

# **Banking Law (Financial Institutions Act) - Title 6 - Liberian Code of Laws Revised**

## **TITLE 6**

### ***New Financial Institution Act of 1999 (Banking Law)***

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## **PART I** ***Preliminary***

**§ 1.** This Act may be cited as the New Financial Institutions Act of 1999 and shall come into effect on the date of its publication in handbills.

### **§ 2. Definitions**

In this Act, unless the context otherwise requires:

(1) "banking business" means and includes:

(i) the business of receiving funds from the general public through the acceptance of voluntary money deposits payable upon demand and subject to transfer by check, or after a fixed period or after notice or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, or from the Government of Liberia or from any

foreign or international financial institutions, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and

(ii) any other activity or activities recognized as a customary banking practice which a financial institution engaging in the activities described in Section (a) (i) may additionally be authorized to engage in by the Central Bank.

(2) "bank-financial institution" means any person engaging in financial transactions consisting in the business of banking, the acceptance of deposits payable on demand and subject to transfer by check, credit, loan making, and lending or rendering non-banking financial services: provided, that for the purpose of the Act, unless the context otherwise requires, all offices and branches of a financial\_ institution in Liberia shall be deemed to be one financial institution;

(3)."Non-bank financial institution" means any person or institution whose activities and transactions are in the form of non-bank financial services rendered without accepting from the general public deposits payable upon demand or after a fixed period;

(4) "commercial bank" means and includes any financial institution whose operations include, but are not limited to, the acceptance of deposits payable on demand and subject to transfer by check;

(5) "Central Bank" means the Central Bank of Liberia established under the Central Bank of Liberia Act;

(6) "credit institution" means any financial institution or financing agency whose operation is non-deposit-based lending without accepting from the general public deposits payable on demand or after a fixed period;

(7) "foreign financial institution" means a financial institution, organized abroad and doing business in Liberia, whether such business be banking or other business;

(8) "Liberia" means the Republic of Liberia;

(9) "licensed financial institution" means a financial institution authorized under the laws of Liberia to do banking business in Liberia.

(10) "local financial institution" means a financial institution organized under the law of Liberia to do banking business in Liberia;

(11) "member of the board of directors" means any person by whatever name he may be called, carrying out or empowered to carry out substantially the same functions in relation to the direction of the financial institution as those carried out by member of the board of directors of a corporation organized under the Associations Law of Liberia, Title 5 of the Liberian Code of Laws Revised;

(12) "Minister" means the Minister of Finance of Liberia.

(13) "person" means and includes any company, partnership, association or body of persons, corporate or unincorporated;

(14) "place of business" means any branch or office of a financial institution in Liberia, including a mobile office open to the public;

(15) "unsecured in relation to advances or credit facilities means advances or credit facilities granted without security or in the case of advances and credit facilities granted against facilities which at any given time exceed the market value of the assets comprising those approved by the Central Bank whenever it deems that no ascertainable market value exists for the said assets.

(16) "Non-bank financial services" means:

(i) the business of thrift operation and loan association;

(ii) Broker and dealer operations in securities and commodities;

(iii) Currency exchanging and encashment of checks;

(iv) Redeeming, encashing, or otherwise dealing in money orders or other similar financial instruments;

(v) Issuance of credit cards;

(vi) Underwriting of insurance

(vii) Loan or financing agency business;

(viii) Operation of building societies;

(ix) Remittance of money but not accepting from the general public money payable on demand or after a fixed period;

(17) "offshore banking" means banking business denominated in foreign currencies and transacted between banking institutions in different countries of the world.

(18) "currency" means banknotes and coins issued and or authorized to circulate as medium of exchange.

(19) "deposit" means a sum of money paid to a financial institution on terms under which it will be repaid with or without interest or a premium, and on demand or after a fixed period, or in circumstances agreed by or on behalf of the person making the

deposit and the person receiving it; and which are not referable to the given of security, or provision of property or rendering of services or to statutory or regulatory reserve requirement.

(20) "extension of credit" means any transaction in which a financial institution delivers or assumes a contingent liability to deliver financial assets in exchange for a claim against the party to or for whom the assets are transferred or are to be transferred. Extensions of credit include, but are not limited to, loans, discounts of financial instruments, lines of credit, payments, repurchase agreements, letters of credit, guarantees, and the exposure to loss in covering foreign exchange positions.

(21) "net worth" means the paid-in capital of a financial institution plus any reserves held by the institution, including those required by law or regulation, and any undivided profits.

(22) "insolvent financial institution" means a financial institution with negative net worth.

(23) "principal shareholder" means any shareholder of a financial institution or other person owning five (5%) percent of any class of shares of the financial institution or other person;

(24) "Related persons" to a financial institution are: (i) any officer or director of the financial institution or any person who alone or together with one or more others has the authority to enter into commitments for the account of the financial institution; (ii) any principal shareholder of the financial institution; and (iii) any person who is related to such officer, director or principal shareholder by marriage, consanguinity to the second degree, or business interest;

(25) "Related person" to any officer, director or principal shareholder of a financial institution means any person who is related to such person by marriage, consanguinity to the second degree, or business interest.

(26) "Court" means a judicial body in Liberia having jurisdiction over matters arising from the enforcement of the provisions of the Financial Institutions Act of 1999.

(27) "Liquidator" unless otherwise provided, means the Central Bank of Liberia appointed by a court to carry out the winding up of a financial institution in liquidation.

(28) "Liquidation officer" means a person, natural or artificial, appointed, designated and assigned by the Central Bank to act for and on behalf of the Central Bank in the winding up process of a financial institution in liquidation.

(29) "Government" means the Government of the Republic of Liberia.

## **PART II**

### ***License***

### **§ 3. Right of the Central Bank to Grant Provisional and Full License.**

(1) No person in Liberia shall carry out banking business or provide non-bank financial services as a business without a license from the Central Bank of Liberia. A local financial institution shall not do banking business or provide non-bank financial services as a business in Liberia or abroad nor shall a foreign financial institution do banking business or provide non-bank financial services as a business in Liberia without a license granted by the Central Bank authorizing the licensee to do such business. The license shall indicate the class of financial institution and the operations the licensee is authorized to do.

(2) (a) Except otherwise suspended, prevented, incapacitated or not permitted, any person who, immediately before the commencement of this Act, was lawfully doing banking business in Liberia and who intends to continue to do such business, shall, within ninety (90) days of said commencement, apply to the Central Bank for a provisional license in a form and on terms and conditions to be prescribed by the Central Bank.

(b) The Central Bank shall, as may be applicable, issue to:

(i) a person doing banking business in Liberia upon the coming into effect of this Act, a provisional license for a term of six months from the date this Act comes into force and operation.

(ii) a person intending to do banking business a provisional license for a term of six months upon submission of an application and the meeting of requirements in Section 4 (1) (a) (b) (c), (e) and (g).

(c) If in the opinion of the Central Bank a person granted a provisional license has successfully met the requirements for the granting of a license, the Central Bank shall issue a full license in replacement of the provisional license.

(3) Any person intending to do banking business after the entry into force of this Act shall, before commencing such business, apply for a license under the provisions of Section 3.

### **§ 4. Licensing Procedures.**

(1) in order to obtain a license to operate as a financial institution in Liberia or to do offshore banking, a person shall apply in writing and submit to the Central Bank the following:

(a) authenticated copies of the instrument under which the entity to operate such a business is duly organized;

(b) pay to the Central Bank a non-refundable application fee as shall be determined by the Board of Governors of the Central Bank;

(c) a statement of the address of the head office of the entity to operate such a business, the name and address of every member of its board and the name and address of its principal officers,

(d) such financial data as the Central Bank may require, including, but not limited to financial statements and projections for five years;

(e) full particulars of the business that the entity proposes to do together with detailed and clear definition of activities to be performed by the proposed financial institution;

(f) evaluation of the adequacy of the entity's financial and managerial resources.

(g) name and description of the location of the principal and other places of business in Liberia where it proposes to do business, and in case of a mobile agency, the area to be served;

(h) such other documents or information as the Central Bank may require;

(i) Such other requirements and information which shall include, but not be limited to, sufficient and detailed information on the backgrounds, qualifications, experience and financial means of each shareholder holding at least five (5%) percent of the capital stock of the proposed financial established.

(2) The application and every document submitted in accordance with Section 4(1) shall be signed by the members of the board of the applicant, or by any principal legally authorized to do so.

(3) (a) In considering an application for a license, the Central Bank shall, without limiting the generality of the requirements, conduct such investigations as may be deemed necessary to ascertain the validity of the documents submitted under Section 4(1), the financial status and history of the applicant, the character and experience of its management, the adequacy of its capital structure, the convenience and needs of the community it intends to serve, the operations it intends to undertake, and the earning prospects afforded by the area primarily to be served.

(b) A financial institution shall not be granted a license under this Section unless it also fulfills the requirements specified either in Section 14 (a) (i), if it is a commercial bank, or in Section 14 (b) (i), if it is a credit institution.

(4) Within ninety days after the receipt of an application, or, where further information has been required, after the receipt of such information, the Central Bank may grant a license or inform the applicant that it has refused to grant a license and may state the grounds upon which such refusal is based: provided, that, for the purpose of this Act, licenses lawfully issued under the Financial Institutions Act of 1974 with amendments thereto shall be deemed issued as provisional licenses under this Act, which shall

expire six months after this Act comes into effect.

(5) In granting a license, the Bank may impose additional conditions to be satisfied by the licensee in respect of the matters set forth in Section 3 (2) (a). In the case of a foreign financial institution, without limiting the generality of the foregoing, the Central Bank shall require as a condition precedent for the commencement of operations that there be filed with the Central Bank:

(a) a duly executed instrument in writing appointing the Central Bank its true and lawful agent upon whom all process, in any action or proceeding against it in a cause of action arising out of a transaction with its places of business in Liberia may be served with the same force and effect as if it were organized in Liberia and has been lawfully served with process therein;

(b) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person in Liberia:

(i) to whom all process shall be forwarded by the Central Bank; or

(ii) upon whom any process not served upon the Central Bank under Section 4 (5) (a) may be served; and

(c) a statement satisfactory to the Central Bank to the effect of the adequacy of the consolidated supervision of the institution's home country, which shall include, but not be limited to, the full extent and status respecting the currencies of denomination, the solvency and the liquidity of the institution and its branches and subsidiaries;

(d) a financial institution, prior to issuance of the license and its commencement of operation, shall pay a license fee to be determined by the Central Bank.

#### **§ 5. Use of the Word "Bank".**

(1) No person other than the licensed financial institution operating as a bank shall, without the consent of the Central Bank, use the word "bank", any of its derivatives in any language, or any banking nomenclature in any language, or any other word or words indicating the transaction of banking business, in the name, description or title under which such person or entity concerned is doing business in Liberia; or make or continue to make any representation to such effect in any billboard, letter-headed paper, notice, advertisement or in any other manner whatsoever for the purpose of doing business in Liberia: provided that any financial institution doing banking business one year to the date of the publication of this Act in hand-bills and was then using the word "bank" or any banking nomenclature in its name, description or title, may elect to retain such word or banking nomenclature thereafter.

(2) Nothing in Section 5(1) shall prevent a person from using the word "bank", in a

proposal, or any of its derivatives in any language, when it is for the sole purpose of organizing a company to the end of applying for a license under the provisions of this Act.

**§ 6. Restriction on Names of Institutions and Requirements to Display License.**

(1) No financial institution shall be granted or continue to hold a license under a name which so closely resembles the name of an existing institution as would be likely, in the opinion of the Central Bank, to mislead the public.

(2) Any license issued under this Act shall be displayed and kept displayed in a conspicuous public place or places in the head office, other offices and branches, and any other place of business of a financial institution in Liberia.

**§ 7. Designated Places of Business.**

(1) Any license granted shall authorize the licensed financial institution to do business at the place or places designated in the license.

(2) Upon receipt of a license, and six months after having commenced banking business or at an earlier date with the approval of the Central Bank, a financial institution may open new places of business in such locations as it may choose after approval by the Central Bank. A financial institution shall not change the location of, or close, an existing place of business in Liberia without the approval of the Central Bank.

**§ 8. Licensing of Non-bank Financial Institutions.**

In order to obtain a license to operate a non-bank financial institution in Liberia, a person shall apply in writing to the Central bank and submit the following:

(1) In the case of Insurance Companies:

(i) the requirements under Section 4 (1) hereof, and

(ii) all of the requirements for license under Chapters (3) and (4) of the Insurance Law of Liberia (1978);

(2) In the case of all other non-bank financial institutions, all of the requirements under section 4(1) and, to the extent not provided for herein, prudential requirements and applicable laws shall apply.

**§ 9. Voting Stock of institutions and Restrictions on Acquisition.**

(1) All voting stock issued by a local financial institution shall be in registered form.

(2) Without the approval of the Central Bank, no local financial institution shall:

(a) enter into a merger or consolidation, or joint venture, or establish a subsidiary;

(b) sell, dispose or transfer the whole or any substantial part of its assets or liabilities in

Liberia other than revolving funds in the ordinary course of its business and no transfer of such revolving funds shall be made which may reduce the capital of the financial institution.

(c) effect a change of its authorized capital as described in Section 15 (3) (b) of this Act;

(d) alter its name as set out in its license or amend the instrument under which it is organized;

(e) undertake banking operations other than the operations it is authorized to do in its license;

(f) have an investment in fixed assets that exceeds 50% of its issued and outstanding capital stock or its unimpaired capital, surplus or reserves;

(g) have an investment of 10% in equity shares of the unimpaired capital, surplus and reserves of any company, in the case of an institution permitted by the Central Bank to so do.

#### **§ 10. Restricted Activities of Foreign Financial Institutions.**

(1) Without the approval of the Central Bank, no foreign financial institution which is licensed under this Act shall:

(a) transfer the whole or any substantial part of its assets or liabilities in Liberia,

(b) effect a reduction of its assigned capital in Liberia;

(c) alter its Name as set out in its license;

(d) undertake banking operations other than the operations it is authorized to do in its license.

(2) In considering any proposed action under Sections 10(1), the Central Bank shall be guided by the criteria set forth in Section 4(3).

#### **§§ 11, 12. Revocation of License by the Central Bank.**

11 (1) The Central Bank may revoke the license of a licensee if the licensee:

(a) fails to commence operations within a period of 6 months following the granting of the license unless such period has been extended by written advice of the Central Bank; or

(b) fails to comply with the conditions of its license or the measures required by the Central Bank in accordance with Section 23;

(c) is in breach of the provisions of this Act which are applicable thereto;

(d) in the case of a bank financial institution, ceases to do banking business in Liberia; or

(e) employs or otherwise engages the services of a person affected under Sections 73(1) and (2) herein, or fails to comply with the requirements of Section 73(1); or fails to comply with a directive of the Central Bank to remove or dismiss such person.

(2) Before revoking any license, the Central Bank shall give the concerned financial institution, within the context of this Act and the Central Bank Act, notice of its intention to do so, and shall afford the licensee a reasonable opportunity to show cause, if any, why the license should not be revoked. If, in its opinion, the cause is valid, the Central Bank may not revoke the license.

(3) When a license has been revoked, the Central Bank shall, as soon as possible, publish notice of the revocation in the Gazette and in a newspaper of general circulation in the area in which is located the main office of the licensee in Liberia and take any other steps necessary to inform the public of such revocation.

**§12(1)** Except for breach of other provisions of other laws, a license revoked may be restored by the Central Bank if the institution proves its capacity to forthwith commence operation, comply with conditions of its license, or recommence banking operations, whichever is the reason for the revocation.

(2) The revocation of a license may be a ground for liquidation. The Court may order compulsory liquidation upon determination and express submission by the Central Bank within sixty (60) days following the date of revocation of the license.

### **§ 13. Penalty for Doing Banking or Foreign Exchange Business Without a License.**

(1) Whenever the Central Bank finds or has reason to believe that a person or entity without a valid license is doing banking business or rendering non-banking financial institution services, it may call for and examine the books, accounts and records of such person or entity in order to ascertain whether such is the case.

Any person doing banking business or rendering non-bank financial institution services without a license, or who refuses to make available for examination the books, accounts and records after having been duly required by the Central Bank to do so, shall be liable to pay a fine of not less than Five Hundred Thousand (L\$500,000) Liberian Dollars, and:

(a) the business may be closed down by the Central Bank, if the violation is a lack of valid license or lack of license, or

(b) the Central Bank may require the board of the business to dismiss and remove the offending officers of the business who have refused to make available books, accounts or records.

(2) A person holding funds which he has obtained by doing banking business without being in possession of a license granted under this Act, shall repay such funds in accordance with the directives of the Central Bank and shall be liable to a fine of not less than Five Hundred Thousand (L\$500,000) Liberian Dollars or ten (10) times the gain obtained in the illegal activity, which ever is greater.

### **PART III**

#### **Financial Requirements and Limitations**

#### **§§ 14 - 16 Minimum and Supplementary Capital Requirements.**

**14(1)** Every financial institution shall maintain unimpaired capital, either paid-up if it is an incorporated local financial institution, or assigned if it is a foreign financial institution, at least equal to the minimum amount specified either in Section 15(1)(a) or in Section 15 (1) (b) (i), as the case may be.

(2)(a) Every financial institution shall maintain a Statutory Reserve Account, and before any dividend is declared or any profit is transferred to the Head Office or elsewhere as the case may be, shall transfer to such account out of the net profits of each year after due provision has been made for taxation, a sum equal to not less than what is specified either in Section 15 (1) (b) or in Section 15(2) (b) as the case may be.

(b) The Central Bank shall, from time to time, prescribe by rules and regulations the method of computing the amount and form of the Statutory Reserve Account and of computing liabilities when these are used to determine the amount of transfer to the Statutory Reserve Account. The Central Bank shall, from time to time, prescribe the method of asset classification, provisioning of bad and doubtful debts and other uncollectibles, income recognition, the calculation of profits or loss, and limits on open foreign exchange positions.

(c) The Statutory Reserve Account shall neither be reduced nor be impaired; provided, however, that the Central Bank may permit a limited reduction not exceeding five percent of the Statutory Reserve when a transfer is being made for the purpose of increasing the capital or when liabilities are being used to compute transfer to the Statutory Reserve Account if the aggregate of the paid-up or assigned capital and the Statutory Reserve Account exceeds twice the amount of five percent of the liabilities to the general public in Liberia in terms of the most recent balance sheet by the extent of such excess amount.

(d) Financial institutions may establish, such other reserve accounts which they may deem to be prudent. However, reserve accounts so established shall not be considered in connection with Section 20 (2) (a) of this Act, except on specific approval of the Central Bank.

**15.** Financial institutions shall observe, as herein contained or when pre-scribed by regulation of the Central Bank the maximum ratios and exposures to be maintained by a

financial institution concerning its assets, risk-weighted assets, and off balance sheet items and various categories of capital and reserves.

(1) Operating as a bank:

(a) The minimum required capital for a bank-financial institution shall be not less than Eighty Million (L\$80,000,000) Liberian Dollars unless the assets size of such financial institution is above One Billion Six Hundred Million (L\$ 1,600,000,000) Liberian Dollars; then and in that case, a minimum of 15% of the total assets or whichever is greater.

(b) There shall be transferred at the end of each financial year to its Statutory Reserve Account a sum equal to:

(i) not less than twenty-five (25%) percent of its net profit until the aggregate of the actual paid-up or assigned capital and Statutory Reserve Account is equal to one and one half times the greater of the minimum required capital or five (5%) percent of its liabilities to the general public in Liberia in terms of its most recent annual balance sheet; or

(ii) not less than fifteen (15%) percent of such net profit whenever the aggregate of the actual paid-up or assigned capital and Statutory Reserve Account is more than one and one half times but less than twice the greater of the minimum required capital or five (5%) percent of its liabilities to the public in Liberia in terms of its most recent annual balance sheet.

(c) The Central Bank may, from time to time, prescribe by rules and regulations the minimum ratio which a bank shall maintain between its capital and its loans and advances.

(d) Any transaction of a bank with related parties must be on a non-preferential basis.

(e) Each bank-financial institution shall have a credit committee, an asset and liability committee and an audit committee of its board; these committees shall be responsible for ensuring that the policies of the financial institution relating to credit, asset and liability management and audit are implemented correctly and legally and for calling the attention of the full board to any such matter that requires its full attention.

(2) Operating as a credit institution:

(a) The minimum required capital of a credit institution shall be not less than Forty Million (L\$40,000,000) Liberian Dollars; the Central Bank shall, from time to time, prescribe by rules and regulations the minimum capital required as operational capital.

(b) There shall be transferred each year to its Statutory Reserve Account a sum equal to not less than twenty-five percent of its net profits, or such lesser amount as the Central Bank may prescribed by rules and regulations with respect to the appropriate

class of financial institution, until the balance in such Statutory Reserve Account is equal to the whole amount of the minimum required capital.

**16.** In making the calculations necessary to ascertain that the financial institution has complied with the requirements of Section 15, allowance shall be made to the satisfaction of the Central Bank and of the external auditor of such financial institution for the following items:

(1) depreciation of assets and provision for bad or doubtful debts (to be calculated at least once in each financial year),

(2) operating and accumulated losses, including accumulated depreciation and bad debts not yet written off;

(3) preliminary expenses, representing expenses relating to organization or extension or the purchase of business or goodwill, and including underwriting commission; and

(4) such other items as the Central Bank may prescribe by regulation.

**§§ 17, 18. Liquidity Requirements and Penalty.**

**17(1)(a)** Any commercial bank or any other financial institution subject to the regulations of the Central Bank and doing or engaging in banking business in Liberia shall maintain not less than an amount of liquid assets as may from time to time be prescribed by the Central Bank by and through publication in the Gazette and written notice to each financial institution.

(b) The amount of the assets prescribed shall be expressed as a percentage of the aggregate demand and time deposits and other liabilities of each financial institution as may be specified for this purpose by the Central Bank; provided, however, that:

(i) this percentage shall not be less than five nor more than twenty-five percent, and

(ii) the Central Bank may specify a period during which surpluses and deficiencies in liquid assets may be averaged.

(c) For the purpose of this Section, advances granted to a financial institution by any other financial institution or by an overseas branch or office of the same institution may be excluded for the computation of that institution's demand and time deposits and other liabilities by the rules and regulations of the Central Bank.

(2) Notices issued under this Section shall apply uniformly in Liberia and shall come into effect on such date as specified, but not earlier than twenty-one days after the issue date; provided, however, that the Central Bank in its notices may differentiate between classes of commercial banks and credit institutions. The distribution of amounts between the classes of liquid assets enumerated in section 17(3) shall be made at the discretion of each financial institution; provided, however, that the Central Bank may

prescribe that up to two percent of the demand and time deposits and other liabilities of each financial institution shall be held in the form of assets set forth in section 17 (3)(d).

(3) For the purpose of this Section, "liquid" assets shall consist of freely transferable assets from any charge or lien whatsoever consisting of the following:

(a) banknotes and coins which are legal tender in Liberia;

(b) balances at the Central Bank except the required reserve and marginal required reserve established under Section 34 (1) of the Central Bank of Liberia Act;

(c) net balances at financial institutions in Liberia and money at call in Liberia: provided, that if such balances are negative they will be subtracted from liquid assets;

(d) treasury bills and other securities issued by the Government and maturing within 180 days;

(e) bills of exchange and promissory notes eligible for rediscount by the Central Bank and warehouse warrants or their equivalent securing possession of goods against which the Central Bank may grant advances, within the limits fixed by the Central Bank and in accordance with its evaluation;

(f) net balances at financial institutions, including the offices and branches of a financial institution in such monetary areas as the Central Bank may approve for the purpose of this Section: provided, that the treatment to be accorded the balances or any portion thereof in respect of the head of a financial institution or any other financial institution organized abroad; and provided further, that if such balances are negative they will be subtracted from liquid assets;

(g) money at call in monetary areas approved by the Central Bank under subsection (f), bills of exchange bearing at least two good signatures drawn on and payable at any place in the approved monetary areas; and treasury bill issued by the Government of a country in any such approved monetary areas and maturing within 180 days.

4. A financial institution shall be held to be in violation of this section if:

(a) it fails to furnish within a reasonable time any information required by the Central Bank to satisfy itself that the financial institution is observing the requirements of this Section; or

(b) it allows its holding of liquid assets to be less than the amount which is from time to time prescribed by the Central Bank; or

(c) during the period of any such deficiency of liquid assets the financial institution grants or permits increases in its outstanding advances, whether by loans or overdraft,

or investment portfolio.

(5) Any financial institution which allows its holding of liquid assets to be less than the amount which is from time to time prescribed by the Central Bank under this Section may be ordered by the Central Bank to pay a charge at an annual rate not exceeding ten percentage points above the highest rate fixed at the time by the Central Bank, pursuant to Section 33 of the Central Bank of Liberia Act for any of its operations on the amount of the deficiency for so long as the failure continues. Such charge shall be payable to the Central Bank on such date as may be prescribed by the Central Bank and may be recovered by deduction from any balance of the financial institution with the Central Bank.

**§18.** The assets in Liberia of every bank financial institution shall:

(1) not be less in value than an amount representing such ratio in respect of its average demand and time deposits and other liabilities specified by the Central Bank, payable in Liberia, as may be prescribed by regulation of the Central Bank from time to time. The average demand and time deposit liabilities shall be determined on a weekly basis.

(2) Non-bank financial institutions may be subject also to prudential requirements and regulations where, to the extent not provided herein, appropriate and applicable company laws respecting financial disclosure, consumer protection, market forces imposition and the use of civil and criminal penalties may govern.

**§ 19. Restrictions on Dividend and Other Payments from Profits.**

(1) No financial institution shall declare, credit or pay any dividends or make any other transfer whenever such payment or transfer would result in an impairment of the capital or of the minimum required balance in the Statutory Reserve Account.

(2) Any financial institution that violates Section 19 (1) shall be liable to pay a fine of not less than two hundred thousand Liberian dollars (L\$200,000) or be closed by the Central Bank. If the closure continues for three days or more because the financial institution fails or refuses to pay the fine, the Central Bank may revoke its license, which may then subject the institution to compulsory reorganization or liquidation.

**§ 20. Credit and Other Restrictions.**

(1) The total liabilities of any borrowing individual, partnership, corporation or any other form of business organization to any bank-financial institution resulting from one or more extensions of credit by that depository institution shall at no time exceed fifteen percent (15%) of the net worth of the institution. The amount of the purchase of equity securities of a borrower by the financial institution in question shall be deemed an extension of credit.

(2) No financial institution, shall, directly or indirectly, except with the approval of the Central Bank on such terms and conditions as the Central Bank may prescribe:

(a) grant to any person any advances or credit facilities or make any guarantee so that

the total value of the advances, credit facilities or guarantees in respect of such a person is at any time more than fifteen percent (15%) of the aggregate amount of the financial institution's unimpaired net worth; provided, however that the limitation imposed herein shall not apply to transactions pertaining to the following:

(i) discounts or payments of drafts secured by readily marketable goods in transit in which the depository institution retains a security interest in and control over the goods;

(ii) loans secured by readily marketable goods remaining under the control of the depository institution and in which the depository institution retains a security interest;

(iii) loans secured by deposits in the depository institution with a value of at least one hundred and twenty five (125%) percent of the loan;

(iv) repurchase agreements covering readily marketable government securities; and

(v) government-guaranteed securities; .

(b) grant any advance against the security of its own shares;

(c) grant or permit to be outstanding unsecured advances unless such have been unanimously approved by all of the members of its board and the institution has notified the Central Bank in advance:

(i) to the members of its board, whether such advances are obtained by them jointly or severally;

(ii) to any person in whom it or any one or more of the members of its board has any interest as a director, partner, manager, agent or member or otherwise;

(d) grant or permit to be outstanding secured or unsecured advances or credit to the members of its board unless such advances or credit are, in addition to the securities that may be required, guaranteed by all members of the board, jointly and severally; provided that the aggregate amount of such advances and credit made to all members of the board shall at no time exceed thirty (30%) percent of the net worth of the financial institution.

(e) grant or permit to be outstanding to its officers and employees unsecured advances, which in aggregate amount for any one officer or employee exceed the annual remuneration of such officer or employee;

(f) engage in trade, except insofar as may be temporarily necessary in the conduct of its business or in the course of the satisfaction of debts due to it;

(g) purchase, acquire or lease real property except as may be necessary for the purpose of conducting its business as a financial institution, including provision for

future expansion and housing its officers or employees; provided, that:

(i) in respect of any real property held or leased by financial institution prior to the commencement of this Act for purposes other than these referred to herein, a financial institution shall be allowed a period of up to five years in which to comply with this paragraph; and

(ii) a financial institution may secure a debt on any real or other property and in default of repayment may acquire such property for resale as soon as possible thereafter.

(h) remit, either in whole or in part, the debts owed to it by any of the financial institution's related party or person.

(3) In the application of the limitation of Section 20 (2) (a) and (c); if the Central Bank shall determine that the interests of a group of two or more persons are so interrelated that they should be considered as a unit, the total indebtedness and contingent indebtedness of that group shall be combined and deemed in respect of a single person; provided, that a financial institution shall not be deemed to have violated Section 20 (2) (a) or (c) solely by reason of the fact of limitation at the time of the determination; but the financial institution shall dispose of the indebtedness and contingent indebtedness of the group on the amount in excess of the limitation within such reasonable time as shall be determined by the Central Bank.

(4) Any financial institution which, prior to the effective date of this Act, entered into any transactions incompatible with the provisions of Section 20 (a) through (f) shall, within (6) six months after the coming into operation of this provision, submit a statement thereof to the Central Bank and shall liquidate all such transactions within such reasonable time as shall be determined by the Central Bank.

(5) Extensions of credit to more than one borrower in the following categories of borrowers shall be combined and subject to the credit limit to one borrower:

(a) a corporation and its majority-owned or controlled subsidiaries and sub-subsidiaries;

(b) a partnership and its members;

(c) a common enterprise and participants in the enterprise who borrow for that enterprise,

(d) government entities, unless:

(i) the borrower has its own revenue sources to service debt; and

(ii) the credit extension is for the borrower's own activities; and enterprises where one is economically dependent on the other to a substantial degree.

(6) Any board members, officers, or employees of a financial institution acting in contravention of any of the provisions of Section 20 is guilty of a felony and shall be liable to imprisonment for a term of not less than three years and to a fine of not less than One Million (L\$ 1,000,000) Liberian Dollars. Each such individual shall make restitution of the amount of money lost as a result of the violation and he shall be removed from office, and the provisions of Section 76 hereof shall be applicable.

(7) Debt Provisioning and Rescheduling

(a) Indebtedness of and to, and owing by or to, a financial institution in the course of its business may be renegotiated to grant permissive delay of repayment for reasons of existing general debt repayment and servicing difficulties.

(b) The Central Bank shall perform the role of intermediary and may, for supervisory purposes, set out, by regulations, a frame-work within which appropriate levels of risk exposure may be assessed. The stages of the process for deciding appropriate levels of provisioning may include:

(i) identification of debtors with current or potential repayment difficulties;

(ii) identification of the nature of those difficulties, and extent to which they affect the debtor;

(iii) determination of the proportion of the exposure that is unlikely to be paid in full;

(iv) consideration of factors which may;

(1) evidence a borrower's inability to meet his obligation at the due date, due to extraneous circumstances;

(2) evidence a borrower's current difficulties in meeting his obligations;

(3) evidence the likelihood of persistence in repayment.

## **PART IV**

### **Audit, Information and Inspection**

#### **§ 21. Appointment of Auditors by Financial Institutions.**

(1) Every financial institution shall appoint an external auditor annually, who shall be a professionally qualified person satisfactory to the Central Bank, whose duties shall be:

(a) to make a report to the shareholders of each such financial institution incorporated under the Associations Law of Liberia, to the owners of each such other local financial institutions, and to the head office abroad of each foreign financial institution, on the annual balance sheet, and income statement. In every such report the auditor shall

state whether, in his opinion, the balance sheet and income statement are properly drawn up, and represent a true and fair view of the state of affairs of the business of the financial institution, and whether or not the auditor was given satisfactory explanations or information from the officers or agents of the institution.

(b) to review the adequacy of internal audit, control, practices and procedures to make recommendations for remedy and to inform the Central Bank about any fraudulent act by any employee, director or subsidiary of the financial institution, or any irregularity, or deficiency in its administration or operation, or any breach of any provision of this Act.

(2) The report of the auditor shall also be read together with the report of the board of directors of the financial institution at the annual meeting of shareholders or other owners of each local financial institution and shall be transmitted to the head office of each foreign financial institution. A copy of the audit report shall be sent to the Central Bank not later than four months from the end of the financial year of the financial institution and thereafter an abridged financial statement shall be published in a form to be determined by the Central Bank. Such published financial institution report shall disclose penalties imposed by the Central Bank.

(3) If a financial institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint such auditor. The remuneration of the auditor, whether appointed by the institution or by the Central Bank, shall be paid by the financial institution and, in the case of an auditor appointed by the Central Bank, shall be determined by the Central Bank, in accordance with prevailing rates for such services in Liberia.

(4) No person having an interest in any financial institution otherwise than as a depositor and no director, officer, employee, or agent of a financial institution shall be eligible for appointment as auditor for such institution. Any person appointed as auditor who shall, after such appointment, acquire any interest or become a director, officer, employee or agent of such institution shall forth-with cease to be such auditor.

## **§ 22. Examination of Financial Institutions by the Central Bank.**

(1) The Central Bank shall carry out a comprehensive on-site inspection/examination of each financial institution at least once every year.

(2) The Central Bank, from time to time, shall cause an examination or special inspection or other inspection to be made of each financial institution whenever in its judgement such examination is necessary or expedient in order to determine whether the institution is in a sound financial condition and whether the requirements of law have been complied with in the conduct of its business.

(3) For the purpose of determining the condition of a financial institution and its compliance with this Act, the Central Bank may at any time cause an examination to be made of any of its affiliates in Liberia to the same extent that an examination may be made of the institution.

(4) For the purpose of Section 22 (2) and (3), the Central Bank may appoint one or more qualified persons. other than officers of the Central Bank to conduct special inspections or other inspections.

(5) Expenses of and incidental to an examination may be paid by the Central Bank; provided however that the Central Bank may require the inspected financial institution to bear a portion of the costs as determined by the Central Bank pertaining to any special inspection or other inspection caused by the failure of the financial institution in question to abide by prudential regulations.

### **§ 23. Right of Central Bank to Inspect Books and Records of Financial Institutions.**

(1) Every financial institution shall produce for the inspection of any examiner appointed by the Central Bank at such time as the examiner specifies, all books, minutes, accounts, cash, securities, documents, and vouchers relating to its business in Liberia and shall supply all information concerning its business in Liberia as may reasonably be required by the examiner within such time as the examiner specifies.

(2) If any books, minutes, cash, securities, document, and vouchers are not produced or information not supplied in accordance with Section 23 (1), the defaulting institution or affiliate or both shall be liable to a fine of not less than One Hundred Thousand (L\$100,000) Liberian Dollars in respect of every day during which the default is not remedied or cured. If any information supplied or item produced is found to be false in any material particular, the institution or affiliate or both shall be in violation of law and shall pay a fine of a minimum of Two Hundred Thousand (L\$200,000) Liberian Dollars in respect of every day the violation continues. The Central Bank may close down and revoke the license of the institution and or the affiliate, if it refuses to correct the default and! or fails to pay the fine.

### **§ 24. Delivery of Returns to the Central Bank and Record Keeping.**

(1) Every bank shall submit to the Central Bank - not later than five (5) banking days after the last day of each reporting period, a schedule or regular reports in a form and at intervals as may be prescribed by the Central Bank.

(2) If any return or regular report required pursuant to Section 24(1) is not forwarded to the Central Bank within the time limit specified by the Central Bank the defaulting institution or affiliate or both shall be liable to a fine of not less than One Hundred Thousand (LS100,000) Liberian Dollars in respect of every day during which the default continues. If any information supplied or item produced is false in any material particular, the institution or affiliate or both shall be in violation of law and shall pay a fine of a minimum of Two Hundred Thousand (L\$200,000) Liberian Dollars in respect of every day the violation continues. The Central Bank may close down and revoke the license of the institution and/or the affiliate, if it refuses to correct the default and/or fails to pay the fine.

(3) Every financial institution shall keep its business records and books in accordance with internationally accepted accounting principles and practices as well as the requirements of the legal provisions on accounting in Liberia, and in a manner which is suitable for effective internal control as may be prescribed by the Central Bank within the general parameters of internationally accepted accounting standards concerning asset classification, loan and income provisioning, and limits on open foreign exchange position of a financial institution.

(4) Failure to keep proper books and records in accordance with Section 24(3) as a result of negligence or incompetence shall cause the directors and officers responsible therefor to be fined up to Two Hundred and Fifty Thousand (L\$250,000) Liberian Dollars and removed from office. Failure to keep proper books and records in accordance with Section 24(3) with intent to conceal, deceive or defraud shall be considered an offense, and the directors or officers responsible therefor shall be jointly or severally liable and may be fined up to Five Hundred Thousand (L\$500,000) Liberian Dollars or liable to imprisonment for a minimum of two (2) years or both.

## **25. Intervention by the Central Bank in Financial Institutions.**

If in the opinion of the Central Bank examination authorized under Section 22 reveals that a financial institution concerned is conducting its business in an unlawful or unsound manner or that its capital is impaired or that it is otherwise in an unsound condition, the Central Bank may:

(1) require the external auditor appointed by the financial institution to undertake a special audit covering the unlawful act or irregularity and/or the impairment of capital and to make a written report within thirty (30) days of such request to the Central Bank and to the financial institution stating the result or conclusions of its audit.

(2) appoint a person who in the opinion of the Central Bank, has had proper training and experience to advise the financial institution on the steps to be taken to rectify the matter, and shall fix his remuneration which shall be paid by the institution.

(3) without prejudice to the authority of the Central Bank, require that such institution signs, obligates and commits itself to a written agreement entered by and between it and the Central Bank to forthwith take such measures as the Central Bank may consider necessary to rectify the matter, including but not limited to remedial measures of suspension and dismissal of the institution's officers and directors, limitation of its operations and the appointment of provisional administration to manage the institution to compliance with regulations.

(4) If a financial institution is an object of such intervention, it shall submit a semiannual report in writing to the Central Bank on the following:

(i) the increase or decrease or otherwise of its registered capital;

(ii) any loss on and of its adjusted capital or cessation of its payments;

(iii) any change in ownership and structure.

**§§ 26-28. Right of Central Bank to Require Information.**

**26.** The Central Bank may, from time to time, call for any information which it may require, for the purposes of this Act, from any financial institution about the operations of the financial institution and those of its affiliates in Liberia, or from a local financial institution about its operations and those of its affiliates abroad; provided, that the information so furnished may, in the discretion of the Central Bank, serve in lieu of statements required under Section 37 of this Act.

**27.** The Central Bank may require financial institutions to furnish it periodically with statements of all credits granted to customers in excess of sums prescribed by regulation, and the extent of their utilization during the month. The Central Bank may communicate to the financial institution which has notified a credit or an application for credit in the name of a customer the overall amounts of credits opened and utilized by him during the period.

**28.** At the request of a financial institution, the Central Bank may, in its discretion, extend from time to time any period within which such financial institution is, in accordance with the provisions of this Act, obliged to furnish any document or information.

**§ 29. Declaration of Interest and Penalty for Contravention.**

29 (1) Every director, officer, or employee of a local financial institution who is in any manner whatsoever, whether directly or indirectly, interested in an advance from that institution shall, as soon as possible, declare the nature of his interest to the board of directors or other body responsible for the management of that institution and shall cause such declaration to be circulated forthwith to all of the members of its board.

(2) The requirement of Section 29 (1) shall not apply where the interest of the member of the board consists only of being a creditor to or holder of an ownership interest in a concern which is interested in an advance from that institution if, in either case, the interest of the member of the board may properly be regarded by the Central Bank as not being a substantial interest.

(3) For the purpose of Section 29 (1), a declaration by a member of the board of a local financial institution to the effect that he is to be regarded as interested in any advance, which may, after the date of the notice, be made by that financial institution shall be deemed to be sufficient declaration of interest in relation to any advance so made if

(a) it specifies the nature and extent of his interest; and

(b) his interest shall not be different in nature from or greater in extent than the nature and extent so specified in such notice at the time any advance is made.

(4) Every director, officer, or employee of a local financial institution who possesses any property or holds office in connection therewith, whether directly or indirectly, or who may have a family member with interest in such property, whereby such interest might be in conflict with his duties to the financial institution, shall declare at a meeting of the board of the institution the fact, nature, character and extent of the conflict.

(5) The declaration referred to in Section 29 (4) shall be made at the first meeting of the members of the board held:

(a) after he becomes a member of the board or an officer or employee of the financial institution; or

(b) if already a member of the board, officer, or employee of the institution, after he commences to hold office related to the property, or comes into possession of the property.

(6) Every member of the board and every officer or employee of a local financial institution who qualifies as an interested party under the provisions of this Section shall cause to be brought up and read any declaration made under Section 29 (1) or under Section 29 (4) at the next meeting of the board of the financial institution after it is given, and shall cause to be recorded any declaration made under this Section in the minutes of the meeting at which it was made or at which it was brought up and read.

(7) Every director, officer, or employee of a local financial institution shall be required, upon request of the Central Bank, to disclose any interests that they and members of their family have in such financial institution, whether directly or indirectly.

(8) Any director or officer or employee of a financial institution who acts in contravention of Section 29 (1) or Section 29 (4) (7) is in violation of the law and shall be liable to pay a fine of up to Two Hundred Thousand (L\$200,000) Liberian Dollars, or be imprisoned for a term of not less than two years or to both fine and imprisonment.

### **§§ 30-32. Penalty for Malpractice and Irregularities.**

**30.** Any member of the board, officer, employee, or agent of a financial institution who:

(1) with intent to deceive:

(i) makes any false or misleading statement or entry;

(ii) omits any statement or entry that should be made in any book, account, report, or statement of the financial institution; or

(2) Obstructs or endeavors to obstruct;

(i) the proper performance by an auditor of his duties in accordance with the provisions of this Act; or

(ii) a lawful examination of the financial institution by a duly authorized examiner appointed by the Central Bank is in violation of the law and shall be liable to pay a fine of not less than Two Hundred Thousand (L\$200,000) Liberian Dollars or be imprisoned for a term not exceeding two years, or to both the fine and imprisonment.

**31.** Any member of the board or officer concerned in the management of a financial institution who:

(1) fails to take all reasonable steps to secure compliance by the financial institution with the requirements of this Act; or

(2) is implicated in an offense committed under Section 30;

is guilty of an offense and shall be liable to imprisonment for a term of up to two years or to pay a fine up to two hundred thousand (L\$200,000) Liberian dollars or to both such imprisonment and fine.

**32.** (1) It shall be unlawful for any financial institution to receive any deposit while insolvent, or for a member of the board or other officer or employee who knows or, in the proper performance of his duty, should know of such insolvency, to receive or to authorize the acceptance of such deposit.

(2) No insolvent financial institution shall, without the approval of the Central Bank, advertise, or cause an advertisement to be made, with the intent or having the tendency or the purpose to induce deposit or payment of funds to it in whatsoever form or for whatever financial purposes such as:

(a) repayment with or without interest;

(b) giving of security or provision of property; or

(c) rendering of financial services.

(3) Any person who violates Sections 32 (1) and (2) shall be liable to pay a fine of not less than Five Hundred Thousand (L\$500,000) Liberian Dollars and/or be subject to imprisonment for a term of not less than two years, or to both the fine and imprisonment.

### **§§ 33. Deposits and Withdrawals.**

(1) Deposits made into an account shall be deemed to have been denominated in the currency of that account, and such deposits shall be withdrawn in the currency of that account, unless the financial institution and the depositor agree otherwise.

(2) In all transactions connected with the opening of, deposit into, or withdrawal from, any account, whenever the depositor is unable to sign, his thumb impression affixed in

the presence of an officer of the financial institution and a third party witness shall have the same legal effect as if it were the depositor's signature.

**§ 34. Contribution to Deposit Insurance Scheme.**

Every bank financial institution shall be required to contribute to a deposit protection scheme which shall be organized in manner and form and kept on terms and conditions as shall, from time to time, be prescribed by the Central Bank.

**§ 35. Restrictions Placed on Central Bank Concerning Inquiries and Disclosure of Information.**

(1) Nothing in this Act shall authorize an inquiry to be made into the affairs of any individual customer of a financial institution. Nothing in this Act shall permit or allow any financial institution or any person acting for or on behalf of the financial institution in his position therewith to neglect or refuse to provide to the Central Bank any document or information it may request, require or order in respect of any customer or the activities of the financial institution.

(2) The Central Bank shall not, unless lawfully required to do so by law or court of law, reveal to any person any information as to the affairs of any individual customer of a financial institution obtained in the exercise of its regulatory jurisdiction: provided, that this provision shall not operate as a bar to communication by the Central Bank in accordance with Section 26.

(3) The Central Bank may publish in whole or in part at such time as it may determine any information or data furnished under this Act: provided, that no information or data shall be published which might disclose the individual affairs of a customer of a financial institution unless the consent of every interested party has been obtained in writing prior to such publication.

**§ 36. Powers of the Central Bank to Fix Business Days, Hours.**

(1) The Central Bank may, by regulation, declare days upon which no financial institution may be open for business with the public, without regard to whether or not such days are or are not also public holidays.

(2) All financial institutions shall remain open for business with the public during hours prescribed by the Central Bank on all days other than those referred to in Section 36(1).

(3) Any private obligation which can only be fulfilled at a financial institution and which would fall due on any day or at any particular hour on which such institution is not open for business under Section 36 (1) or (2) shall be deemed to fall due on the first business day after the expiration of the day of closure.

**§ 37. Restraint on Competition and Penalties.**

(1) No financial institution shall acquire more than ten percent (10%) of the equity in another financial institution in Liberia without securing the prior written approval of the Central Bank.

(2) No financial institution shall enter into an agreement with another financial institution which in the opinion of the Central Bank is in restraint of banking competition. Any such agreement shall be illegal within the context of this Act, and shall be null and void.

(3) Any person who violates Section 37 (1) and (2) is liable to pay a fine of not less than Two Hundred Thousand (L\$200,000) Liberian Dollars or be imprisoned for a term not exceeding two years, or to both the fine and the imprisonment.

### **§ 38. Court Powers to Hear and Determine Violations under this Act.**

38(1) The Central Bank shall have a duty to prevent and restrain violations under this Act. Until the establishment of commercial courts, which shall then have jurisdiction, the Circuit Court is hereby vested with jurisdiction to hear and determine violations of this Act; and it shall be the duty of the Central Bank to institute proceedings where necessary to prevent and restrain such violations.

(2) The Ministry of Justice, assisted by the Central Bank, shall have the duty to prosecute in the Circuit Court, pursuant to the penal law, offenses of fraud or crimes committed under this Act.

(3) Before issuing any final judgement, the Court may, at any time during the course of the proceedings, make such temporary restraining order or prohibition against the violating financial institution and its officers, managers and employees as it shall deem necessary under the circumstances.

### **§ 39. Power of Central Bank to Issue Regulations.**

(1) The Central Bank may issue such regulations and institute such measures as may be required from time to time for giving effect to any and all provisions of this Act, including cease and desist orders. The Central Bank may also, in line with and pursuant to this Act, by its orders, dismiss or cause to be dismissed, directors, officers and employees of financial institutions; appoint provisional administrators therein; or close financial institutions.

(2) Without prejudice to the generality of the obligations, authority, powers and limitations under this Act, the Central Bank may set minimum deposit balance requirements, establish limits for all fee and service charges and otherwise govern and regulate activities and relationship between financial institutions, their customers, creditors and debtors.

### **§ 40. Appointment of Provisional Administrator.**

(1) The Central Bank may appoint a provisional administrator for a financial institution on the basis described in Section 24 and in the event the institution is grossly mismanaged, such as keeping false accounts, eroding asset base, engaging in money laundering, violating the provisions of this Act or other relevant laws and regulations:

(a) The engagement by the Central Bank of a provisional administrator, who shall work

under the supervision of and be responsible to the Central Bank, shall be by written contract setting forth the terms and conditions of the engagement, provided, however, that notwithstanding any contrary provision of the contract, the Central Bank shall have the right to terminate it for cause on one day prior notice. A provisional administrator may succeed a previous provisional administrator.

(b) Compensation of the provisional administrator and his expenses shall be set by the Central Bank and paid by the financial institution.

(c) The provisional administrator shall meet the qualification of a person of financial expertise and experience.

(2) Whenever a provisional administrator is appointed, the provisional administrator shall, within three days of such appointment:

(a) post in each office of the financial institution a notice announcing such action pursuant to this Act, specifying the date and time at which possession by the provisional administrator took effect;

(b) publish a notice to the same effect in one or more newspapers of general circulation in the communities in which the financial institution maintains offices; and

(c) transmit copies of such notices to the Central Bank within three days of each of posting and publication.

(3) Actions on behalf of or for the account of the institution that occur without the prior approval of the provisional administrator after the date of publication of the notice described in Section 40 (2) (b) shall be null and void unless the provisional administrator otherwise decides.

(4) The board of directors, officers and employees of a financial institution shall take all necessary steps to secure the institution's assets after the appointment of a provisional administrator and until the retention, disposal or other use of the assets is determined by the provisional administrator.

(5) The provisional administrator may, under the supervision of the Central Bank, bring an action in court to set aside a transaction based on a forged or fraudulent document that the financial institution has executed to the detriment of creditors.

(6) The provisional administrator, under the supervision of the Central Bank, may bring an action in Court to set aside actions affecting the assets of the financial institution or to recover from third parties the transfers by the financial institutions, as follows:

(a) gratuitous transfers to, or to persons related to, officers, directors, and principal shareholders of the financial institution;

(b) gratuitous transfers to third parties;

(c) transactions in which the considerations given by the financial institution considerably exceeds the received consideration;

(d) any act done with the intention of the parties involved to withhold assets from the creditors of the financial institution, or otherwise impair their rights;

(e) transfers of property of the financial institution to or for the benefit of a creditor on account of a prior debt made which has the effect of increasing the amount that the creditor would receive in a liquidation of the financial institution; provided, however, that payments of deposits in an amount not exceeding Ten Thousand (L\$10,000) Liberian Dollars per depositor shall not be subject to this Section.

(7) Transactions with persons related to the financial institution, if detrimental to the interest of depositors and other creditors, may be set aside and recovered from such persons.

(8) An action to set aside a transfer under Sections 40 (6) and (7) may be brought by the provisional administrator within one year following the effective date of the administration.

(9) Notwithstanding the provisions of Section 40 (7), the provisional administrator may not set aside a payment or transfer by the financial institution if it was made in the ordinary course of the financial institution's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the financial institution which had not been satisfied by the financial institution as of the effective date of the provisional administration.

(10) The recipient of a transfer set aside under Section 40 (7) shall return the property transferred to the provisional administration or, if the property no longer exists, the value of the property at the time of its transfer by the financial institution; provided, however, that a recipient who has returned to the provisional administrator the value of the property transferred to the financial institution shall have a claim against the financial institution for that amount, if the recipient gave value to the financial institution and accepted the transfer in good faith and without an intention to hinder, delay, default or defraud the financial institution's depositors or other creditors.

(11) The provisional administrator shall recover property or the value of the property transferred by the financial institution from a transferee of an initial transferee only if the second transferee did not give fair value for the property.

(12) The provisional administrator may order that notice of the filing of an action to set aside a transfer be recorded in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring lien or other interest in

such property after the filing of such a notice shall take his title or interest subject to the rights of the financial institution to recover the property.

(13) A provisional administrator shall , under the supervision of the Central Bank, have either:

(a) all the powers of the board of directors, officers and employees of the institution in the way in which the provisional administrator reasonably believes to be the best way to bring the financial institution into regulatory compliance, which may include, in consultation with the board of the financial institution, the sale of institution, the sale of all or substantially all of its assets together with an assumption of substantially all of its liabilities, and raising new capital for the financial institution; or

(b) such lesser powers of management and control of the institution as the Central Bank shall designate, that may include the power to veto any proposed transaction of the institution that is not in the ordinary course of the institution's business; that in the opinion of the provisional administrator, would be in violation of applicable law or regulations; or that exceeds a certain amount; provided, that the provisional administrator shall have the same rights and privileges and shall be subject to the same duties, restrictions, penalties and conditions as apply to a board of directors, officers, or employees of a financial institution licensed under this Act.

(14) If a provisional administrator has the powers described in Section 40 (13) (a), the powers of the administrators and shareholders of the financial institution shall be suspended during the provisional administration; provided, however, that administrators may be instructed by the provisional administrator to exercise specified functions for the financial institution and such persons are subject to dismissal by the provisional administrator from their positions at the financial institution.

(15) The Central Bank may authorize the provisional administrator at any time to declare deposits and investments by the public in the institution to be totally or partially blocked for a maximum period of six months; provided, that measures are taken which, in the opinion of the provisional administrator, will preserve the approximate value of these deposits and investments. Interest will continue to accrue on interest-bearing deposits.

(16) The Central Bank may authorize that, notwithstanding any other provision of law, the rehabilitation or sale of a financial institution may include the issuance, based on the determination of the provisional administrator, of new shares to existing shareholders of the financial institution or to new shareholders at prices and with rights determined by the provisional administrator to be fair.

(17)(a) Management by provisional administrator shall continue until, in the opinion of the Central Bank, the financial institution is brought into regulatory compliance; provided, however, that if, in the opinion of the Central Bank, regulatory compliance has not been achieved after one year from the effective date of the appointment, the Central

Bank may take other enforcement measures provided under this Act, including, but not limited to, revoking the license of the financial institution.

(b) If the provisional administrator determines that the financial institution cannot be brought into regulatory compliance, he shall so inform the Central Bank which, if it agrees, shall forthwith order that the provisional administration be terminated.

(18)(a) Funds provided by the Central Bank to the financial institution during the provisional administration shall have priority over all other liabilities of the financial institution and be repaid in the order of first and foremost priority.

(b) Upon approval of the final report of the provisional administrator by the Central Bank, the Central Bank and the provisional administrator shall be relieved of any further responsibility in connection with the provisional administration of a financial institution.

## **PART V**

### **Seizure, Reorganization and Liquidation of Financial Institutions**

#### **§§ 41-46. Voluntary Liquidation of Financial Institutions.**

41(1) Notwithstanding the provisions of the Associations Law and the Insolvency Law, the reorganization and liquidation of financial institutions shall be subject to the provisions stated in this Act.

(2) Any voluntary liquidation of a financial institution shall be subject to prior authorization by the Central Bank. This authorization shall be granted only if it appears to the Central Bank that:

(a) the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and

(b) the liquidation has been approved by two-thirds of the stockholders having the right to vote at a meeting called expressly for this purpose.

**42.** When it has received the authorization of the Central Bank, the financial institution shall:

(1) immediately cease to do business, retaining only the powers to do the necessary business for the purpose of effecting an orderly liquidation;

(2) repay its depositors and other creditors;

(3) wind up all operations undertaken prior to the receipt of the authorization.

**43.** Within thirty days from the receipt of the authorization referred to in Section 41(2), a notice of voluntary liquidation, setting forth such information as the Central Bank may

prescribe, shall be sent by mail to all depositors, other creditors, and persons otherwise entitled to the funds or property held by the financial institution as a fiduciary, lessor of a safe deposit box, or bailee. The notice shall also be posted conspicuously on the premises of each office and branch of the financial institution and shall be given such publication as the Central Bank may direct.

**44.** The authorization to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor to payment in full of his claim nor the right of an owner of funds or other property held by the financial institution to the return thereof. All lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their rightful owners within such maximum period as the Central Bank may prescribe.

**45.** When in the judgement of the Central Bank the financial institution has discharged all the obligations referred to in Section 44, it shall be struck from the list of licensed financial institutions and the remainder of its assets shall be distributed among its stockholders in proportion to their respective rights. No such distribution shall be made before:

(1) all claims of depositors and other creditors have been paid or in the case of a disputed claim, before a financial institution has turned over to the Central Bank or to any other person proposed by the liquidating financial institution and approved by the Central Bank sufficient funds to meet any liability that may be judicially determined;

(2) any funds payable to a depositor or other creditor who has not claimed them have been turned over to the Central Bank or to any person proposed by the liquidating financial institution and approved by the Central Bank;

(3) any other funds and property held by the financial institution that could not be returned to the rightful owners in accordance with the provisions of Section 44 have been transferred to the Central Bank or to any other person proposed by the liquidating financial institution and approved by the Central Bank, together with the inventories pertaining thereto. Any funds or property not claimed within a period of fifteen years following the transfer thereto shall be presumed to be abandoned property as defined in Sections 69-71.

**46.** If the Central Bank finds that the assets of a financial institution whose voluntary liquidation it has authorized will not be sufficient for the full discharge of all its obligations or that completion of the liquidation is unduly delayed, it may, if it deems fit, take possession of the financial institution and undertake compulsory reorganization of it or commence proceedings leading to its compulsory liquidation, in conformity with the procedures set forth below in this Act.

**§§ 47-54. Seizure of Financial Institutions by Central Bank.**

**47.** The Central Bank may seize and take possession of any financial institution:

- (1) whose capital is impaired or whose condition is otherwise unsound;
- (2) whose business is being conducted in an unlawful or imprudent manner;
- (3) when the continuation of its activities is detrimental to the interests of its depositors;
- (4) that refuses to submit its accounting records, books, and documents for inspection as provided in Section 23 or has otherwise obstructed such inspection;
- (5) whose license has been revoked in accordance with Section 11 ,
- (6) which fails, refuses or neglects to comply with an order, requirement or regulation of the Central Bank.

**48.** When taking possession, the Central Bank shall post on the premises of the financial institution a notice announcing its action pursuant to this Act, and the time when such possession shall be deemed to take effect. This time shall not be earlier than the posting of the notice.

**49.** After entering into possession of a financial institution, the Central Bank shall be vested with the full and exclusive power of management and control of that financial institution, including the power to continue or discontinue its operations, to stop or limit the payment of its obligations, to employ any necessary staff, to execute any instrument in the name of the financial institution, to initiate, defend and conduct in its name any action or proceedings to which the financial institution may be party, to terminate possession by restoring the financial institution to its board of directors, and to reorganize or liquidate the financial institution in accordance with the provisions of this Act. As soon as possible after taking possession, the Central Bank will make an inventory of the assets of the financial institution. A copy of the inventory shall be available for examination by interested parties at the Central Bank.

**50.** The Central Bank shall have the power to determine compulsory reorganization of a financial institution. In making such determination the Central Bank shall be guided by the obligation to protect the interest of depositors and creditors having regard to safeguarding the integrity and the preservation of confidence in the Liberian financial system. When the Central Bank decides to reorganize a financial institution it shall prepare a reorganization plan and inform, by a notice in a newspaper of general circulation, all interested parties of its decision to reorganize the financial institution.

**51.** The reorganization of a financial institution under the provisions of this Act is subject to the following conditions:

- (1) the reorganization plan shall be equitable to all classes of depositors, other creditors and stockholders;

(2) the reorganization plan shall provide for bringing in new funds so as to establish adequate ratios between:

- (i) capital and deposits; and
- (ii) liquid assets and deposits.

**52.** The reorganization plan shall provide for the removal of any member of the board, officer, or employee responsible for the circumstances which led to the seizure of the financial institution in accordance with Section

47. The findings of the Central Bank as to the responsibility of a director, officer, or employee for the circumstances that led to the seizure shall be *prima facie* evidence against such person that he is responsible for such circumstances that led to the seizure. Any such director, officer or employee responsible, whether directly or indirectly, in whole or in part, for the circumstances which led to the seizure of the financial institution, shall be guilty of an offense and be liable to imprisonment for a period not less than six months or more than five years or to pay a fine of not less than Three Hundred Thousand (L\$3 00,000) Liberian Dollars or to both such imprisonment and fine.

**53.** When, in the course of reorganization, it appears that circumstances render the reorganization plan inequitable or its execution undesirable in view of the defined objectives, the provisional administrator shall recommend to the Central Bank either the modification of the reorganization plan or the compulsory liquidation of the financial institution.

**54.** The Central Bank shall, within ninety (90) days from the date of seizure, commence process or proceedings leading to either reorganization or compulsory liquidation, or the seizure must be terminated.

**§§ 55-67. Compulsory Liquidation of a Financial Institution.**

**55** (1) Compulsory liquidation as shall be determined by the Central Bank may be decreed only by the Court acting upon a submission by the Central Bank.

(2) Immediately following a submission for compulsory liquidation to the Court, the Central Bank shall notify the members of the board, stockholders, depositors and other creditors and interested parties of the financial institution of such submission. They shall have a period of twenty days to file with the Court any objections or reservations they may have. The Court shall give its ruling within a period of twenty days after the end of the period during which objections or reservations to the liquidation were admissible.

(3) When the Court orders the compulsory liquidation of a financial institution, it shall simultaneously upon rendering its decision, appoint the Central Bank as liquidator in accordance with the provisions of this Act. The Central Bank shall thereupon appoint,

designate, and assign a liquidation officer who shall carry out the task of liquidation under the supervision and direction of the Central Bank with diligence and efficiency

(4) The engagement by the Central Bank of a liquidation officer pursuant to Section 55 (3) shall be by written contract setting forth the terms and conditions of the engagement, provided, however, that notwithstanding any contrary provision of the contract, the Central Bank shall have the right to terminate it for cause on one day prior notice. A liquidation officer may succeed a previous liquidation officer. Compensation of the liquidation officer and his expenses shall be set by the Central Bank and paid by the financial institution. The liquidation officer shall meet the qualification of a person of financial expertise and experience.

**56.** When the Central Bank has taken possession of a financial institution as liquidator under the terms of the Act and thereafter entered into possession:

(1) any term, statutory, contractual or otherwise, on the expiration of which claim or right of the financial institution would expire or be extinguished shall be extended by six months from the date of seizure;

(2) any attachment or lien, except a lien existing six months prior to the seizure of the financial institution, shall be vacated and no attachment or lien except a lien created by the liquidator in the application of the provisions of the this Act shall attach to any of the property or assets of the financial institution so long as such possession continues;

(3) any transfer of an asset of the financial institution made after or in contemplation of its insolvency or the seizure with intent to effect a preference shall be voided.

**57.** No execution shall be returned against the assets of a seized financial institution except, in the discretion of the Court, an execution effected pursuant to adjustment rendered prior to the date of the seizure for an amount not exceeding Ten Thousand (L\$10,000) Liberian Dollars.

**58.** Within a period of six months counting from the date of the decision of the Court ordering the compulsory liquidation, the liquidator may terminate:

(1) any employment contract;

(2) any contract for services to which the financial institution was a party; or

(3) any obligation of the financial institution as a lessee. A lessor who shall have received notice that the liquidator is exercising discretionary powers to terminate the lease shall have no claim for rent other than rent accrued up to the date of termination of the lease, nor for damage by reason of such termination, provided that the date of termination of said lease shall not be earlier than the date of vacation of the leased premises.

**59.** As soon as possible after the decision of the Court ordering the compulsory liquidation, the liquidator shall take the necessary steps to terminate all fiduciary functions performed by the financial institution, return all assets and property held by the financial institution as a fiduciary to the owners thereof, and settle its fiduciary accounts.

**60.** As soon as possible after the decision of the Court ordering the compulsory liquidation, and in any event not later than sixty days after its appointment by the Court as liquidator, the Central Bank, acting by and through the liquidation officer appointed pursuant thereto, shall cause to be sent by mail, at the address shown on the books of the financial institution, to all depositors, other creditors, safe deposit box lessees, and the bailors of property held by the financial institution, a statement of the nature and amount for which their claim is shown on the books of the financial institution. The statement shall note that any objection must be filed with the liquidator before a specified date not later than sixty days thereafter and shall invite safe deposit box lessees and bailors to withdraw their property in person.

**61.** Any safe deposit boxes the contents of which have not been withdrawn before the date specified shall be opened in the manner prescribed by the liquidation officer. Their contents and any unclaimed property held by the financial institution as bailee, together with inventories pertaining thereto, shall be deposited by the liquidation officer in the Central Bank and shall be kept by the Central Bank for fifteen (15) years, unless claimed by the owner before the expiration of that period. On the expiration of that time all funds and property not claimed shall be presumed to be abandoned property for purposes of Section 68 -70.

**62.** Within three months after the last day specified in the notice for the filing of claims or such longer period as may be approved by the Central Bank, the liquidation officer shall:

(1) reject any claim if he doubts the validity thereof,

(2) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim under the provisions of this Act;

(3) notify each person whose claim has not been allowed in full and publish once a week for three consecutive weeks, in a newspaper of general circulation a notice of the date and place where the schedule of the steps it proposes to take will be available for inspection, and the date, not sooner than thirty days counting from the date of the third publication in the newspaper, on which the schedule will be filed with the Court.

**63.** Within thirty (30) days after the filing of the schedule referred to in Section 62 (3), any depositor, other creditor, or stockholder, and any other interested party may file an objection to any step proposed. Any objections so filed shall be considered by the Court within thirty (30) days, upon such notice to the liquidation officer and any interested parties as the Court may prescribe. If an objection is sustained, the Court shall direct that an appropriate modification of the schedule be made. After filing the schedule the liquidation officer may, from time to time, make partial distribution to the holders of

claims which are undisputed or which have been allowed by the Court, on which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims. As soon as possible after all objections have been decided upon, the liquidator shall make final distribution.

**64** (1) The following claims shall have priority against the general assets of the financial institution in the order indicated below:

(a) necessary and reasonable expenses incurred by the liquidation officer or in application of the provisions of this Act;

(b) wages and salaries of officers and employees of the financial institution in liquidation for the three month period preceding the seizure of the financial institution;

(c) taxes, rates and deposits owed to the Government, its institutions, agencies and local government bodies;

(d) fees and assessments due to the Central Bank;

(e) savings deposits;

(f) other deposits.

(2) After payment of all other claims filed, at a rate to be fixed by the liquidation officer, with interest calculated up to the date of liquidation, and with the approval of the Court, any remaining claims determined to be legitimate which were filed after the prescribed time shall be paid.

(3) If the amount available for any class of claimants is insufficient to provide payment in full, the said amount shall be distributed pro rata among the members of that class.

**65.** Any assets remaining after all claims have been paid shall be distributed among all stockholders in proportion to their participation.

**66.** Unclaimed funds remaining after the final distribution referred to in Section 60 which are not subject to other provisions under this Act shall be deposited by the liquidation officer in the Central Bank and shall be kept by the Central Bank for fifteen (15) years, unless claimed by the owner before the expiration of that period. On the expiration of the period the funds remaining unclaimed shall be presumed to be abandoned property for purposes of Section 68-70.

**67.** Once all assets have been distributed in accordance with the provisions of this Act, the liquidator shall tender an audited account to the Court. Upon approval of this account by the Court, the name of the financial institution shall be struck from the list of licensed financial institutions, the Ministry of Commerce & Industry shall be notified, and the liquidator shall be relieved of any liability in connection with the liquidation. The

liquidation shall then be declared closed by the Court and shall terminate the juridical existence in the territory of Liberia of the financial institution concerned.

## **PART VI Miscellaneous Provisions**

### **§§ 68-70. Abandoned Property.**

**68** (1) The following items held or owing by a financial institution, unless subject to Section 68 (2), are presumed to be abandoned:

(a) any general deposit (demand, savings or matured time deposit) made in Liberia with a financial institution, together with any interest or dividend, excluding any lawful charges;

(b) any funds paid in Liberia toward the purchase of shares or other interests in a financial institution, together with any interest or dividend, excluding any lawful charges;

(c) any sum payable on a check certified in Liberia or on written instruments issued in Liberia on which a financial institution is directly liable;

(d) any contents of a safe deposit box upon which the lease or rental period has expired and concerning which notice of the institution's intent to deliver said contents into the custody of the Central Bank has been sent by registered letter to the last known address of the lessee and to which the lessee has failed to respond within one year.

(2) The items enumerated in Section 68 (1) (a) through (c) shall not be presumed to be abandoned if the owner has, within fifteen years of the date of the last deposit, payment of funds, or issuance of an instrument, as the case may be:

(a) increased or decreased the amount of the deposit or funds or presented the passbook or other record for the crediting of interest or dividends in respect of the items enumerated in Section 68 (1) (a) or (b);

(b) corresponded in writing with the financial institution concerning the item;

(c) otherwise indicated an interest in the items as evidenced by a memorandum written by the financial institution. concerning the item.

**69** (1) Every financial institution holding any of the items enumerated in Section 68 annually shall report such holdings to the Central Bank, and thereafter pay or deliver to it all abandoned property listed in the report in accordance with regulations which the Central Bank shall prescribe. Upon paying or delivering abandoned property into the custody of the Central Bank, a financial institution shall be relieved of all liability to the extent of the value of the property for any claim in respect thereof

(2) The Central Bank shall follow the provisions of the Civil Procedure Law in respect of

the disposal of all abandoned property paid or delivered to it.

**70.** Any financial institution which willfully fails to file the report or to pay or deliver property presumed to be abandoned into the custody of the Central Bank in accordance with Section 68-70 is guilty of an offense and any member of its board or officer responsible for such noncompliance shall be liable to a fine not less than Two Hundred Thousand (L\$200,000) Liberian Dollars or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

**§ 71. Obligatory Withdrawal from Office and Penalty for Contravention.**

(1) Any person who is a member of the board, manager, or other officer concerned with the management of a financial institution shall cease to hold office:

(a) if he becomes bankrupt or ceases payments of his obligations;

(b) if he is convicted in a court of law of a felony or any offense involving fraud or dishonesty;

(c) when removed by the Central Bank as provided under this Act and/or the Central Bank of Liberia Act.

(2) No person who has been a member of the board or directly or indirectly concerned in the management of a financial institution the license of which has been revoked shall, without the approval of the Central Bank, act or continue to act as a member of the board of, or be directly or indirectly concerned in the management of any financial institution.

(3) Any person acting in contravention of Section 71(1) or (2) is in violation of the law and shall be liable to pay a fine of not less than Five Hundred Thousand (L\$500,000) Liberian Dollars, and specifically in regard to a contravention of Section 71(1) (b) shall make restitution of such funds the missing of which is wholly or in part, directly or indirectly, attributed to him, and be imprisoned for a term not less than two years.

**§ 72. Prohibition of the Receipt of Commission by Officers of Financial Institutions.**

Any director, officer, employee or agent of a financial institution who asks for, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or item of value for his own personal benefit or advantage or for that of any of his relatives from any person:

(1) for procuring or attempting to procure for any person any advance, loans or credit facility from the financial institution, or

(2) for the purpose of discounting any draft, note, check, bill of exchange or other obligations of the financial institution, or

(3) for permitting any person to overdraw any account with the financial institution without proper authority shall be liable to a fine of Two Hundred Thousand (L\$200,000) Liberian Dollars or imprisonment for two years or to both such fine and imprisonment, and in addition such gift, commission, gratuity, money, property or item of value for his own personal benefit or advantage or for that of any of his relatives shall be forfeited to the Central Bank and treated as abandoned property.

**§ 73. Notification of Persons Dismissed, Terminated or Advised to Retire on Grounds of Fraud and Financial Malpractice.**

(1) A financial institution shall notify the Central Bank of any officer or employee of the financial institution dismissed or advised to retire on grounds of fraud and financial malpractice.

(2) Any financial institution and officer of the financial institution who acts in contravention of Sections 73 (1) shall be liable to a fine of Two Hundred Thousand (L\$200,000) each.

**§ 74. Approval of Central Bank for Appointment of Director or Chief Executive Officer.**

Every financial institution shall before appointing any director or chief executive officer seek the Central Bank's written approval for the proposed appointment.

**§ 75. Relevance of Other Laws.**

Except as otherwise provided herein, the provisions of the Associations Law, Title 5 of the Liberian Code of Laws Revised of 1973, as amended, shall be applicable, for the purpose and in the manner indicated in such Laws, to corporations, partnerships and cooperative societies which are financial institutions as the case may be: provided that no provision of the aforesaid laws shall be construed or applied to financial institutions in a manner contrary to or inconsistent with the provisions of this Act.

**§ 76. Effective Date.**

This Act shall take effect immediately upon publication in handbills.

ANY LAW TO THE CONTRARY NOTWITHSTANDING

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