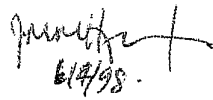


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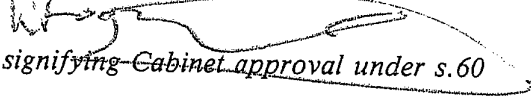
THE FINANCIAL INSTITUTIONS BILL 1998

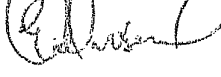
(NAME OF BILL)

CONTENTS: Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

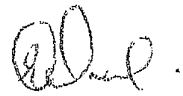
FROM: Attorney General's Chambers 
6/4/98

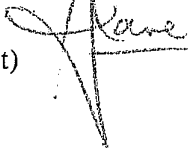
TO: Minister
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: Minister of Finance 
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO: Clerk to National Parliament 
(for certificate by Speaker)

TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament 
(for reference during 1st, 2nd and 3rd Readings)
(Date passed.....15/04/98. Act No.3/98.....)

TO: Attorney General's Chambers 
(for checking before Assent)

TO: Governor-General
(for Assent)

TO: Clerk to National Parliament



THE FINANCIAL INSTITUTIONS

ACT 1998
(NO. 3 OF 1998)



THE FINANCIAL INSTITUTIONS

ACT 1998

(NO. 3 OF 1998)

Passed by the National Parliament this fifteenth day of April 1998.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

E. Andresen
Elizabeth Andresen

Acting Clerk to National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this twenty-fifth day of June 1998.

P. J. Tovua
Paul J. Tovua

Acting Governor-General

AN ACT To Provide for the regulation of the business of banking; and for the licensing, regulation and supervision of financial institutions carrying on banking businesses in Solomon Islands and for purposes connected therewith; and to repeal the Banking Act 1976.

ENACTED by the National Parliament of Solomon Islands.

THE FINANCIAL INSTITUTIONS ACT 1998

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PART I
PRELIMINARY

1. This Act may be cited as the Financial Institutions Act, 1998, and shall come into force on such date as the Minister may appoint by notice published in the Gazette.

Short title and
commencement.

Interpretation.

2. (1) In this Act, unless the contrary intention appears, the expression -

“accounting and internal control systems” include procedures and practices applicable to electronic data processing (hereinafter referred to as “EDP”);

“accounts”, “books”, “vouchers”, “minutes”, “documents” or “records” include those kept in a computer, magnetic tape or any other storage device used in electronic data processing by a financial institution or by any EDP service of a financial institution;

“affiliate” means a company wherein another company’s shareholding is at least twenty per cent but not more than fifty per cent of the outstanding voting stock or where that other company has the power to exercise influence over the policies of management of the company;

“bank” means any financial institution whose operations include the acceptance of deposits of money withdrawable or transferable by cheque or other means of payment transfer;

“banking business” means -

(a) the business of accepting deposits of money from the public or members thereof, withdrawable or payable upon demand or after a fixed period or after notice, or any similar operation through the frequent sales or placement of bonds, certificates, notes or other securities, and the use of such funds, either in whole or in part, for loans or investments for the account and at the risk of the person doing such business; and

(b) any other activity recognised by the Central Bank as customary banking practice which a licensed financial institution engaging in the activities described in paragraph (a), or any related activity which the Central Bank may consider appropriate;

“body corporate” means a company incorporated in Solomon Islands or elsewhere under any law for the time being in force relating to the formation and registration of companies, or a corporation established in Solomon Islands or elsewhere under any Act;

“Central Bank” means the Central Bank of Solomon Islands established under the Central Bank of Solomon Islands Act;

Act No. 4 of
1976.

“Court” means the High Court of Solomon Islands;

“credit institution” means any financial institution other than a bank;

“director” means an individual who exercises management and policy making functions at the highest level of an organisation and occupies the position of director by whatever name called, and includes a person who is a member of the board of directors, committee, council or other governing body, howsoever called, of a body corporate;

“EDP service” refers to any person providing or maintaining electronic data processing service to a financial institution and includes an EDP division within the financial institution, and an EDP division within a subsidiary or affiliate of the financial institution, or any independent EDP service bureau;

“financial institution” means any body corporate doing banking business:

Provided, that for the purposes of this Act, unless the context otherwise requires, all offices and branches of a financial institution in Solomon Islands shall be deemed to be one financial institution;

“foreign financial institution” means a financial institution incorporated or established outside Solomon Islands and recognised as such under the laws of the country in which it was incorporated or established;

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“licensed financial institution” means a financial institution licensed under the provisions of this Act;

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“manager” includes any person for the time being in charge of the principal office in Solomon Islands of any financial institution;

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“Minister” means the Minister responsible for finance;

“officer” includes a director, manager or secretary;

“subsidiary” means a company in which another company owns more than fifty per cent of the outstanding voting stock; and

“voting stock” means any stock, share or other entitlement which carries with it the right for the holder thereof whether personally or through a nominee to vote at any general meeting of the institution in respect of which it has been issued.

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(2) A person shall be deemed to be carrying on banking business if he advertises for or solicits deposits of money, or offers to sell or place bonds, certificates, notes or other securities and uses or intends to use the funds so required, either in whole or part, for advances, investments or in any other operation either authorised by law or by customary banking practice for the account and at the risk of the person placing such advertisement.

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PART II
LICENSING OF FINANCIAL INSTITUTIONS

3. (1) No person other than a company incorporated under the Companies Act or established abroad, or a body corporate established in Solomon Islands by an Act of Parliament shall be eligible to apply for a licence under this Act to engage in the business of banking in Solomon Islands.

(2) A person commits an offence under this Act, who not being licensed as a financial institution -

(a) carries on banking business, whether on his own account, in partnership or otherwise; or

(b) purports to be licensed or otherwise entitled to carry on banking business; or

(c) takes or uses any name, title or description implying or likely to lead the public to believe that he is licensed or otherwise entitled to carry on banking business; or

(d) makes any representation to be a financial institution on any letter-head, notice, or advertisement or in any other manner.

(3) Where the Central Bank has reason to believe that any person is contravening the provisions of subsection (1) it may cause an examination of the books, accounts and records of such person to find out if that is the case.

(4) Any person who refuses to make available for examination such books, accounts and records requested by the Central Bank for purposes of subsection (3) shall be guilty of an offence.

(5) A person holding funds which he has obtained in contravention of subsection (1) shall repay such funds as directed by the Central Bank.

(6) Any person who is convicted of an offence under this section shall be liable to a fine not exceeding three thousand dollars for each day during which the offence continues or to imprisonment not exceeding three years or to both such fine and imprisonment.

Unlicensed
financial institutions prohibited.
Cap.66.

(7) No company which has as part of its name or description the words "Bank", "Banking", "Savings" or "Savings and Loan" shall be incorporated or registered in Solomon Islands without the prior approval of the Central Bank. Where approval is granted under this section, such approval shall only be for the purpose of making an application under section 5 and does not confer or imply any enforceable right in respect of the grant of a licence.

Existing financial institutions deemed licensed.

4. (1) Notwithstanding the provisions of any other Act or law, the financial institutions specified in the Schedule shall -

(a) be deemed to be licensed under section 5 on the coming into force of this Act;

(b) be issued a licence accordingly; and

(c) be subject to this Act.

(2) Any financial institution specified in the Schedule which is, on the coming into force of this Act, in contravention of any provision of this Act, shall rectify such contravention within six months of the coming into force of this Act. Details of such contravention shall be sent to the Central Bank within one month of the coming into force of this Act.

Licensing of financial institutions.

5. (1) Any company desirous of commencing banking business in Solomon Islands after the commencement of this Act shall, before commencing such business, apply for and obtain a licence to do so.

(2) An application for a licence under this section shall be made in writing to the Central Bank in such form as shall be specified by the Central Bank and shall be accompanied by such fee as may be specified.

(3) Every company that makes an application under this section shall furnish to the Central Bank such information, and such documents, authenticated in such manner as the Central Bank may specify, as may be required by the Central Bank to assist it to consider the application. The Central Bank may conduct such investigations as it deems necessary in regard to such application.

(4) Any person who knowingly furnishes any information or document which is false or misleading in any material particular in connection with an application under this Act is guilty of an offence and is liable on conviction to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment not exceeding three years or to both such fine and imprisonment.

(5) In considering an application, the Central Bank shall have regard to the economic advantage of Solomon Islands, the need for and the viability of the financial institution proposed, its ownership spread, the financial capacity, history and qualifications of the applicant, promoters, substantial shareholders and management, their character and experience, the proposed financial institution's accounting, risk management and internal control systems, the adequacy and the structure of its capital and the business activities it intends to undertake.

(6) Where the applicant is a foreign financial institution, the Central Bank shall in addition to the matters specified in subsection (5) have regard to -

- (a) the institution's international reputation;
- (b) the ownership spread of the institution or of its holding company;
- (c) the relevant law and regulatory requirements relating to the licensing and supervision of financial institutions in its country of incorporation;

and shall require -

- (i) written information from the supervisory authority in the applicant's country of incorporation that the supervisory authority has no objection to the proposal to carry on banking business in Solomon Islands;
- (ii) written confirmation that the applicant would provide support as necessary to its branch, subsidiary or affiliate in Solomon Islands; and
- (iii) details of the programme of training the applicant would adopt in order to place Solomon Islands citizens in management positions in its operations in Solomon Islands.

(7) Within four months after receipt of an application under this section, and all other additional relevant information and documents it may require, the Central Bank shall -

- (a) issue to the applicant a licence to carry on banking business subject to such terms and conditions as may be specified in the licence; or
- (b) inform the applicant that its application is refused.

(8) A licence issued under this Act cannot be assigned or transferred and any purported transfer or assignment shall be null and void.

(9) The Central Bank may impose new or additional conditions on a licence issued pursuant to this Act, or vary or remove any conditions already imposed. Before taking such action, the Central Bank shall, by notice in writing to the licensed financial institution concerned, inform it of the changes proposed and afford it an opportunity to make submissions in writing to the Central Bank in this regard no later than fourteen days from the date of the notice. The Central Bank shall take into account any such submissions received in deciding whether or not to proceed with the changes,

(10) Every licensed financial institution shall pay such annual fee as may be determined by the Central Bank from time to time, on such basis as the Minister may approve. The prescribed annual fee shall be paid upon the granting of a licence and not later than the fifteenth day of January of every succeeding year. The annual fee shall be considered as a debt due to the Bank and any licensed financial institution which fails to pay the fee by the due date shall be liable to a surcharge equivalent to one hundred per cent of the prescribed fee. All fees and surcharges received under this subsection shall be paid by the Central Bank to the Treasury on account of the Consolidated Fund.

6. (1) The Central Bank may revoke a licence issued under this Act -

Revocation of
licence.

- (a) if the licensee -
 - (i) requests revocation of the licence;
 - (ii) was licensed on the basis of materially false or misleading information or documents;
 - (iii) fails to commence business within the time period prescribed by the Central Bank;
 - (iv) ceases to carry on banking business in Solomon Islands;
 - (v) contravenes the terms and conditions of its licence or the provisions of this Act; or
 - (vi) is subject to voluntary or involuntary winding-up proceedings or has a receiver appointed; or
- (b) in the circumstances specified in section 17.

(2) Where the Central Bank intends to revoke the licence in any of the circumstances specified under subsection (1) (a), the Central Bank shall give the licensee notice in writing of that intention and shall afford the licensee the opportunity to submit to the Central Bank, within fourteen days of the date of the notice, reasons why the licence should not be revoked. The Central Bank shall take into account any such submissions in deciding whether or not to proceed with the revocation.

(3) The revocation of a licence in the circumstances specified in subsection (1) (a) (ii) shall not prejudice any other action which may be initiated under section 5 (4).

Minimum capital of a financial institution.

7. (1) Every financial institution licensed under this Act shall maintain -

(a) if incorporated in Solomon Islands, paid-up capital and unimpaired reserves; and

(b) if incorporated abroad, assigned capital,

in such minimum proportion in relation to its assets, liabilities or risk exposures, and in such amount, as the Central Bank may in its absolute discretion specify from time to time.

(2) The Central Bank may in its absolute discretion specify the minimum amount of paid-up or assigned capital required by a financial institution for the issue of a licence under section 5.

(3) The Central Bank may in its absolute discretion specify different requirements for different financial institutions or classes of financial institutions.

(4) The minimum amount of paid-up capital or assigned capital which may be specified under subsections (1) and (2) is -

(a) in the case of a credit institution, not less than one million dollars; and

(b) in the case of a bank, not less than five million dollars.

(5) The computation and form of the capital required to be held under subsections (1) and (2) shall be determined by the Central Bank after consultation with the financial institution concerned.

(6) (a) No licensed financial institution shall declare or pay any dividend or make any other transfer from profits or reserves if such payment or transfer would contravene the provisions of this section or any specification made thereunder.

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(b) No licensed financial institution incorporated in Solomon Islands shall pay any dividend on its shares or make any other transfer from profits and no licensed financial institution incorporated outside Solomon Islands shall remit any profits outside Solomon Islands until all its capitalised expenditure including preliminary expenses, organisation expenses, share selling commission, brokerage and amounts of losses incurred (not represented by tangible assets), has been completely written off.

PART III PRUDENTIAL SUPERVISION

8. (1) In the prudential supervision of licensed financial institutions and in determining whether or not a licensed financial institution carries on its business in a prudent manner, the Central Bank shall have regard to the following -

Prudential
supervision.

- (a) capital adequacy in relation to the size and nature of the business;
- (b) asset concentration and risk exposure;
- (c) separation of banking business from other business and from other interests of any person owning or controlling the licensed financial institution;
- (d) adequacy of liquidity in relation to liabilities;
- (e) asset quality and adequacy of provisions for losses;
- (f) internal controls, risk management and accounting systems; and
- (g) such other matters as the Central Bank considers relevant.

(2) The Central Bank may require a licensed financial institution to submit within a prescribed time and in a prescribed form such periodic returns and other information as it considers necessary for the purposes of this Act.

(3) The Central Bank may require any licensed financial institution to submit a certificate from its external auditor verifying the accuracy or any return or information furnished under subsection (2).

(4) The Central Bank may in its absolute discretion impose upon any licensed financial institution and upon any director or officer of the institution administrative fines for -

(a) failure to submit or for wilfully delaying the submission of any required return or information, or for wilfully submitting any false or inaccurate return or information required under subsection (2);

(b) failure to submit the certificate of the external auditor, if required in accordance with subsection (3); or

(c) failure to comply with a directive issued under section 16.

(5) (a) The administrative fines shall be in amounts as may be determined by the Central Bank to be appropriate but in no case may exceed ten thousand dollars for each violation or where the violation is a continuing one, may not exceed three thousand dollars for every day during which the violation continues, and shall take into consideration the surrounding circumstances, such as the nature and gravity of the violation. An administrative fine imposed shall be a civil debt and if not paid may be enforced by action in the Court.

(b) A licensed financial institution or any director or officer of that institution on whom an administrative fine is imposed may, within fourteen days of the date of the notification of such fine, submit reasons to the Central Bank why such fine should not be imposed. After consideration of such submission the Central Bank may confirm, vary or rescind the fine.

9. (1) Every licensed financial institution shall, subject to the approval of the Central Bank, appoint annually one or more persons (whether as individuals or as members from time to time of any firm or firms) to be external auditors of the licensed financial institution.

External auditor
and annual
accounts.

(2) The duties of the external auditor shall include making a report upon the annual balance sheet and profit and loss account of the licensed financial institution and its subsidiaries in relation to the following matters -

(a) whether they have obtained all the information and explanations which to the best of their knowledge and belief were necessary for the purposes of their audit;

(b) whether, in their opinion, proper books of account have been kept by the licensed financial institution, so far as appears from their examination of those books, and proper returns adequate for the purposes of their audit have been received from branches not visited by them;

(c) whether the licensed financial institution's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account dealt with by the report are in agreement with the books of account and returns;

(d) whether, in their opinion and to the best of their information and according to the explanations given to them, the said accounts give a true and fair view -

(i) in the case of the balance sheet, of the state of the licensed financial institution's affairs as at the end of its financial year; and

(ii) in the case of the profit and loss accounts, of the profit or loss for its financial year;

(e) in the case of a licensed financial institution submitting group accounts as required by the Central Bank, whether in their opinion, the group accounts have been properly prepared as to give a true and fair view of the state of affairs and profit or loss of the licensed financial institution and its subsidiaries dealt with thereby; and

(f) in any case in which the external auditor has called for explanation or information from the officers or agents of the licensed financial institution and its subsidiaries whether it is satisfactory.

(3) Every licensed financial institution shall, within three months after the close of its financial year or such further period as the Central Bank may approve, submit to the Bank a copy of its audited annual balance sheet and profit and loss statement together with any notes thereon and a copy of the report of the external auditor made pursuant to subsection (2).

(4) In the case of a licensed financial institution incorporated in Solomon Islands, the report of the external auditor under subsection (2) shall be tabled together with the report of the directors of the licensed financial institution at the annual meeting of shareholders and copies of that report shall be sent to the Central Bank.

(5) Every director and every manager of a licensed financial institution which contravenes the provisions of subsection (4) shall be liable to an administrative fine imposed by the Central Bank in accordance with section 8 (5).

(6) If a licensed financial institution fails to appoint an external auditor under subsection (1), or, at any time, fails to fill a vacancy for such external auditor, the Central Bank may appoint an external auditor and shall fix the remuneration to be paid by that institution to that external auditor.

(7) No person having an interest in any financial institution otherwise than as a depositor, and no director, employee or agent of any licensed financial institution shall be eligible for appointment as an external auditor for that institution; and any person appointed as external auditor to any licensed financial institution who subsequently acquires such interest or becomes a director, employee or agent of that institution shall cease to be external auditor thereof.

(8) (a) It shall be the duty of the external auditor to report immediately to the Central Bank information relating to the affairs of a licensed financial institution obtained in the course of an audit, if he is of the opinion that -

- (i) the financial institution is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations or is in serious financial difficulties;

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- (ii) a criminal offence involving fraud or dishonesty has been committed;
- (iii) serious irregularities have occurred, including irregularities that jeopardise the interest of depositors and creditors;
- (iv) losses have been incurred which substantially reduce the capital funds of the financial institution; or
- (v) the financial institution is unable to confirm that the claims of creditors are still covered by the financial institution's assets.

(b) The external auditor may be required to discuss the audit directly with the Central Bank or be requested to provide additional information regarding the audit.

(9) The external auditor shall, before disclosing any information to the Central Bank under subsection (8), take reasonable steps to inform the licensed financial institution of the intention to disclose the information and the nature of such information, and of the intention to discuss the audit with the Central Bank.

(10) The Central Bank may, by notice in writing to a licensed financial institution, require it to supply the Central Bank with a report, prepared by its external auditor or other person nominated by the Central Bank, on such matters as the Central Bank may determine which may include an opinion on asset quality, adequacy of provisions for losses, and the adequacy of the accounting and control systems.

(11) No civil, criminal or disciplinary proceedings shall lie against any external auditor arising from the disclosure in good faith of information to the Central Bank pursuant to this section.

(12) In the case of a licensed financial institution incorporated outside Solomon Islands, the provisions of subsections (1), (2), (3), (6), (7), (8), (9), (10), and (11) shall be applicable in respect to its operations in Solomon Islands; and a copy of the audited accounts shall be sent to the Central Bank.

Publication of
financial state-
ments.

10. (1) Not later than four months after the close of each financial year of each licensed financial institution, or such longer period as the Central Bank may in any particular case permit, the financial institution shall publish in a national publication specified by the Central Bank, and exhibit thereafter in a conspicuous position in each of its offices and branches in Solomon Islands copies of its audited balance sheet, and profit and loss account and the full and correct names of the directors of the financial institution.

(2) Any licensed financial institution which contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand dollars.

On-site exami-
nation.

11. (1) The Central Bank may, under conditions of confidentiality, initiate on-site examinations of the accounts and affairs of any licensed financial institution and any of its branches, agencies or offices. Such examinations may be conducted by Central Bank officers or by other persons designated as examiners by the Central Bank, (hereinafter referred to as "examiners".)

(2) A licensed financial institution under examination shall make available for the inspection of the examiners all cash and securities of the institution and all accounts, books, vouchers, minutes and any documents or records that are relevant to its business as may be required, within the time specified by the examiners.

(3) The examiners may make copies of and take away for further scrutiny, any papers or electronically stored data they require.

(4) An on-site examination may extend to any of the subsidiaries and affiliates of a licensed financial institution. Accordingly, the provisions of subsections (2) and (3) shall apply in the conduct of any examination of that institution's subsidiary or affiliate.

PART IV
RESTRICTIONS ON BUSINESS

12. (1) A licensed financial institution together with its subsidiaries shall not, in respect of its Solomon Islands operations and, in the case of any such licensed financial institution which is incorporated in Solomon Islands, also in respect of its overseas operations -

Restrictions on advances, credit facilities and guarantees.

(a) make to any person, firm, corporation or company, or to any group of companies or of persons which group is under the control or influence of one and the same person, any advance or credit facility, or give any financial guarantee or incur any other exposure or liability on behalf of that person, firm, corporation, company or group so that the total value of the advances, credit facilities, financial guarantees and other exposures or liabilities in respect of that person, firm, corporation, company or group is at any time more than twenty-five per cent of that licensed financial institution's total capital as determined by the Central Bank:

Provided that this paragraph shall not apply to transactions between banks or between the branches of a bank, or the purchase of telegraphic transfers, or to the purchase of bills of exchange or documents of title to goods, where the holder of those bills or documents is entitled to payment outside Solomon Islands for exports from Solomon Islands, or to advances made against those transfers, bills or documents; or to any advance or credit facility made to or guaranteed by the Government of Solomon Islands;

(b) make any advances or credit facility against the security of its own shares;

(c) (i) grant to any of its directors or shareholders any advance, credit facility or guarantee unless granted on substantially the same terms, including interest rates and security, as those prevailing at the time for comparable transactions by the financial institution with members of the general public;

(ii) make or permit to be outstanding unsecured advances or unsecured credit facilities of an aggregate amount in excess of ten thousand dollars or of one

per cent of the sum of the paid-up capital and published reserves of the licensed financial institution, whichever is the greater, or give any financial guarantees in excess of that amount without security, or incur any other liability in excess of that amount without security -

(A) to or on behalf of any one of its directors, whether the advances, facilities, guarantees or other liabilities are obtained by or on account of the director jointly or severally;

(B) to or on behalf of any firm, partnership or private company in which it, or any one or more of its directors is interested as director, partner, manager or agent, or to or on behalf of any individual, firm, partnership or private company of whom or of which any one or more of its directors is a guarantor.

For the purpose of this sub-paragraph, a private company shall have the meaning ascribed by the Companies Act and a director shall include a wife, husband, father, mother, son or daughter of a director, and persons who stand in a "wantok" relationship to a director;

Cap.66.

(d) make or permit to be outstanding to its officers and employees unsecured advances or unsecured credit facilities which, in aggregate amount for any one officer or employee, exceed one year's emolument of the officer or employee.

(2) For the purposes of paragraph (a) of subsection (1)

(a) "control or influence of one and the same person" shall mean that the person holds and has the power to vote a minimum of fifty-one per cent of the voting shares or stock of the borrower, firm, corporation or company or a group of companies or of persons:

Provided that, the foregoing notwithstanding, a preponderance of evidence may prove "control or influence" if it can be shown that the person exercises a factual control in the policies of the borrower, firm, corporation or company or any group of companies or of persons;

(b) total capital in relation to a licensed financial institution incorporated outside Solomon Islands shall be the sum of the global consolidated issued paid-up capital and published reserves of that licensed financial institution.

(3) In any or all of paragraphs (c) and (d) of subsection (1), the expression "unsecured advances or unsecured credit facilities" means advances or credit facilities made without security, or, in respect of any advance or credit facility made with security, any part thereof which at any time exceeds four-fifths of the market value or in the case of non-marketed securities a valuation by the Central Bank of the assets constituting that security.

(4) Any financial institution specified in the Schedule which is in contravention of this section at the time this Act comes into force, shall within three months of such time submit a statement thereof to the Central Bank and shall rectify such contravention within eighteen months of such time, or such further period as the Central Bank may allow.

13. (1) A licensed financial institution shall not, in respect of its Solomon Islands operations, and in the case of any such licensed financial institution which is incorporated in Solomon Islands, also in respect of its overseas operations -

Prohibited
activities.

(a) engage in any business other than the business specified in the licence;

(b) engage, whether on its own account or on a commission basis, in the wholesale or retail trade, including the import or export trade, or otherwise, have a direct interest in any commercial, agricultural, industrial or other undertaking, except as permitted under paragraph (d) of this subsection and except insofar as may be necessary with respect to such interest as a licensed financial institution may acquire in the course of the satisfaction of debts due to it; but all such interests shall be disposed of within such period of time as may be determined by the Central Bank;

(c) acquire a subsidiary company, or operate via a subsidiary company, or permit a subsidiary company to operate, or carry on business in any capacity, without the prior written approval of the Central Bank;

(d) acquire or hold to an aggregate value exceeding twenty-five per cent of that licensed financial institution's total capital as determined by the Central Bank, any part of the share capital of any financial, commercial, agricultural, industrial, or other undertaking except such shareholding as a licensed financial institution may acquire in the course of the satisfaction of debts due to it; but any such shareholding shall, however, be disposed of within such period of time as may be determined by the Central Bank:

Provided that this paragraph shall not apply to -

(i) any shareholding, approved in writing by the Central Bank, in a subsidiary financial institution or in a subsidiary company formed by a licensed financial institution for the execution of nominee, executor or trustee functions or other functions incidental to banking business; and

(ii) the acquisition and disposal of shares as a trustee or nominee, or the purchase and sale of shares upon the order and for the account of a customer;

(e) purchase, acquire or lease real property, except as may be necessary for the purpose of conducting its business or housing its staff or providing amenities for its staff, having regard to any reasonable requirements for future expansion of its business or staff, but, in the event of any debt due to a licensed financial institution which is secured upon any real or other property of the debtor becoming endangered, the licensed financial institution may acquire such property; but any such property shall be resold within a period of time as may be determined by the Central Bank.

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(2) For the purposes of paragraph (d) of subsection (1) -

- (i) total capital in relation to a licensed financial institution incorporated outside Solomon Islands shall be the sum of the global consolidated issued paid-up capital and published reserves of that licensed financial institution;
- (ii) shareholding acquired or held by a licensed financial institution shall include share capital acquired or held by any subsidiary or subsidiaries of the said financial institution, whether or not the subsidiary or subsidiaries are licensed under this Act.

(3) Except with the consent, in writing, of the Central Bank no financial institution incorporated in Solomon Islands shall open a new branch, agency or office in any place outside Solomon Islands.

(4) No licensed financial institution shall open or close a branch in Solomon Islands without first notifying the Central Bank of its intention to do so.

(5) (a) Every director and every manager of a licensed financial institution, which contravenes the provisions of any or all of paragraphs (a), (b), (c), (d) and (e) of subsection (1) or subsection (3) shall be liable to an administrative fine not exceeding three thousand dollars for every day during which the contravention continues, such administrative fine to be imposed by the Central Bank as provided for under section 8 (5).

(b) Any person liable to an administrative fine in terms of paragraph (a) shall have a good defence if he proves that the contravention was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the contravention as he ought to have exercised having regard to his position in the financial institution in respect of which the contravention was committed.

(6) The restriction contained in paragraph (d) of subsection (1) shall not apply, where a licensed financial institution or a subsidiary or subsidiaries of a licensed financial institution acquires or holds any part of the share capital of any company or companies under an underwriting or sub-underwriting contract for a period not exceeding three months, or such other period as the Central Bank may approve in writing in any particular case.

Persons
debarred from
management.

14. (1) Any person -

(a) who has been a director of, or directly concerned in the management of, a financial institution in Solomon Islands or elsewhere which has had its licence revoked or has been wound up by a court; or

(b) who has been sentenced by a court in any country to a term of imprisonment for an offence involving dishonesty and has not received a full pardon for that offence; or

(c) who is or becomes bankrupt, suspends payment to or compounds with his creditors,

shall not without the express authorisation of the Central Bank act or continue to act as a director, manager, secretary or other employee, of any financial institution.

(2) The Central Bank may in its absolute discretion impose upon any person who contravenes the provisions of subsection (1) an administrative fine as provided for under section 8 (5).

PART V
CONTROL OVER LICENSED FINANCIAL
INSTITUTIONS

15. In the event of a licensed financial institution becoming unable to meet its obligations or suspending payment or in the case of a licensed financial institution incorporated outside Solomon Islands, in the event of its liquidation, bankruptcy or dissolution in its country of incorporation for whatever reason, the assets of the licensed financial institution in Solomon Islands shall be available to meet the licensed financial institution's deposit liabilities in Solomon Islands in priority to all other liabilities of the licensed financial institution, which priority the Central Bank shall be empowered to protect and preserve.

Assets of
licensed finan-
cial institutions.

16. (1) Where the Central Bank is of the opinion, either as a result of an inspection carried out pursuant to section 11 or otherwise, that a licensed financial institution -

Unsound or
unsafe prac-
tices.

(a) is following unsound or unsafe practices in the conduct of its business that are likely to jeopardise its obligations to its depositors or other creditors, or adversely affect the operation or stability of the financial system; or

(b) has contravened or failed to comply with the terms and conditions of its licence or the provisions of this Act,

the Central Bank may issue a directive to such licensed financial institution to -

- (i) cease and desist from such practice, contravention or non-compliance; and
- (ii) take such action (including action to replace or strengthen management) as may be specified in the directive to correct the conditions resulting from such practice, contravention or non-compliance.

17. (1) Where-

Enforcement.

(a) a licensed financial institution informs the

Central Bank that it is insolvent, is likely to become so, or is likely to be unable to pay its obligations; or

(b) if in the opinion of the Central Bank, or if an external audit or an on-site examination shows that, a licensed financial institution -

- (i) is carrying on its business in a manner that is detrimental to the interests of its depositors, creditors or the public; or
- (ii) is likely to be unable to meet its obligations when they fall due;

the Central Bank shall exercise one or more of the powers specified in subsection (2).

(2) The powers referred to in subsection (1) are -

(a) to direct the licensed financial institution to take whatever action in relation to its business as the Central Bank may specify;

(b) to appoint a qualified person to advise the licensed financial institution on the proper conduct of its business;

(c) to direct the licensed financial institution to pay such remuneration to a person appointed under paragraph (b) of this subsection, as may be fixed by the Central Bank;

(d) to revoke the licensed financial institution's licence; or

(e) to present a petition to the Court for the winding up of the licensed financial institution.

(3) Where an advisor is appointed under subsection (2) (b) the licensed financial institution shall afford the advisor access to its books, accounts and documents and shall give such information and facilities as necessary to enable him to carry out his duties.

18. (1) If the Central Bank considers that it is proper to take control of and manage the banking business of a licensed financial institution in order to protect the stability of the financial system, the interest of depositors or in the public interest, it may apply to the Court for any order under this section.

Court supervised management.

(2) The Court may, if it considers that in the circumstances of the case it is appropriate that the Central Bank or its nominee be appointed to take control of and manage the banking business of a licensed financial institution, make any or all of the following orders -

(a) that the Central Bank, or a person nominated by the Central Bank and approved by the Court, be appointed as Court Appointed Manager, to take control of the banking business of a licensed financial institution;

(b) that the Court Appointed Manager shall have such powers and authority as the Court specifies, including the following -

(i) power to carry on or cease to carry on, or sell the business of the financial institution and in so doing, to have and exercise all the powers, rights and authorities necessary to do so;

(ii) such of the powers of a liquidator under the Companies Act as are specified by the Court;

Cap.66.

(c) that any subsidiary of the licensed financial institution be subject to control and management under this section in like manner to the licensed financial institution;

(d) any order in relation to the licensed financial institution that the Court would be able to make in relation to a company that is in liquidation under the Companies Act, including -

- (i) a moratorium on actions or enforcement action against the licensed financial institution on such terms as the Court considers appropriate; or
- (ii) a prohibition against the removal or disposal of assets except with the consent of the Court Appointed Manager; or
- (e) that the Court Appointed Manager be entitled to apply to the Court in the case to seek directions.

(3) If a licensed financial institution that is subject to management and control under this section is incorporated outside Solomon Islands, this section applies to the operations of the licensed financial institution in Solomon Islands and to its property, rights, assets and liabilities relating to its business in Solomon Islands.

(4) If a licensed financial institution or subsidiary that becomes subject to management and control under this section is already in liquidation or receivership -

- (a) the liquidation or receivership shall cease; and
- (b) the person appointed as liquidator or receiver shall be discharged;

Provided that if the control and management of the licensed financial institution or subsidiary under this section is terminated, the Court may order that the liquidation or receivership shall be revised, upon such terms as the Court may specify.

(5) The Court, on the application of the Central Bank or of its own motion, may terminate the appointment of a person as Court Appointed Manager, for any reason, including the resignation of that person.

(6) A licensed financial institution or subsidiary shall cease to be subject to control and management under this section if -

(a) the Court, on the application of the Central Bank, so orders; or

(b) the Central Bank presents a petition for the winding up of the licensed financial institution.

(7) In the exercise of its powers, the Court Appointed Manager shall have regard to -

(a) the need to avoid significant damage to the financial system; and

(b) the preservation, subject to paragraph (a), of the position of creditors and the maintenance of the ranking of claims of creditors, provided that depositors shall receive priority ahead of other creditors.

(8) A Court Appointed Manager shall comply with any written directions of the Central Bank relating to the exercise of his powers under this Act unless -

(a) such directions conflict with any order of the Court; or

(b) the Central Bank is the Court Appointed Manager.

(9) A Court Appointed Manager, and any employee, director or assistant thereof, shall not incur any personal liability by virtue of the exercise, in good faith, of any power or duty under this Act.

(10) An application to the Court under subsection (1) shall be by notice of motion and thereafter the form of the proceedings shall be as directed by the Court.

19. Notwithstanding anything to the contrary contained in the Companies Act -

Liquidation
proceedings.
Cap. 66.

(a) no licensed financial institution shall be wound up without the prior approval of the Central Bank;

(b) the Registrar of Companies shall be the liquidator in any proceedings in Solomon Islands for the winding up of a licensed financial institution except in the case of a members' voluntary winding up of such institution wherein the Registrar may be the liquidator;

(c) the Court may, in the proceedings for the winding up of a licensed financial institution, dispense with any meetings of creditors or contributors or with the appointment of a committee of inspection if it considers that no object will be served thereby sufficient to justify the delay and expense; and

(d) the Court shall presume the amounts shown in the books of the licensed financial institution as standing to the credit of depositors are proved without requiring further proof from the depositors concerned unless the liquidator shows that there is reason for doubting any particular entry.

Misleading or obstructive conduct an offence.

20. Any director, officer, employee, former officer or former employee of a licensed financial institution or of the EDP Servicer of that licensed financial institution, who -

- (a) with intent to deceive -
 - (i) makes a false or misleading entry in any book or record;
 - (ii) makes or provides any false or misleading statement, report, return, document or information;
 - (iii) omits an entry or alters or conceals an entry in any book or record;
 - (iv) conceals or destroys any information, book, voucher, record, report, return, minutes or document, relating to the accounts, transactions, affairs or business of the financial institution; or

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- (b) obstructs or endeavours to obstruct -
- (i) the proper performance by an external auditor of his duties;
- (ii) an on-site examination of the licensed financial institution (or any branch, agency, office, subsidiary or affiliate of that institution) by an examiner appointed by the Central Bank; or
- (iii) the proper performance by an advisor or Court Appointed Manager of his duties,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

21. (1) Any director, manager or other officer concerned in the management of a financial institution who makes or authorises, or permits to be made or authorised by any officer of the financial institution any transaction -

Identification of transactors.

(a) without taking or causing to be taken all reasonable steps to establish the true identity of the persons concerned in the transaction;

(b) when he or the officer concerned doubts or has reason to doubt the authenticity of documents and the truth of written or oral statements material to the transaction; or

(c) when he or the officer concerned knows or has reason to suspect that any of the funds involved in the transaction have been obtained by any party as the direct or indirect result of activity that is illegal inside or outside Solomon Islands,

is guilty of an offence and is liable on conviction to a fine of twenty thousand dollars or imprisonment for one year or both.

(2) No director, manager or other officer concerned in the management of a financial institution who discloses in good faith to a police officer any information regarding any customer or transaction which he believes to be connected to illegal activity, shall incur any liability as a result of such disclosure.

PART VI
MISCELLANEOUS

Notice of
changes.

22. (1) When any alteration is made in the memorandum or articles of association of a licensed financial institution or in any other instruments whereunder that institution was incorporated the institution shall forthwith give to the Central Bank full particulars; in writing; of such alteration, verified by a statutory declaration made by a director of the institution.

Cap.66.

(2) In respect of any application made to the Court under section 24 of the Companies Act proposing a compromise or arrangement that involves a licensed financial institution, the Central Bank shall -

(a) be served with a notice of every meeting ordered by the Court and also a statement explaining the effect of the compromise or arrangement as provided under the Companies Act; and

(c) be eligible to attend and be considered competent to participate and to give advice in any meeting of which such notice is given.

(3) A licensed financial institution shall consult with, and obtain the approval of the Central Bank before making any arrangement or entering into any agreement for the purchase or acquisition of the business of any other financial institution in Solomon Islands, or elsewhere in the case of a financial institution incorporated in Solomon Islands.

(4) Any licensed financial institution which acts in contravention of this section commits an offence and is liable on conviction to a fine not exceeding twenty thousand dollars.

23. (1) Any event specified in subsection (2) that may result in a transfer of control of a licensed financial institution incorporated in Solomon Islands shall be subject to the written approval of the Central Bank before implementation.

Transfer of control.

(2) For the purposes of subsection (1), the following events are hereby specified -

(a) any agreed sale, transfer or other disposition whatsoever of a licensed financial institution's share capital or issue or allotment of any new share capital;

(b) any proposed compromise or arrangement that involves a licensed financial institution for which an application has been made to the Court pursuant to the provisions of the Companies Act and where the proposed compromise or arrangement is for the purposes of or in connection with a scheme for the reconstruction or amalgamation of that institution; or

Cap.66.

(c) any other event or scheme the effect of which transfers, directly or indirectly, the ownership or the powers exercisable over the voting stock of a licensed financial institution.

(3) For the purpose of this section, "transfer of control" refers to any event specified in subsection (2) that results in a person acquiring ownership or exercising power over twenty per cent or more of the voting stock of a licensed financial institution.

(4) No licensed financial institution incorporated in Solomon Islands shall effect a reduction of its issued share capital without prior notice to the Central Bank.

(5) Any licensed financial institution or any person who acts in contravention of this section commits an offence and is liable on conviction to a fine not exceeding thirty thousand dollars and any purported transfer may be declared null and void.

24. (1) Every licensed bank shall use as part of its name, description or title the word "bank" or one or more of its derivatives.

Use of the word "bank" and name restriction.

(2) No institution other than an institution established under an Act of Parliament in Solomon Islands or a bank licensed under this Act shall use the word "bank" or any of its derivatives in any language or any other word that indicates that such institution may be undertaking or carrying on the business of a bank or make any representation to such effect in any billhead, letter, paper, notice or advertisement or by any other means whatsoever.

(3) Notwithstanding subsection (2) the Central Bank may approve the use of the word "bank" where that word is included in the name of a foreign financial institution which is permitted by the Central Bank to establish a representative office in Solomon Islands.

(4) No bank shall be granted or continue to hold a licence under a name which so closely resembles the name of an existing bank that it is likely, in the opinion of the Central Bank, to mislead the public.

(5) No licensed financial institution shall change its name or use a name other than under which it was licensed, unless the written consent of the Central Bank is obtained.

(6) Nothing in this section shall apply to an association of banks or bank employees, formed for the protection of their common interests.

Bank holidays.

25. (1) If the Central Bank considers it necessary or expedient in the public interest, it may by order declare any day a non-business day for financial institutions.

(2) Without prejudice to subsection (1), the Central Bank may in the event of hurricane, earthquake or other natural disaster declare in such manner as it considers appropriate any day a non-business day for financial institutions, which declaration may relate to any part of or to the whole of Solomon Islands.

(3) Any day declared to be a non-business day under this section shall be regarded as a bank holiday for the purposes of the Bills of Exchange Act.

Act of 1882 (45 and 46 Vict.)

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Retention of
cheques, etc.
for seven years.

26. (1) All cheques and bank drafts in the possession of a licensed financial institution on which they are drawn and all bills of exchange or promissory notes in the possession of a licensed financial institution and made payable at the institution shall be retained by that institution until the expiration of the period of seven years from the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(2) This section shall apply to cheques, drafts, bills and notes received by a financial institution either before or after the coming into force of this Act.

(3) No document to which this section refers shall be destroyed under the implied authority thereof at any time after a demand for the delivery of the document has been made to the licensed financial institution by the person entitled thereto.

(4) It shall be sufficient compliance with the duty to retain imposed by subsection (1), if a copy of the document has been made by the financial institution on microfilm, microfiche, tape, disc, or electronic or photographic storage media, and is retained by the licensed financial institution for the same period as that document is required to be retained pursuant to subsection (1).

(5) Notwithstanding subsection (4), no document shall be destroyed under the authority thereof at any time within two years after the date thereof in the case of documents payable on demand or from the due date thereof in the case of all other documents.

(6) Notwithstanding the provisions of any other Act or law, a copy of a document made pursuant to this section shall be admissible as evidence in any legal proceedings to the same extent as the document of which it is a copy would have been admissible.

27. Any director or employee of a licensed financial institution who asks for or receives, consents or agrees to receive, any gift, commission, emolument, service, gratuity, money, property or thing of value for his own personal benefit or advantage or that of any of his relatives for procuring or endeavouring to procure for any person any advance, loan, financial guarantee or credit facility from that financial institution, or the purchase or discount of any draft, note, cheque, bill of exchange or other obligation by that financial institution, or for permitting any person to overdraw any account

Prohibition of
receipt of com-
mission by
staff, etc.

with the financial institution shall be guilty of an offence and shall be liable to a fine of five thousand dollars or to a term of imprisonment not exceeding six months.

Non-compliance with the Act an offence.

28. (1) Any director or officer concerned in the management of any licensed financial institution who -

(a) fails to comply with the requirements of this Act or any of the regulations, notices or directives issued under this Act; or

(b) aids or abets or counsels or procures any person to commit an offence under this Act,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

(2) Any person who commits an offence or any individual responsible for any offence against this Act or any of the regulations, notices or directives issued under this Act for which no penalty is expressly provided in this Act is liable upon conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years or to both such fine and imprisonment and if the offence is a continuing one, to a further fine not exceeding two thousand dollars for every day during which the offence continues.

Prohibition on disclosure.

29. (1) Any statement or return or information provided by a licensed financial institution or obtained from a licensed financial institution by an examiner, advisor or Court Appointed Manager shall be regarded as confidential. The Central Bank and any of its directors, officers, employees or any individual or person designated by the Central Bank under the provisions of this Act shall not disclose any information relevant to the affairs or condition of any licensed financial institution or any of its clients acquired in the performance of his duties except -

(a) for the purpose of the performance of his duties or the exercise of his functions;

(b) when lawfully required to do so by any court, or in connection with any proceedings for an offence against this Act;

(c) with the consent of the person to whom the information relates;

(d) to the extent that the information is available under any other Act or in a public document;

(e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as relating to a particular person; or

(f) in confidence to a supervisory authority in any other country for the purposes of the exercise of functions corresponding to or similar to those conferred on the Central Bank under this Act, if the Central Bank is reasonably satisfied that the recipient of the information will maintain confidentiality.

(2) Any person who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding thirty thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

30. Neither the Central Bank nor any director, officer, employee of the Central Bank or person duly appointed or authorised by the Central Bank shall incur any liability as a result of anything done in good faith in the exercise of any power or the performance of any duty under this Act.

Exclusion from liability.

31. No prosecution in respect of any offence under this Act shall be instituted except by or with the consent of the Director of Public Prosecutions.

Consent of Director of public Prosecutions.

32. (1) Subject to the provisions of subsection (2), this Act shall not apply to -

Non-application to credit unions, etc.

(a) a credit union within the meaning of the Credit Unions Act;

Act No.1 of 1986, Cap.73.

(b) a co-operative society within the meaning of the Co-operative Societies Act.

(2) Notwithstanding the provisions of subsection (1), the Minister may, by order, apply any provision of this Act to a credit union or a co-operative society, if the Minister is satisfied upon a finding by the Central Bank, that a credit union or a co-operative society is accepting deposits or granting loans aggregating to one hundred thousand dollars at any one time.

Unclaimed
moneys.

33. (1) Every licensed financial institution shall, within sixty days after the end of each financial year, publish in a national publication specified by the Central Bank a statement showing all accounts payable by the financial institution in Solomon Islands in respect of which during a period of ten years, or any longer period as the case may be, no transaction has taken place and no statement of account has been requested or acknowledged by the creditor.

(2) Every statement published under subsection (1) shall require the person to whom the account is payable or his legal or personal representative, as the case may be, to submit a claim to the licensed financial institution within three months from the date of publication in a national publication.

(3) When any of the sums included in the statement published under subsection (1) remains unclaimed for a period of three months after publication of the statement in a national publication, such sums, after deduction of the costs of publication, shall be paid to the Central Bank which shall credit such sums into the Consolidated Fund.

(4) Subject to subsection (5), a licensed financial institution is, upon payment to the Central Bank of any sums due under this section, discharged from further liability in respect of that amount.

(5) Where unclaimed moneys have been paid into the Consolidated Fund under this section and the Minister is satisfied that, but for subsection (4), a person would be paid those unclaimed moneys by the licensed financial institution (or, if that financial institution is no longer carrying on banking business, by a licensed financial institution to which the business of the first-mentioned licensed financial institution has been sold or disposed of), those unclaimed moneys shall be paid to that licensed financial institution, which shall thereupon pay those moneys to that person, and those unclaimed moneys shall be a charge upon the Consolidated Fund which is

hereby, to the extent necessary, appropriated for the purpose.

34. (1) The provisions of any other Act or any law that may be inconsistent with the provisions of this Act shall be read subject to or modified by the provisions of this Act. Nothing in this Act shall exempt a licensed financial institution from the provisions of the Companies Act, save that where there is any conflict between the provisions of this Act and the provisions of the Companies Act, this Act shall prevail.

Application of
the Act.

Cap.66.

(2) The Minister, after consultation with the Central Bank, may, by order, apply any provision of this Act to the Development Bank of Solomon Islands, Home Finance Corporation and Solomon Islands National Provident Fund which shall each for the purpose of such provision be deemed to be a licensed financial institution.

35. The Central Bank may with the approval of the Minister make regulations in accordance with the provisions of this Act.

Regulations.

36. The Banking Act 1976 is hereby repealed.

Repeal.
Act No. 20 of
1976.

SCHEDULE
(Section 4)

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Australian Guarantee Corporation (SI) Limited
National Bank of Solomon Islands
Westpac Banking Corporation.

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