

BRITISH VIRGIN ISLANDS
BANKS AND TRUST COMPANIES ACT, 1990¹
(as amended, 2004)

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Short title.

1. This Act may be cited as the Banks and Trust Companies Act, 1990.

PART I – Preliminary

Interpretation.

- 2.(1) In this Act,

“auditor” means a person who

(a) is qualified as an accountant by examination conducted by one of the institutes of Chartered Accountants or Certified Accounts in England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and is a current member in good standing of one of those institutes; or

(b) possesses such other qualification in accountancy as the Commission, by order, approves and is in good standing with respect to such qualification;

“authorized agent” means a person designated an authorized agent by a bank or trust company under paragraph (b) of subsection (1) of section 9;

“bank” means a person carrying on banking business;

“banking business” means the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or similar account money that is repayable by cheque or order and is capable of being invested by way of advances to customers or otherwise but does not include the receiving on savings, deposit or similar account money which is paid by one company to another at a time when

(a) one is the subsidiary of the other; or

(b) both are subsidiaries of another company;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act, 2001;

“financial year” means, in relation to a licensee under this Act,

(a) the period not exceeding 53 weeks at the end of which the balance of the licensee's account is struck; or

(b) if no such balance is struck, or if a period in excess of 53 weeks is used, then, a calendar year;

“Governor” REPEALED;

“Inspector” REPEALED;

“licence” means a licence granted under subsection (3) of section 4;

“licensee” means a company holding a licence under this Act;

“Registrar” REPEALED;

“trust company” means a company carrying on trust business;

“trust” means the legal relationship created inter vivos or on death by a person, known as a settlor or grantor, when assets have been placed under the control of a person, known as a trustee, for the benefit of a person, known as a beneficiary, or for a specified purpose or when a person declares that he holds assets as trustee for the benefit of a beneficiary or a specified purpose and

(a) the assets constitute a separate trust fund and are not part of the trustee's own estate;

(b) title to the trust assets stand in the name of the trustee or in the name of another person on behalf of the trustee; and

(c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed on him by law;

“trust business” means the business of

(a) acting as a professional trustee, protector or administrator of a trust or settlement;

(b) managing or administering any trust or settlement; and

(c) company management as defined by the Company Management Act, 1990.

(2) For the purposes of this Act and subject to subsection (5), a company is deemed to be a subsidiary of another if

(a) that other either

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is a subsidiary of any company that is the other's subsidiary.

(3) For the purposes of subsection (2), the composition of a company's board of directors is deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(4) For purposes of subsection (3), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied:

(a) that a person can not be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in subsection (3);

(b) that a person's appointment to the directorship follows necessarily from his appointment as a director of the company; or

(c) that the directorship is held by the other company itself or by a subsidiary of it.

(5) In determining whether one company is a subsidiary of another

(a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable

(i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity, or

(ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity,

are to be treated as held or exercisable by the other;

(a) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and

(b) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into the ordinary course of that business.

(6) For purposes of this Act,

(a) a company is deemed to be another's holding company if the other is its subsidiary; and

(b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.

PART II – Licences

Requirement for licence.

3.(1) No person shall carry on banking business, and no trust company shall carry on trust business, from within the Virgin Islands, whether or not such business is carried on within or outside the Virgin Islands, unless the person or the trust company, as the case may be, has obtained a licence under this Act for the purpose.

(2) No company incorporated in the Virgin Islands shall carry on banking business or trust business within or outside the Virgin Islands unless the company has obtained a licence under this Act for the purpose.

Application for licence.

4.(1) A licence is obtainable by making application therefor to the Commission in the prescribed form.

(2) An application under subsection (1) shall contain the particulars set out in the First Schedule and shall be accompanied by the fee prescribed in Part I of the Second Schedule.

(3) The Second Schedule may be amended by an order made by the Commission, subject to section 57 (2) of the Financial Services Commission Act, 2001.

(4) If the Commission is satisfied that an application to carry on banking business or trust business is not against the public interest and that the applicant is a person qualified to carry on banking business or trust business, it may grant the application and issue to the applicant a licence subject to such terms and conditions as the Commission thinks fit.

(5) A decision to refuse to grant a licence, other than a licence in respect of a business in existence at the date of the commencement of this Act, is final and is not subject to any appeal.

(6) The Commission shall cause notice of the grant of a licence under this Act to be published in the Gazette.

(7) A licence issued under this Act shall be prominently displayed on the premises where the business is carried on.

Duration of licence.

5. A licence issued under this Act is valid until 31st December of the year in which it is issued and is renewable during the month of January in the following year upon payment of the fee prescribed in Part II of the Second Schedule.

Exemptions.

6.(1) A person who is licensed under this Act is not required to be licensed under the Business Professions and Trade Licences Act, 1989 to carry on banking business or trust business.

(2) This Act does not apply to a person licensed under the Company Management Act, 1990.

Existing businesses.

7. A person who at the commencement of this Act is carrying on banking business or trust business has a period of 3 months to comply with the provisions of this Act.

Notification of change in particulars of licensee.

8. Where a change occurs in the particulars of a licensee as set out in the application for the particulars licence, the licensee shall, as soon as possible thereafter, inform the Commission of the change.

Principal office and authorised agent.

9.(1) A licence shall not be granted to any person unless the person designates, and notifies the Commission,

(a) a principal office in the Virgin Islands; and

(b) by name, two individuals, approved by the Commission, to be that person's authorized agents in the Virgin Islands.

(1) The functions of an authorized agent are to act as an intermediary between the licensee and the Commission, except that in the absence or inability of one authorized agent may carry out the functions of both authorized agents under this subsection.

(2) It shall be a condition of every licence granted that the licensee shall forthwith notify the Commission in writing of any change of

(a) its principal office in the Virgin Islands; or

(b) any of the persons designated as an authorized agent pursuant to paragraph (b) of subsection (1).

(4) Where the Commission has approved a person under paragraph (b) of subsection (1) as an authorized agent, it may in writing revoke the approval.

Types of licences.

10.(1) A licence issued under this Act must be in one of the following categories:

(a) a general banking licence, for the purposes of carrying on banking business within and outside the jurisdiction of the Virgin Islands without any restrictions on that business;

(b) a restricted Class I banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11;

(c) a restricted Class II banking licence, for the purpose of carrying on banking business with the restrictions on that business set forth in section 11 with the further restriction that the licensee shall not receive or solicit funds by way of trade or business from persons other than those listed in any undertaking accompanying the application for the licence;

(d) a general trust licence, for the purpose of carrying on trust business without any restrictions; and

(e) a restricted trust licence, for the purpose of carrying on trust business with the restriction that the licensee shall not undertake trust business for persons other than those listed in any undertaking accompanying the application for the licence.

(2) There may be listed in a schedule to the application for a general trust licence the name of any company engaging in trust business being a subsidiary of the company applying for a general trust licence together with a description of the particular type of trust business being carried on or to be carried on by the subsidiary and the Commission may, upon granting the general trust licence to the applicant company, include in the licence the name of each subsidiary to be included in the licence together with the terms and conditions, if any, subject to which the licence is extended to include each subsidiary.

Limitations on restricted banking licences.

11. The holder of a restricted Class I banking licence shall not

(a) take banking deposits from any person resident in the Virgin Islands other than another licensee or a company incorporated under the International Business Companies Act, 1984;

(b) invest in any asset that represents a claim on any person resident in the Virgin Islands except a claim resulting from

(i) a transaction with another licensee, or

- (ii) the purchase of bonds or other securities issued by the Government, a statutory corporation or a company in which the Government is the sole or majority beneficial owner; or
- (c) without the written approval of the Commission, carry on any business in the Virgin Islands other than the business for which the restricted Class I banking licence has been obtained.

Capital requirements.

12.(1) No general banking licence shall be granted to a company unless the company

- (a) has a fully paid up capital of not less than \$2,000,000 or its equivalent in foreign currencies, or such greater sum as the Commission, by order, determines; and
- (b) has deposited or invested the sum of \$500,000 in such manner as the Commission, by order, prescribes.

(2) No restricted Class I banking licence or restricted Class II banking licence shall be granted to any company unless the company

- (a) has a fully paid-up capital of not less than \$1,000,000, or its equivalent in foreign currencies, or such greater sum as the Commission, by order, determines; and
- (b) has deposited or invested a sum of \$500,000 in such manner as the Commission, by order, prescribes.

(3) No general trust licence shall be granted to any trust company unless the trust company

- (a) has a fully paid-up capital of not less than \$250,000, or its equivalent in foreign currencies, or such greater sum as the Commission, by order, determines; and
- (b) has deposited or invested a sum of money as may be specified by the Commission but not to exceed \$100,000, in such manner as the Commission, by order, prescribes.

(4) The Commission may require a licensee to increase its fully paid up capital to such greater amount as the Commission may determine for the nature of the banking business or trust business being, or sought to be, undertaken.

Surrender of licence.

13.(1) A licensee that has ceased to carry on the business in respect of which its licence was granted may apply to the Commission to surrender its licence if the licensee

- (a) produces evidence that it has repaid all deposits and has transferred all trust assets held or administered by it; or
- (b) being a company, is being wound up voluntarily and produces evidence that it is solvent and is able on demand to repay all its other deposits held by it and all its other creditors and has transferred all trust assets held or administered by it,

and the Commission may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1) the Commission may apply to the

Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act.

PART III - Transferability Of Shares And Beneficial Interests

Shares not to be issued or transferred without approval.

14. No shares or other interests, whether legal or equitable, in a bank or trust company shall be issue, transferred or otherwise disposed of without the prior written approval of the Commission, except that the Commission may exempt any bank or trust company from the provisions of this section, subject to such terms and conditions as the Commission considers necessary.

PART IV - Administration

Functions of the Commission.

15.(1) REPEALED.

(2) For the purposes of this Act, the functions of the Commission are

(a) to maintain a general review of banking and trust company practice in the Virgin Islands;

(b) where it thinks fit, to examine by way of the receipt of regular returns or in such other manner as it thinks fit the affairs or business of any licensee carrying on business within or outside the Virgin Islands for the purpose of satisfying itself that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying out its business in a satisfactory manner;

(c) to assist in the investigation of any contravention of the laws of the Virgin Islands that it has reasonable grounds to believe has or may have been committed by a licensee or by any of its directors or officers;

(d) to examine the accounts and audited annual accounts forwarded to it under section 17; and

(e) to examine, and make recommendations to the Commission with respect to, applications for licenses.

(3) In the performance of its functions under this Act and subject to the provisions of Part IV of the Financial Services Commission Act, 2001, the Commission may at all reasonable times

(a) have access to the books, records, vouchers, documents, cash and securities of any licensee;

(b) request any information, matter or thing from any person whom it has reasonable grounds to believe is carrying on banking business or trust business in the Virgin Islands in contravention of section 3; and

(c) demand of the authorized agent of the licensee any reasonable information or explanation for the purpose of enabling the Commission to perform its functions under the Act.

(1) For the purpose of subsection (3) and subject to the provisions of the Financial Services (International Co-operation) Act, 2000 and the Financial Services Commission Act, 2001, the Commission shall have access to the name or title of an account of a depositor or a licensee or to the settlor, name or title of a trust, only under the authority of any order of the court made on the ground that there is no other way of obtaining the information required by it.

(2) The Commission may authorise in writing any other person to assist it in the performance of its functions under this Act.

(3) The Commission may, if it appears to it that there is reasonable ground for suspecting that there is a contravention of this Act or that a contravention is likely, apply to the court for an order authorizing the Commission to take such action as it considers necessary in the interests of the depositors, the beneficiaries of any trust, or other creditors and to preserve any assets of the bank or trust company that is the subject of the order.

Use of word “bank”, etc.

16.(1) No person, other than a licensee, shall except with the approval of the Commission,

(a) use or continue to use the words “bank”, “savings”, “savings and loan”, “trust”, “trustee”, “trust company” or “trust corporation”, or any of their derivatives, either in English or in any other language, in the name, description or title under which that person is carrying on business from within the Virgin Islands, whether or not the business is carried on within or outside the Virgin Islands;

(b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other manner that that person is carrying on banking business or trust business; or

(c) in any manner solicit or receive deposits from the public.

(1) No company incorporated in the Virgin Islands shall, except with the approval of the Commission, be registered, or continue to be registered, by a name which contains the words “bank”, “savings”, “savings and loan”, “trust”, “trustee”, “trust company” or “trust corporation” or any of their derivatives, either in English or in any other language, in the description or title under which the company is carrying on business within or outside the Virgin Islands.

(2) The Commission may, before giving its approval under subsection (1) or (2), require the production of such references and such information and particulars as may be prescribed.

(3) The Commission may withdraw any approval given under subsection (1) where it considers it to be in the public interest.

(4) The Commission may refuse to grant a licence to a bank or trust company or, if the bank or trust company is already in possession of a licence, it may revoke the licence if, in its opinion, the bank or trust company is carrying on or appears likely to be carrying on banking business or trust business, as the case may be, under a name that is

(a) identical with that of any other person whether within or outside the Virgin Islands, or which so nearly resembles that name as to be calculated to deceive;

(b) calculated to suggest falsely the patronage of or connection with some person, whether within or outside the Virgin Islands; or

(c) calculated to suggest falsely that the person

- (i) has special status in relation to or derived from the Government,
- (ii) has the official approval of or acts on behalf of the Government or of any department, branch, agency or organ of Government, or any officer thereof, or
- (iii) is recognized in the Virgin Islands as a national or central bank or trust company.

Accounts.

- 17.(1)** Every licensee shall have its accounts audited by an auditor annually or at such other periods as the Commission may require.
- (2)** The audited accounts shall be forwarded to the Commission within 3 months from the end of the financial year of the licensee, unless prior written approval for an extension has been granted by the Commission.
- (3)** Where a licensee changes its auditor, the Commission may require the former auditor to explain the circumstances that gave rise to the change.

Certain approvals required.

- 18.** A licensee shall not change its name or operate outside the Virgin Islands any subsidiary, branch, agency or representative office without the prior written approval of the Commission.

Number and approval of directors.

- 19.(1)** A licensee shall at no time have less than 2 directors.
- (2)** A licensee shall, before the appointment of a director or other senior officer, apply to the Commission for its written approval of the appointment.
- (3)** Notwithstanding subsection (2), the Commission may exempt a licensee from the requirements specified in that subsection if such an exemption
- (a) ipso facto lapses if the director or senior officer becomes bankrupt, makes an arrangement or composition with his creditors or is convicted of an offence involving dishonesty; and
 - (i) may be revoked by the Commission.

Specific powers of Governor.

- 20.(1)** Where the Commission is satisfied that a licensee
- (a) has ceased to carry on banking business or trust business;
 - (b) has gone into liquidation or is wound up or is otherwise dissolved;

- (c) has made any arrangement or composition with its creditors;
- (d) is unable or appears likely to become unable to meet its obligations as they fall due;
- (e) is carrying on business in a manner detrimental to the public interest, the interests of its depositors or of the beneficiaries of any trust, or to the interests of other creditors;
- (f) has contravened any provision of this Act; or
- (g) has failed to comply with a condition of its licence,

it may take any of the actions set forth in subsection (2).

(2) Without prejudice to the powers conferred on the Commission by section 38 of the Financial Services Commission Act, 2001, the actions that the Commission may take in pursuance of subsection (1) are

- (a) revocation of the licence;
- (b) imposition of new or additional conditions upon the licensee;
- (c) the substitution of any director or officer of the licensee;
- (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Commission thereon within 3 months of such appointment;
- (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs who shall mutatis mutandis have all the powers of a person appointed as a liquidator of a company under the Insolvency Act; or
- (f) the requiring of the taking of such action by the licensee as the Commission thinks fit.

(1) Notwithstanding subsection (1) of section 26, a licensee may within 7 days from the date of a decision taken under subsection (2) apply to the Commission for a reconsideration of its decision if that decision involves the revocation of a licence.

(2) A person appointed under paragraph (d) or (e) of subsection (2) or whose appointment has been extended under paragraph (b) of subsection (5) may at his discretion and in any case within 3 months from the date of his appointment or of the extension of his appointment, as the case may be, prepare and furnish a report to the Commission of the affairs of the licensee and may make recommendations thereon.

(3) The Commission may, on receipt of a report under subsection (4),

- (a) revoke the appointment of the person appointed under paragraph (d) or (e) of subsection (2);
- (b) extend the period of appointment of the person appointed under paragraph (d) or (e) of subsection (2);
- (c) subject to such conditions as the Commission may impose, allow the licensee to reorganize its affairs in such manner as the Commission approves; or
- (d) apply to the Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act, 2003 for the appointment of a liquidator in respect of the licensee and, if it considers it appropriate, revoke the licence.

(6) Whenever the Commission revokes a licence under paragraph (a) of subsection (2) or paragraph (d) of subsection (5) or under subsection (5) of section 16, it shall cause notice of the revocation to be published in the Gazette and may also cause to be published, whether within the Virgin Islands or elsewhere, in such newspaper or other publication as it may think fit in the circumstances.

Commission may apply to court.

21. The Commission may in any case in which a licensee or person who has at any time been a licensee is being wound up voluntarily, apply to the court for leave to intervene on behalf of any interested party if it considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors, and the court may make such order as it shall consider appropriate.

Power of search.

22.(1) If a Judge or Magistrate is satisfied by information on oath, whether oral or written, given by an officer of the Commission or other person authorised by the Commission that

(a) there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises, or in any vehicle, vessel or aircraft specified in the information; or

(b) that any documents, cash, or securities that ought to have been produced under subsection (3) of section 15 and have not been produced are to be found at any premises, vehicle, vessel or aircraft specified in the information,

he may issue a search warrant authorizing the officer of the Commission or other person authorised by the Commission, together with any other person named in the warrant, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel, or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or the vehicle, vessel or aircraft.

(1) The officer of the Commission or any other person authorized by a warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or who he has reasonable grounds to believe to have recently left or to be about to enter those premises, or that vehicle, vessel or aircraft, and may seize any document, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under subsection (3) of section 15, except that no female shall, in pursuance of any warrant issued under this section, be searched except by a female.

(2) Where by virtue of this section a person has any power to enter any premises, or a vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

PART V - Miscellaneous

Power of Commission to require insurance.

23. The Commission may require a licensee to effect a policy of insurance with a reputable insurance company against

(a) losses arising out of claims by negligence or breach of duty by the licensee or any employee;

(b) the dishonesty of employees or of the licensee;

(c) loss of documents; and

(d) such other risks as the Inspector may from time to time stipulate, in such amount and of such a nature as the Inspector may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Inspector and shall cease to carry on its business until the insurance has been reinstated or replaced.

1. REPEALED.

24A. REPEALED.

Offences.

25.(1) A licensee or any director or officer of a licensee who knowingly or wilfully supplies false or misleading information to the Commission is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or both.

(2) Any person who operates a banking business or a trust business in contravention of section 16 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding one year or both, and in the case of a continuing offence to a fine not exceeding \$1,000 for each day during which the offence continues.

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which the advertisement appears or to which such advertisement is directed is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or both.

(4) Where a limited liability company is convicted of an offence against subsection (3), every director and every officer concerned with the management of the company is liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

(5) Any person who

(a) fails to comply with a request made of him by the Commission or by any other person acting under this Act;

(b) assaults or obstructs an officer of the Commission or other person in the performance of his functions under this Act;

(c) uses any insulting language to an officer of the Commission or other person in the performance of his functions under this Act;

(d) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent an officer of the Commission or other person from performing his functions under this Act; or

(e) contravenes any provision of this Act for which no punishment is specifically provided,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or both.

Appeals.

26. An appeal lies to the Financial Services Appeal Board (established under the Financial Services Commission Act, 2001) from any decision of the Commission

- (a) revoking a licence under subsection (5) of section 16 or under paragraph (a) of subsection (2) or paragraph (d) of subsection (5) of section 20;
- (b) withdrawing any approval under subsection (4) of section 16; or
- (c) requiring a licensee to take certain steps which the Commission may specify under section 20.

27. REPEALED.

Regulations.

28. The Governor in Council may, on the advice of the Commission, make regulations generally for carrying the purpose and provisions of this Act into effect, and specifically, for the following purposes:

- (a) prescribing anything by this Act authorised or required to be prescribed;
- (b) controlling the form of advertising by licensees; and
- (c) exempting any person or business, or class of person or business from any provision of this Act.

29. REPEALED.

Repeal.

30. The Banking Act, 1972 is repealed.

Commencement.

31. This Act comes into operation on such date as the Governor by proclamation published in the Gazette appoints.

FIRST SCHEDULE

(Section 4(2))

PARTICULARS TO BE SPECIFIED IN APPLICATIONS

Every company applying for a licence under this Act shall furnish in writing to the Commission the following particulars which shall accompany the application:

- (1) Name of applicant.
- (2) Address in the Virgin Islands of principal office of applicant and, in the case of a company incorporated in the Virgin Islands, its registered office.
- (3) The names and addresses of all directors.
- (4) The names and addresses of all shareholders.
- (5) The names and addresses of all officers and managers.
- (6) Names and addresses of solicitors, if any, to the applicant, together with a letter from the solicitors confirming that they act for the applicant.
- (7) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming that they act for the applicant.
- (8) Evidence of the proper incorporation of the company in the Virgin Islands or in the country of incorporation, as the case may be.
- (9) Evidence in writing that the applicant itself or some person directly or indirectly connected with the applicant is possessed of solid and practical experience in banking business or trust business, as the case may be.
- (10) The following:
 - (a) an undertaking in writing to provide and set apart a fully paid up capital before or at the time it commences business, such as the Commission may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Commission; and
 - (b) the guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligations of the parties to it are governed exclusively by the law of the Virgin Islands and that the court of the Virgin Islands only shall be the forum for these purposes.
- (1) Character references in writing, together with such other evidence as the Commission may require, that neither the applicant nor any director or officer of the applicant has a criminal record either in the Virgin Islands or elsewhere.
- (2) Annual accounts of its holding company, if any, for the preceding 3 years and thereafter annually duly audited and certified by an independent auditor.
- (3) Names of all subsidiary companies of the applicant with addresses of their registered offices.
- (4) A copy of the act, charter, certificate of incorporation or memorandum of association and articles of association, as may be appropriate, verified by an affidavit sworn by a director, secretary and duly authenticated as follows:

(a) in the case of a company incorporated in the Virgin Islands, notarised; and

(b) in the case of a foreign company, certified and authenticated under the public seal of the country, city or place under the laws of which such country has been incorporated.

- (1)** References, including one from a bank or trust company.
- (2)** Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.
- (3)** Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

SECOND SCHEDULE

Part I

(Section 4(2))

FEES FOR THE GRANT OF A LICENCE

S.I. 67/1996	(1)	If a licence is granted on or before the 30th day of June in any year:	
		(a)	a general banking licence \$20,000
		(b)	a restricted Class I banking licence \$16,000
		(c)	a restricted Class II banking licence \$16,000
		(d)	a general trust licence \$10,000
		(e)	a restricted trust licence \$ 300
S.I. 67/1996	(2)	If a licence is granted on or after the 1st day of July in any year:	
		(a)	a general banking licence \$10,000
		(b)	a restricted Class I banking licence \$ 8,000
		(c)	a restricted Class II banking licence \$ 8,000
		(d)	a general trust licence \$ 5,000
		(e)	a restricted trust licence \$ 150

Part II

(Section 5)

S.I. 67/1996 FEES FOR THE RENEWAL OF A LICENCE

(a)	a general banking licence	\$20,000
(b)	a restricted Class I banking licence	\$16,000
(c)	a restricted Class II banking licence	\$16,000
(d)	a general trust licence	\$10,000
(e)	a restricted trust licence	\$ 300

¹ Based on No. 9 of 1990 which includes amendments made by the Banks and Trust Companies (Amendment) Act, 1995 ("2/1995"), the Banks and Trust Companies (Amendment of Fees) Order, 1996 ("S.I. 67/1996"), the Financial Services Commission Act, 2001 ("12/2001") and the Insolvency (Amendment and Consequential Provisions) Act, 2004 ("11/2004").

Important

This is an unofficial consolidation of the Banks and Trust Companies Act and the amendments thereto. Whilst every effort has been made to ensure correctness, no responsibility is assumed for errors which may appear.