



REPUBLIC OF NAURU

## Banking Act 1975

---

**As in force from 12 December 2013**

---

This consolidation comprises Act No. 4 of 1975 as amended and in force from 12 December 2013 (being, at the time the consolidation was prepared on 26 September 2014, the date of commencement of the most recent amendment).

The notes section at the end of the consolidation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the consolidation may be affected by application provisions that are set out in the notes section at the end of the consolidation

This consolidation is prepared and published in a legislation database by the Department of Justice and Border Control under the *Legislation Publication Act 2011*.

## Contents

1	Short title .....	1
2	Interpretation .....	1
3	Registrar of Banks .....	2
4	Restrictions on carrying on banking business in Nauru .....	3
5	Licensing of banks and financial institutions .....	4
6	Information to be supplied to the Minister, etc., by banks, etc. ....	6
7	Prohibition of disclosure of information by bank, etc. ....	6
7	Licensing of foreign owned banks and regulated financial institutions .....	7
8	Contravention, etc. by officer or employee to be deemed to be contravention, etc. by bank, etc. ....	9
9	Restriction of use of 'bank' and 'saving bank' in titles .....	9
10	Restriction on certain activities of banks, etc. ....	9
11	Restriction on business of financial institutions.....	10
12	Special conditions on grant of licences.....	10
13	Books and accounts of banks and financial institutions to be kept in English .....	11
14	Persons ineligible to take part in the management of corporations licensed as banks or financial institutions .....	11
15	Auditors .....	11
16	Appointment of examiner.....	12
17	Moratorium .....	13
18	Receivers and managers.....	13
19	Winding-up of corporations licensed as banks .....	13
20	Offences.....	14
21	Revocation of licence for contravention of certain provisions of this Act .....	15
22	Regulations .....	15
23	Existing agreement not prejudiced or varied by this Act .....	16
24	Licence issued under section 5 to be deemed to be licence issued under section 5 of the <i>Corporations Act 1972</i> .....	16

REPUBLIC OF NAURU

# Banking Act 1975

---

Act No.4 of 1975

---

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

---

**1 Short title**

This Act may be cited as the *Banking Act 1975*.

**2 Interpretation**

(1) In this Act, unless the context otherwise requires:

**'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 Nauru and a substantial part of whose business in Nauru 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 moneys in amounts of less than two thousand dollars 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 Nauru, 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 Nauru and whose business consists of accepting deposits of moneys 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;

**‘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 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 accepts, from the general public, deposits of money as a regular feature of his business or if he 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 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 the last preceding subsection, the acceptance of moneys against any issue of debentures, stock or bonds offered to the public in accordance with any written law in force in Nauru shall not be deemed to constitute acceptance of deposits of money for the purposes of this Act.
- (5) *[Repealed]*
- (6) This Act does not apply to operations of banking business outside of Nauru.

### **3 Registrar of Banks**

- (1) *[Repealed]*
- (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.

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

#### **4 Restrictions on carrying on banking business in Nauru**

- (1) Banking business shall not be carried on in Nauru:
  - (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 Nauru;
    - (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 Nauru 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 Nauru; 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.

- (2) The reference in subparagraph (iii) of paragraph (a) of the preceding subsection to an agreement entered into before the 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.

## **5 Licensing 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 Nauru and may make the licence subject to such conditions as he 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;
  - (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.
- (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 two or all three of those businesses.
- (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 moneys:

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 moneys 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 the next following subsection, a licence shall be granted for such specified period not exceeding ten years as the Minister thinks fit.
- (6) The licensee 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 Nauru by the licensee; 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.

- (7) A licence may be revoked by the Minister under the provisions of subsection (1) of section 21 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.
- (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 licensee or by the Minister at the expiration of a period of twelve months after he has given to the licensee notice of his intention to make such variation:

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

agreement of the licensee.

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

**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 as to:

- (a) banking transactions carried on in Nauru;
- (b) the transfer of moneys and property into and out of Nauru in the course of banking transactions;
- (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 any person other than to a public officer or an examiner appointed under section 16 for the purpose of enabling him to carry out his 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 any person other than such a person as is referred to herein.

**7 Prohibition of disclosure of information by bank, etc.**

- (1) Save as required by regulations made under section 6, no bank or financial institution, no officer or employee of any bank or financial institution and no person who has been at any time an officer or employee of any bank or financial institution shall supply or reveal, in Nauru or elsewhere, to any person, other than the person on whose behalf the transaction is carried out or the account is kept, any information relating to:
- (a) any banking transaction in Nauru;
  - (b) the transfer of moneys and property into or out of Nauru in the course of any banking transaction;
  - (c) the account of any person with the bank in Nauru or any item of such account or the fact of any person having, or having had, any said account.
- (2) Notwithstanding the provisions of the last preceding subsection an officer or employee of a bank or financial institution may



supply or reveal:

- (a) in Nauru to an officer or employee of the same bank or financial institution such information as to any banking transaction of that bank as he is required to supply or reveal in the performance of his duties as an officer or employee of that bank or financial institution;
  - (b) to an officer or employee of a bank or financial institution outside Nauru the particulars of any banking transaction or of the account of any person with a bank or financial institution in Nauru, if all the persons concerned in the transaction or in whose names the account stands consent in writing to his doing so;
  - (c) to an officer or employee of that bank or financial institution outside Nauru particulars of banking transactions, other than the names of the persons concerned in them or any information by which they might be identified, and the total balances of accounts in Nauru but not of individual accounts;
  - (d) with the prior written approval of the Minister, to the government or a public officer of any other country, the total assets of the bank or financial institution in Nauru, the sum total of moneys transferred to Nauru from that country or from Nauru to that country and the currencies in which such moneys are so transferred, but not the amounts of individual transactions.
- (3) For the purposes of paragraph (b) of subsection (2) of this section all the persons concerned in a transaction and in whose names the account stands shall be deemed to have consented to an officer or employee of a bank or financial institution supplying or revealing to an officer or employee of a bank or financial institution outside Nauru such particulars of a banking transaction or of the account in respect of which such banking transaction is being carried out as are essential to the carrying-out of such transactions but the consent deemed to be given pursuant to this subsection shall not apply to any other particulars.
- (4) Nothing in this section shall prevent a Court in Nauru from requiring any person to give evidence or produce documents in any proceedings in that Court of any facts relevant in those proceedings which such witness could otherwise be required to give or produce.

## **7 Licensing 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 Nauru 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.
  - (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.
- (b) A letter from the applicant bank (by a duly authorised officer) indicating that:
- (i) the applicant bank will comply with all laws and regulations of the Government of Nauru.
  - (ii) the proposed manager of the Nauru 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 Nauru 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 Nauru.
  - (v) it will provide half yearly financial statements covering its Nauru 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 the Act.
- (4) A licence granted under this Act shall be valid only for a period not exceeding 10 years.
- (5) A licensee 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 Nauru.
- (7) This section shall be subject to any applicable provisions of this Act and all applicable laws of the Republic of Nauru.

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

For the purpose of subsection (1) of section 21, the contravention of, or failure to comply with, any of sections 6, 7, 10, 11 and 13 of this Act 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 Nauru 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 'saving bank' in titles**

- (1) No person or unincorporated body, other than a bank licensed under section 5 of this Act, 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 Nauru;
  - (b) make or continue to make any representation in any billhead, letter paper, notice, advertisement or in any other manner whatsoever that such person is carrying on banking in Nauru.
- (2) Any person contravening or failing to comply with the provisions of the preceding subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars 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 licensed under section 5 of this Act 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 the last preceding subsection or of such regulations shall submit a statement of those transactions to the Registrar and shall, within one 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 Nauru.

## **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 Nauru conditional upon compliance with any or all of the requirements mentioned in the next following subsection.
- (2) The requirements referred to in the previous subsection are:
  - (a) that the bank or financial institution shall invest in Nauru in such manner as may be specified such proportion of the moneys borrowed by or deposited with it in Nauru 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;
  - (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 any person under section 5 to carry on the business of a bank or financial institution in Nauru 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.

- (3) 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 licensed under section 5 of this Act 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 licensed 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 licensed under section 5 of this Act which has been wound up by a Court in Nauru 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 Nauru or elsewhere, of an offence involving dishonesty and has not received a full pardon for the offence for which he was convicted; or
  - (c) who has been adjudicated bankrupt or insolvent in Nauru or elsewhere,

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

**15 Auditors**

- (1) Every bank and financial institution licensed under section 5 of this Act shall have its accounts audited within six 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 a registered corporation auditor;
  - (b) by a person approved by the Minister on the application of a corporation or foreign corporation licensed under section 5 of this Act 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 has reason to believe that a bank or financial institution licensed under section 5 of this Act is carrying on its business in a manner which he 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. 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.
- (2) In examining the books and affairs of any bank or financial institution in accordance with the preceding subsection, 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.
- (3) 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 opinion give reason to believe that the bank or financial institution has contravened or is contravening any of the provisions of this Act.
- (4) The provisions of section 7 of this Act 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 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 licensed under section 5 of this Act to do so, make an order:
- (a) prohibiting that bank from carrying on any banking business in Nauru or, if it is a corporation incorporated in Nauru, in Nauru and elsewhere; and
  - (b) staying the commencement or continuance of all suits against that bank in regard to any banking business in Nauru;

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 six months.

- (2) So long as an order under the preceding subsection remains in force the licence granted to the bank under section 5 of this Act 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 licensed under section 5 of this Act 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 Nauru;
- (b) specifying the powers, authorities, duties and functions of such receiver or receiver and manager and providing for his 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 paragraph (a) of section 17(1) prohibiting it from carrying on banking business.

**19 Winding-up of corporations licensed as banks**

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

- (a) where any corporation incorporated in Nauru and licensed

as a bank under section 5 of this Act 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 moneys deposited with it in Nauru, including interest on such moneys, 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 licensed as a bank under section 5 of this Act goes into liquidation or is dissolved in its place of incorporation:
- (i) the liquidator for Nauru 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 Nauru, the liquidator for Nauru shall, in addition to making the payments which he is required by subsection (3) of the said section 229 to make, pay to any natural person usually resident in Nauru and to any corporation or foreign corporation incorporated or registered in Nauru not less than six months before the appointment of the liquidator for Nauru the amount proved to be owed to him or it by the bank in respect of moneys deposited with the bank by him or it in Nauru or deposited with the bank elsewhere but transferred to Nauru not less than three months before the appointment of the foreign liquidator and standing to his or its credit in Nauru.

## 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 – \$2000 and 3 years imprisonment;
- (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 licensed under section 5 of this Act – 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;
- (b) for a body corporate – \$5000.

**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 hand forthwith revoke the licence of that bank or financial institution to carry on banking business in Nauru, unless it shows cause to his 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; 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 Nauru 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 considers reasonable but, if the appeal is dismissed, not so that the date on which the period, as extended, will expire is more than three 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 licensed under section 5 of this Act 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 Nauru of not less than a specified value, such specified value being not greater than the total amount of its liabilities in respect of moneys deposited with it in Nauru;
  - (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 Nauru 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;
    - (ii) providing for the manner in which business may be conducted;
  - (f) generally for carrying the objects 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 Nauru 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 Nauru 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 of this Act shall be deemed for the purposes of the *Corporations Act 1972* to be a licence issued under subsection (5) of section 5 of that Act authorising the carrying-on of the business of banking in Nauru.
- (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 Nauru unless a licence authorising it to do so has been granted under section 5 of this Act 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.

## Notes for Banking Act 1975

### Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Banking Act 1975</i>	1975/04	24.06.1975	01.07.1975*
<i>Banking (Amendment) Act 1975</i>	1975/11	23.09.1975	01.01.1975
<i>Banking (Amendment) Act 1977</i>	1977/05	06.04.1977	06.04.1977
<i>Banking (Amendment) Act 2004</i>	2004/02	26.02.2004	26.02.2004
<i>Statute Law Revision Act 2011</i>	2011/08	15.04.2011	15.04.2011
<i>Banking (Amendment) Act 2013</i>	2013/06	05.12.2013	12.12.2013

\* See s. 5 of the Banking (Amendment) Act 1975.

### Table of Amendments

ad. = added or inserted      am. = amended      rep. = repealed      rs. = repealed and substituted

Provision affected	How affected
Section 1	Rs. by Act 1975/11.
Section 2	Subs. (1) am. by Act 2011/08. Subs. (5) rep. by Act 2011/08. Subs. (6) ad. by Act 2004/02, am. by Act 2011/08.
Section 3	Subs. (1) rep. by Act 2011/08. Subs. (2) am. by Act 2011/08.
Section 4	Subs. (1) am. by Act 2011/08. Subs. (2) am. by Act 2011/08.
Section 5	Subs. (1) am. by Act 2011/08. Subs. (2) am. by Act 1977/05, am. by Act 2011/08. Subs. (6) am. by Act 2011/08. Subs. (7) am. by Act 2011/08. Subs. (9) ad. by Act 2004/02, am. by Act 2011/08.
Section 7	Ad. by Act 2013/06
Section 11	Rs. by Act 1977/05.
Section 12	Subs. (2) am. by Act 2011/08.
Section 19	Am. by Act 2011/08.
Section 20	Rs. by Act 2011/08.
Section 24	Subs. (1) am. by Act 2011/08. Subs. (2) am. by Act 2011/08.