

**PRIVATE & OFFSHORE FINANCIAL SERVICES
AUTHORITY (PO-FSA) - MOTENEGRO**



**PRIVATE & OFFSHORE BANKING ACT – NOTICE
(POBA, 2000 [ELECTRONIC MONEY REGULATION])**

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Arrangement of Sections

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SCHEDULE

PART I

1. SHORT TITLE, PURPOSE, AND INTERPRETATION

- (1) This Act may be cited as the Private & Offshore Banking Act – Notice (POBA, 2000 [Electronic Money Regulation]).
- (2) The purpose of this Act is to encourage the development of Private & Offshore Banking outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo as a responsible offshore financial centre and to provide incentives by way of tax exemptions for offshore banking business carried on from outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo.

2. INTERPRETATION

- (1) In this Act –

“Affiliate” includes an affiliated corporation – International Business Company (IBC) and for the purposes of this Act: -

- (a) one body corporate (IBC) is affiliated with another body corporate if one of them is the subsidiary of the other, or both subsidiaries of the other, or both subsidiaries of the same body corporate, or each of them is controlled by the same person; and
- (b) if the two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

“Auditor” means a person who is licensed and in good standing as a member of an association of chartered accountants or other similar body approved by the Authority as a reputable auditing association.

- (2) “Authority” means Private & Offshore Financial Services Authority (PO-FSA) created pursuant to the Private & Offshore Banking Act – Notice (POBA, 2000 [Electronic Money Regulation]).

“Bank” means any financial institution whose operations include the acceptance of electronic deposits subject to transfer by the depositor by electronic or other means of payment transfer.

“Banking Business” means: -

- (1) The business of receiving funds through: -
- (a) The acceptance of monetary deposits which are repayable on demand or after notice or any similar operation.
 - (b) The sale or placement of bonds, certificates, notes or other securities; and the use of such, either in whole or in part, for loans or investment for the risk of the customer; and
 - (c) Any other activities recognised by the Authority as customary banking practice and which a financial institution may additionally be authorized to do.

“Court” means the Judicial Committee or a judge thereof.

“Eligible Company” means a body corporate – International Business Company (IBC): -

- (a) which is incorporated, subsisting, or continued under the International Business Companies Act of any jurisdiction; and
- (b) whose objects or business activities are restricted to private and offshore banking business.

“Financial Year” means, in relation to a licensee under this Act: -

- (a) a period not exceeding fifty-three weeks at the end of which the balance of the licensee's account is struck; or
- (b) if no such balance is struck, or if the period more than fifty-three weeks is used, then, a calendar year.

“International Business Company” means a company incorporated or subsisting under the International Business Companies Act of any jurisdiction.

“License” means a license granted under section 4(4) of this Act.

“Licensee” means a body corporate – International Business Company (IBC) that holds a subsisting, valid license under this Act to carry on private and offshore banking business from outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo.

“Offshore Banking Business” means banking business which does not involve: -

- (a) taking deposits from any Resident of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, provided that another licensee or an international business company shall be presumed not to be Resident for the purposes of this definition,
- (b) investing in any asset which represents a claim on any Resident of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, except a claim resulting from: -
 - (i) a loan to an international business company registered under the Private & Offshore Banking Act – Notice (POBA, 2000 [Electronic Money Regulation]).
 - (ii) a loan by way of mortgage to a member of the licensee’s staff for the purchase or construction of a residence in SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, to be owner-occupied; or
 - (iii) a transaction with another licensee under this Act.
- (c) the purchase of bonds or other securities issued by the Government of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, or a company in which the government is the sole or majority beneficial owner.
- (d) for the removal of doubt, but subject to regulations as may be applicable thereto, the acceptance in trust of: -
 - (i) amounts of money in foreign currencies or foreign securities or both.
 - (ii) personal or movable property with its location outside of the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo; or
 - (iii) real or immovable property with its location outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo,

from persons not Resident, which trust assets are to be administered, managed, or invested or otherwise dealt with for the benefit of persons not Resident, and includes any activities related, incidental or ancillary thereto.

“Director General/Financial Inspector” means a person licensed to carry on the business of Offshore Representation under the Private & Offshore Banking Act – Notice (POBA, 2000 [Electronic Money Regulation]).

“Registrar” means a person licensed to carry on the business of Offshore Representation under the Private & Offshore Banking Act – Notice (POBA, 2000 [Electronic Money Regulation]).

“Resident” means, for the purposes of this Act: -

- (1) a natural person who is ordinarily resident and subject to income tax in SR Serbia, SR Montenegro, and Autonomous Province of Kosovo.
- (2) a company, partnership, limited partnership or other body, incorporated, established, formed or organised in the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo under the laws of the jurisdiction, the majority of shares or other ownership of which is legally or beneficially owned, directly or indirectly, by persons who are resident under the provisions of subparagraph (1) or (3) hereof, or by the jurisdiction; and
- (3) any other corporation, partnership, limited partnership or other entity who or which is a resident of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, or ordinarily resident or domiciled in, the jurisdiction under general principles of the income taxation of the jurisdiction; Provided that for purposes hereof the term "Resident" shall not include an International Business Company that complies with the tax exemption provisions under the International Business Companies Act of any other jurisdiction; or a bank which is licensed under this Act; so long as and to the extent that such registration or compliance continues under the provisions of the applicable Act; and

“Jurisdiction” means the SR Serbia, SR Montenegro, and Autonomous Province of Kosovo.

In this Act, unless the context requires otherwise, any reference to "dollar" or “\$” shall, unless otherwise stated, be to the lawful currency of the United States of America and the “Euro” or EUR unless otherwise stated, be the lawful currency of Europe.

PART II

LICENSES

- 3.** (1) No private and offshore banking business may be transacted from within the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo, in whole or in part, except by an eligible International Business Company (IBC) which is in possession of a license granted hereunder to that (IBC) to carry on such private and offshore banking business.

(2) Whoever contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and in the case of a continuing offence to a fine not exceeding ten thousand dollars for each day during which the offence continues.
- 4.** (1) An eligible (IBC) desirous of carrying on a private and offshore banking Business from outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo shall make application to the Authority for the grant of a license.

(2) An application under subsection (1) shall be filed with the Registrar, shall contain the particulars set out in the Schedule hereto, and shall be accompanied by the fee prescribed in regulations hereunder.

(3) The Registrar shall review the application to ensure that it contains the required information and is accompanied by the proper application fee as well as the cost for conducting any necessary checks and shall thereafter forward completed applications to the Authority after:-

 - (i) submitting any application that may be considered suitable to the Director General/Financial Inspector for its review.
 - (ii) conducting such enquiries as may be considered necessary.
 - (iii) communicating with such persons, bodies or authorities as required notwithstanding the provisions in this or any other legislation.

(4) Pursuant to subsection (1) the Schedule may be amended by an Order made by the Authority.

- (5) A decision to issue or to refuse to issue a license under this Act to an applicant must be made within 6 months of the receipt of the completed application and after approval from the Executive Board.
 - (6) A decision to refuse to grant a license, other than with respect to a renewal or continuation of an existing license, is final and is not subject to any appeal, and no reasons for the refusal need to be given.
 - (7) A license issued under this Act shall be prominently displayed on each premise where the offshore banking business is carried on.
- 5.**
- (1) Subject to the provisions of subsection (3), a license issued under this Act is valid until it is revoked from when it is issued and the renewable fee is paid each yearly anniversary.
A licensee which fails to pay the prescribed yearly anniversary fee by that date may have its license revoked by the Authority, but in any event, shall pay a surcharge not exceeding one-twelfth of that fee for every month or part of a month that the anniversary fee is not paid.
 - (2) A license is not renewable for an extended period not exceeding fifty years dependent upon the merits of each individual case and subject to the following terms and conditions: -
 - (a) that the remaining provisions of this Act continue to apply; and
 - (b) that the (IBC) pay the appropriate anniversary license fee set forth in the regulations promulgated under this Act.
- 6.** Where a change occurs in the particulars of a licensee as set out in the application for the license or the records filed by the Authority, the licensee shall, as soon as possible thereafter and in any event not later than seven days, inform the Authority in writing of the nature of the circumstances of the change.
- 7.**
- (1) A license shall not be granted to any otherwise eligible (IBC) unless: -
 - (a) it has a place of business in the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo; and
 - (b) it designates and notifies to the Authority by name a registered agent, which is not an official of the applicant, to act as its registered agent in the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo.

- (2) It shall be a condition of every license granted hereunder that the licensee shall forthwith notify the Authority in writing of any change in the location of its office outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo and of any change of its registered agent.
 - (3) Where the Authority has approved a person under subsection (1) as a registered agent, it may in writing revoke the approval if such person ceases to hold a license to act as registered agent as provided herein.
 - (4) Where the Authority revokes its approval of a registered agent or where a registered agent resigns, the licensee shall ensure that a new registered agent is appointed within 15 days.
 - (5) By accepting any license granted under this Act, the licensee appoints its registered agent as its agent for the acceptance of service of documents in any action arising out of the operations of the licensee.
- 8.** A license granted under this Act shall be in one category: -
- (a) a Class II (Also called Class B or Global Private and Offshore Banking License) Private and Offshore Banking License for the purpose of carrying on private and offshore banking business subject to the restriction that the licensee shall not offer or provide its private and offshore banking business services, or otherwise receive or solicit funds by way of trade or business, except from non-resident persons specifically named or described in an undertaking accompanying the application for the license, which undertaking shall, without further notice, constitute a condition to the Class II license, if and when the same is granted.
- 9.** The holder of a Class II Offshore Banking License shall not, without the written approval of the Authority, carry on any banking business with any Resident of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo except in connection with the rendering of private and offshore banking business services from outside the jurisdictions or as expressly provided herein or in other laws governing the operations and activities of the licensee.
- 10.** (1) No Private and Offshore Banking License shall be granted to or maintained by any (IBC) unless it remains an eligible company in good standing and: -
- (a) has and maintains a fully paid-up capital as indicated in the conditions

PART III

TRANSFERABILITY OF SHARES AND BENEFICIAL INTERESTS

12. Shares not to be issued or transferred without approval

- (1) No shares or other interests, whether legal or equitable, in a licensee shall be issued, transferred, or otherwise disposed of without the prior written approval.

PART IV

ADMINISTRATION

13. Functions of the Authority and the Director General/Financial Inspector

- (1) The Authority may exempt any licensee from the provisions of this section subject to such terms and conditions as the Authority may deem necessary.
- (2) In administering this Act, the functions of the Authority, either acting as a body or through the Director General/Financial Inspector are: -
 - (a) where it thinks fit or when required by regulations promulgated under this Act, to examine by way of the receipt of regular returns or in such other manner as it thinks fit the affairs or business of any licensee carrying on business outside the jurisdictions of SR Serbia, SR Montenegro, and Autonomous Province of Kosovo for the purpose of determining that all requirements of this Act have been met and that the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;
 - (b) to assist in the investigation of any contravention of the regulations promulgated under this Act that he has reasonable grounds to believe he has or may have been committed by a licensee or by any of the licensee's directors or officers.
 - (c) to examine accounts and audited annual accounts forwarded to it under section 15; and
 - (d) to examine and approve or deny the applications for licenses under the Act.
- (3) In the performance of his functions under this Act and subject to the confidentiality provisions in this Act and elsewhere under the laws of the jurisdictions, the Director General/Financial Inspector may at all reasonable times and solely for the purpose of carrying out the requirements of this Act and the reasonable requests and directions of the Authority:-
 - (a) have access to the books, records, vouchers, documents, cash, and securities of any licensee.
 - (b) request any information matter or thing from any person who it has reasonable grounds to believe is carrying on a private and offshore

banking business in the jurisdictions in contravention of this Act:
and

- (c) demand of the registered agent of a licensee any reasonable information or explanation as to the private and offshore banking business being conducted by a company for which it serves as registered agent, for the purpose of enabling the authority to perform its functions under the Act; but in no event, except as expressly provided by law, may the Director General/Financial Inspector or the authority or any person or entity acting under or with either of them remove, communicate, send or in any manner transmit any such information, documents, or related material out of the jurisdiction.
- (4) For the purposes of subsection (3), the Director General/Financial Inspector shall have access to the name or title of an account of a depositor and any other confidential information about or in the possession of a licensee only pursuant to an order of the court on the ground that there is no other way to obtain the information required.
- (5) The Authority may, if it appears that there are reasonable grounds for suspecting that there is a contravention of this Act or that a contravention is likely, petition to the court for an order authorizing it to take such action as it considers necessary in the interests of the depositors or other creditors and to preserve any assets of the bank that is the subject of the order.
- (6) The Authority has appointed exclusively the Registrar of the Private & Offshore Financial Services Authority (PO-FSA) to facilitate all Licenses.

14. Use of the word “bank”, etc.

- (1) Except with the approval of the authority, no person or entity, other than a licensee, shall: -
 - (a) use or continue to use the words “bank” “building society”, “financial institution”, “savings”, “savings and loan” “deposit” or any of their derivatives, either in English or in any other language, in the name, description or title under which that person or entity is carrying on private and offshore banking business from outside the jurisdictions, whether or not the private and offshore banking business is carried on within or outside the jurisdictions; or
 - (b) make or continue to make any representation in any advertisement, billhead, circular, letter, letterhead, notice, paper or in any other

manner that the person or entity is carrying on private and offshore banking business.

- (2) Any person or entity who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or both, and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.
- (3) The Authority may, before giving its approval under subsection (1), require the production of such references and such information and particulars as it may prescribe.
- (4) the Authority, with the advice and consent of the Authority, may withdraw any approval given under subsection (1) where it considers it to be in the public interest.
- (5) Except where provided elsewhere in the Act, the Authority may refuse to grant a license to a (IBC) or, if the (IBC) is already in possession of a license, it may revoke the license if, in its opinion, the (IBC) is carrying on or intends to carry on private and offshore banking business under a name that is: -
 - (a) identical with that of any other person or entity, whether within or outside the jurisdictions, or which so nearly resembles that name as to be calculated to deceive.
 - (b) calculated to suggest falsely the patronage of or connection with some person or entity, whether within or outside the jurisdictions; or
 - (c) calculated to suggest falsely that the person or entity: -
 - (i) has special status in relation to or derived from the Government.
 - (ii) has the official approval of or acts on behalf of the Government or of any department, branch, agency or organization of government, or any office thereof; or
- (6) Whenever the Authority revokes a license under subsection (5), it shall cause a notice of the revocation to be published in the jurisdictions official newspaper and or POF-SA website or agents website and may also cause notice to be published, whether within the jurisdiction or elsewhere, in

such newspaper or other publication as it may think fit in the circumstances

15. Accounts

- (1) Every Licensee shall have its accounts audited by an auditor annually or at such other periods as the Authority may require.
- (2) The audited accounts shall be forwarded to the authority within three months from the end of the financial year of the licensee unless prior written approval for an extension has been granted by the Authority.
- (3) Where a licensee changes its auditor, the licensee shall, when required by the Authority, authorise the former auditor to disclose the circumstances that gave rise to the change, and, when so authorised, the auditor shall disclose the circumstances

16. Certain approvals required

A licensee shall not, without the prior written approval of the Authority: -

- (a) change its name; or
- (b) open or operate outside the jurisdictions any subsidiary, agency, representative office, or branch.

17. Number and Approval of Directors

- (1) A licensee shall at no time have fewer than one director
- (2) Unless exempted by the Authority pursuant to subsection (3), a licensee shall, prior to the appointment of a director or other senior officer, apply to the Authority for its written approval of the appointment
- (3) The authority may exempt a licensee from the requirements specified in subsection (2) but an exemption: -
 - (a) by that fact itself lapses if the director or senior officer becomes bankrupt, arranges or composition with his creditors, or is convicted of an offence involving dishonesty; and
 - (b) may be revoked in writing by the Authority at any time.

18. Specific Powers of Authority

- (1) Where the Authority is satisfied that a licensee: -
 - (a) has ceased to carry on private and offshore banking business.
 - (b) has gone into liquidation, is wound up or is in the process of being wound up or is otherwise dissolved.
 - (c) has made any arrangement or composition with its creditors.
 - (d) unable or appears likely to become unable to meet its obligations as they fall due.
 - (e) is carrying on business in a manner detrimental to the public interest, the interests of its depositors, or the interests of other creditors.
 - (f) has contravened any provision of this Act; or
 - (g) has failed to comply with a condition of its license. It may, with the advice of the authority, take any of the actions set forth in subsection (2).
- (2) The actions that the Authority may take in pursuance of subsection (1) are: -
 - (a) revocation of the license.
 - (b) imposition of new or additional conditions upon the licensee.
 - (c) the substitution of any director or officer of the licensee.
 - (d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of such appointment.
 - (e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs who shall, after the necessary changes have been made, have all the powers of a person appointed as a receiver or manager of a business appointed under the Companies Act; or
 - (f) to require the licensee to take such other action as the Authority considers necessary.

- (3) before ordering any of the actions authorised in subsection (2), the Authority shall give the opportunity to the holder of the license to show cause either in person or by representative against the action and a licensee may appeal any action ordered thereunder to the Judicial Committee pursuant to section 24.
- (4) A person appointed under paragraphs (d) or (e) of subsection (2) or whose appointment has been extended under subsection (5) (b) shall from time to time and in any case 3 months from the date of his appointment or of the extension of his appointment, as the case may be, prepare and furnish a report to the Authority of the affairs of the licensee and may make recommendations thereon.
- (5) The Authority may, on receipt of a report under subsection (4): -
 - (a) revoke the appointment of the person appointed under paragraphs (d) or (e) of subsection (2).
 - (b) extend the period of appointment of the person appointed under paragraphs (d) or (e) of subsection (2).
 - (c) Subject to any conditions which the Authority may impose, allow the licensee to reorganise its affairs in a manner as the authority approves; or
 - (d) Revoke the license and request the Judicial Committee to apply to the court for an order that the licensee be forthwith wound up by the court pursuant to the provisions of the International Business Companies Act or the Companies Act, as the case may be.
- (6) Whenever the Authority revokes a license under subsection (2)(a) or subsection (5)(d), it shall cause notice of the revocation to be published in the Official Gazette and may also cause notice to be published, whether within the jurisdictions or elsewhere, in such newspaper or other publication as it may think fit in the circumstances.

19. Judicial Committee may apply to the Court

Where a current or former licensee is being wound up voluntarily, the Judicial Committee may, upon the request of the Authority, 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 or other creditors, and the court may make such order as it shall consider appropriate.

PART V

EXEMPTION FROM TAXATION AND DUTIES

20. Exemption from Taxation and Duties Certificate

- (1) No income tax, capital gains tax or other direct tax shall be levied by the jurisdictions or any political subdivision thereof upon the profits or gains or earnings of a licensee in respect of its private and offshore banking business.
- (2) No income tax, capital gains tax or other direct tax shall be levied by the jurisdictions or any political subdivision thereof in respect of any dividends or earnings attributable to the shares, debt or securities of a licensee that are beneficially owned by another licensee or by a person who is not a resident.
- (3) No estate, inheritance, succession or similar tax or impost shall be levied by the jurisdictions or any political subdivision thereof in respect of any shares, securities or assets of a licensee that are beneficially owned by a person who is not a Resident, and the transfer of such shares, securities or assets shall likewise be exempt from such tax if the transferee is a licensee or otherwise not a resident.
- (4) No income tax, capital gains tax, or other direct tax or impost shall be levied, withheld or collected in or by the jurisdictions or any political subdivision thereof in respect of any dividends, interest, or other returns from any shares, securities, deposits or other borrowings of a licensee or any assets managed by the licensee if the dividends, interest, or other returns are in respect of shares, securities, deposits or other borrowings or assets beneficially owned by a person who is not a Resident; but the burden of establishing such ownership lies upon the licensee.
- (5) The following instruments are all exempt from Stamp Duty: -
 - (a) all instruments relating to the transfers of any property to or by a company licensed under this Act.
 - (b) all instruments relating to transactions in respect of shares, debt obligations or other securities of a (IBC) incorporated under this Act in other jurisdictions; and
 - (c) all instruments relating in any way to the assets or activities of a (IBC) licensed under this Act.

- (6) The exemption from taxes and duties conferred by the foregoing provisions of this Part may, at no extra charge to the licensee, be evidenced by a certificate issued by the Authority, on behalf of the jurisdictions confirming that the licensee shall be exempt from the taxes described in this section for a minimum period of Twenty (20) years from the date a license is first granted under this Act to the licensee; provided that the provisions of this Part shall not be construed or apply so as to provide any guarantee or assurance that such license will be renewed as provided herein or so as to exempt a licensee under this Act from increases in fees charged under or pursuant to this Act or to exempt any Resident from the provisions of any law of the jurisdiction imposing any tax whatsoever.
- (7) The authority may be order exempt a licensee from all or so much of any duty payable under the Customs legislation currently in force in respect of goods imported by the licensee as the authority deems expedient, if the licensee satisfies the authority that the goods are not being made or manufactured in the jurisdictions, are essential as equipment or fixtures for conducting private and offshore banking business outside the jurisdictions, that they will be exclusively used for such purposes outside the jurisdictions, and that the licensee will be bound to notify the authority prior to the sale, transfer or disposal of the goods either in or out of the jurisdictions following the importation of such goods into the jurisdictions.

PART VI

MISCELLANEOUS

21. Power of Authority to require Insurance

The authority may require a licensee to effect a policy of insurance with a reputable insurance company against: -

- (a) losses arising out of claims of negligence or breach of duty by the licensee or any of its directors or employees.
- (b) the dishonesty of employees of the licensee.
- (c) loss of documents; and
- (d) such other risks as the Authority may from time to time stipulate in such amount and such a nature as the authority may determine to be fit and proper, having due regard for the nature and type of business carried on by the licensee; and, in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Authority and shall cease to carry on its business until the insurance has been reinstated or replaced.

22. Preservation Confidentiality

- (1) Subject to subsection (2) neither the PO-FSA nor any person or entity acting under the authority of either, including the Director General/Financial Inspector, shall disclose, or in any way remove from or transmit out of the jurisdictions, any information relating to: -
 - (a) any application made to him for a license under this Act.
 - (b) the affairs of the licensee; no matter how much information is gained; or
 - (c) the identity or affairs of a customer of a licensee, which the Authority or any person or entity acting under the authority of the Authority has acquired in the course of his or its duties or the exercise of his or its functions under this Act.
- (2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars and to imprisonment for two years.

23. Offences

- (1) A licensee or applicant for a license under this Act, or any director or officer of a licensee or applicant who knowingly or wilfully supplies false or misleading information to the Authority, shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.
- (2) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in which the advertisement appears or to which such advertisement is directed shall be guilty of an offence and liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding six months or to both.
- (3) Where a licensee is convicted of an offence pursuant to subsection (2), every director and every officer concerned with the management of the company is liable to be convicted for that offence unless he satisfies the Judicial Committee that the offence was committed without his knowledge or consent or, if the director or officer had knowledge of the offence, that he took all reasonable steps to prevent the commission of the offence.
- (4) Any person who: -
 - (a) fails to comply with a request made of him by the Authority.
 - (b) assaults or wilfully obstructs the Authority in the performance of its duties under this Act.
 - (c) by the offer of any gratuity, bribe or any other inducement prevents or attempts to prevent the PO-FSA or the Director General/Financial Inspector from performing his or its duties under this Act; or
 - (d) contravenes any provision of this Act, or any regulations made under this Act for which no punishment is specifically provided, shall be guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

24. Appeals

- (1) An appeal lies directly to the court by summons or motion from any decision of the Authority: -
 - (a) to not renew or continue a license under section 5.

- (b) revoking a license under subsection (5) of section 14, or under subsection (2) (a) or subsection (5) (d) of section 18.
- (2) An appeal against the decision of the Authority shall be my motion to the Court.
- (3) The following procedure applies to appeals from the Authority: -
 - (a) the appellant within twenty-one days after the day on which the Authority has given its decision shall serve a notice in writing signed by the appellant or his solicitor, on the Authority and the jurisdiction's legal representative of his intention to appeal and of the general grounds of his appeal, and may apply to the court within fourteen days after the day on which the Authority has given its decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the court upon hearing of the application may extend the time prescribed by the section as it deems fit;
 - (b) the Authority shall, within fourteen days of receiving the notice of appeal, transmit a copy of its decision to the registrar of the court and to the jurisdiction's Legal Representative together with all papers relating to the appeal, except that the Authority shall not be obliged to disclose any information if the authority considers that the public interest would suffer by such disclosure;
 - (c) where the appeal is by motion, the registrar of the court shall set down the appeal for hearing on such day as is convenient and shall cause notice of the hearing to be published in such manner as the court may direct; and
 - (d) the court may, upon the hearing of the appeal, confirm, reverse, vary, or modify the decision of the Authority or remit the matter with the opinion and directions of the court thereon to the Authority.
- (4) An appeal against a decision of the Authority shall not operate as a suspension of the decision of the Authority.

25. Immunity

No liability attaches to the Authority, the members or employees of the Authority, the Director General/Financial Inspector, or any other person acting under the Authority of the Authority for an act done in good faith in the proper discharge of an official function described under this Act.

26. Regulations

The Authority, acting on the advice and recommendation, may make regulations generally for carrying the purpose and provisions of this Act into effect and, specifically, for the following purposes: -

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

27. Directions

Without limiting or affecting section 26, the Authority may, from time to time, issue by publication in the Official Gazette directions with relation to such matters as it may think fit and appropriate.

28. Savings for certain existing operations

Notwithstanding any other provision of this Act to the contrary, a (IBC) which on the effective date of this Act holds a license granted under the International Companies Act to undertake private and offshore banking business, or equivalent activities under such act, shall automatically and without further application or review be issued and hold a license under this Act to conduct its private and offshore banking business as it is being license held by such (IBC) under the International Companies Act, and any such licensee may pay the yearly anniversary license fee to be automatically granted under this Act in the same manner as prescribed under section 5(1); provided that such licensee shall, at the first applicable license yearly anniversary date, amend its original private and offshore bank license application to include and update the information to conform to the requirements of the Schedule.

29. Commencement

This Act shall be effective on the date published by the Director General.

SCHEDULE

PARTICULARS TO BE SPECIFIED IN APPLICATIONS

Every (IBC) applying for a license under this Act shall furnish in writing to the Authority the following particulars, which shall accompany and form part of the form of application prescribed by the Authority for use under this Act:

- (1) Name of Applicant
- (2) Address in the jurisdiction of its place of business, and the name and address of the registered agent in the jurisdiction.
- (3) The names, addresses, citizenship, and residency of all directors
- (4) The names and addresses of all shareholders
- (5) The names and addresses of all officers and managers
- (6) Names and addresses of solicitors, if any, to the applicant, together with a letter from the solicitors confirming that they act for the applicant.
- (7) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming that they act for the applicant.
- (8) Evidence of a proper application for incorporation of the (IBC) in the jurisdiction outside SR Serbia, SR Montenegro, and Autonomous Province of Kosovo and that the (IBC) is an “eligible company” in “good standing”.
- (9) Evidence in writing that the applicant itself or some person directly or indirectly connected with the applicant possess of solid and practical experience in banking business.
- (10) The following:
 - (a) an undertaking in writing to provide and set apart a fully paid-up capital fund before or at the time it commences business, such as the Authority may

determine based upon the class of license for which application is being made, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Authority; and

(b) the guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligations of the parties to it are governed exclusively by Act and the Judicial Committee shall be the forum for these purposes.

- (11) Character references in writing, together with such other evidence as the Authority may require that neither the applicant nor any director or officer of the applicant has a criminal record either in the jurisdictions or elsewhere.
- (12) Annual accounts of its holding company, if any, for the preceding three years and thereafter annually duly audited and certified by an independent auditor.
- (13) Names of all subsidiary companies of the applicant with addresses of their registered offices
- (14) A copy of the articles of incorporation and by-laws of the applicant company, verified by an affidavit sworn by the director of the applicant
- (15) References including one from a bank.
- (16) Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.
- (17) Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.
- (18) If application is being made for a Class II license, the list or description of the proposed customers of the licensee, as required by section 8 of the Act.

- (19) A letter from a lawyer or police department confirming the directors do not have a criminal record.