

**Draft and unofficial translation prepared by the Central Bank of Cyprus
(includes new definitions and new sections introduced as well as amendments
to the Banking Law 1997 to 2000)**

BANKING (AMENDMENT) LAW OF 2003

PART I

Preliminary

Section 2: The following definitions are introduced:

“Commission” means the Commission of the European Communities;

“Member State” means member state of the European Union;

“Host Member State” means the member state in which a bank has a branch or in which it provides cross border services;

“associate company” means a company in which a bank holds directly or indirectly through related companies 20% or more of the voting rights or the share capital of the company or when the holding company or another group company exercises significant influence on this company or when the companies have been placed under common management or the majority of their management comprises the same persons;

“electronic money institution” means a legal person, other than a bank, which issues means of payment in the form of electronic money;

“electronic money” means monetary value as represented by a claim on the issuer which is:

(i) stored on an electronic device;

- (ii) issued on receipt of funds of an amount not less in value than the monetary value issued;
- (iii) accepted as means of payment by undertakings other than the issuer.

PART II

Licensing of Banks

Subsection 3(1): Insert the words “Subject to the provisions of subsections 3(2) and 3(3) below, the provisions of Part IV and subsection 35(1),” at the beginning of this subsection and before the words “no person”.

Subsection 3(2) is renumbered as 3(4).

New subsec. 3(2): Subsection (1) above shall not apply to the acceptance of a deposit by a person specified by the Central Bank subject to conditions and restrictions determined by the Central Bank:

Provided that an exemption may only be granted to a person which can demonstrate that it was engaging in the business of accepting deposits before the 18th of July, 1997:

Provided furthermore, that these activities are subject to regulations and controls intended to protect depositors and investors.

Provided moreover, that the Central Bank may revoke an exemption granted to a specified person or amend or extend or impose any condition.

New subsec. 3(3): The Central Bank is empowered to exempt certain transactions from the definition of “deposit” by reference to any factors appearing to it to be appropriate and, in particular, by reference to all or any of the following –

- (a) the amount of the deposit

- (b) the total liability of the person accepting the deposit to his depositors or to any other creditors
- (c) the circumstances in which or the purpose for which the deposit is made
- (d) the number of, or the amount involved in, transactions of any particular description carried out by the person accepting the deposit or the frequency with which this person carries out transactions of any particular description.

Subsection 4(1): Insert the words “Subject to the provisions of Part IV” at the beginning of this subsection.

Subsection 4(3)(b): A new proviso is inserted after the phrase ending with the word “licence”. “The refusal shall be notified to the applicant within six months from the date of receipt of the application for a bank licence. Should the application be incomplete, a refusal is notified to the applicant within six months of the applicant’s sending the information required for a decision. A decision shall, in any case, be taken within a year of the receipt of the application.”

Subsection 4(5) is renumbered as 4(7) and the words “after consultation with the Minister” in line three of this subsection are deleted.

New subsec. 4(5): The Central Bank shall not take into consideration the economic need criterion for purposes of granting a bank licence.

New subsec. 4(6): (a) A licensed bank may voluntarily surrender its licence by written notice to the Central Bank.

- (b) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the bank may by further written notice to the Central Bank substitute an

earlier date, not being earlier than that on which the first notice was given.

- (c) The surrender of a licence shall be irrevocable unless it is expressed to take effect on a later date and before that date the Central Bank by notice in writing to the bank allows it to be withdrawn.

PART IV

Establishment and closure of branches and Amendment of Constitution

Subsection 7(1): Insert at the beginning of this subsection the words "Subject to the provisions of section 10C,"

Subsection 8(1): Insert at the beginning of this subsection the words "Subject to the provisions of sections 10A and 10B".

New Section10A:(1) Notwithstanding the provisions of sections 8 and 10 and subject to the provisions of section 10B and subsections (2) and (3) below, the issue of a licence by the Central Bank to carry on banking business in not required with regard to –

- (a) the provision of cross border services; or
- (b) the establishment of branches;

by a bank or an electronic money institution licensed in another member state, or a legal person licensed in a member state to carry out functions which are integral to or closely related to banking business as defined in section 13(3) of this Law provided that certain conditions laid down in a directive issued by the Central Bank are fulfilled.

- (2) The competent supervisory authority of the member state which licensed the bank or the electronic money institution wishing to establish a branch in the Republic notifies the following to the Central Bank –

- (a) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;
- (b) the address of the branch in the Republic from which documents may be obtained;
- (c) the names of those responsible for the management of the branch;
- (d) the capital base and the solvency ratio of the bank or the electronic money institution:

Provided that the competent supervisory authority of the member state which licensed the bank or the electronic money institution shall notify the Central Bank of the above information within three months of receipt of this information:

Provided moreover, that the Central Bank shall, within two months of receiving the above notification, prepare for the supervision of the branch and, if necessary, indicate the conditions under which, in the interest of the general good, these activities must be carried on in the Republic.

- (3) The competent supervisory authority of the member state which licensed the bank or the electronic money institution, in accordance with subsection (1) above, wishing to carry on its activities by providing services on a cross border basis within the territory of the Republic, shall notify the Central Bank of the activities which this bank or the electronic money institution intends to carry on a cross border basis within the territory of the Republic, within one month of receipt of the bank's notification to it."

New Section10B:(1) The Central Bank may, for statistical purposes, require that banks or electronic money institutions from member states having branches within the territory of the Republic, shall report

periodically on their activities which are carried on within the Republic.

- (2) For the supervision of the liquidity of branches of banks from other member states, the Central Bank may require the same information as it requires for that purpose from banks licensed by it.
- (3) The Central Bank may, by issue of directives published in the Official Gazette of the Republic, prescribe the conditions and the procedure for taking measures in case of infringement of the provisions of this Law by banks or electronic money institutions from member states having branches or providing cross border services within the territory of the Republic."

New Section 10C:(1) Notwithstanding the provisions of section 7 and subject to subsections (2), (3), (4), (5) and (6), a bank incorporated in the Republic wishing to establish a branch in a member state notifies to the Central Bank –

- (a) a programme of operations setting out, inter alia, the types of business envisaged and the structural organisation of the branch;
 - (b) the address of the branch in the member state from which documents may be obtained;
 - (c) the names of those responsible for the management of the branch;
 - (d) the capital base and the solvency ratio of the bank:
- (2) Unless the Central Bank has reasons to doubt the adequacy of the administrative structure or the financial situation of the bank, it shall, within three months of receipt of the information referred to in subsection (1), communicate that information to the competent supervisory authorities of the host member state.

- (3) The Central Bank's communication, in accordance with subsection (2), shall also be notified to the bank within three months as provided in subsection (2).
- (4) Where the Central Bank refuses to communicate the information referred to in subsection (1) to the competent supervisory authority of the host member state, it shall give reasons for its refusal to the bank concerned within three months of receipt of all the information in accordance with subsection (1).
- (5) Where a bank intends to carry on its activities for the first time by providing cross border services within the territory of a member state without establishing a branch in that state, it shall notify this intention to the Central Bank specifying at the same time the member state and the activities which it intends to carry on.
- (6) The Central Bank shall, within one month of receipt of the notification in accordance with subsection (5), send that notification to the competent supervisory authorities of the host member state.

PART V

Limitations and Prohibitions on certain Business Activities and Transactions

Section 11: Throughout Section 11 replace the words "credit facilities" with "exposures".

Subsection 11(1): At the end of this subsection, a new proviso is inserted as follows:

The Central Bank may allow exposures in excess of twenty-five per centum of a bank's capital base provided that the excess relates to trading book exposures as defined in the capital adequacy directive issued by the Central Bank and is covered by additional capital requirement as prescribed by the Central Bank under section 21 of this Law.

Subsection 11(2) is replaced by the following:

Subsection 11(2): In determining compliance with subsection (1) the Central Bank may exempt any exposure from time to time having regard to the public interest or to the exceptionally low risk arising from the exposures concerned provided that such exemptions are not in conflict with European Union acts in force in the Republic.

Subsection 11(4)(a): Insert the phrase “it also includes any other on balance sheet asset item or off-balance sheet asset item of a bank funded or unfunded in respect of that person” at the end of the paragraph.

Subsection 11(4)(b): replace paragraph 11(4)(b) with the following: “large exposure” means an exposure to any one person equal to or greater than 10 per centum of the capital base of a bank”;

Subsection 13(2)(b): Replace the word “of” with the word “predominantly” in the third line.

Part VI

Ownership and Management of Banks

Subsection 17(1): The following phrases are inserted after the end of subsection 17(1):

Any intention to increase the holding in a bank or its holding company above the level that has initially been approved by the Central Bank requires the prior approval of the Central Bank. Moreover, any intention to decrease a holding in a bank or its holding company requires notification to the Central Bank.

Subsection 17(2): Subsection 17(2) is renumbered as subsection 17(3).

New subsec.17(2): Notwithstanding any provisions of the Companies law or any other law in force in the Republic from time to time, if a holding in a bank or its holding company is acquired despite the opposition of the Central Bank, it shall, regardless of any other sanctions to

be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

Section 18 is renumbered as subsection 18(1). In addition, the phrase “without the prior written approval of the Central Bank” to be inserted after the words “shall not” in the last paragraph of this subsection.

New subsec.18(2): Notwithstanding the provisions of subsection (1), if it appears to the Central Bank that any individual is not a fit and proper person to act as director, chief executive or manager of a bank, the Central Bank may direct that such person shall not, act as director, chief executive or manager of a bank.

New subsec.18(3): In determining whether a person is not a fit and proper person to hold any of the above positions the Central Bank shall have regard to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of depositors or potential depositors of the bank are, or are likely to be, in any way threatened by his holding that position. Moreover, the Central Bank will not consider a person to be fit and proper to act as director, chief executive or manager of a bank, if that person is not of sufficiently good repute or lacks sufficient experience to hold any of the above positions.

Part IX

Returns & Accounts

Subsection 24(1): The following proviso is added after the end of subsection 24(1):

Provided that the audit of banks shall be carried out in accordance with international auditing standards and any additional requirements specified by the Central Bank.

Subsection 24(3): The word “approved” to be inserted before the words “auditor’s report” at the end of this subsection.

Subsection 24(4): Fourth line, after the words “financial year” the phrase “together with the auditor’s report” is deleted.

Subsection 25(1): Second line, replace the word “longer” with the word “other”.

Part X

Supervision and Inspection

Subsections 26(3) and 26(4) are renumbered as subsections 26(4) and 26(5) respectively.

New Subsec. 26(3): The Central Bank is empowered to require banks to pay to it fees in connection with expenses incurred for their supervision and inspection in accordance with its directives.

Subsection 27(1) is replaced by the following:

Cooperation with supervisory authorities 27(1): Notwithstanding the provisions of section 26, the Central Bank may co-operate and exchange information with the competent banking and/or insurance and/or securities markets supervisory authorities, whether in the Republic or elsewhere, and upon accession to the European Union it shall co-operate and exchange information with the competent banking and/or insurance and/or securities markets supervisory authorities of member states of the European Union in order to assist these supervisory authorities in the discharge of their functions and responsibilities or to enable the effective exercise of its own functions, including consolidated supervision.

New subsec. 27(3): Where the competent authorities of a member state of the European Union wish in specific cases to verify the information required in the discharge of their supervisory functions and responsibilities concerning a bank or a company which carries out predominantly functions integral to or closely related to

banking business in accordance with section 13(3) of this Law or the holding company of these companies, situated in the Republic, they must ask the Central Bank of Cyprus to have that verification carried out. The Central Bank on receiving such a request must act upon it by-

- (a) carrying out the verification itself;
- (b) allowing the competent authority who made the request to carry it out; or
- (c) allowing an approved auditor or expert to carry it out.

New subsec.27(4): Any exchange of information will only take place when the Central Bank is satisfied that the information provided is subject to the same confidentiality rules in the hands of the receiving competent supervisory authority as apply to the Central Bank.

New subsec. 27(5): Where the information received by the Central Bank originates in another member state of the European Union, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Part XI

Banking secrecy

Section 29: At the end of this section, the following new proviso is inserted:

Provided that the provisions of this section shall also apply to any branch of a bank from a member state established in the Republic, or to any bank which provides cross border services under the provisions of section 10A.

PART XII

Powers of the Central Bank

Powers to take measures 30(1)(a): Add the following phrase at the end of paragraph 30(1)(a):
“or to restrict the operations of a bank by imposing conditions on its licence as it thinks desirable”;

(b) Replace paragraph 30(1)(b) with the following:
“Without prejudice to the generality of paragraph (a) above, the conditions imposed under this section may in particular –

(i) require the bank to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(ii) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;

(iii) prohibit the bank from soliciting deposits, either generally or from specified persons or class of persons;

(iv) prohibit the bank from entering into any other transaction or class of transactions

(v) require the removal of any director, controller or manager:

Provided that any condition imposed under paragraphs (a) and/or (b) above may be varied or withdrawn by the Central Bank.”

Subsection 30(2): Insert the words “or (b)” after the words “paragraph (a)” in line two.

Subsection 30(3): Delete subsection 30(3).

Part XIII

Winding up

Section 33: Insert the phrase "or the surrender of the licence of the bank under subsection (6) of section 4 of this Law," after the words "this Law" in line four.

Part XIV

Deposit Protection Scheme

New subsec.34(4): The Central Bank may provide to the deposit protection scheme any information in its possession which in the opinion of the Central Bank may assist the scheme in the discharge of its functions and responsibilities.

New subsec.34(5): The Central Bank shall not divulge any information under this section relating to any individual deposit account.

Part XV

Miscellaneous

Section 35 of the Banking Law is amended as follows:

Subject. 35(1): the words "and of section 38" in line one of this subsection are deleted

SubSect. 35(1): Add the following provisos at the end of subsection 35(1)

"Provided that the Service for the Supervision and Development of Co-operative Societies (hereinafter referred to as "The Service") provides to the Central Bank all the necessary data and information concerning co-operative credit institutions

operating under the Co-operative Societies" Laws in force from time to time, for purposes of monetary and credit policy, monitoring of the Balance of Payments and providing information to the European Central Bank or international organisations in which the Republic participates."

"Provided moreover, that with regard to the data submitted, the Central Bank may carry out, jointly with the Service, on-site verification at the Co-operative credit institutions."

SubSect 35(2): The following proviso is added at the end of subsection 35(2)

"Provided that in the case of co-operative credit institutions associated with the central body (Co-operative Central Bank Ltd) as prescribed in the Co-operative Societies' Laws in force from time to time, these are subject to the provisions of this Law, excluding section 14, to the extent required for purposes of exercising consolidated supervision on the Co-operative Central Bank Ltd and the co-operative credit institutions associated with it. For this purpose, the Service provides to the Central Bank, all the necessary data and information concerning the associated co-operative credit institutions, while the Central Bank may, **whenever it deems necessary**, carry out, **jointly** with the Service, on-site inspections on a sample basis at these institutions.

Section 39: The side title "Holding and subsidiary companies" is replaced by "Consolidated Supervision".

Subsection 39(1) of this Law is renumbered as subsection 39(2) and the words "the holding company and" after the word "that" in line one of this subsection are deleted.

Subsection 39(2) of this Law is renumbered as subsection 39(3). Number "(1)" in line four of this subsection is replaced with number "(2)".

New subsec. 39(1): The Central Bank shall exercise consolidated supervision which covers the bank, all subsidiary and associate companies of the bank or of its holding company which carry out banking business

or predominantly functions integral to or closely related to banking business in accordance with section 13(3) of this Law and any holding company of any of the above companies. For this purpose, the relevant provisions of this Law shall apply to any such company or its holding company on a consolidated basis and in addition such provisions as may be specified by the Central Bank singly.

Section 40: Insert the phrase “or becomes aware of any material adverse change in its condition” after the word “payment” and before the word “it” in the third line of this section.

Coming into effect (1) This Law (incorporating all the proposed amendments mentioned above) shall come into effect on the date of its publication in the Official Gazette of the Republic.

(2) Notwithstanding the provisions of subsection (1) above, sections 10A, 10B, 10C and subsection (5) of section 4 shall come into effect on the date of accession of the Republic to the European Union.