

Bill No. 32 of 1965

PUBLISHED 29TH SEPTEMBER, 1965

Bill No. 32 of 1965.

BANKING BILL, 1965.

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A BILL

Intituled

An Ordinance to regulate the business of banking.

A.D. 1965.

Enacted by the Legislature of British Guiana:—

Part I — Preliminary

Short title
and com-
mencement.

1. (1) This Ordinance may be cited as the Banking Ordinance, 1965.

(2) This Ordinance shall come into operation on such day as the Governor of British Guiana may by Order appoint.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires —

“bank” means a company licensed under this Ordinance to carry on banking business in British Guiana, provided that where such company is a company incorporated outside British Guiana the expression shall, except as otherwise expressly provided, be construed as a reference to the branch or branches in British Guiana through which that company carries on banking business;

“the Bank” means the Bank of Guyana established under the Bank of Guyana Ordinance, 1965.

“banking business” means a business which includes as an essential feature the acceptance of deposits of money from the public, repayable on demand, for the purpose of lending or investment;

“company” means a company incorporated in British Guiana under any law for the time being in force relating thereto or a company incorporated by Royal Charter or by Act of Parliament or by any enactment of the Legislature of any part of the Commonwealth or under the law of any country provided that such company, if not incorporated in British Guiana, has complied with the provisions of the Companies Ordinance relating to registration for the purpose of carrying on business in British Guiana;

“convertible currency” means a currency which is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

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“Court” means the Supreme Court of British Guiana;

“director” in relation to a company carrying on banking business incorporated directly by a law for the time being in force in British Guiana includes any person, by whatever name called, carrying out or empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director of a banking company registered under the Companies Ordinance;

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“Governor” means the Governor of the Bank of Guyana; “licence” means a licence granted under section 6 authorising the carrying on of banking business in British Guiana;

“licensed company” means a company to which a licence is issued under this Ordinance;

“Minister” means the Minister responsible for finance;

“section” means a section of this Ordinance.

(2) Where by or under this Ordinance any obligation is imposed on any bank or any prohibition is specified with respect to any bank that obligation or prohibition as the case may be shall, in relation to any licensed company incorporated outside British Guiana be deemed to be an obligation or prohibition imposed or specified with respect to the company so licensed:

Provided that where any such obligation or prohibition is expressed in relation to the business of the bank in British Guiana that obligation or prohibition shall in its application to the licensed company have effect with reference to the said business in British Guiana in like manner as it has effect in relation to the Bank.

Part II — Licensing of Banks

3. (1) Subject to section 4, no banking business shall be transacted in British Guiana except by a company which is in possession of a valid licence granted by the Bank and authorising it to carry on banking business in British Guiana.

Necessity for licence to carry on banking business.

(2) No bank shall open a new place of business or alter the location of an existing place of business without the written permission of the Bank granted with the approval of the Minister.

(3) Any person who contravenes the provisions of subsection (1) or (2) of this section shall be liable on summary conviction to a fine not exceeding one hundred dollars for each day during which the offence continues.

4. (1) Any company carrying on banking business in British Guiana at the commencement of this Ordinance which proposes to continue in banking business shall be granted a licence upon application made to the Bank in the prescribed form within three months after the commencement of this Ordinance:

Licensing of existing banks.

Provided that pending the issue of a licence any such company shall be deemed to be duly licensed.

5. (1) Prior to commencing banking business in British Guiana a company shall apply in writing to the Bank for a licence and shall submit a copy of its Memorandum of Association and Articles of Association or other instrument under which it is incorporated and, if it is carrying on banking business outside British Guiana, a copy of its latest audited balance sheet or in lieu thereof such other document as the Bank may require.

Application for licence.

(2) In considering an application for a licence the Bank may call for such information from the company as it may require for the proper determination of the application and the information shall be furnished in such manner as the Bank may require.

(3) If the Bank is of the opinion that it would be undesirable in the public interest that a licence should be granted it shall, with the approval of the Minister, refuse to grant such a licence.

Issue of
licence.

6. (1) When an application for a licence has been duly made, and the Bank is satisfied that all the provisions of this Ordinance have been complied with, the Bank may, with the approval of the Minister, issue a licence in such form as it may prescribe on payment of the fee provided in subsection (2) of this section and notice of the issue of such licence shall be published in the Gazette.

(2) Every bank shall pay to the Bank a fee of two thousand five hundred dollars in respect of its principal place of business in British Guiana and, in addition, a fee of fifty dollars in respect of every other place of business in British Guiana, and so long as the licence is not revoked the bank shall, not later than the 1st February in every year, pay to the Bank the fee prescribed as aforesaid.

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(3) The fee payable by a bank under subsection (2) of this section, shall be in lieu of any tax payable by that bank under paragraph (c) of subsection (1) of section 16 of the Tax Ordinance in respect of the occupation of any building by the bank.

(4) All fees paid to the Bank under this section shall be paid by the Bank to the Accountant General and credited to the general revenue of British Guiana.

Licensing
requirements.

7. No company shall be granted or shall hold a licence unless —

- (a) in the case of a company incorporated in British Guiana its capital stock actually paid up in cash and remaining unimpaired by losses or otherwise is not less than five hundred thousand dollars;
- (b) in the case of a company incorporated outside British Guiana its capital stock actually paid up in cash and remaining unimpaired by losses or otherwise is equivalent to not less than two million dollars;
- (c) all other conditions for carrying on banking business in British Guiana provided for in its Memorandum and Articles of Association or such other similar document concerning the company have been complied with;
- (d) all payments required under the terms of the licence have been duly made.

Use of the
word "bank"
in company's
name.

8. (1) Except with the approval of the Minister, no person other than a bank shall —

- (a) use or continue to use the word "bank" or any of its derivatives or variations either in English or in any other language, in the description or title under which such person is carrying on business in British Guiana;
- (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 is carrying on banking business in British Guiana;

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

(2) Every bank shall use as part of its description or title the word "bank" or one or more of its derivatives, either in English or in some other language.

(3) Any person who acts in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred dollars for every day during which the offence continues.

9. If a question arises as to whether a company is or is not carrying on banking business the Bank shall submit the matter together with its recommendations to the Minister for his decision and the decision of the Minister shall be final. Decision on banking business.

10. (1) The Minister may, after consultation with the Bank, revoke a licence if — Revocation of licence and appeal.

- (a) the holder fails to pay the fee prescribed for the licence within the time specified in subsection (2) of section 6; or
- (b) the holder ceases to carry on banking business in British Guiana or goes into liquidation or is wound up or otherwise dissolved; or
- (c) the bank fails to comply with the provisions of this Ordinance or of any other Ordinance to which it is subject, or fails to comply or to comply satisfactorily with any order issued by the Bank under section 22 after having been given a reasonable time to do so.

(2) If the holder of any licence is aggrieved by the revocation of that licence under paragraph (b) or (c) of subsection (1) of this section, that person may appeal to the Court within fourteen days of the date of such revocation, setting forth the grounds of such appeal.

(3) Every appeal under this section shall be heard by a Judge of the Court sitting in Chambers who may confirm or set aside the revocation of the licence and his decision shall be final.

(4) An appeal made under subsection (2) of this section shall not act to stay any of the measures taken by the Bank in accordance with section 22.

(5) The Bank shall publish in the Gazette notification of the revocation of any licence after the revocation has become final.

Part III — Restrictions on Banking Activities

11. No licensed company incorporated in British Guiana shall pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amounts of losses incurred) not represented by tangible assets has been completely written off. Restriction on dividends.

12. (1) A bank shall not —

- (a) grant to any person any advance or credit facility or give any financial guarantee or incur any other liability on behalf of such person so that the total value of the advances, credit facilities, financial guarantees and other liabilities in respect of such person is at any time more than twenty-five per centum of the sum of the paid up capital and published reserves of the bank: Restriction on certain financial activities.

Provided that the provisions of this paragraph shall not apply to transactions between banks or between the branches of a bank, or to the purchase of clean or documentary bills of exchange, telegraphic transfers or documents of title to goods, the holder of which is entitled to payment outside British Guiana or to advances made against such bills, transfers 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 two per centum of its paid up capital and published reserves —

(i) to any one of its directors whether such advances or facilities are obtained by its directors jointly or severally;

(ii) to 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 any individual, firm, partnership or private company of whom or of which any one or more of its directors is a guarantor. For the purpose of this paragraph, a private company means a private company as defined in section 117 of the Companies Ordinance;

(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 two years' emoluments of such official or employee.

(2) In paragraphs (c) and (d) of subsection (1) of this section the expression "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.

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Restriction on certain other activities.

13. A bank shall not —

- (a) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, except in the course of the satisfaction of debts due to it and the due performance of its functions as a trustee, executor or administrator or as attorney for any such person;
- (b) acquire or hold any part of the share capital of any commercial, agricultural, industrial or other undertaking except such shareholding as a bank may acquire in the course of the satisfaction of debts due to it which shareholding shall, however, be disposed of at the earliest suitable moment;

Provided that this paragraph shall not apply to shareholdings the aggregate value of which does not at any time exceed twenty-five per centum of the sum of the paid up capital and published reserves of that bank;

- (c) purchase, acquire, own, lease or otherwise hold immovable property except as may be necessary for the purpose of conducting its business, housing its staff or providing recreational facilities for its employees:

Provided that —

- (i) in respect of any immovable property held or leased by a bank at the commencement of this Ordinance for purposes other than those referred to herein, that bank shall be allowed a period of three years in which to comply with this requirement; and
- (ii) the bank may acquire immovable property for the satisfaction of debts due to it and for the due performance of its functions as a trustee, executor or administrator or as attorney for any such person, but the property shall, however, be resold at the earliest suitable moment.

Certain transactions by bank to be liquidated.

14. Any bank which, prior to the commencement of this Ordinance, entered into any transaction incompatible with the provisions of paragraph (a), (b), (c) or (d) of subsection (1) of section 12 or paragraph (a) or (b) of section 13 shall within three months after the

commencement of this Ordinance, submit a statement of every such transaction to the Bank and shall, as soon as practicable, liquidate every such transaction.

15. Where a licensed company contravenes any of the provisions of section 12, 13 or 14 the company shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars. Penalty.

Part IV — Reserve Fund and Liquid Assets

16. (1) Every licensed company incorporated in British Guiana 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 fifteen per centum of such profits whenever the amount of the reserve fund is less than the paid up capital of the bank. Maintenance of reserve fund.

(2) The provisions of subsection (1) of this section shall also apply to any licensed company incorporated outside British Guiana unless it is proved to the satisfaction of the Bank that the aggregate reserves of that bank are adequate in respect of its business.

17. (1) Every bank shall maintain a minimum holding of liquid assets as defined in subsection (4) of this section: Minimum holdings of liquid assets.

Provided that a period of three months after the commencement of this Ordinance shall be allowed for compliance with this requirement.

(2) The minimum amount shall relate to each bank's demand and time liabilities as at the close of business on the third Wednesday of each month or if that day is a public holiday or a bank holiday the last preceding working day and shall not be less than fifteen per centum nor more than thirty per centum of its demand liabilities and not less than ten nor more than twenty per centum of its time liabilities at that day, the actual percentage to be fixed by the Bank in accordance with section 41 of the Bank of Guyana Ordinance. No. of 1965.

(3) For the purposes of this section "demand liabilities" means the total of the liabilities of any bank which must be met on demand, and "time liabilities" means the total of the liabilities to be met otherwise than on demand, including the liabilities arising from savings accounts.

(4) For the purposes of this section "liquid assets" means all or any of the following —

- (a) notes and coins which are legal tender in British Guiana;
- (b) balances held at the Bank;
- (c) balances at any other bank in British Guiana after deducting therefrom balances owed to any other bank in British Guiana;
- (d) balances at any banking institution outside British Guiana and money at call outside British Guiana after deducting therefrom balances owed to such banking institution, provided that such balances and money at call represent convertible currencies;
- (e) treasury bills whether issued in British Guiana or elsewhere;
- (f) bills of exchange, promissory notes and other credit instruments eligible for rediscount with the Bank under section 37 of the Bank of Guyana Ordinance.

(5) Any licensed company which fails to comply with any requirement of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one-thirtieth of one per centum of the amount of the deficiency for every day on which the offence occurs.

Part V — Audit

Appointment
of auditor.

18. (1) Every licensed company shall appoint annually an approved auditor whose duties shall be to make to the shareholders of that 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 affairs of the bank, and, in any case in which the auditor has called for explanation or information from the officers or agents of the bank, whether the explanation or information supplied is satisfactory.

(2) The report of the approved auditor shall be read together with the report of the board of management of the bank at the annual meeting of shareholders and a copy shall be sent to the Bank. If any default is made in complying with the requirements of this subsection, the company shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

(3) If a company fails to appoint an approved auditor under subsection (1) of this section or, at any time, fails to fill a vacancy for such auditor, the Bank shall have power to appoint an approved auditor and shall fix the remuneration to be paid by the bank to such auditor.

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(4) For the purposes of this section, an approved auditor shall be a person who is qualified to be an auditor under the provisions of subsection (8) of section 109 of the Companies Ordinance for the purposes of the said Ordinance:

Provided that no person having an interest in any bank otherwise than as depositor and no director, employee or agent of any bank shall be eligible for appointment as an approved auditor for that bank and any person appointed as such auditor to any bank who subsequently acquires such interest or becomes a director, employee or agent of that bank, shall cease to be such auditor.

(5) Where, on application made by a licensed company incorporated outside British Guiana, the Bank is satisfied that the company is in a position to furnish the Bank with reports or other information adequate for the purpose of giving a true and correct statement of the affairs of the bank, the Bank may, by notice in writing, exempt the company from compliance with the provisions of subsections (1), (2) and (3) of this section, subject to such conditions as may be specified in the notice.

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(6) Except as otherwise provided in subsection (4) of this section, the provisions of sections 109 and 110 of the Companies Ordinance shall not apply to a licensed company.

Exhibition and
publication of
audited
balance sheet
by bank.

19. (1) Not later than four months after the end of each financial year of each bank, the bank shall publish in the Gazette and in a newspaper circulating in British Guiana, and exhibit thereafter in a conspicuous position in each of its offices and branches in British Guiana and forward to the Bank, copies of its balance sheet and profit and loss account and the full and correct names of the directors of the bank. The balance sheet and profit and loss account shall bear on their face the certificate of an auditor who is an approved auditor in accordance with section 18.

(2) The Bank may, on application made to it by a licensed company incorporated outside British Guiana authorise that company to publish and exhibit in lieu of the documents referred to in subsection (1) of this section such other document or documents as the Bank considers adequate.

(3) Any licensed company which fails to comply with the requirements of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars.

Part VI — Disqualification as Director

20. (1) Without prejudice to anything contained in sections 70 and 71 of the Companies Ordinance, no person —

Disqualification as director.
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- (a) who has been a director of, or who has directly or indirectly been concerned in the management of, a bank which has had its licence revoked under section 10;
- (b) who is or has been convicted by a court of an offence involving dishonesty and has not received a free pardon for that offence,

shall, without the consent in writing of the Minister, act or continue to act as a director, or be directly or indirectly concerned in the management, of any bank.

(2) Any person who contravenes the provisions of subsection (1) of this section shall be guilty of an offence and shall on conviction on indictment be liable to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand dollars or to both such imprisonment and fine.

Part VII — Inspection of Banks

21. (1) The Bank may periodically or at its discretion cause an inspection to be made by one or more of its officers, of any bank and its books and accounts and supply to such bank a copy of its report on the inspection.

Inspection of banks.

(2) It shall be the duty of every director or other officer of the bank to produce on the premises of the bank to any officer making an inspection under subsection (1) of this section (hereinafter in this section referred to as "the inspecting officer") all such books, accounts and other documents in his custody or under his control and to furnish the inspecting officer with any statement or information relating to the affairs of the bank as the inspecting officer may require of him within such time as the inspecting officer may specify.

(3) Any director or officer of a bank who fails to comply with the requirements of subsection (2) of this section shall be guilty of an offence and shall on conviction on indictment be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dollars or to both such imprisonment and such fine.

(4) Any officer of the Bank charged with the duty of making an inspection under subsection (1) of this section shall not disclose any information regarding the operations of any bank to any other person except the Governor or such other person designated by him.

(5) Any officer of the Bank aforesaid shall not disclose the affairs of a customer of a bank other than for the purposes of this Ordinance of the Bank of Guyana Ordinance or when lawfully required to do so by any court or under the provisions of any law.

(6) Any officer of the Bank aforesaid who contravenes the provisions of subsection (4) or (5) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

22. (1) If the Bank finds on an inspection under section 21 that the affairs of the bank are being conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the bank, or that obligations of the Bank under this Ordinance or under the Bank of Guyana Ordinance are not complied with, the Bank may issue orders requiring the bank to take corrective action or to discontinue the harmful practices or procedures.

Powers of the Bank to issue orders after an inspection.

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(2) No order shall be issued under subsection (1) of this section unless the bank has been given a reasonable opportunity to present its views.

(3) The Bank may, on representation made to it or on its own motion, modify or cancel any order issued under subsection (1) of this section, and in so modifying or cancelling any order may impose such conditions as it thinks fit.

Part VIII — Miscellaneous

- Bank to be appointed liquidator. 23. Notwithstanding the provisions of any other law, the Bank shall be appointed liquidator in any proceeding for the winding up of a bank in British Guiana.
- Offences. 24. 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) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Ordinance or the Bank of Guyana Ordinance, 1965,
- No. of 1965. shall be guilty of an offence and shall on conviction on indictment be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dollars or to both such imprisonment and fine.
- Declaration of bank holidays. 25. (1) The Governor may, at any time, by order declare any day to be a bank holiday.
- (2) No bank shall do any business with the public on any day declared a bank holiday under the provisions of subsection (1) of this section.
- (3) A bank holiday declared under the provisions of subsection (1) of this section shall not necessarily be a public holiday and nothing in this section shall be deemed to affect the provisions of the Public Holidays Ordinance.
- Cap. 61. (4) A bank holiday declared under the provisions of subsection (1) of this section shall be deemed to be a public holiday for the purposes of section 14 of the Bills of Exchange Ordinance.
- Cap. 338.
- Prosecutions. 26. Subject to the provisions of article 45 of the Constitution of British Guiana, no prosecution in respect of any offence under this Ordinance shall be instituted except by the Bank or by any agent duly authorised by the Bank in writing.
- Regulations. 27. The Minister, after consultation with the Bank, may make such regulations as may be required from time to time for carrying into effect the provisions of this Ordinance.
- Ordinance not to apply to certain bodies. 28. This Ordinance shall not apply to —
- Cap. 35. (a) any Society registered under the Industrial and Provident Societies Ordinance;
- Cap. 133. (b) the Post Office Savings Bank established under the Post Office Savings Bank Ordinance; and
- Cap. 326. (c) any co-operative society registered under the Co-operative Societies Ordinance.
- Repeal. 29. The Banks Ordinance is hereby repealed.
- Cap. 324.

OBJECTS AND REASONS

This Bill seeks to provide comprehensive legislation for regulating the business of banking in British Guiana. Provision is made for the issue of a licence by the proposed Bank of Guyana with the approval of the Minister of Finance to enable the business of banking to be carried on. Any bank operating in British Guiana must have a minimum paid up capital, a reserve fund and a minimum holding of liquid assets. Restrictions are placed on the payment of dividends before sums not represented by tangible assets are completely written off, and on certain banking activities in the interest of proper banking practices.

2. The Bill also seeks to vest in the proposed Bank of Guyana supervisory functions in relation to commercial banks operating in British Guiana.

3. The Bill contains provisions giving existing banks the right to be licensed provided application for licence is made within three months of the commencement of the Ordinance. Existing banks will have the right to continue banking business pending the issue of licences to them.

P. S. d'AGUIAR,
Minister of Finance.

(Bill No. 32/1965).