

MONTSERAT

**BANKING (AMENDMENT) ACT 2026**

No. 2 of 2026

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**I ASSENT**

(Sgd.) Harriet Cross

**Governor**

DATE:11.03.2026

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AN ACT TO AMEND THE BANKING ACT (CAP. 11.03).

BE IT ENACTED by The King’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows:—

**1. Short title.**

This Act may be cited as the Banking (Amendment) Act, 2026.

**2. Interpretation**

In this Act “**principal Act**” means Banking Act (Cap. 11.03).

**3. Section 2 amended**

Section 2 of the principal Act is amended—

(a) by deleting the definition for “**branch**” and by substituting the following—

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“**branch**”—

- (a) means any office or premises of a licensed financial institution, other than the principal place of business, where a licensed financial institution carries on all or any part of its banking business; and
  - (b) does not include an automatic banking machine or a bureau de exchange;”;
- (b) by deleting the definition for “**exposure**” and by substituting the following—

“**exposure**” means the aggregate of risk in relation to—

- (a) credit facilities, investments including equities, participations, guarantees, acceptance, repurchase transactions including the sold portion of participations and syndications, derivatives or any other asset recognized by the Central Bank as an exposure;
  - (b) claims on a counterparty including actual and potential claims that arise from the drawing down in full of undrawn advised facilities, whether on or off-balance sheet, revocable or irrevocable, conditional or unconditional, that the licensed financial institution has committed itself to provide, arrange, purchase or underwrite;”;
- (c) by deleting the definition for “**related party**” and by substituting the following—

“**related party**” includes —

- (a) any financial holding company, subsidiary or other affiliate of a licensed financial institution;
- (b) directors, officers and significant shareholders of a licensed financial institution, financial holding company,

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subsidiary or other affiliate of a licensed financial institution;

- (c) a relative of a person specified under paragraph (b);
- (d) a member of the same household of a person specified under paragraph (b);
- (e) an entity that is controlled by a person specified under paragraph (a), (b), (c) or (d); or
- (f) any other person or class of persons determined by the Central Bank, who by reason of a past or present interest in or relationship with the licensed financial institution can reasonably be expected to influence the decision of the licensed financial institution regarding a transaction;” and

(d) by inserting the following new definition in the correct alphabetical sequence—

“ **“bureau de exchange”** means a facility set up by a licensed financial institution or licensed financial holding company that solely facilitates the exchange of currency by means of —

- (a) purchasing notes, coins and travelers’ cheques denominated in foreign currency;
- (b) selling notes and coins, except travelers’ cheques, in any currency in exchange for any other currency;
- (c) accepting credit cards and debit cards;”.

#### 4. Section 10 amended

Section 10(2) of the principal Act is amended—

- (a) in paragraph (m), by deleting the word “and”;
- (b) by deleting paragraph (n) and by substituting the following new paragraphs (n), (o), (p), (q) and (r)—

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- “(n) broker or dealer services;
- (o) provision of payment card services;
- (p) investment management services;
- (q) insurance business, as an agent; and
- (r) any other services that the Central Bank may determine as banking practice.”.

### 5. Section 14 amended

Section 14 of the principal Act is amended —

- (a) by deleting subsection (2) and substituting the following —

“(2) Subject to subsection (2A), the Central Bank shall, before revoking a licence under subsection (1)—

- (a) give the licensed financial institution notice in writing of its intention to do so, specifying the grounds on which it proposes to make the revocation;
- (b) require the licensed financial institution to submit to the Central Bank within a specified period being not less than thirty days from receipt of the notice under paragraph (a), a written statement of objections to the making of the revocation;
- (c) consider the written statement of objections under paragraph (b); and
- (d) advise the licensed financial institution of its decision, in writing.”.

- (b) by inserting immediately after subsection (2), the following new subsection (2A)—

“(2A) Subsection (2) does not apply to a licence revoked under subsection (1)(e), (i) or (j).”.

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### 6. Section 19A inserted

The principal Act is amended by inserting immediately after section 19, the following new section 19A—

#### “19A. Operation of a bureau de exchange

- (1) A licensed financial institution shall obtain the prior written approval of the Central Bank to operate a bureau de exchange for the purposes of section 10(2)(m).
- (2) A licensed financial institution shall not change the location of or close a bureau de exchange without giving sixty days prior notification to the Central Bank.
- (3) A licensed financial institution that does not comply with subsection (1) or (2), is liable to an administrative penalty of \$250,000.”.

### 7. Section 45 amended

Section 45(3)(a) of the principal Act is amended by deleting the words “main office” and by substituting the words “principal place of business”.

### 8. Section 46 amended

Section 46 of the principal Act is amended —

- (a) in subsection (2), by deleting the word “profit” and substituting the words “retained earnings”;
- (b) by deleting subsection (3) and by substituting the following—

“(3) Subject to subsections (4) and (5), a licensed financial institution or licensed financial holding company shall not, except with prior written approval of the Central Bank, declare, credit or pay any dividend or make any other transfer from retained earnings if

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the licensed financial institution or licensed financial holding company realises or projects a net loss for that financial year.”.

### 9. Section 51 amended

Section 51 of the principal Act is amended —

(a) by deleting subsection (2) and by substituting the following—

“(2) The board of directors of a licensed financial institution shall assess and approve a single or cumulative exposure to a related party equivalent to the threshold of the licensed financial institution’s tier 1 capital specified in any prudential standard with respect to related party transactions issued by the Central Bank.”;

(b) by inserting immediately after subsection (4), the following new subsection (4A)—

“(4A) Subsection (4) does not apply to transactions that represent loans to a Participating Government, or to the boards, agencies, or local government bodies of a Participating Government, which are guaranteed by the Participating Government.”.

### 10. Section 54 amended

Section 54 of the principal Act is amended —

(a) by deleting the heading and by substituting the following—

“**Prohibition on engaging or investing in trade**”;

(b) by deleting subsection (7) and by substituting the following—

“(7) A licensed financial institution shall not lease any of its real or immovable

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properties without the prior approval of the Central Bank.”.

### 11. Section 54A inserted

The principal Act is amended by inserting immediately after section 54, the following new section 54A—

#### “54A. Prohibition on outsourcing

- (1) A licensed financial institution shall not outsource any of its material functions to another person without the prior written approval of the Central Bank.
- (2) A licensed financial institution shall not outsource any of its non-material functions to another person without giving thirty days prior notification to the Central Bank
- (3) A licensed financial institution that does not comply with subsection (1) or (2), is liable to a penalty of \$250,000”.

### 12. Section 60 amended

The principal Act is amended by deleting section 60 and by substituting the following—

#### “60. Preparation and presentation of financial statements

Accounts and financial statements of a licensed financial institution or a licensed financial holding company, including financial statements on a consolidated basis, shall—

- (a) be in accordance with internationally-accepted accounting standards specified by the Central Bank; and
- (b) reflect additional accounting rules or standards specified in prudential standards, directions or orders issued by the Central Bank.”.

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### 13. Section 70 amended

Section 70 of the principal Act is amended by inserting immediately after subsection (5), the following new subsections (6) and (7)—

“(6) Where a licensed financial institution or licensed financial holding company is granted an extension of the period to publish its audited financial statements under section 92, the licensed financial institution or licensed financial holding company shall —

(a) publish a notice —

(i) in the *Gazette*; or

(ii) on its website; and

(iii) in a local newspaper; and

(b) exhibit the notice under paragraph (a) in a conspicuous place at each of its places of business.

(7) A notice under subsection (6) must specify—

(a) the fact that the extension was granted;

(b) the reasons for the extension;

(c) the date on which the audited financial statements shall be published.”.

### 14. Part VIA inserted

The principal Act is amended by inserting immediately after section 70, the following new Part VIA—

#### “PART VIA

#### SHELL BANKS

##### 70A. Prohibition on shell banks

(1) A licensed financial institution or a licensed financial holding company shall not —

(a) operate as a shell bank;

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- (b)* enter into, or continue, a correspondent banking relationship with a shell bank; or
  - (c)* establish relations with a local or foreign financial institution that permits its accounts to be used by a shell bank.
- (2)** A licensed financial institution or licensed financial holding company that contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of \$1,000,000, and in the case of a continuing offence, to a further fine of \$100,000 for each day or part of a day during which the offence is continued after conviction.
- (3)** Where a licensed financial institution or licensed financial holding company commits an offence under subsection (2), a director or an officer of the licensed financial institution or licensed financial holding company commits that offence and is liable, on conviction on indictment, to a fine of \$500,000 or to imprisonment for three years or to both such fine and imprisonment and in the case of a continuing offence, to a further fine of \$100,000 for each day or part of a day during which the offence is continued after conviction.
- (4)** In this section —
  - “correspondent banking”** means the provision of banking services by one bank to another bank;
  - “physical presence”** —
    - (a)* means a physical location, site, structure, or other similar facility, through which an entity transacts its affairs or carries on business;

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(b) includes the presence of a person with executive authority who directs the policy and management of the entity;

(c) does not include the existence of —

(i) a local agent, or

(ii) non-management level staff;

**“shell bank”** means an entity that—

(a) does not have a physical presence in the jurisdiction in which it is incorporated; and

(b) engages in activities similar to those carried out by a licensed financial institution;”.

### 15. Part VII amended

Part VII of the principal Act is amended—

(a) by deleting the heading and by substituting the following —

**“PRUDENTIAL SUPERVISION”;**

(b) in section 71, by deleting subsection (1) and by substituting the following—

**“(1)** The Central Bank, shall examine or cause an examination to be made of each licensed financial institution from time to time or whenever in its judgment an examination is necessary or expedient in order to determine that the licensed financial institution is in a sound financial condition and that the requirements of this Act have been complied with in the carrying on of its business.”;

(c) by inserting immediately after section 93, the following new section 93A —

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**“93A. Central Bank to set maximum fees and charges**

The Central Bank may set the maximum amount of fees and charges that may be applied by a licensed financial institution.”.

**16. Part VIIA inserted**

The principal Act is amended by inserting immediately after section 97, the following new Part VIIA—

**“PART VIIA**

**MARKET CONDUCT SUPERVISION**

*Division 1 — General*

**97A. Application and non-application of the Consumer Protection Act**

- (1) Notwithstanding anything contained in any law relating to consumer protection, this Part applies to financial services and financial products and services offered by a licensed financial institution, whether in or from within Montserrat.
- (2) A law relating to consumer protection does not apply to disputes arising under this Part.

**97B. Interpretation: Part VIIA**

In this Part —

**“advertisement”** means any form of communication made to the public or a section of the public for the purpose of promoting financial services and financial products;

**“authorised officer”** means a person authorised by the Central Bank to —

- (a) carry out specified powers under section 97E(3);  
or

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(b) perform specified actions under 97LL(2);

**“basic bank account”** means a savings account that —

- (a) is free to open;
- (b) does not attract charges for the making of deposits or withdrawals;
- (c) accrues interest;
- (d) is not subject to a minimum balance;
- (e) may be subject to a maximum balance; and
- (f) does not have an associated chequing or overdraft facility;

**“bundled services or bundled products”** means two or more services or products offered for sale in a package where each service or product is also available for sale separately in the market;

**“Commission”** means the Financial Dispute Resolution Commission established under section 97ZZ;

**“complainant”**—

- (a) means a person who makes a complaint;
- (b) includes a person acting on behalf of a person under paragraph (a);

**“contract term”** means a provision forming part of a financial contract;

**“corrective action”** means an action taken to correct a contravention under this Part;

**“distance contract”** means a financial contract concluded under a scheme operated by the licensed financial institution, that makes exclusive use of one or more means of distance communication;

**“ECCU Bankers’ Association”** means the Eastern Caribbean Currency Union Bankers’ Association;

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**“financial consumer”**—

- (a) means an individual or a small business who acquires or intends to acquire financial services or financial products from a licensed financial institution;
- (b) includes a person acting on behalf of an individual or a small business under paragraph (a);

**“financial consumer protection”** means the fair and responsible treatment of financial consumers in the purchase and use of financial services and financial products and other interactions with licensed financial institutions;

**“financial contract”** means an agreement between a licensed financial institution and a financial consumer for the provision of financial services or products;

**“financial education”** means a process of acquiring skills and knowledge on financial matters to achieve financial literacy;

**“financial inclusion”** means the effective and quality access to and usage of financial services and financial products in a manner that is affordable to financial consumers and sustainable for licensed financial institutions;

**“financial literacy”** means the demonstrated awareness, knowledge, skills, attitudes and behaviours necessary to make sound financial decisions and to achieve individual financial well-being;

**“financial services or financial products”** means the services or products of a financial nature developed, offered or marketed by a licensed financial institution or for and on behalf of another person by a licensed financial institution;

**“financial consumer dispute”** means a civil dispute between a financial consumer and a licensed financial institution arising over a financial service or product;

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**“market conduct” —**

- (a) means the manner in which a licensed financial institution upholds the interests of financial consumers so that financial consumers are treated fairly ; and
- (b) includes—
  - (i) offering suitably designed products;
  - (ii) providing necessary disclosures to enable informed decision-making;
  - (iii) providing a medium for addressing complaints.

**“means of distance communication” —**

- (a) means any medium by which a financial contract or the provision of financial services or financial products are concluded, without the physical presence of the licensed financial institution and the financial consumer;
- (b) includes telephone, post, courier and electronic mail;

**“non-public consumer data”** means the data provided by the financial consumer to the licensed financial institution, which is not intended for the general public;

**“person”** includes a body corporate;

**“small business”** means an entity—

- (a) in which no more than twenty-five persons are employed;
- (b) whose annual turnover does not exceed one million; and
- (c) whose net assets or paid up capital does not exceed \$500,000;

**“tying”** means the sale of two or more products in a package where one of the products is not sold separately;

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**“vulnerable consumers”** means persons who, by reason of possessing particular characteristics such as, age, education, income, job loss, limited financial literacy or physical or mental capability, are at a higher risk of being excluded from financial services.

### *Division 2 – Regulation by the Central Bank*

#### **97C. Central Bank to regulate and supervise licensed financial institutions**

- (1) The Central Bank shall regulate and supervise licensed financial institutions with respect to market conduct.
- (2) For the purposes of performing its functions under this Part and for better cooperation and exchange of information, the Central Bank may enter into written memoranda of understanding with other regulators and relevant entities.

#### **97D. Functions of Central Bank**

- (1) The functions of the Central Bank are —
  - (a) promoting and advancing the welfare of financial consumers;
  - (b) maintaining a financial sector that is fair, accessible, efficient and sustainable;
  - (c) mitigating any possible risk that financial consumers may encounter in accessing any financial services or financial products;
  - (d) promoting fair financial business practices;
  - (e) protecting financial consumers from —
    - (i) unconscionable, unreasonable, unjust financial business practices, and
    - (ii) misleading, unfair, deceptive or fraudulent conduct;
  - (f) promoting financial consumer awareness;
  - (g) encouraging responsible and informed consumer choice and behaviour;

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- (h)* promoting consumer confidence, empowerment and the development of a culture of financial consumer responsibility through education and advocacy; and
  - (i)* providing an accessible, efficient and effective system of redress to financial consumers.
- (2)** In the event of any conflict between the exercise of the functions of the Central Bank under this Part and financial stability, financial stability shall prevail.

### **97E. Powers of the Central Bank**

- (1)** For the purpose of carrying out the functions under this Part, the Central Bank shall have the power to —
- (a)* undertake mystery shopping;
  - (b)* make a test purchase;
  - (c)* carry out a financial product or service review;
  - (d)* perform a market conduct examination;
  - (e)* inspect documents relating to the investigation and make copies of, or take extracts from, the documents;
  - (f)* request documents, information or evidence;
- (2)** The Central Bank may assess a licensed financial institution for the reasonable expenses to carry out any of its powers under this section.
- (3)** The Central Bank may authorise a person to carry out a power under subsection (1) on its behalf.

### **97F. Power to request information**

- (1)** The Central Bank may, in carrying out its functions under this Part, request a licensed financial institution to submit any information

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including any books, records, video footage or other documents within such period and in such manner the Central Bank specifies.

- (2) A licensed financial institution must comply with a request under subsection (1).
- (3) Where a licensed financial institution contravenes subsection (2), the licensed financial institution is liable to an administrative penalty of \$25,000 and an additional penalty of \$100,000 for each day or part of a day during which the contravention continues.

### **97G. Market conduct examination**

- (1) An authorised officer may examine the premises of a licensed financial institution, its agents or third parties acting on its behalf.
- (2) An authorised officer may, during an examination under subsection (1) and subject to section 97WW, require a director or employee of a licensed financial institution or agent or a third party acting on its behalf—
  - (a) to produce for examination, any books, records or other documents in his or her possession containing or likely to contain such information as the authorised officer may reasonably consider necessary; or
  - (b) to give information in his or her possession pertaining to the matter under examination.
- (3) An authorised officer shall, if so requested, produce the proof of the the authority under which he or she is exercising powers under this section.
- (4) A person who—
  - (a) with respect to any requirement under subsection (2)—
    - (i) fails or neglects to comply; or

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- (ii) unreasonably delays in complying; or
- (b) in complying with a request made under subsection (2) furnishes any information or produces any book, record or other document which the person knows to be false in any material particular,

commits an offence and is liable on summary conviction to a fine of \$50,000.

### **97H. Enforcement action by Central Bank**

- (1) Where a licensed financial institution has failed to comply with this Part, the Central Bank may, in addition to a penalty under this Part or remedial actions under section 76, take one or more of the following enforcement actions against that licensed financial institution —
  - (a) direct the licensed financial institution to —
    - (i) take corrective action within a specified period of time,
    - (ii) suspend or discontinue financial services or financial products related to the failure to comply, in whole or in part,
    - (iii) refund its financial consumers affected by the failure to comply,
    - (iv) implement a new policy and procedure,
    - (v) correct erroneous data, information or statement;
  - (b) restrict the ability of the licensed financial institution to continue to collect fees or charges in connection with a specified financial service or product;
  - (c) prohibit the use of a promotional advertisement with respect to a specified financial service or product;

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(d) recommend to the licensed financial institution to take appropriate action against its directors, managers or employees.

- (2) Where a licensed financial institution fails to take the corrective action under subsection (1)(a)(i), the Central Bank may take any action under subsection (1)(a)(ii), (1)(a)(iii), (1)(a)(iv), (1)(a)(v), (1)(b), (1)(c) or (1)(d).

### **97I. Central Bank may publish data**

- (1) Subject to section 97WW, the Central Bank may publish all general or individual measures adopted under this Part, including enforcement measures, imposition of penalties and its decisions with respect to complaints, reports from the Commission or any statistical data, as it considers relevant.
- (2) The Central Bank shall publish a summary of fees and charges of licensed financial institutions.

### *Division 3 – Duties of licensed financial institutions*

### **97J. General obligation**

- (1) A licensed financial institution shall treat a financial consumer equitably, honestly and fairly.
- (2) A licensed financial institution shall have a duty of care in respect of all financial services or financial products it provides to a financial consumer.
- (3) A licensed financial institution shall —
- (a) treat a financial consumer fairly as an integral part of its good governance principles and corporate culture; and
- (b) impose the values under paragraph (a) on its employees, agents and third parties

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providing financial services and financial products on its behalf.

- (4) A licensed financial institution shall put in place internal monitoring mechanisms for its employees, agents and third parties comply with the principles under subsection (3).
- (5) A licensed financial institution shall, individually or jointly—
  - (a) aid in financially educating its employees and financial consumers; and
  - (b) offer training programmes to its employees on a regular basis.
- (6) A licensed financial institution shall give special consideration to the needs of vulnerable consumers.

#### **97K. Records to be maintained by licensed financial institution**

- (1) A licensed financial institution shall maintain records of all transactions and correspondence between the licensed financial institution and the financial consumer for a period not less than the period required under laws governing anti-money laundering, terrorist financing and counter-proliferation financing.
- (2) Where a licensed financial institution fails to comply with the requirements under subsection (1), the licensed financial institution is liable to an administrative penalty of \$25,000.

#### **97L. Agents and third parties of licensed financial institutions to comply**

A licensed financial institution shall cause its agents or a third party acting on its behalf to comply with this Part, and put in place adequate monitoring mechanisms to oversee the implementation of this Part by its agent or a third party acting on its behalf.

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### **97M. Reporting duties of the licensed financial institution**

- (1) A licensed financial institution shall submit a bi-annual report to the Central Bank specifying the policies adopted with respect to financial consumer protection, including —
- (a) the measures taken to monitor compliance with internal policies, Codes of Conduct and Regulations;
  - (b) financial education activities;
  - (c) financial consumer protection training for employees;
  - (d) information on the number, type and conclusion of disputes of the financial consumers handled internally;
  - (e) a summary of the issues and outcomes of judgments from litigation between the licensed financial institution and financial consumers;
  - (f) the activities of agents or third parties acting on behalf of the licensed financial institution;
  - (g) any monitoring activity undertaken over agents and third parties under paragraph (f);
  - (h) the provision of facilities on-site for persons with limited physical capacity;
  - (i) information on the date and type of the most recent updates to accessibility features on the licensed financial institution's website.
- (2) Without limiting the reporting requirements under subsection (1), a licensed financial institution shall submit, to the Central Bank, quarterly reports with respect to complaints received from financial consumers and the actions taken to address the complaints in the

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timeframe and format specified by the Central Bank.

- (3) Where a licensed financial institution contravenes subsection (1) or (2), the licensed financial institution is liable to an administrative penalty of \$10,000 and an additional penalty of \$500 for each day or part of a day during which the contravention continues.
- (4) Where a licensed financial institution submits a report under subsection (1) or (2) giving information known to be false, or makes a false or misleading statement, the licensed financial institution commits an offence and is liable on summary conviction to a fine of \$25,000.

### **97N. Internal complaint handling procedures**

- (1) A licensed financial institution shall establish an internal complaint handling procedure consistent with Codes of Conduct issued by the Central Bank that identify —
  - (a) the format in which complaints are to be submitted;
  - (b) the means by which complaints are to be submitted;
  - (c) the personnel dedicated to processing complaints.
- (2) A licensed financial institution shall set a timeline for resolving each complaint, not exceeding the timeframe prescribed by the Central Bank.
- (3) A licensed financial institution shall inform a financial consumer of the procedure to further pursue a complaint in the event of an adverse decision, including the resolution process specified by the Central Bank.

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- (4) The Central Bank may monitor the internal complaint handling process of a licensed financial institution.

### **97O. Transparency**

- (1) A licensed financial institution shall provide at each place of its business and of its agents and any other third party acting on its behalf, all relevant and updated documents concerning its financial services or financial products, that are intelligible, legible and accurate.
- (2) A licensed financial institution shall present its financial services and financial products in a consistent manner to facilitate comparison between similar financial services and products amongst licensed financial institutions.
- (3) A licensed financial institution shall display conspicuously at each place of business of the licensed financial institution and of its agents and any other third party dealing with financial consumers on its behalf, information with respect to its internal dispute settlement and redress procedures.
- (4) Information and documents displayed at the place of business of the licensed financial institution, its agents and third parties shall also be displayed on the website of the licensed financial institution, its agents and third parties.
- (5) A licensed financial institution that fails to comply with subsection (1), (2), (3) or (4) is liable to an administrative penalty of \$50,000.

### **97P. Advertising**

- (1) A licensed financial institution shall not —
- (a) publish or advertise any information;
  - (b) carry out promotional activities in a manner,

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that may mislead, deceive, conceal or give out false information to the public.

- (2) The obligation of a licensed financial institution to financial consumers shall not be less than that indicated in the content of the advertisements or in the materials or explanations provided to financial consumers in promotional activities under subsection (1).
- (3) A licensed financial institution that fails to comply with subsection (1) or (2) is liable to an administrative penalty of \$50,000.

### **97Q. Financial education programs**

A licensed financial institution may conduct financial education programmes for financial consumers which must—

- (a) be used to provide objective advice in line with the strategy for financial education put into place by the Central Bank; and
- (b) not be used solely as marketing initiatives for financial services or products.

### **97R. Interest rates, fees and charges**

- (1) A licensed financial institution shall —
  - (a) publish, at a conspicuous place at its places of business, its agents and third parties and on its website;
  - (b) provide its financial consumers with a key information document that specifies,

its interest rates, fees and charges.

- (2) A licensed financial institution shall not deduct interest, fees or charges unless they have been previously disclosed to and agreed on by a financial consumer in a financial contract.
- (3) Where a licensed financial institution contravenes subsection (2), the amount deducted

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is void and must be refunded to a financial consumer.

### **97S. Accessibility and inclusion policy**

- (1) A licensed financial institution shall develop and implement a policy on accessibility and financial inclusion which provides for —
- (a) fair access of financial consumers to financial services and financial products regardless of gender, heritage, religion, country of origin, age, physical capability, income, social status, digital capability or financial literacy;
  - (b) access to one basic bank account, subject to conditions specified by the Central Bank;
  - (c) accessibility features on its website, mobile application or tele-banking facility;
  - (d) dedicated resources to give special attention to financial consumers who—
    - (i) are—
      - (AA) elderly;
      - (BB) physically disabled;
      - (CC) low income; or
    - (ii) have low financial literacy.
- (2) A licensed financial institution shall make its accessibility and inclusion policy available to the public in written or electronic format.

### **97T. Basic bank account**

- (1) A licensed financial institution shall make available a basic bank account to a financial consumer who —
- (a) is a vulnerable consumer;
  - (b) earns an annual income not exceeding the amount specified in Codes of Conduct;

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- (c)* has been assessed as posing a low-risk for money-laundering, terrorist financing and proliferation financing; and
  - (d)* does not qualify for any other type of bank account.
- (2)** A licensed financial institution that fails to comply with subsection (1) is liable to an administrative penalty of \$25,000.

#### *Division 4 – Contractual arrangements*

#### **97U. Disclosure**

- (1)** A licensed financial institution shall, before entering into a financial contract—
- (a)* take precautionary measures to assess and ascertain the suitability of the financial services or financial products for the financial consumer;
  - (b)* explain the important aspects of the financial services or financial products and of the financial contract to the financial consumer;
  - (c)* disclose all associated risks; and
  - (d)* have the financial consumer sign a disclosure form in which the financial consumer acknowledges that the contents of the disclosure form have been explained and the financial consumer has understood the benefits and risks of the financial services or financial products;
  - (e)* consider —
    - (i)* the existing indebtedness of a financial consumer;
    - (ii)* the credit score of a financial consumer;
    - (iii)* the level of financial literacy of a financial consumer;



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- the financial services or financial products;
  - (iv) key features of the financial service or product, including the benefits, rights and obligations of the financial consumer;
  - (v) significant risks, if any, associated with the financial services or financial products;
  - (vi) a summary of the licensed financial institution's privacy policy;
  - (vii) any costs associated with pre-payment or charges associated with late payment; and
  - (viii) contact information of the licensed financial institution at which complaints may be lodged and the Central Bank;
- (b) express the terms and conditions in plain and intelligible language;
  - (c) include aspects of material significance;
  - (d) furnish the financial consumer with timely and updated information on the relevant financial services and financial products; and
  - (e) give the financial consumer no less than five business days to review the applicable documents before entering the contract.
- (5) A licensed financial institution shall, at least thirty calendar days before the change takes effect, notify a financial consumer of a change in the terms and conditions of a financial service or financial product with respect to —
- (a) a key financial service or product feature;
  - (b) interest, fees and charges;
  - (c) a renewal or cancellation notice;

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(d) any other changes to the terms and conditions.

- (6) Where a revised term or condition is not agreed to by a financial consumer and was not foreseen in the original financial contract, a financial consumer may terminate the agreement without penalty.
- (7) A licensed financial institution that fails to comply with subsection (1), (2) (3), (4) or (6) is liable to an administrative penalty of \$10,000.

### **97V. Non-limitation or non-exemption of responsibility**

- (1) A licensed financial institution shall not limit or exempt itself from any of its obligations under this Part in any contract entered into with a financial consumer.
- (2) Where a licensed financial institution purports to limit or exempt its obligations in a contract under subsection (1), the provisions limiting or exempting the obligation of the licensed financial institution shall be void ab initio and not enforceable against the financial consumer.
- (3) A licensed financial institution that contravenes subsection (1) is liable to an administrative penalty of \$100,000.

### **97W. Contract terms**

- (1) A licensed financial institution shall express the terms in a financial contract with a financial consumer in plain and intelligible language.
- (2) Where there is disagreement over the meaning of any contractual provision, the provision shall be given a general meaning advantageous to the financial consumer.

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### **97X. Unfair contract terms**

- (1)** The terms of a financial contract shall be fair and shall not be prejudicial to the rights of a financial consumer.
- (2)** A term of a contract is deemed unfair when it causes an imbalance between the rights of a licensed financial institution and the financial consumer and is detrimental to the financial consumer.
- (3)** In determining whether the term of a financial contract is unfair under subsection (2), consideration shall be given to —
  - (a)* the nature of the financial service or financial product for which the contract is concluded;
  - (b)* all other terms of contract between the parties on which the financial contract is dependent;
  - (c)* the interests of the licensed financial institution;
  - (d)* the interests of the particular class of financial consumers who are likely to enter the contract; and
  - (e)* all other circumstances at the time of conclusion of the contract.
- (4)** An unfair term of a financial contract is void ab initio and not enforceable against a financial consumer.

### **97Y. Cooling-off period**

- (1)** A financial consumer shall, subject to subsections (2) and (6), have a cooling-off period after the date of entering into a financial contract, within which the financial consumer may terminate that financial contract.
- (2)** The Central Bank, may issue a Code of Conduct specifying the duration of the cooling-off period under subsection (1), including different

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durations for different financial services or financial products.

- (3) Where a contract is terminated under subsection (1), a licensed financial institution shall—
- (a) refund the money that the financial consumer has paid under the contract within ten business days after the delivery of the notice to terminate;
  - (b) cancel any automatic payment plans and give notice of termination; and
  - (c) require the financial consumer to pay a reasonable fee to compensate for the costs incurred by the licensed financial institution.
- (4) A licensed financial institution shall provide notice of the financial consumer's rights of rescission in a contract and disclosures in respect of a financial service or financial product.
- (5) A financial consumer shall, where a financial contract is terminated under subsection (1), refund the money that a licensed financial institution has paid under the contract within ten business days from the receipt of the notice by the financial consumer.
- (6) This section does not apply to financial contracts between a licensed financial institution and a financial consumer with respect to a financial service or financial product of a third party.

### *Division 5 – Provision of financial services or financial products by means of distance communication*

#### **97Z. Distance communication and distant contracts**

- (1) A licensed financial institution may, directly or through its agents or third parties —
- (a) supply financial services or financial products by means of distance communication; or

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(b) undertake distance contracts.

(2) The Central Bank may issue Codes of Conduct

(a) to protect the interest of a financial consumer under a distant contract;

(b) relating to advertising and marketing of distant contracts;

(c) with respect to the transparency, clarity and fairness of distance contracts and the provision of services and products by means of distance communication; and

(d) requiring the licensed financial institution to give information to the financial consumer.

### *Division 6 – Abusive practices*

#### **97AA Prohibited acts and conduct**

(1) A licensed financial institution shall not institute any unfair, deceptive or abusive practice.

(2) Without limiting the generality of subsection (1), a licensed financial institution shall not—

(a) offer or provide any financial service or financial product in violation of this Part;

(b) refuse to take any action required under this Part.

(3) The Central Bank may issue Codes of Conduct that specify what constitutes an unfair, a deceptive or an abusive practice under subsection (1).

#### **97BB. Abusive collection and debt recovery practices**

(1) A licensed financial institution shall not apply abusive collection and debt recovery practices against financial consumers and guarantors.

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- (2) The Central Bank may issue Codes of Conduct that specify what constitutes abusive collection and debt recovery practices under subsection (1).
- (3) A licensed financial institution may, subject to the conditions under subsection (4), appoint a debt collection agency for the recovery of debts.
- (4) Where a debt collection agency is appointed under subsection (3), the licensed financial institution shall inform a financial consumer in advance about the type of debt to be collected by the debt collection agency, the conditions of recovery and the period within which the debt is to be collected by a debt collection agency.
- (5) A debt collection agency appointed under subsection (3) shall be bound by the same obligations as the licensed financial institution with respect to collection and debt recovery practices.
- (6) A licensed financial institution shall develop and implement an internal code of conduct that is consistent with the Code of Conduct issued by the Central Bank with respect to a debt collection agency appointed under subsection (3).
- (7) A debt collection agent shall adhere to the internal code of conduct developed by the licensed financial institution under subsection (6).
- (8) The code of conduct developed under subsection (6) shall be published and made available to financial consumers by a licensed financial institution and displayed on the website of the licensed financial institution.
- (9) Where a licensed financial institution exercises its right to foreclose on an asset, it shall inform the financial consumer in writing in advance about the procedures involved, and the process

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to be used to foreclose on such property it holds as collateral security.

- (10) The licensed financial institution shall inform the financial consumer about the legal remedies and options available with respect to the foreclosure process.

### **97CC. Fraud and misuse of an asset of a financial consumer**

- (1) A licensed financial institution—
- (a) shall develop an adequate policy and procedure demonstrating solid mechanisms to prevent and mitigate fraud; and
  - (b) is liable for loss due to fraud or misuse involving an asset of a financial consumer under its administration or control;
- (2) Subsection (1) does not apply where negligence or fraud has been performed by a financial consumer.

### **97DD. Default interest**

- (1) A financial contract must specify —
- (a) the rates of default interest or other charge of a similar nature; and
  - (b) the time from when the default interest or other charge of a similar nature is due.
- (2) The rates under subsection (1)(a) shall not exceed the amount required to cover the reasonable costs of the licensed financial institution.

### **97EE. Bundling and tying**

- (1) A licensed financial institution shall refrain from compelling financial consumers to acquire bundled services or products.

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- (2) A licensed financial institution shall not use tying clauses that unduly restrict the choice of financial consumers.

### *Division 7 – Protection of consumer data and confidentiality*

#### **97FF. Confidentiality and protection of non-public consumer data**

- (1) A licensed financial institution shall—
- (a) not disclose the non-public consumer data of its financial consumers;
  - (b) protect the confidentiality of its non-public consumer data;
  - (c) utilise the data only for the purposes specified and agreed to by a financial consumer or as required under any other enactment.
- (2) A licensed financial institution shall formulate and adopt adequate confidentiality policies and procedures that—
- (a) establish that the non-public consumer data is owned by the financial consumer;
  - (b) set out the licensed financial institution's practices and policies with respect to non-public consumer data;
  - (c) identify any sensitive data collected and processed;
  - (d) explain the purposes for which the non-public consumer data is collected and used;
  - (e) provide for security practices and procedures to safeguard non-public consumer data; and
  - (f) include clear procedures where a financial consumer may voluntarily allow the disclosure of his or her non-public consumer data.

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- (3) The confidentiality policy adopted by a licensed financial institution shall be written in simple and intelligible language.

### **97GG. Collection of non-public consumer data**

- (1) A licensed financial institution shall disclose to its financial consumers in advance the—
- (a) manner in which its non-public consumer data is processed and stored;
  - (b) purpose for which the non-public consumer data is being collected;
  - (c) intended recipients of the non-public consumer data; and
  - (d) contact details of the licensed financial institution collecting the non-public consumer data.
- (2) A financial consumer shall have the right to review the non-public consumer data and to correct or amend any inaccurate or deficient data, if found incorrect.

### **97HH. Storage of non-public consumer data**

A licensed financial institution shall—

- (a) implement reasonable and appropriate organisational, physical and technical measures to protect non-public consumer data against unlawful access, destruction, misuse or accidental loss;
- (b) determine the appropriate level of security required to preserve the confidential nature of non-public consumer data, taking into account the risks of processing, size of the organisation, current privacy practices and cost of implementation;
- (c) require that all of its non-public consumer data controllers and third parties processing

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personal information abide by a confidentiality clause; and

- (d) alert the Central Bank and the affected financial consumers within twenty-four hours of any security breaches resulting from the unauthorised disclosure of non-public consumer data.

### **97II. Disclosure of non-public consumer data**

A licensed financial institution may disclose non-public consumer data to a third party where —

- (a) the financial consumer has been informed about such disclosure and permission has been given in writing by the financial consumer;
- (b) the third party is authorised by the financial consumer to obtain the data from the licensed financial institution; and
- (c) the licensed financial institution is required to disclose the non-public consumer data under the Credit Reporting Act (No. 4 of 2019), or any other enactment or by a court order.

#### *Division 8 – Internal policies and procedures*

### **97JJ. Sale of financial service or product**

- (1) A licensed financial institution shall undertake appropriate market research before launching a financial service or product to ensure that the financial service or product aligns with the needs of the intended financial consumers.
- (2) A licensed financial institution shall adequately and continuously train its employees with respect to the sale of its financial services and financial products.
- (3) Employees of a licensed financial institution engaged in the sale of financial services or

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financial products or in advising customers shall perform their duties in accordance with good business customs and professional ethics and integrity and inform customers fully about the terms for use of the financial services or financial products.

- (4) A licensed financial institution that fails to comply with subsection (1) or (2) is liable to an administrative penalty of \$10,000.
- (5) Where an employee of a licensed financial institution fails to comply with subsection (3), the licensed financial institution is deemed to have failed to comply with subsection (3) and is liable to an administrative penalty of \$20,000.

### **97KK. Sales personnel remuneration policy**

- (1) A licensed financial institution shall formulate and adopt an internal sales personnel remuneration policy.
- (2) A licensed financial institution shall not provide incentives to employees, management, agents or third parties that encourage unethical consumer treatment or over-indebtedness.
- (3) A licensed financial institution shall—
  - (a) give fair consideration to financial consumer rights and interests, the various risks that the financial services or financial products pose to the financial industry and financial consumers, and
  - (b) not only consider the sales performance target achievement of financial services or financial products by the sales personnel.
- (4) Where a licensed financial institution fails to comply with subsection (1) or subsection (2), the licensed financial institution shall be liable to an administrative penalty of \$25,000.

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### *Division 9 – Complaints to the Central Bank*

#### **97LL. Central Bank to receive complaints**

- (1) The Central Bank shall —
- (a) receive and record complaints against licensed financial institutions;
  - (b) review and investigate complaints;
  - (c) allow the licensed financial institution and the financial consumer to make representations with respect to a complaint, including disclosing the grounds of and the responses to the complaint, and reports from experts;
  - (d) settle or resolve disputes between licensed financial institutions and financial consumers;
  - (e) provide detailed information to the public about the complaints and dispute resolution process using various types of media, including its website;
  - (f) regularly engage the public on its scope and procedures;
  - (g) provide the licensed financial institution or the financial consumer with regular updates on the complaint.
- (2) The Central Bank may authorise a person to perform an action under subsection (1) on its behalf.

#### **97MM Complaint**

- (1) Subject to subsection (2) and section 97QQ(5)(i), a financial consumer who —
- (a) has reasonable grounds to believe that a licensed financial institution is in breach of this Part;

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*(b)* has exhausted the complaints mechanism established by the licensed financial institution under section 97N,

may, make a complaint to the Central Bank.

**(2)** A financial consumer shall make a complaint to the Central Bank under subsection (1) no less than thirty days from —

*(a)* the date of purchase of the financial service or product; or

*(b)* the date of lodging a complaint with the licensed financial institution,

whichever is the later.

**(3)** Where a financial consumer is unable to act for himself or herself, a family member or other suitable person may submit a complaint on his or her behalf under subsection (1).

**(4)** A person shall not make a complaint to the Central Bank where a determination has been made by a court with respect to the same subject matter of the complaint.

### **97NN. Form of complaint**

**(1)** A complaint may be made orally, electronically or in writing.

**(2)** Where a complaint is made orally, the Central Bank shall produce the complaint in writing and the complainant shall confirm the contents of the written complaint with his or her signature or other identifying mark.

### **97OO. Action on receipt of complaint**

On receiving a complaint, the Central Bank shall —

*(a)* stamp or otherwise emboss the complaint with a marking to signify receipt;

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- (b) provide the complainant with a copy of the complaint stamped or marked under paragraph (a);
- (c) make a record of—
  - (i) the complainant's name, address and telephone number,
  - (ii) the subject matter of the complaint,
  - (iii) the date of receipt of the complaint,
  - (iv) other relevant details relating to the complaint.

### **97PP. Withdrawal of Complaint**

- (1) A complainant or a licensed financial institution may submit a request in writing to the Central Bank to withdraw a complaint.
- (2) The Central Bank shall consider a request under subsection (1) and determine whether to grant or deny the request for withdrawal of a complaint.
- (3) The Central Bank may grant a request under subsection (2) unless it is in the public interest not to do so.
- (4) Where the Central Bank does not grant a request under subsection (3), the decision shall not be binding on the complainant and the licensed financial institution.

### **97QQ. Assessment of complaint by Central Bank**

- (1) Subject to subsection (3), the Central Bank shall assess the complaint within sixty days of receipt of the complaint.
- (2) Having assessed a complaint under subsection (1), the Central Bank may allow or disallow the complaint.
- (3) Before assessing a complaint under subsection (1), the Central Bank shall —

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- (a)* give the complainant and the licensed financial institution—
    - (i)* an opportunity to make oral representations, and
    - (ii)* take the representations made under paragraph *(a)* into consideration;
  - (b)* conduct an investigation under section 97SS.
- (4)** The Central Bank shall notify the complainant and the licensed financial institution of its decision by notice in writing, including —
  - (a)* the reasons for its decision;
  - (b)* the right to apply for a review of its decision to the Commission under section 97YY or appeal its decision the High Court under section 97XXX.
- (5)** The Central Bank may disallow a complaint where—
  - (a)* the complainant is not a financial consumer;
  - (b)* there has been no loss or material inconvenience to the complainant;
  - (c)* the licensed financial institution has already offered adequate compensation or other remedy;
  - (d)* the complainant previously accepted adequate compensation from the licensed financial institution with respect to the same complaint;
  - (e)* the complaint does not involve a licensed financial institution;
  - (f)* the complaint concerns the legitimate exercise of commercial judgment;
  - (g)* the complaint was the subject of court proceedings in which the court issued a judgment;

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- (h) the complaint is subject to ongoing court proceedings in which the court has not ordered the proceedings to be suspended so that the matter can be considered by the Central Bank;
- (i) more than six months have elapsed since the most recent communication from the licensed financial institution was provided to the complainant.
- (6) Where a complaint is disallowed under subsection (5)(c), the Central Bank may direct the licensed financial institution to compensate the complainant in the same amount previously offered to the complainant.
- (7) In this section, “material inconvenience” means a disproportionate disruption or burden caused by an event or situation that has a direct impact on the financial consumer, such as expending inordinate time and effort to resolve an issue or inability to access a necessary financial service or product in a timely manner.

### **97RR. Central Bank may apply alternative dispute resolution**

The Central Bank may apply conciliation, mediation or other alternative dispute resolution techniques or processes in resolving complaints or disputes.

#### *Division 10 – Investigations by the Central Bank*

### **97SS. Investigations**

- (1) An authorised officer shall conduct an investigation —

  - (a) after receipt of a complaint under section 97OO;
  - (b) on its own motion, where the Central Bank has reason to believe that a licensed financial institution is in breach of this Part.

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- (2) Where an authorised officer conducts an investigation under subsection (1), he or she may enter, during business hours, the place of business of a licensed financial institution, its agent or its third party to —
- (a) undertake mystery shopping;
  - (b) make a test purchase;
  - (c) inspect financial services and financial products;
  - (d) inspect documents relating to the investigation and make copies of, or take extracts from, the documents; and
  - (e) request information, documents and evidence.
- (3) After completing an investigation, an authorised officer shall prepare an investigation report.

#### **97TT. Notice to obtain information, documents and evidence**

Where an authorised officer conducts an investigation under section 97SS(2)(d) or 97SS(2)(e) and the licensed financial institution, financial consumer or any other person agrees to furnish information, documents or evidence with respect to the complaint, the authorised officer may, by notice in writing served on the licensed financial institution, financial consumer or other person, require the licensed financial institution, financial consumer or other person to —

- (a) furnish the information to the authorised officer in writing, in the manner and within the time period specified in the notice; or
- (b) produce the document in a manner specified in the notice;
- (c) cause the licensed financial institution, financial consumer or other person to appear before the

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authorised officer at a time and place specified in the notice to give the evidence, orally or in writing, and to produce the documents.

### **97UU. Application for warrant**

- (1)** The Central Bank shall, if necessary under section 97G, make an application to a magistrate on behalf of an authorised officer for a warrant to exercise powers under section 97SS.
- (2)** Where an application for a warrant is made under subsection (1), the magistrate may issue a warrant to an authorised officer who is named in the warrant, to enter and carry out an investigation at the premises of a licensed financial institution as specified in the warrant.
- (3)** A magistrate shall not issue a warrant under subsection (2) unless —
  - (a)* an affidavit has been furnished by the authorised officer to the magistrate setting out the grounds on which the issue of the warrant is being sought;
  - (b)* the authorised officer or another person has given the magistrate such further information, if any, on oath as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (c)* the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (4)** A warrant issued under subsection (2) must specify —
  - (a)* the purpose for which the warrant is issued;
  - (b)* the hours within which entry is authorised ;
  - (c)* the type of documents or financial services or financial products authorised to be inspected or taken;

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- (d)* the date, by which the warrant is to be executed, not being less than seven days after the day on which the warrant is issued; and
- (e)* that the warrant ceases to have effect after the date specified under paragraph *(d)*.

### **97VV. Entering premises under warrant**

- (1)** An authorised officer shall, before entering the premises under a warrant issued under section 97UU—
  - (a)* announce that he or she is authorised to enter the premises;
  - (b)* give a person at the premises an opportunity to allow entry to the premises; and
  - (c)* give a copy of the warrant to an employee of the licensed financial institution.
- (2)** A person who interferes with an authorised officer in the execution of a warrant under this section commits an offence and is liable on summary conviction to a fine of \$15,000 or imprisonment for two years.
- (3)** Any information or document furnished or produced by a person, and any information or document obtained by an authorised officer under this section, may only be used by an authorised officer or a person assisting an authorised officer in proceedings against the licensed financial institution for failure to comply with this Part.

### **97WW. Confidentiality**

- (1)** The Central Bank, its directors, officers or staff shall, keep confidential and not disclose —
  - (a)* the complaint and any material or concessions submitted to the other party of the financial consumer dispute;

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(b) material and information pertaining to the complaint, including, the identity of the complainant,

unless that material or information is publicly available from another source or the Central Bank is required by another enactment to publish that material or information.

(2) Notwithstanding subsection (1), the Central Bank may publish the name of a licensed financial institution against which a complaint is made and the summary of the facts of the complaint.

### **97XX. Transmission of complaint to the Commission**

(1) Where, the Central Bank is unable to resolve a complaint due to its marked complexity, the Central Bank may refer the complaint to the Commission.

(2) Where a complaint is referred under subsection (1), the Central Bank shall transmit to the Commission, the complaint and other supporting documents for consideration.

### **97YY. Application for review**

Any person aggrieved by a decision of the Central Bank under this Part may, no later than twenty-eight days from the date of the decision, submit an application for review to the Commission.

### *Division 11 – Financial Dispute Resolution Commission*

### **97ZZ. Establishment of the Financial Dispute Resolution Commission**

There is established a body to be known as the Financial Dispute Resolution Commission.

### **97AAA. Composition**

The Commission consists of three persons appointed by the Central Bank as follows —

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- (a) one person nominated by the Central Bank;
- (b) one person nominated by the ECCU Bankers' Association, being a former banker, who has wide experience in administrative, economic or financial matters but has not worked in the banking industry in the previous three years;
- (c) one person jointly nominated by the Central Bank and the Eastern Caribbean Currency Union Bankers' Association, being an attorney-at-law with at least ten years of experience practising law, as Chairperson.

### **97BBB. Tenure of Commission**

- (1) A member of the Commission shall be appointed for a term of three years and is eligible for re-appointment for a further term of three years.
- (2) A member of the Commission shall not be appointed for more than two consecutive terms.
- (3) A member of the Commission who has served the maximum period under subsection (2), may not be reappointed unless a period of three years has elapsed since the last appointment.

### **97CCC. Functions duties of Commission**

The functions of the Commission are to consider—

- (a) a complaint submitted under section 97XX;
- (b) an application for review submitted under section 97YY;
- (c) a matter referred to it under any other enactment administered by the Central Bank.

### **97DDD. Jurisdiction of the Commission**

- (1) Subject to subsection (2), the Commission shall receive—
  - (a) complaints from the Central Bank under section 97XX;

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- (b)* applications for review under section 97YY;  
and
  - (c)* matters referred to under any other enactment administered by the Central Bank.
- (2)** The Commission shall not consider complaints or applications for review with respect to —
- (d)* a licensed financial institution’s general interest rate policies, risk policies and credit decisions;
  - (e)* a dispute between a vendor and a licensed financial institution relating to an outsourcing contract;
  - (f)* general grievances against management or executives of a licensed financial institution;
  - (g)* a dispute in which the action taken by a licensed financial institution is to comply with the orders of a regulatory authority;
  - (h)* a service which is not within the regulatory purview of the Central Bank;
  - (i)* a dispute between licensed financial institutions; and
  - (j)* a dispute involving the employee-employer relationship of a licensed financial institution.

### **97EEE. Powers of the Commission**

The Commission may, on making a determination with respect to a complaint submitted under section 97XX, an application for review submitted under section 97YY, or a matter referred to it under 97DDD(1)(c)—

- (a)* request further information or documents from—
  - (i)* the Central Bank,
  - (ii)* a complainant,
  - (iii)* a licensed financial institution,

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- (iv) any other person that holds relevant information;
- (b) request the Central Bank to conduct a further investigation;
- (c) order a person who engaged in wrongful conduct to compensate or refund or return property to the person who suffered the loss or direct damage;
- (d) order the licensed financial institution to—
  - (i) make corrections to erroneous data, information or statement;
  - (ii) cease or desist from the conduct that is the subject of the complaint or application for review;
  - (iii) make a formal apology;
- (e) declare the whole or part of a financial contract made between the financial consumer and the licensed financial institution to be void;
- (f) give a direction varying a financial contract in the manner specified in the direction;
- (g) publish the name of the non-compliant licensed financial institution;
- (h) refer the matter to an authority responsible for investigating and prosecuting criminal activity;
- (i) dismiss a complaint or application for review, where the Commission is satisfied that it does not have the jurisdiction to determine the complaint or application for review;
- (j) take any other action the Commission considers appropriate.

### **97FFF. Disqualification**

A person is not qualified to be appointed, or to remain, a member of a Commission if the person—

- (a) is convicted of an offence involving dishonesty or an offence under this Act;

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- (b)* does not possess the experience and qualifications specified in section 97AAA;
- (c)* is a member of the Legislative Assembly; or
- (d)* is a director, an officer, an employee or an auditor of a licensed financial institution.

### **97GGG. Resignation**

- (1)** The Chairperson of the Commission may resign by submitting a written notice of resignation to the Central Bank and the ECCU Bankers' Association.
- (2)** A member of the Commission, other than the Chairperson, may resign by submitting, through the Chairperson, a written notice of resignation to the Central Bank.

### **97HHH. Revocation**

- (1)** The Central Bank, may revoke the appointment of a member of the Commission if satisfied that the member—
  - (a)* is disqualified from being a member of the Commission under section 97FFF;
  - (b)* is unable to perform the functions of his or her office;
  - (c)* commits misconduct;
- (2)** Where the Central Bank revokes the appointment of a member of the Commission or the Chairperson, the Central Bank shall state the reasons for the revocation.

### **97III. Vacancy**

The office of a member of the Commission is vacated—

- (a)* on the death of the member;
- (b)* if the member becomes disqualified under section 97FFF;

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- (c) if the member resigns under section 97GGG;
- (d) if the Central Bank revokes the appointment of the member under section 97HHH;
- (e) on the expiry of the member's term of appointment.

### **97JJJ. Remuneration**

A member of the Commission may, with respect to each matter finalised, be paid remuneration by way of honorarium, fees or allowances as the Central Bank determines, on consultation with the Eastern Caribbean Currency Union Bankers' Association.

### **97KKK. Recording Secretary**

- (1) The Commission shall appoint a Recording Secretary of the Commission who has no voting rights.
- (2) The Recording Secretary shall keep a written record of all proceedings of the Commission, which shall be confirmed by the Chairperson.

### **97LLL. Confidentiality and oath of secrecy**

- (1) A member and the recording Secretary of the Commission shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her functions under this Part.
- (2) Except with the written consent of the Commission or for the performance of his or her duties or under a legal obligation, a member or the recording Secretary of the Commission shall not communicate confidential matters to a person or permit a person to have access to records in the possession, custody or control of the Commission.

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- (3) A member and the recording Secretary of the Commission must take the prescribed oath of secrecy.

### **97MMM. Meetings of the Commission**

- (1) The Commission shall meet at a place and on the dates and time as the Chairperson determines.
- (2) The Commission shall meet at least once every month or at a time as may be necessary or expedient for the transaction of business.
- (3) The Chairperson and any other member are deemed to be present at a meeting of the Commission if that Chairperson or member participates by telephone, video link or other electronic means, and all members participating in the meeting are able to hear and speak to each other.
- (4) The Chairperson shall preside at meetings of the Commission, and in the absence of the Chairperson from any meeting, the members present at that meeting shall elect one of their number to preside at that meeting.
- (5) The quorum at a meeting of the Commission is a majority of the members of the Commission, including the member presiding at the meeting.
- (6) The recording Secretary of the Commission shall keep accurate minutes of each meeting that must be confirmed by the Chairperson.
- (7) The Commission may, co-opt a person to attend a particular meeting of the Commission at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Commission.

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- (8) The acts of the Commission are authenticated by the signature of the Chairperson of the Commission.
- (9) The validity of any meeting of the Commission is not affected by any vacancy amongst the members or by a defect in the appointment of a member.
- (10) Subject to this section, the Commission may regulate its own procedure.

### **97NNN. Disclosure of personal interest**

- (1) A member of the Commission who has a direct or indirect personal interest in a matter being considered or to be considered by the Commission shall, as soon as reasonably practicable after the relevant facts concerning the matter come to his or her knowledge, disclose the nature of his or her interest to the Commission.
- (2) A disclosure of interest in a matter shall be noted in the relevant records of the proceedings of the Commission.
- (3) Where a member discloses any personal interest in a matter being considered or to be considered by the Commission, the member shall not—
  - (a) be present at the sitting of the Commission while that matter is being considered by the Commission; and
  - (b) take part in any deliberations or vote relating to the matter.

### **97OOO. Independence of the Commission**

The Commission shall act independently and impartially in performing its functions and exercising its powers.

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### **97PPP. Non-liability of members and the Recording Secretary**

A member and the Recording Secretary of the Commission is not personally liable for any act or omission of the Commission done or omitted to be done in good faith except where such act or omission is a consequence of fraud, gross negligence or willful recklessness.

*Division 12 — Complaints and applications for review before the Commission*

### **97QQQ. Basis of Commission's decision**

- (1) In making a decision under this Part, the Commission must consider—
  - (a) the merits of a complaint or application for review;
  - (b) what is fair in the circumstances of the complaint or application for review.
- (2) The Commission shall publish what is taken into account when considering a complaint.

### **97RRR. Dismissal of a complaint or application for review by the Commission**

- (1) The Commission may dismiss a complaint or an application for review where the Commission is of the opinion that —
  - (a) the complaint or application for review is frivolous or vexatious or not made in good faith;
  - (b) the complainant or applicant has delayed for more than six months from the day the grounds for complaint or application for review arose or a period expressed in the terms or conditions in relation to the financial services or financial products for redress, whichever is greater;

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- (c) having regard to all the circumstances of the case, no investigation or further investigation is necessary;
- (d) the complaint or application for review does not pertain to a matter within the function of the Commission.
- (2) Where the Commission dismisses a complaint or application for review under subsection (1), the Recording Secretary shall give written notice to the complainant of the reasons for dismissing the complaint.

### **97SSS. Commission may apply alternative dispute resolution**

Nothing in this Part shall be construed as limiting the power of the Commission to apply conciliation, mediation or other alternative dispute resolution techniques or processes in the exercise of its powers, duties and functions under this Part.

### **97TTT. Commission's decision binding**

- (1) A decision of the majority of the members of the Commission is a decision of the Commission.
- (2) Subject to section 97XXX, a decision of the Commission is binding on a licensed financial institution and a complainant or an applicant.

### **97UUU. Commission to submit Report to Central Bank**

The Commission shall submit to the Central Bank a quarterly report on the status of its decisions.

### **97VVV. Disclosure of information received in complaint**

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- (1) Subject to subsection (2), the Commission may publish information relating to a complaint.
- (2) Unless with the express consent of the complainant, information published under subsection (1) shall not contain information that identifies the complainant, including the name or address of the complainant.

### **97WWW. Compliance with Commission's decision**

- (1) A licensed financial institution shall comply with the decision of the Commission under section 97TTT, within the time limits specified in the decision.
- (2) Where the licensed financial institution contravenes subsection (1), the Central Bank shall take enforcement action under section 97H.

### **97XXX. Appeal**

Any person aggrieved by a decision of the Central Bank or the Commission under this Part may, no later than twenty-eight days from the date of the decision, file an appeal before the High Court.

#### *Division 13— Register*

### **97YYY. Register**

The Central Bank shall keep a register of all complaints, decisions with respect to complaints resolved by the Central Bank and complaints resolved by the Commission.

### **97ZZZ Transition**

A licensed financial institution shall comply with this Part within six months of the date of commencement of this Part.”

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### 17. Section 185 amended

Section 185 of the principal Act is amended by deleting paragraph (f) and by substituting the following paragraphs (f) and (g) —

- “(f) the forms and procedures for the resolution of complaints and disputes between financial consumers and licensed financial institutions;
- (g) penalties that may be imposed for violations of Orders and Regulations made under this Act and may also prescribe the penalties to be imposed on summary conviction, but no such penalty shall exceed a fine of \$50,000 or imprisonment of a term exceeding twelve months.”.

### 18. Section 186 amended

Section 186 of the principal Act is amended—

- (a) by inserting immediately before the words “The Central Bank”, the designation “(1)”;
- (b) in subsection (1) —
  - (i) under paragraph (q), by deleting the full stop and substituting a comma;
  - (ii) by inserting immediately after paragraph (q), the following new paragraph (r)—

“(r) the maximum amount of fees and charges that may be applied by a licensed financial institution.”;
- (c) by inserting immediately after subsection (1), the following new subsections (2) and (3) —

“(2) The Central Bank shall publish Prudential Standards issued under subsection (1) in the *Gazette*.

(3) Prudential Standards issued by the Central Bank under subsection (1) shall have the force of law.”.

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### 19. Section 186A inserted

The principal Act is amended by inserting immediately after section 186, the following new section 186A—

#### **“186A. Codes of Conduct**

- (1) The Central Bank may issue Codes of Conduct to licensed financial institutions on financial market conduct.
- (2) Without limiting the generality of subsection (1), the Central Bank may issue Codes of Conduct with respect to:
  - (a) appropriate product design and delivery;
  - (b) prevention of over-indebtedness;
  - (c) transparency and disclosure including promotional material and other advertising;
  - (d) methodology for pricing;
  - (e) retention period for information including complaints and records in digital form;
  - (f) fair and respectful treatment of financial consumers;
  - (g) financial consumer access and inclusion;
  - (h) financial consumer education and awareness;
  - (i) privacy of financial consumer data;
  - (j) collection and use of personal information, including means of collection, purpose, and types of data that may be collected and retained;
  - (k) procedures to enforce security interests;
  - (l) complaint handling procedures;
  - (m) treatment of incidents of suspected fraud, scams or misuse regarding customer assets, including refunds and restitution of other assets;

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- (n)* timely reconciliation or adjustment of financial consumer accounts; and
- (o)* collection and debt recovery practices.
- (3)** The Central Bank shall publish Codes of Conduct under subsection (1) or (2) in the Gazette.
- (4)** Codes of Conduct issued under subsection (1) or (2) shall have the force of law.
- (5)** A licensed financial institution that fails to comply with a Code of Conduct issued under subsection (1) or (2) is liable to an administrative penalty of \$10,000.”.

(Sgd.) Marjorie Smith

**SPEAKER**

Passed by the Legislative Assembly this 3<sup>rd</sup> day of March, 2026.

(Sgd.) Judith Baker

**CLERK OF THE LEGISLATIVE ASSEMBLY**