 1987

AN ORDINANCE For the regulation of banking and for matters connected therewith.

[DATE OF COMMENCEMENT: 31ST JANUARY 1989[i]]
(Unless otherwise indicated)

PART I
PRELIMINARY

1 Short title

This Ordinance may be cited as the Banking Ordinance 1987.

[Revision w.e.f. 31/07/2017]

2 Interpretation

In this Ordinance, unless the context otherwise requires-

"bank" means any financial institution whose business includes the acceptance of deposits of money withdrawable by cheque;

"banking business" means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits and shall include merchant banking business;

"company" means a company incorporated in the Falkland Islands under any law for the time being in force relating thereto and any company incorporated outside the Falkland Islands which is permitted by law to carry on business in the Falkland Islands;

"controller" includes the managing director or chief executive of any financial institution, or of any company of which the financial institution concerned is a subsidiary company, or any other person in accordance with whose directions or instructions the financial institution, or the company of which the financial institution concerned is a subsidiary company, is accustomed to act;

"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 the Falkland Islands;

"financial institution" means a company which carries on a banking business;

"licence" means a licence granted under section 5;

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

"manager" includes any person for the time being in charge of the principal office in the Falkland Islands of any financial institution;

"officer" includes a director, manager or secretary.

PART II
LICENSING OF FINANCIAL INSTITUTIONS

3 Necessity for licence

(1) Notwithstanding the provision of any other Ordinance, no banking business shall, save as hereinafter provided, be carried on in the Falkland Islands except by a licensed financial institution.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale for each day during which the offence continues.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

4 Application for licence

(1) Every company carrying on banking business in the Falkland Islands on the day on which this Ordinance comes into operation shall as from that date and for the six months next following that date be deemed to be duly licensed but if such company proposes to continue to carry on banking business in the Falkland Islands after the expiration of the said period of six months it shall, within four months after the day on which this Ordinance comes into force, apply to the Governor for a licence.

(2) Any company desirous of commencing banking business in the Falkland Islands after the day on which this Ordinance comes into force shall apply to the Governor for a licence.

(3) An application for a licence under this Ordinance shall be made to the Governor in such form and in such manner as may be prescribed and shall be accompanied by a copy of the memorandum and articles of association or of any other instrument under which it is incorporated and such other information as the Governor may require.

5 Granting and revocation of licence

(1) Subject to this Ordinance, the Governor in Council may grant a licence in respect of which application has been made under section 4 to a company for carrying on banking business with persons resident or temporarily resident in the Falkland Islands; but if the Governor in Council is of the opinion that it would be undesirable in the public interest that a licence should be granted, he may refuse to grant it and need not give any reason for so refusing.

(2) In granting an application for a licence, the Governor in Council shall specify such conditions in respect of the licence as he thinks fit and proper for the purposes of this Ordinance including (but without limitation of the generality of this section) conditions restricting-

- (a) the extent to which the licensee may accept deposits, grant credit or make investments;
- (b) the class of persons from whom the licensee may solicit deposits;
- (c) the duration of the licence.

(3) The Governor in Council may at any time vary a licence by amending, adding to or revoking any condition in respect of a licence.

(4) A licence shall not be granted to any company having its head office outside the Falkland Islands unless such company notifies and designates to the Financial Secretary-

- (a) a principal office in the Falkland Islands;
- (b) by name one of its officers who is to be the company's authorized agent in the Falkland Islands; and
- (c) by name another of its officers who, in the absence or inability to act of the officer named under paragraph (b), is to be the company's authorized agent in the Falkland Islands.

(5) Every company which holds a licence and which has its head office outside the Falkland Islands shall forthwith notify the Financial Secretary of any change of-

- (a) its principal office in the Falkland Islands; or
- (b) either or both of the officers designated pursuant to subsection (4)(b) or (c).

(6) The Governor in Council may at any time by order revoke a licence where a licensed financial institution-

- (a) fails to commence business within six months of the issue of the licence;
- (b) contravenes any provision of this Ordinance or regulation made hereunder;
- (c) fails to comply with, or contravenes, any condition attached to the licence;
- (d) fails to comply with any directive issued by the Governor in Council under this Ordinance;
- (e) fails to pay a licence fee due and payable under this Ordinance;
- (f) gives for the purpose of obtaining the licence or when otherwise required to give any information pursuant to this Ordinance information which is false or misleading;

(g) is, in the opinion of the Governor in Council, carrying on business in the Falkland Islands in a manner detrimental to the public interest or to the interest of the depositors of such institution;

(h) has, in the opinion of the Governor in Council, ceased to carry on the business authorized by its licence;

(i) goes into liquidation or is wound up or otherwise dissolved; or

(j) has been licensed to carry on business in a country outside the Falkland Islands and the appropriate authorities in that country have suspended, revoked or withdrawn such licence;

(k) has failed to satisfy the Governor in Council that adequate measures have been taken to put its affairs in order as required by section 22(c).

(7) Before making an order under subsection (6) the Governor shall give the financial institution concerned notice in writing of such intention specifying therein the grounds on which he proposes to revoke the licence and shall afford that institution an opportunity of submitting to him a written statement of objections to the making of the order and thereafter the Governor shall advise the institution of his decision in the matter.

6 Reconstruction and similar arrangements by licensed financial institutions incorporated in the Falkland Islands

(1) No person may, in respect of a licensed financial institution that is incorporated under the law of the Falkland Islands-

(a) alter any instrument under or by which it is so incorporated; or

(b) carry out or participate in the carrying out of any reconstruction or rearrangement of its undertaking; or

(c) agree or participate in any agreement to-

(i) purchase or acquire the business or shares of any other financial institution;

(ii) sell or otherwise dispose of any part of its business or of any of its shares,

except with the prior written permission of the Governor in Council and in accordance with such conditions (if any) as may be imposed under this section.

(2) Every transaction that contravenes subsection (1) shall be null and void against any person other than a bona fide purchaser for value.

(3) In granting permission under this section, the Governor may impose such conditions on the permission as appropriate for the purposes of this Ordinance, including (but without limitation of the generality of this section) a condition that, before the proposal is carried out, the licensee shall apply for and obtain a new licence or a further licence under this Ordinance in respect of the business to which the proposal relates.

7 Reconstruction and similar arrangements by financial institutions incorporated outside the Falkland Islands

(1) A licensed financial institution that is incorporated under the law of any country other than the Falkland Islands in respect of which anything described in section 6(1)(a) to (c) is done shall give notice of such thing that is done to the Governor not more than sixty days after it is done.

(2) The licensed financial institution shall also, if so required and within such reasonable time as may be specified, give the Governor such information in writing as he may require concerning anything the subject of a notice under subsection (1).

(3) Any licensed financial institution which fails to comply with any of the provisions of section 5(5), section 6(1)(a) to (c) and subsections (1) and (2) of this section, or with any direction of the Governor thereunder commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale for every day during which the offence continues.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

PART III
CAPITAL AND RESERVES

8 Minimum capital of a financial institution

(1) A licence shall not be granted to-

- (a) a financial institution incorporated in the Falkland Islands unless the aggregate of its unimpaired capital issued and paid up in cash and its unimpaired reserves is not less than £60,000;

- (b) a financial institution incorporated outside the Falkland Islands unless the aggregate of its unimpaired capital issued and paid up in cash and its unimpaired reserves is not less than £250,000;

Provided that nothing contained in this subsection shall apply to any company carrying on banking business in the Falkland Islands at the day of the coming into operation of this Ordinance until the expiration of two years from that day.

(2) Notwithstanding subsection (1), a licence shall not be granted to a bank unless"

- (a) in the case of a bank incorporated in the Falkland Islands, the aggregate of its unimpaired capital issued and paid up in cash and its unimpaired reserves is not less than £250,000; and

- (b) in the case of a bank incorporated outside the Falkland Islands, the aggregate of its unimpaired capital issued and paid up in cash and its unimpaired reserves is not less than £1 million.

9 Maintenance of reserve fund

(1) Subject to subsection (2), every licensed financial institution shall maintain a reserve fund and shall out of its net profits of each year and before any dividend is declared, transfer to that fund a

sum equal to not less than twenty-five per cent of such profits whenever the amount of the reserve fund is less than the issued paid up capital of the company.

(2) Subsection (1) shall not apply to any licensed financial institution with respect to which it is proved to the satisfaction of the Governor in Council that the aggregate reserves of such institution are adequate in respect of its business.

PART IV
RESTRICTIONS ON BUSINESS

10 Restriction of dividends

No licensed financial institution incorporated in the Falkland Islands shall pay any dividend on its shares, and no licensed financial institution incorporated outside the Falkland Islands shall remit any profits outside the Falkland Islands until all its capitalized expenditure (including preliminary expenses, organization expenses, share selling commission, brokerage and amounts of losses incurred) not represented by tangible assets has been completely written off.

11 Persons debarred from management

(1) No person-

(a) who has been a controller of, or directly concerned in the management of a financial institution which has had its licence revoked in accordance with section 22(c) or has been wound up by a court; or

(b) who has been convicted by a court in any country of an offence involving dishonesty and has not received a full pardon for that offence; or

(c) who is or becomes bankrupt, suspends payment to or compounds with his creditors; or

(d) who has been convicted of an offence under this Ordinance,

shall act as a controller, director, manager, secretary or other employee of any financial institution.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding level 11 on the standard scale.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

12 Restrictions on use of title "bank"

(1) Save with the permission of the Governor in Council no person other than a licensed bank shall use or continue to use the word "bank" or any of its derivatives in any language in the description or title under which such person is carrying on business in the Falkland Islands; 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 an association of banks or bank employees formed for the protection of their common interests.

(2) Every bank shall use as part of its description or title the word "bank" or one or more of its derivatives in any language.

(3) Any person contravening this section commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale for each day during which the contravention continues.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

13 Restriction on certain activities by licensed financial institutions

(1) A licensed financial institution shall not in the Falkland Islands-

(a) grant to any person, firm, corporation or company, or to any group of companies or group of persons either of which 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 liability on behalf of such person, firm, corporation, company, or group so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of such person, firm, corporation, company or group is at any time more than twenty-five per cent of the sum of the paid up capital and published reserves of the licensed financial institution:

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 such bills or documents is entitled to payment outside the Falkland Islands for exports from the Falkland Islands or to advances made against such transfers, bills or documents;

(b) grant any advance or credit facility against the security of its own shares;

(c) grant or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of one per cent of the sum of the paid up capital and published reserves of such licensed financial institution, or give any financial guarantees in excess of such amount without security, or incur any other liability in excess of such amount without security-

(i) to or on behalf of any one of its controllers or directors, whether such advances, facilities, guarantees or other liabilities are obtained by or on account of such controller or director jointly or severally;

(ii) to or on behalf of any firm, partnership or private company in which it, or any one or more of its controllers or directors is interested as controller, 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 controllers or directors is a guarantor.

For the purpose of this paragraph a controller or director includes a wife, husband, father, mother, son or daughter of a controller or director.

(d) grant or permit to be outstanding to its officials and employees unsecured advances or unsecured credit facilities which in aggregate amount for any one official or employee exceed one year's emoluments of such official or employee.

(2) In subsection (1)(c) and (d) the expression "unsecured advances or unsecured credit facilities" means advances or credit facilities granted without security or collateral, or, in respect of any advance or credit facility granted with security, any part thereof which at any time exceeds the market value of the assets constituting that security or collateral.

14 Restriction of activities of a licensed bank

A licensed bank shall not-

(a) 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 (b) and except insofar as may be necessary with respect to such interest as a bank may acquire in the course of the satisfaction of debts due to it; but all such interests shall be disposed of at the earliest suitable opportunity;

(b) acquire or hold to an aggregate value exceeding twenty-five per cent of the sum of the paid up capital and published reserves of that bank, any part of the share capital of any financial, commercial, agricultural, industrial or other undertaking except such shareholding as a bank may acquire in the course of the satisfaction of debts due to it which shareholding shall, however, be disposed of at the earliest suitable moment:

Provided that this paragraph shall not apply to any shareholding approved in writing by the Governor in Council in a subsidiary bank or in a subsidiary company formed by a bank for the execution of nominee, executor or trustee functions or other functions incidental to banking business;

(c) 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 bank which is secured upon any real or other property of the debtor becoming endangered the bank may acquire such property which shall, however, be resold as soon as shall be possible.

15 Ceasing of existing restricted activities

Any licensed financial institution which, prior to the day of the coming into force of this Ordinance, entered into any transaction inconsistent with section 13(1) and any licensed bank which, prior to that day, entered into any transaction inconsistent with section 14 shall, within six months after that day, submit a statement of those transactions to the Governor and shall, within one year from the said day or within such further time as the Governor may determine, liquidate the said transactions and if such action as is required under this section is not taken within the time specified or determined the licensed financial institution commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale for every day during which the offence continues.

[Revision w.e.f. 31/07/2017]

16 Minimum holdings of liquid assets

(1) Every-

(a) licensed bank shall in relation to its operations in the Falkland Islands maintain such average minimum holding of approved liquid assets as may from time to time be prescribed by the Governor in Council, and published in the Gazette, provided that the minimum shall be the same for all banks and shall not exceed fifteen per cent of deposit liabilities.

(b) licensed financial institution not being a bank shall in relation to its operations in the Falkland Islands maintain such average minimum holding of approved liquid assets as may from time to time be prescribed by the Governor in Council, and published in the Gazette, provided that the minimum shall be the same for all such financial institutions and shall not exceed ten per cent of deposit liabilities.

(2) The Governor in Council shall determine the method of computing the amounts of approved liquid assets to be held by banks and financial institutions.

(3) For the purposes of this section "approved liquid assets" means all or any of the following:

(a) notes and coins which are legal tender in the Falkland Islands;

(b) net balances and deposits denominated in Falkland Islands pounds held with other banks and financial institutions in the Falkland Islands and not exceeding ninety days to maturity;

(c) cheques and other sight drafts drawn on other banks in the Falkland Islands and in the course of collection;

(d) net balances and money at call and at short notice not exceeding ninety days held with institutions outside the Falkland Islands and denominated in currencies freely convertible into Falkland Islands pounds;

(e) foreign notes and coins freely convertible into Falkland Islands pounds;

(f) Treasury bills and other securities which have been issued or guaranteed by governments abroad, which are marketable in money and capital markets abroad, which mature in not more than one hundred and eighty days and which are denominated in currencies freely convertible into Falkland Islands pounds;

(g) such other assets as the Governor in Council may specify.

(4) Any licensed bank or licensed financial institution which fails to comply, within such reasonable time as the Governor in Council may fix, with any requirement of subsection (1) shall be liable to pay, on being called upon to do so by the Financial Secretary, a penalty interest charge not exceeding one-tenth of one per cent of the amount of the deficiency for every day on which the deficiency continues.

17 Establishment of branches

Except with the prior written permission of the Governor in Council-

(a) no licensed financial institution shall establish a branch, agency or other place of business in any part of the Falkland Islands;

(b) no licensed financial institution which has been incorporated in the Falkland Islands shall establish a branch, agency or other place of business outside the Falkland Islands.

PART V
RETURNS AND ACCOUNTS

18 Returns

(1) Subject to subsection (3) every licensed financial institution shall in relation to its operations in the Falkland Islands submit to the Financial Secretary the undermentioned statements in such form as he may from time to time approve-

(a) in the case of a bank-

(i) not later than twenty-one days after the last day of the month to which it relates, a monthly statement of assets and liabilities accompanied by a statement showing the amounts of all outstanding unsecured advances or unsecured credit facilities as defined in section 13(2);

(ii) not later than twenty-one days after the end of the quarter to which it relates, a return providing an analysis of customers' liabilities to the bank in respect of loans, advances, and other assets of the bank at the close of the last business day of that quarter;

(b) in the case of a financial institution which is not a bank, not later than thirty-five days after the end of the quarter to which it relates, a statement of the assets and liabilities of its offices and branches in the Falkland Islands at the close of the last business day of that quarter.

(2) Subject to subsection (3) the Financial Secretary may require a licensed financial institution to submit such further information as he may consider necessary for the proper understanding of any statement or return furnished by the institution under subsection (1) and such information shall be submitted within such a period and in such manner as the Financial Secretary may require.

(3) No statement, return or information shall be required under subsection (1) or (2) as the case may be with respect to the affairs of any particular customer of a licensed financial institution.

(4) The period within which any statement or return is required to be submitted under this section may be extended by the Financial Secretary if he considers that there are circumstances justifying an extension.

(5) Any licensed financial institution which fails to comply with any of the provisions of subsections (1) or (2) or with any requirements of the Financial Secretary thereunder commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale for every day during which the offence continues.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

(6) Any statement or return submitted by a licensed financial institution under subsection (1) and any information submitted by such institution under subsection (2) shall be regarded as secret, save

that the Financial Secretary may publish consolidated statements aggregating the figures in the statements or returns furnished under subsections (1) and (2):

Provided that no information shall be published which could disclose the affairs of any individual financial institution or of any individual customer of such financial institution unless the specific consent in writing to such publication has first been obtained by the Financial Secretary from such financial institution or customer.

19 Audited accounts and list of directors to be open to inspection *(cf 1987 c.22 s. 45)*

(1) A licensed financial institution shall at each of its offices or branches in the Falkland Islands at which it holds itself out as accepting deposits-

(a) keep a copy of its most recent audited accounts and a list of the full names of all persons who are directors of the financial institution; and

(b) during normal business hours make that copy and that list available for inspection by any person on request.

(2) At institution which fails to comply with paragraph (a) of subsection (1) or with any request made in accordance with paragraph (b) of that subsection commits an offence and is liable on conviction of that offence to a fine not exceeding the maximum of level 5 on the standard scale.

(3) In the case of an institution incorporated in the Falkland Islands or in the United Kingdom the accounts referred to in subsection (1) include the auditor's report on the accounts and, in the case of any other institution whose accounts are audited, the report of the auditors.

[S. 2(a)/Ord. 26/1996/w.e.f. 1/8/2006.]

19A Notification in respect of auditors *(cf 1987 c.22, s. 46)*

(1) A licensed financial institution incorporated in the Falkland Islands or in the United Kingdom shall forthwith give notice to the Financial Secretary if the institution-

(a) proposes to give special notice to its shareholders of an ordinary resolution removing an auditor before the expiration of his term of office; or

(b) gives notice to its shareholders of an ordinary resolution replacing an auditor at the expiration of his term of office with a different auditor,

or if a person ceases to be an auditor of the institution otherwise than in consequence of such a resolution.

(2) An auditor of a licensed financial institution appointed-

(a) in the case of a company incorporated in the Falkland Islands, under section 159 of the Companies Act 1948 in its application to the Falkland Islands; and

(b) in the case of a company incorporated in the United Kingdom, under section 384 of the Companies Act 1985,

shall forthwith give notice to the Financial Secretary if he-

(i) resigns before the expiration of his term of office;

(ii) does not seek to be re-appointed; or

(iii) decides to include in his report on the institution's accounts any qualification-

(aa) as to whether, in the auditor's opinion, the annual accounts of the institution have been properly prepared in accordance with the requirements-

(I) in the case of an institution which is a company incorporated in the Falkland Islands, section 149 of and Part III of the Eighth Schedule to the Companies Act 1948; or

(II) in the case of an institution which is a company incorporated in the United Kingdom, Chapter 1 of Part VII of the Companies Act 1985,

and in particular whether a true and fair view is given-

(A) in the case of an individual balance sheet, of the state of affairs of the company at the end of the financial year;

(B) in the case of an individual profit and loss account, of the profit and loss of the company at the end of the financial year;

(C) in the case of group accounts, of the state of affairs at the end of the financial year, and the profit and loss of the financial year, of the undertakings as a whole so far as concerns members of the company;

(bb) as to whether proper accounting records have been kept by the institution and proper returns adequate for their audit have been received from offices or branches of the institution not visited by the auditor;

(cc) as to whether the institution's individual accounts are in agreement with the accounting records and returns; or

(dd) as to whether he has obtained all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit.

(3) If the Financial Secretary is satisfied that a licensed financial institution is an authorised institution to which section 46 of the Banking Act 1987 of the United Kingdom applies (so that notifications similar to those required by subsections (1) and (2) of this section must be given to the Bank of England), he may by writing under his hand exempt the licensed financial institution and every auditor of that institution from the requirements of subsections (1) and (2) of this section.

[S. 2(b)/Ord. 26/1996/w.e.f. 1/8/2006.]

19B Audited accounts to be sent to the Financial Secretary

(1) Within four months after the end of each of its financial year, or such longer period as the Financial Secretary may, in any particular case, allow, every licensed financial institution shall-

(a) send to the Financial Secretary a copy of its audited accounts and a list of the full names of all persons who are, at the date it is sent directors of the financial institution; and

(b) publish a notice in the Gazette stating that a copy of those accounts and of that list are available for inspection during normal business hours at the, or as the case may be, each, office or branch of the institution in the Falkland Islands at which it accepts deposits.

(2) Section 19 and subsection (1) of this section have effect without prejudice to the requirements of the Companies Act 1948 in its application to the Falkland Islands in relation to the filing of accounts and other documents at the Companies registry by companies which are incorporated in the Falkland Islands or which are overseas companies which have a place of business in the Falkland Islands.

[S. 2(b)/Ord. 26/1996/w.e.f. 1/8/2006.]

PART VI
EXAMINATION AND AUDIT

20 Examinations

(1) The Governor may at his discretion from time to time appoint one or more qualified persons to make examinations under conditions of secrecy of the books and affairs of all licensed financial institutions.

(2) The Governor may at any time appoint one or more qualified persons to make a special examination under conditions of secrecy of the books and affairs of any licensed financial institution-

(a) where he has reason to believe that such institution may be carrying on its business in a manner detrimental to the interests of its depositors and other creditors or may have insufficient assets to cover its liabilities to the public or may be, either in the Falkland Islands or elsewhere, contravening any of the provisions of this Ordinance;

(b) where application is made by shareholders holding not less than one-third of the total number of shares in that institution for the time being issued or by depositors holding not less than one-half of the gross amount of the total deposit liabilities in the Falkland Islands of that institution; but the applicants shall submit to the Governor such evidence as he may consider necessary to justify an examination and they shall furnish adequate security for the payment of the cost of the examination;

(c) if the financial institution suspends payment or informs the Financial Secretary of its intention to do so.

21 Production of books

(1) Every licensed financial institution of which an examination has been ordered under section 20 shall produce to the person or persons appointed under that section, at such times and in such places as such person or persons may specify (being times and places which, in the opinion of such person or persons, would not be detrimental to the conduct of the normal daily business of the financial institution) all books, accounts and documents in the possession or custody of such institution or of which it is entitled to possession or custody relating to its business, and shall give within such times as such person or persons may specify, such oral information concerning its business as may be required.

(2) If any book, account, document or information is not produced in accordance with subsection (1) the financial institution commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale in respect of every day during which the offence continues; and if any book, account, document or information specified in subsection (1) is false in any material particular, the financial institution concerned is liable to a fine not exceeding level 11 on the standard scale.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

(3) As soon as may be after the conclusion of an examination under section 20(2), the person or persons appointed under the provision of section 20 shall submit a full report on such examination to the Governor who shall forward a copy thereof to the head office of the financial institution concerned.

(4) The Governor may order that all expenses of and incidental to an examination under section 20(2) shall be paid by the financial institution examined and he may also, in respect of examinations made under section 20(2)(b), order that the said expenses shall be defrayed by the applicants. A financial institution shall not be required to pay expenses of and incidental to an examination under section 20(1).

22 Powers after examination

If, in the opinion of the Governor in Council, an examination under this Part of this Ordinance shows that the licensed financial institution concerned is carrying on its business in a manner detrimental to the interests of its depositors and other creditors, or has insufficient assets to cover its liabilities to the public, or is either in the Falkland Islands or elsewhere contravening any of the provisions of this Ordinance, the Governor may take such one or more of the following steps from time to time as may seem to him necessary:

(a) direct the financial institution by notice in writing and at its own expense forthwith to take or refrain from taking such action as he may consider necessary in the conduct of its business, and if it is proved that such notice has not been complied with, the financial institution commits an offence and is liable on conviction to a fine not exceeding level 6 on the standard scale in respect of every day during which the offence continues; and the officer or officers responsible commit an offence and are liable on conviction to a fine not exceeding level 6 on the standard scale each; or

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

(b) direct the financial institution, at its own expense, to appoint a person who, in his opinion, has had adequate training and experience to advise the financial institution in the proper conduct of its business and fix the remuneration to be paid by the financial institution to such person; or

(c) unless he is satisfied that the financial institution is taking adequate measures to put its affairs in order, make an order revoking the licence of the financial institution as provided for under section 5(6)(k).

23 Approved auditor

(1) Every licensed financial institution shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that institution a report upon the annual balance sheet and

accounts, and in every such report the auditor shall state whether, in his opinion, the balance sheet is full and fair and properly drawn up, whether it exhibits a true and correct statement of the affairs of the financial institution and, in any case in which the auditor has called for an explanation or information from the officers or agents of the financial institution, whether this is satisfactory.

(2) The report of an approved auditor under subsection (1) shall be read together with the report of the directors of the financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Financial Secretary, together with copies of the balance sheet and profit and loss account, and if any default is made in complying with the requirements of this subsection, the financial institution concerned commits an offence and is liable on conviction to a fine not exceeding level 11 on the standard scale.

[S.R. & O. 7/2003/w.e.f. 24/3/2003.]

(3) If a licensed financial institution fails to appoint an approved auditor under subsection (1), or at any time fails to fill a vacancy for such auditor, the Governor in Council may appoint an approved auditor and shall fix the remuneration to be paid by the institution to such auditor.

(4) The duties and powers conferred by section 21(1), (2) and (3) in relation to a person or persons appointed under the provisions of section 20 are hereby conferred also in relation to approved auditors.

(5) For the purpose of this section an approved auditor is an auditor who is a member of one of the professional bodies for the time being declared by the Financial Secretary by notice in the Gazette to be approved for such purposes.

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

(7) Where in the case of a licensed financial institution incorporated outside the Falkland Islands the Financial Secretary is satisfied that a report upon the annual balance sheets and accounts of such institution has been duly made by an auditor in accordance with the law of the country in which such institution is incorporated, and a copy of such report together with the report of the directors of such institution is sent to the Financial Secretary, he may by notice in writing exempt any such financial institution from the provisions of this section.

PART VII
GENERAL

24 Winding up of financial institutions

(1) Notwithstanding anything to the contrary contained in the Companies and Private Partnership Ordinance, the Supreme Court shall have jurisdiction under the provisions of that Ordinance relating to the winding up of companies by the court and, on the application of the Governor in Council, to wind up any financial institution-

(a) which is unable to pay the sums due and payable to its depositors, or is able to pay such sums only by defaulting on its obligations to its other creditors; or

(b) whose assets are insufficient to cover its liabilities; or

(c) which is no longer a licensee; and

(d) which continues to have any liability to any person in respect of any deposit for which it had a liability when it was so licensed.

(2) The court may, in the proceedings for the winding up of any financial institution, dispense with any meeting of creditors or contributors or with the appointment of a committee of inspection if it considers that no object will be served thereby sufficient to justify the delay and expense.

(3) The court shall presume that any amount shown in the books of the financial institution as standing to the credit of any depositor is proved without requiring further proof from the depositor concerned unless the liquidator shows that there is reason for doubting any particular entry.

25 Fee payable by licensed financial institution

(1) Every financial institution to which a licence is granted shall, upon the issue of such licence, pay to the Treasury such fee as shall be prescribed.

(2) On or before 1st January of every year after the year in which a licence has been granted to a financial institution that financial institution shall, during the subsistence of such licence, pay to the Treasury such fee as shall be prescribed.

(3) The fees payable under subsections (1) and (2) shall be the same for all licensees.

(4) Any licensed financial institution which fails to pay the fee provided by this section commits an offence and (in addition to any other penalty under this Ordinance for such failure) is liable on conviction to a fine not exceeding twenty-five per cent of the fee payable for each day during which such fee remains unpaid, and every controller, director, manager, secretary or other officer of the financial institution who knowingly and willingly authorizes or permits such non-payment also commits an offence and is liable on conviction to the same fine.

(5) The Financial Secretary shall publish annually in the Gazette the name of every financial institution that has paid the fee provided by this section.

26 Imprisonment in default of payment of fine

A person upon whom a fine is imposed under this Ordinance may be sentenced in default of payment thereof to imprisonment in the case of a fine-

(a) not exceeding £5,000, for a term not exceeding three months;

(b) exceeding £5,000 but not exceeding £l0,000, for a term not exceeding six months;

(c) exceeding £l0,000, for a term not exceeding twelve months.

27 Regulations

The Governor in Council may by order make regulations-

(a) prescribing anything which by this Ordinance is to be prescribed;

(b) generally for the better carrying into effect of the provisions of this Ordinance.

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[i] S.R. & O. No. 1 of 1989