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**Fifth Session Second Parliament Republic. of  
Trinidad and Tobago**

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**REPUBLIC OF TRINIDAD AND TOBAGO**

**Act No 2 of 1986**

**AN ACT to amend the Central Bank Act, Chap. 79:02  
and the Financial Institutions (Non-Banking )  
Act, 1979.**

*fAssented to* , 1986]

**WHEREAS it is enacted inter alia by subsection (1) of  
Preamble section 13 of the Constitution that an Act of  
Parliament to which that section applies may expressly  
declare that it shall have effect even though inconsistent  
with sections 4 and 5 of the Constitution and, if any such  
Act does so declare, it shall have effect accordingly :**

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Now, THEREFORE, BE IT ENACTED by the Parliament of Trinidad and Tobago as follows:—

1. (1) This Act may be cited as the Central Bank and Financial Institutions (Non-Banking ) (Amendment) Act, 1986.

(2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

2. Section 14 of the Central Bank Act (hereinafter referred to as "the Act") is amended by inserting the words, "heads of department" immediately after the words "Deputy Governor" occurring in line one.

3. Section 17(2) of the Act is repealed.

4. Section 34(1) of the Act is amended by substituting for the word "five" the word "thirty".

5. Section 35(2) of the Act is amended by inserting the words "including replacement and acquisition of assets for the operations of the Bank" immediately after the word "operation" occurring in line two.

Section 36 of the Act is amended—

(a) in paragraph (g) by substituting for the words "authorised capital" occurring in line nine the words "paid-up capital"; and

(b) by substituting for paragraph (t) the following:

"(t) trade in coins or notes, establish subsidiary companies, purchase, acquire, lease, sell, let or sublet

or otherwise dispose • of real property, lend, borrow or invest in securities in addition to those hereinbefore specified in this section, so however that such loans, borrowings borrowings investments do not exceed ten per cent of the total assets of the Bank, provide for value for the benefit of the Bank, the State or a State agency, organ or department, computer, maintenance and security services and may do any banking business incidental to or canse, quential upan the provisions of this Act and not prohibited by this Act."

**7, Section 37 of the Act is amended—**

- (a) in subsection (1) substitute the words "subsection (2)" for the words "subsections (2) and (3)."
- (b) 'in subsection (1), by deleting paragraphs (b), (c), (d), (e) and (f) and by renumbering paragraph (g) as paragraph (b);
- (c) by repealing subsection (2);
- (d) by renumbering subsection (3) as subsection (2) and by repealing and replacing it, as follows  
 " (2) The Bank may purchase, acquire or lease real property where the Bank considers it necessary or expedient for the carrying out of its function under this Act."

**8. The Act is amended by inserting immediately after section 44B the following new Parts-**

**"PART VA**

**SPECIAL EMERGENCY POWERS OF BANK**

- 44c. (1) In this Part, the expression "agent" in relation to an institution, includes its bankers and any**

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persons, whether officers of the institutions or not, who are employed as its auditors, but does not include its legal advisers;

**"affiliated institution", in relation to an institution, means a company which is or has at any relevant time been-**

- (a) a holding company or a subsidiary of the institution,**
- (b) a subsidiary of a holding company of the institution,**
- (c) a holding company of • a subsidiary of the institution, or**
- (d) a holding company of a holding company or a subsidiary of a subsidiary of the institution.**

**the expressions "holding company" and "subsidiary" having the meanings assigned to them in the Companies Ordinance;**

**"directors" includes any category of persons performing the functions of directors or analogous functions;**

**"Inspector of Banks" means the Inspector of Banks appointed under section 18(1) of the Chapter 79:01 Banking Act;**

**"institution" means a bank within the meaning of the Banking Act or a financial institution within the meaning of the Financial Institutions (Non-Banking) Act;**

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**"officer" in relation to an institution, includes any category of manager as well as any person in the employment of the institution.**

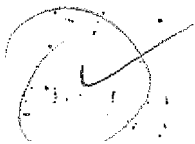
**(2) In this Part a reference to a director, officer or agent of an institution includes a reference to a person who has been but is no longer a director, officer or agent thereof.**

**44D (1) Where the Bank is of the opinion-**

- (a) that the interests of depositors or creditors of an institution are threatened;**
- (b) that an institution is likely to become unable to meet its obligations or is about to suspend or has suspended payment; or**
- (c) that an institution is not maintaining high standards of financial probity or sound business practices;**

**the Bank shall, in addition to any other powers conferred on it by any other law, have power-**

- (i) to investigate the affairs of the institution concerned and any of its affiliated institutions and to appoint a person or person for that purpose;**
- (ii) to such extent as it thinks fit, to assume control of and carry on the affairs of the institution and, if necessary, to take over the property and undertaking of the institution;**
- (iii) to take all steps it considers necessary to protect the interests, and to preserve the rights of depositors and creditors of the institution;**



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- (iv) to restructure the business or undertaking of the institution or to reconstruct its capital base;
  - (y) to provide such financial assistance to the institution as it considers necessary to prevent the collapse of the institution;
  - (vi) to acquire or sell or otherwise deal with the property, assets and undertaking of or any shareholding in the institution, at a price to be determined by an independent valuer;
  - (vii) to appoint such persons as it considers necessary to assist in the performance of the functions conferred by paragraphs (i) to (vi);
  - (vi)<sup>i)</sup> to ensure that each member of the Fund established under Part Va maintains high standards of financial probity and sound business practices and for that purpose to examine and supervise the operations of all member institutions and stipulate prudential criteria to be followed by the institutions as it may deem necessary.

(2) The powers of the Bank under subsection. (1) shall not be exercised unless the Bank is also of the opinion that the financial system of Trinidad and Tobago is in danger of disruption, substantial damage, injury or impairment as a result of the circumstances giving rise to the exercise of such powers.

(3) Pursuant but without prejudice to its powers under subsection (1), the Bank may appoint any person or persons to act as Receiver or Manager and

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such appointment shall take effect as though made by the depositors and other - creditors. of the Company pursuant to a charge over all the fixed and floating assets of the institution and without prejudice to any other, powers verted in such Receiver or Manager the Receiver or Manager shall have power-

- (a) to take possession of, collect and get in any property of the institution and for that purpose to take any proceedings in the name of the institution or otherwise as may seem expedient;
- ( b) to carry on, manage or concur in carrying on and managing the business of the institution or any part thereof and for any of those purposes to raise or borrow any money that may be required on the security of the whole or any part of the property of the institution;
- (c) forthwith to sell or concur in selling (but where necessary with the leave of the Court) and to let or concur in letting and to accept surrenders of leases or tenancies of all or any of the property of the institution and to carry any such sale, letting or surrender into effect by conveying, leasing, letting or accepting surrenders in the name and on behalf of the institution; and any such sale may be for cash, debentures, other obligations, shares, stock pr other valuable considera-don and may be payable in a lump sum or by instalments spread over such period as the Bank shall

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think fit and plant machinery and other fixtures may be severed and sold separately from the premises containing them without the consent of t h e institution being obtained thereto;

( d to make any arrangement or compromise which he shall think expedient;

(e) to make and effect or repair renewals and. any improvements of the institution's equipment and effects and to maintain or renew all insurances;

(f)to appoint managers, agents, officers, servants and workmen for any of the aforesaid purposes at such salaries and for such periods as he may determine;

(g) to do all such other acts• and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he or they lawfully may or can do as agent for the Comnany.

44E. (1) Where the Bank proposes to exercise powers under section 44n (1) (ii) , it shall publish in the *Gazette* and in such newspapers as it thinks appropriate a notification to that effect

(2) The notification shall state-

(a) the property and undertaking it proposes to take over,

(b) the powers to control it proposes to exercise,

and shall give such particulars as the Bank considers necessary for the information of persons having business dealings with the institution.



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(3) Upon the publication of the notification the property and the powers of control stated therein shall vest in the Bank.

(4) A notification under this section may be amended or supplemented from time to time by subsequent notification in the *Gazette* and the notification shall have effect as so amended or supplemented.

44F. (1) Where the Bank has under section 44D assumed control of an institution, it may terminate or retain the services of any or all of the directors, officers and employees of the institution and the directors so retained shall manage the affairs of the institution subject however to any directions of the Bank; and no acts done or resolution, rules, bye-laws or decisions made or conveyances, transfers, assignments or instruments executed during such period relating to the business affairs, property, undertakings or management of the institution shall have effect unless they are approved by or are in conformity with the directions of the Bank.

(2) Where the Bank is exercising powers under section 44D in relation to any institution, that institution, its affiliated institutions and their directors, officers and agents other than its auditors shall give every assistance to the Bank for the purpose of facilitating the performance of functions under section 44D, including the supply of information or explanation in such form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function under section 44n, save that in the case of its auditors they shall only

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be required to supply any information which is in their possession or knowledge other than their internally generated working papers.

(3) Any person appointed under section 44D shall have all the powers of a commissioner under the Commissions of Enquiry Act to summon and examine persons required under subsection (2) to assist the Bank in the performance of its functions, and the provisions of section 12 of the Commissions of Enquiry Act, including the provisions imposing penalties, shall apply in all respects to persons summoned under this subsection.

(4) In any particular case, the Bank may appoint the Inspector of Banks to perform any or all of its functions under section 44n subject to such conditions as may be specified in the appointment.

(5) In the performance of its functions and in the exercise of its powers under section 44n the Bank shall comply with any general or special directions of the Minister and shall act only after due consultation with the Minister.

44G. (1) Where the Bank has under section 44D assumed control of an institution, the Bank, shall, subject to subsection (2), remain in control of, and may continue to carry, on the business of that institution until such time as the Bank publishes in the *Gazette* and in such newspapers as it thinks appropriate a notification that it has ceased to be in control of the institution.

(2) The Bank shall relinquish control and shall not continue to carry on the business of an institution where-

(a) the circumstances on the basis of which the Bank assumed control of the institution under section 44D have ceased to exist;

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- (b) the Bank is of opinion that it is no longer necessary for it to remain in control of the business of the institution; or
  - (c) the Bank has sold or otherwise disposed of the property, assets and undertakings of the institution.

(3) Upan publication of a notification under subsection (1) and subject to such conditions as may be specified therein, all property not sold or otherwise disposed of by the Bank and all powers of control over the affairs of the institution vested in the Bank by or in consequence of the previous notification published under section 44E. (1) shall vest in the institution if it still subsists as a corporate entity and be deemed to have been transferred from the Bank to the institution,

(4) Where the Bank has, in pursuance of section 44D, assumed control of an institution, the High Court may, upon the application of the directors of the institution acting independently of the Bank, if it is satisfied that it is no longer necessary for the protection of the depositors or creditors of the institution that the Bank should remain in control of the business of that institution, order that the Bank cease to control the business of that institution as from a date specified in the Order.

**44a The State, the Minister or the**

**Bank, its directors and officers and any persons appointed by the Bank under section 44D are not subject to any action,**

claim or demand by, or any liability to, any  
person in respect of anything done or  
omitted to be done in good faith and without  
negligence in the performance,

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or in- connection with the performance of functions conferred on the Bank under this Part.

44x. (1) Any person to whom section 44r (2) applies who-

- (a) fails to assist or to facilitate the Bank in any function conferred by section 44D, or
- (b) obstructs the Bank in the performance of any such function,
- (c) <sup>or</sup> in the performance of his obligations under section 44r(2), provides any false or misleading information,

is guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars or five years imprisonment or both.

(2) While the Bank is in control of the business of an institution, any person who, without the approval or authority of the Bank or in a manner contrary to the directions of the Bank, receives, disposes of or otherwise deals with any assets of the institution, or who tampers whether by making entries in or otherwise, with any books, records or documents of the institution is guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years or both and on conviction on indictment to a fine of five hundred thousand dollars or ten years imprisonment or both.

(3) Any person to whom section 44F(2) applies who fails to comply with a requirement or demand by the Bank to do or refrain from doing any act

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or to assist or to facilitate the Bank in any function vested in it by section 44D is guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars or five years imprisonment or both.

## **PART VB**

### **DEPOSIT INSURANCE**

**44z. In this Part--**

**"Board of Management" means the Board of Directors of the Corporation;**

**"Chairman" means the Chairman of the Board of Management;**

**"Closed Institution" means an institution ordered by the Bank to suspend business either under section 20(2) of the Banking Act or section 28(2) of the Financial Institution (Non-Banking) Act and the failure of which the Bank has advised the Corporation under section 44x ( 1 ) ;**

**"Corporation" means the Deposit Insurance Corporation established under section 44v;**

**"deposit" means-**

- (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person's checking, savings, demand or time account, or for which the institution has issued a certificate,**

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receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, inter-bank deposits and deposits from affiliated companies; and

(b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank

**44K** There is established for the protection of depositors a Deposit Insurance Fund (hereinafter referred to as "the Fund").

**44L** Membership in the Fund is compulsory for-

- (a) every bank licensed under the Banking Act;
- (b) every institution licensed under the Financial Institutions (Non Banking) Act.

**44m. (1)** A compulsory initial contribution shall be paid to the Fund at a time to be designated by the Minister, by every bank or other institution; such contribution shall be based on a percentage rate of deposits to be prescribed by the Minister by Order after consultation with the Bank.

**(2)** Every member of the Fund shall pay an annual premium to the Fund, such premium shall be based on a percentage rate of deposits to be prescribed by the Minister by Order after consultation with the Bank.

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(3) The first annual contribution shall be levied within one year of the establishment of the Fund.

(4) The Bank shall contribute to the Fund sums equal in amount to the initial contribution made by members of the Fund.

(5) Where in the opinion of the Corporation the Fund has made or is likely to make payment to depositors which have exhausted or are likely to exhaust the Fund, the Corporation shall furnish the Minister with an estimate of the amount necessary to meet the obligations of the Fund in the year next succeeding and the Minister after consultation with the member institutions may' by Order, require that special contributions be levied on them.

(6) The Bank shall pay hito the Fund an amount equal to the special contributions paid by member institutions.

(7) Where the Corporation determines that the Fund has reached a satisfactory level a may refund any excess moneys to the institutions pro rata so however that all amounts so refunded shall be treated as income in the hands of the institution and chargeable to tax.

44N. (1) The Corporation shall insure each deposit in a member institution which is payable in Trinidad and Tobago in Trinidad and Tobago currency.

(2) Deposit Insurance coverage is limited to fifty thousand dollars or such other amount as the Minister may prescribe

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in different capacities and rights, the limit shall apply to the total amount maintained on deposit in each institution in each. capacity and right.

(3) A depositor is protected by deposit insurance only when the member institution in which he has a deposit is closed by or with the approval of the Bank as a result of financial difficulties.

(4) Payment to the person *prima facie* entitled under this section by the Corporation in respect of any deposit insured discharges the Corporation from liability in respect of that deposit.

(5) When payment is made by the Corporation under this section in respect of a deposit with a member institution the Corporation is subrogated up to the insured limit to all the rights and interests of the depositor as against that member institution and may maintain an action in respect of such rights and interests in the name of the depositor or in the name of the Corporation.

(6) Subject to subsection (7) the benefit of insurance cover shall not be extended to any depositor who is shown to have been a party to or profited from the circumstances giving rise to the member institution's failure.

(7) Subsection (6) does not apply to depositors who are professional advisors of the member institution and whose bona fides are not in question.

(8) Payments to depositors of closed institutions shall commence not later than three months after the closure of the member institution..

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**(9) The insurance coverage shall only benefit deposits which have been held with an institution for a minimum period of one year after the date this Act comes into operation, save where an institution is or has been closed by or with the approval of the Bank.**

**(10) The Corporation shall in respect of rights to which it is subrogated have priority over other unsecured creditors of a closed institution.,**

**44o. Contributions, levies and premia to the Fund by member institutions are allowable deductions to such institutions in computing their chargeability to tax.**

**44P. The Fund shall be managed by a Board of Management which is established a body corporate called the Deposit Tnsurance Corporation and which shall have a caminan sed.**

**44o. (1) 'The Board of Management shall be appointed by the Minister and shall consist of-**

- (a) two members representing the Bank;**
- (b) one member representing the Minister;**
- (c) two members who have knowledge and experience in banking, commerce, finance, accounting, insurance or law, save that no per-son may be appointed a member who is a director of a member institution.**

**(2) There shall be appointed with each member an alternate who shall be qualified for appointment in the same manner as the member to whom he is alternate.**

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**(3) In the absence of a member his alternate shall have and exercise the same powers and enjoy the same privileges as the member to whom he is alternate.**

**44R. Members of the Board shall be appointed for a term of not less than three years and shall be eligible for re-appointment**

**44s. (1) The members shall elect a Chairman from among their number.**

**(2) The Chairman shall in the event of an equality in the voting, in addition to his original vote, have a casting vote.**

**44T. The Corporation shall determine its own procedure save that the quorum for meetings shall be four members.**

**44U. No vacancy in the membership of the Corporation or irregularity in the appointment of its members or their alternates shall invalidate its proceedings.**

**44v. (1) The authorised capital of the Corporation is one million dollars which may be increased by the Board of Management with the approval of the Minister.**

**(2) Upon the establishment of the Corporation, there shall be paid up by the Bank in respect of the capital a sum of five hundred thousand dollars.**

**(3) The paid-up portion of the authorised capital may be increased by such amount as the Minister on the recommendation of the Bank may approve.**

**(4) Any increase in the authorised or paid-up capital shall be notified by publication in the *Gazette***

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**44w. For the proper management and administration of the Fund, the Corporation shall have power-**

- (a) to appoint and employ such number of managers, employees and officers and other employers as it considers necessary or desirable for the efficient performance of its functions and upon such terms and conditions as agreed after consultation with the Bank;**
- (b) to enter into agreement with the Bank for the secondment of staff and the provision of services;**
- (c) to establish committees;**
- (d) to levy authorised contributions and premia from member institutions;**
- (e) to recommend to the Bank the suspension of business or closure of any member where that member is in financial difficulty;**
- (f) in the event of a member becoming insolvent to act as receiver or liquidator of that member;**
- (g) to arrange after consultation with and on the advice of the Bank for the restructuring of a failed member whether by merger with a financially sound member or otherwise;**
- (h) to pay off depositors up to the insured limit;**
- (i) to accumulate, manage and to invest funds collected, to borrow, lend, give guarantees and acquire**

**The undertaking of any institution in  
financial/  
difficulty**

**subject to prior claims being paid  
deduct from moneys from the Fu<sup>nd</sup>  
due to a deposit<sup>or</sup> or any loans due,  
call called-in guarantees and  
overdrafts and to set-off deposits  
pledged as collateral;**

- (k) to require from any director,  
manager, agent or employee of a  
member institution or from such  
person in its holding or parent  
company or any of its subsidiary  
companies any information in  
relation to its business or the  
production of any document or  
record under his custody or  
control.**

**44x. (1) Where the Bank advises the  
Corporation that a member institution has  
failed, the Corporation shall notify each  
depositar in writing that the institution is  
closed and make public notification of the  
closure in such newspapers as may be  
considered appropriate, indicating the  
dates, times and places at which payment  
shall be made.**

**(2) No payment may be made  
unless a depositar produces satisfactory  
evidence of his deposit to the Corporation  
and that- evidence shall be surrendered to  
the Corporation on receipt of payment.**

**(3) Persons who have deposits in  
excess of the insured limit shall be paid  
the insured portion of their deposits and  
shall be issued with a certificate for the  
amount in excess of the limit.**

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(4) Depositors may submit claims for deposit insurance up to one year after closure of the institution with which the deposit was made.

(5) Claims made after the time specified in subsection (4) shall be made against the assets of the institution and shall be paid pro rata as the assets of the institution are collected and sold.

(6) Claims shall be supported by evidence of deposit ownership *and* may be made by depositors in person or in writing supported by affidavit.

44Y. (1) Persons who have borrowed money from institutions that have been closed by the Bank shall make payments to the Corporation on the same terms and conditions attaching to their loan contracts with the institutions.

(2) Subject to subsection (3) demand loans become due as soon as an institution is closed by the Bank. .

(3) The Corporation may on the application of a borrower agree to enter into new arrangements for the repayment of a demand loan.

44z. Where the Bank closes an institution—

- (a) all accounts of the institution are frozen forthwith;
- (b) interest on deposits immediately ceases to accrue whether or not the date of maturity of the deposit was beyond the date of the closure.

44AA. (1) Where a member institution of the Fund, or any director, agent, servant or employee (including a former director, agent, servant or employee) of that institution fails to comply with any request by the

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Corporation for information relating to the affairs of the institution or to co-operate in the inspection or investigation of the institution, that institution or that director, agent, servant or employee is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or imprisonment for two years or both

(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals from the Corporation any material information regarding the financial affairs of the member institution or provides false or misleading information to the Corporation or falsifies or tampers with the books, records, accounts, papers or documents of the institution, so as to mislead the Corporation, that director, agent, servant or employee is guilty of an offence and liable on conviction on indictment to a fine of one hundred thousand dollars or imprisonment for five years or both.

(3) Where a depositor falsifies any passbook, certificate of deposit, bank statement or any document claiming, title to a deposit with a failed member institution or where a person fraudulently claims to be a depositor either for payment or for the purpose of claiming an insured deposit, that depositor or person is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or two years imprisonment or both.

**9. Section 47 of this act is repealed follows**

**47. Apart from the assets held under section 33 the Bank shall not hold securities (including Treásurý Bills) issued or guaranteed by the Government as calculated on the nomihal value thereof which**

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at any time exceed seven times the sum of the paid-up capital of the Bank and the amount standing to the credit of its General Reserve Fund."

10. Section 55 of the Act is repealed and replaced as follows:

55. (1) The Bank and the Corporation are exempt from the provisions of any Act and relating to income taxation or company taxation and from the payment of stamp duty.

(2) The Corporation shall be exempt from the provisions of the Insurance Act, 1980."

11. Section 60 of the Act is amended by adding immediately after subsection (2) the following new subsection :

" (3) The Bank on the recommendation of the Corporation and after consultation with the Minister may make such bye-laws as are necessary for all matters pertaining to the operations and functions of the Corporation."

12. The Financial Institutions (Non-Banking) Act 1979 mended amended-

(a) by adding immediately after subsection (2) of section 13 the following new subsection:—

." (3) Any person who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to imprisonment for five years and a fine of fifty thousand dollars.";

(a) by adding immediately after subsection (4) of **section** 15 the following new subsection:-

"(5) Where a financial institution contravenes the provisions of this section it is guilty of an



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offence and is liable on summary conviction to a fine of fifty thousand dollars and where such offence is committed with the consent or connivance of or attributable to any negligence on the part of any director, manager, secretary or other similar officer of the institution or any person purporting to act in *any* such capacity, he too is guilty of that offence and is liable on summary conviction to imprisonment for five years and a fine of fifty thousand dollars."

Passed in the House of Representatives this 20th day of January; 1986.

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say the votes of 31 members of the House.

Passed in the Senate this 6th day of February, 1986.

*IT IS BY* CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say the votes of 20 Senators.

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**SENATE amendments were agreed :to by the House of Representatives on 7th February, 1986, and supported by the votes of 30 members.**