

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 26.
BANKS AND OTHER FINANCIAL
INSTITUTIONS.

CHAPTER 8A.
MERCHANT BANKS.

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CHAPTER 8A. MERCHANT BANKS.

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CHAPTER 8A. MERCHANT BANKS.

SUBCHAPTER I. GENERAL PROVISIONS.

§ 26-831.01. SHORT TITLE.

This chapter may be cited as the "Merchant Bank Act of 2000".

(June 9, 2001, D.C. Law 13-308, § 301, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 13-308, the "21st Century Financial Modernization Act of 2000", was introduced in Council and assigned Bill No. 13-867, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-597 and transmitted to both Houses of Congress for its review. D.C. Law 13-308 became effective on June 9, 2001.

§ 26-831.02. DEFINITIONS.

For the purposes of this chapter, the term:

- (1) "Affiliate" shall have the same meaning as set forth in § 26-551.02(1).
- (2) "Appropriate financial institutions agency" means the federal or state agency with statutory authority over the financial institution activities of a financial institution.
- (3) "Capital" shall have the same meaning as set forth in § 26-551.02(6).
- (4) "Commissioner" shall have the same meaning as set forth in § 26- 551.02(7).
- (5) "Department" shall have the same meaning as set forth in § 26-551.02(9).
- (6) "Deposit" means a demand, time, or savings deposit, savings share account, withdrawable or repurchasable share, investment certificate, or other savings account or savings deposit account made by an individual, corporation, partnership, state or federal government unit, or any other government organization, without regard to the location of the depositor.
- (7) "District" means the District of Columbia.
- (8) "District of Columbia Banking Code" shall have the same meaning as set forth in § 26-551.02(14).
- (9) "Financial institution" shall have the same meaning as set forth in § 26-551.02(18).
- (10) "Merchant bank" means a financial institution that is chartered or organized under the District of Columbia Banking Code as a merchant bank and is under the authority and supervision of the Commissioner.
- (11) "Subsidiary" shall have the same meaning as set forth in § 26- 551.02(24).
- (12) "Superior Court" means Superior Court of the District of Columbia.
- (13) "Universal bank" shall have the same meaning as set forth in § 26- 1401.02(28).

(June 9, 2001, D.C. Law 13-308, § 302, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(i), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166 rewrote pars. (4) and (5) which had read as follows:

- (4) "Commissioner" means the Commissioner of the Department of Banking and Financial Institutions.

"(5) 'Department' means the Department of Banking and Financial Institutions."

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(i) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

For Law 15-166, see notes following § 26-131.02.

SUBCHAPTER II. APPLICATION AND CERTIFICATION AS A MERCHANT BANK.

§ 26-831.03. APPLICATION FOR MERCHANT BANK CHARTER; REVIEW AND APPROVAL OR DISAPPROVAL OF APPLICATION.

(a) A person described in § 26-833.09(a) may apply for a merchant bank charter by filing a written application with the Commissioner. The application shall include such information as the Commissioner may require by regulation and shall be on such forms and in accordance with such procedures as the Commissioner may prescribe by regulation.

(b) An application submitted under subsection (a) of this section shall be approved or disapproved in writing by the Commissioner within 60 days after a complete application is submitted to the Commissioner. The Commissioner and the applicant may agree to extend the review period for an additional 60 days.

(c) The Commissioner shall not issue a merchant bank charter to the applicant unless:

- (1) The applicant is authorized under its articles of incorporation or other organizational documents to act as a financial institution;
- (2) The applicant is in good standing with the Department and there is no investigatory or enforcement action pending against the applicant by the Department;
- (3) The applicant is in good standing with appropriate financial institutions agencies and there is no investigatory or enforcement action pending against the applicant by an appropriate financial institutions agency;
- (4) The applicant is well capitalized and will maintain a capital level as required by this chapter and as the Commissioner may require as appropriate for the purposes of safety and soundness;
- (5) The applicant does not exhibit a combination of financial, managerial, operational, and compliance weaknesses that are moderately severe or unsatisfactory, as determined by the Commissioner, based upon the Commissioner's assessment of the applicant's capital adequacy of liquidity, and sensitivity to market risk;
- (6) The most recent examination that the applicant has received from its federal appropriate financial institutions agency, if any, indicates that the applicant is in compliance with applicable federal law and regulation;
- (7) The applicant agrees to comply with applicable regulations and rules promulgated by the Commissioner;
- (8) The applicant agrees to comply with any lawful order of the Commissioner and with any conditions imposed by the Commissioner in connection with the approval of an application, including additional requirements imposed on the applicant that the Commissioner determines are necessary for the protection of the shareholders or creditors of the applicant or of the general public;
- (9) The applicant agrees to comply with any written agreement entered into with the Commissioner in connection with the approval of an application;
- (10) The Commissioner determines that it is reasonable to believe that the applicant will act in a safe and sound manner and maintain a safe and sound condition; and
- (11) The Commissioner determines that issuing a merchant bank charter to the applicant will serve the public interest.

(June 9, 2001, D.C. Law 13-308, § 303, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.04. ISSUANCE OF CERTIFICATE OF AUTHORITY.

If the Commissioner approves the application of an applicant to be a merchant bank, the Commissioner shall issue to the applicant a charter stating that the applicant is authorized to conduct business as a merchant bank under this chapter.

(June 9, 2001, D.C. Law 13-308, § 304, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.05. REVOCATION OR SUBSEQUENT LIMITATION OF CERTIFICATE OF AUTHORITY.

If a merchant bank fails to maintain the standards and requirements of this chapter, the Commissioner shall, by order, revoke or limit the exercise of the powers of the merchant bank's authority.

(June 9, 2001, D.C. Law 13-308, § 305, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.06. VOLUNTARY TERMINATION OF CERTIFICATION OF AUTHORITY.

An applicant that is chartered as a merchant bank under this chapter may elect to terminate its charter by giving 60 days prior written notice of the termination to the Commissioner. A termination under this section shall be effective only with the written approval of the Commissioner. An applicant shall, as a condition to a termination under this section, terminate its exercise of all powers granted under this chapter before the termination of the certification. The Commissioner's written approval of a applicant's termination under this section shall be void if the applicant fails to satisfy the condition to termination under this section.

(June 9, 2001, D.C. Law 13-308, § 306, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

SUBCHAPTER III. POWERS AND AUTHORITY OF A MERCHANT BANK.

§ 26-831.07. POWERS OF MERCHANT BANKS; LIMITS ON POWERS.

(a) Except as provided in this chapter, a merchant bank shall have all the powers and authority of a District-chartered bank or District-chartered savings and loan, including powers and authority with respect to investments, loans, fiduciary and trust functions, and transactions; provided, that a merchant bank shall obtain certification as a universal bank before exercising those powers of a universal bank.

(b) A merchant bank shall not solicit, receive, or accept money, or its equivalent, on deposit, or engage in deposit-like activity, as a regular business activity.

(c) A merchant bank may issue a draft drawn on the merchant bank in the form of a treasurer's check or cashier's check.

(d) A merchant bank may deposit cash, whether constituting principal or income, in any financial institution inside or outside the District of Columbia.

(e) A merchant bank shall notify the Commissioner at least 30 days before the merchant bank establishes an office or branch office where the merchant bank intends to transact the business of the merchant bank.

(f) A merchant bank may apply to the Commissioner for certification, chartering, or organization as any other type of financial institution authorized under the District of Columbia Banking Code.

(June 9, 2001, D.C. Law 13-308, § 307, 48 DCR 3244; Oct. 19, 2002, D.C. Law 14-213, § 18(d), 49 DCR 8140.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-213, in subsec. (a), substituted "provided, that a merchant bank shall obtain certification as a universal bank before exercising those powers of a universal bank" for "provided, that a universal bank shall obtain certification as a universal bank before exercising those powers of a universal bank that a District-chartered bank or District-chartered savings and loan is not authorized to exercise".

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

For Law 14-213, see notes following § 26-131.02.

SUBCHAPTER IV. STRUCTURE AND ORGANIZATION OF A MERCHANT BANK; CAPITAL REQUIREMENTS.

§ 26-831.08. CAPITAL REQUIREMENTS OF A MERCHANT BANK.

(a) The minimum amount of initial capital for a merchant bank shall be \$20 million, of which at least \$10 million shall be common stock or an equity interest. The balance may be composed of qualifying subordinated or similar debt as determined under regulations promulgated by the Commissioner. The Commissioner may modify the required minimum amount of initial capital if an applicant files with the Commissioner a written request and application, which application shall include a capital plan and any other documentation required by the Commissioner by regulation or order.

(b) A merchant bank shall maintain minimum capital in at least the same amount as the minimum initial capital required under subsection (a) of this section or in such other amount as the Commissioner may establish by rule or by order, after the filing of a request and application by a merchant bank; provided, the Commissioner shall not establish a minimum capital requirement for a merchant bank that is less than 150% of the tier 1 risk-based capital or 150% of the total risk-based capital established by the Board of Governors of the Federal Reserve System for a well-capitalized bank.

(June 9, 2001, D.C. Law 13-308, § 308, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.09. STRUCTURE AND ORGANIZATION OF MERCHANT BANKS.

(a) A merchant bank may be organized as a corporation, limited liability company, limited partnership, or limited liability partnership.

(b) The articles of incorporation or other organizational documents of a merchant bank shall contain the following statement: "This [corporation/limited liability company/limited partnership/limited liability partnership] is subject to the requirements of the District of Columbia Banking Code and does not have the power to solicit, receive or accept money or its equivalent on deposit." The appropriate business form listed in the bracketed text in the statement shall be included in the statement. The statement shall not otherwise be amended.

(c) A merchant bank may use as a part of its name the word "bank," "banker", "banking", or any abbreviations of those words.

(June 9, 2001, D.C. Law 13-308, § 309, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.10. POLICIES OF MERCHANT BANK'S BUSINESS ACTIVITIES.

(a) The board of directors of a merchant bank, if the merchant bank is a corporation, or its equivalent governing body, if the merchant bank is another type of business entity, shall establish a written policy under which the merchant bank's business activities shall be conducted. The written policy shall include the merchant bank's business plan, operating procedures, investment policies, and lending policies. The written policy shall also address conflicts of interest and shall preclude a merchant bank from making an investment in a small business if the effect is to create the potential of a conflict of interest with a person having an ownership interest in the merchant bank.

(b) The written policy under subsection (a) of this section for business activities shall be reviewed and approved or disapproved by the Commissioner. If the Commissioner finds that the policy does not adequately regulate the business activities of the merchant bank, the Commissioner may require the board of directors, or equivalent governing body, to take corrective action.

(June 9, 2001, D.C. Law 13-308, § 310, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

SUBCHAPTER V. COMMISSIONER POSSESSION, RECEIVERSHIP, CONSERVATORSHIP, AND LIQUIDATION OF MERCHANT BANKS.

§ 26-831.11. LIQUIDATION OF MERCHANT BANKS IN GENERAL.

A merchant bank shall not be liquidated except as provided by this chapter or in accordance with the order of a court of competent jurisdiction.

(June 9, 2001, D.C. Law 13-308, § 311, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.12. COMMISSIONER TAKING POSSESSION OF MERCHANT BANKS.

(a) Subject to § 26-1401.15 as it relates to the functional regulatory authority of the Commissioner for the liquidation or rehabilitation of an insurance subsidiary or holding company affiliate, the Commissioner may take possession of the business and property of a merchant bank if the Commissioner has determined that one or more of the events described in subsection (b) of this section has occurred.

(b) The Commissioner may take possession of the properties or business of a merchant bank under subsection (a) of this section if the merchant bank:

- (1) Has violated a law, rule, regulation, a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request by the Commissioner, or a term or condition of a written agreement entered into with the Commissioner, and such violation affects the safe and sound condition and operation of the bank or the severity of the violation calls into question the competency of management or the quality of the operation of the bank;
- (2) Is conducting its business in an unauthorized or unsafe or unsound manner;
- (3) Is in an unsafe and unsound condition to transact its business;
- (4) Has an impairment of its capital;
- (5) Has suspended payment of its obligations;
- (6) Has neglected or refused to comply with the terms of a duly issued order of the Commissioner;
- (7) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the Department;
- (8) Has refused to be examined upon oath regarding its affairs; or

(9) Has neglected, refused or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

(c) If the Commissioner takes possession of the property or business of a merchant bank under this section, the Commissioner shall inform the merchant bank of the merchant bank's right to seek review of the Commissioner's action under subsection (e) of this section.

(d) The Commissioner may maintain possession of the property or business of a merchant bank until:

(1) The affairs of the merchant bank are finally liquidated;

(2) The merchant bank voluntarily winds up its affairs; or

(3) The Commissioner authorizes the merchant bank to resume business under § 26-833.13.

(e) Within 10 days after the Commissioner takes possession of the property or business of a merchant bank under this section, the merchant bank may apply to the Superior Court for an order requiring the Commissioner to show cause why the Commissioner should not be enjoined from continuing his or her possession of the property or business. The Superior Court may, upon good cause shown, direct the Commissioner to surrender possession or some or all of the business or property of the merchant bank or direct the Commissioner to take, or refrain from taking, any action.

(f) In addition to the authority granted under this section, the Commissioner may request the appointment of a receiver or conservator for the merchant bank under this chapter.

(June 9, 2001, D.C. Law 13-308, § 312, 48 DCR 3244; June 11, 2004, D.C. Law 15-166, § 2(j), 51 DCR 2817.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 15-166, in subsec. (a), deleted "of the Department of Insurance and Securities Regulation" following "authority of the Commissioner".

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2(j) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2653).

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

For Law 15-166, see notes following § 26-131.02.

§ 26-831.13. RESUMPTION OF BUSINESS BY A MERCHANT BANK.

A merchant bank of which the Commissioner takes possession or which is operating under restrictions imposed by the Commissioner may be permitted by the Commissioner to resume business in accordance with the provisions of this chapter and subject to such conditions as may be imposed by the Commissioner.

(June 9, 2001, D.C. Law 13-308, § 313, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.14. APPOINTMENT OF A RECEIVER FOR A MERCHANT BANK.

(a) The Commissioner may petition the Superior Court to appoint a receiver for a merchant bank if there is a reasonable basis to believe that the merchant bank:

(1) Has violated a law, rule, regulation, a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request by the Commissioner, or a term or condition of a written agreement entered into with the Commissioner, and such violation affects the safe and sound condition and operation of the bank or the severity of the violation calls into question the competency of management or the quality of the operation of the bank;

(2) Has violated a condition imposed by the Commissioner in connection with the approval of an application, an order or authorized request of the Commissioner, or a written agreement entered into with the Commissioner;

(3) Is conducting its business in an unauthorized, unsafe, or unsound manner;

- (4) Is in an unsafe and unsound condition;
- (5) Has an impairment of its capital;
- (6) Has suspended payment of its obligations;
- (7) Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the Department;
- (8) Has refused to be examined upon oath regarding its affairs; or
- (9) Has neglected, refused, or failed to take or continue proceedings for voluntary liquidation in accordance with any of the provisions of this chapter.

(b) The Superior Court may act upon a petition by the Commissioner for the appointment of a receiver immediately and without notice to any person. The Superior Court may appoint a receiver if the Superior Court determines that a condition set forth in subsection (a) of this section exists and that the bank is operating, or may operate, in an unsafe or unsound manner. The Superior Court may also issue an injunction to require a universal bank to correct any condition set forth in subsection (a) of this section, whether or not the bank is operating, or may operate, in an unsafe or unsound manner. If the Superior Court appoints a receiver and, after the appointment of the receiver, it appears to the court that reasons for receivership do not, or no longer, exist, the Superior Court shall dissolve the receivership and terminate any pending proceedings.

(c) Unless otherwise provided by law, a receiver, other than a receiver who is an employee of the Department and acting in his or her official capacity, shall post a bond in an amount to be determined by the Superior Court.

(d) The receiver shall, on a regular basis, report to the Commissioner regarding all matters involving the receivership.

(June 9, 2001, D.C. Law 13-308, § 314, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.15. RECEIVER DUTIES AND POWERS.

(a) Subject to Superior Court approval, a receiver shall:

- (1) Take possession of the books, records, and assets of the merchant bank and collect all debts, dues, and claims belonging to the merchant bank;
- (2) Sue, defend, compromise, arbitrate, or otherwise settle all claims involving the merchant bank;
- (3) Sell all real and personal property;
- (4) Exercise all fiduciary functions of the merchant bank;
- (5) Pay all administrative expenses of the receivership, which expenses shall be a first charge upon the assets of the merchant bank and shall be fully paid before a final distribution or payment of dividends to creditors or shareholders;
- (6) Pay, ratably, all debts of the merchant bank; provided, that debts not exceeding \$500 may be paid in full but the holders of such debt shall not be entitled to interest on the debt;
- (7) Repay, ratably, any amount paid in by a shareholder by reason of an assessment made upon the stock of the merchant bank by the Department in accordance with this chapter;
- (8) Pay, ratably, to the shareholders of the merchant bank, in proportion to the number of shares held and owned by each, the balance of the net assets of the merchant bank after payment or provision for payments as provided in this section;
- (9) Have all the powers of the directors, officers, and shareholders of the merchant bank as necessary to support an action taken on behalf of the merchant bank; and
- (10) Hold title to all the bank's property, contracts, and rights of action

(b) Subject to Superior Court approval, a receiver may:

- (1) Borrow money as necessary or expedient in aiding the liquidation of the merchant bank and secure the borrowed money by the pledge, hypothecation, or mortgage of the assets of the bank;
- (2) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel, including, with the prior written approval of the Commissioner, personnel of the Department, that the receiver considers necessary or expedient to assist in the performance of the receiver's duties; provided, that the expense of employing Department personnel shall be an administrative expense of the liquidation

that shall be payable to the Department; or

(3) Exercise any other power and duty authorized by the Superior Court.

(June 9, 2001, D.C. Law 13-308, § 315, 48 DCR 3244; Oct. 19, 2002, D.C. Law 14-213, § 18(e), 49 DCR 8140.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 14-213, in subsec. (a)(7), validated a previously made technical correction.

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

For Law 14-213, see notes following § 26-131.02.

§ 26-831.16. LIEN ON PROPERTY OR ASSETS; VOIDABLE TRANSFER.

(a) Except as provided in subsection (c) of this section, the transfer of, or a lien on, the property or assets of the merchant bank shall be voidable by the receiver if the transfer or lien was:

(1) Made or created within one year before the date the Commissioner takes possession of the merchant bank or the date the merchant bank is ordered into receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the merchant bank or an affiliate of the merchant bank;

(2) Made or created within 90 days before the date the Commissioner takes possession of the merchant bank or the date the merchant bank is ordered into receivership, with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the creditor's or depositor's debt than is given or obtained by another creditor or depositor of the same class;

(3) Accepted after the date the Commissioner takes possession of the merchant bank or the date the merchant bank is ordered into receivership by a creditor or depositor having reasonable cause to believe that a preference, as described in subsection (b) of this section, will occur; or

(4) Voidable by the merchant bank and the merchant bank may recover the property transferred, or its value, from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the Commissioner takes possession of the merchant bank or the date the merchant bank is ordered into receivership or conservatorship.

(b) A preference in a transfer or grant of an interest in the property or assets of a merchant bank shall be deemed to occur when:

(1) There is an intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the merchant bank was or became indebted; or

(2) Less than a reasonably equivalent value is obtained by the merchant bank in exchange for the transfer or grant of interest if the merchant bank was insolvent when the transfer or grant of interest was made or if the merchant bank became insolvent as a result of the transfer or grant of interest.

(c) Notwithstanding any other provision of this chapter, the Commissioner or the receiver shall not void an otherwise voidable transfer under this section if:

(1) The transfer or lien does not exceed \$1,000 in value;

(2) The transfer or lien was received in good faith by a person who is not described in subsection (a)(1) of this section and who gave value in exchange for the transfer or lien; or

(3) The transfer or lien was intended by the merchant bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the merchant bank.

(d) A person acting on behalf of the merchant bank who knowingly participated in making or implementing a voidable transfer or lien, and each person receiving property or assets, or the benefit of property or assets, of the merchant bank as a result of a voidable transfer or lien, shall be personally liable for the property, assets, or benefit received and shall account to the receiver for the benefit of the merchant bank.

(June 9, 2001, D.C. Law 13-308, § 316, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.17. MAINTENANCE AND DISPOSAL OF RECORDS BY RECEIVER.

- (a) With the approval of the Superior Court, a receiver may dispose of records of the merchant bank in receivership that are obsolete and unnecessary to the continued administration of the receivership.
- (b) The receiver may retain the records of the merchant bank and the receivership for a period of time that the receiver considers appropriate or for a period of time as ordered by the Superior Court.
- (c) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the merchant bank and of the receiver's office, including maintaining the records on any medium approved by the Superior Court.
- (d) The receiver may use assets of a merchant bank to:
 - (1) Procure services to maintain the records of a liquidated merchant bank; or
 - (2) Pay fees, as established by the Commissioner, to the Commissioner necessary for the Commissioner to procure services to maintain the records of a liquidated merchant bank.

(June 9, 2001, D.C. Law 13-308, § 317, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.18. CONSERVATOR; APPOINTMENT; BOND AND SECURITY; QUALIFICATIONS; EXPENSES.

- (a) If any of the grounds under § 26-833.12 authorizing the request for the appointment of a receiver exist or if the Commissioner determines that it is necessary to conserve the assets of a merchant bank for the benefit of the depositors, investors, or other creditors of the bank or for the benefit of the general public, the Commissioner may petition the Superior Court to appoint a conservator for a merchant bank.
- (b) The Department shall be reimbursed out of the assets of the conservatorship, for all sums expended by the Department in connection with the conservatorship.
- (c) All expenses of a conservatorship shall be paid out of the assets of the merchant bank upon the approval of the Commissioner, shall be a first charge upon the assets of the merchant bank, and shall be paid in full before a final distribution or payment of dividends to creditors or shareholders of the merchant bank.

(June 9, 2001, D.C. Law 13-308, § 318, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.19. CONSERVATOR; RIGHTS, POWERS, AND PRIVILEGES.

- (a) Under the supervision of the Commissioner, the conservator shall take possession of the books, records, and assets of the bank and shall take any action necessary to conserve the assets of the merchant bank pending further disposition of the business of the merchant bank as provided by law.
- (b) Subject to Superior Court approval and under the supervision of the Commissioner, a conservator shall:
 - (1) Take possession of the books, records, and assets of the merchant bank and collect all debts, dues, and claims belonging to the merchant bank;
 - (2) Sue, defend, compromise, arbitrate, or otherwise settle all claims involving the merchant bank;
 - (3) Sell real and personal property if necessary to conserve the assets of the merchant bank;
 - (4) Exercise all fiduciary functions of the merchant bank;
 - (5) Pay all administrative expenses of the conservatorship, which expenses shall be a first charge upon the assets of the merchant bank and shall be fully paid before a final distribution or payment of dividends to creditors or shareholders;
 - (6) Pay the debts of the merchant bank if the conservator determines that payment of the debts is in the best interests of the merchant bank;
 - (7) Have all the powers of the directors, officers, and shareholders of the merchant bank as necessary

to support an action taken on behalf of the merchant bank; and

(8) Hold title to all the bank's property, contracts, and rights of action.

(c) Subject to Superior Court approval and under the supervision of the Commissioner, a conservator may:

(1) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel, including, with the prior written approval of the Commissioner, personnel of the Department, that the conservator considers necessary or expedient to assist in the performance of the conservator's duties; provided, that the expense of employing Department personnel shall be an administrative expense of the liquidation that shall be payable to the Department; or

(2) Exercise any other power and duty authorized by the Superior Court.

(d) Unless otherwise provided by law, a conservator, other than a conservator who is an employee of the Department and acting in his or her official capacity, may be required to post a bond in an amount to be determined by the Superior Court.

(e) The conservator shall, on a regular basis, report to the Commissioner regarding all matters involving the conservatorship.

(June 9, 2001, D.C. Law 13-308, § 319, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.20. AUTHORITY OF CONSERVATOR TO BORROW MONEY; PURPOSE.

(a) With the prior approval of the Commissioner, the conservator of a merchant bank may borrow money to aid in the operation, reorganization, or liquidation of the bank, including the payment of liquidating dividends.

(b) With the prior approval of the Commissioner, the conservator may secure money borrowed under subsection (a) of this section by the pledge, hypothecation, or mortgage of the assets of the merchant bank.

(June 9, 2001, D.C. Law 13-308, § 320, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

§ 26-831.21. TERMINATION OF CONSERVATORSHIP.

(a) If the Commissioner determines that termination of the conservatorship and resumption of the transaction of the merchant bank's business by the merchant bank can be achieved and maintained in a safe and sound manner and is otherwise in the public interest, the Commissioner may petition the Superior Court to terminate a conservatorship and permit the merchant bank to resume the transaction of its business, subject to terms, conditions, restrictions, and limitations as the Commissioner determines are appropriate.

(b) If the Superior Court determines that reasons for the conservatorship no longer exist, the Superior Court may dissolve the conservatorship and terminate any pending proceedings.

(c) If the Commissioner determines that it would be in the public interest, the Commissioner may petition the Superior Court for termination of a conservatorship and appointment of a receiver for the merchant bank under § 26- 833.12.

(June 9, 2001, D.C. Law 13-308, § 321, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.

SUBCHAPTER VI. MISCELLANEOUS PROVISIONS.

§ 26-831.22. RULES.

The Commissioner may prescribe rules governing the activities of merchant banks and implementing this chapter pursuant to subchapter I of Chapter 5 of Title 2. The rules shall take into account the objective of merchant banks to provide needed capital to businesses and the nondepository nature of merchant banks.

(June 9, 2001, D.C. Law 13-308, § 322, 48 DCR 3244.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 13-308, see notes following § 26-833.01.