

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

***Banks and Financial Institutions.***

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Finance at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in, or in relation to, this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Finance;

“the Department”—should be read as references to the Department of Finance.

TABLE OF CONTENTS.

	<i>Page.</i>
<i>Banks and Financial Institutions Act</i> .....	3
<i>Banks and Financial Institutions Regulation</i> .....	17
Appendixes—	
1. Source of Act.	
2. Source of Regulation.	



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

*Banks and Financial Institutions Act.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—
  - "bank"
  - "banking business"
  - "financial institution"
  - "licensed financial institution"
  - "the regulations"
  - "this Act".
2. Application of Companies Act.

PART II.—LICENSING OF BANKS AND FINANCIAL INSTITUTIONS.

3. Unauthorized banking business.
4. Licensing of banks and financial institutions.
5. Variation of conditions of licences.
6. Revocation of licences.
7. Minimum capital requirements.
8. Effect of revocation.
9. Exemption.

PART III.—DUTIES OF BANKS AND LICENSED FINANCIAL INSTITUTIONS.

10. Compliance with Central Banking Act.
- 10A. Direction to financial institutions.
  11. Location of places of business.
  12. Changes in ownership or control.
  13. Amendment of instrument of incorporation.
  14. Appointment and duties of auditor.
  15. Annual accounts.
  16. Likelihood of inability to meet obligations.

PART IV.—INSPECTION AND CONTROL OF BANKS AND FINANCIAL INSTITUTIONS.

17. Production of books and documents.
18. Action by Central Bank following inspection, etc.
19. Control of banks and licensed financial institutions by Central Bank.
20. Obligations of controlled bank or financial institution.

PART V.—MISCELLANEOUS.

21. Restriction on use of the word "bank".
22. Restriction on names of banks and financial institutions.
23. Indemnity.
24. Assets of banks unable to meet liabilities.
25. Non-business days.

Ch. No. 137

***Banks and Financial Institutions***

- 26. Unclaimed moneys.
- 27. Liability of defaulting officers.
- 28. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

***Banks and Financial Institutions Act.***

Being an Act relating to the licensing and regulation of banks and financial institutions, and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“bank” means, subject to Subsection (2), a corporation licensed as a bank under this Act;

“banking business” means the business of receiving funds—

(a) through the acceptance of money deposits payable—

(i) on demand; or

(ii) after a fixed period of time; or

(iii) after notice; or

(b) by any similar operation through the sale or placement of bonds, certificates, notes or other securities,

and the use of the funds wholly or partly for—

(c) advances or investments; or

(d) any other operation authorized by law or customary banking practices, for the account and at the risk of the person doing the business;

“financial institution” means, subject to Subsection (2), any person or member of a class of persons who or which is declared by the regulations to be a financial institution or a class of financial institutions for the purposes of this Act;

“licensed financial institution” means, subject to Subsection (2), a corporation licensed as a financial institution under this Act, and includes the Papua New Guinea Development Bank;

“the regulations” means any regulations made under this Act;

“this Act” includes the regulations.

(2) For the purposes of this Act, where a bank or financial institution has more than one office or branch in the country doing banking business all of those offices and branches are a single bank or institution.

2. Application of Companies Act.

The requirements of this Act in relation to corporations are in addition to and not in derogation of or substitution for the requirements of the *Companies Act*, but in the case of a conflict between a provision of this Act and a provision of the *Companies Act* the former provision prevails.

PART II.—LICENSING OF BANKS AND FINANCIAL INSTITUTIONS.

**3. Unauthorized banking business.**

- (1) A person, other than the Central Bank or a bank, who in the country—
  - (a) accepts money on deposit that is repayable on demand by cheque drawn by the depositor on the borrower; or
  - (b) pays and collects cheques drawn by or paid in by customers,

is guilty of an offence.

Penalty: A fine not exceeding K10 000.00 for each day for which the contravention continues.

- (2) Subject to Section 9, a person, other than the Central Bank, a bank or licensed financial institution, who carries on any aspect of banking business is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 for each day for which the contravention continues.

- (3) A bank or licensed financial institution that carries on any aspect of banking business otherwise than in accordance with the conditions (if any) of its licence is guilty of an offence.

Penalty: A fine not exceeding K2 000.00 for each day for which the contravention continues.

- (4) It is a defence to a charge of an offence against Subsection (1) or (2) if the person charged proves that he does not carry on banking business within or outside the country.

**4. Licensing of banks and financial institutions.**

- (1) The Minister may licence a corporation as a bank.
- (2) The Minister may licence a corporation, or a person or class of persons, as a licensed financial institution.
- (3) An application for a licence under this section shall—
  - (a) be made through the Central Bank; and
  - (b) in the case of a financial institution—
    - (i) shall be accompanied with such matters as are prescribed; and
    - (ii) where the applicant is a person or a class of persons—shall be lodged within the prescribed time.

- (4) Subject to this Act, a licence under this section may be made subject to such conditions as the Minister determines.

- (5) A licence under this section remains in force until revoked.

- (6) The fee for a licence is as prescribed, and the regulations may prescribe different fees for licences for different classes or sizes of businesses.

*(Amended by No. 1 of 1982, s. 1.)*

**5. Variation of conditions of licences.**

- (1) On the recommendation of or after consultation with the Central Bank, the Minister may vary or revoke the conditions of a licence, or impose conditions or additional conditions.

- (2) Before taking action under Subsection (1), the Minister shall—
  - (a) give notice of his intention to do so to the bank or financial institution; and
  - (b) give it an opportunity to make such written representations as it thinks fit within such period as is specified in the notice.

**6. Revocation of licences.**

(1) If a bank or licensed financial institution—

- (a) is carrying on its business in a manner detrimental to the interests of its depositors or other creditors; or
- (b) ceases to carry on business as a bank or financial institution in the country, goes into liquidation or is wound up or dissolved; or
- (c) fails to comply with this Act or the *Central Banking Act*; or
- (d) fails to pay the prescribed fee at the prescribed time,

the Minister, on the recommendation of or after consultation with the Central Bank, may revoke the licence of the bank or financial institution.

(2) Before revoking a licence, the Minister shall—

- (a) give notice of his intention to do so to the bank or financial institution; and
- (b) give it an opportunity to make such written representations as it thinks fit within such period as is specified in the notice.

(3) A notice of the revocation shall be published in the National Gazette.

(4) Within 30 days after notice of the revocation is given to it, the bank or financial institution whose licence is revoked under this section may appeal to the National Court.

(5) The Central Bank is entitled to appear and be heard on an appeal under Subsection (4).

(6) An appeal under Subsection (4) does not affect the exercise and performance by the Central Bank of its powers and functions under Sections 18 and 19 and the *Central Banking Act*.

(Amended by No. 1 of 1982, s. 2.)

**7. Minimum capital requirements.**

(1) Subject to Subsection (3) a licence for a bank shall not be granted and, if granted, shall not be renewed, unless—

- (a) in the case of a corporation incorporated in the country—its paid-up capital is at least K500 000.00 and its net worth is not less than 5% of the amount of its total deposits and other prescribed liabilities; and
- (b) in the case of a corporation incorporated outside the country—
  - (i) its paid-up capital is not less than K2 000 000.00; and
  - (ii) the board of management or other controlling authority of the body has given an undertaking, to the satisfaction of the Minister, to keep within the country, during the currency of its licence, capital out of its own funds allocated for the purposes of its Papua New Guinea business amounting to not less than—
    - (A) 5% of its total deposits and other prescribed liabilities in the country; or
    - (B) K500 000.00,whichever is the greater.

(2) Subject to Subsections (3) and (4), a licence for a financial institution shall not be granted unless—

- (a) in the case of a financial institution incorporated in the country—its paid-up capital is at least K100 000.00 and its net worth is not less than 5% of its total deposits and other prescribed liabilities; and

- (b) in the case of a financial institution incorporated outside the country—
- (i) its paid-up capital is not less than K250 000.00; and
  - (ii) the board of management or other controlling authority has given an undertaking, to the satisfaction of the Minister, to keep within the country, during the currency of its licence, capital out of its own funds allocated for the purposes of its Papua New Guinea business amounting to not less than—
    - (A) 5% of its total deposits and other prescribed liabilities in Papua New Guinea; or
    - (B) K100 000.00,whichever is the greater.

(3) Where the Minister is satisfied that special circumstances exist that warrant the temporary relaxation of Subsection (1) or (2) in respect of a bank or financial institution, he may allow the bank or financial institution a period of grace, not exceeding three years, specified by him, within which to comply with that subsection.

- (4) A licence for a financial institution may be granted to a corporation which—
- (a) engages in banking business other than the aspects of banking business specified in Section 3 (1) (a) and (b); and
  - (b) has advances, investments, or other outstandings relating to its business amounting to not less than K500 000.00.

*(Amended by No. 1 of 1982, s. 3.)*

#### 8. Effect of revocation.

Notwithstanding the revocation of a licence—

- (a) the bank or financial institution concerned, with the approval of the Minister granted on the recommendation of the Central Bank, may carry on banking business for the purpose of winding up its banking business; and
- (b) proceedings may be taken for the enforcement of a right by or against the bank or financial institution.

#### 9. Exemption.

(1) Where a person or class of persons—

- (a) intends to carry on business of a financial institution other than the aspects of banking business specified in Section 3 (1) (a) and (b); or
- (b) intends to carry on business of a financial institution and does not have the minimum capital requirements specified under Section 7 (2),

the Minister may, by notice in the National Gazette, exempt that person or class of persons—

- (c) from such provisions of this Act; and
- (d) on such terms and conditions,

as are specified in the notice.

(2) The Minister may by notice in the National Gazette exempt a licensed financial institution from the requirements of any provision of this Act (except Sections 4 and 7) and on such terms and conditions as are specified in the notice.

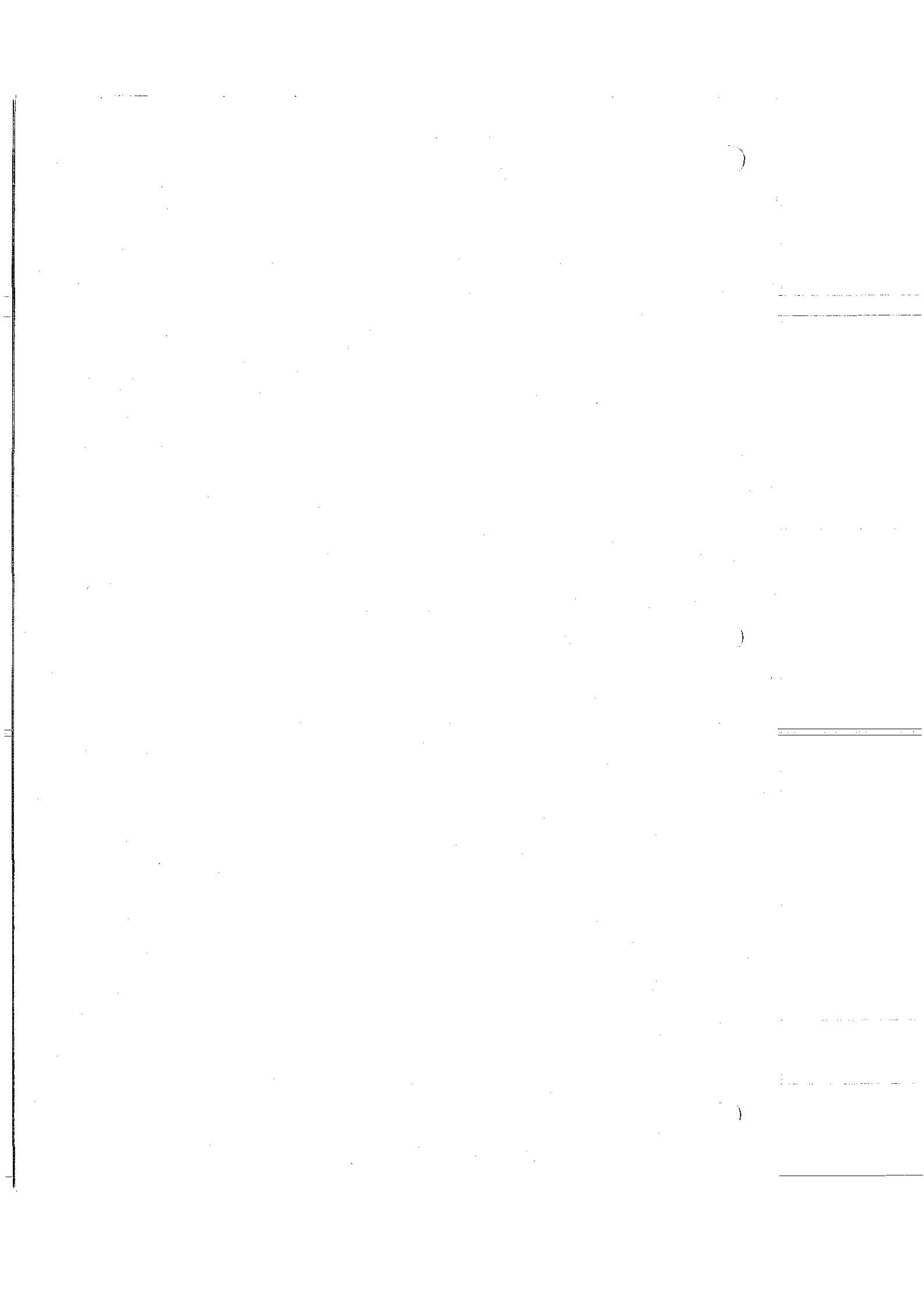


(3) An application for an exemption under this section shall be made through the Central Bank and in the case of an application for exemption under Subsection (1), shall be lodged within the prescribed time.

*(Amended by No. 1 of 1982, s. 4.)*

(4) A notice under this section may—

- (a) be expressed to apply to a particular person or to a class of persons; and
- (b) specify the period during which the notice remains in force; and
- (c) be made subject to such conditions as are specified in the notice.



(5) Where a notice under this section is made subject to conditions, a person to whom the notice applies who fails to comply with those conditions is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 for each day for which the contravention continues.

(6) The Minister may at any time, on the recommendation of or after consultation with the Central Bank, revoke a notice under this section, vary or revoke the conditions of the notice or impose conditions or additional conditions.

PART III.—DUTIES OF BANKS AND LICENSED FINANCIAL INSTITUTIONS.

10. Compliance with Central Banking Act.

Every bank or licensed financial institution must comply with the requirements of, and under, Part III. of the *Central Banking Act*.

10A. Direction to financial institutions.

(1) The Central Bank may, from time to time, by written notice—

(a) give directions to financial institutions as to the policy to be followed in relation to lending and investments; and

(b) specify the rates of interest, or different rates to be paid to or by financial institutions according to the terms of the obligations; and

(c) require a financial institution or a specified class of financial institutions to hold—

(i) balances at the Central Bank or any commercial bank; or

(ii) Government Securities; or

(iii) assets of such kind, including those under Subparagraphs (i) and (ii), as may be specified in the notice,

of such minimum amount or ratio of liabilities as may be specified in the notice.

(2) Where a financial institution fails to comply with a requirement under Subsection (1), the Central Bank may, by written notice to that institution, direct that, during the period specified in the notice, the institution—

(a) must discontinue or limit, in such manner as may be specified, the granting of credit or the making of investments; and

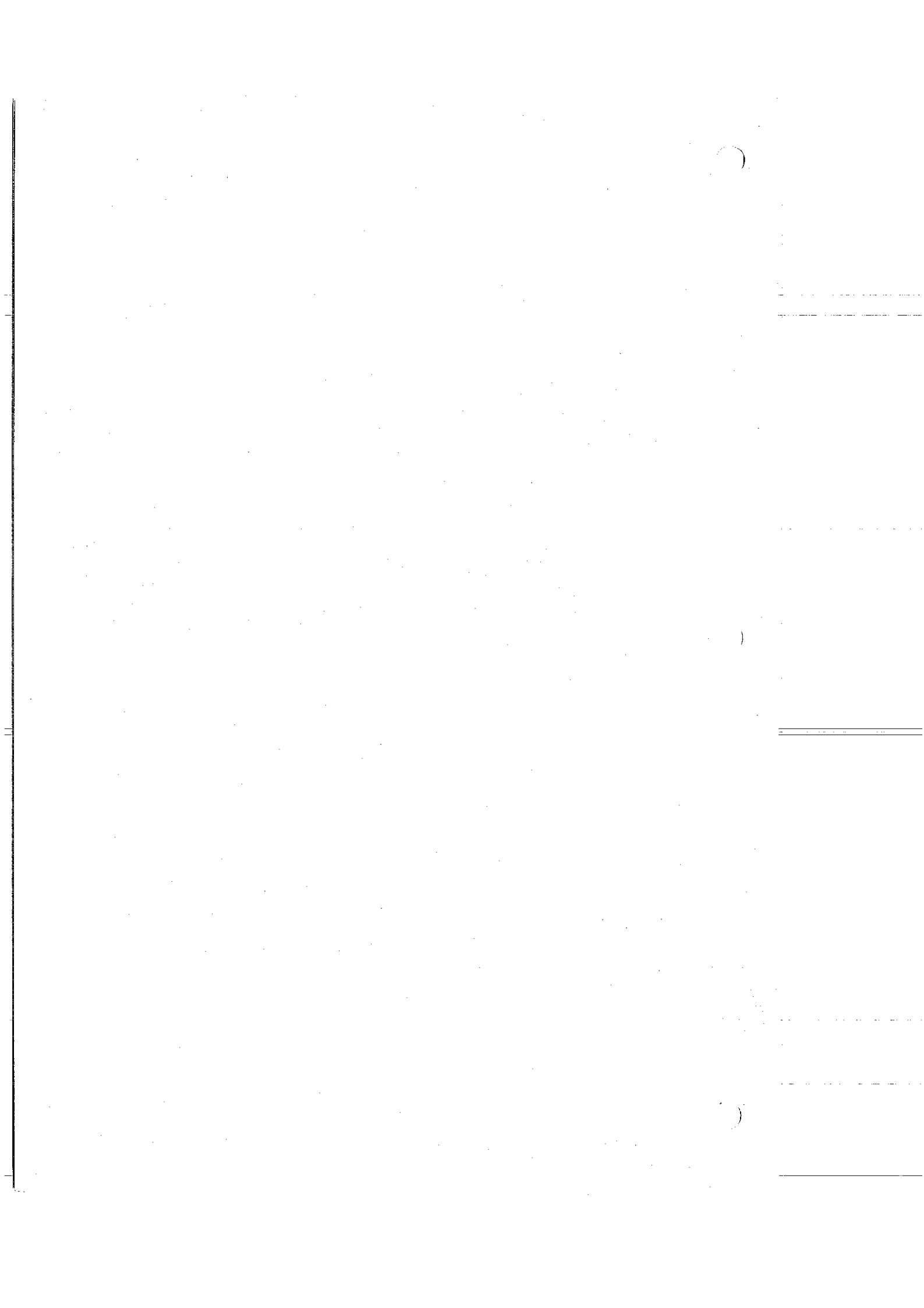
(b) must not pay any dividend.

(3) The Central Bank may, from time to time, by written notice or by notice in the *National Gazette*, require a financial institution or class of financial institutions to supply to the Central Bank such returns or information relating to the assets and liabilities of its business as may be specified in the notice and verified by statutory declaration by a senior officer of that financial institution.

(4) Subject to Subsection (5), an officer of the Central Bank duly authorized for that purpose may inspect the books, accounts and other records of a financial institution exempted under Section 9.

(5) For the purposes of Subsection (4)—

(a) books, accounts and other records may only be produced and inspected at the premises of the financial institution; and



(b) the officer may take copies of, or extracts from, any book, account or other record; and

(c) all information obtained in the course of the inspection shall be treated as confidential and shall be used solely for the purposes of this Act.

(6) A financial institution which fails to comply with a direction or requirement under this section is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 and in addition, a fine not exceeding K1 000.00 for each day the offence continues.

*(Added by No. 1 of 1982, s. 5.)*

**11. Location of places of business.**

(1) Unless specified in its licence, a bank or licensed financial institution which—

(a) opens a new place of business; or

(b) changes the location of a place of business; or

(c) closes a place of business,

without the approval of the Central Bank is guilty of an offence.

(2) A bank or licensed financial institution incorporated in the country which opens a new branch, agency or office outside the country without the approval of the Central Bank is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 and in addition, a fine not exceeding K1 000.00 for each day the offence continues.

*(Replaced by No. 1 of 1982, s. 6.)*

**12. Changes in ownership or control.**

(1) A bank or licensed financial institution must not be merged or consolidated with, or taken over by, any person, or be reconstructed, without the consent of the Minister

(2) A person shall not acquire a direct or indirect interest exceeding 20% of the voting share capital of a bank without the consent of the Minister.

(3) A bank must not issue, allot or register a transfer of any share in the capital of the bank if it has good reason to believe that the issue, allotment or transfer would have the effect of giving any person a direct or indirect interest exceeding 20% of the voting share capital of the bank, without the consent of the Minister.

(4) A consent under this section shall not be unreasonably withheld.

**13. Amendment of instrument of incorporation.**

(1) Before the making of any amendment or alteration to its memorandum or articles of association, a bank or licensed financial institution incorporated in the country must furnish to the Central Bank particulars of the proposed amendment or alteration.

(2) An amendment or alteration to the memorandum or articles of association of a bank or licensed financial institution has no force or effect unless approved by the Central Bank.

(3) A bank or licensed financial institution that thinks that approval under Subsection (2) has been unreasonably withheld may appeal to the National Court.

(4) *(Repealed.)*

(5) A bank or licensed financial institution (whether incorporated within or outside the country) must furnish to the Central Bank, within three months after the making of an

amendment or alteration to its memorandum or articles of association or other constituent instrument, written particulars of the amendment or alteration verified by statutory declaration by a senior officer of the bank or licensed financial institution.

Penalty: A fine not exceeding K500.00.

(Amended by No. 1 of 1982, s. 7)

**14. Appointment and duties of auditor.**

(1) A bank or licensed financial institution shall have and shall appoint annually, or more frequently if required, an auditor who is—

- (a) registered as a registered company auditor under the *Companies Act*, and
- (b) approved by the Central Bank.

(2) If a bank or licensed financial institution fails to have an auditor as required by Subsection (1), the Central Bank may make the appointment and fix the remuneration to be paid to him by the bank or financial institution.

(3) The auditor shall audit and make a report to the Central Bank on the annual balance sheet and profit and loss account required by Section 15.

(4) For the purposes of an audit under this section, the auditor has all the powers of an auditor under the *Companies Act*, and the provisions of that Act, with the necessary modifications, apply accordingly.

**15. Annual accounts.**

Not later than six months after the end of its financial year, every bank or licensed financial institution must submit to the Central Bank a balance sheet and profit and loss account for that financial year in respect of its Papua New Guinea business, in the prescribed form, made up in the prescribed manner and audited in accordance with Section 14.

**16. Likelihood of inability to meet obligations.**

A bank or financial institution that thinks that it is likely—

- (a) to become unable to meet its obligations; or
- (b) to suspend payment,

shall immediately notify the Central Bank of its position.

**PART IV.—INSPECTION AND CONTROL OF BANKS AND FINANCIAL INSTITUTIONS.**

**17. Production of books and documents.**

(1) Subject to Subsection (2), where an inspection is made of the books and accounts of a bank or licensed financial institution under Section 40(2) of the *Central Banking Act* the bank or institution shall—

- (a) produce to the officer making the inspection all such books, accounts and documents; and
- (b) furnish to the officer such statements and information,

relating to the affairs in the country of the bank or institution, as the officer requires.

(2) Books, accounts and other documents may be required to be produced only at the premises of the bank or financial institution concerned.

(3) The officer making the inspection may take copies of or extracts from any book, account or document produced under Subsection (1).

(4) Information obtained in the course of an inspection shall be treated as confidential and shall be used solely for the purposes of this Act and the *Central Banking Act*.

**18. Action by Central Bank following inspection, etc.**

(1) Where on an inspection under Section 40(2) of the *Central Banking Act* or for any other reason the Central Bank is of the opinion that a bank or licensed financial institution—

- (a) is following unsound or improper practices; or
- (b) is likely to become unable to meet its obligations or to suspend payment; or
- (c) has contravened or failed to comply with any provision of this Act or the *Central Banking Act*; or
- (d) has contravened or failed to comply with any condition of its licence; or
- (e) is likely to be carrying on business in a manner detrimental to the interests of its depositors or other creditors,

the Central Bank may, with the approval of the Minister, exercise all or any of the powers conferred by Subsection (2).

(2) In a case to which Subsection (1) applies, the Central Bank may—

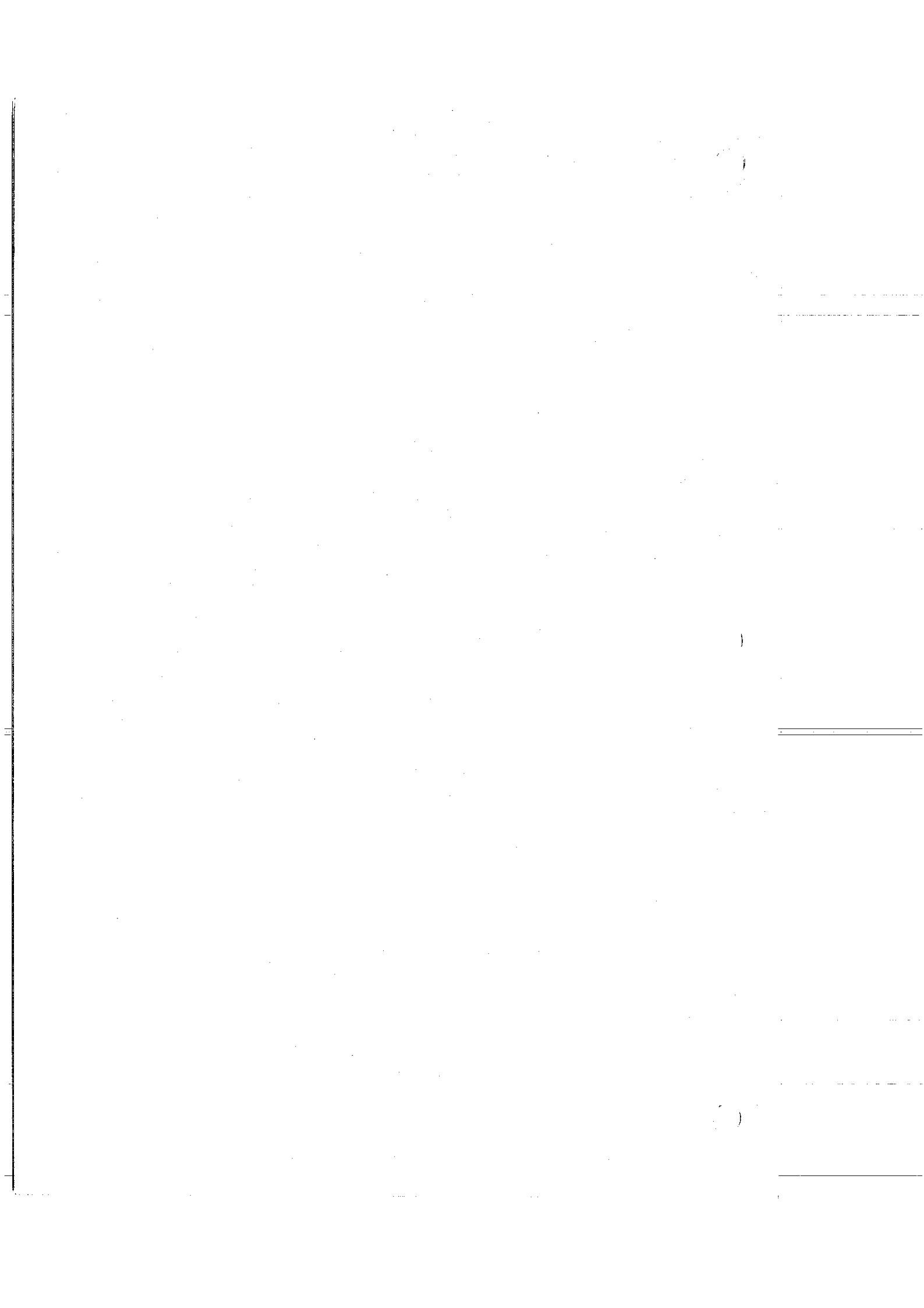
- (a) direct the bank or financial institution to take such steps as the Central Bank thinks necessary to rectify the situation; and
- (b) prohibit the bank or financial institution from extending any further advances, loans or credit for such period or periods, and subject to such exceptions and conditions, as are determined by the Central Bank; and
- (c) remove any person from office as a director, or appoint a person as a director, of the bank or financial institution; and
- (d) appoint a person to advise the bank or financial institution on the proper conduct of its business; and
- (e) assume control of and carry on the business of the bank or financial institution, or appoint some person to assume control of and carry on its business; and
- (f) order the temporary closure of the bank or financial institution; and
- (g) present a petition to the National Court under Section 239 of the *Companies Act* for the winding-up of the bank or financial institution.

(3) If a direction is given under Subsection (2)(a), the bank or institution shall, subject to Subsection (4), carry out the direction within the period fixed by the Central Bank for the purpose.

(4) A person aggrieved by a decision of the Central Bank under Subsection (2) or (3) (otherwise than under Subsection (2)(g)) may appeal within the prescribed time to the National Court, whose decision is final.

(5) Where the Central Bank, under Subsection (2), appoints a person—

- (a) to be a director of a bank or financial institution; or
- (b) to advise the bank or financial institution on the proper conduct of its business; or





PART V.—MISCELLANEOUS.

**21. Restriction on use of the word "Bank".**

(1) A person other than the Central Bank, the Papua New Guinea Development Bank or a bank as defined in Section 2(1) must not, without the consent of the Minister—

- (a) use the word "bank" or any of its derivatives, or any other word indicating the transaction of banking business (whether in the English language or in any other language), in the name, description or title under which that person carries on business in the country; or
- (b) make any representation that he is, or holds himself out to be, a bank.

Penalty: A fine not exceeding K200.00 for each day for which the offence continues.

(2) Subsection (1) does not apply to an association of banks or of bank employees formed to promote their respective mutual interests and not purporting to carry on banking business.

**22. Restriction on names of banks and financial institutions.**

(1) Except with the consent in writing of the Minister granted on the recommendation of the Central Bank, no bank or financial institution may use the expression "Central", "National", "Papua", "New Guinea", "Papua and New Guinea", "Papua New Guinea", "Reserve" or "State", or an expression of a similar meaning (whether in the English language or in any other language), in the name, description or title under which it carries on business in the country.

(2) Subsection (1) does not affect the operation of the *Development Bank Act* or the *Central Banking Act*.

(3) Where the Minister for any reason thinks that the use of a name or description by banks or financial institutions carrying on business in the country is undesirable, the Minister may prohibit the use of that name or description by banks or financial institutions by notice in the National Gazette.

(4) A bank or financial institution that uses an expression, name or description in contravention of Subsection (1), or of a notice under Subsection (3), is guilty of an offence.

Penalty: A fine not exceeding K100.00 for each day for which the offence continues.

(5) It is a defence to a charge of an offence against Subsection (4) if the bank or financial institution proves that it had not had a reasonable opportunity of taking whatever steps were necessary to change its name or abandon the use of the expression, name or description.

**23. Indemnity.**

(1) The State, the Minister or the Central Bank, or any officer of Papua New Guinea or of the Central Bank, is not liable to any person for or in respect of any act done or omitted to be done, in good faith and without negligence, under or for the purposes of, or intended to be under or for the purposes of, this Act.

(2) For the purposes of Subsection (1), the Governor and Deputy Governor of the Central Bank, and all persons appointed under Section 18(2) (c), (d) or (e), shall be deemed to be officers of the Central Bank.

**24. Assets of banks unable to meet liabilities.**

Where a bank becomes unable to meet its obligations or suspends payment, the assets of the bank in the country are available to meet all deposit liabilities in the country, and those deposit liabilities have priority over all other liabilities of the bank.

**25. Non-business days.**

(1) In this section, "bank" includes the Central Bank.

(2) Where in the opinion of the Minister it is in the public interest that—

(a) banks; or

(b) a particular bank; or

(c) a particular branch of a bank,

should remain closed on a day that is not a public holiday the Minister may, by notice in the National Gazette, declare that day to be a non-business day for banks, or for the particular bank, or for the particular branch, as the case may be, and every bank, or the particular bank, or the particular branch, as the case may be, shall remain closed on that day.

(3) A bank is not compellable to make a payment or to do any other act on a day that is a non-business day in relation to it by virtue of Subsection (2), or at a branch on a day that is a non-business day in relation to the branch by virtue of that subsection, that it would not be compellable to make or do on a Sunday, and any obligation otherwise to make a payment or do any act on such a day shall be deemed to be an obligation to make the payment or do the act on the next day that is not a Sunday, public holiday or such a day.

**26. Unclaimed moneys.**

(1) In this section—

"authorised officer" means the Department Head or an officer of the Department authorized by him to act under this section;

"unclaimed moneys" means all principal, interest, dividends, bonuses, profits and sums of money legally payable by a bank but in respect of which the time for the taking of proceedings for recovery has expired, and includes moneys to the credit of an account (other than an account in the name of an infant) that has not been operated on by deposit or withdrawal for a period of not less than seven years.

(2) For the purposes of the definition of "unclaimed moneys" in Subsection (1), the debiting to an account of a fee for keeping the account is not a withdrawal, and the crediting to an account (other than a savings bank or passbook account) of interest payable by a bank on the account is not a deposit.

(3) Each bank must, within three months after 31 December in each year, deliver to the Minister a statement of all unclaimed moneys in its hands.

(4) The statement must specify—

(a) the name, and the last-known address, of each person to whom an amount of unclaimed moneys is payable, or the owner of each account, as the case may be; and

(b) the office or branch of the bank at which the last transaction took place, and the date of the transaction; and

(c) if the person concerned is known to the bank to be dead, the names and addresses, so far as they are known to the bank, of his legal representatives.

(5) The total amount shown in the statement—

- (a) must be paid by the bank to the State at the time of the delivery of the statement; and
- (b) shall be credited to the Unclaimed Moneys Fund kept under the *Unclaimed Moneys Act*; and
- (c) subject to Subsection (7), shall be paid into the Consolidated Revenue Fund after the expiration of six years after payment to the State.

(6) Subject to Subsection (7), on payment to the State of an amount of unclaimed moneys under this section a bank is discharged from further liability in respect of that amount.

(7) Where an amount of unclaimed moneys has been paid to the State under this section and the Minister or an authorized officer is satisfied that, but for Subsection (6), a person would be paid that amount by the bank by which it was paid to the State (or, if that bank is no longer carrying on banking business, by a bank to which that business of that first-mentioned bank has been sold or disposed of), the amount shall be paid to the bank and the bank must then pay it to him.

(8) The Public Account is, to the necessary extent, appropriated for the purposes of any payment under Subsection (7).

(9) The Minister shall cause particulars of every amount of not less than K20.00, or of not less than such other amount as is prescribed, shown in a statement delivered to him under this section to be published in the National Gazette.

(10) A bank that contravenes or fails to comply with any provision of this section that applies to it is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(11) The Minister or a bank may apply to the National Court for a declaration that any moneys are or are not unclaimed moneys within the meaning of this section.

## 27. Liability of defaulting officers.

(1) In this section—

“officer”, in relation to a corporation, includes—

- (a) all persons who are officers of the corporation for the purposes of the *Companies Act*; and
- (b) a member of the board of management or other controlling authority of the corporation; and
- (c) any person appointed under Section 18(2)(e) to assume control of the business of the corporation;

“officer of the corporation who is in default” includes an officer of the corporation who knowingly and wilfully authorizes or permits the commission of an offence by the corporation.

(2) Where an offence against this Act is committed by a corporation, every officer of the corporation who is in default is guilty of an offence.

Penalty: A fine not exceeding K100.00 or 10% of the penalty to which the corporation is liable, whichever is the greater.

**28. Regulations.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not exceeding K200.00 for offences against the regulations.

---

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

*Banks and Financial Institutions Regulation.*

---

ARRANGEMENT OF SECTIONS.

1. Interpretation—  
    "corporation"  
    "Credit instrument".
2. Declaration of financial institutions.
3. Application for licence.
- 3A. Time limit for application for licence or exemption.
4. Licence fees.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

***Banks and Financial Institutions Regulation.***

MADE under the *Banks and Financial Institutions Act.*

**1. Interpretation.**

In this Regulation, unless the contrary intention appears—

“corporation” means a body corporate whether formed or incorporated in the country or elsewhere;

“Credit instrument” means any agreement (written or otherwise) acknowledging an obligation to pay a sum of money on demand or at any future time.

*(Replaced by No. 4 of 1982, s. 1.)*

**2. Declaration of financial institutions.**

A person or class of persons is a financial institution, for the purposes of the Act, where in the course of business he or it—

(a) borrows money or accepts deposits (whether on demand or for a fixed term), or receives credit (other than normal trade credit), or sells any credit instrument; and

(b) lends money or grants credit (other than normal trade credit), or buys or discounts any credit instrument,

and without limiting the generality of Paragraphs (a) and (b), includes—

(c) a person who acts as agent or intermediary for the purposes of any of the transactions referred to under those paragraphs; and

(d) a corporation registered as a Savings and Loans Society under the *Savings and Loans Societies Act*; and

(e) a corporation licenced under the *Insurance Act* to carry on the business of insurance in Papua New Guinea; and

(f) a person or corporation engaged in the business of borrowing or lending money, or buying, selling or otherwise dealing in credit instruments, and declared by the Head of State, acting on advice, by notice in the National Gazette, to be a financial institution.

*(Replaced by No. 4 of 1982, s. 2.)*

**3. Application for licence.**

A corporation seeking a licence as a bank or financial institution under Section 4 of the Act shall apply in writing through the Central Bank and supply—

- (a) a copy of the memorandum and articles of association or other instrument under which the corporation is incorporated, duly verified by a statutory declaration made by a senior officer of the corporation; and
- (b) a copy of the latest audited balance sheet (if any) and in the case of a financial institution the application shall also include—
  - (i) the financial statement disclosing the assets and liabilities as at the quarter immediately preceding the application; and
  - (ii) the balance sheet and profit and loss account of the previous financial year (if any); and
- (c) details of the capital structure of the corporation, including particulars of major shareholders and the distribution of shareholdings; and
- (d) details of the terms and conditions on which the licence is being sought, and in particular—
  - (i) whether incorporation in the country is proposed and, if so, the proposed capitalization and the extent to which an opportunity will be extended for local equity participation; and
  - (ii) the name or names under which operations would be conducted and the business advertised; and
  - (iii) proposed policy regarding the range of business to be conducted, extension of branch network and localization of management and staff; and
  - (iv) in the case of a licence as a financial institution—whether the activities contemplated relate to the conduct of a representative office or the carrying on of business as a financial institution; and
- (e) a statement regarding the benefits expected to accrue to Papua New Guinea from the granting of a licence; and
- (f) such other information as is called for by the Central Bank.

*(Amended by No. 4 of 1982, s. 3.)*

**3A. Time limit for application for licence or exemption.**

(1) Subject to this section, a financial institution to which Section 2 applies shall, within three months from the date it commences business within the meaning of that section, apply to the Minister for a licence or exemption from the requirements of the Act.

(2) Where a financial institution has lodged an application under Subsection (1) he or it may continue to conduct the business of a financial institution until a determination has been made on the application.

*(Added by No. 4 of 1982, s. 4.)*

**4. Licence fees.**

(1) For the purposes of Section 4(6) of the Act, the prescribed fee for a licence is—

- (a) in the case of a licence as a bank—K1 000.00; and
- (b) in the case of a licence as a financial institution—K100.00.

(2) Fees referred to in Subsection (1) shall be paid on the grant of a licence, and afterwards annually in advance on 1 January in each year.

*(Replaced by No. 4 of 1982, s. 5.)*



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 137.

***Banks and Financial Institutions.***

---

APPENDIX 1.

---

SOURCE OF THE BANKS AND FINANCIAL INSTITUTIONS ACT.

Previous Legislation.

*Banks and Financial Institutions Act*

as amended by—

*Banks and Financial Institutions (Amendment) Act 1982 (No. 1 of 1982).*

APPENDIX 2.

SOURCE OF THE BANKS AND FINANCIAL INSTITUTIONS REGULATION.

Previous Legislation.

*Banks and Financial Institutions Regulations*

as amended by—

*Banks and Financial Institutions (Amendment) Regulation 1982* (Statutory Instrument No. 4 of 1982).