

Banking Act 1998 (as amended)

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BANKING ACT 1998
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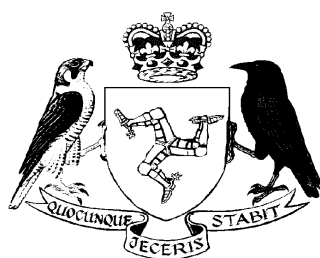
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BANKING ACT 1998

Isle Of Man }
To Wit }

Signed in Tynwald: 28th April 1998
Received Royal Assent: 28th April 1998
Announced to Tynwald: 28th April 1998
Passed: 28th April 1998

AN ACT

to consolidate with amendments Acts relating to banking, to make fresh provision with respect to the regulation of banking business; to amend enactments relating to the regulation of investment businesses; to amend enactments relating to companies; to amend the law relating to bills of exchange; and for connected purposes.

We your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

Banking business

Banking
business.

1. (1) In this Act, "banking business" is a business which includes the carrying on of any of the following activities:-
 - (a) the receipt of deposits;
 - (b) the payment and collection of cheques

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[but the following activities are not “banking business” -

- (aa) the receipt of money paid on terms which are referable to the provision of property or services or the giving of security, and for this purpose money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if -
 - (i) it is paid by way of an advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is not or are not in fact sold, hired or otherwise provided;
 - (ii) it is paid by way of security for the performance of a contract or by way of security in respect of a loss which may result from the non-performance of a contract; or
 - (iii) without prejudice to sub-paragraph (ii), it is paid by way of security for the delivery or return of any property, whether in a particular state of repair or otherwise;
- (bb) the acceptance of a sum of money as part of a savings scheme, in respect of the payment of property or services, sponsored by the United Kingdom Government or by any department, statutory board or other public authority whether or not such sum may be refunded in the event that the payment is not ultimately used for its intended purpose.]¹

(2) A person carrying on a banking business is referred to in this Act as “a banking institution”.

(3) Where a person carries on a business which in any respect is or in the opinion of the Financial Supervision Commission (in this Act referred to as “the Commission”) appears to be of a similar character to a banking business, the Commission may declare in writing that the business either is or is not to be treated for the purposes of this Act as banking business and on the making of such a declaration, this Act shall accordingly apply or, as the case may be, not apply to that person’s business.

(4) The Treasury may by order modify the definition of banking business in subsection (1).

Restrictions on unlicensed banking business

Offence to carry on a banking business without a banking licence.

2. (1) Subject to the provisions of this Act, any person who, whether on his own behalf or on behalf of another person in or outside the Island, carries on or holds himself out as carrying on, in or from the Island, a banking business:-

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- (a) in respect of which no licence under section 6 (in this Act referred to as "a banking licence") is in force; or
- (b) if a banking licence is in force, other than in accordance with the conditions, if any, of the licence,

shall be guilty of an offence.

(2) Without prejudice to the generality of subsection (1), for the purposes of this Act, a person shall be treated as carrying on a banking business:-

- (a) in the Island if that person carries on a banking business outside the Island and establishes a representative office in the Island; or
- (b) from the Island if that person:-
 - (i) is a company incorporated in the Island under the Companies Acts 1931 to 1993; or
 - (ii) is a body corporate incorporated outside the island which is registered under Part XI of the Companies Act 1931,

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and carries on or holds itself out as carrying on a banking business outside the island, whether on its own behalf or on behalf of any other person in or outside the Island.

(3) In subsection (2)(a), "representative office" means any office which in any way appertains to any banking business carried on by a person, other than an office from which that person actually carries on that business.

Managers
of banking
businesses.

3. (1) Any person, other than a banking institution in respect of which a banking licence is in force, who, in or from within the Island, acts as the manager of any banking business shall be guilty of an offence.

(2) In this section "manager" means a person, not being an employee of a banking institution in respect of which a licence is in force:-

- (a) who:-
 - (i) holds himself out as a manager in relation to a banking business; or
 - (ii) provides management services for a banking business, whether or not the functions performed by him as such go beyond the keeping of the banking business accounts or records;

or

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- (b) who, as manager or consultant, provides banking or deposit-taking business expertise for a banking institution which is not the holder of a banking licence.

Banking business licences

Application for, and other matters relating to, a banking licence.

4. (1) Every application for a licence to carry on a banking business shall be made to the Commission.

(2) An application under subsection (1) shall be in such form, and shall be accompanied by such documents and information, as may be required by the Commission.

Criteria for grant of banking licences.

5. (1) A banking licence shall not be granted unless the Commission is satisfied that:-

(a) the applicant is a fit and proper person:-

(i) to carry on the banking business; and

(ii) to provide the services,

described in the application; and

(b) where the applicant is part of a group, the structure of the group and in particular the proposed relationship between the applicant and other bodies within the group will not prejudice the effective supervision of the applicant; and

(c) the effective head office of the applicant is in the same country or territory as its registered office.

(2) A banking licence shall not be granted to an individual who is a sole trader.

(3) Without prejudice to the generality of section 7(1), where at any time after the grant of a banking licence the Commission is satisfied that the criteria mentioned in paragraphs (a) to (c) of subsection (1) are no longer satisfied in respect of the holder of the licence, it may revoke the licence.

Grant and refusal of licences.

6. (1) The Commission shall, in relation to every application for a banking licence:-

(a) grant the licence; or

(b) grant the licence, subject to conditions; or

(c) refuse the application.

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(2) The conditions which the Commission may impose may include a requirement that the person to whom the licence is granted shall:-

- (a) comply with such regulatory codes issued under section 10 as are from time to time in force;
- (b) comply with such rules, regulation, codes or standards as are from time to time in force and made or issued by a recognised regulator or any other regulatory authority (whether made before or after the date on which the condition is imposed).

(3) Without prejudice to subsection (2)(a), a banking licence may include a statement specifying the provisions of any regulatory code issued under section 10 which are not to apply to the person to whom the licence is granted.

(4) Where a banking licence contains a statement under subsection (3), such provisions of the regulatory code as are specified in that statement shall not apply to the holder of the licence.

(5) Subject to the provisions of this section, a banking licence shall remain in force for:-

- (a) such period as may be specified in the licence; or
- (b) until revoked or surrendered,

whichever first occurs.

(6) In respect of a licence to which subsection (5)(a) applies, the Commission may extend the term of the licence for a period not exceeding 21 days.

(7) The form of a banking licence shall be such as the Commission may from time to time adopt.

Revocation and
alteration
of banking
licences.

7. (1) The Commission may at any time revoke a banking licence.

(2) Without prejudice to the generality of subsection (1), the Commission may revoke a banking licence where:-

- (a) any document or information has been furnished or sent to the Commission by or on behalf of the licenceholder; and
- (b) the Commission has reasonable grounds for believing that the document or information has been furnished or sent in contravention of section 27.

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A licence may be revoked under this subsection whether or not proceedings for an offence under section 27 are commenced.

(3) Where a banking licence has been granted under section 6(1)(a) the Commission may at any time make that licence subject to conditions.

(4) Where a banking licence has been granted subject to conditions the Commission may at any time:-

- (a) make the licence subject to further conditions; or
- (b) vary or revoke any condition.

(5) If the holder of a banking licence is in contravention of any condition imposed under this section, the Commission may require the licenceholder to remedy the contravention and if the holder fails to take the action required by the Commission it may undertake enforcement action.

Register of licences.

8. (1) A public register of all licences granted under this Act shall be kept by the Commission at its principal office.

(2) The register referred to in subsection (1) shall contain such information as is prescribed.

(3) The register shall:-

- (a) be in such form; and
- (b) be made available for public inspection in such manner and by such means,

as the Commission may reasonably direct.

[Subsection 8(3)(b) substituted by the Fiduciary Services Act 2005]

Banking names

Restriction on the use of the word "bank".

9. (1) No person, including a banking institution in respect of which a banking licence is in force, shall use or cause to be used the word "bank" or any like or cognate word (whether in English or any other language):-

- (a) as or as part of the name or title of any trade or business carried on by him in or from within the Island or, in the case of a body corporate of a class specified in section 2(2)(b), elsewhere;
- (b) in any advertisement in such manner as may reasonably be held to imply that he is a banking institution carrying on business in or from within the Island or, in the case of a body corporate of a class specified in section 2(2)(b), elsewhere,

without the written consent of the Commission.

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- (1). (2) The Commission may at any time rescind a consent given under subsection (1).
- (3) Any person who contravenes subsection (1) shall be guilty of an offence.

Regulation of banking business

Regulatory codes.

10. (1) The Commission may by instrument in writing make codes (in this Act referred to as "regulatory codes") concerning:-

- (a) the conduct of any business carried on by banking institutions;
- (b) the financial resources of banking institutions;
- (c) the assets, liabilities and other matters to be taken into account in determining a banking institution's financial resources for the purpose of the code;
- (d) arrangements for the settlement of disputes;
- (e) the keeping of accounts and other records, their form, content, inspection and audit;
- (f) the form and content of advertisements in respect of any business carried on by banking institutions;
- (g) the disclosure of the amount or value, or of arrangements for the payment or provision, of commissions or other inducements in connection with any business carried on by a banking institution and the matters by reference to which or the manner in which their amount or value may be determined;
- (h) the giving of notice to the Commission of the occurrence of such events as may be specified in the code;
- (i) the form and content of any information required to be produced by banking institutions to the Commission;
- (j) the financial statements and returns which are to be submitted to the Commission; and
- (k) the display of notices and the provision of information about the affairs of institutions to the public at offices and places of business of banking institutions,

which shall apply to banking institutions.

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(2) A regulatory code may include a requirement that the banking licenceholder to whom it applies shall comply with such rules, regulations, codes or standards as are from time to time in force and made or issued by the Commission.

(3) The Commission shall supply copies of regulatory codes to any person on request at such reasonable charge (if any) as the Commission may determine.

(4) If a banking licenceholder is in contravention of a regulatory code the Commission may undertake enforcement action.

(5) Regulatory codes under this section shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulatory codes are laid or at the next following sitting fails to approve them, the regulatory codes shall cease to have effect.

Supervisory powers etc

Recommendations and directions to banking institutions.

11. (1) The Commission may make recommendations to:-

- (a) a banking institution or former banking institution;
- (b) any other person who, in or from within the Island, acts or has acted as the manager of any banking business.

(2) The Commission may issue directions to any person mentioned in subsection (1) to secure that:-

- (a) effect is given to a recommendation under subsection (1); or
- (b) a banking business is in whole or in part suspended or discontinued.

(3) The Commission shall not make any recommendation under subsection (1) with respect to the affairs of any particular customer of a banking institution or former banking institution unless the Commission is satisfied that it is necessary for the purpose of:-

- (a) securing that a direction issued under subsection (2)(a) is complied with; or
- (b) protecting the interests of the institution's other customers.

(4) No recommendation or direction under this section may be made or issued to or in respect of a former banking institution after that institution has ceased to have any obligation or liability in respect of any activity carried on in connection with or for the purposes of its former banking business.

(5) Any person who contravenes or fails to comply with a direction issued under this section shall be guilty of an offence.

(6) In subsection (1)(b), "manager" has the same meaning as in section 3(2).

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Requests for information.

12. (1) The Commission may request:-

- (a) a banking institution or former banking institution;
- (b) any other person who, in or from within the Island, acts or has acted as the manager of any banking business,

to provide the Commission with any information that it may reasonably require for the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may request information about:-

- (a) subject to subsection (4), the affairs of a customer of a banking institution;
- (b) any body corporate which is or has at any relevant time been:-
 - (i) a holding company, subsidiary or related company of that banking institution;
 - (ii) a subsidiary of a holding company of that banking institution;
 - (iii) a holding company of a subsidiary of that banking institution; or
 - (iv) a body corporate in the case of which a shareholder controller of that banking institution, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting,

or in relation to any partnership of which that banking institution is or has at any relevant time been a member,

if it appears to the Commission necessary for the performance of its functions under this Act.

(3) The Commission may issue directions to any person mentioned in subsection (1) to secure that effect is given to a request under subsection (1) or (2).

(4) The Commission shall not make any request under subsection (1) or (2) with respect to the affairs of any particular customer of a banking institution or former banking institution unless the Commission is satisfied that it is necessary for the purpose of:-

- (a) securing that a direction issued under subsection (3) is complied with; or
- (b) protecting the interests of the institution's other customers.

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(5) No request or direction under this section may be made or issued to or in respect of a former banking institution after that institution has ceased to have any obligation or liability in respect of any activity carried on in connection with or for the purposes of its former banking business.

(6) Any person who contravenes or fails to comply with a direction issued under this section shall be guilty of an offence.

(7) A statement by a person in response to a direction issued under this section may not be used in evidence against him in respect of any criminal proceedings except proceedings alleging contravention of:-

- (a) subsection (6) of this section; or
- (b) section 27.

(8) In subsection (1)(b), "manager" has the same meaning as in section 3(2).

Inspection and investigation. 13. (1) The Commission may inspect the books, accounts and documents and investigate the transactions of:-

- (a) a banking institution or former banking institution;
- (b) any other person who, in or from within the Island, acts or has acted as the manager of any banking business.

(2) The Commission shall have every such power of entry and access as may be necessary for the purposes of subsection (1), and it may take possession of all such books, accounts and documents as, and for as long as, may be necessary for those purposes.

(3) The Commission may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this section.

(4) Any person who intentionally obstructs the Commission acting in the execution of its powers under subsection (1), (2) or (3) shall be guilty of an offence.

(5) In this section, every reference to the Commission shall include any person authorised by it in writing for the purposes of this section.

(6) Any person authorised by the Commission under subsection (5) shall, in the exercise of such right as aforesaid, produce his written appointment if required to do so.

(7) Nothing in this section shall apply in respect of the affairs of any particular customer of a banking institution or former banking institution except and in so far as it may be necessary for the purpose of a compliance visit undertaken by the Commission or an inspection and investigation under subsection (1).

(8) No person shall be prosecuted for an offence under this section without the written consent of the Attorney General.

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(9) In relation to a former banking institution, the powers provided by this section may be exercised only in respect of, or in connection with, such transactions, matters or circumstances as occurred or existed when the former banking institution had any obligation or liability in respect of any activity carried on in connection with or for the purposes of its former banking business.

(10) The powers provided by this section may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of carrying on a banking business contrary to section 2.

(11) In subsection (1)(b), "manager" has the same meaning as in section 3(2).

Power of
Commission
to require
information.

14. (1) Where, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as is relevant to:-

- (a) any banking business which that person is or was carrying on, or appears to the Commission to be or to have been carrying on; or
- (b) any banking business in respect of which that person, in or from within the Island, acts or has acted as the manager or appears to the Commission to have so acted,

the justice may by written instrument, authorise the Commission to exercise the powers under this section and such powers shall not otherwise be exercisable.

(2) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require the person whose affairs are to be investigated ("the person under investigation") or any other person whom it has reason to believe has relevant information to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require any person to produce at a specified time and place any specified documents or copies of documents which appear to the Commission to relate to any matter relevant to the investigation or any documents of a specified class which appear to it so to relate.

(4) If documents or copies of documents are not produced as required under subsection (3), the Commission may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Where any documents are produced as required under subsection (3), the Commission may:-

- (a) take possession of all such documents for so long as may be necessary; or

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- (b) take copies or extracts from them; or
- (c) require the person producing them to provide an explanation of any of them.

(6) A statement by a person in response to a requirement imposed under this section may not be used in evidence against him in respect of any criminal proceedings except proceedings alleging contravention of:-

- (a) subsection (8) of this section; or
- (b) section 27.

(7) A person shall not be under an obligation under this section to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to furnish the name and address of his client.

(8) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence.

(9) In this section, "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.

(10) Where a person claims a lien on a document, its production under this section is without prejudice to the lien.

(11) The Commission may authorise any person to exercise on its behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in such authority.

(12) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under subsection (11) unless he has, if required to do so, produced evidence of his authority.

(13) In subsection (1)(b), "manager" has the same meaning as in section 3(2).

Deemster's
search
warrant

15. (1) Where, on information on oath laid by the Commission, a Deemster is satisfied, in relation to any documents, that there are reasonable grounds for believing:-

- (a) that:-
 - (i) a person has failed to comply with an obligation under section 14 to produce them or copies of them; or

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- (ii) it is not practicable to serve a notice under section 14(3) in relation to them; or
- (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and

(b) that they are on premises specified in the information,

he may issue such a warrant as is mentioned in subsection (2).

(2) The warrant referred to in subsection (1) is a warrant authorising any person named in the warrant:-

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
- (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence in relation to an offence under this Act or the Investment Business Act 1991 [or the Corporate Service Providers Act 2000]² the person named in the warrant may:-

- (a) take possession of those documents, or
- (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.

(4) A person executing a warrant issued under subsection (1) shall be accompanied by a constable.

Directors,
controllers
etc

16. (1) If, on reasonable grounds, it appears to the Commission that any individual is not a fit and proper person:-

- (a) to be appointed as a director, chief executive or manager; or
- (b) to become a controller,

of a banking institution, specified banking institution or banking institution of any specified description, the Commission may direct that the individual shall not, without the written consent of the Commission, be appointed as such a director, chief executive or manager nor become such a controller.

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- (2) If, on reasonable grounds, it appears to the Commission that any:-
- (a) director, chief executive or manager; or
 - (b) controller,

of a banking institution, is not a fit and proper person to continue as such, the Commission may direct that the individual shall not, without the written consent of the Commission, continue as such a director, chief executive, manager or controller.

(3) The Commission shall give written notice to the individual concerned of any decision to make a direction under this section together with a statement of reasons for the decision.

(3A) Subject to subsection (3B), where a notice has been given under subsection (3), the direction shall take effect –

- (a) if no application for a review under section 24 is made within the period prescribed under that section, on the expiry of that period; or
- (b) if there is an application for a review under section 24 –
 - (i) where the applicant abandons the review, on the date of abandonment; or
 - (ii) where the decision of the Commission is confirmed, on the date of confirmation; or
 - (iii) where the decision of the Commission is varied, on such date as the Review Committee appointed under section 24 directs.

(3B) If the Commission is of the opinion that a direction should have immediate effect, the notice under subsection (3) shall contain a statement to that effect together with the reasons for that opinion, and the direction shall have effect on the giving of the notice.

- (4) Any consent by the Commission under subsection (1) or (2) may be:-
- (a) given subject to conditions;
 - (b) varied from time to time; and
 - (c) revoked at any time.

(4A) Any direction by the Commission under subsection (1) or (2), whether made before or after the commencement of this subsection, may be revoked at any time.

- (5) Any individual who:-

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- (a) accepts or continues in any appointment referred to subsection (1)(a) or (2)(a); or
- (b) becomes or continues as a controller,

in contravention of a direction under this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.

(5A) The Commission shall keep a register of directions given under this section and the register shall –

- (a) contain such information; and
- (b) be made available for public inspection in such manner and by such means,

as may be prescribed in regulations made under section 31.

**[Subsections 16(1) & (2) amended by the Fiduciary Services Act 2005]
 [Subsection 16(3) substituted by the Fiduciary Services Act 2005]
 [Subsections 16(4A) & (5A) inserted by the Fiduciary Services Act 2005]**

(6) It shall be the duty of a banking institution to take reasonable care not to appoint or continue the appointment of an individual in contravention of a direction under this section.

(7) In this section:-

“chief executive” means an individual who is employed by the banking institution and who either alone or jointly with others is or will be responsible under the immediate authority of the directors for the conduct of its business;

“controller” means:-

- (a) a managing director of a body corporate of which the banking institution is a subsidiary;
- (b) a chief executive of a body corporate of which the banking institution is a subsidiary;
- (c) an individual in accordance with whose directions or instructions one or more of the directors of a body corporate of which the banking institution is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (d) an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the banking institution or of another body corporate of which it is a subsidiary;

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“director” includes:-

- (a) any individual occupying the position of director by whatever name called;
- (b) any individual in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;

“manager” means an individual employed by the banking institution who, under the immediate authority of a director or its chief executive:-

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

Public
statements.

17. (1) The Commission may issue a public statement concerning:-

- (a) any matter relating to banking business and banking institutions in general or any class of banking business or institution where the Commission believes it to be desirable in the public interest to issue such a public statement; or
- (b) a person who it believes is or has been carrying on banking business in contravention of any provision of this Act; or
- (c) a person who it believes is or has been carrying on banking business (whether in the Island or elsewhere) if it appears to the Commission to be desirable in the public interest to issue such a public statement.

(2) Before issuing a public statement under subsection (1) the Commission:-

- (a) where the statement is in respect of the holder of a licence, shall send to the person concerned at his address stated in the register kept under section 8; or
- (b) where the statement is in respect of any other person, shall send to the person concerned, at his last known address;

written notice of the proposed statement and of the reasons for which it intends to act.

(2A) If a direction has been given under section 16(1) or (2), the Commission shall issue a public statement containing –

- (a) such information as is required by regulations under this Act to be included in the statement; and

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(b) such other information about the reasons for the giving of the direction as the Commission believes to be desirable in the public interest.

(3) Except where the Commission is of the opinion that immediate action is necessary, a notice under subsection (2) shall be sent not less than 7 days before issuing the public statement under subsection (1).

(4) The Commission may publish the fact that:-

- (a) an institution has ceased to hold a banking licence, whether by virtue of revocation, surrender or expiry of the licence or otherwise;
- (b) a particular person has been granted or refused a banking licence or that a particular person does not hold or has not held a banking licence.

(5) Any public statement under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think appropriate.

(6) The Commission shall not issue a public statement under this section in respect of a direction under section 16(1) or (2) before the date on which the direction takes effect in accordance with section 16(3A).

[Subsections 17(1), (2) & (3) amended by the Fiduciary Services Act 2005]
[Subsections 17(2A) & (6) inserted by the Fiduciary Services Act 2005]

Unauthorised
acceptance
of deposits

18. (1) If on the application of the Commission it appears to the High Court that a person has accepted deposits in contravention of section 2 the court may:-

- (a) order him and any other person who appears to the court to have been knowingly concerned in the contravention to repay the deposits forthwith or at such time as the court may direct; or
- (b) appoint a receiver to recover those deposits.

(2) If on the application of the Commission the High Court is satisfied that profits have accrued to a person as a result of deposits having been accepted in contravention of section 2 the court may order him to pay into court, or appoint a receiver to recover from him, such sum as appears to the court to be just having regard to the profits appearing to the court to have accrued to him.

(3) Any amount paid into court or recovered from a person in pursuance of an order under this section shall be paid out to such person or distributed among such persons as the court may direct, being:-

- (a) a person or persons appearing to the court to have made the deposits as a result of which profits mentioned in subsection (2) have accrued; or
- (b) such other person or persons as the court may think fit.

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(4) On an application under this section the court may require the person concerned to furnish it with such accounts or other information as it may require for determining whether and if so, what profits have accrued to him as mentioned in subsection (2) and for determining how amounts are to be paid or distributed under subsection (3), and the court may require any such accounts or other information to be verified in such manner as it may direct.

- Injunctions. 19. (1) If on application of the Commission the High Court is satisfied:-
- (a) that there is a reasonable likelihood that a person will contravene:-
 - (i) any provision of this Act;
 - (ii) any condition imposed under section 6;
 - (iii) any code made under section 10;
 - (iv) a direction under section 11, 12 or 16; or
 - (v) section 25; or
 - (b) that any person has been guilty of any such contravention and that there is a reasonable likelihood that the contravention will be repeated,

the court may grant an injunction restraining the contravention.

(2) If on the application of the Commission it appears to the High Court that a person may have been guilty of such a contravention as is mentioned in subsection (1) the court may grant an injunction restraining him from disposing of or otherwise dealing with any property subject to such conditions and exceptions as may be ordered by the court.

- Civil penalties 19A. (1) If the Commission is satisfied that the holder of a banking licence -
- (a) has contravened any provision of this Act;
 - (b) has contravened any prohibition or requirement imposed under this Act; or
 - (c) in purported compliance with any such requirement, has furnished the Commission with false, inaccurate or misleading information;
- it may require the licence holder to pay a penalty in respect of the contravention.
- (2) The Commission shall give written notice to the licence holder concerned of any decision under subsection (1) together with a statement of the reasons for the decision.

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- (3) The Commission may not in respect of any such contravention –
- (a) both require a person to pay a penalty under this section and revoke his licence under section 7; or
- (b) require a person to pay a penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (4) When setting the amount of financial penalty, the Commission shall have regard to any regulations under this section.
- (5) The Commission shall make such regulations as are necessary to give effect to this section and with respect to –
- (a) the imposition of financial penalties under this section; and
- (b) the amount of financial penalties under this section.
- (6) Regulations under this section shall not come into operation unless they are approved by Tynwald.
- (7) Before making regulations under this section, the Commission shall consult such persons as it thinks appropriate.
- (8) Any amount received as a penalty under this section shall be paid into and form part of the General Revenue of the Island.
- (9) Criminal proceedings in respect of any contravention of this Act may not be commenced or continued if the Commission has required a person to pay a penalty under this section in respect of such contravention.

[Section 19A inserted by the Fiduciary Services Act 2005]

Auditors and reporting accountants

Matters
to be
communicated
to the
Commission
by auditors
and
reporting
accountants

20. (1) Matters are to be communicated to the Commission by an auditor of a banking institution or a reporting accountant in the circumstances specified in subsection (2).

(2) The circumstances referred to in subsection (1) are circumstances in which in the course of his work, the auditor or reporting accountant becomes aware of facts which are such as to give the auditor or reporting accountant reasonable cause to believe that they are of material significance in relation to the Commission's functions under this Act.

(3) Without prejudice to the generality of subsection (2), the circumstances specified in that subsection include circumstances in which in the course of his work, the auditor or reporting accountant becomes aware of facts which:-

- (a) are likely to lead to a serious qualification or refusal of the certificate of audit;

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- (b) endanger the existence of the banking institution; or gravely impair its development;
- (c) imperil the protection of customers of the institution; or
- (d) indicate that the principles of sound management have been seriously violated.

Reporting accountants.

21. (1) The Commission may by notice in writing served on a banking institution require the institution to provide the Commission with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter relating to the affairs of the banking institution.

(2) The accountant or other person appointed by an institution to make any report required under subsection (1) shall be a person nominated or approved by the Commission; and the Commission may require his report to be in such form as is specified in the notice.

(3) If it appears to the Commission to be desirable in the interests of the depositors or potential depositors of a banking institution to do so, it may also exercise the powers conferred by subsection (1) in relation to any body corporate which is or has at any relevant time been:-

- (a) a holding company, subsidiary or related company of that institution;
- (b) a subsidiary of a holding company of that institution;
- (c) a holding company of a subsidiary of that institution; or
- (d) a body corporate in the case of which a shareholder controller of that banking institution, either alone or with any associate or associates, holds 50 per cent or more of the shares or is entitled to exercise, or control the exercise of, more than 50 per cent, of the voting power at a general meeting;

Or in relation to any partnership of which that institution is or has at any relevant time been a member.

(4) If it appears to the Commission to be desirable to do so in the interests of the depositors or potential depositors of a banking institution which is a partnership (in this section referred to as "the licensed partnership") it may also exercise the powers conferred by subsection (1) in relation to:-

- (a) any other partnership having a member in common with the licensed partnership;
- (b) any body corporate which is or has at any relevant time been a member of the licensed partnership;

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- (c) any body corporate in the case of which the partners in the licensed partnership, either alone or with any associate or associates, holds 20 per cent or more of the shares or are entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting; or
- (d) any subsidiary or holding company of any such body corporate as is mentioned in paragraph (b) or (c) or any holding company of any such subsidiary.

(5) The foregoing provisions of this section shall apply to a former banking institution as they apply to a banking institution.

(6) The costs and expenses of and relating to a report under this section shall be paid by the banking institution concerned.

Indemnity
for auditors
and
reporting
accountants.

22. (1) No duty to which:-

- (a) an auditor of a banking institution; or
- (b) a reporting accountant; or

- (c) an auditor of a body which is in the same group as a banking institution,

may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter which is relevant to any function of the Commission under this Act.

(2) This section applies to any matter of which the auditor or reporting accountant becomes aware in his capacity as auditor or reporting accountant and which relates to the business or affairs of the banking institution.

Compensation

Compensation
schemes.

23. (1) The Treasury may make regulations establishing a scheme for compensating depositors in cases where persons who are or have been the holders of banking licences are unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their business.

(2) Without prejudice to the generality of subsection (1), regulations under this section may:-

- (a) provide for the administration of the scheme and the determination and regulation of any matter relating to its operation by such body as appears to the Treasury to be appropriate;

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- (b) establish a fund out of which compensation is to be paid;
- (c) provide for the levying of contributions from, or from any class of, banking institution and otherwise for financing the scheme and for the payment of contributions and other money into the fund;
- (d) specify the terms and conditions on which, and the extent to which, compensation is to be payable and any circumstances in which the right to compensation is to be excluded or modified;
- (e) provide for treating compensation payable under the scheme in respect of a claim against any person as extinguishing or reducing the liability of that person as respect of the claim and for conferring on the body administering the scheme a right of recovery against that person, being, in the event of his insolvency, a right not exceeding such right, if any, as the claimant would have had in that event;
- (f) contain incidental and supplementary provisions; and
- (g) contain transitional provisions, and in particular may provide that rights and liabilities under any existing compensation scheme shall be treated as rights and liabilities of the scheme established under the regulations.

(3) Regulations may be made for the purpose of integrating any procedure for which provision is made by virtue of subsection (2)(e) into the general procedure on a winding-up or bankruptcy and may modify the enactments relating to such procedure for that purpose.

Right to reviews

Review of
Commission
decisions.

24. (1) Any person who is aggrieved by a decision of the Commission to -
- (a) refuse to grant a banking licence;
 - (b) refuse to renew a banking licence;
 - (c) revoke a banking licence;
 - (d) suspend a banking licence;
 - (e) grant or renew a banking licence subject to conditions;
 - (f) make a banking licence subject to conditions or further conditions;
 - (g) vary any condition attached to a banking licence;
 - (h) issue a direction under section 11, 12 or 16;

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- (i) refuse to revoke a direction under section 16; or
- (j) require a licence holder to pay a penalty in respect of a contravention under section 19A;
- (k) issue a public statement under section 17(1); or
- (l) withdraw an exemption in accordance with regulations under section 31(2)(a),

may apply for a review of the decision.”

(2) In the first instance the application shall be addressed to the Chief Secretary who shall report the application to the Council of Ministers.

(3) An application for a review shall be in such form, made within such time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.

(4) On the notification of an application for review, the Council of Ministers shall appoint 3 persons to form a committee (in this section referred to as the “Review Committee”) to review the decision in question.

(5) The members of the committee must be persons -

- (a) who have appropriate experience; and
- (b) who are independent of both the Commission and the applicant.

(6) The Review Committee shall conduct reviews under this section.

(7) On the determination of a review under this section the Review Committee shall confirm, vary or revoke the decision appealed against.

(8) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.

(9) Without prejudice to any right of recourse to the High Court, a decision of the Review Committee on a review under this section shall be binding on the Commission and the applicant.

(10) The Council of Ministers may make regulations to provide for the practice and procedure of the Review Committee and for proceedings before the Committee.]²

[Subsection 24(1) substituted by the Fiduciary Services Act 2005]

Banking Act 1998 (as amended)

Offences

Fraudulent inducement to make a deposit.

25. (1) Any person who:-
- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive; or
 - (b) dishonestly conceals any material facts; or
 - (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed):-

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

- (2) Subsection (1) does not apply unless:-
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Island or arrangements are made in or from the Island for the statement, promise or forecast to be made or the facts to be concealed; or
 - (b) the deposit is or would be made, or the agreement is or would be entered into, in or from the Island.
- (3) A person guilty of an offence under this section shall be liable:-
- (a) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both;
 - (b) on conviction on information, to custody for a term not exceeding 10 years or to a fine or to both.

Prejudicing investigations.

26. (1) Where any person:-
- (a) knows or suspects that an investigation by the Commission is being or is likely to be carried out; and
 - (b) 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,

 Banking Act 1998 (as amended)

he shall be guilty of an offence and shall be liable:-

- (i) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (ii) on conviction on information to a fine or to custody for a term not exceeding 7 years, or to both.

(2) It shall be a defence to a charge under subsection (1) for the defendant to prove that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

False
statements,
etc.

27. Any person who:-

- (a) furnishes or sends to the Commission for any purpose under this Act a document which he knows to be false in a material particular; or
- (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false in a material particular; or
- (c) in furnishing information to the Commission for the purposes of this Act:-
 - (i) makes a statement which he knows to be false in a material particular; or
 - (ii) recklessly makes a statement which is false in a material particular,

shall be guilty of an offence.

Offences by
bodies
corporate.

[28. (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies 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 body corporate.]²

Penalties,
etc.

29. (1) Any person guilty of an offence under any provision of this Act shall be liable (except where otherwise provided):-

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
- (b) on conviction on information, to custody for a term not exceeding 3 years or to a fine, or to both.

 Banking Act 1998 (as amended)

(2) If the holder of a banking licence is convicted of an offence under this Act the Commission may revoke the licence or take such other action as is available to it under this Act.

Miscellaneous and general

Treasury
directions.

30. (1) The Treasury may give the Commission such directions as it thinks fit with respect to the exercise or performance of its powers under sections 4 to 7 and 13(1) to (3) whether generally or in any particular case and the Commission shall comply with such directions.

(2) Subsection (1) is without prejudice to:-

(a) section 13(7) to (11); and

[c.13]

(b) section 6 of the Government Departments Act 1987 (directions given to Departments by the Council of Ministers) and paragraph 12 of Schedule 2 to the Statutory Boards Act 1987 (directions to statutory boards by the Council of Ministers).

[c.14]

Public
documents.

31. (1) The Commission, after consulting the Treasury, may make such regulations as it considers are necessary or desirable to carry the provisions of this Act into effect.

(2) Without prejudice to the generality of that power, regulations may:-

(a) exempt any person or class of persons from any of the provisions of this Act;

(b) prescribe the procedure to be followed in respect of a declaration under section 1(3);

(c) prescribe the fees which shall be paid upon an application for, and upon the grant, variation and renewal of all licences provided for by this Act;

(d) in the case of licences which are not subject to periodical renewal, prescribe fees which shall be paid by licenceholders in respect of such periods and at such times as may be specified.

(3) Any fee falling due under subsection (2)(c) and (d) shall be recoverable as a debt due to the Commission.

(4) Regulations and orders under this Act (with the exception of orders under section 36(2)) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations or orders are laid or at the next following sitting fails to approve them, the regulations shall cease to have effect.

Definition
of "related
company".

32. (1) In this Act a "related company", in relation to an institution, means a body corporate (other than a subsidiary of the institution) in which the institution holds a qualifying capital interest.

 Banking Act 1998 (as amended)

(2) A qualifying capital interest means an interest in relevant shares of the body corporate which the institution holds on a long-term basis for the purpose of securing contribution to its own activities by the exercise of control or influence arising from that interest.

(3) Relevant shares means shares comprised in the equity share capital of the body corporate of a class carrying rights to vote in all circumstances at general meetings of the body.

(4) A holding of 20 per cent or more of the nominal value of the relevant shares of a body corporate shall be presumed to be a qualifying capital interest unless the contrary is shown.

[c.30] (5) In this section "equity share capital" has the same meaning as in section 1(5) of the Companies Act 1974.

Interpretation: 33. (1) In this Act:-
general

"advertisement" includes every form of advertising whether in publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph film or by way of sound broadcasting, television, telecommunications or any other electronic media;

"associate" in relation to an individual means:-

- (a) the wife, husband, son, stepson, daughter, stepdaughter of that individual;
- (b) any body corporate of which that individual is a director; and
- (c) a partner or employee of that individual;

"banking business" has the meaning given in section 1;

"banking institution" has the meaning given by section 1(2);

"banking licence" has the meaning given by section 2(1)(a);

"Commission" has the meaning given by section 1(3);

"deposit" means a loan of money to a person who carries on the business of accepting deposits and where the money so loaned is repayable, by the borrower or by another:-

- (a) on demand or otherwise; and
- (b) with or without interest or a premium or any consideration in money or money's worth;

 Banking Act 1998 (as amended)

“enforcement action” has the meaning given by subsection (2);

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

[c.30]

“holding company” and “subsidiary” shall be construed in accordance with section 1 of the Companies Act 1974;

“prescribed” means prescribed by regulations made by the Commission under section 31;

“recognised regulator” means an authority, whether a governmental or private body and whether in the Island or in a country or territory outside the Island, exercising (whether by law or by the rules of the authority) functions corresponding to those of the Commission under this Act;

“regulatory code” has the meaning given in section 10(1);

“related company” has the meaning given in Section 32;

“reporting accountant” means a person appointed to make a report under section 21.

(2) In this Act, “enforcement action” means the exercise of any one or more of the following powers:-

- (a) the revocation of a banking licence;
- (b) the institution of an inspection or investigation in relation to a banking institution under section 13;
- (c) the issue of a request, recommendation or direction under section 11 or 12 in relation to a banking institution.

(3) The exercise of any enforcement action shall not prevent the exercise or operation of any other power or remedy under this Act nor shall it prevent the commencement of proceedings for an offence under this Act.

(4) In determining for any purposes of this Act whether any particular matter is desirable in the public interest, the Commission shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to –

- (a) the protection of the public;
- (b) the deterrent effect of such a public statement; and
- (c) the effect of publication on those to whom the statement relates.

Banking Act 1998 (as amended)

[Subsection 33(4) inserted by the Fiduciary Services Act 2005]

- Repeal of s.12 of 1995 c.10. 34. Section 12 of the Royal Bank of Scotland International Limited Act 1995 is deemed to have been repealed on 12 July 1995 and accordingly is to be treated as having had no effect.
- Amendments and repeals. 35. (1) the enactments specified in Schedule 1 are amended in accordance with that Schedule.
- (2) The enactments mentioned in Schedule 2 are repealed to the extent specified in column 3 of that Schedule.
- Short title and commencement 36. (1) This Act may be cited as the Banking Act 1998.
- (2) This Act shall come into operation on such day as the Treasury may by order appoint, and different dates may be so appointed for different provisions and for different purposes.

¹ *Inserted by the Banking Act (Amendment) Order 1999 (SD No. 64/99)*

² *Amended by the Corporate Service Providers Act 2000*

³ *Repealed by the Corporate Service Providers Act 2000*

Banking Act 1998 (as amended)

SCHEDULES

Section 35(1)

SCHEDULE 1

AMENDMENT OF ENACTMENTS

PART I

MINOR AND CONSEQUENTIAL AMENDMENTS

Income Tax (Exempt Companies) Act 1984 (c.10)

1. In section 1(1)(c), for sub-paragraph (ii) substitute:-

“(ii) the holder of a banking licence under the Banking Act 1998; or”.

Financial Supervision Act 1988 (c.16)

2. In section 4(1)(c), for “the Banking Act 1975”, wherever occurring, substitute “the Banking Act 1998”.

3. In section 14(1)(b), for “the Banking Act 1975”, wherever occurring, substitute “the Banking Act 1998”.

4. In section 16(1)(c), for “the Banking Act 1975”, wherever occurring, substitute “the Banking Act 1998”.

5. In section 22(1)(a), for “the Banking Act 1975” substitute “the Banking Act 1998”.

6. In section 23(2), for “the Banking Act 1975” substitute “the Banking Act 1998”.

7. In section 24, for “the Banking Act 1975”, wherever occurring, substitute “the Banking Act 1998”.

Investment Business Act 1991 (c.18)

8. In section 15A(2):-

(a) in the definition of “designated body”, after paragraph (c), insert:-

“(ca) a body administering a scheme under section 23 of the Banking Act 1998;”;

(b) in the definition of “specified enactment”, for paragraph (a) substitute:-

“(a) the Banking Act 1998;”.

Banking Act 1998 (as amended)

Credit Unions Act 1993 (c.19)

9. In section 26, for "Banking Act 1975" substitute "Banking Act 1998".

International Business Act 1994 (c.3)

10. In section 1(1)(b), for sub-paragraph (i) substitute:-

"(i) the holder of a banking licence under the Banking Act 1998; or".

11. In section 2(4), for paragraph (b) substitute:-

"(b) the keeping of bank accounts in the Island with the holder of a banking licence under the Banking Act 1998;".

12. In section 7(1)(e), for paragraph (i) substitute:-

"(i) the holder of a banking licence under the Banking Act 1998;".

13. In section 7(2), for paragraph (b) substitute:-

"(b) the keeping of bank accounts in the Island with the holder of a banking licence under the Banking Act 1998;".

Transitional provision

14. Where by virtue of this Part any reference in any enactment to the Banking Act 1975 is substituted by a reference to the Banking Act 1998, the latter shall be construed as including, in relation to circumstances or purposes in relation to which the former has or had effect, a reference to the former.

PART II

MISCELLANEOUS AMENDMENTS

Bills of Exchange Act 1883 [V p.310]

1. After section 52(4) add:-

"(5) Subsection (4) above:-

(a) so far as relating to presenting a bill for payment, shall not apply to presenting a cheque for payment under section 74B of this Act; and

(b) so far as relating to a bill which is paid, shall not apply to a cheque which is paid following presentment under that section."

2. After section 73 insert:-

Banking Act 1998 (as amended)

"Cheques in the Manx language.

73A. (1) Where a cheque is:-

- (a) drawn on a banker who is licensed under section 6 of the Banking Act 1998; and
- (b) presented for payment in the Isle of Man,

payment shall not be refused on the ground only that the cheque or any part of it is in the Manx language.

(2) Except as expressly provided in subsection (1), that subsection is without prejudice to any rule of law relating to the validity of bills which are drawn in a language other than English."

3. After section 74 insert:-

"Presentment of cheque for payment: alternative place of presentment.

74A. Where a banker on whom a cheque is drawn:-

- (a) has by notice published in two newspapers published and circulating in the Isle of Man specified an address at which cheques drawn on him may be presented; and
- (b) has not by notice so published cancelled the specification of that address,

the cheque is also presented at the proper place if it is presented there.

Presentment of cheque for payment: alternative means of presentment by banker

74B. (1) A banker may present a cheque for payment to the banker on whom it is drawn by notifying him of its essential features by electronic means or otherwise, instead of by presenting the cheque itself.

(2) If a cheque is presented for payment under this section, presentation need not be made at the proper place or at a reasonable hour on a business day.

(3) If, before the close of business on the next business day following presentation of a cheque under this section, the banker on whom the cheque is drawn request the banker by whom the cheque was presented to present the cheque itself:-

- (a) the presentment under this section shall be disregarded, and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request under subsection (3) above for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

 Banking Act 1998 (as amended)

(5) Where presentment of a cheque is made under this section, the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(6) For the purposes of this section, the essential features of a cheque are:-

- (a) the serial number of the cheque;
- (b) the code which identifies the banker on whom the cheque is drawn;
- (c) the account number of the drawer of the cheque; and
- (d) the amount of the cheque as entered by the drawer of the cheque.”.

4. Entry 2 shall have effect in relation to cheques drawn on or after the day on which it comes into operation.

Companies Act 1931 (XIII p.235)

5. In section 42, after subsection (1) insert:-

“(1A) Subsection (1) shall not apply in respect of such classes of companies as are prescribed by order made by the Treasury.”.

6. In section 51, after subsection (1) insert:-

“(1A) Subsection (1)(e) and (f) shall not apply in respect of such classes of companies as are prescribed by order made by the Treasury.”.

7. In section 130(1), for “a limited banking company or an insurance company or a deposit,” substitute “an insurance company,”.

Bills of Exchange Act 1958 (XVIII p.965)

8. In section 2:-

- (a) at the beginning insert “(1)”;
- (b) at the end add:-

“(2) For the purpose of subsection (1) above, a copy of a cheque to which that subsection applies is evidence of the cheque if:-

Banking Act 1998 (as amended)

- (a) the copy is made by the banker in whose possession the cheque is after presentment; and
- (b) it is certified by him to be a true copy of the original.”.

Companies Act 1982 (c.2)

9. In section 14, after subsection (9) add:-

“(10) An applicant for authorisation under subsection (1)(b) shall provide such information and documents in support of the application as the Financial Supervision Commission may require.

(11) An authorisation under subsection (1)(b) may be given subject to conditions.

(12) Where an authorisation has been given under subsection (1)(b), the Financial Supervision Commission may at any time:-

- (a) revoke or suspend the authorisation; or
- (b) make that authorisation subject to conditions or further conditions; or
- (c) vary or revoke any condition.

[c.18]

(13) Section 15 of the Investment Business Act 1991 (review of Commission decisions) shall apply in respect of a decision of the Commission under subsection (12) as it applies in respect of a decision referred to in subsection (1)(a), (c) or (d) of that section.

(14) A person who is authorised under subsection (1)(b) shall, when required by the Financial Supervision Commission, provide it with such information and documents as the Commission thinks necessary for the purpose of enabling or assisting it to discharge its functions under this section.

(15) Failure to comply with a requirement under subsection (14) shall be sufficient grounds for the exercise of the power conferred by subsection (12)(a).”.

Financial Supervision Act 1988 (c.16)

10. [repealed by Fiduciary Services Act 2005 Sch. 3]

11. In section 24:-

- (a) in subsection (1):-
 - (i) after paragraph (a) insert:-

Banking Act 1998 (as amended)

- “(aa) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions;”;
- (ii) in paragraph (e), after “or the Investment Business Act 1991” insert “or under the enactments relating to companies”;
- (iii) in paragraph (g), after “official receiver” insert “(whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere)”;
- (iv) after paragraph (g) insert:-
- “(gg) for the purpose of enabling or assisting a receiver or liquidator (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge his functions;”;
- (b) in subsection (5)(b)(iii), after “Banking Act 1975” insert “, the Investment Business Act 1991”;
- (c) [repealed by Fiduciary Services Act 2005 Sch. 3]

Investment Business Act 1991 (c.18)

12. In section 3:-

- (a) after subsection (3) insert:-

“(3A) Without prejudice to the generality of subsection (6), where at any time after the grant of a licence the Commission is satisfied that the criterion mentioned in subsection (3) is no longer satisfied in respect of the holder of the licence, it may revoke the licence.”;

- (b) for subsection (5) substitute:-

“(5) Subject to the provisions of this section, an investment business licence shall remain in force for:-

- (a) such period as may be specified in the licence; or
- (b) until revoked or surrendered,

whichever first occurs.

“(5A) In respect of a licence to which subsection (5)(a) applies, the Commission may extend the terms of the licence for a period not exceeding 21 days.”.

13. In section 8, for subsection (10) substitute:-

 Banking Act 1998 (as amended)

“(10) The power provided by this section may be exercised in relation to a person who has ceased (for any reason) to be a permitted person, but, after that person has ceased to have any liability in respect of investment business for which he had a liability at a time when he was a permitted person, the powers may be exercised only in respect of, or in connection with, such transactions, matters or circumstances as occurred or existed when he did have such a liability.”.

14. In section 8A:-

(a) after subsection (7) insert:-

“(7A) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence in relation to an offence under this Act or the Banking Act 1998, the person named in the warrant may:-

- (a) take possession of those documents, or
- (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.”;

(b) for subsection (9) substitute:-

“(9) A statement by a person in response to a requirement imposed under this section may not be used in evidence against him in respect of:-

- (a) any proceedings under section 6A; or
- (b) any criminal proceedings except proceedings alleging contravention of subsection (11) or (12).”.

15. In section 8A, after subsection (13) insert:-

“(13A) A person guilty of an offence under subsection (13) shall be liable:-

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 7 years, or to both.”.

16. For section 9 substitute:-

“Recom-
mendations
and 9. (1) The Commission may make recommendations to a permitted person or former permitted person.

 Banking Act 1998 (as amended)

directions to
permitted
persons.

(2) The Commission may issue directions to any permitted person or former permitted person to secure that:-

- (a) effect is given to a recommendation under subsection (1); or
- (b) the permitted person's business is in whole or in part suspended or discontinued.

(3) The Commission shall not make any recommendation under subsection (1) with respect to the affairs of any particular customer of a permitted person or former permitted person unless the Commission is satisfied that it is necessary for the purpose of:-

- (a) securing that a direction issued under subsection (2)(a) is complied with; or
- (b) protecting the interests of the permitted person's other customers.

(4) No recommendation or direction under this section may be made or issued to or in respect of a former permitted person after that person has ceased to have any liability in respect of investment business for which the permitted person had a liability at a time when he was a permitted person.

(5) Any person who contravenes or fails to comply with a direction issued under this section shall be guilty of an offence.

Requests
for
information.

9A. (1) The Commission may request a permitted person or former permitted person to provide the Commission with any information that it may reasonably require for the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may request information about:-

- (a) subject to subsection (4), the affairs of a customer of a permitted person;
- (b) any body corporate which is or has at any relevant time been:-
 - (i) a holding company, subsidiary or related company of that permitted person;
 - (ii) a subsidiary of a holding company of that permitted person;
 - (iii) a holding company of a subsidiary of that permitted person; or

Banking Act 1998 (as amended)

- (iv) a body corporate in the case of which a shareholder controller of that permitted person, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting,

or in relation to any partnership of which that permitted person is or has at any relevant time been a member,

if it appears to the Commission necessary for the performance of its functions under this Act.

(3) The Commission may issue directions to any permitted person or former permitted person to secure that effect is given to a request under subsection (1) or (2).

(4) The Commission shall not make any request under subsection (1) or (2) with respect to the affairs of any particular customer of a permitted person or former permitted person unless the Commission is satisfied that it is necessary for the purpose of:-

- (a) securing that a direction issued under subsection (3) is complied with; or
- (b) protecting the interests of the permitted person's other customers.

(5) No request or direction under this section may be made or issued to or in respect of a former permitted person after that person has ceased to have any liability in respect of investment business for which he had a liability at a time when he was a permitted person.

(6) Any person who contravenes or fails to comply with a direction issued under this section shall be guilty of an offence.

(7) Any person who, in purported compliance with a request or direction under this section:-

- (a) makes a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular, or

shall be guilty of an offence.

(8) A statement by person in response to a direction issued under this section may not be used in evidence against him in respect of:-

 Banking Act 1998 (as amended)

- (a) any proceedings under section 6A; or
- (b) any criminal proceedings except proceedings alleging contravention of subsections (6) and (7).

(9) In this section:-

“associate” has the same meaning as in section 10;

[c.30]

“holding company” and “subsidiary” shall be construed in accordance with section 1 of the Companies Act 1974

[c.4]

“related company” shall have the same meaning as in section 32 of the Banking Act 1998.”.

17. In section 10:-

(a) after subsection (1) insert:-

“(1A) If it appears to the Commission that:-

- (a) any director, chief executive, manager; or
- (b) any controller,

of a permitted person is not a fit and proper person to continue as such, the Commission may direct that the individual shall not, without the written consent of the Commission, continue as such a director, chief executive, manager or controller.”;

(b) in subsection (3), after “(1)” insert “or (1A)”;

(c) in subsection (4), after “(1)(a)” insert “or (1A)(a)”.

18. In section 12:-

(a) in subsection (1), in paragraphs (a), (b) and (c) after “is” in each case, insert “or has been”;

(b) for subsection (2) substitute:-

“(2) The Commission may issue a public statement concerning any person who it believes is or has been carrying on investment business (whether in the Island or elsewhere) if it appears to the Commission to be desirable to make the statement for the protection of any person or class of persons.”;

(c) at the end add:-

 Banking Act 1998 (as amended)

“(4) Except where the Commission is of the opinion that immediate action is necessary, a notice under subsection (3) which concerns a permitted person shall be sent not less than 7 days before issuing the public statement under subsection (1) or (2).”.

19. In section 13(1)(a):-

(a) in sub-paragraph (iv), after “9” insert “, 9A”;

(b) for sub-paragraph (v) substitute:-

“(v) section 17A or 17B; or”.

[20. In section 15(1)(f), after “9” insert “, 9A”.]³

21. (1) In section 15A:-

(a) in subsection (2):-

(i) for the words “In subsection (1)-” substitute “In this section:-”

(ii) in the definition of “specified enactment” at the end add:-

“(d) the Companies Acts 1931 to 1993;

(e) the Industrial and Building Societies Acts 1892 to 1993.”;

(b) in subsection (4), after “section 17” insert “or of an agreement between a recognised regulator and a person who carries on investment business whereby the recognised regulator undertakes, with the consent of the Commission, the supervision of investment business carried on by that person.”.

(2) Sub-paragraph (1) shall not have effect in relation to any action, suit or proceedings, whether commenced before or after the date on which that paragraph comes into operation, in respect of any act or matter done or omitted to be done before that date.

22. After section 15A insert:-

 Banking Act 1998 (as amended)

"Matters to be communicated to the Commission by auditors

15B. (1) Matters are to be communicated to the Commission by an auditor of a permitted person in the circumstances specified in subsection (2).

(2) The circumstances referred to in subsection (1) are circumstances in which in the course of his work, the auditor becomes aware of facts which are such as to give the auditor reasonable cause to believe that they are of material significance in relation to the Commission's functions under this Act.

(3) Without prejudice to the generality of subsection (2), the circumstances specified in that subsection include circumstances in which in the course of his work, the auditor becomes aware of facts which:-

- (a) are likely to lead to serious qualification or refusal of the certificate of audit;
- (b) endanger the existence of the permitted person; or gravely impair the development of the permitted person;
- (c) imperil the protection of customers of the permitted person; or
- (d) indicate that the principles of sound management have been seriously violated."

23. In section 17(1), for "sections 8, 9 and 9A" substitute "sections 8, 8A, 9 and 9A".

24. After section 17 insert:-

"Misleading statements.
[P1986/60/47]

17A. (1) Any person who:-

- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive; or
- (b) dishonestly conceals any material facts; or
- (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to:-

 Banking Act 1998 (as amended)

- (i) enter or offer to enter into, or to refrain from entering or offering to enter into, an investment agreement; or
 - (ii) exercise, or refrain from exercising, any rights conferred by an investment.
- (2) Subsection (1) does not apply unless:-
- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Island; or
 - (b) the agreement is or would be entered into or the rights are or would be exercised in the Island.
- (3) A person guilty of an offence under this section shall be liable:-
- (a) on conviction of information, to custody for a term not exceeding 10 years or to a fine or to both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both."

Misleading
practices.
[P1986/60/47]

17B. (1) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those investments.

(2) In proceedings brought against any person for an offence under subsection (1) it shall be a defence for him to prove that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection.

- (3) Subsection (1) does not apply unless:-
- (a) the course of conduct is engaged in, or the act is done, in the Island; or
 - (b) the false or misleading impression is created there.
- (4) A person guilty of an offence under this section shall be liable:-
- (a) on conviction on information, to custody for a term not exceeding 10 years or to a fine or to both;

 Banking Act 1998 (as amended)

- (b) on summary conviction, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000 or to both.”.

25. In section 18:-

(a) after paragraph (a) insert:-

“(aa) upon any application or notification in respect of any matter arising under or relating to an investment business licence;

(ab) upon any amendment of an investment business licence;”;

(b) after Paragraph (c) add:-

“(d) in the case of licences which are not subject to periodical renewal, prescribe fees which shall be paid by licenceholders in respect of such periods and at such times as may be specified.”.

26. In section 19(1)(b), for “2 years” substitute “3 years”.

27. (1) In section 22(1):-

(a) in the definition of “advertisement” add the words “telecommunications or any electronic media”;

(b) after the definition of “conditions” insert:-

“investment agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within any paragraph of Part 1 of Schedule 1 to the Investment Business Order 1991 or would do so apart from Part 2 of that Schedule;”.

(GC 366/91)

(2) In section 22(2)(a), after “9” insert “or 9A”.

28. After section 22 insert:-

“Gaming
contracts.

[c.17]

22A. (1) For the avoidance of doubt, no contract to which this section applies shall be void or unenforceable by reason of section 40 of the Gaming, Betting and Lotteries Act 1988.

(2) This section applies to any contract entered into by either or each party by way of business and the making or performance of which by either party constitutes an activity which is investment business.”.

Banking Act 1998 (as amended)

Section 35(2)

SCHEDULE 2

REPEAL OF ENACTMENTS

<i>Volume/Chapter</i>	<i>Short title</i>	<i>Extent of Repeal</i>
XX p.387	Prevention of Fraud (Investments) Act 1968	Section 1.
1975 c.9	Banking Act 1975	The whole Act.
1977 c.2	Banking Act 1977	The whole Act.
1983 c.10	Statute Law Revision Act 1983	In Schedule 1, entry 21.
1984 c.22	Financial Supervision Commission Act 1984	Section 2. In Schedule 1, entries 6 and 10.
1985 c.25	Treasury Act 1985	In Schedule 2, entries 267, 269, 271 and 272.
1986 c.1	Fines Act 1986	In Schedule 2, entry 86.
1986 c.2	Banking (Amendment) Act 1986	The whole Act.
1986 c.24	Insurance Act 1986	In Schedule 5, entry 2.
1988 c.16	Financial Supervision Act 1988	In section 23(1), the words from "the person" where the words first occur to "and if different,". Schedule 1.
1991 c.18	Investment Business Act 1991	Schedule 1.
1993 c.17	Investment Business (Amendment) Act 1993	The Schedule.