

- (c) in subsection (2A) -
- (i) by the deletion of "20p" and "15p" and the substitution therefor of "10p" and "7½p" respectively;
 - (ii) by the deletion of the semicolon at the end of paragraph (i) and the substitution therefor of a full stop; and
 - (iii) by the deletion of paragraphs (j), (k), (l), (m), (n), and (o);
- (d) by the deletion of subsection (4); and
- (e) by renumbering subsection (5) as subsection (4).

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

R Browning
Clerk of the Legislative Council

Ref: 0747/K/III

Assented to in Her Majesty's name this 26th day of June 1972.

R.G. LEWIS
Governor

I.S.

No. 7

1972

Colony of the Falkland Islands.

IN THE TWENTY FIRST YEAR OF THE REIGN OF

HER MAJESTY QUEEN MARGARET II

Ernest Gordon Lewis, CMG, OBE

Governor

AN ORDINANCE FOR THE LICENSING AND CONTROL OF BANKING IN THE COLONY
ENACTED by the Legislature of the Colony of the Falkland Islands,
as follows -

Title

Enacting
Clause

1. This Ordinance may be cited as the Banking Ordinance 1972.

Short Title

2. In this Ordinance, unless the context otherwise requires -
"bank" means any financial institution whose business includes the
acceptance of deposits of money withdrawable by cheque;

Interpretation

"banking business" means the business of accepting deposits of money
which may be withdrawn or repaid on demand or after a fixed period or
after notice and the employment of those deposits in whole or in
part by lending or any other means for the account and at the risk of
the person accepting such deposits;

"banking licence" means a licence granted by the Governor in Council
under section 5;

"company" means a company incorporated under the Companies and
Private Partnership Ordinance or any company incorporated under
any other Ordinance, Act of Parliament of the United Kingdom or
letters patent of the United Kingdom;

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"licensed bank" means a bank licensed under section 5;

"officer" includes a director, manager or secretary.

3. No banking business shall be transacted in the Colony except
by a company;

Banking business
to be transacted
only by a
company.

Provided that the Governor in Council may at his discretion grant
a special licence to any person not being a company who at the date
of the commencement of this Ordinance carried on, conducted, managed
or directed banking business in the Colony, and such banking business
shall thereupon for the purposes of this Ordinance be deemed to be a
licensed bank to which all the provisions of this Ordinance relating
to a licensed bank shall apply:

Provided that the Governor in Council may at his discretion grant to
such company exemption from any of the provisions of sections 7,8,9,12,
13, or 16 of this Ordinance.

4(1) Notwithstanding any of the provisions of this or any other
Ordinance, no company shall carry on the business of banking
without first being licensed in that behalf by the Governor in
Council.

Banking
Company to
be licensed

(2) Every company carrying on banking business in the Colony on the date on which this Ordinance comes into operation shall as from that date and for the six months next following that date be deemed to be duly licensed but if such company proposes to continue to carry on banking business in the Colony after the expiration of the said period of six months it shall, within three months after the date on which this Ordinance comes into operation, apply to the Governor in Council for a licence:

Provided further that the Governor in Council may at his discretion grant to such licensed bank exemption from any of the provisions of sections 5, 7, 8, 9, 12 or 13 of this Ordinance.

Grant and refusal of licence.

5. (1) The Governor in Council may at his discretion grant a licence to carry on the business of banking in the Colony, subject to such conditions as he may think fit, to any company which has a paid up share capital of not less than £250,000.

(2) The Governor in Council may at his discretion and without assigning any reason therefor refuse to grant a banking licence or cancel any banking licence in the manner hereinafter set out.

Restriction of use of word "bank" or "trust"

6. No person other than a company licensed to carry on banking business under the provisions of this Ordinance shall, without the consent of the Governor, use the word "bank" or "trust" or any derivative thereof in the name under which business is being carried on or use any name implying that the business of banking is carried on.

Maintenance of reserve fund.

7. (1) Subject to subsection (2) of this section, every company licensed to carry on banking business under this Ordinance shall maintain a reserve fund and shall, out of its net profits of each year and before any dividend is declared, transfer to that fund a sum equal to not less than twenty-five per centum of such profits whenever the amount of the reserve fund is less than the issued paid up capital of the company.

(2) Subsection (1) of this section shall not apply to any company licensed to carry on banking business under this Ordinance with respect to which it is proved to the satisfaction of the Governor in Council that the aggregate reserves of such company are adequate in respect of its business.

Restriction of dividends

8. No company licensed to carry on banking business under this Ordinance in the Colony shall pay any dividend on its shares until all its capitalised expenditure not represented by tangible assets has been completely written off.

Restriction on certain activities.

9. (1) A company licensed to carry on banking business under this Ordinance shall not in the Colony -
(a) grant to any person, firm, corporation or company, or to any group of companies or of persons which group is under the control or influence of one and the same person, any advance or credit facility, or give any financial guarantee or incur any other liability on behalf of such person, firm, corporation, company or group so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of such person, firm, corporation, company or group is at any time more than twenty-five per centum of the sum of the paid up capital and published reserves of the licensed company:

Provided that this paragraph shall not apply to transactions between banks or between the branches of a bank, or to the purchase of telegraphic transfers, or to the purchase of bills of exchange or documents of title to goods where the holder of such bills or documents is entitled to payment outside the Colony for exports or to advances made against such transfers, bills or documents;

- (b) grant any advance or credit facility against the security of its own shares;
- (c) grant or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of £1,500 or of one per centum of the sum of the paid up capital and published reserves of such company, whichever is the greater, or give any financial guarantees in excess of such amount without security, or incur any other liability in excess of such amount without security -
 - (i) to or on behalf of any one of its directors, whether such advances, facilities, guarantees or other liabilities are obtained by or on account of such director, jointly or severally;
 - (ii) to or on behalf of any firm, partnership or private company in which it, or any one or more of its directors is interested as director, partner, manager or agent, or to or on behalf of any individual, firm, partnership or private company of whom or of which any one or more of its directors is a guarantor;
- (d) grant or permit to be outstanding to its officials and employees unsecured advances or unsecured credit facilities which in aggregate amount for any one official or employee exceed one year's emolument of such official or employee.

(2) in subsections (c) and (d) of subsection (1) of this section the expression "unsecured advances or unsecured credit facilities" means advances or credit facilities granted without security, or, in respect of any advance or credit facility granted with security, any part thereof which at any time exceeds the market value of the assets constituting that security.

10. (1) The Governor may appoint an advisory committee consisting of such persons and appointed upon such terms as he may think fit to advise him on matters relating to banking business and he may at any time determine any appointment so made.

Appointment of advisory committee.

(2) The Governor may make rules providing for the procedure to be followed at any meeting held by the advisory committee.

11. (1) The Governor in Council may, after consultation with the advisory committee and if he considers it to be in the public interest so to do, order any licensed bank -

Special powers of Governor in Council

- (a) to produce to such person and within such period as may be named in such order any books, accounts or documents of such bank; or such other information relating to the banking business of such bank, provided that no statement or information shall be required with respect to the affairs of any particular customer of a licensed bank;
- (b) to delete from the name under which it is carrying on business within such period as shall be named in such order the word "bank" or "trust" or any derivative thereof or any other word or words forming part of its name;
- (c) to refrain from carrying on banking business;
- (d) to return for cancellation by the Colonial Treasurer any licence issued to such bank under this Ordinance:

Provided that no order under paragraph (a) of this sub-section shall be made unless the production of any such books, accounts or documents is in the opinion of the Governor in Council necessary for the proper prosecution of any investigation the result of which might lead the Governor in Council to make an order under paragraph (b), (c) or (d) of this subsection:

And provided further that before any order is made under paragraph (b), (c) or (d) of this subsection, the Governor in Council shall give the licensed bank notice of his intention to make such an order and shall afford such licensed bank an opportunity of submitting to him a written statement of its case.

(2) The Colonial Treasurer shall publish in the Gazette the name of any licensed bank the licence of which is cancelled.

(3) If any person to whom any books, accounts or documents have been produced under paragraph (a) of subsection (1) of this section shall otherwise than for the purpose of this Ordinance publish or disclose any such books, account or documents or any extract therefrom or particular therein he shall be guilty of an offence and liable on conviction upon indictment to a fine of £500.

Exhibition of balance sheet

12. (1) Not later than four months after the close of each financial year of each licensed bank, or such longer period as the Colonial Treasurer may, in any particular case permit, the licensed bank shall publish in the Colony Gazette and forward to the Colonial Treasurer a copy of its balance sheet and profit and loss account and the full and correct names of the directors of the licensed bank. The balance sheet and profit and loss account shall bear on their face the certificate of an approved auditor in accordance with subsection (1) of section 13 of this Ordinance.

(2) Every licensed bank shall exhibit and keep exhibited throughout the year in every office of the bank in the Colony a copy of its last balance sheet and profit and loss account.

(3) The requirements of this section shall be in addition to and not in derogation of the requirements of the Companies and Private Partnership Ordinance or of any other Ordinance, Act of Parliament of the United Kingdom or letters patent of the United Kingdom.

Approved Auditor

13. (1) Every licensed bank shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that licensed bank a report upon the annual balance sheet and accounts, and in every such report the auditor shall state whether, in his opinion, the balance sheet is full and fair and properly drawn up, whether it exhibits a true and correct statement of the licensed bank's affairs, and, in any case in which the auditor has called for explanation or information from the officers or agents of the licensed bank, whether this is satisfactory.

(2) For the purposes of this section, an approved auditor is a person for the time being declared by the Colonial Treasurer by notice in the Gazette to be approved for such purposes.

Persons debarred from management

14. No person -

(a) who has been a director of, or directly concerned in the management of a licensed bank which has had its licence revoked in accordance with paragraph (d) of section 11 of this Ordinance or has been wound up by a Court; or

(b) who has been sentenced by a competent court to a term of imprisonment involving dishonesty and has not received a full pardon for that offence; or

(c) who is or becomes bankrupt, suspends payment to or compounds with his creditors;

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

15. (1) Any company which acts in contravention of the provisions of the provisions of section 4(1) of this Ordinance and any officer of such company who is in default, shall be guilty of an offence and liable -

Penalties

(a) on summary conviction to a fine of £100; and

(b) on conviction upon indictment to a fine of £500.

(2) Any person who contravenes the provisions of section 3, 6 or 14 of this Ordinance shall be guilty of an offence and liable -

(a) on summary conviction to imprisonment for two years or to a fine of £200 or to both such imprisonment and fine; and

(b) on conviction upon indictment to imprisonment for five years or to a fine of £500 or to both such imprisonment and fine.

(3) Any licensed bank failing to comply with an order made under section 11 (1) of this Ordinance or of failing to comply with the provisions of section 12(1) or (2) of this Ordinance and any officer of such a bank in default shall be guilty of an offence and liable -

(a) on summary conviction to imprisonment for two years or to a fine of £100 or to both such imprisonment and fine; and

(b) on conviction upon indictment to imprisonment for five years or to a fine of £500 or to both such imprisonment and fine, and, in the case of an offence under section 11 (1) (a) of this Ordinance, in addition, to a penalty of £25 for each day during which the default continues.

(4) Any company licensed to carry on banking business under this Ordinance which fails to pay the fees provided by section 16, shall, in addition to any other penalty under this Ordinance for such failure, be guilty of an offence and liable on conviction to a fine not exceeding £25 for each day during which the fee remains unpaid, and every officer of such company who knowingly authorises or permits such non-payments is liable to a like conviction and fine.

16. (1) Every company to which a licence is granted shall, upon the issue of such licence, pay to the Government a fee of £250.

Annual licence fee

(2) On or before the first day of January every year after the year in which a licence has been granted to a company that company shall, during the subsistence of such licence, pay to the Government a fee of £250.

17. Nothing in this Ordinance shall apply to the Government Savings Bank.

Saving.

18. The Governor in Council may make such rules as may be necessary for the purpose of carrying into effect the provisions of this Ordinance.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

R. BROWNING
Clerk of the Legislative Council

Ref: 2497