BANKING

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Banking Act 1975

TABLE OF AMENDMENTS

The Banking Act 1975 No 4 was certified on 24 June 1975 and commenced on 1 July 1975 (see s 5 of the Banking (Amendment) Act 1975 No 11).

Amending Legislation	Certified	Date of Commencement
Banking (Amendment) Act 1975 No 11	23 September 1975	1 July 1975
Banking (Amendment) Act 1977 No 5	6 April 1977	6 April 1977
Banking (Amendment) Act 2004 No 2	26 February 2004	26 February 2004
Statute Law Revision Act 2011 No 8	15 April 2011	15 April 2011
Banking (Amendment) Act 2013 No 6	5 December 2013	12 December 2013
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to provide for the licensing and regulation of commercial and trading banks, savings banks and financial institutions and for matters relating to the carrying on of banking business in the Republic.

Enacted by the Parliament of Nauru as follows:

1 Short title and commencement

This Act may be cited as the *Banking Act 1975* and came into effect on 1 July 1975.

[s 1 am Act 11 of 1975 s 3, opn 1 July 1975]

2 Interpretation

(1) In this Act:

'bank' means a commercial and trading bank or a savings bank;

'banking business' means the business of accepting deposits of money withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits;

'commercial and trading bank' means any corporation, foreign corporation, statutory corporation, body corporate, authority or department of the public service which carries on banking business in the Republic and a substantial part of whose business in the Republic consists of the payment of bills of exchange drawn on it by persons having accounts in credit with it or by persons who have made arrangements to have their accounts with it debited with the amounts of bills of exchange drawn by them on it, but a corporation, foreign corporation, statutory corporation, body corporate, authority or department of the public service which makes payments for goods or services supplied to it by honouring bills of exchange drawn on it shall not for that reason only be taken to be a commercial and trading bank; the business of a commercial and trading bank shall not include the business of accepting deposits of monies in amounts of less than $2,000 to be held, otherwise than for fixed terms, for the persons making the deposits with interest payable thereon;

'financial institution' means any corporation, foreign corporation, body corporate, authority or department of the public service which carries on banking business in the Republic, but which is not a commercial and trading bank or a savings bank;

'savings bank' means any corporation, foreign corporation, statutory corporation, body corporate, authority or department of the public service which carries on banking business in the Republic and whose business consists of accepting deposits of monies to be held, otherwise than for fixed terms, for the persons making the deposits, accumulating the interest payable on the deposits, so far as not withdrawn, and returning the deposits

and the interest payable thereon to the depositors or, in the case of depositors who have died, to their personal representatives or the beneficiaries of their estates; and

[def am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

'the Registrar' means the person for the time being holding the office of the Registrar of Banks by virtue of Section 3 or by virtue of his or her appointment to that office under Section 3.

(2) For the purposes of this Act, a person shall be deemed to be accepting deposits of money if he or she accepts, from the general public, deposits of money as a regular feature of his or her business or if he or she advertises or solicits for such deposits.

(3) For the purposes of this Act, a person shall be deemed to be accepting deposits of money notwithstanding that he or she accepts deposits of money which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof, either conditionally or unconditionally, of the amounts of the deposits at specified or unspecified dates or for the payment of interest on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable.

(4) Notwithstanding the provisions of subsection (3), the acceptance of monies against any issue of debentures, stock or bonds offered to the public in accordance with any written law in force in the Republic shall not be deemed to constitute acceptance of deposits of money for the purposes of this Act.

(5) [subs (5) rep Act 8 of 2011 s 12 and Sch 1[15], opn 15 Apr 2011]

(6) This Act does not apply to operations of banking business outside of the Republic.

[subs (6) insrt Act 2 of 2004 s 3, opn 26 Feb 2004; am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

3 Registrar of Banks

(1) [subs (1) rep Act 8 of 2011 s 12 and Sch 1[16], opn 15 Apr 2011]

(2) The President may appoint a public officer to be the Registrar of Banks; but, where at any time there is no person so appointed, the person who for the time being is, or is acting as, the public service head of the department responsible to the Minister for the administration of this Act shall be the Registrar of Banks.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

(3) The Registrar shall have the duties, powers and functions conferred on him or her by or under this Act and such other powers as are reasonably required from time to time to enable him or her to perform his or her duties and to exercise his or her functions.

(4) The President may appoint a Deputy Registrar of Banks and, unless otherwise directed by the Minister, the Registrar may delegate to the Deputy Registrar such of his or her duties, powers and functions as he or she thinks fit, but, notwithstanding any such delegation, the Registrar shall remain responsible for their performance or exercise and may continue to perform and exercise them himself or herself.

4 Restrictions on carrying on banking business in the Republic

(1) Banking business shall not be carried on in the Republic:

(a) except by, in the case of the business of a bank:

(i) a statutory corporation, body corporate or authority incorporated or established by any written law of the Republic;

(ii) a department of the public service of the Republic; or

(iii) a foreign corporation registered under the *Corporations Act 1972* or eligible to be so registered but exempted under Section 246 of that Act from registration, being a foreign corporation with which the Republic has entered into an agreement before the commencement of this Act for that foreign corporation to carry on that business in the Republic during the period fixed by or under that agreement,

and then only if authorised by a licence granted in that behalf by the Minister under Section 5; and

(b) except by, in the case of the business of a financial institution:

(i) a trading corporation incorporated under the *Corporations Act 1972*;

(ii) a foreign corporation registered under the *Corporations Act 1972*;

(iii) a foreign corporation eligible to be registered under the *Corporations Act 1972* but exempted under Section 246 of that Act from registration;

(iv) a statutory corporation, body corporate or authority incorporated or established by any written law of the Republic; or

(v) a department of the public service of the Republic and then only if authorised by a licence granted in that behalf by the Minister under Section 5.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

(2) The reference in subsection (1)(a)(iii) to an agreement entered into before commencement of this Act is to be deemed to include a reference to any such agreement as varied from time to time by the parties.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

5 Licencing of banks and financial institutions

(1) The Minister, upon application made to the Registrar in writing in the prescribed form and manner, may grant a licence to carry on banking business in the Republic and may make the licence subject to such conditions as he or she thinks fit as to:

(a) the maintaining of reserves of cash, not less than a specified minimum, in such currencies as may be specified and the place or places in which such reserves in whole or in part are to be kept;

(b) the maintaining of such other reserves in such amount and in such form and in such place or places as may be specified; or

(c) in the case of a corporation incorporated, or a foreign corporation registered or exempted from registration, under the *Corporations Act 1972*, the minimum amount of its capital required to be issued and paid up in cash.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

(2) A licence shall authorise the carrying-on of the business of a commercial and trading bank, the business of a savings bank or the business of a

financial institution or any 2 or all 3 of those businesses, but nothing in this subsection shall be taken as prohibiting the granting to a person of 2 or more licences, each licence being in respect of a different type of banking business, so as to authorise that person to carry on simultaneously more than one type of banking business.

[subs (2) am Act 5 of 1977 s 3, opn 6 Apr 1977; Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

(3) A licence to carry on the business of a commercial and trading bank shall state the maximum rate of interest at which the bank may lend monies:

Provided that the rate may be stated as a variable rate and the circumstances in which it is to vary shall, in such case, also be stated.

(4) A licence to carry on the business of a savings bank shall state the minimum rate of interest to be paid on monies deposited:

Provided that the rate may be stated as a variable rate and the circumstances in which it is to vary shall, in such case, also be stated.

(5) Subject to subsection (6), a licence shall be granted for such specified period not exceeding 10 years as the Minister thinks fit.

(6) The licencee shall pay to the Registrar at the time when the licence is granted and on every anniversary thereof for so long as the licence remains in force a fee to be determined in writing by the Cabinet; the amount of the fee need not be the same on each occasion on which it is payable and, if the Cabinet so determines, may vary in relationship to the amount of business transacted in the Republic by the licencee; but either the amount or the manner in which it is to be ascertained on each occasion shall be determined by the Cabinet in writing before the licence is granted:

Provided that the Cabinet may, if it thinks fit, by an instrument in writing under the hand of the Secretary to the Cabinet waive or postpone the payment of any fee payable under this Section or authorise the payment of a lesser amount.

[subs (6) am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

(7) A licence may be revoked by the Minister under the provisions of Section 21(1) or:

(a) in the case of a corporation incorporated, or a foreign corporation registered or exempted from registration, under the *Corporations Act 1972*:

(i) if the corporation or foreign corporation commits any breach of any such condition as is referred to in subsection (1) to which the licence is subject;

(ii) if the corporation or foreign corporation fails to pay any fee payable under subsection (6), payment of which has not been waived or postponed by the Cabinet;

(iii) if the corporation or foreign corporation, not being a foreign corporation exempted from registration under the *Corporations Act 1972*, ceases to be registered under that Act;

(iv) if an order is made under the *Corporations Act 1972* for the corporation to be wound-up; or

(v) if an order is made by a court in the country in which the foreign corporation is incorporated for it to be wound up; or

(b) upon the application of the corporation, foreign corporation, statutory corporation, body corporate, authority or department of the public service to which the licence was granted.

[subs (7) am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

(8) The conditions to which a licence is made subject under the provisions of subsection (1), may be varied at any time by agreement between the Minister and the licencee or by the Minister at the expiration of a period of 12 months after he or she has given to the licencee notice of his or her intention to make such variation:

Provided that the Minister may, if he or she thinks fit, by instrument in writing under his or her hand waive, for a specified period not exceeding 10 years, his or her right to vary otherwise than by agreement with the licencee the conditions of any licence granted under subsection (1), and in that event he or she shall not exercise such right during such period except with the agreement of the licencee.

(9) This Act does not apply to the operations of a bank licenced pursuant to the *Corporations Act 1972* to carry out banking business outside of the Republic.

[subs (9) insrt Act 2 of 2004 s 4, opn 26 Feb 2004; am Act 8 of 2011 s 12 and Sch 1[18], [19], opn 15 Apr 2011]

6 Information to be supplied to the Minister, etc, by banks, etc

The Minister may make regulations requiring banks and financial institutions and officers and employees thereof to supply to the Registrar such information as the Registrar may from time to time require to be supplied to him or her as to:

(a) banking transactions carried on in the Republic;

(b) the transfer of monies and property into and out of the Republic in the course of banking transactions; and

(c) such other matters as the Minister considers it necessary to know in order to ascertain whether or not there has been a breach of any condition of a licence or any provision of this Act:

Provided that neither the Minister nor the Registrar shall reveal such information to a person other than to a public officer or an examiner appointed under Section 16 for the purpose of enabling him or her to carry out his or her duties as such public officer or examiner or to a member of the Cabinet and any such member of the Cabinet, public officer or examiner to whom such information is revealed shall similarly not reveal it to a person other than such a person as is referred to in this Section.

7 Licencing of foreign owned banks and regulated financial institutions

(1) Every application for a licence received from a foreign owned bank or regulated financial institution shall be submitted to the Minister and shall be accompanied by:

(a) a confirmation in writing by the home supervisory authority that it has received a proposal from an institution seeking to establish banking operations in the Republic and after consideration it is able to advise:

(i) that the applicant institution is a licenced financial institution conforming to existing prudential requirements;

(ii) it has consented to the form of representation as outlined in the application;

(iii) it supervises the applicant institution on a global consolidated basis in accordance with the Essential Criteria outlined in *Principle 12 of Core Principles Methodology published by the Basel Committee on Banking Supervision, October 2012*; and

(iv) it may exchange with the Minister, information of a general nature and on an *ad hoc* basis in relation to the institution from time to time; and

(b) a letter from the applicant bank, by a duly authorised officer, indicating that:

(i) the applicant bank will comply with all written laws and regulations of the Government of Nauru;

(ii) the proposed manager of the Republic's operations is a fit and proper person who has no convictions in any court in any place for offences relating to fraud or misappropriation together with a Police certificate to that effect;

(iii) the applicant bank will not engage in any other business in the Republic other than the customary business of banking;

(iv) it agrees to payment of statutory fees and charges in relation to registration and administration of corporations in the Republic; and

(v) it will provide half yearly financial statements covering its Republic's operations and other such statistical data as may be reasonably required by the Minister from time to time.

(2) In addition to the documents, information, and evidence which shall accompany an application under subsection (1), an applicant shall, if required to do so by the Minister, furnish such additional documents, information or evidence as the Minister may require.

(3) In satisfaction of the application, the Minister may issue the licence exempting the foreign bank from all other requirements of this Act.

(4) A licence granted under this Act shall be valid only for a period not exceeding 10 years.

(5) A licencee shall not transfer control of the holder of the licence without prior written approval of the Minister.

(6) The licence or a copy of the licence shall be prominently displayed in the public area of the principal place of business in the Republic.

(7) This Section shall be subject to any applicable provisions of this Act and all applicable written laws of the Republic.

[s 7 subst Act 6 of 2013 s 3, opn 12 Dec 2013]

8 Contravention, etc by officer or employee to be deemed to be contravention, etc by bank, etc

For the purposes of Section 21(1), the contravention of, or failure to comply with, any of Sections 6, 7, 10, 11 and 13 by an officer or an employee of a bank or financial institution, or by a person who has been at any time an officer or employee of a bank or financial institution, whether such contravention or failure occurs in the Republic or elsewhere, shall be deemed to be such a contravention or failure by that bank or financial institution:

Provided that the contravention of, or the failure to comply with, any of such

Sections by a person who has been an officer or employee of a bank or financial institution but is no longer an officer or employee of that bank or financial institution at the time of such contravention or failure shall not be deemed to be a contravention or failure of any of such Sections by that bank or financial institution if it has taken all reasonable steps to prevent such contravention or failure by that person.

9 Restriction of use of "bank" and "savings bank" in titles

(1) No person or unincorporated body, other than a bank licenced under Section 5, shall, without the written consent of the Registrar:
   (a) use or continue to use in any language the word "bank" or any of its derivatives or the words "savings bank" or any derivatives thereof in the title under which such person or body is carrying on business in the Republic; or
   (b) make or continue to make any representation in any bill-head, letter paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking in the Republic.

(2) A person contravening or failing to comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 for every day during which the offence continues.

10 Restriction on certain activities of banks, etc

(1) The Minister may make regulations restricting activities of banks and financial institutions which might result in a reduction or loss of the assets available to meet the claims of the depositors.

(2) No bank shall engage whether on its own account or on a commission basis in wholesale or retail trade, including the import or export trade, or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking except such interest as a bank may acquire in the course of the satisfaction of debts due to it and provided that all such interests shall be disposed of at the earliest suitable opportunity.

(3) Any bank licenced under Section 5 which, prior to the commencement of this Act or of regulations made under subsection (1), as the case may be, has entered into any transactions continuing at the time of such commencement incompatible with the provisions of subsection (2) or of such regulations shall submit a statement of those transactions to the Registrar and shall, within 1 year from the said date, liquidate the transactions unless the Minister gives written consent for an extension of that time-limit.

11 Restriction on business of financial institutions

A financial institution shall not lend money or any other thing to, or borrow or accept on deposit money or any other thing from, any natural person who is habitually resident in the Republic.

[s 11 subst Act 5 of 1977 s 4, opn 6 Apr 1977]

12 Special conditions on grant of licences

(1) The Minister may make the granting of a licence under Section 5 to carry

on the business of a bank or financial institution in the Republic conditional upon compliance with any or all of the requirements mentioned in subsection (2).

(2) The requirements referred to in subsection (1) are:

(a) that the bank or financial institution shall invest in the Republic in such manner as may be specified such proportion of the monies borrowed by or deposited with it in the Republic as may be specified;

(b) that the bank or financial institution shall make loans, upon reasonable security, of such amounts and at such rates of interest as may be specified to the Republic or any corporation or body corporate owned by the Republic;

(c) that the bank or financial institution shall issue to the Republic or a corporation or body corporate owned by the Republic, either free of charge or at such price as may be specified, such number of shares, or such proportion of the total number of shares, of any class comprising or forming part of the share capital of the bank or financial institution as may be specified; and

(d) that the bank or financial institution shall do any other thing which it may lawfully do and which it agrees to do, which the Minister considers will be likely to benefit the Republic or the Nauruan Community:

Provided that, where a licence granted to a person under Section 5 to carry on the business of a bank or financial institution in the Republic has expired, the granting of a further licence to that person to continue to carry on that business shall not be made conditional upon compliance with any such requirement as is referred to in paragraph (c), unless the granting of the first-mentioned licence was made conditional upon compliance with that requirement.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[19], opn 15 Apr 2011]

(3) A failure to comply with any requirement compliance with which is, in pursuance of subsection (1), made a condition of the granting of a licence granted under Section 5 shall, for the purposes of this Act, be deemed to be failure to comply with a provision of this Section.

(4) In this Section, ***"specified"*** means specified by the Minister as part of a requirement compliance with which is, in pursuance of subsection (1), made a condition of the granting of a licence.

13 Books and accounts of banks and financial institutions to be kept in English

All entries in any books of, and all accounts kept by, any bank or financial institution licenced under Section 5 shall be recorded and kept in the English language using the system of numerals employed for the time being in keeping the accounts of the Republic.

14 Persons ineligible to take part in the management of corporations licenced as banks or financial institutions

(1) No person:

(a) who has been a director of, or directly or indirectly concerned in the management of, a bank or financial institution licenced under Section 5

of this Act which has been wound-up by a court in the Republic or, in the case of a foreign corporation, in the country in which it was incorporated;

(b) who has been convicted by a court, in the Republic or elsewhere, of an offence involving dishonesty and has not received a full pardon for the offence for which he or she was convicted; or

(c) who has been adjudicated bankrupt or insolvent in the Republic or elsewhere,

shall act or continue to act as a director of, or be directly or indirectly concerned in the management of, any bank or financial institution licenced under Section 5.

15 Auditors

(1) Every bank and financial institution licenced under Section 5 shall have its accounts audited within 6 months of the end of its financial year or at such time or times as the Minister may order in any particular case:

(a) by an auditor;

(b) by a person approved by the Minister on the application of a corporation or foreign corporation licenced under Section 5 for such person to be approved as its auditor; or

(c) by such method of internal audit as shall be acceptable to the Minister.

(2) A copy of the report of the auditor shall be sent to the Registrar, together, where applicable, with a copy of the profit and loss account and balance sheet of the bank or financial institution for the financial year to which the report relates and a copy of such notes, if any, as the auditor has made on the accounts.

16 Appointment of examiner

(1) The Minister may, if he or she has reason to believe that a bank or financial institution licenced under Section 5 is carrying on its business in a manner which he or she regards as not satisfactory or is contravening or not complying with the provisions of this Act, appoint any fit and proper person or persons having a sufficient knowledge of accountancy to examine as often as may be necessary or expedient the books and affairs of that bank or financial institution.

(2) The examiner or examiners shall be given access to all accounts, returns and other information with regard to the bank or financial institution which are in its possession.

(3) In examining the books and affairs of any bank or financial institution in accordance with subsections (1) and (2), it shall be the duty of an examiner at all times to avoid unreasonable hindrance to the daily business of that bank or financial institution and to confine the investigation to matters strictly relevant to the examination.

(4) The examiner shall report to the Minister on the manner in which the bank or financial institution is carrying on its business and any circumstances which in his or her opinion give reason to believe that the bank or financial institution has contravened or is contravening any of the provisions of this Act.

(5) The provisions of Section 7 shall apply to a person appointed under the

provisions of this Section to examine the books and affairs of a bank or financial institution as though he or she were an officer of that bank or financial institution.

17 Moratorium

(1) The Supreme Court, on application made *ex parte* by the Secretary for Justice, may, if it considers it to be in the interests of the depositors of a bank licenced under Section 5 to do so, make an order:

(a) prohibiting that bank from carrying on any banking business in the Republic or, if it is a corporation incorporated in the Republic, in the Republic and elsewhere; and

(b) staying the commencement or continuance of all suits against that bank in regard to any banking business in the Republic,

for a specified period of time from the date of such order on such terms and conditions as to the court seem reasonable, and may from time to time extend the period, so, however, that the total period of such a moratorium shall not exceed 6 months.

(2) So long as an order under subsection (1) remains in force, the licence granted to the bank under Section 5 shall be suspended.

18 Receivers and managers

The Supreme Court, on application made *ex parte* by the Secretary for Justice, may if it considers it to be in the interests of any depositor, creditor or customer of a bank licenced under Section 5 to do so, make an order:

(a) appointing a receiver or receiver and manager of the whole or any part of the business and undertaking of the bank in the Republic;

(b) specifying the powers, authorities, duties and functions of such receiver or receiver and manager and providing for his or her remuneration, which may be ordered to be paid out of the assets of the bank; and

(c) authorising, subject to such terms and conditions as the court sees fit to impose, the receiver or receiver and manager to carry on in whole or in part the business of the said bank notwithstanding that its licence to carry on its banking business has been suspended or revoked or an order has been made under Section 17(1)(a) prohibiting it from carrying on banking business.

19 Winding-up of corporations licenced as banks

Notwithstanding anything to the contrary contained in the *Corporations Act 1972*:

(a) where any corporation incorporated in the Republic and licenced as a bank under Section 5 is being wound up by the District Court:

(i) the court shall presume that the amounts shown in the books of the bank as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the liquidator shows that there is reason for doubting any particular entry; and

(ii) notwithstanding the provisions of any other written law, the bank's liabilities in respect of monies deposited with it in the Republic, including interest on such monies, shall be paid in priority to all other debts and claims of any kind whatsoever, except the proper costs,

charges and expenses of and incidental to the winding-up, which costs include the remuneration of the liquidator; and

(b) where a foreign corporation licenced as a bank under Section 5 goes into liquidation or is dissolved in its place of incorporation:

(i) the liquidator for the Republic appointed by the Registrar of Corporations under Section 229 of the *Corporations Act 1972* may presume that the amounts shown in the books of the bank as standing to the credit of depositors are proved without further proof from the depositors; and

(ii) before paying or transferring to the foreign liquidator any of the assets got in within the Republic, the liquidator for the Republic shall, in addition to making the payments which he or she is required by Section 229(3) of the *Corporations Act 1972* to make, pay to any natural person usually resident in the Republic and to any corporation or foreign corporation incorporated or registered in the Republic not less than 6 months before the appointment of the liquidator for the Republic the amount proved to be owed to him or her or it by the bank in respect of monies deposited with the bank by him or her or it in the Republic or deposited with the bank elsewhere but transferred to the Republic not less than 3 months before the appointment of the foreign liquidator and standing to his or her or its credit in the Republic.

[s 19 am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

20 Offences

(1) A person who contravenes or fails to comply with the provisions of Section 4 or 14 commits an offence.

Penalty:

(a) for an individual, $2,000 and 3 years imprisonment; or

(b) for a body corporate, $10,000.

(2) A person commits an offence if the person:

(a) contravenes or fails to comply with any other provision of this Act for which no penalty is specified; or

(b) being a director or manager of a bank or financial institution licenced under Section 5, fails to take all reasonable steps to secure compliance by the bank or financial institution with any such provision.

Penalty:

(a) for an individual, $500 and 6 months imprisonment; or

(b) for a body corporate, $5,000.

[s 20 subst Act 8 of 2011 s 12 and Sch 1[17], opn 15 Apr 2011]

21 Revocation of licence for contravention of certain provisions of this Act

(1) Where any bank or financial institution has, or is deemed to have, contravened, or failed to comply with, any provision of any of Sections 6, 7, 10, 11, 12 and 13 the Minister may, whether or not the bank or financial institution has been prosecuted for an offence under Section 20, by an instrument under his or her hand forthwith revoke the licence of that bank

or financial institution to carry on banking business in the Republic, unless it shows cause to his or her satisfaction why the licence should not be revoked.

(2) An appeal against the revocation of a licence by the Minister under this Section shall lie to the Supreme Court and no appeal shall lie from the Supreme Court to any other court or tribunal.

(3) Where the licence of any bank or financial institution is revoked under this Section, it shall within 3 months of the date of such revocation cease to carry on in the Republic banking business of the kind authorised by the licence:

Provided that, where appeal proceedings have been commenced in the Supreme Court under subsection (2), the Court or a Judge may extend the period to such extent as it or he or she considers reasonable but, if the appeal is dismissed, not so that the date on which the period, as extended, will expire is more than 3 months after the date on which judgment is given in those appeal proceedings.

22 Regulations

(1) The Minister may make regulations:

(a) for the exhibition by banks and financial institutions licenced under Section 5 of their balance sheets;

(b) for the destruction of cheques and bank drafts in the possession of banks on which they are drawn and of bills of exchange and promissory notes in the possession of banks, at the expiration of a specified period from the date thereof in the case of instruments payable on demand and from the due date thereof in other cases;

(c) requiring any bank to hold assets in the Republic of not less than a specified value, such specified value being not greater than the total amount of its liabilities in respect of monies deposited with it in the Republic;

(d) prescribing the terms and conditions upon which banks and financial institutions shall or may open, or permit to be opened, and operate, or permit to be operated, in the Republic accounts identified mainly, or only, by a number or code, and all other matters incidental to the management and control of such accounts;

(e) in relation to savings banks:

(i) regulating the investment of their funds; or

(ii) providing for the manner in which business may be conducted; or

(f) generally for carrying the objectives of this Act into effect.

(2) Regulations may provide that any of their provisions shall not apply to any specified bank or financial institution.

23 Existing agreement not prejudiced or varied by this Act

The provisions of this Act shall not prejudice or vary any agreement made between the Republic and any bank before the commencement of this Act, or any such agreement as varied from time to time by the parties, for the bank to carry on in the Republic any form of banking business; but, subject to the

express provisions of any such agreement, the provisions of this Act shall apply to any bank carrying on such business in the Republic in pursuance of any such agreement.

24 Licence issued under Section 5 to be deemed to be licence issued under Section 5 of the Corporations Act 1972

(1) A licence issued under the provisions of Section 5 shall be deemed for the purposes of the *Corporations Act 1972* to be a licence issued under Section 5(5) of that Act authorising the carrying-on of the business of banking in the Republic.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

(2) Notwithstanding the provisions of Section 5 of the *Corporations Act 1972*, it shall not be lawful for any corporation to carry on the business of banking in the Republic unless a licence authorising it to do so has been granted under Section 5 and is for the time being still in force and that business is carried on only in accordance with the conditions of the licence and the provisions of this Act.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

[s 24 am Act 8 of 2011 s 12 and Sch 1[18], opn 15 Apr 2011]

Banking (Application for Licence) Regulations 1977

TABLE OF PROVISIONS

Regulation	*Title*
1	Citation
2	Manner of applying for a licence to carry on business as a financial institution
	SCHEDULE — APPLICATION FOR LICENCE TO CARRY ON BANKING BUSINESS IN THE REPUBLIC AS A FINANCIAL INSTITUTION

Banking (Application for Licence) Regulations 1977

TABLE OF AMENDMENTS

The Banking (Application for Licence) Regulations 1977 were notified and commenced on 18 May 1977 (GN No 206/1977; Gaz 38/1977).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

IN EXERCISE of the powers conferred on me by Section 22 of the *Banking Act 1975*, I HEREBY make the following Regulations:

1 Citation

These Regulations may be cited as the *Banking (Application for Licence) Regulations 1977*.

2 Manner of applying for a licence to carry on business as a financial institution

(1) A person seeking to have a licence granted under Section 5 of the Act to a corporation incorporated, or intended to be incorporated, in the Republic or to a foreign corporation registered in the Republic under the *Corporations Act 1972* for the corporation or foreign corporation to carry on in the Republic the business of a financial institution shall make application in writing in the form set out in the Schedule and shall deliver or send the application to the Registrar of Corporations of the Republic, either directly or through a registered corporation agent.

(2) Every such application as is referred to in subregulation (1) shall be accompanied by a reference from an international bank in respect of every person who controls or will control the corporation or foreign corporation to which the application relates.

(3) Nothing contained in subregulation (2) shall apply with respect to the Bank of Nauru established by the *Bank of Nauru Act 1976*.

SCHEDULE

REPUBLIC OF NAURU

BANKING ACT 1975

[Section 5 and Regulation 2]

APPLICATION FOR LICENCE TO CARRY ON BANKING BUSINESS IN THE REPUBLIC AS A FINANCIAL INSTITUTION

To: The Minister for Finance and Sustainable Development,

Name of corporation (or foreign corporation) to which licence is to be granted (or proposed name of corporation):

Has the corporation been incorporated (or the foreign corporation been registered in the Republic):

If so, on what date:

Name(s) and address(es) of person(s) who (will) control(s) the corporation (or foreign corporation):

Relevant professional qualifications and experience of that (those) person(s):

Nominal (authorised) capital and denomination of shares:

Issued capital:

(a) paid up:

(b) paid up in cash:

Issued capital intended to be:

(a) paid up:

(b) paid up in cash,

and when payment is to be made under (a) and (b):

Capital reserves:

General nature of intended business:

Geographical area(s) of intended operations:

Date: (Signed). . . . . .

Details of capacity in which the applicant is acting in making the application)

Notes:

1. If a licence is granted upon this application, it will be deemed to be also a licence issued under Section 5(5) of the *Corporations Act 1972* (see *Banking Act 1975*, Section 24).

2. If a licence is granted upon this application, the licencee will be required to supply to the Registrar of Banks annually within 6 months after the end of the licencee's financial year copies of the audited balance sheet, the audited profit and loss account and the auditor's report. (They will not be passed to the Registrar of Corporations and will not be available for inspection).