



ST. HELENA

(Chapter No. not allocated yet)

FINANCIAL SERVICES ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

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¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

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Schedule 1

FINANCIAL SERVICES ORDINANCE

(Ordinances 11 of 2008 and 2 of 2017)

AN ORDINANCE TO REGULATE BANKING AND FINANCIAL SERVICES PROVIDED IN OR FROM ST. HELENA AND TO PROVIDE FOR THE PROTECTION OF CLIENT MONEY

Commencement

[3 November 2008]

Part I – Preliminary**Short title and commencement**

1. (1) The Ordinance may be cited as the Financial Services Ordinance, 2008 and shall come into force on such day or days as the Governor may appoint by Order published in the *Gazette*.

(2) Orders made under subsection (1) may prescribe different commencement dates for different provisions, or for different purposes, and may contain such transitional provisions (if any) as appear to the Governor to be necessary or expedient.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
- “**bank**” means any person carrying on the business of banking;
- “**body corporate**” means a body of persons having a legal personality distinct from that of its members;
- “**branch**” means premises of a banking or investment business, other than its head office, from which the business is undertaken;
- “**business of banking**” means—
- (a) the business of accepting deposits for the purpose of employing such money in whole or in part for—
 - (i) the making or giving of loans, advances, overdrafts, guarantees or similar facilities, or
 - (ii) the making of investments, for the account and at the risk of the person accepting such deposits; or
 - (b) any other business or activity declared to be the business of banking by regulations made under section 39;
- “**connected persons**” means persons defined as such in a Large Exposures Directive;
- “**clients’ money**” means money paid to an investment business by a client or potential client with the intention that the money be used to purchase investments and money paid to an estate agent to be used for the purchase of land;
- “**company**” means a limited liability company constituted in St. Helena in compliance with any law which may from time to time be in force, or a company constituted outside St. Helena under the laws of any country provided that such company, if not constituted in St. Helena, has reregistered in St. Helena and has complied with the provisions of any law which may from time to time be in force in St. Helena relating thereto;

- “**control**”² is the power to govern the financial and operating policies of an entity so as to affect the entity’s returns, granting exposure, or rights to variable returns from the entity;
- “**controller**” is a person who, alone or together with others, exercises control in relation to a body corporate;
- “**credit facility**” means the lending of a sum of money by way of an advance, overdraft or loan or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed *'pour aval'*;
- “**Court**” means a court in St. Helena or elsewhere;
- “**deposit**” means a sum of money paid on terms under which it will be repaid, with or without interest or a premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;
- “**Directive**” means a Directive issued by the Regulatory Authority;
- “**director**” includes an individual occupying the position of director of a company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director and in respect of a company registered or incorporated outside St. Helena includes a member of a local board or agent or representative of that company;
- “**equity share**” means a share in a company when the shareholding entitles the shareholder to a right to vote, and “equity shareholding” shall be construed accordingly;
- “**Financial Services Supervisor**” means the person appointed by the Governor under section 3(1) to be the Financial Services Supervisor for the purposes of this Ordinance;
- “**holding company**” has the same meaning as in the Companies Ordinance, 2004;
- “**Large Exposures Directive**” means a Directive issued by the Regulatory Authority to regulate large exposures;
- “**licence**”, in relation to banking or investment business means a licence granted under this Ordinance;
- “**manager**” means a person who is placed in charge of the business or part of the business of a business or otherwise who has a substantial supervisory role with the power to make policy and executive decisions on behalf of the business;
- “**money laundering**” has the same meaning as that assigned to the term in the Money Laundering Ordinance 2008.
- “**officer**”, in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;
- “**person**” includes a person or body of persons whether corporate or not and includes a branch of a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a country or territory outside St. Helena;
- “**property**” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets;
- “**qualifying shareholding**” means a direct or indirect equity shareholding of at least 10 per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution on a winding up in respect of such equity shares are not identical, the higher or highest percentage figure shall be deemed to be the percentage of equity shares held, and “qualifying shareholder” shall be construed accordingly;
- “**reconstruction**” has the same meaning as is assigned to the term in England by the Companies Act 1985;

² Definition of “control” substituted by Ord. 2 of 2017

This e-version of the text is not authoritative for use in court.

“Regulated Activity” means each or any of the activities listed in Schedule 1 and such other activities (if any) as are from time to time declared to be regulated activities by regulations made under section 39;

“Regulatory Authority” means the body referred to in section 3(2);

“relevant business” means—

- (a) any business carrying out one or more Regulated Activities; and
- (b) the Government Cash Office;

“representative office” means, in relation to a body corporate, unincorporated body or association formed in accordance with or existing under the laws of a place outside St. Helena, premises in St. Helena from which banking or investment business is promoted or assisted in any way, and in relation to a body corporate, unincorporated body or association formed in accordance with and existing under the laws of St. Helena, premises outside St. Helena from which investment business is promoted or assisted in any way;

“significant shareholding” means a direct or indirect equity shareholding of at least 5 per cent but not more than 10 per cent of the equity shares of a company; provided that where the rights held as to the percentage of votes, to profits available for distribution and to rights to assets available for distribution of a winding up in respect of such equity shares are not identical, the higher or highest percentage figure shall be deemed to be the percentage of equity shares held, and “significant shareholder” shall be construed accordingly;

“subsidiary” has the same meaning as is assigned to the term “subsidiary undertaking” by the Companies Ordinance 2004.

(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits:

Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in St. Helena shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of this Ordinance.

(3) The Governor in Council may by an Order published in the *Gazette* vary the percentage holdings which constitute significant shareholdings and qualifying shareholdings for the purposes of this Ordinance.

Appointment of the Financial Services Supervisor and Regulatory Authority

3.³ (1) The Governor shall, by notice in the *Gazette*, appoint a fit and proper person to be the Financial Services Supervisor.

(2) There is hereby established a body corporate with juristic personality, to be known as “The Financial Services Regulatory Authority”, with the power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings in its own name and to do all things necessary to carry out its functions.

(3) The members of the Regulatory Authority shall be—

- (a) the Financial Services Supervisor (as Chairman); and
- (b) such other members as the Governor may appoint by notice in the *Gazette*;

³ Section 3 amended by Ord. 2 of 2017

and the Regulatory Authority shall perform such functions as are conferred upon it by this or any other Ordinance, and such other functions (if any) as the Governor may consider appropriate in relation to the operation of this Ordinance.

(4) The Financial Services Supervisor and the members appointed under subsection (3)(b) shall be appointed for such period as the Governor may determine, and shall be entitled to receive such remuneration and allowances (if any) as the Governor may from time to time approve.

(5) Acts of the Regulatory Authority may be authenticated under the hand of any one of its members.

Powers and duties of the Regulatory Authority .

4. (1) It shall be the duty of the Regulatory Authority, always having regard to its regulatory objectives as set out and defined in this section, to carry out the functions prescribed by this Ordinance and to ensure that relevant businesses carrying on business in St. Helena comply with—

- (a) this Ordinance;
- (b) Regulations and Directives issued under this Ordinance, and
- (c) the conditions of their licenses.

(2) The regulatory objectives of the Regulatory Authority are:

- (a) Maintenance of market confidence;
- (b) Promotion of public awareness;
- (c) the protection of consumers and depositors; and
- (d) the reduction of financial crime.

(3) (a) The market confidence objective is maintaining confidence in the financial system.

(b) The public awareness objective is promoting public understanding of the financial system.

(c) The protection of consumers and depositors objective is securing the appropriate degree of protection for consumers and depositors.

(d) The reduction of financial crime objective is reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

(4) The Regulatory Authority may make Financial Services Directives as may be required for carrying into effect any of the provisions of this Ordinance.

(5) Directives issued under subsection (4) may include but will not be limited to—

- (a) Restrictions on the provision of regulated activities to persons outside St. Helena;
- (b) Controls over the opening and regulation of branches and representative offices;
- (c) Measures to protect consumers from being sold inappropriate financial products;
- (d) Measures to protect client money placed with relevant businesses;
- (e) Large exposures;
- (f) Liquidity requirements;
- (g) Capital requirements;
- (h) Internal controls;
- (i) Reporting requirements;
- (j) Accounting requirements.

(6) Banking and Financial Service Directives, and any amendment or revocation thereof, shall be intimated in writing to relevant businesses and the Regulatory Authority shall make copies thereof available to the public.

(7) The operating and other costs of the Financial Services Supervisor and of the Regulatory Authority shall be met out of the fees charged for licences; and the Regulatory Authority shall—

- (a) keep proper accounts of its income and expenditure; and
- (b) make an annual report to the Governor upon its activities, and include therein its accounts for the year reported upon.

(8) The functions of the Regulatory Authority, other than its powers to issue Directives and its functions under sections 8 to 10, may be exercised by its Chairman acting alone, and whether or not he is present in St. Helena.

Exemption from liability in damages

5. Neither the Regulatory Authority nor any person who is, or is acting as, a member, officer or member of staff of the Regulatory Authority nor any person appointed by the Regulatory Authority to perform any duty or exercise any functions under this Ordinance is liable in damages for anything done or omitted in the discharge or purported discharge of the Authority's functions unless the act or omission is shown to be in bad faith.

Part II – Licensing of Regulated Activities

Licences for Regulated Activities.

6.⁴ (1) A person is guilty of an offence if he carries on any Relevant Business in or from St. Helena unless he is authorised to do so by a licence granted under this Ordinance authorising him to carry on that type of business:

Provided that a solicitor or accountant who is a member of an appropriate professional body may (without holding such a licence) provide financial advice where the provision of that advice is incidental to the provision of their primary service.

(2) A person who commits an offence against subsection (1) is liable—

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £100,000, or both;
 - (b) on conviction on indictment to imprisonment for five years, or to a fine, or both,
- and, in either case, the court may order that any property owned by the offender and used by him in connection with the Relevant Business shall be forfeit to Her Majesty.

(3) The granting of a licence shall be subject to such annual fee as the Regulatory Authority may from time to time determine and different fees may be prescribed for different types of business.

(4) Every person who was conducting any Relevant Business in or from St. Helena prior to the commencement of this Ordinance shall cease to conduct such business within 3 months of the coming into force of this Ordinance unless he is, within that period, granted a licence to conduct that business.

Contracts or Agreements made by unauthorised persons.

7. A contract or agreement made by a person carrying on a Relevant Business without a valid licence is unenforceable against the other party or parties, and the other party is entitled to recover from the person or persons carrying on the Relevant Business—

- (a) any money or other property paid or transferred by him under the agreement;
- (b) compensation for any loss sustained by him as a result of having parted with it; and

⁴ Section 6 amended by Ord. 2 of 2017

- (c) without prejudice to the generality of paragraph (b), interest at such rate as is from time to time prescribed in a Financial Services Directive.

Application for a licence

8.⁵ (1) Any person desirous of commencing a Relevant Business in or from St. Helena shall, before commencing any such business, apply in writing to the Regulatory Authority for a licence under this Ordinance.

(2) An application for a licence may be made by—

- (a) an individual;
- (b) a body corporate;
- (c) a partnership;
- (d) an unincorporated association; or
- (e) an overseas business wishing to establish a branch in St. Helena.

(3) Every application for a licence shall be in such form and accompanied by such information as shall be prescribed from time to time by a Financial Services Directive, and an application may only be withdrawn by written notice to the Regulatory Authority at a time before it has been granted or refused.

(4) Every application for a licence shall be accompanied by a business plan which specifies the range of services to be provided by the relevant business. If a licence is granted this range of services cannot be materially varied without the express written consent of the Regulatory Authority.

(5) The Regulatory Authority shall have power to require any person to provide such information as it shall deem necessary for the purposes of determining an application for a licence or for the purposes of determining whether to restrict or revoke a licence.

(6) Every application for a licence must be accompanied by such fee as the Regulatory Authority may from time to time determine and different fees may be prescribed for different types of business.

(7) A person may, at least nine months before expiry of a licence issued under section 9, apply to the Regulatory Authority for renewal of the licence and the provisions of this section shall apply with necessary modifications in respect of any such application:

Provided that the annual report of activities for the last financial year shall be submitted in addition to any other information or documents required by the Regulatory Authority under this section.

Issuing of a licence

9.⁶ (1) No person shall be granted a licence unless the Regulatory Authority is satisfied that—

- (a) the resources of the person concerned are in the opinion of the Regulatory Authority adequate in relation to the Relevant Business that he seeks to carry on;
- (b) in the case of a banking business its own funds, whether in St Helenian pounds or in another currency acceptable to the Regulatory Authority, is not less than the value of one million pounds or such other amount as may be fixed from time to time by the Governor in Council, by Order published in the *Gazette*;
- (c) in the case of a bank or insurance business there are at least two individuals who will effectively direct the business in St. Helena;

⁵ Section 8 amended by Ord. 2 of 2017

⁶ Section 9 amended by Ord. 2 of 2017

- (d) each applicant is a fit and proper person to carry on the Relevant Business;
 - (e) all qualifying shareholders, controllers and all persons who will effectively direct the Relevant Business are suitable persons to ensure its prudent management;
 - (f) any other conditions determined by the Regulatory Authority can be complied with in full;
 - (g) in respect of a Relevant Business operating in St. Helena and elsewhere the customers in St. Helena are adequately protected before issuing a licence.
 - (h) If the applicant is a relevant business registered outside St. Helena it holds an appropriate licence for the activity it proposes to conduct in St. Helena in the country or territory where it is registered and in the case of a bank the activity in St. Helena will be included in the consolidated supervision of its home supervisor;
 - (i) the applicant will only provide services to the types of customers specified in a Financial Services Directive.
- (2) If any applicant has close links with another person the Regulatory Authority must be satisfied that those links are not likely to prevent the Authority's effective supervision of the applicant.
- (3) The Regulatory Authority shall determine each application for a licence within six months of receipt of the application or, if the application does not comply with section 8(4), or if additional information is required, within six months of compliance with the said subsection or the furnishing of the information as the case may be, whichever be the later.
- (4) Subject to subsection (6), the Regulatory Authority may determine an application by doing any of the following:
- (a) granting a licence without conditions;
 - (b) granting a licence subject to such conditions as it may deem appropriate;
 - (c) refusing to grant a licence.
- (5) If the Regulatory Authority fails to determine an application for a licence within the time prescribed under subsection (3), the application shall be deemed to have been refused.
- (6) Regulations made under section 39 may provide that the Regulatory Authority shall not grant a licence in relation to such classes of Regulated Activity as may be prescribed.
- (7) The Regulatory Authority may issue a licence under this section for a period not exceeding five years.
- (8) A licence under this section may be renewed and the provisions of this section apply with necessary modifications in respect of any such renewal.
- (9) Any licence granted before 1 December 2016 will expire and require renewal by 1 December 2020.

Restriction and revocation of a licence.

- 10. (1)** The Regulatory Authority may revoke a licence if the holder (or any of 2 or more holders)—
- (a) renounces the licence; or
 - (b) does not commence business pursuant to the licence within twelve months of its issue, or within such other period of time as may be specified in the licence; or
 - (c) is declared bankrupt or goes into liquidation or makes a composition with its creditors or goes into administration or is otherwise dissolved; or
 - (d) has ceased to operate as a result of a merger with another institution; or
 - (e) is a branch of a company incorporated outside St. Helena and the competent authorities in the country of incorporation withdraw the authorisation.
- (2) The Regulatory Authority may impose restrictions on a licence or may revoke a licence in any of the following circumstances—

- (a) if any document or information accompanying an application for a licence or any information given in connection therewith is shown to have been false in any material particular or if the holder of a licence conceals from, or fails to notify to the Regulatory Authority any document or information or change therein which it was its duty to reveal or notify under this Ordinance; or
- (b) if the holder ceases to carry on the Regulated Activity in St. Helena for more than 6 months; or
- (c) if the holder fails to comply with any of the provisions of this Ordinance or any Directive issued under this Ordinance or with the conditions under which the licence is granted; or
- (d) if the holder no longer possesses adequate resources; or
- (e) if the holder is likely to become unable to meet its obligations or can no longer be relied upon to fulfill its obligations towards investors, depositors or creditors; or
- (f) if the holder has insufficient assets to cover its liabilities; or
- (g) if the holder has suspended payment or is about to suspend payment; or
- (h) if the Regulatory Authority considers that, by reason of the manner in which the business is conducting or proposes to conduct its affairs, or for any other reason, the interests of the depositors, investors or creditors are threatened.
- (i) if the holder is in material breach of any of the provisions of the Money Laundering Ordinance 2008 or any Directives issued under that Ordinance.

(3) Restrictions imposed by the Regulatory Authority pursuant to subsection (2) shall be such restrictions as the Regulatory Authority considers appropriate for the proper compliance by the relevant business with the provisions of this Ordinance and the conditions, if any, of its licence and for the protection of depositors, investors or creditors and may include (without prejudice to the generality hereof):

- (a) a requirement regarding the removal of any officer of the business;
- (b) a requirement for any person who directly or indirectly possesses a qualifying shareholding in the Relevant Business to divest himself of all or part of that holding;
- (c) a requirement for the business to take or refrain from taking any action;
- (d) a requirement that the business be prohibited from undertaking any transaction or transactions or any class of business or be permitted to undertake any transaction or transactions or any class of business only upon such terms as the Regulatory Authority may prescribe.

(4) The Regulatory Authority may vary or revoke any restrictions imposed under this section.

(5) Where the Regulatory Authority intends to restrict or revoke a licence or to vary any restriction, it shall serve written notice of its intention on the business; such notice shall specify the grounds upon which the Regulatory Authority intends to take action and shall specify a period (not being less, unless the Regulatory Authority considers that the matter is urgent, than 21 days) within which the business may make representations to the Regulatory Authority as to why such action should not be taken. Unless the Regulatory Authority decides that the matter is urgent, it shall not impose or vary any restriction or revoke a licence before the expiry of such period.

(6) A licence granted to a branch of a relevant business incorporated outside St. Helena may only be revoked after consultation with the competent authorities of the country of incorporation, unless the Regulatory Authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(7) Upon the restriction or revocation of a licence of a relevant business incorporated in St. Helena, the Regulatory Authority shall inform the competent authorities of any place outside St. Helena in which the relevant business (or any of its subsidiaries) is carrying on a Regulated Activity.

(8) The Regulatory Authority may, if it considers it to be in the public interest, issue a public statement to the effect that a particular licence has been restricted or revoked

Review

- 11. (1)** Any person who is aggrieved by a decision of the Regulatory Authority—
- (a) to impose any condition on the grant of a licence;
 - (b) to impose or vary any restriction;
 - (c) to revoke a licence;
 - (d) to close a representative office;
 - (e) to issue any notice or make any order under section 12;
 - (f) to make any order under section 13 of this Ordinance,

may seek a review by the Regulatory Authority, and the Regulatory Authority shall reconsider its decision in the light of that request and any additional information submitted in support thereof.

(2) A request for a review by the Regulatory Authority shall not suspend the operation of the decision which is the subject of the review.

(3) Upon review, the Regulatory Authority may—

- (a) confirm, reverse or vary its original decision and take any action within its powers under this Ordinance to implement a new decision;
- (b) require the attendance of any witness or require the production of any document or other information;
- (c) order the payment of costs and expenses by any party to the review.

(4) If the Regulatory Authority confirms its original decision the aggrieved person may (subject to any requirement of Rules of Court as to seeking leave or other preliminary procedure) apply for judicial review.

Use of the word "bank".

12. (1) Subject to subsections (2) and (3), and save with the written permission of the Regulatory Authority, no person other than a bank with a current licence may use the word "bank" or any of its derivatives (or any other words such as may indicate or purport to indicate the carrying on of the business of banking in any language) in the description or title under which such person is carrying on business, or make any such use on any letter paper, in any notice or advertisement, or in any other similar manner.

(2) A bank incorporated outside St. Helena may use the name used in its country of incorporation save that, where there is a risk that the use of such a name may be misleading, such bank shall add such explanatory particulars to its name as the Regulatory Authority shall direct.

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

(4) A person who acts in contravention of subsection (1) or (3), or who fails to comply with a direction made under subsection (2), is guilty of an offence and is liable—

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £5000, or both;
- (b) on conviction on indictment to imprisonment for five years, or to a fine, or both.

Participation in a Relevant Business

13. (1) Notwithstanding anything contained in any other law, the consent of the Regulatory Authority shall be required before any person may lawfully—

- (a) acquire a significant shareholding or a qualifying shareholding in a Relevant Business;
- (b) increase an existing holding which is not a significant shareholding or a qualifying shareholding so as to cause it to become a significant shareholding or a qualifying shareholding in a Relevant Business;
- (c) increase a significant shareholding in a Relevant Business so as to cause it to become a qualifying shareholding;
- (d) increase a qualifying shareholding so as to cause it to equal or exceed, twenty per centum or thirty-three per centum or fifty per centum or to cause the relevant business to become that person's subsidiary;
- (e) reduce a qualifying shareholding so as to cause it to fall below fifty per centum or thirty-three per centum or twenty per centum or to cause the relevant business to cease to be that person's subsidiary;
- (f) reduce a qualifying shareholding or a significant shareholding so as to cause it to cease to be a qualifying shareholding or significant shareholding;
- (g) divest himself of a qualifying shareholding or a significant shareholding.

(2) The Governor in Council may, by Order published in the *Gazette*, vary or remove any of the percentages mentioned in paragraphs (d) and (e) of subsection (1).

(3) It shall be the duty of a relevant business and of the directors thereof to notify the Regulatory Authority forthwith upon becoming aware that any person intends to take any of the actions set out in subsection (1).

(4) Notwithstanding anything contained in any other law, the consent of the Regulatory Authority shall be required before any relevant business may lawfully—

- (a) sell or dispose of its business or any significant part thereof;
- (b) merge with any other company;
- (c) undergo any re-construction;
- (d) increase its nominal or issued share capital or effect any material change in voting rights.

(5) It shall be the duty of all directors and qualifying shareholders of a relevant business to notify the Regulatory Authority forthwith upon becoming aware that the business intends to take any of the actions set out in subsection (4).

(6) Any person intending to take any of the actions set out in subsection (1) and any relevant business intending to take any of the actions set out in subsection (4) shall notify the Regulatory Authority in writing and the Regulatory Authority may issue a Directive regulating the form in which such notification shall take place and the information required to be furnished to the Regulatory Authority with such notification.

(7) Within two months of receipt of such notification or receipt of such information as the Regulatory Authority may lawfully require, whichever be the later, the Regulatory Authority shall issue a notice—

- (a) granting unconditional consent to the taking of the action; or
- (b) granting consent to the taking of the action subject to such conditions as the Regulatory Authority may deem appropriate; or
- (c) refusing consent to the taking of the action:

Provided that where the Regulatory Authority fails for any reason to issue such a notice within the prescribed period, this fact shall be construed as if a refusal notice had been issued in terms of paragraph (c) of this subsection.

(8) If any person or any relevant business takes or intends to take any action set out in subsections (1) and (4) without obtaining the consent of the Regulatory Authority, then, without prejudice to any other penalty which may be imposed under this Ordinance, the Regulatory Authority may make an order—

- (a) restraining the person or business from taking the action;
- (b) declaring the action to be void and of no effect;
- (c) requiring the person or business to take such steps as may be necessary to restore the position existing immediately before the action was taken;
- (d) restraining the person or business from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment;
- (e) restraining the person or business from taking any similar action or any other action within the categories set out in subsections (1) and (4) of this section.

(9) Every person who does an act which is unlawful under this section, or who fails to comply with an order made under subsection (8), is guilty of an offence and is liable—

- (a) on summary conviction to imprisonment for 12 months, or to a fine of £5000, or both;
 - (b) on conviction on indictment to imprisonment for five years, or to a fine, or both,
- and, in either case, the court may order that any property owned by the offender and used or acquired by him in connection with the relevant offence shall be forfeit to Her Majesty.

Control of a relevant business.

14. (1) Every person who is a controller of a relevant business shall be a fit and proper person to exercise such control.

(2) Every relevant business shall forthwith notify to the Regulatory Authority—

- (a) full particulars of all persons who are controllers of the business but are neither significant shareholders nor qualifying shareholders of the business;
- (b) full particulars of any person who is proposed to become a controller of the business without being or becoming a significant shareholder or qualifying shareholder;
- (c) full particulars of any person who is proposed to cease to be a controller of the business.

(3) A relevant business shall furnish the Regulatory Authority with such further information (if any) as it may require concerning any existing or proposed controller.

(4) If the Regulatory Authority is of the opinion that any person who is or is proposed to become a controller of a relevant business without being or becoming a significant shareholder or a qualifying shareholder is not a suitable person to be a controller, the Regulatory Authority may make an order requiring such a person to cease to be a controller or restraining such a person from becoming a controller.

Prohibited Transactions.

15. (1) A bank shall not—

- (a) grant any credit facility against the security of its own shares or against any other securities issued by the bank itself or against any shares or any other securities of another body corporate in which the bank has control;

- (b) grant or permit to be outstanding, unsecured credit facilities which in the aggregate exceed the sum of one thousand St Helenian pounds or its equivalent in any other currency—
- (i) to any one of its directors or their spouses whether jointly or severally as well as with third parties;
 - (ii) to any person in whom or in which the bank or any one or more of its directors is interested as a director, partner, manager, agent or member, or to any person of whom or of which any one or more of the bank's directors is a guarantor;
 - (iii) to any body of persons in which the bank or any one or more of its directors jointly or severally maintains control, not being itself a bank or the parent undertaking of the bank, a subsidiary of this parent undertaking or a subsidiary of the bank;

unless the bank can demonstrate to the Regulatory Authority that such facilities are in the ordinary course of its banking business.

- (c) grant to or permit to be outstanding in respect of any officer, other than a director, or any employee, unsecured credit facilities which in the aggregate exceed twelve months' emolument of such officer or employee;
- (d) acquire or hold any part of the share capital of, or otherwise have a direct or indirect interest in any one bank or other company or group of connected persons, the original cost value of which exceeds fifteen per centum of the bank's own funds and such holdings shall not exceed in the aggregate one hundred per centum of its own funds:

Provided that:

- (i) a bank's subsidiaries considered as a whole shall not constitute a group of connected persons for the purpose of this section;
 - (ii) where the share capital acquired is that of a subsidiary bank the limit of fifteen per centum laid down in this paragraph shall be twenty-five per centum of the bank's own funds;
 - (iii) shareholding in companies other than those falling under (ii) above shall not exceed in the aggregate sixty per centum of the bank's own funds;
 - (iv) where the said percentages are exceeded as a result of the acquisition of shares in satisfaction of debts due to the bank, it shall have a maximum of twelve months or such longer period as may be determined by the Regulatory Authority within which to comply with the provisions of this paragraph;
 - (v) the Regulatory Authority may allow a bank to exceed temporarily the limits laid down in this paragraph whenever, in the opinion of the Regulatory Authority, such excess is the result of an unavoidable reduction of the own funds of the bank;
 - (vi) where the bank is a parent or subsidiary undertaking compliance with the limits laid down in this paragraph shall be monitored on a consolidated basis;
- (e) without the consent of the Regulatory Authority acquire or hold shares in another company which is not a bank, which exceeds five per centum of that company's issued share capital;

- (f) purchase, acquire or otherwise hold any immovable property or any right thereon except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff:

Provided that this paragraph shall not prevent a bank—

- (i) from letting part of any building which is used for the purpose of conducting its business; or
- (ii) from securing a debt on any immovable property and, in the event of default in payment of such debt, from acquiring or holding such property for realisation within twelve months, or any longer period as may be determined by the Regulatory Authority;
- (iii) in other instances from acquiring immovable property with the prior approval of the Regulatory Authority the original cost of which property shall not in the aggregate exceed five per centum of the bank's own funds.

(2) In paragraphs (b) and (c) of subsection (1) the expression "unsecured credit facilities" shall mean credit facilities made without security or, in respect of any credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security, or where the Regulatory Authority is satisfied that there is no established market value, on the basis of a valuation approved by the Regulatory Authority itself.

Large Exposures.

16.⁷ The Regulatory Authority shall from time to time issue Directives covering large exposures.

Own funds and reserves.

17. (1) Every bank shall—

- (a) maintain a ratio of own funds to risk-weighted assets and off balance sheet items defined in and calculated according to the provisions of a Directive;
- (b) notify the ratio to the Regulatory Authority at such times and in such manner as shall be prescribed by a Directive;
- (c) notify the Regulatory Authority forthwith upon the ratio falling below the level required by paragraph (a) of this subsection whereupon the Regulatory Authority shall require the bank to take necessary measures to restore the ratio to the required level within such period as the Regulatory Authority may determine.

(2) Every bank shall maintain adequate provisions for bad and doubtful debts.

Liquidity.

18.⁸ The Regulatory Authority shall from time to time issue Directives specifying what shall constitute the specified assets and the deposit liabilities of a bank and laying down the minimum holding of specified assets as a proportion of deposit liabilities which a bank must hold.

Clients' money.

⁷ Section 16 substituted by Ord. 2 of 2017

⁸ Section 18 amended by Ord. 2 of 2017

19.⁹ Clients' money placed in a designated account with a bank in accordance with the provisions of a Financial Services Directive or by an estate agent, solicitor or accountant shall be regarded as held in trust for the client and not form part of the assets of the business or estate agent, solicitor or accountant.

Information to be submitted to the Regulatory Authority.

20. (1) Every relevant business shall submit to the Regulatory Authority—

- (a) notification of any proposed changes in Directors or officers of the business at least one month prior to the proposed appointment;
- (b) such information as the Regulatory Authority may require to satisfy itself that the business is complying with the provisions of this Ordinance and the Financial Services Directives;
- (c) such separate statements relating to its offices and branches outside St. Helena in such form and at such times as the Regulatory Authority may require in the discharge of its duties.

(2) The provisions shall also apply to all branches, agencies or offices in St. Helena of a relevant business which is not incorporated in St. Helena.

(3) All statements required under subsections (1) and (2) shall be submitted in such form and at such periods as shall be prescribed by a Directive.

(4) The Regulatory Authority may require the auditors of a relevant business to provide it with a report as to the completeness and accuracy of one of the periodic statements provided in accordance with this section.

(5) All statements and other information furnished by any relevant business under subsections (1) and (2) shall be regarded as secret and confidential except as between that business and the Regulatory Authority.

Directors and Managers

21. (1) No change may be made to the Directors or Managers of a relevant business except with the prior approval of the Regulatory Authority.

(2) A relevant business shall provide the Regulatory Authority with such information about individuals who are prospective Directors or Managers as is necessary to allow the Regulatory Authority to determine whether the individual is a fit and proper person for the position

(3) A relevant business shall inform the Regulatory Authority of any material changes to the information provided under subsection (2) within one month of the change occurring.

Supervision of relevant businesses.

22. (1) Every relevant business shall submit to the Regulatory Authority any information which it may reasonably request in the exercise of its duties under this Ordinance, and the Regulatory Authority may enquire into and ask for clarification of any information so submitted.

(2) Any request for information or for clarification thereof under this section shall be by notice in writing and shall require the recipient to provide the information at such time or

⁹ Section 19 amended by Ord. 2 of 2017

times or at such intervals or in respect of such period or periods as may be specified by the notice.

(3) Without prejudice to the generality of subsections (1) and (2), the Regulatory Authority may—

- (a)* by notice in writing served on a relevant business, require the relevant business to provide a report by an accountant or other person with relevant professional skill on any aspect of any matter about which the Regulatory Authority has required or could require the relevant business to provide information under subsection (1);
- (b)* by notice in writing served on a relevant business, require it to produce within such time and at such place as may be specified in that notice, such document or documents of such description as may be so specified in the notice;
- (c)* authorise an officer, servant or agent of the Regulatory Authority, on producing evidence of his authority, to require any relevant business to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify, being such information or documents as the Regulatory Authority may reasonably require for the performance of its functions under this Ordinance.

(4) The accountant or other person appointed by a relevant business to make any report required under paragraph (a) of subsection (3) shall be a person nominated or approved by the Regulatory Authority; and the Regulatory Authority may require the report to be in such form as is specified in the notice.

(5) Where, by virtue of subsection (3), any person has power to require the production of any documents from a relevant business, that person shall have the like power to require the production of those documents from any person who appears to be in possession of them.

(6) The power under this section to require a relevant business or any 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 relevant business or person, or any other person who is a present or past officer of, or is or was at any time employed by or acting as an employee of, the relevant business 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.

(7) If it appears to the Regulatory Authority to be desirable in the interests of the depositors, investors, or creditors to do so, it may also exercise the powers conferred by subsections (1) and (3) in relation to any person who is or has at any relevant time been—

- (a)* a holding company, subsidiary or a company which is a connected person of that relevant business;
- (b)* a subsidiary or a person which is a company connected to a holding company of that relevant business;
- (c)* a holding company of a subsidiary of that relevant business; or
- (d)* a controller of that relevant business.

(8) The Regulatory Authority may by notice in writing served on any person who is or is to be an officer of a relevant business require him to furnish, within such time as may be specified in the notice, such information or documents as the Regulatory Authority may reasonably require for determining whether he is a suitable person to hold the particular position which he holds or is to hold.

(9) The Regulatory Authority may exercise the powers conferred by subsections (1) and (3) in relation to any person who has a significant shareholding or qualifying shareholding in a relevant business if it considers that the exercise of those powers is desirable in the interests of the depositors, investors or creditors or potential depositors, investors or creditors of that business.

(10) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him—

- (a) in any civil proceedings, including any proceedings under this Ordinance other than criminal proceedings; and
- (b) in criminal proceedings for an offence of perjury.

(11) The Regulatory Authority shall have the power to recover from a relevant business reported on under subsection (3) the costs and expenses incurred in relation to such report.

Right of entry to obtain information and documents.

23. The Regulatory Authority may apply to the Magistrates' Court for an order authorizing an appointed individual to:

- (a) enter any premises occupied by a person on whom a notice has been served under section 22 or section 24 for the purpose of obtaining there the information or documents required by that notice;
- (b) enter any premises occupied by any person on whom a notice could be served under section 22 or section 24 for the purpose of obtaining there such information or documents as are specified in the authority, being information or documents that could have been required by such a notice; but the Regulatory Authority shall not authorise any person to act under this paragraph 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;

Provided that where an entry as is mentioned in this subsection involves premises that are occupied for the purposes of habitation, such entry shall be carried out in the presence of a police officer of a rank not below that of Sergeant, and shall moreover not take place between 8pm and 7am.

Investigations.

24.¹⁰ (1) If it appears to the Regulatory Authority desirable to do so in the interests of the depositors, investors or creditors or potential depositors, investors or creditors of a relevant business, it may appoint one or more competent persons to investigate and report on—

- (a) the nature, conduct or state of the business's business or any particular aspect of it; or
- (b) the ownership or control of the business,

and the Regulatory Authority shall give written notice of any such appointment to the business concerned.

(2) If a person appointed under subsection (1) considers it necessary for the purposes of his investigation, he may also investigate the business of any person who is or has at any relevant time been—

- (a) a holding company, subsidiary or a company which is a connected person of the relevant business under investigation;
- (b) a subsidiary or a company which is a connected person of a holding company of that business;
- (c) a holding company of a subsidiary of that business; or
- (d) a controller of that business.

¹⁰ Section 24 amended by Ord. 2 of 2017

This e-version of the text is not authoritative for use in court.

(3) The Regulatory Authority may exercise the powers conferred by subsection (1) in relation to any person who has a significant shareholding or qualifying shareholding in a relevant business if it considers that the exercise of those powers is desirable in the interests of the depositors, investors or creditors or potential depositors, investors or creditors of that business.

(4) Where a person appointed under subsection (1) decides to investigate the business of any person by virtue of subsection (2) or subsection (3) he shall inform that person by notice in writing.

(5) It shall be the duty of every person who is or was an officer, employee, agent, banker or auditor of a body which is under investigation under this Ordinance, or any person appointed to make a report in respect of that body under this Ordinance and anyone who has a significant shareholding in, qualifying shareholding in, or is a controller of that body—

- (a) to produce to the persons appointed under subsection (1) of this section, within such time and at such place as they may require, all documents relating to the body concerned 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
- (c) otherwise to give those persons all assistance in connection with the investigation which he is reasonably able to give, and those persons may take copies of or extracts from any documents produced to them under paragraph (a) above.

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

(7) No person shall—

- (a) without lawful excuse fail to produce any documents which it is his duty to produce under subsection (5);
- (b) without lawful excuse fail to attend before the persons appointed under subsection (1) when required to do so; or
- (c) without lawful excuse fail to answer any question which is put to him by persons so appointed with respect to any banking or investment business which is under investigation or a body which is being investigated by virtue of subsection (2) or (3).

(8) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him—

- (a) in any civil proceedings, including any proceedings under this Ordinance other than criminal proceedings; and
- (b) in criminal proceedings for an offence of perjury.

(9) The Regulatory Authority shall have the power to direct a relevant business reported on under subsection (1) to pay for the costs and expenses incurred in relation to such report.

(10) For the purposes of this section, reference to relevant business shall include reference to persons appearing to be carrying on a relevant business.

Suspected offences.

25. (1) Where the Regulatory Authority has reasonable grounds for suspecting that a person is guilty of any offence under this Ordinance, it may by notice in writing require that person or any other person—

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

(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 which it may reasonably require for that purpose;

(c) to attend at such place and time as may be specified in the notice, and answer questions relevant for determining whether such an offence has occurred.

(2) The Regulatory Authority or their duly authorised officer, employee or agent may take copies of or extracts from any documents produced under this section.

(3) The Regulatory Authority may apply to the Magistrates' Court for an Order authorising an appointed person to enter, between 7am and 8pm, on producing if required evidence of his authority, 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 (c) of that subsection or exercising the powers conferred by subsection (2) of this section.

(4) No person shall without lawful excuse fail to comply with a requirement imposed on him under this section or intentionally obstruct a person in the exercise of the rights conferred by subsection (3).

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him.

(6) Where the Regulatory Authority is satisfied that it has reasonable grounds for believing that an offence has been committed under this Ordinance it may—

(a) require the business forthwith to take such steps as the Regulatory Authority may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to take charge of the assets of the relevant business or any portion of them for the purpose of safeguarding the interests of depositors, investors or creditors;

(c) require the business to wind up its business or to wind up its business in St. Helena;

(d) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the business;

(e) fix the remuneration to be paid by the business to any competent person appointed under this subsection.

(7) Where a competent person is appointed by the Regulatory Authority under paragraph (b) or (d) of subsection (6), the business shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the business in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the business, shall be exercisable by and vest in him to the exclusion of the business.

Obstruction.

26.¹¹ (1) No person who knows or suspects that an investigation is being or is likely to be carried out—

(a) under section 22, section 24 or section 25; or

(b) into the suspected commission of any offence under this Ordinance,

shall falsify, conceal, destroy or otherwise dispose of, or cause or permit 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.

¹¹ Section 26 amended by Ord. 2 of 2017

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(2) Every person who does an act which is forbidden under subsection (1) is guilty of an offence and is liable on conviction on indictment to imprisonment for five years, or to a fine of £500,000, or both.

Co-operation and sharing of information.

27. (1) The Regulatory Authority may share its supervisory duties with overseas competent authorities in the case of a relevant business or branch operating in St. Helena which is fully or partly owned by a person who does not reside in St. Helena or in the case of a relevant business fully or partly owned by residents of St. Helena which is operating abroad, and may exchange information with overseas supervisory authorities

(2) In subsection (1), ‘overseas Regulatory Authority’ means a person or body exercising in a place outside St. Helena powers or functions similar to those exercised in St. Helena by the Regulatory Authority.

(3) The Regulatory Authority may share information with the Governor, or with any law enforcement authority in St. Helena or elsewhere for the purpose of assisting in the investigation of suspected criminal activity and of prosecuting offenders.

(4) A person appointed under section 22 or section 24 shall be given access to any accounts, returns, or other information with regard to relevant business which are in the possession of the Regulatory Authority, the Registrar of Companies and any other public or statutory officer in St. Helena.

(5) The Regulatory Authority may hold meetings between a relevant business and its appointed auditors and on a trilateral or bilateral basis as circumstances may warrant; such meetings may be called by any of the parties concerned but shall always be chaired by the Regulatory Authority.

Communication by auditors etc. with the Regulatory Authority.

28. (1) No duty to which—

(a) an auditor of a relevant business; or

(b) a person appointed to make a report under section 22(3)(a) or section 24(1)

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

(2) In relation to an auditor of a relevant business this section applies to any matter falling within section 32(9).

(3) In relation to a person appointed to make a report under section 22(3)(a), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

(a) relates to the business or affairs of the relevant business in relation to which his report is made or any associated body of that business, or

(b) if by virtue of section 22(7), the report relates to an associated body of a relevant business, to the business or affairs of that body.

(4) In relation to a person appointed to make a report under section 24(1), this section applies to any matter of which he becomes aware in his capacity as the person making the report and which—

(a) relates to the business or affairs of the relevant business in relation to which his report is made or any associated body of that business, or

(b) if, by virtue of 24(2), the report relates to an associated body of a relevant business, to the business or affairs of that body.

(5) In this section "associated body", in relation to an institution, means any such body as is mentioned in 22(7) or mentioned in section 24(2).

Relevant businesses unable to meet obligations.

29. Notwithstanding any investigation provided for in this Ordinance—

(a) where a relevant business considers that it is likely to become unable to meet its obligations or that it is about to suspend payment it shall forthwith inform the Regulatory Authority and the Governor in writing;

(b) where the Regulatory Authority becomes aware that a relevant business is likely to become unable to meet its obligations or that it is about to suspend payment, it shall forthwith inform the Governor in writing.

Power of the Regulatory Authority to take control of a relevant business.

30. (1) If, whether from any report made under section 22 or section 24 or otherwise, it appears to the Regulatory Authority that any of the circumstances indicated in section 10(2) apply, the Regulatory Authority may—

(a) require the relevant business forthwith to take such steps as the Regulatory Authority may consider necessary to remedy or rectify the matter;

(b) appoint a competent person to advise the relevant business in the proper conduct of its business;

(c) appoint a competent person to take charge of the assets of the relevant business or any portion of them for the purpose of safeguarding the interests of depositors, investors or creditors;

(d) appoint a competent person to assume control of the relevant business and either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the Regulatory Authority may direct;

(e) revoke or restrict a licence according to the provisions of section 10 of this Ordinance;

(f) require the relevant business to wind up its business or to wind up its business in St. Helena;

(g) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the relevant business;

(h) fix the remuneration to be paid by the relevant business to any competent person appointed under this subsection.

(2) Where a competent person is appointed by the Regulatory Authority—

(a) under paragraph (b) of subsection (1), the relevant business shall act in accordance with the advice given by such person unless and until the Regulatory Authority otherwise directs;

(b) under paragraph (c) of subsection (1), the relevant business shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the business in respect of those assets whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the business, shall be exercisable by and vest in him to the exclusion of the business;

- (c) under paragraph (d) of subsection (1), the relevant business shall submit its business to the control of such person and shall provide him with such facilities as he may require in order to carry on that business or to carry out the functions assigned to him under that paragraph, and all the powers, functions and duties of the business, whether exercisable by the company in general meeting or by the board of directors or by any other person, including the legal and judicial representation of the business in all matters, shall be exercisable by and vest in him to the exclusion of any other person.
- (3) Where a person is appointed under paragraph (c) or paragraph (d) of subsection (1)—
- (a) any function, power or duty exercisable by any other person, including the curator of a bankrupt or any other person appointed by or under any other law, and relating to any assets or business of which the person appointed under either of the paragraphs aforesaid is placed in charge or in control, shall, unless or until the Regulatory Authority otherwise directs or an express provision of law specifically provides otherwise, cease to be so exercisable;
- (b) the person appointed under either of the paragraphs aforesaid shall, in respect of such property, partnerships, firms or other business as the Regulatory Authority may specify and in which the banking or investment business has an interest, whether directly or indirectly, including any interest arising from advances or loans made or credit facilities given or any liability undertaken, have such powers, functions and duties, including legal and judicial representation, as the Regulatory Authority may direct, and any such power, function or duty shall be exercisable by and vest in such person to the exclusion of any other person;
- Provided that:
- (i) the Regulatory Authority shall have power to direct that all or any of the powers, functions or duties aforesaid should be exercisable by any other person, and in any such case, with effect from such date or dates as the Regulatory Authority may specify and unless and until the Regulatory Authority otherwise directs, the powers, functions and duties to which the direction of the Regulatory Authority applies shall be exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;
- (ii) where the Regulatory Authority is of the opinion that the relevant business has ceased to have any interest as aforesaid, it shall direct that any powers, functions and duties exercisable under this paragraph shall cease to be so exercisable, but any such direction shall not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties;
- (c) the person appointed under either of the paragraphs aforesaid shall have the power to require any other person to provide him with such facilities as he may deem necessary to carry out any of the powers, functions or duties under this section;
- (d) the provision of any law relating to bankruptcy or insolvency shall cease to apply to, and shall cease to operate in respect of, any property, partnership, firm or other business specified by the Regulatory Authority under paragraph (b) of this subsection, unless and until, or except to the extent that, the Regulatory Authority otherwise directs; and in any such case the person appointed as aforesaid shall, subject to any directions of the Regulatory Authority given in the interest of the creditors, act as if those provisions did not exist and as if any declaration of bankruptcy had not been made;

(e) any person appointed by the Regulatory Authority under any of the provisions shall submit six-monthly reports of his activities and annual accounts of all transactions carried out by him in the performance of his functions audited by an independent auditor to the Governor in Council.

(4) Where a person is appointed under paragraph (g) of subsection (1), such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(5) The provisions shall have effect notwithstanding any other provision of any enactment (except an enactment made after the commencement of this Ordinance which expressly repeals, amends or excludes the provisions of this section), and notwithstanding any deed, contract, instrument or other document whatsoever.

(6) The foregoing provisions vesting exclusive powers of representation in a person appointed by the Regulatory Authority thereunder shall apply also to any act or proceedings commenced or instituted before such representation vested as aforesaid, and in respect of any such act or proceedings any other person acting or purporting to act, or in respect of whom action is taken, in that capacity shall cease to be a party to, and shall be excluded from, any such act or proceedings.

(7) No person shall in any way obstruct a person appointed under subsection (1) in the performance of any of his functions, powers or duties under this section.

(8) Upon receipt of such a report as is mentioned in subsection (1), the Regulatory Authority shall inform the Governor as to whether it intends to take any action pursuant to such report and of any action it intends to take thereon.

Publication of audited financial statements.

31. (1) Subject to subsection (2) every relevant business which is a body corporate shall, not later than four months from the closing of its financial year or at any other time as may be exceptionally authorised by the Regulatory Authority—

- (a) forward to the Regulatory Authority,
- (b) publish in a local newspaper, and
- (c) exhibit in a conspicuous position in each of its offices and branches in St. Helena and its dependencies and keep so exhibited throughout the year,

a copy of its audited financial statements.

(2) Subsection (1) does not apply to relevant businesses whose activities are restricted to the activities specified in paragraphs 4, 5, 6, 8, and 9 of Schedule 1.

Auditors.

32.¹² (1)(a) Subject to paragraph (b) every relevant business which is a body corporate shall each year appoint an approved auditor or auditors whose duty shall be to report on the financial statements of the business examined by them and on all financial statements prepared by the business.

(b) Paragraph (a) does not apply to relevant businesses whose activities are restricted to the activities specified in paragraphs 4, 5, 6, 8, and 9 of Schedule 1

(c) For the purposes of this section, “an approved auditor” means the Chief Auditor of the Government of St. Helena or any other suitably qualified person (who is a member in good standing of an internationally recognised body responsible for regulating the activities of the

¹² Section 32 amended by Ord. 2 of 2017

accounting profession) authorised by the Regulatory Authority to act as an auditor of a relevant business.

(2) If a relevant business fails to appoint an auditor under subsection (1), or at any time fails to fill any vacancy in the office of an auditor, the Regulatory Authority may appoint an auditor for that business and shall fix the remuneration to be paid by that business to such auditor.

(3) The auditor's report shall contain statements as to the following matters:

- (a) whether, in their opinion, the financial statements present fairly, in all material respects, the financial position of the relevant business as at the end of the financial year, and the financial performance and cash flows for the year then ended, in accordance with the applicable international financial reporting framework;
- (b) whether, in their opinion, and to the best of their knowledge and according to the explanations given to them, the financial statements give the information required by any law which may from time to time be in force in the manner;
- (c) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purpose of the audit.

(4) In the case of a registered company or mutual organization the report of the auditors shall be presented together with the report of the directors of the relevant business at the annual meeting of shareholders or members.

(5) Every auditor of a relevant business shall have the right to demand such information or explanation as he or she deems necessary in the performance of his or her duties from any officer or employee of the business.

(6) A relevant business shall forthwith give written notice to the Regulatory Authority—

- (a) on the appointment of its auditors;
- (b) if it proposes to give notice to its shareholders or members to—
 - (i) replace its auditors at the expiration of their term of office;
 - (ii) remove its auditors before the expiration of their term of office;
- (c) if the auditors cease to be auditors of the relevant business for any reason other than those in paragraph (b) of this subsection.

(7) The Regulatory Authority may require a relevant business to change its appointed auditors where, in the Regulatory Authority's opinion, such auditors are considered unfit for this appointment, at any time during their term of office.

(8) An auditor shall immediately advise the Regulatory Authority if—

- (a) he or she resigns;
- (b) he or she does not seek to be re-appointed; or
- (c) he or she decides to qualify the audit report.

(9) If, in his or her capacity as an auditor of a relevant business or due to a direct request by the Regulatory Authority under section 20 or section 22, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the depositors, investors or creditors of that business, of the branches in St. Helena or its dependencies of a relevant business which is not incorporated in St. Helena, or of any connected person which is a relevant business, he or she shall immediately inform the Regulatory Authority through the business's management or, if circumstances so warrant, directly to the Regulatory Authority.

(10) The Regulatory Authority may, in the case of a relevant business not incorporated in St. Helena grant exemption (by way of a Financial Services Directive) from any of the requirements of this Section provided that such exemption does not materially detract from the main objects of this section.

Disqualification of officers.

33. No person—

- (a) who has been adjudged bankrupt or has made a composition with his creditors or has been an officer of a relevant business which has had its licence revoked under section 10(2); and who has not been exempted in writing by the Regulatory Authority from the provisions of this section; or
- (b) who is interdicted or incapacitated or who has been involved in money laundering or found guilty of a crime affecting public trust, theft, fraud, extortion or of knowingly receiving property obtained by theft or fraud,

shall act or continue to act as an officer of a relevant business.

Duties of officers.**34.** Every officer of a relevant business shall take all reasonable steps—

- (a) to secure compliance by the business with all of the provisions of this Ordinance and of its license or any Financial Services Directive or regulation issued under this Ordinance, and
- (b) to ensure that no incorrect information is provided either willfully or as the result of gross negligence.

Confidentiality

35. (1) Subject to the provisions of this section, no information obtained under or for the purposes of this Ordinance and relating to the business or other affairs of any person may be disclosed except—

- (a) when specifically authorised by provisions of this Ordinance;
 - (b) with the written consent of the person to whom the information relates; or
 - (c) 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.
- (2)** Nothing in subsection (1) prohibits the disclosure of information—
- (i) for the purposes of any criminal proceedings whether under this Ordinance or otherwise;
 - (ii) in connection with any other proceedings arising out of this Ordinance; or
 - (iii) in order to enable the Regulatory Authority to comply with any obligation imposed on it by or under this Ordinance

(3) Nothing in this Ordinance shall authorise the Regulatory Authority to enquire or cause an enquiry to be made into the affairs of any individual customer of a relevant business except for the purpose of ensuring compliance with any of the provisions of this Ordinance or any Directives issued under this Ordinance or the Money Laundering Ordinance 2008 or any Directives issued under that Ordinance.

(4) No person, including past and present officers or agents of a relevant business, shall disclose any information relating to the affairs of a relevant business or of a customer of a relevant business which he has acquired in the performance of his duties or the exercise of his functions under this Ordinance except—

- (a) when authorised to do so under any of the provisions of this Ordinance;
- (b) for the purpose of the performance of his duties or the exercise of his functions;
- (c) when lawfully required to do so by any court in St. Helena or elsewhere or under a provision of any law; or
- (d) with the express written permission of the person to whom the information relates.

(5) When an officer of a relevant business has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with any guidelines provided by the Regulatory Authority, and nothing done in compliance with the provisions of this subsection shall constitute a breach of confidentiality.

(6) Notwithstanding anything contained in this section, exchange of information between a parent business and subsidiaries and vice-versa on mutual customers to whom the parent business or its subsidiaries may have granted or is granting a credit or investment facility, shall not constitute a breach of confidentiality:

Provided that for the purposes of this subsection, a connected person or a group of connected persons or members of such group shall also be considered mutual customers.

Injunctions and Restitution

36. (1) If on application by the Regulatory Authority, the Magistrates' Court is satisfied—

(a) that there is a reasonable cause to believe that any person will contravene a requirement of this Ordinance or

(b) that any person has contravened a requirement of this Ordinance and that there is a reasonable cause to believe that the contravention will continue or be repeated,

the court may make an order restraining the contravention.

(2) If on application by the Regulatory Authority, the Magistrates' Court is satisfied—

(a) that any person has contravened a requirement of this Ordinance and

(b) that there are steps which could be taken to remedy 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.

Offences and penalties.

False and misleading statements

37. (1) Any person who—

(a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive, or dishonestly conceals any material facts; or

(b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

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 or investment 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 or investment,

is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000

(2) Any person who provides any information or statement in connection with an application for a licence under Section 8, knowing it to be false or misleading, or being reckless as to whether it might be false or misleading, is guilty of an offence and liable on summary conviction to a fine not exceeding £10,000.

(3) Subsections (1) and (2) do not apply unless—

- (a) the statement, promise or forecast is made in or from, or the facts are concealed, in or from St. Helena, or arrangements are made in or from St. Helena for the statement, promise or forecast to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in St. Helena; or
- (c) the deposit or investment is or would be made, or the agreement is or would be entered into, in St. Helena.

General provisions concerning offences

38. (1) Any person who—

- (a) contravenes or fails to comply with any of the provisions of this Ordinance for which no separate penalty is provided;
 - (b) contravenes or fails to comply with the provisions of any Banking or Financial Services Directive or regulation;
 - (c) fails to comply with any lawful order or requirement of the Regulatory Authority;
 - (d) fails to comply with any lawful order or requirement of any other person made under this Ordinance;
 - (e) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he is lawfully required to produce by any person under this Ordinance; or
 - (f) willfully obstructs any person exercising powers or functions under this Ordinance;
- is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or to imprisonment for a term not exceeding two years, or to both.

(2) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of any manager, secretary or other similar officer of the body corporate, or of any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) (a) The Governor in Council may, by regulations made under section 39, provide for administrative penalties which may be imposed by the Regulatory Authority without recourse to civil or criminal proceedings:

Provided that such regulations may not provide for a financial penalty exceeding £10,000.

(b) Regulations made under paragraph (a) shall provide for an appeal from any decision of the Regulatory Authority to impose an administrative penalty.

Regulations

39.¹³ (1) The Governor in Council may make regulations generally for the better carrying into effect of the provisions of this Ordinance, but shall consult the Regulatory Authority before making, amending or revoking any such regulations.

(2) The Governor in Council may, after consultation with the Regulatory Authority, provide by order that sections 21 and 24 shall apply to representative offices in St Helena as they apply to a relevant business.

Repeal and transitional provisions

¹³ Section 39 amended by Ord. 2 of 2017

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40. (1) The Banking Ordinance 2003 is repealed.

(2) All references to the Banking Ordinance 2003 in other legislation shall be construed as references to corresponding provisions of this Ordinance.

(3) All licences, Directives, Orders and other instruments made or issued under the Banking Ordinance 2003 and having effect at the date of commencement of this Ordinance remain in force and have effect (until revoked or replaced) as if made under corresponding provisions of this Ordinance.

(4) The Regulatory Authority appointed under subsection (2) shall subsume the duties and responsibilities of the Regulatory Authority established under Section 3 of the Banking Ordinance 2003.

Schedule 1

Section 2

Regulated Activities

Part 1 Regulated Activities

Dealing in investments

1 (1) Buying, selling, subscribing for or underwriting investments or offering or agreeing to do so, either as a principal or as an agent.

(2) In the case of an investment which is a contract of insurance, that includes carrying out the contract.

Arranging deals in investments

2 Making, or offering or agreeing to make—

(a) arrangements with a view to another person buying, selling, subscribing for or underwriting a particular investment;

(b) arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

Deposit taking

3 Accepting deposits.

Safekeeping and administration of assets

4 (1) Safeguarding and administering assets belonging to another which consist of or include investments or offering or agreeing to do so.

(2) Arranging for the safeguarding and administration of assets belonging to another, or offering or agreeing to do so.

Managing investments

5 Managing, or offering or agreeing to manage, assets belonging to another person where—

(a) the assets consist of or include investments; or

- (b) the arrangements for their management are such that the assets may consist of or include investments at the discretion of the person managing or offering or agreeing to manage them.

Investment advice

6 Giving or offering or agreeing to give advice to persons on—

- (a) buying, selling, subscribing for or underwriting an investment; or
- (b) exercising any right conferred by an investment to acquire, dispose of, underwrite or convert an investment.

Establishing collective investment schemes

7 Establishing, operating or winding up a collective investment scheme, including acting as—

- (a) trustee of a unit trust scheme;
- (b) depositary of a collective investment scheme other than a unit trust scheme; or
- (c) sole director of a body incorporated by virtue of regulations under section 262.

Using computer-based systems for giving investment instructions

8 (1) Sending on behalf of another person instructions relating to an investment by means of a computer-based system which enables investments to be transferred without a written instrument.

(2) Offering or agreeing to send such instructions by such means on behalf of another person.

(3) Causing such instructions to be sent by such means on behalf of another person.

(4) Offering or agreeing to cause such instructions to be sent by such means on behalf of another person.

Financial Advice

9 The provision of financial advice if it is a regular feature of the business

Money Services Business

10 (1) Transmission of money on behalf of another person as part of a business

(2) Operation of a bureau de change

Part II Investments

General

In this Schedule, “Investments” shall include the following:

1 *Securities*

(1) Shares or stock in the share capital of a company.

(2) “Company” includes—

- (a) any body corporate (wherever incorporated), and

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- (b) any unincorporated body constituted under the law of a country or territory outside St. Helena,
- 2** *Instruments creating or acknowledging indebtedness*
Any of the following—
- (a) debentures;
 - (b) debenture stock;
 - (c) loan stock;
 - (d) bonds;
 - (e) certificates of deposit;
 - (f) any other instruments creating or acknowledging a present or future indebtedness.
- 3** *Government and public securities*
- (1) Loan stock, bonds and other instruments—
- (a) creating or acknowledging indebtedness; and
 - (b) issued by or on behalf of a government, local authority or public authority.
- (2) “Government, local authority or public authority” means—
- (a) the government of St. Helena, or of any country or territory outside St. Helena;
 - (b) a local authority in the United Kingdom or elsewhere;
 - (c) any international organisation the members of which include the United Kingdom .
- 4** *Instruments giving entitlement to investments*
- (1) Warrants or other instruments entitling the holder to subscribe for any investment.
- (2) It is immaterial whether the investment is in existence or identifiable.
- 5** *Certificates representing securities*
Certificates or other instruments which confer contractual or property rights—
- (a) in respect of any investment held by someone other than the person on whom the rights are conferred by the certificate or other instrument; and
 - (b) the transfer of which may be effected without requiring the consent of that person.
- 6** *Units in collective investment schemes*
- (1) Shares in or securities of an open-ended investment company.
- (2) Any right to participate in a collective investment scheme.
- 7** *Options*
Options to acquire or dispose of property.
- 8** *Futures*
Rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date.
- 9** *Contracts for differences*
Rights under—
- (a) a contract for differences; or
 - (b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in—
 - (i) the value or price of property of any description; or

- (ii) an index or other factor designated for that purpose in the contract.

10 *Contracts of insurance*

Rights under a contract of insurance.

11 *Participation in Lloyd's syndicates*

(1) The underwriting capacity of a Lloyd's syndicate.

(2) A person's membership (or prospective membership) of a Lloyd's syndicate.

12 *Loans secured on land*

(1) Rights under any contract under which—

(a) one person provides another with credit; and

(b) the obligation of the borrower to repay is secured on land.

(2) "Credit" includes any cash loan or other financial accommodation.

(3) "Cash" includes money in any form.

13 *Rights in investments*

Any right or interest in anything which is an investment.

Part III Further Interpretation Provisions

(1) In this Schedule—

"buying" includes acquiring for valuable consideration;

"offering" includes inviting to treat;

"property" includes currency of St. Helena or any other country or territory;

"selling" includes disposing for valuable consideration; and

references to an instrument include references to any record (whether or not in the form of a document).

(2) In paragraph (1), "disposing" includes—

(a) in the case of an investment consisting of rights under a contract—

(i) surrendering, assigning or converting those rights; or

(ii) assuming the corresponding liabilities under the contract;

(b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the contract or arrangements;

(c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists.

Part IV Exemptions

The following do not constitute "Investments":

An instrument acknowledging indebtedness for the consideration payable under a contract for the supply of goods and services