

(Reprint No. 4)

SOUTH AUSTRALIA

FINANCIAL INSTITUTIONS DUTY ACT 1983

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 December 1994.

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being

Financial Institutions Duty Act 1983 No. 88 of 1983
[Assented to 1 December 1983]¹

as amended by

Statutes Amendment (Taxation) Act 1987 No. 2 of 1987 [Assented to 5 March 1987]

Financial Institutions Duty Act Amendment Act 1990 No. 43 of 1990 [Assented to 25 October 1990]²

Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]³

Financial Institutions Duty (Reduction of Duty) Amendment Act 1993 No. 49 of 1993 [Assented to 20 May 1993]⁴

Financial Institutions Duty (Exempt Accounts) Amendment Act 1994 No. 69 of 1994 [Assented to 24 November 1994]⁵

¹ Came into operation 1 January 1984: s. 2.

² Came into operation 1 October 1990: s. 2.

³ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.

⁴ Came into operation 1 June 1993: s. 2.

⁵ Came into operation 1 December 1994: *Gaz.* 24 November 1994, p. 1599.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to impose a duty upon financial receipts; to provide for the assessment and collection of the duty; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Financial Institutions Duty Act 1983*.

Commencement

2. This Act shall come into operation on the first day of January, 1984.

Interpretation

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

"agent" includes a person who is, by an order of the Commissioner, declared to be an agent for any other person for the purposes of this Act;

"approved government instrumentality" means—

- (a) an instrumentality or agency of the Crown in right of the State; or
- (b) a department of the Government of the State,

declared by the Treasurer, by instrument published in the *Gazette*, to be an approved government instrumentality for the purposes of this Act;

"bank" means a bank within the meaning of the *Banking Act 1959* of the Commonwealth or a bank constituted under a law of the State or of the Commonwealth, but does not include the Reserve Bank of Australia;

"bill of exchange" means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person or to bearer;

"books" includes financial records of any kind (whether in documentary or other form);

"cash" means money in the form of cash, bills of exchange or a combination of cash and bills of exchange;

"cash delivery company" means a company the principal business of which is—

- (a) the collection, transportation and delivery of cash; or
- (b) the preparation and delivery of pay-rolls;

"charitable organisation" means a body established on a non-profit basis for charitable, religious, educational or benevolent purposes and includes a trustee who holds property on behalf of such a body;

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"the Commissioner" means the Commissioner of Stamps or the Deputy Commissioner of Stamps and includes any other person while he is performing any of the duties or functions of the Commissioner of Stamps or the Deputy Commissioner of Stamps;

"company" means a body corporate or an unincorporated association (including a partnership);

"corporation" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"deal" has the same meaning as is assigned to the term by section 9 of the *Corporations Law* in relation to securities, and "dealing" has a corresponding meaning;

"dealer in securities" has the same meaning as is assigned to the term "dealer" by section 9 of the *Corporations Law*;

"duty" means financial institutions duty, additional duty or penal duty imposed by or under this Act;

"exempt account" means—

- (a) a Government Department account;
- (b) a short-term dealing account;
- (c) a special account;
- (d) a sweeping account;

"financial institution" means—

- (a) a bank; or
- (b) a person whose sole or principal business is the provision of finance; or
- (c) a dealer in securities; or
- (d) a trustee company; or
- (e) a management company within the meaning of section 9 of the *Corporations Law* that carries on business in South Australia; or
- (f) a pastoral finance company; or
- (g) the Public Trustee,

but does not include a person declared by or under this Act not to be a financial institution;

"financial institutions duty" means duty payable under section 29, 30 or 76;

"Government Department account" means an account kept by a financial institution in respect of which a notice given under section 35 is in force;

"inspector" means a person authorised by the Commissioner to exercise the powers of an inspector under this Act;

"**liquidator**" includes a person who, although not appointed as liquidator, is required by law to carry out the winding-up of a company;

"**money**" includes a bill of exchange and a promissory note;

"**pastoral finance company**" means a person carrying on a business of financing pastoral pursuits or a business of stock or station agents to whom an order in force under section 11 of the *Banking Act 1959* of the Commonwealth applies;

"**person**" includes a company;

"**premises**" means—

- (a) a building, structure or place (including an aircraft, vessel or vehicle); or
- (b) a part of premises as defined above;

"**the prescribed percentage**", in relation to money received by a financial institution, means—

- (a) where the money is received by the financial institution before 1 October, 1990—0.04 per cent;
- (b) where the money is received by the financial institution on or after 1 October 1990 and before 1 June 1993—0.1 per cent;
- (c) where the money is received by the financial institution on or after 1 June 1993—0.065 per cent;

* * * * *

"**promissory note**" means an unconditional promise in writing made by one person to another, signed by the maker, arranging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person or to bearer;

"**receipt**" includes a payment, repayment, deposit or subscription and the crediting of an account;

"**registered financial institution**" means—

- (a) a financial institution that is registered under this Act; or
- (b) a financial institution that, under section 62, is deemed to be a registered financial institution;

"**registered short-term money market operator**" means a person registered as a short-term money market operator under this Act;

"**the relevant amount**" means—

- (a) in relation to any month before October 1990—\$1 000 000;
- (b) in relation to any month from October 1990 to May 1993—\$1 200 000;
- (c) in relation to any month from June 1993—\$1 846 154;

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"return period", in relation to a financial institution or a registered short-term money market operator, means a period in respect of which the financial institution or registered short-term money market operator is required to furnish a return under this Act;

"securities" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"share" includes stock;

"short-term dealer" means—

- (a) a corporation that, under section 65(1)(a) of the *Corporations Law* is declared to be an authorised dealer in the short-term money market; or
- (b) a body corporate in respect of which a declaration under section 9 is, or is deemed to be, in force;

"short-term dealing account" means an account kept by a bank in respect of which a certificate issued by the Commissioner under section 32 is in force;

"special account" means an account kept by a bank in respect of which a certificate issued by the Commissioner under section 31 or 34 is in force;

"sweeping account" means an account kept by a bank in respect of which a certificate issued under section 33 is in force;

"term deposit" means a deposit of money with a financial institution for a specified period, or a specified period and then at call, in relation to which deposit the financial institution, instead of crediting a current account kept by the financial institution, issues a certificate of deposit or similar record of deposit;

"trustee" means—

- (a) a person appointed or constituted trustee by act of parties, by order or declaration of a court or by operation of law; or
- (b) an executor, administrator, guardian, committee, receiver or liquidator; or
- (c) a person—
 - (i) having or taking upon himself the administration or control of real or personal property affected by an express or implied trust; or
 - (ii) having the possession, control or management of real or personal property of a person who is under a legal or other disability; or
 - (iii) acting in a fiduciary capacity;

"trustee company" means—

- (a) a company upon which power to act as trustee has been conferred by an Act of Parliament of a State; or

(b) a prescribed company or a company of a prescribed class;

"voting share" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*.

(2) A reference in this Act to the provision of finance includes a reference to—

(a) the borrowing of money or the obtaining of other financial accommodation, including the issue of share capital by a building society or credit union;

(b) the dealing in—

(i) securities; or

(ii) bills of exchange; or

(iii) promissory notes; or

(iv) certificates of deposit; or

(v) any matter or thing prescribed for the purposes of this paragraph;

(c) the lending of money, with or without security;

(d) the purchase, acquisition, discounting or factoring of debts due to another person.

(3) In this Act, a reference to carrying on a business of a particular kind includes reference to carrying on that business in the course of, as part of, incidentally to, or in connection with, the carrying on of another business.

(4) For the purposes of this Act, the value of a bill of exchange or a promissory note shall be taken to be its nominal or face value.

(5) Where money is received or a liability incurred in a currency other than the currency of Australia, the amount of that receipt or liability is, for the purposes of this Act, the equivalent amount in the currency of Australia calculated at a rate of exchange that was a relevant ruling telegraphic transfer buying rate of exchange in Australia on the day on which the money was received or the liability incurred.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Application of Act to Crown

4. This Act binds the Crown not only in the right of the State but also, so far as the legislative power of the State permits, in all its other capacities.

Certain bodies not to be regarded as financial institutions

5. (1) None of the following is a financial institution—

(a) a corporation the sole or principal business in South Australia of which is the operation of an approved superannuation scheme; or

(b) a trustee of an approved superannuation scheme in his capacity as such; or

(c) a corporation that is registered under the *Life Insurance Act 1945* of the Commonwealth; or

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- (d) a corporation the sole or principal business in South Australia of which is insurance business as defined by section 3(1) of the *Insurance Act 1973* of the Commonwealth; or
- (e) a corporation that is a medical benefits organisation or a hospital benefits organisation registered under the *National Health Act 1953* of the Commonwealth; or
- (f) a dealer in securities who carries on the business of dealing in securities solely—
 - (i) in his capacity as an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth; or
 - (ii) in his capacity as a receiver, as a receiver and manager or as another person appointed by a court to carry on the business concerned; or
- (g) a dealer in securities, being a corporation, that acts as a dealer only in relation to its own debentures; or
- (h) the Treasurer; or
- (i) Credit Union Services Co-operative of S.A.; or
- (j) Credit Union Association of S.A.; or

* * * * *

(l) any prescribed person or person of a prescribed class.

(2) For the purposes of subsection (1)(a) and (b), an approved superannuation scheme means—

- (a) a scheme of superannuation retirement benefit or pension created for the benefit of employees or self-employed persons, not being a scheme declared under subsection (3) not to be an approved superannuation scheme for the purposes of this Act; or
- (b) a scheme of superannuation retirement benefit or pension created and operated by or under any law of the Commonwealth or of a State or Territory.

(3) Where there are fewer than twenty contributors to a superannuation scheme, the Treasurer may, by notice given to the person by whom the scheme is operated, declare the scheme not to be an approved superannuation scheme for the purposes of this Act.

Receipts to which this Act applies

6. (1) Except as otherwise provided, this Act applies to—

- (a) a receipt of money in the State; and
- (b) a receipt of money outside the State in pursuance of a transaction of which—
 - (i) South Australian law is the proper law; or
 - (ii) South Australian law would have been the proper law had not the parties expressly or by implication determined upon the law of some other place as the law to govern the transaction.

(2) Where a person receives a consideration, other than money (whether or not in consideration of his having given credit to any person), in or towards settlement, satisfaction or discharge of any debt or obligation owing to that person, the person shall, when he receives the consideration, be deemed, for the purposes of this Act, to have received an amount of money equal to the value of that consideration.

(3) For the purposes of this Act, the crediting of an account of a person, including the crediting of an account effected by means of an entry or record made by use of a machine or device, shall be deemed to constitute a receipt of money by the person by whom the account is kept.

(4) A reference to the crediting of an account includes—

- (a) the depositing of money to the credit of the account by the person in whose name the account is kept or by another person; and
- (b) without limiting the generality of paragraph (a), the transfer of money to the credit of the account from another account of the person in whose name the account is kept or from an account of another person; and
- (c) the transfer between ledgers or divisions in an account where different terms and conditions apply in respect of those ledgers or divisions.

(5) Where a receipt arises by virtue of the crediting of an account, the receipt shall be regarded as a receipt of money in the State if—

- (a) the account was established at an office or branch of a financial institution situated in the State and has not been transferred to an office or branch situated outside the State; or
- (b) the account was established at an office or branch of a financial institution situated outside the State but has been transferred (and was last transferred) to an office or branch situated in the State.

(6) Where—

- (a) an account kept by a financial institution is debited by the financial institution with an amount that is to be invested, on the instructions of the person on whose behalf the account is kept, with the financial institution; and
- (b) there is no corresponding credit to an account that constitutes a dutiable receipt for the purposes of this Act,

the amount so debited shall be regarded as a receipt of money by the financial institution.

(7) An entry made in an account of a financial institution by that financial institution solely in accordance with its internal accounting practices does not constitute a dutiable receipt.

(8) Where a financial institution provides cash to a person in exchange for a cheque, the financial institution shall not be regarded as having received money, except to the extent that the value of the cheque exceeds the amount of the cash given in exchange.

(9) Where a financial institution provides a cheque to a person in exchange for cash, the financial institution shall not be regarded as having received money, except to the extent that the amount of cash exceeds the value of the cheque given in exchange.

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Definition of dutiable and non-dutiable receipts

7. (1) Subject to this section, a receipt to which this Act applies is a dutiable receipt.
- (2) The following are, for the purposes of this Act, non-dutiable receipts:
- (a) a receipt of money for the credit of an exempt account; or
 - (b) a receipt of money in the course of short-term dealings during a month by a registered financial institution that is a registered short-term money market operator, being a receipt that is taken into consideration for the purposes of ascertaining the average daily liability of the financial institution during that month; or
 - (c) a receipt of money by a registered financial institution, being the repayment of moneys that have been invested in the course of short-term dealings by, or on behalf of, the financial institution; or
 - (d) a receipt of money by a bank that is a registered financial institution from another such bank, being a receipt for the purpose of settling a balance due to the bank from the other bank in accordance with customary general clearance arrangements provided for banks by the Reserve Bank; or
 - (e) a receipt of money by a building society that is a registered financial institution from another such building society, being a receipt for the purpose of settling a balance due to the building society from the other building society in accordance with general clearing arrangements carried out between building societies; or
 - (f) a receipt of money by a credit union that is a registered financial institution from another such credit union, or from Credit Union Services Co-operative of S.A. or from the Credit Union Association of S.A., being a receipt for the purpose of settling a balance due to the credit union from another credit union in accordance with general clearing arrangements carried out between credit unions; or
 - (g) a receipt of money by a bank that is a registered financial institution for the credit of a foreign exchange clearing account or foreign exchange settlement account; or
 - (h) a receipt of money by a dealer in securities as agent in respect of the issue of securities, bills of exchange (other than cheques), promissory notes or certificates of deposit (not including an amount that is a fee or commission); or
 - (i) a receipt of money by a dealer in securities in respect of a sale or purchase of securities that is liable to duty under Part 3A of the *Stamp Duties Act 1923* (not including an amount that is a fee or commission); or
 - (j) a receipt of money—
 - (i) by a management company from a person who is the trustee or representative for the purposes of a deed relating to the management company in accordance with Division 5 of Chapter 7.12 of the *Corporations Law*; or
 - (ii) by such a trustee or representative from such a management company; or
 - (k) a receipt of money by a trustee company or the Public Trustee from the estate of a deceased person committed to the management of the trustee company or the Public Trustee; or

- (l) a receipt of money by a pastoral finance company that is a registered financial institution other than a receipt that is an amount received by the pastoral finance company in the course of banking business carried on by it or in the course of short-term dealings; or
- (m) a receipt of money by a financial institution solely by reason of the making of an entry in an account kept by the financial institution in error, to correct an error or by reason of the dishonour of a cheque; or
- (n) a receipt of money by a financial institution in consideration of the supply of goods by the financial institution (otherwise than in the course of carrying on rental business within the meaning of the *Stamp Duties Act 1923*); or
- (o) a receipt of money by a registered financial institution from, or on behalf of, a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, the term of which bill of exchange is not more than 185 days and the face or nominal value of which is not less than \$50 000, being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange; or
- (p) a receipt of money by a registered financial institution from a charitable organisation for the purpose of investing that money; or
- (q) a receipt of money by a registered financial institution (being a bank, building society or credit union), being a payment to the credit of an account kept by that financial institution of an amount payable to the person in whose name the account is kept under or by virtue of the *Veterans' Entitlements Act 1986* of the Commonwealth or any other Act of the Commonwealth Parliament relating to the repatriation of members of the military forces of the Commonwealth; or
- (r) a receipt of a class declared by regulation to be non-dutiable.

(3) Notwithstanding subsection (2)(a), a receipt to the credit of an exempt account shall, unless the receipt has been credited to an account in the books of the person in whose name the exempt account is kept, be regarded as a dutiable receipt by that person.

(4) Where money is received in the State by a financial institution (otherwise than by the crediting of an account) for the credit of an account kept by the financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the initial receipt is non-dutiable.

(5) Where money is received in the State by a financial institution (otherwise than by the crediting of an account) for the credit of an account kept by some other financial institution and the crediting of that account will constitute a dutiable receipt for the purposes of this Act, the receipt by the firstmentioned financial institution is non-dutiable.

(6) Where—

- (a) a financial institution acts as agent for the purpose of collecting money on behalf of a person who is declared, or is a member of a class declared, by the Treasurer, by notice published in the *Gazette*, to be a person, or a class of persons, in relation to whom the provisions of this subsection apply; and
- (b) the money so collected is not paid to an account kept by the financial institution in the name, or on behalf, of that person,

the receipt of money by the financial institution in the course of its agency is non-dutiable.

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Short-term dealings

8. (1) For the purposes of this Act, an amount is received by a person in the course of short-term dealings where—

- (a) the amount is an amount of cash of not less than \$50 000 received by that person by way of loan, advance or deposit repayable by him—
 - (i) at call; or
 - (ii) within 185 days; or
 - (iii) at call after a term of not more than 185 days,
not being an amount received by a bank by way of deposit repayable on demand or for the credit of a current account kept by it for another person; or
- (b) the amount is a repayment of a loan, advance or deposit of not less than \$50 000 made by that person within 185 days before the amount is repaid; or
- (c) the amount is an amount (not including a fee or commission) in respect of the issue of securities, bills of exchange (other than cheques), promissory notes or certificates of deposit, the term of which is not more than 185 days; or
- (d) the amount is an amount (not including a fee or commission) in respect of a sale or purchase of securities, the term of which is not more than 185 days, being a sale or purchase that is not liable to duty under Part 3A of the *Stamp Duties Act 1923*; or
- (e) the amount is the proceeds of the sale by that person of a bill of exchange or a promissory note before maturity and not later than 185 days after its acquisition by that person, not being a bill of exchange or a promissory note issued by that person; or
- (f) the amount is the proceeds of the sale by that person of securities or certificates of deposit before maturity and not later than 185 days after their acquisition by that person; or
- (g) the amount is the amount received by that person on maturity of securities, bills of exchange, promissory notes or certificates of deposit acquired by him within 185 days before the amount was received.

(2) A reference in subsection (1) to a bill of exchange, promissory note or certificate of deposit is a reference to a bill of exchange, promissory note or certificate of deposit, the face or nominal value of which is not less than \$50 000.

(3) For the purposes of this Act, the average daily liability of a person during a month in respect of short-term dealings is—

(a) where the person is a registered financial institution (not being a person entitled to make application under section 32 for approval of an account as a short-term dealing account)—the amount calculated in accordance with the formula $\frac{A}{12B}$ where—

(i) A is the sum of the daily closing balances of the liability of the financial institution to each person (not being a charitable organisation) in respect of amounts received whether within or outside South Australia (other than amounts included in a return by the financial institution under section 22) from that person in the course of short-term dealings, other than balances that are less than \$50 000; and

(ii) B is the number of days in the month; and

(b) where the person is a person in whose name a short-term dealing account is kept by a bank—the amount calculated in accordance with the formula $\frac{A}{B}$ where—

(i) A is the sum of the daily closing balances of the liability of the bank to that person under that account; and

(ii) B is the number of days in the month.

Declaration of short-term dealer in unofficial market

9. (1) The Commissioner may, by notice published in the *Gazette*, declare a corporation that is a dealer in the unofficial short-term money market to be a short-term dealer for the purposes of this Act.

(2) The Commissioner may, by notice published in the *Gazette*, revoke a declaration under subsection (1).

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PART 2
ADMINISTRATION

The Commissioner

10. The Commissioner shall have the administration of this Act.

Delegation

11. (1) The Commissioner may, by instrument in writing, delegate to any officer of the Public Service any of his powers or functions under this Act.

(2) A delegation under this section—

- (a) may be absolute or conditional; and
- (b) does not derogate from the powers exercisable personally by the Commissioner; and
- (c) is revocable at will.

Secrecy provisions

12. A person shall not divulge or communicate information that is or was acquired by him by reason of his being, or having been, employed in, or in connection with, the administration of this Act except—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration of this Act; or
- (c) to—
 - (i) the Commonwealth Commissioner of Taxation; or
 - (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation; or
- (d) to the Commissioner for Corporate Affairs; or
- (e) for the purpose of legal proceedings under this Act.

Penalty: \$10 000.

PART 3
GROUPING OF FINANCIAL INSTITUTIONS

Interpretation

13. In this Part—

"business" includes—

- (a) a trade or profession; and
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity, carried on by an employer, of employing one or more persons where that person performs or those persons perform duties for or in connection with another business.

Grouping of corporations

14. For the purposes of this Act, financial institutions that are corporations constitute a group if they are, for the purposes of the *Corporations Law*, related to each other.

Grouping where employees used in another business

15. For the purposes of this Act, where—

- (a) an employee of a financial institution, or two or more employees of a financial institution, performs or perform duties solely or mainly for or in connection with a business carried on by that financial institution and another financial institution or other financial institutions, or by another financial institution or other financial institutions; or
- (b) a financial institution has, in respect of the employment of, or the performance of duties by, one or more of its employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods and services) with another financial institution or other financial institutions relating to a business carried on by that other financial institution or those other financial institutions, whether alone or together with another financial institution or other financial institutions,

that financial institution and—

- (c) each such other financial institution; or
- (d) both or all of those other financial institutions,

constitute a group.

Grouping of commonly controlled businesses

16. (1) A reference in this section to two businesses does not include a reference to two businesses both of which are owned by the same person or persons, not being a trustee or trustees, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person (whether or not being a financial institution) has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of two businesses, being carried on by two or more financial institutions, the financial institutions that carry on those businesses constitute a group.

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(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of two businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs of this subsection in one of the businesses and a controlling interest under the same or another of those paragraphs in the other business:

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors or a majority of the directors or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors, of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, fifty per centum or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether beneficially or not beneficially), fifty per centum or more of the capital of the partnership; or
 - (ii) is, or are together, entitled (whether beneficially or not beneficially) to fifty per centum or more of any profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is a beneficiary or those persons (whether or not as the trustees of another trust) are together beneficiaries, in respect of fifty per centum or more of the value of the interests in the trust firstmentioned in this paragraph;
- (e) a person has, or persons have together, a controlling interest in a business, if that person (whether or not he is a trustee of a trust) is the sole owner of the business or those persons (whether or not they are trustees of a trust) are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it shall be deemed to have a controlling interest in any other business in which another corporation that is, for the purposes of the *Corporations Law*, related to it has a controlling interest.

(5) Where—

- (a) a person is a beneficiary under a trust; or
- (b) two or more persons together are beneficiaries under a trust,

in respect of fifty per centum or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of that subsection, be deemed to have a controlling interest in that business.

(6) Where—

- (a) a person has, or persons have together, a controlling interest under subsection (3) in a business, being carried on by a financial institution or by two or more financial institutions; and
- (b) the financial institution or financial institutions that carries or carry on that business has or have a controlling interest under subsection (3) in another business,

the person or persons referred to in paragraph (a) shall be deemed to have a controlling interest for the purposes of that subsection in the business referred to in paragraph (b).

Smaller groups subsumed into larger groups

17. (1) Notwithstanding any other provision of this Part (except subsection (2) of this section), where a financial institution is, whether or not by virtue of this subsection, a member of two or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Grouping provisions to operate independently

18. The fact that a financial institution is not a member of a group constituted under a provision of this Part does not prevent that financial institution from being a member of a group constituted under another provision of this Part.

Beneficiaries under discretionary trusts

19. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this Part, to be a beneficiary in respect of fifty per centum or more of the value of the interests in that trust.

Exclusion of persons from groups

20. (1) Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that he considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Commissioner may, by notice in writing served on that firstmentioned member, exclude that member from that group.

(2) The Commissioner shall not exercise the power conferred on him by subsection (1) so as to exclude a financial institution from a group on and from a date if that financial institution is or was on that date a corporation related, for the purposes of the *Corporations Law*, to another corporation which is a member of that group.

(3) Notwithstanding any other provision of this Part, a notice under subsection (1) shall have effect according to its tenor on and from the date specified in the notice (being a date that is the date of the notice or before the date of the notice) as the date on and from which the financial institution referred to in the notice is or shall be deemed to have been excluded from the group so referred to.

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PART 4
REGISTRATION

DIVISION 1—FINANCIAL INSTITUTIONS

Registration of financial institutions

21. (1) Subject to this Act, a financial institution (not being a member of a group) and each financial institution that is a member of a group, being a financial institution or group which—

- (a) during the preceding twelve months had dutiable receipts totalling more than \$5 000 000; or
- (b) during the preceding month had dutiable receipts totalling more than \$416 666,

shall, within twenty-one days after the end of that period or month, apply to the Commissioner in a manner and form approved by the Commissioner for registration as a financial institution under this Act.

(2) Subsection (1) does not apply to a registered financial institution.

(3) A financial institution that is not required to apply for registration may at any time apply to the Commissioner for registration as a financial institution under this Act.

(4) The Commissioner—

- (a) shall, upon receipt of an application under subsection (1), register the financial institution; and
- (b) may, upon receipt of an application under subsection (3), register the financial institution.

(5) The Commissioner may cancel the registration of a financial institution (not being a member of a group) if—

- (a) during the preceding twelve months the total of the dutiable receipts of the financial institution did not exceed \$5 000 000; and
- (b) during the preceding month the total of the dutiable receipts of the financial institution did not exceed \$416 666,

or if, in his opinion, the total of the dutiable receipts of the financial institution during the succeeding twelve months is not likely to exceed \$5 000 000.

(6) The Commissioner may cancel the registration of a financial institution that is a member of a group if—

- (a) during the preceding twelve months the total of the dutiable receipts of the group did not exceed \$5 000 000; and
- (b) during the preceding month the total of the dutiable receipts of the group did not exceed \$416 666,

or if, in his opinion, the total of the dutiable receipts of the group during the succeeding twelve months is not likely to exceed \$5 000 000.

(7) Where a financial institution is registered only by reason of being a member of a group, the Commissioner may, upon the financial institution ceasing to be a member of a group, cancel its registration.

Returns by financial institutions

22. Subject to this Act, each financial institution that is registered or required to apply for registration in accordance with the provisions of section 21 shall, within twenty-one days after the end of each month, furnish to the Commissioner, in a manner and form approved by the Commissioner, a return relating to that month in which he specifies—

- (a) the total of the dutiable receipts other than the dutiable receipts referred to in paragraph (b); and
- (b) the number of dutiable receipts of, or exceeding, the relevant amount,

that were received by him during that month.

Returns by a nominated member of a group of financial institutions

23. (1) Where, in relation to a group of financial institutions that has made application under this section, the Commissioner is of the opinion that, having regard to—

- (a) the size of the group; and
- (b) the financial institutions that constitute the group; and
- (c) any other relevant matters,

it is expedient so to do, he may nominate a member of that group to furnish, within twenty-one days after the end of each month, to the Commissioner, in a manner and form approved by him, a return relating to that month in which he specifies—

- (d) the total dutiable receipts of each member of the group during that month other than dutiable receipts referred to in paragraph (e); and
- (e) the number of dutiable receipts of each member of the group during that month of, or exceeding, the relevant amount; and
- (f) the total dutiable receipts of each member of the group during the period of twelve months immediately preceding that month.

(2) Where a member of a group nominated under subsection (1) furnishes a return to the Commissioner in accordance with that subsection, each member of the group specified in a return so furnished shall be deemed to have furnished, when that return is furnished, a return under section 22.

(3) A nomination under subsection (1) may be either unconditional or subject to such conditions as the Commissioner thinks fit.

(4) The Commissioner may at any time, by notice in writing, revoke any nomination under subsection (1).

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Exemption from furnishing returns of financial institutions

24. (1) If the Commissioner is of the opinion that, having regard to the amount of duty payable by a registered financial institution, it is expedient to do so, he may issue a certificate to that financial institution exempting it from furnishing monthly returns in accordance with the provisions of section 22 and any financial institution to which such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish a return relating to each financial year within twenty-one days after the end of each financial year.

(2) A certificate issued under subsection (1) may be either unconditional or subject to such conditions as are prescribed or as the Commissioner thinks fit.

(3) The Commissioner may at any time, by notice in writing, revoke any certificate issued under subsection (1).

(4) The issue of a certificate under subsection (1) shall not exempt a financial institution from the payment of any duty, notwithstanding that it may have the effect of postponing the time for payment of any duty.

(5) In subsection (1) "financial year" means the period of twelve months ending on the thirtieth day of June or such other period as the Commissioner determines in a particular case.

Further returns

25. The Commissioner may, by notice in writing, call upon any financial institution or person to furnish to him, within the time specified in the notice, such return or such further or fuller return as the Commissioner requires, whether on his own behalf or as an agent or a trustee.

DIVISION 2—SHORT-TERM MONEY MARKET OPERATORS

Registration of short-term money market operators

26. (1) A person may make application to the Commissioner in a manner and form approved by the Commissioner for registration as a short-term money market operator for the purposes of this Act.

(2) A person may not make application under this section unless—

(a) the person is a short-term dealer; or

(b) the person carries on a business in South Australia of dealing in securities, bills of exchange, promissory notes or certificates of deposit in the short-term money market, or of making or receiving loans, advances or deposits in the short-term money market.

(3) Where the Commissioner is satisfied that an application under this section is duly made, the Commissioner may register the applicant as a short-term money market operator under this Act.

(4) The Commissioner may, by notice in writing given to a person who is a registered short-term money market operator, cancel his registration where he is satisfied that the person—

(a) has ceased to be a person who may make application for registration under this section; or

(b) has paid moneys to an exempt account in contravention of the provisions of Part 6,

and may determine a period, not exceeding one year, during which the person is ineligible to make an application under this section.

Returns by registered short-term money market operators

27. Each registered short-term money market operator shall, within twenty-one days after the end of each month, furnish to the Commissioner, in a manner and form approved by the Commissioner, a return relating to that month and shall specify in that return his average daily liability in respect of short-term dealings during that month and the daily amounts used in calculation of that average daily liability.

Further returns

28. The Commissioner may, by notice in writing, call upon any registered short-term money market operator to furnish to him, within the time specified in the notice, such return or such further or fuller return as the Commissioner requires, whether on his own behalf or as an agent or a trustee.

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**PART 5
LIABILITY TO DUTY**

Financial institutions duty

29. (1) Subject to this Act, a financial institution that receives money during a month is liable to pay financial institutions duty in respect of each such receipt to which this Act applies.

(2) The amount of financial institutions duty payable by a financial institution in respect of each receipt of money is—

(a) the prescribed percentage of the money received; or

(b) \$1 200,

whichever is the less.

(3) Subsection (1) does not apply to a non-dutiable receipt.

(4) A financial institution is not liable to pay duty under this section in respect of the receipt of money during a month if it is not registered under this Act and is not required to be so registered.

Financial institutions duty in respect of certain short-term dealings

30. Subject to this Act, a registered short-term money market operator is liable to pay financial institutions duty in respect of his average daily liability during a month in respect of short-term dealings at the rate of 0.005 per centum of that average daily liability.

**PART 6
EXEMPT ACCOUNTS**

Special bank accounts of non-bank financial institutions

31. (1) A non-bank financial institution may make application to the Commissioner in a manner and form approved by him for approval of an account kept in the State in the name of the non-bank financial institution by a bank that is a registered financial institution as a special account for the purposes of this Act.

(2) A bank that is a registered financial institution may make application to the Commissioner in a manner and form approved by him for approval of an account kept in the name of the bank by another bank that is a registered financial institution as a special account for the purposes of this Act.

(3) Where an application is made under subsection (1) or (2), the Commissioner shall, subject to this section, issue to the applicant a certificate of approval of the account to which the application relates as a special account for the purposes of this Act.

(4) Where a certificate under this section is produced to a bank that is a registered financial institution, the bank shall designate the account to which the certificate relates as a special account for the purposes of this Act.

(5) Where a person in whose name a special account is kept by a bank is a pastoral finance company, an amount shall not be paid to the credit of the special account unless the amount—

- (a) is an amount received by the pastoral finance company in the course of banking business carried on by it; or
- (b) is an amount received by the pastoral finance company in the course of short-term dealings; or
- (c) is an amount paid to that account from another account kept in the name of the pastoral finance company by a bank that is a registered financial institution.

(6) Notwithstanding subsection (5), where a pastoral finance company—

- (a) pays to the credit of a special account kept in its name by a bank, an amount that includes an amount other than an amount that, under subsection (5), it is authorised to pay to the credit of that account; and
- (b) pays to the credit of another account kept in South Australia in its name by a bank that is a registered financial institution (not being a special account) within fourteen days after the firstmentioned amount is paid to the credit of the special account, that part of that amount that it is not authorised to pay to the credit of the special account,

the payment to the credit of the special account shall not be considered a contravention of subsection (5).

(7) An amount shall not be paid to the credit of a special account kept by a bank in the name of *The Law Society of South Australia* unless the amount is an amount deposited with *The Law Society of South Australia* under Part 4 of the *Legal Practitioners Act 1981*.

(8) An amount shall not be paid to the credit of a special account kept by a bank in the name of a cash delivery company unless that amount was received by the company in the course, or for the purposes, of its business and does not include any fee, commission or other consideration to which the company is or may become entitled in its own right.

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(9) Where a person in whose name a special account is kept by a bank is a person prescribed for the purposes of subsection (11), an amount shall not be paid to the credit of the special account unless it is a prescribed amount or an amount included in a class of prescribed amounts.

(10) Where the Commissioner is satisfied that an amount has been paid to the credit of a special account in contravention of this section, the Commissioner—

- (a) may, by notice in writing given to the financial institution at which the special account is kept and the person in whose name the account is kept, cancel the account as a special account for the purposes of this Act; and
- (b) may determine a period, not exceeding one year, during which the person in whose name the account is kept is ineligible to make application under this section.

(11) In this section—

"non-bank financial institution" means—

- (a) a registered financial institution, not being a bank; or
- (b) a registered financial institution, being a pastoral finance company; or
- (c) Credit Union Services Co-operative of S.A.; or
- (d) Credit Union Association of S.A.; or

* * * * *

- (f) *The Law Society of South Australia*; or
- (g) a cash delivery company; or
- (h) Australian Stock Exchange Limited; or
- (i) any prescribed person.

Short-term dealing account of registered short-term money market operator

32. (1) A person who is a registered short-term money market operator and is not a registered financial institution may make application to the Commissioner in a manner and form approved by him for approval of an account kept in the State in the name of the operator by a bank that is a registered financial institution as a short-term dealing account for the purposes of this Act.

(2) Where an application is made under subsection (1), the Commissioner shall, subject to this section, issue to the applicant a certificate of approval of the account as a short-term dealing account for the purposes of this Act.

(3) Where a certificate under this section is produced to a bank that is a registered financial institution, the bank shall designate the account to which the certificate relates as a short-term dealing account for the purposes of this Act.

(4) An amount shall not be paid to the credit of a short-term dealing account kept by a bank in the name of a registered short-term money market operator unless the amount—

- (a) is an amount received by that operator in the course of short-term dealings; or

- (b) is an amount paid to that account from another account kept in South Australia or a prescribed State or Territory by that bank or by another bank that is a registered financial institution in the name of that operator.

(5) An amount shall not be credited to, or debited against, a short-term dealing account in contravention of a prohibition imposed by regulation.

(6) Where—

- (a) the Commissioner is satisfied that an amount has been credited to, or debited against, a short-term dealing account in contravention of subsection (4) or (5); or
- (b) the Commissioner cancels the registration of the person in whose name the account is kept as a short-term money market operator,

the Commissioner—

- (c) may, by notice in writing given to the bank at which the short-term dealing account is kept and the person in whose name the account is kept, cancel the certificate; and
- (d) may determine a period, not exceeding one year, during which the person in whose name the account is kept is ineligible to make application under this section.

Sweeping accounts

33. (1) A person who carries on a business in the State may make application to the Commissioner in a manner and form approved by him for approval of an account kept in the State in the name of the applicant by a bank that is a registered financial institution as a sweeping account for the purposes of this Act.

(2) Where an application is made under subsection (1), the Commissioner may, in his absolute discretion and subject to subsection (3), issue to the applicant a certificate of approval of the account as a sweeping account for the purposes of this Act.

(3) The Commissioner shall not issue a certificate under subsection (2) unless he is satisfied that the nature of the applicant's business is such that proceeds of the business must be paid to the credit of several accounts and then, at regular intervals, transferred to the credit of a consolidated account (being the account to which the application for a sweeping account relates).

(4) Where a certificate under this section is produced to the bank by which the account to which it relates is to be held as a sweeping account, the bank shall designate the account to which the certificate relates as a sweeping account for the purposes of this Act.

(5) An amount shall not be paid to the credit of a sweeping account kept by a bank unless—

- (a) the amount is paid to the credit of the account by debiting the amounts standing to the credit of other accounts and forthwith crediting, by mechanical or other device, the sweeping account with the total sum of the amounts so debited; and
- (b) the accounts that are debited in order that the sweeping account may be credited in accordance with paragraph (a)—
 - (i) are kept in South Australia in the name of the person in whose name the sweeping account is kept; and
 - (ii) are kept by the same bank that keeps the sweeping account; and

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(iii) are non-exempt accounts.

(6) An amount shall not be credited to, or debited against, a sweeping account in contravention of a prohibition imposed by regulation.

(7) Where the Commissioner is satisfied that an amount has been credited to, or debited against, a sweeping account in contravention of subsection (5) or (6), the Commissioner—

- (a) may, by notice in writing given to the bank at which the sweeping account is kept and the person in whose name the account is kept, cancel the certificate; and
- (b) determine a period, not exceeding one year, during which the person in whose name the account is kept is ineligible to make application under this section.

Other special accounts

34. (1) A person, who is eligible under subsection (2) to have an account kept in the State by a registered financial institution (being a bank, building society or credit union) approved as a special account, may apply to the Commissioner, in a manner and form approved by him, for approval of the account as a special account.

(2) For the purposes of subsection (1)—

- (a) a dealer in securities is eligible to have an account kept in his name that is a dealer's trust account for the purposes of the Securities Industry (South Australia) Code approved as a special account;
- (b) a person who is under a prescribed statutory obligation to pay money to the credit of a trust account kept in his name is eligible to have that trust account approved as a special account;
- (c) a charitable organisation is eligible to have any account kept in its name approved as a special account.

(3) Where an application is made under subsection (1), the Commissioner shall, subject to this section, issue to the applicant a certificate of approval of the account as a special account.

(4) Where a certificate under this section is produced to the registered financial institution at which the account is kept, the financial institution shall designate the account to which the certificate relates as a special account for the purposes of this Act.

(5) The following restrictions apply in respect of accounts approved as special accounts under this section:

- (a) an amount shall not be paid to the credit of such an account kept in the name of a dealer in securities unless it is an amount that is required or permitted to be paid to the credit of a dealer's trust account under the *Corporations Law*;
- (b) an amount shall not be paid to the credit of such an account to which subsection (2)(b) applies unless that amount represents trust moneys received by the person in whose name the account is kept and required by statute to be paid to the credit of that account;
- (c) an amount shall not be paid to the credit of such an account kept in the name of a charitable organisation unless that amount represents moneys to which the organisation is exclusively entitled.

(6) Where the Commissioner is satisfied that—

- (a) an amount has been paid to the credit of a special account in contravention of subsection (5); or
- (b) the person in whose name an account approved as a special account under this section is kept has ceased to be eligible to have the account approved,

the Commissioner—

- (c) may, by notice in writing given to the financial institution at which the special account is kept and the person in whose name the account is kept, cancel the account as a special account for the purposes of this Act; and
- (d) may determine a period, not exceeding one year, during which the person in whose name the account is kept is ineligible to make application under this section.

Government Department account

35. (1) An application for approval of an account kept in the State by a bank, building society or credit union that is a registered financial institution as a Government Department account for the purposes of this Act may be made—

- (a) by an approved Government instrumentality; or
- (b) by a department of the Government of the Commonwealth, another State or a Territory of the Commonwealth.

(2) Where an application is made under subsection (1), the Commissioner shall issue to the applicant a certificate of approval of the account as a Government Department account for the purposes of this Act.

(3) Where a certificate under this section is produced to the registered financial institution at which the account is kept, the financial institution shall designate the account to which the certificate relates as a Government Department account for the purposes of this Act.

Cancellation of designation of account

36. (1) Where the Commissioner, by notice under this Part, cancels a certificate of approval in respect of a special account, a short-term dealing account or a sweeping account, the account shall cease to be an exempt account as from the date of cancellation stated in the notice.

(2) Where a financial institution receives a notice of a kind referred to in subsection (1) in respect of an account kept by the financial institution, it shall, as from the date of cancellation referred to in the notice, cancel the designation of the account as a special account, a short-term dealing account or a sweeping account (as the case may require).

Payments and returns by account holders

37. (1) A person in whose name an exempt account to which this section applies is kept must, not later than two months after the end of each financial year—

- (a) provide the Commissioner with a return in a form approved by the Commissioner—
 - (i) giving details of any amounts paid into the account in contravention of this Act; or
 - (ii) if no amount was paid into the account in contravention of this Act—stating that fact; and

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- (b) if amounts were paid into the account in contravention of this Act, pay to the Commissioner in respect of each such amount—
- (i) duty equal to—
 - (A) the prescribed percentage of the amount; or
 - (B) \$1 200,whichever is the less; and
 - (ii) additional duty equal to the amount of that duty.

Penalty: \$10 000.

(2) The Commissioner may remit additional duty payable under subsection (1) in whole or part.

(3) This section applies to the following classes of exempt accounts:

- (a) short term dealing accounts; and
- (b) special accounts kept in the name of a pastoral finance company; and
- (c) sweeping accounts; and
- (d) any other class of exempt accounts prescribed by regulation.

(4) Parts 7, 8, 9 and 10 apply—

- (a) as if duty payable under subsection (1) were financial institutions duty payable by a financial institution; and
- (b) as if additional duty payable under subsection (1) were additional duty payable by a financial institution under section 41(2).

(5) In this section—

"financial year" means the year ending on 30 June or on any other date approved by the Commissioner in a particular case.

PART 7
COLLECTION AND RECOVERY OF DUTY

Time for payment of duty

38. Subject to this Act, each financial institution and each registered short-term money market operator liable to pay financial institutions duty shall pay the duty within the period within which he is required by this Act to lodge the return of the receipts or average daily liability in respect of which the duty is payable.

Extensions and time to pay

39. (1) The Commissioner may, in such cases as he thinks fit—

- (a) extend the time for furnishing a monthly return by such period as he considers the circumstances warrant; or
- (b) extend the time for payment of duty by such period as he considers the circumstances warrant; or
- (c) permit the payment of duty to be made by instalments within such time as he considers the circumstances warrant.

(2) An extension or permission under this section may be granted upon such conditions as the Commissioner thinks fit (including a condition providing for the payment of interest on the balance of duty outstanding at a rate not exceeding twenty per centum per annum).

Abridgement of time for lodging returns and paying duty

40. (1) Where the Commissioner has reason to suspect that a financial institution or registered short-term money market operator may leave South Australia before duty becomes due and payable, he may, by notice served on the financial institution or registered short-term money market operator, abridge the time for lodging a return of receipts or average daily liability and for the payment of financial institutions duty in respect of the receipts or average daily liability.

(2) Where a notice is served under subsection (1), the person to whom the notice is addressed shall lodge the return referred to in the notice and pay the financial institutions duty in respect of the receipts or average daily liability to which the return relates on or before a date stated in the notice.

Additional duty

41. (1) If financial institutions duty is not paid on or before the expiration of the period within which it is required to be paid by or under this Act, additional duty computed upon the amount of the arrears, as from the expiration of the period within which the duty should have been paid, at the rate of twenty per centum per annum, shall be payable.

(2) Where a financial institution or registered short-term money market operator fails to include in a return full particulars of dutiable receipts or average daily liability in respect of which financial institutions duty is payable, he shall be liable to pay, by way of additional duty (and in addition to the additional duty (if any) payable under subsection (1)), double the difference between the duty properly payable and the duty payable on the basis of the defective return.

(3) The Commissioner may, on the application of a financial institution or registered short-term money market operator, remit additional duty payable under this section in whole or in part.

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Refund of duty overpaid

42. Where duty has been overpaid the Commissioner shall refund the amount of the overpayment.

Assessments of duty

43. (1) Where, in the opinion of the Commissioner, a financial institution or a registered short-term money market operator has not paid the financial institutions duty or all the financial institutions duty, to which it is liable in respect of a particular period, the Commissioner may make, and cause to be served on the financial institution or registered short-term money market operator, an assessment of duty consisting of—

- (a) the financial institutions duty that has not, but should have been, paid in respect of the period to which the assessment relates; and
- (b) any additional duty that is payable under section 41; and
- (c) penal duty in accordance with subsection (2).

(2) Where financial institutions duty is assessed under this section, penal duty is payable of an amount stated in the assessment of duty (but not exceeding the amount of financial institutions duty that has not, but should have, been paid in respect of the period to which the assessment relates).

(3) The Commissioner may, if he thinks fit, remit, in whole or part, penal duty payable under subsection (2).

(4) Duty payable upon an assessment must be paid by the financial institution or registered short-term money market operator to which the assessment relates on or before a date stated in the assessment.

(5) If a financial institution or registered short-term money market operator fails to pay duty as required by subsection (4), it shall be guilty of an offence.

Penalty: \$10 000.

Recovery of duty

44. (1) Duty shall be deemed, when it becomes due and payable, to be a debt to the Crown and payable to the Commissioner.

(2) The Commissioner may recover unpaid duty by action in any court of competent jurisdiction.

Service of process

45. (1) In proceedings for the recovery of duty any process may be served on the defendant—

- (a) personally; or
- (b) by leaving the process at his address for service; or
- (c) by sending the process or a sealed copy of the process by post addressed to the defendant at his address for service; or
- (d) by such other method as is permitted by any Act or rule of court.

(2) In any case to which subsection (1)(c) applies, unless the contrary is proved, service of the process shall be deemed to have been effected two days after the date of posting.

(3) In subsection (1)—

"address for service", in relation to the defendant to proceedings for the recovery of duty, means—

- (a) his last known place of residence or business; or
- (b) his address for service as shown on a return furnished by him, or on his behalf, under this Act (not being an address superseded by a subsequent address for service shown on a later return).

Liquidator to give notice

46. (1) A person who is the liquidator of a company which has been a financial institution registered or required to be registered under this Act or which is a registered short-term money market operator shall, within fourteen days after he has become liquidator of that company, serve on the Commissioner notice in writing of his appointment as liquidator.

(2) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any duty which then is, or will thereafter become, payable by the company.

(3) The liquidator—

- (a) shall not, without leave of the Commissioner, part with any of the assets of the company until he has been so notified; and
- (b) shall set aside, out of the assets available for the payment of the duty, assets to the value of the amount so notified or the whole of the assets so available if they are of less than that value; and
- (c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the duty.

(4) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the duty for which he is liable under subsection (3)), he shall, to the extent of the value of the assets of which he has taken possession and which are, or were at the time, available to him for the payment of the duty, be personally liable to pay the duty, and shall be guilty of an offence.

Penalty: \$1 000.

Expiation fee: Division 8 fee.

(5) Where more persons than one are appointed liquidators or required by law to carry out the winding-up of a company, the obligations and liabilities attaching to a liquidator under this section shall attach to each of those persons and, where any one of those persons has paid the duty due in respect of the company being wound-up, the other person or persons shall each be liable to pay that person his equal share of the amount of the duty so paid.

(6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any duty payable in respect of the company.

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(7) Nothing in this section—

- (a) limits the liability of a liquidator under section 65; or
- (b) affects any of the provisions of the *Corporations Law*.

Agents for absentee principal winding-up business

47. (1) Where an agent for a principal resident outside South Australia who has been a financial institution registered or required to be registered under this Act, or who is or has been a registered short-term money market operator, has been required by his principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any duty which then is, or will thereafter become, payable in respect of the business of the principal.

(2) An agent who, without reasonable excuse, fails to give notice to the Commissioner or fails to provide for payment of the duty as required by this section shall be personally liable for any duty which then is, or will thereafter become, payable in respect of the business of the principal, and shall be guilty of an offence.

Penalty: \$5 000.

Expiation fee: Division 6 fee.

(3) The Commissioner may, in a particular case, for reasons that, in his discretion, he thinks sufficient, remit the whole or any part of any duty for which an agent is personally liable pursuant to subsection (2).

When duty not paid during lifetime

48. Where, whether intentionally or not, a person escapes full payment of duty in his lifetime by reason of his not having duly made full, complete and accurate returns, the following provisions shall apply:

- (a) the Commissioner has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as he would have had against that person if he were still living;
- (b) the trustees shall make such returns under this Act as the Commissioner requires;
- (c) the trustees are subject to the duty to the same extent as the deceased person would be subject to the duty if he were still living, but the Commissioner may, in a particular case, for reasons that, in his discretion, he thinks sufficient, remit the duty in whole or in part;
- (d) the amount of duty payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

Provision for payment of duty by executors or administrators

49. (1) Where, at the time of the death of a person who was a financial institution or registered short-term money market operator, he had not paid the whole of the duty payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of the duty from the executors and administrators as he would have had against the person if he were alive.

(2) The executors or administrators shall furnish such of the returns mentioned in Part 4 as have not been made by the deceased.

Recovery of duty paid on behalf of another person

50. A person who, under the provisions of this Act, pays any duty for or on behalf of any other person shall be entitled to recover the amounts so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

Contributions from persons jointly liable to pay duty

51. (1) Where two or more persons are jointly liable to pay duty, they shall each be liable for the whole duty, but any of them who has paid the duty may recover contributions as follows:

- (a) a person who has paid duty may recover by way of contribution from any other person jointly liable to pay that duty a sum which bears to the duty the same proportion as the share of dutiable receipts or average daily liability which that other person received or paid bears to the total dutiable receipts or average daily liability which the persons jointly liable to the duty received or paid;
- (b) a person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request, or may retain or deduct the amount of the contribution out of any money in his hands belonging or payable to the person liable to contribute.

(2) A person who, during a period, is or was a member of a group within the meaning of Part 3 is jointly and severally liable with the other persons who are or were members of the group during that period to pay duty payable by members of that group in respect of that period.

Commissioner may collect duty from person owing money to financial institution

52. (1) The Commissioner may, by notice in writing (a copy of which shall be served on the financial institution or registered short-term money market operator), require—

- (a) any person by whom any money is due or accruing or may become due to a financial institution or registered short-term money market operator; or
- (b) any person who holds or may subsequently hold money for or on account of a financial institution or registered short-term money market operator; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to a financial institution or registered short-term money market operator; or
- (d) any person having authority from some other person to pay money to a financial institution or registered short-term money market operator,

to pay to him forthwith, upon the money becoming due or being held or within such further time as the Commissioner allows, the money or so much thereof as is sufficient to pay the duty due by the financial institution or registered short-term money market operator or the fine and costs, if any, imposed by a court on him in respect of an offence against this Act.

(2) A person who fails to comply with a notice under subsection (1) shall be guilty of an offence.

Penalty: \$5 000.

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(3) Where any amount referred to in subsection (1) is less than the amount of the duty due by the financial institution or registered short-term money market operator, the person served with the notice under that subsection shall pay to the Commissioner, in reduction of the amount of the duty due, the amount payable by that person to the financial institution or registered short-term money market operator.

(4) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the financial institution or registered short-term money market operator and of all other persons concerned, and is hereby indemnified in respect of the payment.

(5) If the duty due by the financial institution or registered short-term money market operator, or the fine and costs, if any, imposed by a court on it in respect of an offence against this Act, are paid before any payment, if made under a notice given under subsection (1), the Commissioner shall forthwith give notice of the payment to the person served with the notice under that subsection.

(6) In this section "duty" includes any judgment debt and costs in respect of duty.

**PART 8
OBJECTIONS AND APPEALS**

Objections and appeals

53. (1) A person who is dissatisfied with an assessment made by the Commissioner, or a decision of the Commissioner, under this Act may, within thirty days after the date of the assessment or decision—

- (a) object to the assessment or decision by forwarding to the Treasurer a detailed statement of the grounds of his objection; or
- (b) appeal to the Supreme Court.

(2) The Treasurer may, for proper cause, extend the time for making an objection under this section.

(3) After consideration of an objection, the Treasurer may confirm, vary or rescind the assessment or decision.

(4) Where an assessment is increased by the Treasurer, further duty becomes payable in accordance with the increase and, where an assessment is decreased, the Commissioner shall refund any amount overpaid.

(5) Where a person is dissatisfied with a decision of the Treasurer under subsection (3), he may, within thirty days after receiving notice of that decision, appeal to the Supreme Court.

(6) Upon an appeal under this section, the Supreme Court may—

- (a) confirm, vary or quash the assessment or decision as it thinks just; and
- (b) make such incidental or ancillary orders as it thinks necessary or expedient.

(7) For the purposes of an appeal under this section, the Supreme Court may be constituted of a single judge.

(8) An assessment made by the Commissioner under this Act is not open to challenge in legal proceedings except by way of objection or appeal under this section.

Objection or appeal not to suspend payment or recovery of duty

54. (1) An obligation to pay duty or a right to recover duty is not suspended by an objection or appeal.

(2) If an assessment is altered upon an objection or appeal, a due adjustment shall be made and, where the assessment is increased, further duty becomes payable in accordance with the increase and, where the assessment is decreased, the Commissioner shall refund any amount overpaid.

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PART 9
PENAL PROVISIONS

Offences

55. (1) Any person who—

- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act or by the Commissioner; or
- (b) makes or delivers a return that is false in any material particular or makes any false answer, whether orally or in writing; or
- (c) being the person in whose name an exempt account is kept by a financial institution, pays, causes to be paid or permits or authorises to be paid to the credit of that account an amount in contravention of this Act,

shall be guilty of an offence.

Penalty: \$10 000.

Expiation fee: Where it is alleged that a person has failed or neglected to furnish any return or information, or to comply with a requirement—Division 6 fee.

(1a) It is a defence to a charge of an offence against subsection (1)(c) to prove that the defendant has provided a return and paid duty and additional duty to the Commissioner in accordance with section 37 in relation to the payment to which the charge relates.

(2) A person who contravenes any provision of this Act for the contravention of which no penalty is expressly provided shall be guilty of an offence.

Penalty: \$5 000.

Continuing offences

56. (1) Where a person is convicted of an offence by reason of failure to comply with a requirement imposed by or under this Act and he continues in default after the date of conviction, he shall be guilty of a further offence and liable to a penalty not exceeding the maximum prescribed for the original offence.

(2) Where a person is required to comply with a requirement within a particular period and he fails to do so, his default shall, for the purposes of subsection (1), be deemed to continue until the requirement is complied with, notwithstanding the expiration of the period.

Evading duty

57. Any person who, by any wilful act or default, evades or attempts to evade financial institutions duty shall be guilty of an offence.

Penalty: \$10 000 and treble the amount of duty evaded or attempted to be evaded.

Proceedings for offences against this Act

58. (1) The offences constituted by this Act are summary offences.

(2) A prosecution in respect of an offence against section 57 may be commenced at any time within three years after the commission of the offence.

(3) A prosecution in respect of an offence against section 55(1) may be commenced at any time.

(4) A prosecution for an offence against this Act shall not be instituted except with the authority of the Commissioner.

(5) Where a complaint in respect of an offence against this Act is laid in the name of the Commissioner, the prosecution shall, in the absence of proof to the contrary, be deemed to have been instituted with the authority of the Commissioner.

Penalties not to relieve from levy

59. Payment of penalties under this Act shall not relieve any person from liability to any duty for which he would otherwise be liable.

Obstructing officers

60. Any person who obstructs or hinders any person acting in the administration of this Act shall be guilty of an offence.

Penalty: \$5 000.

Offences by bodies corporate

61. (1) Where a company is guilty of an offence against this Act, each responsible officer of the company shall also be guilty of an offence and liable to a penalty not exceeding the maximum prescribed for the principal offence unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the principal offence.

(2) In this section—

"responsible officer", in relation to a company, means—

- (a) where the company is a body corporate—an officer of the body corporate within the meaning of the *Corporations Law*;
- (b) where the company is an unincorporated association (not being a partnership)—a member of the committee of management of the association;
- (c) where the company is a partnership—a partner.

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PART 10
MISCELLANEOUS

Undertaking by financial institution

62. (1) A financial institution that is not registered under this Act and is not required to be so registered may give an undertaking to the Commissioner, in a manner and form approved by him, to make such payments to the Commissioner in respect of such receipts of money and at such times as it would be required to make if it were required to be registered under this Act.

(2) The Commissioner shall decide whether or not to accept an undertaking given under subsection (1).

(3) Where the Commissioner accepts an undertaking given under subsection (1), the financial institution shall be deemed to be registered under this Act during the period during which the undertaking has effect in accordance with subsection (4).

(4) An undertaking accepted by the Commissioner under this section has effect from the date on which the Commissioner accepts the undertaking until—

- (a) the financial institution, by notice in writing to the Commissioner, withdraws the undertaking; or
- (b) the Commissioner, by notice in writing to the financial institution, withdraws his acceptance of the undertaking.

Applications by financial institutions to pay receipts to the credit of non-exempt bank accounts

63. (1) A registered financial institution may apply to the Commissioner, in a manner and form approved by him, for approval under this section to pay amounts received by it during a month to the credit of an account, being an account that is not an exempt account under this Act, kept in its name by a bank that is a registered financial institution.

(2) A registered financial institution shall, in making an application under subsection (1), give a written undertaking to the Commissioner that, if the application is successful, it will not make, or cause to be made, any payment to the credit of any exempt account kept in its name by a bank (other than a short-term dealing account).

(3) Upon application under this section, the Commissioner may, by instrument in writing—

- (a) grant the approval to which the application relates unconditionally; or
- (b) grant the approval to which the application relates subject to such conditions as it thinks fit; or
- (c) refuse the application.

(4) Where an application under this section is approved by the Commissioner and the financial institution does not breach the undertaking given under subsection (2), the financial institution shall be deemed to have paid duty in respect of receipts during a month that, under this Act, would have been payable to the credit of an exempt account but which were instead paid into a non-exempt bank account in accordance with the approval of the Commissioner.

(5) The Commissioner may at any time, by notice in writing, revoke an approval granted under this section.

Public officer of company

64. (1) The Commissioner may, by notice served on a company, require the company to appoint, within such period as is specified in the notice, a public officer (being a natural person whose principal place of residence is in South Australia) of the company for the purposes of this Act, and to keep the office of public officer constantly filled by such a person.

(2) An appointment of a public officer shall be deemed not to be duly made until after notice of the appointment in writing, specifying the name of the officer, has been lodged with the Commissioner.

(3) Where—

(a) the Commissioner has required a company to appoint a public officer and the company does not make such an appointment within the period specified in the notice served under subsection (1); or

(b) the office of public officer is left vacant,

the Commissioner may appoint a public officer of the company.

(4) Where the company has appointed a public officer under subsection (1) and the Commissioner is dissatisfied with the appointment, the Commissioner may appoint a person to be the public officer in place of the person appointed by the company.

(5) Service of a document on the public officer of a company is sufficient service on the company for the purposes of this Act and, if at any time there is no public officer, then service on any person acting or appearing to act in the business of the company is sufficient.

(6) The public officer is answerable for the doing of all such things as are required to be done by the company under this Act and, in case of default, is liable to the same penalties.

(7) Everything done by the public officer that he is required to do in his representative capacity shall be deemed to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

(8) A notice served on or requisition made upon the public officer shall be deemed to be served on or made upon the company.

(9) Any proceedings under this Act taken against the public officer shall be deemed to have been taken against the company and the company is liable jointly with the public officer for any penalty imposed upon him.

(10) Notwithstanding the foregoing provisions of this section and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that, under this Act, may be given to, served on or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served on or taken against any director, secretary or other officer of the company or any attorney or agent of the company, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

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Agents and trustees

65. The following provisions shall apply with respect to every agent and every trustee:

- (a) he shall be answerable as a financial institution or registered short-term money market operator for the doing of all such things as are required to be done by virtue of this Act in respect of the receipt of money or average daily liability which is subject to duty under this Act;
- (b) he shall, in respect of any such receipts or average daily liability, make the returns and be chargeable with duty thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make;
- (d) where as agent or trustee he pays duty, he is hereby authorised to recover the amount so paid from the person on whose behalf he paid it, or to deduct it from any money in his hands belonging to that person;
- (e) he is hereby authorised and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the duty;
- (f) he is hereby made personally liable for the duty payable if, after the Commissioner has required him to make a return or while the duty remains unpaid, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to him from or out of which the duty could legally be paid, but, subject to section 47(2), he shall not be otherwise personally liable for the duty;
- (g) he is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner;
- (h) for the purpose of ensuring the payment of duty, the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of duty, and in as full and ample a manner.

Person in receipt or control of money for absentee

66. The following provisions shall, subject to this Act, apply with respect to every person who has the receipt, control or disposal of money belonging to a person resident out of South Australia, who is liable to pay duty under this Act:

- (a) he shall, when required by the Commissioner, pay the duty due and payable by the person on whose behalf he has the receipt, control or disposal of money;
- (b) where he pays duty in accordance with paragraph (a), he is hereby authorised to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person;
- (c) he is hereby authorised and required to retain from time to time out of any money which comes to him on behalf of the person resident out of South Australia so much as is sufficient to pay the duty which is or will become due by that person;

- (d) he is hereby made personally liable for the duty payable by him on behalf of the person resident out of South Australia after the duty becomes payable or if, after the Commissioner has required him to pay the duty, he, except with the written permission of the Commissioner, disposes of or parts with any fund or money then in his possession or which comes to him from or out of which the duty could legally be paid, but he shall not be otherwise personally liable for the duty;
- (e) he is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

Books to be kept

67. (1) A financial institution or registered short-term money market operator shall, for the purposes of this Act, keep such books as are necessary to give a true indication, in respect of each month, of its dutiable receipts or average daily liability and shall retain those books for a period of three years after the completion of the transactions to which they relate.

Penalty: \$10 000.

Expiation fee: Division 6 fee.

(2) Any books required to be kept under this section must be kept in writing in the English language or so as to be readily accessible and readily convertible into writing in the English language.

(3) This section does not apply so as to require the retention of books—

- (a) in respect of which the Commissioner has notified the financial institution or registered short-term money market operator that retention is not required; or
- (b) of a body corporate that has gone into liquidation and has been finally dissolved.

Power to obtain information and evidence

68. (1) For the purpose of inquiring into the liability of a financial institution or registered short-term money market operator under this Act, or any other question relevant to the enforcement of this Act, the Commissioner may, by notice in writing, require any person—

- (a) to furnish him, either orally or in writing, with such information as he requires; or
- (b) to attend for examination before him or before an inspector; or
- (c) to produce books in his custody or control relevant to the subject-matter of the inquiry.

(2) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend for examination before the Commissioner or an inspector.

(4) Where books are produced under this section, the Commissioner or an inspector—

- (a) may take and retain possession of the books for such period as is necessary to enable the books to be inspected and copies of, or extracts from, the books to be made or taken by or on behalf of the Commissioner; and

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(b) while any such book is in his possession, shall permit a person who would be entitled to inspect the book if it were not in his possession to inspect the book at any reasonable time.

(5) Where a person has a lien on books, nothing done under this section in relation to the books prejudices the lien.

(6) A person shall not be subject to any liability by reason of complying with a requirement made, or purporting to have been made, under this section.

(7) A person who fails, without reasonable excuse, to comply with a requirement of the Commissioner under this section shall be guilty of an offence.

Penalty: \$10 000.

Expiation fee: Division 6 fee.

Access to books, etc.

69. (1) For the purpose of ascertaining whether the provisions of this Act are being or have been complied with, or for any other purposes related to the enforcement of this Act, the Commissioner or an inspector may at any reasonable time—

- (a) enter premises; and
- (b) inspect and take extracts from, or make copies of, any books in the premises that appear relevant to the assessment of duty.

(2) A person who—

- (a) hinders an inspector in the exercise of powers conferred by this section; or
- (b) being an officer of a financial institution or registered short-term money market operator, fails to afford such assistance to the inspector as may be necessary to enable him to carry out an inspection under this section,

shall be guilty of an offence.

Penalty: \$10 000.

Warrant to enter and search premises

70. (1) If a justice of the peace is satisfied, on information on oath laid by the Commissioner, that there is reasonable ground for suspecting that there are in certain premises books that are relevant to the assessment of duty, the justice may issue a warrant authorising an inspector together with any other person named in the warrant—

- (a) to enter those premises (using such force as is necessary for the purpose); and
- (b) to search the premises and to break open and search anything in the premises in which books may be stored or concealed; and
- (c) to take possession of, and secure against interference, any books that appear to be relevant to the assessment of financial institutions duty; and
- (d) to deliver any books, possession of which is so taken, into the possession of the Commissioner.

(2) Where a person takes possession of books under this section, that person or a person to whom they are subsequently delivered—

- (a) may retain possession of the books for such period as is necessary to enable them to be inspected, and copies of, or extracts from, them to be made or taken by or on behalf of the Commissioner; and
- (b) while any such book is in his possession, shall permit a person who would be entitled to inspect the book if it were not in his possession to inspect the book at any reasonable time.

(3) Where a person has a lien on books, nothing done under this section in relation to the books prejudices the lien.

(4) A person shall not oppose or obstruct any person acting in the execution of a warrant under subsection (1), or assisting in the execution of such a warrant.

Penalty: \$10 000.

(5) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

Evidence

71. (1) A certificate purporting to be under the hand of the Commissioner certifying that—

- (a) a financial institution or registered short-term money market operator named in the certificate is liable to duty in respect of a period specified in the certificate; or
- (b) an assessment of the duty has been duly made and served; or
- (c) the particulars of the assessment are as stated in the certificate; or
- (d) the amount specified in the certificate was, at the date of the certificate, payable as duty by the financial institution or registered short-term money market operator named in the certificate,

shall be admissible in evidence in any proceedings for the recovery of duty and, in the absence of evidence to the contrary, shall be proof of the matters stated in the certificate.

(2) A document purporting to be a copy of any document furnished to, or issued by, the Commissioner, and to be certified as a true copy by the Commissioner, shall for all purposes be sufficient evidence of the matter set forth in the original, without production of the original.

(3) In any proceedings against a person for failing duly to furnish a return, a certificate purporting to be under the hand of the Commissioner certifying that the return was not received before the expiration of the period within which it was required to be furnished shall be admissible in evidence in those proceedings and, in the absence of evidence to the contrary, shall be proof that the defendant has failed duly to furnish the return.

(4) In any proceedings against a person for failing to comply with a requirement of the Commissioner under this Act, a certificate purporting to be under the hand of the Commissioner certifying that the requirement was duly made but was not complied with by the defendant shall be admissible in evidence in those proceedings and, in the absence of evidence to the contrary, shall be proof of the matters stated in the certificate.

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(5) A certificate purporting to be under the hand of the Commissioner certifying that an officer of the public service named in the certificate was, on a day specified in the certificate, invested with specified delegated powers and functions shall be admissible in evidence in any proceedings and, in the absence of evidence to the contrary, shall be proof of the matters stated in the certificate.

Service of documents by the Commissioner

72. (1) Any certificate, notice, form or other document required or authorised by this Act to be served or given by the Commissioner may be served or given personally or by post.

(2) Without limiting the generality of subsection (1)—

- (a) personal service of a document may be effected by leaving the document at an address for service of the person to be served shown on a return furnished by or on behalf of that person under this Act (not being an address that has been superseded by a subsequent address for service shown on a later return); and
- (b) service by post of a document may be effected by sending the document by post to an address for service of the person to be served shown on a return furnished by or on behalf of that person under this Act (not being an address that has been superseded by a subsequent address for service shown on a later return).

(3) The provisions of this section are in addition to and not in derogation of the provisions of any other law relating to the service of documents.

Service of documents on the Commissioner

73. Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Commissioner for the purposes of this Act may be served by lodgment at the office of the Commissioner with an officer of the public service employed in the administration of this Act and authorised in writing by the Commissioner to accept service of documents on his behalf.

Payments from Consolidated Account

74. Where the Commissioner becomes liable to pay amounts in accordance with the provisions of this Act, those amounts shall be paid from the Consolidated Account.

Passing on duty

75. (1) Nothing in this Act, in any other law, or in any contract, agreement or other instrument (including an instrument constituting a trust) made before the commencement of this Act, prevents a registered financial institution from recovering from a person from whom it receives money, or with whom it has dealings, financial institutions duty paid by the financial institution in respect of that receipt of money, or those dealings.

(2) Nothing in this Act, in any other law, or in any contract, agreement or other instrument (including an instrument constituting a trust) made before the commencement of this Act, prevents a registered short-term money market operator from recovering from a person on whose behalf the operator has had short-term dealings financial institutions duty paid by the operator in respect of the average daily liability of the operator in respect of those short-term dealings.

(3) Nothing in this Act, in any other law, or in any contract, agreement or other instrument (including an instrument constituting a trust) made before the commencement of this Act, prevents a person from recovering from any other person with whom he has dealings an amount equal to the amount of financial institutions duty that he may be liable to pay to a registered financial institution on account of the receipt by that financial institution of moneys relating to those dealings.

Depositors with unregistered financial institutions

76. (1) Where—

- (a) a person deposits money with a financial institution that is not a registered financial institution under this Act; and
- (b) that financial institution has—
 - (i) during the preceding twelve months had dutiable receipts totalling more than \$5 000 000; or
 - (ii) during the preceding month had dutiable receipts totalling more than \$416 666; and
- (c) the deposit constitutes a receipt by the financial institution for the purposes of this Act,

the person shall, within twenty-one days after the end of the month during which the deposit was made with the financial institution, furnish to the Commissioner, in a manner and form approved by him, a return stating—

- (d) the total of the deposits that he has made with the financial institution during that month other than deposits referred to in paragraph (e); and
- (e) the number of deposits of, or exceeding, the relevant amount.

(2) A person who is required to furnish the Commissioner with a return under subsection (1) is liable to pay financial institutions duty in respect of each such deposit of money made with the financial institution.

(3) The amount of financial institutions duty payable in respect of each deposit by virtue of subsection (2) is—

- (a) the prescribed percentage of the amount of the deposit; or
- (b) \$1 200,

whichever is the less.

(4) Subsection (2) does not apply to a deposit of money which, if it were a receipt of money by a registered financial institution, would constitute a non-dutiable receipt.

(5) Regulations may be made providing for the payment and recovery of duty payable under this section.

Regulations

77. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) provide for the signing of returns, applications, notices, statements or forms by or on behalf of financial institutions or registered short-term money market operators; and
- (b) authorise the authentication of any certificate, notice or other document issued for the purpose of this Act; and

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- (c) prescribe the manner of notifying the appointment of a public officer of a company; and
- (d) control or prohibit the making of charges or the implementation of practices or procedures by a financial institution or registered short-term money market operator which require or have the effect of requiring a person from whom they receive money, or with whom they have dealings, to pay to the financial institution or registered short-term money market operator any amount on the account of imposition of duty under this Act other than the amount of financial institutions duty payable by the financial institution or registered short-term money market operator in respect of, or as a consequence of, that receipt of money or those dealings; and
- (e) impose penalties not exceeding one thousand dollars for contravention of, or non-compliance with, any regulation.

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APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(1):	definition of "corporation" substituted by 69, 1994, s. 8 (Sched.) definition of "dealer in securities" substituted by 69, 1994, s. 8 (Sched.) definition of "dealing" repealed and definition of "deal" inserted in its place by 69, 1994, s. 8 (Sched.) definition of "financial institution" amended by 69, 1994, s. 8 (Sched.) definition of "the prescribed percentage" inserted by 43, 1990, s. 3(a); amended by 49, 1993, s. 3(a); 69, 1994, s. 3(a); paragraph (d) repealed by 69, 1994, s. 3(a) definition of "the relevant amount" inserted by 43, 1990, s. 3(b); amended by s. 49 1993, s. 3(b); 69, 1994, s. 3(b); paragraph (d) repealed by 69, 1994, s. 3(b) definition of "securities" substituted by 69, 1994, s. 8 (Sched.) definition of "short-term dealer" amended by 69, 1994, s. 8 (Sched.) definition of "voting share" substituted by 69, 1994, s. 8 (Sched.)
Section 5(1)(k):	repealed by 43, 1990, s. 4
Section 7(2):	amended by 69, 1994, s. 8 (Sched.)
Section 12:	amended by 2, 1987, s. 3
Section 14:	amended by 69, 1994, s. 8 (Sched.)
Section 16(4):	amended by 69, 1994, s. 8 (Sched.)
Section 20(2):	amended by 69, 1994, s. 8 (Sched.)
Section 22:	amended by 43, 1990, s. 5
Section 23(1):	amended by 43, 1990, s. 6
Section 29(2):	amended by 43, 1990, s. 7
Section 31(11):	definition of "non-bank financial institution" amended by 69, 1994, s. 4
Section 31(11)(e):	repealed by 43, 1990, s. 8
Section 32(4):	amended by 43, 1990, s. 9
Section 34(5):	amended by 69, 1994, s. 8 (Sched.)
Section 37:	amended by 43, 1990, s. 10; substituted by 69, 1994, s. 5
Section 43(2):	substituted by 69, 1994, s. 6
Section 46(4):	amended by 71, 1992, s. 3(1) (Sched.)
Section 46(7):	amended by 69, 1994, s. 8 (Sched.)
Section 47(2):	amended by 71, 1992, s. 3(1) (Sched.)
Section 55(1):	amended by 71, 1992, s. 3(1) (Sched.)
Section 55(1a):	inserted by 69, 1994, s. 7
Section 61(2):	definition of "responsible officer" amended by 69, 1994, s. 8 (Sched.)
Section 67(1):	amended by 71, 1992, s. 3(1) (Sched.)
Section 68(7):	amended by 71, 1992, s. 3(1) (Sched.)
Section 76(1):	amended by 43, 1990, s. 11(a)
Section 76(3):	amended by 43, 1990, s. 11(b), (c)
Section 78:	repealed by 69, 1994, s. 8 (Sched.)
Schedule:	repealed by 69, 1994, s. 8 (Sched.)

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APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.