



# Banking Act 1979

## 1979 CHAPTER 37

### PART I

#### CONTROL OF DEPOSIT-TAKING

##### *Powers of the Bank*

#### **16 Powers to obtain information and require production of documents**

- (1) The Bank may by notice in writing served on a licensed institution—
  - (a) require the institution to furnish to the Bank, at such time or times as may be specified in the notice, such information as the Bank may reasonably require about the nature and conduct of the institution's business and its plans for future development; and
  - (b) require the institution to furnish to the Bank, together with the information required under paragraph (a) above, a report by an accountant approved by the Bank on that information or on such aspects of it as may be specified in the notice.
- (2) The Bank may by notice in writing served on a licensed institution require the institution to produce, within such time and at such place as may be specified in the notice, such books or papers as may be so specified, being books or papers which the Bank may reasonably require for the purpose of obtaining information falling within paragraph (a) of subsection (1) above.
- (3) Where, by virtue of subsection (2) above, the Bank has power to require the production of any books or papers from a licensed institution, the Bank shall have the like power to require production of those books or papers from any person who appears to the Bank to be in possession of them; but where any person from whom such production is required claims a lien on books or papers produced by him, the production shall be without prejudice to the lien.

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- (4) Where, by virtue of subsection (2) or subsection (3) above, the Bank requires the production by a licensed institution or any other person of books or papers, the Bank may—
- (a) if the books or papers are produced, take copies of them or extracts from them and require that person, or any other person who is a present or past director, controller or manager of, or is or was at any time employed by, the institution, to provide an explanation of any of them; and
  - (b) if the books or papers are not produced, require the person who was required to produce them to state, to the best of his knowledge and belief, where the books or papers are.
- (5) If and so long as an institution which was formerly a recognised bank or licensed institution—
- (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,
- the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (6) Any person who, when required to do so under this section, fails without reasonable excuse to furnish any information or accountant's report, to produce any books or papers, or to provide any explanation or make any statement, shall be liable on summary conviction to a fine not exceeding £1,000.
- (7) Any person who, in purported compliance with a requirement under this section, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular, shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (8) Nothing in this section or in section 17 below shall compel the production by a solicitor of a document containing a privileged communication made by him or to him in that capacity.

## **17 Investigations on behalf of the Bank**

- (1) If it appears to the Bank desirable to do so in the interests of the depositors of a recognised bank or licensed institution, the Bank may appoint one or more competent persons to investigate and report to the Bank on the state and conduct of the business of the bank or institution concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of\* his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been—
- (a) a holding company or subsidiary of the body whose business is under investigation ;
  - (b) a subsidiary of a holding company of that body; or
  - (c) a holding company of a subsidiary of that body.

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- (3) It shall be the duty of every director, controller, manager and agent of a body whose business is under investigation (whether by virtue of subsection (1) or subsection (2) above)—
- (a) to produce to the persons appointed under subsection (1) above all books and papers relating to the body concerned which are in his custody or power; and
  - (b) to attend before the persons so appointed when required to do so; and
  - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any director, controller, manager or agent of a body who—
- (a) without reasonable excuse fails to produce any books or papers which it is his duty to produce under subsection (3) above, or
  - (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) above when required to do so, or
  - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a business which is under investigation or to the business of any body corporate which is being investigated by virtue of subsection (2) above,
- shall be liable on summary conviction to a fine not exceeding £1,000.
- (5) Any director, controller, manager or agent of a body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (6) In this section—
- (a) "holding company" shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960;
  - (b) any reference to a director, controller, manager or agent of a body includes a reference to a person who has been but no longer is a director, controller, manager or agent of that body; and
  - (c) "agent", in relation to a body whose business is under investigation, includes its bankers and solicitors and any persons, whether officers of the body or not, who are employed as its auditors.

## **18 Winding up on petition from the Bank**

- (1) On a petition presented by the Bank by virtue of this section, the court having jurisdiction under the Companies Act 1948 may wind up a recognised bank or licensed institution under that Act if—
- (a) the institution is unable to pay sums due and payable to its depositors or is able to pay such sums only by defaulting in its obligations to its other creditors; or
  - (b) the value of the institution's assets is less than the amount of its liabilities.
- (2) If a petition is presented by the Bank by virtue of this section for the winding up of a recognised bank or licensed institution which, apart from this subsection, would be excluded from being an unregistered company for the purposes of Part IX of the Companies Act 1948 by virtue of—

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- (a) paragraph (c) of section 398 of that Act (exclusion of partnerships etc. having less than eight members), or
- (b) paragraph (d) of that section (exclusion of limited partnerships registered in England and Wales or Northern Ireland),

the court shall have jurisdiction, and the Companies Act 1948 shall have effect, as if the institution concerned were an unregistered company within the meaning of Part IX of that Act

- (3) If and so long as an institution which was formerly a recognised bank or licensed institution—
  - (a) is neither recognised nor licensed, but
  - (b) continues to have any liability in respect of any deposit for which it had a liability at a time when it was recognised or licensed,
 the provisions of this section shall apply in relation to it as if it were a licensed institution.
- (4) In its application to Northern Ireland, this section shall have effect—
  - (a) with the substitution of a reference to the Companies Act (Northern Ireland) 1960 for any reference to the Companies Act 1948;
  - (b) with the substitution of a reference to paragraph (d) of section 348 of the Companies Act (Northern Ireland) 1960 for the reference in paragraph (a) of subsection (2) above to paragraph (c) of section 398 of the Companies Act 1948; and
  - (c) with the omission of paragraph (b) of subsection (2) above.

## **19 Confidentiality of information obtained by the Bank**

- (1) Subject to the provisions of this section and section 20 below, no information obtained under or for the purposes of this Act and relating to the business or other affairs of any person may be disclosed (otherwise than to an officer or employee of the Bank) except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to the extent that it is information which is at the time of the disclosure, or has previously been, available to the public from other sources; or
  - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (2) Nothing in subsection (1) above prohibits the disclosure of information—
  - (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
  - (b) in connection with any other proceedings arising out of this Act; or
  - (c) in order to enable the Bank to comply with any obligation imposed on it by or under this Act.
- (3) If, in order to enable the Bank properly to discharge any of its functions under this Act, the Bank considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill, nothing in subsection (1) above prohibits the disclosure to that person of such information as may appear to the Bank to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.
- (4) Nothing in subsection (1) above prohibits the disclosure of information—

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- (a) to the Treasury in circumstances where, in the opinion of the Bank, it is desirable or expedient that the information should be so disclosed in the interest of depositors or in the public interest; or
  - (b) to the Deposit Protection Board established under Part II of this Act in order to enable that Board to perform any of their functions under that Part.
- (5) Nothing in subsection (1) above prohibits the disclosure to the Secretary of State of information relating to a body corporate to which section 165 or section 172 of the Companies Act 1948 applies if it appears to the Bank that there may be circumstances relating to the body corporate in which the Secretary of State might wish to appoint inspectors under—
- (a) sub-paragraph (i) or sub-paragraph (ii) of paragraph (b) of the said section 165 (investigation of cases of fraud, etc.); or
  - (b) the said section 172 (investigation of ownership of company, etc.).
- (6) Nothing in subsection (1) above prohibits the disclosure to the authorities which exercise in a country or territory outside the United Kingdom functions corresponding to those of the Bank under this Act of information which was furnished by or relates to a recognised bank or licensed institution which—
- (a) carries on or proposes to carry on a deposit-taking business in that country or territory, whether directly, through a subsidiary or otherwise, or
  - (b) has or proposes to acquire an interest in an institution which carries on or proposes to carry on a deposit-taking business in that country or territory, or
  - (c) is a subsidiary of, or appears to the Bank to be otherwise associated with, an institution which is established under the law of that country or territory or whose principal place of business is, or is proposed to be, in that country or territory,
- if it appears to the Bank that the disclosure of the information would assist those authorities in the exercise of those functions.
- (7) Any person who discloses information in contravention of subsection (1) above shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both.
- (8) In the application of this section to Northern Ireland,—
- (a) for any reference in subsection (5) above to section 165 or section 172 of the Companies Act 1948 there shall be substituted respectively a reference to section 159 or section 165A of the Companies Act (Northern Ireland) 1960 ; and
  - (b) for any reference in that subsection to the Secretary of State there shall be substituted a reference to the Department of Commerce for Northern Ireland.

## **20 Information disclosed to the Bank from other sources**

- (1) If and so far as it appears to the Secretary of State that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).
- (a) information obtained by the Secretary of State under section 109 or section 110 of the Companies Act 1967 (inspection of companies' books and

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- papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in section 111 of that Act; and
- (b) where the information is contained in a report made by inspectors appointed under section 164, section 165 or section 172 of the Companies Act 1948 (investigation of affairs or ownership of companies and certain other bodies corporate) the Secretary of State may furnish a copy of the report to the Bank.
- (2) If and so far as it appears to the Department of Commerce for Northern Ireland that the disclosure of any information will enable the Bank better to discharge its functions under this Act (but not otherwise).—
- (a) information obtained by the Department under Article 107 or Article 108 of the Companies (Northern Ireland) Order 1978 (inspection of companies' books and papers) may be disclosed to the Bank, notwithstanding the provision as to security of information contained in Article 109 of that Order; and
- (b) where the information is contained in a report made by inspectors under section 158, section 159 or section 165A of the Companies Act (Northern Ireland) 1960 (investigation of affairs or ownership of companies and certain other bodies corporate) the Department may furnish a copy of the report to the Bank.
- (3) Subsection (1) of section 19 above does not apply to information which has been disclosed to the Bank by virtue of subsection (1) or subsection (2) above, but—
- (a) except as provided by paragraph (b) below, nothing in this Act authorises any further disclosure of that information in contravention of section 111 of the Companies Act 1967 or, as the case may require, Article 109 of the Companies (Northern Ireland) Order 1978; and
- (b) with respect to that information the references in subsections (3) to (6) of section 19 above to subsection (1) of that section shall be construed as including a reference to the said section 111 or, as the case may require, Article 109.
- (4) If information is disclosed to the Bank by the authorities which exercise, in a country or territory outside the United Kingdom, functions corresponding to those of the Bank under this Act.—
- (a) subsection (1) of section 19 above applies to that information as it applies to information obtained under or for the purposes of this Act; but
- (b) the references in subsections (4) to (6) of that section to the disclosure of information do not extend to the disclosure of that information.