

FINANCIAL SERVICES COMMISSION ACT, 2010 – 21

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FIRST SCHEDULE

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BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
21st December, 2010.

2010 – 21

An Act to provide for the establishment and management of a Financial Services Commission to regulate the financial services sector other than banking services, and to provide for the Commission to give technical assistance in respect of the monitoring of the corporate sector and also to provide for related matters.

(By Proclamation) Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Financial Services Commission Act, 2010*. Short title.

Interpreta-
tion.

2. In this Act,

"appeal" includes an application or reference;

"auditor" means a person who is qualified to practise in Barbados and includes a partnership of auditors;

"Commission" means the Financial Services Commission established by section 3 of this Act;

Cap. 378.

"credit union" means a co-operative society within the meaning of section 193 of the *Co-operative Societies Act*, which is registered under that Act;

"customers" in relation to a financial institution means depositors, shareholders, investors and policy holders as well as any other person who has a similar financial interest in the financial institution;

"document" includes a record or information of any kind which is stored in an electronic format;

"examiner" means a person appointed pursuant to section 14;

"financial institution" means

Second
Schedule.

(a) an institution or a business which is governed by any of the Acts set out in the *Second Schedule*; or

(b) a credit union;

"financial services" means

(a) the services governed by the specified enactments; and

Cap. 378.

(b) the services provided by a credit union in accordance with the *Co-operative Societies Act*;

"Financial Services Commission Appeals Tribunal" or "Tribunal" means the tribunal established under section 26;

"Fund" means the Financial Services Commission Fund, established under section 41;

"guidelines" means guidelines made under this Act;

"investigator" means a person authorised to conduct an investigation pursuant to section 16;

"member" means in relation to the Commission, a member of the Commission and in relation to the Tribunal a member of the Tribunal;

"Minister" means the Minister responsible for Finance;

"regulations" means the regulations made under this Act;

"regulatory authorities" means the authorities which administer the specified enactments and includes the relevant Minister;

"specified enactments" means

(a) the Acts specified in the *Second Schedule* and any subsidiary legislation made under those Acts; and Second Schedule.

(b) the *Co-operative Societies Act* and the subsidiary legislation made under that Act in so far as those enactments relate to credit unions. Cap. 378.

3. (1) There is established a Commission to be known as the Financial Services Commission. Establishment of Commission.

(2) The *First Schedule* has effect with respect to the constitution of the Commission and otherwise in relation hereto. First Schedule.

(3) The Minister may by order amend the *First, Second or Third Schedule*. First Schedule.
Second Schedule.

Cap. 1. (4) The Commission is a body corporate to which section 21 of the *Interpretation Act* applies.

(5) The members of the Commission are entitled to such remuneration and allowances as the Minister determines.

Functions
of
Commis-
sion.

4. (1) The functions of the Commission are as follows:

- (a) to be responsible for the administration of the specified enactments, including the licensing or registration, as the case may be, of financial institutions;
- (b) to supervise and regulate the operation of financial institutions;
- (c) to establish standards for institutional strengthening, for the control and management of risk in the financial services sector and for the protection of customers of financial institutions as well as creditors and the public;
- (d) to issue guidelines in accordance with section 53;
- (e) to promote stability, public awareness and public confidence in the operations of financial institutions;
- (f) to increase the competitiveness of the financial services sector;
- (g) to advise the Minister in respect of matters relating to this Act;
- (h) to provide technical assistance and advice to the International Business Unit or to any other government agency in relation to its responsibilities under any law to supervise, regulate or monitor any business operating in Barbados; and
- (i) to do such other things as are necessary to effectively carry out the purposes of this Act.

(2) For the purposes of this section, "government agency" means a Ministry, a Department of Government or a statutory Board.

5. (1) The Commission shall administer the specified enactments with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of this Act. Administration of specified enactments.

(2) Notwithstanding subsection (1), where there is any conflict between this Act and the specified enactments, the provisions of this Act shall apply.

6. (1) Subject to subsection (2), no person shall operate any business which is regulated under any of the specified enactments without first applying to the Commission to be registered or to obtain a licence, as the case may be, in accordance with those Acts. Duty to be licensed or registered.

(2) After the commencement of this Act, all licences and certificates of registration issued under the specified enactments remain valid until the date fixed for their expiry.

(3) Where an application is made to the Commission under subsection (1), the Commission shall issue a certificate of registration or a licence, as the case may be, if it is satisfied that the requirements for the registration or the grant of a licence under any of the specified enactments are fulfilled and that the person is a fit and proper person to operate a financial services business.

(4) The certificate of registration or licence issued under subsection (1) shall be in such form as the Commission approves.

(5) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of \$100 000.

(6) Where there is reasonable cause to believe that any company has contravened subsection (1), the Commission may cause an examination to be made of that company; and the provisions of this Act shall apply *mutatis mutandis* for the purposes of the examination as if the company was registered or licensed under this Act.

(7) A person who holds funds obtained from carrying on business in Barbados contrary to subsection (1) shall repay those funds in accordance with the direction of the Minister.

Register to
be kept.

7. (1) The Commission shall keep a register of persons licensed or registered under this Act and the register shall be

- (a) in such form and with such particulars as the Commission may decide;
- (b) published at such intervals and in such manner as the Commission may decide; and
- (c) open to public inspection at such times as are reasonably convenient.

(2) Any record of registration or register of licences maintained pursuant to the specified enactments shall continue to have effect as though maintained pursuant to this Act.

Powers of
Commission.

8. (1) Subject to this Act and the specified enactments, the Commission may,

- (a) give directives
 - (i) to ensure compliance with this Act, the regulations or guidelines or to ensure compliance with any of the specified enactments;
 - (ii) to ensure that a financial institution is being properly managed and remains financially sound;
- (b) investigate the affairs of a financial institution in accordance with this Act;
- (c) suspend or cancel the registration or revoke the licence of a financial institution pursuant to this Act and the specified enactments;
- (d) seize the management and control of a financial institution, appoint a manager or take any other necessary action for the purpose of protecting the interest of customers of financial institutions, as well as creditors and the public and ensuring that the financial institution remains financially sound;

- (e) reorganize or wind up a financial institution in accordance with the specified enactments and any other applicable enactment;
- (f) exempt any financial institution from any requirement under this Act or any requirement under the guidelines where in the opinion of the Commission it is necessary to do so;
- (g) exercise any of the powers exercisable by the regulatory authorities under the specified enactments before the commencement of this Act; and
- (h) exercise such other powers as are necessary to enable it to effectively discharge its functions under this Act.

(2) A financial institution that is aggrieved by any action taken by the Commission pursuant to paragraphs (a), (c), (d), or (e) of subsection (1) may, within 30 days of the receipt of written notification of the decision, appeal to the Tribunal.

(3) A person appointed under subsection (1)(d) shall be paid by the Commission such remuneration as the Commission may determine; and the remuneration shall be charged to the financial institution concerned.

9. (1) A directive under section 8(1)(a) must be in writing and must give the person to whom it is issued a reasonable time for compliance. Compliance with directives.

(2) Any person to whom a directive is given pursuant to section 8(1)(a) shall comply with the directive.

(3) No person shall knowingly hinder or prevent compliance with a directive given pursuant to section 8(1)(a).

(4) Any person who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to imprisonment for a term of 1 year or to both and, in addition, where a time period is specified for compliance, to a further fine of \$2 500 for each day during which the person fails to comply with the directive.

Submission
of informa-
tion.

10. (1) Subject to section 8(1)(f), every financial institution shall furnish to the Commission at the end of each quarter, a financial statement and any other information necessary for the understanding of the financial statement.

(2) In addition to the furnishing of the financial statement pursuant to subsection (1), every financial institution shall furnish to the Commission at such time as the Chief Executive Officer of the Commission may fix in writing, such time being reasonable in all the circumstances; and in such manner as may be specified, the following information relating to its business operations:

- (a) any information relating to the financial statements or any information relating to the financial returns of the financial institution;
- (b) any information the Commission considers necessary in respect of any holding company, subsidiary or affiliate of the financial institution; and
- (c) any other information, records or documents the Commission considers necessary for the purpose of carrying out its functions under section 4(1)(b).

(3) Where a financial institution fails without reasonable excuse to comply with a direction under subsection (2) that financial institution and every director of the financial institution is guilty of an offence and is liable on conviction, on indictment, to a fine of \$100 000 or to imprisonment for a term of 2 years or to both.

Annual
audit.

11. (1) A financial institution shall appoint an auditor annually to conduct an audit of that financial institution.

(2) An auditor may not be appointed by a financial institution for the purposes of this section, unless that auditor is approved by the Commission as having the capacity and resources to satisfactorily audit that particular financial institution.

(3) A former director shall not be eligible for appointment as an auditor of the financial institution within a period of 3 years after the termination of his term as a director.

(4) A financial institution shall give notice in writing to the Commission

(a) if it fails to appoint an auditor; or

(b) if it intends to terminate the appointment of its auditor,

and shall in the notice state the reason for its failure to appoint an auditor or for the intention to terminate the appointment, as the case may be.

(5) An auditor of a financial institution shall forthwith give written notice to the Commission where that auditor

(a) resigns before the expiration of his term of office; or

(b) does not seek re-appointment.

(6) It is the duty of

(a) the auditor appointed under subsection (1) to submit a report to the shareholders and directors of the financial institution; and

(b) the financial institution to submit to the Commission a copy of the audited annual financial statement and a copy of the report referred to in paragraph (a).

(7) It is the duty of the auditor to note in his report and to report to the Commission any instances where the operations of the financial institution might not in his opinion be in compliance with the requirements of this Act, the regulations, the guidelines or the specified enactments.

(8) Where in the course of an audit an auditor has reason to believe that a crime involving fraud, theft or any other offence involving dishonesty or money laundering or the financing of terrorism has been, is being or is likely to be committed, the auditor shall without delay report the matter to the Commission.

Appoint-
ment of
auditor by
the Com-
mission.

12. (1) Where a financial institution

(a) fails to appoint an auditor under section 11(1); or

(b) terminates the appointment of its auditor without appointing a replacement,

the Commission may appoint an auditor who shall have all the powers of an auditor appointed by the financial institution under section 11(1) to carry out the audit, and shall fix the remuneration to be paid to the auditor by the financial institution.

(2) Where the Commission is not satisfied with the annual financial statement or the report of the auditor appointed by a financial institution, the Commission may appoint another auditor to conduct an independent audit and shall fix the remuneration to be paid to the auditor by the financial institution.

(3) Subsections (7) and (8) of section 11 shall apply to an auditor appointed under this section.

Commis-
sion may
request
information
from
auditors.

13. (1) The Commission may, when it considers it necessary to do so, request in writing, information obtained in the course of an audit from the auditor of a financial institution.

(2) An auditor shall, within 14 days of the request referred to in subsection (1), submit the information requested to the Commission.

(3) An auditor who fails without reasonable excuse to submit the information requested in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for 12 months or to both.

Examina-
tion.

14. (1) The Commission may, if it considers it necessary, cause an examination to be made into the affairs of a financial institution by

(a) any of its officers; or

(b) any person authorized by it,

- (i) to determine whether the provisions of this Act, the regulations or guidelines as well as the provisions of the specified enactments are being complied with;
- (ii) to determine whether the provisions of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act* and the guidelines relating thereto are being complied with; Cap. 129.
- (iii) to determine whether the financial institution is in a sound financial condition; or
- (iv) for any other reason which in the opinion of the Commission is necessary for the purposes of due diligence or in the interest of the customers of the institution.

(2) Where necessary, the Commission may in respect of any holding company, parent company or any other company that holds shares in a financial institution,

- (a) inspect the books of the company; or
- (b) request any information from the appropriate authorities in any country where the company is located.

15. An auditor, officer or employee of a financial institution shall produce for an examiner at such time as the examiner fixes, such time being reasonable in all the circumstances, all books, minutes, cash, securities, vouchers and other documents and records relating to its assets, liabilities and business generally; and shall give the examiner such information concerning its affairs and business as the examiner may request orally or in writing. Production of documents and information.

16. (1) The Commission may, where the Commission considers it to be necessary, authorize a suitably qualified person to conduct an investigation into the affairs of a financial institution. Investigations.

(2) Where an investigation is being conducted under this Act, an investigator may

- (a) request information from the financial institution; or
- (b) make enquiries into the operations of the financial institution from
 - (i) a former auditor, former officer or former employee of the financial institution;
 - (ii) a person possessing or likely to possess information in respect of the operations of the financial institution by reason of that person's connections or association with the financial institution; or
 - (iii) a person with whom the financial institution conducts business.

Powers and responsibilities of examiner and investigator.

17. (1) Before conducting an examination or an investigation, the examiner or the investigator shall produce evidence of his authorization to all persons concerned.

(2) An examiner or an investigator may seize any document, record or other information which in his opinion is necessary.

(3) An examiner or an investigator shall submit a full report of the examination or the investigation as the case may be, to the Chief Executive Officer of the Commission at the conclusion of the proceedings and also to the board of directors of the financial institution.

No liability for disclosing information.

18. An auditor, officer or employee of a financial institution or any other person who is required under this Act to make any disclosure for the purposes of an examination or an investigation, shall not by reason of making that disclosure, be regarded as being in breach of his duty to the financial institution.

Offence for not producing information.

19. (1) Where

- (a) any document or record requested by an examiner or an investigator is not produced within a reasonable time; or

- (b) any information requested is not given to the examiner or the investigator within a reasonable time,

the person who is responsible for giving the information is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction, on indictment, to a fine of \$50 000 or to imprisonment for a term of 1 year or to both and, in addition, to a further fine of \$2 500 for each day during which the offence continues.

20. (1) Where the Commission is of the opinion that an examination of a financial institution indicates that the financial institution

Prescribed
remedial
action.

- (a) is carrying on its business in an unlawful manner;
- (b) is in an unsound financial condition or is likely to be in such a condition; or
- (c) has inadequate internal controls or systems,

the Commission, after service of notice in writing, may

- (i) require the financial institution to immediately take such remedial measures as the Commission considers necessary; and
- (ii) with the approval of the Minister,
- (A) appoint a person who, in the opinion of the Commission, has had training and experience in the business of the financial institution concerned to advise the financial institution on the action to be taken to remedy the situation; or
- (B) suspend the registration or licence of the financial institution for a period not exceeding 3 months.

(2) A person appointed under subsection (1)(b)(ii) shall be paid by the Commission such remuneration as the Commission may determine; and the remuneration shall be charged to the financial institution concerned.

(3) A financial institution that is required to take remedial measures or whose registration or licence is suspended under this section may, within 21 days of the service of the notice under subsection (1), make representation in writing to the Commission as to why the Commission should not take the action intended.

(4) Where a financial institution is dissatisfied with the decision of the Commission after representation is made under subsection (3), the financial institution may, within 30 days after it is notified of the Commission's decision, appeal to the Tribunal.

(5) Where the Commission is of the opinion that the operations of a foreign office of a financial institution present a threat to the financial soundness of that financial institution, the Commission may, in such time as is reasonable in all the circumstances, by notice in writing,

- (a) require the financial institution to make such changes in the operations of the office as are considered necessary; or
- (b) require the financial institution to close the office.

(6) A financial institution may appeal to the Tribunal where that financial institution is aggrieved by the decision of the Commission under subsection (5).

Failure to
take
remedial
action etc.

21. (1) The Commission may by notice in writing cancel the registration or revoke the licence of a financial institution issued under this Act where

- (a) the financial institution fails within a reasonable time to take remedial measures within the period specified; or

- (b) the financial institution fails within a period of suspension
 - (i) to desist from the conduct which resulted in the suspension; or
 - (ii) to take any action required by the Commission.

(2) A financial institution that is aggrieved by any action taken under subsection (1) may, within 14 days after it is notified of the decision, make representation in writing to the Commission as to why the Commission should not take the action intended.

(3) A financial institution that is dissatisfied with any decision taken under subsection (2) after representation is made to the Commission may, within 30 days of the receipt of the notification, apply to the Tribunal for an order requiring the Commission to revoke the decision to cancel the registration or revoke the licence of the financial institution; and the Tribunal may make such order as it thinks fit in the circumstances.

22. Any person who,

- (a) destroys, falsifies, conceals or disposes of; or
- (b) causes or permits the destruction, falsification, concealment or disposal of,

Tampering
with
evidence.

any document, information or other thing that the person knows or ought reasonably to know is relevant to an examination or investigation conducted under this Act, is guilty of an offence and is liable on conviction on indictment, to a fine of \$100 000 or to imprisonment for a term of 5 years or to both.

23. Any person who,

- (a) obstructs the carrying out by an auditor or an examiner of the auditor's or the examiner's proper function under this Act; or
- (b) in any way obstructs the examination or investigation of a financial institution under this Act,

Obstruction.

is guilty of an offence and is liable on conviction on indictment to a fine of \$200 000 or imprisonment for 5 years, or to both.

Examina-
tion
expenses.

24. The Commission may impose such charges as are necessary to meet the expenses relating to an examination under this Act on the financial institution which is being examined or where the examination is sought by interested persons, those persons may be required to meet the expenses.

Revocation,
cancellation
or suspen-
sion of
licence or
registration.

25. (1) The Commission may after consultation with the Minister, revoke the licence or cancel the registration of a financial institution where in the opinion of the Commission,

- (a) a financial institution is not maintaining high standards of financial probity or following sound business practices; or
- (b) a financial institution has committed a serious breach of this Act, the regulations, the guidelines or the specified enactments.

(2) Where the Commission intends to cancel the registration or revoke the licence of a financial institution under subsection (1), the Commission shall give notice in writing to the financial institution setting out the reasons for the intended action and give the financial institution a reasonable opportunity to show cause why the licence should not be revoked or the registration cancelled, as the case may be.

(3) Where the Commission cancels the registration or revokes the licence of a financial institution under subsection (1), the Commission shall give notice in writing to the financial institution.

(4) A financial institution that is aggrieved by the cancellation of its registration or the revocation of its licence under subsection (1), may within 30 days of the receipt of the notification under subsection (3), appeal to the Tribunal.

(5) The Commission may suspend the operation of a financial institution pending the determination of an appeal under subsection (4).

(6) Where the Commission cancels the registration or revokes the licence of a financial institution under this section and there is no appeal or the appeal is disallowed, notice of the revocation or cancellation shall be published in the *Official Gazette* and in a daily newspaper published and circulating in Barbados.

26. (1) There shall be a Financial Services Commission Appeals Tribunal which shall hear appeals in accordance with this Act.

Establishment of Appeals Tribunal. Third Schedule.

(2) The *Third Schedule* shall have effect with respect to the jurisdiction and procedure of the Tribunal and otherwise in relation thereto.

(3) The Tribunal may be divided into such number of divisions as are required for the efficient hearing of appeals in relation to the various financial services sectors.

(4) An appeal to the Tribunal shall be heard and determined by the division to which it is assigned by the direction of the Chairman of the Tribunal.

27. (1) The Tribunal shall hear appeals in accordance with this Act.

Appeal to Tribunal.

(2) Where under any of the specified enactments an appeal lies to the Minister or a tribunal or any other authority or body from a decision of the regulatory authorities, the appeal shall, after the commencement of this Act, lie to the Tribunal.

(3) The Tribunal may make any order or take any action which would have been within the power of the Minister, the tribunal or other authority or body to make under the specified enactments upon an appeal before the commencement of this Act.

(4) Every hearing and determination by the Tribunal must be in accordance with the principles of natural justice and the Tribunal is under a duty to give reasons for decisions in accordance with Part II of the *Administrative Justice Act*.

Cap. 109 B.

28. (1) Any party to an appeal determined by the Tribunal pursuant to sections 8(2), 20(4) and (6); and 21(3) and 25(4) who is dissatisfied with the determination may, within 14 days after that person is notified of the decision, appeal to the Court of Appeal against the decision in accordance with rules of court.

Appeal to Court of Appeal.

(2) On an appeal under subsection (1), the Court of Appeal may make any order or give any decision which might have been made or given by the Tribunal, and may, if it thinks fit, remit the case to the Tribunal with directions as to its determination by the Tribunal.

Appeal on
a point of
law.

29. (1) Any party to an appeal determined by the Tribunal who is dissatisfied with the determination on a point of law may, within 14 days after the decision is given, appeal to the Court of Appeal in accordance with rules of court.

(2) On an appeal under subsection (1), the Court of Appeal may make any order or give any decision which might have been made or given by the Tribunal, and may, if it thinks fit, remit the case to the Tribunal with directions as to its determination by the Tribunal.

Ministerial
directions.

30. (1) The Minister may, after consultation with the Chairman of the Commission, give to the Commission directions of a general nature as to the policy to be followed by the Commission in the performance of its functions in relation to matters appearing to the Minister to concern the public interest.

(2) The Minister may at any time request the Commission to provide him with information concerning any aspect of its administration under this Act, and the Commission shall provide the information.

Delegation.

31. (1) The Commission may by order delegate any power or function conferred on it by this Act to any member, committee or senior officer of the Commission, except

(a) the power to issue and revoke the licence of a financial institution or to register or cancel the registration of a financial institution; or

(b) the power to make regulations under this Act.

(2) A delegation under subsection (1),

(a) may be subject to such conditions, qualifications and exceptions as may be prescribed in the order; and

(b) shall not preclude the Commission from exercising that power or performing that duty.

32. (1) The Commission shall, with the approval of the Minister, appoint a chief executive officer, by whatever name called.

Appointment of chief executive officer.

(2) The chief executive officer shall perform such functions as may be conferred on him by the Commission.

(3) The chief executive officer is subject to the directions of the Commission and is responsible to the Commission for the execution of its policy and the management of its affairs.

33. (1) The operations of the Commission may be separated into divisions and the Commission may appoint officers to manage each division.

Divisional heads and other staff.

(2) The Commission may appoint such number of officers and other staff as it considers necessary for the proper carrying into effect of this Act.

34. Notwithstanding the powers conferred on the Commission by section 33, the Commission shall not, without the prior approval of the Minister,

Salaries.

(a) assign to any post established by the Commission any salary in excess of such amount per annum as the Minister may determine and notify to the Commission in writing;

(b) appoint any person to a post established by the Commission to which a salary in excess of the amount determined by the Minister under paragraph (a) is assigned; or

(c) make provision for the payment of any pension, gratuities or similar benefit to the members of the Commission or its employees in respect of service to the Commission.

35. (1) Where a public officer accepts employment with the Commission, that public officer shall retain any right to pension, gratuity or other allowance for which he would have been eligible had he remained in the public service; and any such right is preserved.

Saving of pension rights.

Cap. 25. (2) Where a public officer is seconded to a post in the Commission from a pensionable office within the meaning of section 2 of the *Pensions Act*, the period of service with the Commission, unless the Governor-General otherwise determines, counts for pension under that Act as if the officer had not been so seconded.

Private pension plan. 36. The Commission shall provide for the establishment and maintenance of a pension fund for the benefit of the employees of the Commission within 3 years of the commencement of this Act.

Declaration of interest. 37. (1) A member of the Commission who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare his interest to the Commission.

(2) The Commission, excluding the member whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.

(3) Where the Commission determines that the interest of a member of the Commission is such as to constitute a conflict of interest, that member shall not take part in any deliberations on that matter, and shall not be present during such deliberations.

(4) For the purposes of this section, a member of the Commission shall be deemed to have a direct interest in a matter if

(a) that member or his nominee or an immediate relative is a shareholder or partner in; or

(b) that member or his nominee or an immediate relative is an officer of,

a company or other body of persons having an interest in or being involved in a matter before the Commission.

(5) For the purposes of subsection (4), "immediate relative" means the spouse, child, step-child, parent, brother or sister of a member of the Commission.

(6) Any person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25 000, unless he proves that he did not know that he had an interest in the matter which was the subject of consideration at the meeting.

(7) A person convicted of an offence under this section is no longer eligible to sit on the Commission.

38. No action or other proceedings for damages shall be instituted against a member of the Commission or an employee or agent of the Commission in the discharge or purported discharge of his respective functions under this Act, unless it is shown that the act or omission was in bad faith.

Protection of commissioners, officers and agents.

39. (1) The Commission may, without the consent of a financial institution, disclose information received

Sharing of information.

(a) to the Commissioner of Inland Revenue;

(b) to the Financial Intelligence Unit, established under the *Money Laundering and Financing of Terrorism (Prevention and Control) Act*;

Cap. 129.

(c) to any other supervisory or regulatory authority of financial institutions in Barbados; or

(d) subject to subsection (2), to the appropriate supervisory authority of financial institutions outside Barbados at the request of that authority, where there is a branch, holding company or affiliate of a financial institution operating in that country.

(2) In the case of paragraph (d) of subsection (1), information may only be given where there is a memorandum of understanding in place and the Commission is satisfied that the authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

Confidenti-
ality.

40. (1) No member of the Commission or other person employed or retained by the Commission shall make use, either directly or indirectly, of any confidential information obtained as a result of his relationship with the Commission for his own benefit or advantage.

(2) No person specified in subsection (1) shall disclose confidential information obtained as a result of his relationship with the Commission to any person other than

- (a) an authorised official of the Government of Barbados; or
- (b) the duly authorised representative of the Government of another country, in connection with the enforcement of this Act or any other law of Barbados.

(3) A person who receives confidential information from a person specified in subsection (1) is subject to the provisions of this section as if he were a person specified in subsection (1).

(4) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on conviction on indictment, to a fine of \$100 000 or to imprisonment for 2 years, or to both.

Establish-
ment of
Fund.

41. There is hereby established a Financial Services Commission Fund, the resources of which shall comprise

- (a) such amounts as may be voted for the purpose by Parliament;
- (b) such amounts as may be borrowed by the Commission for its purposes;
- (c) amounts realized from investment proceeds;
- (d) such amounts as may accrue from fees and charges or the operations of the Fund; and
- (e) such other moneys as may become available to the Commission from any other source approved by the Minister.

- 42.** The resources of the Fund shall be applied in the payment of expenses and towards the discharging of obligations and the performing of any function of the Commission under this Act and the regulations. Application of Fund.
- 43.** The Commission may appoint, on such terms and conditions as the Minister approves, such experts as it considers necessary to assist it in such manner as it determines. Appointment of experts.
- 44.** (1) For the purpose of carrying out its functions, the Commission may, with the approval of the Minister prescribe by order, Fees.
- (a) fees for services performed under this Act or the regulations, including fees for the filing of any document or application;
- (b) fees for the registration or licensing of financial institutions;
- (c) charges for the late payment of fees or any sum owing to the Commission.
- (2) For the purpose of carrying out its functions, the Commission may charge any fee that is prescribed under any of the specified enactments.
- (3) All fees and other sums due and payable to the Commission under this Act are recoverable as debts due to the Commission and, without prejudice to any other remedy, may be recovered summarily as a debt due to the Commission in civil proceedings before the Magistrate's Court for District 'A', notwithstanding the fact that the sums due may exceed the monetary limit of that Court.
- 45.** The Commission Investment of funds.
- (a) shall develop an investment policy in relation to the Fund; and
- (b) may invest any sums not required for the purposes of section 42 in such low-risk securities as it considers appropriate.
- 46.** The Commission is exempt from the payment of corporation tax, stamp duty and land tax. Exemption from taxes.

Borrowing
power.

47. (1) Subject to subsection (2), the Commission may borrow money required by it for meeting any of its obligations or performing any of its functions.

(2) The power conferred on the Commission by subsection (1) is exercisable only with the approval of the Minister, and the Commission shall stipulate

(a) the amount and source of the loan; and

(b) the terms and conditions on which the loan may be obtained.

(3) The approval of the Minister under subsection (2) may either be general or limited to a particular borrowing.

Guarantee
of loans.

48. The Government may guarantee in such manner and on such terms and conditions as Parliament thinks fit, the satisfaction of

(a) any loan to the Commission together with any interest charges thereon; and

(b) interest charges on any debenture stock issued by the Commission.

Accounts
and audit.

49. The Commission shall, in respect of its functions under this Act,

(a) keep proper accounts and adequate financial and other records; and

(b) prepare financial statements in respect of each financial year in conformity with established accounting principles; and

(c) appoint an auditor annually for the purpose of auditing its accounts.

Report.

50. (1) Subject to subsection (3), the Commission shall, not later than 4 months after the end of each financial year, submit to the Minister a report containing

(a) an account of the activities and transactions of the Commission throughout that financial year in such detail as the Minister may direct; and

(b) audited financial statements of the operations of the Commission for that financial year.

(2) A copy of the report referred to in subsection (1), together with a copy of the auditor's report, shall be printed and laid in the House of Assembly and Senate and published in the *Official Gazette* not later than 3 months after the date of the receipt thereof by the Minister.

(3) Where the Commission is in operation for a period of less than 12 months, the time referred to in subsection (1) for the submission of the report shall not apply; and the report in respect of the first financial year may be submitted not later than 4 months after the end of the second financial year.

51. (1) The Commission may

(a) publish in the *Official Gazette* and in a daily newspaper published and circulating in Barbados, and in such form as may be appropriate, any information which the Commission considers to be of public interest; and

(b) require financial institutions to publish any information or data which, in the opinion of the Commission, is of interest to the public.

(2) Where the Commission publishes information under subsection (1),

(a) no information in respect of the affairs of a particular customer of a financial institution shall be published; and

(b) no individual transactions of a particular customer of a financial institution shall be identified in the publication.

Publication
of informa-
tion.

52. (1) Proceedings for an offence under this Act other than an indictable offence shall not be instituted except by or with the consent of the Commission.

Prosecution
of offences.

(2) The Commission may authorize any of its officers, whether or not that person is an attorney-at-law, to prosecute or conduct before a court of summary jurisdiction any proceedings relating to subsection (1).

(3) Notwithstanding any provision in any Act prescribing the period within which summary proceedings may be commenced, proceedings for an offence under this Act may be commenced

- (a) at any time within the period of 12 months from the date on which evidence, sufficient in the opinion of the Commission to justify a prosecution for the offence, comes to its knowledge; or
- (b) within the period of 12 months, after the commission of the offence,

whichever period last expires.

Guidelines. **53.** (1) The Commission may, after consultation with financial institutions, issue guidelines for the purpose of

- (a) establishing codes of conduct to govern the financial services sector;
- (b) modernizing the financial services sector;
- (c) promoting international standards and best practices;
- (d) the detection, prevention and deterrence of money laundering; and
- (e) the detection of funds allocated or used for the financing of terrorism contrary to section 4 of the *Anti-Terrorism Act*.

Cap. 158.

(2) Where the Commission intends to make any substantive modification to the guidelines, the Commission shall consult with financial institutions.

(3) The Commission shall, at such intervals as the Commission determines, review any guidelines for the time being in force.

(4) The guidelines and any substantive amendment to the guidelines shall be published in the *Official Gazette*.

54. The Commission may, with the approval of the Minister, make regulations Regulations.

- (a) to make provision for any exemptions granted under section 8(1)(f) relating to a particular financial services sector;
- (b) prescribing any matter or thing required by this Act to be prescribed;
- (c) respecting any matter required to carry out the purposes of this Act; and
- (d) generally for the proper administration of this Act.

55. (1) Where at the commencement of this Act, the Minister or other authority or body is in the process of hearing an appeal under any of the specified enactments, the Minister or other authority or body shall continue to hear and determine the appeal. Transitional provisions relating to appeals.

(2) Where at the commencement of this Act an appeal under any of the specified enactments is awaiting hearing by the Minister or other authority or body, the appeal shall be heard and determined by the Tribunal.

(3) Subject to subsection (1), after the commencement of this Act, any tribunal or similar body which was established under any of the specified enactments to hear appeals shall cease to exist.

56. After the commencement of this Act,

- (a) all assets and liabilities of the Securities Commission are deemed to be transferred to the Commission;
- (b) any right, privilege, duty or obligation conferred on or imposed upon the Securities Commission and existing immediately before the date referred to, shall be deemed to be conferred on or imposed upon the Commission; and

Transfer and vesting of assets of the Securities Commission.

- (c) any contract entered into by or on behalf of the Securities Commission before the date referred to, shall be deemed to have been entered into by or on behalf of the Commission.

Transitional provisions relating to the Crown.

- 57.** Upon the coming into operation of this Act,
- (a) all funds appropriated for the administration of any of the specified enactments shall vest, by virtue of this Act, in the Commission;
- (b) all rights, powers, privileges and authorities relating to the administration of any of the specified enactments, that immediately before the commencement of this Act were vested in and exercisable by the Crown, are vested in and exercisable by the Commission;
- (c) all liabilities incurred by the Crown in respect of the administration of any of the specified enactments and subsisting immediately before the commencement of this Act shall have effect as if they had been incurred by or on behalf of the Commission; and
- (d) without affecting the generality of paragraph (c), all contracts made by or on behalf of the Crown and subsisting immediately before the commencement of this Act shall be deemed to have been made by or on behalf of the Commission and shall be construed with such modifications and adaptations as may be necessary to give effect to them.

Savings re civil proceedings.

58. All civil proceedings commenced before the commencement of this Act in any court of competent jurisdiction by or against the Crown or the Securities Commission which concern the administration of any of the specified enactments may be continued by or against the Commission; and the process in those proceedings may be amended accordingly.

Proclamation.

59. This Act shall come into operation on a date to be fixed by Proclamation.

FIRST SCHEDULE

*(Section 3)**Financial Services Commission*

1. (1) The Commission shall comprise seven persons who shall be appointed by the Minister by instrument in writing in accordance with subparagraph (2):

Appointment of members.

(2) The Minister shall appoint persons who appear to him to be qualified and experienced in matters relating to commerce, insurance, pensions, securities, credit unions, law, accounting or such other areas as in his opinion, are required for the management of the Commission.

(3) The members of the Commission shall, subject to the provisions of this Schedule, hold office for such period, not exceeding 3 years, as the Minister may specify in the instrument of appointment, and each member shall be eligible for reappointment at the end of their tenure.

2. The Minister shall appoint a member to be Chairman of the Commission and another member to be Deputy Chairman.

Chairman and Deputy Chairman.

3. (1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt by the Minister of the instrument.

Resignations.

(2) Any member other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward it to the Minister; and that member shall cease to hold office as from the date of receipt of the instrument by the Minister.

4. (1) A vacancy shall be deemed to arise in the membership of the Commission in the case of

Vacancies.

- (a) the death or resignation of a member;
- (b) the revocation by the Minister of the appointment of a member;
- (c) absence from Barbados of a member without leave of the Minister; or

(d) failure of a member to attend 4 consecutive meetings of the Commission, unless such failure to attend was approved by the Minister.

(2) A person who is appointed to fill a vacancy created by the death, resignation or removal from office of a former member shall hold office only for the unexpired portion of the term of that former member.

Revocation of appointment.

5. The Minister shall terminate the appointment of any member if that member

- (a) fails to carry out any of the functions conferred or imposed on him under this Act;
- (b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;
- (d) is guilty of serious misconduct in relation to his duties under this Act;
- (e) is bankrupt or compounds with or suspends payment to his creditors;
- (f) fails to comply with section 37 by not declaring his interest in any matter before the Commission.

Temporary appointment.

6. The Minister may in writing grant leave of absence to a member; and in the case of the inability of any member to act the Minister may appoint a person to act temporarily in the place of that member.

Gazetting of appointments.

7. The appointment, removal or resignation of any member of the Commission shall be notified in the *Official Gazette*.

Seal and execution of documents.

8. (1) The seal of the Commission shall be kept in the custody of the Chairman, Deputy Chairman or such officer of the Commission as the Commission may approve, and may be affixed to documents or instruments pursuant to a resolution of the Commission, in the presence of any 2 of the Chairman or Deputy Chairman and the Secretary to the Commission.

(2) The seal of the Commission shall be authenticated by the signature of the Chairman or Deputy Chairman as well as by the Secretary to the Commission.

(3) All documents or instruments made by the Commission, other than those required by law to be under seal, and all decisions of the Commission may be signified under the hand of the Chairman or Deputy Chairman.

9. (1) The Commission may appoint committees of its members or other persons to assist with the proper discharge of its functions. Committees.

(2) Where a person who is not a member of the Commission is appointed to a committee, the Commission may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.

10. (1) The Commission shall meet as often as may be necessary or expedient for the transaction of its business; and such meetings shall be held at such places and times and on such days as the Commission may determine. Procedure and meetings.

(2) The Chairman or, if he is for any reason whatsoever unable to act, the Deputy Chairman may at any time call a special meeting of the Commission, and shall call a special meeting to be held within 7 days of a written request for that purpose addressed to him by any 2 members of the Commission.

(3) The Chairman or in his absence, the Deputy Chairman shall preside at all meetings of the Commission.

(4) The quorum of the Commission shall be a majority of the membership thereof.

(5) The decisions of the Commission at any meeting shall be by a majority of votes, and in the event of an equality of votes, the Chairman or Deputy Chairman presiding at the meeting has a second or casting vote.

(6) Minutes in proper form of each meeting shall be kept by the Secretary or such officer as is appointed for the purpose, and shall be confirmed at the next meeting and signed by the Chairman or Deputy Chairman.

11. The Commission may invite any person to attend any of its meetings for the purpose of assisting or advising it with respect to any matter with which the Commission is dealing, but a person so invited does not have a right to vote. Attendance of non-members at meetings.

12. Subject to the provisions of this Schedule, the Commission may regulate its own proceedings. Commission to regulate proceedings.

SECOND SCHEDULE

*(Section 2)**Specified enactments*

1. *Exempt Insurance Act, Cap. 308A.*
2. *Insurance Act, Cap. 310.*
3. *Occupational Pension Benefits Act, Cap. 350B.*
4. *Securities Act, Cap. 318A.*
5. *Mutual Funds Act, Cap. 320B.*

THIRD SCHEDULE

(Section 26)

Financial Services Commission Appeals Tribunal

1. (1) The Commission shall appoint as Chairman, a member who is an attorney-at-law who has been in practice for not less than 10 years and such other number of members as the Commission deems appropriate.

(2) The members of the Tribunal are entitled to such remuneration and allowances as the Commission with the approval of the Minister determines.

2. A member may at any time resign his membership by notice in writing addressed to the Commission.

3. (1) If the Commission is satisfied that a member

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge the functions of a member,

the Commission may by notice published in the *Official Gazette* declare the office of the member to be vacant and, thereupon, the office shall become vacant.

(2) In case of the temporary absence or inability of a member to act, the Commission may by notice published in the *Official Gazette*, appoint a suitable person to act in that member's place.

4. The Commission shall publish in the *Official Gazette* notice of the appointment and cessation of appointment of a member.

5. The Tribunal may, at the discretion of the Chairman, sit in private where it appears expedient that the Tribunal should do so.

6. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

7. (1) In determining an appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(2) In case of a difference of opinion among members sitting together, the opinion of the majority shall prevail, and in case of an equality of numbers, the opinion of the Chairman shall prevail.

(3) Notwithstanding sub-paragraph (2), where the question to be determined is one of law, account shall not be taken of the opinion of a member who is not an attorney-at-law.

Cap. 121. 8. (1) In the hearing and determination of any matter before it, the Tribunal may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*; but the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case, the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence.

(2) The parties to the proceedings shall be entitled to appear in person or may be assisted in the preparation of their respective cases by counsel or by a duly authorized representative, but the Tribunal shall not award costs to any party to a proceeding before the Tribunal other than sums in respect of the reasonable costs incurred in any one or more of the following:

- (a) the filing of documents;
- (b) the obtaining of any expert report;
- (c) the enforcement of an award of the Tribunal;

and any such award of costs shall be in the discretion of the Tribunal.

9. The Tribunal may, where it determines it to be necessary in any particular case, consult any person having experience in any relevant field to assist it in dealing with a matter.

10. The Tribunal may issue subpoenas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence, requiring parties or witnesses to answer questions, and for the purpose of conducting its proceedings in a proper and orderly manner.

11. For the purposes of reviewing a decision, the Tribunal may proceed in the absence of a party who has been given reasonable notice in writing to attend.

12. (1) The decision of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(2) The Tribunal shall ensure that the decision is served on each party to the proceedings.

13. Subject to this *Schedule*, the Tribunal shall regulate its own procedure and may make rules for that purpose. *Schedule.*

14. Without prejudice to the generality of paragraph 11, the Tribunal, as respecting the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary for the exercise of its jurisdiction, shall have all such powers as are vested in a magistrate's court in an action in that court.