



**ST HELENA**

**REVISED EDITION OF THE LAWS, 2017**

**EMPLOYMENT & COMMERCE**

**FINANCIAL SERVICES ORDINANCE, 2008<sup>1</sup>**

*Ordinance 11 of 2008*

*In force 3 November 2008*

*Amended by Ordinances 2 of 2017 and 10 of 2019*

*Subsidiary legislation:*

**FINANCIAL SERVICES REGULATIONS, 2017**

*Legal Notice 14 of 2017*

*Page 34*

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**FINANCIAL SERVICES ORDINANCE, 2008**

**ARRANGEMENT OF SECTIONS**

**PART I  
PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Appointment of the Financial Services Supervisor and Regulatory Authority
4. Powers and duties of the Regulatory Authority.
5. Exemption from liability in damages

**PART II  
LICENSING OF REGULATED ACTIVITIES**

6. Licences for regulated activities
7. Contracts or agreements made by unauthorised persons
8. Application for a licence
9. Issuing of a licence
10. Restriction and revocation of a licence
11. Review
12. Use of the word “bank”
13. Participation in a relevant business
14. Control of a relevant business
15. Prohibited transactions
16. Large exposures

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 13 December 2019.

17. Own funds and reserves
18. Liquidity
19. Clients' money
20. Information to be submitted to the Regulatory Authority

### PART III DUTIES OF OFFICERS

21. Directors and managers
22. Supervision of relevant businesses
23. Right of entry to obtain information and documents
24. Investigations
25. Suspected offences
26. Obstruction
27. Co-operation and sharing of information
28. Communication by auditors etc. with the Regulatory Authority
29. Relevant businesses unable to meet obligations
30. Power of the Regulatory Authority to take control of a relevant business
31. Publication of audited financial statements
32. Auditors
33. Disqualification of officers
34. Duties of officers
35. Confidentiality

### PART IV ENFORCEMENT PROVISIONS

36. Injunctions and restitution
37. False and misleading statements
38. General provisions concerning offences

### PART V FINAL PROVISIONS

39. Regulations
  40. Repeal and transitional provisions
- Schedule 1: Regulated Activities

AN ORDINANCE to regulate banking and financial services provided in or from St Helena and to provide for the protection of clients' money.

### PART I PRELIMINARY

#### **Short title and commencement**

**1.** (1) The Ordinance may be cited as the Financial Services Ordinance, 2008 and comes into force on a day or days the Governor appoints 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 any transitional provisions that 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;
- “**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;
- “**corporate body**” means a body of persons having a legal personality distinct from that of its members;
- “**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 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 in force in St Helena relating thereto;
- “**control**” 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 corporate body;
- “**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 under section 4(4);
- “**director**” includes an individual occupying the position of director of a company, by whatever name 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**” is to 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 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 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 corporate body, 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% 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 is deemed to be the percentage of equity shares held, and “**qualifying shareholder**” is to be construed accordingly;
- “**reconstruction**” has the same meaning as in Division H of Part II of the Companies Ordinance, 2004;
- “**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 office receiving revenues;
- “**representative office**” means, in relation to a corporate body, 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 corporate body, 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% but not more than 10 % 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 is deemed to be the percentage of equity shares held, and “**significant shareholder**” is to be construed accordingly;
- “**subsidiary**” has the same meaning as “subsidiary undertaking” in the Companies Ordinance 2004.

(2) Subject to subsection (2A), a person is deemed to be accepting deposits of money if, whether as principal or as agent, the person accepts from the public deposits of money as a regular feature of the person’s business, or if, whether as principal or as agent, the person 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:

(2A) 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 does not of itself constitute acceptance of deposits of money for the purposes of this Ordinance.

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

(2) This section establishes a corporate body 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 are—

(a) the Financial Services Supervisor (as Chairman); and

(b) such other members as the Governor appoints by notice in the *Gazette*.

(3A) The Regulatory Authority must perform the functions conferred upon it by this or any other Ordinance, and any other functions 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) must be appointed for a period the Governor decides, and are entitled to receive any remuneration and allowances the Governor approves.

(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 is 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 licences.

(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 issue Directives as required for carrying into effect any of the provisions of this Ordinance.

- (5) Directives issued under subsection (4) may include, but are not 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 (as to which see section 16);
  - (f) liquidity requirements;
  - (g) capital requirements;
  - (h) internal controls;
  - (i) reporting requirements;
  - (j) accounting requirements.

(6) Directives, and any amendment or revocation of them, must be notified in writing to relevant businesses and the Regulatory Authority must make copies of them available to the public.

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

- (a) keep proper accounts of its income and expenditure; and
- (b) make an annual report to the Governor upon its activities, and include in the report 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 Chair acting alone, whether or not 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. (1)** Subject to subsection (2A), it is an offence for a person to carry on any relevant business in or from St Helena unless authorised to do so by a licence granted under this Ordinance authorising the person to carry on that type of business.

Penalty: (a) on summary conviction - a fine of £100,000 or imprisonment for 12 months, or both;

(b) on conviction on indictment - a fine, or imprisonment for 5 years, or both.

**(2A)** A person who is a legal practitioner or accountant and a member of an appropriate professional body may (without holding a licence as required by subsection (1)) provide financial advice if the provision of that advice is incidental to the provision of the person's primary service.

**(2)** A court on convicting a person of an offence against subsection (1) may order that any property owned by the offender and used by the offender in connection with the relevant business be forfeited to the Crown.

**(3)** The granting of a licence is subject to an annual fee that the Regulatory Authority prescribes, and different fees may be prescribed for different types of business.

**(4)** *Omitted*

### 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 the other party under the agreement;

(b) compensation for any loss sustained by the other party as a result of having parted with it; and

(c) without limiting paragraph (b), interest at a rate prescribed in a Directive.

### Application for a licence

**8. (1)** Any person desirous of commencing a relevant business in or from St Helena must, 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 corporate body;

(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 –

- (a) must be in a form and accompanied by information as prescribed by a Directive; and
- (b) may only be withdrawn by written notice to the Regulatory Authority before it has been granted or refused.

(4) Every application for a licence must 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 may require any person to provide any information it considers necessary for the purposes of deciding on an application for a licence or whether to restrict or revoke a licence.

(6) Every application for a licence must be accompanied by any fee prescribed by the Regulatory Authority; and different fees may be prescribed for different types of business.

(7) A person may, at least 9 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 apply with necessary modifications in respect of any such application.

(8) On an application under subsection (7), the annual report of activities for the last financial year must be submitted in addition to any other information or documents required by the Regulatory Authority under this section.

### **Issuing of a licence**

9.<sup>2</sup> (1) No person may be granted a licence unless the Regulatory Authority is satisfied that—

- (a) the resources of the person concerned are adequate in relation to the relevant business that the person 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 £1,000,000 or any other amount 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 2 individuals who will effectively direct the business in St Helena;
- (d) each applicant is a fit and proper person to carry on the relevant business;
- (e) all qualifying shareholders, controllers and 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;

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<sup>2</sup> Section 9 amended by Ord. 10 of 2019



(i) the applicant will only provide services to the types of customers specified in a 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 must determine each application for a licence within 6 months of receipt of the application or, if the application does not comply with section 8(4), or if additional information is required, within 6 months of compliance with that subsection or the provision 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 –

- (a) granting a licence without conditions;
- (b) granting a licence subject to conditions it considers appropriate; or
- (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 must be deemed to have been refused.

(6) Regulations made under section 39 may provide that the Regulatory Authority must not grant a licence in relation to prescribed classes of regulated activity.

(7) The Regulatory Authority may issue a licence under this section for a period not exceeding 5 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 1st December 2016 expires on 1<sup>st</sup> December 2020 and must be renewed on or before that date.

(10) The Regulatory Authority may, on application by a relevant business registered outside St Helena, grant that business a licence to carry on insurance business in St Helena and may (by way of a Directive) dispose of any of the requirements under this Ordinance and the regulations with respect to that business, if—

- (a) that business holds an appropriate licence to carry on insurance business in the country or territory where it is so registered; and
- (b) the Regulatory Authority is satisfied that the licensing requirements in that other country or territory are sufficient to ensure stringent control and oversight over that business by the corresponding authority in that country or territory.”.

### **Restriction and revocation of a licence**

10. (1) The Regulatory Authority may revoke a licence if the holder (or any of 2 or more joint holders)—

- (a) renounces the licence;
- (b) does not commence business pursuant to the licence within 12 months of its

- issue, or within any other period specified in the licence;
- (c) is declared bankrupt or goes into liquidation or makes a composition with creditors or goes into administration or is otherwise dissolved;
- (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 if—

- (a) any document or information accompanying an application for a licence or any information given in connection with the application 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 in a document or information which it was its duty to reveal or notify under this Ordinance;
- (b) the holder ceases to carry on the regulated activity in St Helena for more than 6 months;
- (c) the holder fails to comply with any provision of this Ordinance or any Directive issued under this Ordinance or with the conditions under which the licence is granted;
- (d) the holder no longer possesses adequate resources;
- (e) 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;
- (f) the holder has insufficient assets to cover its liabilities;
- (g) the holder has suspended payment or is about to suspend payment;
- (h) the Regulatory Authority considers that, because 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) the holder is in material breach of any provision of the Money Laundering Ordinance 2008 or any Directive issued under that Ordinance.

(3) Restrictions imposed by the Regulatory Authority pursuant to subsection (2) must be such 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. They may include (without limiting the power) a requirement—

- (a) regarding the removal of any officer of the business;
- (b) for any person who directly or indirectly possesses a qualifying shareholding in the relevant business to divest himself or herself or itself of all or part of that holding;
- (c) for the business to take or refrain from taking any action;
- (d) that the business not undertake any transaction or transactions or any class of business, or only undertake them upon terms the Regulatory Authority specifies.

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

(5) If the Regulatory Authority intends to restrict or revoke a licence or to vary any restriction, it must serve written notice of its intention on the business; such notice must specify the grounds upon which the Regulatory Authority intends to take action and must 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.

**(5A)** Unless the Regulatory Authority decides that the matter is urgent, it must not impose or vary any restriction or revoke a licence before the expiry of the period specified in a notice under subsection (5).

**(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 must 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 to—

- (a) impose any condition on the grant of a licence;
- (b) impose or vary any restriction;
- (c) revoke a licence;
- (d) close a representative office;
- (e) issue any notice or make any order under section 12; or
- (f) make any order under section 13,

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

**(2)** A request for a review by the Regulatory Authority does 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 except 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 the 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 except that, where there is a risk that the use of such a name may be misleading, the bank must add any explanatory particulars to its name that the Regulatory Authority directs.

(3) Every bank must use as part of its description or title the word “bank” or one or more of its derivatives.

(4) A person who contravenes subsection (1) or (3), or fails to comply with a direction given under subsection (2) commits an offence.

Penalty: (a) on summary conviction – a fine of £5,000 or imprisonment for 12 months, or both;

(b) on conviction on indictment – an unlimited fine, or imprisonment for 5 years, or both.

### **Participation in a relevant business**

13. (1) Regardless of anything contained in any other law, the consent of the Regulatory Authority must 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 20%, 33 % or 50%, as the case may be, 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 50% , 33% or 20% , as the case may be, 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, herself or itself 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 is the duty of a relevant business and of its directors to notify the Regulatory Authority immediately 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 is required before any relevant business may lawfully—

- (a) sell or dispose of its business or any significant part of it;
- (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 is the duty of all directors and qualifying shareholders of a relevant business to notify the Regulatory Authority immediately 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) must notify the Regulatory Authority in writing in a form and containing information specified by the Regulatory Authority.

**(7)** Within 2 months of receipt of such notification, or of receipt of any information the Regulatory Authority may lawfully require, whichever be the later, the Regulatory Authority must issue a notice—

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

**(7A)** A failure by the Regulatory Authority for any reason to issue a notice under subsection (7) within the prescribed period is to be construed as if a refusal notice had been issued in terms of paragraph (c) of that 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 affecting 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 any steps 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).

**(9)** A person who does an act which is unlawful under this section, or who fails to comply with an order made under subsection (8), commits an offence.

Penalty: (a) on summary conviction – a fine of £5,000 or imprisonment for 12 months, or both;

(b) on conviction on indictment – an unlimited fine, or imprisonment for 5 years, or both.

**(10)** On convicting a person of an offence under subsection (9) the court may order

that any property owned by the offender and used or acquired by the offender in connection with the offence be forfeited to the Crown

### **Control of a relevant business**

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

- (2)** Every relevant business must immediately 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 must provide the Regulatory Authority with any further information it requires 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 that person to cease to be a controller or restraining that person from becoming a controller.

### **Prohibited transactions**

**15. (1)** A bank must 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 corporate body in which the bank has control;
- (b)* grant or permit to be outstanding, unsecured credit facilities which in total exceed £1,000 or its equivalent in any other currency to—
  - (i)* any one of its directors or their spouses whether jointly or severally as well as with third parties;
  - (ii)* 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 any person of whom or of which any one or more of the bank's directors is a guarantor;
  - (iii)* 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 total exceed 12 months' emolument of the officer or employee;
- (d)* subject to subsection (2A), 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 15% of the bank's own funds and such holdings must not exceed in total 100% of its own funds;

- (e) without the consent of the Regulatory Authority acquire or hold shares in another company which is not a bank, exceeding 5% of that company's issued share capital;
- (f) subject to subsection (2B), purchase, acquire or otherwise hold any immovable property or any right over such property except as is reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff:

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

(2A) For purposes of subsection (1)(d) –

- (a) a bank's subsidiaries considered as a whole do not constitute a group of connected persons;
- (b) if the share capital acquired is that of a subsidiary bank the limit of 15% laid down is increased to 25% of the bank's own funds;
- (c) shareholding in companies other than those falling under paragraph (b) above must not exceed in total 60% of the bank's own funds;
- (d) if the said percentages are exceeded as a result of the acquisition of shares in satisfaction of debts due to the bank, the bank has a maximum of 12 months or any longer period determined by the Regulatory Authority, within which to comply with subsection (1)(d);
- (e) the Regulatory Authority may allow a bank to exceed temporarily the limits laid down subsection (1)(d) whenever, in the opinion of the Regulatory Authority, the excess is the result of an unavoidable reduction of the own funds of the bank;
- (f) if the bank is a parent or subsidiary undertaking, compliance with the limits laid down in subsection (1)(d) must be monitored on a consolidated basis.

(2B) Subsection (1)(f) does not prevent a bank–

- (a) from letting part of any building which is used for the purpose of conducting its business; or
- (b) 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 12 months, or any longer period determined by the Regulatory Authority;
- (c) in other instances, from acquiring immovable property with the prior approval of the Regulatory Authority, the original cost of which property not being in total more than 5% of the bank's own funds.

## Large exposures

16. The Regulatory Authority must from time to time issue Directives covering large exposures.

### **Own funds and reserves**

- 17.** (1) Every bank must—
- (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 times and in a manner prescribed by a Directive;
  - (c) notify the Regulatory Authority immediately if the ratio falls below the level required by paragraph (a) of this subsection whereupon the Regulatory Authority must require the bank to take necessary measures to restore the ratio to the required level within a period the Regulatory Authority determines.
- (2) Every bank must maintain adequate provisions for bad and doubtful debts.

### **Liquidity**

**18.** The Regulatory Authority must from time to time issue Directives specifying what constitutes 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**

**19.** Clients' money placed in a designated account with a bank in accordance with the provisions of a Directive or by an estate agent, legal practitioner or accountant must 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 must 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) any information the Regulatory Authority requires to satisfy itself that the business is complying with this Ordinance and the Directives;
  - (c) separate statements relating to its offices and branches outside St Helena in a form and at times the Regulatory Authority requires.
- (2) The requirements in subsection (1) 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) must be submitted in a form and for periods prescribed by a Directive.
- (4) The Regulatory Authority may require the auditors of a relevant business to provide the Authority 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 provided by any relevant business under subsections (1) and (2) must be regarded as secret and confidential except as between that



business and the Regulatory Authority.

### **PART III DUTIES OF OFFICERS**

#### **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 must provide the Regulatory Authority with all information about individuals who are prospective directors or managers necessary to allow the Regulatory Authority to determine whether the individual is a fit and proper person for the position

(3) A relevant business must 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 must submit to the Regulatory Authority any information that the Authority reasonably requests in the performance 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 under subsection (1) must be by notice in writing and must require the recipient to provide the information at a time or times or at intervals or in respect of a period or periods specified by the notice.

- (3) Without limiting 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 a time and at a place specified in that notice, a document or documents of a description so specified;
  - (c) authorise an officer, servant or agent of the Regulatory Authority, on producing evidence of his or her authority, to require any relevant business to provide him or her immediately with any information, or to produce to him or her immediately, any documents that he or she specifies, being information or documents the Regulatory Authority reasonably requires 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 subsection (3)(a) must be a person nominated or approved by the Regulatory Authority; and the Regulatory Authority may require the report to be in a form specified in the notice.

- (5) If, by virtue of subsection (3), any person has power to require the production of

any documents from a relevant business, that person has 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 the person's 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, the Authority 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, a 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 the person to furnish, within a time specified in the notice, any information or documents the Regulatory Authority reasonably requires for determining whether the person is suitable to hold the particular position which the person 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 the person—

- (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 may recover from a relevant business reported on under subsection (3) the costs and expenses incurred in relation to the report.

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

23. (1) Subject to subsections (2) and (3), 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 the information or documents specified in the authority, being information or documents that could have been required by such a notice.

(2) The Regulatory Authority must not authorise any person to act under subsection (1)(b) unless it has reasonable cause to believe that if a notice under section 22 or section 24 were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) If an entry as is mentioned in subsection (1) involves premises that are occupied for the purposes of habitation, entry must be carried out in the presence of a police officer of a rank not below that of Sergeant, and must not take place between 8.00 p.m. and 7.00 a.m..

### Investigations

24. (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 must 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 the investigation, the person 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.

(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) A person appointed under subsection (1) who decides to investigate the business of any person by virtue of subsection (2) or subsection (3) must inform that person by notice in writing.

(5) Every person who is or was an officer, employee, agent, banker or auditor of a body which is under investigation under this Ordinance, every person appointed to make a report in respect of that body under this Ordinance and anyone who has a significant or qualifying shareholding in that body, or is a controller of it ("**the requested person**"), must—

- (a) produce to the persons appointed under subsection (1), within a time and at a place they require, all documents relating to the body concerned which are in the custody or power of the requested person;
- (b) attend before the persons so appointed at a time and place they require; and
- (c) otherwise to give those persons all assistance in connection with the investigation which the requested person 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 must, if so required, produce evidence of his or her authority.

**(7)** No person may—

- (a) without lawful excuse fail to produce any documents which it is the person's 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 the person 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 the person—

- (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 may 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, a reference to a relevant business includes a reference to persons appearing to be carrying on a relevant business.

### **Suspected offences**

**25. (1)** If the Regulatory Authority has reasonable grounds for suspecting that a person has committed an offence under this Ordinance, it may by notice in writing require that person or any other person to—

- (a) provide, at a place specified in the notice and either immediately or at a time so specified, any information the Authority reasonably requires for the purpose of investigating the suspected offence;
- (b) produce, at a place specified in the notice and either immediately or at a time so specified, any documents, or documents of a description so specified, that the Authority reasonably requires for that purpose;
- (c) attend at a place and time specified in the notice, and answer questions relevant for determining whether such an offence has been committed.

**(2)** The Regulatory Authority or its 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 7.00 a.m. and 8.00 p.m., on producing if required evidence of his or her 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) A person must not without lawful excuse fail to comply with a requirement imposed on the person under this section or intentionally obstruct another 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 the person.

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

- (a) require the business immediately to take any steps the Regulatory Authority considers 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) If a competent person is appointed by the Regulatory Authority under paragraph (b) or (d) of subsection (6), the business must deliver to that person all the assets of which that person 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, is exercisable by and vest in that person to the exclusion of the business.

## **Obstruction**

**26.** (1) A 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,

must not falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which the person knows or suspects are or would be relevant to such an investigation, unless the person proves that he or she had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

(2) A person who contravenes subsection (1) commits an offence triable only on indictment.

Penalty: A fine of £500,000 or imprisonment for 5 years, or both.

### **Co-operation and sharing of information**

**27. (1)** The Regulatory Authority may –

- (a) 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
- (b) 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 must 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 must 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 is to be regarded as contravened by reason of the auditor or appointed person 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 the person becomes aware in his or her capacity as the person making the report and which—

(a) relates to the business or affairs of the relevant business in relation to which the 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 the person becomes aware in his or her capacity as the person making the report and which—

- (a) relates to the business or affairs of the relevant business in relation to which the 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 section 24(2).

### **Relevant businesses unable to meet obligations**

**29.** Notwithstanding any investigation provided for in this Ordinance—

- (a) a relevant business that considers that it is likely to become unable to meet its obligations or that it is about to suspend payment, must immediately inform the Regulatory Authority and the Governor in writing;
- (b) if 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, the Authority must immediately 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 do all or any of the following—

- (a) require the relevant business immediately to take such steps as the Regulatory Authority considers 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 any other function or functions in respect of the business, or part of it, that the Regulatory Authority directs;
- (e) revoke or restrict a licence in accordance with section 10;
- (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) If a competent person is appointed by the Regulatory Authority—

- (a) under subsection (1)(b) - the relevant business must act in accordance with the advice given by such person unless and until the Regulatory Authority otherwise directs;
- (b) under subsection (1)(c) - the relevant business must deliver to such person all the assets of which the person 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, is exercisable by and vest in that person to the exclusion of the business;

- (c) under subsection (1)(d) - the relevant business must submit its business to the control of such person and must provide the person with any facilities the person requires in order to carry on that business or to carry out the functions assigned to the person 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, are exercisable by and vest in that person to the exclusion of any other person.
- (3)** If 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 those paragraphs is placed in charge or in control, cease, unless or until the Regulatory Authority otherwise directs or an express provision of law specifically provides otherwise, to be so exercisable;
  - (b) the person appointed under either of those paragraphs has, in respect of any property, partnerships, firms or other business the Regulatory Authority specifies 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, the powers, functions and duties, including legal and judicial representation, that the Regulatory Authority directs, and any such power, function or duty is exercisable by and vests in that person to the exclusion of any other person;
  - (c) the person appointed under either of those paragraphs may require any other person to provide the person appointed with any facilities he or she considers 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 ceases to apply to, and ceases to operate in respect of, any property, partnership, firm or other business specified by the Regulatory Authority under paragraph (b), unless and until, or except to the extent that, the Regulatory Authority otherwise directs; and in any such case the person appointed must, 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 of subsection (1) must submit to the Governor in Council 6-monthly reports of the person's activities and annual accounts of all transactions carried out by the person in the performance of his or her functions, audited by an independent auditor.
- (3A)** In relation to subsection (3)(b)—
- (a) the Regulatory Authority may direct that all or any of the powers, functions or duties it directs are to be exercisable by any other person, and in any such case, with effect from a date or dates the Regulatory Authority specifies and unless and until the Regulatory Authority otherwise directs, the powers, functions and duties to which the direction of the Regulatory Authority applies are exercisable by and vest in such other person appointed for the purpose to the exclusion of all others;



(b) if the Regulatory Authority is of the opinion that the relevant business has ceased to have any interest as aforesaid, it must direct that any powers, functions and duties exercisable under subsection (3)(b) cease to be so exercisable, but any such direction does not affect anything done or omitted to be done by virtue or by reason of any of the aforesaid powers, functions or duties.

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

(5) The foregoing provisions 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 under them 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 ceases to be a party to, and must be excluded from, any such act or proceedings.

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

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

### **Publication of audited financial statements**

**31.** (1) Subject to subsection (2), every relevant business which is a corporate body must, not later than 4 months after 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.** (1) (a) Subject to paragraph (b), every relevant business which is a corporate body must each year appoint an approved auditor whose duty is 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 (being a member in good standing of an internationally recognised body responsible for regulating the activities of the accounting profession) who is 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 must fix the remuneration to be paid by that business to such auditor.

- (3) The auditor's report must contain statements as to whether –
- (a) in the auditor's 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) in the auditor's opinion, and to the best of the auditor's knowledge and according to the explanations given to the auditor, the financial statements give the information required by any law which is from time to time in force in the matter;
  - (c) the auditor has obtained all the information and explanations which to the best of the auditor's knowledge and belief were necessary for the purpose of the audit.

(4) In the case of a registered company or mutual organisation the report of the auditor must 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 has the right to demand from any officer or employee of the business any information or explanation that the auditor considers necessary for the performance of the auditor's duties

(6) A relevant business must immediately give written notice to the Regulatory Authority—

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

(7) The Regulatory Authority may require a relevant business to change its appointed auditor at any time during the term of office of the auditor if, in the Regulatory Authority's opinion, the auditor is considered unfit for the appointment.

- (8) An auditor must immediately advise the Regulatory Authority if the auditor—
- (a) resigns;
  - (b) does not seek to be re-appointed; or
  - (c) decides to qualify the audit report.

(9) If, in a capacity as 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 –

- (a) that business;
- (b) the branches in St Helena, Ascension or Tristan da Cunha of a relevant business which is not incorporated in St Helena; or
- (c) any connected person which is a relevant business,

the auditor must 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 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.** A person must not act or continue to act as an officer of a relevant business if the person—

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

### **Duties of officers**

**34.** Every officer of a relevant business must take all reasonable steps to—

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

### **Confidentiality**

**35. (1)** Subject to 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 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)** Subsection (1) does not prohibit the disclosure of information—

- (a) for the purposes of any criminal proceedings whether under this Ordinance or otherwise;
- (b) in connection with any other proceedings arising out of this Ordinance; or
- (c) in order to enable the Regulatory Authority to comply with any obligation imposed

on it by or under this Ordinance

**(3)** This Ordinance does not 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—

- (a) this Ordinance or any Directives issued under it;
- (b) the Money Laundering Ordinance 2008 or any Directives issued under it.

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

- (a) when authorised to do so by or under this Ordinance;
- (b) for the purpose of the performance of the person's duties or the exercise of the person's 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)** If an officer of a relevant business has reason to believe that a transaction or a proposed transaction could involve money laundering, the officer must act in accordance with any guidelines provided by the Regulatory Authority, and nothing done in compliance with the provisions of this subsection constitutes a breach of confidentiality.

**(6)** Notwithstanding 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, does not constitute a breach of confidentiality; and for the purposes of this subsection, a connected person or a group of connected persons or members of such group are also to be considered mutual customers.

## **PART IV ENFORCEMENT PROVISIONS**

### **Injunctions and restitution**

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

- (a) there is a reasonable cause to believe that any person will contravene a requirement of this Ordinance or
- (b) any person has contravened a provision 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 that—

- (a) any person has contravened a provision of this Ordinance; and
- (b) 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 any steps the court directs to remedy it.

### **False and misleading statements**

- 37. (1)** It is an offence for a person ('A') to—
- (a) make a statement, promise or forecast which A knows to be misleading, false or deceptive, or dishonestly conceal any material facts; or
  - (b) recklessly make (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,

if A 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 ('B') (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 A or any other person ('C'); or
- (ii) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit or investment.

Penalty: A fine of £10,000

**(2)** A 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, commits an offence.

Penalty: A fine of £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)** It is an offence for a person to—
- (a) contravene or fail to comply with any of the provisions of this Ordinance for which no separate penalty is provided;
  - (b) contravene or fail to comply with the provisions of any Directive or regulation;
  - (c) fail to comply with any lawful order or requirement of the Regulatory Authority;
  - (d) fail to comply with any lawful order or requirement of any other person made under this Ordinance;
  - (e) without reasonable excuse alter, suppress, conceal, destroy or refuse to produce any document which the person is lawfully required to produce by any other person under this Ordinance; or
  - (f) willfully obstruct any person exercising powers or functions under this Ordinance.

Penalty: A fine of £5,000 or imprisonment for 2 years, or both.

**(2)** If an offence under this Ordinance is committed by a corporate body and is proved to have been committed with the consent or connivance of any manager, secretary or other similar officer of the corporate body, or of any person who was purporting to act in such capacity, that officer or person, as well as the corporate body, commits that offence and is 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.

(aa) Such regulations may not provide for a financial penalty exceeding £10,000.

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

## **PART V FINAL PROVISIONS**

### **Regulations**

**39.** (1) The Governor in Council may make regulations generally for the better carrying into effect of the provisions of this Ordinance, but must 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 apply to representative offices in St Helena as they apply to a relevant business.

### **Repeal and transitional provisions**

**40.** *Omitted*

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

- (b) 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 if—

- (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**” include the following:

#### **1. Securities**

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

(2) “Company” includes—

(a) any corporate body (wherever incorporated); and

(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

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**FINANCIAL SERVICES ORDINANCE, 2008**

**FINANCIAL SERVICES REGULATIONS, 2017**

(Section 39)

TABLE OF CONTENTS

1. Citation

PART 1  
PROVISION OF SERVICES

2. Service to eligible customers  
3. Customer Protection  
4. Clients’ money  
5. Banking services on St Helena

PART 2  
PROVISIONS RELATING TO AUTHORISED BANKS

6. Reporting Requirements

7. Own Funds
8. Liquidity
9. Large Exposures
10. Accounting and Other Records
11. Records
12. Information for Management
13. Internal Controls
14. High level controls
15. General Controls
16. Control Objectives
17. Controls to protect electronic information
18. Applications for Licence
19. Audited Accounts
20. Supervision

**PART 3**  
**PROVISIONS RELATING TO INSURANCE BUSINESS OPERATIONS**

21. Applications for Licence
22. Internal Controls
23. Information for Management
24. Reporting Requirements and Supervision

**PART 4**  
**ANNUAL REPORT**

25. Regulatory Authority to prepare annual report

**Citation**

1. These Regulations may be cited as the Financial Services Regulations, 2017.

**PART 1**  
**PROVISION OF SERVICES**

**Service to eligible customers**

2. (1) Persons licensed under the Ordinance may only provide services to customers who meet any one of the following criteria:
  - (a) has St Helenian status;
  - (b) has a current entitlement to paid employment on St Helena;
  - (c) owns or leases (minimum two year lease) land in St Helena;
  - (d) is a dependent relative of a person who meets any of the criteria in paragraph (a), (b) or (c) and that dependent relative lives in St Helena;
  - (e) is a business registered in St Helena;
  - (f) is a St Helena based voluntary organisation;
  - (g) is a partnership operating a business in St Helena whose members have a current work permit;
  - (h) is a visitor to St Helena where the service is directly related to their activity on the island;

- (i) is a prospective inward investor (provided the regulated service is limited to the provision of financial advice.)
- (2) The services must be discontinued if the customer ceases to be eligible to receive them.

### **Customer Protection**

- 3. (1) An investment business intending to offer financial products or services to residents of St Helena must prepare a product description setting out the following:
  - (a) the nature of the product or service to be offered;
  - (b) a detailed description of the risks relating to the product or service in terms which can be understood by an unsophisticated investor; and
  - (c) any charges or commissions relating to the product or service.
- (2) Each product description must be clear and not misleading.
- (3) The product or service may not be offered to residents of St Helena until the Regulatory Authority has confirmed that it has no objection to such action.

### **Clients' money**

- 4. (1) Clients' money must be paid into a segregated account with a bank authorised by the Regulatory Authority or a bank authorised in an Organisation for Economic Co-operation and Development (OECD) member country and held in trust for the client.
- (2) Any bank holding such accounts must be notified at the time the account is opened that it is a client's money account.
- (3) Withdrawals from a client's money account can only be made to—
  - (a) purchase investments as specified by the client; or
  - (b) repay money to the client.

### **Banking services on St Helena**

- 5. (1) A company incorporated outside St Helena which carries on the business of banking and contemplates setting up operations on St Helena, Ascension or Tristan da Cunha, hereinafter "the applicant bank", shall seek approval of the Regulatory Authority before carrying on any business on St Helena, Ascension or Tristan Da Cunha.
- (2) A person in breach of subsection (1) is guilty of an offence for which the maximum penalty on conviction is a fine of £50,000.
- (3) An applicant bank shall submit the following documents to the Regulatory Authority for the purpose of obtaining approval:
  - (a) copy of the applicant bank's legal constitution in its country of registration;
  - (b) copy of the applicant bank's licence to operate as a bank;
  - (c) the applicant bank's audited accounts for the five years prior to the application;
  - (d) full details in relation to the applicant bank's directors including—
    - (i) full names and current address;

- (ii) nationality or nationalities;
- (iii) other directorships;
- (e) any other documents that the Regulatory Authority may require.

(4) The Regulatory Authority may, within three months of having received an application by an applicant bank, approve or reject such application.

(5) The Regulatory Authority may approve an application subject to conditions to be applied from time to time.

## PART 2 PROVISIONS RELATING TO AUTHORISED BANKS

### Reporting Requirements

6. (1) Banks are required to provide the Regulatory Authority with the following returns on a calendar month basis:

- (a) Balance Sheet as per form BS1;
- (b) Profit and Loss Account as per form PL1;
- (c) Maturity Analysis of Assets and Liabilities as per form MA1;
- (d) Liquidity Statement as per form LQ1;
- (e) Large Exposures return as per form LE1, including large exposures to connected persons;
- (f) Capital Position as per form CA1;
- (g) Statement of Interest Rate exposure as per form IR1;
- (h) Certificates signed by the bank's internal auditor confirming the reconciliation of the bank's accounts with other banks and confirming the reconciliation of all suspense accounts.

(2) Banks are required to provide the Regulatory Authority with the following returns on a quarterly basis:

- (a) A list of relationships where the banking exposure is receiving close attention and monitoring by the bank's own management "watch list";
- (b) Statement of Unauthorised Overdrafts as per form UO1, including a list of large exposures receiving special attention;
- (c) Statement of Investments as per form INV1.

(3) All returns must be signed by the manager and be submitted to the Regulatory Authority in electronic format within 10 working days of the relevant month end.

### Own Funds

7. (1) Banks must maintain the minimum own funds level specified in section 9(1)(b) of the Ordinance at all times.

(2) Banks must maintain a specified ratio of Own Funds to Risk Weighted Assets. The Regulatory Authority shall determine an appropriate ratio for each bank taking account of the nature and scale of the business and the risks inherent in that business. This ratio shall not be less than 15%.

- (3) Own Funds shall comprise:
- (a) Shareholders' equity;
  - (b) Balance on profit and loss account;
  - (c) Less: Intangible assets.
- (4) Risk weighted assets shall comprise:

<b>Asset</b>	<b>Weighting</b>
(a) Private Sector Lending	100%
(b) Housing Loans	50%
(c) Undrawn Facilities	50%
(d) Guarantees	100%
(e) UK Government Securites	10%
(f) Loans to St Helena Government	20%
(g) Fixed Assets	100%
(h) Balances with banks headquartered in Zone A Countries	20%
(i) Balances with banks headquartered in Zone B countries with residual maturity under 1 year	20%
(j) Net open position in foreign currencies	100%

- (5) (a) Undrawn facilities include all commitments by the bank to lend to customers where the customer has the right to draw on the facility without further authorisation from the bank.
- (b) Where an exposure is unconditionally guaranteed by a third party the risk weighting will be that appropriate to the guarantor.
- (c) "Zone A" countries now comprise members of the European Union, the USA and Switzerland.
- (d) "Zone B" comprises all countries not in Zone A.
- (e) Net open position in foreign currencies is the amount of foreign currency (excluding sterling) notes held plus any foreign currency balances with banks.

(6) The Regulatory Authority may vary these weightings or add additional asset categories (taking account of the Basle Accord 1988 and any subsequent changes or amendments) by giving not less than three months' notice to the banks.

## **Liquidity**

8. (1) Banks must maintain adequate liquidity taking account of the nature and scale of the business, so that they are able to meet their obligations as they fall due.

(2) Banks must maintain liquid assets in St Helena of not less than 0.5% of current and deposit account balances and undrawn commitments and total liquid assets of not less than 25%.

- (3) Liquid assets shall comprise:
- (a) St Helena notes and coin;
  - (b) UK notes and coin;
  - (c) Sight deposits with Zone A banks;
  - (d) 80% of the nominal value of UK Government Securities or Certificates of

Deposit with Zone A banks.

## Large Exposures

**9. (1) “Exposure”** means the maximum loss which the bank would incur if a customer, or group of related customers, were to fail to meet their obligations, ignoring any collateral that might be held. This includes both direct exposure through lending, and indirect exposure through the holding of securities, guarantees, or other contingent liabilities. The relevant amount of an exposure is the amount that the bank has committed to the customer, regardless of the amount actually drawn at any point in time.

**(2)** A **“Large Exposure”** is any exposure of £100,000 or more.

**(3)** Exposures of £150,000 or more cannot be entered into unless the Regulatory Authority has confirmed that it has no objection to the exposure under consideration.

**(4)** Aggregate individual exposures greater than 10% of own funds cannot exceed 300% of own funds, unless the Regulatory Authority has confirmed that it has no objection to the excess.

**(5)** Banks must not enter into a transaction, or series of connected transactions, with a single customer or group of related customers, which would result in the bank having an exposure which exceeds 25% of its own funds.

**(6)** Exposures to individual banks greater than the Bank of St Helena’s own funds cannot be entered into unless the Regulatory Authority has confirmed that it has no objection to the exposure under consideration.

**(7)** Exposures to the St Helena and United Kingdom Governments are exempt from these restrictions.

**(8) “Connected Lending”** means loans—

*(a)* to Connected Persons who are any one of the bank’s directors, employees or their partners, whether jointly or severally as well as with third parties;

*(b)* 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 the bank’s directors is a guarantor; or

*(c)* 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.

**(9)** All connected lending of £100,000 or more is to be reported on form LE even if deemed to be in the ordinary course of business.

## Accounting and Other Records

**10.** It is the responsibility of the bank’s directors and managers to take reasonable care to establish and maintain such systems and controls as are appropriate to the nature, scale

and complexity of the business.

## **Records**

- 11.** The bank's records should be such as to—
- (a) capture and record on a timely basis and in an orderly fashion, every transaction or commitment which the bank enters into, with sufficient information to explain—
    - (i) its nature and purpose;
    - (ii) any asset or liability, actual or contingent, which respectively arises or may arise from it; and
    - (iii) any income or expenditure, current or deferred, which arises from it.
  - (b) provide details, as appropriate, for each transaction and commitment, showing—
    - (i) the parties to the transaction;
    - (ii) the amount and currency;
    - (iii) the contract, rollover, value and settlement or repayment dates;
    - (iv) the contracted interest rates of the transaction or commitment;
    - (v) the contracted exchange rate of a foreign exchange transaction or commitment;
    - (vi) the contracted commission or fee payable or receivable, together with any other related payment or receipt;
    - (vii) the nature and current estimated value of any security for a loan or other exposure; the physical location and documentary evidence of such security;
  - (c) be maintained in such a manner that financial and business information can be extracted promptly to enable management to—
    - (i) identify, measure, monitor and control the quality of the bank's assets and safeguard them, including those held as custodian;
    - (ii) identify, measure, monitor and control its exposures by related counterparties across all products;
    - (iii) identify, measure, monitor and control its exposures to liquidity risk, and foreign exchange and other market risks across all products;
    - (iv) monitor the performance of all aspects of its business on an up-to-date basis; and
    - (v) make timely and informed decisions.
  - (d) contain details of exposure limits authorised by management which are appropriate to the type, nature and volume of business undertaken;
  - (e) provide information which can be summarised in such a way as to enable actual exposures to be readily, accurately and regularly measured against these limits;
  - (f) contain details of the factors considered, the analysis undertaken and the authorisation or rejection by management of a loan, advance or other credit exposure.

## **Information for Management**

**12. (1)** Every bank should prepare information for directors and management so that they can monitor, assess and control the performance of its business, the state of its affairs and the risks to which it is exposed, including in particular exposure to the risk of money laundering and terrorist financing.

**(2)** It is the responsibility of directors and management to decide what information is required and to decide who should receive it.



- (3) Appropriate management information should be provided to—
- (a) persons responsible for exercising managerial functions or for maintaining accounting and other records;
  - (b) executives who, either alone or jointly, are responsible under the immediate authority of the directors for the conduct of the business of the bank; and
  - (c) the directors of the bank.
- (4) This information should be prepared—
- (a) to show the state of affairs of the bank;
  - (b) to show the operational results of the business both on a cumulative basis and by discrete period, and to give a comparison with budgets and previous periods;
  - (c) to provide an analysis of assets and liabilities showing how they have been valued;
  - (d) to provide an analysis of its off-balance sheet position showing how they have been valued;
  - (e) to provide an analysis of income and expenditure showing how it relates to different categories of asset and liability and off-balance sheet positions; and
  - (f) to show the bank's exposure to each type of risk, compared to the relevant limits set by management.

### **Internal Controls**

13. A system of dual internal control should be designed and operated to provide reasonable assurance that—
- (a) all the bank's revenues accrue to its benefit;
  - (b) all expenditure is properly authorised and disbursed;
  - (c) all assets are adequately safeguarded;
  - (d) all liabilities are recorded;
  - (e) all statutory requirements relating to the provision of accounts are compiled with and all prudential reporting conditions are adhered to.

### **High level controls**

14. High level controls are the controls which are primarily exercised at director and senior manager level, as distinct from the detailed controls, the operation of which is delegated to others and typically include—
- (a) the setting of strategy and plans. The strategic plan should be documented and consider the external factors that might impact on the business in the near future, for example macro economic factors and competition. The strategic plan should be reviewed annually and is a key document for the production of the annual business plan and budget that will set out how the bank will achieve its goals for the coming year. Some banks may also consider it appropriate to establish trigger points on key indicators to identify adverse trends in the business that would cause the Board to revisit its strategy or business plan. For banks that are part of a larger group, the strategic plan and annual business plan may be produced on an integrated, group-wide basis;
  - (b) approval of risk policies including risk capital appetite and a risk management framework appropriate to the business;
  - (c) establishment and review of the organisational structure;
  - (d) the system for delegation;
  - (e) review of high level management information;

- (f) maintaining the framework for monitoring and/or periodic review of risk management and detailed control systems and for the implementation of action points following such a review.

### **General Controls**

- 15. (1)** Internal control systems should provide reasonable assurance that—
- (a) the business is planned and conducted in an orderly and prudent manner in adherence to the Bank’s written and Board Approved policies;
  - (b) transactions and commitments are entered into in accordance with management’s general or specific authority;
  - (c) management is able to safeguard the assets and control the liabilities of the business;
  - (d) there are measures to minimise the risk of loss from irregularities, fraud and error, and promptly and readily to identify them when they occur;
  - (e) the accounting and other records of the business provide complete, accurate and timely information;
  - (f) management is able to monitor on a regular and timely basis, among other things, the adequacy of the bank’s capital, liquidity, profitability and the quality of its assets;
  - (g) management is able to identify, regularly assess and, where appropriate, quantify the risk of loss in the conduct of the business so that—
    - (i) the risks can be monitored and controlled on a regular and timely basis; and
    - (ii) appropriate provisions can be made for bad and doubtful debts, and for any other exposures both on and off balance sheet;
  - (h) management is able to comply with the Regulatory Authority’s reporting rules and to submit them on a timely basis; and
  - (i) the bank is able to comply with the other notification requirements under the Ordinance.
- (2)** It is a responsibility of directors and management—
- (a) to review, monitor and test its systems of internal control on a regular basis in order to assure their effectiveness on a day-to-day basis and their continuing relevance to the business; and
  - (b) to establish, regularly test, and maintain appropriate and effective arrangements to whereby the bank’s operations may be continued and the integrity of its records and information systems may be maintained in the event of any reasonably foreseeable adverse occurrence.

### **Control Objectives**

- 16.** Each bank should address the following control objectives:
- (a) Organisational structure: Banks should have documented the high level controls in their organisation which—
    - (i) define allocated responsibilities;
    - (ii) identify lines of reporting for all aspects of the enterprise’s operations, including the key controls and giving outline job descriptions for key personnel;
  - (b) Risk management: A bank should document its risk management framework and its appetite for each type of risk setting out how the risks in the business are identified, measured, monitored and controlled;
  - (c) Monitoring procedures: A bank should have procedures in place to ensure that

relevant and accurate management information covering the financial state and performance of the bank and the risk exposures which the bank has entered into is provided to appropriate levels of management on a regular and timely basis. Procedures should also be in place which are designed to provide reasonable assurance of compliance with the bank's policies and practices, including any limits on delegated authority referred to above, and with statutory, supervisory and regulatory requirements;

- (d) Segregation of duties: A prime means of control is the separation of those responsibilities or duties which would, if combined, enable one individual to record and process a complete transaction. Segregation of duties reduces the risk of intentional manipulation or error and increases the element of checking, and—
  - (i) functions which should be separated include those of authorisation, execution, valuation, reconciliation, custody and recording;
  - (ii) in the case of a computer-based accounting system, systems development and daily operations should be separated;
  - (iii) for smaller banks, segregation of duties can be difficult due to limited number of staff, in such circumstances, the Board should satisfy itself that the bank is not running undue risk and that there are compensating controls in place, eg frequent review of the area by internal audit and/or executive directors;
- (e) Authorisation and approval: All transactions should require authorisation or approval by an appropriate person and the levels of responsibility should be recorded as prescribed above;
- (f) Completeness and accuracy: Banks should have controls to ensure that all transactions to be recorded and processed have been authorised, are correctly recorded and are accurately processed;
- (g) Safeguarding assets: A bank should have controls designed to ensure that access to assets or information is limited to authorised personnel;
- (h) Personnel: There should be procedures to ensure that personnel have capabilities commensurate with their responsibilities. The proper functioning of any system depends on the competence and integrity of those operating it.

### **Controls to protect electronic information**

**17. (1)** Every bank must take all necessary steps to protect all information held by the bank, and in particular information held in electronic form within the bank's information systems, against unauthorised access and disclosure.

- (2)** The system of controls established must ensure protection against—
  - (a) fraud and theft;
  - (b) errors;
  - (c) service interruption and failure;
  - (d) misinformation which may affect audit trails or processing of individual transactions.

**(3)** Every bank must promote and maintain a climate of security awareness and vigilance throughout the bank and must—

- (a) make provision for information technology security education and training, designed to make staff aware of the need for, and their role in, supporting good information technology security practice and the importance of protecting company assets;
- (b) establish information technology security policy, standards, procedures and

responsibilities, designed to ensure that arrangements are adequate and appropriate.

### Applications for Licence

**18. (1)** All applications for a licence to conduct a banking business in accordance with the Financial Services Ordinance 2008 shall be accompanied by the following information:

- (a) a statement setting out the nature and scale of the banking business which the applicant intends to carry on, including the specific banking services to be provided, the arrangements for the management of that business and any plans of the applicant for future development of that business; and
- (b) details of the corporate structure of the bank; and
- (c) details of every individual who is, or is to be, a director, controller or manager of the bank; and
- (d) details of the individuals who will effectively direct the business of the bank; and
- (e) statements of the policies of the bank with regard to lending, liquidity and risk management: and
- (f) the organisational structure of the bank; and
- (g) the proposed capital structure of the bank; and
- (h) a description of the control environment in the bank; and
- (i) the proposed location of the bank; and
- (j) the name of the auditor of the bank; and
- (k) any other information specified by the Regulatory Authority.

**(2)** This application must be signed by two directors of the bank, or two individuals who will become directors of the bank if the application is successful, certifying that the information provided is to the best of their knowledge and belief complete and accurate.

### Audited Accounts

**19. (1)** The accounts to be published in accordance with section 31(1) of the Ordinance will include the following information:

- (a) a statement of assets and liabilities in the following format:

<b>Liabilities</b>	<b>Assets</b>
Shareholders' equity	Cash
	Investments - UK Government
	- other
Balance on Profit and Loss Account	Deposits on call
Personal Current Accounts	Deposits at fixed notice
Business Current Accounts	Personal loans
Savings Accounts	Business Loans
Business Deposit Accounts	Personal Overdrafts
Personal Deposit Accounts	Business overdrafts
Provision for Bad and Doubtful Debts	Housing Loans
Provisions for Operational Risk	Fixed Assets
Other liabilities	

- (b) a Profit and Loss or Income and Expenditure account in the following format:
  - (i) Interest Receivable

- (ii) Interest Payable
- (iii) Net Interest Income
- (iv) Fees Receivable
- (v) Profits (less losses) on sale of securities
- (vi) Profits (less losses) on Foreign Exchange Transactions
- (vii) Other income
- (viii) Total income
- (ix) Employee Costs
- (x) Premises Costs
- (xi) Systems Costs
- (xii) Depreciation of fixed assets
- (xiii) Fees payable
- (xiv) Other expenses
- (xv) Total Costs
- (xvi) Provisions for bad and doubtful debts
- (xvii) Write down in the value of securities
- (xviii) Net profit or loss/Surplus or deficit
- (c) a statement of the accounting policies used in the preparation of the accounts;
- (d) a statement of movements in shareholders' equity;
- (e) a statement showing the value of fixed assets and the depreciation charge for the year;
- (f) a statement showing the movement in provisions for bad and doubtful debts during the year;
- (g) a statement showing the market value of any securities held;
- (h) an analysis of interest income and interest expense;
- (i) a signed copy of the auditors report;
- (j) a directors report commenting on the financial performance of the bank and confirming that to the best of their knowledge and belief all requirements of the Regulatory Authority have been met and that there have been no events since the year end which have had a material effect on the bank.

## **Supervision**

- 20. (1)** The Regulatory Authority will receive monthly reports from the bank.
- (2)** These reports will allow the Regulatory Authority to check that the provisions of the Financial Services Ordinance 2008 and the Directives are being complied with.
- (3)** The Regulatory Authority may vary the frequency of all or any of the reports as it deems necessary.
- (4)** The Regulatory Authority will review all the reports and monitor the trends in the business to satisfy itself that the bank is being run in a prudent manner. Particular attention should be paid to the lending activity especially the trend in non-performing loans and the level of bad and doubtful debt provisions.
- (5)** The trend in the profit and loss account should be reviewed to ensure that the business continues to be viable.
- (6)** On an annual basis the Regulatory Authority should meet with the management

of the bank to discuss—

- (a) any issues arising from the analysis of the returns;
- (b) the general trends in the business;
- (c) any significant staff issues;
- (d) the individual large exposures;
- (e) any significant connected lending;
- (f) any significant non-performing assets;
- (g) any future plans for the business.

(7) A record should be kept of all meetings with banks and any significant issues which arise.

(8) The Regulatory Authority may change the frequency of these meetings as it deems necessary.

(9) Once a year the Regulatory Authority should ask the auditors to audit one of the returns provided to them by the bank or such other aspects of the bank's business as the Regulatory Authority may require. The auditors should be asked to report on the completeness and accuracy of the return or the state of the business audited as appropriate. The costs of such audits will be met by the Regulatory Authority.

(10) The Regulatory Authority should meet with the auditors and representatives of the bank to discuss any issues which may have arisen from the audit of the return and the annual accounts.

(11) Once a year the Regulatory Authority should meet with the board of the bank to discuss any significant issues that have arisen during the year and the future plans for the bank.

### **PART 3 PROVISIONS RELATING TO INSURANCE BUSINESS OPERATIONS**

#### **Applications for Licence**

**21.** (1) All applications for a licence to carry on insurance business in accordance with the Ordinance shall be accompanied by the following information:

- (a) A statement setting out the nature and scale of the insurance business which the applicant intends to carry on, including the specific insurance services to be provided, the arrangements for the management of that business and any plans of the applicant for future development of that business; and
- (b) details of the corporate structure of the business; and
- (c) details of every individual who is, or is to be, a director, controller or manager of the business; and
- (d) details of the individuals who will effectively direct the business; and
- (e) statements of the policies of the bank with regard to underwriting limits and practices, and to the nature, level and source of reinsurance cover to be obtained; and
- (f) the organisational structure of the business; and
- (g) the proposed capital structure of the business; and
- (h) a description of the control environment in the business; and
- (i) the proposed location of the business; and
- (j) the name of the auditor of the business; and

(k) any other information specified by the Regulatory Authority.

(2) This application must be signed by two directors of the business, or two individuals who will become directors of the business if the application is successful, certifying that the information provided is to the best of their knowledge and belief complete and accurate.

### **Internal Controls**

**22.** (1) A system of internal control should be designed and operated to provide reasonable assurance that—

- (a) the business is planned and conducted in a sound and prudent manner and in adherence to established policies;
- (b) transactions and commitments are entered into in accordance with management's general or specific authority;
- (c) management is able to—
  - (i) establish a prudent valuation of the insurance liabilities (including those incurred but not reported, and potential liabilities which may arise in relation to unexpired risks for which insurance cover has been provided);
  - (ii) safeguard the assets of the business and value them on a prudent basis, having regard to the need to ensure that they are appropriately matched to the liabilities in duration and quality;
- (d) there are measures to minimise the risk of loss from irregularities, fraud and error, and promptly and readily to identify them when they occur;
- (e) the accounting and other records of the business provide complete, accurate and timely information;
- (f) management is able to identify, regularly assess and, where appropriate, quantify the risk of loss in the conduct of the business so that the risks can be monitored and controlled on a regular and timely basis;
- (g) management is aware of and able to comply with any requirements imposed by any relevant underwriters, including those imposed by or under any contract of reinsurance;
- (h) management is able to comply with the Regulatory Authority's reporting requirements and to submit them on a timely basis;
- (i) the business is able to comply with any other notification requirements under the Ordinance.

(2) It is a responsibility of directors and management to—

- (a) review, monitor and test its systems of internal control on a regular basis in order to assure their effectiveness on a day-to-day basis and their continuing relevance to the business;
- (b) establish, regularly test, and maintain appropriate and effective arrangements whereby the business's operations may be continued and the integrity of its records and information systems may be maintained in the event of any reasonably foreseeable adverse occurrence.

(3) The requirements imposed by this paragraph apply to any insurance business which—

- (a) carries on insurance business where the relevant risks are directly held on its own balance sheet;
- (b) is the parent company of a group whose subsidiary undertakings include an insurance

business (whether established in St Helena or elsewhere).

### **Information for Management**

**23. (1)** Every insurance business should prepare information for directors and management so that they can monitor, assess and control the performance of its business, the state of its affairs and the risks to which it is exposed, including in particular exposure to the risk of money laundering and terrorist financing.

**(2)** It is the responsibility of directors and management to decide what information is required and to decide who should receive it.

**(3)** Appropriate management information should be provided to—

- (a)* persons responsible for exercising managerial functions or for maintaining accounting and other records;
- (b)* executives who, either alone or jointly, are responsible under the immediate authority of the directors for the conduct of the insurance business;
- (c)* the directors.

**(4)** This information should be prepared—

- (a)* to show the state of affairs of the insurance business; and
- (b)* to show the operational results of the business giving details of premiums written and claims incurred, investment income and losses, and reinsurance premiums and recoveries, on both a cumulative basis and by discrete period, and
- (c)* to give a comparison with budgets and previous periods; and
- (d)* to provide an analysis of income and expenditure showing how it relates to different categories of insurance business written.

### **Reporting Requirements and Supervision**

**24. (1)** Any person licensed to carry on insurance business shall submit quarterly and annual reports to the Regulatory Authority covering such issues as the Regulatory Authority may specify.

**(2)** These reports will allow the Regulatory Authority to check that the provisions of the Ordinance and the Directives are being complied with.

**(3)** The Regulatory Authority may vary the frequency of all or any of the reports as it deems necessary.

**(4)** Where an insurance business is the parent company of a group whose subsidiary undertakings included an insurance business licensed in a jurisdiction other than St Helena, that business shall provide to the Regulatory Authority a copy of the returns submitted by its subsidiary undertaking to the insurance supervisory authority of the jurisdiction in which it is licensed.

**(5)** The Regulatory Authority will review all the reports and monitor the trends in the business to satisfy itself that the insurance business is being run in a sound and prudent manner.

**(6)** The Regulatory Authority should make contact with the management of the



business on a regular basis to discuss—

- (a) any issues arising from the analysis of the reports made to it;
- (b) the general trends in the business;
- (c) any significant staff issues;
- (d) the adequacy of the business' capital, and its reinsurance cover in relation to the level of business written and planned to be written and the nature of the risks covered;
- (e) any future plans for the business.

(7) The Regulatory Authority should meet with the representatives of licensed insurance businesses and, if it judges it appropriate, with its auditors at any time when issues arise which cause it concern as to the business' compliance with the Ordinance or the directives, or as to whether the business is being managed in a sound and prudent manner.

(8) A record should be kept of all discussions with insurance businesses and any significant issues which arise.

#### **PART 4 ANNUAL REPORT**

##### **Regulatory Authority to prepare annual report**

25. The Regulatory Authority must prepare an annual report to the Governor on its activities during the year.

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