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BANKING LAW REFORM IN THE PALESTINIAN TERRITORIES

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PREFACE

The Commercial Law Reports Series is a project of the IPCRI Law & Development Program, jointly organized by IPCRI in Jerusalem, IPCRI-UK in London, and the Friends of IPCRI-USA in Oakland, California. These Reports are produced with the understanding that in a time of rapid regional and global change, it is essential that modern legal mechanisms be used to promote economic and social development and to help construct a new Israeli-Palestinian relationship based on principles of equitability and mutual benefit. To this end, decision-makers will require a wide range of quality legal analyses and recommendations from various experts and organizations. The IPCRI Law & Development Program, a unique joint Israeli-Palestinian legal research effort, was created to help address this need by bringing together Palestinian, Israeli, and international legal experts committed to exploring cooperatively the legal implications of the peace process in commercial and civil law.

The Commercial Law Reports are produced by legal and economic staff of the IPCRI Law & Development Program with the advice and assistance of several Palestinian, Israeli, and international commercial law experts and practitioners. The Reports track commercial law development in the Palestinian territories and Israeli-Palestinian economic agreements. They also contain translations of relevant statutes and military orders, analyses of the present commercial law structures, and proposals for legal modernization and harmonization.

This Commercial Law Report focuses specifically on banking law in the Palestinian territories. The Palestinian Monetary Authority is working with commendable alacrity to prepare a new Palestinian banking statute with the assistance of International Monetary Fund expert advisors. The authors of this Report hope to provide an additional perspective on the questions of banking law reform in the Palestinian territories. Thus, the Report presents analyses of Palestinian banking law structures and recommends specific legal changes to be incorporated in the new Palestinian banking law. Other

Commercial Law Reports address other commercial law fields such as investment and taxation.

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ABBREVIATIONS

"BOI" -- Bank of Israel

"BOP" -- Bank of Palestine

"CAB" -- Cairo Amman Bank

"CBJ" -- Central Bank of Jordan

"CBOP" -- Commercial Bank of Palestine

"DOP" -- Declaration of Principles (Oslo Accords)

"JD" -- Jordanian Dinar

"MO" -- Military Order

"MOU" -- Israeli-Jordanian Memorandum of Understanding

"NIS" -- New Israeli Shekel

"PMA" -- Palestinian Monetary Authority

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ASSUMPTIONS

With respect to monetary matters in the West Bank and Gaza Strip under the regime of the interim peace agreements we have made the following assumptions:

- Those parts of the West Bank and the Gaza Strip transferred to the Palestinian Council ("the Palestinian territories") comprise one administrative entity which should be subject to a unified set of laws;

- The NIS and the JD will remain legal tender in the West Bank and the JD will become legal tender in the Gaza Strip (as the NIS already is) during the transitional period¹;

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Foad Bezeiso, the Governor of the PMA said that the PNA plans to establish its own currency within two years. *The Jerusalem Post*, "PA Plans to Unveil its Own Currency," by Jennifer Friedlin, Jan. 21, 1995. As early as January 26, 1995, moreover, the **Agreement of Cooperation in the Field of Monetary and Banking Affairs between the Hashemite Kingdom of Jordan and the PNA**. Article One (2) provided "The two sides pledge to enter early and comprehensive discussions aimed at organizing the process of replacing the Jordanian Dinar in use in the areas of the Palestinian National Authority with the Palestinian currency and the resulting mutual arrangements and commitments, if the Palestinian National Authority decides to take such a measure."

- As a corollary, no new currency will be introduced during the early stages of the transitional period;

- The Palestinian Monetary Authority will be strengthened to pursue the goals of financial sector development in the Palestinian territories;

- The central banks of Jordan and Israel will continue to be involved to varying degrees in supervising the banks which they have chartered in the Palestinian territories..

I. INTRODUCTION

The law of the Palestinian territories is a largely incoherent amalgam left behind by the region's various previous rulers and occupiers. The legal system, prostrate since the *Intifada*, is now struggling with the gigantic tasks of re-establishing its authority and reforming almost all of the law. In the meantime, different laws remain in force in the West Bank and the Gaza Strip, as well as in those parts of each territory that are under the authority of the Palestinian Council and those which are not. Banking law is one of the major areas of law in the Palestinian territories which should, and will be, the subject of comprehensive legal reform in the near future.

Reform of the banking laws must be conducted with a careful understanding of the history, structure, and special needs of the banking sector in the Palestinian territories. The local banking system in the Palestinian territories was practically obliterated in 1967 and, having failed to recover, was virtually nonexistent by the signing of the DOP on September 13, 1993. The optimism and relaxation of conditions which followed the signing of the DOP, however, sparked a resurgence of banking

activities in the Palestinian territories. Most of the banks which have opened offices in the Palestinian territories in the wake of the DOP have been branches of foreign banks, particularly Jordanian banks.

The PMA was established in January of 1995 with a mandate to regulate the banking sector in the Palestinian territories. There is presently at least one serious incipient debate regarding Palestinian banking law reform and many questions worthy of careful consideration. The authors of this report have considered the available evidence at this juncture to make general and specific suggestions about what the laws, regulations, and policies should be. It is hoped that these suggestions will be of value to the drafters of the new Palestinian banking statute.²

Banking law is a vast regulatory field. Furthermore, the successful function of any part of the law is often contingent upon that of many other more or less distinct

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We were unable to obtain a copy of the draft banking law floated by the PMA last year.

branches of law. In the instance of banking law, the laws of contracts, property, and incorporation have significant ramifications. The general ability of the legal system to execute and enforce its judgments is also an important variable.

It is not practical to attempt to address all of the existing core of banking laws. To begin with, the decree promulgated by Palestinian Chairman Yasser Arafat to establish the PMA will not be examined as a whole, but only with reference to its effect on supervision.³ Monetary issues will not be considered at all. Furthermore, Israeli MO's are numerous, and chaotically drafted amendments and revocations abound. We have only examined those relevant to the issues discussed herein.

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The Paris Economic Agreement provided for the creation of the PMA. PROTOCOL ON ECONOMIC RELATIONS BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE P.L.O., REPRESENTING THE PALESTINIAN PEOPLE, May 1994, Article IV (1). In December 1994 PNA Chairman Yasser Arafat decreed the creation of the PMA and named Faud Beseiso its Governor. Interview with Faud Beseiso, Governor of the PMA, Oct. 24, 1996.

For these reasons and in the interests of making a focused contribution, this report will limit the scope of its analysis to four issues that are deemed to be of practical and immediate importance. These four issues are as follows:

1) *Licensing*. There has been much criticism of the opaque and arbitrary licensing practices in the Palestinian territories since 1967.⁴ While not all of these deficiencies were due to the laws themselves, the need for properly defined licensing requirements and clear delineation of the proper scope of banking activities is self evident.

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Interview with Khaled M. Ghabeish, General Manager of the BOP, Oct. 15, 1995; Interview with Ussama Hamed, Research Fellow, Palestine Economic Policy Research Institute (MAS), Oct. 8, 1995.

2) *Supervision.* The transfer of responsibilities for bank supervision from the BOI to the PMA in the Gaza Strip and Jericho was fraught with difficulties and resulted in a regulatory and supervisory vacuum. The PMA is actively developing its mechanisms and network for supervision. An effective and credible supervisory system is vital and should be fostered by laws, regulations, and policy.

3) *System of Payments.* An efficient system of payments is an essential feature of a competitive banking sector and a properly functioning economy. While the current arrangements for clearing and settlement of monetary instruments such as checks seems to be working reasonably well, problems exist which may become worse if left unaddressed. The PMA will therefore want to reconsider and perhaps formally restructure this area.

4) *Lending.* Lending has been slow to expand as banks have returned to the Palestinian territories. This has led to charges that the foreign banks are facilitating capital flight rather than private sector development. While lending laws are generally not incorporated into banking statutes, the practice of lending is so integral to banking

and such an important issue from an economic perspective that these issues must be addressed. The report will consider the problem of the low rates of lending up to the date of publication, and recommend what might be done by laws to improve these rates.

This Report will proceed to explore these issues first by providing general background and explaining basic principles of banking law in the following two sections. Next, the main section of this report will address in detail the four substantive banking law issues discussed above by defining the objectives, considering the current laws, and suggesting optimal laws and regulatory policy. Specific recommendations for modernized and unified laws are provided in the Conclusion.

II. BACKGROUND TO THE PALESTINIAN BANKING SECTOR

At the time of the Arab-Israeli war of 1967, there were eight Jordanian and foreign owned banks with 32 branches in the West Bank and three Egyptian and foreign owned banks with 6 branches in the Gaza Strip. Among these banks were the BOP, the

Arab Bank (which had branches in both the West Bank and the Gaza Strip), and ANZ Grindlays.

The Israeli military government was the sole legislative authority in the Palestinian territories for 27 years. The military commander vested all power to legislate in himself and his delegates by MO #2. Up to 1993, approximately 1,500 MO's were promulgated the West Bank, and approximately 1,100 in the Gaza Strip. Some orders are numbered and some are not. Furthermore, the military commander created the Civil Administration and delegated power to it to promulgate circulars or regulations which were also legally effective. In a piecemeal fashion, this process made sweeping changes in the law in the Palestinian territories.

In 1967, the banking law of the West Bank was the Jordanian Banking law of 1966. The banking law of the Gaza Strip was the British Mandate Palestine Banking Ordinance of 1941. Numerous MO's directly or indirectly changed the law of banking in the Palestinian territories, but many of them were never given effect or enforced. The Civil Administration in turn delegated its authority over banks in the Palestinian

territories to the BOI. The BOI often simply applied the Jordanian and British Mandate statutes despite the existence of superseding MO's.⁵

Nevertheless, some MO's had a tremendous impact. MO#7 closed all the Arab and foreign owned banks in the West Bank in 1967, with the sole inconsequential exception of the Ottoman Bank.⁶ All accounts at these banks were frozen and transferred

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Interview with Margrite Cohen, Legal Counsel for the BOI, Oct. 12, 1995. Ms. Cohen maintained that the MO's modelled on the detailed and complex Israeli licensing procedures were awkward to apply in the West Bank. She therefore applied the licensing provisions of the Jordanian law without regard to the amendments by military order.

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MO #255 later amended (or rendered obscure) MO #7 by changing Article 1 to provide that banks could only be opened or closed pursuant to "security provisions." The Ottoman Bank was specifically excepted by MO #7 from the closure of the other banks. All the other banks, with the exception of ANZ Grindlays, were Arab institutions. The Ottoman Bank decided to wrap up its operations in the occupied territories within a year and a half, apparently out of concern for its relations with the Arab world. Interview with Foad Shehadeh, Ramallah Attorney, January 29, 1996.

to the BOI as deposits in the banks' names. While the state of belligerency between Israel and Jordan and Egypt may have made this necessary, the banking system did not recover prior to the DOP.

The closure of the Arab banks severed direct financial links with the Arab countries. Israeli currency was declared to be legal tender in the Palestinian territories. The JD continued to circulate in the West Bank, and to some extent in the Gaza Strip as well. The Egyptian pound persisted only briefly in the Gaza Strip before fading out of unofficial circulation.

Some Israeli MO's complicated and impeded financial transactions in the Palestinian territories by placing restrictions upon the import and export of currency.⁷ While these orders were entirely ineffective in preventing actual transfers of currency,

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MO # 952 amended 23 times (20 January 1982) controlled the flow of foreign currency. MO # 973 amended 7 times (9 June 1982) controlled the flow of money into the territories.

they did place a burden on banks engaged in the transfer of money for investment or other purposes. These MO's were rescinded by 1992.

The BOI licensed 31 Israeli banks to operate in the Palestinian territories by 1984 -- 22 of them in Arab towns. It licensed two Arab banks as well. The BOP won a court battle for a license, enabling it to reopen in the Gaza Strip in 1981. The BOP's subsequent applications to open branches in the West Bank were denied, and it lost a second lawsuit after the BOI refused to permit the opening of a Nablus branch. The CAB was licensed to operate in the West Bank in 1986. The terms of the licensure agreements with the BOP and the CAB were not disclosed.⁸ The BOI remained the sole licensure and supervisory authority in the Palestinian territories until January 1995.

Israeli banks were often aggressive in their lending practices but provided very limited services to Palestinians. Palestinians often preferred Palestinian money changers

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Interview with Samer F. Abdallah, Regional Credit Manager CAB, Nov. 2, 1995.

to Israeli banks. Moreover, the *Intifada* effectively drove Israeli banks from Palestinian towns in the West Bank and the Gaza Strip. All but 6 Israeli branches in these regions closed. By 1992 the level of business at one of the principal bank branches dealing with Arab customers had declined to only 20% of the already low pre-*Intifada* level.

The BOI supervised the BOP and, to some extent, the CAB. By the signing of the DOP, the BOP had opened five branches in the Gaza Strip, and the CAB had opened eight in the West Bank. After the DOP was signed foreign banks flooded into the Palestinian territories. Jordanian banks were able to penetrate the West Bank almost *en masse* due to the Israeli-Jordanian MOU which was signed on December 1, 1993. By the end of 1994 there were 7 banks with 34 branches operating in the Palestinian territories. Two of these, the BOP and the newly chartered Ramallah-based CBOP, were Palestinian banks. The others were Jordanian.

Chairman Arafat decreed the creation of the PMA in December 1994. The decree delegated to the PMA, *inter alia*, authority for banking supervision in the Palestinian

territories. In January 1995, the PMA commenced operation under Mr. Fuad Beseiso, its newly appointed Governor.

The Jordanian-Palestinian Economic Agreement, signed on January 26, 1995, conveyed the PMA's retroactive approval to those Jordanian branches already approved by the CBJ and the BOI in the past year. Many of these banks and their branches had not yet opened in January 1995. The Jordanian domination of banking in the Palestinian territories has been confirmed by the subsequent opening of many of these branches.

As of May 1995, there were 10 banks with 41 branches in operation in the territories. Six of the banks and 30 of the branches were of Jordanian origin. A total of 19 banks and 62 branches had licenses to operate at that time, of which 15 banks and 40 branches were Jordanian.⁹ By November 1995, there were 12 banks and 51 branches in

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operation in the Palestinian territories -- roughly a 500% increase in institutional coverage from September 1993.¹⁰ Total deposits reached \$1,013 million at the end of September 1995, up from \$100 million in September 1993.¹¹

As of September 1995, these deposits were roughly evenly divided between the Gaza Strip and Jericho and those areas of the West Bank still under Israeli control.¹² Per capita deposits in Jericho were significantly larger than those in areas of the West Bank

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PALESTINIAN BANKING SECTOR STATISTICAL REVIEW -- Issue 2, Palestine Economic Policy Research Institute (MAS) (December 1995), p. x.

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12

12

Table 3.1 \$561 million in the Israeli controlled West Bank and \$452 million in the Gaza Strip and Jericho.

still under Israeli control.¹³ This seems to be the result of the Palestinian preference for dollars and the BOI's restrictions on dollar accounts in the areas under Israeli authority up until September 1995. Dollars constitute 75% of deposits in Jericho, compared with 53% in the Gaza Strip and only 8% in the rest of the West Bank.¹⁴ At the end of September 1995, 58% of total deposits were in dollars.¹⁵ This percentage was despite restrictions on withdrawing dollars from these accounts. (These restrictions have now been lifted.) Accordingly, the predominance of the dollar over the dinar and shekel is likely to increase.

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¹³ \$2,556 for Jericho, \$387 for the rest of the West Bank and \$396 for the Gaza Strip.

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¹⁴ p. xi

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¹⁵ p. xi

III. GENERAL PRINCIPLES OF BANKING LAW

Any financial system should provide four essential sets of services. The first is a stable monetary framework which is reflected by low and stable inflation and stable exchange rates. The second is an efficient payment system in both domestic and international trade. The third is a system of financial intermediation which encourages savings and productive investment as well as an efficient allocation of capital. Fourth and finally, there should be efficient distribution of risk throughout the economy by, for instance, providing insurance on deposits.

Such a financial system should be encouraged in the Palestinian territories through judicious reform of the legal framework for banking. A good legal framework will provide a clear and trustworthy basis for banks to expand and modernize their

operations in the Palestinian territories. Such a framework should also provide solutions to the urgent needs of the Palestinian territories as the following suggests:

1) Stimulating short and long term lending is necessary. Only thus can the fast rising demand for consumption and investment be met.

2) Long term savings, in particular, must be encouraged to promote long term lending.¹⁶

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Broadly speaking, banks have to match the maturity of their sources of funding with that of their assets in order to minimize cash flow mismatching and interest rate risk. For a more detailed discussion, see *First Trilateral Conference for Facilitating Trade and Investment Flows Between Israel, Jordan and the Palestinian Territories*, IPCRI Law and Development Program, Regional Trade Papers Number 1 (May 1995) p. 92.

3) The Palestinian territories need to attract international banks. The banks that have reopened since 1993 are mostly Jordanian. With some notable exceptions such as the Arab Bank, the Jordanian and local Palestinian banks may not offer access to the broad international banking contacts which are needed to establish international trading relations and service the Palestinian diaspora.

4) The banking sectors of the West Bank and the Gaza Strip must be integrated.

Finally, in view of hopes for closer relationships with Western banking networks, the future legal framework must ultimately be closely adapted to current legislation in market economies and consistent with international guidelines.

IV. BANKING LAW ISSUES

A. Licensing

In order to assure the stability and good conduct of banks, access to the financial services market is restricted by requiring banks to obtain licenses. Most bank failures are due to poor management or abusive ownership. Thus, the decision to grant a banking license is crucial for the economy. It is also an opportunity to implement economic policy.

Applicants for a banking license should be screened for banking experience, ethical character, and sufficient means to operate a bank. Policies for directing credit to certain sectors of the economy may also be advanced. A banking statute can either specify requirements for obtaining a license in detail, or it may entrust a supervisory authority such as the PMA with discretion to review and decide upon applications. The former arrangement makes the requirements clear for all parties who may be interested in applying for a license, thus permitting them to make well informed decisions. The latter arrangement allows for a flexible response to the diverse and often changing factors which must be considered by the supervisory authority.

The licensing provisions of a banking statute should perform three essential functions:

1) The term "bank" should be defined to clarify which business activities require a license, and which will preclude the issuance of a license.

2) The supervisory authority should be authorized and required to screen applicants (potential bank owners and managers) for banking experience, ethical character, and sufficient capitalization to operate a bank.

3) The supervisory authority should be empowered to pursue economic policies which are in the public interest by restricting access to the banking sector, or making it conditional upon specific terms.

This section will address in turn each of these functions of the law. Additionally, this section will consider the question of how to approach the licensing of foreign bank branches or subsidiaries, and what licensure requirements might be

imposed for branches in general. First, however, it is worthwhile to survey the current laws on licensing.

1. The licensing laws of the Palestinian territories

Different laws apply in the West Bank and the Gaza Strip. In 1967 and, to some indeterminate extent, up to the present, the law under which new banks were licensed in the West Bank was the Jordanian Banking law of 1966.¹⁷ The relevant provisions of this law are provided below.

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Interview with Cohen, *supra*, note 3. As explained previously, the BOI continued to apply the provisions of the Jordanian law even after they were superseded by MO's. Interview with Fuad Beseiso, Governor of the PMA, October 24, 1995. Mr. Beseiso and his staff stated that they were using MO #705 to evaluate license applications to the PMA following the transfer of licensing powers to the PMA in January 1995.

Jordanian Banking law of 1966

Chapter Two Licensing Banks

Article 3

- a. An entity may not conduct banking transactions unless it is a licensed bank.
- b. The Central Bank will issue licenses according to the provisions of this Law.
- c. A license will be issued to a company only. Banks that were previously permitted to conduct banking transactions will be considered licensed banks and will be issued new licenses accordingly.

Article 4

- a. Any company interested in conducting banking transactions in the Kingdom must first submit a request for a license to the Central Bank.
- b. Any group of persons interested in establishing a company for the conduct of banking transactions, must first send a written request to the Central Bank, according to the Company Law. If the Central Bank approves the request and the company is established, the license will be issued accordingly.
- c. While in the process of issuing the license the Central Bank may ask for information relating to the financial status of the company, its capital, its expected profits, its administration, and the necessity for its services in the Kingdom.

Article 5

a. The capital of a licensed bank operating in the Kingdom must not at any time be less than 250,000 JD or the equivalent in another currency.

b. Any foreign company authorized to operate as a bank in the Kingdom must transfer a one time payment of not less than 250,000 JD before conducting banking transactions; the company must constantly hold assets exceeding its obligations in the Kingdom at an amount not less than 250,000 JD.

Article 6

If the licensed bank did not conduct banking transactions for a period exceeding six months from the time the license was issued, the Central Bank must cancel the bank's license.

Article 7

a. If the licensed bank did not abide by the laws that the Central Bank was appointed to enforce or provisions, instructions, and orders enacted under these laws, the Central Bank must cancel the bank's license.

b. If the Central Bank decides to cancel a bank's license, it must notify the bank at least 30 days before the decision takes effect.

c. The licensed bank may appeal a decision given according to subsection "b" before the Council of Ministers within the aforesaid 30 day period. The Council must decide within 30 days from the submission of the appeal. The decision will then become final.

Article 8

After this law enters into effect no one may use the word "bank" or a word having the same meaning in Arabic or in another language or any expression having to do with banking transactions in their papers or private documents unless it is a licensed bank.

Article 9

a. A licensed bank may not open a branch office in any city in the Kingdom nor can it transfer a branch from one city to another inside the Kingdom without permission from the Central Bank.

b. Before granting a permit according to subsection "a" above, the Central Bank must order the licensed bank to submit information regarding the necessity of opening a new branch or changing the location of an existing one.

c. A licensed bank may not discontinue its business in the Kingdom before getting a written permit from the Central Bank, which will determine the manner of discontinuation and its conditions.

Article 10

a. A licensed bank, as a Jordanian company, may not open new branches outside the Kingdom, or transfer an existing branch from this country to another before obtaining a permit from the Central Bank. The Central Bank may determine conditions for the granting of the permit.

b. A licensed bank may not merge with another licensed bank before obtaining a written permit from the Central Bank.

c. A licensed bank in the Kingdom may not amend its acts or its articles of incorporation or memorandum of association without a written permit from the Central Bank.

d. If the Central Bank refuses to approve any request submitted according to this Article, the licensed bank may appeal the decision before the Council of Ministers within 30 days of receiving notice of the refusal. The decision of the Council of Ministers is final and will be given within 30 days of the submission of the appeal.

The Banking Law of 1966 is no longer the applicable law in Jordan, having been replaced by the Banking Law of 1971 as amended by Law No. 11 of 1992. In the

West Bank, the Banking Law of 1966 was modified, in many respects, by MO's which essentially conformed to Israeli law with regards to licensing.¹⁸

In contrast to the legal structures prevailing in the West Bank, those in the Gaza Strip are still more antiquated. The British Mandate Palestine Banking Ordinance of 1941 remains in effect in the Gaza Strip, although it has been considerably modified by Israeli MO #705. The relevant provisions of the Palestine Banking Ordinance, unamended, are provided below.

Banking Ordinance No. 26 of 1941

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MO #45 of 1967 essentially transferred the powers conferred by the Banking Law of 1966 upon the CBJ to the Israeli agency in charge of banking (the BOI). MO #1180 of 1986 significantly amended the Jordanian law. See the Israeli Banking (Licensing) Law 5741-1981.

3- (1) No banking business shall be transacted in Palestine except by a company registered under the provisions of:-
(a) the Registration of Companies and Partnerships Ordinance of 1919, published in the *Gazette* dated the first day of August, 1919;
(b) the Companies Ordinance or any ordinance substituted therefor.

(2) The incorporation of a company which has as its object or one of its objects the carrying on of banking business shall not be authorized unless its authorized capital is not less than fifty thousand pounds.

(3) The Registrar of Companies shall not certify that any company which has as its object or one of its objects the carrying on of banking business is entitled to commence to carry on business in accordance with the provisions of section 92 of the Companies Ordinance, unless --

(a) if its authorized capital is fifty thousand pounds the same has been subscribed and not less than twenty-five thousand pounds has been paid up thereon in cash, or

(b) if its authorized capital is more than fifty thousand pounds at least fifty thousand pounds has been subscribed and not less than twenty-five thousand pounds has been paid up thereon in cash.

(4) No foreign company within the meaning of section 2 of the Companies Ordinance, which has as its object or one of its objects the carrying on of banking business shall be registered unless it is proved to the satisfaction of the High Commissioner that it has a paid-up capital of a sum which in his opinion is equivalent to an amount being not less than one hundred thousand pounds.

(5) The High Commissioner may in his absolute discretion vary the requirements of subsections (2), (3) or (4) of this section in respect of any company when he considers it to be in the interests of the public to do so:

Provided that where the High Commissioner has reduced the requirements as to capital prescribed in subsections (2), (3) or (4) hereof, the company in favor of which such vitiation has been made shall not open a branch office except under special license of the High Commissioner.

4.- (1) No person or body of persons, whether incorporated or unincorporated, other than a company authorized to carry on banking business shall, without the consent of the High Commissioner, use or continue to use the word 'bank' or any of its derivatives in the name under which he is carrying on business.

(2) Any person or body of persons whether incorporated or unincorporated who acts in contravention of the provisions of this section shall be liable to a fine not exceeding ten pounds for every day during which the offense continues.

7. Notwithstanding anything in this or any other Ordinance contained, no company shall commence to carry on banking business without obtaining from the High Commissioner a license to do so. The High Commissioner may at his discretion and without assigning any reason therefor, refuse to grant such license.

8.- (1) The High Commissioner may, after consulting with the Advisory Committee and the Examiner of Banks, and if he considers it to be in the public interest to do so, order any bank--

(a) to delete from the name under which it is carrying on business within a period of twenty-eight days from the date of such order, the word 'bank' or any of its derivatives, or any other word or words forming part of its name;

(b) to refrain from receiving from the public money withdrawable by cheque or order:

Provided that before such order is made, the High Commissioner shall give such bank notice in writing of his intention to do so and shall afford it an opportunity of submitting to him a written statement of its case.

(2) Any bank failing to comply with an order made under this section shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

11.- (1) Without prejudice to anything contained in section 73 of the Companies Ordinance, no person --

(a) who has been a director of, or directly or indirectly concerned in the management of, a bank which has been wound up by a Court, or

(b) who has been sentenced by a Court of Law to a term of imprisonment for an offense involving moral turpitude and has not received a full pardon for the offense for which he was sentenced, shall, without the express authorization of the High Commissioner, act or continue to act as a director of, or be directly or indirectly concerned in the management of, any bank.

(2) Any person acting in contravention of subsection (1) of this section shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such penalties.

The Palestine Banking Ordinance of 1941 is clearly outdated in many respects, but it provides an effective framework under which banks can be licensed and

supervised by a responsible authority. MO #705 is the most recently adopted amendment of the banking laws in the Gaza Strip. MO #705 provides that the licensing authority (the BOI at the time of the amendment) should consider the following matters to determine whether or not to approve an application for a license: 1) a feasibility study submitted by the applicant; 2) the suitability of owners and the board of advisors to the bank; 3) the impact of granting the license on the level of service and competition in the banking sector; 4) the economic policies of the military commander; and 5) the effect on public order of granting the license. The minimum capital required to begin a new bank under MO #705 is \$20 million.¹⁹ MO #705 also expressly grants the licensing authority the power to make the issuance or authentication of licenses and permits contingent upon specific stipulations or terms within the license or permit.

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MO #705 (Gaza). According to Ze'ev Abeles, the BOI Supervisor of Banks, the BOI relaxed its requirement of \$20 million to \$10 million in order for the CBOP to open. IPCRI Roundtable Forum on Business and Commercial Law Meeting No. 5, The Emerging Legal Structure for Palestinian Banking, May 30, 1995, p.5

Since the signing of the DOP there have been significant changes in the structure of banking supervision and law in the Palestinian territories. The BOI maintained its supervisory responsibilities until the April 1994 signing of the Israeli-Palestinian Paris Agreement on Economic Relations. This Agreement provided that any foreign bank, including any Israeli bank, which wished to open a branch in the areas under PNA control would thereafter apply to the PMA for a license.

The PMA, however, was not formally constituted until January 1995. Since Israel and Jordan had already concluded their MOU in December 1993, Jordanian banks therefore applied to the BOI in the interim between the signing of the Paris Accord and the establishment of the PMA. The PNA subsequently agreed with the Jordanian Government that the PMA would retroactively approve these licenses. The terms of this agreement are provided below:

The licenses already issued by the Central Bank of Jordan for the operation of branches or offices of Jordanian banks in the areas of the West Bank that will come under the control of the Palestinian Authority

will continue to be valid subject to these branches or offices complying with banking legislation and regulations that the Palestinian Authority may issue in the future.

In addition, the two sides will coordinate in the matter of licensing new branches of Jordanian banks that have not been licensed before the signing of this agreement until the transfer of the authority of licensing in the West Bank to the Palestinian Authority.²⁰

The PMA has now taken control of licensing in those areas transferred to the PNA under the Interim Agreement. The BOI has effectively withdrawn its supervisory role in the past year.²¹ The present interim arrangement regarding licenses will imminently be replaced by legislation and regulation promulgated by the Palestinian legislature and the PMA.

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Agreement of Cooperation in the Field of Monetary and Banking Affairs between the Hashemite Kingdom of Jordan and the Palestinian Authority, art. 2(1/3).

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Interview with Gad Marx, Supervisor of Banks for Judea, Samaria and the Gaza Strip,

BOI, Oct. 8, 1995.

2. The proper scope of banking activities

The statutory definition of the term "bank" may be used to determine what business activities require a banking license. Further description of "banking business" or "banking activities," as well as detailed prohibitions of certain activities may be used to permit or prevent banks from undertaking certain kinds of business activities. The current definitions of the terms "bank" and "banking business" in the West Bank and Gaza Strip are provided below.

Jordanian Banking Law of 1966

'licensed bank' - a company licensed to conduct banking business according to this law.

'banking business' - receiving money for checking accounts or fixed-term accounts; opening checking accounts; opening credit accounts; issuing letters of guarantee; payment and collection of checks; instructions and payment orders or notes and securities; deduction of bills, notes, and other marketable securities; trading in foreign currency and other banking transactions.

The West Bank definitions, provided above, are generally adequate. However, the list of activities constituting banking business is incomplete for contemporary purposes. The Gaza definitions are provided below.

Banking Ordinance No. 26 of 1941

'bank' means any company carrying on banking business or using the word 'bank' or any of its derivatives as part of the title under which it carries on business but shall not include a registered cooperative society;

'banking business' means the business of receiving from the public on current account money which is to be repayable on demand by cheque, and of making advances to customers.

The language of the 1941 ordinance is dated and obscure. While it does provide a functional definition, it fails to expressly permit many types of legitimate banking activities. A banking statute should define "banking business" as including payment services, the purchase, sale, and custody of payment documents and securities (including underwriting), letters of credit, factoring, leasing, and foreign exchange transactions. This will make it easier for banks to function as universal type institutions,

engaged in commercial and investment banking activities. Such a model would best suit the needs of the Palestinian territories.²²

By the same token, there are activities in which banks should not be permitted to engage. These, too, are insufficiently described by the Jordanian Banking Law of 1966, the Palestine Banking Ordinance of 1941, and MO #705. Limitations on the business in which banks may engage arise from three broad categories of prudential concern: 1) The possibility that the business activity will lead to conflicts of interest; 2) the threat the activity poses to the safe and sound management of the bank; and 3) the risks stemming from banks doing business requiring different expertise than that generally associated with banking.

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See EEC Council Directive 89/646 for a model list of permissible activities of universal banks.

The first prudential concern regarding limitations on the businesses in which banks can engage, conflicts of interest, relates to any situation in which a banker is placed in conflict between his responsibility for the security of customer deposits and the needs of a separate business venture. Since banks, however, are in the business of investment, it would be too sweeping a restriction and an impediment to development if banks were simply prohibited from holding interests in any non-banking enterprise. Nevertheless, the law generally should restrict banks from engaging in enterprises which combine the threat of a conflict of interest with one of the other two prudential concerns.

The second prudential concern, the safe and sound management of banks, relates chiefly to business risk. An example of an activity that may pose a threat to the safety and soundness of banks is investment in real estate. Speculation in real property is always risky and requires business skills which are often incompatible with the conservatism desired of bankers. However, an absolute ban would be excessive and place a damper on badly needed housing development in the Palestinian territories. A workable balance can be reached by forbidding real estate investment but permitting real

estate lending. Such lending would be subject to limits based on the relative size of real estate loans in comparison with the bank's total capital or deposits.

The Jordanian Banking Law of 1966 achieves such a balance by providing that "a licensed bank may not purchase real property unless it is necessary for the administration of its business or for the residence of its employees or their servants."²³ The 1966 Law also limits credit secured by real property to 40% of the bank's deposits.²⁴ Concurrently, the newer Jordanian Banking law of 1971, currently in force in Jordan, is even more conservative and accordingly limits secured and unsecured lending for real estate projects to 20% of deposits.²⁵ This is a sounder banking practice, and the new Palestinian banking law would do well to impose such a limit.

²³Jordanian Banking Law of 1966, chptr. 3, art. 11(f).

²⁴*Id.*, art. 11(g).

²⁵Jordanian Banking Law of 1971, Article 11(g)

The third prudential concern relates to risks which stem from involvement in ventures requiring different expertise than that associated with banking. This type of scenario is illustrated by the insurance business. Insurance brokering provides an example of a business activity which requires specialized expertise not normally associated with banking, and thus should not be undertaken by banks. In general, the risks of the insurance market require the application of concepts significantly different from those required in the fundamentally more conservative business of banking. The provision of insurance services by banks is, therefore, problematic because the expertise required to assess insurance risk is distinct from that required for banking. Thus, the new Palestinian banking law should forbid licensed banks from acting as insurance principals, though it may properly permit insurance brokering activities.

Concurrent with the above, regulatory constraints on the engagement of banks in non-bank enterprises are justified by the following three arguments: 1) The relatively non-liquid nature of most business activities poses the risk of a considerable loss if the bank must convert to cash at a non-optimal time; 2) similarly, the transformation of an excessive amount of a bank's deposits into equity capital should be avoided to preserve

solvency; and 3) substantial equity involvement by a bank with related companies can cause conflicts of interest.

Additionally, in the case of the Palestinian territories, a relatively small area with few major economic players, the concentration of economic power through participation of banks in non-bank enterprises could exacerbate economic imbalances. For example, such participation could create unfair competitive edges over other banks by establishing principal bank relationships for key Palestinian enterprises. Lender-borrower relationships, of course, are also exposed to the temptation to be influenced by ownership considerations of the party on both sides. Thus, provisions limiting the engagement of banks in non-bank enterprises should be included in the new Palestinian Banking Law.

The Jordanian Banking Law of 1966 prohibits banks from engaging in trade.²⁶ It also prohibits banks from owning and managing other businesses, or any "commercial,

²⁶*Id.*, art. 11(d).

agricultural or industrial enterprise," with some narrow and qualified exceptions.²⁷ While these provisions are wise and should be retained, it is probably unrealistic to expect that a bank, especially a universal type institution, could function to its potential while refraining from any ownership of other enterprises. Furthermore, the PNA and the PMA will want to generate more private investment in the Palestinian territories in short order. Therefore, a legal mechanism must be used to allow limited ownership by banks of non-bank enterprises.

²⁷*Id.*, art. 11(e) "A licensed bank may not participate in any commercial, agricultural or industrial enterprise or any other enterprise or purchase shares in such an enterprise exceeding the amount of twenty five percent of its paid capital including the declared reserve and not including investments in local economic development enterprises which the central bank approved and participation resulting from the collection of a due debt, and in this case the bank must try to get rid of the participation as soon as possible."

Such a mechanism can be incorporated into the new Palestinian Banking Law by permitting banks to acquire equity participation in non-bank enterprises up to a specific ceiling. The ceiling could be a percentage of the bank's capital or deposits or of the company's equity or both. The Jordanian Banking Law of 1966 employs such a mechanism to prohibit banks from owning shares (equity participation) in non-bank enterprises which exceed the value of 25% of its paid-in capital.²⁸ Such a prohibition, however, is unduly conservative. The needs of the nascent Palestinian economy require that this percentage be raised to between 30% and 40% of a bank's capital. Competent supervision by the PMA should ameliorate any risks associated with the higher ceiling.

One final prohibition in the current banking law should be maintained. The warning to those without licenses to refrain from the use of the word "bank" or any of its derivatives in the Palestine Banking Ordinance of 1941 is insufficient to perform the task of preventing unlicensed banking.²⁹ However this warning was happily combined

²⁸*Id.*, art. 11(e).

²⁹Banking Ordinance of 1941, sec. 4(1).

with an explicit ban later in the ordinance.³⁰ These provisions should, for the sake of clarity, be consolidated into one article banning unlicensed banking or borrowing on the prestige of banks to market non-banking activities.

The PMA has indicated that it may require the licensing of money changers and money lenders. While it is not unheard of for a banking statute to include such provisions, the rationale for licensing banks does not fully apply to money changers or money lenders. Unlike banks, money changers and money lenders do not accept deposits of other people's money. Transactions devoid of this essential feature do not involve the same level of trust. Nor do money changers and money lenders have as vast a potential impact upon the economy as do banks. Furthermore, such attempts to supervise the licensing of such institutions may unduly burden the PMA just as it undertakes its vital new supervisory responsibilities. It may therefore be unwise and inefficient for the PMA to require the licensing of money changers and money lenders.

³⁰*Id.*, sec. 7 "no company shall commence to carry on banking business without obtaining from the High Commissioner a license to do so."

3. Necessary qualifications of managers and owners

A banking license is in essence a permit to engage in the business of handling other people's money. Reliable banks are vital to the health of any economy. Thus, licenses should only be granted to people who are worthy of great trust. A supervisory authority is therefore responsible for screening applicants for banking licenses (prospective owners and managers) for capability, honesty, and financial means.

The PMA must have the power to screen applicants for: 1) the management's experience and knowledge of banking; 2) the sound ethical character of both ownership and management; and 3) the financial means of the bank and its owners. Therefore, the power to decide to whom to grant a license should either be provided to the PMA in the new Palestinian Banking Law or by a Law of the Palestinian Monetary Authority giving legislative effect to Chairman Arafat's decree creating the PMA. The PMA's discretion, however, should not be absolute. The law should also require applicants to submit

relevant information so the PMA could make a reasoned decision on the basis of such information.

The Jordanian Banking Law of 1966 requires applicants to submit documentation of "the financial status of the company, its capital, its expected profits, its administration, and the necessity for its services in the Kingdom."³¹ The Jordanian Banking Law of 1966 does not specifically require information about the experience and character of ownership or management.³² While the CBJ could probably be trusted to utilize the information to analyze such factors, the new Palestinian Banking Law should be unequivocal on these points.

³¹Banking Law of 1966, art. 4.

³²However, there are requirements that a manager or clerk who is convicted "of a moral crime, or a theft, of embezzlement, forgery, falsehood, bribery, or abuse of confidence, or if he is declared bankrupt, or made a deal with his creditors" forfeit his job, and that if a licensed bank is given a liquidating order by a court or has its license canceled, members of the board of directors and managers of that bank may not work in another licensed bank without the approval of the CBJ. Id., chap. nine, art. 26.

The Palestine Banking Ordinance of 1941 only narrowly prohibits from issuance of a license persons who have either directed, or participated in the management of a bank which was "wound up by a Court," or were convicted of a crime involving "moral turpitude."³³ The proscription of those with criminal convictions is essentially sound. However, proscribing those who once participated in the management of a failed bank does not sufficiently address concerns about the experience or ability of proposed bank managers. A positive showing of a good track record in banking should be required.

In order to properly assess the level of ability and ethical character of someone applying to open and operate a bank, the new Palestinian Banking Law should require applicants to submit documentation of the identity and past activities of owners and managers. Such documentation should include at least three references regarding their

³³"Winding up" is the process whereby a Court presides over the liquidation of a failed bank or other corporate entity. "Moral turpitude" is a vague but often used term.

Essentially, it implies an act sufficiently vile, depraved, or dishonest to disqualify one from those professions which are held to require honesty and ethical integrity, such as the practice of law.

professional and personal reputation. Professional expertise is properly only a concern for those in management. More detailed information concerning the education, nationality, and professional qualifications of managers should be sought, including at least three personal references, one of which should be from a previous employer.

Having assembled this information, the PMA should be clearly empowered to deny applications on the grounds of the professional or personal unsuitability of persons proposed as owners or managers of a bank. The new Palestinian Banking Law can do this by imposing specific requirements as to the professional competence and personal history of such persons. The following requirements are recommended:

- 1) Management personnel must have graduated from an institute of higher economic education;
- 2) Management personnel must not have been responsible for the bankruptcy of an enterprise with which they were previously employed or otherwise associated;
- 3) Management personnel must have knowledge of banking law;

4) Management personnel must have had at least 3 years experience in a responsible position in the financial sector; and

5) Management personnel may not be involved in any business activity outside the bank which might create a conflict of interest.

Another necessary qualification concerns sufficient levels of capitalization. MO #705 imposes a requirement of \$20 million minimum capital in order to open a bank.³⁴ The PMA has so far required \$10 million, which is a sound policy. However, the capital requirement to be provided in the new Palestinian Banking Law should be flexible. The PMA should be able to adjust it in order to tighten or loosen access to the banking industry depending on its assessment of whether or not the Palestinian territories are overbanked. The new Palestinian Banking Law should convey this discretion to the PMA in much the same manner as does MO #705 with regard to the BOI. Additionally, it

³⁴The Palestine Banking Ordinance of 1941 (requiring 50,000 pounds) and the Jordanian Banking Law of 1966 (requiring 250,000 JD) are outdated.

may be wise to legislate a statutory floor, perhaps \$10 million, beneath which the capital requirement cannot be dropped by the PMA.

Finally, banking laws often forbid the operation of banks as sole proprietorships because of the lack of internal checks and balances inherent in such arrangements. Banking laws also often require that bank management plans ensure that the bank will be effectively managed by at least two persons of proven experience. This requirement, known as the "four eyes" principle, has been enshrined by the EEC First Directive and is applied well beyond Europe. Such a principle gives management more depth and ensures better internal controls. The new Palestinian Banking Law should, for these reasons, prohibit sole proprietorships and adopt the "four eyes" requirement.

4. The economic needs of the Palestinian territories

The PMA may decide that, aside from the foregoing qualifications, the market is the best determinate of which banks will operate in the Palestinian territories. In all

likelihood, a new bank with sound management and sufficient capital will thrive if the economy is not overbanked. However, due to the prominent position of banks in national economies, the spectacle of bank failure can be dangerously demoralizing even if the actual interests damaged are relatively narrow. Thus, the PMA may want to retain the discretion to deny entry into the banking sector to otherwise qualified applicants if it deems the economy to be overbanked. Further, it may wish to have the power to direct banking business to certain sectors of the economy by making the license contingent upon stipulations that the bank will act in certain ways.

In the past, many nations have permitted the supervisory authority to consider the "economic needs" of the country in making licensing decisions. This power is made explicit in MO #705.³⁵ The Palestine Banking Ordinance of 1941 simply uses more general language conveying absolute discretion regarding licensing to the High

³⁵MO #705 authorizes the supervisory authority to consider "the impact of granting the license on the level of service and competition in the banking sector."

Commissioner.³⁶ In contrast, the Jordanian Banking Law of 1966 does not explicitly convey such discretion to the CBJ.³⁷ However, insofar as it empowers the CBJ to request "information relating to...expected profits...and the necessity for its services in the country" it implicitly does so.³⁸

Recently, the use of the "economic needs" criteria has fallen into disfavor in several countries. These countries now allow their respective supervisory authorities varying amounts of discretion related to the management plans and the applicant's relationship with the supervisory authority. Should the PMA contemplate using discretionary judgement to determine when the Palestinian territories are overbanked or

³⁶Banking Ordinance of 1941, sec. 7. The High Commissioner, or his successor, is not even obligated to state a reason for his decision.

³⁷However, the Jordanian Banking Law of 1971, art. 4(c), which has no legal force in the West Bank, does so.

³⁸Jordanian Banking Law of 1966, Article 4(c).

even which banks will be good for the economy, it may duly consider the value and the danger of letting market forces operate over time to cull the weak from the flock.

To enable the PMA to make a well-informed assessment regarding individual banks, applicants should be required to submit pertinent information regarding the projected economic viability of the bank they propose to operate. Such information should include: the business plan of the bank; its management plan; its organizational, accounting, and internal control systems; the operating procedures on the credit committee and the audit committee of the bank; its computerized data processing systems and the safety and back-up measures taken to protect the security, reliability and continuity of these systems; projected profit and loss accounts and balance sheets; and an explanation of the structure of the corporate group of which the bank is a part. Such information (being obviously significant for purely prudential concerns as well) may permit the PMA to evaluate whether the proposed bank is likely to be a successful competitor in the current market and whether it is likely to be beneficial to the economy of the Palestinian territories.

The PMA should have the authority to deny entry to a new, adequately staffed and financed bank, if, in its judgment, it would be difficult for the new bank to operate successfully in an overbanked market. It is, however, arguable whether or not the PMA should be able to consider the likely benefits of a particular bank to the economy. The primary objection to granting the supervisory authority this power is that such a determination is open to arbitrary decision.

The present banking legislation in the Palestinian territories grants such powers to the supervisory authority. As stated above, the Palestine Banking Ordinance of 1941 conveys to the High Commissioner absolute and unquestionable authority in all such matters. The Jordanian Banking Law of 1966 makes specific reference to the "necessity" of the bank's services, which appears to allow the CBJ discretion to consider the competitiveness or the economic benefit of the bank as well. MO #705 is more open to arbitrary interpretation than the 1966 Jordanian Law, as it would permit denials not only on the broad grounds of "economic needs," but also on grounds that granting the license is inconsistent with the economic policy of the military commander, or poses a threat to public order.

In spite of concerns regarding arbitrary decisions, the present condition of the Palestinian economy and financial sector, particularly the shortage of capital, argues strongly for granting the PMA powers to condition a license upon satisfaction of requirements and conditions associated with economic policy. The new Palestinian Banking Law should therefore permit the PMA to consider not only the competitiveness of the bank, but any facet of its economic policies in deciding to deny entry to the banking sector. Concerns regarding the potential for arbitrary decisions can be addressed by creating a statutory right of judicial appeal in any case where a license is denied.

The Jordanian Banking Law of 1966 provides such a right of appeal for applicants for branch permits or permits to amend a bank's charter.³⁹ The Palestine Banking Ordinance, however, does not permit such appeals. MO #705 is silent regarding rights of appeal, but applicants during the period of Israeli military rule presumably did

³⁹*Id.*, art. 10(b)-(d).

have a right to appeal to the Israeli High Court of Justice in the event the BOI rejected their application. This right was exercised on more than one occasion.

While the PMA should have the authority to consider broadly defined economic needs criteria, there should also be a clearly defined right of appeal. Due process requires both that the PMA respond to an application within a set period of time -- 90 days seems sufficient to permit careful analysis without damaging the business prospects of the applicants -- and that a denial be accompanied by a written explanation detailing the reasons for the decision. A denial should also include notice of the right to appeal to the District Court within a period of time set by the statute, for example 30 days.

5. Foreign banks

Foreign, primarily Jordanian, banks currently constitute the bulk of the Palestinian banking sector. These banks were licensed prior to the PMA's

establishment, and the PNA has agreed not to reconsider these licenses. In the future, the PMA may choose to either execute a licensing policy which encourages foreign banks to open in the Palestinian territories or one which protects domestic banks by restricting foreign competition.

The Palestine Banking Ordinance of 1941 and the Jordanian Banking Law of 1966 set higher capital requirements for foreign banks than for domestic banks.⁴⁰ Currently, the PMA asks foreign branches to set aside \$5 million in capital, which may or may not

⁴⁰Palestine Banking Ordinance of 1941, sec. 3-(3)(4); Jordanian Banking Law of 1966, Article 5. Under the British ordinance, 50,000 pounds subscribed and 25,000 pounds paid in cash is required for domestic banks as against 100,000 pounds paid up for foreign banks. The High Commissioner had discretion to vary these requirements. Under the Jordanian law, the capital of a licensed bank must always be 250,000 JD, but a foreign company authorized to operate as a bank must transfer a one time payment of 250,000 JD before conducting banking business.

effectively exceed the \$10 million capital requirement for new domestic banks. (The supervisory authority has discretion under MO #705 to adjust capital requirements.)

As long as the domestic banks in the Palestinian territories lack a credible lender of last resort, foreign banks lend stability and higher standards to the banking structure. However, even if the situation should change so that policy makers favor nurturing domestic banks by raising the requirements for foreign subsidiaries and branches, the modern atmosphere of openness fostered by the Basle Concordat will militate against protectionism.

The PMA should have some discretion to vary requirements for foreign and domestic banks, but it is difficult to foresee likely circumstances in which it would be wise to openly discriminate against foreign banks. Furthermore, such discrimination would be in violation of the provision of the Palestinian Law on the Encouragement of

Investment which guarantees national treatment of foreign investors.⁴¹ This is not to ignore the problem of capital flight by foreign banks collecting Palestinian deposits and lending money elsewhere. This problem may be addressed, however, by judging foreign banks individually, rather than collectively (see the "Lending" section).

Finally, while it is not generally advisable to place additional licensure requirements on the ownership or management of foreign branches or subsidiaries wishing to do business in the Palestinian territories, it is only practical to obtain different background information from foreign applicants than that which would be requested from domestic applicants -- or to obtain the same information from a different source. Foreign banks have the advantage of not being new banks, but going concerns with established track records. The home state's supervisory authority will have supervised the foreign bank and should be able to provide reliable information about the bank.

⁴¹For further discussion of this new law, see, A CRITICAL ANALYSIS OF THE PALESTINIAN LAW ON THE ENCOURAGEMENT OF INVESTMENT, *Commercial Law Reports Series No. 2*, IPCRI Law & Development Program (Jerusalem 1995).

The PMA should require foreign applicants to submit written permission from the parent bank's home state banking supervisory authority to open a branch or subsidiary in the Palestinian territories or an authoritative statement that such permission is not required. Foreign applicants should also provide the PMA with written confirmation from the home state supervisory authority that the foreign bank has a valid license in its home state. The home state authority should similarly confirm that the foreign bank is subject to its supervision. Finally, the PMA will be aided by the sharing of the home authority's examination reports pursuant to the Basle Concordat (see the "Supervision" section).

6. Branches and subsidiaries

It is necessary under the present laws for a bank which already has a license to obtain a permit to open a branch in the Palestinian territories. The Jordanian Banking Law of 1966 makes this explicit and requires a licensed bank to submit information to the

CBJ regarding the necessity of opening a new branch or changing the location of an existing branch.⁴² The Palestine Banking Ordinance does not address this question, but the BOI's practice, in both the West Bank and the Gaza Strip, was to require a permit to open a branch.

Questions about the business acumen of management, the ethical character of ownership and management, and the capital committed to the bank are obviously inapplicable to branch banks. The issue of the economic needs of the Palestinian territories -- or some distinct region thereof -- is apropos. However, the modern trend is to let the market perform the function of determining the economic needs of a country when it comes to branches. This makes sense since the economic significance of a branch closure is much less than that of a bank failure.

The PMA may wish to ensure a good geographic distribution of banking services. Thus, it should have the discretion to refuse to grant a permit for a new branch unless it will be located in a given area, wherein the PMA deems greater access to

⁴²Banking Law of 1966, art. 9.

banking services is required. In addition, the PMA may wish to penalize those banks believed to have facilitated capital flight from the Palestinian territories by denying their applications to open further branches. This will be discussed below (see the "Lending" section).

B. Supervision

Institutional professionalism will have a greater impact on the quality of PMA supervision than will any law. The PMA is expected to have a banking supervision department that will be responsible for monitoring the proper operation, stability, solvency, and liquidity of the banks operating in the Palestinian territories. In late October of 1995, the PMA had a staff of roughly thirty professionals, a majority of whom were engaged in banking supervision, drawing on expertise accumulated in various Arab and Western countries. Before 1996 they will assume responsibility for the supervision of the 12 banks and 51 branches currently in operation in the Palestinian territories.

The Palestinian Banking Law should seek to make banking supervision conform to the international principles and standards reflected in international conventions, in particular the recommendations of the Basle Committee on Banking Regulations and Supervisory Practices. It should also seek to facilitate the development of the PMA's supervisory capacity.

The economic centrality of the banking system renders effective supervision a crucial safeguard against economic instability. Positioned at the center of the payment system, holding deposits, and allocating financial resources within the national economy, banks must exemplify financial and business integrity. Free market economics would permit commercial banks to determine independently the extent and nature of their participation in the process of financial intermediation. However, because irresponsible banking would generate serious tremors in the wider economy, there is an exceptional need for their definitive regulation. Therefore, direct supervision over banks by a central authority is imperative.

Supervision strives to ensure that banks conduct business in a sound and prudent manner. The method supervisors use is examination of banks to monitor their compliance with acceptable financial criteria. These criteria often relate to capital adequacy, liquidity, risk concentration or foreign exchange exposure. Other matters to which prudential regulations⁴³ should apply are internal administrative accounting and control systems.

Two techniques on which the PMA will rely to examine banks are routine analysis of financial data ("off-site supervision") and inspection procedures ("on-site supervision"). Off-site supervision aims at monitoring both individual banks and the banking system as a whole. Such surveillance checks for adherence to laws and prudential regulations. It also seeks to progressively establish an early warning system which identifies problems in the banking system before they become critical. The PMA should develop a system for regularly analyzing the prudential, accounting, and credit reports routinely submitted to a central monetary authority.

⁴³Prudential regulations are those promulgated by the supervisory authority.

The PMA should also develop its capacity for on-site examination. While on-site examination requires many man-hours of work, it sets the standard for surveillance. The capacity for on-site examination must be planned and developed in conjunction with the accounting practices requisite for assessing the soundness of financial institutions.

Strengthening the supervisory capacity of the PMA is a long term challenge requiring the progressive development of specialized skills and experience that are rare in the Palestinian economy. The recent rapid growth in financial intermediation and the number of banks and branches in the Palestinian territories may soon outstrip the limited resources available to the PMA for supervision. For this reason, the PMA should focus its efforts on licensing banks and closely monitoring key prudential parameters: liquidity, capital adequacy, credit exposure limits, loan classification, interest rate and foreign currency risks, and internal control management.

1. The legal basis for supervision

While the institutional health of the PMA may be the paramount consideration for effective bank supervision, a specific legal foundation is also necessary. A business organization code and clear property laws are prerequisites. Additionally, the new Palestinian Banking Laws themselves should establish a system of supervision involving independent auditing and disclosure of financial accounts.

Efficiency demands that banking supervision be entrusted to a single agency, such as the PMA. There is no convincing evidence from abroad as to whether supervision is conducted more efficiently if organized by a government ministry or a separate agency. It has been the case in all countries that the location of the supervision function depends on historical and institutional factors as much as on the financial and legal framework. These factors are difficult to assess, at the moment, in the Palestinian territories. The PMA's final institutional constitution has not yet been fully resolved, but since the PMA is in fact the institution that will carry out the functions of banking supervision, this authority should be entrenched in the new Palestinian Banking Law.

Beyond designating the PMA as the supervisory body, the new Palestinian Banking Law should also institutionalize the type of supervisory system to be established. While the PMA is in a position to develop a system of supervision which does not rely upon statutory powers, so much as on regular contacts between senior bank management and the PMA, such a system would be inadvisable. It is true that such a supervisory system would be expedited by the small geographic area of the Palestinian territories and the relatively small number of banks. However, such a non-statutory supervisory system, relying primarily on ongoing informal contacts between senior bank management and supervisors, would involve an excessive exercise of discretion by PMA regulators.

A statutory system establishing the basic parameters of formal supervision is a precaution against such excessive exercise of discretion and concentration of power in the hands of a small number of individuals. Furthermore, such a statutory system would bolster the PMA's credibility by setting transparent and detailed regulations and providing strict enforcement mechanisms. Thus, while supervision is conducted in some countries on the basis of informal contacts and cooperation between banks and

regulators, the present Palestinian situation is new and uncertain and it is, consequently, recommended that the new Palestinian Banking Law build stability and confidence by providing for a formal supervisory system.

Formality, however, should have limits. The economic needs of the Palestinian territories require flexibility for supervision. It is therefore advisable that the prudential criteria for licensing and supervision enshrined in the law be broadly drawn. The PMA should have a reasonable level of discretion to interpret and apply these criteria.

Granted that the specific nature of the prudential criteria is to be left to the PMA, it may still be advisable to provide a list of some areas to be addressed, including: liquidity, capital adequacy, credit exposure limits, loan classification, interest rate and foreign currency risks, and internal control management. This list should be permissive and suggestive rather than mandatory. The list can thus serve to place interested parties on notice of the areas which will be the likely subjects of PMA interest.

The Jordanian Banking Law of 1966 does not clearly grant supervisory power to the CBJ or identify the prudential criteria to be used.⁴⁴ Instead, the 1966 Law simply grants the CBJ power to appoint clerks who specialize in bank examination to review the books and other documents of licensed banks, to notify banks of problems and require a written response, to enjoin unsound practices, and to cancel banking licenses in the event of noncompliance by banks.⁴⁵ Banks are also required by the 1966 Jordanian Law to retain an accountant to prepare an annual report for submission to the CBJ.⁴⁶

Similarly, the Palestine Banking Ordinance of 1941 states that "the High Commissioner may nominate an officer of the Government of Palestine to be Examiner of Banks, who shall exercise general supervision and control over the carrying on of banking business in Palestine and shall have power to call for any books, accounts or

⁴⁴Banking Law of 1966, art. 20.

⁴⁵*Id.*

⁴⁶ *Id.*, arts. 20, 21, 22, and 23.

documents of the banks."⁴⁷ While the Jordanian and British Mandate statutes adequately establish the supervisory function of a supervisory authority, they fail to articulate the authority's responsibilities and powers.

The Jordanian Banking Law of 1966 only vaguely provides that the CBJ can intervene when it "concludes that a licensed bank is conducting business in a way that is harmful to its clients or itself."⁴⁸ The Palestine Banking Ordinance similarly neglects to state that supervisors may impose prudential regulations. This oversight in the present statutory law can be corrected by clearly establishing the powers of the supervisory authority to set prudential regulations. This can be done by generally providing in the new Palestinian Banking Law that the PMA may issue all regulations, guidelines, and instructions as necessary for the prudential supervision of banks. The new law should also permit PMA supervisors to enter any bank to inspect accounts and obtain necessary information.

⁴⁷Banking Ordinance of 1941, sec. 5(1).

⁴⁸Banking Law of 1966, art. 20.

Consistent with the principle favoring broadly drawn prudential criteria, the new Palestinian Banking Law should not set specific numerical requirements, except a minimum capital requirement for licensing purposes. Until the PMA has more experience and resources, strict numeric requirements are likely to be a burden. As a result, the PMA should establish numerical requirements for banks through periodically issued regulations. This approach will allow for flexibility and discretion in dealing with troubled banks or incompetent or abusive management, abuses by bank insiders and related companies, and concentrations of credit.

The new Palestinian Banking Law should clearly empower the PMA to require banks to provide documents for off-site investigation and to perform on-site investigations. However, the new law should also retain the confidentiality provision from the Jordanian Banking Law of 1966 regarding information gathered by the PMA in the course of such examinations. There should, however, be exceptions to the principle of confidentiality. For example, the new Palestinian Banking Law should state that the duty of confidentiality may be overcome by order of a court finding it to be in the public

interest to disclose certain information.⁴⁹ In addition, cooperative supervision arrangements involving foreign bank supervision authorities will require the PMA to provide information to foreign supervisory agencies. Lastly, it may be necessary to breach, in a limited fashion, the principle of confidentiality to effect policy directed at encouraging banks to invest in the Palestinian territories as provided by law.

2. Enforcement Powers

The agency responsible for examining and supervising banks must have the power to enforce its authority. The Palestine Banking Ordinance of 1941 provides specific penalties for violations of its particular sections throughout. These include fines for carrying on business under the term "bank" or any of its derivatives without the consent of the High Commissioner; refusal of a bank to cooperate with the Examiner

⁴⁹It should be noted that the Palestine Banking Ordinance of 1941 requires banks to exhibit and publish their last audited balance sheet and does not require confidentiality.

of Banks; or failure of a bank to provide monthly or biannual reports to the Financial Secretary.⁵⁰ The Palestine Banking Ordinance also contains a general sanctions provision, as provided below.

⁵⁰Banking Ordinance of 1941, sec. 5(2). "Any officer or agent of a bank who refuses to produce any book, account, or document lawfully called for under the provisions of the section shall be liable to a fine not exceeding fifty pounds in respect of each offense"; section 4(2); section 9(2). *See also* section 10(2) which fines a bank for not exhibiting its balance sheets; section 11(2) which threatens conviction and a prison sentence for individuals prohibited from management who defy the law; section 12(2) which fines banks who do not pay the annual fee for banks; and section 15 which imposes fines and imprisonment for bank personnel who fail to comply with the ban on issuance of bank notes which have not been made legal tender in Palestine.

8.--(1) The High Commissioner may, after consulting with the Advisory Committee and the Examiner of Banks, and if he considers it to be in the public interest so to do, order any bank--

(a) to delete from the name under which it is carrying on business, within a period of twenty-eight days from the date of such order, the word 'bank' or any of its derivatives, or any other word or words forming part of its name;

(b) to refrain from receiving from the public money withdrawable by cheque or order:

Provided that before such order is made, the High Commissioner shall give such bank notice in writing of his intention so to do and shall afford it an opportunity of submitting to him a written statement of its case.

(2) Any bank failing to comply with an order made under this section shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

The enforcement system provided by the Palestine Banking Ordinance is adequate. The explicit right to notice and appeal, as found in the Palestine Banking Ordinance, is also commendable. Thus, the enforcement provisions of the Palestine Banking Ordinance form a solid base on which the new Palestinian Banking Law can be built.

The enforcement provisions provided by the Jordanian Banking Law of 1966 while similar to those found in the Palestine Banking Ordinance, supplement the power to assess fines with a mandatory cancellation of licenses. The Banking Law of 1966 provides that if a licensed bank does not abide by those laws which the CBJ is authorized to enforce, the CBJ must cancel the bank's license.⁵¹ The bank must be notified of the CBJ's intentions thirty days before cancellation of the license, and the bank may appeal the decision to the Council of Ministers within the notice period.⁵² The council must reach a decision within 30 days of the appeal.⁵³ The Jordanian Banking Law of 1966 also details fines to be levied for specific offenses.⁵⁴

⁵¹Banking Law of 1966, art. 7.

⁵²*Id.*

⁵³ *Id.*

⁵⁴Banking Law of 1966, arts. 25 and 26.

MO #1180⁵⁵ of 1986 amends the Jordanian Banking of Law of 1966 by substituting a broader array of sanctions. Under MO #1180 violations of the banking laws by banks are subject to progressive sanctions beginning with a warning, and proceeding to restrictions on those services a bank can offer customers. Repeated or more severe violations can be punished by the prohibition of paying dividends, the suspension or firing of certain employees, the appointment of an administrator to manage the bank's operations and, finally, the cancellation of the bank's license.⁵⁶

MO #1180 is a useful model for specifying the enforcement powers the PMA should possess. It is advisable, however, that details such as the amount of fines for particular infractions be left to PMA regulations.⁵⁷ These regulations should be made

⁵⁵Like several other MOs, #1180 also has another number (#1178) and is thus referred to by different numbers in various military legal publications. This MO allowed the CAB to reopen following substantial changes to the Banking Law of 1966. For more information, See JAMIL RABAH & NATASHA FAIRWEATHER, ISRAELI MILITARY ORDERS IN THE OCCUPIED WEST BANK 1967-1992 (Jerusalem 1993).

⁵⁶MO #1180.

⁵⁷MO #1180 provides these in detail as later amended by MO #1268.

public and adjusted as need be. The new Palestinian Banking Law should, however, specifically describe the sanctions which the PMA can impose. It should also empower the PMA to address unsound banking practices not specified in the statute. It is not necessary that specific authority to impose sanctions for refusal to cooperate, with examination or other specific offenses be provided so long as the PMA possesses general authority to enforce the investigation as well as correction of unsound or abusive practices by sanctions.

3. The function of lender of last resort

The BOI has held supervisory responsibility for banks operating in the Palestinian territories since 1967. However, it only initiated on-site supervision of non-Israeli banks in 1992. Additionally, the BOI has not acted, explicitly or implicitly, as the lender of last resort for non-Israeli banks. The resultant vacuum has created considerable uncertainty regarding the stability, solvency, and liquidity of the Palestinian banking system.

The BOI regards the volume of financial transactions in the Palestinian territories to be so negligible as not to warrant intervention on the grounds of protecting the Israeli economy from any instability that the Palestinian financial system might experience. Furthermore, the Paris Accord gave the PMA responsibility for acting as the lender of last resort for domestic banks within the areas controlled by the PNA.⁵⁸ Thus, the PMA, rather than the BOI, is the putative lender of last resort for Palestinian chartered banks such as the BOP and the CBOP.

However, the exercise of such responsibility implies the availability of sufficient reserves and/or flexible access to sources of credit. It is clear that the PMA does not currently meet these conditions. Thus, domestic Palestinian banks are currently operating without a lender of last resort.

⁵⁸ Protocol on Economic Relations between the Government of the State of Israel and the PLO, representing the Palestinian people (The Paris Economic Agreement), Article IV, 5.

The CBJ, however, as the supervisor on a consolidated basis for Jordanian banks, serves as the lender of last resort for those Jordanian banks operating branches in the Palestinian territories. These Jordanian banks account for a large majority of deposits in banks operating in the Palestinian territories. Thus, most deposits in banks in the Palestinian territories are protected by the role played by the CBJ as lender of last resort to Jordanian banks. Jordanian banks operating in the Palestinian territories are at present beneficial for the overall stability of the Palestinian banking system.⁵⁹ Thus, nothing should be done to undermine the constructive role played by Jordanian banks operating in the Palestinian territories.

4. The supervision of foreign banks

⁵⁹The failure of the very large Petra Bank and the Jordanian branches of the BCCI amidst scandalous money laundering charges in recent years notwithstanding, the CBJ supervises a generally credible Jordanian banking system. This may, however, be primarily due to the abilities of Jordanian bankers.

The supervisory authority of the home state of a foreign bank is generally viewed as the primary party responsible for its supervision. This responsibility extends to the supervision of branches and subsidiaries under the jurisdiction of a host authority. The CBJ, for example, supervises the activities of Jordanian banks in the Palestinian territories. The host authority (in this case the PMA) also has some supervisory responsibility over foreign banks operating branches on its territory. This responsibility should conform to that recommended by the Basle Concordat on the allocation of supervisory responsibilities between the home and host authority of a foreign bank.⁶⁰

The reopening of Jordanian banks in the Palestinian territories was enabled by the 1993 Israeli-Jordanian MOU. The MOU delineates the supervisory responsibilities of

⁶⁰The Basle Concordat effectively requires the home and host authorities to exchange copies of their examination reports and any information relevant to the solvency, stability, and soundness of banks, branches, and subsidiaries. The Protocol on Economic Relations between the Government of the State of Israel and the PLO, representing the Palestinian people, Article IV, 7, 8 & 9 states that the PMA will license and supervise banks consistently with the Basle Concordat.

the CBJ and the BOI in a manner which conforms to the guidelines of the Basle Concordat. In addition, the 1995 Jordanian-Palestinian Agreement of Cooperation confirms the status of the PMA as the home supervisory authority in the Palestinian territories.⁶¹ Finally, the Israeli-Palestinian Paris Accord on Economic Affairs names the PMA as the host supervisory authority over Israeli banks operating in the Palestinian territories.⁶²

The BOI has made it clear that it does not intend to exercise a supervisory role beyond the minimum required by the Basle Concordat. BOI officials emphasize that the risk of a liquidity crisis is minimal given the small loan/deposit ratio (23% as of March 1995 in the West Bank excluding Jericho). They also rightly argue that the Palestinian economy and its deposits correspond to a very small fraction of the Israeli economy at

⁶¹Agreement of Cooperation in the Field of Monetary and Banking

Affairs Between the Hashemite Kingdom of Jordan and the Palestinian National Authority, art. 2(2).

⁶²Protocol on Economic Relations between the Government of the State of Israel and the PLO, representing the Palestinian people, Article IV, 8 & 9.

the present time. Thus, BOI officials do not believe that the Palestinian banking sector warrants their special concern or intervention.⁶³

Concurrently, Palestinian policy makers prefer a minimal role for the BOI. They wish, for political reasons, to minimize Israeli influence over the emerging Palestinian economy. However, as the BOI is a credible supervisory authority for the most advanced banking system in the region, the PMA could effectively benefit from cooperation regarding technology and know-how. Furthermore, a stable and safe Palestinian banking system is generally in the long term interest of the BOI. Thus,

⁶³Interview with Cohen, *supra* note 3. Interview with Marx, *supra* note

14. Some Israeli economists, however, have disputed the belief that the Palestinian economy could not significantly impact the Israeli economy, stressing that in the absence of a 100% reserve requirement, the quantity of shekels created may be affected. Moreover, there is a consensus that the sudden collapse of the shekel/dinar market or massive fraud would require BOI intervention in the Palestinian banking sector. .

ideally, the PMA and the BOI should be prepared to cooperate, where possible, to promote the stability of the Palestinian banking system.⁶⁴

In contrast with the BOI, the CBJ has shown genuine enthusiasm for cooperating with the PMA. The CBJ is doubtless motivated by the potential impact of financial transactions and legislation in the Palestinian territories on the Jordanian economy. The CBJ and the PMA have thus been exchanging information and skilled staff during the last several months pursuant to the January 1995 Jordanian-Palestinian Agreement. Such cooperation between the CBJ and the PMA is expected to increase.

The Basle Concordat, as previously stated, should provide the basis for all home-host banking supervision relationships in the region. These guidelines for allocating supervisory responsibility between a home and a host supervisory authority

⁶⁴ The Paris Economic Agreement requires the BOI and PMA to "establish a mechanism for co-operation and for the exchange of information on issues of mutual interest. Protocol on Economic Relations between the Government of the State of Israel and the PLO, representing the Palestinian people, Article IV, 9(f)

over foreign branches and subsidiaries cover three major areas: solvency, liquidity, and foreign exchange operations. Each of these areas is discussed below in the context of the Palestinian territories.

Under the Basle Concordat, home authorities retain the primary supervisory responsibility for the solvency of their domestic banks' foreign branches. In contrast, the home and host authority share joint responsibility for the solvency of locally chartered foreign subsidiaries.⁶⁵ Most of the Jordanian banks operating in the Palestinian territories are branches (not subsidiaries) of parent companies chartered in Jordan. Thus, primary supervisory responsibility falls to the CBJ which has been fairly active in monitoring them.

⁶⁵A branch is only part of the larger bank, and its solvency is directly dependent upon the central operation in the home state. A subsidiary, however, is formed with its own separate capital and the parent bank is not necessarily bound to provide it with money should the need arise.

In contrast, the primary responsibility for the supervision of the liquidity of both branches and subsidiaries rests, under the Basle Concordat, with the host authority. However, liquidity is also of interest to the home authority. This is because the liquidity of a foreign offshoot can affect the overall liquidity of the banking group. Thus, within the framework of consolidated supervision, the home authority retains a general responsibility for monitoring the overall liquidity control systems of the banking group as a whole.

Finally, under the Basle Concordat, responsibility is shared with regard to the supervision of banks' foreign exchange operations. In the absence of a separate currency, foreign exchange supervision will consist of the separate monitoring of currency conversion, positions, and internal controls for the shekel, the JD, and other currencies. As the shekel is expected to continue to be widely used in the Palestinian territories, foreign exchange is likely to be an area over which the BOI will be willing to maintain some responsibility.

5. Prudential requirements

a. liquidity

Generally, "liquidity" refers to a bank's capacity to meet its obligations as they become due. Banks throughout the world are required to maintain a portion of their assets in liquid form, e.g., in a form allowing the bank to quickly generate the cash necessary to meet creditor calls on the bank's liabilities. The liquidity requirements on all deposits in banks in the Palestinian territories should be set, announced, and published by the PMA as prudential regulations. Not only will the PMA be expected to supervise the implementation of all liquidity requirements, but the reserves and liquid assets required will actually be deposited with the PMA.

The Paris Accord stipulates that the liquidity requirements on the various kinds of shekel deposits in Palestinian banks will not be less than 4% to 8% depending on the type of deposit.⁶⁶ Under this Agreement, changes of over 1% in the liquidity

⁶⁶Protocol on Economic Relations between the Government of the State of Israel and the PLO, representing the Palestinian people, Article IV, 11(b).

requirements in Israel are to be reciprocated in an effort to eliminate arbitrage opportunities between shekel deposits in Israel and the Palestinian territories.⁶⁷

Since Palestinian banks have limited access to capital markets, the retention of a substantial portion of total asset portfolios in the form of highly liquefiable assets is important to the preservation of public confidence. It provides a necessary cushion against an unanticipated outflow of funds. However, fixing liquidity ratios can prove problematic. First, if they are fixed at excessively low levels they are likely to be irrelevant or ineffective. Second, if banks are forced to retain too much liquidity, this freezing of assets for liquidity purposes will limit lending and may adversely affect the profitability of banks. The best solution, therefore, would be a statutory provision requiring the PMA to impose a minimum ratio of liquid assets to deposits, but allowing it to set stricter or milder requirements as needed within a range set by the statute.⁶⁸

⁶⁷Id.

⁶⁸The Jordanian Banking Law of 1966, for example, mandates that the CBJ employ a minimum ratio of liquid assets to bank deposits of no less than 25% and no more than 35%, which is a sound range. Art. 17(b).

Minimum liquidity requirements for shekels and JD's should correspond with those prevailing in Israel and Jordan, respectively.⁶⁹

In addition to static liquidity ratios, the PMA should also be attentive to the prospective liquidity profile, the maturity mismatching of banks, and the use of techniques such as peer group and trend analysis in order to develop an early warning system for identifying problem institutions. Finally, special attention should be paid to adequate liquidity levels for each of the major currencies used in the Palestinian territories -- the shekel, the JD, and the dollar. The absence of a Palestinian currency for the foreseeable immediate future and the relative liquidity of the shekel/dinar exchange market create potential sources of illiquidity which heighten the need for close monitoring of liquidity requirements.

⁶⁹Pursuant to MO #45 and the Jordanian Banking Law of 1966, the Israeli Military Government promulgated the unnumbered *Provisions Regarding Banking (Liquid Assets)(Judea & Samaria)* in 1986. These provisions regulate, in great detail, the mechanisms for calculating liquidity and various rates for several types of deposits. Ordinary deposits in Israeli currency require a minimum ratio of 38%, and deposits for fixed periods require a ratio ranging from 15% to 38% with the ratio declining as the fixed period extends.

b. capital adequacy

Capital acts as a buffer against unexpected losses, protecting depositors and other creditors and maintaining public confidence in the banking system. Conformity with international standards on capital adequacy will help establish a more level playing field for local and foreign banks operating in the Palestinian territories. Similarly, conformity with such capital adequacy standards will reduce the scope of lending competition which can erode banking profitability and make it difficult for banks to increase their capital base. A bank which is subject to lower capital standards not only enjoys a higher leverage potential and is more likely to accept greater and riskier lending opportunities but also has a pricing advantage over its competitors. While the fledgling Palestinian economy could benefit from aggressive lending practices, the overriding consideration should be to ensure bank solvency. Thus, the PMA should employ international standards on capital adequacy.

The internationally accepted risk-weighted capital adequacy ratio is 8%. In order to determine the precise ratio to be used in a given case, different weights are ascribed to different categories of assets which are balanced against the capital base. The weights reflect the perceived risk factors of the different types of activities in which banks are engaged. The use of a risk-weighted ratio should allow an overall view of the aggregate risk factors, although it is unlikely to capture the overall quality of a bank's portfolio and the degree of concentration in certain sectors, markets, or geographical areas. Furthermore, as any capital ratio establishes the maximum amount of leverage permitted for a soundly managed bank, individual banks that have operations that exhibit more than normal business risk should not be permitted to operate at the maximum leverage limit established by the PMA.

c. reserve requirement

Reserve requirements set by the PMA should mirror those set by the countries which issue the two currencies in use -- namely, an 8% reserve requirement for shekels

and 14% for dinars -- thereby eliminating opportunities for arbitrage by Israelis and Jordanians. It should be kept in mind that a reserve requirement differential between the shekel and the dinar is likely to translate into an interest rate differential between deposits in the two currencies. This could create currency substitution towards the shekel, assuming that economic actors think that inflation will be roughly the same in Israel and Jordan over time. Currently, the PMA has set a 14% reserve requirement for the dinar, 10% for the shekel, and 8% for the dollar.

d. risk concentration

Interviews with bankers in the Palestinian territories suggest that some banks, especially those that are locally chartered, are being established to service a very narrow customer base in which shareholders often the most prevalent borrowers. This practice creates a potential for conflicts of interest and undue concentrations of power. Loans to a customer connected to the bank's management are particularly risky because the management may apply weaker criteria for loan eligibility.

One suggestion has been to impose limits on the percentage of total shares in a bank which can be owned by one shareholder. However, while bank ownership should ideally be as diluted as possible, the limited sources of available capital for establishing Palestinian banks makes the imposition of such a maximum shareholding limit inadvisable. Conversely, a bank should be prohibited from acquiring a controlling interest in a non-bank enterprise. (See the "Licensing" Section -- Scope of banking activities).

Restrictions on related party loans are an important regulatory mechanism both because such loans constitute a high concentration of risk and because they create a potential for abuse of authority, particularly if a loan is made at a preferential interest rate. MO #1180 severely restricts related party loans. It forbids loans exceeding 1000 JD to directors, employees, or any shareholder holding more than 10% of the ownership of the bank. In light of this, MO #1180 is excessively constraining.

A more reasonable restriction would be to forbid related parties from borrowing from the bank at interest rates lower than those charged to similar non-related parties. Such lending to related parties should be limited to 10-15% of capital and reserves, which is in conformity with international standards. We also recommend that the limit on exposure to a single unrelated client be in the range of 20-30%. The Jordanian Banking Law of 1966 sets a 25% limit. This limit should be retained for unrelated parties and lowered for related parties.

It is realistic to expect breaches of such prudential regulations. Because locally chartered banks are likely to have low levels of capital, the PMA may be willing to allow some leeway on large exposure limits on the grounds that they would not otherwise be able to engage in average size transactions. Such a policy would contradict the fundamental reason for the exposure limits and is, therefore, inadvisable.

C. System of Payments

An efficient system of payments is critical because it permits money to flow quickly and securely throughout the economy. Such a system requires the quick and reliable transfer of payment information (clearing) and money value (settlement). The mechanisms for clearing and settlement should be monitored by a central administrative entity such as the PMA. The PMA should establish and enforce relevant rules, standards, and procedures. Since money transfers are often international, it is highly advisable that the Palestinian system conform to international standards.⁷⁰

Many countries (USA, UK, Canada, etc.) have enacted rules for the system of payments as part of their banking laws or central bank regulations. This approach provides clarity and legal certainty. However, it can prove rigid in the face of technological changes and inhibit free contractual arrangements. Other countries (Germany, the Scandinavian countries, etc.) have left the structure for clearing and settlement to the private sector and private contract law, and provide only a minimal

⁷⁰See generally Central Bank Payment and Settlement Services with Respect to Cross-border and Multi-Currency Transactions (1993) Committee on Payment and Settlement Systems, Basle.

regulatory framework. This latter model is more appropriate for the Palestinian territories. In this case, a full statutory framework would impose unnecessary additional burdens on the PMA's limited resources and would have to rely for enforcement on a court system which is only now reestablishing its authority and credibility.

We recommend that the responsibility of the PMA to oversee arrangements for the system of payments in the Palestinian territories be established either in the new Palestinian Banking Law or in the PMA Law. This responsibility should be limited to monitoring the system to ensure: 1) that the systems designed and developed by the banks maintain a level playing field in the sector; 2) that such arrangements are consistent with the economic needs of the Palestinian territories; and 3) that banks' internal rules and procedures are sound. Concurrently, a formal Banking Association should be created and a forum for consultation and discussion between banking representatives and the PMA should be actively promoted in an effort to cooperatively establish minimum standards for the banking industry. Only the credible threat of expanded and more intrusive regulation is likely to effectively foster such self-regulatory endeavors.

1. Clearing system

Checks in the Palestinian territories, written in shekels, dinars, and dollars, are cleared in different ways depending on the currency in which they are denominated. Although dollars are a popular currency, it has been difficult for many banks in the Palestinian territories to hold accounts in dollars and the number of dollar denominated checks is therefore small. Dollar denominated checks are cleared on a collection basis, which is slow and can be costly. Shekel and dinar transactions are dominant and systems have been developed for such transactions which facilitate rapid and inexpensive clearance.

The Jordanian and Palestinian banks in the Palestinian territories currently have correspondent relationships with Israeli banks. Such relationships enable these banks to clear shekel denominated checks through the Israeli clearing system. Jordanian and Palestinian banks keep deposit accounts at their respective Israeli correspondent banks,

and the accounts are credited and debited as checks clear. Since the distances between the West Bank and Gaza and Tel Aviv are small, checks can be physically transferred and cleared quickly (generally in a day) at low cost.

The shekel denominated process conforms to Western payment system standards. It is efficient and should be maintained by the PMA. A collection system (which requires an actual transfer of money rather than the crediting and debiting of accounts) would be much slower and more expensive than the correspondent bank system. Furthermore, move to a collection system might also negatively affect the willingness of Israeli merchants to accept checks drawn on Jordanian or Palestinian banks.

Most dinar denominated checks are cleared bilaterally between banks. Jordanian and Palestinian banks, therefore, maintain accounts with the various other banks operating in the Palestinian territories. Since each bank must credit and debit separate accounts with a growing number of other banks, this practice may become inefficient and burdensome as the number of banks increase. Furthermore, such a system forces

banks to assess the credit of each bank with which they maintain accounts and to assume greater aggregate risk. As a transitional step towards increasing the efficiency of the current system, the Arab Bank⁷¹, the most reputable and well capitalized bank operating in the Palestinian territories, is expected to take on the responsibility of acting as a central clearing house, pending the establishment of a clearing house by the PMA.

A separate clearing house for dinar denominated checks would improve the operational efficiency of the present system. It should not, however, obscure the fact that the CBJ, as the bank which issues dinars and serves as the lender of last resort, provides the ultimate source of liquidity ensuring the integrity of dinar denominated

⁷¹The Arab Bank is a large, international, and universal type bank. It was founded in 1930 in Jerusalem, but moved to Amman in 1948. Its founders were primarily Palestinians, although it is now very diversified in its ownership of some 3,300 investors. As of 1995 its total balance sheet exceeded \$21 billion and it had total equity in excess of \$1.2 billion. It has over 300 branches worldwide and is one of the most important financial institutions in the Arab world.

transactions. Any clearing system for such transactions established outside of Jordan should obtain the consent of the CBJ. It should also adopt a proviso stating that adequate rules and procedures will be established guaranteeing transaction settlement with Jordan. The CBJ can also be associated with the clearing and settlement arrangements as an additional party to settled transactions, contributing to a collateral or loss-sharing arrangement.

2. Dishonored checks

The presentation of checks without adequate backing funds on account (e.g., "bad checks") is a significant problem in the Palestinian territories. The volume of bad checks written in the Palestinian territories impedes the more widespread dissemination of checks as a means of payment. To upgrade banking integrity, it is crucial for stricter penalties to be imposed to discourage the writing of bad checks and to protect banks.

Presently, banks in the Palestinian territories have not coordinated a mechanism to identify culprits and deter them from repeating their acts. MO #1024 of 1982, largely ignored by banks in the West Bank and Gaza, provides for the restriction of the accounts who have written too many dishonored checks as follows: "An account will be restricted and its owner will be restricted if 10 or more checks drawn on the account are refused during a 3 month period, as long as 15 days passed between the first and last refusal." It further provides that "a restricted client will not open an account and will not draw a check on a restricted account" and "if the account holder is restricted a second time within two years of the termination of the period of restriction, the supervisor will notify all banks of this breach."⁷²

While MO #1024 provides adequate measures to deter repeated check bouncing, its conditions for restriction are too lenient. The number of checks refused before a client is restricted should be lowered. Furthermore, the new Palestinian Banking Law or

⁷² MO # 767 Order Concerning Dishonored Checks (Gaza) 1982 provides essentially the same things.

PMA regulations should provide or facilitate an effective coordinated mechanism to enforce restriction.

Alternative models of MO #1024 include the creation of a blacklist shared by all commercial banks (the French system) or the imposition of monetary penalties and a low credit rating (the American system). The establishment of a blacklist seems preferable for practical reasons, primarily because it does not require the creation of rating agencies or rely on the courts for enforcement. In the interim, a coordinated effort among the banks to exchange information about those who write dishonored checks would serve as a deterrent and limit the risk to individual banks.

3. International transfers

Under Israeli military rule, all foreign currency transactions and the possession of foreign currency required a permit from the Civil Administration.⁷³ In addition, foreign

⁷³MO #952 of 1981 (since repealed) required a permit for any transaction in a foreign currency with a resident of the occupied territories regardless of whether the transaction was to take place in the territories, exporting money from the territories, bringing in shekels by remittance or otherwise, any transaction involving property in the area if a resident of foreign country is party thereto, and any transaction involving property outside the area if a resident of the area is a party thereto or possession of a foreign currency by a resident of the territories. It was amended by MO's #1218 and #1237 (which increased the penalty for possessing foreign currency in "dangerous circumstances" from 3 years in prison or a fine three times as high as the original one set in MO # 845 to 5 years and 5 times the fine) and 12 unnumbered MO's. MO #973 of 1982 prohibited the importation of money into the territories in either local or foreign currencies without an order or permit to the contrary. It was amended by MO's #1070 (expanding the prohibition to more

currency transfers had been limited to annual per person amounts until the PNA took power in the Gaza Strip and Jericho in 1994.⁷⁴ Furthermore, non-Israeli banks operating in the West Bank and the Gaza Strip had been obligated by the BOI to effect international transfers through correspondent Israeli banks.⁷⁵ While such international transfers were

organizations and people), #1221 (requiring a permit for a resident who brings in money from a hostile state and punishing violations with 5 years in prison or a fine), #1243 and 8 unnumbered MO's.

⁷⁴Unnumbered regulations of control/supervision of currency (financing of import), MO #952 restricted the transfer of currency to \$3,000 annually to dependent relatives outside the territories, as well as restricting the amount of money a resident could carry when traveling out of the territories to this amount with no more than \$500 of the total in cash. Unnumbered MO Amendment 6 to MO #952 (1988) reduced the amount of JD's a resident could bring in when returning from 500 to 200. Unnumbered MO Amendment 4 to MO #973 prohibited credit card and bank transfers as well as restricting the amounts of cash or gold which could be imported.

⁷⁵Interview with Marx, *supra* note 14. The BOI acted pursuant to MO #45 of 1967 which canceled all delegations and appointments of responsibility made prior to June 6, 1967 and conveyed authority to "the Israeli official in charge of banks" to appoint or delegate responsibility as specified by the law in force.

relatively fast, they carried additional costs due to the fact that banking fees had to be paid to both the local and the Israeli banks.

In a market economy, the banking law generally does not contain provisions which regulate correspondent bank relationships. Rather, the banks decide whether or not to contract into such relationships on the basis of their needs and cost factors. The PMA should adopt a policy allowing the free formation of correspondent relationships. However, banks in the Palestinian territories (and in particular domestic Palestinian banks) will most probably find it advantageous to maintain existing relationships with Israeli correspondent banks. This is the case because local banks lack their own networks of international correspondents and the alternative of using the services of Jordanian banks, while less expensive, is more time consuming. Most Jordanian banks operating in the Palestinian territories already have an international network of correspondent bank relationships and can be expected to effect foreign transfers through this system.

As Palestinian banks establish themselves they will improve their credit and their international reputations. Over the medium to long term, therefore, they can be expected to establish direct correspondent bank relationships with banks outside of Israel and Jordan. The establishment of such independent correspondent bank relationships will lower the cost and increase the efficiency of foreign transfers of funds. To expedite the emergence of such relationships and to encourage efficient and low cost transfers of funds as a means of promoting international commerce, we recommend that the PMA adopt a liberal policy regarding foreign transfers which in no way restricts the amount of money flowing in and out of the Palestinian territories.

D. Lending

Among the most basic functions of a banking system are the pooling of the savings of a community and making the collections of deposits a source of credit for its members. Thus, the Palestinian economy, having languished in the absence of a functioning banking structure and the resultant limits on the ability of residents to

borrow for local investments in homes and business ventures, should be greatly assisted by the newly expanding banking system. However, initial reports reveal dissatisfaction with the amount of credit being extended by banks in the Palestinian territories.

It appears that banks in the Palestinian territories have become "over liquid." In other words, the banks have, by industry standards, excess amounts of funds which are not being allocated to loans. At present, customer deposits account for the vast bulk of the funds in the banks in the Palestinian territories.⁷⁶ However, only a relatively small

⁷⁶*Palestinian Banking Sector Statistical Review*, Palestine Economic Policy Research Institute (MAS), June 1995, p. xvi. According to this excellent study, the share of customer deposits in total liabilities at the end of March 1995 was 92.7% in the Gaza Strip and Jericho (the areas then under Palestinian self-rule). In the rest of the West Bank this figure was 81.3%. *Palestinian Banking Sector Statistical Review, Issue 2* Palestine Economic Policy Research Institute (MAS), December 1995.

portion of these funds are being channeled into loans. Many of the major banks operating in the Palestinian territories, for example, reputedly maintain loan to deposit ratios of only 20%.⁷⁷ This is an unusually low ratio.

The low rate of lending corresponds with a dramatic increase in customer deposits since the signing of the DOP in 1993. Not only have customer deposits increased, but the rate of increase appears to be rising. In September 1993, total deposits in the Palestinian banking system amounted to only \$100 million. At the end of 1994, total deposits amounted to \$589 million. At the end of March 1995, total deposits were

Figure 3A Customer deposits were 80.73% of all liabilities as of September 1995.

⁷⁷Interview with Samer F. Abdallah, Regional Credit Officer for the CAB, Nov. 2, 1995; The loan to deposit ratio in the Palestinian territories was approximately 22% in September 1995. It was 16% for the Gaza Strip and Jericho and 27% in the rest of the West Bank. *Palestinian Banking Sector Statistical Review, Issue 2* Palestine Economic Policy Research Institute (MAS), December 1995, p. xii.

\$828 million -- an increase of 41% -- and have since surpassed \$1 billion.⁷⁸ There are at least three reasons for the increased rate of deposits: 1) foreign aid has increased the supply of money; 2) residents who had deposited their money abroad are transferring these funds into banks in the Palestinian territories; and 3) residents who used to hold cash are shifting to making deposits in banks.⁷⁹

The dramatic growth in deposits poses a striking contrast against the remarkably small loan portfolio of the banks in the Palestinian territories. At the end of December 1994, outstanding loans by all banks operating in the Palestinian territories only amounted to \$163 million or 24% of the banks' assets and 28% of customer deposits. By the end of March 1995, there had been an increase to \$288 million or 30% of assets and

⁷⁸PALESTINIAN BANKING SECTOR STATISTICAL REVIEW -- Issue 2, Palestine Economic Policy Research Institute (MAS)(December 1995), p. *xsupra* note 10.

⁷⁹PALESTINE BANKING SECTOR STATISTICAL REVIEW, Palestine Economic Policy Research Institute (MAS), June 1995. p. xv.

35% of customer deposits.⁸⁰ However, a substantial part of this increase can be attributed to borrowing by PNA institutions from banks in Gaza.⁸¹ Worse still, the majority of lending by banks in the Palestinian territories is reportedly in the form of overdraft facilities, accounting for 72% of all lending by Palestinian banks.⁸²

The lack of lending by banks in the Palestinian territories may simply be attributable to the need for time to adjust to a new and uncertain situation. Almost all of the banks are just beginning to operate in the Palestinian territories. Sound lending

⁸⁰*Id.*, at xix. In comparison, during approximately the same period, the ratio between private sector loans and total customer deposits was around 80% in Jordan, and about 86% in Israel.

⁸¹PALESTINE BANKING SECTOR STATISTICAL REVIEW, Issue 2, Palestine Economic Policy Research Institute (MAS), December 1995 p. ix-x. The authors, Osama Hamed and Mark Khano, adjusted their data in Issue 2 to include only the net government deposits and loans in the Gaza Strip and Jericho "because of duplicate and cumulative accounting of the Palestine National Authority's deposits at one of the banks in the GSI."

⁸²*Id.*, at xii.

practices require that banks take time to gain familiarity with local markets and potential customers. In a situation where, for reasons elaborated upon later in this section, cash flow lending necessarily predominates and systemic risk (risk which cannot be avoided by diversifying) is endemic in the form of security closures, interdictions, and the like, caution is common sense.

Furthermore, the banks in the Palestinian territories require time to adjust to the changing political situation. In a new system, which for now lacks mechanisms to protect depositors such as deposit insurance and established supervision, caution is to be expected. The PMA is a newly created agency which has not yet been fully institutionalized. Simultaneously, the BOI has declined to provide complete supervisory coverage for some time. As a result, it is quite reasonable that banks take into account the protection of depositors before promoting lending.⁸³ However, the institutionalization of the PMA and the introduction of proper supervisory and

⁸³PALESTINE BANKING SECTOR STATISTICAL REVIEW, Palestine

Economic Policy Research Institute (MAS), June 1995, p. xx.

insurance coverage should, over time, result in the adoption of a more liberal lending policy.

An additional impediment to lending which is likely to disappear over time is the lack of reliable track records of new Palestinian businesses. The absence of such records makes it difficult for banks to assess the ability of prospective borrowers to generate income flows, and thus the ability to repay the loan. With the establishment of such track records, however, banks will be in a better position to evaluate the earning potential of applicants and to make lending decisions accordingly.

The argument that time-related factors, such as those described above, have been partly responsible for the dearth in lending is supported by the fact that the rate of lending by banks in the Palestinian territories is now starting to show an increase.⁸⁴

⁸⁴PALESTINE BANKING SECTOR STATISTICAL REVIEW, Issue 2, Palestine Economic Policy Research Institute (MAS), December 1995 p. xii. The loan to deposit ratio for the Palestinian territories increased from 19% in December 1994, to 23% at the end of March 1995, and then to 27% at the end of September 1995. The first issue indicated that this ratio was much higher in the Gaza Strip and Jericho than in the territories as a whole -- 46% as opposed

Thus, it may be that the market will be able to adjust and generate growth without significant regulatory intervention. The urgency of the demand for increased local lending, however, may make direct PMA intervention necessary if lending does not continue to expand. In any case, certain changes to the laws would help create a more supportive legal structure for the expansion of lending.

The nature of the required legal changes and possible direct intervention into the lending market is implicated by a debate which is now emerging between the management of the foreign (overwhelmingly Jordanian) banks which dominate the Palestinian banking industry and the managers of the domestic Palestinian banks. The former point to structural legal and political problems which inhibit their lending practice in the Palestinian territories. The latter argue that the foreign banks are using the claim

to only 23% at the end of March 1995. PALESTINE BANKING SECTOR STATISTICAL REVIEW, Palestine Economic Policy Research Institute (MAS), June 1995, p. xix. Of course, these higher loan to deposit ratios in Gaza and Jericho were attributable to PNA borrowing from local banks. The adjustments the authors made to inflated figures for government deposits and loans in the second issue reduced the loan to deposit ratio in the Gaza Strip and Jericho to 17% in December 1994, 16% in March 1995 and 16% again in September 1995.

of structural impediments as an excuse to siphon off crucial Palestinian funds to more attractive foreign markets in Jordan and elsewhere. Reforms of laws on the margins of the new Palestinian Banking law could address the former complaints, as suggested below.

1. Collateral lending

Many bankers in the Palestinian territories, most particularly the managers of foreign banks, claim that local lending is constrained by the inability of banks to foreclose on collateral security if a lender defaults. However, there is no consensus among bankers in the Palestinian territories that the inability to foreclose is in fact a genuine or significant impediment to lending.⁸⁵ Several Palestinian bankers claim that

⁸⁵Interview with Khaled Ghabeish, General Manager of the CBOP, Oct. 15, 1995. Ghabeish claims in general that the strength of the Palestinian social structure discourages default and that payment on problem loans can usually be enforced through informal arbitration and mediation,

individuals with adequate cash flows could, by acting as guarantors, reliably back up loans and that collateral security need not be a concern with regard to lending in the Palestinian territories.⁸⁶ This claim dovetails with the related argument that reliance on

including the traditional method of dispute resolution known as *sulha*.

Furthermore, extended families and clans generally assist members who have trouble paying off a loan. It is a common practice for family members, often more than two, to co-sign loan contracts as guarantors. This device is especially effective if the *mukhtar*, or traditional head of the extended family, is one of the cosignatories since upholding family honor is a very compelling motivation with many family members if financial disaster strikes.

⁸⁶In October of 1995 the CBOP, a locally chartered bank, was carrying a 64% loans to deposits ratio -- well above that of its Jordanian competitors. Banks like the CBOP rely in large part upon cosignatories, and recourse to borrowers' families in the event of repayment problems. In the future, competition between banks should reduce the numbers of required cosignatories. The PALESTINE BANKING SECTOR STATISTICAL REVIEW, Issue 2, Palestine Economic Policy Research Institute (MAS), December 1995, p. xii. reported the CBOP's loan to deposit ratio as 59% at the end of September 1996.

cash flow rather than collateral lending is inevitable and desirable. While this debate is not wholly examined here, it is recommended that banks not be restricted to collateral lending arrangements. Banks should remain free to contract loans as they see fit -- on a cash flow, collateral, or combined basis.

In any case, it is not disputed that banks in the Palestinian territories have for years been faced with a situation in which judicially enforced foreclosure is impossible. Legal changes designed to restore the ability of lenders to foreclose on collateral would certainly be advisable. Such changes, however, should be made with careful consideration to the sources of the problems relating to collateral lending and foreclosure. These problems are connected with such issues as the incomplete registration of land in the Palestinian territories, the limited or untested ability of Palestinian courts to enforce foreclosure judgments, and a strong social taboo against taking land in this manner.

Land is the preferred form of collateral in the Palestinian territories, as it is throughout the world. That most of the land in the Palestinian territories has not been

registered presents a serious obstacle to collateral lending. The process of land registration, which had slowly expanded from Ottoman times and was being pursued by the Jordanian government in the West Bank, was frozen by the Israeli military commander in 1967. Thus, only about 35% of the land in the West Bank is currently registered while in the Gaza Strip the figure is about 50%.⁸⁷

While many people in the Palestinian territories do not have deeds to their land, ownership can often be ascertained by reference to the family or community concerned. Land transactions have been made on this basis since 1967. Nonetheless, questions of the precise boundaries of parcels of land and inheritance abound in the absence of a modern registration system. The lack of such a system is a sufficient but not necessarily determinative reason for the failure of banks to lend.⁸⁸ A modern system for land registration should, in any event, be initiated at the earliest possible time.

⁸⁷Jennifer Moorehead and Shawqi Issa, "Evaluation of Israeli Settlement Policy and the Protest Movement Against Settlement Expansion," (Land & Water Establishment, Jerusalem, February 13, 1995) p. 2-3.

⁸⁸Interview with Judge Abdallah Abu-Asi, Gaza City District Court, November 27, 1995.

A related problem is that banks have been unable to enforce collateral security agreements against defaulting debtors in the civil courts. The Palestinian courts have for many years been unable to enforce judgments for possession of collateral without the use of Israeli police, and have therefore refrained from doing so. This can be expected to change due to the arrival of the Palestinian police, but such a change could take time. It is, for example, not clear that such a change has yet happened in the Gaza Strip and Jericho.⁸⁹

The final problem responsible for the inability of banks to foreclose on land stems from the strong social taboo in Palestinian society against evicting an owner from

⁸⁹Mahmoud Takroui, the Regional Manager of the CAB expressed this doubt at the Fourth IPCRI Roundtable Forum Meeting on Business and Commercial Law, May 30, 1995. *See* Transcript - "The Emerging Legal Structure for Banking," p. 11. Samer F. Abdallah, Lending Officer of the CAB Ramallah Branch, also expressed this concern. Interview with Abdallah, Nov. 2, 1995.

his land. This taboo is particularly pronounced in the case of an owner using the land as a residence or for agricultural purposes. Even with access to effective use of police power, courts would have great difficulty enforcing collateral lending agreements against a popular refusal to accept the institution of foreclosure.⁹⁰

Despite these problems, some banks, notably the CAB, have engaged, to some extent, in lending against collateral. The loan agreements specify where the land lies, who owns it, whether or not it has been registered, and what improvements are on the land. The agreements state that if the borrower defaults, the bank may foreclose directly and sell the land at auction. However, no such agreement has ever been enforced in a court of law. For this and the other reasons discussed above, the rates of collateral lending in the Palestinian territories remain far from adequate.

An important step that could be taken to improve the rates of lending would be to enact a modern collateral lending law. The Jordanian Collateral Lending Law #46 of 1953, currently applicable in the West Bank, is outdated and in need of replacement.

⁹⁰Interview with Attorney Ali Al-Safarine, Nov. 15, 1995.

Furthermore, there is no collateral lending law in Gaza. Unlike modern collateral lending laws which typically require the lender to provide the defaulting debtor with written notice of intent to foreclose on the collateral, the 1953 Jordanian law provides no such notice requirement. Moreover, whereas modern collateral lending laws generally grant the debtor a set period (usually two weeks or 30 days) following the notice in which to redeem the loan in order to avoid foreclosure, the 1953 Jordanian law fails to create such a statutory redemption period.

In the absence of a modern collateral lending law, the present practice for Palestinian banks is to fashion agreements that specifically state that no redemption period will be granted if the debtor defaults.⁹¹ The 1953 Jordanian law provides that borrowers may use their real property interests, full or partial, as collateral. Under the 1953 law, a security deed must be prepared which includes information pertaining to whether or not the property has a lease on it, and the duration of any such lease. It is, moreover, permissible under the 1953 Jordanian Collateral Lending Law to directly

⁹¹*Id.*

commence foreclosure without an evidentiary hearing. Under the 1953 law, the sale of the property at auction proceeds upon default as described below.

Article 12:

If the period of the loan runs without the money being paid or the debtor defaults, the Land Registration Department will sell the location in question in accordance with the next article if there is a request from the creditor or his heirs at law, without having to go to court.

Article 13:

(a) If the Land Registration Department is required to sell a location as provided in the preceding article, the land should be sold according to the law of execution and the debtor or his heirs notified one by one by subpoena that they must pay the money within one week.

(b) If the debtor asks the head of the District Court (Al bidayeh) to delay the auctioning of the land or property, the head of the Court can delay the sale up to two months and for one time if he is convinced by his knowledge of the situation that:

(1) the debtor has a good chance to pay off the debt if he gets this time;

(2) this sale will cause the debtor unreasonable difficulties and deprive him of reasonable needs.

(c) If the money was not paid and there is no District Court decision to delay as per the preceding article the location will be put up for auction for a period of 45 days extendable an additional 15 days provided that in the additional period the price asked for the parcel is no more than 3% less than the original price.

(d) Registration departments ("tabu") should, if needed, write to the execution head officer that it is necessary to inform the debtor or tenant to quit the location. This is in the event that any errant tenant remains on the land. In the event that the debtors object to the actions of the registration department said objection shall not delay the auction.⁹²

Since West Bank creditors have not had access to the Jordanian Land Registration Department since 1967, alternative procedures have been developed regarding the enforcement of collateral agreements. These procedures call for the security agreement to be filed with the Execution Department of the District Court with a request for fast action.⁹³ The bank's attorneys also typically file a notice with the Land Department so that the land cannot be conveyed while the action is pending.⁹⁴ Similar procedures are followed in the Gaza Strip. However, these procedures have never, so far as we have been able to determine, resulted in an actual foreclosure in either the West Bank or the Gaza Strip.

⁹²Jordanian Collateral Lending Law of 1953.

⁹³Interview with Al-Safarine, *supra* note 76.

⁹⁴*Id.*

The first line of defense for a debtor against whom a bank has filed a foreclosure action is to attempt to redeem the loan. If the debtor succeeds in raising the money the District Court will almost always insist that the bank accept and then proceed under the contract. Thus, there is a judicially enforced redemption period for Palestinian debtors which is much longer than that formally afforded debtors in countries with more generous statutes.

If the debtor is unable or unwilling to make himself current on the debt, the court has the power to order the land be sold at auction to enable the bank to recoup its losses on the loan contract. To execute such a sale, however, the Execution Department requires the assistance of the police. In the recent past this was impossible, and banks found themselves under a great deal of practical pressure to reschedule the debt and proceed on the contract. Currently, however, the predominant opinion of counsel to banks operating in the West Bank is that a foreclosure could be fully executed with the assistance of the Palestinian Police.⁹⁵

⁹⁵Interview with Abdallah, *supra* note 75.

While the cooperation of the Palestinian Police may make judicially ordered foreclosures practicable, new collateral lending legislation is needed to clarify the procedures for foreclosure. Such legislation would also have the beneficial effect of helping to alleviate the wider concerns, described above, regarding the ability of banks to foreclose in the local court system. Additionally, such legislation would have the advantage of harmonizing the procedures for foreclosure in the Gaza Strip and the West Bank.

Such a unified Palestinian collateral lending law will only be effective in promoting lending in those areas in which the Palestinian courts have the authority necessary to enforce the law. Furthermore, the social taboo against taking land could pose a persistent problem even after the courts have established their authority. It would therefore be advisable that the new collateral lending law incorporate provisions directed at easing such societal resistance against taking land.

The new collateral lending legislation should provide safeguards for defaulting debtors such as a generous notice provision and a right of debtor redemption in all

cases involving land upon which the debtor resides. Such safeguards will do no harm to the interests of creditors and may ease societal resistance. The legislation should also include language which can be incorporated into collateral lending contracts making it clear that the bank may exercise the foreclosure option if the debtor is unable to take advantage of the notice period to redeem the loan. Foreclosure, however, will be precluded if the debtor is able to redeem the debt by making himself current (with interest) before the expiration of the notice period, or discharging it at any time before the final sale. In either case the bank will be put in the position it would have occupied had the debtor not defaulted.

By themselves, however, legal changes such as the enactment of a new Palestinian Collateral Lending Law, even with generous protections for defaulting debtors, may not be sufficient to overcome societal nonacceptance of foreclosure arrangements which stem from deep rooted social taboos. A proposal which has been suggested in this regard is for the Palestinian Council to legislate the creation of a national body, "the Palestinian Agency," which will take possession of land when the owner defaults on a loan to which the land served as security. The Palestinian Agency

would be required by law to then make good on the loan and to use the land exclusively for purposes which benefit the cause of Palestinian nation-building.⁹⁶

This proposal should not be adopted until there has been a trial period of stability during which the Palestinian police and laws have time to take effect, and until banks have an opportunity to gain confidence in the loan market and their ability to foreclose if need be. If, however, the expected improvement in loan to deposit ratios does not occur, this proposal may be worthy of consideration.

The "Palestinian Agency" proposal is premised on the idea that Palestinian society may tolerate foreclosure by such a Palestinian Agency (as opposed to foreclosure by a private lender) if it sees that the Agency uses the land for the purpose of developing the national homeland (e.g., housing projects, public facilities, or any other projects which are in accord with the wider interests of national development).

⁹⁶This proposal was first suggested to IPCRI by Dr. Benny Toren, an economist at the Jerusalem Institute for Israel Studies, who based his idea, in part, on the experience of the Jewish Agency.

Furthermore, to encourage the public to truly support its activities, it should be made clear in the charter of the Palestinian Agency that the land it holds belongs to all the Palestinian people.

Accomplishing the above will require two steps. First, a provision of the new Palestinian Collateral Lending Law must be drafted creating a right in the lender to submit a defaulted loan to the Palestinian Agency which must, within a fixed and relatively short time, make good on the loan. Second, a law must be drafted creating the Palestinian Agency and giving it the power to take possession of any land which served as security on a loan that is in default.

2. Capital flight

As mentioned above, some Palestinian bankers and lawyers believe that the inadequacy of the legal system has been used as an excuse for poor service by some of

the foreign banks.⁹⁷ These individuals argue that banks functioned and loaned money under the same laws prior to 1967. The blunt accusation that foreign banks are collecting Palestinian deposits and transferring the money out of the Palestinian territories is often heard.

The Governor of the PMA, Fouad Beseiso, does not wish to directly regulate lending practices. He has, however, told the banks in the Palestinian territories that if local lending ratios do not improve he will do so. Mr. Beseiso seems to prefer self-regulation and the use of incentives in these matters. He believes that the caution of

⁹⁷IPCRI Roundtable Transcript "The Emerging Legal Structure for Banking," p. . Attorney Raja Shehedah singled out the CAB, which enjoyed monopolistic status on the West Bank from 1986 until 1993. However, he also attributed the problem to a lack of "legal culture."

banks to date is understandable.⁹⁸ However, he has stated if the problems of over-liquidity and capital flight are not corrected he will "take direct action."⁹⁹

There are several possible ways the PMA could intervene to respond to the problem of capital flight. The PMA could regulate loan to deposit ratios at a certain level as regards local lending. As stated previously, these ratios are currently much too low for many banks. However, such a regulatory intervention could have negative repercussions as it might force banks to take unsound risks.

Another response to capital flight is simply to restrict the export of currency. But such capital controls are easily avoided in the modern international economy as was amply demonstrated by Palestinian money changers during the occupation. Such

⁹⁸Interview with Fuad Beseiso, Oct. 24, 1995. Mr. Beseiso indicated that the PMA was well aware of the failure of many banks, especially foreign banks, to lend and of the level of their deposits, but was being patient for the time being.

controls can, however, discourage foreign investment unless evasion or exceptions impose only a minimum of burden.

A third possible course of action is to permit the export of currency, but to require banks to extend a certain percentage of loans within a defined geographic area which relates to where they collect deposits. Of course, requiring a certain percentage of total lending to be confined to one area is problematic in an industry which requires flexibility and sound lending policies. Therefore, more subjective criteria should be used by the PMA to encourage banks, especially foreign banks, to extend credit in the Palestinian territories.

In the United States, the Community Reinvestment Act¹⁰⁰ and the Home Mortgage Disclosure Act¹⁰¹ serve both to disseminate information and to encourage

⁹⁹*Id.*

¹⁰⁰12 USC 2901, 91 Stat. 1147 (1978) hereinafter "CRA."

¹⁰¹12 USC 2801, et seq (as amended), 89 Stat. 1125 (1975).

banks to extend credit within specific areas. These statutes function by a combination of supervisory and public pressure. Both statutes require banks to compile and make available statistics regarding their lending practices. Thus, banks are made vulnerable to public awareness of any failure to lend in the communities in which they collect deposits. With regard to the role of the supervisory authority the CRA simply states:

2903. Financial institutions; evaluation "In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall: (1) assess the institution's record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution, and; (2) take such record into account when considering an application to open a new deposit facility by such institution."

An application for a "deposit facility" is defined by the CRA to include a bank charter, deposit insurance, establishment of a branch, relocation of a home or branch office, or merger with or acquisition of another insured bank. Under the CRA, bank regulators develop their own guidelines to "encourage" financial institutions, through the examination process, to meet local credit needs. In the United States, these guidelines are intended to relate to the supply of credit in urban areas which are

experiencing decay or neglect. In the Palestinian territories, similar statutory guidelines could simply refer to the need to make local loans with local deposits as provided by reasonable legally required loan to deposit ratios.

Under the scheme described above, enforcement should follow examination. PMA examiners should prepare a report after they audit a bank regarding its lending practice. A copy should be given to the directors of the bank. The directors should be informed as to how their practice measures against acceptable standards, and made aware of the possible repercussions should they apply to the PMA for new licenses in the future.

Such a separate statute or, such language within the licensure provisions of the new Palestinian Banking Law, could prove a powerful but flexible tool which the PMA could use both to discourage capital flight and, if necessary, to control the expansion of the banking industry in the Palestinian territories. It could allow the PMA considerable discretion, while giving banks fair warning that their lending practices will be scrutinized, and possibly publicized. An unreasonable failure to extend credit locally

should result in later repercussions if a bank wishes to expand its presence in the Palestinian territories.

Nonetheless, it would be prudent to wait to see how the long term trends in lending by Palestinian and Jordanian banks develop before drawing conclusions with respect to regulatory intervention in lending policy.¹⁰² Whether or not Jordanian banks are in fact transferring some Palestinian deposits to Jordan, their presence is likely to be a boon to the Palestinian economy. As mentioned above, the Jordanian banks have a credible lender of last resort in the CBJ¹⁰³, are well capitalized, and have an international network for business, a modern infrastructure, and proven track records of sound

¹⁰²The PMA was rumored to have asked the CBJ to have the Jordanian branches place 40% of their deposits with the PNA as a reserve. See *The Jordan Times*, Oct 11, 1995. The rumor was inaccurate.

¹⁰³There have been at least two significant bank collapses in Jordan in recent years, the Petra Bank and the BCCI branches. While these may have been due in some part to supervisory oversights they were primarily due to the misfeasance of the banks themselves and not to the failure of the CBJ as a lender of last resort.

performance and quality service -- albeit below Israeli standards. Thus, it is probably unwise to restrict the activities of foreign banks for the time being.

3. Institutional changes to increase lending

Three categories of institutional changes exist which could increase lending without requiring any direct action by the PNA or the PMA. The first contemplates the emergence of savings and loan societies¹⁰⁴ in the Palestinian territories which may serve to more effectively pool community savings for investment (e.g., lending) purposes than banks. The Palestinian economy already contains various non-bank providers of financial services.¹⁰⁵ Thus, if banks continue to lend at insufficient rates, savings and

¹⁰⁴A savings and loan is a small society comprised of members who know one another. Peer pressure can often facilitate loan enforcement better in such circumstances.

¹⁰⁵The Palestinian territories contain credit associations which are funded primarily by a combination of capital contributions from members and grants from outside agencies. Also, moneychangers have played a vital role in the Palestinian economy since the days when there was only one non-Israeli bank in the Gaza Strip and another in the West Bank.

loans societies may emerge to fill the gap in the market while fitting into an existing framework of non-bank financial institutions in the Palestinian territories.

A second institutional change is for banks to initiate a practice of extending loans to more than two persons, with all agreeing to be responsible for any one member of the group who defaults. Such an arrangement should be more attractive to banks because the risk of default would be reduced. Similar arrangements are employed by World Bank small loan promotion programs in rural areas of the developing world.

A third institutional change is for insurance companies, pension funds, and other similar long term institutions to provide mechanisms for making more long term savings available to banks, enabling the extension of long term credit. At this time, most banks are only permitted by their licensing agreements to offer loans maturing within three years.¹⁰⁶ Bankers foresee a rapidly rising demand for long term finance associated with construction and purchases of capital machinery. The near absence of long term savings accounts temporarily precludes the extension of long term credit. As long term

¹⁰⁶Interview with Ghabeish, *supra* note 71.

institutions develop and provide sources of long term savings, banks should be permitted to extend credit beyond three year periods subject to strict supervision of the maturity structure of their assets and liabilities. PMA licensing policies should take this into account.

CONCLUSION AND MODEL STATUTORY ARTICLES

The foregoing recommendations are recapitulated below in the same order in which they appear in the main body of the Report along with model statutory provisions. The recommendations do not cover an entire statute since many features of banking law are standard and can be adopted directly from the current banking laws in force on the Palestinian territories with few changes. Additionally, several of the recommendations are not limited by the boundaries of a banking statute but may be enacted in the framework of another law. Accordingly, model statutory provisions are suggested in the form of model articles, rather than as one unified model banking statute.

Some of the model articles are recommended for inclusion in the "Palestinian Banking Law" which has been discussed throughout the Report. Other model articles may be considered for inclusion either in such a statute or in the PMA Law. Still other recommendations refer to the margins of banking law, e.g., to laws which indirectly have an impact on banking practice. Finally, some recommendations which have not been expressed in the form of model statutory articles are aimed at PMA regulations or policy decisions rather than statutes.

First, with regards to licensure, we recommend that "bank" and "banking business" be defined so as to clearly describe the business that a licensed bank may and may not undertake. This also serves to clarify which activities must be licensed. The relevant model article appears below:

Article (*Definition of bank and banking business*)

(1) A bank is a juridical person engaged in the business of accepting money deposits or other funds from the public and using these funds to extend credit on its own account.

(2) Unless expressly prohibited by the terms of its license, or pursuant to sanctions, a licensed bank may engage in the following activities:

- (a) Receiving deposits or extending credit in any form;
- (b) borrowing funds and buying and selling for its own account or for customer's accounts --
 - i. money market instruments such as checks, bills of exchange and certificates of deposit;
 - ii. futures and options relating to debt securities and interest rates;
 - iii. foreign exchange and interest rate instruments;
 - iv. debt securities;
- (c) providing payment and collection services;
- (d) issuing and administering means of payment, including payment cards, traveller's checks and banker's drafts;
- (e) money brokering, including foreign currency brokering;
- (f) financial leasing;
- (g) providing trust services;
- (h) providing credit reference services;
- (i) providing investment portfolio management and advisory services;
- (j) the underwriting and distribution of, and dealing in equity securities.

(3) These activities may be limited by the PMA depending on the size of authorized capital and the quality, size, and experience of the staff and management.

(4) Licensed banks are prohibited from engaging in the following business:

- (a) acting as an insurance principal;
- (b) commerce, trade or industry;
- (c) contributing to or buying shares of any commercial, industrial, agricultural or other enterprise for amounts aggregating more than 35% of its working capital and its reserves in the Palestinian territories, with the exception

of investments in local economic development institutions approved by the PMA and of investments resulting from the collection of its overdue debts, provided that these latter investments are disposed of within a period not to exceed two years.

(d) purchasing real property unless it is necessary for the administration of its business, or extending credit for real estate projects which exceeds 20% of total deposits.

(5) No person shall use the word "bank" or any derivative thereof in the exercise of a business, or in offering a product or service unless it is in the possession of a banking license issued by the PMA.

Second, we recommend that the law require that an application for a banking license be accompanied by information which will allow the PMA to assess the likely viability of the bank and the likely benefit of the bank to the Palestinian economy. The requirements for obtaining a banking license should be: 1) that those who propose to manage the bank possess sufficient banking expertise and good ethical character; 2) that those who would invest in the bank contribute capital sufficient to make it a viable institution; and 3) that the applicants convince the PMA that their bank will be beneficial to the economy in the Palestinian territories.

To enable the PMA to make a decision regarding licensure, applicants must submit documents providing sufficient information respecting the above three subjects. Furthermore, the PMA must have discretion to refuse applications on these grounds. The relevant model article appears below:

Article *(Information to be submitted with a license applications, and grounds for denial)*

- (1) A request for an authorization to open a bank shall contain the following:
- (a) The shareholders agreement to form a bank;
 - (b) the charter of the bank;
 - (c) the amount of authorized capital;
 - (d) the business plan of the bank, showing the economic viability of the bank, its management structure, its organizational, accounting and internal control systems, the operating procedures of the credit committee and the audit committee of the bank, its computerized data processing systems and the safety and back-up measures taken to protect the security, reliability and continuity of these systems, projected profit and loss accounts and balance sheets for the first three years of operation of the bank; and an explanation of the structure and governance structure of the corporate group of which the bank is to form a part;
 - (e) documentation of the nationality, identity, and past activities of each shareholder of the bank, as well as at least three references concerning the professional and personal reputation of each shareholder.
 - (f) documentation of the nationality, education, professional qualifications, detailed work experience, and professional and personal

reputation of each member of the supervisory council, the executive board, chief accountant or other significant managerial staff including at least three references, one from a prior employer.

(2) The PMA shall deny a request for a license which does not satisfactorily demonstrate the following:

(a) that the amount and/or composition of the authorized capital possessed by the bank meets the requirements set by the PMA;

(b) that the business plan of the bank shows that it should be profitable within a reasonable amount of time;

(c) that the bank is effectively managed by at least two persons of proven expertise;

(d) that the bank is effectively owned by more than one person;

(e) that the members of the supervisory council and managers meet requirements regarding their business expertise and personal integrity as follows:

i. have graduated from an institution of higher economic education;

ii. have not been responsible for the bankruptcy or failure of a business enterprise with which they were previously employed;

iii. have knowledge of banking law;

iv. have had at least three years experience in a responsible position in the financial sector;

v. are not involved in any other business activity outside the bank which might create a conflict of interest;

vi. are not on the basis of other information to be considered to threaten confidence in the bank or to be insufficiently trustworthy or competent to assume the intended position in the bank.

(3) The PMA is authorized to issue regulations regarding the minimum amount of authorized capital to obtain a license to open a bank, however, this amount should not be less than \$5 million (USD).

(4) Within 90 days of receiving the application for a license the PMA shall decide and inform the applicant in writing. If the decision is to deny the application, the PMA shall inform the applicant of the reasons and of his right to appeal the decision to the District Court within 30 days of the date of the written notice.

Third, the following article regarding economic needs could be preserved as a distinct article or incorporated in the foregoing article. It is provided separately to emphasize the permissiveness of this criterion as opposed to the mandatory and more specific nature of the foregoing requirements:

Article (*Economic needs as a grounds for denial*)

(1) Before granting a license for a new bank or a permit for a new branch the PMA may require an applicant to furnish information regarding the needs of the Palestinian territories for banking services, and the public interests which would justify opening the new bank.

(2) If the PMA is not satisfied that the operation of the new bank or branch is justified by the needs of the Palestinian territories for banking services, it may refuse to grant the license.

(3) If the PMA does decide to deny an application for a license, it must provide the reasons for its decision and inform the applicant of his right to appeal to the District Court within 30 days of the date of the written notice.

Fourth, while branch banks have been required to obtain permits in order to open, the considerations are not as broad as when a new bank applies to open. The PMA should require branch banks to obtain permits, and duly consider the economic needs of the Palestinian territories when deciding whether or not to permit a new branch to open.

Requirements for foreign bank branches and subsidiaries should not vary significantly from those for domestic banks at this time. However, since foreign banks are new to the Palestinian territories, the PMA should obtain the same full range of information about them as it does from an applicant to open a new domestic bank. It should also possess discretion to vary the requirements from foreign to domestic banks if it so chooses. Given the different position from which such banks approach opening a bank in the Palestinian territories, it should be possible to ascertain their soundness and likely benefit to the local economy by considering the following information:

Article *(Foreign branches and subsidiaries)*

(1) If a foreign bank wishes to open a branch in the Palestinian territories its request for a license to do so from the PMA should be accompanied by the following in addition to the requirements for branch bank permits:

- (a) written permission of the parent bank's home state banking supervisory authority to open a branch in the Palestinian territories, or an authoritative statement that such permission is not required;
- (b) written confirmation that the foreign bank has a valid license in its home state;
- (c) written confirmation that the foreign bank is subject to supervision by the home state authority;
- (d) such other information as the PMA may require.

(2) If a foreign bank applies to take majority participation in the foundation of a subsidiary bank in the Palestinian territories it must submit the following in addition to the information required for opening a new bank:

- (a) written permission of the bank's home state banking supervision authority to take majority participation in such a bank, or an authoritative statement that such permission is unnecessary;
- (b) documentation of the good standing of the bank in the markets of its home state;
- (c) documentation showing the identity of the management and the shareholders;
- (d) such other information as the PMA may require.

Fifth, proper supervision requires the authority to impose prudential criteria upon banks and to enforce them by auditing. Adequate supervision, however, cannot simply

be driven by firm statutory provisions enacted by the Palestinian Council. Rather, the ability to flexibly develop and execute supervisory powers must be left to the PMA.

For the above reasons, the PMA should not be unduly taxed by statutory numerical requirements. Instead, the statute should empower the PMA to flexibly interpret broadly drawn prudential criteria. The PMA should be required to issue regulations periodically providing the current interpretation of statutory guidelines regarding such prudential criteria. The relevant model article appears below:

Article (*Supervision*)

(1) The PMA is authorized to issue all regulations, guidelines and instructions as shall be necessary for the prudential supervision of banks and to visit any bank and inspect its accounts to obtain necessary information, and shall maintain written explanation of the criteria it employs to evaluate the sound condition of the banks such as capital adequacy, liquidity, risk concentration, foreign exchange standards, internal administrative accounting standards, control systems, credit exposure limits, and such other measures as the PMA finds appropriate.

(2) If a bank fails to comply with sound prudential criteria, it may be subject to sanctions. The PMA shall send a written warning to a bank persisting in unsound practices and may proceed after 14 days to restrict the services the bank may offer, prohibit certain activities, levy fines,

prevent the paying of dividends, compel the suspension or firing of employees, appoint an administrator or revoke the bank's license.

(3) Information gathered by the PMA from banks is confidential and shall not be made public, except as necessary to comply with cooperative supervision arrangements with foreign bank supervision authorities, to effect policy directed at encouraging banks to invest in the Palestinian territories as provided by law, or upon the order of a court finding it to be in the public interest to do so.

The enforcement provision in the above article complies with our recommendation in that it does not set amounts of fines, but leaves this to the PMA's discretion. Nonetheless, the progressive nature of the sanctions is clear, as is the necessity of an initial warning, and an opportunity to correct the objectionable practice or appeal.

Sixth, foreign banks require special statutory treatment regarding supervision due to the need to cooperate with the supervisory authority in the foreign bank's home state. Foreign banks presently predominate in the Palestinian territories. Despite the fact that these banks are supervised by their respective home authorities, the PMA should exercise some supervisory responsibility and authority over branches of foreign banks

operating in the Palestinian territories. The statute should define this authority consistently with the Basle Concordat. The relevant article appears below:

Article (*Supervision of foreign banks*)

(1) The PMA shall exchange its examination reports of foreign bank branches and subsidiaries with the home country's supervisory authority.

(2) The PMA shall supervise the solvency of foreign subsidiaries jointly with the home authority.

(3) The PMA shall supervise the liquidity of foreign branches and subsidiaries, but shall allow for the concerns of the home authority in doing so.

(4) The PMA shall supervise the foreign exchange practices of foreign branches and subsidiaries jointly with the home authority.

Seventh, prudential requirements should be established by regulation, not by statute. Liquidity requirements, which were formally set by the 1966 Jordanian Banking Law, and are addressed by the Paris Accord, must be flexible. Different rates should be set for dinars, shekels, and dollars. The capital assets ratios should conform to the

internationally accepted weighted capital adequacy ratio scheme and reserve requirements should mirror those in Israel and Jordan for their respective currencies.¹⁰⁷

¹⁰⁷Currently, the PMA intends to regulate a 14% compulsory reserve requirement for deposits in Jordanian dinars, 10% for Israeli shekels, and 8% for dollar deposits. Interview with Beseiso, *supra* note 84.

Eighth, the problem of risk concentration, especially with regards to small, closely held banks, may be addressed by provisions prohibiting related parties from borrowing at rates lower than those charged to similar non related parties and lending more than 25% of a bank's capital to an individual client. These provisions could be included in the article of the new Palestinian Banking Law which describes the activities in which banks are permitted or prohibited from engaging. They could also be placed in a separate section of the Palestinian Banking Law for prohibited activities (as was done in the Jordanian Banking Law of 1966) as follows:

Article (*Risk concentration*)

(1) A licensed bank may not lend money to a member of the Board of Directors, employee or other related party on terms more favorable than those extended to other non-related parties, and loans to such parties should not exceed 15% of capital and reserves.

(2) A licensed bank may not lend more than 25% of its capital to a single client.

Ninth, the PMA must monitor and encourage the development of effective and fair systems of payments among banks which both meet the economic needs of the Palestinian territories and are sound banking practice. Banking laws throughout the world do not codify how supervisory authorities should execute this responsibility, as flexibility is imperative. It is thus sufficient for the new Palestinian Banking Law to simply grant the PMA responsibility for overseeing systems of payments. The relevant model statutory article is provided below:

Article (*System of payments*)

(1) The PMA shall be responsible for overseeing the development and maintenance of fair and efficient systems of payments which serve the needs of the Palestinian economy, and shall encourage the operation of a banking association which sets minimum standards for banks operating in the Palestinian territories regarding systems of payments.

Tenth, the clearing systems for checks which are currently used, involving correspondent banks in Israel for shekel denominated transactions, and bilateral accounts among Palestinian and Jordanian banks for dinar transactions, are effective. With regard to the former, correspondent bank relationships should be preserved. With

regard to the latter, it appears to be advisable for one bank with sufficient resources, such as the Arab Bank, to establish a central clearing house for the Palestinian territories as more banks begin to do business. The PMA can ensure the effective maintenance of these system by regulation and the threat of regulation. Repercussions for bouncing checks, however, may be provided by statute. The relevant model statutory article appears below:

Article (*Dishonored checks*)

(1) If more than five checks from an account are dishonored within one year, the account may be restricted by the bank in question.

(2) The PMA shall encourage the establishment and distribution among banks of a list of persons proscribed from maintaining checking accounts as a penalty for habitual offenders.

Eleventh, it is advisable to foster the formation of a Banking Association among the banks operating in the Palestinian territories. Such an association would develop systems of payments for its members. The PMA should encourage the formation of a Palestinian Banking Association by quietly indicating that it favors the creation of such a body and that in its absence the PMA will be forced to interfere and regulate.

Twelfth, the area of international transfers of funds is also effected by correspondent bank relationships. It is unwise to attempt to legislate or regulate the foundation of such relationships, which are best left to the banks to establish by agreement. No limits should be placed on the amounts of funds that can be transferred. All MO's which regulate correspondent bank relationships or limit transfers should be repealed.

Thirteenth, a new Palestinian Collateral Lending Law should be enacted. It should take the form of a separate law as lending practice is not usually governed by a banking statute. The two aspects of lending for which recommendations were made in this Report were: (1) collateral security; and (2) capital flight. With regards to collateral security, the new Palestinian Collateral Lending Law should be based on a reformation of the Jordanian Collateral Lending Law of 1953. The following model provisions are not intended to be a complete model collateral lending statute, but only to consider those matters addressed in the Report. The relevant model article appears below:

Article (*Collateral Lending*)

(1) Real or personal property, or other pecuniary interests may be used as collateral to secure credit by their full or partial owners. The debtor may again use such property as collateral.

(2) If real or immovable property is used as collateral security for a loan, the parties to the contract shall prepare a certificate stating whether or not the property is leased, the period of the loan, and the amount of the loan. This certificate should be filed at the Land Registration Department until the debt is discharged and the security interest no longer has effect. The Land Registration Department should maintain such records for public inspection.

(3) If the period of the loan runs without the debt being paid, or if the debtor defaults, the creditor may take action to foreclose upon the property used as collateral security. A creditor must take the following steps in order to foreclose:

(a) Once the debtor defaults, the creditor must send him written notice to the address last provided by the debtor. The notice must inform the debtor of the following:

- i. The amount currently due under the contract with interest;
- ii. That if the debtor pays the amount due with interest making him current on the contract within 30 days of the date of the notice he may redeem the loan;
- iii. That if the debtor fails to make himself current on the loan, after 30 days the creditor may proceed to foreclose upon the property.

(b) If the debtor pays the amount, with interest, making him current on the loan within 30 days of the date of the creditor's notice, the contract

shall proceed as agreed. If he fails to do so, the creditor may proceed to foreclose as follows:

- i. To file an action in the District Court which has jurisdiction over the property stating that the debtor is in default, that the loan is secured by collateral, and identifying the collateral;
- ii. After the time for response in civil actions has run, the creditor may ask the court for an order permitting him to sell the property at auction to the highest bidder;
- iii. Upon obtaining such an order the creditor must publish notice in the newspaper of record stating his intent to sell the property at a designated location and time which shall be no less than 60 days from the date on which the creditor filed the action.

(c) The District Court may impose a settlement upon the parties if it is convinced that:

- i. the debtor has a good chance to pay off the debt if he is given time;
- ii. sale of the property will cause the debtor undue hardship and deprive him of basic needs.

The above provisions are intended to afford debtors generous due process and opportunities to redeem the loan if they default. This, in turn, is calculated to reduce societal resistance to foreclosure on property and thus make collateral lending more attractive to banks.

Fourteenth, a question exists as to whether or not the low loan to deposit ratios in the Palestinian territories are symptomatic of banks taking deposits from residents and making loans abroad. The evidence available to us is not dispositive. Nonetheless, we recommend giving the PMA the power to cope with this problem should it become convinced that it is necessary to do so. Accordingly, we recommend incorporation of the following article into the new Palestinian Banking Statute:

Article: (*Capital Flight*)

(1) The purpose of this article is to facilitate the extension of credit to residents of the Palestinian territories for the improvement of the local economy.

(2) The PMA may examine banks to determine whether or not Palestinian deposits are being used in sufficient quantities to extend credit to residents of the Palestinian territories. When the PMA conducts an examination of a financial institution it shall:

(a) Assess the institution's record of meeting the credit needs of the Palestinian territories, consistent with the safe and sound operation of such institution; and

(b) take such record into account in its evaluation of an application to open a deposit facility by such institution;

(c) For purposes of this article, an application to open a deposit facility shall include any application in connection with:

i. A license for a new or subsidiary bank or savings and loan institution;

- ii. The establishment of a branch or other facility with ability to accept deposits;
- iii. The relocation of the home office or a branch office of a regulated financial institution;
- iv. The merger or consolidation with, or the acquisition of the assets of, or any other manner of acquisition of a bank or financial institution.

(3) Financial institutions shall keep records regarding the loans issued to the bank, and shall prepare reports semi-annually for the perusal of banking inspectors regarding the number of loans, their amounts, to whom they were issued and for what purpose with the purpose of demonstrating compliance with the purposes of this article.

The thrust of the foregoing article is that the PMA shall monitor the banks to see whether or not they are, in fact, facilitating capital flight and shall take the bank's record into consideration when deciding on license or permit applications. It should, perhaps, be included as part of the statutory section on licensing.

The Palestinian banking sector has expanded at a startling rate. Its full impact on Palestinian society has yet to be felt and is difficult to gauge. The PMA is scarcely a year old, and its future performance is impossible to predict. Other political and economic factors could determine the fate of the system as well. The suggestions we

have made are subject to these uncertainties, but we have made the best use of the information and expertise at our disposal to develop them. It is our hope that our work will prove useful to those who are charged with implementing banking law reform in the Palestinian territories, as well as those who wish to know more about the Palestinian banking system, for reasons of business, academic, or general interest. We especially hope it will prove useful to those who, as we do, hope for prosperity and peace in this region.

APPENDIX OF LAWS

The following appendix of laws is divided into West Bank, Gaza Strip and PNA era (universal) sections. Each section is presented in roughly chronological order. The Gaza Strip section is less inclusive, which reflects the balance of materials discussed in the foregoing paper. There have been some omissions of materials discussed due to the unavailability of complete drafts.

West Bank Laws

Jordanian Temporary Banking Law No. 94 of 1966

Chapter One

Definitions

Article 1

This law is called the Temporary Banking Law of 1966, it becomes valid after being published in the official gazette.

Article 2

In this law the following words and terms will have the following meanings unless the context otherwise requires:

"Kingdom" - the Jordanian Hashemite Kingdom;

"Central Bank" - the Central Bank of Jordan;

"company" - any public company, limited by shares, permitted to do business according to the company law in effect in the Kingdom;

"licensed bank" - the company licensed to conduct banking transactions according to this law;

"an individual" - an individual or a legal personality;

"marketable currency" - any currency that can be traded in the international currency market or transferred freely at prices that are in accordance with the agreement of the International Money Fund;

"foreign currency" - any currency other than Jordanian currency or any debt, balance, or deposit in any currency that is not Jordanian;

"banking procedures" - receiving money for checking accounts or fixed term accounts; opening checking accounts; opening credit accounts; issuing letters of guarantee; payment and collection of checks; instructions and payment orders for notes and securities; deduction of bills, notes and other marketable securities; trading in foreign currency and other banking transactions;

Chapter Two

Licensing Banks

Article 3

- a. An individual may not conduct banking transactions unless it is a licensed bank.
- b. The Central Bank will issue licenses according to the provisions of this law.
- c. A license will be issued to a company only.

- d. Bankers that were previously permitted to conduct banking transactions will be considered licensed banks and will be issued new licenses accordingly.

Article 4

- a. Any company interested in conducting banking transactions in the Kingdom must first submit a request for a license to the Central Bank.
- b. Any group of persons interested in establishing a company for conducting banking transactions, must first send a written request to the Central Bank, according to the Company Law. If the Central Bank approves and the company is established, the license will be issued accordingly.
- c. While in the process of issuing the license the Central Bank may ask for information relating to the financial status of the company, its capital, its expected profits, its administration and the necessity for its services in the country.

Article 5

- a. The capital of a licensed bank operating in the Kingdom must not at any time be less than 250,000 J.D or the equivalent in another currency.
- b. Any foreign company authorized to operate as a bank in the Kingdom must transfer a one time payment of not less than 250,000 J.D. before conducting banking transactions; the company must constantly hold assets exceeding its obligations in the Kingdom at an amount not less than 250,000 J.D.

Article 6

If the licensed bank did not conduct banking transactions for a period exceeding six months from the time the license was issued, the Central Bank must cancel the bank's license.

Article 7

- a. If the licensed bank did not abide by the laws that the Central Bank was appointed to enforce or provisions, instructions, and orders enacted by these laws, the Central Bank must cancel the bank's license.
- b. If the Central Bank decides to cancel a bank's license, it must notify the bank at least 30 days before the decision enters into effect.

- c. The licensed bank may appeal a decision given according to subsection (b) before the Council of Ministers within the aforesaid 30 day period. The council must decide within 30 days from the submission of the appeal. The decision will then become final.

Article 8

After this law enters into effect no one may use the word "bank" or a word having the same meaning in Arabic or in another language or any expression having to do with banking transactions in their papers or private documents unless it is a licensed bank.

Article 9

- a. A licensed bank may not open a branch office in any city in the Kingdom nor can it transfer a branch from one city to another inside the Kingdom without permission from the Central Bank.
- b. Before granting a permit according to subsection (a) above, the Central Bank must order the licensed bank to submit information regarding the necessity of opening a new branch or changing the location of an existing one.

- c. A licensed bank may not discontinue its business in the Kingdom before getting a written permit from the Central Bank, which will determine the manner of discontinuation and its conditions.

Article 10

- a. A licensed bank, as a Jordanian company, may not open new branches outside the Kingdom, or transfer an existing branch from this country to another before obtaining a permit from the Central Bank. The Central Bank may determine conditions for the granting of the permit.
- b. A licensed bank may not merge with another licensed bank before obtaining a written permit from the Central Bank.
- c. A licensed bank in the Kingdom may not amend its acts or its articles of association or memorandum of association without a written permit from the Central Bank.
- d. If the Central Bank refuses to approve any request submitted according to this article, the licensed bank may appeal the decision before the Council of Ministers within 30 days of receiving notice of the refusal. The decision

of the Council of Ministers is final and will be given within 30 days of the submission of the appeal.

Chapter Three

Prohibited Actions

Article 11

- a. A licensed bank may not grant any client credit or guarantees exceeding twenty five percent of the bank's paid capital or its reserve, unless it has the consent of the Central Bank.

This provision will not apply to banks' transactions amongst themselves or to credit that was given in consideration of a promissory note, guarantees or securities payable in foreign currency.

- b. A licensed bank may not grant credit facilities to a customer using the customer's shares in the bank as guarantee/security.

- c. A licensed bank may not grant credit exceeding the amount of one thousand J.D. to a member of the board of directors without guarantees/security, or to a clerk or an employee of the bank in an amount exceeding his yearly salary, without the approval of the Central Bank.
- d. A licensed bank may not deal alone or with others, on its account or for commission, in wholesale or retail trade; this includes export and import, or dealings for the purpose of collecting debts that have become due.
- e. A licensed bank may not participate in any commercial, agricultural, or industrial enterprise or in any other enterprise or purchase shares in such an enterprise exceeding the amount of twenty five percent of its paid capital including the declared reserve and not including investments in local economic development enterprises which the Central Bank approved and participation resulting from the collection of a due debt, and in such a case the bank must try to end the participation as soon as possible.
- f. A licensed bank may not purchase real property unless it is necessary for the administration of its business or for the residence of its employees and their servants. This does not prevent the bank from leasing part of its

property which is used for banking operations, as long as it gets the consent of the Central Bank. In addition this does not prevent the bank from purchasing real property in consideration of a due debt, as long as the bank gets rid of the property as soon as possible.

- g. A licensed bank may not grant loans or advances secured by real property exceeding 40% of its deposits unless the bank specialized in mortgage loans and had the consent of the Central Bank. Any loan or advance will be deemed to be secured partially or fully by real property. For the purposes of this section; a loan or advance secured by a building.
- h. A licensed bank may not hold foreign currency except in the bounds and according to the ratio and the conditions the Central Bank will determine from time to time.

Article 12

Any licensed bank that finds a deviation of the provisions of section 11 during its normal activities must report it to the Central Bank within 3 months of this law coming into effect, and the bank must correct these deviations within the period of time determined by the Central Bank.

Chapter Four

Reserve, Profit and Balance

Article 13

Every licensed bank must deduct 10% of its profit every year for its reserve fund account until the general reserve will be equal to the paid capital of the bank. This deduction comes instead of the deduction mentioned in the Company Law in effect in the Kingdom.

Article 14

A licensed bank may not distribute dividends to its shareholders before deducting all the foundation expenses or any type of loss or expense that are not balanced by assets. The Central Bank may approve the deduction of expenses and losses over a number of years.

Article 15

Every licensed bank must:

- a. immediately hang up in a conspicuous place in its offices and its branches its last yearly balance, approved by an accountant. It must include a list of the members of the board of directors. The balance must also be published in a local daily newspaper.
- b. deliver to the Central Bank, within 3 months of the end of the bank's fiscal year, a copy of its yearly balance and an account of profits and losses for that year, approved by an accountant.

Chapter Five

The Minimum Rate of Liquid Assets

Article 17

- a. Every licensed bank in the Kingdom must hold the minimum rate of liquid assets of the following kind as determined by the Central Bank:
 1. Jordanian bills and coins,

2. balances in the Central Bank,
 3. balances in other licensed banks,
 4. balances in foreign currency in foreign banks,
 5. bonds issued by the government or guaranteed by the government which will become payable within a period not exceeding 3 months,
 6. foreign bonds which can be traded in the stock market and are issued in marketable currency and which will become payable in a period not exceeding three months.
- b. The minimum rate for these liquid assets shall be a percentage of the amounts in the checking accounts and the fixed term accounts, including savings accounts, as long as the percentage will not be less than 25% and not more than 35%.
- c. The Central Bank will determine how the liquid assets shall be calculated for the purposes of this section. Every licensed bank shall adjust its situation according to the provisions of this section within six months of this law coming into effect.

- d. The Central Bank may impose a fine on a bank that does not hold the minimum rate of liquid assets. The fine will not exceed 365/10 of the deficit for every day that the deficit continues.

Chapter six

Information about Licensed Banks

Article 18

Every licensed bank must present the Central Bank with a periodic report upon request, for the purpose of performing its responsibilities, at the time and in the manner that the Central Bank determines. The Central Bank may request additional information if it believes it is necessary for clarifying the information given in the periodic report. The licensed bank shall present it at the times determined.

Article 19

The Central Bank will publish all or part of the information supplied by the licensed banks on the dates that it determines, as long as the publication

will not divulge a licensed bank's business, unless the Central Bank received the written permission of the licensed bank.

Chapter Seven

Supervision of Licensed Banks

Article 20

- a. The Central Bank, as it deems necessary, will appoint one or more clerks, who specialize in reviewing banks, for the purpose of reviewing the books, the bills, and other documents of a certain licensed bank. The management of the licensed bank and all of its clerks must present the Central Bank's clerks with all the necessary books, bills and documents and must help to facilitate the reviewing.
- b. Any information brought to the knowledge of the clerks of the Central Bank while conducting the review of the licensed bank is considered secret.

- c. If the Central Bank concludes that the licensed bank is conducting business in a way that is harmful to its client's or to itself, it must notify the bank and demand the licensed bank's written opinion on the reviewer's remarks.
- d. The Central Bank must instruct the licensed bank to discontinue the harmful practices and methods and to correct the situations that consequently arose.
- e. If the licensed bank violates the instructions given to it according to this section, the Central Bank must cancel its license.

Chapter Eight

External Supervision of Licensed Banks

Article 21

Every licensed bank must appoint an accountant every year, as long as the accountant is not a manager, a clerk, an agent or a benefiter of the

licensed bank. If the accountant has deposited money in the licensed bank or bought less than 5% of its stock, he is not considered a benefiter.

Article 22

A copy of the accountant's report will be sent to the Central Bank within 4 months of the end of the fiscal year. The Central Bank may demand additional information about the licensed bank from the accountant who checked its accounts, as long as the Central Bank notifies the licensed bank that it is doing so.

Article 23

If the licensed bank delayed appointing an accountant, an accountant will be appointed by the Central Bank. The Central Bank will determine the accountant's salary and the licensed bank must pay it.

Chapter Nine

Different Stipulations

Article 24

- a. If the licensed bank ceased from conducting business for any reason, or a licensed authority decided that it must cease from conducting business, the Central Bank must immediately take the management of the bank into its hands, and supervise the safeguarding of its assets and certificates, in a way that it seems fit in order to protect the depositors' interests.
- b. If the licensed bank was a foreign company it shall not, and its branch or branches operating inside the Kingdom shall not, do as they please with the licensed bank's assets or transfer part of the assets abroad before paying all due debts in Jordan.
- c. If a decision was made to liquidate a licensed bank, the Central Bank will be given all the authorities of a liquidator according to this law.

Article 25

The Central Bank can cancel the license of any bank operating in the Kingdom in the following cases:

- a. at the request of the bank itself;
- b. if the bank was declared bankrupt, or if a decision was made to liquidate it;
- d. if the bank merged with another bank;
- e. If the bank continues to violate this law in a way that threatens the depositors' interests.

Article 26

- a. A member of the board of directors, a general manager, a manager, or any clerk of a licensed bank will lose his job if he is found guilty by any court of a felony or a misdemeanor, of a moral crime, or a theft, of embezzlement, forgery, falsehood, bribery, or abuse of confidence, or if he was declared bankrupt, or made a deal with his creditors.
- b. If a licensed bank was given a liquidating order by a court or its license was canceled, a member of the board of directors or a manager of that bank may not work in another licensed bank without the approval of the Central Bank.

Article 27

The board of directors of a licensed bank, its general director, or any of its directors must:

- a. take the necessary steps to ensure the performance of this law or any other effective law relating to the operating of a licensed bank;
- b. take the necessary steps to ensure that the information presented to the Central Bank, according to the provisions of this law or any effective law relating to the operating of a licensed bank, is correct and exact.

Article 28

The Board of Directors of the Central Bank will punish any licensed bank that violates the provisions of this law, and will impose the following fines:

- a. for a violation of sections 3, 7, 8, 9, 10, 11, 13, 15a, 18 and 25 - a fine of 100 J.D. for each day the violation continues;
- b. for a violation of sections 14, 15b, 18, 26 and 27 - a fine of not less than 50 J.D. and not more than 500 J.D.;

- c. for a violation of sections 20, 21 and 22 - a fine not less than 10 J.D. and not more than 100 J.D.
- d. The Central Bank must notify the licensed bank of the violation before imposing the fine mentioned in this section, and if the licensed bank does not correct the defect within the period of time that the Central Bank determined, the fine will be imposed.

Article 29

The fine must be paid within a period of 30 days from the day the fine was imposed. The fines will be deposited in the government's account and will be collected according to the Emirate Tax Collection Provisions.

Article 30

The Council of Ministers in cooperation with the Central Bank must enact regulations necessary for the performance of this law, in particular regulations allowing the attainment of information from the companies and institutions receiving deposits or granting credit facilities and allowing supervision over their ledgers and bills.

Article 31

- a. All the branches and the offices of any licensed bank will be considered one bank for the purposes of this law.
- b. The Central Bank must enact special provisions for the performance of this law.

Article 32

- a. The Law of Supervision of Banking 1959 is canceled.
- b. All provisions of other laws dealing with licensed banks that contradict these provisions are canceled.
- c. All the regulations, provisions, orders and decisions that were issued according to the Law of Supervision of Banking will be deemed to be enacted according to the provisions of this law until they are amended, exchanged or canceled.

Article 33

The Prime Minister and the ministers are responsible for the performance of the provisions of this law.

Order Regarding the Prohibition of Trade and Monetary Transactions (Banks)
(The West Bank Area) (No. 7) 1967

Whereas I believe that it is necessary for proper administration and public order, I hereby instruct the following:

Closing the Banks

1. All the banks and the credit institutions in the West Bank will be closed until another order is given regarding this matter.

1A. Permitting the Opening of Banks

If an order was given permitting the opening of a bank or credit institution, the provisions of this order will not apply to that bank or credit institution from the date the opening was permitted and they will not apply subject to any condition or exception determined in an order given according to section 1 of this order.

2. **Freezing Transactions**

All banks and credit institutions are hereby prohibited from executing business transactions of any kind.

3. **Relations with Banks Outside the Area**

All banks and credit institutions are hereby prohibited from acting, having relations and negotiating with banks or correspondents of any bank or any branch outside the area.

4. **Penalties**

Anyone who does not abide by the provisions of this order is liable to 15 years imprisonment or a fine of 10,000 Israeli Lira or both punishments combined.

4A. **Cancellation of Laws**

In order to remove doubt, it is hereby determined that any general provision that is not a provision of military legislation, that orders the closing of banks in the Area or prohibits their activity or the execution of banking transactions in the area is canceled, unless I renewed its validity.

Order Regarding the Prohibition of Trade and Monetary Transactions (Banks) (The West Bank Area) (No. 7) 1967

By the power vested in me as Commander of the Area and according to section 1 of the Order Regarding the Prohibition of Trade and Monetary Transactions (Banks) (The West Bank Area) (No. 7) 1967 I hereby determine that the said order will not apply to the "Ottoman Bank" beginning from 11/6/68.

Order Regarding Delivering Reports and Freezing Accounts (Banks) (The West Bank Area) (No.9) 1967

Whereas I believe that it is necessary for proper administration, I, General Haim Hertzog, commander of IDF forces in the West Bank Area, hereby order the following:

1. **Definitions**

In this order -

"supervisor" - any IDF officer and other person whom I authorized to be a supervisor for the purposes of this order;

"employee" - including any employee who has knowledge of a transaction;

2. **Entering and Demanding Reports**

A supervisor may enter a bank or credit institution and demand reports from any employee about any transaction that is within the employee's control, possession or knowledge.

3. **Freezing and Seizing Accounts**

- a) A supervisor may order, in writing, to freeze an account in any bank or credit institution, if he believes it is necessary for one of the purposes mentioned in this order.
- b) A supervisor may take any measure that is needed for the realization of a request given according to subsection a of this order.
- c) A supervisor may seize accounting books, lists and other documents if he believes it is necessary for one of the purposes mentioned in this order.

4. **Penalties**

Anyone who disturbs the supervisor from doing his job or who refuses to act according to the provisions of this order or disobeys them is liable to 3 years imprisonment or a fine of 1,000 Israeli Lira or both punishments combined.

Order Regarding the Law of Banks (The West Bank Area) (No. 45) 1967

By the power vested in me as commander of IDF forces in the West Bank Area, I hereby order:

1. **Definitions**

In this order -

"**The Law of Banks**" - The Law of Banks No.94 of 1966 as was in effect on 7/7/67;

"**The Law of Corporations**" -The Law of Corporations No. 12 of 1964 as was in effect on 7/7/67;

"**the Area**" - the West Bank Area;

"the supervisor of banks" - who was appointed by me for the purposes of this order;

"the Jordanian Government" - The government of the Jordanian Hashemite Kingdom;

"an individual" - including a corporation and an unincorporated group of people;

"the Central Bank" - as defined in the Central Banking Law No. 93 1966 as was in effect on 7/7/67;

2. **Authorities of the Supervisor of Banks**

Any appointment and any authority given according to the Law of Banks or by its virtue to the Jordanian Government or to the Central Bank or one of their authorities, or to any person, will be handed over to the supervisor of banks.

3. **Cancellation of Authorities**

Any appointment and any authority given according to the Law of Banks before 7/7/67 are hereby canceled, but the supervisor of banks may revalidate any appointment or authority.

Order Regarding Determining Israeli Currency as Legal Tender (The West Bank Area) (No. 76) 1967

Whereas I consider it necessary for the maintenance of proper administration I hereby order the following:

1. **Definitions**

in this order -

"bank" - including a branch of a bank in the area or a monetary institution or a branch of one in the area;

"Dinar" - the currency that was used in the area on June 7, 1967;

"the Area" - the West Bank area;

"the Bank of Israel Law" - Bank of Israel Law 1954;

"Israeli currency" - money bills or change that are legal tender in Israel;

"the supervisor of banks" - as defined in the Order Regarding The Law of Banks (Judea and Samaria) (No. 45) 1967;

"licensed authority" - appointed by the Commander of the Area to be the licensed authority for the purposes of this order;

2. **Determining Israeli Currency as Legal Tender**

- a) The offering of Israeli currency is legal tender in the area, according to its face value, subject to that which is stated in this order.
- b) That which is stated in subsection (a) will not effect the validity of a condition in a loan contract, between a borrower and a bank authorized to give loans in Dinars, according to which the borrower must repay in Dinars a loan given in Dinars.

3. **Preserving the Validity of the Dinar**

In order to remove doubt it is determined that this order does not cancel the Dinar as legal tender in the area.

4. **The value of the Dinar**

- a) The value of the Dinar in relation to the New Israeli Shekel will be determined from time to time according to the value of the Dinar in the international market. A bank is permitted to buy and sell Dinars and to execute other banking transactions according to a value different from the value determined by the licensed authority, if the supervisor of banks permitted the bank to do so.

- b) The licensed authority shall deliver a notice regarding the value of the dinar to the authorized merchant banks, when the value is determined from time to time by the authority.

5. ***Canceled***

5A. **Amendment**

- a) The licensed authority may determine that beginning from a certain date, the offering of old money bills will not be legal tender in the area, either generally or for a certain interest or purpose.

- b) in this section -

"**the licensed authority**" - as defined in The Order Regarding Supervision of Currency, Securities, and Gold (Judea and Samaria) (No. 299) 1969;

"**old money bill**" - money bill of the kind that will be determined by the licensed authority;

6. **Cancellation**

The order regarding the value of the dinar (the West Bank area) (No. 20) 1967 is canceled.

7. **Entering into Effect**

This order enters into effect on August 4, 1967.

8. **Name**

This order will be called "Order Regarding Israeli Currency as Legal Tender" (the West Bank area) (No. 76) 1967

Order Regarding Israeli Currency as Legal Tender (Additional Provisions) (The West Bank area) (No. 83) 1967

Whereas I consider it necessary for the maintenance of proper administration I hereby order the following:

1. **Definitions**

a) in this order -

"**an individual**" - including a group of people incorporated or unincorporated;

"**legislation**" - laws, regulations, orders, and notices or provisions that are given according to them;

"obligation" - obligation in writing, oral, according to legislation or court decision;

- b) Any term in this order has the meaning it has in the Order Regarding Determining Israeli Currency as Legal Tender (The West Bank Area) (No. 76) 1967 (hereinafter - "the main order")

2. **Obligation Made in Legal Tender**

An obligation that was made in Dinars before this order was in effect will be seen as if it was made in any currency that is legal tender in the area, with the necessary changes according to the circumstances.

3. **Offenses**

The punishment of any one who refuses to accept currency that is legal tender according to its face value at the exchange rate that was determined is five years imprisonment or a 5,000 Lira fine or both punishments together.

4. **Entering into Effect**

This order enters into effect on August 6, 1967.

5. **Name**

This order will be called "Order Regarding Israeli Currency - Additional Provisions (West Bank Area) (No. 83) 1967.

Order Concerning Bank Laws January 1969 (Amendment to 45) MO 296

Certain articles of the Central Bank Law 93 for 1966 do not apply to those banks which have permits unless otherwise stipulated by the inspector of banks.

Regulations of Control/Supervision of Currency (Financing of Import) (Judea and Samaria) 1989

By the power invested in me by section 12 of the Order regarding the Control/Supervision of Currency (Judea and Samaria) (No. 952) 1981 I hereby issue these regulations:

1. **Definitions**

in these regulations -

"importer" - a resident of the area who imports goods according to section 13 of the Permit of Control/Supervision of currency 1981

"import list" - list of imported goods and imported commercial goods for use in the area, that is submitted by a person who is authorized according to the Order regarding Customs Authority (Judea and Samaria) (No. 309) 1969 for the purpose of releasing goods for use in the area

2. **Reporting on the Import List**

an importer will report on the import list the specifics of the financing of the import as the supervisor of foreign currency will determine.

3. **Entering into Effect**

These regulations will enter into effect on the day they are signed.

4. **Name**

These regulations will be called the Regulations of Control/Supervision of Currency (Financing of Import) (Judea and Samaria) 1989

Order regarding Control/Supervision of Currency (Judea and Samaria) (No. 952)

1981

1. Definitions

In this order

"other occupied area" - area occupied by the IDF that is not "the Area"

"permit" - permit given according to section 9

"gold" - gold coins, gold bars, or certificates giving the right to gold coins or bars

"bank" - as defined in section 4 of The Order regarding The Law of Banks (Judea and Samaria) (No. 45) 1967

"foreign currency" - any currency that is legal in any country and is not Israeli currency, Jordanian dinar, the right to such currency or gold

"securities" - certificate giving title in a corporation, certificate giving right to sue a corporation, obligation to make payment that was issued by the government or any other governmental institution

"foreign securities" - any one of these:

- 1) a security for which the principal, interest or dividend are paid in foreign currency or for which the owner has the choice of demanding that they be paid in foreign currency, either if the security was issued in the Area or outside of it
- 2) a security for a corporation that is registered outside the Area, outside other occupied areas and outside Israel

"property" - excluding personal belongings, including foreign currency, Israeli currency, Jordanian dinar and including certificates witnessing the right to property

"transaction" - sale, purchase, taking into possession, changing possession, loan, deposit, credit, rental, payment, drawing of a bill including a check, remission, gift, pardoning, writing off, recognition of debt, granting power of attorney or trusteeship, or commitment to do so, or an action creating a right or obligation in property, changing a right or obligation, transfer or cancellation of them, being absolute or conditioned, if the executor of the transaction did so for his own good or for the good of another, and even if the executor acted through an agent or trustee

"foreign resident" - any one of these:

- 1) a person who is not a resident as defined in The Order Regarding Identity Cards and Registration of Population (Judea and Samaria) (No. 297) 1969
- 2) a person who is in the Area by permit for transitory residence or visitors residence or according to the General Entry Permit (No. 5) (Israeli and Foreign Residents) (Judea and Samaria) 1970
- 3) a corporation whose registered office is not in the Area and its main place of business is not in the Area, and it is not registered in the Area as a foreign corporation and it is not a branch, representative or agency of such a corporation in the Area
- 4) a person who fulfills the conditions that the supervisor determined in the regulation that according to them he should be considered a foreign resident for the purpose of this order and its regulations

"resident of the area" - a person who is not a foreign resident

9. **Granting Permits**

- a) The chief of the Civil Administration, the Supervisor or a person who was authorized by them may permit actions and transactions that need a permit

according to this order, may issue a general permit, a specific permit or a personal permit.

- b) A permit may be issued after the fact, but a personal permit so issued requires the approval of the Attorney General.

15. **Fines**

The supervisor or a person who was authorized by him may fine a person who has disobeyed this order or its regulations with the approval of the Attorney General and the acceptance of that person. The fine may not exceed the maximum fine that may be given for that offence. If charges were brought against the offender, he is not to be fined for the offence, unless the Attorney General announced stay of proceedings.

17. **Punishments**

- a) a person who did any of these:
 - 1) executed without a permit an action or transaction that requires a permit according to this order
 - 2) breached a condition of a permit that was given according to section 8

3) delivered an incorrect or incomplete report or delivered a document including such a report

4) destroyed or altered a document that he was required to deliver
his punishment is - 3 years imprisonment or a fine three times the fine determined in section 1(a)(3) of The Order regarding the raising of fines that were determined in military legislation (Judea and Samaria) (No. 845) 1980 (hereinafter Order of the fines)

if the offence is committed in severe circumstances his punishment is - 5 years or a fine five times the fine determined in section 1(a)(4) of the Order of fines. The court may also impose a fine of three times, and in severe circumstances 5 times, the value of the property or the transaction that was involved in the offence, according to the higher fine.

b) a person who did any of these:

1) disturbed an authorized person in executing his authorities according to this order or prevented him from doing so

2) refused or abstained from delivering information, documents or ledgers that he was obligated to deliver, if it was demanded of him to do so

3) disobeyed an instruction of this order or its regulations that were not determined in section (a)

his punishment is- one year imprisonment or a fine three times the fine determined in section 1(a)(2) of the Order of the fines.

18. Foreclosure

a) if a man was convicted of an offence according to this order or its regulations, the property involved in the offence will be foreclosed upon, unless the court decides otherwise.

b) if a fine was paid according to section 15, the supervisor may command the foreclosure upon property that was confiscated and that was involved in an offence according to this order and its regulations.

Order regarding Supervision of Currency (Judea and Samaria) (No. 952) 1981

1. Definitions

In this order

"**other occupied area**" - area occupied by the IDF that is not "the area";

"permit" - permit given according to section 9;

"gold" - gold coins, gold bars, or certificates giving the right to gold coins or bars;

"bank" - as defined in section 4 of The Order Regarding The Law of Banks (Judea and Samaria) (No. 45) 1967;

"foreign currency" - any currency that is legal tender in any country and is not Israeli currency, Jordanian Dinar, or the right to such currency or gold;

"securities" - certificate granting title to a corporation, certificate granting the right to sue a corporation, or an obligation to make payment that was issued by the government or any other governmental institution;

"foreign securities" - any one of these:

- 1) a security for which the principal, interest or dividend are paid in foreign currency or the owner has the choice of demanding they be paid in foreign currency, either if the security was issued in the area or outside of it;
- 2) a security for a corporation that is registered outside the area, outside other occupied areas and outside Israel

"property" - including foreign currency, Israeli currency, Jordanian Dinar, and certificates witnessing the right to property, and excluding personal belongings.

"transaction" - sale, purchase, loan, deposit, credit, rental, payment, taking into possession, changing possession, remission, gift, pardoning, writing off, drawing of a bill including a check, recognition of debt, granting power of attorney or trusteeship or commitment to do so, an action creating a right or obligation in property, changing a right or obligation, transfer or cancellation of a right or obligation, being absolute or conditioned, if the executor of the transaction did so for his own good or for the good of another, and even if the executor acted through an agent or trustee;

"foreign resident" - any one of these:

- 1) a person who is not a resident as defined in The Order Regarding Identity Cards and Registration of Population (Judea and Samaria) (No. 297) 1969;
- 2) a person who is in the area by permit for transitory residence or as a visitor or according to the General Entry Permit (No. 5) (Israeli and Foreign Residents) (Judea and Samaria) 1970;

- 3) a corporation whose registered office is not in the area, its main place of business is not in the area, it is not registered in the area as a foreign corporation, and it is not a branch, representative or agency of such a corporation in the area;
- 4) a person who fulfills the conditions by which the supervisor determined in the regulations that he should be considered a foreign resident for the purpose of this order and its regulations;

"resident of the area" - a person who is not a foreign resident.

2. **Transactions**

- a) A transaction in foreign currency or in foreign securities to which a resident of the area is a party requires a permit, whether it is executed in the area or outside of it.
- b) A transaction to which a foreign resident is party, unless it is a transaction normally undertaken by tourists, requires a permit if it was executed in the area or if it was executed outside the area and involves property in the area.

- c) A transaction that a foreign resident may execute according to subsection b, does not detract from the requirement of a permit according to subsection a for a resident of the area.

3. **Removal of Property**

Removal of property by transport or by any other way, requires a permit.

4. **Importing Israeli Currency**

Bringing Israeli currency or the right to Israeli currency into the area, by transport or any other means, requires a permit.

5. **Real Property**

A transaction involving real property to which a foreign resident is a party and which is carried out in the area, or a transaction involving real property outside the area to which a resident of the area is party, requires a permit.

6. **Holding Currency**

- a) The holding of foreign currency or foreign securities by a resident of the area requires a permit.

- b) A resident of the area who has in his possession, order or control, foreign currency must offer it for sale to an authorized merchant, unless he has permission to deal with it in another way.

7. **Supervisor**

The head of the civil administration may appoint a supervisor of foreign currency.

8. **Authorized Merchant**

- a) The supervisor may give a permit to a bank to be an authorized merchant.
- b) The supervisor may determine conditions in a permit according to subsection a. He may change conditions that he determined, restrict the period of their validity, and impose restrictions regarding the place and the kind of transactions that the bank is allowed to execute as an authorized merchant.
- c) The supervisor may cancel a permit that was granted according to this section, if he believes the cancellation is necessary for the public interest.

9. **Granting Permits**

- a) The head of the civil administration the supervisor or a person authorized by them may grant a general permit, a specific permit or a personal permit permitting actions and transactions requiring permits according to this order.
- b) A permit may also be given after the fact, but a personal permit given so requires the approval of the Attorney General.

10. **Scope of Provisions**

Any order, permit, exemption, appointment or other provision according to this order, can be applied generally, to a class of matters, to a certain matter, to a class of people or to a certain person.

11. **Registration**

A transaction to which a foreign resident is party to must be registered by permit according to these provisions in a ledger that is kept according to law or to security legislation.

12. **Producing Information**

- a) The supervisor may enact regulations compelling the production of information documenting compliance with these provisions.

b) The supervisor may instruct an individual to produce information concerning the performance of these provisions.

13. **Authority to Inspect**

In order to carry out this order or to prevent or discover breaches of it, the supervisor, or a person delegated by him, may enter any place in order to inspect stock or ledgers and other documents and to seize any object that may be used as evidence in a trial for an offence according to this order. The seized objects shall be managed, subject to the provisions of this order, according to provisions of chapter 4 of the Order Regarding Security Provisions (Judea and Samaria) (No.378) 1970, with the required changes.

14. **Providing Information, Documents and Other Certificates**

The supervisor or a person delegated by him may take evidence from any individual. For this purpose he may demand information, ledgers, property and other certificates that he believes will insure compliance with this order.

15. **Fines**

The supervisor or a person authorized by him may fine a person who has committed an offence according to this order or its regulations with the approval

of the Attorney General of the headquarters of the area and the acknowledgement of the person incurring the fine. The fine may not exceed the maximum fine stipulated for that offence. If charges are brought against the offender, he is not to be fined for the offence, unless the Attorney General announces stay of proceedings.

16. **Evidence**

- a) If an individual claims that he has a permit, the full onus of proof falls upon him.
- b) A document produced by a bank in the course of its regular business, either if it was made in the area or if it was made outside the area, will be prima facie evidence of the truth of its content in a trial according to this order.

17. **Punishments**

- a) A person who perpetrated any of the following:
 - 1) executed without a permit an action or transaction that requires a permit according to this order;

2) breached a condition of a permit that was given according to section 8;

3) delivered an incorrect or incomplete report or delivered a document including such a report;

4) destroyed or altered a document that he was required to deliver

is to be punished with up to 3 years imprisonment or a fine three times the fine determined in section 1(a)(3) of the Order Regarding the Raising of Fines Determined in Military Legislation (Judea and Samaria) (No. 845) (hereinafter - Order of the Fines). An offence committed in severe circumstances is punishable by up to five years imprisonment or a fine five times the fine determined in section 1(a)(4) of the Order of Fines. The court may also impose a fine of three times, and in severe circumstances five times, the value of the property or the transaction involved in the offence, according to the higher fine.

b) A person who perpetrated any of the following:

1) interfered with an authorized person's ability to execute

his authorities according to this order or prevented his doing so;

- 2) refused or abstained from delivering information, documents or ledgers that he was obligated to deliver, if he was demanded to do so;
- 3) disobeyed an instruction of this order or its regulations that were not determined in section a

is to be punished with up to one year imprisonment or a fine three times the fine determined in section 1(a)(2) of the Order of the Fines.

18. Foreclosure

- a) If an individual is convicted of an offence according to this order or its regulations, the property involved in the offence, according to this order or its regulations, will be foreclosed on, unless the court decides otherwise.
- b) If a fine is paid according to section 15, the supervisor may command the foreclosure on property that was confiscated and that was involved in an offence according to this order and its regulations.

19. Cancellation

- a) The Order Regarding Supervision Over Currency, Securities and Gold (Judea and Samaria) (No.299) 1969 is canceled.
- b) All permits given to authorized merchants, according to any law or security legislation, before this order came into effect are canceled.

20. **Entering into Effect**

This order enters into effect on January 20, 1982.

21. **Name**

This order will be named Order regarding Supervision of Currency (Judea and Samaria) (No. 952) 1981.

Order Regarding Bringing Monies into the Area (Judea and Samaria) (No. 973) 1982

By the power invested to me as commander of the IDF forces in the area and whereas I believe that it is necessary for the maintenance of a proper administration and public order, I hereby order as follows:

1. **Definitions**

in this order -

"area" - including the state of Israel and any other area occupied by the IDF

"monies" - legal tender in the area or outside of it, securities, gold, and the right to any one of those

"the fund" - the fund for the development of the area that will be established in an order by the commander of IDF forces in the area

"transit station" - as defined in the Order Regarding Transit Stations - The Bridges of Jordan (Judea and Samaria) (No. 175) 1967

"resident of the area" - resident as defined in the Order Regarding Identity Cards and Registration of Population (Judea and Samaria) (No. 297) 1969. and corporations that were established by law or by security legislation or by their force or a corporation that is controlled and administered in the area or by a resident of the area

"enemy" - a fighting side or maintaining a state of war with Israel or claiming to do so, either if war was declared or if it was not, if acts of hostility were committed and if they were not, and any authority or corporation of it, and any body subjected to it or supported by it, either directly or indirectly and including

a hostile organization as defined in the Order Regarding Prohibition of Training and Meeting with a Hostile Organization Outside the Area (Judea and Samaria) (No.284) 1969

2. Receiving Monies and Bringing Them In

- a) subject to the stated in section 3 below -
 - 1) bringing monies into the area and receiving monies outside the area by a resident of the area - require a permit.
 - 2) bringing monies into the area by a resident of an enemy country - requires a permit.
 - 3) bringing monies in by way of a transit station - requires a permit.
- b) for the purposes of this order, bringing in or receiving monies means either by the individual himself or by someone else, either directly or indirectly, as compensation for a service or not, with consideration or without consideration.

3. Enemy Money

- a) bringing enemy money into the area and receiving enemy money outside the area - require a permit.

- b) a permit as stated in section a will be given only for the purpose of delivering the money to the possession of the fund.
- c) the commander of IDF forces in the area may determine other purposes for which the head of the civil administration may permit bringing enemy money into the area and receiving it outside the area.

4. **Granting a Permit**

the head of the civil administration or someone who was authorized by him (hereinafter - the head of the civil administration) may, at his discretion, grant a permit as stated in sections 2 and 3, the permit will be in writing and it can be general, for a class of matters, for a specific matter, for a class of people or for a specific person.

5. **Requesting a Permit**

a request for a permit as stated in section 4 will be presented to the head of the civil administration, and will contain details, documents, affidavits, obligations and guarantees as the head of the civil administration will demand.

6. **Declaration**

- a) a resident of the area and a resident of an enemy country that bring money into the area must declare that they are doing so.
- b) an individual who brings money into the area through a transit station must declare that he is doing so.
- c) the head of the civil administration may determine in regulations how to declare, specifics of declarations and exemptions from the obligation to declare.
- d) an individual who brought money into the area without declaring so as stated in this section, may not transfer the money to another person, and if the money was transferred to the area by a bank transfer, they may not be taken out of the bank.

7. **Penalties**

- a) the punishment of an individual who received money outside the area or brought money into the area without a permit or by breaching a condition of the permit and he required a permit to receive or to bring in the money

according to this order is 5 years
imprisonment or a fine of 75,000
shekels or both punishments together.

- b) the punishment of an individual who brought money into the area without declaring and he was obligated to declare according to this order is 1 year imprisonment or a fine of 20,000 shekel or both punishments together.
- c) the punishment of an offender of section 6(c) of this order is 3 years imprisonment or a fine of 50,000 shekels or both punishments together.
- d) the punishment of an individual who commits an offence according to this order after he was previously convicted of an offence according to this order or after he previously paid a fine according to this order is 7 years imprisonment or a fine of 100,000 shekels or both punishments together.

8. **Fines**

the head of the civil administration may fine an individual who committed an offence according to this order, with the approval of the attorney general and the individual, the fine may not exceed the maximum fine that may be given for that

offence. if the head of the civil administration did so - all proceedings against that individual regarding that offence shall be stopped, and if he is being held for that offence - he shall be released.

9. **Foreclosure**

- a) if an individual was convicted of an offence according to this order, the monies involved in the offence their fruits and consideration, shall be foreclosed upon, unless the court ordered otherwise.
- b) if a fine was paid according to section 8, the monies involved in the offence, their fruits and consideration shall be foreclosed upon, unless the head of the civil administration ordered otherwise.
- c) for the purposes of this order, the authority of a soldier to detain, seize, confiscate and search according to sections 80 and 84 of the Order Regarding Security provisions (Judea and Samaria) (No.378) 1970 will apply also to fruits and consideration of the monies.

10. **Preservation of Laws**

receiving a permit or making a declaration according to this order does not exempt one from the need to receive a permit according to the Order Regarding

Supervision of Currency (Judea and Samaria) (No. 952) 1982 and the need for any permit according to any law or security legislation.

11. **Execution and Regulations**

the head of the civil administration may pass regulations for the purpose of executing this order.

12. **Cancellations**

the Order Regarding Prohibition of Receiving Benefits from an Enemy Authority (Judea and Samaria) (No. 156) 1968 - is canceled.

**Provisions Regarding Banking (Restrictions on Guarantees) (Judea and Samaria)
1986**

By the force of my authority according to section 5 of the Law of Banks, No. 94 1966, I hereby determine:

1. **Definitions**

in these provisions -

"obligations on customers' account" - an obligation to pay money to an individual, if following the payment another individual is obligated to reimburse the bank regarding the payment, excluding those obligations which fall under one of the following conditions:

- a) endorsement that is none other than authorization to cash a check and there is no transfer of ownership;
- b) an obligation that is considered a deposit for the purpose of the liquidity provisions that apply in the area;
- c) other obligations that were approved by the supervisor;

"capital" - as determined by the supervisor for each bank, and in the absence of such a determination, as determined by the surplus of assets of the bank in the area over the obligations in the area, according to the general rules determined by the supervisor;

"provisions of liquidity" - Provisions Regarding Banking (liquid assets) (Judea and Samaria) 1986;

"formal guarantees" - obligations on customers' account of the following categories:

- a) guarantee to a court;
- b) guarantee given in the framework of a tender, in order to secure the signing of a contract between the customer and the participant, according to the conditions of the tender;
- c) guarantee by a building contractor or from any other supplier of services or goods to insure the quality of work or execution of repairs;
- d) guarantee to a licensed authority regarding fulfilling conditions of a permit granted by law;

"open certificates credit" - obligations on customers' account that is a credit certificate opened or maintained by the bank, or endorsement of a bill in relation to international trade of goods until the bill reaches the bank or writes the certificates that is required for the banks obligation to be absolute;

"performance guarantees" - obligations on customers' account of the following categories:

- a) guarantee by a supplier of goods or services, including a building contractor, to his customer promising to fulfill his obligations;
- b) guarantee to register a mortgage given for a maximum period of 3 years from the date the guarantee was given or from the date a former guarantee was given;

"guarantee to assure credit" - obligations on customers' account of the following categories:

- a) guarantees, reimbursement statements or other obligations to a creditor or to one who has become a guarantor to the fulfillment of a credit receiver's obligations;
- b) endorsement of bill;
- c) secondary deduction of a bill, unless the purchaser does not have the right to sue the seller's bank;
- d) guarantee to a supplier of goods or services to assure payment for goods or services rendered;
- e) guarantee to a lessor of equipment to assure payment from the lessee of the equipment;

2. **Applicability**

These provisions will apply to any obligation on the account of a customer of a bank, in Jordanian Dinar, in New Israeli Shekel, and in any other currency.

3. **Restrictions on Obligations on Customers' Account**

a) The aggregate sum of obligations on customers' account will not exceed, at any time, 200% of the capital of the bank, as calculated on the last day of the month prior to the calculation.

b) For the purposes of this section the amount of obligations on customers' account will be calculated on the following aggregate basis:

1) formal guarantees	10%
2) open credit certificates	20%
3) performance guarantees	33%
4) guarantees insuring credit	100%
5) other obligations	50%

4. **Restrictions on Guarantees Insuring Credit**

The sum of guarantees of the bank insuring credit shall not exceed, at any time, 100% of the bank's capital as calculated on the last day of the month prior to the calculation.

5. **Deductions**

The bank is authorized to deduct the following amounts from the sum of obligations on customers' account, under these provisions:

- a) the bank's right to set off a payment against a deposit that it made according to its obligations, with written agreement of the depositor not to withdraw the deposit as long as the bank's obligation still stands;
- b) a guarantee or reimbursement statement of a bank in the area or in Israel, which can be paid after payment of the obligation;
- c) a guarantee or reimbursement statement of the head of the civil administration or state guarantees of the State of Israel, which can be paid after the payment of the obligation;
- d) in relation to open credit certificates only, the obligation of a foreign bank that can be paid after payment of the credit certificates;

- e) in relation to standby letters of credit that are made relating to international trade of goods or services, an amount equal to the amount of obligation of the foreign bank, approved by the supervisor, is payable upon request according to the standby letter of credit.

For the purposes of this section, "standby letter of credit" is one where it is explicitly written that the uniform procedures and practices that apply to credit certificates determined by the International Trade Bureau also apply to it;

- f) guarantee of a foreign bank that can be paid after payment of the obligation, if the supervisor approves the deduction;

6. Calculating Sums

- a) The determined maximum amount of the bank's obligations on customers' account is considered as the amount of the obligation without considering the sum of the primary transaction; if a maximum sum is not determined, obligations on customers' account will be calculated according to the sum of the principal of the primary transaction at the time

of the calculation, including interest and linkage that has accumulated up until the last day of the month;

- b) Obligations in currencies other than NIS will be translated into NIS according to the exchange rate advertised by the bank of Israel on the day of the calculation;

7. **Reporting**

- a) The bank will report to the supervisor in the manner that the supervisor shall determine.
- b) The reports will be presented to the supervisor no later than 3 weeks from the end of the month being reported on.

8. **Breaches**

If the sum of obligations on customers' account exceeds the amount permitted under section 3, or if the sum of guarantees insuring credit exceeds the amount permitted under section 4, the bank will pay the supervisor, on the date of the report, an amount equal to 0.833% of the amount which exceeds each of the 2 types of obligations.

Order Regarding Checks Without Coverage (Judea and Samaria) No. 1024 1982

By virtue of my authority as commander of the IDF forces in the area, I hereby order as follows:

1. **Definitions**

In this Order -

"bank" - within the meaning of section 4 of the Order Regarding the Law of Banks (Judea and Samaria) (No. 45) 1967;

"account holder" - who is registered at a bank as an account holder;

"the supervisor" - the supervisor of banks within the meaning of the Order Regarding the Law of Banks (Judea and Samaria) (No. 45) 1967;

"account" - an account in Israeli currency drawn on by check

"joint account" - an account for which more than one account holder is registered;

"check" - within the meaning of the Commercial Law No. 12 1965;

"dishonored check" - a check that was presented for payment on the specified date or afterward, on which the bank refused to pay out due to lack of sufficient balance in the account and on which the bank was not obligated to pay out due to an agreement with the drawer, even if this was not the only reason for refusal;

2. **Account Restrictions and Client Restrictions**

- a) An account will be restricted (hereinafter - "restricted account") and its owner will be restricted (hereinafter -"restricted client") if 10 or more checks drawn on the account are refused during a 3 month period, as long as 15 days passed between the first and last refusal, and notice was sent to the account holder as determined in the regulations.
- b) The supervisor may change the number of checks and the determined periods in subsection a.
- c) A bank will give written notice to the holder of an account and to one who is registered as having power of attorney to the account of restrictions according to this section; the period of restriction will be one year.
- d) the commencement of the restrictions will be on the day stated in the notice, and it will be at least 15 days after the notice is given.

3. **Restrictions in Severe Circumstances**

- a) If an additional account of a restricted client is restricted, or the account holder is restricted a second time within 2 years of the termination of the period of restriction, the supervisor will notify all banks of this breach, and from the date of the notice -
 - 1) All the client's accounts, that are not joint accounts, and joint accounts he shares with others who are also restricted clients, will be restricted for a period of 1 year.
 - 2) A bank will not open an account for him for a period of 2 years.
- b) The supervisor will notify the account holder and one who is registered at the bank as having power of attorney to the account of the restriction.
- c) Commencement of the restriction will be on the date stated in the notice, and this will be at least 15 days after notice is given.

4. **Nature of the Restriction**

- a) A restricted client will not open an account.
- b) An individual will not draw a check on a restricted account.

- c) An individual who was restricted in severe circumstances, as stated in section 3, will not draw a check on any account.

5. **Bank's Obligations Regarding a Restricted Account**

- a) A bank will not honor a check drawn on a restricted account.
- b) A bank will not supply checks for drawing on a restricted account.
- c) A bank will not open an account for a restricted client.

6. **Exceptions**

- a) Notwithstanding the stated in section 5(a) a bank may honor a check within 15 days of the commencement of the restriction, as long as the date on it precedes the date that the restriction commenced.
- b) Failure to honor a check, based on the provisions of this order, does not detract from any right of the check holder to claim on the check.

7. **Marking the Check**

A bank that refused to honor a check presented to it according to section 5(a) will mark the check.

8. **Restriction of an Account by the Supervisor**

If the supervisor found that a bank did not restrict an account holder or an account, that according to the provisions of this order should have been restricted, he may take any action necessary to perform the restriction in place of the bank.

9. **Amending Errors**

If a bank wrongfully informs of a restriction, then it shall correct the mistake and inform the supervisor of this, and the restriction will be canceled.

10. **Appeal**

An individual who receives a notice under section 2(c) or 3(b) and who claims that one of the checks refused was refused by mistake, or he had reason to believe that the bank was obligated to honor it, may appeal to the appeals committee within the meaning of the Order Regarding the Appeals Committee (Judea and Samaria) (No. 172) 1967 and request that they erase the check from the list of refused checks.

11. **Identification Information**

- a) A bank shall not open an account without recording identification information for the account holder and for one to whom he gave power of

attorney, as determined by the supervisor in the regulations (hereinafter "the regulations")

- b) Whoever was an account holder or the holder of power of attorney at the commencement of these regulations, shall provide the bank with identification information as stated in subsection a, within the period determined by the supervisor.
- c) If the supervisor finds that a bank did not record the identification of an account holder because the account holder refused to provide it or did not provide it, the supervisor may instruct the bank not to provide checks for withdrawal from the account.

12. **Disclosing the Identity of a Withdrawer**

The drawee bank shall supply a person holding a check not honored for any reason, upon request, with identification information as determined by the supervisor's regulations.

13. **Reporting**

A bank that restricted an account holder shall report this to the supervisor. The supervisor shall relay the details of the restrictions, according to the supervisor's

decision, to all the banks, including the banks in Israel and in the area of the Gaza Strip.

14. Producing Information

- a) The supervisor may publish the restricted account numbers, the name of the bank managing each account, and the date the restriction ends.
- b) The supervisor may publish the names of the people restricted in severe circumstances as stated in section 3, with identification information and the date the restriction ends, after the appeal period has passed or the appeal process has finished.

15. Authority to Provide Information

A bank and the supervisor may disclose that a client or his account were restricted, if the disclosure of this information is required by law or security legislation for the purposes of a criminal investigation.

16. Penalties

An individual who knowingly draws a check within the period he is a restricted client due to reasons stated in section 3, is liable to a fine of 10,000 NIS or four times the amount of the check, whichever is greater.

17. **Exemptions from Criminal Responsibility**

A bank, its employees, the supervisor, and his delegates will not be criminally responsible for any act or omission done in good faith during the performance of this order.

18. **Harmful Actions**

If a bank does not abide by the provisions of this order, the supervisor may view this as a harmful action according to section 20 of the Law of Banks No. 24 of 1966.

19. **Restrictions as an Additional Penalty**

a) in this section:

"**court**" - a military court within the meaning of the Order Regarding Security Provisions (Judea & Samaria) (No. 378) of 1970 or a local court within the meaning of the Order Regarding Local Courts (Judea & Samaria) (No. 412) of 1970.

b) A court deciding on an offence, connected with checks, according to chapter 11 of the Criminal Law NO.16 of 1960, may order that the accused or his account, or all of his accounts, including joint accounts and his

partners, be restricted according to this order, from the determined date, in addition to any other penalty.

- c) A court may impose a longer restriction period than that determined in this order, as long as it does not exceed 5 years.
- d) A court may decide that for the purposes of section 14(b), the accused will be viewed as someone restricted in severe circumstances as state din section 3.
- e) The court will notify the supervisor that it imposes according to this section.

20. **Widening the Scope**

- a) in this section:

"restriction" - restricting an account, restricting a client, restriction in severe circumstances and restriction as an additional penalty.
- b) In relation to this order a restriction made in Israel or in the Gaza Strip is viewed as if it was made according to this order.

21. **Regulations and Instructions of the Supervisor**

- a) The supervisor is in charge of the performance of this order and he may enact regulations and instructions for its performance, including determining:
 - 1) the details of warnings to the drawer of dishonored checks and the manner and dates of sending them;
 - 2) the details of notices according to sections 2(c) and 3(b), deciding the commencement date of the restriction and the manner of serving notices;
 - 3) in relation to section 7 - the manner of marking a check;
 - 4) details of reports in relation to section 13;
 - 5) manners of serving and advertising according to section 14;
 - 6) who the bank will record as an account holder in relation to this order, in special circumstances;
- b) The supervisor may delegate his powers under this order, except the powers under sections 18 and 21(a).
- c) The supervisor may make exceptions to the application of this order.

**Order Concerning Bringing Money into the Area (Amendment to MO #973) July 7,
1984 – No. 1070**

This adds the following phrase to Article 1: "and any other organization that was
established under a law or
security legislation or any
organization that is
administered and run in the area
or by a resident of the area."

Provisions Regarding Banking (Liquid Assets) (Judea and Samaria) 1986

By the power vested in me by section 17 of the Law of Banks No. 94, 1966 and section 2 of the Order Regarding the Law of Banks (Judea and Samaria Area) No. 45, 1967, I instruct as follows:

Part A: Definitions

1. **Definitions**

In these provisions -

"bank" - an authorized bank operating in the area that is not an operating banking corporation in the area;

"deposit" - a deposit in Israeli currency, including the following obligations:

- a) an obligation for credit that the bank receives;
- b) an obligation to make payment to an individual if, and to the extent that, the bank receives funds against the obligation, less the bank's commission for granting the obligation;

- c) an obligation by check or payment order that one draws on oneself, creating a promissory note or endorsing a bill of exchange, if the obligation is to be liquidated upon request or if the date of liquidation has arrived;
- d) an obligation to guarantee credit given by the bank;
- e) with the initiative or brokerage of the bank, an obligation to guarantee credit given from lender to borrower;
- f) obligation arising from sale of securities or other assets in a return sale agreement;

"foreign currency" - rights or gold and all currency that is not legal tender in the area;

"linked deposit" - a deposit whose principal or interest is linked, either completely or partially, to the rate of exchange between Israeli currency or Jordanian Dinar, to the consumers price index, to another index, or to the prices of any them, and so l

"credit" - in any form, including:

- a) discount on bills and notes;
- b) overdraft;

c) purchasing of securities or other assets with a return sale agreement;

"required liquidity" - the amount of liquid assets that a bank must hold according to these provisions;

"liquidity in practice" - the amount of liquid assets that a bank holds in practice against its required liquidity;

"liquidity deficit" - the amount by which the banks liquidity in practice falls short of its required liquidity;

"liquidity surplus" - the amount by which the liquidity in practice exceeds the required liquidity;

"week" - a week begins on Thursday and ends on the following Wednesday;

Part B: Categorizing Deposits and Calculating Liquidity

2. Categorization

In regard to these provisions bank deposits will be categorized as follows:

- a) **"ordinary deposit"** - a deposit in a checking account and all deposits not in another category according to this section;
- b) **"fixed term deposit"** - a deposit in which the following exists according to its terms:
 - 1) the depositor may not collect it, transfer it to another, or draw credit against it for a fixed time;
 - 2) it is not a linked deposit;
 - 3) the bank did not grant the depositor a marketable certificate on the deposit or a deposit certificate requiring only the bank's approval for transfer;
 - 4) the supervisor authorized the program for receiving the deposit;
- c) **"deposit for giving loans"** - a deposit for a specific individual, a specific type of individual, or for a specific purpose, that the depositor induced the bank to loan against;

3. **Calculating Liquidity**

- a) A bank is required to hold liquid assets under the provisions that the liquidity in practice will be equal to the required liquidity, on the basis of a weekly average
- b) Calculating required liquidity and liquidity in practice:
 - 1) The basis for the weekly calculation is the average of the daily balances, which will be calculated according to the bank's position at the close of trade on each day, unless the supervisor agrees to a different calculation regarding a specific term.
 - 2) The required amount for a day which is not a business day will be calculated according to the bank's situation on the previous business day.

Part C: Liquidity in Israeli Currency

4. Rates of Liquidity

- a) A bank must hold liquid assets against deposits in Israeli currency at the following rates:

Type of deposits	Rate of required liquidity
1. ordinary deposit in Israeli currency, not within other provisions of these provisions	38%
2. deposit for a fixed period in Israeli currency:	
a. for a fixed period of not less than 1 week but less than 2 weeks	38%
b. for a fixed period of not less than 2 weeks but less than 1 month	38%
c. for a fixed period of not less than 1 month but less than 2 months	30%
d. for a fixed period of not less than 2 months but less than 6 months	20%
e. for a fixed period of not less than 6	15%

months

3. deposit for granting loans in Israeli

currency:

a. of the head of the civil administration

less the balance of loans given against

it according to his provisions

90%

b. which was deposited to credit the head of

the civil administration by an individual who

received a loan from the bank,

less the balance of the loan, as long as the

total of the loans will not exceed the amount

determined by the supervisor

90%

c. of another individual approved by the

supervisor, less the balance of the loans

given against it, in accordance with the

depositor's instructions

90%

- b) A bank is not required to hold liquid assets according to the provisions of this chapter, for deposits in Israeli currency from another bank in the area or in Israel.
- c) A bank may deduct a deposit in Israeli currency that was deposited in a banking corporation in Israel. That banking corporation has a liquidity requirement for the deposit in Israel for the deposits that require liquidity according to this section.

5. **Breaking a Fixed Term Deposit**

- a) If a bank repays a fixed term deposit before its original repayment date, in full or in part, the bank will be required to hold liquid assets against the amount repaid at the rate which is the difference between the rate of liquidity for the deposit before its early repayment and the rate of liquidity for an ordinary deposit, for the following periods:

Original period

Holding period

of deposit

- 1) a period of not less than 1 week but less than 2 weeks 1 week
- 2) a period of not less than 2 weeks but less than 1 month 2 weeks
- 3) a period of not less than 1 month but less than 2 months 3 weeks
- 4) a period of not less than 2 months half of the original deposit period

- b) The liquidity requirement according to this section commences on the day the bank repays the deposit, in full or in part.

- c) If a bank repays part of the deposit early, the balance of the deposit will be considered as if deposited according to the terms of the original deposit.

6. **Liquidity on Credit**

A bank is required to hold liquid assets in an amount equal to 1% of the amount of credit that it gives in Israeli currency, excluding:

- a) credit against deposits for granting loans as in section 4(a)(3);
- b) credit to the head of the civil administration or to the bank of Israel;
- c) other credit approved by the supervisor;

7. **Liquid Assets**

The liquid assets that the bank is required to hold according to these provisions are:

- a) deposits in Israeli currency deposited in the bank of Israel;
- b) money bills and change in Israeli currency held by the bank;

Part D: Deposits in Foreign Currency

8. **Required Liquidity on Deposits in Foreign Currency**

- a) A bank must hold liquid assets against deposits in foreign currency in its branches in the area at the rate of 100% of the deposits.
- b) A bank that deposits foreign currency in another bank in the area or in Israel may deduct the amount of the said deposit from the amount deposited in the bank.
- c) The supervisor may exempt from the requirement to hold liquid assets as according to this section, in regard to deposits in foreign currency of the kind he determined.

9. **Breaking a Fixed Term Deposit**

- a) If a bank repays a fixed term deposit in foreign currency before the original repayment date, the bank will be required to hold liquid assets in foreign currency for one year, at these rates:
 - 1) if the deposit is repaid in the first quarter after the deposit, the amount required is 100% of the amount repaid
 - 2) if the deposit is repaid in the second quarter after the deposit, 65% of the amount repaid

3) if the deposit is repaid in the third quarter after the deposit, 40% of the amount repaid

4) if the deposit is repaid in the fourth quarter after the deposit, 15% of the amount repaid

in this matter, one "quarter" is a period of 3 months

b) the liquidity requirement according to this section applies from the date the bank repays the deposit.

c) if the bank repays only part of the deposit, the balance of the deposit will be considered to be deposited according to the terms of the original deposit.

10. **Liquid Assets in Foreign Currency**

The liquid assets that the bank must hold according to this chapter will be deposited in foreign currency in the Bank of Israel as detailed below:

Required liquidity

Deposit in the bank of

Israel

-resident's deposit for a fixed term resident (patam) fixed fixed term

-resident's checking account resident (patam) checking

-breaking a resident's fixed term deposit resident (breaking)

Part E: Other Provisions

11. Deposits in Dinars Exceeding the Limits

If the amount of a bank's deposits in Jordanian Dinars exceeds the maximum amount determined by the supervisor, the bank shall hold money bills in Jordanian Dinars against the total amount deposited in J.D.s.

12. Accounting Rules

The supervisor may notify a bank about accounting rules for calculating required liquidity and liquidity in practice for deposits and credit that they give.

Part F: Interest on Liquidity Deficits

13. Interest on Liquidity Deficits

- a) A bank will pay interest on liquidity deficits according to this chapter.
- b) Calculation of interest on liquidity deficits will be on the basis of the average of the liquidity deficit and the liquidity surplus during 3 week periods that commence from the first week in which the bank has a liquid deficit and is separate for each category of liquid assets.
- c) If the liquidity deficit of a bank exceeds 5% of its required liquidity (hereinafter "excess deficit"), in any specific week, the excess deficit will not be taken into account while calculating the tri-weekly average. The bank will pay the supervisor interest for that week in the amount of the average deficit plus the excess deficit.
- d) The bank will pay the supervisor interest for the liquidity deficit calculated according to this section according to the level of the deficit, at the rate determined for regular deficits in the addendum.

- e) If a bank has liquidity deficits for 3 consecutive weeks, the bank shall pay the supervisor interest for its resulting deficit according to the level of the deficit at the rates determined for continuous deficits in the addendum, until 3 consecutive weeks pass in which the bank does not have liquidity deficits.
- f) The supervisor may collect the amounts of interest he is owed under this section by charging the bank's account in the Bank of Israel.

14. **Payment of interest**

Interest will be paid to the supervisor, according to these provisions, in Israeli currency immediately after the supervisor notifies the bank.

Part G: General

15. **Coming into Force**

These provisions come into force on the day they are signed.

16. **Israeli Banks**

These provisions do not apply to banks whose head office is in Israel and who are required, according to the law applying in Israel, to hold required liquidity for their offices in the area.

17. **The name**

These provisions will be called "Provisions Relating to Banking (liquid assets) (Judea and Samaria) 1986

Addendum

(section 13)

Interest Rates on Liquidity Deficits

Deficit level

Yearly interest rate

on normal on continuous

deficit deficit

1. on the part of the deficit that is less than 2% of the required

	liquidity	25%	26%
2.	on the part of the deficit that is not less than 2% but is less than 5% of the required liquidity	30%	32%
3.	on the part of the deficit that is not less than 5% but is less than 8% of the required liquidity	35%	38%
4.	on the part of the deficit that is not less than 8% but is less than 12% of the required liquidity	40%	45%
5.	on the part of the deficit that is not less than 12% but is less than 15% of the required liquidity	45%	48%
6.	on the part of the deficit that is not less than 15% but is less than 20% of the required liquidity	50%	53%
7.	on the part of the deficit that		

is 20% or more of the required

liquidity

55%

58%

Order Concerning Amendment to Banking Law (Amendment to No. 45) Sept. 26, 1986

M.O. #1179 (Sometimes numbered 1177)

This deletes Article 4.

Military Order No. 1180 - Order Regarding the Amendment of the Banking Law

(Sometimes numbered 1178) 1986

By the power invested in me as commander of IDF forces in the area, I hereby order as follows:

1. **amendment of section 2**

in the Law of Banking No. 94 of 1966 (hereinafter - the law) at the end of section

2:

"possession" - either singularly or along with relatives, either directly or indirectly, including by a corporation under his control.

"the supervisor" - the supervisor of the banks that was appointed according to the law of Law of Banks (Judea and Samaria)(No. 45) 1967

"relative" - spouse, sibling, parent, offspring, offspring of spouse, and the spouse of any one of those

2. **amendment to section 3**

in section 3 of the law -

a) at the end of subsection (b):

"it is possible to restrict in a permit the scope of a banks business or administration, and it is possible to determine any condition to assure that the bank will be able to keep its obligations and administer its business in a proper way.

b) at the end of subsection (c):

"these provisions will not apply to branches of foreign banks"

c) subsection (d) will be marked subsection (e), and before it:

"(d) the following provisions will apply to a bank that was permitted to open according to section 1 of the Order Regarding Prohibition of Trade and Transactions 1976:

1) in relation to all provisions regarding the bank's capital, a bank's capital is the amount of assets of the bank in excess of its debts, as long as the amount is approved by the supervisor.

2) in relation to all provisions regarding the banks management and its board of directors, the provisions will apply also to management that was appointed in the area to manage the bank's business in the area.

3) in relation to all provisions regarding an authorized bank, the branch will be deemed an authorized bank."

3. amendment to section 5

at the end of section 5 of the law:

"c) an authorized bank will not reduce its paid capital in the area, without the approval of the supervisor, and as long as in any case the capital will not be reduced to less than the minimum amount determined in section a.

d) the supervisor may determine that an authorized bank must retain a certain balance between certain categories of assets and other categories of assets or certain categories of debts, or between certain categories of debts and certain categories of assets, or between any one of them and the capital of the authorized banks."

4. **addition of section 5A**

after section 5 of the law:

"5A an authorized bank whose main office is outside the area will appoint a local business manager, being local resident, to manage the bank's branches in the area, by way of a written appointment which authorizes him to receive any official documents in the framework of the authorized bank's activities, and according to which he will be responsible for the authorized banks activities in front of the licensed authorities in the area. A copy of the appointment letter, with a notary confirmation, will be presented to the supervisor."

5. **replacement of section 7**

section 7 of the law will be deleted and replaced by:

"7(a) the supervisor may take steps detailed hereinafter against an authorized bank that breached the provisions of this law or the regulations, the provisions, the notices or the orders given according to the law, or provisions according to any law or security legislation.

1) to give a warning

2) to reduce or to suspend the credit services given to an authorized

bank.

(b) the supervisor may in the event of a repeated breach or a severe breach of a provision of this law or the regulations, the provisions, the notices, or the orders given according to the law, or provisions according to any law or security legislation:

1) to instruct an authorized bank to abstain from certain activities, or to impose restrictions, as the supervisor sees fit, on the credit services of the authorized bank.

2) to prohibit allocation of dividends or profits to shareholders of the authorized bank and to prohibit giving benefits to the board of directors, to directors and to people holding signature rights of the authorized bank.

3) to restrict or to make dependent the authority of a member of the board of directors, business manager, or person holding signature rights of the licensed bank.

4) to suspend or dismiss a director or business manager.

5) to appoint an authorized manager to manage the authorized bank's activities.

6) to cancel the permit of the authorized bank.

(c) an authorized bank whose permit was canceled will be deemed as an authorized bank for three years from the date of cancellation for the purposes of the law and security legislation.

(d) the supervisor may instruct an authorized bank whose permit was canceled any instruction regarding the administration of business, as the supervisor sees fit, in order to protect creditors of the bank and other clients that were attached to the bank before its permit was canceled. This provision does not relieve the authorized bank of fulfilling the obligations it took upon itself before its permit was canceled."

6. **amendment to section 9**

at the end of section 9 of the law:

"(d) the supervisor may cancel the authorization that was given by virtue of section a after the authorized bank was given an opportunity to hear its claims if one of the following occurred:

1) the authorized bank has not yet begun to conduct business in the branch or has ceased to conduct business.

2) the authorized bank breached a fundamental condition of the authorizing conditions.

3) the authorized bank breached a fundamental condition of the law or security legislation.

4) reasons of public interest justify the need to cancel the authorization.

(e) the authorized bank will cease to conduct business if its permit was canceled according to section d.

7. amendment to section 11

in section 11 of the law -

(a) subsection c will be deleted and replaced by:

"(c) an authorized bank may not give credit of more than 1,000 Dinar to a member of the board of directors, an employee of the bank, or their relatives, or to any

one holding shares of any kind of the bank whose value constitutes more than 10% of the banks capital, or to any one holding more than 10% of any kind of the bank's shares, without the approval of the supervisor. The statement in this section also applies to credit to a corporation that one or more of the stated above hold more than 25% or more of any kind of its shares."

(b) subsection g will be deleted and replaced by:

"(g) an authorized bank will not give loans or advances amounting to more than 20% of their deposits for the purpose of building residential property or commercial property, or for purchasing such buildings, unless the authorized bank specializes in loaning for purchasing of property or received the supervisor's permission to do so."

8. amendment to section 15

at the end of section 15 of the law:

"(c) at dates determined by the supervisor, an authorized bank will prepare and advertise financial reports, prepared according to accounting principals and other rules that the supervisor will determine, and the supervisor may determine the manner of advertising the report and its review and examination by an accountant.

9. **amendment to section 17**

in section 17 of the law -

(a) subsection b will be deleted and replaced by:

"(b) the supervisor may instruct an authorized bank to hold liquid assets in a certain amount and a certain combination as a certain percentage of a category of assets or obligations or in another manner. If doubt arises as to the type of an asset or obligation, the supervisor will decide in the matter."

(b) in subsection d instead of - "that dos not exceed 10/365 of the deficit for each day the deficit continues"; insert - "in the amount that the supervisor determines by provision. In the the event of a repeated breach, the supervisor may take the steps stated in section 7."

10. **amendment to section 18**

in section 18 of the law the word "periodical" will be deleted wherever it appears.

11. **amendment to section 20**

in section 20 of the law -

(a) at the end of subsection b:

"but information or details that were brought to the supervisor's attention, may be disclosed, if the supervisor sees a need to do so for the purposes of a criminal investigation or indictment of for the area's security needs, or if the information or document were received from an authorized bank - with the bank's approval.

(b) subsection e will be deleted.

12. **addition of section 20A**

after section 20 of the law:

"20A. (a) if the supervisor believes that a debt that is owed to the bank is a bad debt, or that an asset of an authorized bank is registered in its books at an amount exceeding its value at that time in a sale from a willful seller to a willful purchaser, he may instruct the authorized bank to set aside the required amount in an appropriate fund.

(b) an instruction according to section a is like a notice according to section 20(c).

13. **amendment to section 21**

in section 21 of the law, between the words "accountant" and "the condition" the words "whose appointment is approved by the supervisor" will be inserted.

14. **amendment to section 23**

in section 23 of the law instead of "if the authorized bank delayed the appointment of an accountant" the words "if the authorized bank does not appoint an accountant within 3 months" will be inserted.

15. amendment to section 24

section 24(a) of the law will be deleted and replaced by:

"(a) if an authorized bank is about to cease to fulfill its obligations, or stopped fulfilling its obligations, for any reason, or if a licensed authority in the area determined that the authorized bank must stop its activities altogether, the supervisor may take the bank's management into his own hands, and he may supervise the conserving of its money, documents and records in any way which appears appropriate to the supervisor, in order to secure the interests of the depositors."

16. amendment to section 25

in section 25 of the law:

(a) the statement in the section will be marked (a)

(b) subsections a, b, c, and d will be marked 1, 2, 3, and 4 accordingly

(c) at the end of the section:

"(b) the head of the civil administration may, for reasons of the area's security or public interest, act in the ways determined in section 7(b) with the necessary changes."

17. **addition of sections 25A to 25C**

after section 25 of the law:

"25A. Authorized banks will pay the civil administration a license fee every year, and an additional fee for every extra branch; the supervisor will determine by order the amount of the fee and the time of payment.

25B. In any case that an authorized bank must pay a fine according to this law or its regulations, orders or provisions that were given according to it, the head of the civil administration may, in addition to any remedy, instruct the supervisor to transfer to him the amount of the fine instead of obligating the authorized bank to deposit a sum with the supervisor.

25C. (a) The supervisor may give instructions - generally or to a specific authorized bank- in the matter of the composition of the board of directors of an authorized bank and in the matter of the subjects that will be brought before the board of directors of an authorized bank.

(b) Notwithstanding the statement in section 104(g) of the Law of Corporations no. 12 of 1964, the supervisor may decide that in a corporation that is an authorized bank, there will be more than 11 directors on the board of directors, but not more than 15. This decision can be general or for a specific bank."

18. **addition of section 27A**

after section 27 of the law:

"27A. (a) Authorized banks will be closed on the days and during the periods that the supervisor will decide.

(b) The supervisor may, in emergency situations and special situations, announce the closing of all or some of the branches of authorized banks or an authorized bank, for any period that he decides."

19. **addition of section 34**

after section 33 of the law:

"34. The supervisor may exempt an authorized bank that is a branch of a banking corporation registered in Israel of all or some of the provisions of this law, if it is proven that the branch follows the provisions of the law applying in Israel. The provisions of

the law applying in Israel will apply to a branch that was exempt according to this section, with the necessary changes."

20. cancellations

sections 28 and 29 of the law are canceled.

Allowed the Cairo Amman Bank to reopen. Amended by 1268.

Order Concerning Israeli Currency as Legal Tender (Also numbered as 1197)(Amendment 31 to MO 76 and 45) June 1987

It is permissible for the bank to buy and sell Jordanian dinars even if this is at a different rate than that set by appropriate authority so long as the controller of banks has approved it.

**Order Concerning Currency Control (Also numbered as 1215) January 1988
(Amendment to MO # 952) No. 1218**

This replaces violations in accordance with this law with "violations unless the court ordered otherwise."

Order Concerning Bringing Money into the Area (Also numbered as 1217) February 18, 1988 (Amendment to 2 to MO # 973) No. 1221

Article 6, paragraph a, has been changed to "a permit is required for a resident of the Area who brings in money from a hostile state or for a resident of a hostile state wishing to bring money into the Area." Anyone who has received money contrary to the provisions of this order will be punished by five years in prison and a fine five times the level of the fine specified in clause 1a of Article 4 of military order 845.

Order Concerning Currency Control, April 26, 1988 (Amendment to MO # 952) No. 1237

This changes the legal status of certain foreign currencies. It amends paragraph a which stipulates that the punishment should be three years in prison or a fine three

times as high as the original one set in military order 845. The second category of punishment for breaking this order in "dangerous circumstances" will be five years in prison or five times the fine.

**Order Concerning Bringing Money into the Area (Currency) June 20, 1088
(Amendment 3 to Military Order #973) No. 1242**

The phrase "if the court ordered otherwise" is to be canceled.

**Order Concerning Amendment to Banking Law, January 8, 1989 (Amendment to MO
1180)**

This changes the level of penalties.

Gaza Strip

Banking Ordinance No. 26 of 1941

BE IT ENACTED by the High Commissioner for Palestine, with the advice of the Advisory Council thereof:-

1. This Ordinance may be cited as the Banking Ordinance, 1941.

2. In this Ordinance, unless the context otherwise requires:--

"bank" means any company carrying on banking business or using the word "bank" or any of its derivatives as part of the title under which it carries on business but shall not include a registered cooperative society;

"banking business" means the business of receiving from the public on current account money which is to be repayable on demand by cheque, and of making advances to customers.

"bank note" means any bill, draft or note issued by any bank for the payment of money to the bearer on demand or entitling or being intended to entitle the holder without indorsement or without any further indorsement than may exist thereon at the time of issue to the payment of any sum of money on demand, whether the same be so expressed or not;

"company" means a company registered under the Companies Ordinance.

3- (1) No banking business shall be transacted in Palestine except by a company registered under the provisions of:-

(a) the Registration of Companies and Partnerships Ordinance of 1919, published in the *Gazette* dated the first day of August, 1919;

(b) the Companies Ordinance or any ordinance substituted therefor.

(2) The incorporation of a company which has as its object or one of its objects the carrying on of banking business shall not be authorized unless its authorized capital is not less than fifty thousand pounds.

(3) The Registrar of Companies shall not certify that any company which has as its object or one of its objects the carrying on of banking business is entitled to commence to carry on business in accordance with the provisions of section 92 of the Companies Ordinance, unless --

(a) if its authorized capital is fifty thousand pounds the same has been subscribed and not less than twenty-five thousand pounds has been paid up thereon in cash, or

(b) if its authorized capital is more than fifty thousand pounds at least fifty thousand pounds has been subscribed and not less than twenty-five thousand pounds has been paid up thereon in cash.

(4) No foreign company within the meaning of section 2 of the Companies Ordinance, which has as its object or one of its objects the carrying on of banking business shall be registered unless it is proved to the satisfaction of the High Commissioner that it has a paid-up capital of a sum which in his opinion is equivalent to an amount being not less than one hundred thousand pounds.

(5) The High Commissioner may in his absolute discretion vary the requirements of subsections (2), (3) or (4) of this section in respect of any company when he considers it to be in the interests of the public to do so:

Provided that where the High Commissioner has reduced the requirements as to capital prescribed in subsections (2), (3) or (4) hereof, the company in favor of which such vitiation has been made shall not open a branch office except under special license of the High Commissioner.

4.- (1) No person or body of persons, whether incorporated or unincorporated, other than a company authorized to carry on banking business shall, without the consent of the High Commissioner, use or continue to use the word 'bank' or any of its derivatives in the name under which he is carrying on business.

(2) Any person or body of persons whether incorporated or unincorporated who acts in contravention of the provisions of this section shall be liable to a fine not exceeding ten pounds for every day during which the offense continues.

5.- (1) The High Commissioner may nominate an officer of the Government of Palestine to be Examiner of Banks, who shall exercise general supervision and control over the carrying on of banking business in Palestine and shall have power to call for any books, accounts or documents of any bank.

(2) Any officer or agent of bank who refuses to produce any book, account or document lawfully called for under the provisions of this section shall be liable to a fine not exceeding fifty pounds in respect of each offence.

6.- (1) The High Commissioner may appoint an Advisory Committee consisting of such persons and appointed on such terms as he may think fit to advise him on matters relating to banking business and he may at any time determine any appointment so made.

(2) The High Commissioner may make rules providing for the procedure to be followed at any meeting held by the Committee to be constituted under this section.

7. Notwithstanding anything in this or any other Ordinance contained, no company shall commence to carry on banking business without obtaining from the High Commissioner a license to do so. The High Commissioner may at his discretion and without assigning any reason therefor, refuse to grant such license.

8.- (1) The High Commissioner may, after consulting with the Advisory Committee and the Examiner of Banks, and if he considers it to be in the public interest to do so, order any bank--

(a) to delete from the name under which it is carrying on business within a period of twenty-eight days from the date of such order, the word 'bank' or any of its derivatives, or any other word or words forming part of its name;

(b) to refrain from receiving from the public money withdrawable by cheque or order:

Provided that before such order is made, the High Commissioner shall give such bank notice in writing of his intention to do so and shall afford it an opportunity of submitting to him a written statement of its case.

(2) Any bank failing to comply with an order made under this section shall be liable to a fine not exceeding ten pounds for every day during which the default continues.

9.- (1) Every bank shall furnish to the Financial Secretary: --

(a) not later than twenty-one days after the last day of each month a statement in the form set out in the first schedule to this Ordinance showing the assets and liabilities of the bank at the close of business on the last day of the preceding month.

(b) not later than twenty-eight days after the last day of March and September a statement in the form set out in the second schedule to this Ordinance, giving an analysis of advances current and bills discounted as at the 31st March and the 30th September, respectively.

Provided that in the case of a bank which is a foreign company within the meaning of section 2 of the Companies Ordinance, the statements to which reference is made in paragraphs (a) and (b) hereof, shall comprise data only with respect to offices and/or branches of such foreign company which are situated in Palestine:

Provided that the High Commissioner may by order from time to time vary the form of the first and second schedules, and the dates as at which the information required in the second schedule shall be compiled and forwarded to the Financial Secretary.

(2) Any bank failing to comply with the requirements set out in paragraphs (a) and (b) of subsection (1) hereof, shall be liable to a fine not exceeding five pounds for every day during which the default continues.

10.- (1) Every bank shall-

(a) exhibit throughout the year in a conspicuous position in every office and branch of the bank in Palestine a copy of its last audited balancesheet;

(b) on or about the date of the presentation of such balance sheet to the shareholders in general meeting, cause a copy thereof to be published in a daily newspaper circulating in Palestine.

(2) Any bank to which this section shall apply which fails to comply with the requirements thereof shall be liable on conviction to a fine not exceeding one hundred pounds.

11.- (1) Without prejudice to anything contained in section 73 of the Companies Ordinance, no person --

(a) who has been a director of, or directly or indirectly concerned in the management of, a bank which has been wound up by a Court, or

(b) who has been sentenced by a Court of Law to a term of imprisonment for an offense involving moral turpitude and has not received a full pardon for the offense for which he was sentenced, shall, without the express authorization of the High Commissioner, act or continue to act as a director of, or be directly or indirectly concerned in the management of, any bank.

(2) Any person acting in contravention of subsection (1) of this section shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such penalties.

12.-- (1) Every bank shall pay to the Government of Palestine an annual fee of one hundred pounds, which shall be payable upon the second day of each calendar year.

(2) Any bank which fails to pay the annual fee required under this section shall, in addition to any other prescribed penalty, be liable to a penalty not exceeding ten pounds for each day during which such fee remains unpaid, and every director, manager, secretary or other officer of the bank who knowingly and wilfully authorizes or permits such non-payment shall be liable to a like penalty.

13.-- (1) Notwithstanding anything contained in the Mortgage Law (Amendment) Ordinance or in subsection (2) of section 10 of the Credit Banks Ordinance, any bank which makes the highest or only bid at any auction held for the sale of any immovable property mortgaged to such bank as security for debt, shall be entitled to the rights specified in paragraphs (a), (b), and (c) of that subsection (subject always to the provisions of the proviso thereto), although the amount of such bid is less than the debt due to the bank including interest and costs.

(2) The making by a district court of an order vesting in any bank immovable property mortgaged to such bank as security for any debt shall not be deemed to discharge the mortgagor from all further liability in respect of such debt.

14.-- (1) The issue in Palestine of any bank notes by any bank carrying on business in Palestine is prohibited.

(2) No bank carrying on business in Palestine shall circulate or cause to be circulated in Palestine any bank notes which have been made legal tender in Palestine.

15.-- (1) Any bank which --

(a) wilfully fails to comply with the provisions of this Ordinance, or

(b) issues bank notes in Palestine or circulates or causes to be circulated in Palestine any bank notes issued by it or any other bank notes the issue of which is not authorized by the Government of Palestine, shall, upon the application of the Attorney General made to the Registrar of Companies, be struck off the register of companies.

(2) Any person who, being a director or manager of a bank,

(a) fails to take all reasonable steps to secure compliance by the bank with the requirements of the Ordinance, or

(b) fails to take all reasonable steps to ensure the correctness of any statement submitted under the provisions of this Ordinance,

shall in respect of each offence be liable on convictions to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred pounds or to both such penalties.

16. The Banking Ordinance, the Banking (Amendment and Further Provisions) Ordinance, 1936, and the Banking (Amendment and Further Provisions) Ordinance, 1937, are hereby repealed.

8 October 1941

Harold MacMichael

High Commissioner

Order Concerning Dishonored Checks (Also numbered as (767)(Amendment 31 to MO 76 and 45) June 1987

1- In this Military Order

"bank" - a banking committee as referred to in Military Order regarding banking (Gaza Strip)(705) 1981.

"holder of the account" - a person who has a registered account in the bank.

"supervisor" - as referred to in the Military Order regarding banking (Gaza Strip)(705) 1981.

"account" - an account in the Israeli currency from which money is cashed by using checks.

"shared accounts" - accounts where more than one person has registered as owner.

"checks" - as referred to in Military Order Concerning Checks (Gaza Strip) (671) 1980.

"dishonored checks" - a check given to a bank on the date mentioned or afterwards and the bank refused to pay (balanced) due to there not being sufficient funds in the

account to cover it and it was not obliged to pay it according to an agreement with the drawer of money and even if that was not the only reason for refusing the check.

2.- (A) The account becomes restricted (hereinafter, a restricted account), the holder of the account becomes restricted (hereinafter, the restricted client) if ten withdrawn checks were refused during 3 months under the condition that this happens after 15 days pass between the first and the last refusal and a notice should be sent to the holder of the account as decided in the regulation.

(B) The supervisor may change the number of checks and the limited periods mentioned in the clause (A) hereinabove.

(C) The bank sends a written notice about the restriction to the holder of the account and to whoever was registered in the bank as a party interested in this account. The period of restriction lasts for one year.

(D) The restriction period starts on the date mentioned in the notice and it starts after 15 days from the date of sending it.

3.- (A) If the restricted client was restricted on a different account or if the account holder was restricted again during two years from the termination of the period in which

he was restricted the supervisor then has to notify all banks about that and starting from the date mentioned in the notice.

(1) All the shared accounts of the client must become restricted and all the shared accounts that he has with others if the other was also a restricted client.

(2) The bank shall not open an account for him in the two following years.

(B) The supervisor notifies the holder of the account about the restriction and whoever was registered as an attorney regarding the account.

(C) The restriction period commences from the date mentioned in the notification and restriction starts from 15 days after the notice is sent.

4.- (A) The restricted client shall not open any account.

(B) No one may draw a check from a restricted account.

(C) No one who is restricted according to article (3) may draw a check from any account.

5.- (A) The bank shall not pay 2 check that was drawn from a restricted account.

(B) The bank shall not give a check book for drawing money from a restricted account.

(C) The bank does not open an account for a restricted account.

6.- (A) Notwithstanding whatever was mentioned in article (%) a bank may pay a check during 15 days from the commencement of the restriction under the condition that the mentioned date was before the commencement of the restriction.

(B) Not paying the check according to the provisions of this article does not mean that the holder of the check loses his right to file a case regarding the check in court.

7.- Not paying the check according to the provisions of article (5)(A) the bank which the money was drawn from must mark that check.

8.- If it was clear to the supervisor that the bank did not restrict the holder of the account or restrict an account which had to be restricted according to the provisions of this Military Order the person may take any other action to execute the restriction.

9.- If the bank notified someone by mistake about a restriction, the wrongful act must be corrected and the supervisor notified. the restriction in this case is considered void.

10.- Whoever received a notification according to article (2)(C) and 3(B) and claimed that during the calculation of the refused checks took in account a refused check that was paid by mistake or there was reasons that left him thinking that he was obliged to

pay he may appeal before the Appeal Committee as referred to in the Military Order Concerning Appeal or Petition of Committees (Gaza and Sinai) (No. 409) 1971 and ask that the check be considered among the refused checks.

11.- (A) The bank shall not open an account without registering certain information about the identification of the person or whoever represents him according to the decision of the supervisor by the regulations (hereinafter, the regulation).

(B) Whoever was the holder of the account on the night of the commencement of the regulation he or his representative must submit special information about the identity that was declared in clause (A) during the period specified by the supervisor.

(C) If it was revealed to the supervisor that the bank failed to register the special information about the identification of the holder of the account because of his refusal or his failure to submit the information, he may ask the bank to give him check books to draw money from the account.

12.- The bank which the money was drawn from must give to the holder of the checks who did not pay all needed information about the identification of the drawer as decided by the supervisor in the regulation.

13.- If the bank restricted the holder of the account he then must submit a report about that to the supervisor who must in turn refer the details regarding the restrictions to all the banks including the banks in Israel and the West Bank and that according to whatever was decided by the supervisor.

14.- (A) The supervisor must publish the numbers of the restricted accounts and to show the name of the bank where each account is held and the termination of the restriction date.

(B) The supervisor may, after the opposition period passes or after the end of the procedures of opposition, publish the names of the persons restricted under strict conditions according to article (3) and by showing the special information regarding the termination of the restriction.

15.- The bank and the supervisor may limit the client's account if it was necessary for a criminal investigation according to any legislation or security laws.

16.- Whoever withdrew a check with knowledge during the restriction period according to Article 3 is subject to a penalty reaching up to 10,000 shekels or 4 times the amount of the check, whichever is higher.

17.- The bank, employees and the supervisor or whoever is in their are free of any criminal liability regarding any act committed in good faith to execute the order.

18.- If the bank failed to execute any of the provisions of this article the supervisor may consider this as a failure for the purposes of Article 29-31 of the Military Order regarding banking. (Gaza and Sinai) (No. 705) 1981.

19.- In this Article

(A) "court" - the military court as referred to in the Military Order Concerning Security regulations for the year 1970 or for the local court as referred to in the Military Order Concerning the Local Courts (Gaza and Sinai)(No. 395) 1971.

(B) The court may and upon review of a crime according to Military Order Regarding Checks (Gaza and Sinai)(No. 671) 1980 if it is related to checks may include another penalty to restrict the convicted person in all his or all his accounts including the shared accounts and the partners in those accounts according to this Military Order under the condition that this does not exceed 5 years.

(C) The court may impose a restriction period exceeding the period limited by this Military Order under the conditions that it does not exceed 5 years.

(D) For the purposes of Article 14(B) the court may consider the convicted person restricted according to the provisions of Article 3.

(E) The court should inform the supervisor about all the penalties imposed according to this article.

20.- In this Article

(A) "restriction" - restriction of the account or the client or restriction under strict penalty circumstances or restriction as an additional penalty for the purposes of this Military Order the current restriction is considered in Israel or in the West Bank Area is a restriction according to this Military Order.

21.- (A) The supervisor is responsible for executing this order and he may issue regulations and instructions for executing and he may decide

(1) The details of notices sent to the drawer of refused checks, dates and ways of sending them.

(2) The details of notices according to articles 2(C) & 3(B) ways of restricting them and the date the restriction commenced, ways and methods of notification.

(3) Ways of marking a check for the purposes of Article 7.

(4) The details of the reports for the purposes of Article 13.

(5) Ways of submitting and publishing information according to Article

14.

(6) The person who is registered by the bank as the holder of the account for the purposes of this Military Order and in special circumstances.

(B) The supervisor may give his authorization according to this Military Order except his authorization according to article 18 & 21(A).

(C) The supervisor may decide on exceptions on this Military Order.

22.- In the second addendum of this Military Order regarding the Constitution of the Civil Service Department (Gaza and Sinai)(No. 725) 1981 after Military Order Concerning Supervision Over Public Committees (Gaza)(No. 766) 1982. The Military Order regarding balanced checks applies (No. 767) 1982.

23.- This Military Order comes into force on 1/11/1982 Articles 11 and 21 from this Military Order come into force from the date of signing.

24.- This Military Order is called the Military Order Concerning Dishonored Checks (Gaza)(No. 767) 1982.

15/9/1982

4

PNA laws

Agreement of Cooperation in the Field of Monetary and Banking Affairs between the Hashemite Kingdom of Jordan and the Palestinian National Authority.

In accordance with the General Agreement on Cooperation and Coordination between the Hashemite Kingdom of Jordan and the Palestinian National Authority signed in Amman on the 26th of January 1995, the two sides agree on the following:

Article One.

In the monetary field:

1. The Jordanian Dinar continues to be the currency in circulation in addition to other currencies in circulation in the areas of the Palestinian National Authority and as a legal means of payment for all purposes including official transactions.

The Palestinian National Authority and its institutions, the local authorities and the banks will accept Dinar as a means of payment in any transaction.

2. The two sides pledge to enter early and comprehensive discussions aimed at organizing the process of replacing the Jordanian Dinar in use in the areas of the Palestinian National Authority with the Palestinian currency and the resulting mutual arrangements and commitments, in the Palestinian National Authority decides to take such a measure. The two sides pledge under no circumstances to take any sudden unilateral monetary action that contradicts the stability of the monetary situation in the two brotherly countries and their mutual economic security.

3. The Palestinian side, until the issuing of a new Palestinian currency, will work towards organizing its local payments in Jordanian Dinars to the maximum possible extent.

Article Two.

In the sphere of banking:

1/1. The licensing of banks in the areas of the Palestinian Authority will take place from the relevant Palestinian Authority and this includes the licensing of Jordanian Banks to open branches or new offices in the Palestinian areas.

1/2. The Jordanian and Palestinian sides will supply the necessary facilitations in accordance with the relevant legislation in each country and on the basis of preferential treatment, to the opening of branches or offices of Jordanian and Palestinian banks in the two countries if these banks have headquarters in the Hashemite Kingdom of Jordan or in the Palestinian areas.

1/3. The licenses already granted by the Central Bank of Jordan for the operating of branches or offices of Jordanian banks in the areas of the West Bank that will come under the control of the Palestinian Authority will continue to be valid subject to these branches or offices complying with banking legislation and regulations that the Palestinian Authority may issue in the future.

In addition the two sides will coordinate in the matter of licensing new branches of Jordanian banks that have not been licensed before the signing of this agreement until the transfer of the authority of licensing in the West Bank to the Palestinian Authority.

Second. Banking supervision

2/1. The Basle International Agreement will be the reference in matters relating to the coordination of banking supervision and the distribution of supervision responsibilities between the mother monetary authority and the host monetary authority. For the purposes of implementing this agreement the Palestinian Monetary Authority and the Central Bank of Jordan agree to establish the basis, rules and machinery relevant to the banking supervision of branches and offices of Jordanian banks working the Palestinian areas in a manner that ensures the safety and liquidity of these banks and the consistency of their work with the monetary requirement of the two countries.

2/2. The Palestinian Monetary Authority and the Central Bank of Jordan will exchange the necessary data and information on activities of the Jordanian branches and offices working in the Palestinian areas as well as statistics and data related to the totals of current deposits and current loans in Jordanian Dinar that belong to non Jordanian banks that work in the Palestinian areas. In addition the Central Bank of Jordan will provide the Palestinian Monetary Authority with any data or statistic related to the

activity of branches or offices of licensed Palestinian banks that operate or may operate in the Jordanian territory and of Jordanian banks that operate in the West Bank.

2/3. The Central Bank of Jordan will provide the necessary expertise and service to the Palestinian side to complete the establishment of the Palestinian monetary Authority and its trained personnel and systems in accordance with the request of the relevant Palestinian Authority and subject to the capabilities of the Central Bank of Jordan and its bank training facilities within the Kingdom.

2/4. The Jordanian side will work to provide the required liquidity in Jordanian Dinar to the Jordanian Banks working in the areas of the Palestinian Authority (in accordance with the rules that are placed by the joint committee).

2/5. The Jordanian and Palestinian sides will work towards facilitating the entry and exit of the Jordanian currency without any restriction as long as the Jordanian Dinar is accepted in circulation in the Palestinian areas.

2/6. The two sides will work on immediate consultation to deal with any urgent monetary problem that involves the circulation of the Jordanian Dinar in the areas of the Palestinian National Authority.

This agreement was signed in Amman on the 26th of January, the 25th of Shaban 1415 Hijira.

On behalf of the
Hashemite Kingdom of Jordan
Dr. Mohammed Said Al Nablusi
Governor of the Central Bank

On behalf of the
Palestinian National Authority
Mohammed Zuhdi Al Nashashibi
Minister of Finance