

ANNEX 2

Table B: Further Proposed Amendments to the Draft Central Bank of The Bahamas (Amendment) Bill

	First Round Public Consultation Draft Legislative Provisions	Second Round Public Consultation Draft Legislative Provisions	Summary of Proposed Changes	Rationale for Proposed Changes
Clause 2				
1.	<p><b>2. Amendment of section 24 of the principal Act.</b></p> <p>Section 24 of the principal Act is amended by —</p> <p>(a) inserting before the existing provision, the subsection designation “(1)”; and</p> <p>(b) inserting immediately after subsection (1) the following new subsections —</p>	<p><b>2. <del>Repeal and replacement Amendment of section 24 of the principal Act.</del></b></p> <p>Section 24 of the principal Act is <del>repealed and replaced as follows</del> amended by —</p> <p><del>(a) inserting before the existing provision, the subsection designation “(1)”; and</del></p> <p><del>(b) inserting immediately after subsection (1) the following new subsections—</del></p>	<p>It is proposed to repeal and replace section 24 of the principal Act instead of merely amending it.</p>	<p>The proposed amendments are substantial and warrant section 24 being repealed and replaced.</p>
2.	<p>(3) The Central Bank shall, where an amount is paid to the Bank which is —</p> <p>(a) less than five hundred dollars; or</p> <p>(b) five hundred dollars or more and has been held by the Bank for a minimum period of twenty-five years,</p> <p>pay to the Treasurer an amount equal to the amount so paid, together with interest accrued on such amount while it was held by the Bank,</p> <p>(i) within two months after the amount referred to in paragraph (a) is received by the Bank; or</p> <p>(ii) within two months after the end of the calendar year in which the twenty-five year period referred to in paragraph (b)</p>	<p>(3) The Central Bank shall, where an amount is paid to the Bank which is—</p> <p>(a) less than five hundred dollars; or</p> <p>(b) five hundred dollars or more, and has been held by the Bank for a minimum period of <del>twenty-five</del> <u>ten</u> years,</p> <p>pay to the Treasurer, <u>in the case of funds paid to the Central Bank in —</u></p> <p><u>(i) Bahamian dollars, an amount equal to; and</u></p> <p><u>(ii) any other currency, an amount equivalent to <del>an amount equal to</del></u></p> <p>the amount <del>so</del> <u>paid, to the Central Bank</u> together with interest accrued on such amount while it was held by the Bank,</p> <p>(A) within two months after the amount referred to in paragraph (a) is</p>	<p>Subsection (3) has been amended to —</p> <p>(i) reduce the period within which a claim can be brought for dormant account funds from twenty-five years proposed in the previous draft Bill, to ten years; and</p> <p>(ii) require the Central Bank to pay to the Treasurer an equal amount of Bahamian dollars as it receives with respect to a Bahamian dollar denominated dormant account and an equivalent amount as it receives with respect to a foreign currency denominated dormant account.</p>	<p>(i) The Central Bank has acceded to representations from banks requesting that the twenty-five years period for subsistence of the right to claim dormant account funds be shortened in order to reduce banks’ administrative burden with respect to dormant accounts. The Central Bank’s benchmark of other jurisdictions indicated that there is no best practice in this area, as the periods within which a claim could be brought ranged from ten years to indefinite. It was considered that a total period of seventeen years (seven years held by the bank plus ten years held by the Central Bank or the Treasurer) was adequate. In arriving at this number, regard</p>

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	<p>expires.</p> <p>Provided that interest shall accrue only on the amount referred to in paragraph (b), if interest was payable in respect of that amount by the bank that transferred the funds to the Central Bank.</p>	<p>received by the Bank; or (B)within two months after the end of the calendar year in which the <del>twenty-five</del> <u>ten</u> year period referred to in paragraph (b) expires.</p> <p>Provided that interest shall accrue only on the amount referred to in paragraph (b), if interest was payable in respect of that amount by the bank that transferred the funds to the Central Bank.</p>		<p>was given to the fact that a good number of dormant accounts have been held by the Central Bank from the inception of the dormant accounts regime and that very few claims are made each year.</p> <p>(ii) The inclusion of subsection (3)(b) will enable the Central Bank to pay dormant account funds that it receives in Bahamian dollars to the Treasurer in Bahamian dollars and to pay dormant account funds received in foreign currency to the Treasurer in another currency (for example, United State dollars). The amendment provides the Bank with some flexibility regarding the treatment of foreign currency funds transferred. It is intended to support the reformulated subsection (8) (see below) which empowers the Central Bank to invest and reinvest dormant account funds and will also empower the Bank to convert dormant account funds to other currencies for investment purposes, as it may deem prudent.</p>
3.	<p>(4) The Central Bank shall —</p> <p>(a) where a payment has been made to the Treasurer by the Bank pursuant to subsection (3), be discharged from further liability in respect of the amount so paid; and</p> <p>(b) retain all records relating to amounts paid to the Bank pursuant</p>	<p>(4) The Central Bank shall—</p> <p>(a) where a payment has been made to the Treasurer by the Bank pursuant to subsection (3), be discharged from further liability in respect of the amount so paid; and</p> <p>(b) retain all <u>of its</u> records relating to</p>	<p>Subsection (4) of the previous draft Bill has been amended in paragraph (b) to make clear that the Central Bank is required to retain its records relating to dormant accounts transferred to it for a minimum period of 15 years after amounts of less than \$500 are paid to the Treasurer.</p>	<p>This amendment clarifies that the Central Bank is required to retain its records relating to the dormant accounts it receives. The reduction of the record retention period from 30 years to 15 years is consequential to the amendment to subsection (3) which reduces the period within</p>

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	<p>to —</p> <p>(i) subsection (3)(a), for a minimum period of thirty years after payment is made by the Bank to the Treasurer; and</p> <p>(ii) subsection (3)(b) for a minimum period of five years after payment is made by the Bank to the Treasurer.</p>	<p>amounts paid to the Bank pursuant to —</p> <p>(i) subsection (3)(a), for a minimum period of <del>thirty</del> <b>fifteen</b> years after payment is made by the Bank to the Treasurer; and</p> <p>(ii) subsection (3)(b), for a minimum period of five years after payment is made by the Bank to the Treasurer.</p>		<p>which a claim may be brought to 10 years.</p>
4.	<p>(6) The Central Bank shall make application to the Minister on behalf of an entitled person for repayment by the Treasurer to the Bank of a specified amount where —</p> <p>(a) such amount is paid by the Bank to the Treasurer pursuant to subsection (3)(a);</p> <p>(b) the Bank is satisfied that the person is entitled to receive such amount paid to the Treasurer; and</p> <p>(c) the entitled person brings a claim for such amount within twenty-five years of such amount being received by the Bank.</p>	<p>(6) The Central Bank shall make application to the Minister on behalf of an entitled person for repayment by the Treasurer to the Bank of a specified amount <u>paid to the Treasurer where — (a) such amount is paid by the Bank to the Treasurer</u> pursuant to subsection (3)(a); <del>where —</del></p> <p><del>(b)</del> <u>(a) the Bank that paid the funds to the Central Bank represents to the Central Bank that it is satisfied that the person is entitled to receive, in the case of funds transferred to the Central Bank in —</u></p> <p><u>(i) Bahamian dollars, an amount equal to; and</u></p> <p><u>(ii) in any other currency, an amount equivalent to,</u></p> <p><del>such amount paid to the Treasurer the funds transferred to the Central Bank;</del> and</p> <p><del>(c)</del> <u>(b) the entitled person brings makes a claim to the bank that paid the funds to the Central Bank for such amount within twenty-five ten years of such transfer. amount being</u></p>	<p>Subsection (6) of the previous draft Bill has been amended to set out the conditions upon which funds transferred to the Treasurer by the Central Bank may be claimed. New elements of the process include —</p> <p>(i) codification of the current requirement that the bank that transferred funds to the Central Bank indicated to the Central Bank that it is satisfied of the claimant's entitlement to the funds;</p> <p>(ii) codification of the process whereby claims for Bahamian dollars transferred to the Central Bank would be settled in an equal amount of Bahamian dollars, and the introduction of the process whereby claims for foreign currency transferred to the Central Bank would be settled in an equivalent amount in foreign currency; and</p> <p>(iii) reduction of the period within which a claim may be brought for dormant account funds, from the twenty-five years proposed in</p>	<p>(i) The previous draft Bill required the Central Bank to be satisfied that the claimant is entitled to bring the claim. In practice, the bank that transferred the funds to the Central Bank is responsible for maintaining all records with respect to dormant accounts transferred to the Central Bank in order to satisfy itself of the validity of claims. The Central Bank does not receive any information to identify the owners of dormant accounts transferred to it. The amendment clarifies the requirements in this regard by codifying the existing practice.</p> <p>(ii) Subsection (6)(a) will enable the Central Bank to repay Bahamian dollar claims in Bahamian dollars and claims for any other currency in an equivalent amount (in a foreign currency). Currently, dormant account funds are transferred to the Central Bank in the currencies in which they are held by the bank and claims</p>

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		<del>received by the Bank.</del>		the previous draft Bill, to ten years.	are paid in the same currency. (iii) See the discussion at row 3, item (i) above.
5.	No equivalent provision.	<del>(8) The Minister, the Treasurer and the Government of The Bahamas shall — (a) where a payment has been made to the Bank by the Treasurer pursuant to subsection (7), be discharged from further liability in respect of the amount so paid; and (b) not be liable to any person for a payment made pursuant to subsection (7), if afterwards a claim is made by any other person in respect of the amount so paid.</del>		The proposed new subsection (8) provides The Minister, the Treasurer and the Government for protection from liability – (i) for funds paid by the Treasurer to the Central Bank in respect of claims; and (ii) to a person who claims funds after they have been paid by the Treasurer to the Central Bank for onward payment to another person.	The amendment mirrors the existing protection from liability given to the Central Bank in subsection (5) and to banks in section 20(13) of the BTCRA. Similar provisions are found in the legislation of a number of the benchmarked countries, including the Cayman Islands.
6.	(8) The Central Bank may invest any amount transferred to the Bank pursuant to subsection (4) of section 20 of the Banks and Trust Companies Regulation Act (Ch. 316).	<del>(89) The Central Bank may shall have full power to invest and reinvest</del> any amount transferred to the Bank pursuant to subsection (4) of section 20 of the Banks and Trust Companies Regulation Act (Ch. 316).		Subsection (8) of the previous draft Bill has been reformulated in subsection (9) to empower the Central Bank to invest and reinvest dormant account funds transferred to it.	The proposed amendment gives the Central Bank the additional power to reinvest dormant account funds and uses more expansive language to grant the Central Bank greater flexibility in its investment decisions.
Objects and Reasons					
	The purpose of the Bill is to provide for payment by the Central Bank to the Treasurer of funds transferred to the Central Bank from dormant accounts held by banks, for such funds to be held in trust by the Treasurer for the benefit of The Bahamas, and for the circumstances in which such funds may be repaid by the Treasurer to the Central Bank for payment to entitled persons.	The purpose of the Bill is to <del>repeal and replace section 24 of the Act to empower the Central Bank to deal more effectively with dormant account balances held by the Bank provide for payment by the Central Bank to the Treasurer of funds transferred to the Central Bank from dormant accounts held by banks, for such funds to be held in trust by the Treasurer for the benefit of The Bahamas, and for the circumstances in which such funds may be repaid by the Treasurer to the Central Bank for payment to entitled</del>		The Objects and Reasons segment of the Bill has been reformulated and expanded to clearly summarize the purpose(s) of each subsection of the proposed new section 24.	The amendments are self-explanatory.

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		<p>persons.</p> <p><u>The new section 24 provides for —</u></p> <p><u>(a) in subsections (1) and (2), the power of the Central Bank to accept deposits required to be transferred to it by banks under the Banks and Trust Companies Regulation Act, to pay interest on money so deposited and to pay out money to any person entitled, and for the Central Bank to establish a Fund for deposits so received from the banks;</u></p> <p><u>(b) in subsection (3), where the Central Bank receives deposits of less than \$500 or where the Bank has held a deposit of \$500 or more for a minimum period of 10 years, the payment within the time specified by the Central Bank, to the Treasurer for the benefit of The Bahamas of the amount equal or equivalent to such deposits along with any interest accrued while held by the Central Bank;</u></p> <p><u>(c) in subsection (4) the Central Bank's discharge from further liability in respect of amounts paid to the Treasurer and retention by the Central Bank of records in relation to the accounts;</u></p> <p><u>(d) in subsection (5), the vesting of the sums transferred in the Treasurer, their incorporation into the Consolidated Fund, interest to cease to accrue on such funds, and the requirement of a Resolution by Parliament prior to disposal of such</u></p>		

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		<p><u>funds (except where the Bank applies to the Minister for the Treasurer to make repayment to the Bank);</u></p> <p><u>(e) in subsections (6) and (7), the circumstances in which the Central Bank may apply to the Minister for, and the Minister may give, a direction to the Treasurer to repay to the Central Bank, for payment to a person entitled, the amount specified that was transferred to the Treasurer notwithstanding the absence of a Resolution from both Houses of Parliament;</u></p> <p><u>(f) in subsection (8), the discharge from further liability of the Minister, the Treasurer and the Government where payment has been made to a person entitled in accordance with the section or where, afterwards, a new claim arises;</u></p> <p><u>(g) in subsection (9), the power of the Central Bank to invest and reinvest sums transferred to the Bank under section 20(4) of the Banks and Trust Companies Regulation Act;</u></p> <p><u>(h) in subsections (10) and (11), persons, including directors and officers of a body corporate, who fraudulently make claims for repayment of amounts transferred to the Treasurer to be guilty of an offence.</u></p>		

**CENTRAL BANK OF THE BAHAMAS (AMENDMENT) BILL, 2016**

**Arrangement of Sections**

**Section**

- 1. Short title and commencement.....2
- 2. Amendment of section 24 of the principal Act..... .2

**OBJECTS AND REASONS**

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**CENTRAL BANK OF THE BAHAMAS (AMENDMENT) BILL, 2016**

**A BILL FOR AN ACT TO AMEND THE CENTRAL BANK OF THE  
BAHAMAS ACT TO PROVIDE FOR THE TRANSFER TO THE  
TREASURER AND DISPOSAL OF DORMANT ACCOUNT BALANCES  
PAID TO THE CENTRAL BANK AND FOR CONNECTED PURPOSES**

**Enacted by the Parliament of The Bahamas**

**1. Short title and commencement.**

- (1) This Act, which amends the Central Bank of The Bahamas Act<sup>1</sup>, may be cited as the Central Bank of The Bahamas (Amendment) Act, 2016.
- (2) This Act shall come into force on a date to be appointed by the Minister by notice published in the Gazette.

**2. Repeal and replacement of section 24 of the principal Act.**

Section 24 of the principal Act is repealed and replaced as follows—

- “(1) The Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act, pay interest on money so deposited and pay out money to any person entitled thereto.
- (2) The Bank shall establish a Fund for the deposits it receives pursuant to subsection (1) from which it may deduct such sums as are required to meet the reasonable expenses incurred by the Bank in connection with the administration of such Fund.
- (3) The Central Bank shall, where an amount is paid to the Bank which is—
- (a) less than five hundred dollars; or
  - (b) five hundred dollars or more, and has been held by the Bank for a minimum period of ten years,
- pay to the Treasurer, in the case of funds paid to the Central Bank in –
- (i) Bahamian dollars, an amount equal to; and
  - (ii) any other currency, an amount equivalent to
- the amount paid to the Central Bank, together with interest accrued on such amount while it was held by the Bank,
- (A) within two months after the amount referred to in paragraph (a) is received by the Bank; or
  - (B) within two months after the end of the calendar year in which the ten year period referred to in paragraph (b) expires.

Provided that interest shall accrue only on the amount referred to in paragraph (b), if interest was payable in respect of that amount by the bank that transferred the funds to the Central Bank.

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<sup>1</sup>(Ch. 351)



- (4) The Central Bank shall—
  - (a) where a payment has been made to the Treasurer by the Bank pursuant to subsection (3), be discharged from further liability in respect of the amount so paid; and
  - (b) retain all of its records relating to amounts paid to the Bank pursuant to —
    - (i) subsection (3)(a), for a minimum period of fifteen years after payment is made by the Bank to the Treasurer; and
    - (ii) subsection (3)(b), for a minimum period of five years after payment is made by the Bank to the Treasurer.
- (5) An amount paid by the Central Bank to the Treasurer pursuant to subsection (3) shall —
  - (a) form part of the Consolidated Fund;
  - (b) vest in the Treasurer for the benefit of The Bahamas;
  - (c) subject to subsections (6) and (7), not be disposed of without the prior approval, signified by resolution, of both Houses of Parliament; and
  - (d) cease to accrue interest.
- (6) The Central Bank shall make application to the Minister on behalf of an entitled person for repayment by the Treasurer to the Bank of a specified amount paid to the Treasurer pursuant to subsection (3)(a) where —
  - (a) the bank that paid the funds to the Central Bank represents to the Central Bank that it is satisfied that the person is entitled to receive, in the case of funds transferred to the Central Bank in —
    - (i) Bahamian dollars, an amount equal to; and
    - (ii) in any other currency, an amount equivalent to, the funds transferred to the Central Bank; and
  - (b) the entitled person makes a claim to the bank that paid the funds to the Central Bank within ten years of such transfer.
- (7) The Minister shall, on application made by the Bank in accordance with subsection (6), direct the Treasurer to repay to the Bank for payment to the entitled person the amount specified in the application and the Treasurer shall, notwithstanding that no prior approval signified by resolution has been obtained from both Houses of Parliament with respect to the repayment, repay such amount to the Central Bank.
- (8) The Minister, the Treasurer and the Government of The Bahamas shall —
  - (a) where a payment has been made to the Bank by the Treasurer pursuant to subsection (7), be discharged from further liability in respect of the amount so paid; and
  - (b) not be liable to any person for a payment made pursuant to subsection (7), if afterwards a claim is made by any other person in respect of the amount so paid.
- (9) The Central Bank shall have full power to invest and reinvest any amount transferred to the Bank pursuant to subsection (4) of section 20 of the Banks and Trust Companies Regulation Act (Ch. 316).

- (10) A person who fraudulently makes a claim for repayment of an amount pursuant to subsection (6)(b) commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
  
- (11) Every director or other officer concerned in the management of a body corporate which fraudulently makes a claim for repayment of an amount pursuant to subsection (6)(b) commits the offence committed by such body corporate unless such director or officer proves that —
  - (a) the offence was committed without his consent or connivance; or
  - (b) he exercised reasonable diligence to prevent the commission of the offence.”.

## OBJECTS AND REASONS

The purpose of the Bill is to repeal and replace section 24 of the Act to empower the Central Bank to deal more effectively with dormant account balances held by the Bank.

The new section 24 provides for —

- (a) in subsections (1) and (2), the power of the Central Bank to accept deposits required to be transferred to it by banks under the Banks and Trust Companies Regulation Act, to pay interest on money so deposited and to pay out money to any person entitled, and for the Central Bank to establish a Fund for deposits so received from the banks under the Banks and Trust Companies Regulation Act;
- (b) in subsection (3), where the Central Bank receives deposits of less than \$500 or where the Bank has held a deposit of \$500 or more for a minimum period of 10 years, the payment within the time specified by the Central Bank to the Treasurer for the benefit of The Bahamas of the amount equal or equivalent to such deposits along with any interest accrued while held by the Central Bank;
- (c) in subsection (4), the Central Bank's discharge from further liability in respect of amounts paid to the Treasurer and retention by the Central Bank of records in relation to the accounts;
- (d) in subsection (5), the vesting of the sums transferred in the Treasurer, their incorporation into the Consolidated Fund, interest to cease to accrue on such funds, and the requirement of a Resolution by Parliament prior to disposal of such funds (except where the Bank applies to the Minister for the Treasurer to make repayment to the Bank);
- (e) in subsections (6) and (7), the circumstances in which the Central Bank may apply to the Minister for, and the Minister may give, a direction to the Treasurer to repay to the Central Bank, for payment to a person entitled, the amount specified that was transferred to the Treasurer notwithstanding the absence of a Resolution from both Houses of Parliament;
- (f) in subsection (8), the discharge from further liability of the Minister, the Treasurer and the Government where payment has been made to a person entitled in accordance with the section or where, afterwards, a new claim arises;
- (g) in subsection (9), the power of the Central Bank to invest and reinvest sums transferred to the Bank under section 20(4) of the Banks and Trust Companies Regulation Act;
- (h) in subsections (10) and (11), persons, including directors and officers of a body corporate, who fraudulently make claims for repayment of amounts transferred to the Treasurer to be guilty of an offence.