

# **The Banking Ordinance 1958**

**Ordinance No. 1 of 1958**

**Repealed by [Act No. 31 of 1971]**

I assent.

**ROBERT SCOTT,**  
Governor.

17th April, 1958.

## **An Ordinance to Regulate the Business of Banking.**

[19th April, 1958].

BE IT ENACTED by the Governor of Mauritius, with the advice and consent of the Legislative Council thereof, as follows –

### **1. Short title**

This Ordinance may be cited as the **Banking Ordinance, 1958,**

### **2. Interpretation**

In this Ordinance, unless the context otherwise requires –

"bank" means any company carrying on banking business;

"banking business" means the business of receiving money on current account, of paying and collecting cheques drawn by or paid in by customers and of making advances to customers;

"company" means a company, including a company incorporated outside the Colony, registered under the Companies Ordinance;

"scheduled bank" means a bank specified in the First Schedule to this Ordinance;

"unsecured advances or unsecured credit facilities" means advances or credit facilities made without security or in respect of any advance or credit facility made with security, any part thereof which at any time exceeds the market value of the assets constituting that security.

### **3. Banking business to be transacted only by companies with minimum capital**

(1) No banking business shall be transacted in the Colony except by a company licensed under this Ordinance.

No concern having as its object or one of its objects the carrying on of banking business—

- (a) shall be registered under the Companies Ordinance;
- (b) being so registered shall undertake banking business; unless its capital issued and paid up in cash and outstanding is not less than Rs1,000,000, or its equivalent in the case of a bank whose Head Office is situated outside the Colony.

### **4. Restriction of use in title of the word "bank"**

- (1) No person or body of persons, whether incorporated or unincorporated, other than a company licensed under this Ordinance, shall without the consent of the Financial Secretary—
- (a) use or continue to use in any language the word "bank" or any of its derivatives in the name under which he is or it is carrying on business in the Colony;
  - (b) make or continue to make any representation in any bill head, letter paper, notice, advertisement or in any other manner whatsoever that such person or body of persons is carrying on banking business in the Colony:

Provided that nothing in this subsection shall apply to any association of banks formed for the protection of their mutual interest.

- (2) No company shall, except with the prior consent in writing of the Financial Secretary, carry on the business of banking in the Colony unless it uses in any language as part of its name the word “bank” or one of its derivatives.
- (3) Any person or body of persons contravening or failing to comply with any of the provisions of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding Rs 300 for every day during which the offence continues,

## **5. Licences to carry on banking business**

- (1) Notwithstanding anything in this or any other Ordinance contained, no company shall carry on banking business in the Colony without a valid licence so to do. A licence granted under this section shall authorise the carrying on of banking business by all the branches in the Colony of the recipient company.
- (2) Every bank carrying on banking business in the Colony at the date of commencement of this Ordinance shall, before the expiry of three months from such commencement, and every other company shall, before commencing to carry on banking business in the Colony, apply in writing to the Financial Secretary for a licence under this section:

Provided that in the case of a scheduled bank carrying on business in the Colony at the date of the commencement of this Ordinance-

- (a) the Financial Secretary shall forthwith upon receipt of an application in writing under this subsection issue to such bank a licence; and

(b) nothing in this section shall be deemed to prohibit the carrying on of its business by any such bank between the date of the commencement of this Ordinance and the issue of a licence under this section.

(3) Before granting a licence to a bank under this section or at any time after the grant of such a licence to a bank, the Financial Secretary shall be entitled to cause an inspection of the books of any such bank to be made or to call for such other Information as he may think fit in order to satisfy himself that the affairs of such bank are not being conducted to the detriment of the interest of its depositors:

Provided that nothing in this section shall be construed as empowering the Financial Secretary to cause an inspection of the books of, or to require information from, a scheduled bank before the grant of a licence to any such bank.

(4) (a) The Financial Secretary may in his discretion and without assigning any reason therefor-

(i) refuse to grant a licence to any bank other than a scheduled bank or

(ii) grant a licence to any bank subject to such conditions as to the Financial Secretary may seem desirable, as to the bank having at all times available for its use funds sufficient to meet its liabilities within the Colony.

(b) No decision made by the Financial Secretary under this subsection shall be called in question in any court but any person aggrieved thereby may within fourteen days of being notified of the decision appeal in writing to the Governor in Council.

(5) The Financial Secretary may in his discretion at any time revoke a licence-

- (a) if he considers that a bank is carrying on its business in a manner detrimental to the interests of its depositors and other creditors or has insufficient assets to cover its liabilities to the public or is contravening the provisions of this Ordinance;
- (b) if the holder ceases to carry on banking business in the Colony or goes into liquidation or is wound up or otherwise dissolved:

Provided that before any licence is revoked the Financial Secretary shall give to the bank notice in writing of his intention so to do specifying a date upon which revocation will take effect (which date shall not be less than fourteen days from the date of the notice) and calling upon the bank to show cause to the Financial Secretary why such licence should not be revoked. No decision made by the Financial Secretary under this subsection shall be called in question by any court but any person aggrieved by any such decision may within fourteen days of being notified of the decision appeal in the manner to be provided by Rules of Court to a Judge in Chambers.

- (6) A licence granted under this section shall remain valid until revoked:

Provided that when a licence has been suspended under section 14 of this Ordinance it shall cease to be in force for the period of such suspension.

- (7) Any licence granted under this section shall be displayed and kept displayed in a conspicuous place in the public part of the principal premises in the Colony in which the bank carries on its banking business, and copies thereof shall be similarly displayed in each of its branch offices in the Colony.
- (8) The issue of a licence by the Financial Secretary under this section shall not exempt the company from payment of the appropriate licence duty in accordance with the provisions of the Licence Laws for the time being in force.

## **6. Reserve Fund**

- (1) Every bank incorporated in and operating within the Colony shall maintain a reserve fund, and shall, out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to not less than fifty per centum of such profits to the reserve fund until the amount of such fund is equal to half the paid-up capital and thereafter not less than twenty per centum of such profits until the amount of such fund is equal to the paid-up capital of the Bank.
- (2) The provisions of subsection (1) of this section shall also apply to banks incorporated outside the Colony and licensed under this Ordinance unless, in the opinion of the Financial Secretary, the aggregate reserves of any such bank are adequate.

## **7. Restriction on payment of dividends**

No bank shall pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amount of losses incurred) not represented by tangible assets has been completely written off.

## **8. Limitation on activities of banks**

No bank shall –

- (1) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, or shall otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking, except such interest as a bank may acquire in the course of satisfaction of debts due to it and provided that all such interest shall be disposed of at the earliest suitable moment;

- (2) purchase, acquire or lease immovable property except as may be necessary for the purpose of conducting its business or housing its staff:

Provided that in the event of any debt due to a bank becoming endangered the bank may secure such debt on any immovable or other property of the debtor and may acquire such property which shall, however, be resold at the earliest suitable moment.

- (3) grant any advance or credit facility against the security of its own shares.

## **9. Statements to be furnished by banks**

- (1) Every bank shall furnish to the Financial Secretary-
  - (a) Not later than forty-two days after the last day of the months of March, June, September and December in each year a statement in the form set out in Part 1 of the Second Schedule to this Ordinance showing the assets and liabilities of the bank at the close of business on the last business day of such month together with a statement of the total of any outstanding unsecured advances or unsecured credit facilities and showing as a separate subtotal the total of such advances or facilities exceeding Rs5,000 in any one case made to directors, officials, or employees of the bank and to any company, société, partnership or other concern in which a director or official of the bank has substantial financial interest;
  - (b) not later than forty-two days after the last day of March and September in each year a statement in the form set out in Part II of the Second Schedule to this Ordinance giving an analysis of advances and bills discounted as at the last business day of each such month:

Provided that the data contained in the statements referred to in paragraphs (a) and (b) of this subsection shall in the case of a bank incorporated outside the Colony, relate only to the business of such bank within the Colony.

(2) Notwithstanding the provisions of subsection (1) of this section, the Financial Secretary may-

- (a) accept from any bank in lieu of the form of statement referred to in paragraph (a) or paragraph (b) of subsection (1) of this section a statement in such varied form as in his opinion is sufficient to reveal adequately and clearly the financial position of the bank;
- (b) exceptionally require a bank to submit within a reasonable period such further information as he may deem necessary for the proper understanding of the statements furnished by that bank under subsection (1) of this section.
- (3) Any bank wilfully failing to comply with the requirements of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding Rs100 for every day during which the offence continues.
- (4) The Governor may amend by regulation made under this Ordinance the form of the Second Schedule and the dates for the compilation or submission of the statements under subsection (1) of this section.
- (5) Save as provided in subsection (6) of this section, all statements furnished to the Financial Secretary in accordance with the provisions of subsection (1) or paragraph (a) of subsection (2) and any information submitted under paragraph (b) of subsection (2) of this section shall be treated as confidential by the Financial Secretary except for the purposes of a prosecution or other proceedings under this Ordinance.
- (6) The Financial Secretary shall compile a consolidated statement aggregating the figures in the statements furnished in accordance with the provisions of subsection (1) of this section in such form as may seem to him suitable and shall publish the same as soon thereafter as may be possible in the Gazette.



**10. Books and accounts to be kept in English or French**

All entries in any books and all accounts kept by any bank shall be recorded and kept in the English or French language using the system of numerals employed in Government accounts.

**11. Exhibition of balance sheet**

- (1) Every bank shall –
  - (a) exhibit throughout the year in a conspicuous position in every office and branch of the bank in the colony a copy of its last audited balance sheet;
  - (b) within six months of the end of its financial year publish its audited balance sheet in not less than two of the principal daily newspapers of the Colony;
  - (c) within six months of the end of its financial year forward to the Financial Secretary a copy of its audited balance sheet and the full and correct names of the directors of the bank.
- (2) Any bank which fails to comply with the requirements of subsection (1) of this section shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding Rs5,000.

**12. Individuals eligible to take part in management of banks**

- (1) No person-
  - (a) who has been a director of, or directly or indirectly concerned in the management of, a bank which has been wound up by a court, or

(b) who has been sentenced by a court of law, or to a term of imprisonment for an offence involving moral turpitude and has not received a full pardon for the offence for which he was sentenced, or

(c) who is a bankrupt,

shall, without the express authorization of the Governor in Council, act or continue to act as a director of, or be directly or indirectly concerned in the management of, any bank.

(2) Any person acting in contravention of subsection (1) of this section shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years and to a fine not exceeding Rs10,000.

### **13. Auditors**

(1) Every bank shall have its accounts audited either

(a) by a person who is a member of an association or society approved by the Governor for that purpose; or

(b) by a person approved by the Governor on the application of a bank for such person to be approved as its auditor.

(2) A copy of the report of the auditor shall be sent to the Financial Secretary

(3) If any default is made in complying with the requirements of subsection (1) or (2) of this section the bank shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding Rs5,000,

### **14. Moratorium**

(1) The Supreme Court, on application made ex-parte by the Financial Secretary, may, if it considers it to be in the interests of the depositors of the bank so to do, make an order-

(a) prohibiting a bank from carrying on any banking business in the Colony;  
and

(b) staying the commencement or continuance of all actions and proceedings against a bank in regard to any banking business in the Colony

for a specified period of time from the date of such order on such terms and conditions as to it seems reasonable, and may from time to time extend the period, so, however, that the total period of moratorium shall not exceed six months.

(2) So long as an order under subsection (1) of this section remains in force the licence granted under this Ordinance to such bank shall be suspended.

## **15 Liquidation proceedings**

Notwithstanding anything to the contrary contained in Liquidation the Companies Ordinance-

(a) the Accountant in Bankruptcy shall be the liquidator in any proceedings in the Colony for the winding up of a bank;

(b) the court may, in the proceedings for the winding up of a bank, dispense with any meetings of creditors or contributors or with the appointment of a committee of inspection if it considers no object will be served thereby sufficient to justify the delay and expense;

(c) the court shall presume that the amounts shown in the books of the bank as standing to the credit of depositors are proved without requiring further

proof from the depositors concerned unless the liquidator shows that there is reason for doubting any particular entry.

## **16. Offences and Penalties**

(1) Any person who, being a director or manager of a bank-

- (a) fails to take all reasonable steps to secure compliance by the bank with the requirements of this Ordinance; or
- (b) makes any statement or gives any information which he knows to be false in answer to any request for information made under section 5 of this Ordinance; or
- (c) is privy to the furnishing of any false information supplied under the provisions of section 9 of this Ordinance;

shall be guilty of an offence and shall, on conviction, be liable to penal servitude for a term not exceeding five years and to a fine not exceeding Rs20,000.

- (2) Any person who carries on or is privy to the carrying on of a banking business in the Colony which has been established contrary to the provisions of this Ordinance shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years and to a fine not exceeding Rs10,000.

## **17. Saving**

This Ordinance shall not apply to the Mauritius Agricultural Bank established under the provisions of the Agricultural Bank Ordinance, 1950, or to the Savings Bank established under the provisions of the Savings Bank Ordinance, 1950, or to the Mauritius Co-operative Central Bank or any co-operative society registered under the provisions of the Co-operative Credit Societies Ordinance, 1945.

## **18. Operation of Ordinance**

This Ordinance shall have effect anything to the contrary notwithstanding in the Companies Ordinance and the provisions of that Ordinance, in so far as they relate to banks or the carrying on of banking business in the Colony, shall have effect subject to the provisions of this Ordinance.

## **19. Regulations**

(a) The Governor may make such regulations as may be required from time to time for carrying into effect the objects of this Ordinance.

(b) Any regulations made under this section may provide a penalty not exceeding Rs5,000 for any breach of the provisions thereof.

Passed in the Legislative Council, Island of Mauritius, this eighth day of April, one thousand nine hundred and fifty-eight.

**L. REX MOUTOU,**

Clerk of the Legislative Council

Published by order of His Excellency the Governor, this nineteenth day of April, one thousand nine hundred and fifty-eight.

**ROBERT NEWTON,**

Colonial Secretary

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### **FIRST SCHEDULE**

(Section 5)

1. Barclays Bank, D.C.O.
2. Mauritius Commercial Bank Limited

## SECOND SCHEDULE

### PART 1 – (section 9)

BANK.....QUARTERLY STATEMENT OF ASSETS AND LIABILITIES  
AS AT.....

LIABILITIES	Rs	ASSETS
1. Capital issued and paid up in cash and outstanding.....		1. Cash in hand.....
2. Reserve Fund		2. Balances due from:-
3. Debentures.....		(a)Other banks in the Colony.....
4. *Deposits.....		+ (b) Banks abroad (including Head Office where that is outside the Colony)
(a) Demand.....		3. Bills discounted
(b) Time.....		(a)Local Bills:-
(c) Saving.....		(i)Current.....
[*of which in total by Government Rs .....]		(ii)Overdue.....
5. Balances due to :-		(b)Foreign Bills
(a) Other banks in the Colony.....		(i)Current.....
(b) Banks abroad (including Head Office where that is outside the Colony)		(ii)Overdue.....
6. Bills payable.....		4. Bills receivable
7. Loans and Advances from:-		5. Loans and Advances to:-
(a) Other banks in the Colony		(a) Other banks in the Colony...
(b) Banks abroad		(b) Banks abroad.....
(c) Other parties or institutions		(c) Customers other than banks...
[Contingent liability in respect of bills rediscounted Rs.....]		6. **Investments (vide details below).
[Other contingent liabilities Rs.....]		7. Bank furniture, fittings, equipment and premises
8. Acceptances on account of customers...		8. Liabilities of customers for acceptances (as per contra).....
9. Confirmed documentary credits.....		9. Liabilities of customers for confirmed

10. Guarantees, Endorsements and other obligations on account of customers.....		documentary credits (as per contra)...
11. Other Liabilities.....		10. Liabilities of customers for Guarantees Endorsements and other obligations (a per contra).....
		11 Other Assets.....
TOTAL LIABILITIES.....	—	TOTAL ASSETS.....
	—	
	—	

Net external assets or Net external liabilities.....Rs.....

We declare that the foregoing is made up from the books of the bank and that to the best of our knowledge and belief it is correct.

Date..... Manager.....Chief  
Accountant.....

+Give on an attached sheet details of balances lodged in countries in which currency restrictions exist and which are subject to such restrictions.

+Total outstanding unsecured advances and unsecured credit facilities.....  
Rs.....of which granted to directors, officials, or employees or to concerns in which a director or an official has a substantial financial interest and exceeding Rs 5,000 individually...Rs.....

\*\*Investments (details of Total)

(a) Mauritius Rs  
Government Stock.....  
Municipal Stock.....  
Public Utilities stock.....  
Other.....  
(b) Foreign.....

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**PART II – (Section 9)**

Bank.....

ANALYSIS OF LOANS TO CUSTOMERS AS AT .....19.....SHOWING  
ADVANCES  
AND BILLS DISCOUNTED SEPARATELY

SECTION 1 – Analysis by the purpose for which or the type of Industry to which  
the advance is made or upon which the Bill is drawn

	Advances	Bills Discounted
Agricultural Interests.....		
Produce Brokers and Exporters.....		
Industries and Manufacturers.....		
Wholesalers.....		
Retailers.....		
Motor Traders.....		
Personal and Professional.....		
Stockbrokers.....		
Government.....		
Other Public Bodies.....		
Financial Institutions		
(1) Boards of Executors and Trust Companies, Building and Insurance Societies.....		
(2) Finance, Investments, Discount and Property Owning Companies.....		
Other		
Customers.....		



Foreign Bills.....		
TOTAL		

Section 2 – Analysis by the Number and Value of Advances and Bills Discounted.

Value Range	Number of Advances	Value of Advances	Number of Bills	Face Value of Bills
Up to Rs. 10,000.....				
Over Rs. 10,000 and up to Rs.100,000.....				
Over Rs. 100,000 and up to Rs.1,000,000.....				
Over Rs. 1,000,000				
		(*)		(*)
TOTAL				

\*The total value should agree with the total value in Section 1 and with the total of advances and bills discounted as shown in Part 1.

.....  
Manager.

Date.....

.....  
Chief Accountant