

A BILL

entitled

MONEY SERVICE BUSINESS ACT 2016

TABLE OF CONTENTS

1	Citation
2	Interpretation
	PART 1
	PRELIMINARY
3	Meaning of "director", "controller", "senior executive" and "associate"
4	Carrying on money service business in Bermuda
5	Annual reports
6	Authority's statement of principles and guidance provision
7	Codes of practice
	PART 2
	LICENSING
8	Restriction on carrying on money service business without a licence
9	Exemption order
10	Money Service Business Licence
11	Grant and refusal of applications
12	Display and registration of licence
13	Annual licence fee
14	Restriction of licence
15	Revocation of licence
16	Winding up on petition from the Authority
17	Notice of restriction or revocation of licence
18	Restriction in cases of urgency
19	Directions to protect interests of clients
20	Notification and confirmation of directions

21 Surrender of licence

PART 3  
ACCOUNTS AND AUDITS

22 Duty to prepare annual financial statements  
23 Appointment of Auditors  
24 Auditor to communicate certain matters to Authority

PART 4  
OBJECTIONS TO SHAREHOLDER CONTROLLERS

25 Notification of new or increased control  
26 Objection to new or increased control  
27 Objection to existing controller  
28 Contraventions by controller  
29 Restriction on sale of shares

PART 5  
DISCIPLINARY MEASURES

30 Power to impose civil penalties for breach of requirements  
31 Civil penalties procedures  
32 Public censure  
33 Public censure procedure  
34 Prohibition orders  
35 Prohibition Orders: procedures  
36 Applications relating to prohibition orders: procedures  
37 Determination of applications for variation, etc.  
38 Injunctions

PART 6  
RIGHTS OF APPEAL

39 Rights of Appeal  
40 Constitution of tribunals  
41 Determination of appeals  
42 Costs, procedure and evidence  
43 Further appeals on a point of law

PART 7  
NOTICES AND INFORMATION

44 Warning notices  
45 Decision notices  
46 Notices of discontinuance  
47 Publication  
48 Notification of change of controller or officer  
49 Power to obtain information and reports  
50 General power to require production of documents  
51 Right of entry to obtain information and documents

PART 8  
INVESTIGATIONS

- 52 Investigations on behalf of the Authority
- 53 Investigations of suspected contraventions
- 54 Power to require production of documents during investigation
- 55 Powers of entry
- 56 Obstruction of investigations

PART 9  
CERTIFICATE OF COMPLIANCE

- 57 Certificates of Compliance

PART 10  
RESTRICTION ON DISCLOSURE OF INFORMATION

- 58 Restricted information
- 59 Disclosure for facilitating the discharge of functions of the Authority
- 60 Disclosure for facilitating the discharge of functions by other authorities
- 61 Information supplied to the Authority by relevant overseas authority

PART 11  
MISCELLANEOUS AND SUPPLEMENTAL

- 62 False documents or information
- 63 Offences by companies
- 64 Restriction on use of words "Money Service Business"
- 65 Notices
- 66 Service of notice on Authority
- 67 Civil debt and civil penalties
- 68 Consequential amendments
- 69 Transitional
- 70 Commencement

SCHEDULE 1  
Minimum Criteria For Licensing

SCHEDULE 2  
Consequential Amendments

WHEREAS it is expedient to make new provision for regulating the business of money service business; for the protection of the interests of clients or potential clients of persons carrying on the business of money service business; and for purposes connected with those matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1  
PRELIMINARY

Citation

1 This Act may be cited as the Money Service Business Act 2016.

Interpretation

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

“the Authority ”means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

bureau de change”– means a business that exchanges cash in one currency for cash in another currency;

“cashing cheques” means exchanging a signed written negotiable instrument which is drawn on a specific bank account for cash;

“cheque guaranteeing” – means providing a guarantee for the payment of a cheque in accordance with prescribed procedures.

“code of practice” means a code of practice issued by the Authority pursuant to section 7;

“company” means a body corporate wherever incorporated;

“controller” has the meaning given in section 3(3);

“Court” means the Supreme Court;

“decision notice” means a notice prepared in accordance with section 41;

“director” has the meaning given in section 3(2);

“documents” includes information recorded in any form; and in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“financial statements” in relation to the business of an undertaking which is a company, means the statements specified in subsection (1)(a) and the notes mentioned in subsection (1A) of section 84 of the Companies Act 1981;

“financial year” means the period not exceeding 53 weeks at the end of which the balance of an undertaking’s accounts is struck or, if no such balance is struck or a period of more than 53 weeks is employed for that purpose, then calendar year;

“fit and proper person” has the meaning assigned to the term in Schedule 1;

“issuing, selling or redeeming drafts, money orders or traveller’s cheques” means selling or otherwise exchanging, drafts, money orders and traveller’s

cheques as negotiable instruments for cash;

“holding company” has the meaning given in section 86(2) of the Companies Act 1981;

“licence” means a licence issued by the Authority under section 8 (2) and “licensee” and “licensed” shall be construed accordingly;

“Minister” means the Minister of Finance;

“minimum criteria” means the minimum criteria for licensing specified in the Schedule 1;

“money transmission service” means a service that involves sending of money by any means; other than payment service –

“officer”, in relation to an undertaking, includes director, secretary or senior executive of the undertaking by whatever name called;

“payment service business” means a business that is licensed to provide and execute payment services to and for third parties by whatever means;

“senior executive” has the meaning given in section 3 (6);

“share” has the meaning given in section 2 of the Companies Act 1981;

“shareholder controller” has the meaning given in section 3(4);

“subsidiary” has the meaning given in section 86 of the Companies Act 1981;

“undertaking” means—

- (a) a company;
- (b) a partnership;
- (c) or an individual.

“warning notice” means a notice prepared in accordance with section 40.

(2) In this Act “money service business” means the business of providing any or all of the following money service business activities; “money service business activities” to the general public—

- (a) money transmission services;
- (b) cashing cheques which are made payable to customers and guaranteeing cheques;
- (c) issuing, selling or redeeming drafts, money orders or traveller’s cheques for cash;
- (d) payment service business;
- (e) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency;

- (f) any other services the Minister, acting on the advice of the Authority, may specify by notice published in the Gazette.

**Meaning of "director", "controller", "senior executive" and "associate"**

3 (1) In this Act "director", "controller", "senior executive" and "associate" shall be construed in accordance with the provisions of this section.

- (2) "Director" in relation to an undertaking—
  - (a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
  - (b) where it is used in subsections (6) and (7), includes a partner of a partnership.
- (3) "Controller" in relation to an undertaking, means—
  - (a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
  - (b) in the case of an undertaking which is a partnership, a partner;
  - (c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;
  - (d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
  - (e) a person who satisfies the requirements of this paragraph;
  - (f) a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.
- (4) For the purpose of subsection (3)(e), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—
  - (a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
  - (b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
  - (c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—

- (i) a holding of shares in; or
- (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of, (5) the undertaking, or as the case may be, the other company concerned.

(5) In this Act "majority shareholder controller" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.

(6) "Senior executive", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—

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

(7) In this section "chief executive" in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.

(8) In this Act "associate" in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means—

- (a) if that person is an individual—
  - (i) the spouse, child, step-child or parent of that person;
  - (ii) the trustees of any settlement under which that person has a life interest in possession;
  - (iii) any company of which that person is a director;
  - (iv) any person who is an employee or partner of that person;
- (b) if that person is a company—
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (ii) any director or employee of any such subsidiary company;
- (c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

(9) For the purpose of subsection (8), “settlement” includes any disposition or arrangement under which property is held in trust.

#### Carrying on business of money service in Bermuda

4 (1) For the purposes of this Act, a person carries on money service business in or from within Bermuda if such person—

(a) carries on money service business from a place of business maintained by such person in Bermuda;

; or

(b) discharges in Bermuda the duties of a money service business the discharge of which constitutes the carrying on by such person of money service business in Bermuda under an order made under subsection (2).

(2) The Minister acting on the advice of the Authority may make an order specifying the circumstances in which a person is to be regarded for the purpose of this section as—

(a) carrying on money service business in Bermuda;

(b) not carrying on money service business in Bermuda.

(3) An order made under this section is subject to the negative resolution procedure.

#### Annual reports

5 The Authority shall as soon as practicable after the end of each of its financial years, make to the Minister and publish in such manner as it thinks appropriate an annual report on its activities under this Act in that year.

#### Authority’s statement of principles and guidance provision

6 (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

(a) in interpreting the minimum criteria and the grounds for revocation specified in section 14;

(b) in exercising its power to grant, revoke or restrict a licence;

(c) in exercising its power to obtain information, reports and to require production of documents;



(d) in exercising its powers—

- (i) under section 30 to impose a civil penalty;
- (ii) under section 32 to censure publicly;
- (iii) under section 30 to make a prohibition order; and
- (iv) under section 3 to publish information about any matter to which a decision notice relates.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

(3) The Authority may from time to time give guidance on the application of this Act and regulations made under it.

(4) The Authority may publish such guidance (which may be in the form of information and advice) in such manner as it thinks fit.

#### Codes of practice

7 (1) The Authority may issue codes of practice in connection with the manner by which licensed undertakings shall carry on money service business.

(2) Without prejudice to the generality of subsection (1), the Authority may issue codes of practice for the purpose of providing guidance as to the duties, requirements and standards to be complied with, and the procedures (whether as to identification, record-keeping, internal reporting and training or otherwise) and sound principles to be observed by persons carrying on money service business.

(3) Before issuing a code of practice, the Authority shall publish a draft of that code in such manner as it thinks fit and shall consider any representations made to it about the draft.

(4) Every licensed undertaking shall in the conduct of its business have regard to any code of practice issued by the Authority.

(5) A failure on the part of a licensed undertaking to comply with the provisions of such a code shall be taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 3 of Schedule 1 (Minimum Criteria for Licensing).

## PART 2 LICENSING

#### Restriction on carrying on money service business without a licence

8 (1) Subject to section 9, a person shall not carry on money service business in or from within Bermuda unless that person is for the time being a licensed undertaking in one of the classes specified in subsection (2).

(2) The Authority may license an undertaking to carry on money service business activities for the period specified in the license:

- (i) money transmission services;
- (ii) cashing cheques which are made payable to customers and guaranteeing cheques;
- (iii) issuing, selling or redeeming drafts, money orders or traveller's cheques for cash;
- (iv) carrying on payment service business; or
- (v) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

- (3) A person who contravenes this section is guilty of an offence and liable—
- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for one year or to both such fine and imprisonment;
  - (b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.

(4) The Minister may by regulations subject to negative resolution procedure, make provision for the regulation by the Authority of money service businesses.

(5) Without prejudice to the generality of subsection (4), regulations may in particular provide with respect to any of the following matters—

- (a) any matter relating to the conduct of a money service business;
- (b) the requirement for any additional service or services to be deemed a money service business activity;
- (c) the preparation, adoption and implementation of processes or procedures relating to a money service business.

(6) Regulations made under subsection (4) may make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.

#### Exemption order

9 (1) Section 8 shall not apply to any person exempted by or under an exemption order issued in terms of this section.

(2) The Minister acting on the advice of the Authority may issue an exemption order, which shall provide for—

- (a) a specified person;
- (b) persons falling within a specified class, to be exempt from the

requirement of section 8.

- (3) An exemption order may provide for an exemption to have effect—
- (a) in respect of all money service business activities;
  - (b) only in respect of one or more money service business activities;
  - (c) in respect of specified circumstances;
  - (d) subject to conditions.

(4) “Specified” means specified by the exemption order.

(5) An order made under this section is subject to the negative resolution procedure.

#### Money Service Business Licence

10 (1) An application for a money service business licence may be made to the Authority.

(2) An application shall be made in such manner as the Authority may direct and shall be accompanied by—

- (a) a business plan setting out the nature and scale of the money service business activity which is to be carried on by the applicant;
- (b) particulars of the applicant’s arrangements for the management of the business;
- (c) policies and procedures to be adopted by the applicant to meet the obligations under this Act and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (d) such other information and documents as the Authority may reasonably require for the purpose of determining the application; and
- (e) an application fee of such amount as may be prescribed under the Bermuda Monetary Authority Act 1969.

(3) An application may be withdrawn by notice in writing to the Authority at any time before it has determined the application.

#### Grant and refusal of applications

11 (1) Subject to this section, the Authority may on an application duly made in accordance with section 10, and after being provided with all such information, documents and reports as it may reasonably require under that section, grant or refuse the application for a licence.

(2) The Authority shall not grant an application unless it is satisfied that

the minimum criteria are fulfilled with respect to the applicant.

(3) It shall be a condition of every licence issued under this Act that a licensed undertaking shall not hold client monies or any other client assets.

(4) A licence issued under this section may be subject to such limitations on the scope of the money service business activity or the manner of operating the money service business as the Authority may determine to be appropriate having regard to the nature and scale of the proposed business.

(5) The Authority may, on application made by a licensed undertaking, vary or remove any limitation imposed on the scope of its licence.

(6) A licence issued to a partnership shall be issued in the partnership name, and shall not be affected by any change in the name of the partners.

(7) The Minister acting on the advice of the Authority may by order amend Schedule 1 by adding new criteria or by amending or deleting the criteria for the time being specified in the Schedule.

(8) An order made under subsection (7) shall be subject to the negative resolution procedure.

#### Display and registration of licence

12 (1) A licensed undertaking shall at all times keep the licence on display at its principal place of business in Bermuda.

(2) The Authority shall cause a notice of every licence issued under this Act to be published in the Gazette.

(3) The Authority shall compile and maintain, in such manner as it thinks fit, a register containing, in respect of each licence, such particulars as may be prescribed.

(4) The register referred to in subsection (3) shall, at all reasonable times, be available for inspection at the offices of the Authority by any person upon payment of the fee prescribed under the Bermuda Monetary Authority Act 1969 or the matters required to be set out in the register shall be posted by the Authority on its website.

#### Annual licence fee

13 (1) A licensed undertaking shall pay such fee as may be prescribed under the Bermuda Monetary Authority Act 1969—

- (a) on the grant of a licence; and
- (b) on or before 31 March in every year after the year in which the licence was granted.

(2) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed on it by subsection (1), it shall be liable to a civil penalty not exceeding \$5,000.

#### Restriction of licence

14 (1) Subject to section 18, the Authority may restrict a licence—

- (a) if it is satisfied of the matters specified in paragraph (a), (b), (d) or (e) of section 15, but it appears to the Authority that the circumstances are not such as to justify revocation;
- (b) if it is satisfied that a person has become a controller of an undertaking in contravention of section 25 or has become or remains a controller after being given a notice of objection pursuant to section 26 or 27;
- (c) in connection with the revocation of a licence—
  - (i) when giving the undertaking notice that it proposes to revoke its licence; or
  - (ii) at any time after such notice has been given to the undertaking; or
- (d) at any time after the undertaking has served a notice surrendering its licence with effect from a later date.

(2) The Authority may restrict a licence by imposing such conditions as it thinks desirable for the protection of the undertaking's clients or potential clients, and may in particular—

- (a) require the undertaking to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business activities in a particular way;
- (b) impose limitations on the acceptance of money service business;
- (c) prohibit the undertaking from soliciting money service business either generally or from persons who are not already its clients;
- (d) prohibit the undertaking from accepting new money service business;
- (e) prohibit the undertaking from entering into any other transactions or class of transactions;
- (f) require the removal of any officer or controller;
- (g) specify requirements to be fulfilled otherwise than by action taken by the undertaking.

(3) Any condition imposed under this section may be varied or withdrawn by the Authority.

(4) The Authority may on the application of an undertaking vary any condition imposed on its licence.

(5) The fact that a condition imposed under this section has not been

complied with shall, where the restriction has been imposed pursuant to paragraphs (a) or (b) of subsection (1), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

#### Revocation of licence

15 Subject to section 18, the Authority may revoke the licence of an undertaking if the Authority is satisfied that—

- (a) any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled, in respect of the undertaking;
- (b) the undertaking has failed to comply with any obligation imposed on it by or under this Act or is carrying on business in a manner not authorised by its licence;
- (c) a person has become a majority shareholder controller of the undertaking in contravention of section 25 or has become or remains such a controller after being given a notice of objection pursuant to section 26 or 27;
- (d) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the undertaking or, in connection with an application for a licence, by or on behalf of a person who is or is to be an officer or controller of the undertaking; or
- (e) the interests of the clients or potential clients of the undertaking are in any way threatened.

#### Winding up on petition from the Authority

16 (1) On a petition presented by the Authority by virtue of this section, the court may wind up an undertaking which is a company in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the undertaking be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of an undertaking under this section.

#### Notice of restriction or revocation of licence

17 (1) Where the Authority proposes to—

- (a) restrict a licence under section 14(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the undertaking concerned; or revoke a licence under section 15,
- (c) the Authority shall give to the undertaking concerned a warning notice under section 44.

(2) Where—

- (a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of the Schedule 1 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as a controller or an officer, the Authority shall give that person a copy of the warning notice but the Authority may omit from such copy any matter which does not relate to him.
- (3) After giving a notice under subsection (1) and taking into account any representations made under section 44(2), the Authority shall decide whether—
- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the undertaking's licence, to restrict its licence instead; or
- (d) if the proposed action was to restrict the undertaking's licence or to vary the restrictions on a licence, to restrict it or to vary the restrictions in a different manner.
- (4) Once the Authority has made a decision under subsection (3) it shall forthwith provide either a decision notice under section 45 or a notice of discontinuance under section 46, as the case may be.
- (5) The Authority shall publish in the Gazette in such form as it thinks fit, notice of every revocation of a licence under the Act.

#### Restriction in cases of urgency

18 (1) No notice need be given under section 14 in respect of the imposition or variation of a restriction on an undertaking's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the undertaking impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 37.

(4) Section 14(2) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 14(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) An undertaking to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may within the period of 14 days beginning with the day on which the notice was given make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction

and taking into account any representations made in accordance with subsection (5) the Authority shall decide whether—

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

(7) The Authority shall within the period of 28 days beginning with the day on which the notice was given under subsection (2) give the undertaking concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

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

#### Directions to protect interests of clients

19 (1) The Authority may give a licensed undertaking directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the licensed undertaking's clients.

(3) An undertaking which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$25,000;
- (b) on conviction on indictment to a fine of \$75,000.

#### Notification and confirmation of directions

20 (1) A direction under section 19 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the licensed undertaking concerned.

(2) A direction under section 19(1), except one varying a previous direction with the agreement of the licensed undertaking concerned—

- (a) shall state the reasons for which it is given and give particulars of the licensed undertaking's rights under subsection (3) and section 37; and
- (b) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the licensed undertaking concerned.

(3) A licensed undertaking to which a direction is given which requires confirmation under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall



take any such representations into account in deciding whether to confirm the direction.

#### Surrender of licence

21 (1) A licensed undertaking may surrender its licence by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the licensed undertaking may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a licence shall be irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

### PART 3

#### ACCOUNTS AND AUDIT

#### Duty to prepare annual financial statements and accounts

22 (1) Every licensed undertaking shall prepare annual financial statements or accounts as required by this section in respect of all transactions and balances relating to its business.

(2) A licensed undertaking which is a company shall prepare annual financial statements of its business, and shall cause copies of those statements to be laid before the company in general meeting.

(3) A licensed undertaking which is not a company shall prepare annual accounts in such form and containing such particulars as the Authority may direct.

(4) A licensed undertaking, where required by subsection (1) to prepare financial statements or to prepare audited financial statements or accounts in accordance with subsection (6), shall keep a copy of the most recent financial statements or accounts or audited financial statements or accounts as the case may be, at each of its offices in Bermuda together with the auditor's report thereon.

(5) Not later than four months after the close of its financial year every licensed undertaking shall provide the Authority with a copy of its financial statements or its accounts for that year, and, where such statements or accounts have been audited in accordance with subsection (6), a report thereon.

(6) Notwithstanding subsection (1), the Authority may require a licensed undertaking to prepare audited financial statements or accounts in such manner as it may direct.

#### Appointment of auditors

23 (1) Every licensed undertaking required by the Authority in accordance with section 22 (6) to prepare audited financial statements or accounts shall annually appoint an approved auditor to audit such financial statements or accounts.

(2) If a licensed undertaking fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that money service business to such auditor.

(3) A licensed undertaking shall forthwith give written notice to the Authority if it—

- (a) proposes to remove an auditor before the expiration of his term of office;
- (b) or proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) A licensed undertaking which fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.

(5) For the purposes of this section, “approved auditor” means an auditor who is a person entitled to practice as a public accountant and is a member of a professional body approved by the Authority for the purposes of this Act.

(6) No person having an interest in any licensed undertaking otherwise than as a client, and no officer, servant or agent of any money service business shall be eligible for appointment as an approved auditor for that licensed undertaking; and any person appointed as such auditor to any licensed undertaking who subsequently acquires such interest or becomes an officer, servant or agent of that licensed undertaking shall cease to be an approved auditor.

Auditor to communicate certain matters to Authority

24 (1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

(2) The circumstances referred to in subsection (1) are—

- (a) his resignation before the expiration of his term of office;
- (b) his intention not to seek to be re- appointed;
- (c) a decision to include a modification of his report on the licensed undertaking’s financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Authority’s functions under this Act.

(4) An auditor who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$25,000.

#### PART 4

#### OBJECTIONS TO SHAREHOLDER CONTROLLERS

Notification of new or increased control

25 (1) No person shall become a 10% or majority shareholder controller of a licensed undertaking which is a company unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the licensed undertaking; and
- (b) either the Authority has, before the end of the period of three months beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the licensed undertaking, or that period has elapsed without the Authority having served him under section 26 a written notice of objection to his becoming such a controller of the licensed undertaking.

(2) Subsection (1) applies also in relation to a person becoming a partner in a licensed undertaking which is a partnership.

(3) A notice under subsection (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (1)(b).

Objection to new or increased control

26 (1) The Authority may serve a notice of objection under this section on a person who has given notice under section 25 unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed undertaking;
- (b) that the interests of clients and potential clients of the licensed undertaking would not be in any manner threatened by that person becoming a controller of that description of the licensed undertaking; and
- (c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed undertaking as a controller of the description in question the criteria in Schedule 1 would continue to be fulfilled in the case of the licensed undertaking or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the

reasons for which it is not satisfied; and

(b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall—

(a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied with and, subject to subsection (5), the reasons for which it is not satisfied; and

(b) give particulars of the rights conferred by section 37.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under section 25 in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with a notice of objection under this section at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in section 25(1)(b) (with any extension under subsection (4) of that section) and the period mentioned in subsection (6) shall not expire, if it would otherwise do so, until 14 days after the end of the period within which representations can be made under subsection (3).

#### Objection to existing controller

27 (1) Where it appears to the Authority that a person who is a controller of any description of a licensed undertaking is not or is no longer a fit and proper person to be such a controller of the licensed undertaking it may serve him with a written notice of objection to his being such a controller of the licensed undertaking.

(2) Before serving a notice of objection under this section the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice shall—

(a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and

(b) give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of 28 days beginning with the day on which the notice is served, make written representations to the

Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

- (4) A notice of objection under this section shall—
- (a) subject to subsection (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in subsection (1); and
  - (b) give particulars of the rights conferred by section 37.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

#### Contraventions by controller

- 28 (1) Subject to subsection (2), any person who contravenes section 25 by—
- (a) failing to give the notice required by subsection (1)(a) of that section;
  - (b) or becoming a controller of any description to which that section applies before the end of the period mentioned in subsection (1)(b) of that section in a case where the Authority has not served him with a preliminary notice under section 26(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under subsection (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within 14 days of becoming aware of the fact.

- (3) Any person who—
- (a) before the end of the period mentioned in section 25 (1)(b), becomes a controller of any description to which that subsection applies after being served with a preliminary notice under section 26(2);
  - (b) contravenes section 25 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
  - (c) having become a controller of any description in contravention of that section (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him' shall be guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine of \$25,000.

- (5) A person guilty of an offence under subsection (3) shall be liable—
- (a) on summary conviction to a fine of \$25,000 and in respect of an offence under paragraph (c) of that subsection, to a fine of \$500 for each day on which the offence has continued;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

Restriction on sale of shares

29 (1) The powers conferred by this section shall be exercisable where a person—

- (a) has contravened section 25 by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
- (b) having become a controller of any description in contravention of section 25 continues to be one after a notice has been served on him; or
- (c) continues to be a controller of any description after being served under section 26 with a notice of objection to his being a controller of that description.

(2) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this section applies shall, until further notice, be subject to one or more of the following restrictions—

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

(3) The court may, on the application of the Authority, order the sale of any specified shares to which this section applies and, if they are for the time being subject to any restrictions under subsection (2), that they shall cease to be subject to those restrictions.

(4) No order shall be made under subsection (3) in a case where the notice of objection was served under section 26 or 27—

- (a) until the end of the period within which an appeal can be brought against the notice of objection; and

(b) if an appeal is brought, until it has been determined or withdrawn.

(5) Where an order has been made under subsection (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(6) Where shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(7) This section applies—

(a) to all the shares in the licensed undertaking of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the licensed undertaking; and

(b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that licensed undertaking.

(8) A copy of the notice served on the person concerned under subsection (2) shall be served on the licensed undertaking or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.

## PART 5

### DISCIPLINARY MEASURES

#### Power to impose civil penalties for breach of requirements

30 (1) Except as provided in section 13, 48, 49 or 58, every person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a penalty not exceeding \$500,000, as the Authority considers appropriate, for each such failure.

(2) For the purposes of subsection (1) “appropriate” means effective, proportionate and dissuasive.

(3) The Authority shall not impose a penalty where it is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

#### Civil penalties procedures

31 (1) If the Authority proposes to impose a civil penalty, it must give the licensed undertaking concerned a warning notice.

(2) If the Authority decides to impose a civil penalty, it must give the licensed undertaking concerned a decision notice.

#### Public censure

32 (1) If the Authority considers that a licensed undertaking has contravened a requirement imposed on it by or under this Act, the Authority may publish a statement to that effect.

(2) After a statement under this section is published, the Authority shall send a copy of it to the licensed undertaking.

#### Public censure procedure

33 (1) If the Authority proposes to publish a statement in respect of a licensed undertaking under section 32, it must give the institution a warning notice.

(2) If the Authority decides to publish a statement under section 32, (whether or not in the terms proposed) it must give the licensed undertaking concerned a decision notice.

#### Prohibition orders

34 (1) Subsection (2) applies if it appears to the Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by a person who is licensed by the Authority under this Act ('a regulated person').

(2) The Authority may make a prohibition order prohibiting the individual from performing a specified function, any function falling within a specified description, or any function.

(3) A prohibition order may relate to—

- (a) a specified regulated activity, any regulated activity falling within a specified description, or all regulated activities;
- (b) regulated persons generally, or any person within a specified class of regulated persons.

(4) In exercising its discretion to make a prohibition order under subsection (2), the Authority must have regard (among other things) to such factors, including assessment criteria as the Authority may establish in a statement of principles.

(5) A licensed undertaking must ensure that no function performed in relation to the carrying on of a regulated activity, is performed by an individual who is prohibited from performing that function by a prohibition order.

(6) The Authority may, on the application of the individual named in a prohibition order, vary or revoke the Order.

(7) The Authority shall publish a prohibition order that is in effect, and every variation of such order, in such manner as it considers appropriate to bring the order to the attention of the public.

(8) This section applies to the performance of functions in relation to a regulated activity carried on by a person who is an exempted person in relation to that activity as it applies to the performance of functions in relation to a regulated activity carried on by a regulated person.

(9) Any person who fails to comply with the terms of a prohibition order commits an offence and is liable—



- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment to a fine of \$200,000 or to imprisonment for four years or to both such fine and imprisonment.

(10) In this section—

“exempted person” means a person who is exempted in accordance with section 9 from the requirement to hold a licence by or under this Act;

“regulated activity” means any activity that is carried on by way of a business requiring licensing or other authority under any provision of this Act, regulations, rules or orders made thereunder;

“regulated person” has the meaning given in subsection (1); “specified” means specified in the prohibition order.

#### Prohibition Orders: procedures

35 (1) If the Authority proposes to make a prohibition order it must give the individual concerned a warning notice.

(2) If the Authority decides to make a prohibition order it must give the individual concerned a decision notice.

#### Applications relating to prohibition orders: procedures

36 (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Authority decides to grant the application, it must give the applicant written notice of its decision.

(3) If the Authority decides to refuse the application, it must give the applicant a decision notice.

#### Determination of applications for variation, etc.

37 (1) The Authority may grant an application made under section 36 if it is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.

(2) In deciding that question, the Authority may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training;
- (c) or possesses a level of competence, required in relation to persons performing functions of the kind to which the application relates.

Injunctions

38

- (1) If, on the application of the Authority, the Court is satisfied—
- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
  - (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

- (2) If, on the application of the Authority, the Court is satisfied—
- (a) that any person has contravened a relevant requirement; and
  - (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) person may have—

- If, on the application of the Authority, the Court is satisfied that any
- (a) contravened a relevant requirement; or
  - (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order restraining such person from disposing of, or otherwise dealing with, any of his assets which it is satisfied the person is reasonably likely to dispose of or otherwise deal with.

(4) In subsection (2), references to remedying a contravention include references to mitigating its effect.

(5) “Relevant requirement” in relation to an application by the Authority, means a requirement which is imposed by or under this Act.

## PART 5

### RIGHTS OF APPEAL

#### Rights of Appeal

- 39 (1) A licensed undertaking which is aggrieved by a decision of the Authority—
- (a) to restrict its licence, to restrict it in a particular manner or to vary any restrictions of its licence;
  - (b) to revoke its licence;

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- (c) to refuse an application for a licence made under section 11(1);
- (d) to impose a civil penalty under section 30; or
- (e) to publish a statement in respect of it pursuant to section 32,

may appeal against the decision to the tribunal constituted in accordance with section 40 (the tribunal).

(2) Where—

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 14(2)(a); or
- (b) the effect of a decision within subsection (1)(a) is to require the removal of a person as a controller or officer of an undertaking,

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

(3) Any person on whom a notice of objection is served under section 26 or 27 may appeal to the tribunal against the decision of the Authority to serve the notice; but this subsection does not apply to a person in any case in which he has failed to give a notice or become or continued to be a controller in circumstances in which his doing so constitutes an offence under section 27(1), (2) or (3).

(4) Any individual in respect of whom a prohibition order has been made under section 34, may appeal to the tribunal.

(5) Any person in respect of whom a decision notice has been issued refusing a revocation or variation of a prohibition order may appeal to the tribunal.

(6) The tribunal may suspend the operation of a restriction or a variation of a restriction pending the determination of an appeal in respect of the decision imposing or varying the restriction.

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

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

#### Constitution of tribunals

40 (1) A tribunal shall be constituted in accordance with this section, where an appeal is brought under section 39, to determine the appeal.

(2) The tribunal shall consist of a chairman, or, in his absence, a deputy chairman and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The two other members of the tribunal shall be selected by the chairman, or, in his absence, the deputy chairman, from a panel of members appointed by the Minister under subsection (6), who shall be persons appearing to the chairman or, as the case may be, the deputy chairman, to have experience of money service business.

(5) During any period of time when the chairman or deputy chairman is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(6) The Minister shall appoint a panel of not less than nine persons with experience of money service business to serve as members of appeal tribunals.

(7) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of two years ending with the date of his appointment been an officer, servant or agent of the Authority or of any licensed undertaking.

#### Determination of appeals

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

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

- (a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

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

#### Costs, procedure and evidence

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

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted,

including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;

- (c) as to the procedure to be adopted where appeals are brought both by a licensed undertaking and by a person who is to be a controller or officer of a licensed undertaking, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
- (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
- (i) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to the negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable—

- (a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

Further appeals on a point of law

43 (1) A licensed undertaking or other person who has appealed to a tribunal may appeal to the court on any question of law arising from the decision of the appeal by the

tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for rehearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

## PART 7 NOTICES AND INFORMATION

### Warning notices

44 (1) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(2) The warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to give a decision notice.

(3) The Authority may extend the period specified in the notice.

(4) A warning notice about a proposal to publish a statement under section 32 must set out the terms of the statement.

(5) A warning notice given under section 35 must set out the terms of the prohibition.

### Decision notices

45 (1) A decision notice must—

- (a) be in writing;
- (b) give reasons for the Authority's decision to take the action to which the notice relates;
- (c) give its decision; and
- (d) give an indication of the right to appeal the decision to the tribunal under section 39.

(2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 44 was given; and if no decision notice under subsection (1) is given within that period, the Authority shall be treated as having at the end of that period given a notice of discontinuance under section 46.

(3) A decision notice about the imposition of a civil penalty under section 31 must state the date of payment.

(4) A decision notice about public censure under section 32 must—

(a) set out the terms of the statement;

(b) give details of the manner in which, and the date on which, the statement will be published.

(5) A decision notice about a prohibition order made under section 34 (2) must—

(a) name the individual to whom the prohibition order applies;

(b) set out the terms of the order; and

(c) be given to the individual named in the order.

(6) A decision notice shall state the day on which it is to take effect.

(7) The Authority may, before it takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.

(8) The Authority may give a further decision notice as a result of subsection (7) only if the person to whom the original notice was given consents.

(9) If the person to whom a decision notice is given under subsection (1) had the right to refer the matter to which the original decision notice related to the tribunal, he has that right as respects the decision notice under subsection (7).

#### Notices of discontinuance

46 (1) Subject to section 45(2), if the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance to the person to whom the warning notice was given.

(2) A notice of discontinuance must identify the action which is being discontinued.

#### Publication

47 (1) Subject to sections 16, 32 and 34, the Authority may publish such information about a matter to which a decision notice relates as it considers appropriate.

- (2) The Authority must not publish a decision notice under subsection (1)—
  - (a) before notifying the person concerned;
  - (b) and pending an appeal under section 40.

#### Notification of change of controller or officer

48 (1) A licensed undertaking shall give written notice to the Authority of the fact of any person having become or ceased to be a controller or officer of the licensed undertaking.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the licensed undertaking becomes aware of the relevant facts.

(3) A licensed undertaking which fails to give a notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that a licensed undertaking fails to comply with a requirement imposed under subsection (1) it shall be liable to a civil penalty not exceeding \$5,000.

#### Power to obtain information and reports

49 (1) The Authority may by notice in writing served on a licensed undertaking—

- (a) require the undertaking to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for ensuring that the undertaking is complying with the provisions of this Act and any code of practice, and for safeguarding the interests of clients and potential clients of the undertaking;
- (b) require the undertaking to provide the Authority with a report, in such form as may be specified in the notice, by the undertaking's auditor or by an accountant or other person with relevant professional skill in, or on any aspect of, any matter about which the Authority has required or could require the undertaking to provide information under paragraph (a).

(2) The person appointed by a licensed undertaking to make any report required under subsection (1)(b) shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking, of the functions of the Authority under this Act.

#### General power to require production of documents

50 (1) The Authority may—

- (a) by notice in writing served on a licensed undertaking require it to



produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

- (b) authorise an officer, servant or agent of the Authority producing such evidence of his authority to require it to provide to him such information, or to produce to him such documents, as he may specify, being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a licensed undertaking, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a licensed undertaking or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that undertaking or person, or any other person who is a present or past controller or officer of, or is or was at any time employed by or acting as an employee of, the licensed undertaking in question, to provide an explanation of any of them; and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) If it appears to the Authority to be desirable in the interests of the clients or potential clients of a licensed undertaking which is a company to do so, it may also exercise the powers conferred by section 49 and subsection (1) of this section in relation to any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of that undertaking;
- (b) a subsidiary company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of more than 50% of the voting power at a general meeting.

(5) The Authority may by notice in writing served on any person who is or is to be a controller or officer of a licensed undertaking require him to provide the Authority, within such

time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(6) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

#### Right of entry to obtain information and documents

51 (1) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under sections 49(1) and 50(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 49(3).

(2) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by any person on whom a notice could be served under sections 49(1) and 50(1) for the purpose of obtaining there such information or documents as are specified in the authority, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

## PART 7

### INVESTIGATIONS

#### Investigations on behalf of the Authority

52 (1) If it appears to the Authority desirable to do so in the interests of the clients or potential clients of a licensed undertaking, the Authority may appoint one or more competent persons to investigate and report to the Authority on—

- (a) the nature, conduct or state of the undertaking's business or any particular aspect of it; or
- (b) the ownership or control of the undertaking, and the Authority shall give written notice of any such appointment to the undertaking concerned.

(2) If a person appointed under subsection (1) thinks it necessary for the purposes of the investigation he is appointed to carry out, he may also investigate the business of any company which is or has at any relevant time been—

- (a) a parent company, subsidiary company or related company of the undertaking under investigation;

- (b) a subsidiary company or related company of a parent company of that undertaking;
- (c) a parent company of a subsidiary company of that undertaking; or
- (d) a company in the case of which a shareholder controller of that undertaking, either alone or with any associate or associates, holds 50% or more of the shares or is entitled to exercise, or control the exercise of more than 50% of the voting power at a general meeting.

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

(4) It shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of a licensed undertaking which is under investigation (whether by virtue of subsection (1) or (2)), or any person appointed to make a report in respect of that undertaking under section 53(1)(b)—

- (a) to produce to the persons appointed under subsection (1), within such time and at such place as they may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the persons so appointed at such time and place as they may require and answer questions relevant to the investigation as the persons appointed under subsection (1) may require; and
- (c) otherwise to give the persons so appointed all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(5) For the purpose of exercising his powers under this section, a person appointed under subsection (1) may enter any premises occupied by a licensed undertaking which is being investigated by him under this section; but he shall not do so without prior notice in writing.

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

(7) Unless the Authority otherwise directs, the licensed undertaking under investigation shall pay to the Authority all expenses of, and incidental to, the investigation.

(8) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4);
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a licensed undertaking which is under investigation or a company which is being investigated by virtue of subsection (2); or

- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5), shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(9) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(10) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

#### Investigations of suspected contraventions

53 (1) The Authority may conduct an investigation if it appears to the Authority that—

- (a) a person may have contravened section 8;
- (b) any exempted person may have contravened any restriction or exemption or condition given under an exemption order under section 9;
- (c) an undertaking may have contravened a requirement imposed by or under this Act, regulations, rules or orders made thereunder;
- (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity within the meaning of section 34.

(2) The power conferred by subsection (1)(c) may be exercised in relation to a former licensed undertaking but only in relation to—

- (a) business carried on at any time when the undertaking was licensed under this Act; or
- (b) the ownership or control of an undertaking at any time when it was licensed under this Act.

#### Power to require production of documents during investigation

54 (1) The Authority may by notice in writing require the person who is the subject of an investigation under section 53 (“the person under investigation”) or any person connected with the person under investigation—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of the

investigation;

- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant to the enquiry as the Authority may require.

(2) The Authority may by notice in writing require every person who is or was a controller, officer, employee, agent, banker, auditor or barrister and attorney of an undertaking which is under investigation by virtue of subsection (1)—

- (a) to produce to the Authority, within such time and at such place as the Authority may require, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required for the investigation, which are in his custody or power;
- (b) to attend before the Authority at such time and place as the Authority may require and answer questions relevant to the investigation as the Authority may require; and
- (c) to take such actions as the Authority may direct in connection with the investigation.

(3) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

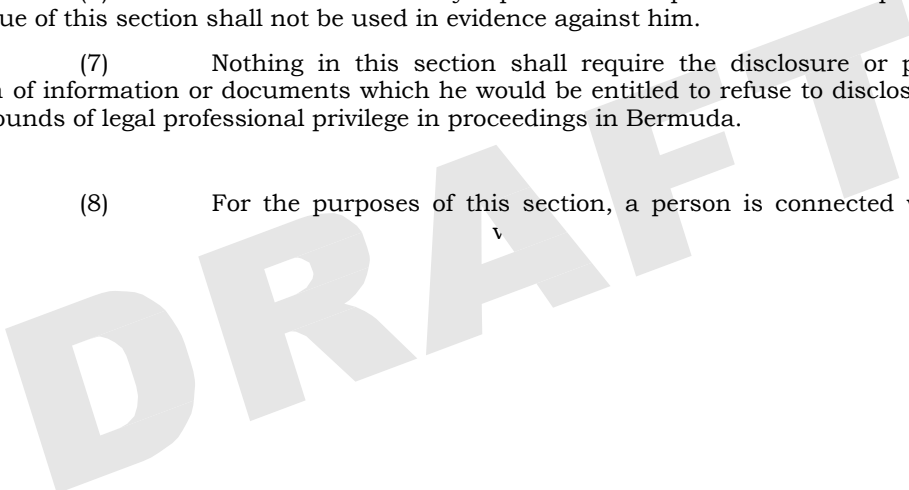
(4) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (a) of that subsection or exercising the powers conferred by subsection (3).

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (4) shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both such fine and imprisonment.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

(8) For the purposes of this section, a person is connected with the person



under investigation if such person is or has at any relevant time been—

- (a) a member of a group to which the person under investigation belongs;
- (b) a controller of the person under investigation;
- (c) a partner of a partnership of which the person under investigation is a member.

#### Powers of entry

55 (1) A magistrate may issue a warrant under this section if satisfied on information on oath that the Authority is conducting an investigation under section 53 and—

- (a) a person has failed to comply with a notice served on him under section 54;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by the person in response to a notice served on him under section 54; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on the person under section 54 it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person under investigation which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person is guilty of any such contravention as is mentioned in section 53.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may

be retained—

- (a) for a period of three months; or
- (b) until the conclusion of proceedings, if within the period of three months referred to in paragraph (a), proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 53.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

#### Obstruction of investigations

56 (1) A person who knows or suspects that an investigation is being or is likely to be carried out—

- (a) into a suspected contravention of section 8, or a term or condition of an exemption order made under section 9; or
- (b) under section 53, shall be guilty of an offence if he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$25,000 or to imprisonment for six months or to both such fine and imprisonment;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

## PART 9

### CERTIFICATE OF COMPLIANCE

Certificates of Compliance

57 (1) Every licensed undertaking shall, within four months from the end of its financial year, deliver to the Authority a certificate of compliance, signed by an officer of the undertaking, made up to the end of its financial year, certifying that the undertaking has complied with the minimum criteria and codes of practice.

(2) A licensed undertaking that fails to deliver a certificate as required by subsection (1) within the time specified therein shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default.

PART 10

RESTRICTION ON DISCLOSURE OF INFORMATION

Restricted information

58 (1) Except as provided by sections 59, 60 and 61 no person who—  
(a) under or for the purposes of this Act receives information relating to the business or other affairs of any person; and  
(b) obtains information directly or indirectly from a person who has received it as provided under paragraph (a),

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both such fine and imprisonment.

Disclosure for facilitating the discharge of functions of the Authority

59 (1) Section 58 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the Authority to discharge—

- (a) its functions under this Act; and
- (b) its functions under the Bermuda Monetary Authority Act 1969.



(2) Without prejudice to the generality of subsection (1), section 58 does not preclude the disclosure of information by the Authority to the auditor or accountant of a licensed undertaking, or the person appointed to make a report under section 49(1)(b) if it appears to the Authority that disclosing the information would enable or assist the Authority to discharge the functions mentioned in that section or would otherwise be in the interests of the clients or potential clients.

#### Disclosure for facilitating the discharge of functions by other authorities

60 (1) Section 56 does not preclude the disclosure of information to the Minister or other authority in Bermuda in any case in which the disclosure is for the purpose of enabling or assisting him to discharge his regulatory functions.

(2) Section 56 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under this Act.

(3) Subsection (2) does not apply in relation to disclosures to an authority unless the Authority is satisfied that the authority is subject to restrictions on further disclosure at least equivalent to those imposed by sections 56 and 57 and this section.

- (4) Section 58 does not preclude the disclosure of information—
- (a) for the purpose of enabling or assisting a person to do anything which he is required to do in pursuance of a requirement imposed under section 49(1)(b);
  - (b) with a view to the undertaking of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or any other Act;
  - (c) in connection with any other proceedings arising out of this Act.

(5) Section 58 does not preclude the disclosure by the Authority to the Director of Public Prosecutions or a police officer not below the rank of inspector of information obtained pursuant to section 52, 54 or 55 or of information in the possession of the Authority as to any suspected contravention in relation to which the powers conferred by those sections are exercisable.

(6) Information which is disclosed to a person in pursuance of this section shall not be used otherwise than for the purposes mentioned in this section.

#### Information supplied to the Authority by relevant overseas authority

61 (1) Section 56 applies to information which has been supplied to the Authority for the purposes of any relevant functions by the relevant supervisory authority in a country or territory outside Bermuda.

(2) Information supplied to the Authority as mentioned in subsection (1) shall not be disclosed except as provided by section 56 or—

- (a) for the purpose of enabling or assisting the Authority to discharge its functions under this Act; or
- (b) with a view to the undertaking of, or otherwise for the purpose of, criminal proceedings, whether under this Act or any other Act.

- (3) In this section—
- “relevant functions” in relation to the Authority means its functions under this Act;
- “relevant supervisory authority” means the authority discharging in that country or territory functions corresponding to those of the Authority under this Act.

## PART 11

### MISCELLANEOUS AND SUPPLEMENTAL

#### False documents or information

- 62 (1) Any person who, for any purposes of this Act—
- (a) issues a document, or supplies information, which is false or misleading in a material respect; or
  - (b) signs a document which is false or misleading in a material respect;
  - (c) or takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.
- (1)to prove— (3) It shall be a defence for a person charged with an offence under subsection
- (a) if an individual, that he had no knowledge of the falsity or misleading character of the document or information, and took every reasonable precaution to ensure its accuracy; and
  - (b) if not an individual, that every person acting on his behalf had no such knowledge, and took every such reasonable precaution, as aforesaid.

#### Offences by licensed undertaking

63 (1) Where an offence under this Act committed by a licensed undertaking is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any officer of the licensed undertaking, or any person who was purporting to act in any such capacity, he, as well as the licensed undertaking, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a licensed undertaking are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the licensed undertaking.

#### Restriction on use of words "Money Service Business"

64 (1) No person carrying on business in or from Bermuda shall use any name which indicates or may reasonably be understood to indicate (whether in English or in any other language) that it is carrying on money service business unless it is a licensed undertaking or is exempted under section 9.

(2) Any person using a name in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

#### Notices

65 (1) This section has effect in relation to any notice, direction or other document required or authorised by or under this Act to be given to or served on any person other than the Authority.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his principal place of business; or
- (c) by sending it to him at that address by facsimile or other similar means which produces a document containing the text of the communication.

(3) Any such document may in the case of a company be given to or served—

- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business.

#### Service of notice on Authority

66 (1) No notice required by this Act to be given or served on the Authority shall be regarded as given or served until it is received.

(2) Subject to subsection (1), such notice may be given by facsimile or other similar

means which produces a document containing the text of the communication.

#### Civil debt and civil penalties

67 (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 30 in relation to the same matters.

(2) A civil penalty levied pursuant to this Act may be recovered by the Authority as a civil debt.

#### Consequential amendments

68 Schedule 2 which makes consequential amendments to the Bermuda Monetary Authority Act 1969 has effect.

#### Transitional

69 (1) This section applies to a undertaking which on the commencement of this Act is a licensed undertaking carrying on money service business under a licence issued by the Authority under the repealed enactment.

(2) On the commencement of this Act the Authority shall issue to an undertaking to which this section applies, a money service business licence, and thereupon the provisions of this Act shall apply to the licensed undertaking as if such licence were issued pursuant to an application made under section 12.

(3) An undertaking shall not be liable to pay the fee prescribed by virtue of section 12 (1) on the issue of its licence under subsection (2), but shall be liable to pay the fee prescribed thereby on or before 31 March and annually thereafter, and the provisions of section 12 (2) shall apply in relation to failure to pay such fee.

(4) Where the undertaking referred to in subsection (1) makes an application for a licence within the one year period from the date of commencement of this Act, it may continue to carry on money service business activities without a licence until that application is finally disposed of or withdrawn, and if the application is refused and an appeal is brought against the refusal, until it has been determined or withdrawn.

#### Commencement

70 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

## SCHEDULE 1

### MINIMUM CRITERIA FOR LICENSING

#### *Controllers and officers to be fit and proper persons* (section 11(2))

1. (1) Every person who is, or is to be, a controller or officer of the licensed undertaking is a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of clients or potential clients of the licensed undertaking are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

#### *Business to be conducted in prudent manner*

2. (1) The licensed undertaking shall conduct, or, in the case of an undertaking which is not yet carrying on money service business, will conduct its business in a prudent manner.

(2) In determining whether a licensed undertaking is conducting its business in a prudent manner, the Authority shall take into account any failure by the undertaking to comply with the provisions of—

- (a) this Act;
- (b) any applicable law, including the provisions of the law pertaining to

anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti- Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti- Terrorist Financing) Regulations 2008;

- (c) codes of practice issued by the Authority pursuant to section 7 of this Act;
- (d) international sanctions in effect in Bermuda.

(3) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of \$50,000 or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed undertaking.

(4) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records and has developed policies and procedures pertaining to its obligations under this Act or any other Act.

(5) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the licensed undertaking to be prudently managed and the licensed undertaking to comply with the duties imposed on it by or under this Act or other provisions of law.

(6) Subparagraphs (2) to (5) are without prejudice to the generality of subparagraph (1).

#### *Integrity and skill*

3. The business of the licensed undertaking is or, in the case of an undertaking which is not yet carrying on money service business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

#### *Corporate Governance*

4. (1) The licensed undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

(2) Without prejudice to subparagraph (1) the business of the licensed undertaking shall be effectively directed—

- (a) by at least two persons; and
- (b) be under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

#### *Consolidated Supervision*

5. The position of the licensed undertaking within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

**AMENDMENTS TO THE BERMUDA MONETARY AUTHORITY ACT 1969**

The Bermuda Monetary Authority Act is amended—

- (a) by repealing section 20AA;
- (b) in the Third Schedule by deleting the words “Money Service Business” and substituting “Undertaking licensed under the Money Service Business Act 2016”;
- (c) in the Fourth Schedule by deleting the heading “**Bermuda Monetary Act 1969**” and all fee requirements thereunder;
- (d) by inserting the following before the heading “**Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) act 2008**”:

**“Money Service Business Act 2016**

- (1) Application fee under section 13 (1) (a) \$[ ]
- (2) Annual fee pursuant to section 13 (1) (b) \$[ ]”.

## MONEY SERVICE BUSINESS BILL 2016

### EXPLANATORY MEMORANDUM

This Bill makes new provision for regulating the business of money service businesses and for the protecting of the interests of clients or potential clients of persons carrying on money service business.

Clause 1 provides for a citation of the Bill.

Clause 2 provides for definitions in the Bill. Clause 2(2) provides for the substantive interpretation of the term “money service business”. For purposes of the Bill the term is interpreted to mean the provision of money service business.

Clause 3 provides for the substantive interpretation of the terms “director”, “controller”, “senior executive” and “associate” that are of significant use in the Bill.

Clause 4 provides for the substantive interpretation of the phrase “carrying on money service business in Bermuda”. The clause provides for the circumstances that are to apply to a person for such person to be considered as carrying on money service business in Bermuda, where such person is situated either within Bermuda or outside of Bermuda.

Clause 5 imposes a duty on the Bermuda Monetary Authority (“the Authority”) to publish annual reports.

Clause 6 requires the Authority to publish a statement of principles. This statement is to indicate to persons carrying on money service business how the Authority proposes to carry out certain aspects of its licensing and supervisory functions. This clause also allows the Authority to publish guidance on the application of the Bill and regulations made under it.

Clause 7 empowers the Authority to issue codes of practice. Persons carrying on money service business are required to observe these codes of practice. A failure to observe the codes of practice could lead to regulatory sanctions.

Clause 8 prohibits any person from carrying on money service business unless that person is licensed by the Authority or exempted under clause 9.

Clause 9 empowers the Minister to make orders exempting specified persons from the requirement to hold a licence. The Minister may, acting on the advice of the Authority, issue an exemption order.

Clause 10 provides a procedure for making applications to the Authority for licences. An application must be accompanied by a business plan, application fee (to be prescribed under the Bermuda Monetary Authority Act 1969) and such other information or documents as the Authority may require.

Clause 11 empowers the Authority to grant or refuse applications for licences. The Authority must refuse an application unless it is satisfied that the minimum criteria are fulfilled with respect to the applicant. The Minister is empowered to amend Schedule 1 that sets out the minimum criteria by order, under clause 11(7).



Clause 12 requires licences to be displayed. The Authority is required to publish a notice in the Gazette of each licence issued under the Act. It is also required to compile a register of licences which must be available for inspection by members of the public.

Clause 13 provides for fees to be prescribed under the Bermuda Monetary Authority Act 1969. It provides for the fees to be payable on the grant of the licence and thereafter annually on or before 31 March. These fees are to cover the cost of regulating undertakings and are therefore payable to the Authority and not to the Government. Where a licensed undertaking fails to tender such fee in time, it shall be liable to a civil penalty.

Clause 14 provides the main mechanism for regulating undertakings. Clause 14(1) empowers the Authority to restrict the licence of an undertaking in certain circumstances. These in general are when a licensed undertaking fails to satisfy the minimum criteria, when it contravenes a provision of the Bill or fails to meet an obligation imposed by or under the Bill - but in circumstances not to justify revocation of the licence. The Authority's objective in restricting a licence is to protect clients or potential clients of an undertaking. The Authority is given wide powers under clause 13(2) to achieve this objective and can impose conditions on the licensed undertaking by restricting its licence.

Clause 15 provides for the revocation of a licence. Paragraphs (a) to (e) set out the grounds for revocation. These are identical to the grounds for restricting a licence. The difference is a matter of degree. Minor breaches are unlikely to lead to revocation, but to restriction.

Clause 16 provides for the winding-up of a licensed undertaking that has had its licence revoked, if it is just and equitable to wind it up.

Clause 17 requires the Authority to give notice to a licensed undertaking where it proposes to restrict, vary a restriction or revoke its licence. The Authority is required to give the undertaking a warning notice in writing which must state the action it proposes to take and give reasons for the proposed action. The licensed undertaking is given the opportunity to make representations to the Authority. The Authority after considering any representations made to it can either proceed with its proposed action or take no further action. It can also, where it has proposed revoking a licence, restrict it instead; and where it has proposed restricting or varying the licence in a certain manner, restrict or vary it in a different manner. Once the Authority has made its decision it must provide a decision notice in writing giving its decision, the reasons for its decision and an indication of the right to appeal to a tribunal. If the Authority decides not to take the action proposed in a warning notice it must give a notice of discontinuance, identifying the action which is being discontinued.

Clause 18 provides for the imposition of restrictions in cases of urgency where the situation warrants immediate action. In such cases, the Authority is not required to give a licensed undertaking notice under clause 14 (1) of its intention to impose a restriction. Nevertheless, the Authority is required to give a licensed undertaking its reasons in writing for so doing. A licensed undertaking has the right to make representations to the Authority and can appeal a decision of the Authority under this clause.

Clause 19 provides for the giving of directions by the Authority to a licensed undertaking following the revocation or surrender of its licence. In these circumstances there is no licence subsisting on which the Authority can impose restrictions for the protection of clients. This clause seeks to empower the Authority to give a licensed undertaking such directions as appear to the Authority desirable for safeguarding the interests of the clients. Failure to comply with directions is a criminal offence.

Clause 20 provides for the notification and confirmation of directions given by the Authority to licensed undertakings under clause 19. The clause requires that the Authority give directions by notice in writing and empowers the Authority to vary a direction by a further direction. The Authority may revoke a direction by notice in writing. The clause further provides that a direction given shall cease to have effect at the end of 28 days unless it is confirmed by a further notice given by the Authority.

Clause 21 provides for the surrender of a licence by an undertaking. The surrender of a licence is irrevocable, unless it is expressed to take effect at a future date, and before that date the Authority by notice in writing allows it to be withdrawn.

Clause 22 provides for the licensed undertaking to prepare annual financial statements and to appoint an auditor who must audit the accounts.

Clause 23 requires for licensed undertakings to appoint an approved auditor.

Clause 24 requires approved auditors to communicate certain matters to the Authority.

Clause 25 requires any person who proposes to become a 10 %, or majority shareholder controller of a licensed undertaking (or a partner in a licensed undertaking) to obtain the approval of the Authority first. Such a controller is required to serve notice on the Authority of his proposal and to only become such a controller if the Authority either does not object or does not respond within a specified period.

Clause 26 provides for the Authority to object to any person who seeks to become a controller unless it is satisfied of a number of matters, one of which is that the person concerned is a fit and proper person to become a controller of the licensed undertaking. Provision is made for the giving of appropriate notices and for the making of representations by the person concerned.

Clause 27 provides for the Authority to object to an existing controller who it considers is no longer a fit and proper person. Provision is made for the giving of notices and for the making of representations by the person concerned.

Clause 28 provides for contraventions by a controller of various requirements under the Bill. Contraventions are committed, in particular, with respect to the failure by a person to notify the Authority as required that the person is to become a 10% or majority controller of a licensed undertaking or where a person fails to comply with notices of objection to him being a controller given by the Authority. The penalties that may be imposed range from \$25,000 to \$50,000.

Clause 29 provides for the imposition by the Authority of certain restrictions on the shares of a controller. The Authority may also apply to the court for an order for the sale of specified shares.

Clause 30 empowers the Authority to impose civil penalties of up to \$500,000 for failure to comply with any requirement, or contravention of any prohibition, imposed by or under the Bill. In determining what is an appropriate level of penalty; the Authority must take into account clause 30(2) whereby the fine must be effective in that it would be of a sufficient amount to make the person concerned take notice, it must be proportionate to the breach, and it must be dissuasive in that it would act as a deterrent. The Authority is precluded from imposing a fine if it is satisfied that the person concerned took all reasonable steps

and exercised all due diligence to ensure compliance.

Clause 31 sets out the procedure for imposing fines. The Authority must give a warning notice first, followed by a decision notice. Clauses 44 and 45 make provision for the content of such notices.

Clause 32 provides for public censure of a licensed undertaking by the publication of a statement by the Authority stating that such undertaking has contravened a requirement imposed by or under the Bill.

Clause 33 sets out the public censure procedure. The Authority must give a warning notice first, followed by a decision notice.

Clause 34 empowers the Authority to ban certain officers from performing functions in relation to any activity regulated under the Bill. The Authority can make a number of prohibition orders, depending on the circumstances of each particular case and after an assessment of the qualities of the individual concerned. A person who performs or agrees to perform a function in breach of the order would be liable to a civil penalty. This clause imposes an obligation on regulated persons not to employ persons to perform functions that they are prohibited from performing. On the application of the person concerned, the prohibition order may be varied or revoked.

Clause 35 sets out the procedure for making prohibition orders. The Authority must give a warning notice first, followed by a decision notice.

Clause 36 establishes a procedure for the making of applications to vary or revoke a prohibition order, requiring the Authority to serve appropriate notices.

Clause 37 permits the Authority to revoke or vary a prohibition order if it is satisfied that a person in respect of whom an order had been made is now fit and proper.

Clause 38 allows for the issuing of three types of injunction orders by the Supreme Court on the application of the Authority. The first is an order restraining a person from contravening any requirement imposed by or under the Bill; the second is an order requiring persons to take steps to remedy a contravention of such a requirement; and the third is an order restraining a person from disposing or otherwise dealing with assets.

Clause 39 provides for appeals to appeal tribunals against decisions of the Authority restricting or revoking a licence.

Clause 40 provides for the establishment of appeal tribunals. A tribunal comprises a chairman, or deputy chairman to act in his absence, who must be a barrister and attorney of at least seven years standing; and two other members with experience of money service business. The chairman and deputy chairman of the tribunal are appointed by the Minister. The other members are appointed by the chairman, or, in his absence, by the deputy chairman from a panel.

Clause 41 provides for the jurisdiction and powers of the tribunal in the determination of appeals.

Clause 42 provides for costs, procedure and evidence. Under this clause, a tribunal has power to give directions as to costs and the Minister has power to make regulations prescribing procedure and evidence.

Clause 43 provides for appeals against the decisions of the tribunal to lie to the Supreme Court on questions of law only. Appeals to the Court of Appeal lie with leave of

that court.

Clause 44 establishes a procedure for the issue of warning notices. A warning notice is the initial step in an enforcement action, following an investigation into a breach. It sets out the proposed action and the reasons for it and also gives an indication of whether or not the Authority proposes to publish its decision. The notice provides a period, not less than 14 days, to enable the licensed undertaking or person concerned to make representations. The Authority could extend this period on application.

Clause 45 establishes a procedure for the issuing of decision notices. A decision notice informs the money service business or the person concerned that the Authority has now concluded that it is appropriate to take the action in respect of which a warning notice had been issued. It sets out the particulars of the decision and the reasons for the action and also gives an indication of whether or not the Authority would publish the decision; and informs the institution concerned of its right to appeal to the tribunal. The Authority is required to make a determination within 90 days after a warning notice is given and if no decision notice is given within that period, it shall be treated as having discontinued the action. Clause 45(7) provides for a different action to be taken if, before the direction is given, the Authority decides to take a different action with the consent of the institution.

Clause 46 requires the Authority to give a notice of discontinuance to the person concerned if, following the issue of a warning notice the Authority decides not to proceed with the proposed action.

Clause 47 allows the Authority to decide what information should be published about a decision and prohibits the Authority from publishing a decision unless it has first notified the person concerned, and pending the outcome of any appeal that might have been made.

Clause 48 requires a licensed undertaking to notify the Authority of any change in its controllers or officers. Where an undertaking fails to comply, it shall be liable to a civil penalty.

Clause 49 provides for the obtaining of information and reports from a money service business. A report requested by the Authority under this clause may be prepared by a money service business' auditor, accountant or other person. An auditor, accountant or other person is required to report to the Authority any facts which indicate to him that the minimum criteria is not or has not been or may not be fulfilled by a licensed undertaking which are likely to be of material significance for the exercise of the Authority's functions.

Clause 50 provides for the production of documents for examination by the Authority. The Authority may also require the parent or a subsidiary company of a money service business to produce documents for its examination, if it appears to it to be desirable in the interests of the clients.

Clause 51 provides for a right of entry into premises occupied by a money service business, by officers, servants and agents of the Authority to obtain information or documents in certain circumstances.

Clause 52 provides for the investigation of a money service business. Such investigations are conducted by third parties on behalf of the Authority, all expenses of which are payable by the licensed undertaking under investigation unless otherwise directed by the Authority. The Authority can launch an investigation into the nature, conduct or state of a money service business or any particular aspect of it; or into the

ownership and control of a money service business. Various powers are given to the investigator to enable him to carry out his duties under this clause. This clause also creates various offences in connection with failing to assist in or obstructing an investigation.

Clause 53 provides empowerment to the Authority to investigate suspected contraventions of fundamental requirements in the Bill including the requirements not to carry on a money service business without a licence, requirements or conditions applicable to an exemption order, requirements that apply to a fit and proper person's ability to perform functions in relation to a money service business and other requirements imposed by or under the Bill, regulations, rules or orders for purposes of the Bill.

Clause 54 provides that the Authority may require the person under investigation or any person connected to the person under investigation to provide information, produce documents or attend for questioning. Clause 54(6) precludes the use of statements given in the course of such investigations as evidence against that person.

Clause 55 provides for the issue of search warrants by a magistrate in cases where a person is suspected of removing, tampering or destroying documents required by the Authority for its functions, or in cases where a person under investigation or any person connected to the person under investigation refuses to provide the information or documents requested under clause 54.

Clause 56 makes it an offence to obstruct investigations.

Clause 57 makes provision for a licensed undertaking to within four months from the end of its financial year, deliver to the Authority a certificate signed by an officer of the licensed undertaking, certifying that the licensed undertaking has, (with respect to the preceding financial year) complied or failed to comply with the minimum criteria for licensing under Schedule 1; and that it has observed any limitations imposed on it by the Authority under its license (if applicable).

Clause 58 prohibits the disclosure of information relating to the business or other affairs of persons coming into the possession of any person exercising functions under the Act.

Clause 59 authorises the disclosure of information in clause 60 if it is necessary for facilitating the discharge of the functions of the Authority.

Clause 60 authorises disclosure to the Minister and to other authorities in Bermuda for the purpose of enabling or assisting them to discharge their regulatory functions. Disclosure may be made to overseas regulators who exercise functions corresponding to the functions of the Authority, provided that such overseas regulators are subject to similar restrictions on further disclosure. Information may be disclosed for the purposes of criminal proceedings and may be disclosed to the Director of Public Prosecutions or a police officer not below the rank of inspector.

Clause 61 imposes similar restrictions on the disclosure of information supplied to the Authority by an overseas authority.

Clause 62 creates offences in connection with false documents or information.

Clause 63 provides for the trial and punishment of directors and officers of a money

service business for offences committed by companies in circumstances where such persons are implicated in the commission of an offence under the Act.

Clause 64 prohibits the use of the term " a money service business " by persons not holding a licence, unless it is exempted from holding a licence, as provided under clause 9.

Clause 65 provides the procedure for the giving and serving of notices to a money service businesses.

Clause 66 provides that a notice required under the Bill to be given or served on the Authority shall not be regarded as given or served until it is received by the Authority.

Clause 67 directs that where a person is convicted of a criminal charge, no civil penalty can be imposed relative to the same matter. The clause also provides a mechanism for the recovery of civil debt imposed under the Bill. The Authority would be able to claim the amount owing by way of civil proceedings in court.

Clause 68 provides for consequential amendments to the Bermuda Monetary Act 1969 to bring it into conformity with the Bill.

Clause 69 provides that persons carrying on a money service business may continue to do so without a licence during a one year period after commencement of the Act. Such persons shall have 12 months within which they must apply for a licence under this clause of the Bill.

Clause 70 provides for the Bill to come into operation on such day as the Minister may appoint by notice published in the Gazette. This clause also provides for different provisions of the Bill to come into operation on different days.

Schedule 1 provides the minimum criteria required under clause 11(2) for the licensing of a money service businesses under the Bill. For this purpose the Schedule requires amongst other things; for controllers and officers of licensed undertakings to be fit and proper persons; stipulates the composition of the board of directors for undertakings that are companies; and requires the business of licensed undertakings to be conducted in a prudent manner.

Schedule 2 makes provision for amendment to the Bermuda Monetary Authority Act 1969 ("BMA Act") by:- (i) repealing section 20AA "Money Service Business", as the Bill will now be the primary legislation for the licensing and supervision of money service business by the Authority in Bermuda; (ii) amending the Third Schedule to make provision for "undertakings licensed under the Money Service Business Act 2016" to be an institution to which the BMA Act applies; (iii) amending the Fourth Schedule to delete former requirements under the BMA Act for payments by undertakings of registration and annual fees to conduct "money service business" and instead; providing for such fees to be payable in accordance with the requirements under the (new) heading "Money Service Business Act 2016".