

**Law no. 24/2010<sup>1</sup>**

# MALDIVES BANKING ACT

(unofficial English translation)

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<sup>1</sup> (as amended by First Amendment to the Maldives Banking Act ( Law. No 3/2015)

# MALDIVES BANKING ACT

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# MALDIVES BANKING ACT (Law no. 24/2010)

## Introduction

**and 1.**

- (a) This Act is enacted for the purposes of providing for licensing of banks to conduct banking business in Maldives, a system for operating banks in Maldives, policies for operating banks in a safe and prudent manner, supervision of banks, appointment of conservators and receivers, liquidation of banks, and for other related purposes.
- (b) This Act shall be cited as “Maldives Banking Act”.

**PART I**  
**PROVISIONS RELATING TO LICENSING AND OPERATION OF**  
**BANKS IN A PRUDENT MANNER**

# CHAPTER 1

## GENERAL PROVISIONS

## Objectives of the Act

2.

- (a) The primary objective of this Act is to set out banking policies, and to ensure that the banking system operates in accordance with such policies, in order to achieve the following.
  - (1) Maintain stability and public confidence in the banking system.
  - (2) Protect the rights of depositors and creditors of the Bank.
  - (3) Manage systemic risks.
  - (4) Prevent financial crimes.
  - (5) Foster competition in the Maldives banking system, and ensure that the banking system is responsive to the public's needs for banking services and able to contribute to economic growth in the Maldives.
- (b) The Maldives Monetary Authority (MMA) shall be responsible for enforcing and implementing this Act.

## Prohibitions

3.

- (a) No person shall engage in the banking business in the Maldives, advertise for deposits in the Maldives, or engage in any of the activities listed in section 4 of this Act as requiring a licence, unless they have a licence issued by the MMA. The MMA is empowered

to grant exemptions to this requirement to the following persons.

- (1) Based upon the size and nature of their business, exemptions to the prohibitions stated in paragraph (a) of this section may be granted to such persons, in accordance with regulations made under this Act. Such exemptions may be conditional or limited as to time; and they may be partial and list certain provisions of this Act that shall apply to the beneficiaries of the exemption notwithstanding the exemption. Exemptions granted under this section may be revoked or additional conditions imposed by the MMA at any time.
  - (2) Leasing companies may be exempted from this prohibition by the MMA if it determines that the businesses of such companies are subject to prudential regulation under a separate legal framework that adequately protects the public interest. The MMA has the right to subsequently impose additional conditions or revoke any such exemption.
- (b) The MMA shall provide a written explanation describing the basis for any exemptions that it may grant under this section, which shall be published in the *Government Gazette*.
  - (c) No person shall use the word “bank” or related word or derivatives of this word in Dhivehi or any other language in connection with a business or service unless they have a licence issued by the MMA authorizing them to engage in the banking business. The MMA shall be authorized, acting on a case-by-case basis, to grant exemptions to this prohibition in cases where it determines that it is clear from the context that the public is not likely to believe that banking services are being offered or that they will otherwise be injured by the proposed use of the word.
  - (d) If the MMA determines that there are reasonable grounds to suspect that any person engages in activities that are prohibited under the preceding provisions of this section, the MMA shall be empowered to enter their offices and to examine their accounts and books, or to direct that such items be brought to it for inspection. Immediately upon the request of the MMA, Maldives Police Service shall, if necessary by the use of force, assist the MMA to gain access to the premises of such person and to examine their accounts and books; or to bring such materials to



the MMA for inspection.

## CHAPTER 2

### LICENSING

**General licensing requirements 4.**

- (a) A licence issued by the MMA under this Act must be obtained prior to commencing any of the following activities.
- (1) Engaging in the banking business in the Maldives with citizens of the Maldives or other persons;
  - (2) Engaging in the banking business outside the Maldives through the use of a company organized under the laws of the Maldives, or operating from offices located in the Maldives;
  - (3) Opening a branch or a subsidiary in the Maldives of a domestic or foreign bank;
  - (4) Opening a branch or representative office outside the Maldives of a domestic bank or of any bank operating from offices located in the Maldives;
  - (5) Operating a representative office in the Maldives of a foreign bank.
- (b) Licences shall be granted only to companies registered under the Law No. 10/96 (Companies Act of the Maldives), in the case of domestic entities; or to companies registered under the Companies Act of the such Countries, in the case of branches or representative offices of foreign banks.
- (c) Licences shall be granted in writing, shall be valid for an indefinite period of time and shall not be transferable. The licence or its attachments shall specify the conditions under which it is issued; and compliance with all conditions of licensing, unless such conditions are later modified, shall be a continuing requirement applicable to all licensees.
- (d) Licences may be granted to foreign banks only if they are subject to consolidated supervision, determined by the MMA to be adequate, by a supervisory authority in the country in which the foreign bank maintains its head office.

- (e) The MMA shall have sole responsibility for the issuance of licences under this Act.
- (f) Banks licensed under this Act shall provide 60 (sixty) days prior written notice to the MMA and to its customers of the closing of branches and they shall file with the MMA at the time of submitting such notice a plan providing for the orderly transfer or termination of the business of the branch.

**Licence applications      5.**

- (a) Licences shall be applied for in writing to the MMA and shall be in such form, and shall contain such information, as the MMA may prescribe. The MMA may prescribe different application forms, and different informational requirements, for each category of licence. The MMA shall determine the procedures that it will use to evaluate applications for licences.
- (b) In the case of an application for licence, the information submitted with the application shall include, but need not be limited to the following.
  - (1) An authenticated copy of the charter and corporate governance documents of the applicant, and of its audited annual balance sheets and profit and loss statements for the last 3 (three) years;
  - (2) A description of the proposed capital funds of the applicant, the sources of such funds and the amount that has been paid in. The MMA may, in its discretion, require that the intended capital funds be deposited with the MMA, or other depository approved by the MMA, together with a certification that there is no encumbrance on such funds.
  - (3) The premises and the addresses at which the applicant proposes to do business, and the name under which the applicant intends to conduct banking business.
  - (4) The names, places of permanent residence, business and professional backgrounds, and other biographical and financial data to be determined by the MMA, of each proposed major shareholder and administrator of the applicant.
  - (5) For each major shareholder and administrator, an affidavit duly signed by the individual stating any convictions for crimes or no

conviction, and any involvement in a managerial function in an insolvent company or a company subject to insolvency proceedings, if any. The standard text for such affidavit may be determined by the MMA.

- (6) A business plan describing the objectives and business activities intended for the proposed entity, including a description of its organizational structure and internal controls including measures appropriate to counter money-laundering and the financing of terrorism, together with projected balance sheets, profit and loss accounts and cash flow statements for the first 3 (three) years of operations shall also be submitted.
  - (7) In the case of an application by a foreign bank or bank holding company, or the subsidiary of such foreign bank or bank holding company, a statement from the foreign supervisory authority responsible for the prudential supervision of the foreign entity to the effect that it has no objection to the proposed establishment of operations in the Maldives by the applicant. This statement also shall state that it will exercise consolidated supervision over the applicant.
- (c) In the case of an application by a bank holding company or bank to organize a domestic bank, the MMA shall, in addition to the information referred to in paragraph (b) of this section, obtain detailed financial and operational information regarding the prospective licensee. This information shall also include information concerning the major shareholders and administrators of such bank or bank holding company. The MMA may use this information to determine the following.
  - (1) That the ownership by the bank holding company or bank will not weaken the subsidiary bank but will bring financial and managerial resources that will benefit the domestic subsidiary bank; and
  - (2) That the major shareholders and administrators of the bank holding company or bank are fit and proper persons.

- (d) In the case of an application by a foreign bank to open a branch or representative office in the Maldives, the MMA may request that such of the information listed in paragraph (b) of this section and any additional information that it believes pertinent to the proposal shall be provided to it. In addition, MMA shall also request to provide financial and biographical information regarding the persons to be designated as branch manager or representative office manager as the case may be.
- (e) The MMA shall be authorized to request such additional information other than provided in paragraphs (a), (b), (c) and (d) of this section in connection with all applications for a licence as, in its discretion, it determines to be necessary.
- (f) Applications for licences shall be accompanied by an application fee payable to the MMA in such amounts as the MMA may prescribe.
- (g) Applicants applying for a licence should act expeditiously to provide the information required for the licence application as well as other information requested by MMA for the purposes of processing the application. In the event that the applicants fail to complete their application filing requirements within 3 (three) months period commencing on the date of applying for licence, the MMA may deem the application to have been abandoned and the application fee forfeited.

**Grant or denial of application for a licence**

**6.**

- (a) Within 3 (three) months of its receipt of a complete application, the MMA shall grant or deny the requested license. MMA shall specify by regulation the manner in which this period will be counted.
- (b) Applications may be rejected if the MMA is not satisfied that the conditions specified by this Act are met. The MMA shall publish standards that it will use to evaluate applications for a licence under this Act. The MMA shall issue a written statement explaining its reasons for denying a request for a licence.
- (c) Where the following matters concerning the applicant are in a manner or standard satisfactory to the MMA, the MMA shall grant a licence to the applicant.
  - (1) The financial history and status of the applicant, its proposed major shareholders and administrators.

- (2) The character and professional experience of its major shareholders and administrators as fit and proper persons.
  - (3) The adequacy of the applicant's proposed staffing, its capital structure, and its operational and financial resources to cover obligations and liabilities that will be incurred in the conduct of the banking activities sought to be licensed.
  - (4) The adequacy of proposed risk management policies and systems, internal controls, audit procedures and corporate governance practices.
  - (5) The soundness of its proposed operations, and that the business plan is viable and satisfactory to MMA.
- (d) The MMA may take into consideration the extent to which the applicant has fulfilled the credit and banking needs of communities in other countries where it operates; its plans to train Maldivians and incorporate them into the operations and management of the bank; and the extent to which its presence is likely to enhance the number of local, regional and international banks operating in the Maldives. The MMA shall provide notice of approval of the application to the applicant, publish the same in the *Government Gazette*, and add the bank to the Register of Banks.
- (e) If MMA refused to grant licence pursuant to paragraph (b) of this section, the applicant may appeal the decision in the Court as per section 67 of this Act.

**Register of Banks**                      7.      The MMA shall maintain a Register of Banks available for inspection by the public. This Register shall contain, for each licensee granted licence under this Act, the name, address, names of administrators, and in the case of foreign branches and representative offices, the addresses of head offices, and such other information, if any, regarding each licensee as the MMA determines would be useful to the public.

**Conditions of licensing**                      of 8.      (a) Each licence granted by the MMA under this Act shall be subject to undertake the following.

(1) The representations and statements made by the applicant, its major shareholders, administrators and any other persons acting on its behalf in connection with the licence application shall be accurate and truthful.

- (2) Unless less than 12 (twelve) months are provided to start the business as a licence condition, the licensee shall start business for which licence is provided within 12 (twelve) months of granting the licence. If the licensee fails to start business within that period the licence shall automatically be revoked.
  - (3) The licensee shall comply with the capital adequacy and with all other prudential requirements of this Act as well as with all applicable regulations and other guidance adopted by the MMA.
  - (4) The licensee shall maintain appropriate internal controls, audit procedures and other appropriate systems and policies to manage the risks of its business.
  - (5) The licensee shall conduct its business in a safe and sound manner and in compliance with all applicable laws, regulations and other administrative instructions from relevant authorities.
  - (6) The licensee shall not engage in criminal activities, including criminal breach of trust, fraud, money laundering and the financing of terrorism.
  - (7) The licensee shall operate its business only under the name that has been approved for use by the licensee by the MMA.
  - (8) The licensee, must at all times during the license period, have an office established in Maldives at which all of its business activities are conducted; with at least two individuals who shall be full-time employees to properly conduct all of its business activities. Proper accounts and records of its business must also be maintained at that office.
  - (9) Each person who will be a major shareholder or administrator of the licensee shall at all times be fit and proper for the intended position.
- (b) The MMA shall be authorized to impose additional licence conditions subsequent to the initial licensing and to modify or waive any conditions of licensing in writing. Such modification or waiver shall be

published in the *Government Gazette*.

- (c) A licensee's failure to conform to a condition of licensing shall, in the discretion of the MMA, be grounds for revocation of the licence or other enforcement action by the MMA as provided under this Act.

## CHAPTER 3

### ISLAMIC BANKING

- |   |            |  |
|---|------------|--|
| <b>Licensing</b>                                  | <b>9.</b>  | Subject to the licensing provisions of this Act, the MMA may grant licences to establish domestic banks functioning in accordance with Islamic principles or licences to open branches and representative offices of foreign Islamic banks in the Maldives. In addition, domestic banks not organized as Islamic banks, and branches of foreign banks not organized as Islamic banks, may, with the prior approval of the MMA, offer banking services on an Islamic banking basis through a department of the bank or otherwise. Such banks and departments of banks shall be subject to supervision, control, and examination by the MMA in the same manner as other banks, except as otherwise provided in this Act. |
| <b>Banking activities on a non-interest basis</b> | <b>10.</b> | Islamic banks shall aim to provide banking services and engage in financing and investment operations on a non-interest basis in all forms and cases.  |
| <b>Permissible activities</b>                     | <b>11.</b> | Islamic banks, and banks not organized as Islamic banks but providing banking services on an Islamic banking basis, may engage in consumer, commercial, financial, and investment operations and participate in consumer, commercial, economic development, and construction projects, in connection with the provision of Islamic banking services to customers, to the extent that participation in such activities constitutes the functional equivalent of traditional banking activities. The MMA shall be authorized to provide guidance by regulation or otherwise with regard to the conduct of Islamic banking activities by licensees.   |

## CHAPTER 4

### CAPITAL

- |  |            |  |
|--|------------|--|
| <b>Minimum capital of domestic banks, Tier I banks and Tier II banks</b> | <b>12.</b> | (a) Domestic banks shall be established as Tier I or as Tier II banks, with the capital specified in Rufiyaa, paid in unencumbered cash, and in the manner prescribed by this section. |
|--|------------|--|

- (1) A Tier I bank shall at all times maintain a minimum unimpaired paid-up capital of not less than 150,000,000/- (one hundred and fifty million) Rufiyaa, or such higher amount as may be specified by the MMA. A Tier I bank may engage in the banking activities specified in section 25 of this Act, provided however, that it shall comply with the procedure described in paragraph (b) of section 25 with respect to engaging in the activities listed there.
  - (2) A Tier II bank shall at all times maintain a minimum unimpaired paid-up capital of not less than 60,000,000/- (sixty million) Rufiyaa, or such higher amount as may be specified by the MMA. A Tier II bank shall engage only in the deposit-taking activities described in subparagraph (a) (1) of this section 25, and in consumer, retail and residential mortgage lending activities, as may be authorised by the MMA.
- (b) Except as otherwise provided in this Act, Tier I banks and Tier II banks shall comply with all of the provisions of this Act applicable to banks. A Tier II bank having unimpaired paid-up capital in the minimum amount described in subparagraph (a) (1) of this section or such higher amount as the MMA may specify, and meeting all requirements applicable to the organization of a bank, may seek authority from the MMA to be licensed as a Tier I bank. The MMA may determine the procedures pursuant to which such applications shall be determined.
- (c) A bank may declare dividends from actual profits derived from the past year's operations, after adjustments required under this Act and regulations of the MMA have been made. However, dividends may be declared from profits retained from prior years' operations, only with the approval of the MMA. No bank may declare or pay any cash dividends, make any payment to shareholders, or make any transfer of profits, if such transfer or payment will result in a reduction of its capital or reserves below the minimum levels required under this Act or as required by regulation or order of the MMA.
- (d) A bank shall allocate, after taxes, at least 50% (fifty percent) of its net, distributable profits for the formation of a capital reserve until the reserve totals 50% (fifty percent) of its paid-up capital. Once the reserve reaches 50 percent of the bank's paid-up



capital, the allocation shall not be less than 25% (twenty five percent) of the bank's net, distributable profit until the reserve totals an amount equal to the bank's paid-up capital. A bank may not reduce its capital and the reserve accumulated in the manner described in this section or in any other manner without the MMA's prior approval.

- (e) A bank shall obtain the approval of the MMA prior to issuing or retiring whole or part of subordinated debt or repayment of the principal or interest.

**Assigned capital requirement for branches of foreign banks; net domestic assets; computation of prudential ratios**

13. (a) A foreign bank operating in the Maldives shall be required to maintain equity capital allocated to its operations in the Maldives in an amount equal to the minimum level of paid-up capital required for the operation of a domestic bank. This allocation of capital shall be referred to as "assigned capital". If the branch of a foreign bank intends to conduct operations in the manner of a Tier I bank, then the amount specified for unimpaired paid-up capital for Tier I banks shall be maintained as assigned capital of such branch. If the branch of a foreign bank intends to conduct operations as a Tier II bank, then the amount specified as unimpaired paid-up capital for Tier II banks shall be maintained as assigned capital of such branch. Transfers shall be made from profits of the branch to the reserve account to augment assigned capital in the manner described in paragraph (d) of section 12 of this Act. Assigned capital shall be maintained in the manner described in guidelines issued by the MMA.
- (b) Each branch of a foreign bank operating in the Maldives, if so directed by the MMA, shall maintain in the Maldives an excess of assets over its liabilities in such amount, if any, as the MMA may stipulate.
- (c) The determination of prudential ratios of the domestic branch of a foreign bank, including but not limited to capital adequacy and those matters set forth in Chapter 6 of this Act, shall be based on the assigned capital of such branches.

**Capital adequacy requirements**

14. (a) Each bank shall at all times maintain total capital of not less than 12% (twelve percent) of the total value of its assets determined on a risk-adjusted basis, core capital of not less than 6% (six percent) of risk-adjusted assets; and capital of not less than 5% (five percent) of gross assets. The MMA shall, acting consistently with international standards, define in regulations the meaning of capital, core capital, capital base and other terms and specify categories of

risk assets. The MMA shall also, in its discretion, be authorized to specify higher capital ratios than those listed in this section.

- (b) The amount of any holding of capital in another bank shall be deducted from the bank's capital for purposes of calculating the capital ratios pursuant to paragraph (a) of this section.
- (c) The MMA shall specify by regulation principles for establishing and holding a bank's paid-up minimum capital.
- (d) The MMA shall be authorized to order individual banks to hold higher capital ratios than the generally applicable levels, should the MMA determine that the operations and financial condition of such banks warrant the imposition of such higher capital levels.

## CHAPTER 5

### MANAGEMENT OF A BANK

#### **Board of Directors**

- 15.** (a) The board of directors of a bank shall have overall responsibility for establishing the policies and procedures under which the affairs of the bank shall be governed and for overseeing the activities of management. In particular, the board of directors shall establish the risk-management policies for all major functions of the bank, including the lending, investments, asset-liability management, audit, internal control systems and accounting standards of the bank.
- (b) The board of directors shall consist of not less than 5 (five) and not more than 15 (fifteen) members, and shall be an uneven number. The members of the board of directors shall be appointed at the general meeting of shareholders for a period of not more than 4 (four) years. They may be reappointed for subsequent periods of not more than 4 (four) years. Some of the members of the board shall have experience in preparing financial reports, accounting or auditing. The board of directors shall select a chairman from among its members. At the general meeting of shareholders, the bank's shareholders may establish the remuneration for members of the board of directors.
- (c) The chairman and all members of the board of directors must be fit and proper persons according to law. They shall be at least 30 (thirty) years of age and be not more than 70 (seventy) years of age, unless this

maximum age limit is extended by the MMA, on a case-by-case basis, to permit the continued service of a director.

- (d) The majority of the members of the board of directors shall not work full-time for the bank.
- (e) A member of the board of directors may not be:
  - (1) a major shareholder, administrator or employee of another bank, unless the bank is a subsidiary of such other bank or both banks are under common control, provided that, in that case, such members may not constitute a majority of the members of the bank's board of directors.
  - (2) an official who heads a government ministry or a member of the cabinet.
- (f) The members of the board of directors shall act honestly and in good faith, and be loyal to the best interests of the bank. In carrying out their functions they shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In the event that members of the board of directors fail to exercise such care, diligence, skill and loyalty in protecting and promoting the interests of the bank, they may be held personally liable in damages to persons who suffer injuries that are caused by their failure to exercise such care, diligence, skill and loyalty. A case may be filed in the Court against members of boards of directors seeking damages for such failure.
- (g) The decisions of the board of directors shall be adopted by majority vote of the members constituting a quorum. A quorum shall consist of not less than three-fourths of the entire board. If the vote is evenly divided, the chairman's vote shall be the deciding vote.
- (h) The board of directors shall hold at least 1 (one) regular meeting each month of the Gregorian calendar. At each regular meeting the board shall review and approve the minutes of the prior meeting, and review the operations, activities, and financial condition of the bank. The board may designate committees from among its members to perform specific duties or functions and shall review the reports of such committee at regular meetings. Actions and decisions of the board shall be recorded in minutes of the meeting.

**Management and duty of care 16.**

- (a) The board of directors of a domestic bank shall appoint one of its members as the managing director or chief executive officer of the bank. The board of

directors of a foreign bank operating in the Maldives shall appoint a designated branch manager. The managing director or the chief executive officer or the designated branch manager shall be responsible for implementation of the decisions of the board of directors and for the management of the day-to-day operations of the bank.

- (b) The board of directors shall appoint an officer responsible for the maintenance and storage of all corporate books, accounts and records of the bank, and for the attestation of signatures when required. The board of directors shall also appoint suitably qualified persons as executive officers responsible for major aspects of the bank's operations, including lending, internal audit, compliance with the applicable laws, regulations, instructions, directives and procedures and asset and liability management. The board may designate from among its own members appropriate committees of the board to oversee the activities listed in this paragraph and other activities of the bank.
- (c) A person to be appointed to serve in the position of managing director, executive officer, designated branch manager, and such other bank officials as may be designated by the MMA, must:
  - (1) be a fit and proper person according to law;
  - (2) possess the necessary competence and experience required for the conduct of the operations for which the individual will be responsible;
  - (3) not be a major shareholder, administrator or employee of another bank; and
  - (4) reside in the Maldives and engage full time in the management of the bank's operations. However, the MMA may, in its discretion, authorize a recently established branch of a foreign bank, as a temporary measure, to share the services of one or more executive officers with its foreign parent or affiliates.
- (d) The executive officers shall act honestly and in good faith, and be loyal to the best interests of the bank. In carrying out their functions they shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In the event that executive officers fail to exercise such care, diligence, skill and loyalty in protecting and promoting the interests of the bank, they may be held personally liable in damages to persons who suffer injuries that are caused by their failure to

exercise such care, diligence, skill and loyalty. A case may be filed in the Court against an executive officer seeking damages for such failure.

**Changes  
administrators**

**of 17.**

- (a) A bank shall give prior written notice to the MMA at least 30 (thirty) days before appointing or electing a person as administrator pursuant to section 15 or 16 of this Act. Such notice shall provide information to support that the person is fit and proper and fulfils the criteria set forth in regulation by the MMA. In the event that the MMA determines that the person is not fit and proper according to the regulation, the MMA shall notify the bank in writing that the person may not be appointed or elected as an administrator, within 30 (thirty) days after receiving such notice. If the MMA has not objected in writing to the appointment or election of the person within 30 (thirty) days of receipt of the notification, or extended the period for making its determination for no more than an additional 30 (thirty) days, then the MMA shall be deemed to have not objected that the person may be appointed or elected an administrator of the bank.
- (b) An administrator of a bank shall be terminated if the board of directors finds that the individual no longer meets one or more of the requirements for the position as specified in section 15 and 16 of this Act. If the board of directors finds that an administrator no longer meets the requirements for the position, it shall inform the bank's shareholders of the same.
- (c) Banks shall notify the MMA of the dismissal or the acceptance of the resignation of an administrator, as well as the reasons for such dismissal or resignation, within 3 (three) days of the occurrence of the event.

**Removal  
administrators**

**of 18.**

- (a) An administrator of a bank who is removed by the MMA from office may not be a member of the board of directors, the managing director or designated branch manager, or work in a senior position in any other bank.
- (b) A person who has been an administrator of a bank whose licence has been revoked or whose involuntary liquidation was decided during the administrator's term of office may not be an administrator or work in a senior bank position in another bank.
- (c) Where the MMA is satisfied as to the qualifications, professional experience and conduct of an administrator specified in paragraph (b) of this section, such administrator may be exempted from the provisions of paragraph (b) of this section after the expiration of 5 (five) years following the occurrence of an event specified in paragraph (b) of this section.

**Disclosure of personal interests 19.**

- (a) Each administrator shall disclose to the board of directors any significant personal financial interests, directly or indirectly, that the administrator may have in the bank. In addition to the circumstances specified in paragraph (b) of this section, such disclosures shall be made upon first becoming an administrator and annually thereafter, in accordance with guidelines adopted by the bank and any regulations that may be issued by the MMA.
- (b) Whenever any matter related to such significant personal interest comes up for discussion in such board of directors or audit committee, or in any other committee or working group of the bank with decision-making authority, the administrator concerned shall disclose the interest at the beginning of the discussion, and shall not thereafter participate in the meeting while discussions on the matter are ongoing, and shall take no part in the decision on such matter; and the administrator's presence shall not be counted for the purpose of constituting a quorum.
- (c) For purposes of this section, a financial interest shall be considered to be a "significant personal financial interest" if it constitutes 10% (ten percent) or more of an administrator's net worth, or if it contributes 10% (ten percent) or more of an administrator's annual income.

**Changes in ownership and becoming a major shareholder 20**

- (a) Any person, acting directly or indirectly or in concert with other persons, who proposes to become a major shareholder in a bank, shall obtain approval of the MMA prior to acquiring the shares that will make the person a major shareholder. A person shall be deemed to be acting in concert with one or more other persons if, in the judgment of the MMA, they are acting pursuant to an understanding, whether formal or informal, to actively co-operate in acquiring a voting interest in a bank.
- (b) The notice of request for approval of the proposed acquisition as per paragraph (a) of this section shall include the following.
  - (1) The name, nationality, permanent address and business or profession of each proposed major shareholder, together with a sworn statement of assets and liabilities in such detail as may be required by the MMA.
  - (2) For each proposed major shareholder or ultimate beneficial owner, an affidavit regarding criminal convictions pursuant to subparagraph (b) (5) of section 5.

- (3) Where a proposed major shareholder or ultimate beneficial owner is a company, copies of the latest 3 (three) audited annual balance sheets and profit and loss accounts.
  - (4) A list of other organizations in which the proposed major shareholder or ultimate beneficial owner holds interests, specifying the size of such interests and the registered addresses of the organizations.
  - (5) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.
  - (6) The identity, source and amount of the funds to be used in making the acquisition.
  - (7) Where a major change in the bank's business, corporate structure or management is proposed, details of such change.
  - (8) Such other information as the MMA may require.
- (c) The MMA shall assess the proposed changes, if any, in the operations or activities of the bank and the expected effects on the financial affairs and soundness of the bank and satisfy itself as to the identity and character of the proposed major shareholders or ultimate beneficial owners. The MMA shall not approve a proposed acquisition referred to in paragraph (a) of this section if, in its discretion, it concludes that it would substantially lessen competition, jeopardize the financial stability of the bank or prejudice the interests of its depositors.
- (d) Any major shareholder, acting directly or indirectly or in concert with other persons, who proposes to increase an existing holding in a bank in a manner that would reach or exceed a threshold of 20% (twenty percent), 33% (thirty three percent) or 50% (fifty percent) of the bank's capital or the voting rights, respectively, shall obtain the approval of the MMA prior to acquiring the additional shares. The MMA may, in its discretion, require the submission of any or all of the information described in paragraph (b) of this section. And the MMA has the authority to disapprove the acquisition if it determines that any of the conditions for approval described in paragraph (c) of this section are not met.
- (e) A person shall not be eligible to become a major shareholder of a bank already in operation if such person would not be eligible to become a major

shareholder of a bank in organization.

- (f) Any bank becoming aware of a proposed acquisition of its shares as described in paragraphs (a) and (d) of this section shall give notice to the MMA as soon as it becomes aware of such proposal.
- (g) The MMA shall approve or disapprove a proposed acquisition under paragraphs (a) or (d) of this section within 90 (ninety) days after its receipt of a notice containing the information described in paragraphs (b) or (d) of this section. If the MMA fails to act within that time period, the acquisition shall be deemed to have been approved. If the MMA disapproves the acquisition, it shall issue a written statement explaining its reasons for disapproval of the proposal.

**Merger**

- 21.**
- (a) No bank shall merge or consolidate with any other bank or acquire, in whole or in part, either directly or indirectly, the assets of, or assume the liabilities of, any other bank except with the prior approval of the MMA.
  - (b) Any bank which intends to engage in any merger, consolidation, acquisition or assumption of deposit liabilities under paragraph (a) of this section shall give at least 90 (ninety) days' prior notice to the MMA, and provide the MMA with such information as the MMA may require.
  - (c) The MMA shall assess the financial and managerial resources and future prospects of the existing and proposed bank, and shall not approve the proposal unless the bank to result from the transaction would satisfy all criteria were it seeking to be licensed as a new bank. The MMA shall not approve a proposed transaction which would substantially lessen competition unless any anti-competitive effects are clearly outweighed by its expected positive effects.

**Audit Committee**

- 22.**
- (a) Each bank shall establish an audit committee which shall meet at least 4 (four) times per year. The audit committee shall be a committee of the board of directors and shall have the following duties and powers to.
    - (1) review with the board, and seek approval by the board, of the accounting procedures, the internal controls regarding financial reporting and risk management, and the internal and external audit plans for the bank;



- (2) recommend for approval by shareholders, an auditor for appointment pursuant to section 49 as the bank's external auditor;
  - (3) review the external auditor's report on the bank's financial statements and to report the audit committee's findings thereon to the board of directors before approval of the financial statements by the board of directors;
  - (4) provide oversight to the bank's internal and external auditors;
  - (5) monitor the bank's compliance, through oversight of the internal and external audit functions, with the laws and regulations applicable to the bank and report to the board of directors thereon;
  - (6) review reports to be submitted by the bank to the MMA;
  - (7) report on any matters submitted to it by the board of directors;
  - (8) review reports of the internal and external auditors, and to ensure that management is taking appropriate corrective action with regard to any matters identified therein; and
  - (9) report at least annually to the bank's shareholders at the general meeting of shareholders on its activities.
- (b) The audit committee shall have not less than 3 (three) members. The members shall be appointed by the board of directors from among the members of the board for periods of not more than 4 (four) years. They may be reappointed for subsequent terms of equal length. The chairman of the board of directors and the managing director of the bank shall not be members of the audit committee. However, if the board of directors consists of only five persons, then either the chairman or the managing director shall be appointed as a member of the audit committee. The majority of the members of the audit committee shall not work for the bank and at least some of them shall have experience in financial reporting, accounting or auditing. The board of directors shall designate a member of the audit committee, who is not an employee of the bank, to be chairman of the audit committee. For a branch of a foreign bank, the audit committee shall be appointed by the head office, provided that the designated branch manager shall not be a member of the audit committee.

- (c) The decisions of the audit committee shall be decided by majority vote of the members present. If the vote is evenly divided, then the chairman shall cast the deciding vote.

**Matters not specified in this Act** 23.

In the absence of specific conflicting provisions in this Act, the provisions of the Law No. 10/96 (Companies Act of the Maldives) shall be applicable to matters pertaining to the board of directors, the managing director, management of the bank, and the general meeting of shareholders.

## CHAPTER 6

### RULES FOR THE CONDUCT OF BANKING ACTIVITIES

**General principles**

**banking** 24.

- (a) Banks must conduct their affairs in a sound and prudent manner and in accordance with this Act, any conditions attached to their banking licences, and the regulations, guidelines, rulings and orders issued by the MMA. Banks must maintain adequate capital and liquidity, appropriate loan loss reserves, make adequate provision for depreciation of assets, for discharge of liabilities, and for other losses, maintain adequate accounting and other records of business, observe effective controls of risks and ensure that their assets and liabilities are sufficiently diversified to ensure sustained operations.
- (b) The MMA shall prescribe by regulation standards for banks with regard to the matters mentioned in paragraph (a) of this section and any other matters relevant to prudential supervision of banks in accordance with international standards and best practices. Banks shall comply with the obligations listed in paragraph (a) of this section even if MMA has not issued regulations.

**Banking activities**

25.

- (a) A bank may engage in any or all of the following activities subject to any conditions of its banking licence.
  - (1) Receiving money deposits or other repayable funds, bearing interest or not;
  - (2) extending credits whether secured or not by collateral or liens, including without limitation: consumer and mortgage credit; factoring, with or without recourse; financing of commercial transactions, including purchasing negotiable instruments at discount without recourse; and financial leasing services;
  - (3) buying and selling for its own account or for the account of customers including underwriting and brokerage services: money market instruments including checks, bills of

exchange, promissory notes and certificates of deposit; foreign currencies; bullion; exchange and interest rate instruments; stocks and other securities; and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates. Any securities underwriting activities shall be conducted subject to a limit on the bank's commitment of 15% (fifteen percent) of the bank's capital base and reserves per issue, and any other conditions imposed by the MMA under paragraph (b) of this section in connection with a bank's provision of underwriting services generally, or, on a case-by-case basis, in connection with particular underwriting commitments undertaken by a bank;

- (4) acting as agent or broker in connection with the sale of insurance;
  - (5) entering into contingent commitments, including guarantees and letters of credit, for its own account and for the account of customers;
  - (6) providing clearing, settlement and transfer services for money, securities, payment orders and payment instruments such as cheques, credit, debit and other payment cards, travellers' checks and bank drafts, wire transfers, and pre-authorized debits and credits;
  - (7) money brokering;
  - (8) providing trust services;
  - (9) providing safe deposit box services;
  - (10) providing services as portfolio manager of securities or as financial adviser or as financial agent or consultant;
  - (11) providing financial information and credit reference services; and
  - (12) anything that shall be incidental to the foregoing and such other activities, not prohibited by section 26 of this Act, as the MMA may by regulation authorize as banking activities.
- (b) Banks seeking to engage in the activities listed in subparagraphs (a) (3), (4), (8) and (10) of this section, shall obtain approval of the MMA prior to engaging in such activities. However, such approval shall not be required in connection with the purchase and sale

of money market instruments as referred to in subparagraph (a) (3) and foreign exchange. In approving requests for authority to engage in these activities, the MMA shall consider the following:

- (1) whether the applicant has the financial resources, management capacity, technical knowledge, risk management procedures and other requisites to offer such services in a safe and sound manner;
  - (2) whether the interests of the bank's depositors and other creditors will be prejudiced through the bank's engagement in the activity; and
  - (3) whether the provision of these services in the manner proposed will be pro-competitive and otherwise further the public interest. The MMA may, in its discretion, condition its approval as it believes appropriate.
- (c) The MMA may, in its discretion, and subject to such conditions as it may stipulate, require banks to conduct certain banking activities through separately capitalized subsidiaries that has more than 50% (fifty percent) share by the relevant bank.
- (d) The MMA may, in its discretion, authorize banks to provide permissible banking services or activities to their customers electronically through the use of computers, the internet and other electronic means. Before permitting the provision of banking services or activities electronically, the MMA shall first satisfy itself that the bank seeking to provide such services or activities will do so in a manner that:
- (1) is consistent with safe and sound banking practices;
  - (2) provides adequate security to customers, the bank and others;
  - (3) protects the privacy of customers;
  - (4) does not prejudice the interests of customers.
- (e) The MMA shall provide the requested authority only if it is satisfied that the provision of services electronically will not impede the MMA in conducting its supervisory and examination responsibilities or present other risks to the bank, the banking system as a whole, and the payments system. The MMA shall be authorized to adopt regulations governing the provision of electronic banking services.

- (f) The MMA shall have sole authority for determining what activities may be conducted by a bank, and the principles and conditions under which permissible activities may be conducted.
- Prohibited activities**      26. (a) No bank shall engage in or participate as an agent, partner or co-owner in wholesale or retail trade, manufacturing, transportation, agriculture, fisheries, mining, building, insurance underwriting or other commercial activities, except for activities that are authorized by section 25 of this Act. Notwithstanding the foregoing, and with the prior written authorization of the MMA, a bank may temporarily carry on or participate in the carrying on of such activities to the extent necessary to obtain satisfaction of claims for debts previously contracted. The MMA may require the bank to cease such activities by a date specified in the authorization.
- (b) Paragraph (a) of this section shall not be construed to prohibit Islamic banks, and banks not organized as Islamic banks but providing banking services on an Islamic banking basis through a division or department of the bank, from offering services on an Islamic banking basis in accordance with regulations and other guidance provided by the MMA.
- (c) A bank may not create a lien on its assets or provide security for the repayment of deposits except as stated below, or as otherwise permitted by law.
- (1) A bank may pledge its assets to secure a deposit of the Government of the Maldives, if required by law.
- (2) With approval of the MMA, a bank may pledge assets to secure the repayment of money borrowed, or in connection with the purchase of deposit insurance from a private insurance company.
- (d) A lien or pledge of assets created in violation of this section shall be void.
- Prudential requirements**      27. (a) The board of directors of each bank shall adopt and ensure adherence to risk-management policies appropriate for the affairs of the bank and to ensure compliance with prudent banking practices. Such internal policies shall be consistent with the requirements of section 24 of this Act, including any regulations or other guidance issued by the MMA thereunder and any regulations issued by the MMA pursuant to paragraph (b) of this section, if any. In particular, banks shall develop and apply internal policies on prudential ratios regarding:

- (1) their liquid assets or resources in relation to the value or change in value of their assets including guarantees and collateral received, or in relation to their liabilities. Banks shall be permitted to meet the requirements concerning liquid resources by maintaining with the MMA money deposits of a value equivalent to the liquid asset requirement.
  - (2) the maximum aggregate amount of all or certain categories of their credits and investments;
  - (3) the classification and evaluation of assets, and provisions to be made on the basis of such classification and evaluation, and determining the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash;
  - (4) prohibitions and conditions concerning the types or forms of credits and investments made, and liabilities assumed contingent or otherwise;
  - (5) conditions concerning matching as to maturity and interest in respect of assets and liabilities contingent or otherwise; and
  - (6) prohibitions and conditions concerning unhedged positions, exceeding a specified ratio, in foreign currencies or precious metals; exchange and interest rate instruments; stocks and other transferable securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates.
- (b) The MMA shall by regulation prescribe prudential requirements including procedures and methods of calculation to be followed in their application with regard to capital adequacy; asset-classification; suspension of interest accrual and provisions for loan losses; limits on credits extended to single borrowers, groups of connected borrowers, and connected persons; transactions with related parties; foreign currency open position limits; inter-bank placements; liquidity management; and other prudential matters. The MMA may specify requirements, prescribed in response to exceptional circumstances, concerning the rate of interest, maturity and other conditions applicable to any type or form of financing extended or received including deposits or applicable to contingent liabilities.

- (c) Banks must obtain the approval of the MMA prior to entering into management contracts for the bank or any agreement for advisory or consulting services that has the effect of substituting for or delegating the proper duties and responsibilities of the board of directors and executive officers.

**Limits on credit exposures**

**28.**

- (a) The maximum credit exposure that a bank may have outstanding shall not exceed the amount prescribed by MMA by regulation. Under such regulations, MMA may prescribe the following limits on credits exposure.
  - (1) The maximum credit exposure to a single borrower or group of connected borrowers considered as a single borrower under regulations of the MMA.
  - (2) The maximum credit exposure to a corporate group as defined in regulation by the MMA.
  - (3) The maximum aggregate of all large exposures as defined in regulation by the MMA.
- (b) Extensions of credit made directly to the Government, or to any agency or Ministry of the Government, or that the Government has unconditionally guaranteed as to payment of principal and interest, shall be exempt from the limits specified in paragraphs (a) of this section; and they shall be exempt from section 29 of this Act as well.
- (c) For the purposes of applying this section or any regulations issued by the MMA, the MMA shall be authorized to define by regulation when credits granted to one person shall be attributed to another person or combined with credits granted to any other person on the basis of the use of funds and the sources of repayment; and to determine, on a case-by-case basis, when such credits shall be attributed or combined.

**Bank credit to related persons**

**29.**

- (a) A bank may extend credit to a related person as defined in regulations of the MMA, only if:
  - (1) the credit and its financial terms and conditions have been approved in advance by the board of directors, acting by a favourable vote of two-third of the entire board of directors, or, in the case of credit extended by the branch of a foreign bank, by the designated branch manager. This requirement shall not apply to loans made pursuant to an employee benefit scheme as is described in subparagraph (a) (3) of this section, provided that the total indebtedness of the related person to the bank

does not exceed the limit set by MMA in regulation;

- (2) the credit amount does not exceed the credit limit to a related person set by MMA in regulations. Such regulations may establish a limit on the maximum credit outstanding to a related person, credit limit on all related persons in the aggregate, conditions and repayment terms, service charge or interest rates, requirements in respect of security, the procedures and terms thereof, and may stipulate the credits that shall be combined with the credit to a related person.
  - (3) the credit is granted on terms and conditions that are no less favourable to the bank than the terms and conditions that are offered by the bank to the public in the ordinary course of business when the credit is granted, provided, however, that a bank may offer loans to its employees, but not to its directors, at concessionary rates of interest and service charge in accordance with an employee benefits scheme that is available to all employees of the bank, has been approved by the board of directors, complies with any regulations issued by the MMA in respect of credits to related persons, and has been approved, in writing, by the MMA
- (b) The MMA shall be authorized, acting on a case-by-case basis, to determine whether the relationship between a person and the bank is such as to constitute the person a related person and whether the relationship between a related person and another person is such as to require that the other person be considered part of the related person for purposes of applying the limits in this section and the limits stipulated by the MMA through regulation.
- (c) A director, officer or employee of a bank who approves or participates in the approval of a loan with actual knowledge that the loan exceeds the limits in sections 28 of the Act or Authority's regulation shall be jointly and severally liable for the lesser amount of the following:
- (1) the bank's actual loss resulting from the loan; or
  - (2) the amount of the loan which exceeded the limits stated in section 28 or the limits stated in any regulations issued by the MMA.



Such persons shall remain liable for that amount until the loan and all prior indebtedness of the borrower to the bank have been fully repaid.

- (d) The MMA shall be authorized, in its discretion, to direct a bank to deduct any lending to a related person from its capital for purposes of calculating the ratio pursuant to paragraph (a) of section 14 of this Act, and impose on a bank the condition that any loans made by it to related persons shall be fully secured by readily marketable collateral, as those terms may be defined by the MMA.
- (e) Any purchase or lease of asset by a bank from a related person, and any provision of services by a related person to a bank, shall, in accordance with regulations to be adopted by the MMA be approved in advance by a vote of the board of directors or by the designated branch manager, as described in subparagraph (a) (1) of this section, and accomplished on terms that are no less favourable to the bank than those under which similar transactions between the bank and unrelated persons would be accomplished.

<b>Foreign currency exposures</b>	<b>30.</b>	The MMA may issue regulations setting limits on the foreign currency exposures that banks may incur in foreign currencies generally or in specified currencies.
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<b>Permissible Investments</b>	<b>31.</b>	<ul style="list-style-type: none"> <li>(a) Except as provided in this section, banks may not invest in companies engaged in commercial or industrial activities. However, this shall not prohibit Islamic banks, or banks providing financing on an Islamic basis, from providing such financing in accordance with regulations issued and guidance provided by the MMA.</li> <li>(b) Banks may not invest in the stocks, bonds, shares or equity-linked bonds of any company in an amount that exceeds 15% (fifteen percent) of the bank's capital. Such investments, in the case of a company engaged in activities other than banking activities, shall not exceed 5% (five percent) of the voting interests in the company.</li> <li>(c) Banks may not acquire ownership interests in other banks or financial institutions, in excess of 5% (five percent) of the voting interests in such other institutions, without first obtaining the prior approval of the MMA for such acquisition.</li> <li>(d) Banks may not acquire real estate or retain legal title of real estate except for the purposes stated below: <ul style="list-style-type: none"> <li>(1) to accommodate their own operations and to provide housing for employees;</li> </ul> </li> </ul>
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- (2) to acquire real estate required to provide Islamic banking services in accordance with any regulations issued and guidance provided by the MMA; and
  - (3) real estate held temporarily during the course of realizing on collateral for loans.
- (e) Banks shall dispose any investment made against any ownership interests in companies or financial institutions in excess of the limitations provided in this section acquired in the course of their banking business, within 6 (six) months after such interests were acquired, unless the MMA, for good cause shown, extends the permitted holding period for additional time not to exceed 6 (six) more months. Any interests in real estate acquired in the course of banking operations beyond the limitations of this section shall be disposed of within 2 (two) years after such interests were acquired, unless the MMA, for good cause shown, extends the permitted holding period for additional time not to exceed 2 (two) more years.

**Bank holidays**

32. All banks shall open their doors for business with the public on all days and during all office hours set by the MMA, excluding those days determined by the MMA to be bank holidays. MMA may authorize a bank to open for business with the public on days and hours outside of the minimums set by the MMA, and except with such authorization by the MMA, no bank shall open its doors for business with the public during bank holidays determined by the MMA. In the event that circumstances require the suspension of banking operations, the MMA may allow or order a bank to close their doors temporarily, cease their operations, and resume them on a date specified by the MMA.

**Suspicious transactions**

33. A bank's disclosure of any information in good faith under this section shall not be considered a breach of banking confidentiality. In addition, neither the MMA nor the bank shall bear any liability as a result thereof.

**Restriction on loans secured by bank shares and reacquisition of shares**

34. No bank may grant credit or provide a guarantee to a customer that uses the customers' shares in the bank as collateral to secure the loan. A bank may not repurchase its own shares without first obtaining the prior approval of the MMA. However, a bank may take its own shares as security to avoid a loss on a debt previously contracted and shall thereafter dispose of such shares in accordance with regulations issued by the MMA. Shares held and loans secured by shares of a bank shall be deducted from capital for purposes of calculating minimum capital requirements and capital adequacy ratios.

**Dormant accounts**

**35.** Any bank account that has had no transactions or written communications relating to it for a period of 5 (five) years shall be determined as a dormant account, and the bank shall be subject to the following rules in dealing with such an account. However, this Section does not restrict the banks from establishing their own policies in the treatment of accounts that have had no transactions or written communications relating to it for a duration less than 5 (five) years, to the extent that such treatment does not conflict with the provisions of this Act.

- (a) If an account holder has not conducted a transaction from the account or written correspondence with the bank for 5 (five) years, on the first business day of the following calendar year the bank shall dispatch by registered post a notice to the account holder at his last known address containing particulars of the dormant account. The bank shall publish in at least 1 (one) local newspaper and in the *Government Gazette* the names of account holders that do not respond to the letter. Not less than 60 (sixty) days after such notice and publication, if the account holder cannot be located, the bank shall make a detailed report to the MMA and shall turn over the amount on deposit to the MMA, to be held in a special account at the MMA.
- (b) The MMA shall hold the funds in a special account to be invested in government securities. However, for a period of 5 (five) years any owner who, to the satisfaction of the MMA furnishes proof of ownership, shall be entitled to the repayment of the amounts by the MMA. After expiration of such period, any remaining unclaimed amounts shall be transferred to the Ministry of Finance and Treasury. However, the owner shall still be entitled at any subsequent time to claim the funds from the Ministry of Finance and Treasury upon providing evidence, satisfactory to the MMA, of entitlement to such funds.

**Records**

**36.** (a) Banks shall keep on file in the Maldives, for such period of time as is required by law or as the MMA may specify, the documents described below.

- (1) Customer identification records.
- (2) Applications and all other contract documents pertaining to transactions, a signed written record of the decision of the bank approving the transactions and all documents or records relating to suspicious transactions.
- (3) Financial records of parties who conduct transaction with the bank, and any other documentary evidence on which the bank

relied in approving such transactions.

- (4) The account agreements with its customers.
- (5) Such other documents as the MMA may specify by regulation.

- (b) Records shall be kept in written form. A bank may retain books, records, statements, documents, correspondence, cables, notices, and other documents relating to its financial activities in reduced form such as microfilm, electronic data storage or other current technological devices instead of the original for the period established in the law, to the extent that adequate data management and recovery systems and procedures are in place. Such reduced copies shall have the probative effect of the original and shall be accepted in the Court as evidence. The MMA may issue regulations setting out detailed systems requirements for record keeping.

**Payments system and credit bureaus**

- 37. (a) Banks or MMA may establish cooperative systems, payment systems, settlement systems and clearing systems for the transfer of funds and for the settlement of accounts and to make payments among the banks and other financial institutions. The MMA may establish regulations and procedures to govern the conduct of these activities. A bank shall participate in any such system established by MMA if instructed to do so by the MMA.
- (b) Banks may establish credit information exchange agencies or credit bureaus to collect and to disseminate to other banks such information concerning the financial status of existing and prospective customers as the banks may need in order to make prudent banking decisions. Banks shall participate in any such credit bureau or agency MMA may establish. Such information shall be furnished only to banks and such other persons, if any, as may be designated in a regulation issued by the MMA who have an actual or prospective banking or business relationship with the person concerning whom the information is provided. Such information shall be furnished subject to regulations that may be adopted by the MMA under subparagraph (c) (5) of section 66 of this Act, as shall be necessary to protect the confidentiality of banking information and to prevent the unauthorized dissemination of such information.

**Prohibition on invoking bank secrecy and professional privilege**

- 38. Banking secrecy and professional privilege, including the provisions relating to banking confidentiality set forth in section 41 of this Act, shall not be invoked as a ground for non-compliance with the obligations to provide any report of suspicious transactions, or information, or reports set

forth under Prevention of Money laundering and Financial Terrorism Act.

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| <b>Prohibition<br/>tipping-off</b>  | <b>on</b> | <b>39.</b> | A bank, its directors, officers or employees, shall not disclose to its customer or to a third party that information is being, was or will be provided to the Financial Intelligence Unit or that a report concerning money laundering, corruption or the financing of terrorism is being or has been or will be submitted to the Financial Intelligence Unit or that a money laundering or financing of terrorism investigation is being carried on, or will be or has been carried out. |
| <b>No liability for good<br/>faith reporting of<br/>suspicious<br/>transactions</b> |           | <b>40.</b> | No criminal, civil, any other proceedings for breach of banking confidentiality or professional secrecy may be instituted against banks or their directors, officers or employees, who in good faith submit reports or provide information in accordance with this Act.  |

## CHAPTER 7

### CONFIDENTIALITY

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| <b>Banking<br/>confidentiality</b>                                  |                    | <b>41.</b> | A bank shall maintain confidentiality regarding all accounts, deposits, trusts, and safe deposit boxes of customers. It shall be prohibited to provide information on the aforesaid, directly or indirectly, without the written approval of the concerned customer or, in the event that the customer is deceased, without the consent of the customer's legal representative, or one of the customer's heirs or legatees or without the Order of a Court of law or without a written request from a designated criminal investigative authority or without a written request from the Prosecutor General or the existence of one of the cases permitted under this Act. This prohibition shall remain in effect even if the relationship between the customer and the bank ends for any reason. |
| <b>Confidentiality<br/>obligations<br/>individual<br/>employees</b> | <b>of<br/>bank</b> | <b>42.</b> | It shall be prohibited for any current or former administrator, officer, employee or agent of a bank to provide information or statements on customers or their accounts, deposits, trusts, or safe deposit boxes, or transactions or to disclose or enable a third party to examine such information and statements in other than the cases or circumstances permitted under this Act. This prohibition shall apply to any person, including officers and employees of the MMA and bank auditors, who examine such statements and information directly or indirectly by virtue of their profession, position, or work.   |
| <b>Exceptions<br/>confidentiality</b>                               | <b>to</b>          | <b>43.</b> | The provisions of sections 41 and 42 of this Act shall not apply to disclosure of information in the following cases.   |

- (a) The performance of duties assigned legally to auditors appointed at a bank's general meeting of shareholders or appointed by the MMA in accordance with this Act.
- (b) Information and documents requested by the MMA in connection with its duties under this Act or under the Law No. 6/81 (Maldives Monetary Authority Act 1981).
- (c) Actions taken in good faith in the course of the implementation of measures for the prevention of corruption and countering money laundering and financing of terrorism pursuant to laws or regulations dealing with such matters.
- (d) The issuance of a certificate or statement of the reasons for refusing to pay a check based on the request of someone claiming a right to payment on the instrument.
- (e) The exchange between banks of information regarding customers' indebtedness, the status and historical usage of their accounts and other banking information, as may be needed to provide data for determining the soundness of credits, deposit accounts and other banking transactions in existence or proposed to be entered into with customers. However, confidential banking data provided by one bank to another bank under this authority shall be limited to information needed to accomplish the purposes described above and shall be subject to the same strictures of confidentiality as other customer information in possession of the bank receiving the information.
- (f) A bank's disclosure of all or some information on a customer's transactions to prove the bank's claim in a judicial proceeding between it and its customer regarding these transactions.
- (g) A bank's disclosure of information regarding a customer and the customer's financial affairs at the order of a Court in connection with the Court proceeding of a dispute between the customer and one or more other persons, subject to such confidentiality restrictions regarding further disclosure as the Court may require.
- (h) Provision of information by MMA to supervisory authorities in other countries.
- (i) Provision of information to a credit bureau or agency established pursuant to section 37 (b).

## CHAPTER 8

### ACCOUNTS AND FINANCIAL STATEMENTS

- |   |            |   |
|---|------------|---|
| <b>Financial Year</b>                                 | <b>44.</b> | The financial year for domestic banks shall commence on January 1 and end on December 31 of the same year. For a branch of a foreign bank, the financial year may differ. The MMA may, acting by regulation, prescribe different financial years for domestic banks and foreign bank branches.  |
| <b>Accounting principles and financial statements</b> | <b>45.</b> | <p>(a) Banks shall:</p> <ul style="list-style-type: none"><li>(1) maintain proper books and records as required for orderly operations in conformity with section 36 of this Act;</li><li>(2) apply accountancy rules and systems in conformity with international accounting standards, including the use of full accrual accounting, and in compliance with any special requirements of the MMA in this regard, if any; and</li><li>(3) prepare their financial statements consisting of their balance sheets, profit and loss accounts, annual cash flow statements, and statements of changes in capital accounts in a manner that gives a true and fair view of the financial position of the bank. The financial statements shall include a statement by management acknowledging its responsibility to maintain internal controls systems at the bank.</li></ul> <p>(b) The MMA shall be authorized to issue directions by means of regulations or other guidance with respect to the matters set forth in paragraph (a) of this section. Banks and their external auditors must comply with any such regulations or guidance.</p> |
| <b>Submission of reports and information</b>          | <b>46.</b> | <p>(a) Each bank shall furnish to the MMA, in the form and detail and at the intervals specified by the MMA, the following information:</p> <ul style="list-style-type: none"><li>(1) statements showing the bank's assets and liabilities;</li><li>(2) statements showing foreign currency exposures, capital adequacy ratio, reserve position, liquid assets, large credit exposures and credit to related persons;</li><li>(3) supplementary reports or information concerning its various accounts and activities, including information on assets, liabilities, capital accounts, deposits, banking facilities</li></ul>   |

and credit or contingent liabilities granted to the bank's customers; and

- (4) such other information as may be requested by the MMA.
- (b) MMA may require banks to provide information, documents, or reports in addition to those prescribed under section 46(a). Banks shall submit such information, document, or report to the MMA, in such form and by such time as required by the MMA.
- (c) Each bank that has one or more subsidiaries shall also prepare consolidated financial statements. MMA may specify other affiliates and holding companies of a bank for which consolidated financial statements shall also be submitted. In addition, MMA may request reports from any of the bank's subsidiaries or affiliates if it deems such to be necessary for the exercise of consolidated supervision of the bank's activities.
- (d) Each foreign bank with one or more branch offices in the Maldives shall prepare accounts and financial statements for its operations in the Maldives as if such branch offices together were to constitute a single entity. MMA may request a foreign bank with one or more branch offices in the Maldives to submit separate accounts and financial statements for each branch office operated in the Maldives.
- (e) A copy of each bank's audited financial statements, including the accompanying letter from the auditors to the bank, if any, shall be submitted by the bank to the MMA when they become available and within 4 (four) months after the end of the financial year at the latest. Each foreign bank with one or more branch offices in the Maldives shall also submit a copy of the foreign bank's audited financial statements to the MMA when they become available.
- (f) The audited financial statements of a bank shall be made available to its shareholders at least 30 (thirty) days prior to the general meeting of shareholders.

**Publication and display of financial statements**

47. Each bank shall publish, in a newspaper of general circulation, its audited financial statements, including consolidated financial statements, if applicable, within 4 (four) months after the end of the financial year. And such financial statements shall be displayed in a prominent location in its head office and branches, together with a list of the names of the members of its board of directors.

**Annual Report**

48. (a) Each bank shall submit to the MMA, the annual report prepared for the shareholders including any reports by the bank's directors and management to



shareholders, not later than 30 (thirty) days after it becomes available, and within 4 (four) months after the end of the bank's financial year, at the latest. Domestic branches of foreign banks shall send copies of the annual reports of such foreign banks to the MMA promptly after they become available.

- (b) The annual report of a domestic bank shall contain such information as may be prescribed by MMA, including a report by the board of directors on the bank's business during the preceding year and expected future developments.

## CHAPTER 9

### AUDIT

#### **Audit**

- 49.** (a) Each bank shall appoint an external auditor who is qualified and experienced in the audit of banks. The external auditor shall be appointed by the bank's shareholders at a general meeting of shareholders. The appointed external auditor shall be an auditor endorsed by MMA.
- (b) The agreement between the bank and the external auditor shall be made with the following matters included.
  - (1) All reports and work papers prepared by the external auditor, must upon request, be made available to the MMA.
  - (2) The external auditor shall, at the request of the MMA, undertake such additional assignments or prepare such additional reports regarding the bank as the MMA may request.
- (c) The external auditor, or any member of the audit firm, shall not be an administrator, shareholder, employee, agent or representative of the bank for which the external auditor is to be appointed. The external auditor may not have an interest in or be indebted on preferential terms to the bank. However, the external auditor may maintain a credit balance deposit account at the bank. Should the external auditor acquire any such interest in or become indebted on preferential terms to the bank during the course of the engagement, the services of the external auditor shall be terminated and a temporary alternate external auditor shall be appointed by the MMA until the bank appoints a new external auditor.

- (d) The external auditor shall not provide services to the bank that are related to the internal audit function of the bank nor shall he provide services on which the external auditor would be expected to give an opinion as a result of an external audit, except occasionally for training purposes. In the event that the bank should need assistance in maintaining proper accounting systems and procedures, or in establishing proper financial control and risk management systems and procedures, such assistance shall be provided by auditors other than the bank's external auditor, except when directed by the MMA pursuant to subparagraph (a) (2) of section 50.
- (e) No bank shall appoint the same external audit firm continuously for a period of more than 4 (four) years without MMA's permission.
- (f) In compliance with internationally-recognized auditing standards and any standards issued through regulation or otherwise by the MMA, the auditor shall audit the bank's operations on a consolidated basis and:
  - (1) issue a statement to the bank indicating whether the auditor, and all members of the audit firm, comply with the provisions of paragraphs (b) and (c) of this section;
  - (2) within 3 (three) months after the end of the financial year, prepare for the board of directors of the bank an audit report together with an audit opinion stating whether the financial statements are complete, fair and properly drawn up and present a full and fair view of the financial condition of the bank in accordance with this Act and applicable accounting standards. A copy of this audit report, together with any accompanying letter to management, shall be sent by the auditor directly to the MMA. In particular, the audit report shall state:
    - (a) whether any explanation or information called for from the administrators, employees or agents of the bank in the course of the audit was satisfactory or materially deficient;
    - (b) whether the bank maintains internal controls designed to provide reasonable assurance regarding the reliability of:
      - financial reporting;
      - the preparation of financial

statements in accordance with applicable accounting standards;

- the safeguarding of assets of the bank;
- the adherence to applicable laws and regulations, including this Act;
- risk management policies and procedures of the bank;
- systems for the prevention of money laundering and financing of terrorism.

- (c) whether the bank maintains a loan review and provisioning process designed to produce an accurate loan grading system and loan loss provisions that are adequate, with reference to regulatory requirements prescribed by MMA and to the actual risk of loss based on current and foreseeable conditions;
  - (d) whether the bank maintains proper books of account and whether the bank's financial statements are in agreement with said books; and
  - (e) the extent to which management applied the auditor's recommendations and remarks made in connection to operations and management in previous years.
- (3) inform each member of the board of directors and the MMA about any act by an administrator, officer, employee or agent of the bank of which the external auditor has become aware, or has reason to believe, may constitute fraudulent activity, a violation of this Act or of any regulation or order issued by the MMA;
  - (4) inform each member of the board of directors and the MMA about any irregularity or deficiency in the bank's administration or operations of which the external auditor has become aware and which could be expected to result in a material loss for the bank; and
  - (5) inform each member of the board of directors and the MMA about any conditions or trends in the bank's operations, not amounting to fraudulent activity, or violation of law,

regulation or order, or irregularity or deficiency in administration or operations, as described in subparagraphs (3) and (4) above, but that nonetheless could jeopardize the solvency or liquidity of the bank and are therefore of supervisory concern.

- (g) Each bank shall send a copy of the audit report, including the accompanying letter from the auditor to management of the bank, to the MMA not later than 30 (thirty) days after it becomes available, and in no event later than 4 (four) months after the end of the financial year. In the event that the MMA is not satisfied with the audit report, it may require the appointment of another auditor to prepare a new audit report within a specified time at the expense of the bank.

**Additional duties**

**50.**

- (a) The MMA may impose on an auditor, in addition to any duty specified in section 49 of this Act, the duty to:
  - (1) submit to the MMA such additional information in relation to the audit as the MMA considers necessary;
  - (2) submit a report, carry out an examination or recommend any procedure as specified by the MMA;
  - (3) submit to the MMA a report on the financial and accounting systems and internal controls of the bank; or
  - (4) submit to the MMA a report on whether or not adequate measures to prevent money laundering and financing of terrorism have been adopted by the bank and are being implemented in accordance with such regulations, directions and guidelines issued by the MMA.
- (b) The auditor's costs for performing any such additional duties imposed by the MMA shall be borne by the bank.

**Application of certain provisions of other laws and notice to MMA of intent to discharge auditor**

**51.**

- (a) The provisions of the Law No. 10/96 (Companies Act of the Maldives) shall apply to bank auditors unless stipulated otherwise in this Act.
- (b) Auditors shall observe professional and banking confidentiality requirements, provided, however, that the auditor shall not incur criminal or civil liability for the disclosure of confidential information concerning a bank or a bank customer which the auditor provides in good faith to the MMA under this Act. In

particular, a report by the auditor to the MMA pursuant to paragraph (f) of section 49 shall not be construed as a breach of professional or banking confidentiality obligations.

- (c) A bank shall provide prior notice to the MMA of its intent to discharge its auditor or audit firm, and state the reasons for its intended action. In the event that the MMA finds such reasons to be insufficient, it may order the auditor or audit firm to be retained or reinstated.

## CHAPTER 10

### SUPERVISION AND EXAMINATIONS

#### Examinations

- 52. The MMA shall supervise banks on a consolidated basis, or, if that is not possible, then on such other basis as the MMA may determine to be feasible, in the following manner.

- (a) The MMA may at any time cause an on-site examination of a bank to be made by one or more officers of the MMA, or by any other person or persons appointed by the MMA for the purpose of determining the condition and performance of the bank, the adequacy of management and the board's policies for managing risk, and the extent to which it complies with the provisions of laws and regulations regarding the management of its activities, and any other matters deemed relevant by the MMA.
- (b) The MMA shall make an on-site examination of all banks on a regular basis, at intervals not exceeding 2 (two) years.
- (c) The MMA may request that banks provide, and corroborate in writing when necessary, any additional information, documents, clarifications or proof.
- (d) Any person authorized to carry out an examination under this section shall be subject to confidentiality requirements and may require any administrator, officer, employee or agent of a bank, or its subsidiaries or affiliates, to provide access to all necessary books, accounts, documents, and records. The bank shall furnish the requested information to the bank examiner in a timely manner.
- (e) Bank examiners shall prepare a report based on the results of the examination and shall submit the report to the MMA and to the board of directors of the bank.

#### Exchange information

- of 53. (a) The MMA may exchange information on supervisory matters, whether based on a memorandum of understanding or not, with banking supervisory authorities in other countries. The exchange of such

information may include confidential information, provided that the MMA has satisfied itself that the information submitted shall remain confidential at the foreign banking supervisory authority.

- (b) The MMA may enter into memoranda of understanding with foreign banking supervisory authorities setting out the scope, procedures and other details for the exchange of information on a reciprocal basis.

**Immunity from legal action 54.**

No member of the Board of Directors of the MMA, nor any officer, employee or agent of the MMA (including persons appointed pursuant to this Act to carry out an audit, an examination, or to act as supervisors, conservators or receivers), shall be personally liable in damages for any act or omission in the discharge or purported discharge of their functions under this Act. The MMA shall indemnify such persons against legal costs incurred in the defence of legal actions brought against them based on such actions. However, no indemnity shall be provided by the MMA where a Court determines that the person acted in bad faith or has committed a criminal offense.

## CHAPTER 11

### ENFORCEMENT MEASURES AND PENALTIES

**Corrective measures, enforcement actions and administrative penalties 55.**

- (a) The MMA may take any measure or impose any administrative penalties stipulated in paragraphs (b) and (c) of this section, as applicable, in cases where it determines or has reason to believe that a bank, an administrator of a bank or any other person associated with a bank has:
  - (1) violated the provisions of this Act or of any regulation, condition of licensing, instruction or order issued by the MMA; or
  - (2) engaged or is engaging in unsafe or unsound banking operations.
- (b) If any of the violations stipulated in subparagraphs (a) (1) and (2) of this section occur, have occurred, or the MMA has reason to believe that they will occur, the MMA may take one or more of the following measures or impose one or more of the following administrative penalties:
  - (1) send a written warning to the bank;
  - (2) enter into an informal agreement with the bank regarding measures to be taken to correct violations stipulated in subparagraphs (a) (1) and (2) of this section and establishing a time

schedule for accomplishing such action;

- (3) give orders to the bank to cease and desist from particular actions, or requiring the bank to take affirmative action to correct the violations stipulated in subparagraphs (a) (1) and (2) of this section;
- (4) require that the bank submit a detailed description of remedial measures that it intends to take or that it has taken to eliminate the violations stipulated in subparagraphs (a) (1) and (2) of this section;
- (5) require the board of directors to inject additional capital funds within a time period acceptable to the MMA, or in the alternative, require the board to submit a plan acceptable to the MMA for increasing capital to a level specified by the MMA;
- (6) require that the bank cease some of its operations;
- (7) bar the bank from declaring or paying any cash dividends or distributing profits to any person;
- (8) impose any restriction or prescribe conditions on the granting of credit;
- (9) in addition to any minimum balances for reserves stipulated in the Law No: 6/81 (Maldives Monetary Authority Act 1981) and other legally required deposits, require the bank to deposit and maintain balances with the MMA for a period of time and on such terms as deemed appropriate by the MMA;
- (10) require that the chairman convene the board of directors to review and examine the violations stipulated in subparagraphs (a) (1) and (2) of this section attributed to the bank and to take the necessary measures to eliminate such violations. In this case, one or more representatives of the MMA shall attend the Board of Directors meeting;
- (11) require the bank to hire, for a period of time and under conditions to be specified by the MMA, an advisor who shall have authority to make decisions or disapprove actions proposed to be taken by the bank regarding the sale, disposition or transfer of the bank's assets, the loan or investment of the bank's funds, the undertaking of any debt, obligation or liability,

and the payment of dividends;

- (12) require that the bank temporarily or permanently remove from office the managing director, any other executive officer or the designated branch manager, depending on the seriousness of the violation stipulated in subparagraphs (a) (1) and (2) of this section;
  - (13) require that the bank remove the chairman or any of the members of the bank's board of directors;
  - (14) dissolve the bank's board of directors and appoint a conservator in accordance with section 70 of this Act to assume responsibility for managing the bank;
  - (15) impose an administrative penalty on the bank, provided that, at the discretion of the MMA, administrative penalties may be imposed on a daily basis until the violation has eased or compliance is obtained. Such administrative penalties shall be of an amount between 10,000/- (ten thousand) Rufiyaa and 100,000/- (one hundred thousand) Rufiyaa on a daily basis. However, the total aggregate administrative penalty imposed shall not exceed 5 % (five percent) of the bank's paid-up capital;
  - (16) impose an administrative penalty on one or more administrators of the bank in the event that the MMA determines that such administrators are responsible for the existence of the violations stipulated in subparagraphs (a) (1) and (2) of this section; or
  - (17) revoke the bank's licence.
- (c) The MMA shall have the power to remove an administrator, manager, or other employee of a bank from office or employment in, or prohibit a major shareholder or other persons from participating in the affairs of a bank or other entity subject to supervision by the MMA under this Act if the MMA determines that:
- (1) the person intentionally committed or participated in the commission of an act referred to in subparagraphs (a) (1) and (2) of this section, or intentionally violated an order of the MMA issued in response to the same or a similar act, and



- (2) as a result of an act referred to in subparagraphs (a) (1) and (2) of this section, the bank has suffered, or will likely suffer, financial loss or other damage, or the person has received financial gain or other benefit as a result of the commission of such an act, and
  - (3) the commission of an act referred to in subparagraphs (a) (1) and (2) of this section involves personal dishonesty on the part of the person, or demonstrates a wilful or continuing disregard for the safety and soundness of the bank.
- (d) (1) The MMA may impose an administrative penalty on a bank, in the following cases of an amount between 10,000/- (ten thousand) Rufiyaa and 100,000/- (one hundred thousand) Rufiyaa per day until the violation has ceased or compliance is obtained. However, the total aggregate administrative penalty imposed shall not exceed 5% (five percent) of the bank's paid-up capital.
- (a) The bank's submission to the MMA materially deficient or false statements, statistics, or information that is, intentionally or negligently; or
  - (b) The bank's failure to provide the MMA with information in its possession that is requested by MMA.

The imposition of the administrative penalty stipulated in subparagraph (d)(1) of this section shall not bar the MMA or other aggrieved party from demanding compensation from the bank in violation for damages arising from the incorrectness of the information and statements mentioned in subparagraphs (a) and (b) of this paragraph (d) (1) of this section.

- (2) The MMA shall establish, and revise from time to time, a schedule showing the amounts of administrative penalties that may be imposed for various categories of offences or violations. The amounts of such penalties may be stated in ranges. The size of an actual penalty may be determined based on the offence or violation, and the steps taken to mitigate the loss caused.
- (e) When the MMA decides that an order to cease and desist shall be given to a bank pursuant to this section, or that administrative penalties should be assessed on a bank or on an administrator of a bank, or that it has grounds to remove an administrator under this

section, then the MMA shall serve on the bank or administrator, as the case may be a notice of charges, including a statement of the facts constituting the alleged violation or threat of violation; describing the order or administrative penalties that the MMA proposes to issue or impose, or stating the reasons why the MMA believes that removal of an administrator is warranted; and requesting that a written response be provided by the bank or administrator within 30 (thirty) days after the date of service of such notice. If so requested by the bank or the administrator in its written response, the MMA shall schedule a hearing for a date not later than 30 (thirty) days after the date of service of such notice on the bank, or 15 (fifteen) days after receipt by the MMA of the bank's or the administrator's, as the case may be written response to such notice, whichever is later. The hearing shall be held by an appropriately qualified person appointed by the MMA for such purpose. Within 30 (thirty) days after the conclusion of the hearing, the MMA shall decide whether or not to issue an order or to assess the administrative penalties. Any order or assessment of penalties shall be accompanied by the reasons supporting the issuance of such order or the assessment of such penalties. A bank or administrator aggrieved by the issuance of a cease and desist order, a removal order, or the assessment of penalties under this section may obtain judicial review of the decision of the MMA, as is provided for in section 67 of this Act.

- (f) if MMA reasonably believes that in case where an immediate action is not taken, an irreversible loss maybe immediately incurred to the bank, the depositors or creditors and the shareholders of the bank, MMA may issue a cease and desist order or an order for the removal of an administrator to the bank, without service of notice and without conducting a hearing as per paragraph (e) of this section. The bank shall comply with such an order immediately upon receipt of the order.
- (g) The imposition by the MMA of measures or administrative penalties stipulated in this section shall not bar any civil or criminal accountability under any other law.
- (h) In the event that administrative penalties assessed by the MMA pursuant to this section are not paid by the bank or the administrator within 30 (thirty) days following the date on which they are assessed, the MMA shall be authorized to take the following actions:

- (1) order that additional penalties, in the amount determined by the MMA, shall accrue on a daily basis until the entire amount is paid, and
- (2) commence an action in the Court against the bank or the administrator, as the case may be, to obtain payment.

## CHAPTER 12

### CRIMINAL SANCTIONS

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|--|-------------------|------------|--|
| <b>Engaging<br/>unlicensed<br/>operations</b>                  | <b>in banking</b> | <b>56.</b> | A person who knowingly and wilfully engages in the banking business in the Maldives, in contravention of Sections 3 and 4 of this Act, shall be guilty of an offense, and is liable on conviction to pay a fine between 100,000/- (one hundred thousand) Rufiyaa and 1,000,000/- (one million) Rufiyaa or imprisonment between 2 (two) years and 5 (five) years, or both, depending on the seriousness of the offence.   |
| <b>Providing<br/>information<br/>to the<br/>MMA</b>            | <b>false</b>      | <b>57.</b> | A person who, in connection with any application for a licence filed under Chapter 2 of this Act, or in supplying information expected to be relied upon by the MMA in administering this Act, wilfully makes any statement to the MMA that is materially misleading or that he knows to be untrue in any material respect, shall be guilty of an offense, and is liable on conviction to pay a fine between 50,000/- (fifty thousand) Rufiyaa and 500,000/- (five hundred thousand) Rufiyaa or imprisonment between 6 (six) months and 3 (three) years, or both, depending on the seriousness of the offence. |
| <b>Person who provides<br/>false information to a<br/>bank</b> |                   | <b>58.</b> | A person who, in connection with an application for a loan or other action from a bank, or in supplying information expected to be relied on by the bank, wilfully makes any statement to the bank that he knows to be untrue in any material respect, or withholds information needed to be provided, shall be guilty of an offense, and is liable on conviction to pay a fine between 50,000/- (fifty thousand) Rufiyaa and 500,000/- (five hundred thousand) Rufiyaa or imprisonment between 6 (six) months and 3 (three) years, or both, depending on the seriousness of the offence.                      |
| <b>Failure to provide<br/>notice to MMA when<br/>required</b>  |                   | <b>59.</b> | A person who wilfully fails to provide timely notice to the MMA as prescribed in paragraphs (a), (d) and (f) of section 20, or section 21 of this Act shall be guilty of an offense, and is liable upon conviction to pay a fine between 50,000/- (fifty thousand) Rufiyaa and 500,000/- (five hundred thousand) Rufiyaa or imprisonment between 6 (six) months and 3 (three) years, or both depending on the seriousness of the offence.  |
| <b>Breach of<br/>confidentiality<br/>provisions</b>            | <b>bank</b>       | <b>60.</b> | Except as provided for in Sections 38 and 43, a person who, although bound by the confidentiality requirements of section 41 and 42 of this Act, wilfully discloses information  |

that he knows to be subject to the confidentiality requirements of those Sections, shall be guilty of an offence, and is liable on conviction to pay a fine between 100,000/- (one hundred thousand) Rufiyaa and 500,000/- (five hundred thousand) Rufiyaa or imprisonment between 2 (two) years and 5 (five) years, or both, depending on the seriousness of the offence.

- Operation of a pyramid scheme**      **61.**      A person who, with intent to profit, initiates, offers, advertises or directs a pyramid scheme within the meaning of section 68 of this Act, shall be guilty of an offence, and is liable on conviction to pay a fine between 100,000/- (one hundred thousand) Rufiyaa and 1,000,000/- (one million) Rufiyaa or imprisonment between 2 (two) years and 5 (five) years, or both, depending on the seriousness of the offence.

## CHAPTER 13

### OTHER PROVISIONS

- Participation in deposit insurance scheme**      **62.**      Banks shall be authorized, with the prior approval of the MMA and subject to such conditions and regulations as it may impose, to participate in deposit insurance schemes based in the Maldives or elsewhere. A bank shall, if instructed to do so by the MMA, participate in any deposit insurance scheme established by MMA or the Government of the Maldives.
- Fee and other charges**      **63.**      (a) MMA may levy on the banks an adequate fee or charge for services provided to the banks.  
(b) MMA may charge an annual fee or licence fee from the banks.
- Participation in Financial sector development projects**      **64.**      MMA may require a financial institution or institutions to participate in development projects carried out by MMA for the purposes of developing and strengthening the financial sector of the Maldives, and increasing and strengthening financial inclusion within the Maldives. A financial institution or institutions shall participate in such projects as required to do so by the MMA.
- Applicability of other laws**      **65.**      The provisions of Law No: 10/96 (Maldives Companies Act) shall apply to banks to the extent that these provisions do not conflict with the provisions of this Act and regulations and orders issued under it.
- Regulations issued under this Act**      **66.**      (a) The MMA may issue regulations for the implementation and enforcement of this Act. In addition, the MMA may issue circulars or memoranda of general applicability and it may issue rulings and orders in individual cases.  
(b) All the regulations issued under this Act shall be published in the Government Gazette. The regulation

shall specify the date on which it shall take effect.

- (c) To facilitate the enforcement of this Act, the MMA shall be authorized to issue regulations governing the following matters:
  - (1) to implement and enforce this Act;
  - (2) to implement and enforce prudential limits and banking practices provided for explicitly or implicitly in this Act;
  - (3) to implement and enforce programs and policies for anti-money laundering and combating the financing of terrorism;
  - (4) to establish procedures for the operation of payments, funds transfer, and check-clearing systems; and
  - (5) to establish procedures for the operation and governance of credit reporting agencies and credit bureaus.

**Judicial review**

- 67. (a) Unless otherwise provided in this Act, any party to whom an order or decision of the MMA is issued or made shall have the discretion to apply for a judicial review of the order or decision of the MMA in the Court as stipulated in this Act. Such orders shall include orders or decisions of the MMA rejecting the application for a licence under section 6, revoking a licence under section 8, or imposing any corrective measure or administrative penalty under section 55, or taking actions pursuant to Part II of this Act that are stated to be subject to judicial review.
- (b) Any party dissatisfied with an order or decision of the MMA under this Act may, within 30 (thirty) days of the issuance of such order or decision, apply for judicial review thereof in the Civil Court.
- (c) Any application made to the Court for judicial review of an order or decision made under this Act shall be conducted by the Court according to the following procedures:
  - (1) the record on which the review is conducted shall be the record developed during the administrative process before the MMA. The Court shall permit the introduction into evidence of factual matters not presented to the MMA during the administrative process, only in extraordinary cases where it is necessary to achieve the ends of justice;

- (2) the scope of review by the Court of such order or decision of the MMA shall be confined to whether the decision of the MMA was adopted in accordance with lawful procedures, or was arbitrary or capricious, or was otherwise contrary to law;
  - (3) the filing of an appeal shall not automatically effect a suspension of any measures imposed by the MMA; and
  - (4) the Court shall issue its decision within 60 (sixty) days following the date on which the information and records relating to the case were filed with it by the MMA.
- (d) In cases brought under Part II of this Act, the Court shall be authorized, in appropriate cases, to award monetary damages to injured parties, but shall not modify, enjoin, stay, suspend or set aside the actions of any conservator, receiver or the MMA, except with respect to a decision of the Court regarding the removal of a conservator under section 74 of this Act.
- Pyramid schemes prohibited**      **68.**      (a) It shall be a criminal offense for any person, directly or indirectly, to initiate, offer, advertise or direct a scheme, of the type commonly known as a “pyramid scheme”. If the profits earned by participants in the scheme depend on increases in the number of participants in the scheme or in the size of their contributions to the scheme, such scheme shall be considered as a pyramid scheme.
- (b) The MMA shall be empowered to enter the offices and to examine the accounts, books, documents and other records of any person if the MMA has reason to believe such person is promoting or directing a scheme described in paragraph (a) of this section. If the MMA, after due investigation, concludes that such a scheme is, or has been, in operation, the MMA may request the Prosecutor General to initiate prosecution of the person or persons concerned.
- Transitional provisions**      **69.**      (a) Every bank that, on the date that this Act enters into effect, carries a banking licence issued by the MMA may continue to operate as a bank and shall be subject to this Act. Any operations conducted by such banks at the time this Act becomes effective that do not conform to the requirements of this Act shall be brought into compliance with this Act, and into compliance with any regulations or other guidance issued by the MMA pursuant to this Act, within such time period as the MMA may prescribe but not to exceed one year after this Act takes effect, or one year after any implementing regulations or other guidance

take effect, whichever is later.

- (b) Every bank that, on the date that this Act enters into effect, carries a banking licence, shall provide the MMA with a list of major shareholders described in subparagraph (b) (4) of section 5, and the affidavits described in subparagraph (b) (5) of section 5, within one year after this Act takes effect.

## **PART II**

### **APPOINTMENT OF A CONSERVATOR, LIQUIDATION OF BANK, AND APPOINTMENT OF A RECEIVER**

#### **CHAPTER 14**

##### **CONSERVATORSHIP**

**Grounds  
appointment of a  
conservator** 70.

- (a) The MMA shall appoint a conservator for a bank when the MMA determines that:
  - (1) the bank fails to pay its financial obligations, including but not limited to deposit liabilities, as they fall due;
  - (2) the capital of the bank is less than 50% (fifty percent) of the minimum capital required by this Act or by regulation of the MMA issued pursuant to Chapter 4 of this Act;
  - (3) a petition has been submitted for opening bankruptcy proceedings against the bank, as set forth in section 83 of this Act;
  - (4) the board of directors is unable or unwilling to properly manage the affairs of the bank.
- (b) The MMA may appoint a conservator for a bank when the MMA determines that:
  - (1) the bank has failed to carry out an order given to the bank by the MMA, including an order for payment of civil monetary penalties;
  - (2) the MMA determines that the capital of the bank is too low to support safe and sound banking operations;
  - (3) there is evidence that the bank or any of its administrators have engaged in criminal activities punishable by imprisonment of 1 (one) year or more or there is evidence or reasonable cause to believe that the bank or any of its administrators is engaging in criminal

activities;

- (4) there is reasonable cause to believe that the board of directors is unwilling or unable to properly manage the affairs of the bank.
- (c) The provisions of this Chapter shall apply to the domestic branch offices and domestic representative offices in the Maldives of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any such office shall be attributed to that single entity in applying the provisions of this Chapter. The conservator of a foreign bank shall be authorized to take all actions with respect to such foreign bank, as could be taken by the authorized manager or by shareholders at the general meeting of shareholders of a domestic bank.

**Appointment of a conservator**

**71.**

- (a) Conservators shall be appointed by decision of the MMA. Only fit and proper persons are eligible to serve as conservators of a bank.
- (b) If at any time a conservator becomes ineligible to serve, the conservator shall be replaced by the MMA.
- (c) Conservators shall be appointed for a term, not exceeding 12 (twelve) months, as specified in the decision on their appointment. The term of appointment may be extended twice by the MMA once for additional periods not exceeding 12 (twelve) months each. The conservator shall be employed by the MMA and receive remuneration from the MMA at rates determined by the MMA. The costs incurred by the MMA on account of the conservatorship shall be borne by and charged to the bank for which the conservator is appointed.
- (d) The decision appointing a conservator or extending the term of appointment of a conservator shall be in writing, shall specify the grounds on which it is given and shall list the principal duties of the conservator. The MMA shall promptly submit the appointment letter of the conservator to the bank for which the conservator is appointed, record in the register of banks and publish in the *Government Gazette*.

**Effects of the appointment of a conservator**

**72.**

- (a) The decision of the MMA appointing a conservator for a bank takes effect immediately, unless the decision provides otherwise.
- (b) The decision of the MMA appointing a conservator for a bank suspends the powers of the shareholders to take action at the general meeting of shareholders of



the bank. Thereafter, the conservator shall have the power to take all of the actions in the ordinary course of business including those that could be taken at the general meeting of shareholders of the bank, such as the sale and disposition of assets and such other actions as may be necessary to place the bank in a safe and solvent condition. However, a transaction involving recapitalisation with new investors, the participation of the bank in the capital stock of other financial institutions, or the sale, merger, amalgamation, closure or liquidation of the bank may be undertaken only in circumstances and on terms and conditions that have been approved by the Court on recommendation of the MMA.

- (c) The decision of the MMA appointing a conservator for a bank shall suspend the powers of the board of directors and administrators of the bank and shall have the effect of transferring all their powers to the conservator. The conservator may delegate to other persons, including administrators and employees of the bank, such powers as the conservator deems necessary or appropriate, unless the MMA determines otherwise in a written notice to the conservator. In the absence or inability of the conservator to act, the MMA may exercise the powers of the conservator.
- (d) Actions taken by or on behalf of a bank after a conservator is appointed for that bank, shall be null and void. However, actions taken by or by the authority of the MMA or the conservator, money or securities transfer orders covered by section 94 of this Act shall not be void.
- (e) A conservator shall be accountable only to the MMA for the performance of duties and for the exercise of the powers as conservator. The conservator may only perform the duties assigned to the conservator by the MMA. The conservator shall only be subject to the regulations issued and instructions given to the conservator by the MMA and to orders issued by the Court.

- (f) Notwithstanding any requirements set forth in section 12 this Act, the MMA, in its sole discretion, may organize and licence a bridge bank which will be owned and fully controlled by the MMA, to receive any assets and liabilities of one or more banks as to which a conservator under Chapter 14 or a receiver under Chapter 17 has been appointed. A bridge bank may be placed under the control of a conservator or receiver and shall terminate its operations at the end of a 1 (one) year period following the issuance of a licence, except that the MMA, in its discretion, may extend its status for two additional 1 (one) year terms.

**Taking control of the bank**

**73.**

- (a) Immediately upon appointment, the conservator shall take control of the bank for which he has been appointed and secure the assets, books and records of the bank, and thereafter manage the bank during the period of conservatorship, in order to prevent the dissipation of such assets by theft or other improper action.
- (b) The conservator shall have unrestricted access to and control over the assets, the offices, and the books, records and other documents, of the bank for which he has been appointed. Immediately upon the request of a conservator, law enforcement officials shall, if necessary by use of force, assist the conservator to gain access to the premises of the bank for which the conservator has been appointed and to gain control over and to secure the aforementioned. The decision of the MMA appointing the conservator shall have the legal force and effect of an enforceable court order requiring law enforcement authorities to provide such assistance.
- (c) A conservator may employ at the expense of the bank for which the conservator has been appointed, such independent specialists, including attorneys, accountants and consultants, on such terms as the MMA shall approve.

**Review of appointment**

**of 74.**

- (a) Within 5 (five) days from the date of service of the decision appointing the conservator for a bank, the board of directors of the bank may make written representations on behalf of the bank to the MMA challenging the appointment of the conservator. In the event that the board of directors waives its right to challenge, or if no such challenge is made within the 5 (five) day time period referred to above, the bank shall be deemed to have consented to the decision appointing the conservator.
- (b) Upon the timely receipt of such a challenge, the MMA shall review the appointment of the conservator in light of the arguments made against it and decide

either to affirm the appointment or to terminate the appointment, giving the grounds for its decision. The decision of the MMA shall be served promptly upon the chairman of the board of directors of the bank.

- (c) If, upon review of a challenge by the board of directors under paragraph (a) of this section, the appointment of the conservator is terminated by the MMA, the conservator shall immediately return control of the bank and its assets, books and other documents to the authorized managers of the bank.
- (d) Any decision of the MMA appointing a conservator that is not a decision to which the bank has consented, and any decision of the MMA affirming the appointment of a conservator under paragraph (b) of this section, may be submitted by the bank, or any administrator, creditor, depositor or shareholder of the bank to the Court for review within 30 (thirty) days from the date of service of the decision on the bank. The appointment and powers of the conservator shall stay in full force and effect until a final decision is taken by the Court.

**Report of the  
conservator and plan  
of action**

- 75.
- (a) No later than 30 (thirty) days after the appointment or within the period MMA may have extended, the conservator shall prepare and present to the MMA a report on the financial condition and future prospects of the bank for which the conservator has been appointed. The conservator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the bank. The report may be prepared with the assistance of independent experts as the conservator may determine in accordance with paragraph (c) of section 73 of this Act.
  - (b) The report specified in paragraph (a) of this section shall be accompanied by a proposed plan of action, that shall include the relative costs and benefits associated with the following:
    - (1) operating the bank in a safe and prudent manner, and returning the bank to a sound and viable condition and substantial compliance with the law by carrying out a plan of corrective action;
    - (2) recapitalization of the bank under the procedure set forth in section 78 of this Act;
    - (3) a voluntary liquidation of the bank under section 79 of this Act, or a revocation of the banking licence and liquidation of the bank in accordance with section 80 of this Act; and

- (4) the opening of bankruptcy proceedings against the bank

#### **Moratorium**

- 76.** If required to protect the financial condition of a bank for which a conservator has been appointed, the MMA may declare deposits and investments by the public in the bank, other than deposits and investments in segregated fiduciary accounts, to be totally or partially blocked for a maximum period of 3 (three) months, provided that measures are taken which, in the opinion of the MMA, will preserve the approximate value of these deposits and investments together with interest accrued before and during the moratorium. In extraordinary cases, the conservator, with the approval of the MMA, may permit the withdrawal of some or all of the deposits held in the name of a natural person not to exceed 50% (fifty percent) of total deposit and investments for each such case.

#### **Termination of conservatorship**

- of 77.**
- (a) The appointment of a conservator shall terminate upon the occurrence of any of the following events.
    - (1) Completion of the term specified in the decision appointing the conservator or in the decision extending the term of the conservator.
    - (2) A decision of the MMA that the bank has been returned to an acceptable condition and the circumstances that gave rise to the appointment of a conservator no longer exist.
    - (3) Appointment of a receiver pursuant to section 89 of this Act.
  - (b) Upon termination of the appointment of a conservator as described in subparagraphs (a) (1) or (2) of this section, the conservator shall immediately return control of the bank and its assets, books and records to the authorized managers of the bank.
  - (c) Upon termination of the appointment, the conservator shall prepare and submit to the MMA a final report and accounting of the conservatorship.

## **CHAPTER 15**

### **RECAPITALIZATION**

#### **Recapitalization procedures**

- 78.** (a) A bank may be recapitalized using public funds by the conservator appointed for the bank, under supervision of the MMA, if the Minister of Finance and Treasury decides, upon the recommendation of the MMA, that the stability of the banking system of the Maldives requires the recapitalization of the bank. Once the Minister of Finance and Treasury has taken a decision to recapitalize a bank, then the Minister may authorize or make available financing in connection with the

transactions, costs and expenses referred to in paragraphs (d) and (e) of this section.

- (b) The recommendation of the MMA to recapitalize a bank using public funds shall be accompanied by a recapitalization plan prepared by the MMA in consultation with the conservator. The plan shall identify the existing weaknesses in the administration or operations of the bank, determine the corrective measures required to remedy such weaknesses, and provide a timetable and financing plan for the proposed rehabilitation. The plan shall review and evaluate strategies for transferring the core business of the bank to another bank through one or more of the transactions authorized by section 95 of this Act and shall to the extent practicable preclude the enrichment of shareholders at the expense of the State. At any time during the execution of the plan, the Minister of Finance and Treasury, after having consulted the MMA, may:
  - (1) terminate the rehabilitation plan; or
  - (2) request the MMA to revoke the licence of the bank if grounds for licence revocation exist under section 55 of this Act; or
  - (3) request the MMA to submit a petition to the Court for the institution of bankruptcy proceedings under section 83 of this Act.
- (c) For the purpose of conserving the assets and managing the business of a bank under rehabilitation on a going concern basis, the MMA may direct the conservator to transfer all or part of the assets and liabilities of the bank to a bridge bank established and capitalized by the state and holding a banking licence issued by the MMA. This transfer shall become effective immediately. If some obligations of the bank to creditors would be excluded from such a transfer, the conservator shall take the interests of such creditors into account. Such a transfer shall not require the consent of the bank or any of its governing bodies. The transfer of liabilities shall be published by notice in the *Government Gazette* and in a newspaper of general circulation designated by the MMA.
- (d) Upon the request of the conservator made in accordance with the rehabilitation plan, and with the concurrence of the Minister of Finance and Treasury where appropriate, the MMA may:
  - (1) authorize the conservator for the bank to carry out one or more of the transactions authorized by section 95 of this Act, which may include financing provided by the State in the form of

deposits, loans, grants, the provision of guarantees or infusion of capital;

- (2) order an increase in the authorized capital of the bank or the issue of shares of capital stock of the bank on such terms and conditions as the MMA may determine; or
  - (3) authorize the conservator to terminate all or some current contracts of the bank for the delivery of goods or services by analogous application of the provisions of section 100 of this Act. The costs of resolving any claims resulting from termination of contracts may be submitted to the MMA and treated as a cost of rehabilitation of the bank.
- (e) The costs incurred on account of rehabilitation of a bank shall be charged to the bank, and, to the extent that the resources of the bank shall prove insufficient, to the State.

## CHAPTER 16

### LIQUIDATION OF BANKS

- Voluntary liquidation**    **79.**    (a) A bank may be liquidated by the decision of its shareholders after the voluntary termination of operations has been approved by the MMA and the licence has been revoked. The liquidation shall be carried out by the bank, in compliance with the rules specified or referred to in paragraphs (c) and (d) of section 80 of this Act and under supervision of the MMA.
- (b) The bank shall provide the MMA with such documents and information as the MMA shall request and shall grant the staff of the MMA access to the buildings, books and records of the bank whenever the MMA decides that such access is required to discharge its supervisory responsibilities.
- (c) If the MMA determines that the bank does not ensure an orderly liquidation or if the bank fails to comply with the provisions of paragraph (b) of this section, the MMA shall appoint a receiver who shall carry out or complete the liquidation of the bank under the supervision of the MMA.
- Forced liquidation**    **80.**    (a) The decision of the MMA taken pursuant to section 55 of this Act to revoke the banking licence of a bank against which no bankruptcy proceedings have been opened, must provide for the liquidation of the bank in accordance with the procedures prescribed by this section by a receiver appointed for the bank by the MMA. The MMA shall arrange for the prompt

publication of the decision by notice in the *Government Gazette* and in a newspaper of general circulation.

- (b) From the time of the decision of the MMA to revoke the banking licence of a bank and to liquidate a bank:
  - (1) acts performed by or on behalf of the bank are legally void and unenforceable, except for acts performed by or by authority of the receiver for the bank, acts deemed beneficial to the bank by the receiver and ratified by the receiver, and money and securities transfer orders covered by section 94 of this Act;
  - (2) all restraints on the disposition of bank assets and liens in aid of execution in favour of the bank's creditors or other restraints on the bank's assets shall be deemed removed by operation of law;
  - (3) the assets of the bank shall be immune from attachment and execution, except for assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance; and
  - (4) no bankruptcy proceeding may be commenced against the bank.
- (c) The liquidation shall be carried out by the receiver under supervision of the MMA, in accordance with procedures that are consistent with those set forth in section 96 up to and including section 109 of this Act.
- (d) Upon the request of the receiver, the MMA may authorize a bank to carry out one or more of the transactions stated in section 95 of this Act.
- (e) The provisions of this section shall apply to the domestic branch offices and domestic representative offices of a foreign bank as if all these domestic branch offices and domestic representative offices together were to form a single legal entity. All assets, liabilities, acts and omissions of domestic branches and domestic representative offices of a foreign bank shall be attributed to that single entity in applying the provisions of this section. The receiver shall be authorized to take all actions with respect to such single entity as could be taken, were it to be a domestic bank, by the authorized manager or by shareholders at the general meeting of shareholders.

## CHAPTER 17

### RECEIVERSHIP OF BANKS

- Inapplicability of general insolvency laws to banks** 81. The bankruptcy law applicable to the insolvency of companies generally shall not apply in whole or part to banks which, instead, are governed by this Act.
- Grounds for opening bankruptcy proceedings; and responsibility of MMA to determine solvency** 82. Upon receipt of a satisfactory petition under section 83 of this Act and the appointment of a conservator under section 84, the MMA shall open bankruptcy proceedings against a bank on one or more of the following grounds:
- (a) the bank is not paying its financial obligations, including deposit liabilities, as they fall due, and no liquidity support acceptable to the MMA is available;
  - (b) the core capital of the bank is less than 2% (two percent) of the gross assets of the bank, and no recapitalization plan acceptable to the MMA is available; or
  - (c) the bank is no longer viable, and the MMA determines that that no realistic means exists, to return the bank to a viable condition within a reasonable time.
- The MMA shall have sole authority and discretion to determine whether a bank is bankrupt as provided in this section, subject to judicial review of its decision by the Court as provided in section 67.
- Petition for opening bankruptcy proceedings** 83. (a) Petitions for opening bankruptcy proceedings against a bank shall be submitted to the Court by the form prescribed by the Court.
- (b) A Petition for opening bankruptcy proceedings against a bank may be granted by the Court only if the following are satisfied:
- (1) the petition is presented by the MMA, together with financial statements of the bank certified by the MMA, showing the basis on which one or more applicable statutory grounds for opening bankruptcy proceedings applies; or
  - (2) the petition has been filed with the Court and served on the MMA by three or more creditors of the bank with obligations aggregating more than 10,000,000/- (ten million) Rufiyaa or more than 2% of the bank's gross liabilities that are due and unpaid, which amount is the greatest, together with documentary evidence showing that the bank is not paying its financial obligations as they fall due under



paragraph (a) of section 82 of this Act.

## Appointment conservator

**of 84.**

As soon as a petition for opening bankruptcy proceedings against a bank has been served on the MMA by creditors of the bank under subparagraph (b) (2) of section 83 of this Act, or the MMA has presented a petition to the Court under subparagraph (b) (1) of section 83, a conservator shall be appointed by the MMA pursuant to section 70 on the ground that the bank is not paying its financial obligations as they fall due. The conservator shall forthwith take control of the bank in accordance with section 73. The provisions of section 74 shall not apply to a decision of the MMA appointing a conservator pursuant to this section, and such decision of the MMA shall not be subject to review by the Court.

**Hearing before the 85.  
Court**

85.

(a) Upon filing of a petition for opening bankruptcy proceedings against a bank, the Court shall summon the MMA and any other petitioner, the conservator appointed for the bank, and the bank to attend a public hearing to consider the petition. In exceptional situations the Court may decide to conduct a non-public hearing. The hearing shall begin within 2 (two) business days from the time of filing of the petition.

(b) If the petition is filed by the MMA, the hearing shall be concluded within 1 (one) week. If the petition is filed by creditors of the bank, the hearing shall be concluded within 2 (two) weeks. At the conclusion of the hearing, the Court shall either reject the petition or grant the petition.

## Grounds for rejecting the petition 86.

86.

(a) A petition for opening bankruptcy proceedings against a bank shall be rejected by the Court if:

(1) the petition does not meet the requirements of this Act; or

(2) the MMA opposes or rejects the petition under paragraph (b) of this section.

(b) If the petition is made by creditors of the bank, the MMA may oppose the petition only if:

- (1) the MMA has determined that no statutory ground for opening bankruptcy proceedings against the bank applies; the Court may require the MMA to produce evidence supporting its determination, including financial statements of the bank certified by the MMA;

(2) the MMA demonstrates to the Court that, before a copy of the application for opening bankruptcy proceedings against the bank was served upon the MMA, the banking licence of

the bank had been revoked and a receiver had been appointed to liquidate the bank; or

- (3) the MMA submits to the Court a decision of the Minister of Finance and Treasury in accordance with section 78 of this Act that the stability of the banking system of the Maldives requires the recapitalization of the bank.
- (c) At its request, the MMA shall be granted 2 (two) weeks in which to submit such evidence or decision, before the Court rules on the petition.
- (d) In addition to the occurrence of the events stated in paragraph (a) of this section, the Court may reject a petition for opening bankruptcy proceedings against a bank only if:
  - (1) any document or other evidence submitted to the Court in support of the petition is manifestly false or inaccurate and without such document or other evidence the petition does not meet the requirements of this Act; or
  - (2) the bank shows to the satisfaction of both the Court and the MMA that payments of supplemental subscriptions to the capital of the bank have been received by the bank in immediately available funds sufficient to eliminate the grounds for opening bankruptcy proceedings against the bank under section 82 of this Act.

**Rejection of frivolous  
petitions filed by bank  
creditors**

- 87.**
- (a) At any time after the filing of a petition for opening bankruptcy proceedings against a bank by creditors of the bank, the Court may reject the petition in writing, with or without a hearing, on the grounds that the petition is frivolous, in which case the petitioners may be held liable for monetary damages, including costs and expenses resulting from filing of the petition which the Court may award.
  - (b) In exceptional circumstances, the filing of a frivolous petition for opening bankruptcy proceedings against a bank may constitute an offense that, upon conviction in the Criminal Court, may be punished by imprisonment for a period between 6 (six) months and 3 (three) years or by the payment of a fine between 75,000/- (seventy five thousand) Rufiyaa and 150,000/- (one hundred and fifty thousand) Rufiyaa or both.
  - (c) Anyone who is determined by the Court to have filed a frivolous petition for opening bankruptcy proceedings against a bank may be subject to prosecution in the Criminal Court in a proceeding

initiated by the Prosecutor General based on the request of the Court.

- Forced liquidation if bankruptcy petition is rejected** 88. If a petition presented by the MMA for opening bankruptcy proceedings against a bank is rejected by the Court on grounds other than those specified in section 86 of this Act, or if the Court fails to observe the time periods set forth under this Act or to render a decision in a timely manner under section 85 of this Act, the MMA shall revoke the banking licence of the bank and liquidate the bank in accordance with the procedures prescribed by section 80 of this Act.
- Bankruptcy decision and appointment of a receiver** 89. By the order of the Court to grant a petition for opening bankruptcy proceedings against a bank, the bank shall be declared bankrupt, and a receiver shall be appointed in order to carry out the bankruptcy related activities.
- Service and publication of bankruptcy decision** 90. Immediately after the Court has issued a decision granting or rejecting a petition for opening bankruptcy proceedings against a bank, the decision shall be served by the Court on the MMA and on the bank and the Court shall arrange for publication of the decision in the *Government Gazette* and in a newspaper of general circulation.
- Receiver** 91. (a) The receiver appointed by a decision of the Court opening bankruptcy proceedings against a bank, or as a replacement receiver, shall be selected by the Court from a list of candidates submitted to the Court by the MMA, unless a deposit insurance scheme with mandatory participation has been established in the Maldives, in which case the deposit insurer or its designee shall be appointed by the Court as receiver. Only fit and proper persons shall be eligible to serve as receiver or as replacement receiver for a bank. A person serving as conservator for the bank, if otherwise qualified, shall be eligible to serve as receiver. The bankruptcy decision shall specify the remuneration and other terms and conditions of employment of the receiver. The remuneration and other costs incurred on account of the receiver shall be paid from the assets of the bank for which the receiver is appointed.
- (b) The MMA shall indemnify the receiver of a bank for all liabilities and all reasonable costs and expenses incurred by the receiver on account of the receivership to the extent that they exceed the assets of the bank available to meet such liabilities, costs or expenses.
- (c) Receivers shall carry out their activities under the direction and supervision of the MMA, which, on the appointment of the receiver, shall provide the receiver with written directions including a list of activities that the receiver may undertake without the direction of the MMA. Such directions shall include a

delegation of authority to the receiver to enter into individual transactions not to exceed a stated amount for each such transaction, including, but not limited to, sales of assets, individually or by bulk sale. Although the receiver may at any time apply to the MMA for directions, the receiver shall be obligated to apply to the MMA for directions only where specifically required to do so by a provision of this Act.

- (d) A receiver may employ at the expense of the bank for which the receiver has been appointed such specialists, on such terms and conditions, as the MMA shall approve.
- (e) The Court shall replace the receiver immediately upon the request of the MMA in any of the following circumstances:
  - (1) upon the resignation, death or incapacity to act of the receiver; or
  - (2) in the event that the receiver does not diligently perform the receiver's tasks; or
  - (3) in the event that the receiver shall no longer be a fit and proper person; or
  - (4) if for any other reason, the receiver becomes ineligible to serve in that capacity.
- (f) Whenever a receiver is replaced, the person replacing the receiver shall succeed to the powers of the receiver, and the books, records and assets of the bank in the custody of the receiver as well as the books and records of the receivership shall be transferred into the custody of that person.

**Powers of the receiver 92.**

- (1) Upon appointment the receiver shall become the sole legal representative of the bank, and succeeds to all rights and powers of the shareholders of the bank, the board of directors of the bank, and the authorized manager of the bank including the power to operate and to liquidate the bank. Such rights and powers shall include holding title to the books, records, and assets of the bank; operating the bank; marshalling assets and claims; transferring or disposing of assets; and taking any other action necessary for the effective liquidation of the bank. The official duties of a conservator, if any, shall terminate upon appointment of a receiver.
- (b) Monetary claims against the bank shall be served on the receiver for the bank.

**Effect of bankruptcy decision 93.**

- (a) The decision of the Court opening bankruptcy proceedings against a bank shall take effect at the time that the decision is taken.
- (b) Immediately upon the bankruptcy decision taking effect, the bank shall cease to take deposits from the public.
- (c) Acts performed by or on behalf of the bank after the bankruptcy decision takes effect are legally void and unenforceable, except for acts performed by or under authority of the receiver for the bank and acts deemed beneficial to the bank by the receiver and ratified by the receiver.
- (d) As a result of the bankruptcy decision, all current court proceedings against the bank are stayed and no court proceeding against the bank shall commence after the bankruptcy decision takes effect, except with the leave of the Court and subject to such terms as the Court imposes.
- (e) As a result of the bankruptcy decision, all restraints on the disposition of bank assets and attachments in aid of execution on the bank's assets in favour of creditors shall be deemed removed by operation of law. Attachments placed and acts of execution performed after the bankruptcy decision takes effect shall be void, except for execution in accordance with section 102 of this Act of assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance.
- (f) Neither interest nor any other charge shall accrue on liabilities of a bankrupt bank after the bankruptcy decision takes effect.
- (g) Transfers of shares made after the bankruptcy decision takes effect, except for transfers made with the prior consent of the MMA, shall be void.
- (h) All legal acts of the bank that are done within 90 (ninety) days before the time of the decision whereby bankruptcy proceedings are opened against the bank shall upon application of the receiver be declared null and void by the MMA if the bank and its counterparty in the act knew or should have known at the time of the act that the act would damage the interests of creditors of the bank. Such knowledge shall be presumed whenever the act consists of:
  - (1) a gift or other transfer without consideration to any person;

- (2) a payment or transfer to an owner, administrator or employee of the bank, unless such owner, administrator or employee shows to the satisfaction of the Court that the payment or transfer concerned his employment by the bank or concerned an account maintained with the bank, and was not unusual in size, or that he did not know that the payment or transfer would damage interests of creditors of the bank;
- (3) a payment or transfer before its due date or the transfer of collateral for a debt before the due date of the debt;
- (4) the conclusion of a contract imposing obligations on the bank that is significantly more onerous than the obligations imposed on the other party or parties to the contract;
- (5) an arrangement between the bank and one or more other persons, other than an eligible financial contract defined in section 99 of this Act, permitting an offset between rights and obligations of the bank that without such arrangement would not have been permissible before the time of the bankruptcy decision;
- (6) interbank transfers between a domestic branch of a foreign bank and such foreign bank or its branches or subsidiaries abroad.

**Finality in payment and securities settlement systems** 94.

- (a) Notwithstanding the provisions of paragraph (d) of section 72 of this Act, subparagraph (b) (1) of section 80, paragraph (g) and subparagraphs (h) (2) and (3) of section 93, stating that certain transactions shall be void, the validity of transactions made through payment and securities settlement systems shall be determined in the following manner:
  - (1) irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by the MMA shall be legally enforceable and binding on third parties, even in the event of a decision of the Court opening bankruptcy proceedings against the bank, but only if the transfer orders become irrevocable before the bankruptcy decision takes effect; or
  - (2) where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system after a court decision opening bankruptcy proceedings against the bank takes effect and the transfer orders are carried out on the day of the decision

of the Court, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the bankruptcy decision before the transfer orders became irrevocable.

- (b) No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the decision of the Court opening bankruptcy proceedings against a bank takes effect shall lead to the unwinding of a netting by a payment or securities settlement system recognized as such by the MMA because of that decision.
- (c) For the purpose of this section a transfer order entered into a money or securities settlement system becomes irrevocable at the time defined by the rules of that system.

**Transfers of bank  
shares, assets and  
liabilities** 95.

- (a) In the interests of preserving the soundness of the banking system and to maximize the value of a bank for its creditors, in the event that the receiver, with the concurrence of the MMA, determines that engaging in a transaction or series of transactions set forth in subparagraphs (1) and (2) of this paragraph is necessary, the receiver shall then provide notice of the intended action to the Court for its approval:
  - (1) transfer all or substantially all of the shares in capital stock of the bank; or
  - (2) transfer all or substantially all of the assets, of the assets of the bank, or all or substantially all of the liabilities of the bank, or both.

The approval of the Court shall not be necessary for transactions other than those referred to in subparagraphs (1) and (2) of this paragraph.

- (b) If the Court does not disapprove the transaction proposed within 15 days of its receipt of the notice described in paragraph (a) of this section, then the receiver may proceed to implement the proposal without further delay.
- (c) A transaction pursuant to paragraph (a) of this section may be proposed at any time after the filing of a petition for opening bankruptcy proceedings against the bank until the bank has been liquidated.
- (d) A transaction pursuant to paragraph (a) of this section shall not require the consent of the bank or any of its governing bodies. In reviewing a notice by a receiver of intent to cause a transfer of part of the obligations of the bank whereby some creditors would be excluded from the transfer, the Court shall take the

interests of such creditors into account. A transfer of liabilities shall become effective at the beginning of the day following the day of publication of a notice of the transfer in the *Government Gazette*.

**Property report of the bank**

96. (1) Within 30 (thirty) days or within any extended period given by MMA, from the date of the appointment of the receiver, the receiver shall prepare and submit to the MMA a property report of the bank. Such property report shall include the following:
- (1) the assets of the bank, including claims of the bank on account of unpaid subscriptions of capital stock of the bank, loan and guarantee agreements, and agreements of purchase or sale, as well as the book values and estimated liquidation values of the assets;
  - (2) the contracts pursuant to which property of the bank is held by other parties, including rental, lease and collateral agreements;
  - (3) the contracts pursuant to which the bank receives services; and
  - (4) the significant transactions entered into by the bank during the period of 30 (thirty) days immediately preceding the date of the bankruptcy decision.
- (b) The report shall be updated quarterly and shall be made available at the MMA for inspection by the creditors of the bank whose claims are included on the list of approved claims stated in section 98 of this Act.

**Registration of claims**

97. (a) Except as provided in paragraphs (a) and (b) of section 98, claims on a bankrupt bank shall be registered with the receiver in writing within 60 (sixty) days from the date that the decision of the Court opening bankruptcy proceedings against the bank is published in the *Government Gazette*. At the request of 3 (three) or more creditors submitted to the Court at least 10 (ten) days before the expiration of the period referred to in this paragraph, the Court may once extend this term for all creditors by 30 (thirty) days on grounds of equity.
- (b) Claims shall be registered together with documentary evidence of the claim and the following information:
- (1) the name and address of the creditor;
  - (2) the amounts of interest and other charges, penalties and taxes included in the principal amount of the claim; and



- (3) details concerning any mortgage, lien or guarantee securing the claim, including the name and address of any guarantor.
- (c) The decision of the Court opening bankruptcy proceedings against a bank suspends the authority of depositors to access their deposits recorded in the books or records of the bank. However, the receiver, acting pursuant to section 108 of this Act, and in order to mitigate hardship to depositors, may authorize depositors to access a limited amount of their funds as may be necessary to meet living expenses.
- (d) Creditors shall be given a registration receipt by the receiver on the registering of a claim, which shall be conclusive evidence of registration.

**Admission of claims**

**98.**

- (a) Only claims that are registered in accordance with section 97 of this Act may be admitted. However, claims on account of deposits recorded in the books or records of the bank shall be admitted for the amounts so recorded without requiring registration.
- (b) Registered claims recorded in the books or records of the bank shall be admitted by the receiver as recorded without further proof. However, claims registered for an amount that is less than the amount recorded by the bank shall be admitted only for the lesser amount claimed.
- (c) Claims secured by a mortgage or lien resting on assets of the bank may be registered by creditors of the bank for the amount by which the amount of the claim exceeds the expected sales value of the asset in a public auction. Any claim so registered shall not be admitted until the auction has taken place or title to the asset has been otherwise transferred pursuant to section 102 of this Act.
- (d) Claims whose value is uncertain may be admitted for a value estimated by the receiver.
- (e) After examining the registered claims, the receiver shall record the claims admitted by the receiver on a list of admitted claims and the receiver shall record the claims contested by the receiver on a list of contested claims specifying the reasons for the opposition. Registered claims contested in part shall be recorded on both lists for the admitted part and the contested part respectively. Both lists shall for each claimant specify name and address, the amounts of the claims, and whether the claims are secured by collateral. Claims shall be listed together, in the order of their priority of payment.

- (f) Both lists specified in the paragraph (e) of this section shall be completed and submitted to the Court for approval within 30 (thirty) days after the deadline for registration of claims. Thereafter, the receiver shall submit quarterly updated lists to the Court for approval. Before approving the lists, the Court may move claims from one list to the other in consultation with the receiver. The Court may specify the evidence required for the approval of contested claims.
- (g) The Court shall set dates for hearings where creditors whose claims are contested may submit evidence to prove their claims to the receiver and the Court, provided that such hearings shall be held not later than 60 (sixty) days after the date on which the list of contested claims is submitted to the Court. Creditors shall be notified of the date of each hearing by a written notice sent to the creditor's address and by notice placed by the receiver in the *Government Gazette*. No creditor need be notified of a hearing in writing more than once for the same claim. Following the hearing, the Court shall decide whether the contested claims shall be approved or rejected. Claims for which the creditor fails to appear at the hearing of which the creditor has notified in writing shall be regarded as rejected by the Court. Creditors whose claims have been rejected by the Court shall be notified by the receiver in writing.
- (h) The approval by the Court of claims shall be final. Claims approved by the Court shall be removed from the list of claims admitted by the receiver or the list of claims contested by the receiver, and be recorded on a list of approved claims, a copy of which shall be kept by the Court and the receiver. Creditors whose claims have been approved by the Court shall be notified by the receiver in writing.
- (i) No payment shall be made by the receiver on account of claims that are rejected by the Court. The creditor whose claim has been rejected by the Court may appeal the decision of the Court to the High Court within 2 (two) weeks after the date of receipt of notice of the decision.

**Set off and netting**

- 99.** (a) Except as otherwise stated in this section, no provision of this Act and no decision made under this Act shall prevent or prohibit the set off by operation of law of obligations between a bankrupt bank and its contractual counterparties. However, the receiver may prohibit the following:
- (1) the set off of deposits against loan balances where the effect, as determined by the receiver, would be to unfairly prefer some depositors

over others, and

- (2) the set off of deposits by directors, officers and employees of the bank.
- (b) In determining the financial obligations and rights between a bankrupt bank and its contractual counterparties, effect shall be given to the termination and set off provisions of eligible financial contracts between them. The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the bank on the counterparty or shall be admitted after its registration as a claim of the counterparty on the bank. In this paragraph, “eligible financial contract” means any of the following agreements:
- (1) a currency or interest rate swap agreement;
  - (2) a basis swap agreement;
  - (3) a spot, future, forward or other foreign exchange agreement;
  - (4) an agreement providing for a cap, collar or floor transaction;
  - (5) a commodity swap agreement;
  - (6) a forward rate agreement;
  - (7) a repurchase or reverse repurchase agreement;
  - (8) a spot, future, forward or other commodity agreement;
  - (9) an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities;
  - (10) any derivative, combination or option in respect of, or an agreement similar to, any of the agreements referred to in subparagraphs (1) to (9);
  - (11) any master agreement in respect to an agreement referred to in subparagraphs (1) to (10);
  - (12) any master agreement in respect of a master agreement referred to in subparagraph (11);

(13) a guarantee of the liabilities under an agreement referred to in subparagraphs (1) to (12); and

(14) any agreement stated to be an “eligible financial contract” in a regulation issued by the MMA;

and “net termination value” referred in this section means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

(c) Except as provided by section 94 of this Act, no set off shall be allowed with respect to claims acquired and debts assumed with respect to a bank after the Court decision opening bankruptcy proceedings against the bank takes effect or with respect to claims acquired and debt assumed in bad faith before that decision takes effect.

<b>Termination contracts</b>	<b>of 100.</b>	All current contracts or portions of contracts of a bankrupt bank for the delivery of goods or services, including contracts of sale, rental and lease contracts, hire purchase contracts and employment contracts, may be terminated unilaterally by the receiver within a reasonable time, and not exceeding 60 (sixty) days after the petition for opening bankruptcy proceedings has been granted. However, any party or beneficiary to such a contract may register a claim for compensation for breach of contract, which compensation shall be limited to direct compensatory damages up to the date of termination of the contract by the receiver, with interest to the date of payment, but which shall not include damages for pain and suffering, or any damages for lost profits or lost opportunities.
<b>Negotiated settlements</b>	<b>101.</b>	With the prior approval of the MMA, the receiver for a bank may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank. No such settlement shall be subject to review or appeal.
<b>Secured claims</b>	<b>102.</b>	(a) Assets securing an approved claim of a creditor against the bank shall be sold in a commercially reasonable manner and the secured creditor shall be deemed repaid in full to the extent that proceeds of the sale provide sufficient funds to cover the approved claim. provided, however, that the receiver may, in his discretion, agree to transfer the asset serving as collateral to the secured creditor in satisfaction of the claim. If proceeds of the sale exceed the approved value of a claim, then the excess funds shall be remitted to the receiver for inclusion in the assets of the bank available for distribution to creditors as provided in section 103 of this Act. If the proceeds of the sale are insufficient to satisfy the approved value of a claim in full, then the balance shall be treated as

an unsecured claim of the creditor against the bank pursuant to section 103 of this Act.

- (b) In the case of secured claims of the bank against other persons, if the claim is due on demand or has matured, or if the maturity of the claim can be accelerated, then the assets securing the bank's claim shall be placed at the disposal of the receiver upon the receiver's request. The assets shall be sold in a commercially reasonable manner or the receiver may take possession of the asset for use by the receivership and the bank shall be deemed repaid in full to the extent that the proceeds of the sale generate sufficient funds to cover the claim. If proceeds of the sale exceed the value of the bank's claim, then the excess funds shall be remitted to the owner of the assets. If the proceeds of the sale are insufficient to satisfy the value of the bank's claim in full, then the receiver may proceed against the obligor to recover the deficiency. Secured claims of the bank against other persons that are not yet mature where the maturity cannot be accelerated under the terms of any applicable agreement may be sold by the receiver without the consent of such other person.
- (c) Assets shall be deemed to have been sold in a commercially reasonable manner when they are disposed of as follows:
  - (1) securities, foreign currencies and other assets that can be readily sold at market sold in the markets where they are traded; and
  - (2) sold at public auction. However, if the receiver determines that a reasonable price cannot be obtained for assets in a public auction, the MMA may authorize the receiver to sell the assets privately at a price approved by the MMA.
- (d) Any dispute between the receiver and a secured creditor as to the value of an asset securing a claim shall be resolved by sale of the asset at public auction, in which event the sales price at public auction shall be conclusive as to the value of the asset.
- (e) with respect to assets other than those set forth in subparagraph (c) (1) of this section, the receiver may satisfy the claim of any secured creditor by payment to such creditor without need for a public auction. In such an event, the receiver may rely on an appraisal of an independent party of the assets in question.

**Priority of payments**      **103.** The assets of a bankrupt bank shall be distributed among its creditors in the following order of priority:

- (a) salary and benefit payments to employees of the bank, excluding any remuneration to members of the board of directors and executive officers, as accrued to the date of the decision to open bankruptcy proceedings, and provident fund contributions or other similar premiums relating to employees of the bank due over a period of not more than 1 (one) year preceding the date of the bankruptcy decision;
- (b) all costs and expenses on account of the administration of the bankruptcy;
- (c) liabilities of the bank on account of conservatorship and rehabilitation;
- (d) claims with regard to deposits that are not in the form of debt securities up to a maximum amount of 100,000/- (one hundred thousand) Rufiyaa per depositor;
- (e) any claims of depositors not paid under paragraph (d) of this section together with claims of unsecured creditors;
- (f) unpaid taxes in the Maldives;
- (g) any claims relating to subordinated debt.

The remaining assets shall be transferred to the shareholders of the bank *pro rata* to their respective ownership shares.

#### **Liquidation plan**

- 104.** (a) Within 90 (ninety) days from the date of the decision of the Court opening bankruptcy proceedings against a bank, the receiver shall prepare and submit to the MMA for its approval a liquidation plan for the bank. The plan shall include the following documents and reports:
- (1) a current *pro forma* balance sheet showing the assets and liabilities of the bank valued at their estimated liquidation value and a *pro forma* balance sheet of the expected assets and liabilities of the bank after 3 (three) months. The balance sheets shall show liabilities as admitted claims of creditors as well as approved claims, contested claims and claims of creditors approved by the Court;
  - (2) quarterly statements of past and projected income and expenses of the bank;
  - (3) a progress report on the sale and on plans for the sale of major assets of the bank;

- (4) a report on the judicial or extrajudicial pursuit of claims of the bank, including court action to obtain annulment of fraudulent agreements and the transfers made and rights created by them;
  - (5) a report on illegal activities of administrators of the bank and actions to obtain compensation for the bank;
  - (6) a report on the continuation or termination of ongoing contracts, such as insurance, employment and service contracts of the bank, including a detailed analysis of financial provisions for bank employees;
  - (7) a report on the liabilities of the bank and a schedule of expected payments to creditors of the bank during the next quarter; and
  - (8) a report on the costs and expenses of the receivership as of the date of the liquidation plan, and an estimate of future costs and expenses.
- (b) The liquidation plan shall be updated quarterly. After its approval by the MMA, the liquidation plan shall be available for inspection by the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to section 98 of this Act.
- Recapitalization of bankrupt banks**      **105.** (a) No bankrupt bank shall be recapitalized in whole or in part with public funds except as provided by section 78 of this Act.
- (b) A bankrupt bank may be recapitalized with private funds provided that the major shareholders, directors and executive officers are fit and proper persons, the recapitalized bank will meet all financial and other criteria that would be applicable were it being organized as a new bank, and the MMA approves the recapitalization plan.
- No compromise with creditors**      **106.** Notwithstanding the provisions of section 101 of this Act stating that negotiated settlements may be entered into with creditors, there shall be no compromise or other arrangement with groups of creditors concerning a bankrupt bank.
- General meetings and committee of creditors**      **107.** (a) There shall be no general meeting of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver, the MMA decides that such meeting is desirable to achieve an efficient liquidation of the bank.
- (b) There shall be no committee of creditors of a bankrupt bank unless, at the request of the receiver, the MMA

decides that such committee is desirable to represent and protect the interests of one or more classes or groups of creditors.

- (c) The decision of the MMA authorizing a general meeting of creditors of a bankrupt bank or a committee of creditors shall specify the tasks of the meeting or the committee and the scope of its activities.

**Immediate advances to depositors**      **108.**      Claims on account of demand or other deposits with a bankrupt bank that are not in the form of debt securities may be paid in advance of any other distribution to unsecured creditors up to a maximum amount of 50% (fifty percent) of deposit per depositor.

**Distribution payments**      **of 109.**      (a) Subject to section 103 of this Act, approved claims shall be ranked and combined according to their priority of payment and recorded in a distribution schedule. Except for payments in accordance with section 108 of this Act, the amounts to be paid on claims of the same class shall be determined on the basis of the same percentage applied to the amount of available funds.

(b) At any time, and consistent with section 103 of this Act, the receiver may propose and the MMA may approve a distribution schedule of payments to be made to creditors of the bank with approved claims. Any creditor dissatisfied with the amount to be paid on his claim may obtain judicial review thereof in the Court pursuant to section 67.

(c) Upon the approval of a distribution schedule by the MMA, the receiver shall make the payments listed in that distribution schedule. Amounts included in a distribution schedule that cannot be paid because the creditors cannot be identified or contacted shall be deposited in an account with the MMA. The receiver shall publish a notice in the *Government Gazette* and a newspaper of general circulation inviting these creditors by name to come forward. The amounts so deposited shall remain available for payment to the creditors or their successors for 10 (ten) years, at which time the unpaid amounts shall be transferred to the Ministry of Finance and Treasury, provided, however that the owner shall be entitled at any subsequent time to claim the funds from the Ministry of Finance and Treasury upon providing satisfactory evidence of entitlement to such funds.

**Bankruptcy proceedings concerning branch or representative office**      **110.**      (a) Bankruptcy proceedings may be opened against a domestic branch or a domestic representative office of a foreign bank:



- (1) if any of the grounds listed in section 70 of this Act applies to such branch or representative office as if it were a separate legal entity; or
  - (2) at the petition of the MMA to open bankruptcy proceedings against a domestic branch or representative office of a foreign bank, if bankruptcy proceedings have been opened against the foreign bank in the country where its head office is located or where it principally carries on business.
- (b) The provisions of this Chapter shall apply to the domestic branch offices and domestic representative offices of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any such office shall be attributed to that single legal entity in applying the provisions of this Chapter. The conservator shall be authorized to take all actions with respect to such foreign bank as could be taken, were it to be a domestic bank, by the authorized manager or shareholders at the general meeting of shareholders.
  - (c) At the time that the decision of the Court opening bankruptcy proceedings against a domestic branch office or a domestic representative office of a foreign bank is served on that office, the foreign bank shall cease all banking activities and services in the Maldives, except for banking activities and services carried out by or with the prior written authorization of the receiver appointed for that office.
  - (d) In its application in bankruptcy proceedings opened against a branch office or representative office of a foreign bank, section 99 of this Act only applies to the set off and netting of obligations resulting from or otherwise relating to the business of the foreign bank in the Maldives.
  - (e) Bankruptcy proceedings in the Maldives opened against a branch office or representative office of a foreign bank shall not limit the rights of creditors of the foreign bank to pursue the assets of the foreign bank in satisfaction of their claims.

**Cross border bank 111.  
insolvency**

- (a) In order to promote equal access of domestic and foreign creditors to a universal pool of assets of a bankrupt bank with cross border activities:
  - (1) if a bankrupt domestic bank has branch offices or representative offices in a foreign country, the MMA shall cooperate as much as possible with the authorities of that country;

- (2) if a creditor of a bankrupt domestic bank has received partial payment on his claims in a foreign country, the balance of his claims may be presented for payment together with costs incurred, in the proceeding in the Maldives;
  - (3) the Court shall decide to what extent foreign bankruptcy decisions, conservatory measures and bank rehabilitation measures concerning foreign banks should be recognized with respect to their domestic branch offices and representative offices; and
  - (4) if a foreign bank is in liquidation in the country where its head office is located or where it principally carries on business, the Court may at the request of the MMA authorize the transfer to the liquidator in that country of such assets of the foreign bank as the MMA shall deem advisable and in the interest of the creditors of that bank.
- (b) A receiver or conservator for any bank shall be the sole representative of such bank, its branches, offices and subsidiaries, wherever situated, and may take such action in the courts of the Maldives, or other jurisdictions, as may be necessary or appropriate to carry out the provisions of this Act.

**Consultations between the Court and the MMA**

**112.** Before taking any decision affecting a bank declared bankrupt, the Court shall inform the MMA of its proposed decision and afford the MMA a reasonable opportunity to give its advice to the Court concerning the proposed decision. In making a decision on bankruptcy proceedings against a bank, the Court shall take account of the advice of the MMA. In the event that the Court rejects all or part of the advice of the MMA, the decision shall describe the advice so rejected and give the grounds for the rejection.

**Termination of bankruptcy proceedings**

**of 113.**

- (a) Upon termination of the receiver's tasks, the receiver shall be discharged by decision of the Court, but not before the receiver has prepared and submitted to the Court a report of the receivership. The decision of discharge by the Court shall direct where the books and records of the bank and the receivership shall be deposited.
- (b) The bankruptcy proceedings against a bank shall be terminated by decision of the Court when all assets of the bank have been liquidated and the proceeds paid to the creditors of the bank or deposited with the MMA to remain available for payment to creditors of the bank pursuant to paragraph (c) of section 109 of this Act.

- (c) The decision of the Court terminating bankruptcy proceedings against a bank shall be published by the MMA in the *Government Gazette*.

**Acts and sections repealed 114.**

- (a) At such time as this Act enters into effect:
  - (1) sections 29 and 30 of the Law No. 6/81 (Maldives Monetary Authority Act 1981) shall be repealed;
  - (2) the Regulations for Banks and other Financial Institutions (effective July 1, 1988) shall be repealed;
  - (3) the following Regulations issued by the MMA under authority of the Law No. 6/81 (Maldives Monetary Authority Act 1981) shall be deemed to be authorized under this Act and shall continue in effect.
    - (a) Regulation on Capital Adequacy
    - (b) Regulation on Single Borrower Limits
    - (c) Regulation on Limits on Loans to Related Persons
    - (d) Regulation on Transactions with Related Persons
    - (e) Regulation on Asset Classification and Provisioning
    - (f) Regulation on Inter-Bank Exposure
    - (g) Regulation on External Audits
    - (h) Regulation on Publication and Disclosure
    - (i) Regulation on Fit and Proper Requirements
    - (j) Regulation on Corporate Governance
    - (k) Regulation on Foreign Currency Exposure Limits
- (b) In case of inconsistency with a provision of any the Law No. 6/81 (Maldives Monetary Authority Act 1981), or the Law No. 10/96 (Maldives Companies Act), or any other law of the Maldives, including the relevant provision of this Act shall prevail.

<b>Entry into force</b>	<b>115.</b> This Act shall enter into force after its passage and from the date of its ratification and publication in the <i>Government Gazette</i> .
<b>Definitions</b>	<p><b>116.</b> Unless the context otherwise requires, the following terms shall have the following meanings:-</p> <p>“<i>ultimate beneficial owner</i>” means, the persons other than the legal owner of shares who is entitled to the dividend of shares.</p> <p>“<i>hedge</i>” means reducing the business risks of a price change in the future.</p> <p>“<i>risk-adjusted asset</i>” means the bank assets that have a risk weighting applied to them or different categories of assets weighted according to categories of relevant risks applied to them.</p> <p>“recapitalization” means increasing a bank’s capital.</p> <p>“<i>receiver</i>” means a person appointed by the MMA to collect the assets of an insolvent bank and distribute the proceeds to satisfy liabilities in accordance with the priorities specified in this Act.</p> <p>“<i>bank</i>” means a person holding a licence or permit under this Act to engage in the banking business, all or one or part of banking activities listed in section 25 of this Act.</p> <p>“<i>bank holding company</i>” means a company that owns or controls a bank.</p> <p>“<i>banking service</i>” or “<i>banking activities</i>” means the activities that are listed in section 25.</p> <p>“<i>banking business</i>” means the business of receiving deposits of money or other repayable funds from the public for the purpose of making credits or investments for its own account;</p> <p>“<i>Board</i>” means the Board of Directors of a bank.</p> <p>“<i>branch</i>” means a place of business forming a legally dependent part of a bank where banking activities are conducted.</p> <p>“<i>bridge bank</i>” means a bank organized under Chapter 15 of this Act.</p> <p>“<i>capital base</i>” means capital base as set forth in regulations of the MMA.</p>

“*Court*” means the Civil Court.

“*company*” means a joint stock company or corporation.

“*control*” shall be deemed to exist over a company if a person:

- (a) directly or indirectly, or acting through one or more persons, owns, controls, or holds with power to vote a minimum of 25% (twenty five percent) of the voting shares of the company;
- (b) has the power to elect more than 50% (fifty percent) of the directors of the company; or
- (c) exercises a controlling influence over the company, as determined by the MMA.

“*credit exposure*” means:

- (a) any disbursement or commitment to make a disbursement of a sum of money in exchange for the right to receive repayment of the amount disbursed and outstanding and to payment of interest or service charge on such amount;
- (b) any guarantee issued subject to repayment;
- (c) any purchase at par or at discount of a debt security; and
- (d) other right to receive payment of a sum of money.

“*conservator*” means a person appointed by the MMA to operate a troubled bank in order to conserve, manage and protect its assets on an interim basis until the bank has been stabilized, rehabilitated, closed or otherwise resolved by the MMA.

“*qualifying holding*” means a direct or indirect holding by a person acting alone or through or in concert with one or more other persons in an undertaking which represents a minimum of 10% (ten percent) of the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding exists, as the MMA may determine.

“*designated branch manager*” means a person designated pursuant to paragraph (a) of section 16 of this Act as being responsible for the operations of a branch of a foreign bank in the Maldives.

*“executive officer”* means a person who is an employee of a bank licensed to conduct banking operations in the Maldives who, regardless of title, participates in policy-making functions, or is responsible for any material portion of the business activities of the bank, or is authorized to commit the bank’s funds by making loans or investments. The term includes the chairman of the board, the president, the managing director, vice president, the chief lending officer, the chief financial officer, the chief executive officer, general manager and the treasurer of a bank.

*“foreign”*, when applied to a legal entity or office or branch, means a legal entity or office or branch that is not a domestic legal entity or office or branch.

*“Islamic bank”* means a legal entity licensed under this Act to engage in banking business carrying out its banking activities according to the precepts and principles of Islam, in accordance with any guidance that may be provided by the MMA.

*“MMA”* means the Maldives Monetary Authority.

*“subsidiary”* means any legal entity in which another person or group of persons acting in concert holds a minimum of 50% (fifty percent) of the voting shares; or a qualifying holding that permits such other person or group of persons to exercise effective control over the management or policies of the legal entity in which the holding exists.

*“administrator”* means a person who is a director, executive officer, member of the audit committee of a bank, or, in the case of a foreign bank, the designated branch manager.

*“affiliate”* means a company that controls a bank, any other company that is controlled by the company that controls the bank, and any other company as determined in regulation by the MMA.

*“major shareholder”* means a person who, directly or indirectly, holds a minimum of 10% (ten percent) of the capital or the voting rights of a legal entity, or who through other means, in the opinion of the MMA, is able to control the legal entity of which he is deemed to be a major shareholder.

*“managing director”* means the person who is responsible for the management of day-to-day operations of the bank and for execution of the policies established by the bank’s board of directors.

*“money brokering”* means providing short term loans to a financial institution on a profit or commission basis.

*“fit and proper”* person means a person who is regarded as honest and trustworthy and whose professional qualifications, background, experience, financial position, or business interests qualify that person, in the judgment of the MMA and in accordance with its regulations, to be an owner, administrator, conservator or receiver of a bank. No person shall be regarded as fit and proper if the person:

- (a) has been convicted of a criminal offense for which the person was or could have been sentenced to imprisonment unless such conviction was based on his political activities;
- (b) has been declared bankrupt by a court of law within the previous 2 (two) years;
- (c) has been disqualified or suspended from practicing a profession on grounds of personal misconduct unless such disqualification or suspension was based on his political activities; or
- (d) has been declared unfit to manage a company by a court of law or under an order issued by a competent agency;

*“currency”* means the currency of the Republic of the Maldives (consisting of bank notes and coins).

*“person”* means a natural person or a legal entity.

*“book value”* means book value of an asset.

*“representative office”* or *“a representative office”* means a place of business forming a legally dependent part of a bank where activities are limited to the provision of information and liaison functions, and where no banking business may be conducted and no deposits or other repayable funds may be received from the public.

*“list”* means the list of the names of banks in the Register of Banks to be maintained by the MMA;

*“domestic”*, when applied to a legal entity, means an entity whose head office is located in the Maldives and when applied to an office or a branch, means an office or branch that is located in the Maldives.

*“safe deposit box”* means any lockable item that is provided by the bank to safe keep items of customers

*“safe deposit box service”* means to safe keep items of customers in a lockable item by the bank.

*“debt security”* means:

- (a) any negotiable instrument of indebtedness giving the right to acquire another negotiable debt security that is easily transferrable;
- (b) any instrument giving the right to acquire another negotiable debt security; and
- (c) any negotiable instrument of indebtedness giving the right to acquire another negotiable debt security that is transferrable by subscription or exchange. Such negotiable debt securities may also include those in certified or in book-entry form;

*“deposit”* means a sum of money received by a person on terms under which the deposit will be repaid or transferred to another person, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by the depositor and such person.

*“director”* means a person who is a member of the board of directors of a bank licensed to conduct banking business or activities in the Maldives.

