



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER T60

**TRUST COMPANIES AND
OFFSHORE BANKING ACT**

Showing the Law as at 15 December 2010

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 8/2003, in force 14 November 2003

Act 15/2005, in force 9 December 2005

Act 5/2008, in force 27 February 2008

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TRUST COMPANIES AND OFFSHORE BANKING ACT

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TRUST COMPANIES AND OFFSHORE BANKING ACT

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. (1) In this Act —

“attorney-at-law” means an attorney admitted to practice before the Eastern Caribbean Supreme Court in Anguilla;

“auditor” means a person who is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Governor as a reputable auditing association;

“authorised agent” means an authorised agent referred to in section 20;

“bank” means a person carrying on banking business;

“banking business” means—

(a) the business of receiving funds through the acceptance of money deposits payable on demand or after a fixed period or after notice or any similar operation through the frequent sale or placement of bonds, certificates, notes or other securities, and the use of such funds either in whole or in part for loans or investment for the account and the risk of the person doing such business; and

(b) any other activity prescribed by the Governor as constituting customary banking practice that a bank engaged in activities described in paragraph (a) may additionally be authorised to do;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

(Act 15/2005, s.1)

“company” means a company incorporated or continued under the Companies Act;

“Court” means the High Court;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“domestic bank” means a person holding a licence under the Banking Act;

“foreign company” means a foreign company registered under Division 3 of Part 4 of the Companies Act;

“foreign regulatory authority” means an authority in a jurisdiction outside Anguilla that exercises functions corresponding or similar to the functions exercised by the Commission;

(Act 15/2005, s.1)

“Inspector” means the Inspector of Trust Companies and Offshore Banks appointed under section 32;

“international business company” means a company incorporated or continued under the International Business Companies Act;

“offshore banking business” means banking business carried on in or from within Anguilla in a currency other than Eastern Caribbean dollars with a non-resident of Anguilla;

“offshore banking licence” means a licence issued under section 6;

“prescribed” means prescribed by regulations made by the Governor under section 40;

“trust” means trust as defined in the Trusts Act;

“trust business” means carrying on the business of acting as trustee of property;

“trust company licence” means a licence issued under section 12.

(2) Subject to subsection (3), for the purposes of this Act, the following are regarded as non-residents of Anguilla—

- (a) an international business company;
- (b) a company or an LLC formed or continued under the Limited Liability Company Act that, at the relevant time does not engage in any revenue generating activities in Anguilla.

(3) An LLC or a company shall not be regarded as engaging in a revenue-generating activity in Anguilla in respect of—

- (a) any offshore banking business conducted with it by a person holding an offshore banking licence; or
- (b) any activity which the Governor may prescribe as exempt from paragraph (2)(b).

(4) For greater certainty—

- (a) a company;
- (b) an international business company; or
- (c) an LLC formed or continued under the Limited Liability Company Act;

that carries on banking business or trust business outside Anguilla carries on banking business or trust business, as the case may be, from within Anguilla.

Application

2. (1) This Act does not apply to the Caribbean Development Bank.
- (2) For greater certainty—
- (a) a person, including a domestic bank, that holds an offshore banking licence—
 - (i) is exempt from the provisions of the Banking Act in respect of offshore banking business, and
 - (ii) is subject to the provisions of the Banking Act in respect of banking business other than offshore banking business; and
 - (b) a person holding an offshore banking licence or a trust company licence, other than a domestic bank, does not require a licence under the Trades, Businesses, Occupations and Professions Licensing Act in respect of its offshore banking or trust business.

PART 2

OFFSHORE BANKING BUSINESS

Interpretation

3. In this Part—

“licence” means an offshore banking licence;

“licensee” means a person holding an offshore banking licence.

Licence required

4. (1) No person, including a domestic bank, shall carry on offshore banking business unless he holds a licence that is not suspended under section 16.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000, to a term of imprisonment of 2 years or to both.

Application for licence

5. (1) A company or a foreign company may apply to the Governor for a licence.
- (2) An application under subsection (1) must—
- (a) contain the information and be in the form prescribed; and
 - (b) be accompanied by the documentation prescribed.

Issuance of licence

6. If the Governor is satisfied—

- (a) that an applicant is—
 - (i) a fit and proper person, and
 - (ii) is qualified,to carry on offshore banking business;
- (b) that the persons having any share or other interest, whether legal or equitable, in the applicant and its directors and officers are fit and proper persons to have an interest in or be concerned with the management of a licensee, as the case may be;
- (c) that the applicant intends, if issued with a licence, to commence offshore banking business;
- (d) that the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licensing; and
- (e) that issuing the licence is not against the public interest;

he may issue a licence to the applicant subject to such terms and conditions as he thinks fit.

Restrictions on business that may be carried on by licensee

7. A licensee that is not a domestic bank may not—
- (a) invest in any asset that represents a claim on any person resident in Anguilla except a claim resulting from—
 - (i) a transaction with another licensee, or
 - (ii) the purchase of bonds or other securities issued by the Government, a government agency or a company in which the Government is the sole or majority beneficial owner; or
- (Act 8/2003, s.75)*
- (b) without the written approval of the Governor, carry on any offshore banking business other than that for which the licence has been issued.

Maintenance of capital

8. (1) A licensee, other than a domestic bank, must ensure that its paid-up share capital is maintained in an amount not less than \$250,000, or the equivalent in another currency, or such greater sum as may be ordered under subsection (2).

(2) The Governor may, on the recommendation of the Inspector, order a licensee to increase its fully paid-up capital to such greater amount as he may determine having regard to the nature of the offshore banking business being, or sought to be, undertaken.

(3) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

(4) Where an offence under this section is committed by a company, a director or officer of the company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to a fine of \$25,000, to a term of imprisonment for 6 months or to both.

PART 3

TRUST BUSINESS

Interpretation

9. In this Part—

“licence” means a trust company licence;

“licensee” means a person holding a trust company licence.

Licence required

10. (1) Subject to subsection (2), no person shall carry on trust business in or from within Anguilla unless he holds a licence that is not suspended under section 16.

(2) Subsection (1) does not apply to—

(a) a domestic bank that holds an offshore banking licence that is not suspended; or

(b) an attorney-at-law in so far as he is engaged in trust business solely in the practice of law.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000, to a term of imprisonment of 2 years or to both.

Application for licence

11. (1) A company, a foreign company or, subject to section 13(2), an international business company may apply to the Governor for a licence.

(2) An application under subsection (1) must—

(a) contain the information and be in the form prescribed; and

(b) be accompanied by the documentation prescribed.

Issuance of licence

12. If the Governor is satisfied—

(a) that an applicant is—

(i) a fit and proper person, and

- (ii) is qualified,
to carry on trust business;
- (b) that the persons having any share or other interest, whether legal or equitable, in the applicant and its directors and officers are fit and proper persons to have an interest in or be concerned with the management of a licensee, as the case may be;
- (c) that the applicant intends, if issued with a licence, to commence carrying on trust business in or from within Anguilla;
- (d) that the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licensing; and
- (e) that issuing the licence is not against the public interest;

he may issue a licence to the applicant subject to such terms and conditions as he thinks fit.

Class and extension of licence

13. (1) A licence shall be in one of the following classes—

- (a) a general trust company licence;
- (b) a restricted trust company licence.

(2) A general trust company licence must not be issued to an international business company.

(3) A restricted trust company licence is subject to the restriction that the licensee does not undertake trust business on behalf of persons other than those listed in the undertaking accompanying the application for the licence or any amendment to the list filed with the Inspector.

(4) An applicant for a general trust company licence may apply for the licence to extend to a wholly-owned subsidiary of the applicant.

(5) An application under subsection (4) must be made in writing to the Governor accompanied by—

- (a) the name of the subsidiary;
- (b) documentary proof sufficient to establish that the subsidiary is wholly owned by the applicant;
- (c) a description of the type of trust business being, or to be, carried on by the subsidiary;
and
- (d) any other information or documentation that the Governor considers necessary.

(6) The Governor may, upon granting a general trust company licence to the applicant, extend the licence to include any subsidiary referred to in subsection (4), subject to such terms and conditions as he thinks fit.

Maintenance of capital

14. (1) A holder of a general trust company licence, other than a domestic bank, must ensure that its paid-up share capital is maintained in an amount not less than \$250,000, or the equivalent in another currency, or such greater sum as may be ordered under subsection (3).

(2) A holder of a restricted trust company licence must ensure that its fully paid-up share capital is maintained in an amount not less than the amount prescribed by the Governor as being the minimum capital for a restricted trust company, or such greater sum as may be ordered under subsection (3).

(3) The Governor may, on the recommendation of the Inspector, order a licensee to increase its fully paid-up capital to such greater amount than that required under subsection (1) or (2) as he may determine having regard to the nature of the general or restricted trust business being, or sought to be, undertaken.

(4) A company that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine of \$25,000.

(5) Where an offence under this section is committed by a company, a director or officer of the company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to a fine of \$25,000, to a term of imprisonment for 6 months or to both.

PART 4

MATTERS APPLICABLE TO TRUST BUSINESS
AND OFFSHORE BANKING BUSINESS**Interpretation**

15. In this Part—

“licence” means an offshore banking licence or a trust company licence;

“licensed business” means the trust business or offshore banking business, as the case may be, that the licensee is licensed to carry on;

“licensee” means a person holding an offshore banking licence or a person holding a trust company licence.

*Revocation, Suspension and Surrender of Licence
and Variation of Terms of Licence***Revocation or suspension of licence**

16. (1) The Governor may at any time revoke or suspend a licence if it appears to him—

- (a) that the licensee—
- (i) is not a fit and proper person or is not qualified to carry on the licensed business,
 - (ii) is carrying on the licensed business in a manner detrimental to the public interest or to the interests of any of its creditors or, in the case of a holder of an offshore banking licence, of any depositors or, in the case of a holder of a trust company licence, of any beneficiary of a trust of which it is a trustee,
 - (iii) is insolvent,
 - (iv) has contravened or is in contravention of any provision of this Act, the Code of Practice issued under section 41 or the Anti-Money Laundering and Terrorist Financing Regulations,
(Am. in L.R. 15/12/2010)
 - (v) has breached or is in breach of any term or condition of its licence,
 - (vi) has ceased to carry on the licensed business, or
 - (vii) has furnished the Governor or the Inspector with any false, inaccurate or misleading information whether on making application for a licence or subsequent to the issue of the licence; or
- (b) that any person having a share or interest in the licensee, whether equitable or legal, or any director or officer of the licensee is not a fit and proper person to have an interest in or to be concerned with the management of a licensee, as the case may be.

(2) The Governor shall revoke a licence if the licensee fails to pay the prescribed annual fee together with the appropriate late payment penalty in full on or before 30th June in the year in which the annual fee was due.

(Act 5/2008, s.1)

(3) Subject to subsection (4), the period of suspension of a licence under subsection (1) shall not exceed 90 days.

(Act 15/2005, s.2)

(4) If it is satisfied that is in the public interest to do so, the Court may, on the application of the Inspector, extend the period of suspension of a licence under this section for one or more further periods not exceeding 90 days each.

(Act 15/2005, s.2)

Appointment of administrator by the Court

17. (1) If a licence is or is about to be suspended or revoked under section 16, the Inspector may apply to the Court—

- (a) for the appointment of an administrator to take over and manage the licensed business then carried on by the licensee or carried on by it immediately prior to the revocation or suspension of its licence, as the case may be; or

- (b) for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act.
- (2) An application made under subsection (1) may be made on an *ex parte* basis.
- (3) On an application made under subsection (1), the Court may make such order as it considers necessary to safeguard—
 - (a) in the case of a holder of an offshore banking licence, the interests of any depositors; or
 - (b) in the case of a holder of a trust company licence, the interests of any beneficiary of a trust of which the licensee is a trustee.
- (4) Without limiting subsection (3), an order made under that subsection may—
 - (a) grant an administrator the powers of a licensee under this Act;
 - (b) require the administrator to provide security;
 - (c) fix the remuneration of the administrator;
 - (d) require such persons as it considers necessary to appear before the Court for the purposes of giving information concerning the licensed business; and
 - (e) make any order that could be made by the Magistrate on an application made under section 33.

Surrender of licence

- 18.** (1) A licensee that ceases to carry on the licensed business may apply to the Governor to surrender its licence.
- (2) An application under subsection (1) must—
 - (a) contain the information and be in the form prescribed; and
 - (b) be accompanied by the documentation prescribed.
 - (3) If the Governor is satisfied that—
 - (a) the licensee has ceased to carry on the licensed business and that—
 - (i) in the case of a person holding an offshore banking licence, the licensee has repaid all deposits accepted by it, or
 - (ii) in the case of a person holding a trust company licence, the licensee has properly distributed, transferred or otherwise dealt with all trust assets that were held or administered by it; or
 - (b) if the licensee is being wound up, that it is solvent and is able on demand—

- (i) in the case of a company holding an offshore banking licence, to repay all deposits accepted by it, or
- (ii) in the case of a person holding a trust company licence, to properly distribute, transfer or otherwise deal with all trust assets that are or were held or administered by it;

the Governor may approve the surrender.

(4) In the case of a surrender of a licence under paragraph (3)(b), the Attorney General or the Inspector may apply to the Court for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act.

Variation of terms or conditions of licence

19. The Governor may, upon giving reasonable notice to the licensee—

- (a) vary or cancel any terms or conditions imposed on the issue of a licence or under the extension of a licence under section 13(4); or
- (b) impose new terms or conditions.

Principal Office and Authorised Agent

Principal office and authorised agent

20. (1) A licensee must have—

- (a) a principal office in Anguilla; and
- (b) two authorised agents who comply with subsection (2).

(2) Each authorised agent—

- (a) must be an individual resident in Anguilla; and
- (b) must, prior to his appointment—
 - (i) have consented in writing to act as an authorised agent, and
 - (ii) be approved in writing as an authorised agent by the Inspector.

(3) The licensee must appoint its first authorised agents not later than the day of the issue of its licence and shall forthwith notify the Inspector that the approved appointments have been made.

(4) A licensee may not change the address of its principal office or appoint an authorised agent without the prior written approval of the Inspector.

(5) The Inspector in his discretion may in writing revoke an approval given under this section.

(6) Subject to subsection (7), a licensee that contravenes this section commits an offence and is liable on summary conviction—

- (a) in respect of a breach of subsection (1), to a fine of \$25,000; and
- (b) in respect of a breach of subsection (3) or subsection (4), to a fine of \$10,000.

(7) A licensee does not contravene subsection (1) when an authorised agent dies or resigns or has his approval revoked under subsection (5) if—

- (a) the licensee forthwith submits to the Inspector for approval the name of a person to replace the authorised representative; and
- (b) appoints an authorised agent forthwith after he is approved;

so long as the licensee has at least 1 authorised agent.

(8) This section does not apply to a domestic bank.

(9) The authorised agents of a licensee shall in their capacity as representatives of the licensee ensure compliance with any statutory requirements under this Act.

Operation outside Anguilla

21. (1) A licensee must not operate a branch, agency or office outside Anguilla without the prior approval of the Inspector.

(2) A licensee who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000.

Restrictions on and Change of Names

Restrictions on use of certain terms

22. (1) No person other than a licensee shall, except with the authority of the Governor or under the authority of any other written law—

- (a) use, whether in the name under which he is registered or in the description or title under which he carries on business in or from within Anguilla and whether in English or in any language—
 - (i) the words “bank”, “savings” or “trust” or any derivative, or
 - (ii) any word that, in the opinion of the Governor, suggests trust business or offshore banking business; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on trust business or offshore banking business.

(2) The Governor may, by written notice, require a licensee who carries on offshore banking business or trust business under a name that is—

- (a) identical to that of any other person, whether within or outside Anguilla, or which so nearly resembles that name as to be likely to deceive;
- (b) likely to suggest falsely the patronage of or connection with some person whether within or outside Anguilla; or
- (c) likely to suggest falsely that he has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials;

forthwith to change the name and in default of compliance may revoke the licence.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000, to a term of imprisonment of 1 year or to both.

(4) A licensee who fails to change his name within 7 days of the date of receipt of a written notice under subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000 and to a daily default fine of \$500.

Change of name

23. A licensee shall not change its name without the prior written approval of the Inspector.

Transfer of Shares and Appointment of Directors

Transfer of shares

24. (1) No share or other interest, whether legal or equitable, in a licensee shall be issued, transferred or otherwise disposed of without the prior written approval of the Governor.

(2) The Governor may exempt any company from the provisions of subsection (1), subject to such terms and conditions as he thinks fit.

Number and appointment of directors

25. (1) A licensee shall have not less than 2 directors.

(2) Subject to subsection (3), no appointment of a director or other senior officer of a licensee shall be made without the prior written approval of the Inspector.

(3) Subsection (2) does not apply to a licensee that is exempted in writing by the Inspector.

(4) An exemption under subsection (3) may be granted subject to such terms and conditions as the Inspector considers fit and may be revoked by the Inspector in writing.

Exemption for domestic bank

26. Sections 24 and 25 do not apply to a domestic bank.

Obligations of Licensee

Annual fee

27. A licensee shall pay the prescribed annual fee on or before 15th January of each year and any penalties for late payment of such fee as may be prescribed by regulation.

(Act 5/2008, s.2)

Books and records

28. (1) A licensee shall keep within Anguilla—

- (a) such books and records as accurately reflect his licensed business; and
- (b) such further books and records in respect of its licensed business as the Commission may require.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 6 months or to both.

(Act 15/2005, s.3)

Display of licence

29. A licensee must prominently display its licence on the premises where its licensed business is carried on.

Accounts

30. (1) Every licensee shall have its accounts audited by an auditor annually or at such other periods as the Governor or the Inspector may require.

(2) The licensee shall forward the audited accounts to the Inspector within 6 months from the end of the financial year of the licensee unless prior written approval for an extension has been granted by the Inspector.

(3) Where a licensee changes its auditor, the licensee shall, when required by the Inspector, authorise the former auditor to disclose the circumstances that gave rise to the change, and when so authorised, the auditor shall disclose such circumstances.

Directions for the reporting of information

31. (1) The Inspector may, by notice published in the *Gazette*, issue directions to licensees for the making of returns, or the furnishing of documentation, to him for regulatory purposes.

(2) A notice under subsection (1) must specify the period within which returns must be made or documentation filed.

(3) Directions issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(4) A licensee that fails, within the period specified, to make a return or furnish documentation to the Inspector in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

*Administration***Inspector**

32. (1) There is established the office of Inspector of Trust Companies and Offshore Banks as a public office to which appointments are to be made in accordance with section 66 of the Constitution of Anguilla.

(2) Under the general supervision of the Governor, the Inspector is responsible for ensuring the proper administration of this Act.

(3) The functions of the Inspector include—

- (a) monitoring trust business and offshore banking business;
- (b) advising the Governor on all matters concerning the regulation and supervision of trust business and offshore banking business;
- (c) examining and evaluating all applications for—
 - (i) trust company licences, and
 - (ii) offshore banking licences,and making recommendations to the Governor concerning such applications;
- (d) examining and, if he thinks fit, reporting to the Governor upon returns made and documents filed by licensees under this Act;
- (e) where he thinks fit or when required by the Governor, the examination in such manner as he considers necessary, the affairs or business of any licensee for the purpose of satisfying himself that the provisions of this Act, the Code of Conduct issued under section 41 or the Anti-Money Laundering and Terrorist Financing Regulations are being complied with and that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;
(Am. in L.R. 15/12/2010)
- (f) the provision of assistance in the investigation of any offences under the laws governing banking and other commercial activities committed by the licensee, his directors, agents or officers; and
- (g) reporting to the Governor regarding the examination of any documents produced to him in the course of the performance of his functions.

(4) For the purposes of performing his functions under subsection (3), the Inspector shall be entitled—

- (a) to have access to and take copies of such books, records, vouchers, documents, cash and securities and all other financial instruments of any licensee;

- (b) to request such information, matter or thing from any person who, he has reasonable grounds to believe, is carrying on offshore banking business or trust business in contravention of any part of this Act; and
- (c) to call upon the authorised agent, or manager, of the licensee for such information or explanation;

as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(5) Where in the conduct of an examination of the affairs or business of a licensee carried out under paragraph (3)(e) the Inspector, or a person acting under his authority, obtains access to the name and title of a settlor or of an account of a depositor, he must not disclose the information obtained to any other person unless authorised to do so by order of the Court made on the application of the Inspector.

(6) The Court may make an order under subsection (5) if it is satisfied that—

- (a) the Inspector has adduced *prima facie* evidence of illegal activity; and
- (b) there are reasonable grounds for believing that the information sought to be disclosed will be of value in the investigation of that illegal activity.

(7) Notice of an application by the Inspector for an order permitting disclosure under subsection (5) must be served on the licensee from whom the Inspector obtained the document or information at least 5 days prior to the hearing or such shorter period as the Court may allow and the licensee shall be entitled to be heard at the hearing of the application.

(8) Where the Inspector is satisfied that there is *prima facie* evidence of illegal activity carried on by any licensee and for any reason is unable to obtain information he requires from such licensee, the Inspector may apply to the Magistrate for an order of the Magistrate directing the licensee to provide to the Inspector the information that he requires.

(9) Where the Magistrate is satisfied that the Inspector has adduced *prima facie* evidence of illegal activity carried on by a licensee and that the Inspector is unable to obtain such information as is referred to in subsection (8), the Magistrate shall, on application made by the Inspector, issue an order directing the licensee to provide to the Inspector such information.

(10) Any licensee who contravenes the order of the Magistrate commits an offence and is liable to a fine of \$25,000, to a term of imprisonment for 1 year or to both.

(11) With the written approval of the Governor, the Inspector may authorise in writing any person to assist him in the performance of his functions under this Act.

(12) If the Magistrate is satisfied by information on oath given by the Inspector or by a person authorised by the Governor to assist the Inspector that there is reasonable ground for suspecting that an offence against this Act has been or is being committed by a licensee, the Magistrate shall, on application made by the Inspector, issue an order authorising him to take such action as the Magistrate may consider necessary in the interest of the depositors or of the beneficiaries of any trust or other creditors of the licensee and to preserve any assets of the licensee.

Power of search

33. (1) If the Magistrate is satisfied by information on oath given by the Inspector or by a person authorised by him—

- (a) that a licence has been revoked or suspended under section 16;
- (b) that there are reasonable grounds for believing that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found on any premises or in any vehicle, vessel or aircraft specified in the information; or
- (c) that any document that ought to have been produced under section 32(4) and has not been produced is to be found at any premises or in any vehicle, vessel or aircraft specified in the information;

he may grant a search warrant authorising the Inspector, together with any other person named in the warrant, to enter the premises or any premises upon which the vehicle, vessel or aircraft may be located at any time within 1 month from the date of the warrant and to search the premises or the vehicle, vessel or aircraft.

(2) The Inspector or any other person authorised by a warrant to search any premises or any vehicle, vessel or aircraft—

- (a) may search every person who is found in or whom he has reasonable grounds to believe to have recently left, or to be about to enter, those premises or that vehicle, vessel or aircraft; and
- (b) may seize any document found on the premises or in the vehicle, vessel or aircraft that he has reasonable grounds for believing ought to have been produced under section 32(4).

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

Attorney General may apply to Court

34. Where a licensee or a person who has at any time been a licensee is being wound up voluntarily, the Attorney General may, when being requested by the Inspector, apply to the Court for leave to intervene on behalf of any interested party, if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust, or other creditors and the Court shall make such order as it shall consider appropriate.

*Miscellaneous***Insurance**

35. (1) The Inspector may by written notice require a licensee to effect a policy of insurance with an approved insurance company and maintain it.

(2) The policy of insurance shall insure against—

- (a) losses arising out of claims of negligence or breach of duty by the licensee or by an employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Inspector may stipulate;

in such amount and of such nature as the Inspector determines having due regard to the nature and type of business carried on by the licensee.

(3) The licensee shall effect the policy of insurance within the time specified in the notice or any extension of the time given by the Inspector.

(4) The licensee shall without delay give notice to the Inspector in writing if—

- (a) he is unable to obtain insurance as required by the Inspector; or
- (b) he ceases to maintain the insurance.

(5) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000, to a term of imprisonment of 1 year or to both.

Confidentiality

36. (1) For the purposes of this section, “protected person” means—

- (a) a person who has applied for a licence under this Act;
- (b) a licensee;
- (c) a customer of a licensee;
- (d) a settlor or beneficiary of a trust of which the licensee is a trustee; or
- (e) a company managed by a licensee.

(2) Subject to subsection (3), the Inspector, a person acting under the Inspector’s authority, and a person authorised by the Governor under section 32(12) to assist the Inspector must not disclose to any person information that the Inspector, the person acting under the Inspector’s authority, or the person authorised by the Governor under section 32(12) has acquired in the course of his duties concerning the affairs of a protected person or in the exercise of his functions under this Act.

(3) Subsection (2) does not apply to a disclosure—

- (a) required or permitted by any court of competent jurisdiction in Anguilla;
- (b) to the Governor;
- (c) to any person for the purpose of discharging any duty or exercising any power under this Act;

- (d) in respect of the affairs of a protected person made with the consent of that person;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
- (g) made by the Inspector to a foreign regulatory authority upon the written request of that authority.

(4) The Inspector may not disclose information concerning the affairs of a protected person to a foreign regulatory authority under paragraph (3)(g) unless he is satisfied—

- (a) that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure; and
- (b) that the information disclosed is reasonably required by the authority for the purposes of its regulatory functions.

(5) Paragraph (3)(g) does not apply to information to which section 32(5) applies.

(6) The Governor may issue guidelines to the Inspector concerning the discharge of his functions under this section.

(7) Any person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Immunity

37. No liability attaches to the Governor, the Inspector or any person acting under the authority of the Governor or the Inspector for an act done in good faith in the discharge or purported discharge of his functions under this Act.

Gazette notices

38. (1) The Governor shall cause notice of the issue, revocation or suspension of a licence to be published in the *Gazette*.

(2) A notice of issue of a licence published in the *Gazette* must specify the terms and conditions, if any, to which the licence is subject.

Appeals

39. (1) A decision of the Governor under section 7, section 13(6), section 14(2) or section 19 is final and conclusive and shall not be called into question in any court of law.

(2) An appeal lies to the Court from a decision of the Governor to suspend or revoke a licence under section 16.

(3) Unless the Court otherwise orders, an appeal made under subsection (2) does not operate to suspend the decision of the Governor.

Regulations

40. The Governor in Council may make regulations generally for giving effect to the provisions of this Act and specifically—

- (a) requiring the payment of fees under this Act and prescribing them, including—
 - (i) fees for filing an application,
 - (ii) fees for the issuance of a licence, and
 - (iii) annual fees;
- (b) controlling the form of advertising undertaken by licensees;
- (c) prescribing any thing required or permitted to be prescribed by this Act; and
- (d) exempting any trust company from this Act or any provision of this Act, subject to such conditions, if any, as are imposed in respect of the exemption.

Code of Practice

41. (1) The Inspector may issue a Code of Practice with respect to the procedures to be followed by, and the conduct expected of, a licensee in the operation of its licensed business.

(2) The Code of Practice may include—

- (a) due diligence procedures;
- (b) record keeping requirements; and
- (c) audit requirements.

(3) The Code of Practice may make different provision in relation to different persons, circumstances or cases.

(4) The Inspector must publish the Code of Practice and any amendments thereto in the *Gazette*.

Offences

42. (1) A person who with intent to deceive, or for any purpose of this Act makes any representation that he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of \$25,000, to imprisonment for a term of 1 year or to both.

(2) A person who—

- (a) assaults or obstructs the Inspector or other person in the performance of his functions under this Act;
- (b) uses any insulting language to an Inspector or other person in the performance of his functions under this Act;

- (c) by the offer of any gratuity, bribe or other inducement prevents or attempts to prevent an Inspector or other person from performing his functions under this Act; or
- (d) contravenes any provision of this Act or regulations, for which no penalty is specifically provided;

commits an offence and is liable on summary conviction to a fine of \$5,000, to imprisonment for a term of 1 year or to both.

(3) A licensee that carries on business contrary to the terms or conditions of its licence or, in the case of the holder of a restricted trust company licence, in contravention of the restriction, commits an offence and is liable on summary conviction to a fine of \$25,000.

(4) Where an offence under this Act is committed by a company, a director or officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits the offence and is liable on summary conviction to—

- (a) a fine of the amount specified for the offence;
- (b) to a term of imprisonment as specified for the offence, if any; or
- (c) to both a fine and imprisonment.

(5) Notwithstanding that the offence is punishable only on summary conviction, the Proceeds of Crime Act applies to the following offences—

- (a) section 4(2);
- (b) section 8(3);
- (c) section 8(4);
- (d) section 10(3);
- (e) section 14(4);
- (f) section 14(5);
- (g) section 21(2);
- (h) section 35(5);
- (i) section 42(1); and
- (j) section 42(4), where the offence committed by the company is an offence referred to in paragraphs (a) to (f).

(Am. in L.R. 15/12/2010)

Citation

43. This Act may be cited as the Trust Companies and Offshore Banking Act, Revised Statutes of Anguilla, Chapter T60.
