

THE OFFICIAL GAZETTE 16TH NOVEMBER, 2004
LEGAL SUPPLEMENT - C

BILL No. 21 of 2004

Tuesday 16th November, 2004

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.
16th November, 2004

The following Bill which will be introduced in the National Assembly is published for general information.

Maurice B. Henry,
for Clerk of the National Assembly.



GUYANA

BILL No. 21 of 2004

FINANCIAL INSTITUTIONS (AMENDMENT) BILL 2004

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 14(2) of the Principal Act.
3. Amendment of section 29 of the Principal Act.
4. Amendment of section 30 of the Principal Act.
5. Insertion of new section 30A in the Principal Act.
6. Insertion of new sections 33A-33E in the Principal Act.

A BILL
Intituled

AN ACT to amend the Financial Institutions Act 1995

A.D. 2004 Enacted by the Parliament of Guyana:-

Short title
Act No. 1
of 1995 1. This Act, which amends the Financial Institutions Act 1995, may be cited as the Financial Institutions (Amendment) Act 2004.

Amendment of
section 14 (2) of
the Principal Act. 2. Section 14(2) of the Principal Act is hereby amended in the following respects -

- (a) by renumbering it as paragraph (a) of subsection (2);
- (b) by the insertion of the following as paragraph (b) of subsection (2) -

“(b) No licensed financial institution shall make a loan, advance or other extension of credit in any amount to any person for the purpose of purchasing shares in the licensed financial institution, or its parent company, or in any of its subsidiaries or affiliates except where such loan, advance or other extension of credit is fully collateralised by deposits with the financial institution, or by obligations of the Government of Guyana.”.

Amendment
of section 29 of
the Principal Act. 3. Section 29 of the Principal Act is hereby amended in the following respects -

- (a) by renumbering it as subsection (1) of section 29;
- (b) by the insertion after subsection (1) as so renumbered of the following as subsection (2) -

“(2) Any director, officer, employee, representative or agent of a licensed financial institution, or other person conducting business on its behalf, who knowingly accepts false information from any person for the purpose of that person securing a loan, advance or other extension of credit shall be guilty of an offence and shall be liable upon summary conviction to a fine of not more than five hundred thousand dollars and imprisonment for a term not exceeding three years.”.

Amendment
of section 30
of the
Principal
Act

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Section 30 of the Principal Act is hereby amended by the substitution thereof of the following -

"Manage-
ment
Compliance
duties

30. The Bank may, by written order suspend from office for any period not exceeding one year any director, officer or other person concerned in the management of a licensed financial institution who fails to take all reasonable steps to secure compliance by the financial institution with the requirement of this Act or any direction of the Bank:

Provided that before a person is suspended he shall be given a reasonable opportunity of being heard in his defence.

Insertion
of new section
30A in the
Principal
Act

5.

The Principal Act is hereby amended by the insertion immediately after section 30 of the following section as section 30A-

"Offence
committed
by director.

30A. Any director, officer or other person concerned in the management of a licensed financial institution-

(a) who is found guilty of an offence under this Act shall in addition to any other specified penalty restore in full to the licensed financial institution the amount of any resulting financial loss to the institution;

(b) who is suspended for non-compliance under section 30 shall restore in full to the licensed

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financial institution the amount of any resulting financial loss to the institution.”

insertion of
new sections
33A-33E in
the Principal
Act

6. The Principal Act is hereby amended by the insertion immediately after section 33 of the following sections as sections 33A-33E-

“Bank may
take
control.

33A. (1) Notwithstanding anything in this Act, where any of the circumstances described in subsection 2 exist in respect of a licensed financial institution, the Bank may-

(a) take temporary control, for a period not exceeding thirty days, of the assets of the licensed financial institution and the assets under its administration; or

(b) take temporary control for a period not exceeding thirty days of the licensed financial institution.

(c) For the purposes of this section, where the licensed financial institution concerned is a branch of a foreign company, the term “assets of the licensed financial institution” shall mean the assets in respect of its business in Guyana, including the assets referred to in section 21, and any other asset in Guyana of the branch of a foreign company, and the references to taking control of the licensed financial institution or similar expressions shall mean the taking of control of the business in Guyana of the branch of a foreign company.

(2) Control by the Bank under subsection (1) may be taken in respect of a licensed financial institution where-

(i) the licensed financial institution has failed to pay its liabilities or, in the opinion of the Bank, will not be able to pay its liabilities as they become due and payable;

(ii) in the opinion of the Bank, a practice or state of affairs exists in respect of the licensed financial institution that may be materially prejudicial to the interests of the institution's depositors or creditors or the owners of any assets under the licensed financial institution's administration;

(iii) the assets of the licensed financial institution are not, in the opinion of the Bank, sufficient to give adequate protection to the institution's depositors and creditors;

(iv) any asset appearing on the books or records of the licensed financial institution or held under its administration is not, in the opinion of the Bank, satisfactorily accounted for;

(v) the capital or assigned capital of the licensed financial institution has, in the opinion of the Bank, reached a level or is eroding in a manner that may detrimentally affect its depositors or creditors; or

(vi) the licensed financial institution has failed to

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comply with an order, direction, notice, or condition imposed by the Bank

(3) The Bank shall notify the licensed financial institution of any action being taken under subsection (1) and of its right to make written representations to the Bank.

(4) Where, pursuant to subsection (1)(a), the Bank has temporary control of the assets of a licensed financial institution referred to in that subsection, the Bank may do all things necessary or expedient to protect the rights and interests of the depositors and creditors of the licensed financial institution.

(5) Where, pursuant to subsection (1)(a), the Bank has temporary control of the assets of a licensed financial institution referred to in that subsection-

(a) the financial institution shall not make, acquire or transfer any loan or make any purchase, sale or exchange of securities or any disbursement or transfer of cash of any kind without the prior approval of the Bank or a representative designated by the Bank; and

(b) no director, officer or employee of the financial institution shall have access to any cash or securities held by the licensed financial institution unless-

(i) a representative of the Bank accompanies

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the director, officer or employee; or

(ii) the access is previously authorised by the Bank or the Bank's representative.

Powers of directors and officers suspended.

33B.(1) Where the Bank takes control of a licensed financial institution pursuant to section 33A (1) (b) the powers, duties, functions, rights and privileges of the directors and officers responsible for management of that institution are suspended.

(2) Where the Bank takes control of a licensed financial institution pursuant to section 33A (1)(b) the Bank shall manage the business and affairs of the licensed financial institution and in doing so the Bank-

(a) may perform any of the duties and functions that the persons referred to in subsection (1) were performing prior to the taking of control; and

(b) has and may exercise any power, right or privilege that any such person had or could have exercised prior to the taking of control.

(3) Where the Bank takes control of a licensed financial institution pursuant to section 33 A (1)(b) the Bank may appoint one or more persons to assist in the management of the licensed financial institution.

(4) All expenses of and incidental to the taking control of a licensed financial institution shall be paid by the licensed financial institution in such manner as the Bank may determine.

Expiration
of control

33C. Control by the Bank under section 33 A(1), of a licensed financial institution or of the assets of a licensed financial institution expires on the day on which a notice by the Bank is sent to the directors and officers who conducted the business and affairs of the financial institution stating that the Bank is of the opinion that the circumstances leading to the taking of control by the Bank have been substantially rectified and that the licensed financial institution can resume control of its business and affairs.

Bank may
request
winding-up.

33D. Where-

- (i) the assets of a licensed financial institution are under the control of the Bank pursuant to section 33A (1) (a); or
- (ii) the licensed financial institution is under the control of the Bank pursuant to section 33 A(1) (b),

the Bank may, at any time before the receipt of a request under section 33E to relinquish control of a licensed financial institution or of the assets of a licensed financial institution, apply to the Court for an order deeming the Bank to have taken possession of the licensed financial institution under section 42 and for deeming the Bank to have satisfied the provision of the said section 42 for taking such possession.

Requirement
to relinquish
control.

33E. Where no action has been taken by the Bank under section 33B and, after sixty days following the taking of control by the Bank under section 33 A of a licensed financial institution or of the assets of a licensed financial institution, the Bank receives from the board of directors of that institution, or, in the case of a branch of a foreign company, from its principal officer, a notice in writing requesting the Bank to relinquish control, the Bank shall, not later than twelve days after receipt of the notice,

(a) comply with the request; or

(b) apply to the Court for an order under section 42 as

provided for in section 33D.

Applica-
tion
of Provisions.

33F. Where the Bank proceeds under section 42 in either section 33D or 33E the remaining provisions of Part VIII may in so far as they are applicable apply in any further proceedings.”

EXPLANATORY MEMORANDUM

The Bill seeks to amend the Financial Institutions Act 1995 to prevent abuse of the financial institutions by insiders, enhance corporate governance and strengthen the powers of the central Bank to deal with problematic licensed financial institutions.

Clause 2 amends section 14 to prohibit the granting of loans by a licensed financial institution for the purpose of purchasing shares in the said licensed financial institution or its related companies.

Clause 3 amends section 29 to prevent insiders from colluding with others to obtain credit facilities by fraudulent means.

Clause 4 amends section 29 to strengthen corporate governance within the licensed financial institutions.

The Bill amends the Act by inserting six new sections to improve the Bank of Maldives' ability to deal speedily with problematic licensed financial institutions, particularly, in relation to unsafe or unsound practices which could pose a threat of loss or a loss to depositors and or shareholders.



Minister of Finance