

CHAPTER 12

BANKING (SPECIAL PROVISIONS) ACT

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SCHEDULE - BANKING BUSINESS

PART I.- PRELIMINARY

Short title 1. This Act may be cited as the Banking (Special Provisions) Act.

Interpretation 2.(1) In this Act, unless the context otherwise requires -
3/23/1976
"amend" means vary, revoke or add to;

"authority" means an authority in writing under section 7 to carry on banking business in Seychelles;

"company" means a company incorporated or registered
Cap. 40 under the Companies Act;

"Minister" means the Minister responsible for Finance.

(2)A reference in this Act to the conditions subject to which an authority was granted is a reference to those conditions as from time to time in force.

Cap. 40 (3)The Companies Act shall apply for the purpose of determining whether a company is, or is not, for the purposes of this Act, a subsidiary of any other body.

PART II.- PROVISIONS RELATING TO THE CARRYING ON OF BANKING BUSINESS

Authority to 3. No person, other than a company, shall be granted an
be granted authority.
only to
company

Authority to 4.(1) The Minister shall not grant an authority to a company
be granted incorporated under the Companies Act, unless he is satisfied, on
only to such evidence as he may require, that the company is a subsidiary
subsidiary of a commercial bank or a merchant bank, whose headquarters is
Cap. 40 outside Seychelles.

(2)The Minister shall not grant an authority to a company
Cap. 40 registered under the Companies Act, unless he is satisfied, on such evidence as he
may require, -

(a) that the company is a commercial bank or a merchant bank, whose headquarters is outside
Seychelles; and

(b) that the business of the company in Seychelles will be carried on through a branch of the
company established in Seychelles.

Authority not to be granted to company holding banking licence
Cap 79 5. No company which holds a banking licence required under
section 3 of the Financial Institutions Act shall be granted an
authority.

Application for authority 6.(1) A company which desires an authority shall make applica-
tion in writing to the Minister accordingly.

(2)An application made pursuant to subsection (1) by a
Cap. 40 company incorporated under the Companies Act, shall specify the name of the
commercial bank or merchant bank of which the company is a subsidiary.

(3)A company making application pursuant to subsection (1) shall furnish to the Minister -

(a) a copy of the memorandum of association and the articles of association of the company or,
where appropriate, such other instrument as relates to the constitution of the company;

(b) where appropriate, such information and documents relating to the commercial bank or merchant
bank named, pursuant to subsection (2), in the application, which the Minister may reasonably require;
and

(c) such information concerning any other matter which the Minister may reasonably require for the
purpose of dealing with the application.

Grant of authority 7.(1) Subject to sections 3, 4 and 5 -

(a) where an application is made by a company under section 6 and the requirements of section 6(3)
are complied with;

(b) the undertakings (if any) required under section 8 to be given are given; and

(c) the requirements (if any) required under section 9 to be met are met,

the Minister may, in his discretion, grant to the company an authority in writing to carry on banking
business in Seychelles, but shall not otherwise grant an authority.

(2) Where the Minister is prepared to grant an authority to a company he shall so notify the company in writing and the company, if it wishes to proceed with the application, shall pay to the Minister the prescribed fee.

(3) Where the Minister is prepared to grant an authority to a company only on conditions imposed under section 10 he shall give particulars of the conditions when notifying the company under subsection (2) of this section.

(4) Where a company fails to pay, pursuant to subsection (2), the prescribed fee within 45 days after notification pursuant to that subsection, the application by the company for an authority shall be deemed to have been withdrawn by the company.

Undertakings to Minister 8.(1) The Minister, before granting an authority -

Cap. 40 (a) may require, in the case of a company incorporated under the Companies Act, the commercial bank or merchant bank named, pursuant to section 6(2), in the application of the company for an authority; or

(b) may require, in the case of a company registered under that Act, the company,

to give such undertakings with respect to the meeting of the obligations and liabilities which may be incurred by the company in carrying on business in Seychelles pursuant to an authority as he deems necessary.

(2) Nothing in subsection (1) shall be taken as requiring the Minister to ensure that any undertaking given to him pursuant to that subsection is legally enforceable.

Company to comply with 9. The Minister, before granting an authority to a company, may require the company to meet, or give undertakings to meet,

requirements such requirements relating to the carrying on of its business in Seychelles as he deems necessary.

Authority may be granted 10.(1) An authority may be granted to a company subject to such conditions as are specified in the authority.

subject to conditions subject-matter dealt with in Part III or V of Cap. 79 (2) Without derogation from the generality of subsection (1), an authority may be granted to a company subject to conditions with respect to any the Financial Institutions Act.

(3) Without derogation from the generality of subsection (1), the conditions subject to which an authority is granted to a company may amend paragraph 2 of the Schedule in its application to the company.

Variation of conditions of authority 11.(1) Subject to this section, the Minister may, from time to time, by notice served on a company, amend the conditions subject to which an authority was granted to the company.

(2) Before amending the conditions subject to which an authority was granted to a company, the Minister shall give the company an opportunity of making representations in writing to the Minister about any matters which the company considers are relevant in connection with the proposed amendment, and the Minister shall consider any representations so made.

(3) The Minister may, in a notice served on a company pursuant to subsection (1), stipulate that the amendment concerned shall not take effect until such date (being a date that is later than the date on which the notice is served) specified in the notice, but if no such date is so specified the amendment takes effect on the date on which the notice is served on the company.

(4) A notice required to be served under this section on a company may be served by delivering it at, or sending it by registered post to, the premises at which the company carries on its banking business in Seychelles.

(5) Where an authority is granted unconditionally to a company, the power of amendment under this section shall be deemed to include, in respect of the company, a power to impose any condition which might have been imposed under section 10 on the granting to the company of the authority (subject to subsection (2) of this section being complied with) and the authority shall be deemed to have been granted to the company subject to any condition so imposed and, accordingly, that condition may be amended under this section.

Annual fee 12. A company in possession of an authority shall, on, or not earlier than one month before, each anniversary of the date on which the authority was granted to the company, pay to the Minister the prescribed annual fee.

Cancellation 13.(1) Where a company in possession of an authority -
of authority

(a) has failed to comply with any of the conditions subject to which the authority was granted;

(b) has failed to comply with any undertaking given under section 8(1);

(c) has failed or ceased to meet any requirement imposed under section 9;

(d) has failed to pay the annual fee as required by section 12;

(e) has failed to comply with section 14(2) or 16;

(f) has ceased to carry on business as a subsidiary of the commercial bank or merchant bank named, pursuant to section 6(2), in the application of the company for an authority;

(g) has proceeded with a reconstruction or amalgamation without the consent of the Minister under section 16(2) or otherwise than in accordance with the terms and conditions subject to which the consent was given;

(h) has failed to comply with section 18; or

(i) has ceased to carry on banking business in Seychelles,

the Minister may, on that ground, cancel the authority.

(2) Where the commercial bank or the merchant bank named, pursuant to section 6(2), in the application of a company for an authority, has failed to comply with any undertaking given under section 8(1), the Minister may, on that ground, cancel the authority.

(3) Where, in the opinion of the Minister, an examination under section 19 shows that a company in possession of an authority has carried on its business in an improper or fraudulent manner he may, on that ground, cancel the authority.

(4) The Minister shall not, under subsection (1), (2) or (3) cancel an authority on any ground referred to in subsection (1), (2) or (3) unless -

(a) the Minister has, by notice served as provided in section 11(4) on the company, given not less than one month's notice of the intention to cancel the authority on that ground;

(b) the Minister has, in the notice, specified a date on or before which the company, or the commercial bank or the merchant bank of which the company is a subsidiary, may, by notice to the Minister, submit any matter which it wishes the Minister to consider; and

(c) the Minister has taken into account -

(i) any action taken by the company, or the commercial bank or the merchant bank of which it is a subsidiary, to remove that ground or to prevent the occurrence of similar grounds;

(ii) any matters so submitted by the company or that commercial or merchant bank before the specified date.

(5) The Minister may cancel an authority granted to a company if an order is made or a resolution is passed winding up the affairs of the company unless -

(a) the winding up is for the purpose of amalgamation or reconstruction; and

(b) in the case of a company incorporated under the
Cap. 40 Companies Act, the Minister has been notified of, and given his consent to, the amalgamation or reconstruction.

(6) The Minister may cancel an authority granted to a company if a receiver is appointed of the assets of the company.

(7) The Minister may cancel an authority granted to a company if the company is convicted of an offence under section 23.

(8) Where the Minister cancels an authority granted to a company he shall give 7 days notice of the

cancellation to the company.

Banking 14.(1) The Schedule applies to and in respect of a company in
Business possession of an authority.

which may be

carried on (2) A company in possession of an authority shall not carry on in Seychelles
any banking business other than that specified in the Schedule or, if the Schedule is amended pursuant
to section 10(3) or 11 in its application to the company, other than the specified in the Schedule as so
amended.

PART III.- GENERAL

General law 15.(1) Subject to this section, nothing in this Act shall be
to apply construed as exempting a company in possession of an authority from complying
with any law in force in Seychelles.

Cap. 79 (2) The Financial Institutions Act does not apply to a company in possession
of an authority.

(3) The Minister may, by order, exempt a company in possession of an authority from
compliance with any of the provisions

Cap. 40 of the Companies Act, relating to the making or submission of returns or accounts,
or may vary any such provision for the purposes of its application to a company in possession of an
authority, and may grant such exemption subject to such conditions as he deems fit, and in any such
case that Act shall apply subject to the exemption or the variation so granted or made subject to the
conditions (if any) so imposed.

(4) An order under subsection (3) may be made so as to be of general application, or to apply only
to one, or more than one, company in possession of an authority and named in the order.

Alterations 16.(1) Where, and as often as, any alteration is made in the

and agree- memorandum of association or articles of association of a company
ments, etc. incorporated under the Companies Act, in possession of an

Cap. 40 authority, the company shall forthwith give the Minister full particulars in writing
of the alteration.

(2) A company incorporated under the Companies Act, in possession of an authority shall not
proceed with any amalgamation affecting, or reconstruction of, the company -

(a) without the consent in writing of the Minister; and

(b) except in accordance with such terms and conditions subject to which the Minister's consent may
be given.

Persons 17.(1) Any person who -
debarred
from (a) has been a director of, or directly concerned in

management
section 13;

(b) has been a director of, or directly concerned in the management of, a company whose banking licence

Cap. 113 as a bank has been cancelled under Licences Act;

(c) has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence; or

(d) is or becomes bankrupt in any country, suspends payment to or compounds with his creditors,

shall not, without the express consent of the Minister, act or continue to act as a director, manager, secretary or other employee of, a company in possession of an authority.

Returns, etc. 18.(1) A company in possession of an authority shall submit to the Minister such statements, documents, reports or accounts at such intervals, as may be prescribed.

(2) A company in possession of an authority shall publish such statements, documents, reports or accounts at such intervals and in such manner, as may be prescribed.

(3) A company in possession of an authority shall keep in Seychelles such books, statements, documents, reports and accounts as may be prescribed.

Examinations 19.(1) The Minister may, from time to time, appoint one, or more than one, qualified person to make examinations in Seychelles under conditions of secrecy of the books and affairs of all companies in possession of an authority.

(2) The Minister may at any time appoint one, or more than one, qualified person to make a special examinations in Seychelles under conditions of secrecy of the books and affairs of any company in possession of an authority.

Production of books, etc., as the person or persons may specify (being times and places which, in the opinion of the person or persons, would not be detrimental to the conduct of the normal daily business of the company) all books, statements, documents, reports and accounts in the possession or custody of the company or of which it is entitled to possession or custody relating to its business in Seychelles, and shall give within such times as the person or persons may specify, such oral information concerning its business as may be required.

(2) As soon as may be after the conclusion of an examination under section 19(2), the person or persons appointed under the provisions of section 19(2) shall submit a full report on the examination to the Minister who shall forward a copy thereof to the company concerned.

(3) The Minister may order that all expenses of and incidental to an examination under section 19(2) shall be paid by the company examined.

(4) A company shall not be required to pay expenses of and incidental to an examination under section 19(1).

Use of word "bank" Cap. 79 21.(1) Notwithstanding section 11 of the Financial Institutions Act, a company proposing to carry on the business of banking in Seychelles pursuant to an authority may use in the description or title under which it proposes to so carry on that business the word "bank" or its derivatives and, for so long as it is in possession of an authority, it may continue to use such a description or title.

(2) Where an authority is not granted to a company applying for an authority or the authority granted to a company is cancelled under this Act, section 11 of the Financial Institutions Act, applies to and in respect of that company.

Exemption from Business tax 22.(1) The income of a company derived from carrying on business under, and in accordance with the conditions of, an authority is exempt from Business Tax.

(2) The income of a person (other than a person who is a resident of Seychelles or a company in possession of an authority), being income that consists of -

- (a) dividends or interests paid by a company in possession of an authority; or
- (b) profits paid by such a company to a customer,

out of income derived by such a company in carrying on business pursuant to an authority, is exempt from Business tax and withholding tax.

(3) The exemption under subsection (1) of the income of a company does not exempt the company from furnishing any return or information which is required by the Commissioner of Taxes, or from including in a return such information as is prescribed, or as is required by the Commissioner, under any law relating to the taxation of income which is, from time to time, in force.

Offences 23.(1) Any person who -

- (a) knowingly or recklessly makes any false statement in an application for an authority;
- (b) contravenes section 17;
- (c) knowingly or recklessly submits pursuant to section 18(1) any statement, document, report or account that is false in a material particular;
- (d) fails or neglects to produce any book, statement, document, report or information when required to do so under section 20;

(e) knowingly or recklessly produces pursuant to section 20 any book, statement, document, report or information that is false in a material particular,

is guilty of an offence and liable on conviction -

(f) in the case of an individual, to imprisonment for a term not exceeding two years or to a fine not exceeding twenty thousand rupees, or both; or

(g) in the case of a company, to a fine not exceeding fifty thousand rupees.

(2) Where a company commits an offence under this Act with the consent or connivance of, or because of the neglect by, any individual, the individual commits the same offence if at that time-

(a) he is a director, manager, secretary or similar officer of the company;

(b) he is purporting to act as such an officer; or

(c) the company is managed by its members of which he is one.

Regulations 24. The Minister may make regulations prescribing all matters and things which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Minister to prepare annual report 25.(1) The Minister shall, within six months from 1st January in each year, cause to be prepared a report in relation to banking business carried on in Seychelles pursuant to this Act during the twelve months that ended on the preceding 31st December.

2/Dec 31/1979

(2) The Minister shall lay a copy of every report prepared pursuant to subsection (1) before the People's Assembly.

Delegation of powers 26. The Minister may, by notice published in the Gazette, delegate to the Central Bank of Seychelles, established by the Central Bank of Seychelles Act, the performance of any of his powers and functions under this Act.

2/Dec 3/1979
47/6/1986
(delegated by notice by notice No. 183 of 1982 except those under sections 24, 25 and 26)

BANKING BUSINESS

1. In this Schedule, "approved currency" means any currency, other than the Seychelles Rupee or a currency declared pursuant to paragraph 4 not to be an approved currency.

2. A company in possession of an authority may, subject to the conditions on which the authority was granted, -

(a) accept time and demand deposits or borrow, in an approved currency, from persons resident outside Seychelles;

(b) accept time and demand deposits or borrow, in an approved currency, from a company in possession of an authority and entitled to carry on the business referred to in subparagraph (c);

(c) deposit with or extend loans and advances, in an approved currency, to a company in possession of an authority and entitled to carry on business referred to in subparagraph (b);

(d) extend loans and advances (other than overdrafts), in an approved currency, to a person (other than a company in possession of an authority) resident in Seychelles subject to and in accordance with the specific approval of the Minister given under paragraph 5;

(e) extend loans and advances in an approved currency, to a person who is not resident in Seychelles;

(f) invest in interest or dividend-bearing securities expressed in an approved currency;

(g) transact exchange business, in an approved currency, provided that no person resident in Seychelles (other than a company in possession of an authority) shall be involved in any way in any such transaction;

(h) establish, open or advice letters of credit, expressed in an approved currency, if neither the person opening the credit nor the beneficiary of the credit is a person resident in Seychelles or, if so resident, is a company in possession of an authority.

(i) discount bills acceptances, expressed in an approved currency, if the party who discounts the bill or acceptance is not a person resident in Seychelles or, if so resident, is a person in possession of an authority.

(j) hold and operate with a company holding a banking licence
Cap. 79 required under the Financial Institutions Act, an account for the purpose of meeting its day to day expenses and its own expenditure needs.

3. A company in possession of an authority shall not accept from, or operate for, any person a savings or cheque account.

4. The Minister may, by order, declare that a currency shall not be an approved currency for the

purposes of this Schedule.

5.(1) A company in possession of an authority may, pursuant to paragraph 2(d), extend loans and advances to the Government on the request of the Minister and such a request shall be treated as the approval of the Minister for the purposes of paragraph 2(d).

(2) The Minister may give his approval for the purposes of paragraph 2(d) either unconditionally or subject to such conditions as he deems fit to impose, including a condition relating to the payment to the Minister by the company to which the consent is given of a specified charge or a charge calculated in a specified manner in respect of the transaction.

(3) The Minister may give to a company in possession of an authority a general approval for the purposes of paragraph 2(d) in relation to such cases as are defined in the instrument of approval, and every case falling within the definition shall be treated as having the approval of the Minister for the purposes of paragraph 2(d).

(4) The Minister may, at any time, in writing to a company in possession of an authority, withdraw or amend an approval given under subparagraph (3), but without prejudice to anything done before the withdrawal or amendments.