

**THE BANKS AND TRUST COMPANIES REGULATION ACT  
(CHAPTER 316)**

**CONSOLIDATED VERSION**

**OF**

S.I No. 3/2006    **THE BANKS AND TRUST COMPANIES (LARGE EXPOSURES)  
REGULATIONS, 2006**  
Made the 27<sup>th</sup> day of January, 2006

*INCORPORATING*

S.I No. 26/2012    **THE BANKS AND TRUST COMPANIES (LARGE EXPOSURES)  
(AMENDMENT) REGULATIONS, 2012**  
Made the 2<sup>nd</sup> day of March, 2012

The Governor of the Central Bank of The Bahamas, in exercise of the powers conferred by section 24 of the Banks and Trust Companies Regulation Act, makes the following regulations -

**1. Citation**

These Regulations may be cited as the Banks and Trust Companies (Large Exposures) Regulations.

**2. Interpretation**

In these Regulations -

“**capital base**” means the total of shareholders’ funds plus other capital items permitted by the Central Bank and subject to any adjustment or deduction required by the Central Bank and reported in the most

recent Statement of Capital Adequacy schedule of the Excel Reporting System or in such form as determined by the Central Bank;

“**Central Bank**” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act;

“**concessive terms**” means conditions and requirements that are less demanding than or inconsistent with the conditions and requirements imposed upon the general range of non-related-party clients in similar circumstances;

“**control**” means the power, whether arising from ownership, contract, guarantee, agreement, or otherwise, whereby one person can direct the affairs of another;

“**counterparty**” means the borrower (customer), the person guaranteed, the issuer of a security in the case of an investment in a security or the party with whom the contract is made in the case of a contract;

“**exposure**” means –

- (i) claims on a counterparty including actual claims and potential claims which would arise from the drawing down in full of undrawn advised facilities, whether revocable, irrevocable, conditional or unconditional, which the licensee has committed itself to provide and claims which the licensee has committed itself to purchase or underwrite;
- (ii) contingent liabilities arising in the normal course of business and liabilities that would arise from the drawing down of undrawn advised facilities;

- (iii) holdings of equity capital, bonds, bills or other financial instruments;
- (iv) any other assets that constitute a claim on a counterparty by the licensee and which are not included in sub-subparagraphs (i), (ii), or (iii);

**“group of connected parties”** means two or more individual counterparties that constitute a single risk and includes –

- (i) any party that, either directly or indirectly, controls the counterparty;
- (ii) any party that is controlled, either directly or indirectly, by any party that controls, either directly or indirectly, the counterparty;
- (iii) a subsidiary or associate company of the counterparty;
- (iv) directors, executive officers, senior staff, and controlling shareholders, of the counterparty; and
- (v) directors, executive officers, senior staff, and controlling shareholders of any person identified in (i), (ii) and or (iii);

**“large exposure”** means an exposure which is equal to or exceeds ten percent of the capital base of a licensee;

**“licensee”** –

- (i) means any bank or trust company which is incorporated in The Bahamas and holds a licence granted under section 4 of the Act; and
- (ii) does not include nominee trust companies and restricted banks and or trust companies whose operations are limited to conducting business either on behalf of clients who are members

of the same family or for specified persons which are named in the licence;

**“related party”** includes-

- (a) a person that controls, whether directly or indirectly, a licensee;
- (b) a person that is controlled, whether directly or indirectly, by the person that controls the licensee;
- (c) the subsidiaries or associate companies of a licensee;
- (d) the directors, executive officers, senior staff of—
  - (i) a licensee;
  - (ii) any person identified in paragraphs (a),(b), or (c);
- (e) any person who, either alone or together with any associate, is entitled to exercise control over ten percent or more of the share capital of—
  - (i) a licensee;
  - (ii) any person identified in paragraphs (a), (b) or (c);
- (f) the immediate family members of persons identified in paragraphs (a), (d) or (e);
- (g) partnerships, companies, trusts or other entities in which an immediate family member referred to in paragraph (f), has a controlling interest; and
- (h) any person that manages or is managed by a licensee under a management contract;

**“the Act”** means the Banks and Trust Companies Regulation Act;

**“Zone A banks”** means banks that are located in Zone A countries;

**“Zone A central banks”** means central banks located in Zone A countries;

**“Zone A central governments”** means central governments located in Zone A countries;

**“Zone A countries”** means any country which is a full member of the Organization for Economic Co-operation and Development together with any country which has concluded lending arrangements with the International Monetary Fund associated with the General Agreement to Borrow but excludes those countries –

- (i) which have rescheduled their external debts during the preceding five years;
- (ii) whose rating for long-term liabilities in foreign currencies is lower than investment grade; and
- (iii) which have no rating and whose yield to maturity and remaining duration are not comparable with those of long-term liabilities with an investment grade rating;

**“Zone B central banks”** means central banks located in Zone B countries;

**“Zone B central governments”** means central governments located in Zone B countries;

**“Zone B countries”** means those countries which are not included in Zone A.

**3. Single exposure limit**

- (1) No licensee shall incur exposures, on an aggregate basis, to any individual counterparty or group of connected parties, which exceed twenty-five percent of the licensee's capital base.
- (2) No licensee shall hold non-capital investments in securities of a single issuer which exceed ten percent of the licensee's capital base.

**4. Limit on exposures to related parties**

- (1) No licensee shall incur exposures to its related parties which in aggregate exceed fifteen percent of the licensee's capital base.
- (2) All exposures to related parties must be:
  - (a) negotiated on an arm's length basis for clear commercial advantage of the licensee at market rates and without concessive terms; and
  - (b) specifically approved by the licensee's Board of Directors.

**5.** The Central Bank shall monitor all exposures to related parties and may deduct them from the capital base of the licensee if they are, in the opinion of the Central Bank, of the nature of a capital investment or made on concessive terms.

**6. Aggregate limits on large exposures**

No licensee shall incur non-exempt large exposures which in aggregate exceed eight hundred percent of its capital base.

## **7. Exempt Exposures**

The following exposures shall be exempt from the limits outlined in regulations 3, 4 and 6:-

- (a) exposures to the Government of The Bahamas and non-commercial Bahamian governmental institutions or secured by securities and or guarantees of the Government of The Bahamas;
- (b) exposures to Zone A central banks;
- (c) exposures to Zone A central governments which are rated high grade or higher by two of the major credit rating agencies for foreign currency debt;
- (d) exposures secured by securities and or guarantees from Zone A central governments which are rated high grade or higher by two of the major credit rating agencies for foreign currency debt;
- (e) short-term interbank deposits of not more than six (6) months maturity, booked with Zone A banks; and
- (f) exposures which are fully collateralized throughout their tenure by cash deposits, including certificates of deposit and equivalent instruments issued by the lending bank, held by the lender with the specific right of offset, where the release of the deposit is conditional on the repayment of the related extensions of credit.

## **8. Exemption from exposure limits**

The Inspector of Banks and Trust Companies may, upon receiving prior notice from a licensee of any of the exposures set out in paragraphs (a), (b), (c), (d), (e) and (f) hereof, exempt the licensee from the exposure limits outlined in regulations 3, 4 and 6 -

- (a) exposures to Zone B central governments and central banks which are denominated in the country's local currency and funded by liabilities in the same currency rated high grade or higher by two of the major credit rating agencies for foreign currency debt;
- (b) exposures which are collateralized by marketable securities throughout their tenure having a market value equal to at least one hundred percent of the extension of credit or such higher percentage as the Inspector shall require;
- (c) exposures which are supported by a parental guarantee acceptable to the Inspector;
- (d) underwriting exposures which do not exceed 90 days duration. Any residual holdings of securities, which are held for more than 90 days, shall not be treated as exempt and shall be subject to the limits outlined in regulations 3, 4 and 6;
- (e) off-balance sheet exposures to banks which are acceptable to the Inspector; and
- (f) exposures to related parties where the licensee or the related party is fulfilling a treasury role on behalf of the group or managing liquidity across the group and the conditions set by the Inspector have been met.

## **9. Compliance and internal policies**

Licensees shall implement and maintain internal policies and internal limits which will ensure compliance with regulations 3, 4 and 6.



## **10. Review of internal policies**

Licensees shall regularly, but not less than once annually, review their internal policies to take account of changing operating circumstances.

## **11. Reporting requirements**

Licensees shall report to the Inspector all large exposures, exempt or otherwise, on a quarterly basis (or more frequently if required by the Central Bank) in the manner determined by the Inspector.

## **12. Notification of breach**

A licensee shall, on becoming aware of any breach of regulations 3, 4 or 6 -

- (a) notify the Inspector and provide the particulars of the breach in the manner determined by the Inspector within two working days after breaching the regulations; and
- (b) take immediate action to bring the exposure within the established limits as soon as practicable but no later than ten working days after breaching the limits.

## **13. Remedial action by the Central Bank**

Where a licensee is in breach of regulation 3, 4 or 6 the licensee and the Inspector shall enter into discussions for the purpose of determining what remedial action is required.

**14. Notice of remedial action for Compliance**

The Inspector may, by notice in writing served on the licensee, require the licensee to take such remedial action as he thinks fit to ensure compliance with regulations 3, 4 and 6.

**15. Variation of limits**

The Inspector may, by notice in writing served on a licensee, vary any of the limits specified in regulation 3, 4 or 6 in relation to that licensee.

**16. Penalty for non-compliance**

(1) Subject to paragraph (2), the Central Bank may impose a fine not exceeding five thousand dollars where a licensee fails to comply with the provisions of any of regulations 3, 4, 6, 11 or 12.

(2) The Governor may, if he thinks fit, exempt a licensee from the provisions of this regulation.

**Signed**

**WENDY CRAIGG**

**Governor of The Central Bank of The Bahamas**