



Central Bank of The Bahamas

Second Round

PUBLIC CONSULTATION

on

Proposals for:

- (a) Further revisions to the draft Central Bank of The Bahamas Bill**
- (b) A Draft Banks and Trust Companies Regulation Bill, 2019**
- (c) Further revisions to:**
 - i. The Protection of Depositors Act, 1999; and**
 - ii. The Protection of Depositors Byelaws, 1999**

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I. INTRODUCTION

- 1.1 The Central Bank of The Bahamas (“Central Bank”) released a Consultation Paper in June 2018 (First Round Public Consultation) setting out its proposals for changes to the legislation relating to the resolution of problem banks. The proposed enhancements were set out in the draft Banks and Trust Companies Regulation (Amendment) Bill, 2018, the draft Central Bank of The Bahamas (Amendment) Bill, 2018, the draft Protection of Depositors (Amendment) Bill, 2018 and the draft Protection of Depositors’ (Amendment) Byelaws, 2018 (see the Consultation Paper here: <http://www.centralbankbahamas.com/publications.php>).
- 1.2 In January 2019, the International Monetary Fund conducted a review of The Bahamas’ financial services sector and assessed the legal and regulatory framework of the sector against international standards under their Financial Sector Assessment Program (FSAP). The IMF Mission reviewed the draft Bills and Byelaws circulated during the First Round Public Consultation and made a number of recommendations with a view to enhancing the drafts. After considering the IMF’s recommendations, the Central Bank is proposing further amendments to the proposed financial crisis management framework. Given the extent of the amendments sought in regards to the financial crisis management framework, the Central Bank will recommend that the Government repeal and replace the Banks and Trust Companies Regulation Act, 2000.
- 1.3 The Central Bank itself, also proposes several other amendments, unrelated to the financial crisis management framework, which seek to, inter alia, curtail the amount of funds which it may lend to the government, authorize the Central Bank to issue digital currency as legal tender and allow the Central Bank to provide banking services to certain non-bank financial institutions, such as credit unions.
- 1.4 This Consultation Paper summarizes the key additional changes which the Bank is proposing to the draft Central Bank of The Bahamas Bill issued in the First Round Consultation, the Protection of Depositors Act, 1999 and the Protection of Depositors Byelaws, 1999. Further changes proposed to the financial crisis management framework and which are captured in the draft Banks and Trust Companies Regulation Bill, 2019 are also summarized below.
- 1.5 Annexed to this Consultation Paper are tracked and clean versions of the following draft documents which set out the further revisions proposed by the Central Bank:
- Draft Central Bank of The Bahamas Bill, 2019
 - Draft Banks and Trust Companies Regulation Bill, 2019
 - Draft Protection of Depositors (Amendment) Bill, 2019
 - Draft Protection of Depositors (Amendment) Byelaws, 2019
- 1.6 For ease of reference, in the draft Bills and Byelaws, revisions proposed during the First Round Consultation are highlighted in gray, while revisions proposed in this Second Round Consultation are redlined.

II. DETAILS OF THE DRAFT AMENDMENTS

2.1 *Draft Central Bank of The Bahamas Bill, 2019*

Changes incorporated in the draft Central Bank of The Bahamas Bill, 2019 (“the CBB Bill” or “the Bill”) seek to augment the crisis management framework; authorize the Central Bank to issue digital currency as legal tender; and enhance and further modernize the Central Bank’s governing legislation. This Consultation Paper provides an overview of the proposed revisions to the CBB Bill:

- (a) Clause 5 of the CBB Bill includes as a new objective of the Bank the objective of acting as the resolution authority for banks.
- (b) Clauses 8 and 12 of the Bill seek to establish that the currency of The Bahamas may include electronic money issued by the Central Bank and that electronic money (digital currency) issued by the Central Bank is legal tender in The Bahamas. Clause 14 will make it an offence for a person to counterfeit digital currency or to reproduce digital currency without the Central Bank’s permission. A new clause 14A will authorize the Central Bank to make regulations for the purpose of prescribing the framework for the issue of digital currency.
- (c) Clause 20 seeks to reduce the amount of temporary loans which the Central Bank may lend to the Government, to a maximum of ten percent of the Government’s average ordinary revenue or ten percent of the Government’s estimated ordinary revenue, whichever is less.
- (d) Clause 21 seeks to reduce the amount of securities issued or guaranteed by the Government or a public corporation, which the Bank may hold, from fifteen percent to a maximum of five percent of the average ordinary revenue of the Government, or five per cent of the estimated ordinary revenue of the Government, whichever is the less. This clause also seeks to authorize the Central Bank to set the interest rates for Treasury bills and securities.
- (e) Clause 22 seeks to:
 - expand the types of institutions to which the Central Bank may offer banking services, to include non-bank financial institutions; and
 - authorize the Central Bank to issue its own interest-bearing securities to support its monetary policy.
- (f) Clause 23 seeks to expand the types of institutions that must establish and maintain a statutory reserve with the Central Bank and to provide the Central Bank with a discretion to determine, by Notice, the level of such reserves.

- (g) Clause 26 seeks to authorize the Central Bank to provide financial assistance to a bridge institution and to require a bridge institution to repay or reimburse the Central Bank.
- (h) Clause 28 seeks to empower the Central Bank to incorporate a company or acquire or hold shares of a body corporate to carry out the functions of a bridge institution or asset management vehicle.
- (i) Clause 43 seeks to expand the list of persons who would be subject to the confidentiality requirements to include a statutory administrator, an independent valuer, a bridge institution, an asset management vehicle or a purchaser of the assets, rights or liabilities of a bank under statutory administration.
- (j) Clause 61 seeks to consolidate the categories of persons afforded legal protection for good faith actions in the course of their functions and to extend legal protection to persons listed under section 13A of the Banks and Trust Companies Regulation Act, 2000, to directors and officers of bridge institutions and asset management vehicles and to independent valuers.
- (k) Clause 62 seeks to limit the scope of judicial review or arbitration proceedings to whether the defendant acted unlawfully, in bad faith, or with gross negligence, and expands the list of persons to whom this limitation applies to include a statutory administrator, a liquidator, a director or officer of a bridge institution or an asset management vehicle or an independent valuer.

2.2 *Draft Banks and Trust Companies Regulation Bill, 2019*

The draft Banks and Trust Companies Regulation Bill, 2019 (“the BTCR Bill”) includes the following further revisions:

(a) Changes to the proposed resolution framework

- **Expansion of resolution objectives**

New provisions in clause 11B which seek to expand the statutory objectives for placing a bank in resolution. The proposed additional objectives include, inter alia protecting depositors, minimizing the cost of resolution and protecting public funds.

- **Powers relating to statutory administration**

Clause 18(1)(h) has been inserted in the BTCR Bill and seeks to enhance the types of directions which the Central Bank may issue to a bank under statutory administration to include for example, a requirement for a bank

to sell or dispose of a part of its business or to change its legal or operational structure.

Clauses 18BR, 18BS and 18BT seek to provide for the establishment of a resolution funding account and for a bank under statutory administration to be charged reasonable costs incurred by the Central Bank or the Minister of Finance in preparing to make or making a transfer instrument or otherwise seeking to resolve a bank under statutory administration.

Clauses 18CM and 18CN seek to provide a framework for the appointment of an independent valuer to assess the compensation due to a shareholder or creditor of a bank under statutory administration where the bank has been the subject of a merger, purchase and assumption, sale or restructuring – resulting in the shareholder or creditor being placed in a worse position than if the bank had been liquidated.

- **Framework for bridge institutions and asset management vehicles**

New provisions setting out the framework for the structure and operation of bridge institutions (formerly referred to in the First Round Public Consultation as “bridge banks”) and asset management vehicles have been inserted in the BTCR Bill (see clause 18BK on bridge institutions and clauses 18BL – 18BP on asset management vehicles) while the Central Bank’s power to incorporate these entities is set out in clause 28 of the draft Central Bank of The Bahamas Bill.

- **Transfer Instruments**

New provisions in clause 18BI seek to give the statutory administrator tools to transfer property, assets, rights and liabilities of banks under statutory administration. These tools include property transfer instruments and securities transfer instruments. A new fourth schedule has been inserted in the Bill, which seeks to set out the parameters and application of securities transfer instruments. A new fifth schedule has been inserted in the Bill, which seeks to set out the parameters and application of property transfer instruments. Wherever a property transfer instrument or a securities transfer instrument is made, new provisions will require that the making of the instrument be reported to the Minister of Finance and that a copy of that report be laid before both Houses of Parliament (see clauses 18BI(8) and (9)).

(b) Other amendments

- **Legal Protection for Central Bank staff and agents**

It is proposed to remove provisions relating to protection of Central Bank staff and agents from liability for acts done in good faith and the provisions relating to the indemnity of such persons and to place these provisions in the draft Central Bank Bill (see clause 61 of the CBB Bill).

- **Liability of directors and officers of licensees**

Clause 13A(2)(b) seeks to extend culpability to directors, officers and managers of licensees convicted of knowingly failing to notify the Central Bank of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.

- **Removal of directors and officers of licensees**

Clause 18(1)(c) seeks to authorize the Central Bank to require the removal of any director or officer of a licensee.

2.3 *Draft Amendments to the Protection of Depositors Act, 1999*

Revisions proposed to the Protection of Depositors Act, 1999 since the First Round Consultation seek to enhance the corporate governance framework of the Corporation, to reduce the time within which the Corporation must make payouts to depositors following the failure of a member institution. The Bill also seeks to include co-operative credit unions in the membership of the Deposit Insurance Fund. Key changes are set out below:

- (a) Clause 4 of the Bill seeks to expand the list of objects of the Corporation to include contributing to the financial stability of The Bahamas.
- (b) Clause 5 of the Bill seeks to include co-operative credit unions in the membership of the deposit insurance fund.
- (c) Clause 6 of the Bill seeks to increase the annual premiums payable by Members of the Fund from one twentieth of one percent to one tenth of one percent of insured deposits.
- (d) Clause 7 of the Bill seeks to reduce, over a prescribed period, the time within which the Corporation must make payouts to depositors.
- (e) Clause 8 of the Bill seeks to authorize the Minister to lend funds to the Corporation.
- (f) Clause 10 of the Bill seeks to require directors of the Corporation to disclose any conflicts they become aware of as a result of an interest in a contract or other transaction of the Corporation.
- (g) Clause 15 of the Bill seeks to authorize the Corporation to charge fees for the administration of the Act.
- (h) Clause 19 of the Bill seeks to empower the Inspector of Banks and Trust Companies to conduct examinations of member institutions to determine, inter alia, the reliability of their depositor records.

- (i) Clause 27 of the Bill seeks to expand the information sharing powers of the Corporation and authorize the Corporation to exchange information with other domestic financial services regulators and the Minister of Finance or his designate to facilitate financial crisis management or other aspects of financial stability; and foreign deposit insurance schemes provided inter alia that the scheme is subject to adequate legal restrictions on further disclosures.

2.4 *Draft Protection of Depositors (Amendment) Byelaws, 2019*

The draft Protection of Depositors (Amendment) Byelaws, 2019 (“the draft Byelaws”) is set out at **Annex 3**. Key further amendments to the Protection of Depositors Byelaws, 1999 since the First Round Public Consultation are set out below.

- (a) Clause 2 of the draft Byelaws seeks to include a new definition of “certificate of insurance”:
- (b) Clause 3 of the draft Byelaws seeks to amend bye-law 4 to make it mandatory for member institutions to display the signs and logos issued by the Corporation; to prominently display statements informing customers whether or not a financial product which is being offered is insured under the Protection of Depositors Act.
- (c) Clause 4 of the draft Byelaws seeks to insert new byelaws 4A, 4B and 4C in the principal byelaws. The new byelaw 4A seeks to allow the Corporation to cancel a certificate of insurance on inter alia the imminent insolvency of a member institution. Byelaw 4B seeks to allow Member institutions to appeal to the Minister against cancellation. Byelaw 4C seeks to provide inter alia for continuing insurance coverage for depositors of Member institutions following a merger, consolidation or amalgamation of a Member institution with another Member or a non-Member institution. Deposits held with member institutions (up to the prescribed amount) before the merger, etc., will continue to be insured for two years.
- (d) Clause 5 of the draft Byelaws will insert new byelaws 8A, 8B and 8C in the principal Byelaws. Byelaw 8A seeks to require member institutions to provide depositors, as part of the account opening process, with information indicating whether their deposits or facilities are covered by deposit insurance. Byelaw 8B seeks to require member institutions to inform depositors when their deposits are not covered by the Protection of Depositors Act. Byelaw 8C sets out new obligations for member institutions to provide the Corporation with specified deposit liability data to enable the Corporation to prepare for and pay compensation under the Protection of Depositors Act.

III. CONSULTATION PERIOD

The Central Bank invites your comments on the proposed legislation, which should be submitted no later than 31st October, 2019. Your comments and questions regarding the proposals should be directed to:

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7th October, 2019

Annex 1



CENTRAL BANK OF THE BAHAMAS BILL, ~~2018~~2019

A BILL FOR AN ACT TO CONSOLIDATE AND MODERNISE THE LAW GOVERNING THE CENTRAL BANK OF THE BAHAMAS; TO PROVIDE FOR THE CONTINUANCE OF THE CENTRAL BANK, ITS FUNCTIONS, POWERS AND DUTIES AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Central Bank of The Bahamas Act, ~~2018~~2019.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation.

In this Act —

“asset management vehicle” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act;

“average ordinary revenue” means the annual average of the ordinary revenue of the Government over the three years (for which accounts have been laid before Parliament) next before the year in which any question under subsection (4) of section 20 is raised;

“Bank” or **“Central Bank”** means the Central Bank of The Bahamas, continued as a body corporate by section 3 of the repealed Act, and which continues under section 3 and is governed in accordance with and for the purposes of this Act;

“bank” has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act¹;

“banking business” has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act and “banker” shall be construed accordingly;

“Board” means the Board of Directors of the Central Bank appointed pursuant to paragraph 2(1) of the *Schedule*;

“bridge institution” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act;

“civil and administrative investigations and proceedings” means proceedings in any court of law, including in the jurisdiction of an overseas regulatory authority and investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;

“collateral property” means property provided, whether under a pledge, a charge, a repurchase or similar arrangement, or otherwise, for the purpose of securing the performance of an obligation;

“commercial bank” means a bank –

- (a) licensed under the Banks and Trust Companies Regulation Act to carry on banking business in The Bahamas; and
- (b) designated as an authorised dealer within the meaning of paragraph (1) of regulation 42 of the Exchange Control Regulations Ch., 360;

“company” means a company incorporated under any law in force whether in The Bahamas or elsewhere;

“Consolidated Fund” shall mean the Consolidated Fund within the meaning of Article 128 of the Constitution;

“demand liabilities of the Bank” means demand liabilities recorded in a statement of the account audited under subsection (2) of section 37;

“Deputy Governor” means the person appointed as such under paragraph 2 of the *Schedule*;

“Director” in relation to the Bank, includes the Governor and each Deputy Governor unless the context otherwise specifies;

“electronic money” has the meaning assigned in section 2 of the Payment Systems Act;

“external auditors” means auditors appointed under section 37;

“financial institution” means a person carrying on a business regulated under the laws enforced by the Bank;

¹ Vol. VII, (Ch. 316)

- “foreign financial institution”** means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;
- “freely convertible foreign currency”** means a foreign currency which, is, in the opinion of the Bank, freely negotiable and transferable in international exchange markets;
- “Governor”** means the person appointed as Governor of the Central Bank of The Bahamas pursuant to paragraph 2(1) of the *Schedule*;
- “International Financial Reporting Standards”** means, the most recent international accounting standards, and any other pronouncements, issued by the International Federation of Accountants;
- “International Standards of Auditing”** means, the most recent international auditing standards, and any other pronouncements, issued by the International Federation of Accountants;
- “Minister”** means the Minister of Finance;
- ordinary revenue”** means all income or contributions to Government revenue not being loans, capital grants or other receipts of a capital nature;
- “overseas regulatory authority”** means an authority which, in a country or territory outside The Bahamas, exercises regulatory functions or other functions corresponding to any functions of the Bank;
- “payment instruments”** includes cheques, bills of exchange, promissory notes, electronic money, credit cards, and debit cards;
- “payment systems”** has the meaning assigned in section 2 of the Payment Systems Act, 2012;
- “penalty”** means an administrative monetary penalty imposed by the Bank and includes a fine payable pursuant to section 46;
- “public corporation”** means a body corporate established directly by statute for public purposes;
- “regulations”** means regulations made under this Act or any other law;
- “regulatory functions”** means functions of the Bank, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified by the Bank;
- “repealed Act”** means the Central Bank of The Bahamas Act (*Ch. 351*);
- “securities”** has the meaning assigned in section 2 of the Securities Industry Act, 2011;

“year” means the financial year of the Central Bank.

PART II – CONTINUANCE, OBJECTIVES AND FUNCTIONS OF THE BANK

3. Continuance of the Central Bank of The Bahamas.

- (1) The Central Bank of The Bahamas, continued as a body corporate under section 3 of the repealed Act, continues to exist for the purposes of and shall be governed in accordance with this Act.
- (2) The Bank is a body corporate with full legal capacity and administrative and financial autonomy, having perpetual succession and a common seal with capacity to —
 - (a) acquire, hold, administer, and dispose of movable and immovable property of whatever kind;
 - (b) enter into contracts; and
 - (c) institute legal proceedings and be subject to such proceedings.
- (3) The Board shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Bank.
- (4) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Bank.

4. Places of business, etc.

The Bank shall have its principal place of business in the City of Nassau and may, in The Bahamas or elsewhere, as the Bank thinks fit —

- (a) establish and maintain branch offices; and
- (b) appoint agents and correspondents.

5. Objectives and functions of the Central Bank.

- (1) The main objectives of the Central Bank are to —
 - (a) promote stable monetary, credit and balance of payment conditions in order to protect the exchange rate regime and facilitate orderly and balanced growth of the economy;
 - (b) contribute to the stability of the financial system of The Bahamas through collaboration with other domestic and foreign regulatory authorities; ~~and~~
 - (c) support the general economic policy of the Government by providing sound economic, financial and monetary advice; **and**
 - (d) **act as the resolution authority for banks.**

- (2) The functions of the Bank are to —
- (a) determine and implement monetary policy;
 - (b) advise the Minister on the exchange rate policy and implement the exchange rate policy determined by the Minister;
 - (c) hold and manage all official external reserves of The Bahamas;
 - (d) issue and manage the currency of The Bahamas;
 - (e) collect and produce statistics in respect of the economy and the financial system of The Bahamas;
 - (f) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system;
 - (g) regulate and supervise financial institutions;
 - (h) act as fiscal agent of the Government and of any public corporation of The Bahamas;
 - (i) advise the Minister on any matter of a financial or monetary nature referred by the Minister to the Bank for its advice; and
 - (j) assist and co-operate with domestic and overseas regulatory authorities, and participate in international financial organizations, concerning matters related to the objectives and functions of the Bank.
- (3) The Bank has ancillary power to do in The Bahamas or elsewhere all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and performance of its functions under this Act.

PART III – CAPITAL AND RESERVES

6. Capital of the Central Bank.

- (1) The authorised capital of the Central Bank shall be three million dollars in the currency of The Bahamas.
- (2) The authorised capital shall be solely subscribed by the Government, and fully paid from the Consolidated Fund, and shall not be transferable or subject to encumbrance.
- (3) The authorised capital may be increased by such amounts as may be proposed by the Bank and approved by the Minister.
- (4) There shall be no reduction of the authorised capital, except by way of an amendment made to this Act.

7. General Reserve and Unrealized Revaluation Reserve.

- (1) The Central Bank shall establish and maintain a General Reserve.
- (2) The General Reserve may not be used except for the purposes of covering losses sustained by the Bank.

- (3) The Bank shall establish an Unrealized Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.

PART IV – CURRENCY

8. Currency of The Bahamas.

- (1) The currency of The Bahamas shall ~~be the~~ **comprise** notes and coins **and electronic money** issued by the Central Bank under the provisions of this Act.
- (2) The unit of the currency of The Bahamas shall be the dollar, which shall be divided into one hundred cents.

9. Contracts, etc., deemed to be in currency of The Bahamas.

Every contract, sale, payment, bill, note or security for money and every transaction, dealing, proceeding, matter or thing relating to money or involving the payment of, or the liability to pay money is deemed to be made, executed or entered into, in or in relation to the currency of The Bahamas unless it is expressly made executed or entered into in or in relation to the currency of some other country.

10. Sole right of Central Bank to issue notes and coins.

- (1) The Central Bank has the sole right and authority to issue notes and coins throughout The Bahamas.
- (2) The Bank shall from time to time as circumstances may require — (a) arrange for the printing of notes and the minting of coins; and (b) issue, re-issue and redeem notes and coins.
- (3) No person other than the Bank shall issue in The Bahamas notes or coins or any documents or tokens having the appearance of notes or coins.

11. Denominations and forms of notes and coins.

The Minister may by order, after consultation with the Central Bank, prescribe the —

- (a) denominations, in multiples or fractions of a dollar, forms and designs of the notes and coins issued by the Bank; and
- (b) standard, weight and composition of coins, and the amount of tolerance and variation allowed in relation to coins, issued by the Bank.

12. Legal Tender.

- (1) Notes issued by the Central Bank are legal tender in The Bahamas at their face value for the payment of any amount.
- (2) Coins issued by the Central Bank are legal tender in The Bahamas at their face value up to an amount —

- (a) not exceeding one hundred dollars, in the case of coins of a denomination of not less than one dollar; and
 - (b) not exceeding five dollars, in the case of coins of a lesser denomination than one dollar.
- (3) (a) **Electronic money issued by the Central Bank is legal tender in The Bahamas at its face value for the payment of any amount.**
- (b) **The Central Bank may simultaneously issue notes and coins and electronic money as legal tender in The Bahamas or may issue electronic money in the place of notes and coins;**
- (4) Subject to subsections ~~(4) and (5)~~ (5) and (6), all notes and coins lawfully in circulation immediately before commencement of this Act are deemed for all purposes to be legal tender issued by the Bank under this Act.
- (4 5) The Bank may, on giving not less than one month's notice in the *Gazette*, call in any notes or coins on payment of the face value thereof, and any such notes or coins shall, on the expiration of the notice, cease to be legal tender.
- (5 6) A note or coin which is mutilated or imperfect —
- (a) shall not be legal tender in The Bahamas and shall be withdrawn from circulation;
 - (b) notwithstanding subsection ~~(4)~~ (5) and subject to section 13, is redeemable at any time by the Bank on the demand of any person; and
 - (c) is one which has been impaired, diminished in size or lightened otherwise than by fair wear and tear, or which has been defaced by stamping, engraving or piercing.
- (6-7) The aggregate amount of currency in circulation issued by the Bank shall appear as a liability in a statement of the accounts of the Bank.

13. Damaged currency, etc.

- (1) No person is entitled as of right to recover from the Central Bank the value of any lost, stolen, mutilated or imperfect note or coin.
- (2) The Bank may in the Bank's discretion, as an act of grace, refund to any person the value of a mutilated or imperfect note or coin.

14. Counterfeits and reproduction of currency.

- (1) No person shall, without the prior consent of the Central Bank, make, design, engrave, print, reproduce, use, issue, or publish any article or thing resembling or having a likeness to a note or coin **or any electronic money issued by the Central Bank** as to be likely to be confused with or mistaken for such note or coin **or electronic money.**
- (2) The Bank shall require a person to withdraw from circulation any note or coin **or electronic money** which the Bank or the person knows or suspects has been counterfeited or altered.

- (3) A person commits an offence who —
- (a) counterfeits or alters any note or coin or **electronic money** that is legal tender in The Bahamas or abroad or any payment instrument which is denominated in the Bahamian dollar or a unit of foreign currency;
 - (b) possesses or transports any counterfeited or altered note, coin or payment instrument with the knowledge that it was counterfeited or altered.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (5) A person who fails to comply with a requirement of the Bank under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, commits a further offence and is liable to a fine of ten thousand dollars for every day or part thereof on which the offence is continued.

14A. Power of Bank to make regulations for digital currency framework

The Central Bank shall make regulations for the purpose of prescribing the framework under which electronic money may be held or used by the public in keeping with best international practices for the development and functioning of the payments system.

PART V – GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC.

15. Power of Central Bank in relation to foreign exchange, etc.

Without prejudice to the objective of the Central Bank to promote monetary stability —

- (a) the Minister, in consultation with the Bank, shall determine the exchange rate policy; and
- (b) the Bank shall implement the exchange rate policy determined by the Minister under paragraph (a).

16. External reserve.

- (1) The Central Bank shall manage all official reserves of external assets of The Bahamas and give priority to safety, before profitability, of such assets.
- (2) The Bank may, pursuant to subsection (1), hold, manage, acquire, and sell any of the following assets —

- (a) gold (in coins or bullion) and other precious metals, including credit balances representing such gold and other precious metals;
 - (b) notes and coins (other than gold coins) denominated in freely convertible foreign currencies;
 - (c) balances payable on demand or within a short term which are denominated in freely convertible foreign currencies and held with financial institutions or agents, foreign central banks, foreign financial institutions, regional development banks, or international financial organizations;
 - (d) money at call denominated in freely convertible foreign currencies; (e) bills in the nature of Treasury Bills denominated in freely convertible foreign currencies and issued by any foreign government;
 - (f) claims on international financial organizations, including special drawing rights held with the International Monetary Fund and the reserve position of The Bahamas in the International Monetary Fund;
 - (g) readily marketable securities issued or guaranteed by any foreign government; and
 - (h) any reserve asset deemed by the Board to be an internationally recognised reserve asset.
- (3) The value of the external reserve shall not at any time be less than fifty per centum of the value of the aggregate of notes and coins in circulation and other demand liabilities of the Bank.
- (4) Where the external reserve declines or, in the opinion of the Bank, may decline to a level that could jeopardize the Bank's objectives and the Bank is unable to remedy such decline, the Bank shall cause to be made and transmit to the Minister —
- (a) a report on the causes leading to the decline of the reserve; and
 - (b) the Bank's proposals for remedying the decline of the reserve.
- (5) The Minister shall in collaboration with the Bank, on receipt of a report under subsection (4), take the necessary remedial action proposed by the Bank.

PART VI – RELATIONS WITH THE COMMERCIAL BANKS

17. Liquid assets.

- (1) Every commercial bank shall conduct its business so as to ensure, taking one month with another, that its liquid assets are on average not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Central Bank.

- (2) Subject to subsection (3), the Bank shall by order fix, and may from time to time vary, the percentage required by subsection (1).
- (3) An order made by the Bank under subsection (2) —
 - (a) shall not at any time fix a percentage of less than ten or more than thirty per centum;
 - (b) may fix different percentages for different classes of commercial banks; and
 - (c) shall not increase any percentage at the time in force by more than five per centum.
- (4) In this section “liquid assets” means —
 - (a) notes and coins;
 - (b) any cash balance held at the Bank;
 - (c) money at call and demand balances at any financial institution carrying on business in The Bahamas;
 - (d) Treasury Bills;
 - (e) stock of the Government;
 - (f) any instrument or security of a kind referred to in section 22(d);
 - (g) any freely convertible foreign currency;
 - (h) money at call and demand balances at any foreign financial institution, being money at call or demand balances held in freely convertible foreign currency; or
 - (i) any other asset the Bank designates for the purposes of this section to be liquid assets.
- (5) A bank that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the net average deficiency, taking one month with another, not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

PART VII – NATIONAL PAYMENT SYSTEM

18. Central Bank to regulate payment systems.

The Central Bank may, in the exercise of its functions pursuant to sections 5(1) (b) and 5(2)(f) —

- (a) establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and oversee any system —

- (i) for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
 - (ii) for the clearing and settlement of payments and other arrangements for the exchange of securities;
 - (iii) to facilitate the clearing and settlement of securities and other arrangements for the making or exchange of payments or the exchange of securities, as well as links among systems; and
- (b) regulate and oversee the issuance, provision and functioning of payment instruments, operating either with or without the opening of an account, including the issuance of electronic money or any other forms of stored value.

PART VIII – RELATIONS WITH THE GOVERNMENT

19. Bank as fiscal agent for Government.

- (1) The Central Bank may act generally as fiscal agent for the Government and any public corporation on such terms and conditions as may be agreed between the Government and the Bank, where the Bank can so act consistently with its functions under this Act.
- (2) Without prejudice to section 22, the Bank may provide public debt services functions to the Government, including the provision of advice or services in respect of the issuance, repayment, and management of public debt.

20. Advances to the Government.

- (1) Subject to the provisions of this section, the Central Bank shall not make any direct or indirect advances to the Government or to any public corporation.
- (2) Subsection (1) does not apply to intra-day credits which shall be guaranteed by negotiable Government securities.
- (3) Every intra-day credit extended by the Bank to the Government or to a public corporation under subsection (2) shall be repaid by the Government or the public corporation, as the case may be, by the end of the same day as that on which such credit was extended.
- (4) Notwithstanding subsections (1) and (3), the Bank may provide temporary loans to the Government, where —
 - (a) the amount of the loans, which may be outstanding at any one time, **taken together with any Treasury bills or securities issued or guaranteed by the Government or a public corporation**, shall not exceed, **in the aggregate, [ten] per centum of the average ordinary revenue of the Government or [ten] per centum of the estimated ordinary revenue of the Government**, whichever is the less;
 - (b) the loan will mature within ninety-one days; and

- (c) the interest rate on the loan is based on market related interest rates.

21. Subscription to Government securities from primary markets.

- (1) Subject to the provisions of this section, the Central Bank shall not purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or any public corporation.
- (2) Notwithstanding subsection (1), the Bank may, **for the purpose of replacing maturing securities, implementing monetary policy, maintaining financial system stability or to support the working of the clearing and settlement systems,** purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or a public corporation ~~where if—~~
- (a) the aggregate amount of the Treasury Bills and securities —
- (i) issued or guaranteed by the Government or a public corporation; and
- (ii) purchased or subscribed by the Bank in the primary markets which may be outstanding at any one time,
- shall not exceed ~~fifteen~~**five** per centum of the average ordinary revenue of the Government, or ~~fifteen~~**five** per centum of the estimated ordinary revenue of the Government, whichever is the less;
- (b) the Treasury Bills and securities are negotiable; and
- (3) **For the purposes of paragraph (b) of subsection (2) the interest rates on the Treasury Bills and securities shall be ~~are based on market related interest rates~~ specified by the Bank, after giving consideration to prevailing market rates.**

PART IX – GENERAL POWERS OF THE BANK

22. Powers of the Central Bank.

The Central Bank may, in the discharge of its functions under this Act —

- (a) open accounts for, accept deposits from, and collect money for or on account of, the Government, ~~a~~ **any** commercial bank, **any other financial institution** or a public corporation;
- (b) open accounts in a central bank in any foreign country or in the Bank for International Settlements, accept deposits from central banks in foreign countries, the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development and any other international financial organization, act as agent, mandatory depository or correspondent for any such banks or organizations, and pay interest on deposits;
- (c) buy and sell special drawing rights issued by the International Monetary Fund;

- (d) buy, hold, sell, discount or re-discount Treasury Bills and bills of exchange, promissory notes or other credit instruments;
- (e) issue its own interest-bearing securities for purposes of monetary policy operations and buy, sell, discount or re-discount, or grant loans or advances against, such securities;
- (e f) buy, and sell on spot and forward and under repurchase agreements, hold, lend, and borrow securities;
- (f g) buy, sell, and hold gold and other precious metal; and
- (g h) make to any commercial bank, on such terms and conditions as may be determined by the Bank, loans or advances and take adequate collateral in respect of any securities or credit instrument referred to in paragraph (d).

23. ~~Commercial banks~~ **Financial Institutions** must maintain Statutory Reserve.

- (1) ~~Every commercial bank~~ **A financial institution** shall establish and maintain **with the Central Bank** a statutory reserve (“the Statutory Reserve”) of ~~not less than that percentage of the amount of the basis for the Statutory Reserve that is at any time fixed by the Central Bank~~ **such percentage of its liabilities as the Central Bank may prescribe specify by notice.**
- (2) The Central Bank shall by ~~order~~ **notice** fix, and may from time to time vary, the percentage and the basis for the Statutory Reserve required by subsection (1).
- (3) ~~An order~~ **A notice** made by the Bank under subsection (2)—
 - (a) may fix different percentages for different classes of ~~commercial banks;~~ **financial institutions;** and
 - (b) shall specify the basis and require all of the Statutory Reserve to be lodged with the Bank.
- (4) A ~~commercial bank~~ **financial institution** that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the deficiency not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

24. Power of Bank to fine.

- (1) Notwithstanding section 45, the Central Bank may, where the Bank is satisfied that a ~~commercial bank~~ **financial institution** has committed an offence, issue a notice requiring that institution ~~to order the commercial bank to~~ pay a fine —
 - (a) in the case of an offence committed under section 23, of such percentage of the deficiency, as ~~may by order be fixed by the Bank~~ **the Bank may, by notice, fix** from time to time, for every day during which the contravention or failure continues;
 - (b) in the case of an offence committed under section 17, of such percentage, as may by order be fixed by the Bank from time to

time, of the net average deficiency, taking one month with another, for every day during which the contravention or failure continues.

- (2) The Bank may by ~~order~~ **notice** fix and from time to time vary the percentage required by subsection (1) provided that such percentage shall not exceed twice the annual discount rate prevailing at the time an offence against section 23 or 17 is committed.
- (3) Where the Bank ~~makes an order~~ **issues a notice** under this section—
 - (a) the ~~order~~ **notice** shall be put in writing;
 - (b) the ~~order~~ **notice** shall specify the offence which the ~~commercial bank~~ **financial institution** committed and the penalty imposed by the Bank;
 - (c) a copy of the ~~order~~ **notice** shall be given to the ~~commercial bank~~ **financial institution**; and
 - (d) once the ~~commercial bank~~ **financial institution** pays the fine as ordered, the ~~commercial bank~~ it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the ~~commercial bank~~ **financial institution** to prove that the offence with which it is charged has been dealt with under this section provided however that nothing in this section shall prevent the Central Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, including to require the ~~bank~~ **financial institution** in question to take corrective measures.

25. Credit controls.

- (1) Subject to subsection (2), the Central Bank may by regulations prescribe—
 - (a) the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations;
 - (b) the maturities for which and the security on which loans or advances may or may not be made by commercial banks;
 - (c) the maximum amounts of increase in loans or advances made by commercial banks as a percentage of the commercial banks' outstanding loans or advances;
 - (d) the maximum value of loans and advances granted to a borrower by a commercial bank as a percentage of the collateral property, or loans to value, which the borrower provides to the commercial bank;
 - (e) the maximum aggregate of monthly repayment obligations of a borrower of commercial banks as a percentage of the ordinary monthly income of the borrower;

- (f) the methods of computation of, and the maximum difference permitted between, maturities of assets and liabilities held by a commercial bank;
 - (g) the methods of computation of interest, and the minimum and maximum amounts of interest payable in respect to loans, advances and deposits or classes thereof.
- (2) Regulations made under this section may apply to all the loans and advances of any specified commercial bank or to any specified class or classes of loans or advances of any specified class or classes of such banks.

26. Lender of last resort.

- (1) In exceptional circumstances, the Central Bank may on such terms and conditions as may be determined by the Bank grant loans or advances to a commercial bank where —
- (a) the loans or advances will mature within ninety-one days;
 - (b) the interest rates on the loans or advances are more than those applied to loans or advances made pursuant to section 22;
 - (c) adequate collateral property is provided to the Bank by the commercial bank; and
 - (d) the commercial bank, in the opinion of the Bank, is solvent and requests such loans or advances for the propose of improving liquidity conditions.
- (2) The types and minimum value of collateral property to secure loans or advances provided by the Bank under subsection (1) shall not be less prudent than the levels prescribed by the Central Bank from time to time by [regulations/orders/directives] and as determined by the Central Bank at the time of a particular transaction, and such discount levels prescribed by the Central Bank shall reflect the risk characteristics of the collateral provided..
- (3) The Bank may extend the period prescribed under subsection (1)(a) for up to ninety-one days provided a commercial bank undertakes to implement such remedial measures as may be specified by the Bank.
- (4) Notwithstanding the provisions of subsection (1), the Bank may grant loans or advances to, or buy or subscribe any securities of, a commercial bank where the circumstances specified in subsection (1)(c) or (1)(d) are not present if,—
- (a) the Government guarantees the repayment in writing; and
 - (b) such loans, advances, or purchase or subscription of securities are necessary to preserve the stability of the financial system.
- (5) (a) **Notwithstanding the provisions of subsection (1), the Central Bank shall provide the financial assistance that a bridge institution needs in order to discharge its obligations, except for its obligations to the Deposit Insurance Corporation, as they become due.**

- (b) The bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

27. Transfer of the Central Bank's dormant account balances to the Treasurer.

- (1) The Central Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act (*Ch. 316*), pay interest on money so deposited and pay out money for payment to a person entitled thereto.
- (2) The Central 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 dormant account balances.
- (3) Subject to subsections (2) and (4), 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 the funds paid to the Central Bank, in equal amount where the funds were paid to the Central Bank in Bahamian dollars and in an equivalent amount where the funds were paid to the Central Bank in any other currency, together with interest accrued on such amount while it was held by the Central Bank —
 - (i) within two months after the amount referred to in paragraph (a) is received by the Bank; or
 - (ii) within two months after the end of the calendar year in which the ten year period referred to in paragraph (b) expires.
- (4) Interest shall accrue on an amount referred to in subsection (3)(b) only where interest was payable in respect of that amount by the bank which transferred the funds to the Central Bank.
- (5) 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 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.
- (6) 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 (7) and (8), not be disposed of without the prior approval, signified by resolution, of both Houses of Parliament; and
 - (d) cease to accrue interest.
- (7) 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) 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 an equal amount in Bahamian dollars or an equivalent amount where the funds were paid to the Central Bank in any other currency; and
 - (b) the entitled person makes a claim to the bank that paid the funds to the Central Bank within ten years of the transfer to the Central Bank.
- (8) The Minister shall, on application made by the Central Bank in accordance with subsection (7), 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 Bank.
- (9) The Minister, the Treasurer and the Government shall —
- (a) where a payment has been made to the Central Bank by the Treasurer pursuant to subsection (8), 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 (8), if afterwards a claim is made by any other person in respect of the amount so paid.
- (10) The Central Bank may invest and reinvest any amount transferred to the Bank pursuant to section 20(4) of the Banks and Trust Companies Regulation Act (*Ch. 316*).
- (11) The Central Bank shall, when calculating the length of time during which it has held amounts paid to the Bank for the purpose of determining when such amounts should be paid to the Treasurer pursuant to subsection (3)(b), take account of any period prior to the commencement of this Act during which the Bank held such amounts.
- (12) A person who fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

- (13) 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 (7)(b) commits the offence committed by such body corporate unless such director or officer proves that—
- (a) the offence was committed without the consent or connivance of the director or officer; or
 - (b) the director or officer exercised reasonable diligence to prevent the commission of the offence.

28. Ancillary business.

- (1) The Central Bank may in the discharge of its functions do any other business incidental to or consequential upon the functions of the Bank.
- (2) Without prejudice to the generality of subsection (1) and subject to the provisions of this Act, the Bank may purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and may provide ancillary services in connection with such activities.
- (3) Subsection (2) applies only to real property which —
 - (a) is necessary for, or incidental to, discharging the functions of the Bank; or
 - (b) was purchased or acquired by the Bank before 29th December, 2000.
- (4) **The Central Bank may establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of carrying out the functions of**
 - (a) a bridge institution; or**
 - (b) an asset management vehicle.**

29. Prohibited activities.

Except as expressly authorised by this Act, the Central Bank —

- (a) shall not engage in trade or otherwise have a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank;
- (b) shall dispose as soon as may be practicable of any interest acquired in the course of the satisfaction of debts due to the Bank; and
- (b) shall not grant unsecured loans or advances to any person.

PART X – ACCOUNTS, STATEMENTS AND AUDIT

30. Financial year.

The financial year of the Bank shall end on the thirty-first day of December.

31. Profits, losses, and distributable earnings.

- (1) The net profit or loss of the Central Bank shall be determined in accordance with the International Financial Reporting Standards.
- (2) The distributable earnings of the Bank shall be determined —
 - (a) by deducting from the net profit the total amount of unrealized revaluation gains;
 - (b) by allocating an equivalent amount deducted under paragraph (a) to the Unrealized Revaluation Reserve established under section 7(3);
 - (c) by adding to the amount determined under paragraph (a) the amount of any unrealized profit that was deducted from the net profit for one or more previous years and was realized during the current financial year;
 - (d) by deducting an equivalent amount added under paragraph (c) from the Unrealized Revaluation Reserve; and
 - (e) by transferring from the amount determined under paragraph (c) the total amount of unrealized revaluation losses to the Unrealized Revaluation Reserve to the extent that the amount of the Unrealized Revaluation Reserve will be more than zero after such transfer.

32. Allocation of distributable earnings.

- (1) Within 30 days after submitting a statement of the accounts under section 35(1), the Central Bank shall allocate all distributable earnings to the General Reserve established under section 7(1) until the amount of the General Reserve exceeds the greater of —
 - (a) twice the authorised capital of the Bank; or
 - (b) fifteen per centum of the average amount of demand liabilities of the Bank over the last three years.
- (2) Subject to subsections (3) and (4), all distributable earnings remaining after the allocation under subsection (1) shall be transferred to the Consolidated Fund.
- (3) The Bank may, with the approval of the Minister, increase the General Reserve beyond the maximum prescribed under subsection (1) by allocating the distributable earnings to the General Reserve.
- (4) The Bank may, with the approval of the Minister —
 - (a) establish as part of the capital of the Bank a reserve other than the General Reserve and the Unrealized Revaluation Reserve; and
 - (b) transfer to the reserve established under paragraph (a) distributable earnings which would otherwise be transferred to the Consolidated Fund under subsection (2).
- (5) No distribution of income, profit, or earnings shall be made by the Bank except as permitted by this section.
- (6) Where the Bank incurs negative distributable earnings, such earnings shall first be transferred to the General Reserve and subsequently to the authorised capital.

33. Coverage of shortfall in capital.

- (1) The Board shall, where in an external audit of the accounts of the Central Bank under section 37 the amount of assets falls below the sum of demand liabilities and unimpaired authorised capital, after consultation with the external auditors and within a period not exceeding thirty days, cause to be made and transmit to the Minister a report concerning the causes and extent of the shortfall of the assets.
- (2) The Bank shall, where a report is transmitted to the Minister in accordance with subsection (1), request the Minister to make payments from the Consolidated Fund to the authorised capital for the purpose of increasing the authorised capital to the amount prescribed by section 6(1).
- (3) The Minister shall, on receipt of a request made by the Bank under subsection (2), within a period not exceeding thirty days make such payment as requested by the Bank in currencies or negotiable bonds with a certain maturity issued by the Government at market-related interest rates.

34. Accounting standard.

The Central Bank shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Bank to reflect its operations and financial conditions.

35. Publication of accounts.

- (1) The Central Bank shall, within four months after the end of each financial year, cause to be made and transmit to the Minister —
 - (a) a report of the operations of the Bank during that year, approved by the Board; and
 - (b) a statement of the accounts of the Bank in respect of that year, approved by the Board and signed by the Governor and certified by the external auditors, together with the report of the external auditors.
- (2) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (1)(a) and (b) —
 - (a) cause a copy of the said report and statement of accounts (together with the external auditors report) to be laid before each House of Parliament; and
 - (b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.
- (3) The Bank shall on its website publish the reports and statement of the accounts submitted to the Minister under subsection (1).

36. Publication of monthly statements.

The Central Bank shall on or before the end of each month prepare and transmit to the Minister, and publish in the Gazette and on the website of the Bank, a statement of the assets and liabilities of the Bank as at the last working day of the preceding month.

37. External Audit.

- (1) There shall be established an audit committee (“Audit Committee”) of the Central Bank.
- (2) The accounts, records, and statement of the accounts of the Bank shall be audited, at least annually, by independent external auditors appointed by the Board with the approval of the Minister.
- (3) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions.
- (4) The audit under subsection (1) shall be conducted in accordance with the International Standards of Auditing.
- (5) Subject to subsection (7) the external auditors shall be appointed for —
 - (a) a minimum period of three consecutive years; and
 - (b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.
- (6) The external auditors shall submit a written report to the Audit Committee of the Bank on significant matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process of the Bank.
- (7) The external auditors may be dismissed at any time by the Board for a good cause.

PART XI – INFORMATION AND CONFIDENTIALITY

38. Information may be required from financial institutions.

- (1) This section applies to —
 - (a) a financial institution;
 - (b) a connected person; or
 - (c) a person reasonably believed to have information relevant to an inquiry by the Central Bank.
- (2) The Bank may require by notice in writing any person to which this section applies to supply to the Bank, in such form and within such time as may be specified in the notice, information or documents as the Bank considers necessary to enable the Bank to carry out its functions under this Act or any other law.

- (3) The Bank may exercise the power vested in the Bank under subsection (2) for the purpose of assisting an overseas regulatory authority.
- (4) The Bank may, where a person fails to comply with a requirement of the Bank under subsection (2), apply to a Magistrate for an order requiring the person to comply with the requirement.
- (5) The Bank may, where the Bank considers it necessary in connection with a requirement to examine a person on oath, apply to a Magistrate to have the person examined by the court and the results of the examination sent to the Bank.
- (6) A court shall process an application under subsection (5) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.
- (7) Any document provided to the Bank under subsection (2) shall be the property of the Bank.
- (8) A person is not required under this section to disclose information or to produce a document which the person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in court proceedings.
- (9) The Bank may, where the Bank considers it proper, return a document supplied under subsection (2) to the person who supplied the document to the Bank.
- (10) For the purposes of this section —
 - (a) “document” means a medium in which information is recorded;
 - (b) any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the adviser in any of the following circumstances —
 - (i) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;
 - (ii) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (iii) by any person in contemplation of, or in connection with, legal proceedings;
 - (c) no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering a criminal purpose; and
 - (d) “connected person” means any one of the following —
 - (i) a director, officer, partner, employee, or agent of the financial institution's group;
 - (ii) a controller of the financial institution;
 - (iii) a person required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.

- (11) A person who without reasonable cause —
 - (a) fails to comply with a requirement of the Bank under subsection (2);
 - (b) with intent to avoid compliance with subsection (2) destroys, mutilates, defaces, hides or removes a document; or
 - (c) wilfully obstructs an inquiry by the Bank under subsection (2), commits an offence is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, to a further fine of ten thousand dollars for every day or part thereof during which the offence is continued.
- (12) Where —
 - (a) an offence under this section has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, the officer or person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly; and
 - (b) the affairs of a body corporate are managed by its members, paragraph (a) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

39. Collection of statistics.

- (1) Notwithstanding section 40, the Central Bank may obtain in such form and within such time as may be determined by the Bank information from any person for the purpose of discharging the Bank's functions under section 5(2).
- (2) Notwithstanding any other provision of this Act, information obtained by the Bank under subsection (1) shall not be used or supplied to any person in the Government or otherwise for any purpose other than the collection and production of statistical data.

40. Assistance in obtaining information.

- (1) The Central Bank may —
 - (a) seek the assistance of the Commissioner of Police in the exercise of the Bank's powers under this Act; and
 - (b) authorise a competent person to exercise any of the Bank's powers under this Act.
- (2) No assistance shall be sought or authority granted by the Bank under subsection (1) except for the purpose of investigating —
 - (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or

- (b) a person or subject matter specified by the Bank, being a person who or a subject matter which is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.
- (3) No person is bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless the grantee of the power has, where required, produced evidence of the grantee's authority.
- (4) Where the Bank seeks assistance or grants an authority under this section, the assistance or authority shall be provided or executed in such manner as the Bank may determine and a person to whom the Bank grants an authority shall make a report to the Bank, in such manner as the Bank may require, on the exercise of the authority and its results.

41. Information exchange.

- (1) Notwithstanding section 43(1), the Central Bank may exchange information with —
 - (a) any other regulatory authority in The Bahamas, where it is considered by the Governor that such cooperation or information may be relevant to the functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector;
 - (b) an overseas regulatory authority; and
 - (c) an international financial organization.
- (2) The Bank shall not supply to an overseas regulatory authority any information which is not disclosed to the public, unless —
 - (a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank;
 - (b) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
 - (c) the Bank is satisfied that information provided pursuant to subsection (1) will not be used in criminal proceedings against the person providing the information.
- (3) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Magistrate in the manner contemplated by section 38(4) and (5)
—

- (a) the Bank shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and
- (b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.

42. Supplying false statement.

A person who supplies or is concerned in supplying to the Central Bank any statement, account, report or other information pursuant to this Act knowing the same to be false in a material particular commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a fine not exceeding ten thousand dollars for each day or part thereof during which the offence continues.

43. Confidentiality.

- (1) Subject to subsection (2), no person who is or has been—
 - (a) a director, officer, employee, agent or adviser of the Central Bank;
 - (b) A statutory administrator appointed by the Central Bank under the Banks and Trust Companies Regulation Act;
 - (c) An independent valuer appointed by the Central Bank under section 18BI of the Banks and Trust Companies Regulation Act, 2019;
 - (d) Potential purchasers of the assets, rights or liabilities of a bank under statutory administration that have been contacted by the Central Bank or the statutory administrator;
 - (e) A bridge institution;
 - (f) An asset management vehicle;
 - (g) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in subparagraphs (a) to (g);
 shall disclose any information relating to the affairs of the Bank, or of any person, that such person has acquired in the performance or exercise of his duties or functions under this Act or any other law.
- (2) Subsection (1) does not apply to a disclosure —
 - (a) lawfully required or permitted by a court of competent jurisdiction within The Bahamas;
 - (b) necessary for fulfilling functions and duties required or permitted by this Act or any other law;

- (c) made with the voluntary consent of the person to whom the disclosed information relates;
 - (d) where the information disclosed is or has been available to the public from another source;
 - (e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;
 - (f) made to authorities in The Bahamas to the extent necessary —
 - (i) for the conduct of criminal proceedings; or
 - (ii) for disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or an employee of the Bank, of his duties;
 - (g) made for the purposes of any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a financial institution;
 - (ii) the appointment or duties of a receiver of a financial institution or agency or Government body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to any application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed; or
 - (h) made to the Minister or any officer of the Ministry of Finance, or to a Government agency or body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to an application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.
- (3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

PART XII – OFFENCES, CONTRAVENTIONS AND PENALTIES

44. Procedure in relation to offences.

- (1) Every offence under this Act shall, where prosecuted, be tried summarily.
- (2) The Central Bank shall, where an offence under this Act also constitutes a designated contravention under section 47, make an election in accordance with section 48.

45. Offences by corporations.

Where an offence under this Act has been committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, the officer or person, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

46. Central Bank may impose general penalties.

- (1) The Central Bank may order a person to pay a penalty not exceeding two [hundred] thousand dollars in any case where it is satisfied that the person has committed an offence **under regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations.**
 - ~~(a) regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations; or~~
 - ~~(b) the Financial Transactions Reporting Act or any regulations made pursuant to that Act~~
- (2) The Bank may order the payment of such penalty as may be prescribed by regulations if satisfied that any person has committed a contravention or an offence under or in relation to —
 - (a) a provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (b) a condition or limitation imposed by the Bank;
 - (c) a direction issued by the Bank pursuant to section 6C(1) ~~or section 18(1)(g) or 18(1)(h) of the Banks and Trust Companies Regulation Act (Ch.316);~~
 - (d) section 47; or
 - (e) an order made by the Bank under this or any other Act ~~or a regulation made pursuant to this or any other Act.~~
- (3) The Bank shall, where it makes an order under this Part —
 - (a) specify in the order the —
 - (i) name of the person believed to have committed a contravention or an offence;
 - (ii) nature of the contravention or offence which the person is believed to have committed;
 - (iii) penalty imposed by the Bank; and
 - (b) give a copy of the order to the person named in the order.
- (4) An order made under this Part may be enforced in the same manner as an order of the court.

47. Designated contraventions and fixed penalties.

- (1) The Central Bank may by regulation designate contraventions of this or any other Act or a regulation made pursuant to this or any other Act and impose fixed penalties in respect of such designated contraventions.
- (2) The Bank may pursuant to subsection (1) — (a) designate as a contravention —
 - (i) a breach of, or non-compliance with, a specified provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (ii) a non-compliance with any of the following —
 - (A) a condition or limitation imposed by the Bank;
 - (B) a direction issued by the Bank pursuant to section 6C(1) or section 18(1)(h) of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (C) an order made by the Bank under this or any other Act or a regulation made pursuant to this or any other Act;
 - (b) classify a designated contravention as a minor, serious or very serious contravention; and
 - (c) subject to subsections (3), (4), and (6), impose a fixed penalty or a range of fixed penalties in respect of a designated contravention.
- (3) The maximum penalty fixed for a designated contravention shall be — (a) for a contravention committed by an individual, in the case of—
 - (i) a minor contravention, two thousand five hundred dollars;
 - (ii) a serious contravention, five thousand dollars; and
 - (iii) a very serious contravention, ten thousand dollars;
 - (b) for a contravention committed by a company, in the case of— (i) a minor contravention, ten thousand dollars;
 - (ii) a serious contravention, fifty thousand dollars; and
 - (iii) a very serious contravention, one hundred thousand dollars.
- (4) A minor contravention shall, where it consists of a late or erroneous filing, constitute a separate contravention for each day, or part of a day, during which it is continued.
- (5) The Bank shall determine the amount of the penalty for a designated contravention by taking into account —
 - (a) the degree of intention or negligence on the part of the person who committed the contravention;
 - (b) the harm done by the contravention;
 - (c) the history of the person or financial institution that committed the contravention having regard to any prior contravention or

conviction under this Act within the five year period immediately before the contravention;

- (d) whether the financial institution or person concerned brought the contravention to the attention of the Bank;
 - (e) the seriousness of the contravention;
 - (f) whether or not the contravention was inadvertent;
 - (g) the efforts, if any, made to rectify the breach or non-compliance and to prevent a recurrence;
 - (h) the potential financial consequences to the financial institution or person concerned, and to third parties including customers and creditors of the financial institution, of imposing a penalty;
 - (i) the penalties imposed by the Bank in other cases; and
 - (j) any other criteria as may be prescribed by regulation.
- (6) For the purposes of this section —
- (a) a designated contravention does not include a breach referred to in section 46(1); and
 - (b) subsection (5) does not apply to a penalty fixed under subsection (2)(c).

48. Central Bank must make an election.

- (1) The Central Bank, where a breach or non-compliance described in section 46 or 47(a) may be proceeded with as a contravention or as an offence —
 - (a) shall elect to proceed with the matter in one manner only; and
 - (b) on completion of the proceeding in the manner elected pursuant to paragraph (a), is precluded from proceeding in the other manner.
- (2) Where the Central Bank elects to proceed with a breach or non-compliance as a contravention, this shall not preclude the Bank from exercising any of its other powers under this Act or any other law.

49. Procedure for imposition of penalty on making of election.

The Central Bank shall, where the Bank pursuant to section 48 elects to proceed with a matter by imposing a penalty on a person, give to such person prior to imposing the penalty a written notice containing the —

- (a) name of the person believed to have committed the contravention or offence;
- (b) nature of the contravention of the offence;
- (c) penalty that the Bank intends to impose;
- (d) right of the person within thirty days after the notice is served, or within such longer period as the Bank may specify in the notice, to pay the penalty

or to make representations to the Bank with respect to the contravention or offence;

- (e) manner in which the person may make representations pursuant to paragraph (d); and
- (f) warning that the person will, where payment or representations are not made in accordance with the notice, be deemed to have committed the contravention or offence and the Bank may issue an order imposing a penalty in respect of it.

50. Determination of responsibility and penalty.

- (1) A person who pays in full the penalty proposed in a notice under section 49 is deemed to have committed the contravention or offence and all proceedings in respect of such contravention or offence terminates upon such payment.
- (2) The Central Bank —
 - (a) where a person makes representations in accordance with a notice under section 49, shall decide on a balance of probabilities whether such person committed the contravention or offence; and
 - (b) may in accordance with this or any other Act or a regulation made pursuant to this or any other Act, do either one of the following —
 - (i) where the Bank decides a contravention or offence has been committed, by order impose the penalty proposed or a lesser penalty;
 - (ii) where the Bank decides a contravention or offence has not been committed, impose no penalty.
- (3) A person who does not pay the penalty or make representations in accordance with a notice under section 49 is deemed to have committed the contravention or offence and the Bank may in accordance with this or any other Act or a regulation made pursuant to this or any other Act—
 - (a) by order impose the penalty proposed or a lesser penalty; or
 - (b) impose no penalty.

51. Publication of penalties.

The Central Bank may, where the Bank imposes a penalty on a person, publish in such manner as the Bank deems appropriate a statement of the contravention or offence in respect of which the penalty is imposed.

PART XIII – MISCELLANEOUS

52. Exemption.

- (1) The Central Bank is exempt from payment of tax under the Real Property Tax Act (*Ch. 375*) and payment of any other taxes and levies on the import and domestic supply of gold, banknotes, and coins.

- (2) Notes and coins issued by the Bank are exempt from the payment of stamp duty.
- (3) The Bank is exempt from the payment of stamp duty and postal charges for money transacted between the offices of the Bank, and with an agency of the Government, in connection with the Bank's functions under this Act.

53. Remission.

- (1) The Bank may remit all or part of a penalty imposed under section 46, including interest on such penalty.
- (2) A remission may be conditional or unconditional.

54. Time limits.

- (1) A document appearing to have been issued by the Central Bank, certifying the day on which the subject matter of any proceedings by the Bank became known to the Bank —
 - (a) is admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and
 - (b) in the absence of evidence to the contrary, is proof of the matter asserted in such document.
- (2) The Central Bank shall not commence proceedings in respect of a designated contravention —
 - (a) in the case of a minor contravention, later than six months after the subject-matter of the proceedings become known to the Bank; or
 - (b) in the case of a serious contravention or a very serious contravention, later than six years after the subject-matter of the proceedings became known to the Bank.

55. Appeal.

- (1) A person may appeal to the Supreme Court from any decision of the Central Bank imposing a penalty in respect of a serious contravention or a very serious contravention under section 47.
- (2) Subject to subsection (3), an appellant under subsection (1) must —
 - (a) make his appeal on motion; and
 - (b) within twenty-one days after the day on which the Bank imposed the penalty, serve on the Attorney General a notice in writing signed by the appellant or his counsel and attorney of the intention to appeal and the general grounds for the appeal.
- (3) A person desiring to appeal a decision of the Bank under subsection (1) may, upon notice to the Attorney-General, apply to the Supreme Court for leave to extend the time within which the notice of appeal may be served and the Supreme

Court, upon the hearing of such application, may extend the time prescribed under subsection (2)(b) as the Supreme Court deems fit.

- (4) The Attorney-General shall upon receiving a notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal.
- (5) Notwithstanding subsection (4), the Attorney-General shall not be compelled to disclose any information if the Attorney General considers that the public interest would suffer by such disclosure.
- (6) The Registrar of the Supreme Court shall set an appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.
- (7) The appellant at the hearing of an appeal —
 - (a) before commencing his case, must state all the grounds of appeal on which the appellant intends to rely; and
 - (b) must not, except by leave of the Supreme Court, go into any matters not raised by the stated grounds of appeal.

56. Conflicts of interest.

- (1) The Central Bank shall establish a code (“Code” or “Codes of Conduct”) requiring a director, Governor, and the Bank's employees to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Bank.
- (2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Bank —
 - (a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;
 - (b) the disclosure shall be recorded in the minutes of the Board; and
 - (c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or decision of the Board with respect to the contract or transaction.
- (3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

57. Fees and charges.

The Central Bank may charge reasonable fees and charges for the services the Bank provides and the functions the Bank carries out.

58. Supremacy of this Act.

- (1) Where a conflict arises between this Act and the provisions of any other Act, the provisions of this Act shall prevail.
- (2) The provisions of this Act shall not be repealed, amended, or suspended, in whole or in part, by other laws, unless the subsequent legislation specifically amends this Act.
- (3) This Act may only be repealed or amended on a recommendation from, or after consultation with, the Central Bank.

59. Preferential right.

- (1) The Central Bank has an unconditional preferential right to use any collateral or assets provided by a debtor in settlement of, or to secure its obligations to the Central Bank, if such asset or collateral is in the possession of the Bank.
- (3) Where a debtor defaults on the debtor's obligations to the Bank, whether or not insolvency proceedings commence against the debtor, the Bank may exercise its preferential right under subsection (1) in such manner as the Bank may think fit, without the authorization or intervention of any court or public entity.
- (3) Where insolvency proceedings have commenced against a debtor under the Banks and Trust Companies Regulation Act (*Ch 316*), any collateral provided by a debtor to the Central Bank under section 26 of this Act, shall have the effect of a fixed charge over the underlying assets in favor of the Central Bank, and such assets shall not be available to other creditors of the debtor.
- (4) The Bank shall not be hindered in the exercise of its preferential right under subsection (1) by any claim of a third party.

60. Immunities of the Central Bank.

- (1) Where any legal action has been commenced in a court in The Bahamas, no order of attachment or writ of execution with regard to any property held by or deposited with the Central Bank shall be granted before a final judgement in such action has been issued by the court.
- (2) The Bank may in whole or in part, in writing, waive the Bank's immunity from attachment or execution under subsection (1), except the Bank's right to a waiver shall not apply with regard to the special drawing rights.
- (3) No account with the Bank intended to be used in the performance of the Bank's functions under this Act shall be the subject of any seizure, attachment, sequestration or blocking order.

61. Immunity of officials and staff of the Central Bank.

- (1) No civil or criminal liability shall attach to--
- (a) a director, Deputy Governor, employee or agent of the Central Bank,
 - (b) ~~or~~ correspondent acting under the direction of the Bank;
 - (c) any person duly authorized by the Inspector under subsection 13(4) of the Banks and Trust Companies Regulation Act;
 - (d) any person duly authorized by the Central Bank under or pursuant to subsections 18(1)(e), (f) and (g); subsection 18(9); subsection 18B(1) or subsection 18CB(1) of the Banks and Trust Companies Regulation Act (Ch. 316);
 - (e) a director or officer of a bridge institution;
 - (f) a director or officer of an asset management vehicle;
 - (g) an independent valuer appointed under the Banks and Trust Companies Regulation Act —

even after the termination of their functions or duties, for anything done or statement made or omitted to be done or made in good faith in the course of or in connection with —

- ~~(a)~~(i) the exercise or purported exercise of any power under this Act or any other law;
 - ~~(b)~~(ii) the performance or purported performance of any function or duty under this Act or any other law; or
 - ~~(c)~~(iii) the compliance or purported compliance with this Act or any other law.
- (2) The Bank shall indemnify a director, Deputy Governor, employee or agent of the Bank, or correspondent acting under the direction of the Bank, a statutory administrator, a liquidator, a director or officer of a bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, even after the termination of their functions or duties, against the cost of defending their actions in connection with subparagraphs ~~(a), (b) or (c)~~ (i), (ii) or (iii) of subsection (1).

62. Judicial or administrative review and arbitration.

In any court, administrative review or arbitration proceedings brought against a member of the Board, officer, employee, correspondent or agent of the Bank, a statutory administrator, a liquidator, a director or officer of a bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions, or against the Bank for any actions or inactions, under this Act or any other law —

- (a) the court, administrative body or arbitration panel may examine only whether the defendant acted unlawfully in bad faith, or with gross negligence, the burden of proof of which shall be borne by the claimant;

- (b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and
- (c) the court, administrative body or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, modify, stay, suspend, or set aside the action in question.

63. Repeal.

The Central Bank of The Bahamas Act (*Ch. 351*) is repealed.

64. Transitional provisions.

- (1) On the day of the coming into operation of this Act —
 - (a) every person who, immediately before that day, was appointed a member of the Board of Directors of the Central Bank shall be deemed to have been appointed under this Act and shall continue to serve in that capacity for the unexpired portion of the term remaining to be served;
 - (b) all real and personal property and every right and interest in that property that, immediately before that day, was vested in the Bank under the repealed Act shall continue to be vested in the Bank for the purposes of and subject to this Act, subject to any debts, trusts and liabilities affecting the property, right or interest;
 - (c) all rights accruing or accrued to the Bank in respect of any property vested in the Bank by virtue of this section are vested in the Bank and may be enforced against the Bank;
 - (d) all contracts, agreements, leases and undertakings made and all securities lawfully given to or by the Bank under the repealed Act which, immediately before that day, are in force shall have effect as contracts, agreements, leases and undertakings by and with the Bank as continued under this Act and may be enforced by and against the Bank accordingly;
 - (e) all debts due and moneys payable to the Bank and all claims, liquidated or un-liquidated, recoverable against the Bank under the repealed Act shall be debts due and moneys payable by and claims recoverable against the Bank as continued under this Act;
 - (f) any legal or other proceedings that might, have been continued or commenced by or against the Bank.
- (2) A reference to the Central Bank in a law of The Bahamas and in any document in force immediately before the date of the coming into operation of this Act shall be read, deemed and taken to refer to the Bank as continued under this Act.
- (3) The persons who, immediately before the coming into operation of this Act, were appointed the Governor and Deputy Governor under the repealed Act shall continue under the title of Governor and Deputy Governor respectively under

this Act as if those persons had been appointed under this Act on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.

- (4) Any officer or servant appointed or employed by the Bank under the repealed Act shall continue in office or employment with the Bank as continued under this Act on the same terms and conditions as existed before the coming into operation of this Act.

65. Savings.

Any licence, authority, approval or exemption granted by the Central Bank under the repealed Act which is in force immediately before the coming into force of this Act —

- (a) shall continue to have effect after the coming into force of this Act as if granted by the Bank under this Act;
- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

66. Validation of acts of the Central Bank.

Every act or thing done by the Central Bank under the repealed Act prior to 1st September, 2010 that would have been lawful if section 28(2) had been in force at the time when it was done is declared valid and lawful to the extent it would be valid and lawful if done under section 28(2).

SCHEDULE (Section 3(4))

CONSTITUTION AND FUNCTIONING OF THE BOARD AND THE BANK

1. Role and duties of the Board of Directors.

- (1) There shall be a Board of Directors responsible for the formulation of the policies of the Central Bank and oversight of the implementation of such policies and of the operations and internal controls of the Bank.
- (2) The duties and powers of the Board are to —
 - (a) formulate any policy, other than monetary policy, of the Bank for the performance of its functions;
 - (b) make decisions with regard to those matters set out in section 28;
 - (c) adopt an action or measure taken against a person subject to the supervision of the Bank, in accordance with the powers entrusted to the Bank by this Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or any other law;
 - (d) adopt sanctions imposed by the Bank under this Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or any other law.
 - (e) approve bye-laws and regulations issued by the Bank;
 - (f) approve a guideline, note, notice, order, and any other document issued by the Bank, to require or expect compliance by a person outside the Bank;
 - (g) approve the procedures of the Board, Audit Committee, Monetary Policy Committee, Investment Committee, and any other body of the Bank;
 - (h) approve a procedure for risk management of the Bank;
 - (i) approve the investment policy and guidelines for the management of external reserves by the Bank;
 - (j) decide the categories of assets that shall constitute the external reserve in accordance with section 16;
 - (k) make decisions regarding the establishment and abandonment of a branch office of the Bank and the appointment of an agent and correspondent of the Bank;
 - (l) approve a personnel policy for the Bank, including a policy for remuneration and terms and conditions of employment;
 - (m) approve the annual budget of the Bank;
 - (n) approve the exercise of the powers under section 32(3) and (4), and section 33(1);
 - (o) approve a statement of the accounts and a report submitted to the

- Minister under section 35(1);
- (p) approve the acquisition and disposition of real property and other significant assets of the Bank;
 - (q) approve the arrangements for printing notes and minting coins and the issuance, re-issuance, and redemption of notes and coins referred to in section 10 and the advice rendered to the Minister under section 11;
 - (r) establish committees and determine their composition, duties, and procedures; and
 - (s) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

2. Constitution and tenure of Board of Directors.

- (1) The Board of Directors shall consist of the following persons to be appointed by the Governor-General on the advice of the Minister after consultation with the Board —
 - (a) a Governor, who shall be —
 - (i) a person of recognized experience in financial matters;
 - (ii) appointed for a term of five years and eligible for re-appointment for no more than two additional terms;
 - (iii) appointed on such terms and conditions as may be set out in the instrument of appointment; and subject to paragraphs 5 and 6, such terms and conditions may not be altered to his disadvantage during his tenure of office;
 - (b) not more than two deputy governors (“Deputy Governors”) of the Bank each of whom shall be appointed for a term of five years and eligible for re- appointment for no more than two additional terms; and
 - (c) not less than four and not more than six other directors, each being a person who —
 - (i) appears to the Governor-General to have wide experience, and to have shown capacity, in financial or commercial matters, industry, law or administration; and
 - (ii) shall be appointed for a term of five years and eligible for re-appointment for no more than two additional terms.
- (2) Each director shall, subject to the Act and this *Schedule*, hold and vacate office in accordance with the terms of his appointment.
- (3) The directors other than the Governor or Deputy Governors shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.

- (4) A person shall not be appointed a director who —
 - (a) is a member of either House of Parliament;
 - (b) is an officer or employee of an agency of the Government or any public entity;
 - (c) has been convicted by a court of an indictable offence or other offence involving dishonesty;
 - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;
 - (e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;
 - (f) on the grounds of personal misconduct, has been —
 - (i) disqualified or suspended by a competent authority from practicing a profession; or
 - (ii) prohibited from being a director or officer of any public entity or business undertaking.
- (5) For the purpose of sub-paragraph (4), a professor of a university shall not be deemed to fall within sub-paragraph (4)(b).
- (6) The Bank shall cause the names of all the members of the Board, and every change in membership, to be published in the Gazette.

3. Role of the Governor and the Deputy Governors.

- (1) The Governor or a Deputy Governor designated by the Board to act as Governor —
 - (a) shall preside as chairman at the meetings of the Board;
 - (b) shall serve as chief executive officer of the Bank, responsible to the Board for the execution of the Bank's policy and the day-to-day management and internal control of the Bank;
 - (c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, may —
 - (i) act, contract, and sign instruments and documents on behalf of the Bank; and
 - (ii) pursuant to the resolutions of the Board, delegate the powers referred to in sub-sub-paragraph (i) to other officers of the Bank.
- (2) The Deputy Governors shall perform the functions conferred on them by this Act and, under the supervision of the Governor, such other functions as may be conferred on them by the Board.

- (3) In the event of the Governor's inability to act or a vacancy in the office of the Governor, the Board shall designate one of the Deputy Governors to act as Governor.
- (4) Subject to sub-paragraph (5), the Governor and Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not —
 - (a) receive salary or supplementation thereto from any source other than the Bank; and
 - (b) occupy any other office or employment, whether remunerated or not.
- (5) Notwithstanding sub-paragraph (4), the Governor and Deputy Governors may —
 - (a) act as a member or director of any board, committee or commission established by the Government whether by statute or otherwise; or
 - (b) become a Governor, director or member of the board, by whatever name called, of any international financial institution or international financial organization of which The Bahamas is a member.

4. Removal from the Board.

- (1) A director or Deputy Governor who falls within paragraph 2(4) shall be removed from office.
- (2) A director or Deputy Governor may be removed from office if the Director or Deputy Governor —
 - (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
 - (b) is incapacitated by physical or mental illness; or
 - (c) is guilty of serious misconduct.
- (3) A decision to remove a director or Deputy Governor under sub-paragraphs (1) and (2) shall be made by the Governor-General on the advice of the Minister after consultation with the Board.
- (4) The Governor-General shall, within 21 days of the date of a decision made under sub-paragraph (1) or (2), provide the person in question with written reasons for the decision.
- (5) The Bank shall cause the reasons for the removal of the Governor from office to be published in the Gazette.

5. Resignation from the Board.

- (1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing —
 - (a) in the case of the Governor, not less than three months' notice; or

- (b) in the case of any other director or a Deputy Governor, not less than one months' notice.
- (2) The Minister may waive the period of notice required by sub-paragraph (1).

6. Vacancies.

- (1) A vacancy in the office of the Governor, Deputy Governor or a director shall be filled within sixty days by the Governor-General appointing a person to the office for the ordinary term in accordance with paragraph 2.
- (2) Where the Governor and Deputy Governors are unable to act, the Governor-General on the advice of the Minister shall appoint a person, eligible to be appointed as a director, to act temporarily in the place of the Governor and Deputy Governor.
- (3) An appointment under sub-paragraph (2) shall not be for a period exceeding six months.

7. Meetings.

- (1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every month.
- (2) A meeting of the Board —
 - (a) may be convened by the Governor or, in his absence, a Deputy Governor designated to act as Governor pursuant to paragraph 3(3); or
 - (b) shall be convened on the written requisition of three directors specifying the reasons for which the meeting is required.
- (3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by a Deputy Governor designated to act pursuant to paragraph 3(3).
- (4) Three directors, of whom one shall be either the Governor or Deputy Governor designated pursuant to paragraph 3(3), shall form a quorum at any meeting.
- (5) A decision of the Board shall be adopted by a simple majority of the directors present and, in the case of an equality of votes, the person presiding at the meeting shall have and exercise a casting vote.
- (6) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.
- (7) No act or proceeding of the Board shall be invalidated merely by reason of a vacancy in the Board or of a defect in the appointment or qualification of a director.

8. Remuneration of the Board.

- (1) The Bank shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.
- (2) The amount of remuneration determined under sub-paragraph (1) —
 - (a) shall be stated in the instrument of appointment of the director;
 - (b) shall not be diminished during the term of office of the director receiving the remuneration; and
 - (c) shall not be determined by reference to the profits of the Bank.

9. Audit Committee.

- (1) There shall be established an audit committee (the “Audit Committee”) of the Bank responsible for —
 - (a) overseeing the internal and external audit of the Bank;
 - (b) recommending to the Board a person or firm to be appointed as external auditors and the scope of the external audit;
 - (c) meeting with external auditors to discuss their findings;
 - (d) reviewing with external auditors the annual statement of the accounts of the Bank;
 - (e) resolving disagreements between the management and external auditors regarding the financial reporting; and
 - (f) performing any other functions prescribed by the charter of the Audit Committee.
- (2) The Audit Committee shall consist of the following persons appointed by the Board —
 - (a) two directors, neither of whom shall be the Governor;
 - (b) one financial expert who —
 - (i) has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Audit Committee;
 - (ii) has recognised expertise in accounting or auditing; and
 - (iii) does not fall within paragraph 2(4) and paragraph 4(2)(a)(b) or (c).
- (3) A financial expert under sub-paragraph (2)(b) shall be appointed for a term of four years and eligible for re-appointment for no more than two additional terms.
- (4) A member of the Audit Committee —
 - (a) shall be removed by the Board if the member falls within paragraph 2(4)(a); and

- (b) may be removed by the Board if the member falls within paragraph 2(4)(b).
- (5) Without prejudice to this paragraph, the Board shall prescribe duties and procedures of the Audit Committee by establishing a charter (“the Audit Committee Charter”).
- (6) The Audit Committee shall report to the Board on the performance of its functions, at least quarterly.

10. Investment Committee.

- (1) There shall be established an investment committee (the “Investment Committee”) of the Bank responsible for —
 - (a) making recommendations to the Board in respect of the management of the external reserves;
 - (b) proposing to the Governor eligible counter-parties, risk limits, and benchmarks in respect of external reserve management;
 - (c) managing the external reserve in accordance with the investment policy and guidelines approved by the Board under this Act;
 - (d) proposing to the Board nominees for the appointment of external managers of the external reserves;
 - (e) overseeing external managers of the external reserve; and
 - (f) performing any other functions prescribed by the approved investment policy and guidelines.
- (2) Members of the Investment Committee shall be appointed by the Governor.
- (3) Without prejudice to this Act, the Board shall pursuant to the investment policy and guidelines prescribe the responsibilities, composition, and procedures of the Investment Committee.

11. Monetary Policy Committee.

- (1) There shall be a monetary policy committee (the “Monetary Policy Committee”) of the Bank —
 - (a) chaired by the Governor; and
 - (b) composed of members appointed by the Governor.
- (2) The Monetary Policy Committee shall —
 - (a) determine the monetary policy of the Bank;
 - (b) approve basic assessments of the conditions of the economy and the financial system; and
 - (c) perform any other functions as may be determined by the Board.
- (3) The Board shall prescribe the responsibilities, composition, and procedures of the Monetary Policy Committee.

12. Staff and remuneration.

- (1) The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Bank.
- (2) Remuneration paid under sub-paragraph (1) shall not be determined by reference to the profits of the Bank.
- (3) The Bank may, as the Bank determines —
 - (a) pay to or in respect of officers or servants of the Bank pensions or gratuities;
 - (b) make payments towards the provisions for employees of pensions or gratuities; or
 - (c) maintain for employees pension schemes (by being a contributor or otherwise).

13. Seal.

- (1) The seal of the Bank shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or a Deputy Governor and one other director authorized by the Board to act in that behalf.
- (2) Any document purporting to be a document executed under the seal of the Bank shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

ANNEX 1



CENTRAL BANK OF THE BAHAMAS BILL, 2019

A BILL FOR AN ACT TO CONSOLIDATE AND MODERNISE THE LAW GOVERNING THE CENTRAL BANK OF THE BAHAMAS; TO PROVIDE FOR THE CONTINUANCE OF THE CENTRAL BANK, ITS FUNCTIONS, POWERS AND DUTIES AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Central Bank of The Bahamas Act, ~~2018~~2019.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation.

In this Act —

“**asset management vehicle**” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act;

“**average ordinary revenue**” means the annual average of the ordinary revenue of the Government over the three years (for which accounts have been laid before Parliament) next before the year in which any question under subsection (4) of section 20 is raised;

“**Bank**” or “**Central Bank**” means the Central Bank of The Bahamas, continued as a body corporate by section 3 of the repealed Act, and which continues

- under section 3 and is governed in accordance with and for the purposes of this Act;
- “bank”** has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act¹;
- “banking business”** has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act and “banker” shall be construed accordingly;
- “Board”** means the Board of Directors of the Central Bank appointed pursuant to paragraph 2(1) of the *Schedule*;
- “bridge institution”** has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act;
- “civil and administrative investigations and proceedings”** means proceedings in any court of law, including in the jurisdiction of an overseas regulatory authority and investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;
- “collateral property”** means property provided, whether under a pledge, a charge, a repurchase or similar arrangement, or otherwise, for the purpose of securing the performance of an obligation;
- “commercial bank”** means a bank –
- (a) licensed under the Banks and Trust Companies Regulation Act to carry on banking business in The Bahamas; and
 - (b) designated as an authorised dealer within the meaning of paragraph (1) of regulation 42 of the Exchange Control Regulations Ch., 360;
- “company”** means a company incorporated under any law in force whether in The Bahamas or elsewhere;
- “Consolidated Fund”** shall mean the Consolidated Fund within the meaning of Article 128 of the Constitution;
- “demand liabilities of the Bank”** means demand liabilities recorded in a statement of the account audited under subsection (2) of section 37;
- “Deputy Governor”** means the person appointed as such under paragraph 2 of the *Schedule*;
- “Director”** in relation to the Bank, includes the Governor and each Deputy Governor unless the context otherwise specifies;
- “electronic money”** has the meaning assigned in section 2 of the Payment Systems Act;
- “external auditors”** means auditors appointed under section 37;
- “financial institution”** means a person carrying on a business regulated under the laws enforced by the Bank;
- “foreign financial institution”** means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;

¹ Vol. VII, (Ch. 316)

- “freely convertible foreign currency”** means a foreign currency which, is,
in the opinion of the Bank, freely negotiable and transferable in international exchange markets;
- “Governor”** means the person appointed as Governor of the Central Bank of The Bahamas pursuant to paragraph 2(1) of the *Schedule*;
- “International Financial Reporting Standards”** means, the most recent international accounting standards, and any other pronouncements, issued by the International Federation of Accountants;
- “International Standards of Auditing”** means, the most recent international auditing standards, and any other pronouncements, issued by the International Federation of Accountants;
- “Minister”** means the Minister of Finance;
- ordinary revenue”** means all income or contributions to Government revenue not being loans, capital grants or other receipts of a capital nature;
- “overseas regulatory authority”** means an authority which, in a country or territory outside The Bahamas, exercises regulatory functions or other functions corresponding to any functions of the Bank;
- “payment instruments”** includes cheques, bills of exchange, promissory notes, electronic money, credit cards, and debit cards;
- “payment systems”** has the meaning assigned in section 2 of the Payment Systems Act, 2012;
- “penalty”** means an administrative monetary penalty imposed by the Bank and includes a fine payable pursuant to section 46;
- “public corporation”** means a body corporate established directly by statute for public purposes;
- “regulations”** means regulations made under this Act or any other law;
- “regulatory functions”** means functions of the Bank, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified by the Bank;
- “repealed Act”** means the Central Bank of The Bahamas Act (*Ch. 351*);
- “securities”** has the meaning assigned in section 2 of the Securities Industry Act, 2011;
- “year”** means the financial year of the Central Bank.

PART II – CONTINUANCE, OBJECTIVES AND FUNCTIONS OF THE BANK

3. Continuance of the Central Bank of The Bahamas.

- (1) The Central Bank of The Bahamas, continued as a body corporate under section 3 of the repealed Act, continues to exist for the purposes of and shall be governed in accordance with this Act.
- (2) The Bank is a body corporate with full legal capacity and administrative and financial autonomy, having perpetual succession and a common seal with capacity to —
 - (a) acquire, hold, administer, and dispose of movable and immovable property of whatever kind;
 - (b) enter into contracts; and
 - (c) institute legal proceedings and be subject to such proceedings.
- (3) The Board shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Bank.
- (4) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Bank.

4. Places of business, etc.

The Bank shall have its principal place of business in the City of Nassau and may, in The Bahamas or elsewhere, as the Bank thinks fit —

- (a) establish and maintain branch offices; and
- (b) appoint agents and correspondents.

5. Objectives and functions of the Central Bank.

- (1) The main objectives of the Central Bank are to —
 - (a) promote stable monetary, credit and balance of payment conditions in order to protect the exchange rate regime and facilitate orderly and balanced growth of the economy;
 - (b) contribute to the stability of the financial system of The Bahamas through collaboration with other domestic and foreign regulatory authorities; ~~and~~
 - (c) support the general economic policy of the Government by providing sound economic, financial and monetary advice; and
 - (d) act as the resolution authority for banks.
- (2) The functions of the Bank are to —

- (a) determine and implement monetary policy;
 - (b) advise the Minister on the exchange rate policy and implement the exchange rate policy determined by the Minister;
 - (c) hold and manage all official external reserves of The Bahamas;
 - (d) issue and manage the currency of The Bahamas;
 - (e) collect and produce statistics in respect of the economy and the financial system of The Bahamas;
 - (f) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system;
 - (g) regulate and supervise financial institutions;
 - (h) act as fiscal agent of the Government and of any public corporation of The Bahamas;
 - (i) advise the Minister on any matter of a financial or monetary nature referred by the Minister to the Bank for its advice; and
 - (j) assist and co-operate with domestic and overseas regulatory authorities, and participate in international financial organizations, concerning matters related to the objectives and functions of the Bank.
- (3) The Bank has ancillary power to do in The Bahamas or elsewhere all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and performance of its functions under this Act.

PART III – CAPITAL AND RESERVES

6. Capital of the Central Bank.

- (1) The authorised capital of the Central Bank shall be three million dollars in the currency of The Bahamas.
- (2) The authorised capital shall be solely subscribed by the Government, and fully paid from the Consolidated Fund, and shall not be transferable or subject to encumbrance.
- (3) The authorised capital may be increased by such amounts as may be proposed by the Bank and approved by the Minister.
- (4) There shall be no reduction of the authorised capital, except by way of an amendment made to this Act.

7. General Reserve and Unrealized Revaluation Reserve.

- (1) The Central Bank shall establish and maintain a General Reserve.
- (2) The General Reserve may not be used except for the purposes of covering losses sustained by the Bank.

- (3) The Bank shall establish an Unrealized Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.

PART IV – CURRENCY

8. Currency of The Bahamas.

- (1) The currency of The Bahamas shall comprise notes and coins and electronic money issued by the Central Bank under the provisions of this Act.
- (2) The unit of the currency of The Bahamas shall be the dollar, which shall be divided into one hundred cents.

9. Contracts, etc., deemed to be in currency of The Bahamas.

Every contract, sale, payment, bill, note or security for money and every transaction, dealing, proceeding, matter or thing relating to money or involving the payment of, or the liability to pay money is deemed to be made, executed or entered into, in or in relation to the currency of The Bahamas unless it is expressly made executed or entered into in or in relation to the currency of some other country.

10. Sole right of Central Bank to issue notes and coins.

- (1) The Central Bank has the sole right and authority to issue notes and coins throughout The Bahamas.
- (2) The Bank shall from time to time as circumstances may require — (a) arrange for the printing of notes and the minting of coins; and (b) issue, re-issue and redeem notes and coins.
- (3) No person other than the Bank shall issue in The Bahamas notes or coins or any documents or tokens having the appearance of notes or coins.

11. Denominations and forms of notes and coins.

The Minister may by order, after consultation with the Central Bank, prescribe the —

- (a) denominations, in multiples or fractions of a dollar, forms and designs of the notes and coins issued by the Bank; and
- (b) standard, weight and composition of coins, and the amount of tolerance and variation allowed in relation to coins, issued by the Bank.

12. Legal Tender.

- (1) Notes issued by the Central Bank are legal tender in The Bahamas at their face value for the payment of any amount.
- (2) Coins issued by the Central Bank are legal tender in The Bahamas at their face value up to an amount —

- (a) not exceeding one hundred dollars, in the case of coins of a denomination of not less than one dollar; and
 - (b) not exceeding five dollars, in the case of coins of a lesser denomination than one dollar.
- (3) (a) Electronic money issued by the Central Bank is legal tender in The Bahamas at its face value for the payment of any amount.
- (b) The Central Bank may simultaneously issue notes and coins and electronic money as legal tender in The Bahamas or may issue electronic money in the place of notes and coins;
- (4) Subject to subsections (5) and (6), all notes and coins lawfully in circulation immediately before commencement of this Act are deemed for all purposes to be legal tender issued by the Bank under this Act.
- (5) The Bank may, on giving not less than one month's notice in the *Gazette*, call in any notes or coins on payment of the face value thereof, and any such notes or coins shall, on the expiration of the notice, cease to be legal tender.
- (6) A note or coin which is mutilated or imperfect —
- (a) shall not be legal tender in The Bahamas and shall be withdrawn from circulation;
 - (b) notwithstanding subsection (5) and subject to section 13, is redeemable at any time by the Bank on the demand of any person; and
 - (c) is one which has been impaired, diminished in size or lightened otherwise than by fair wear and tear, or which has been defaced by stamping, engraving or piercing.
- (7) The aggregate amount of currency in circulation issued by the Bank shall appear as a liability in a statement of the accounts of the Bank.

13. Damaged currency, etc.

- (1) No person is entitled as of right to recover from the Central Bank the value of any lost, stolen, mutilated or imperfect note or coin.
- (2) The Bank may in the Bank's discretion, as an act of grace, refund to any person the value of a mutilated or imperfect note or coin.

14. Counterfeits and reproduction of currency.

- (1) No person shall, without the prior consent of the Central Bank, make, design, engrave, print, reproduce, use, issue, or publish any article or thing resembling or having a likeness to a note or coin or any electronic money issued by the Central Bank as to be likely to be confused with or mistaken for such note or coin or electronic money.
- (2) The Bank shall require a person to withdraw from circulation any note or coin or electronic money which the Bank or the person knows or suspects has been counterfeited or altered.

- (3) A person commits an offence who —
 - (a) counterfeits or alters any note or coin or electronic money that is legal tender in The Bahamas or abroad or any payment instrument which is denominated in the Bahamian dollar or a unit of foreign currency;
 - (b) possesses or transports any counterfeited or altered note, coin or payment instrument with the knowledge that it was counterfeited or altered.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (5) A person who fails to comply with a requirement of the Bank under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, commits a further offence and is liable to a fine of ten thousand dollars for every day or part thereof on which the offence is continued.

14A. Power of Bank to make regulations for digital currency framework

The Central Bank shall make regulations for the purpose of prescribing the framework under which electronic money may be held or used by the public in keeping with best international practices for the development and functioning of the payments system.

PART V – GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC.

15. Power of Central Bank in relation to foreign exchange, etc.

Without prejudice to the objective of the Central Bank to promote monetary stability —

- (a) the Minister, in consultation with the Bank, shall determine the exchange rate policy; and
- (b) the Bank shall implement the exchange rate policy determined by the Minister under paragraph (a).

16. External reserve.

- (1) The Central Bank shall manage all official reserves of external assets of The Bahamas and give priority to safety, before profitability, of such assets.
- (2) The Bank may, pursuant to subsection (1), hold, manage, acquire, and sell any of the following assets —

- (a) gold (in coins or bullion) and other precious metals, including credit balances representing such gold and other precious metals;
 - (b) notes and coins (other than gold coins) denominated in freely convertible foreign currencies;
 - (c) balances payable on demand or within a short term which are denominated in freely convertible foreign currencies and held with financial institutions or agents, foreign central banks, foreign financial institutions, regional development banks, or international financial organizations;
 - (d) money at call denominated in freely convertible foreign currencies; (e) bills in the nature of Treasury Bills denominated in freely convertible foreign currencies and issued by any foreign government;
 - (f) claims on international financial organizations, including special drawing rights held with the International Monetary Fund and the reserve position of The Bahamas in the International Monetary Fund;
 - (g) readily marketable securities issued or guaranteed by any foreign government; and
 - (h) any reserve asset deemed by the Board to be an internationally recognised reserve asset.
- (3) The value of the external reserve shall not at any time be less than fifty per centum of the value of the aggregate of notes and coins in circulation and other demand liabilities of the Bank.
- (4) Where the external reserve declines or, in the opinion of the Bank, may decline to a level that could jeopardize the Bank's objectives and the Bank is unable to remedy such decline, the Bank shall cause to be made and transmit to the Minister —
- (a) a report on the causes leading to the decline of the reserve; and
 - (b) the Bank's proposals for remedying the decline of the reserve.
- (5) The Minister shall in collaboration with the Bank, on receipt of a report under subsection (4), take the necessary remedial action proposed by the Bank.

PART VI – RELATIONS WITH THE COMMERCIAL BANKS

17. Liquid assets.

- (1) Every commercial bank shall conduct its business so as to ensure, taking one month with another, that its liquid assets are on average not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Central Bank.

- (2) Subject to subsection (3), the Bank shall by order fix, and may from time to time vary, the percentage required by subsection (1).
- (3) An order made by the Bank under subsection (2) —
 - (a) shall not at any time fix a percentage of less than ten or more than thirty per centum;
 - (b) may fix different percentages for different classes of commercial banks; and
 - (c) shall not increase any percentage at the time in force by more than five per centum.
- (4) In this section “liquid assets” means —
 - (a) notes and coins;
 - (b) any cash balance held at the Bank;
 - (c) money at call and demand balances at any financial institution carrying on business in The Bahamas;
 - (d) Treasury Bills;
 - (e) stock of the Government;
 - (f) any instrument or security of a kind referred to in section 22(d);
 - (g) any freely convertible foreign currency;
 - (h) money at call and demand balances at any foreign financial institution, being money at call or demand balances held in freely convertible foreign currency; or
 - (i) any other asset the Bank designates for the purposes of this section to be liquid assets.
- (5) A bank that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the net average deficiency, taking one month with another, not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

PART VII – NATIONAL PAYMENT SYSTEM

18. Central Bank to regulate payment systems.

The Central Bank may, in the exercise of its functions pursuant to sections 5(1) (b) and 5(2)(f) —

- (a) establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and oversee any system —

- (i) for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
 - (ii) for the clearing and settlement of payments and other arrangements for the exchange of securities;
 - (iii) to facilitate the clearing and settlement of securities and other arrangements for the making or exchange of payments or the exchange of securities, as well as links among systems; and
- (b) regulate and oversee the issuance, provision and functioning of payment instruments, operating either with or without the opening of an account, including the issuance of electronic money or any other forms of stored value.

PART VIII – RELATIONS WITH THE GOVERNMENT

19. Bank as fiscal agent for Government.

- (1) The Central Bank may act generally as fiscal agent for the Government and any public corporation on such terms and conditions as may be agreed between the Government and the Bank, where the Bank can so act consistently with its functions under this Act.
- (2) Without prejudice to section 22, the Bank may provide public debt services functions to the Government, including the provision of advice or services in respect of the issuance, repayment, and management of public debt.

20. Advances to the Government.

- (1) Subject to the provisions of this section, the Central Bank shall not make any direct or indirect advances to the Government or to any public corporation.
- (2) Subsection (1) does not apply to intra-day credits which shall be guaranteed by negotiable Government securities.
- (3) Every intra-day credit extended by the Bank to the Government or to a public corporation under subsection (2) shall be repaid by the Government or the public corporation, as the case may be, by the end of the same day as that on which such credit was extended.
- (4) Notwithstanding subsections (1) and (3), the Bank may provide temporary loans to the Government, where —
 - (a) the amount of the loans, which may be outstanding at any one time, taken together with any Treasury bills or securities issued or guaranteed by the Government or a public corporation, shall not exceed, in the aggregate, ten per centum of the average ordinary revenue of the Government or ten per centum of the estimated ordinary revenue of the Government, whichever is the less;
 - (b) the loan will mature within ninety-one days; and

- (c) the interest rate on the loan is based on market related interest rates.

21. Subscription to Government securities from primary markets.

- (1) Subject to the provisions of this section, the Central Bank shall not purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or any public corporation.
- (2) Notwithstanding subsection (1), the Bank may, for the purpose of replacing maturing securities, implementing monetary policy, maintaining financial system stability or to support the working of the clearing and settlement systems, purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or a public corporation if—
 - (a) the aggregate amount of the Treasury Bills and securities —
 - (i) issued or guaranteed by the Government or a public corporation; and
 - (ii) purchased or subscribed by the Bank in the primary markets which may be outstanding at any one time,shall not exceed five per centum of the average ordinary revenue of the Government, or five per centum of the estimated ordinary revenue of the Government, whichever is the less; and
 - (b) the Treasury Bills and securities are negotiable.
- (3) For the purposes of paragraph (b) of subsection (2) the interest rates on the Treasury Bills and securities shall be specified by the Bank, after giving consideration to prevailing market rates.

PART IX – GENERAL POWERS OF THE BANK

22. Powers of the Central Bank.

The Central Bank may, in the discharge of its functions under this Act —

- (a) open accounts for, accept deposits from, and collect money for or on account of, the Government, any commercial bank, any other financial institution or a public corporation;
- (b) open accounts in a central bank in any foreign country or in the Bank for International Settlements, accept deposits from central banks in foreign countries, the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development and any other international financial organization, act as agent, mandatory depository or correspondent for any such banks or organizations, and pay interest on deposits;
- (c) buy and sell special drawing rights issued by the International Monetary Fund;
- (d) buy, hold, sell, discount or re-discount Treasury Bills and bills of exchange, promissory notes or other credit instruments;

- (e) issue its own interest-bearing securities for purposes of monetary policy operations and buy, sell, discount or re-discount, or grant loans or advances against, such securities;
- (f) buy, and sell on spot and forward and under repurchase agreements, hold, lend, and borrow securities;
- (g) buy, sell, and hold gold and other precious metal; and
- (h) make to any commercial bank, on such terms and conditions as may be determined by the Bank, loans or advances and take adequate collateral in respect of any securities or credit instrument referred to in paragraph (d).

23. Financial Institutions must maintain Statutory Reserve.

- (1) A financial institution shall establish and maintain with the Central Bank a statutory reserve (“the Statutory Reserve”) of such percentage of its liabilities as the Central Bank may specify by notice.
- (2) The Central Bank shall by notice fix, and may from time to time vary, the percentage and the basis for the Statutory Reserve required by subsection (1).
- (3) A notice made by the Bank under subsection (2)—
 - (a) may fix different percentages for different classes of; financial institutions; and
 - (b) shall specify the basis and require all of the Statutory Reserve to be lodged with the Bank.
- (4) A financial institution that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the deficiency not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

24. Power of Bank to fine.

- (1) Notwithstanding section 45, the Central Bank may, where the Bank is satisfied that a financial institution has committed an offence, issue a notice requiring that institution to pay a fine —
 - (a) in the case of an offence committed under section 23, of such percentage of the deficiency, as the Bank may, by notice, fix from time to time, for every day during which the contravention or failure continues;
 - (b) in the case of an offence committed under section 17, of such percentage, as may by order be fixed by the Bank from time to time, of the net average deficiency, taking one month with another, for every day during which the contravention or failure continues.
- (2) The Bank may by notice fix and from time to time vary the percentage required by subsection (1) provided that such percentage shall not exceed twice the annual

discount rate prevailing at the time an offence against section 23 or 17 is committed.

- (3) Where the Bank issues a notice under this section—
- (a) the notice shall be put in writing;
 - (b) the notice shall specify the offence which the financial institution committed and the penalty imposed by the Bank;
 - (c) a copy of the notice shall be given to the financial institution; and
 - (d) once the financial institution pays the fine it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the financial institution to prove that the offence with which it is charged has been dealt with under this section provided however that nothing in this section shall prevent the Central Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, including to require the financial institution in question to take corrective measures.

25. Credit controls.

- (1) Subject to subsection (2), the Central Bank may by regulations prescribe
- (a) the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations;
 - (b) the maturities for which and the security on which loans or advances may or may not be made by commercial banks;
 - (c) the maximum amounts of increase in loans or advances made by commercial banks as a percentage of the commercial banks' outstanding loans or advances;
 - (d) the maximum value of loans and advances granted to a borrower by a commercial bank as a percentage of the collateral property, or loans to value, which the borrower provides to the commercial bank;
 - (e) the maximum aggregate of monthly repayment obligations of a borrower of commercial banks as a percentage of the ordinary monthly income of the borrower;
 - (f) the methods of computation of, and the maximum difference permitted between, maturities of assets and liabilities held by a commercial bank;
 - (g) the methods of computation of interest, and the minimum and maximum amounts of interest payable in respect to loans, advances and deposits or classes thereof.

- (2) Regulations made under this section may apply to all the loans and advances of any specified commercial bank or to any specified class or classes of loans or advances of any specified class or classes of such banks.

26. Lender of last resort.

- (1) In exceptional circumstances, the Central Bank may on such terms and conditions as may be determined by the Bank grant loans or advances to a commercial bank where —
 - (a) the loans or advances will mature within ninety-one days;
 - (b) the interest rates on the loans or advances are more than those applied to loans or advances made pursuant to section 22;
 - (c) adequate collateral property is provided to the Bank by the commercial bank; and
 - (d) the commercial bank, in the opinion of the Bank, is solvent and requests such loans or advances for the propose of improving liquidity conditions.
- (2) The types and minimum value of collateral property to secure loans or advances provided by the Bank under subsection (1) shall not be less prudent than the levels prescribed by the Central Bank from time to time by [regulations/orders/directives] and as determined by the Central Bank at the time of a particular transaction, and such discount levels prescribed by the Central Bank shall reflect the risk characteristics of the collateral provided..
- (3) The Bank may extend the period prescribed under subsection (1)(a) for up to ninety-one days provided a commercial bank undertakes to implement such remedial measures as may be specified by the Bank.
- (4) Notwithstanding the provisions of subsection (1), the Bank may grant loans or advances to, or buy or subscribe any securities of, a commercial bank where the circumstances specified in subsection (1)(c) or (1)(d) are not present if,—
 - (a) the Government guarantees the repayment in writing; and
 - (b) such loans, advances, or purchase or subscription of securities are necessary to preserve the stability of the financial system.
- (5)
 - (a) Notwithstanding the provisions of subsection (1), the Central Bank shall provide the financial assistance that a bridge institution needs in order to discharge its obligations, except for its obligations to the Deposit Insurance Corporation, as they become due.
 - (b) The bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

27. Transfer of the Central Bank's dormant account balances to the Treasurer.

- (1) The Central Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act (*Ch. 316*), pay interest on money so deposited and pay out money for payment to a person entitled thereto.

- (2) The Central 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 dormant account balances.
- (3) Subject to subsections (2) and (4), 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 the funds paid to the Central Bank, in equal amount where the funds were paid to the Central Bank in Bahamian dollars and in an equivalent amount where the funds were paid to the Central Bank in any other currency, together with interest accrued on such amount while it was held by the Central Bank —
- (i) within two months after the amount referred to in paragraph (a) is received by the Bank; or
 - (ii) within two months after the end of the calendar year in which the ten year period referred to in paragraph (b) expires.
- (4) Interest shall accrue on an amount referred to in subsection (3)(b) only where interest was payable in respect of that amount by the bank which transferred the funds to the Central Bank.
- (5) 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 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.
- (6) 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 (7) and (8), not be disposed of without the prior approval, signified by resolution, of both Houses of Parliament; and
 - (d) cease to accrue interest.

- (7) 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) 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 an equal amount in Bahamian dollars or an equivalent amount where the funds were paid to the Central Bank in any other currency; and
 - (b) the entitled person makes a claim to the bank that paid the funds to the Central Bank within ten years of the transfer to the Central Bank.
- (8) The Minister shall, on application made by the Central Bank in accordance with subsection (7), 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 Bank.
- (9) The Minister, the Treasurer and the Government shall —
- (a) where a payment has been made to the Central Bank by the Treasurer pursuant to subsection (8), 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 (8), if afterwards a claim is made by any other person in respect of the amount so paid.
- (10) The Central Bank may invest and reinvest any amount transferred to the Bank pursuant to section 20(4) of the Banks and Trust Companies Regulation Act (*Ch. 316*).
- (11) The Central Bank shall, when calculating the length of time during which it has held amounts paid to the Bank for the purpose of determining when such amounts should be paid to the Treasurer pursuant to subsection (3)(b), take account of any period prior to the commencement of this Act during which the Bank held such amounts.
- (12) A person who fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.
- (13) 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 (7)(b) commits the offence committed by such body corporate unless such director or officer proves that—
- (a) the offence was committed without the consent or connivance of the director or officer; or
 - (b) the director or officer exercised reasonable diligence to prevent the commission of the offence.

28. Ancillary business.

- (1) The Central Bank may in the discharge of its functions do any other business incidental to or consequential upon the functions of the Bank.
- (2) Without prejudice to the generality of subsection (1) and subject to the provisions of this Act, the Bank may purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and may provide ancillary services in connection with such activities.
- (3) Subsection (2) applies only to real property which —
 - (a) is necessary for, or incidental to, discharging the functions of the Bank; or
 - (b) was purchased or acquired by the Bank before 29th December, 2000.
- (4) The Central Bank may establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of carrying out the functions of
 - (a) a bridge institution; or
 - (b) an asset management vehicle.

29. Prohibited activities.

Except as expressly authorised by this Act, the Central Bank —

- (a) shall not engage in trade or otherwise have a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank;
- (b) shall dispose as soon as may be practicable of any interest acquired in the course of the satisfaction of debts due to the Bank; and
- (b) shall not grant unsecured loans or advances to any person.

PART X – ACCOUNTS, STATEMENTS AND AUDIT

30. Financial year.

The financial year of the Bank shall end on the thirty-first day of December.

31. Profits, losses, and distributable earnings.

- (1) The net profit or loss of the Central Bank shall be determined in accordance with the International Financial Reporting Standards.
- (2) The distributable earnings of the Bank shall be determined —
 - (a) by deducting from the net profit the total amount of unrealized revaluation gains;
 - (b) by allocating an equivalent amount deducted under paragraph (a) to the Unrealized Revaluation Reserve established under section 7(3);

- (c) by adding to the amount determined under paragraph (a) the amount of any unrealized profit that was deducted from the net profit for one or more previous years and was realized during the current financial year;
- (d) by deducting an equivalent amount added under paragraph (c) from the Unrealized Revaluation Reserve; and
- (e) by transferring from the amount determined under paragraph (c) the total amount of unrealized revaluation losses to the Unrealized Revaluation Reserve to the extent that the amount of the Unrealized Revaluation Reserve will be more than zero after such transfer.

32. Allocation of distributable earnings.

- (1) Within 30 days after submitting a statement of the accounts under section 35(1), the Central Bank shall allocate all distributable earnings to the General Reserve established under section 7(1) until the amount of the General Reserve exceeds the greater of —
 - (a) twice the authorised capital of the Bank; or
 - (b) fifteen per centum of the average amount of demand liabilities of the Bank over the last three years.
- (2) Subject to subsections (3) and (4), all distributable earnings remaining after the allocation under subsection (1) shall be transferred to the Consolidated Fund.
- (3) The Bank may, with the approval of the Minister, increase the General Reserve beyond the maximum prescribed under subsection (1) by allocating the distributable earnings to the General Reserve.
- (4) The Bank may, with the approval of the Minister —
 - (a) establish as part of the capital of the Bank a reserve other than the General Reserve and the Unrealized Revaluation Reserve; and
 - (b) transfer to the reserve established under paragraph (a) distributable earnings which would otherwise be transferred to the Consolidated Fund under subsection (2).
- (5) No distribution of income, profit, or earnings shall be made by the Bank except as permitted by this section.
- (6) Where the Bank incurs negative distributable earnings, such earnings shall first be transferred to the General Reserve and subsequently to the authorised capital.

33. Coverage of shortfall in capital.

- (1) The Board shall, where in an external audit of the accounts of the Central Bank under section 37 the amount of assets falls below the sum of demand liabilities and unimpaired authorised capital, after consultation with the external auditors and within a period not exceeding thirty days, cause to be made and transmit to the Minister a report concerning the causes and extent of the shortfall of the assets.

- (2) The Bank shall, where a report is transmitted to the Minister in accordance with subsection (1), request the Minister to make payments from the Consolidated Fund to the authorised capital for the purpose of increasing the authorised capital to the amount prescribed by section 6(1).
- (3) The Minister shall, on receipt of a request made by the Bank under subsection (2), within a period not exceeding thirty days make such payment as requested by the Bank in currencies or negotiable bonds with a certain maturity issued by the Government at market-related interest rates.

34. Accounting standard.

The Central Bank shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Bank to reflect its operations and financial conditions.

35. Publication of accounts.

- (1) The Central Bank shall, within four months after the end of each financial year, cause to be made and transmit to the Minister —
 - (a) a report of the operations of the Bank during that year, approved by the Board; and
 - (b) a statement of the accounts of the Bank in respect of that year, approved by the Board and signed by the Governor and certified by the external auditors, together with the report of the external auditors.
- (2) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (1)(a) and (b) —
 - (a) cause a copy of the said report and statement of accounts (together with the external auditors report) to be laid before each House of Parliament; and
 - (b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.
- (3) The Bank shall on its website publish the reports and statement of the accounts submitted to the Minister under subsection (1).

36. Publication of monthly statements.

The Central Bank shall on or before the end of each month prepare and transmit to the Minister, and publish in the Gazette and on the website of the Bank, a statement of the assets and liabilities of the Bank as at the last working day of the preceding month.

37. External Audit.

- (1) There shall be established an audit committee (“Audit Committee”) of the Central Bank.

- (2) The accounts, records, and statement of the accounts of the Bank shall be audited, at least annually, by independent external auditors appointed by the Board with the approval of the Minister.
- (3) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions.
- (4) The audit under subsection (1) shall be conducted in accordance with the International Standards of Auditing.
- (5) Subject to subsection (7) the external auditors shall be appointed for —
 - (a) a minimum period of three consecutive years; and
 - (b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.
- (6) The external auditors shall submit a written report to the Audit Committee of the Bank on significant matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process of the Bank.
- (7) The external auditors may be dismissed at any time by the Board for a good cause.

PART XI – INFORMATION AND CONFIDENTIALITY

38. Information may be required from financial institutions.

- (1) This section applies to —
 - (a) a financial institution;
 - (b) a connected person; or
 - (c) a person reasonably believed to have information relevant to an inquiry by the Central Bank.
- (2) The Bank may require by notice in writing any person to which this section applies to supply to the Bank, in such form and within such time as may be specified in the notice, information or documents as the Bank considers necessary to enable the Bank to carry out its functions under this Act or any other law.
- (3) The Bank may exercise the power vested in the Bank under subsection (2) for the purpose of assisting an overseas regulatory authority.
- (4) The Bank may, where a person fails to comply with a requirement of the Bank under subsection (2), apply to a Magistrate for an order requiring the person to comply with the requirement.
- (5) The Bank may, where the Bank considers it necessary in connection with a requirement to examine a person on oath, apply to a Magistrate to have the

person examined by the court and the results of the examination sent to the Bank.

- (6) A court shall process an application under subsection (5) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.
- (7) Any document provided to the Bank under subsection (2) shall be the property of the Bank.
- (8) A person is not required under this section to disclose information or to produce a document which the person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in court proceedings.
- (9) The Bank may, where the Bank considers it proper, return a document supplied under subsection (2) to the person who supplied the document to the Bank.
- (10) For the purposes of this section —
 - (a) “document” means a medium in which information is recorded;
 - (b) any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the adviser in any of the following circumstances —
 - (i) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;
 - (ii) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (iii) by any person in contemplation of, or in connection with, legal proceedings;
 - (c) no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering a criminal purpose; and
 - (d) “connected person” means any one of the following —
 - (i) a director, officer, partner, employee, or agent of the financial institution's group;
 - (ii) a controller of the financial institution;
 - (iii) a person required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.
- (11) A person who without reasonable cause —
 - (a) fails to comply with a requirement of the Bank under subsection (2);
 - (b) with intent to avoid compliance with subsection (2) destroys, mutilates, defaces, hides or removes a document; or
 - (c) wilfully obstructs an inquiry by the Bank under subsection (2),

commits an offence is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, to a further fine of ten thousand dollars for every day or part thereof during which the offence is continued.

(12) Where —

- (a) an offence under this section has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, the officer or person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly; and
- (b) the affairs of a body corporate are managed by its members, paragraph (a) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

39. Collection of statistics.

- (1) Notwithstanding section 40, the Central Bank may obtain in such form and within such time as may be determined by the Bank information from any person for the purpose of discharging the Bank's functions under section 5(2).
- (2) Notwithstanding any other provision of this Act, information obtained by the Bank under subsection (1) shall not be used or supplied to any person in the Government or otherwise for any purpose other than the collection and production of statistical data.

40. Assistance in obtaining information.

- (1) The Central Bank may —
 - (a) seek the assistance of the Commissioner of Police in the exercise of the Bank's powers under this Act; and
 - (b) authorise a competent person to exercise any of the Bank's powers under this Act.
- (2) No assistance shall be sought or authority granted by the Bank under subsection (1) except for the purpose of investigating —
 - (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or
 - (b) a person or subject matter specified by the Bank, being a person who or a subject matter which is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.
- (3) No person is bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless the grantee of the power has, where required, produced evidence of the grantee's authority.

- (4) Where the Bank seeks assistance or grants an authority under this section, the assistance or authority shall be provided or executed in such manner as the Bank may determine and a person to whom the Bank grants an authority shall make a report to the Bank, in such manner as the Bank may require, on the exercise of the authority and its results.

41. Information exchange.

- (1) Notwithstanding section 43(1), the Central Bank may exchange information with —
- (a) any other regulatory authority in The Bahamas, where it is considered by the Governor that such cooperation or information may be relevant to the functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector;
 - (b) an overseas regulatory authority; and
 - (c) an international financial organization.
- (2) The Bank shall not supply to an overseas regulatory authority any information which is not disclosed to the public, unless —
- (a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank;
 - (b) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
 - (c) the Bank is satisfied that information provided pursuant to subsection (1) will not be used in criminal proceedings against the person providing the information.
- (3) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Magistrate in the manner contemplated by section 38(4) and (5) —
- (a) the Bank shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and
 - (b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.

42. Supplying false statement.

A person who supplies or is concerned in supplying to the Central Bank any statement, account, report or other information pursuant to this Act knowing the same to be false in a material particular commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a fine not exceeding ten thousand dollars for each day or part thereof during which the offence continues.

43. Confidentiality.

- (1) Subject to subsection (2), no person who is or has been—
 - (a) a director, officer, employee, agent or adviser of the Central Bank;
 - (b) A statutory administrator appointed by the Central Bank under the Banks and Trust Companies Regulation Act;
 - (c) An independent valuer appointed by the Central Bank under section 18BI of the Banks and Trust Companies Regulation Act, 2019;
 - (d) Potential purchasers of the assets, rights or liabilities of a bank under statutory administration that have been contacted by the Central Bank or the statutory administrator;
 - (e) A bridge institution;
 - (f) An asset management vehicle;
 - (g) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in subparagraphs (a) to (g);shall disclose any information relating to the affairs of the Bank, or of any person, that such person has acquired in the performance or exercise of his duties or functions under this Act or any other law.
- (2) Subsection (1) does not apply to a disclosure —
 - (a) lawfully required or permitted by a court of competent jurisdiction within The Bahamas;
 - (b) necessary for fulfilling functions and duties required or permitted by this Act or any other law;
 - (c) made with the voluntary consent of the person to whom the disclosed information relates;
 - (d) where the information disclosed is or has been available to the public from another source;
 - (e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;
 - (f) made to authorities in The Bahamas to the extent necessary —
 - (i) for the conduct of criminal proceedings; or

- (ii) for disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or an employee of the Bank, of his duties;
 - (g) made for the purposes of any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a financial institution;
 - (ii) the appointment or duties of a receiver of a financial institution or agency or Government body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to any application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed; or
 - (h) made to the Minister or any officer of the Ministry of Finance, or to a Government agency or body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to an application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.
- (3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

PART XII – OFFENCES, CONTRAVENTIONS AND PENALTIES

44. Procedure in relation to offences.

- (1) Every offence under this Act shall, where prosecuted, be tried summarily.
- (2) The Central Bank shall, where an offence under this Act also constitutes a designated contravention under section 47, make an election in accordance with section 48.

45. Offences by corporations.

Where an offence under this Act has been committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, the officer or person, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

46. Central Bank may impose general penalties.

- (1) The Central Bank may order a person to pay a penalty not exceeding two hundred thousand dollars in any case where it is satisfied that the person has committed an

offence under regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations.

- (2) The Bank may order the payment of such penalty as may be prescribed by regulations if satisfied that any person has committed a contravention or an offence under or in relation to —
 - (a) a provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (b) a condition or limitation imposed by the Bank;
 - (c) a direction issued by the Bank pursuant to section 6C(1) 18(1)(g) or 18(1)(h) of the Banks and Trust Companies Regulation Act (*Ch.316*);
 - (d) section 47; or
 - (e) an order made by the Bank under this or any other Act.
- (3) The Bank shall, where it makes an order under this Part —
 - (a) specify in the order the —
 - (i) name of the person believed to have committed a contravention or an offence;
 - (ii) nature of the contravention or offence which the person is believed to have committed;
 - (iii) penalty imposed by the Bank; and
 - (b) give a copy of the order to the person named in the order.
- (4) An order made under this Part may be enforced in the same manner as an order of the court.

47. Designated contraventions and fixed penalties.

- (1) The Central Bank may by regulation designate contraventions of this or any other Act or a regulation made pursuant to this or any other Act and impose fixed penalties in respect of such designated contraventions.
- (2) The Bank may pursuant to subsection (1) — (a) designate as a contravention —
 - (i) a breach of, or non-compliance with, a specified provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (ii) a non-compliance with any of the following —
 - (A) a condition or limitation imposed by the Bank;
 - (B) a direction issued by the Bank pursuant to section 6C(1) or section 18(1)(h) of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (C) an order made by the Bank under this or any other Act or a regulation made pursuant to this or any other Act;

- (b) classify a designated contravention as a minor, serious or very serious contravention; and
 - (c) subject to subsections (3), (4), and (6), impose a fixed penalty or a range of fixed penalties in respect of a designated contravention.
- (3) The maximum penalty fixed for a designated contravention shall be — (a) for a contravention committed by an individual, in the case of—
- (i) a minor contravention, two thousand five hundred dollars;
 - (ii) a serious contravention, five thousand dollars; and
 - (iii) a very serious contravention, ten thousand dollars;
- (b) for a contravention committed by a company, in the case of— (i) a minor contravention, ten thousand dollars;
- (ii) a serious contravention, fifty thousand dollars; and
 - (iii) a very serious contravention, one hundred thousand dollars.
- (4) A minor contravention shall, where it consists of a late or erroneous filing, constitute a separate contravention for each day, or part of a day, during which it is continued.
- (5) The Bank shall determine the amount of the penalty for a designated contravention by taking into account —
- (a) the degree of intention or negligence on the part of the person who committed the contravention;
 - (b) the harm done by the contravention;
 - (c) the history of the person or financial institution that committed the contravention having regard to any prior contravention or conviction under this Act within the five year period immediately before the contravention;
 - (d) whether the financial institution or person concerned brought the contravention to the attention of the Bank;
 - (e) the seriousness of the contravention;
 - (f) whether or not the contravention was inadvertent;
 - (g) the efforts, if any, made to rectify the breach or non-compliance and to prevent a recurrence;
 - (h) the potential financial consequences to the financial institution or person concerned, and to third parties including customers and creditors of the financial institution, of imposing a penalty;
 - (i) the penalties imposed by the Bank in other cases; and
 - (j) any other criteria as may be prescribed by regulation.
- (6) For the purposes of this section —
- (a) a designated contravention does not include a breach referred to in section 46(1); and

- (b) subsection (5) does not apply to a penalty fixed under subsection (2)(c).

48. Central Bank must make an election.

- (1) The Central Bank, where a breach or non-compliance described in section 46 or 47(a) may be proceeded with as a contravention or as an offence —
 - (a) shall elect to proceed with the matter in one manner only; and
 - (b) on completion of the proceeding in the manner elected pursuant to paragraph (a), is precluded from proceeding in the other manner.
- (2) Where the Central Bank elects to proceed with a breach or non-compliance as a contravention, this shall not preclude the Bank from exercising any of its other powers under this Act or any other law.

49. Procedure for imposition of penalty on making of election.

The Central Bank shall, where the Bank pursuant to section 48 elects to proceed with a matter by imposing a penalty on a person, give to such person prior to imposing the penalty a written notice containing the —

- (a) name of the person believed to have committed the contravention or offence;
- (b) nature of the contravention of the offence;
- (c) penalty that the Bank intends to impose;
- (d) right of the person within thirty days after the notice is served, or within such longer period as the Bank may specify in the notice, to pay the penalty or to make representations to the Bank with respect to the contravention or offence;
- (e) manner in which the person may make representations pursuant to paragraph (d); and
- (f) warning that the person will, where payment or representations are not made in accordance with the notice, be deemed to have committed the contravention or offence and the Bank may issue an order imposing a penalty in respect of it.

50. Determination of responsibility and penalty.

- (1) A person who pays in full the penalty proposed in a notice under section 49 is deemed to have committed the contravention or offence and all proceedings in respect of such contravention or offence terminates upon such payment.
- (2) The Central Bank —
 - (a) where a person makes representations in accordance with a notice under section 49, shall decide on a balance of probabilities whether such person committed the contravention or offence; and

- (b) may in accordance with this or any other Act or a regulation made pursuant to this or any other Act, do either one of the following —
 - (i) where the Bank decides a contravention or offence has been committed, by order impose the penalty proposed or a lesser penalty;
 - (ii) where the Bank decides a contravention or offence has not been committed, impose no penalty.
- (3) A person who does not pay the penalty or make representations in accordance with a notice under section 49 is deemed to have committed the contravention or offence and the Bank may in accordance with this or any other Act or a regulation made pursuant to this or any other Act—
 - (a) by order impose the penalty proposed or a lesser penalty; or
 - (b) impose no penalty.

51. Publication of penalties.

The Central Bank may, where the Bank imposes a penalty on a person, publish in such manner as the Bank deems appropriate a statement of the contravention or offence in respect of which the penalty is imposed.

PART XIII – MISCELLANEOUS

52. Exemption.

- (1) The Central Bank is exempt from payment of tax under the Real Property Tax Act (*Ch. 375*) and payment of any other taxes and levies on the import and domestic supply of gold, banknotes, and coins.
- (2) Notes and coins issued by the Bank are exempt from the payment of stamp duty.
- (3) The Bank is exempt from the payment of stamp duty and postal charges for money transacted between the offices of the Bank, and with an agency of the Government, in connection with the Bank's functions under this Act.

53. Remission.

- (1) The Bank may remit all or part of a penalty imposed under section 46, including interest on such penalty.
- (2) A remission may be conditional or unconditional.

54. Time limits.

- (1) A document appearing to have been issued by the Central Bank, certifying the day on which the subject matter of any proceedings by the Bank became known to the Bank —
 - (a) is admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and

- (b) in the absence of evidence to the contrary, is proof of the matter asserted in such document.
- (2) The Central Bank shall not commence proceedings in respect of a designated contravention —
 - (a) in the case of a minor contravention, later than six months after the subject-matter of the proceedings become known to the Bank; or
 - (b) in the case of a serious contravention or a very serious contravention, later than six years after the subject-matter of the proceedings became known to the Bank.

55. Appeal.

- (1) A person may appeal to the Supreme Court from any decision of the Central Bank imposing a penalty in respect of a serious contravention or a very serious contravention under section 47.
- (2) Subject to subsection (3), an appellant under subsection (1) must — (a) make his appeal on motion; and
 - (b) within twenty-one days after the day on which the Bank imposed the penalty, serve on the Attorney General a notice in writing signed by the appellant or his counsel and attorney of the intention to appeal and the general grounds for the appeal.
- (3) A person desiring to appeal a decision of the Bank under subsection (1) may, upon notice to the Attorney-General, apply to the Supreme Court for leave to extend the time within which the notice of appeal may be served and the Supreme Court, upon the hearing of such application, may extend the time prescribed under subsection (2)(b) as the Supreme Court deems fit.
- (4) The Attorney-General shall upon receiving a notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal.
- (5) Notwithstanding subsection (4), the Attorney-General shall not be compelled to disclose any information if the Attorney General considers that the public interest would suffer by such disclosure.
- (6) The Registrar of the Supreme Court shall set an appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.
- (7) The appellant at the hearing of an appeal —
 - (a) before commencing his case, must state all the grounds of appeal on which the appellant intends to rely; and
 - (b) must not, except by leave of the Supreme Court, go into any matters not raised by the stated grounds of appeal.

56. Conflicts of interest.

- (1) The Central Bank shall establish a code (“Code” or “Codes of Conduct”) requiring a director, Governor, and the Bank's employees to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Bank.
- (2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Bank —
 - (a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;
 - (b) the disclosure shall be recorded in the minutes of the Board; and
 - (c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or decision of the Board with respect to the contract or transaction.
- (3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

57. Fees and charges.

The Central Bank may charge reasonable fees and charges for the services the Bank provides and the functions the Bank carries out.

58. Supremacy of this Act.

- (1) Where a conflict arises between this Act and the provisions of any other Act, the provisions of this Act shall prevail.
- (2) The provisions of this Act shall not be repealed, amended, or suspended, in whole or in part, by other laws, unless the subsequent legislation specifically amends this Act.
- (3) This Act may only be repealed or amended on a recommendation from, or after consultation with, the Central Bank.

59. Preferential right.

- (1) The Central Bank has an unconditional preferential right to use any collateral or assets provided by a debtor in settlement of, or to secure its obligations to the Central Bank, if such asset or collateral is in the possession of the Bank.
- (3) Where a debtor defaults on the debtor's obligations to the Bank, whether or not insolvency proceedings commence against the debtor, the Bank may exercise its preferential right under subsection (1) in such manner as the Bank may think fit, without the authorization or intervention of any court or public entity.

- (3) Where insolvency proceedings have commenced against a debtor under the Banks and Trust Companies Regulation Act (*Ch 316*), any collateral provided by a debtor to the Central Bank under section 26 of this Act, shall have the effect of a fixed charge over the underlying assets in favor of the Central Bank, and such assets shall not be available to other creditors of the debtor.
- (4) The Bank shall not be hindered in the exercise of its preferential right under subsection (1) by any claim of a third party.

60. Immunities of the Central Bank.

- (1) Where any legal action has been commenced in a court in The Bahamas, no order of attachment or writ of execution with regard to any property held by or deposited with the Central Bank shall be granted before a final judgement in such action has been issued by the court.
- (2) The Bank may in whole or in part, in writing, waive the Bank's immunity from attachment or execution under subsection (1), except the Bank's right to a waiver shall not apply with regard to the special drawing rights.
- (3) No account with the Bank intended to be used in the performance of the Bank's functions under this Act shall be the subject of any seizure, attachment, sequestration or blocking order.

61. Immunity of officials and staff of the Central Bank.

- (1) No civil or criminal liability shall attach to--
 - (a) a director, Deputy Governor, employee or agent of the Central Bank,
 - (b) ~~or~~ correspondent acting under the direction of the Bank;
 - (c) any person duly authorized by the Inspector under subsection 13(4) of the Banks and Trust Companies Regulation Act;
 - (d) any person duly authorized by the Central Bank under or pursuant to subsections 18(1)(e), (f) and (g); subsection 18(9); subsection 18B(1) or subsection 18CB(1) of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (e) a director or officer of a bridge institution;
 - (f) a director or officer of an asset management vehicle;
 - (g) an independent valuer appointed under the Banks and Trust Companies Regulation Act —even after the termination of their functions or duties, for anything done or statement made or omitted to be done or made in good faith in the course of or in connection with —

- (i) the exercise or purported exercise of any power under this Act or any other law;
 - (ii) the performance or purported performance of any function or duty under this Act or any other law; or
 - (iii) the compliance or purported compliance with this Act or any other law.
- (2) The Bank shall indemnify a director, Deputy Governor, employee or agent of the Bank, or correspondent acting under the direction of the Bank, a statutory administrator, a liquidator, a director or officer of a bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, even after the termination of their functions or duties, against the cost of defending their actions in connection with subparagraphs ~~(a), (b) or (c)~~ (i), (ii) or (iii) of subsection (1).

62. Judicial or administrative review and arbitration.

In any court, administrative review or arbitration proceedings brought against a member of the Board, officer, employee, correspondent or agent of the Bank, a statutory administrator, a liquidator, a director or officer of a bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions, or against the Bank for any actions or inactions, under this Act or any other law —

- (a) the court, administrative body or arbitration panel may examine only whether the defendant acted unlawfully in bad faith, or with gross negligence, the burden of proof of which shall be borne by the claimant;
- (b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and
- (c) the court, administrative body or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, modify, stay, suspend, or set aside the action in question.

63. Repeal.

The Central Bank of The Bahamas Act (*Ch. 351*) is repealed.

64. Transitional provisions.

- (1) On the day of the coming into operation of this Act —
 - (a) every person who, immediately before that day, was appointed a member of the Board of Directors of the Central Bank shall be deemed to have been appointed under this Act and shall continue to serve in that capacity for the unexpired portion of the term remaining to be served;
 - (b) all real and personal property and every right and interest in that property that, immediately before that day, was vested in the Bank under the

repealed Act shall continue to be vested in the Bank for the purposes of and subject to this Act, subject to any debts, trusts and liabilities affecting the property, right or interest;

- (c) all rights accruing or accrued to the Bank in respect of any property vested in the Bank by virtue of this section are vested in the Bank and may be enforced against the Bank;
 - (d) all contracts, agreements, leases and undertakings made and all securities lawfully given to or by the Bank under the repealed Act which, immediately before that day, are in force shall have effect as contracts, agreements, leases and undertakings by and with the Bank as continued under this Act and may be enforced by and against the Bank accordingly;
 - (e) all debts due and moneys payable to the Bank and all claims, liquidated or un-liquidated, recoverable against the Bank under the repealed Act shall be debts due and moneys payable by and claims recoverable against the Bank as continued under this Act;
 - (f) any legal or other proceedings that might, have been continued or commenced by or against the Bank.
- (2) A reference to the Central Bank in a law of The Bahamas and in any document in force immediately before the date of the coming into operation of this Act shall be read, deemed and taken to refer to the Bank as continued under this Act.
- (3) The persons who, immediately before the coming into operation of this Act, were appointed the Governor and Deputy Governor under the repealed Act shall continue under the title of Governor and Deputy Governor respectively under this Act as if those persons had been appointed under this Act on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.
- (4) Any officer or servant appointed or employed by the Bank under the repealed Act shall continue in office or employment with the Bank as continued under this Act on the same terms and conditions as existed before the coming into operation of this Act.

65. Savings.

Any licence, authority, approval or exemption granted by the Central Bank under the repealed Act which is in force immediately before the coming into force of this Act —

- (a) shall continue to have effect after the coming into force of this Act as if granted by the Bank under this Act;
- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

66. Validation of acts of the Central Bank.

Every act or thing done by the Central Bank under the repealed Act prior to 1st September, 2010 that would have been lawful if section 28(2) had been in force at the time when it was done is declared valid and lawful to the extent it would be valid and lawful if done under section 28(2).

SCHEDULE (Section 3(4))

CONSTITUTION AND FUNCTIONING OF THE BOARD AND THE BANK

1. Role and duties of the Board of Directors.

- (1) There shall be a Board of Directors responsible for the formulation of the policies of the Central Bank and oversight of the implementation of such policies and of the operations and internal controls of the Bank.
- (2) The duties and powers of the Board are to —
 - (a) formulate any policy, other than monetary policy, of the Bank for the performance of its functions;
 - (b) make decisions with regard to those matters set out in section 28;
 - (c) adopt an action or measure taken against a person subject to the supervision of the Bank, in accordance with the powers entrusted to the Bank by this Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or any other law;
 - (d) adopt sanctions imposed by the Bank under this Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or any other law.
 - (e) approve bye-laws and regulations issued by the Bank;
 - (f) approve a guideline, note, notice, order, and any other document issued by the Bank, to require or expect compliance by a person outside the Bank;
 - (g) approve the procedures of the Board, Audit Committee, Monetary Policy Committee, Investment Committee, and any other body of the Bank;
 - (h) approve a procedure for risk management of the Bank;
 - (i) approve the investment policy and guidelines for the management of external reserves by the Bank;
 - (j) decide the categories of assets that shall constitute the external reserve in accordance with section 16;
 - (k) make decisions regarding the establishment and abandonment of a branch office of the Bank and the appointment of an agent and correspondent of the Bank;
 - (l) approve a personnel policy for the Bank, including a policy for remuneration and terms and conditions of employment;
 - (m) approve the annual budget of the Bank;
 - (n) approve the exercise of the powers under section 32(3) and (4), and section 33(1);
 - (o) approve a statement of the accounts and a report submitted to the

- Minister under section 35(1);
- (p) approve the acquisition and disposition of real property and other significant assets of the Bank;
 - (q) approve the arrangements for printing notes and minting coins and the issuance, re-issuance, and redemption of notes and coins referred to in section 10 and the advice rendered to the Minister under section 11;
 - (r) establish committees and determine their composition, duties, and procedures; and
 - (s) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

2. Constitution and tenure of Board of Directors.

- (1) The Board of Directors shall consist of the following persons to be appointed by the Governor-General on the advice of the Minister after consultation with the Board —
 - (a) a Governor, who shall be —
 - (i) a person of recognized experience in financial matters;
 - (ii) appointed for a term of five years and eligible for re-appointment for no more than two additional terms;
 - (iii) appointed on such terms and conditions as may be set out in the instrument of appointment; and subject to paragraphs 5 and 6, such terms and conditions may not be altered to his disadvantage during his tenure of office;
 - (b) not more than two deputy governors (“Deputy Governors”) of the Bank each of whom shall be appointed for a term of five years and eligible for re- appointment for no more than two additional terms; and
 - (c) not less than four and not more than six other directors, each being a person who —
 - (i) appears to the Governor-General to have wide experience, and to have shown capacity, in financial or commercial matters, industry, law or administration; and
 - (ii) shall be appointed for a term of five years and eligible for re-appointment for no more than two additional terms.
- (2) Each director shall, subject to the Act and this *Schedule*, hold and vacate office in accordance with the terms of his appointment.
- (3) The directors other than the Governor or Deputy Governors shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.

- (4) A person shall not be appointed a director who —
 - (a) is a member of either House of Parliament;
 - (b) is an officer or employee of an agency of the Government or any public entity;
 - (c) has been convicted by a court of an indictable offence or other offence involving dishonesty;
 - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;
 - (e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;
 - (f) on the grounds of personal misconduct, has been —
 - (i) disqualified or suspended by a competent authority from practicing a profession; or
 - (ii) prohibited from being a director or officer of any public entity or business undertaking.
- (5) For the purpose of sub-paragraph (4), a professor of a university shall not be deemed to fall within sub-paragraph (4)(b).
- (6) The Bank shall cause the names of all the members of the Board, and every change in membership, to be published in the Gazette.

3. Role of the Governor and the Deputy Governors.

- (1) The Governor or a Deputy Governor designated by the Board to act as Governor —
 - (a) shall preside as chairman at the meetings of the Board;
 - (b) shall serve as chief executive officer of the Bank, responsible to the Board for the execution of the Bank's policy and the day-to-day management and internal control of the Bank;
 - (c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, may —
 - (i) act, contract, and sign instruments and documents on behalf of the Bank; and
 - (ii) pursuant to the resolutions of the Board, delegate the powers referred to in sub-sub-paragraph (i) to other officers of the Bank.
- (2) The Deputy Governors shall perform the functions conferred on them by this Act and, under the supervision of the Governor, such other functions as may be conferred on them by the Board.

- (3) In the event of the Governor's inability to act or a vacancy in the office of the Governor, the Board shall designate one of the Deputy Governors to act as Governor.
- (4) Subject to sub-paragraph (5), the Governor and Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not —
 - (a) receive salary or supplementation thereto from any source other than the Bank; and
 - (b) occupy any other office or employment, whether remunerated or not.
- (5) Notwithstanding sub-paragraph (4), the Governor and Deputy Governors may —
 - (a) act as a member or director of any board, committee or commission established by the Government whether by statute or otherwise; or
 - (b) become a Governor, director or member of the board, by whatever name called, of any international financial institution or international financial organization of which The Bahamas is a member.

4. Removal from the Board.

- (1) A director or Deputy Governor who falls within paragraph 2(4) shall be removed from office.
- (2) A director or Deputy Governor may be removed from office if the Director or Deputy Governor —
 - (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
 - (b) is incapacitated by physical or mental illness; or
 - (c) is guilty of serious misconduct.
- (3) A decision to remove a director or Deputy Governor under sub-paragraphs (1) and (2) shall be made by the Governor-General on the advice of the Minister after consultation with the Board.
- (4) The Governor-General shall, within 21 days of the date of a decision made under sub-paragraph (1) or (2), provide the person in question with written reasons for the decision.
- (5) The Bank shall cause the reasons for the removal of the Governor from office to be published in the Gazette.

5. Resignation from the Board.

- (1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing —
 - (a) in the case of the Governor, not less than three months' notice; or

- (b) in the case of any other director or a Deputy Governor, not less than one months' notice.
- (2) The Minister may waive the period of notice required by sub-paragraph (1).

6. Vacancies.

- (1) A vacancy in the office of the Governor, Deputy Governor or a director shall be filled within sixty days by the Governor-General appointing a person to the office for the ordinary term in accordance with paragraph 2.
- (2) Where the Governor and Deputy Governors are unable to act, the Governor-General on the advice of the Minister shall appoint a person, eligible to be appointed as a director, to act temporarily in the place of the Governor and Deputy Governor.
- (3) An appointment under sub-paragraph (2) shall not be for a period exceeding six months.

7. Meetings.

- (1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every month.
- (2) A meeting of the Board —
 - (a) may be convened by the Governor or, in his absence, a Deputy Governor designated to act as Governor pursuant to paragraph 3(3); or
 - (b) shall be convened on the written requisition of three directors specifying the reasons for which the meeting is required.
- (3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by a Deputy Governor designated to act pursuant to paragraph 3(3).
- (4) Three directors, of whom one shall be either the Governor or Deputy Governor designated pursuant to paragraph 3(3), shall form a quorum at any meeting.
- (5) A decision of the Board shall be adopted by a simple majority of the directors present and, in the case of an equality of votes, the person presiding at the meeting shall have and exercise a casting vote.
- (6) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.
- (7) No act or proceeding of the Board shall be invalidated merely by reason of a vacancy in the Board or of a defect in the appointment or qualification of a director.

8. Remuneration of the Board.

- (1) The Bank shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.
- (2) The amount of remuneration determined under sub-paragraph (1) —
 - (a) shall be stated in the instrument of appointment of the director;
 - (b) shall not be diminished during the term of office of the director receiving the remuneration; and
 - (c) shall not be determined by reference to the profits of the Bank.

9. Audit Committee.

- (1) There shall be established an audit committee (the “Audit Committee”) of the Bank responsible for —
 - (a) overseeing the internal and external audit of the Bank;
 - (b) recommending to the Board a person or firm to be appointed as external auditors and the scope of the external audit;
 - (c) meeting with external auditors to discuss their findings;
 - (d) reviewing with external auditors the annual statement of the accounts of the Bank;
 - (e) resolving disagreements between the management and external auditors regarding the financial reporting; and
 - (f) performing any other functions prescribed by the charter of the Audit Committee.
- (2) The Audit Committee shall consist of the following persons appointed by the Board —
 - (a) two directors, neither of whom shall be the Governor;
 - (b) one financial expert who —
 - (i) has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Audit Committee;
 - (ii) has recognised expertise in accounting or auditing; and
 - (iii) does not fall within paragraph 2(4) and paragraph 4(2)(a)(b) or (c).
- (3) A financial expert under sub-paragraph (2)(b) shall be appointed for a term of four years and eligible for re-appointment for no more than two additional terms.
- (4) A member of the Audit Committee —
 - (a) shall be removed by the Board if the member falls within paragraph 2(4)(a); and

- (b) may be removed by the Board if the member falls within paragraph 2(4)(b).
- (5) Without prejudice to this paragraph, the Board shall prescribe duties and procedures of the Audit Committee by establishing a charter (“the Audit Committee Charter”).
- (6) The Audit Committee shall report to the Board on the performance of its functions, at least quarterly.

10. Investment Committee.

- (1) There shall be established an investment committee (the “Investment Committee”) of the Bank responsible for —
 - (a) making recommendations to the Board in respect of the management of the external reserves;
 - (b) proposing to the Governor eligible counter-parties, risk limits, and benchmarks in respect of external reserve management;
 - (c) managing the external reserve in accordance with the investment policy and guidelines approved by the Board under this Act;
 - (d) proposing to the Board nominees for the appointment of external managers of the external reserves;
 - (e) overseeing external managers of the external reserve; and
 - (f) performing any other functions prescribed by the approved investment policy and guidelines.
- (2) Members of the Investment Committee shall be appointed by the Governor.
- (3) Without prejudice to this Act, the Board shall pursuant to the investment policy and guidelines prescribe the responsibilities, composition, and procedures of the Investment Committee.

11. Monetary Policy Committee.

- (1) There shall be a monetary policy committee (the “Monetary Policy Committee”) of the Bank —
 - (a) chaired by the Governor; and
 - (b) composed of members appointed by the Governor.
- (2) The Monetary Policy Committee shall —
 - (a) determine the monetary policy of the Bank;
 - (b) approve basic assessments of the conditions of the economy and the financial system; and
 - (c) perform any other functions as may be determined by the Board.
- (3) The Board shall prescribe the responsibilities, composition, and procedures of the Monetary Policy Committee.

12. Staff and remuneration.

- (1) The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Bank.
- (2) Remuneration paid under sub-paragraph (1) shall not be determined by reference to the profits of the Bank.
- (3) The Bank may, as the Bank determines —
 - (a) pay to or in respect of officers or servants of the Bank pensions or gratuities;
 - (b) make payments towards the provisions for employees of pensions or gratuities; or
 - (c) maintain for employees pension schemes (by being a contributor or otherwise).

13. Seal.

- (1) The seal of the Bank shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or a Deputy Governor and one other director authorized by the Board to act in that behalf.
- (2) Any document purporting to be a document executed under the seal of the Bank shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

BANKS AND TRUST COMPANIES REGULATION BILL, 2019

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BANKS AND TRUST COMPANIES REGULATION BILL, 2019

A BILL FOR AN ACT TO MAKE PROVISIONS TO REGULATE BANKS AND TRUST COMPANIES WITHIN THE BAHAMAS; FOR THE PROVISION OF A SPECIAL RESOLUTION FRAMEWORK FOR BANKS AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

1.	Short Title and Commencement.	
	(This Act may be cited as the Banks and Trust Companies Regulation Act, 2019.
2.	Interpretation.	
	In this Act -	
		<p>“asset management vehicle” means a company that is—</p> <ul style="list-style-type: none"> (a) incorporated under the Companies Act; (b) limited by shares; (c) wholly or partially owned by the Central Bank and or the Government; (d) created for receiving some or all of the assets, rights and liabilities of a bank under statutory administration or a bridge institution.
		<p>“authorised agent” means a person designated by a bank or trust company under the provisions of section 4;</p>
		<p>“Bahamas Agent” means a Registered Representative who provides administrative services to a private trust company under a service agreement;</p>
		<p>“Bank” or “Central Bank” means the Central Bank of The Bahamas, continued as a body corporate by section 3 of the</p>

	<p>repealed Act Central Bank of The Bahamas Act, and which continues under section 3 and is governed in accordance with and for the purposes of this Act;</p>	
	<p>“bank” means any person lawfully carrying on banking business including the accepting of deposits of money withdrawable by cheque;</p>	
	<p>“banking business” means</p> <ul style="list-style-type: none"> (i) the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them; and (ii) without limiting the generality of the foregoing, includes the provision of money transmission services, <p>and “banker” shall be construed accordingly;</p>	
	<p>“bridge bank institution” is a company that is-</p> <ul style="list-style-type: none"> (a) incorporated under the Companies Act; (b) limited by shares; (c) owned by the Government or the Central Bank; (d) created for receiving a transfer, and effecting a timely disposal of the assets, rights and liabilities of a bank under statutory administration; and (e) licensed under this Act. 	
	<p>“Central Bank” means the Central Bank of The Bahamas, continued as a body corporate by section 3 of the repealed Act, and which continues under section 3 and is governed in accordance with and for the purposes of this Act;</p>	
	<p>“company” means a company incorporated either under the laws of The Bahamas or</p>	

	<p>under the laws of any other country or place;</p>	
	<p>“controller” means a person—</p> <p>(a) in accordance with whose directions, instructions or wishes the directors or officers of a licensee, or of another company of which the licensee is a subsidiary, are accustomed or are under an obligation, whether formal or informal, to act;</p> <p>(b) who is able to exercise a significant influence over the management of a licensee, or of another company of which it is a subsidiary by virtue of—</p> <p>(i) a holding of shares or other securities in the licensee or such other company;</p> <p>(ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the licensee, or such other company;</p> <p>(c) who is in a position to determine the policy of the licensee but who is not—</p> <p>(i) a director or officer of the licensee whose appointment has been approved by the Central Bank; or</p> <p>(ii) a person in accordance with whose directions, instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by such person in a professional capacity;</p>	
	<p>“deposit” means—</p> <p>(a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person's chequing, savings, demand or time account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; and</p>	

		<p>(b) such other payments as the Bank may by regulation prescribe, excluding, subject to sub-paragraph (iii), any unpaid balance of money or its equivalent received or held in relation to the provision of property other than currency, or services or the giving of security; and, for the purposes of this Act, an unpaid balance of money or its equivalent is referable to the provision of property or services or the giving of security only if—</p> <p>(i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is or are not sold, hired or otherwise provided;</p> <p>(ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or</p> <p>(iii) it is paid by way of security for the delivery or return of any property whether in a particular state of repair or otherwise.</p>	
		<p>“Designated Person” means the individual or individuals (whether living or deceased) described as such within a Designating Instrument provided that if more than one Designated Person is described as such each Designated Person must be related to a Designated Person so described by consanguinity or some other family relationship;</p>	
		<p>“Designating Instrument” means an instrument in the form specified in the First Schedule to the Banks and Trust Companies (Private Trust Companies) Regulations;</p>	
		<p>“Domestic Systemically Important Institution” or “DSII” means a bank licensed under this Act and which reported total consolidated domestic liabilities of such</p>	

		amount as the Governor may determine by notice, to the Central Bank for the preceding financial year of that bank;	
		“Financial and Corporate Service Provider” means a person that is licensed pursuant to the Financial and Corporate Service Provider’s Act (Ch.369);	
		“Governor” means the person appointed as Governor under paragraph 2 of the Schedule to the Central Bank of The Bahamas Act;	
		<p>“indirect controller” means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in a designated licensee--</p> <p>(a) in accordance with whose directions, instructions or wishes the directors and officers of the designated licensee are accustomed or under an obligation, whether formal or informal, to act; or</p> <p>(b) who is in a position to determine the policy of the designated financial institution licensee, but does not include any person –</p> <p>(i) who is a director or other officer of the designated financial institution licensee whose appointment has been approved by the Central Bank; or</p> <p>(ii) in accordance with whose directions; instructions or wishes the directors of the designated financial institution licensee are accustomed to act by reason only that they act on advice given by him in his professional capacity.</p>	
		“Inspector” means the office of Inspector of Banks and Trust Companies established under section 13;	
		“insolvent” has the meaning ascribed to it in section 187 of the Companies Act.	
		“levy” means the amount payable by a DSII for the DSII’s preceding financial year pursuant to section 27(2);	
		“levy threshold amount” means such sum as the Governor may determine by Notice;	
		“licence” means a licence granted under section 4 or deemed to be so granted in accordance with that section;	

		<p>“licensee” means any person holding a licence under</p> <p>the provisions of this Act and for the purposes of this Act “licensee” includes the branches or subsidiaries of a licensee operating outside of The Bahamas;</p>	
		<p>“Minister” means the Minister of Finance;</p>	
		<p>“Money Transmission Agent” means any person carrying on money transmission business on behalf of a Money Transmission Service Provider.</p>	
		<p>“Money Transmission Business” means the business of accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs and “money transmission services” shall be construed accordingly;</p>	
		<p>“Money Transmission Service Provider” means any person carrying on a money transmission business;</p>	
		<p>“other family relationships” means personal relationship between two persons —</p> <p>(a) by marriage or former marriage; or</p> <p>(b) which exists if —</p> <p>(i) one is the child of the other, natural or adopted, legitimate or illegitimate; or</p> <p>(ii) one is regarded by the other as his child;</p>	
		<p>“Penalty” means an administrative monetary penalty imposed by the Central Bank and includes a fine payable pursuant to section 46 of the Central Bank of The Bahamas Act;</p>	
		<p>“Private Trust Company” means a company incorporated under the provisions of the Companies Act, or the International Business Companies Act, which by its Memorandum and Articles of Association —</p> <p>(a) acts as trustee only for a trust or trusts created or to be created by or at the direction of a Designated Person or</p>	

		<p>Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated Persons need not be named in such company's Memorandum and / or Articles of Association;</p> <p>(b) is required to have a Registered Representative; and</p> <p>(c) is not the subject of a notice of withdrawal made under section 4(7);</p>	
		<p>“Registered Representative” means a person resident in The Bahamas that is--</p> <p>(a) a trust company that is licensed pursuant to section 34(2) to provide to--</p> <p>(i) a Private Trust Company, the services of a —</p> <p>(aa) secretary;</p> <p>(bb) director; or</p> <p>(cc) Bahamas Agent, and</p> <p>(ii) a Qualified Executive Entity, the services of an Executive Entity Agent, and</p> <p>(iii) a Foundation, the services of a Foundation Agent; or</p> <p>(b) a licensed Financial and Corporate Service Provider registered by with the Central Bank to provide the services referred to in (i) and (ii);</p>	
		<p>“Securities Commission” means the Securities Commission of The Bahamas referred to in section 10(1) of the Securities Industry Act, 2011.</p>	
		<p><u>“Stabilization option” refers to a power, that may be exercised in relation to a bank under statutory administration, pursuant to section 18BH or 18BI.</u></p>	
		<p>“Supervisory Authority” in relation to a country or territory outside The Bahamas means a foreign entity charged with the responsibility of conducting consolidated</p>	

		supervision of banking and trust business by organisations licensed in its home country;	
		“Total domestic liabilities amount” means an amount equal to the total domestic liabilities of a DSII as reported by the DSII to the Central Bank for the DSII’s preceding financial year”.	
		“trust business” means the business of acting as trustee, executor or administrator;	
		“trust company” means any company carrying on trust business.	
3.	Licence required to carry on banking business or trust business.		
	(1)	No banking business shall be carried on from within The Bahamas, whether or not such business is carried on in The Bahamas except by a company in possession of a valid licence granted by the Central Bank authorising it to carry on such business.	
	(2)	No trust company shall carry on trust business from within The Bahamas whether or not such business is carried on in The Bahamas unless it is in possession of a valid licence granted by the Central Bank authorising it to carry on such business.	
	(3)	No person shall be a Registered Representative (whether or not such business is carried on in or from within The Bahamas) unless that person is- (a) in possession of a valid licence granted by the Central Bank pursuant to section 3(2) of this Act; or (b) a licensee under the Financial and Corporate Service Providers Act (<i>Ch. 369</i>), who has obtained the prior approval of who is registered with the Central Bank to carry on such business.	
	(4)	The Governor may by Regulation exempt any specified person or class of persons, or any specified class or part of any class of banking or trust business from the provisions of subsections (1) and (2) of section 3 sections 3(1) or 3(2) or of any regulations made pursuant to this Act, subject to such terms and conditions as may, in the Governor’s opinion, be appropriate.	
	(5)	Subject to subsection (4), the provisions of this Act shall, unless the context otherwise requires, apply <i>mutatis mutandis</i> to Private Trust Companies_ and to Registered Representatives.	
	(6)	For the avoidance of doubt, the Central Bank may impose any of the sanctions set out in section 18 (1) (b) , (c),(d), (e), (f), (g), (h) and (i) of this Act, against a Private Trust Company or a Registered Representative where, in the opinion of the Central Bank, the Private Trust Company or a Registered Representative is, whether in The Bahamas or elsewhere — (a) contravening any of the provisions of this or any other Act or of any order or regulations made under this Act, or any	

		<p>term or condition subject to which an approval pursuant to subsection 3(3), or an exemption pursuant to subsection 3(4), was granted; or</p> <p>(b) contravening or failing to comply with a direction of the Central Bank; or</p> <p>(c) carrying on its business in a manner that is detrimental to the reputation of The Bahamas.</p>	
	(7)	<p>Every person who contravenes the provisions of this section or of section 3A shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand five hundred dollars for each day during which the offence continues.</p>	
3A.	Stand-alone Money Transmission Businesses.		
		<p>Any person, other than a bank or trust company licensed under this Act, who desires to carry on the business of providing money transmission services as-</p> <p>(a) a Money Transmission Service Provider shall submit an application to the Central Bank for a licence to carry on such services, in such form, and shall furnish the Central Bank with such information as the Bank may require;</p> <p>(b) a Money Transmission Agent shall, subject to such terms and conditions as the Central Bank may require, register with the Central Bank.</p>	
3B.	Application.		
		<p>The provisions of this Act shall, unless the context otherwise requires, apply <i>mutatis mutandis</i> to Money Transmission Service Providers.</p>	
3C.	Non-Applicable Provisions.		
		<p>The provisions of sections 4, 8, 14, 15, 17, 20 and 21 shall not apply to Money Transmission Service Providers.</p>	
3D.	Application in case of a proposed company.		
	(1)	<p>A group of persons may, where the group proposes to form a company for the purpose of carrying on a banking business or a trust business, make application to the Central Bank for an intimation as to whether or not the company will be authorised to carry on such business upon its incorporation.</p>	
3E.	Criteria to determine if person is fit and proper.		
	(1)	<p>The Central Bank shall, in determining for the purposes of this Act whether a person is or remains a fit and proper person, have regard to all the circumstances, including such person's —</p> <p>(a) honesty, integrity and reputation;</p>	

		<p>(b) competence and capability;</p> <p>(c) financial soundness; and</p> <p>(d) previous disciplinary record, general compliance history including whether the Central Bank or any other domestic regulatory authority, or a Supervisory Authority, or other foreign regulatory body, has previously imposed a disciplinary sanction on such person.</p>	
	(2)	<p>Without limiting the generality of subsection (1), The the Central Bank shall consider whether the applicant, or any other person the Bank deems relevant, is a fit and proper person where an application is made —</p> <p>(a) pursuant to</p> <p>(i) section 3A;</p> <p>(ii) section 3D;</p> <p>(iii) subsection (1) of section 4; or</p> <p>(b) by a licensed Financial and Corporate Service Provider for approval to carry on the business of a Registered Representative.</p>	
	(3)	<p>For the purpose of subsection (2), a relevant person includes a person who is or is to be a controller, director, or officer of the business to which the application relates.</p>	
	(4)	<p>The Central Bank shall refuse to grant a licence, or an approval, or to register a person, where the Bank is of the opinion that the business to which the application relates would not be carried on by fit and proper persons.</p>	
4.	Application shall be made to the Central Bank.		
	(1)	<p>Any company desirous of carrying on banking business and any company desirous of carrying on trust business from within The Bahamas shall make application to the Central Bank for the grant of a licence.</p>	
	(2)	<p>An application made pursuant to subsection (1) shall be in writing and contain such information and particulars, and be accompanied by such references, as may be prescribed and the Central Bank —</p> <p>(a) shall, in considering the application, have regard to —</p> <p>(i) the incorporation and ownership structure of the company;</p> <p>(ii) the nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the bank or trust company, as the case may be;</p>	

		<ul style="list-style-type: none"> (iii) the soundness and feasibility of the business plan; and (iv) the best interests of the financial system in The Bahamas; <p>(b) may, if satisfied with respect to the matters set out in subsection (1) of section 3E, grant a licence to the applicant subject to such terms and conditions, if any, as the Bank deems necessary;</p> <p>(c) shall, in every case in which application is made pursuant to subsection (1), advise the Minister of the Bank's decision to either grant or refuse the grant of a licence to the applicant.</p>	
	(3)	Whenever [the Central Bank] considers it to be in the public interest, the Central Bank may refuse to grant a licence.	
	(4)	<p>A licence shall not be granted to any bank or trust company having its head office or its registered office outside The Bahamas unless -</p> <ul style="list-style-type: none"> (a) such bank or trust company designates and notifies to the Central Bank- <ul style="list-style-type: none"> (i) a principal office in The Bahamas, (ii) by name one of its officers who is to be the bank's or trust company's authorised agent in The Bahamas, and (iii) by name another of its officers who in the absence or inability of the officer named under sub-paragraph (ii) is to be the bank's or trust company's authorised agent in The Bahamas; (b) the Central Bank is satisfied that the bank or trust company is subject to adequate consolidated supervision by the Supervisory Authority and that the Supervisory Authority makes no objection to the establishment of the branch or subsidiary in The Bahamas; (c) the Supervisory Authority is permitted to examine, wherever they are kept, the books of the bank or trust company; (d) there are no constraints on internal and external audits imposed by the Supervisory Authority; (e) the Supervisory Authority is informed where the bank or trust company will be managed; (f) the Supervisory Authority has agreed to inform the Central Bank as soon as reasonably possible of any circumstances that arise which may seriously jeopardise the interests of creditors of the bank or trust company. 	
	(5)	It shall be a condition of every licence granted to a bank or trust company to which subsection (4) applies, that the bank or trust company shall forthwith notify the Central Bank in writing of any change of -	

		(a) its principal office in The Bahamas; or (b) either or both of the officers designated pursuant to paragraph (a)(ii) or (iii) of subsection (4).	
	(6)	In respect of a licence granted under subsection (2), the Central Bank may at any time - (a) make the licence subject to such conditions or limitations that are consistent with this Act and that relate to the business of the bank or trust company as the Central Bank considers necessary; (b) amend or revoke any authorization contained in the licence or any condition or limitation to which the licence is subject: Provided that before taking any action under paragraph (a) or (b) the Central Bank shall provide the bank or trust company with an opportunity to make representation regarding any proposed action.	
	(7)	Subject to subsection (8) the Central Bank may, by notice in writing- (a) cancel any registration granted pursuant to section 3(3) or 3(A)(b); (b) withdraw any exemption granted pursuant to section 3(4).	
	(8)	The Central Bank shall, before cancelling a registration or withdrawing an exemption, afford a person in respect of whom it proposes to take action pursuant to paragraph (a) or (b) of subsection (7), an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being less than seven days.	
	<u>(9)</u>	Whenever the Central Bank shall cancel a registration or withdraw any exemption under subsection (7) the Bank may cause notice of such action to be published in the Gazette.	
	<u>(910)</u>	Notwithstanding anything to the contrary in any trust instrument, where the Central Bank is satisfied that in the interests of a trust it is necessary for all or any of the trusts for which the company is acting as trustee to be transferred to a new trustee for administration by such trustee, the Central Bank may petition the court for that purpose. order the transfer of any such trust to a new trustee, and make such supplemental orders or give such directions, as it deems fit.	
	<u>(10)</u>	Wherever the Central Bank takes action pursuant to subsection (9), the court, may, after hearing representations from the Central Bank or any other person appearing to the court to be affected, order the transfer of any such trust to a new trustee, and may make such supplemental or incidental orders or give such directions, as the court thinks fit.	
5.	Approval of Central Bank.		

		A licensee incorporated or registered in The Bahamas shall not without the prior written approval of the Central Bank establish, outside of The Bahamas, a subsidiary, branch, agency or representative office.	
6.		Shares, etc., not to be issued or transferred without approval.	
	(1)	No shares in a company or any other securities of such company which is a licensee under this Act shall be issued and no issued shares shall be transferred or disposed of in any manner without the prior approval of the Central Bank; Provided that the Central Bank may exempt any licensee or group or class of licensees from the provision of this section subject to such terms and conditions if any as the Central Bank may deem necessary.	
	(2)	All dividends of the shareholders of a bank or trust company shall be paid out of the profits and not out of the subscribed capital of the bank or trust company.	
	(3)	No person shall become a controller or an indirect controller of a licensee without obtaining the prior approval of the Central Bank.	
	(4)	In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.	
	(5)	The Central Bank may by Notice in writing exempt any person or class of persons or any class or description of shares or interest in shares from the provisions of this section subject to such terms and conditions, if any, as the Central Bank may deem necessary and may make such further transitional provisions as the Central Bank considers necessary or expedient for the purposes of this section.	
6A.		Grant of Approval in relation to controllers of a licensee.	
	(1)	Subject to subsection (2), the Central Bank may approve an application made under subsection (1) or subsection (3) of section 6 where – (a) the issue, transfer or disposal to a person of the shares or other securities of a licensee, would result in such person becoming a controller of the licensee; or (b) an existing controller of a licensee is the person acquiring the shares or other securities of the licensee and such acquisition would result in the increase of the controller's influence over the licensee.	
	(2) (1)	The Bank shall, in approving may approve an application made by a person pursuant to subsection (1) (3) of section 6, satisfy itself if satisfied that – (a) the person acquiring the shares or other securities of the license is a fit and proper person;	

		<p>(b) having regard to the likely influence of the person acquiring the shares or other securities, the licensee will or will continue to conduct its business prudently and to comply with the provisions of this Act; and</p> <p>(c) it is in the best interest of the financial system of The Bahamas to approve the application.</p>	
	(3) (2)	<p>The Central Bank may, where the Bank grants an approval of an application which results in the circumstances referred to in paragraphs (a) or (b) of subsection (1), impose such conditions as the Bank may determine including, but not limited to, a condition</p> <p>Any approval under this section may be granted to any person subject to such conditions as the Central Bank may determine, including but not limited to any condition –</p> <p>(a) restricting the controller’s disposal or further acquisition of shares, or other securities, or voting power, in the licensee; or</p> <p>(b) restricting the controller’s exercise of voting power in the licensee.</p>	
	(4) (3)	The Central Bank may at any time add to, vary or revoke a condition imposed under subsection (3) (2).	
	(5) (4)	A condition imposed under subsection (3) (2) shall have effect notwithstanding any provision of the Companies Act, any other law, or anything contained in the memorandum or articles of association of the licensee.	
6B.	Objection to an existing controller of a licensee.		
	(1)	<p>The Central Bank may, where approval has been granted for the acquisition of shares or other securities in a licensee in the circumstances referred to in paragraphs (a) or (b) of subsection (1) of section 6A, serve a written notice of objection on the controller where the Bank is satisfied that –</p> <p>(a) the controller has ceased to be a fit and proper person;</p> <p>(b) having regard to the likely influence of the controller, the licensee is no longer likely –</p> <p>(i) to conduct, or is no longer conducting, its business prudently;</p> <p>(ii) to comply with, or is no longer complying with, the provisions of this Act;</p> <p>(c) a condition of approval imposed on the controller under subsection (3) of section 6A has not been complied with;</p> <p>(d) the controller has furnished a false or misleading document or information in connection with an application made under subsection (1) of section 6;</p> <p>(e) the Bank would not have granted the approval in relation to the controller had the Bank been aware, at the time, of circumstances relevant to the application for such approval; or</p>	

		<p>(f) it is no longer in the best interests of the financial system in The Bahamas for the person to continue to be a controller of a licensee.</p> <p>The Central Bank may serve a written notice of objection on a person referred to in subsection 6A(1) 6(3) if the Central Bank is satisfied that—</p> <p>(a) the person has ceased to be a fit and proper person;</p> <p>(b) having regard to the likely influence of the person, the licensee is no longer likely—</p> <p>(i) to conduct, or is no longer conducting, its business prudently; or</p> <p>(ii) to comply with, or is no longer complying with, the provisions of this Act;</p> <p>(b) having regard to the likely influence of the person, there is a material risk that, the licensee—</p> <p>(i) will fail to conduct, or is failing to conduct, its business prudently; or</p> <p>(ii) will fail to comply with, or is failing to comply with, the provisions of this Act;</p> <p>(c) a condition of approval imposed on the person under subsection 6A(3) 6(3) has not been complied with;</p> <p>(d) the person has furnished a false or misleading document or information in connection with an application made under subsection 6(1) 6(3);</p> <p>(e) the person has knowingly failed or refused to cooperate with the Central Bank in the performance of its duties;</p> <p>(e) the Central Bank would not have granted the approval in relation to the person had it been aware, at the time, of circumstances relevant to the application for such approval;</p> <p>(f) the Central Bank would not have been satisfied as to any matters specified in subsection (1) had it been aware, at that time, of circumstances relevant to the person's application under subsection 6 (3); or</p> <p>(f) g) it is no longer in the best interests of the financial system in The Bahamas for the person to continue to be a controller or an indirect controller, as the case may be, of a licensee.</p>	
	(2)	<p>The Central Bank shall, in any written notice of objection, specify a reasonable period within which the person named in the notice shall -</p> <p>(a) take such steps as are necessary to ensure that he ceases to be a controller or an indirect controller, as the case may be; or</p> <p>(b) comply with such direction or directions as the Central Bank may make under section 6C.</p>	
	(3)	<p>A person served with a notice of objection under this section shall comply with the notice.</p>	

	(4)	Notwithstanding the provisions of subsections (2) and (3), a controller person who has been served with a notice of objection pursuant to subsection (1) may, within a period of fourteen seven days commencing the day after which the notice is served, make written representations to the Central Bank which the Bank shall take into account in determining whether to vary or revoke the notice.	
6C.	Power to make directions.		
	(1)	Subject to section 6D, the Central Bank – <ul style="list-style-type: none"> (a) where the Bank is satisfied that a person has failed to comply with a condition imposed under subsection (3) of section 6A; or (b) where the Bank has served a written notice of objection under section 6B, may by notice in writing – <ul style="list-style-type: none"> (ii) direct the transfer or disposal of all or any of the shares or other securities in a licensee held by such person or an associate of such person within such time, or subject to such conditions, as the Central Bank considers appropriate; (iii) restrict the transfer or disposal of shares or other securities specified pursuant to subparagraph (i); or (iv) make such other direction as the Central Bank considers appropriate. 	
	(2)	A person to whom a notice is given under subsection (1) shall comply with such direction or directions as may be specified in the notice.	
	(3)	Notwithstanding any of the provisions of the Companies Act, any other law, or anything contained in the memorandum or articles of association of a licensee, a direction or restriction by the Central Bank under subsection (1) shall apply so that, until a transfer or disposal is effected in accordance with the direction, or the restriction on the transfer or disposal is removed-- <ul style="list-style-type: none"> (a) no voting rights shall be exercisable in respect of the specified shares or other securities unless the Central Bank expressly permits such rights to be exercised; (b) no shares or other securities of the licensee shall be issued or offered, whether by way of rights, bonus or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly permits such issue or offer; and (c) except in a liquidation of the licensee, no payment shall be made by the licensee of any amount, whether by way of dividends or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly authorises such payment. 	

	(4)	<p>For the purposes of this section, a person, A is an associate of another person B where —</p> <ul style="list-style-type: none"> (a) A is the spouse, parent, remoter lineal ancestor step-parent, son, daughter, remoter issue, step-son, step-daughter, brother or sister of B; (b) A is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes — <ul style="list-style-type: none"> (i) of B, or (ii) where B is a company, of the directors of B; (c) B is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes - <ul style="list-style-type: none"> (i) of A, or (ii) where A is a company, of the directors of A; (d) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B; (e) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A; (f) A is a related company of B; (g) A is a company in which B, alone or together with other associates of B as referred to in paragraphs (b) to (f), is in a position to control not less than 20% of the voting power in A; (h) B is a company in which A, alone or together with other associates of A as described in paragraphs (b) to (f), is in a position to control not less than twenty percent (20%) of the voting power in B; or (i) A is a person with whom B has an agreement or arrangement, whether oral or in writing, express or implied, to act together with respect to the — <ul style="list-style-type: none"> (i) acquisition, holding or disposal, of shares or other interests in the licensee; or (ii) exercise of their voting power in relation to the licensee. 	
6D.		Offences, penalties and defences.	
	(1)	<p>A person who —</p> <ul style="list-style-type: none"> (a) contravenes subsection (1) of section 6; (b) contravenes subsection (3) of section 6; (b) (c) contravenes subsection (3) of section 6B; (c) (d) contravenes subsection (2) of section 6C; or (d) (e) fails to comply with a condition imposed under subsection (3) of section 6A, 	

		<p>commits an offence and shall be liable on summary conviction –</p> <ul style="list-style-type: none"> (i) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment; (ii) in the case of a company, to a fine not exceeding one hundred thousand dollars; (iii) in the case of a continuing offence by an individual, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues; and (iv) in the case of a continuing offence by a company, to a further fine not exceeding one thousand dollars or each day, or part of a day, during which the offence continues. 	
	(2)	<p>It shall be a defence for a person who is charged with an offence in respect of a contravention of subsection (1) of section 6 to prove that such person –</p> <ul style="list-style-type: none"> (a) was not aware that he had committed the contravention; and (b) within fourteen days of becoming aware that he had committed the contravention – <ul style="list-style-type: none"> (i) notified the Central Bank of the contravention; and (ii) within such time as was determined by the Bank, took such actions in relation to his shareholding or control of the voting power in the licensee as was directed by the Bank. 	
7.	Use of the word “bank”, etc.		
	(1)	<p>Except with the approval of the Central Bank no person, other than a licensee acting under and in accordance with the terms of his its licence, shall –</p> <ul style="list-style-type: none"> (a) use or continue to use the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language, in the description or title under which such person is carrying on business from within The Bahamas whether or not such business is carried on in The Bahamas; (b) use words representing that that person is carrying on money transmission business, in English or in any other language, in the description or title under which that person carries on business from within The Bahamas whether or not such business is carried on in The Bahamas; (c)(b) make, or continue to make, whether directly or indirectly, any representation in any bill-head, letter, 	

		<p>letter-head, circular, paper, notice or advertisement or by any other means whatsoever, whether similar to the foregoing or not, that such person is carrying on banking business or trust business banking business, trust business, or money transmission business or is authorised by the law of The Bahamas to carry on such respective business;</p> <p>(d)(e) in any manner whatsoever, solicit or receive deposits from the public.</p>	
	(2)	<p>Except with the approval of the Central Bank -</p> <p>(a) the Registrar General shall not register a company; and</p> <p>(b) no company if already registered immediately before the twenty-fifth day of November, 1968, shall be entitled to remain registered on or after that date, with a name which contains the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language.</p>	
	(3)	<p>Before giving his its approval under subsection (1) or subsection (2) the Central Bank may require of any person such references and such other information and particulars as may be prescribed.</p>	
	(4)	<p>Whenever he the Central Bank considers it to be in the public interest he the Central Bank may withdraw any approval given under subsection (1).</p>	
	(5)	<p>The Central Bank may refuse to grant a licence to a bank or a trust company, or if such bank or trust company is already in possession of a licence, the Bank may revoke such licence, if in the Bank’s opinion such bank or trust company is carrying on or intending to carry on banking or trust business, as the case may be, under a name which –</p> <p>(a) is identical with that of any company, firm or business house whether within The Bahamas or not or which so nearly resembles that name as to be calculated to deceive;</p> <p>(b) is calculated to suggest, falsely, the patronage of or connection with some person or authority whether within The Bahamas or not; or</p> <p>(c) is calculated to suggest, falsely, that such bank or trust company has a special status in relation to or derived from the Government of The Bahamas or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognized in The Bahamas as a national or central bank or trust company.</p> <p>The Central Bank may refuse to grant a licence to, or to register, as the case may be, a person, or if such person is</p>	

		<p>already in possession of a licence or certificate of registration, as the case may be, the Central Bank may revoke such licence or cancel such registration, if in the Bank's opinion such person is carrying on or intending to carry on banking or trust business, money transmission business or the business of acting as a Registered Representative, as the case may be, under a name which —</p> <p>(a) is identical with that of any company, firm or business house, whether within The Bahamas or not, or which so nearly resembles that name as to be calculated to deceive;</p> <p>(b) is calculated to suggest, falsely, the patronage of, or connection with some person or authority whether within The Bahamas or not; or</p> <p>(c) is calculated to suggest, falsely, that such person has a special status in relation to or derived from the Government of The Bahamas or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognized in The Bahamas as a national or central bank or trust company, money transmission service provider or Registered Representative, as the case may be; or</p> <p>(d) is calculated to mislead the public as to the nature of the person's business arrangements.</p>	
	(6)	<p>Every person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.</p>	
	(7)	<p>Where it appears to the Central Bank-</p> <p>(a) that a company has contravened any prohibition contained in subsection (1), and that no other effective means exists of dealing with the company in relation to the contravention; or</p> <p>(b) that a company is disentitled to remain registered by reason of being in breach of paragraph (b) of subsection (2),</p> <p>then in either such case the Bank may direct the Registrar General to give notice in writing to the company requiring it to show cause within thirty days why it should not be struck off the register of companies; and the Registrar General shall serve such notice accordingly, specifying the contravention or breach complained of, by causing the same to be delivered personally or sent by prepaid registered post to the secretary of the company at its registered office; and in the case of a notice sent by post it shall be deemed to have been served on</p>	

		the fifth day after the posting of the registered envelope or packet containing the same.	
	(8)	If any company fails within thirty days of the service of a notice under the provisions of subsection (7) to showcause why it should not be struck off the register or to satisfy the Central Bank that the contravention or breach complained of has been discontinued and will not be repeated, then the Central Bank may in writing direct the Registrar General to strike the company off the register; and the Registrar General shall act accordingly and thereupon the company shall be dissolved.	
	(9)	Upon the removal of a company pursuant to this section the provisions of section 271(4) to 274 (inclusive) of the Companies Act shall have effect in relation to such company as they have effect in relation to any company removed from the register pursuant to that Act.	
8.	Yearly financial statements to be published.		
	(1)	Every licensee shall, within four months of the end of its financial year, publish a true and full yearly statement of its accounts and the auditor of the licensee shall certify that such statement is properly drawn up so as to exhibit a true and correct view of the state of the licensee's affairs as shown by the books of the licensee; provided that the Central Bank may, if the Bank sees fit, exempt any licensee from the provisions of this section.	
	(2)	Such statement shall be signed by the manager or by such other person or officer of the licensee as may from time to time be authorised by the licensee to sign such statement on behalf of the licensee; and the correctness thereof shall be declared to in such manner and by such persons as the Central Bank may direct.	
	(3)	Such statements shall be published in such form and manner and shall contain such particulars as the Central Bank may from time to time direct.	
	(4)	Every licensee shall provide within four months of the end of its financial year a copy of its annual financial statement to the Central Bank, unless prior written approval for an extension of time has been granted by the Bank.	
	(5)	The Central Bank may, for such further period not exceeding sixty days it deems expedient, extend the time periods referred to in subsections (1) and (4).	
9.	Information to be furnished to the Central Bank.		
	(1)	Every person who is subject under this Act to the supervision of the Central Bank shall furnish the Bank with such information including returns at such times and in such form as the Bank may reasonably require for the proper discharge	

		of its functions under this Act or any regulations made under this Act.	
	(2)	A person who fails without reasonable excuse to furnish any information required by the Bank under this section commits an offence and shall be liable on summary conviction – (a) in the case of an individual, to a fine not exceeding fifty thousand dollars (\$50,000) dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred dollars (\$500) for each day, or part of a day, during which the offence continues; or (b) in the case of a company, to a fine not exceeding one hundred thousand dollars (\$100,000) and, in the case of a continuing offence, to a further fine not exceeding one thousand (\$1,000) for each day, or part of a day, during which the offence continues.	
10.	Information on Insolvency.		
	(1)	A licensee shall immediately inform the Central Bank where such licensee – (a) is, or is likely to become, insolvent; (b) is, or is likely to become, unable to meet its obligations; or (c) has suspended, or is about to suspend, payments.	
	(2)	The Central Bank may in writing – (a) where a licensee is, or appears likely to become, unable to meet its obligations; or (b) where a licensee, in the opinion of the Bank, is carrying on business in a manner detrimental to the interest of the (i) public; (ii) despositors of the licensee; (iii) beneficiaries of any trust; or (iv) other creditors of the licensee, (A). require the manager or authorised agent of such licensee to supply within such reasonable time as may be specified-the financial statements of such licensee, as of a date determined by the Central Bank, audited by an auditor who is a chartered accountant or a certified public accountant approved by the Bank; and (B) such other information relating to the licensee as the Bank may specify	
	(3)	A person who – (a) fails to comply with the written requirements of the Central Bank made pursuant to subsection (2); or	

		(b) in response to the written requirements of the Central Bank made pursuant to subsection (2), knowingly or wilfully supplies false information to the Bank, commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.	
	(4)	A bank that receives any deposit while insolvent commits an offence, and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.	
	(5)	Any director or officer of a bank described in subsection (4) who knows or, in the proper performance of his duties, should know of the insolvency of such bank, and who receives, or authorizes the acceptance of a deposit, commits an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand dollars and to imprisonment for a term not exceeding two years.	
11.	Recovery Plans.		
	(1)	The Central Bank may shall require a bank to prepare and submit periodically to the Central Bank, a plan for the rapid and orderly recovery of such bank based on different scenarios of financial distress or failure, whether on an individual basis or on a group basis.	
	(2)	A bank's senior management shall be responsible for the development and maintenance of the bank's recovery planning process.	
	(2) (3)	<p>The plan required under subsection (1) shall include such details as may be specified by the Central Bank from time to time and shall be referred to as a "recovery plan" or "the plan".</p> <p>(a) The Central Bank may issue a direction to a bank specifying the matters which shall be included in a plan required under subsection (1) and such plan shall be referred to as a "recovery plan" or "the plan".</p> <p>(b) A bank shall--</p> <p>(i) review its recovery plan at least annually; and</p> <p>(ii) keep its recovery plan up to date, including updating the plan to reflect any change to the legal or organizational structure of the bank, its business, its financial situation, and any other</p>	

		<p>matter which could have a material effect on or necessitate a change to the recovery plan;</p> <p>(iii) notify the Central Bank promptly of any material changes to its recovery plan and, in any event, within one month of making such change.</p>	
	(5) (3)	A bank shall update its recovery plans as frequently as required by the Central Bank.	
	(3) (4)	<p>(a) Where the Central Bank is of the opinion that a recovery plan submitted by a bank pursuant to subsection (1) is deficient in any material respect</p> <p>(i) is not credible; or</p> <p>(ii) is not likely to facilitate an orderly recovery of the bank under the relevant provisions of this Act,</p> <p>it shall notify the bank in question of the deficiencies in the plan and require such bank to resubmit the recovery plan within a specified timeframe and with such revisions as may reasonably be required by the Central Bank to address any deficiency in the plan.</p> <p>(b) Revisions required by the Central Bank to a bank's recovery plan, pursuant to paragraph (a) may include proposals for changes in the business operations and corporate structure of the bank to facilitate implementation of the plan.</p>	
	(5)	Revisions required by the Central Bank to a bank's recovery plan, pursuant to paragraph (a) subsection (4) may include proposals for changes in the business operations and corporate structure of the bank to facilitate implementation of the plan.	
	(4) (6)	<p>Where a bank fails to submit or resubmit a recovery plan in the period required by the Central Bank, the Central Bank may</p> <p>(a) impose more stringent prudential requirements, and/or restrictions on the growth, activities, or operations of the bank, or any branch or subsidiary thereof; or</p> <p>(b) take any other actions the Central Bank may determine, until such time as the bank resubmits a plan that in the opinion of the Central Bank, remedies the deficiencies.</p>	
	(7)	The Central Bank may direct a bank to implement all or a specified part of the bank's recovery plan.	
	(6) (8)	A plan submitted in accordance with this section shall not be binding on the Central Bank or its agents, in the recovery of a bank.	

	(9)	No private right of action may be based on any plan submitted in accordance with this section.	
11A.	Resolution Plans.		
	(1)	The Central Bank may prepare a resolution plan for a bank (including at a consolidated level in consultation with any other domestic regulatory authority or a Supervisory Authority), using information and analysis submitted by the bank, and with the full cooperation of the bank.	
	(2)	A bank shall cooperate with the Central Bank in the exercise of its powers under subsection (1)	
	(2) (3)	The plan referred to in subsection (1) shall set out options for resolving the bank in different scenarios including systemic instability, and shall include details of how resolution powers and tools may be applied to resolve the bank where necessary, in a manner that promotes continuity in its critical functions.	
	(4)	The Central Bank shall update the resolution plan of a bank as frequently as is necessary given the risk profile of the bank.	
	(3) (5)	Where the Central Bank is of the opinion that significant impediments to orderly resolution exist, it shall may issue a notice directing the bank in writing to address or remove such impediments and the bank shall comply with such direction of the Central Bank.	
	(6)	The Central Bank shall— (a) give reasons for issuing a direction under subsection (5); (b) state when the direction takes effect; and (c) specify a reasonable period within which the bank may make representations to the Central Bank about the direction.	
	(7)	The Central Bank must consider representations made pursuant to subsection (6)(c) and decide— (a) whether to confirm or revoke the notice; and (b) if the notice is revoked, whether to serve a new notice containing a different direction	
	(8)	The Central Bank must serve written notice on the bank of its decision under subsection (7).	
	(9)	If no representation is made by the bank within the period specified under subsection (6)(c), the Central Bank must serve written notice on the bank that the notice under section 11A(5) is confirmed.	
11B.	Objectives of Resolution.		

	(1)	<p>The powers of the Central Bank under section 18(1)(g) (f), and 18B or 18 relating to statutory administration and liquidation shall be exercised by the Central Bank, a statutory administrator or liquidator appointed by the Central Bank, as the case may be, to achieve the objectives of –</p> <p>(a) maintaining financial stability ; (b) protecting and enhancing public confidence in the stability of the banking system including by ensuring prompt payouts of deposits of a bank in liquidation; (c) ensuring continuity of critical financial services and functions; (d) minimizing the costs of resolution and avoiding unnecessary destruction of value; (e) as much as is practical, minimizing the impact of resolution on other jurisdictions.</p> <p>(b) protecting and enhancing public confidence in the stability of the banking system of The Bahamas; (c) protecting depositors including by ensuring prompt payouts of deposits of a bank in liquidation; (d) minimizing the costs of resolution and avoiding unnecessary destruction of value; (e) protecting public funds;</p>	
	(2)	<p>In subsection (1)(a) the reference to financial stability includes, in particular, a reference to the continuity of critical banking services.</p>	
	(3)	<p>The order in which the objectives are listed in this section is not significant; they are to be balanced by the Central Bank as appropriate in each case.</p>	
12.		<p>Appointment powers and duties of auditors.</p> <p>(1) Subject to subsection (2), a licensee shall, within fourteen days of the appointment, notify the Central Bank of the appointment of the auditor of a licensee.</p> <p>(2) The Central Bank may at any time require a licensee to replace an auditor by notice in writing delivered to the usual place of business of the licensee and the auditor.</p> <p>(3) An auditor of a licensee shall—</p> <p>(a) have the right of access at all times to the books, accounts and vouchers of the licensee and be entitled to require from the licensee such information and explanations as he reasonably considers necessary for the performance of his duties as auditor;</p> <p>(b) give the Inspector immediate written notification of the following matters –</p> <p>(i) his intention to resign before the expiration of his term of office as auditor;</p> <p>(ii) his intention not to seek to be reappointed as auditor; and</p>	

		(iii) a decision to include a modification of his report on the licensee's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.	
(4)		An auditor or former auditor of a licensee shall give written notice to the Inspector of any fact or matter— (a) of which such auditor has or had become aware; and (b) which is likely to be of material significance for the discharge, in relation to the licensee, of the functions of the Inspector under this Act.	
(5)		A Notice under subsection (4) shall be given— (a) in the case of an auditor, immediately after the auditor, becomes aware of the matters in respect of which notice is to be given to the Inspector; and (b) in the case of a former auditor, as soon as reasonably practicable after this provision comes into force.	
(6)		An auditor or former auditor who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of twenty-five thousand dollars.	
(7)		This section shall apply to any matter of which an auditor or former auditor of a licensee has or had become aware in his capacity as auditor and which relates to the business or affairs of the licensee or any related company.	
(8)		In this section "related company", in relation to a licensee, means— (a) a parent company, subsidiary company or associate company of that licensee; (b) a subsidiary company of a parent company of the licensee; (c) a parent company of a subsidiary company of the licensee; or (d) a company wherein a controlling shareholder of that licensee, either alone or with one or more associates, holds ten per cent or more of the shares or is entitled to exercise, or to control the exercise of more than ten per cent of the voting power at a general meeting.	
(9)		No duty of confidentiality to which an auditor or former auditor of a licensee may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector, pursuant to— (a) paragraph (b) of subsection (3); (b) subsection (4); or	

		(c) paragraphs (a), (b) and (c) of subsection 13(3), any information or opinion which is relevant to the Inspector's functions and responsibilities under this Act.	
13.	Power and duties of the Inspector.		
	(1)	There is hereby established within the Central Bank of The Bahamas the Office of Inspector of Banks and Trust Companies and the functions of that office shall be performed by such person as the Governor considers suitable for the purpose of performing the powers and duties assigned to such Inspector under this Act.	
	(2)	It shall be the duty of the Inspector - (a) to maintain a general review of bank and trust company practice in The Bahamas; (b) whenever he thinks fit and when required by the Governor to conduct on-site examinations and off-site supervision of the business of the licensee for the purpose of satisfying himself that the provisions of this Act, any other relevant Act administered by the Bank or the Financial Transactions Reporting Act, 2000 this Act or any other Act or regulation relating to compliance with anti-money laundering or countering the financing of terrorism and proliferation financing requirements are being complied with, that the licensee is in sound financial position and, after the conclusion of each examination or supervision, to report to the Governor, or in such cases where the Inspector is unable to conduct such examination or supervision, to appoint an auditor, at the expense of the licensee, to conduct such examination or supervision and to report thereon to the Governor; and the Governor may assess charges to recover the cost of such examination or supervision; (c) to examine and to report on the several returns delivered to the Governor pursuant to section 8 of this Act; (d) to examine and make recommendations to the Governor with respect to applications for licences; (e) to examine, by way of receipt of regular returns or in such other manner as he thinks necessary the affairs or business of any licensee carrying on business in or from within The Bahamas for the purpose of satisfying himself that the Act is being complied with and that the licensee is in sound financial position; (f) to inspect and supervise banks and trust companies in accordance with the Rules for Inspection and Supervision set out in the First Schedule.	
	(3)	In the performance of his functions under this Act and subject to the provisions of section 19, the Inspector shall be entitled at all reasonable times – (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee or;	

	<p>(b) to call upon the manager or any officer of any licensee for such information or explanation;</p> <p>(c) to call upon the auditors of any licensee for such auditor's reports, working papers, information or explanation;</p> <p>(d) to require that the auditor of a licensee report to the Inspector on the extent of the procedures of the auditor in the examination of the annual financial statements and may require that the auditors enlarge the scope of that examination or direct that any other particular procedure be performed in any particular case;</p> <p>(e) to require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the licensee for the safety of its creditors and shareholders, or the beneficiaries of any trust, or any other examination, at the expense of the licensee, as considered necessary by the Inspector as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.</p>	
(4)	The Inspector with the approval of the Governor may in writing authorise any other person to assist the Inspector in the performance of his functions under this Act.	
(5)	No duty of confidentiality to which an auditor of a licensee may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector, pursuant to paragraphs (a), (b) and (c) of subsection (3), any information or opinion which is relevant to the Inspector's functions and responsibilities under this Act.	
(5)	<p>Where any person -</p> <p>(a) fails to comply with any requirement made by the Inspector, pursuant to subsection (3), within the period determined by the Inspector or within such further period as the Inspector may determine, it shall be presumed, in the absence of satisfactory evidence being furnished by the licensee justifying such a failure to comply with such requirement, that the licensee concerned has been carrying on business in contravention of the terms of its licence with effect from the date of such failure;</p> <p>(b) knowingly or intentionally supplies false or misleading information to the Inspector or any person authorised to assist the Inspector;</p> <p>(c) as an auditor of a licensee in the performance of an audit, grossly violates the duties of such auditor as set out in subsection (1) of section 8; or makes untrue statements in an audit report or omits essential facts or fails to request pertinent information from the licensee or fails to report his findings to the Inspector; or</p>	

		(d) perpetrates a fraud or a crime which involves the making of misrepresentations in advertising or otherwise or using the domicile of The Bahamas for such purposes he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.	
13A.	Protection from Liability.		
23 of 2010, s.8.	(1)	Subject to subsection (2), no civil or criminal liability for anything done or omitted in the discharge or purported discharge of their respective functions under the Act shall attach to— (a) any Director, officer, employee or agent of the Bank; (b) any person duly authorized by the Inspector under subsection (4) of section 13; (c) any person duly authorized by the Central Bank under or pursuant to— (i) paragraphs (e), (f) and (g) of subsection (1) of section 18; (ii) subsection (9) of section 18; (iii) paragraph (f) of subsection (1) of section 18B. (d) even after the termination of their functions or duties	
	(2)	Subsection (1) shall not apply in any case in which it was shown that an act or omission was in bad faith.	
	(3).	The Board of Directors may indemnify the Governor against the cost of defending his actions while discharging his functions in good faith and the Governor may likewise indemnify against the cost of defending their actions while discharging their functions in good faith— (a) any officer, employee or agent of the Central Bank; (b) the Inspector; (c) any person duly authorised by the Inspector under subsection (4) of section 13; and (d) any person duly authorized by the Central Bank under or pursuant to— (i) paragraphs (e) or (f) of subsection (1) of section 18; (ii) subsection (9) of section 18; (iii) paragraph (f) of subsection (1) of section 18B. The Central Bank shall indemnify members of its Board, the Inspector, its staff and agents, including any statutory administrator or liquidator appointed under this Act, against the cost of defending their actions while discharging their functions in good faith.	
13B.A	Notice to the Central Bank.		

	(1)	A licensee shall immediately notify the Central Bank of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.	
	(2)	(a) A licensee which contravenes or fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars.	
		(b) Where a licensee is convicted of an offence pursuant to paragraph (a) of subsection (2), every director, manager, secretary or other officer of the licensee is guilty of the offence where it is proved that the default which constituted the offence took place with that person's knowledge, authority, permission or implied or express consent and is liable on summary conviction to a fine not exceeding fifty thousand dollars.	
14.	Inspection by supervisory authority.		
	(1)	<p>A Supervisory Authority which is responsible for regulating a bank or trust company with a branch or subsidiary incorporated inside The Bahamas may upon written notification to and approval by the Inspector, conduct an inspection, under conditions of confidentiality, and subject to the conditions set out in subsection (2), solely for purposes of consolidated supervision, of the books and accounts of any branch or subsidiary of that bank or trust company in The Bahamas and may gather only such information as is necessary for the performance of consolidated supervision of any branch or subsidiary of that bank or trust company in The Bahamas, being information as to whether such branch or subsidiary of that bank or trust company as a constituent of the banking group -</p> <p>(a) is adequately organized;</p> <p>(b) has adequate risk management systems and appropriately identifies, limits and monitors risks inherent in that bank's bank or trust company's business activities;</p> <p>(c) is managed by persons who are fit and proper for the conduct of business activities;</p> <p>(d) complies with capital-adequacy and risk-diversification requirements on a consolidated basis; and</p> <p>(e) correctly complies with its reporting duties to the Supervisory Authority.</p>	
	(2)	<p>Any branch or subsidiary of a bank or trust company to which subsection (1) applies shall, subject to the conditions set out below, permit the Supervisory Authority at all reasonable times, to conduct its inspection under subsection (1) where -</p> <p>(a) the Supervisory Authority has obtained the prior written approval of the Inspector;</p> <p>(b) the Supervisory Authority is prohibited by its domestic laws from divulging information obtained in the course of the inspection to any other person or where the Supervisory authority has given such written</p>	

		<p>undertaking, as the Inspector may require, as to the confidentiality of the information obtained;</p> <p>(c) the Supervisory Authority has given to the Inspector a written undertaking to comply with the provisions of this Act and any condition imposed by the Inspector under this section;</p> <p>(d) the Supervisory Authority has given to the Inspector a written undertaking to use the information obtained exclusively for the purpose of consolidated supervision;</p> <p>(e) the Supervisory Authority has given to the Inspector a written undertaking that it shall not transmit information obtained during the course of its inspection to any other authorities or bodies without the written consent of the Inspector;</p> <p>(f) the Supervisory Authority agrees to subsequently report to the Inspector on the general results of the inspection.</p>	
	(3)	<p>Where information concerning criminal or penal matters comes to the attention of the Supervisory Authority in the course of an inspection, and the Supervisory Authority wishes to convey such information to any person or entity in the Supervisory Authority's home country, or elsewhere, the Supervisory Authority shall not, without first obtaining the consent in writing of the Inspector, divulge such information to any person or entity in the home country of the Supervisory Authority or elsewhere:</p> <p>Provided that in all cases, the Supervisory Authority shall inform the Inspector of any information concerning criminal or penal matters which come to the Supervisory Authority's attention in the course of an inspection.</p>	
	(4)	<p>The Supervisory Authority, in carrying out an inspection under subsection (1), shall not have access to information relating to the assets under management or deposit operations of individual customers of a licensee:</p> <p>Provided however, that where the Supervisory Authority during an inspection within The Bahamas wishes to gain access to information, which directly or indirectly relates to assets under management or deposit operations of any individual customer for the purpose of assessing any risks and addressing any specific supervisory concerns, the Supervisory Authority shall inform the Inspector and the Inspector shall gather the information himself and shall, upon being satisfied that the information meets the requirements set out in this subsection, transmit it to the Supervisory Authority requesting it.</p>	
	(5)	<p>The Inspector or any authorized agent of the Inspector may, whenever the Inspector thinks fit or upon the request of a licensee accompany a Supervisory Authority during its inspection within The Bahamas of a licensee, pursuant to this section.</p>	

15.	Appointed body to conduct inspection.		
	(1)	A Supervisory Authority may, with the prior written approval of the Inspector, appoint another body to conduct the inspection referred to in subsection (1) of section 14 and in such event the provisions of this section and subsections (1), (2), (3), (4) and (5) of section 14 shall apply to the appointed body in the same way as they apply to the Supervisory Authority.	
	(2)	The Inspector may, at any time after granting approval for an inspection under this section require the Supervisory Authority to comply with such other conditions as the Inspector may determine.	
16.	Confidentiality of reports of Inspector and Supervisory Authority.		
	(1)	Any person who has, by any means, access to a report or other information or document produced by the Inspector or a Supervisory Authority upon examination or inspection of a licensee under section 13 or 14, by reason of his acting in any of the following capacities - (a) director, officer, employee or agent of any licensee or former licensee; (b) counsel and attorney, consultant or auditor of The Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor; (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator; (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor, shall not communicate the report or other information or document or any part thereof to any person other than a director, officer, employee or agent of the licensee without the prior written permission of the Inspector.	
	(2)	The Inspector may grant permission under subsection (1) subject to such conditions as may be determined by the Inspector.	
	(3)	If any person receives a report or any part of a report or other information or document referred to in subsection (1), knowing or having reasonable grounds to believe, that such report or other information or document or part thereof was communicated to him in contravention of this section, that person shall be guilty of an offence unless he proves - (a) that the report or other information or document or part thereof, as the case may be, was communicated to him contrary to his intention; and (b) where the communication was effected in any written form, that he has conveyed or has taken reasonable	

		steps to convey the report or other information or document or part thereof, as the case may be, to the Inspector.	
	(4)	Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.	
17.	Rules for inspection and supervision of banks.		
		The rules set out in the First Schedule shall be observed by the Inspector for the purpose of supervising banks and trust companies and their operations so as to ensure the preservation of the soundness and efficiency of the banking system.	
18.	Powers of the Central Bank.		
	(1)	<p>The Central Bank may -</p> <p>(a) by order, revoke the licence of a licensee -</p> <p>(i) if, in the opinion of the Central Bank, the licensee is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or the beneficiaries of any trust or other creditors or is either in The Bahamas or elsewhere contravening the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which the licence was issued;</p> <p>(ii) if the licensee has ceased to carry on banking business or trust business; or</p> <p>(iii) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved;</p> <p>(iv) if a licensee is, or appears likely to become, unable to meet its obligations as they fall due;</p> <p>(v) if a licensee has failed to comply with a direction of the Central Bank made pursuant to paragraph (h) of subsection (1) of section 18;</p> <p>(vi) if it appears to the Central Bank that the licensee has furnished information or documents to the Bank in connection with its application for a licence which is or are false or misleading in a material particular or has failed to inform the Central Bank of a material change in respect of information so furnished</p> <p>and the Bank shall subsequently advise the Minister of its decision;</p> <p>(b) apply to the Supreme Court for an order compelling the licensee to comply with the direction, cease the</p>	

		<p>contravention or to do anything required to be done where the licensee—</p> <p>(i) is contravening or has failed to comply with a direction of the Central Bank;</p> <p>(ii) is contravening the Act; or</p> <p>(iii) has omitted to do anything under the Act that is required to be done by the licensee;</p> <p>(e b) impose, amend or vary conditions upon the licence;</p> <p>(d c) require the substitution or removal of any director or officer of the licensee;</p> <p>(e d) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Central Bank thereon within three months of the date of his appointment;</p> <p>(f e) at the expense of the licensee, appoint a receiver or receiver manager to assume control of the licensee's affairs in the interest of creditors who will have all the powers of a receiver under the Companies Act; and</p>	
		<p>(g) at the expense of the licensee assume the temporary management of the licensee if, in the opinion of the Central Bank, the licensee—</p> <p>(i) is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors, or other creditors, or the beneficiaries of any trust; or</p> <p>(ii) is either in The Bahamas or elsewhere, contravening the provisions of this or any other Act, or of any order or regulations made under this Act, or any term or condition subject to which the licence was issued.</p> <p>(g f) at the expense of the bank, appoint a statutory administrator of the bank, who meets the qualifications established by the Central Bank including fit and proper person criteria required to be met by directors and officers of banks, to manage the bank on its behalf.</p> <p>(h) issue directions requiring a licensee to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or that is in contravention of any law, or to perform a remedial act, or to do anything required to be done; and</p> <p>(h g) issue directions requiring a licensee to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or that is in contravention of any law in The Bahamas or elsewhere, or to perform a remedial act, or to do anything required to be done and such directions include the power to--</p>	

		<ul style="list-style-type: none"> (i) restrict the licensee or a subsidiary of a licensee from further lending; (ii) limit a licensee's maximum individual and aggregate exposures, including off-balance sheet transactions, investments, or capital expenditure; (iii) require the licensee or a subsidiary to dispose of specified assets; (iv) require the licensee to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Central Bank has caused material losses to the licensee or its subsidiary, is detrimental to the interest of depositors, the beneficiaries of any trust or other creditors or presents excessive risk to the licensee or its subsidiary; (v) require the licensee or its subsidiary to sell, liquidate, or otherwise dispose of its subsidiary or part of its business; (vi) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions— <ul style="list-style-type: none"> (a) to change its legal or operational structure, or (b) so far as it is able to do so, to change the legal or operational structure of a subsidiary; (vii) prohibit payment of bonuses or incentive compensation to any director or officer; (viii) v prohibit the licensee or its subsidiary from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to shareholders or to any person claiming under their authority; and (vi) require shareholders of the licensee to contribute additional capital: and: (vii) require such action to be taken by the licensee as the Central Bank considers necessary. <p>(h) where a bank has been placed under statutory administration, issue directions:</p> <ul style="list-style-type: none"> (i) to require the bank or its subsidiary to sell, liquidate, or otherwise dispose of its subsidiary or part of its business; (ii) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions require the bank— <ul style="list-style-type: none"> (a) to change its legal or operational structure, or (b) so far as it is able to do so, to change the legal or operational structure of a subsidiary; (iii) to prohibit payment of bonuses or incentive compensation to any director or officer; and
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		(iv) to require such action to be taken by the bank as the Central Bank considers necessary.	
	(2)	Whenever the Central Bank is of the opinion that any action under subsection (1)(a)(i) and (b) should be taken against a licensee, the Bank may forthwith suspend the licence of such licensee and before taking such action the Central Bank shall give that licensee notice in writing of its intention so to do setting out in such notice the grounds on which it proposes to act and shall afford the licensee within such time as may be specified therein, not being less than seven days, an opportunity of submitting to the Bank a written statement of objection to such action, and thereafter the Central Bank shall advise the licensee of its decision.	
	(3)	Whenever the Central Bank shall suspend a licence under subsection (2) the Bank may cause notice of such suspension to be published in the Gazette.	
	(4)	Any suspension of a licence under subsection (2) shall be for a period of ninety days, or until the Central Bank takes action under subsection (1)(a)(i) or (b) or until the Central Bank notifies the licensee that the suspension is removed, whichever period is the shorter.	
	(5)	Where the Central Bank suspends or revokes a licence under this section, the Bank may apply to the Supreme Court for an order that the licensee be forthwith wound up by the court in which case the provisions of the Ch. 308 Companies Act relating to the winding up of a company by the court shall, mutatis mutandis, apply.	
	(6)	The Central Bank may, in any case in which a licensee or person who has at any time been a licensee is being wound up voluntarily, apply to the Supreme Court if the Bank considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust or other creditors, and the court shall make such order as it shall consider appropriate in the winding up of the licensee.	
	(7)	Where a petition for the winding up of a licensee, or a person who has at any time been a licensee, is presented by a person other than the Central Bank, the petitioner shall without delay serve the Central Bank with a copy of the petition and the Central Bank may appear at the hearing of the petition.	
	(8)	The Petitioner shall, in addition to service of a copy of the petition, forward to the Central Bank, without delay, a copy of any document which relates to the petition for winding up and which is required to be sent to a licensee or former licensee or any of their respective depositors, beneficiaries, or other creditors.	

	(9)	<p>A person appointed for the purpose by the Central Bank may—</p> <p>(a) attend a meeting of creditors of a licensee or former licensee;</p> <p>(b) attend a meeting of a committee established to discuss a compromise or arrangement; and</p> <p>(c) make representations as to any matter for decision at any such meeting.</p>	
18A.	Surrender of Licence.		
	(1)	<p>A licensee which has ceased to carry on the business in respect of which a licence was granted may apply to the Central Bank to surrender its licence if the licensee—</p> <p>(a) produces evidence that it has ceased to carry on such business, repaid all deposits held by it and transferred all trust assets held or administered by it; or</p> <p>(b) is being wound up voluntarily and produces evidence that it is solvent, able forthwith to repay all deposits held by it and all its other creditors, and has transferred all trust assets held or administered by it.</p> <p>A licensee or a person registered pursuant to subsections 3(3)(b) or 3A(b), which has ceased to carry on the business in respect of which a licence or certificate of registration, as the case may be, was granted, shall apply to the Central Bank to surrender its licence or certificate of registration.</p>	
	(2)	<p>Subject to subsection (3), the Central Bank may upon an application made pursuant to subsection (1) approve the surrender upon such terms and conditions as the Bank deems appropriate.</p> <p>The Central Bank may upon an application made pursuant to subsection (1) approve the surrender upon such terms and conditions as the Bank deems appropriate.</p>	
	(3)	<p>The Central Bank may, where an application is made under paragraph (b) of subsection (1) apply to the Supreme Court for the licensee to be wound up either by the Court or subject to its supervision.</p>	
	(4)	<p>The provisions of the Companies Act, (Ch 308) relating to the winding up of a company by or subject to the supervision of the Supreme Court shall, mutatis mutandis, apply upon the making of an order by the Court pursuant to an application by the Central Bank under subsection (3).</p>	
18AA.	Winding up of non-bank licensees and registrants.		
		<p>Notwithstanding section 190(1) and 211 of the Companies Act (Ch. 308), no trust company, money transmission business service provider licensed under this Act or person registered pursuant to subsection 3(3)(b) or 3A(b) may—</p> <p>(a) be wound up voluntarily; or</p> <p>(b) petition the Supreme Court to be wound up, except with the prior written approval of the Central Bank.</p>	

18B.	Temporary Management of Licensees—Appointment of a Statutory Administrator.	
	(1)	<p>The Central Bank shall, upon assuming the temporary management of a licensee under paragraph (g) of subsection (1) of section 18, have full and exclusive powers of management and control of the licensee, including, without prejudice to the generality of the foregoing, power to—</p> <p>(a) continue or discontinue its operations; (b) stop or limit the payment of its obligations; (c) employ any necessary officers or employees; (d) execute any instrument in the name of the licensee; (e) initiate, defend and conduct in the name of the licensee any action or proceedings to which the licensee may be a party; and (f) appoint any person to manage on its behalf, the licensee.</p> <p>The Central Bank may, by notice in writing, appoint a statutory administrator pursuant to section 18(1)(g f) where—</p> <p>(a) in the opinion of the Central Bank, a bank has—</p> <p>(i) engaged or is engaging in any unsafe and unsound practice in such a manner as to weaken the bank's condition, threaten depositors' interests or dissipate the bank's assets; or</p> <p>(ii) is either in The Bahamas or elsewhere, contravening the provisions of this or any other Act, or of any order or regulations made under this Act, or any directive issued by the Central Bank pursuant to this Act, or any term or condition subject to which its licence was issued;</p> <p>(b) the bank's capital level falls below (or is likely to fall below within the next twelve months) the minimum regulatory capital required by the Central Bank;</p> <p>(c) the capital and value of the assets of the bank have, in the opinion of the Central Bank, reached or are likely to reach a level or are eroding in a manner that may detrimentally affect its depositors or creditors, with no reasonable prospects of timely restoration of such capital and value;</p> <p>(d) the Central Bank has reasonable cause to believe that the bank or its directors, officers or a significant shareholder has engaged or is engaging in illegal activities in a manner which jeopardizes depositors' interests;</p> <p>(e) the Central Bank is of the opinion that the realizable value of the assets of the bank is not sufficient to give adequate protection to the depositors and creditors of the bank, or is less than its liabilities, or the bank's</p>

		<p>financial condition suggests that it will shortly be in that circumstance;</p> <p>(f) the Central Bank is of the opinion that the bank is unable to or is likely to become unable to meet its liabilities and other obligations as they mature or become due, or pay its depositors' demands in the normal course of business;</p> <p>(g) the bank fails in any manner to cooperate with its external auditors; or</p> <p>(h) the bank fails to cooperate with the Central Bank to enable the Central Bank to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the bank's books, papers or records.</p>	
	(2)	<p>The Central Bank shall within ninety days of assuming the temporary management of a licensee—</p> <p>(a) restore full and exclusive powers of management and control of the licensee to its board of directors or owners as the case may be; or</p> <p>(b) revoke its licence and apply to the Supreme Court for an order that the licensee be forthwith wound up by that Court in accordance with the provisions of the Companies Act, (Ch 308).</p> <p>(a) Where the Central Bank determines that a statutory administrator should be appointed pursuant to subsection (1), the Central Bank shall notify the Minister of its decision.</p>	
	(3)	Where the Central Bank appoints a statutory administrator of a bank, the Central Bank shall promptly notify the bank of the appointment and shall specify in the notice, the grounds for the appointment.	
	(4)	The Central Bank may simultaneously publish notice of the appointment of a statutory administrator in the Gazette and in a newspaper of general circulation.	
	(5)	The statutory administrator may be a person from the private sector or an official of the Central Bank.	
	(6)	<p>The statutory administrator may be appointed for—</p> <p>(a) a period not exceeding twelve months; and</p> <p>(b) a further period not exceeding twelve months, if it appears to the Central Bank that additional time is required to ensure an orderly restructuring of the bank under this Act.</p>	
	(7)	<p>The Central Bank may—</p> <p>(a) vary the terms of appointment of a statutory administrator;</p> <p>(b) at any time replace a statutory administrator; and</p>	

		(c) remove a statutory administrator prior to the end of any of the periods specified in subsection (6)(a) or (b), by written notice to the statutory administrator.	
	<u>(8)</u>	The variation of the terms of appointment of a statutory administrator or the termination of such appointment shall take place on such date as is specified in the notice referred to in subsection (7).	
	<u>(9)</u>	If a statutory administrator has any direct or indirect interest in a bank under statutory administration he shall disclose his interest to the Central Bank as soon as possible.	
	<u>(10)</u>	Any transaction involving a bank in statutory administration in which the statutory administrator has a direct or indirect material interest in the matter may be engaged in only with the prior written approval of the Central Bank.	
18BA.	Expenses of the statutory administrator.		
		The statutory administrator shall receive such remuneration as the Central Bank may determine and all costs and expenses incurred on account of the statutory administration shall be borne by and charged to the bank under statutory administration.	
18BB.	General powers of the statutory administrator.		
	<u>(1)</u>	Upon the appointment of a statutory administrator— (a) all powers, functions and responsibilities of the shareholders, directors and officers of a bank under statutory administration shall vest in the statutory administrator, except where the statutory administrator requests the shareholders or directors or officers to carry out any activity provided under this Act; and (b) any action or decision taken by or on behalf of the bank subject to statutory administration shall, unless they are taken by or under the authority of the statutory administrator, be null and void.	
	<u>(2)</u>	The statutory administrator shall have full and exclusive powers to manage and operate the bank, including taking any action as necessary or appropriate to— (a) carry on the business of the bank; (b) exercise shareholders' rights and powers; (c) continue or discontinue any or all of its operations; (d) stop or limit the payment of the bank's obligations; (e) remove any or all directors and officers; (f) employ any necessary officers or employees; (g) execute any instrument in the name of the bank;	

		<p>(h) initiate, defend and conduct in the name of the bank any action or proceedings to which the bank may be a party;</p> <p>(i) preserve and safeguard the assets and property of the bank; or</p> <p>(j) implement a plan of action with respect to the bank that has been approved by the Central Bank.</p>	
	(3)	The statutory administrator may employ, at the expense of the bank under statutory administration, counsel and attorneys at law, auditors and other independent professionals or consultants to assist the statutory administrator on such terms as the Central Bank may approve.	
18BC.	Central Bank Oversight of Statutory Administrator.		
	(1)	The statutory administrator shall act in accordance with regulations made pursuant to this Act or directions issued by the Central Bank to facilitate the purposes of this Act or of regulations made under this Act and shall only be accountable to the Central Bank for the performance of his duties and the exercise of his powers as statutory administrator.	
	(2)	The statutory administrator may delegate any of his powers or duties to other persons, subject to the prior written approval of the Central Bank.	
	(3)	The Central Bank may issue its approval pursuant to subsection (2) and may make such approval subject to such conditions as the Central Bank deems appropriate.	
18BD.	Suspension of Dividends.		
		The statutory administrator shall immediately suspend the payment of capital distributions in general and payment of any kind to directors, officers and significant shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the statutory administrator.	
18BE.	Moratorium and effect of statutory administration on proceedings.		
	(1)	The Central Bank may impose a moratorium temporarily suspending some or all payments by a bank under statutory administration as the Central Bank may consider necessary to protect the interest of depositors and the stability of the financial sector.	
	(2)	No person or class of persons shall, without the prior written consent of the statutory administrator begin or continue a proceeding or petition in a court or other forum against a bank under statutory administration or exercise	

		rights under a mortgage, charge, or other security or collateral over the property of a bank under statutory administration, or issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a bank under statutory administration.	
	(3)	For the purposes of this section, proceedings or petitions include counterclaims or cross-claims against the bank and the appointment of a statutory administrator against subsidiaries of the bank but excludes actions taken by the Central Bank, regulatory authorities, the Public Prosecutor and other public agencies, in respect of any matter in existence or violations or misconduct prior to the statutory administration.	
	(4)	Where statutory administration has not yet been terminated, the Central Bank may, where it is of the opinion that it is no longer necessary to impose a stay, publish in the Gazette a notice that the stay has been lifted.	
18BF.	Taking control of the bank.		
	(1)	<p>The statutory administrator shall immediately upon appointment, secure the property, offices, books, records, and assets of a bank under statutory administration to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:</p> <p>(a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;</p> <p>(b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;</p> <p>(c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises;</p> <p>(d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties; and</p>	

		(e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the statutory administrator, and persons authorized by the statutory administrator have such authority.	
	(2)	The statutory administrator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.	
	(3)	The statutory administrator may call upon any director, officer, employee or agent or any former, director, officer, employee or agent of a bank under statutory administration to make available to the statutory administrator any records and information relating to the bank that the statutory administrator shall require and such director, officers, employee or agent of the bank shall provide such records or information to the statutory administrator, as the case may be.	
	(4)	The statutory administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the statutory administrator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank	
	(5)	Any person who willfully interferes with a statutory administrator's access to or control over the offices, books of account and other records, and other assets of a bank shall obstruct the statutory administrator in the exercise of his functions under this Act commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of ten one thousand dollars for each day during which the offence continues.	
18BG.	Inventory and plan of action to resolve the bank.		
	(1)	<p>Within a period specified by the Central Bank, the statutory administrator shall prepare and deliver to the Central Bank –</p> <p>(a) a written inventory of the assets and liabilities of the bank under statutory administration, classifying the assets according to their different risk profiles and classifying the non-performing loans according to the Central Bank's directives;</p> <p>(b) a written assessment of the amount of assets likely to be realized in a liquidation of the bank;</p>	

		<p>(c) a written report on the financial condition and future prospects of the bank under statutory administration and propose a plan of action which, as appropriate, shall recommend—</p> <p>(i) returning the bank to compliance with the law by carrying out a plan of corrective actions that may include a capital increase;</p> <p>(ii) compulsory liquidation of the bank if there is no reasonable prospect for the return of the bank to financial soundness through re-organization or otherwise; or,</p> <p>(iii) if the bank cannot be rehabilitated, any other course of action designed to minimize disruption to depositors and preserve the stability of the banking sector.</p>	
	(2)	The statutory administrator shall promptly provide any additional report or information requested by the Central Bank.	
	(3)	<p>The Central Bank may—</p> <p>(a) approve the report or additional report mentioned in subsection (1)(c) or (2), as the case may be, without modification;</p> <p>(b) approve the report or additional report mentioned in subsection (1)(c) or (2), as the case may be, subject to such conditions as it thinks necessary; or</p> <p>(c) refuse to approve the report.</p>	
	(4)	The statutory administrator may, subject to the written approval of the Central Bank, implement the plan of action mentioned in subsection (1)(c) on the basis of the report provided to the Central Bank.	
18BH.		Capital increase by existing shareholders.	
	(1)	<p>On the basis of the report produced under subsection 18BG(1)(c) or 18BG(2) and with the approval of the Central Bank, the Statutory Administrator may take the following actions to increase the bank's capital through the issuance of new shares:</p> <p>(a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital; and</p> <p>(b) notify existing shareholders of the amount of additional capital needed to bring the bank's capital into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional</p>	

		capital needed, within three business days of such notification.	
	2)	Existing shareholders of a bank under statutory administration shall have no pre-emptive or other rights to purchase additional shares issued except as provided in this section.	
	3)	<p>The statutory administrator's power under subsection (1) may be exercised. The statutory administrator may take action to increase the bank's capital through the issuance of shares to new shareholders in the following circumstances:</p> <p>(a) in the event that binding commitments are not submitted by existing shareholders in an amount equal to the full amount of additional capital needed by existing shareholders; or</p> <p>(b) without offering shares to existing shareholders, if the Central Bank determines that:</p> <p>(i) an expedited resolution of a bank is necessary to maintain financial stability, or</p> <p>(ii) the existing shareholders are no longer fit and proper to maintain a controlling shareholding in the bank.</p>	
	4)	<p>For the purpose of carrying out a recapitalization by new shareholders of a bank under statutory administration, the statutory administrator shall:</p> <p>(a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital;</p> <p>(b) if necessary to reflect losses, reduce the par value of outstanding shares, restructure or write down debt or other capital instruments, notwithstanding the provision of any other law;</p> <p>(c) determine the amount and type of funding needed to bring the bank into compliance with all capital requirements; and</p> <p>(d) cause the bank to issue additional shares in the amount necessary, carry out the sale of shares and facilitate the purchase of such shares by new investors.</p>	
	5)	Notwithstanding any existing law or other laws that may come into effect to regulate the securities market and other disclosures by issuers of securities, the Securities Commission shall take the necessary action to permit issuance of a bank's securities in accordance with the provisions of this section within a maximum of three business days.	

	(6)	The powers provided in subsections (1), (3) and (4) and section 18BI(1), (2) and (5-9) may be exercised by a statutory administrator subject to the written authorization of the Central Bank.	
	(7)	Where a statutory administrator pursuant to subsection (4)— <ul style="list-style-type: none"> (a) writes down equity or other instruments of ownership of a bank, unsecured and uninsured creditor claims; (b) converts into equity or other instruments of ownership of a bank all or parts of unsecured and uninsured creditor claims; the statutory administrator shall take the action referred to in paragraph (a) and (b) in a manner that respects the hierarchy of claims in liquidation.	
18BI.	Mergers, sales and other restructurings.		
	(1)	Subject to section 18BF, and on the basis of the report produced under subsection 18BG(1)(c) or (2), the statutory administrator may carry out a merger of the bank under statutory administration or a transfer, in whole or in part, of the bank's assets and liabilities. <ul style="list-style-type: none"> (a) shares or other securities issued by the bank; (b) the bank's assets, rights and liabilities. 	
	(2)	A transfer of the bank's assets and liabilities pursuant to subsection (1) may include a transfer to a bridge institution for a temporary period for the purpose of resolving the failing bank or a transfer to an asset management vehicle for the purpose of resolving the bank. A transfer of the bank's shares or other securities, assets, rights and liabilities pursuant to subsection (1) may be to— <ul style="list-style-type: none"> (a) a purchaser; (b) a bridge institution for a temporary period for the purpose of resolving the bank; (c) an asset management vehicle for the purpose of resolving the bank. 	
	(3)	A bridge institution established under subsection (2) shall be subject to all of the provisions of this Act, unless specifically exempted by the Central Bank by notice in writing. The statutory administrator may transfer to a purchaser, a bridge institution or an asset management vehicle— <ul style="list-style-type: none"> (a) shares or other securities of a bank under statutory administration by making one or more securities transfer instruments; 	

		(b) assets, rights or liabilities of a bank under statutory administration by making one or more property transfer instruments.	
	<u>(4)</u>	Where a statutory administrator has first transferred any securities issued by or any assets, rights or liabilities of a bank under statutory administration to a bridge institution, the statutory administrator may— (a) by making one or more securities transfer instruments, transfer securities issued by the bridge institution or securities issued by a bank under statutory administration and held by the bridge institution to— (i) another bridge institution (an onward bridge institution); or (ii) another entity. (b) by making one or more property transfer instruments, transfer assets, rights or liabilities of the bridge institution (however accruing or arising) to another entity.	
	<u>(5)</u>	The fourth schedule has effect with respect to securities transfer instruments.	
	<u>(6)</u>	The fifth schedule has effect with respect to property transfer instruments.	
	<u>(4 7)</u>	The transferee of assets of the bank under statutory administration shall have no liability to depositors, creditors, or shareholders of the bank except to the extent liabilities are explicitly assumed.	
	<u>(8)</u>	Where a transfer is made under subsection (3) the Central Bank shall inform the Minister of Finance about the transfer as soon as practicable after the transfer is completed.	
	<u>(4 9)</u>	The Minister of Finance shall cause a copy of each report under subsection (7) to be laid before each House of Parliament.	
	<u>(5 10)</u>	Subject to the written approval of the Central Bank, the statutory administrator may carry out a restructuring of the liabilities of a bank under statutory administration, through arrangements with the bank's creditors, including a reduction, modification, re-scheduling or novation of their claims.	
	<u>(6 11)</u>	When action is taken by the statutory administrator pursuant to subsection (1), the Central Bank shall— (a) by instrument in writing appoint an independent valuer to verify the adequacy of the compensation provided to the transferor regarding the transferred shares or other securities, assets, rights and liabilities; and	

		(b) publish notice of the appointment of the independent valuer in the Gazette.	
	(7) 12	Any measure conducted under statutory administration under this section will not constitute a voidable preference, a transaction at undervalue or a fraudulent trading pursuant to sections 241, 242 and 243 of the Companies Act (Ch 308);	
18BJ.	<u>Termination of Statutory Administration.</u>		
	(1)	Subject to subsection (2) the statutory administration shall terminate at the expiry of the term specified in the notice appointing the statutory administrator or any extension of the term of such appointment by the Central Bank.	
	(2)	Statutory administration shall be terminated prior to the expiry of the term set out in subsection (1) if the Central Bank determines that: <ul style="list-style-type: none"> (a) statutory administration is no longer necessary because the grounds for appointment of the statutory administrator have ceased to exist; or (b) the bank under statutory administration cannot be rehabilitated or restructured and the Central Bank issues a decision to revoke the bank's license under section 18(1)(a) and to commence liquidation proceedings under section 18CB. 	
	(3)	Where the statutory administration is terminated in circumstances mentioned in subsection (1) and the reason for the appointment of the statutory administrator continues to exist, the Central Bank shall issue a decision to revoke the licence under section 18(1)(a) and commence a compulsory winding-up proceeding under section 18CB.	
	(4)	In the case of a termination of statutory administration that does not involve a closure of the bank, the statutory administrator shall carry out the duties of the bank's directors and officers, until nomination or election of new directors and appointment of officers, at which time all powers of control over the affairs of the bank and its properties, offices, assets books and records that were vested in the statutory administrator shall vest in the bank.	
	(5)	The decision of the Central Bank to terminate the statutory administration shall be accompanied by a recommendation by the statutory administrator and a detailed report prepared by the statutory administrator supporting the recommendation.	
	(5)	Within thirty days of the termination of the appointment or such further period as the Central Bank may approve, the statutory administrator shall prepare and submit to the Central Bank a final report and accounting of the statutory administration.	

18BK	Bridge Institution		
	(1)	Upon the incorporation of a body corporate by the Central Bank pursuant to section 28(4) of the Central Bank of The Bahamas Act, the Central Bank shall grant a license to the body corporate to carry on the business of a bridge institution.	
	(2)	The Bank may exempt the bridge institution from such requirements, or grant such approvals, under this Act as may be necessary to facilitate the carrying on of its licensed business.	
	(3)	The Central Bank shall publish notice of the grant of a licence pursuant to subsection (1) in the gazette.	
	<u>(4)</u>	(a) A company incorporated pursuant to subsection 28 of the Central Bank of The Bahamas Act, may be licensed as a bridge institution for a period of two years;	
		(b) The Minister may, by order, grant up to three extensions – of one year each – of the period referred to in paragraph (a).	
	<u>(5)</u>	The Central Bank may— (a) hold any shares of a bank under statutory administration that the Central Bank acquires in the course of a sale or other disposition of its shares of the bridge institution or that a bridge institution acquires in the course of a sale or other disposition of its assets; (b) hold the shares for a period of no more than five years from the day on which they are acquired and may dispose of them.	
	(6)	The Minister may, by order, extend the period referred to in subsection (5) if general market conditions so warrant.	
	(7)	A company’s licence as a bridge institution terminates if (a) the Central Bank is no longer the sole shareholder; or	

		(b) the bridge institution is amalgamated with a body corporate that is not a bridge institution.	
	(8)	<p>If a bridge institution's licence has not terminated under subsection (7), the bridge institution's board of directors shall take all necessary steps to dissolve the bridge institution if</p> <p>(a) all or substantially all of the bridge institution's assets have been sold or otherwise disposed of; and</p> <p>(b) all or substantially all of its liabilities have been assumed or discharged.</p>	
	(9)	If the Central Bank considers that substantially all of the transfers of assets, rights and liabilities or shares or other securities of a bank to a bridge institution have been substantially completed, the Central Bank shall apply for a winding-up order under the Companies Act, (Ch. 308) in respect of the bank.	
	(10)	An employee or officer of the Central Bank shall not receive remuneration or benefits from a bridge institution for being a director or officer of that institution.	
	(11)	<p>If a bridge institution becomes the employer of employees of a bank, the bridge institution is not liable in respect of a liability, including one as a successor employer,</p> <p>(a) that is in respect of the employees or former employees of the bank or a predecessor of the bank or in respect of a pension plan for the benefit of those employees or former employees; and</p> <p>(b) that exists before the bridge institution becomes the employer or that is calculated by reference to a period before the bridge institution becomes the employer.</p>	
	(12)	Subsection (12) does not affect the liability of a successor employer other than the bridge institution.	
	(13)	<p>(a) The Central Bank may give directions to the board of directors of a bridge institution.</p> <p>(b) The board of directors of the bridge institution shall ensure that the directions are implemented in a prompt and efficient manner and shall, after implementing a direction, notify the Central Bank without delay that it has been implemented.</p>	
	(14)	<p>(a) The Central Bank may give directions to the board of directors of a bridge institution to make, amend or repeal any by-law.</p> <p>(b) The board of directors of a bridge institution may, with the prior approval of the Central Bank, make, amend, or repeal any by-law.</p>	

		(c) For the purposes of paragraphs (a) and (b), by-law means a by-law of the bridge institution.	
	(15)	(a) Any action or other civil proceeding before a judicial or quasi-judicial body and any arbitration, to which a bridge institution may become a party by virtue of acquiring an asset or assuming a liability of a bank under statutory administration shall be stayed for a period of ninety days from the day on which the bridge institution acquires the asset or assumes the liability. (b) The bridge institution may waive the stay referred to in paragraph (a).	
	(16)	Without prejudice to section 18CM, the following persons shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the bridge institution or its management: (a) shareholders of the bank under statutory administration; (b) creditors of the bank under statutory administration, or (c) other third parties whose assets, rights or liabilities have not been transferred.	
	(17)	The bridge institution, and the members of its senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and the senior management of the bridge institution and shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties	
18BL	Transfer to Asset Management Body		
	(1)	A statutory administrator may transfer the assets, rights or liabilities of-- (a) a bank under statutory administration; or (b) a bridge institution, to an asset management vehicle by making one or more property transfer instruments.	
	(2)	Without prejudice to section 18CM, shareholders or creditors of a bank under statutory administration and other third parties whose assets, rights or liabilities have not been transferred to the asset management vehicle shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the asset management vehicle, or to its management body.	
	(3)	An asset management vehicle, its management body and senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and the management body and senior management of the vehicle shall have no	

		liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.	
18BM	Management of assets by asset management vehicle		
	An asset management vehicle must manage the assets transferred to it with a view to maximizing their value through eventual sale or orderly wind down.		
18BN	Onward property transfer from asset management vehicle		
	(1)	This section applies if the Central Bank or statutory administrator has made a property transfer instrument under section 18BL (hereafter referred to as “the original instrument”) in respect of an asset management vehicle.	
	(2)	The Central Bank or statutory administrator may, by making one or more property transfer instruments, transfer assets, rights or liabilities of the asset management vehicle (whether accruing or arising before or after the original instruments is made) to another entity.	
	(3)	A property transfer instrument may relate to assets, rights or liabilities of an asset management vehicle whether or not they were transferred to that vehicle by an instrument made under this Section.	
18BO	Report		
	(1)	If the statutory administrator transfers to an asset management vehicle under section 18BL any assets, rights or liabilities of a bank under statutory administration or of a bridge institution, the Central Bank must report to the Minister of Finance on— (a) the activities and audited financial position of the asset management vehicle; and (b) the progress that has been made towards maximizing the value of the assets transferred to it through eventual sale or orderly wind down.	
	(2)	The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which a transfer is first made to the asset management vehicle.	

	(3)	A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).	
	(4)	The reporting obligation under subsection (3) does not apply in respect of any year during which the asset management vehicle does not hold any assets or rights, or have any liabilities, mentioned in subsection (1).	
	(5)	The Minister of Finance must cause a copy of each report under subsection (1) to be laid before each House of Parliament.	
18BP	Disposal of Proceeds		
	(1)	This section applies to any money received by the Central Bank as a shareholder of an asset management vehicle.	
	(2)	The money must be paid into the resolution funding account.	
18BQ	Power to direct a residual financial institution		
	(1)	This section applies in a case where some, but not all, of the assets, rights or liabilities of a bank under statutory administration have been transferred to a purchaser, a bridge institution or an asset management vehicle pursuant to sections 18BI.	
	(2)	The Central Bank may serve a notice under subsection (3) if of the opinion that doing so is reasonably required for facilitating the orderly resolution of the bank under statutory administration in accordance with the resolution objectives.	
	(3)	The Central Bank may, by notice in writing, direct the bank under statutory administration to continue to provide, on reasonable commercial terms, to another entity to which any assets, rights or liabilities of the bank under statutory administration have been transferred in the application of a stabilization option, services that are essential to the continued performance of critical financial functions in The Bahamas.	
	(4)	The Central Bank must revoke a notice served by it under subsection (3) as soon as practicable after it ceases to be of the opinion mentioned in subsection (2).	
	(5)	A bank under statutory administration that, without reasonable excuse, fails to comply with a notice served on it under subsection (3) commits an offence and is liable –	

		(a) on summary conviction to a fine of \$200,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.	
	(6)	If a bank under statutory administration commits an offence under subsection (5), an officer of the institution also commits an offence under that subsection if the officer – (a) authorized or permitted the commission of the offence by the institution; or (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the institution.	
	(7)	An officer who commits an offence under subsection (6) is liable on summary conviction to a fine of \$50,000 and or to imprisonment for one year and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues.	
	(8)	An officer of a bank under statutory administration may commit an offence under subsection (6) whether or not the bank has been prosecuted for, or found guilty of, an offence under that subsection.	
18BR	Recovery of costs following application of stabilization option		
	(1)	This section applies in the, case of a bank under statutory administration where the Central Bank is of the view that – (a) the bank has ceased, or is likely to cease to be viable; (b) there is no reasonable prospect that private sector action (outside of resolution) would result in the bank again becoming viable within a reasonable period; (c) (i) the non-viability of the bank poses risks to the stability and effective working of the financial system of The Bahamas, including to the continued performance of critical financial functions; and (ii) resolution will avoid or mitigate those risks.	
	(2)	The Central Bank or the Minister of Finance may charge to the bank under statutory administration all reasonable costs properly incurred by the Central Bank or the Minister of Finance, as the case requires, in or in connection with a matter mentioned in section 18BS(1).	
	(3)	However, the Central Bank or the Minister of Finance must not charge costs under subsection (2) if, or to the extent that, the charging of the costs might, in the opinion of the Central Bank or the Minister of Finance (having consulted the Central Bank), undermine the meeting of the resolution objectives.	

	(4)	Any costs charged to an entity under subsection (2) may be recovered from the entity as a civil debt due to the Central Bank or the Government, as the case requires, in any court of competent jurisdiction.	
	(5)	Any money received in respect of costs charged to an entity under subsection (2) (including under subsection (4)) must be paid into the resolution funding account.	
18BS		Payment from resolution funding account	
	(1)	Subject to subsection (5), money standing to the credit of the resolution funding account may only be used by – (a) the Central Bank in, or in connection with – (i) preparing for the making of a transfer instrument in respect of a bank that, in the opinion of the Central Bank, is likely to become a bank under statutory administration; (ii) the making of a transfer instrument in respect of a bank under statutory administration; or (iii) the resolution of a bank under statutory administration, including payment of any compensation due under section 18CM and any associated costs.	
	(2)	Money standing to the credit of the resolution funding account may not be used to meet- (a) expenses incurred by the Central Bank in performing functions under, or otherwise carrying out duties under section 11, 11A, 13 or 22; or (b) general operational expenses incurred by the Central Bank unrelated to a matter mentioned in subsection (1)(a).	
	(3)	Before the Central Bank may use money standing to the credit of the resolution funding account in regards to the exercise of a power by the statutory administrator under section 18BH or 18BI it must have regard to the extent to which the bank's own resources can be utilized, including the extent to which- (a) liabilities of the bank can be written off or converted to enable it to absorb losses and re-establish its capital position; (b) assets of the bank can be sold; or (c) private sector funding can be obtained by the bank.	
	(4)	Without limiting subsection (1)(a), the purposes for which money standing to the credit of the resolution funding account may be used by the Central Bank include- (a) providing a guarantee or indemnity in respect of the assets, rights or liabilities of a bank under statutory administration, a group company of a	

		<p>bank under statutory administration, a bridge institution or an asset management vehicle;</p> <p>(b) lending money to a bank under statutory administration, a group company of bank under statutory administration, a bridge institution or an asset management vehicle; and</p> <p>(c) if necessary, providing, or underwriting the provision of, capital to a bank under statutory administration, a group company of a bank under statutory administration, a bridge institution or an asset management vehicle.</p>	
	(5)	<p>Any money standing to the credit of the resolution funding account that neither the Central Bank nor the Minister of Finance intends to use for a purpose mentioned in subsection (1) must be used to repay resolution funds and, to that end, must be paid –</p> <p>(a) out of the resolution funding account; and</p> <p>(b) into the account from which resolution funds were paid into the resolution funding account.</p>	
	(6)	<p>For the purposes of subsection (5)(b), if resolution funds were paid into the resolution funding account from more than one account, the money must be paid into those accounts in proportion to the amounts paid from those accounts.</p>	
	(7)	<p>Interest, by reference to prevailing market rates, may be charged to the resolution funding account on the outstanding principal amount of resolution funds until repaid under subsection (5) or section 18BT.</p>	
	(8)	<p>The use of the resolution funding account is subject to audit in accordance with regulations made pursuant to this subsection.</p>	
18BT	Repayment of resolution funds		
	(1)	<p>Any money standing to the credit of the resolution funding account on completion of the resolution must be used to repay any resolution funds or pay interest charged under section 18BS(7).</p>	
	(2)	<p>Money used for a purpose mentioned in subsection (1) must be paid into the account out of which the resolution funds, or the resolution funds to which the interest relates, were paid into the resolution funding account and, if resolution funds were paid into the resolution funding account out of more than one account, in proportion to the amounts paid out of those accounts.</p>	
18C.	Chief Justice May Make Rules Liquidation of banks.		
	(1)	<p>The Chief Justice may make rules governing the procedure in relation to applications to the Supreme pursuant to sections 18, 18A, 18B, 18F(6) and 18G(6).</p>	

		The winding-up of a bank shall be undertaken pursuant only to the provisions of the this Act, and the Companies Act, (Ch. 308) as modified by the this Act.	
	(2)	The Central Bank may issue regulations, rules, orders, directions, or other instruments regarding the winding-up of a bank pursuant to the this Act.	
18CA.	Voluntary liquidation of banks.		
	(1)	Notwithstanding sections 190(1) and 211 of the Companies Act, (Ch 308), no bank may petition the court to be wound-up voluntarily, except with the prior written approval of the Central Bank.	
	(2)	The Central Bank may, subject to such terms and conditions as it deems appropriate, approve the voluntary winding-up of a bank if it is satisfied that— (a) the bank is solvent and has sufficient liquid assets to repay its depositors and other creditors in full and without delay; (b) the winding-up has been approved by the holders of at least two-thirds of the issued voting shares of the bank; and (c) there are clear procedures in place for repayment of the bank's depositors and creditors within three days.	
	(3)	Where the Central Bank approves the voluntary winding up of a bank pursuant to subsection (2), the bank shall— (a) surrender its license and all copies thereof to the Central Bank which shall forthwith accept the surrender of such license; (b) apply to the Supreme Court for its winding up; (c) cease to do business, retaining only such staff as is necessary for an orderly winding-up under the supervision of a voluntary liquidator appointed with the approval of the Central Bank, and thereafter exercise its powers only to the extent, necessary to effect its orderly liquidation; (d) repay in full its depositors within three days and other creditors within a reasonable period of time; and (e) wind-up all operations which were commenced or undertaken prior to the receipt of the approval to wind-up.	
	(4)	Notwithstanding section 212 of the Companies Act, (Ch. 308), a voluntary winding-up is deemed to commence from the time the Central Bank approves the voluntary winding-up pursuant to subsection (2).	
	(5)	(a) Notwithstanding the provisions of section 216 of the Companies Act, (Ch. 308)— (i) no person shall pass a resolution to remove a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) from office	

		<p>unless that person gives the Central Bank prior notice of his intention to pass such a resolution;</p> <p>(ii) a person who makes an application to the court pursuant to section 216(3) of the Companies Act, (Ch. 308) for an order that a voluntary liquidator appointed under paragraph (c) of subsection (3) be removed from office, shall notify the Central Bank of the application within twenty-four hours of the filing of the application.</p> <p>(b) Notwithstanding the provisions of section 217 of the Companies Act, (Ch. 308), where a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) intends to resign, he shall notify the Central Bank of his intention prior to his resignation.</p>	
	(6)	Notwithstanding section 218(1) of the Companies Act, (Ch. 308), notice of a voluntary winding-up shall be filed, served or published within ten days of receipt of the approval of the Central Bank given pursuant to subsection (2).	
	(7)	The voluntary liquidator shall notify the Central Bank in any case where an application for a supervision order is made to the Supreme Court or where a court issues a supervision order pursuant to sections 219, 225, 226 and 227 of the Companies Act, (Ch. 308).	
	(8)	The voluntary liquidator shall submit a report and an account of the winding-up to the Central Bank, every six months.	
	(9)	The voluntary liquidator shall submit a report and an account of the winding-up within twenty-one days of the date on which the bank's affairs are fully wound up	
	(10)	The Central Bank shall have power to issue directives to a voluntary liquidator and require the voluntary liquidator to produce such other reports as the Central Bank may require.	
18CB.	Compulsory winding up and appointment of liquidator.		
	(1)	<p>The Central Bank shall appoint a liquidator for a bank if:</p> <p>(a) the Central Bank has revoked the license of the bank pursuant to subsection 18(1)(a) (i), (iii) or (iv) of this Act; or</p> <p>(b) a statutory administration is terminated pursuant to subsection 18BJ(2)(b) of this Act.</p>	
	(2)	The Central Bank may appoint a liquidator for a bank where it has revoked the licence of the bank pursuant to section 18(1)(a) (ii), (v) or (vi).	
	(3)	The liquidator shall be a person from the private sector or an officer of the Central Bank who meets the qualifications established by the Central Bank.	
	(4)	<p>The Central Bank shall—</p> <p>(a) have the power to vary or revoke the appointment of the liquidator at any time upon written notice to the person so appointed, and that person immediately shall cease to act as liquidator; and</p>	

		(b) appoint a replacement who shall be a person from the private sector or an officer of the Central Bank who meets such qualifications as may be established by the Central Bank.	
	(5)	The terms of the liquidator's compensation shall be set by the Central Bank and may include incentives for meeting the objectives described in section 18CC and may include penalties for failure to meet such objectives.	
	(6)	The compensation of the liquidator and experts that he engages, reimbursement of their expenses and expenses of the Central Bank in execution of provisions of this section with respect to a bank, shall be paid from the assets of the bank.	
	(7)	Payments to the liquidator shall be made on a current basis if in the judgment of the liquidator and upon approval of the Central Bank, there are sufficient liquid assets.	
	(8)	Any moneys owing to the liquidator at the end of the term of liquidation shall be paid from the proceeds of the sales of the bank's assets in accordance with the priority described in section 18CI.	
18CC.	Powers and duties of the liquidator.		
	(1)	Where the Central Bank appoints a liquidator of a bank pursuant to section 18CB, the liquidator shall become the sole legal representative of the bank, and, shall succeed to all rights and powers of the shareholders and directors and officers responsible for the management of the bank.	
	(2)	The liquidator shall exercise his powers with due regard to the objectives of resolution as set out in section 11B of the Act.	
	(3)	The liquidator may borrow money guaranteed with the bank's assets, or without guarantee, with the prior approval of the Central Bank.	
	(4)	The liquidator may— (a) not take any new deposits; (b) extend credit only to an existing customer in accordance with the terms of an agreement in force at the time of the appointment of the liquidator and with the prior approval of the Central Bank provided however that the liquidator shall have the power to repudiate such loan commitments where such repudiation is in the best interest of the insolvency estate.	
	(5)	The liquidator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.	
	(6)	The liquidator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the liquidator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank.	
	(7)	Any person who willfully interferes with the liquidator's access to or control over the offices, books of account and	

		<p>other records, and other assets of a bank shall obstruct obstructs the liquidator in the exercise of his functions under this Act, commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of ten one thousand dollars for each day during which the offence continues.</p>	
	(8)	<p>The liquidator shall secure the property, offices, books, records, and assets of the bank to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:</p> <ul style="list-style-type: none"> (a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets; (b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees; (c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises; (d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties; (e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the liquidator and persons authorized by the liquidator have such authority; and (f) suspending the payment of capital distributions in general and payment of any kind to directors, officers and principal shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the liquidator. 	
	(9)	<ul style="list-style-type: none"> (a) The liquidator shall establish a new balance sheet for the bank, based on his determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in the liquidation of a bank's assets. (b) The liabilities of a bank placed in liquidation under section 18CB shall be deemed due and payable and 	

		interest shall cease to accrue as of the date of the appointment of the liquidator.	
	(10)	<p>Within one month of taking possession of a bank—</p> <p>(a) the liquidator shall make an inventory of the assets and property of the bank and transmit a copy thereof to the Central Bank; and</p> <p>(b) the Central Bank shall make a copy of the inventory available for examination by the public.</p>	
	(11)	The powers of the shareholders and directors and officers responsible for the management of the bank shall be terminated upon the appointment of the liquidator; provided, however, that directors or officers may be instructed by the liquidator to exercise specified functions for the bank; and further, provided that such persons shall be subject to dismissal by the liquidator from their positions at the bank and shall thereupon cease to receive compensation from the bank.	
	(12)	When part of the business of a bank is sold in accordance with section 18BI(1), the liquidator must cooperate with any request of the Central Bank to enter into an agreement for the residual entity to provide services or facilities to the transferor.	
	(13)	<p>The liquidator shall immediately, following his appointment—</p> <p>(a) file a copy of his instrument of appointment with the Registrar; and</p> <p>(b) post in each branch of the bank a notice of—</p> <p>(i) the revocation of the license of the bank in liquidation; and</p> <p>(ii) his appointment as liquidator of the bank and specify in such notice:</p> <p>(aa) the effective date and time when he took possession of the bank; and</p> <p>(bb) specify that persons who previously had authorization to act or give instructions on behalf of the bank are no longer so authorized;</p>	
	(14)	<p>The liquidator shall—</p> <p>(a) publish notice of his appointment in the Gazette and in a local newspaper of general circulation, each week for four consecutive weeks; and</p> <p>(b) co-ordinate such publication with the Deposit Insurance Corporation for the purpose of payment of insured deposits to eligible depositors pursuant to the Protection of Depositors Act (Ch. 317).</p>	
	(15)	<p>Within sixty days after the appointment of a liquidator, the liquidator shall:</p> <p>(a) deliver a notice of his appointment to all known depositors, creditors and lessees of safe-deposit boxes held by the bank;</p>	

		(b) publish in the Gazette and a local newspaper of general circulation a notice specifying the manner and time in which any claim against the bank may be filed with the liquidator, not being earlier than sixty days from the date of delivery or publication of the notice.	
	(16)	<p>As of the date of appointment of a liquidator:</p> <p>(a) any claim or right of the bank which would expire or be extinguished upon the expiration of a statutory, contractual or other term, shall be suspended;</p> <p>(b) the calculation of interest and penalties against the bank's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the bank;</p> <p>(c) all legal proceedings against the bank are stayed and the exercise of any right in respect of the bank's assets shall be suspended;</p> <p>(d) no right shall be exerted over the bank's assets during the bank's liquidation, except rights given to the liquidator;</p> <p>(e) no creditor may attach, sell or take possession of any assets of the bank as a means of enforcing his claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the bank's assets;</p> <p>(f) any attachment or security interest (except one existing six months prior to the effective date of the liquidation) shall be vacated, and no attachment or security interest, except one created by the liquidator in the application of this section shall attach to any of the assets or property of the bank so long as such liquidation continues;</p> <p>(g) shareholders' rights shall be extinguished except for the right to receive proceeds, if any, under subsection 18CI(4);</p>	
18CD.	Termination of Contracts.		
	(1)	<p>(a) A liquidator may, within thirty days of the date of his appointment, repudiate any unfulfilled or partially fulfilled contract, to the extent that the fulfillment of such contract is determined to be burdensome for the bank and the repudiation would promote the orderly administration of the bank's affairs and protect depositors' interests.</p> <p>(b) Notwithstanding any other law, any liability arising from a repudiation pursuant to subsection 1(a) shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.</p>	

	(2)	Subject to any law governing conditions of employment, the liquidator of a bank may terminate, not later than three months after his appointment:- (a) any employment contract of the bank; (b) any contract for services to which the bank is a party; and (c) any obligations of the bank as a lessee of property.	
	(3)	A lessor of any property referred to in subsection (2):- (a) shall be given notice of not less than thirty days of the intended termination of the obligations of a bank; (b) has no claim for rent other than rent accrued up to and including the date of the termination of the obligation of the bank; and (c) has no right to consequential or other damages which arise by reason only of any termination of the obligations of the bank, notwithstanding any term of the lease to the contrary.	
18CE.	Notice of Claims.		
	(1)	A liquidator shall, not later than ninety days after the last day specified in the notice for filing claims against a bank being compulsorily wound-up- (a) where he doubts the validity of any claim, reject the claim; (b) determine the amount, if any, owing to each known depositor or other creditor, and the priority of each claim under this Act; (c) file with the Central Bank a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the bank provided that such filing shall exclude deposits that are uninsured but which are included in the definition of “deposits” under section 2(1) of the Protection of Depositors Act (<i>Ch. 317</i>), and which have been fully paid out or transferred to another entity; (d) notify each person whose claim is allowed in full; and (e) publish, once a week for three consecutive weeks, in the Gazette and in a newspaper of general circulation in The Bahamas— (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection; and (ii) the last date, not being earlier than thirty days from the date of publication, on which the liquidator will file that schedule with the Central Bank. (f) The Central Bank may approve the schedule of actions referred to in subsection (1)(c) subject to such terms and conditions as it may require. (g) The Central Bank shall, in approving the schedule referred to in subsection (1)(c), ensure that all of the deposits that are uninsured but which are included in the definition of “deposits” under section 2(1) of the	

		Protection of Depositors Act (<i>Ch. 317</i>) are paid out in an expeditious manner.
18CF.	Objections.	
	(1)	Within twenty days of the filing of a schedule under section 18CE(1)(c), a depositor or other creditor or shareholder of the bank concerned, or other interested person, may file with the Central Bank any objection that person has to any action proposed in such schedule.
	(2)	The Central Bank may direct that an objection filed pursuant to subsection (1) be served on the liquidator and such interested parties as the Central Bank may require, and shall subsequently hear the objection and issue a Notice setting out its determination thereon as it considers appropriate in the circumstances.
	(3)	When the Central Bank allows an objection, the Notice shall set out the manner in which the schedule referred to in section 18CE is to be modified.
18CG.	Distributions.	
	(1)	Where a liquidator has filed a schedule in respect of a bank, pursuant to subsection 18CE(1)(c), the liquidator shall make periodic distributions of recoveries on liquidated assets to claimants, if the liquidator establishes an adequate reserve (as determined by the Central Bank) for the payment of disputed claims against the bank.
	(2)	As soon as practicable after all objections against the distribution proposed by the liquidator have been heard and determined, final distribution of the assets of the bank concerned shall be made by the liquidator.
18CH.	Avoidance of pre-liquidation transfers.	
	(1)	The liquidator may declare void a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors within the five years preceding the effective date of the liquidation.
	(2)	The liquidator may declare void the following transactions affecting the assets of the bank or to recover from third parties the transfers by the bank – <ul style="list-style-type: none"> (a) gratuitous transfers to, or to persons related to, directors and officers and principal shareholders of or holders of significant interests in the bank made within the five years preceding the effective date of the liquidation; (b) gratuitous transfers to third parties made within the three years preceding the effective date of the liquidation; (c) transactions in which the consideration given by the bank considerably exceeded the received value obtained, made within the three years preceding the effective date of the liquidation; (d) any act done within the five years preceding the effective date of the liquidation, with the intention of

		<p>all parties involved to withhold assets from the bank's creditors, or otherwise impair their rights;</p> <p>(e) transfers of property of the bank to, or for the benefit of, a creditor on account of a debt incurred within the six months preceding the effective date; of the liquidation which has the effect of increasing the amount that the creditor would receive in a liquidation of the bank; provided however that payment of deposits in an amount equal to or less than two thousand dollars per depositor shall not be subject to this provision.</p> <p>(f) transactions with persons related to the bank conducted within one year prior to the effective date of the liquidation, if detrimental to the interest of depositors and other creditors; and</p> <p>(g) any attachment or security interest, except one existing six months prior to the effective date of the liquidation.</p>	
	(3)	An action to declare a transfer void may be brought by the liquidator within one year following the effective date of the liquidation.	
	(4)	Notwithstanding the foregoing subsections, the liquidator may not declare void a payment or transfer by the bank if it was made in the ordinary course of the bank's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the liquidation.	
	(5)	The liquidator may recover property or the value of property transferred by the bank from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set aside.	
	(6)	The liquidator may file notice of an action to declare a transfer void in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his or her title or interest subject to the rights of the bank to recover the property.	
	(7)	<p>Notwithstanding subsection (1) –</p> <p>(a) irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by the Central Bank shall be legally enforceable and binding on third parties, even upon a decision revoking the bank's license and appointing a liquidator, but only if the transfer orders become irrevocable before such decision takes effect; or</p> <p>(b) where a bank enters irrevocable money or securities transfer orders into a payment or securities</p>	

		settlement system after the decision revoking the bank's license and appointing a liquidator takes effect and the transfer orders are carried out on the day of such decision, the transfer orders shall be legally enforceable and binding on third parties, unless the liquidator proves that the system operator was aware of the decision before the transfer orders became irrevocable.	
	(8)	No law, regulation or practice on the setting aside of contracts and transactions issued or adopted before the decision revoking the bank's license and appointing a liquidator takes effect shall, as a consequence of such decision, lead to the unwinding of a netting by a payment or securities settlement system recognized as such by the Central Bank because of that decision.	
	(9)	For the purposes of subsections (7) and (8) - (a) a payment order entered into a money or securities settlement system becomes irrevocable at the time defined by the regulations of that system; and (b) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.	
	(10)	Nothing in this Act and no decision made under this Act shall prevent or prohibit the set off by operation of law of obligations between a bank being subject to the liquidation proceedings under this Act and its counterparties.	
	(11)	(a) In determining the rights and obligations between a bank in liquidation and its contractual counterparties— (i) effect shall be given to the termination provisions of eligible financial contracts between them; (ii) the net termination value determined in accordance with an eligible financial contract between them, shall be a claim of the bank on the counterparty or shall be admitted after its validation as a claim of the counterparty on the bank. (b) For the purposes of this subsection — (i) "eligible financial contract" means swaps, options and other derivative transactions related to interest rates, foreign exchange swaps, commodities, and guarantee of liabilities, but also includes any type of financial contract from time to time specified by the Central Bank by regulation for such purpose ; and (ii) "net termination value" means the net amount obtained after setting off the mutual obligations	

		between the parties to an eligible financial contract in accordance with its provisions.	
	(12)	Except as provided under this subsection, no set-off shall be allowed with respect to claims against the bank after the decision to revoke the bank's license and the appointment of a liquidator takes effect or within three months before such decision.	
	(13)	Save for deposits insured under the Protection of Depositors Act (<i>Ch 317</i>), claims against the bank arising from deposits shall be set-off against any sum due by a depositor to the bank as of the date on which the license is revoked and the liquidator is appointed – (a) automatically if such sum is matured or past due; (b) at the option of the depositor, if the sum is not matured or past due.	
18CI.	Priority of claims.		
	(1)	In any liquidation of a bank's assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor.	
	(2)	The following unsecured claims have priority against the general assets of a bank being compulsorily wound-up under this Act, namely- (a) necessary and reasonable expenses incurred by the statutory administrator or liquidator, including professional fees in carrying out their functions under this Act; (b) subrogated claims of the Deposit Insurance Corporation under the Protection of Depositors Act (<i>Ch. 317</i>) in respect of insured deposits; (c) deposits that are uninsured but not excluded from the definition of "deposits" under section 2(1) of the Protection of Depositors Act (<i>Ch. 317</i>); (d) credits extended to the bank by the Central Bank until the appointment of the liquidator to the extent not sufficiently secured by collateral; (e) wages and salaries of the officers and employees of the bank (whether or not earned wholly or in any part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, that accrued during the three months immediately preceding the appointment of a statutory administrator or liquidator under this Act, provided that such amount does not exceed ten thousand dollars per person; (f) all taxes due and other imposts owing to the Government of The Bahamas; (g) the fees, and assessments owing to the Central Bank; (h) credits extended to the bank after the appointment of the liquidator; (i) all other unsecured claims of creditors;	

		(j) subordinated debt.	
	(3)	After payment of all other claims against the bank, all remaining claims against the bank that were not filed within the time limited therefore under this Act may then be paid.	
	(4)	Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the liquidator on a pro rata basis among the claimants in that class.	
	(5)	The assets of a bank being compulsorily wound-up that remain after the final distribution to claimants pursuant to subsection (2) shall be distributed by the liquidator among the shareholders of the bank in proportion to their respective rights.	
18CJ.	Final reporting.		
	(1)	A liquidator appointed pursuant to section 18CB shall, prepare a report and an account of the winding up showing how it has been conducted and how the bank's property has been disposed of and thereupon shall call a general meeting of the bank for the purpose of laying before it the account and giving an explanation for it.	
	(2)	The liquidator shall submit the report and an account of the winding up described in subsection (1) to the Central Bank.	
	(3)	At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each contributory in any manner authorised by the company's articles and published in the Gazette.	
	(4)	The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed form specifying - (a) the date upon which the meeting was held; and (b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.	
	(5)	A liquidator who fails to call a general meeting of the company as required by subsection (1) or fails to make a return as required by subsection (3) shall be liable to pay an administrative penalty not exceeding ten thousand dollars.	
18CK.	Automatic Termination Rights.		
		The entry into resolution and the exercise of any resolution powers shall not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of a bank in resolution, to exercise contractual acceleration or early termination rights, provided the substantive obligations under the contract continue to be performed.	
18CL.	Creditor Safeguards.		
	(1)	The powers of the Central Bank or statutory administrator under section 18B shall not be used to-	

		<p>(a) transfer assets of a bank in resolution against which a liability is secured (under a lien, mortgage or any other type of security interest) unless the liability and the benefit of the security interest is also transferred; or</p> <p>(b) transfer only some but not all of the rights and liabilities protected under a netting clause contained in an eligible financial contract.</p> <p>(c) For the purposes of this section – “eligible financial contract” has the meaning ascribed under subsection 18CH(11)(b).</p>	
18CM.	Shareholder and Creditor Safeguards.		
	(1)	If, in accordance with a valuation determined by an independent valuer, who meets qualification requirements prescribed by the Central Bank, any shareholder or creditor of the bank under statutory administration establishes that as a result of any merger, purchase and assumption, sale or restructuring under section 18BI, it is in a position that is worse than if the bank had been liquidated (not taking into account the effects of any financial or other support from the Central Bank, the Government, or the Deposit Insurance Corporation to the bank or an acquirer of the bank under section 18BI of this Act), that shareholder or creditor shall be entitled to compensation in an amount that would restore the shareholder or creditor to the same position as he would have been in had the bank been liquidated provided however that such compensation will only be payable to the shareholder or creditor if recoveries from the liquidation of assets would have exceeded other claims.	
	(2)	For the purposes of subsection (1) the Central Bank shall pay the compensation and shall decide whether to pay it wholly or partly in cash or wholly or partly in any other form, including shares, that the Central Bank considers appropriate.	
	(3)	Subject to subsection (1) in determining the amount of compensation to which a person is entitled, the following shall not be taken into account: <ul style="list-style-type: none"> (a) any shares or other interest or right received by another person as a result of a transfer made pursuant to section 18BI or retained by another person; and (b) any common shares received by another person as a result of a conversion of shares or liabilities in accordance with the contractual terms of those shares or liabilities. 	
	(4)	Payment of the compensation by the Central Bank under subsection (2) discharges the Central Bank from its obligations under that subsection and in no case is the	

		Central Bank under any obligation to see to the proper application in any way of any such payment.	
	(5)	An independent valuer may appoint a person to assist in the performance of the independent valuer's functions, subject to the written approval of the Central Bank.	
	(6)	The Central Bank shall determine the remuneration to be paid to an independent valuer and any person appointed pursuant to subsection (5).	
	(7)	The valuation under subsection (1) shall determine the following: (a) the treatment that shareholders and creditors, would have received if the institution under resolution had entered liquidation at the time when the decision was made to place the bank under statutory administration; (b) the actual treatment that shareholders and creditors have received in the resolution of the institution under statutory administration; (c) whether there is any difference between the treatment referred to in paragraph (a) and the treatment referred to in paragraph (b).	
	(8)	The valuation under subsection (1) shall— (a) assume that the bank under statutory administration would have entered normal liquidation proceedings at the time when the decision referred to in section 18(1)(f) was taken, (b) assume that the resolution action or actions had not been effected, and (c) disregard any provision of extraordinary public financial support to the institution under resolution.	
	(9)	Where the valuation carried out under subsection (1) determines that any shareholder or creditor referred to in that subsection, has incurred greater losses than they would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the Fund in compensation.	
	(10)	Any affected shareholder or creditor may apply to the independent valuer appointed under subsection 18BI(11) for compensation in accordance with subsection (1).	
	(11)	The independent valuer to whom an application is made shall determine the amount of compensation due to any person who has made an application under subsection (10).	
	(12)	Before any determination under subsection (11) has been made, the following persons may make submissions to the independent valuer concerned and the independent valuer shall consider any such submissions:	

		<p>(a) the Central Bank; (b) the Minister; (c) any affected shareholders or creditors.</p>	
	(13)	<p>Where the independent valuer has determined, in accordance with subsection (11) the amount of compensation, if any, payable to each person who has applied for it, the independent valuer shall report in writing to the Central Bank the following:</p> <p>(a) the name of each such person; (b) whether compensation is payable to each such person; (c) the amount of compensation, if any, payable to each such person.</p>	
	(14)	<p>A report under subsection (13) shall set out the following:</p> <p>(a) a summary of the evidence on which the independent valuer relied in making his or her determination; (b) the independent valuer's reasons for making the determination.</p>	
	(15)	<p>As soon as practicable after the publication of the independent valuer's report, the Central Bank shall—</p> <p>(a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and (b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.</p>	
	(16)	<p>The Central Bank shall cause the independent valuer's report under subsection (13) to be published as soon as is practicable.</p>	
	(17)	<p>As soon as practicable after the publication of the independent valuer's report, the Central Bank shall—</p> <p>(a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and (b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.</p>	
	(18)	<p>The Central Bank, or a shareholder or creditor who has or claims a right to compensation, may lodge an appeal with the Supreme Court against the determination of the independent valuer under subsection (13).</p>	
	(19)	<p>The independent valuer is to be the respondent to an appeal under subsection (18)</p>	
	(20)	<p>On hearing an appeal under subsection (13), the Court may substitute its own determination or confirm, annul or vary</p>	

		the determination appealed from and may make any other consequential order.	
	(21)	In deciding, for the purposes of an appeal under subsection (13) whether the independent valuer's determination should be confirmed, annulled or varied, the test to be applied by the Supreme Court is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the independent valuer and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors.	
18CN		Compensation	
	(1)	A person may not be appointed as an independent valuer by the Central Bank unless they meet the qualifications specified in writing by the Central Bank.	
	(2)	The Central Bank must exercise the powers that it has under this Act to, as far as practicable, provide access, or procure the provision of access, for the independent valuer of any records and documents of the bank under statutory administration, or of a connected person, that are, or any other information that is, relevant to the performance by the independent valuer of functions under this Act.	
	(3)	For the purposes of subsection (2) "connected person" has the meaning given in subsection 38(10)(d) of the Central Bank of The Bahamas Act.	
	(4)	The Central Bank may revoke the appointment of an independent valuer if_ <ul style="list-style-type: none"> (b) the person is incapable of performing the functions of an independent valuer; (c) the person is not performing the functions of an independent valuer impartially and independently; (d) the person is guilty of serious misconduct; (e) the person no longer satisfies the criteria for appointment specified by the Central Bank. 	
	(5)	Where the Central Bank revokes the appointment of an independent valuer pursuant to subsection (4), or where the independent valuer resigns the Bank shall appoint a new independent valuer as soon as practicable following such revocation or resignation.	
	(6)	As soon as practicable after a new independent valuer is appointed under subsection (5), the Central Bank may, by notice in writing served on the person who has ceased to hold the office of independent valuer, require the person to provide the documents, records or accounts to which this subsection applies to the person appointed as the	

		successor of the person in that office within the period, and in the manner, specified in the notice.	
	(9)	Subsection (6) applies to— (a) any document provided to the person in the capacity of independent valuer; (b) any records or accounts kept by the person as required under subsection (6); and (c) any other records made by the person in the capacity of independent valuer that are relevant to the performance by a successor independent valuer of functions under this Act.	
	(10)	A person who, without reasonable excuse, fails to comply with a requirement under subsection (8) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of one thousand dollars for every day during which the offence continues.	
	(11)	A person who produces any document for complying with a requirement under subsection (8) that the person knew, or ought reasonably to have known, to be false in a material particular commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for six months.	
	(12)	The acts of a person acting as an independent valuer are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the independent valuer, other than a defect arising because the independent valuer did not meet the criteria specified by the Central Bank.	
18D.	Central Bank may publish action.		
		The Central Bank may, if satisfied that the circumstances so warrant, at any time make public and publish notice of any action it has taken under paragraphs (a) through (f) or (h) of subsection (1) of section 18, section 18A, section 18E or under section 18F.	
18E.	Prohibition orders.		
	(1)	The Central Bank may, where it appears to the Bank that an individual is not or is no longer a fit and proper person to perform a regulated function, make an order prohibiting such individual from performing a regulated function.	
	(2)	For the purposes of this section, “regulated function” includes— (a) serving as a director of a licensee, a Registered Representative or a money transmission agent; (b) serving as an officer of a licensee, a Registered Representative or a money transmission agent;	

		<p>(c) acting as the auditor of a licensee, a Registered Representative or a money transmission agent; and</p> <p>(d) performing any other function in or for a licensee, a Registered Representative or a money transmission agent which requires approval, supervision or monitoring by the Central Bank.</p>	
	(3)	<p>An individual who is in breach of a prohibition order, performs or agrees to perform a regulated function commits an offence and shall be liable on summary conviction —</p> <p>(a) to a fine not exceeding fifty thousand dollars; and</p> <p>(b) in the case of a continuing breach, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues.</p>	
	(4)	<p>It is a defence to a charge against a person in relation to a contravention of subsection (3) if the defendant proves that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.</p>	
	(5)	<p>The Central Bank may, on the application of the individual named in the prohibition order, vary or revoke the order.</p>	
18F.		Bank to issue warning, decision notices.	
	(1)	<p>The Central Bank shall, where it proposes to make a prohibition order, issue a warning notice to all interested parties including —</p> <p>(a) the individual affected by the proposed order; and</p> <p>(b) if the Bank deems fit, the relevant licensee Registered Representative, or Money Transmission Agent</p>	
	(2)	<p>A warning notice issued under subsection (1) shall —</p> <p>(a) set out the terms of the prohibition and the grounds on which the Bank proposes to act; and</p> <p>(b) afford the individual named in the notice within such time as is specified in the notice, an opportunity to submit to the Bank a written statement of objection to the proposed prohibition order.</p>	
	(3)	<p>The Bank shall, following the issuance of a warning notice under subsection (1), advise the individual named in the notice of its decision.</p>	
	(4)	<p>The Bank shall, where it decides to make a prohibition order, issue to the individual named in the warning notice, a written notice of the Bank's decision</p>	
	(5)	<p>A decision notice issued under subsection (4) shall —</p> <p>(a) name the individual to whom the prohibition order applies;</p> <p>(b) set out the terms of the order;</p>	

			<ul style="list-style-type: none"> (c) state the date on which the Bank's decision is to take effect; (d) be delivered to the individual named in the order; and (e) if the Bank deems fit, be delivered to the relevant licensee Registered Representative, or Money Transmission Agent. 	
	(6)		An individual against whom a decision to make a prohibition order is made may refer the matter to the Supreme Court.	
18G.	Variation, revocation of prohibition order.			
	(1)		An individual against whom a prohibition order has been made may apply to the Central Bank to have the order varied or revoked.	
	(2)		<p>The Central Bank shall —</p> <ul style="list-style-type: none"> (a) where it decides to grant an application for variation or revocation of a prohibition order, give the applicant and if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent a written notice of the Bank's decision; and (b) where the Bank proposes to refuse such application, issue to the applicant and, if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent a written warning notice. 	
	(3)		<p>A warning notice issued under paragraph (b) of subsection (2) shall —</p> <ul style="list-style-type: none"> (a) set out the reasons for the Bank's proposed refusal to vary or revoke the prohibition order; and (b) contain a statement that the individual named in the warning notice may, within such time as is specified in the notice, submit to the Bank a written statement of objection to such proposed refusal. 	
	(4)		The Bank shall, following the issuance of a warning notice under paragraph (b) of subsection (2), advise the individual named in the notice of its decision.	
	(5)		The Bank shall, where it decides to refuse the application for variation or revocation, issue to the applicant a written decision notice which shall comply with the requirements of subsection (5) of section 18F.	
	(6)		An applicant issued a decision notice under subsection (5) may refer the matter to the Supreme Court.	
19.	Preservation of confidentiality.			

(1)		<p>No person who has acquired information in his capacity as -</p> <ul style="list-style-type: none"> (a) director, officer, employee or agent of any licensee or former licensee; (b) counsel and attorney, consultant or auditor of the Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor; (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator; (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor; (e) the Inspector under the provisions of this Act; (f) a Supervisory Authority or as a director, officer, employee or agent of a Supervisory Authority; shall, without the express or implied consent of the customer concerned, disclose to any person any such information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee or relating to any application by any person under the provisions of this Act, as the case may be, except - <ul style="list-style-type: none"> (i) for the purpose of the performance of his duties or the exercise of his functions under this Act, if any; (ii) for the purpose of the performance of his duties within the scope of his employment; (iii) when a licensee is lawfully required to make disclosure by any court of competent jurisdiction within The Bahamas, or under the provisions of any law of The Bahamas; (iv) for the purpose of enabling or assisting the Central Bank to exercise any functions conferred upon the Bank by any written law; (v) in the case of a bridge institution, to the Minister of Finance or his designate; (v) in the case of an asset management vehicle, to the Minister of Finance or his designate; (vii) to a person with a view to the institution of, or for the purpose of- <ul style="list-style-type: none"> (a) criminal proceedings; (b) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; or (c) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Central Bank of his duties. 	
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	(2)	Subsection (1) shall not apply in any case where in accordance with such conditions as the Inspector may determine, information of such class or classes as the Inspector may from time to time approve, is transmitted from a licensee to the head office, a branch or subsidiary of that licensee outside of The Bahamas, solely for the purposes of carrying out collation, synthesis or processing of information on behalf of the licensee.	
	(3)	In any civil proceedings where information is likely to be disclosed in relation to a customer's bank account, those proceedings may, if the court, of its own motion or on the application of a party to the proceedings, so orders, be held in camera and the information shall be confidential as between the court and the parties thereto.	
	(4)	No person shall publish the name, address or photograph of any parties to those civil proceedings as are referred to in subsection (3) or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or after they have been terminated.	
	(5)	The Central Bank may, subject to the provisions of section 14(2), provide information on the beneficial owners, directors, officers and operations of a licensee (including any report produced by the Inspector pursuant to any inspection or examination of the licensee) to the Supervisory Authority which is responsible for regulating the head office of the licensee for the purpose of consolidated supervision of the licensee by the Supervisory Authority.	
	(6)	To facilitate regulatory cooperation within The Bahamas, the Governor or any director, officer, employee, agent or advisor of the Bank may cooperate with any other domestic regulatory authority, including, by sharing information on the beneficial owners, directors, officers and operations of a licensee and any of its affiliates, or any other information acquired in the discharge of functions and duties under this or any other Act, where the Governor considers that such cooperation or information may be relevant to the functions of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.	
	(7)	Nothing contained in this section shall - (a) prejudice or derogate from the rights and duties subsisting at common law between a licensee and its customer;	

		<p>(b) prevent a licensee from providing upon a legitimate business request in the normal course of business a general credit rating with respect to a customer; or</p> <p>(c) prevent the Inspector from sharing information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee with the Financial Intelligence Unit where he believes that a suspicious transaction was not reported as required under the Financial Transactions Reporting Act.</p>	
	(8)	The Central Bank in the exercise of its co-operative functions may, with the approval of the Governor, enter into memoranda of understanding with Supervisory Authorities for the purpose of facilitating the consolidated supervision of its licensees.	
	(9)	No memorandum of understanding entered into pursuant to subsection (8) may call for assistance beyond that which is provided for by this Act, or relieve the Central Bank of any of its functions or duties under this Act.	
	(10)	Every person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.	
20.	Treatment of dormant accounts held by banks.		
	(1)	<p>This section applies to —</p> <p>(a) a deposit account, including demand, savings, and fixed term deposit account;</p> <p>(b) a chequing account;</p> <p>(c) a bank draft, cashier cheque, certified cheque and money order;</p> <p>(d) a traveller's cheque;</p> <p>(e) a credit balance on a credit card;</p> <p>(f) a credit balance on a loan;</p> <p>(g) collateral held on a loan, including cash and non-cash collateral;</p> <p>(h) funds paid for shares or other interest in a licensee;</p> <p>(i) a custody account or safety deposit box;</p> <p>(j) a deposit account of precious metals and precious gemstones;</p> <p>(k) all securities listed in Part I of the <i>First Schedule</i> to the Securities Industry Act (<i>No. 10 of 2011</i>); and</p> <p>(l) such other deposit account or other facility as the Governor Central Bank may, by notice, determine.</p>	

(2)		<p>For the purposes of this section —</p> <p>“customer” means —</p> <ul style="list-style-type: none"> (a) a person who holds an account or other facility; (b) a person who, in respect of an account or other facility, is authorised, in writing, to act as the agent of the person who holds the account or other facility; (c) a person who is authorised under a power of attorney to manage and control an account or other facility; (d) where a person who holds an account or other facility is deceased, the heirs, executors, administrators and assigns of that person; (e) such other person as the Governor Central Bank may by notice determine; <p>“dormant account” means a deposit account or other facility at a bank where the customer has initiated no transaction, for a period of seven years, with respect to —</p> <ul style="list-style-type: none"> (a) the deposit account or other facility; (b) any other deposit account or facility of the customer held with the bank; <p>“other facility” means any account or arrangement —</p> <ul style="list-style-type: none"> (a) that is provided by a bank to a customer; (b) by, through or with which a customer may conduct transactions, including instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques; <p>“precious gemstones” does not include jewelry;</p> <p>“recognized foreign securities exchange” has the meaning assigned in section 2 of the Securities Industry Act, 2011;</p> <p>“registered securities exchange” means a securities exchange that is registered pursuant to Part V of the Securities Industry Act, 2011;</p> <p>“transaction” means an action initiated by a customer, in person or by electronic or other non-physical means, in respect of a deposit account or other facility that such customer has with a bank and includes —</p> <ul style="list-style-type: none"> (a) a deposit, withdrawal, exchange or transfer of funds in any currency denomination whether in cash, by cheque, payment order, or other instrument; (b) a communication, acknowledgement, request, or instruction where evidenced in writing and signed by the customer; (c) a contemporaneous record of the customer's verbal instruction prepared by the bank. 	
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(3)		<p>The seven year period, referred to in the definition of dormant account in subsection (2), shall be calculated in the case of —</p> <ul style="list-style-type: none"> (a) a deposit account made for a fixed period, from the date on which the fixed period terminated, or the date the customer terminates his instructions to automatically renew the deposit, whichever is the later; (b) a deposit account not made for a fixed period, from the date on which the customer last conducted a transaction with respect to the deposit account; and (c) a facility other than one referred to in paragraphs (a) or (b), from the date on which the facility was issued, established, or the obligation to make a payment in respect of the facility accrued, whichever is the later. 	
(4)		<p>A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, within two months after the end of the calendar year in which the applicable seven year period expired —</p> <ul style="list-style-type: none"> (a) pay to the Central Bank an amount equal to and in the same currency denomination as the amount owing by the bank in respect of the dormant account, including cash from a dormant safety deposit box; or (b) subject to subsection (10), liquidate a dormant account, including a safety deposit box, containing precious metals, precious gemstones or securities, and after deducting the reasonable costs incurred in connection with the liquidation of the account, pay the balance of the proceeds of sale of such account to the Central Bank, provided that, the Central Bank may exempt a bank in writing from this subsection where extenuating circumstances exist. 	
(5)		<p>For the purposes of paragraph (b) of subsection (4) —</p> <ul style="list-style-type: none"> (a) securities listed on a registered securities exchange or a recognized foreign securities exchange shall be sold at prices prevailing on the exchange at the time of sale; (b) securities that are not listed on an established stock exchange may be sold over the counter at prices prevailing at the time of the sale or by any reasonable method selected by the bank using its best efforts and prudence and having regard to market conditions at the time of the sale, which sale shall take place within two months after the end of the calendar year in which the applicable seven year period expired or within such longer period as the Central Bank may, in its sole discretion, approve; (c) a purchaser acquiring property at a sale takes the property free of all claims of the owners and of all persons claiming through or under the owners; (d) a person making a claim for liquidated property — 	

		<p>(i) is entitled to receive the proceeds of sale of such property, less deductions for —</p> <p>(aa) costs of sale;</p> <p>(bb) reasonable expenses incurred by the Bank, pursuant to section 29(2) 24(2) of the Central Bank of The Bahamas Act (Ch. 351); and (ii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.</p>	
	(6)	<p>Subsection (4)(b) shall not apply where the precious metals, precious gemstones or securities do not have a ready buyer, cannot be sold, are worthless or are not cost-effective to sell and, in such cases, the bank —</p> <p>(a) shall transfer the property to the Central Bank or to an agent appointed by the Central Bank; or</p> <p>(b) at the discretion of the Central Bank, shall continue to hold the precious metals, precious gemstones or securities, as the case may be, as an agent for the Central Bank.</p>	
	(7)	<p>Subject to subsection (12), no person shall have a claim for any act done pursuant to paragraph (b) of subsection (4) against —</p> <p>(a) a bank;</p> <p>(b) a registrar and transfer agent; or (c) any other person acting for or on behalf of the bank.</p>	
	(8)	<p>A bank shall retain —</p> <p>(a) for a period of fifteen years after the date the bank makes a payment to the Central Bank pursuant to subsection (4); or</p> <p>(b) for a period of five years after the bank makes a payment to a claimant pursuant to subsection (12), all records relating to the dormant account in respect of which such payment was made including all —</p> <p>(i) registers;</p> <p>(ii) signature cards;</p> <p>(iii) signing authorities;</p> <p>(iv) microfilm or electronically stored copies of such records.</p>	
	(9)	<p>Notwithstanding subsection (8), the relevant periods for the retention of records where a bank makes a payment pursuant to subsection (4) or subsection (12) with respect to a securities account shall be seventeen years and seven years, respectively.</p>	
	(10)	<p>Notwithstanding subsection (4), a bank shall —</p> <p>(a) subject to paragraph (b), not make payment to the Central Bank with respect to —</p> <p>(i) dormant accounts which have any one or more of the following characteristics —</p>	

		<ul style="list-style-type: none"> (aa) are non-cash collateral; (bb) are a custody account or safety deposit box, except for cash, precious metals, precious gemstones or securities found in such boxes; (ii) such other characteristics as the Governor may, by regulation, determine; <p>(b) continue to administer the dormant accounts referred to in paragraph (a) in the best interest of the customer in accordance with the bank's contractual obligations and subject to heightened internal monitoring by the bank, in accordance with guidelines issued by the Central Bank;</p> <p>(c) deduct a reasonable sum for the administration of the dormant account referred to in paragraph (a) only where —</p> <ul style="list-style-type: none"> (i) there is an enforceable written contract between the bank and the customer under which the bank may impose a charge; and (ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled. 	
	(11)	A bank which holds a dormant account of the kind referred to in subsection (10)(a) shall make a report to the Central Bank at such intervals, and in such form containing such particulars, as the Bank may require.	
	(12)	<p>Where a bank has made a payment to the Central Bank pursuant to subsection (4) and —</p> <p>(a) the bank represents to the Central Bank that it is satisfied that a person is entitled to receive an equal amount where the funds were paid in Bahamian dollars and an equivalent amount where the funds were paid in any other currency; and</p> <p>(b) the person has brought a claim to the bank for the amount so paid prior to the expiry of ten years from the date of the Central Bank's receipt of such amount, a liability shall arise —</p> <ul style="list-style-type: none"> (i) on the Central Bank, to repay to the bank an equal or equivalent amount, as the case may be, together with interest if interest was payable by the bank, at a rate and computed in a manner that the Central Bank may by written notice determine; and (ii) on the bank, to pay the amount received from the Central Bank under sub-paragraph (i) to the claimant. 	
	(13)	A bank which makes a payment to the Central Bank pursuant to subsection (4), or transfers property to the Central Bank or an agent of the Bank pursuant to subsection (6)(a), shall be discharged from further liability in respect of such payment or transfer.	

	(14)	The Central Bank shall, where the Bank makes a payment pursuant to subsection (12) of this section or section 24(1) of the Central Bank of The Bahamas Act (Ch. 351), be discharged from further liability in respect of such payment.	
	(15)	A bank shall maintain a register of dormant accounts containing in respect of each account the — (a) full name and last known address of each customer; (b) last known telephone number or other contact of each customer; (c) name of the bank and location of the branch at which the dormant account is held; (d) account number; (e) type of facility; (f) full description of assets, including amount and currency where appropriate; (g) fee status, indicating whether the account was subject to any fees immediately prior to transfer to the Central Bank and the amount of such fees; (h) interest status, indicating whether the account was subject to any interest earned immediately prior to transfer to the Central Bank and the amount of such interest; (i) date of last transaction on the account; (j) measures, briefly described, taken to contact the customer; (k) in the case of funds in transit, file copy of the instrument or transfer; (l) date funds were paid to the Central Bank pursuant to subsection (4), where applicable; and (m) other information that the Central Bank may, in writing, require a bank to maintain in the register.	
21.	Charges for account to be by agreement.		
		No bank shall directly or indirectly charge or receive any sum of money for the establishment, maintenance or service of an account unless such charge is made by express and specific agreement between the bank and the customer.	
22.	Power of search.		

(1)		<p>If a Magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 13(4) to assist the Inspector either -</p> <ul style="list-style-type: none"> (a) that a licence has been suspended; or (b) that there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information or in any vehicle, vessel or aircraft so specified; or (c) that any books, records, vouchers, documents, cash or securities which ought to have been produced under section 13(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft, <p>he may grant a search warrant authorising the Inspector or such person authorised under section 13(4) or any police officer together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.</p>	
(2)		<p>The person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under section 13(3):</p> <p>Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.</p>	
(3)		<p>Where by virtue of this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.</p>	

	(4)	Every person who shall obstruct the Inspector or any other person in the exercise of any powers conferred on him by virtue of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.	
23.	Attorney-General's fiat.		
	(1)	No prosecution in respect of any offence committed under this Act shall be instituted except by or with consent of the Attorney-General.	
	(2)	Any penalty incurred under this Act shall be paid to the Central Bank.	
	(3)	Notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence committed under this Act may be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Attorney General, to justify a prosecution for the offence comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires;	
	(4)	For the purposes of this section, a certificate purporting to be signed by the Attorney General as to the date on which such evidence referred to in subsection (3) comes to his knowledge shall be conclusive.	
24.	Regulations.		
		The Governor may make regulations for all or any of the following purposes—	
		(a) to prescribe the information, particulars and references which may be prescribed under section 4(2) and section 7(3);	
		(c) to prescribe the facts or matters which are likely to be of material significance for the discharge of the Inspector's functions under this Act.	
		(d) generally for carrying out the purposes or provisions of this Act into effect.	
		The Central Bank may make regulations for all or any of the following purposes —	
		(a) to prescribe the information, particulars and references which may be prescribed under section 4(2) and section 7(3);	

		<p>(b) to prescribe the facts or matters which are likely to be of material significance for the discharge of the Inspector's functions under this Act;</p> <p>(c) generally for carrying out the purposes or provisions of this Act into effect.</p>	
24A.	Contraventions and penalties		
	(1)	<p>The Governor may make regulations-</p> <p>(a) designating, as a contravention that may be proceeded with under section 24B-</p> <p style="padding-left: 40px;">(i) a breach of or non-compliance with, a specified provision of this Act or a regulation made pursuant to this Act;</p> <p>A non-compliance with-</p> <p style="padding-left: 40px;">(A) a condition and or limitation imposed by the Central Bank;</p> <p style="padding-left: 40px;">(B) a direction issued by the Central Bank pursuant to subsection (i) of section 6c or paragraph (h) of subsection (i) of section 18.</p> <p style="padding-left: 40px;">(C) an order made by the Central Bank under this Act or under a regulation made pursuant to this Act.</p> <p>_____</p> <p>(b) classifying a designed contravention as a minor, serious or very serious contravention; and</p> <p>(c) subject to subsections (2), (3), and (5), fixing a penalty or a range of penalties in respect of a designated contravention.</p>	
	(2)	<p>The maximum penalty for a contravention shall be —</p> <p>(a) for a contravention committed by an individual, in the case of —</p> <p style="padding-left: 40px;">(i) a minor contravention, two thousand five hundred dollars;</p> <p style="padding-left: 40px;">(ii) a serious contravention, five thousand dollars; and</p> <p style="padding-left: 40px;">(iii) a very serious contravention, ten thousand dollars.</p> <p>(b) for a contravention committed by a company, in the case of —</p> <p style="padding-left: 40px;">(i) a minor contravention, ten thousand dollars;</p> <p style="padding-left: 40px;">(ii) a serious contravention, fifty thousand dollars; and</p> <p style="padding-left: 40px;">(iii) a very serious contravention, one hundred thousand dollars.</p>	
	(3)	<p>A minor contravention shall, where it consists of a late or erroneous filing and is continued for more than one day,</p>	

		constitute a separate contravention for each day, or part of a day, during which it is continued.	
	(4)	<p>The Central Bank shall determine the amount of penalty for a designated contravention by taking into account</p> <ul style="list-style-type: none"> (a) the degree of intention or negligence on the part of the person who committed the contravention; (b) the harm done by the contravention; (c) the history of the person or licensee who committed the contravention having regard to any prior contravention or conviction under this Act within the five-year period immediately before the contravention; (d) whether the licensee or person concerned brought the contravention to the attention of the Bank (e) the seriousness of the contravention; (f) whether or not the contravention was inadvertent ;; (g) the efforts, if any, made to rectify the breach or non-compliance and to prevent a recurrence (h) the potential financial consequences to the licensee or person concerned and to third parties, including customers and creditors of the licensee, of imposing a penalty; (i) the penalties imposed by the Central Bank in other cases; and (j) any other criteria as may be prescribed by regulation. 	
	(5)	<p>For the purpose of this section-</p> <ul style="list-style-type: none"> (a) a designated contravention does not include a breach referred to in subsection (1) of section 24B; and (b) subsection (4) does not apply to a penalty fixed under paragraph (c) of subsection (1) 	
24B.	Payment of Penalties		
	(1)	<p>The Central Bank may order a person to pay a penalty not exceeding two thousand dollars in any case where it is satisfied that the person has committed an offence under —</p> <ul style="list-style-type: none"> (a) regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations; or (b) the Financial Transactions (Wire Transfers) Regulations. 	
	(2)	<p>The Central Bank may order the payment of such penalty as may be prescribed by regulations made under this Act if satisfied that a person has contravened —</p> <ul style="list-style-type: none"> (a) a provision of this Act; (b) a regulations made under this Act; (c) a condition or limitation imposed by the Central Bank; 	

		<p>(d) a direction issued by the Central Bank pursuant to subsection 6C or paragraph (h) of subsection 18; or</p> <p>(e) an order made by the Central Bank under this Act or under a regulation made pursuant to this Act."</p>	
	(3)	<p>The Central Bank, shall where it makes an order under this section:-</p> <p>(a) specify in the order the—</p> <p>— (i) name of the person believed to have committed a contravention or an offence;</p> <p>— (ii) nature of the contravention or offence which the person is believed to have committed; and</p> <p>— (iii) penalty imposed by the Central Bank.</p> <p>(b) give a copy of the order to the person named in the order.</p>	
	(4)	<p>An order made under this section may be enforced by the Central Bank in the same manner as an order of the Court.</p>	
24C	Election		
		<p>The Central Bank shall, where a breach or non-compliance may be proceeded with as a designated contravention under section 24B or as an offence-</p> <p>(a) elect to proceed with the matter in one manner only; and</p> <p>(b) on completion of the proceeding in the manner elected pursuant to paragraph (a), be precluded from proceeding in the other manner.</p>	
24D	Publication of fines and penalties		
		<p>The Central Bank may where the Bank imposes a penalty on a person, publish in such manner as it deems appropriate a statement of the contravention or offence in respect of which the penalty is imposed..</p>	
24E	Proceedings.		
		<p>The Central Bank may, where the Bank is of the opinion that action pursuant to subsections (1) or (2) of section 24B should be taken against a person, give to such person prior to taking action a written notice containing the-</p> <p>(a) name of the person believed to have committed a contravention or an offence;</p> <p>(b) nature of the contravention or offence;</p> <p>(c) penalty that the Central Bank intends to impose;</p> <p>(d) right of the person, within thirty days after the notice is served or within such longer period as the Bank may specify in the notice, to pay the penalty</p>	

		<p>or to make representations to the Bank with respect to the contravention or offence</p> <p>(e) manner in which the person may make representations pursuant to paragraph (d); and</p> <p>(f) warning that, the person will, where payment or representations are not made in accordance with the notice, be deemed to have committed the contravention or offence and the Bank may issue an order imposing a penalty in respect of it.</p>	
24F.	Determination of responsibility and penalty		
	(1)	<p>A person who pays in full the penalty proposed in a notice of contravention or offence pursuant to section 24E shall be deemed to have committed the contravention or offence and all proceedings in respect of such contravention or offence shall terminate upon such payment.</p>	
	(2)	<p>The Central Bank shall, where a person make representations in accordance with a notice of contravention or offence, decide on a balance of probabilities whether the person committed the contravention or offence and may in accordance with this Act and the regulations-</p> <p>(a) where the Bank decides a contravention or offence has been committed, by order impose the penalty proposed or a lesser penalty; or</p> <p>(b) where the Bank decides a contravention or offence has not been committed, impose no penalty.</p>	
	(3)	<p>A person who does not to pay the penalty or make representations in accordance with the notice of contravention or offence shall be deemed to have committed the contravention or offence and the Central Bank may, in accordance with this Act and the regulations -</p> <p>-, (a) by order impose the penalty proposed or a lesser penalty; or</p> <p>(b) impose no penalty.</p>	
24G.	Time Limit		
	(1)	<p>The Central Bank may not commence proceedings in respect of a designated contravention-</p> <p>(a) in the case of a minor contravention, later than six months after the subject matter of the proceedings became known to the Central Bank; or</p> <p>(b) in the case of a serious contravention or a very serious contravention, later than six years after the subject matter of the proceedings became known to the Central Bank.</p>	

	(2)	<p>A document appearing to have been issued by the Central Bank, certifying the day on which the subject matter of any proceedings became known to the Central Bank, shall be—</p> <p>(a) admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and</p> <p>(b) , in the absence of evidence to the contrary, proof of the matter asserted in such document.</p>	
24H	Remission		
	(1)	<p>The Central Bank may remit all or part of any penalty imposed under section 24B or any regulation made under this Act, including interest on such penalty.</p>	
	(2)	A remission may be conditional or unconditional.	
25.	No Derogation.		
	(1)	<p>The provisions of this Act shall have effect in addition to and not in derogation of any other provisions having the force of law in the Bahamas.</p> <p>The provisions of the Act shall have effect in addition to and not in derogation of any other provisions having the force of law in The Bahamas, provided however that the provisions of the Act shall prevail to the extent of any inconsistency with other laws of general application.</p>	
	(2)	<p>This Act shall not apply to the Post Office Savings Bank.</p> <p>This Act shall have effect notwithstanding anything to the contrary in the Companies Act (<i>Ch. 308</i>) and the provisions of that Act, insofar as they relate to banking business or such other business as may be regulated or supervised by the Central Bank in or from within The Bahamas, shall have effect only subject to the provisions of this Act.</p>	
26.	Appeal.		
	(1)	<p>An appeal shall lie to the Supreme Court from any decision of the Central Bank -</p> <p>(a) revoking a licence under section 4(6), section 7(5), section 18BJ(3) or section 18;</p> <p>(b) cancelling any registration or withdrawing any exemption under section 4(7) or withdrawing any approval under section 7(4);</p> <p>(c) requiring a licensee to take certain steps which the Central Bank may specify under section 18.</p>	

		<p>(d) serving to serve a notice of objection under subsection (1) of section 6B.</p> <p>(e) serving to serve a decision notice under subsections (4) of 18F or subsection (5) of section 18G.</p> <p>(f) serving to serve a notice in respect of a serious contravention or a very serious contravention under section 24E.</p> <p>(g) appointing a statutory administrator pursuant to section 18(1)(g-f);</p>	
	(2)	<p>An appeal against the decision of the Central Bank shall be on motion and the appellant within twenty-one days after the day on which the Central Bank has given its decision shall serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of his intention to appeal and of the general ground for his appeal:</p> <p>Provided that any person aggrieved by the decision of the Central Bank may upon notice to the Attorney-General apply to the Supreme Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.</p>	
	(3)	<p>The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Central Bank's decision and all papers relating to the appeal:</p> <p>Provided that the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.</p>	
	(4)	<p>The Registrar shall set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.</p>	
	(5)	<p>At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by such statement.</p>	
	(6)	<p>The Supreme Court may adjourn the hearing of the appeal and may upon hearing thereof confirm, reverse, vary or ——— modify the decision of the Central Bank or remit the matter with the opinion of the Supreme Court thereon to the Central Bank.</p> <p>In any court, administrative, or arbitration proceedings brought against the Central Bank, the Inspector, a director, officer, employee, correspondent or agent of the Central Bank, including any statutory administrator, or liquidator</p>	

		<p>appointed by the Central Bank under this Act for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions or against the Bank for any actions or inactions pursuant to sections 18(1)(g) (f), 18B, 18BB, 18BD, 18BE, 18BI, 18BJ, 18BK, 18CA(10), 18CB(3), 18CC, 18CH, 18CD, 18CE and 18CI of this Act relating to intervening in or resolving banks:</p> <p>(a) the court, administrative body, or arbitration panel may examine only whether the respondent acted unlawfully, in bad faith, or with gross negligence, the burden of proof of which shall be borne by the plaintiff/claimant;</p> <p>(b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and</p> <p>(c) the court, administrative body, or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.</p>	
	(7)	An appeal against a decision of the Central Bank shall not have the effect of suspending the execution of such decision.	
27.	Fees and levy.		
	(1)	Notwithstanding the provisions of any other law, a bank that is a DSII at any time during a financial year that ends after the commencement of this section is liable to pay a levy in respect of that financial year.	
	(2)	The provisions of the Third Schedule shall have effect for the payment of the fees in respect of the matters mentioned in that Schedule and all fees and levy listed in the Third Schedule shall be collected by the Central Bank.	
	(3)	Subject to subsection (4) all fees and any levy amount paid pursuant to subsection (2) shall be placed in the Consolidated Fund.	. 2
	(4)	For the purpose of funding regulatory activity of the Central Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas and the Compliance Commission, the Central Bank shall withhold such amount of the fees and levy collected under subsection (2) as may be agreed with the Minister and shall remit the balance to the Treasurer.	
	(5)	<p>The Minister may by regulations—</p> <p>(a) provide for the refund (or other application) of over payment of levy;</p> <p>(b) vary the fees or amount of levy prescribed in the Third Schedule, to provide that any such regulations which increase the amount of any fees or levy payable under this Act shall be exempt</p>	

		from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament;	
	(6)	The Central Bank may, if the Central Bank considers it appropriate to do so, waive the payment of the whole or a part of an amount of levy that is payable by a DSII.	
	(7)	In subsection (5) the expression “affirmative resolution of both Chambers of Parliament” in relation to regulations means that the regulations are not to come into operation unless and until affirmed by a resolution of each of those Chambers.	
	(8)	If any person fails to comply with any requirement of subsections (1), (2) and the Third Schedule, he, or, where such person is a company, the company and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default, shall on summary conviction be liable, for every day during which the default continues, to a fine not exceeding one thousand dollars.	
28.	Repeal.		
		The Banks and Trust Companies Regulation Act and the Banks Act are hereby repealed.	
29.	Saving		
		Any licence, authority, approval or exemption granted under the repealed Act which is in force immediately before the coming into force of this Act - (a) shall continue to have effect after the coming into force of this Act as if granted under this Act; (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.	
1.		<p style="text-align: center;">FIRST SCHEDULE (Section 17)</p> <p style="text-align: center;">RULES FOR INSPECTION AND SUPERVISION OF BANKS AND TRUST COMPANIES</p> <p>Duties of Inspector The Inspector shall - (a) regularly evaluate the condition, solvency and liquidity of all licensees;</p>	

		<p>(b) establish appropriate and prudent standards for conducting safe and sound banking and trust business;</p> <p>(c) set prudent and appropriate capital adequacy requirements for banks not less than those established in the Basel Capital Accord and its Amendments;</p> <p>(d) evaluate banks' policies, practices and procedures related to the granting of loans and making of investments and the on-going management of the loan and investment portfolios;</p> <p>(e) ensure that banks and trust companies have management information systems that enable management to identify portfolio concentration in line with established limits;</p> <p>(f) ensure that banks and trust companies have in place and use systems that accurately measure, monitor and adequately control market and other risks;</p> <p>(g) ensure that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and loan-loss reserves;</p> <p>(h) ensure that banks and trust companies have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including strict know-your-customer rules that promote high ethical and professional standards, and so prevent the use of the bank for criminal purposes;</p> <p>(i) co-operate with inspectors and supervisors in other jurisdictions to the extent necessary for the purposes of cross-border supervision consistent with the policy established by the Basel Committee for cross-border supervision.</p>	
2.		<p>Interpretation</p> <p>In this schedule -</p> <p>“Basel Capital Accord” or “Basel Committee on Banking Supervision” or “Basel Committee” means the committee of banking supervisory authorities established by central bank — Governors of the Group of Ten countries in 1975 and its report.</p> <p>central banks and bank supervisors that is the primary global standard setter for the prudential regulation of banks.</p>	
		<p>Second Schedule.</p> <p><i>Repealed by No. 21 of 2007</i></p>	

THIRD SCHEDULE (Section 27) FEES AND LEVY			
1.	(1)	The amount of levy payable by a DSII for a financial year is the amount worked out using the following formula —	
		Levy = Rate of Assessment per annum	x (Consolidated Total Domestic Liabilities amount of DSII
		-- Levy threshold	+ Regulatory capital amount equivalent to 16 percent of a DSII's risk assets)
	(2)	The amount of levy payable by a DSII for a financial year shall in no case be less than zero.	
	(3)	The annual rate of assessment to be used to calculate the levy shall be 0.30% or such other percentage as the Minister may by regulation determine from time to time	
	(4)	Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say –	
2		Matters in respect of which fee is payable	Amount of fee \$
		(a) Appointment of a licensee by the Controller of Exchange as an authorised dealer as defined in paragraph (1) of regulation 42 of the Exchange Control Regulations in the case where the licensee as per its last audited financial statement –	
		(i) has domestic assets not exceeding \$500 million	\$250,000
		(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$500,000
		(iii) has domestic assets exceeding \$1 billion	\$1 million
		(b) Continuance in being on the first day of January in any year as a person appointed as mentioned in sub-paragraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements-	
		(i) has domestic assets not exceeding \$500 million	\$275,000
		(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$550,000

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		(iii) has domestic assets exceeding \$1 billion but not exceeding \$1.5 billion	\$1 million
		(iv) has domestic assets exceeding \$1.5 billion	\$1.2 million
		(c) A further fee payable on the first day of January in any year by any person appointed as mentioned in subparagraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements--	
		(i) has domestic liabilities not exceeding \$100 million	\$50,000
		(ii) has domestic liabilities exceeding \$100 million but not exceeding \$500 million	\$450,000
		(iii) has domestic liabilities exceeding \$500 million but not exceeding \$1 billion	\$1.5 million
		(iv) has domestic liabilities exceeding \$1 billion	\$2 million
		(d) Appointment of a licensee as authorised agent pursuant to the Exchange Control Regulations in the case where the licensee as per its last consolidated audited financial statements -	
		(i) has assets not exceeding \$5million	\$90,000
		(ii) has assets exceeding \$5 million but but not exceeding \$20 million	\$150,000
		(iii) has assets exceeding \$20 million	\$225,000
		(e) Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (d) of this paragraph in the case where the licensee as per its last audited financial statement –	
		(i) has assets not exceeding \$5 million	\$90,000
		(ii) has assets exceeding \$5 million but not exceeding \$20 million	\$150,000
		(iii) has assets exceeding \$20 million	\$225,000
		(f) Grant of license to carry on banking business or trust business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee-	\$80,000

		<p>(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and</p> <p>(ii) has not been appointed as mentioned in subparagraph (a) or (d) (g) of this paragraph</p>	
		<p>(f) Grant of licence to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee—</p> <p>(iii) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and</p> <p>(iv) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph</p>	\$80,000
		<p>(g) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (f) of this paragraph</p>	\$80,000
		<p>(h) Grant of licence to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee—</p> <p>(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and</p> <p>(ii) has not been appointed as mentioned in sub-paragraph (a) or (d) of this paragraph</p>	\$80,000
		<p>(i) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (f) (h) of this paragraph</p>	\$80,000
		<p>(j) Grant of licence to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where</p>	

		<p>the licensee—</p> <p>(i) Has been declared by the Controller of the Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and</p> <p>(ii) has not been appointed as mentioned in sub-paragraph (a) or (d) of this paragraph</p>	\$80,000
		(k) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (j) of this paragraph	\$80,000
		<p>(l) Grant of license to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee-</p> <p>(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and</p> <p>(ii) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph</p>	\$58,000
		(m) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (l) of this paragraph	\$58,000
		(n) Continuance in being on the first day of January in any year as a person licensed to carry on banking business solely with a person specified in the licence	\$35,000
		(o) Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence	\$35,000
		(p) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (o) of this paragraph	\$35,000
		(q) Grant of license solely to carry on the trust Business specified in the licence	\$11,000
		(r) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (q) of this paragraph	\$11,000
		(s) Grant of any licence not mentioned in subparagraph (f), (h), (j), (l), (o) or (q) of this paragraph	\$2,500
		(t) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (s) of this paragraph	\$2,500

		(u) On commencement of the business of a private trust company	\$6,000
		(v) Continuance in being on the first day of January in any year as a private trust company mentioned in subparagraph (v-u) of this paragraph	\$4,000
		(w) On commencement of the business of a Money Transmission Service Provider	\$11,000
		(x) Continuance in being on the first day of January in any year as a Money Transmission Service Provider mentioned in paragraph (x-w)	\$11,000
		(y) Registration as a Registered Representative of a private trust company or qualified executive entity	\$2,500
		(z) Continuance in being on the first day of January in any year as a person mentioned in subparagraph (y) of this paragraph	\$2,500
		(za) On Commencement of the business of a qualified executive entity	\$5,250
		(zb) Continuance in being on the first day of January in any year as a person mentioned in paragraph (za)	\$3,750
3.		<p>Where any person by reason of falling within a class mentioned in subparagraphs (a) to (y zb) of paragraph 2 of this Schedule has paid a fee therein prescribed in respect of that class for any year and would, but for provisions of this paragraph of this Schedule, be required to pay in that year a further fee or further fees by reason of such person during that year coming additionally within another such class as aforesaid, such person shall not be required to pay in respect of fees under this Act for that year more in total than the highest fee prescribed in respect of any of the classes within which such person falls:</p> <p>Provided that any person in any year falling within a class mentioned at subparagraph (a) or (b) and at the same time within a class mentioned at subparagraph (c), (d) or (e) of the said paragraph 1 of this Schedule shall, subject to paragraphs 4 and 5 of this Schedule, be required to pay the fee prescribed in respect of both such classes for that year.</p>	
4.		<p>As respects the fees specified at subparagraphs (b), (e), (g), (i), (k), (m), (n), (p), (s), (u), (w), and (y), (za) and (zb) of paragraph 2 of this Schedule –</p> <p>(a) not more than sixty days grace, to be calculated from the first day of January in each year, may be allowed</p>	

		<p>by the Treasurer for the payment of the fees payable in any year; and</p> <p>(b) no such fees shall be payable in any year where the original appointment or licence to which such fee relates was made or granted on or after the first day of September in the preceding year.</p>	
5.		Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 2 of the Third Schedule to, the Companies Act and pursuant to subsection (1) of section 176 of, and paragraph 3 of the Schedule to, the International Business Companies Act shall be deducted from any fees payable by such person in that year under this Act.	
		<p>FOURTH SCHEDULE (Section 18BI(4)) Securities Transfer Instruments</p> <p>Part 1 General</p>	
	<u>1</u>	Interpretation	
		<p>In this Schedule –</p> <p>“prescribed entity” means –</p> <p>(a) a bank under statutory administration;</p> <p>(b) a holding company of a bank under statutory administration;</p> <p>(c) an affiliated operational entity of a bank under statutory administration;</p> <p>(d) a bridge institution to which –</p> <p>(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or</p> <p>(ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument;</p> <p>(e) an asset management vehicle to which assets, rights or liabilities mentioned in paragraph 18BI(2) have been transferred by a property transfer instrument.</p> <p>“securities” includes—</p> <p>(a) shares and stock;</p> <p>(b) debentures, including—</p>	

		<ul style="list-style-type: none"> (i) debenture stock, (ii) loan stock, (iii) bonds, (iv) certificates of deposit, and (v) any other instrument creating or acknowledging a debt. <p>(c) warrants or other instruments that entitle the holder to acquire anything in paragraph (a) or (b);</p>	
	<u>2</u>	<u>Securities transfer instrument</u>	
		<p><u>(1) A securities transfer instrument is an instrument that –</u></p> <ul style="list-style-type: none"> <u>(a) provides for the transfer of securities issued by a prescribed entity; and</u> <u>(b) makes any other provision for the purpose of, or in connection with, the transfer of securities issued by a prescribed entity (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).</u> <p><u>(2) A securities transfer instrument may relate to –</u></p> <ul style="list-style-type: none"> <u>(a) specified securities; or</u> <u>(b) securities of a specified description.</u> 	
	<u>3</u>	<u>Procedure</u>	
		<p><u>As soon as practicable after making a securities transfer instrument in respect of a prescribed entity, the Central Bank or statutory administrator must –</u></p> <ul style="list-style-type: none"> <u>(a) Send a copy to –</u> <ul style="list-style-type: none"> <u>(i) the transferor;</u> <u>(ii) the transferee; and</u> <u>(iii) the Minister of Finance;</u> <u>(b) publish a copy of the instrument on its internet website;</u> <u>(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and</u> <u>(d) cause notice of the making of the instrument to be published in the Gazette.</u> 	
	<u>4</u>	<u>Effect of securities transfer instrument</u>	
	<u>(1)</u>	<u>A transfer of securities and any other provision contained in a securities transfer instrument takes effect by operation of this Act.</u>	

	<u>(2)</u>	<u>A transfer takes effect at the times, or on the date, specified in the securities transfer instrument.</u>	
	<u>(3)</u>	<u>A transfer takes effect despite any restriction arising under contract or legislation or in any other way.</u>	
	<u>(4)</u>	<u>A securities transfer instrument may provide for a transfer to take effect free of any trust, liability or other encumbrance (and may include provision about the extinguishment of any trust, liability or other encumbrance).</u>	
	<u>(5)</u>	<u>A securities transfer instrument may extinguish rights to acquire securities.</u>	
	<u>(6)</u>	<u>This paragraph does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a securities transfer instrument.</u>	
	<u>(7)</u>	<u>In this paragraph – “restriction” includes – (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and (b) a requirement for consent (however described); “transfer” means a transfer of securities under a securities transfer instrument.</u>	
	<u>5</u>	<u>Continuity</u>	
	<u>(1)</u>	<u>A securities transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.</u>	
	<u>(2)</u>	<u>A securities transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.</u>	
	<u>(3)</u>	<u>A securities transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.</u>	
	<u>(4)</u>	<u>A securities transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.</u>	
	<u>(5)</u>	<u>A securities transfer instrument may permit or require –</u>	

		<p><u>(a) a transferor to provide a transferee with information and assistance; and</u></p> <p><u>(b) a transferee to provide a transferor with information and assistance.</u></p>	
	<u>6</u>	<u>Conversion and de-listing</u>	
	<u>(1)</u>	<u>A securities transfer instrument may provide for securities to be converted from one form or class to another.</u>	
	<u>(2)</u>	<u>A securities transfer instrument may provide for the listing of securities on a recognized stock exchange to be cancelled or dealings in securities on a recognized stock exchange to be suspended.</u>	
	<u>7</u>	<u>Removal of directors etc.</u>	
	<u>(1)</u>	<u>A securities transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.</u>	
	<u>(2)</u>	<u>The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.</u>	
	<u>8</u>	<u>Instruments</u>	
	<u>(1)</u>	<u>A securities transfer instrument may permit or require the execution, issue or delivery of an instrument.</u>	
	<u>(2)</u>	<u>A securities transfer instrument may provide for a transfer to have effect irrespective of –</u> <u>(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with; or</u> <u>(b) registration.</u>	
	<u>(3)</u>	<u>A securities transfer instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the securities transfer instrument.</u>	
	<u>(4)</u>	<u>A securities transfer instrument may modify or annul the effect of an instrument.</u>	
	<u>(5)</u>	<u>A securities transfer instrument may –</u> <u>(a) entitle a transferee to be registered in respect of a security; and</u> <u>(b) for that purpose, require a person to effect registration.</u>	
	<u>9</u>	<u>Incidental provision, etc</u>	

	<u>(1)</u>	<u>A securities transfer instrument may include incidental, consequential or transitional provisions.</u>	
	<u>(12)</u>	<u>In relying on subparagraph (1), a securities transfer instrument –</u> <u>(a) may make provision generally or only for specified purposes, cases or circumstances; and</u> <u>(b) may make different provision for different purposes, cases or circumstances.</u>	
		<u>Part 2</u> <u>Supplemental Securities Transfer Instrument</u>	
	<u>10</u>	<u>Supplemental securities transfer instrument</u>	
	<u>(1)</u>	<u>This Part applies if the Central Bank has made a securities transfer instrument under section 18BI (original instrument).</u>	
	<u>(2)</u>	<u>The Central Bank or statutory administrator or statutory administrator may make one or more supplemental securities transfer instruments.</u>	
	<u>(3)</u>	<u>A supplemental securities transfer instrument is a securities transfer instrument that –</u> <u>(a) provides the transfer of securities that were issued by the prescribed entity before the original instruments and were not the subject of the original instrument or another supplemental securities transfer instrument; or</u> <u>(b) makes provision of a kind that a securities transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).</u>	
	<u>(4)</u>	<u>The possibility of making a supplemental securities transfer instrument in reliance on subparagraph (2) does not prevent the making of a new instrument under section 18BI (and not in reliance on subparagraph (2)).</u>	
	<u>(5)</u>	<u>Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental securities transfer instrument in the same way as it applies with respect to an original instrument.</u>	
	<u>11</u>	<u>Part 3</u> <u>Reverse Securities Transfer Instrument</u>	
	<u>(1)</u>	<u>This Part applies if the Central Bank or statutory administrator has made a securities transfer instrument under section 18BI (original instrument) providing for the transfer of securities issued by a prescribed entity (original</u>	

		<u>transferred securities) to another entity (original transferee).</u>	
	<u>(2)</u>	<u>The Central Bank or statutory administrator may make one or more reverse securities transfer instruments in respect of original transferred securities held by the original transferee.</u>	
	<u>(3)</u>	<u>A reverse securities transfer instrument is a securities transfer instrument that –</u> <u>(a) provides for the transfer of original transferred securities held by the original transferee to the transferor under the original instrument; and</u> <u>(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred securities (whether or not the transfer was the subject of that instrument).</u>	
	<u>(4)</u>	<u>The Central Bank or statutory administrator must not make a reverse securities transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.</u>	
	<u>(5)</u>	<u>Nothing in this subparagraph prevents the making of a supplemental securities transfer instrument under Part 2 of this Schedule in respect of securities that have been the subject of a reverse securities transfer instrument.</u>	
	<u>(6)</u>	<u>Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse securities transfer instrument in the same way as it applies with respect to an original instrument.</u>	
		<u>FIFTH SCHEDULE</u> <u>(Section 18BI(5))</u>	
		<u>Property Transfer Instruments</u>	
		<u>Part 1</u>	
		<u>General</u>	
	<u>1</u>	<u>Interpretation</u>	
		<u>In this Schedule –</u> <u>“prescribed entity” means –</u> <u>(a) a bank under statutory administration;</u> <u>(b) a holding company of a bank under statutory administration;</u> <u>(c) an affiliated operational entity of a bank under statutory administration;</u> <u>(d) a bridge institution to which –</u> <u>(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or</u>	

		<p>(ii) <u>assets, rights or liabilities of such an entity have been transferred by a property transfer instrument; or</u></p> <p>(e) <u>an asset management vehicle to which assets, rights or liabilities mentioned in section 18BI(2) have been transferred by a property transfer instrument.</u></p>	
	<u>2</u>	<u>Property transfer instrument</u>	
	<u>(1)</u>	<p>A property transfer instrument is an instrument that –</p> <p>(a) <u>provides for the transfer of assets, rights or liabilities of a prescribed entity; and</u></p> <p>(b) <u>makes any other provision for the purpose of, or in connection with, the transfer of assets, rights or liabilities of a prescribed entity (whether or not the transfer was the subject of that instrument).</u></p>	
	<u>(2)</u>	<p>A property transfer instrument may relate to –</p> <p>(a) <u>all assets, rights and liabilities;</u></p> <p>(b) <u>all assets, rights and liabilities subject to specified exceptions;</u></p> <p>(c) <u>specified assets, rights or liabilities; or</u></p> <p>(d) <u>assets, rights or liabilities of a specified description.</u></p>	
	<u>3</u>	<u>Procedure</u>	
		<p><u>As soon as practicable after making a property transfer instrument in respect of a prescribed entity, the Central Bank or statutory administrator must –</u></p> <p>(a) <u>Send a copy to—</u></p> <p style="padding-left: 20px;"><u>(i) the transferor;</u></p> <p style="padding-left: 20px;"><u>(ii) the transferee; and</u></p> <p style="padding-left: 20px;"><u>(iii) the Minister of Finance;</u></p> <p>(b) <u>publish a copy of the instrument on its internet website;</u></p> <p>(c) <u>arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and</u></p> <p>(d) <u>cause notice of the making of the instrument to be published –</u></p> <p style="padding-left: 20px;"><u>(i) in the Gazette; and</u></p> <p style="padding-left: 20px;"><u>(ii) in the Gazette to maximize the likelihood of the notice coming to the attention of persons likely to be affected.</u></p>	
	<u>4</u>	<u>Effect of property transfer instrument</u>	

	<u>(1)</u>	<u>A transfer of assets, rights or liabilities and any other provision contained in a property transfer instrument takes effect by operation of this Act.</u>	
	<u>(2)</u>	<u>A transfer takes effect at the time, or on the date, specified in the property transfer instrument.</u>	
	<u>(3)</u>	<u>Subject to any condition imposed under subparagraph (4), a transfer takes effect despite any restriction arising under contract or legislation or in any other way.</u>	
	<u>(4)</u>	<u>A property transfer instrument may make a transfer subject to such conditions as the Central Bank or statutory administrator determines, provide for a transfer to be a conditional or a specified event or situation –</u> <u>(a) occurring or arising; or</u> <u>(b) not occurring or arising.</u>	
	<u>(5)</u>	<u>A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subparagraph (4).</u>	
	<u>(6)</u>	<u>Consequences mentioned in subparagraph (5) may include any of the following –</u> <u>(a) automatic vesting in the original transferor;</u> <u>(b) an obligation to effect a transfer back to the original transferor;</u> <u>(c) provision making a transfer or anything done in connection with a transfer void or voidable.</u>	
	<u>(7)</u>	<u>If a property transfer instrument makes provision in respect of assets held on trust (however arising), it may also make provision about –</u> <u>(a) the terms on which the assets are to be held after the instrument takes effect, which provision may remove or alter the terms of the trust but only to the extent that the Central Bank or statutory administrator thinks it necessary or expedient for transferring –</u> <u>(i) the legal or beneficial interest of the transferor in the assets; or</u> <u>(ii) any powers, rights or obligations of the transferor in respect of the assets; or</u> <u>(b) how any powers, provisions and liabilities in respect of the assets are to be exercisable or have effect after the instrument takes effect.</u>	
	<u>(8)</u>	<u>Provision may not be made under sub-subparagraph (7)(a) that affects the beneficial interest of a client in the client's assets held on trust, however arising.</u>	
	<u>(9)</u>	<u>In subparagraph (7), a reference to the transferor is a reference to the transferor under the property transfer instrument.</u>	
	<u>(10)</u>	<u>Nothing in paragraph 4 affects the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a creditor or shareholder who is or was the trustee under the trust or a counterparty to the contract prior to the appointment of a statutory</u>	

		<u>administrator if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a property transfer instrument.</u>	
	<u>(11)</u>	<u>A transfer of an interest in land under a property transfer instrument does not extinguish, affect, vary, diminish or postpone any priority of that interest, whether under any Act or in equity.</u>	
	<u>(12)</u>	<u>The Central Bank or statutory administrator must register or cause to be recorded in the Registry –</u> <u>(a) a copy of the property transfer instrument under which an interest in land is transferred;</u> <u>(b) a copy of an instrument that states whether any condition imposed on the transfer under subparagraph (4) is satisfied; and</u> <u>(c) a copy of an instrument that evidences an automatic vesting in the original transferor in consequence of a breach of such condition.</u>	
	<u>(13)</u>	<u>The production of the instruments mentioned in sub-subparagraph (12)(a) and (b) is conclusive evidence for proving and deducing title in favour of the transferee. However, in the case of an automatic vesting in the original transferor, the production of the instruments mentioned in sub-subparagraph (12)(a), (b) and (c) is conclusive evidence for proving and deducing title in favour of the original transferor.</u>	
	<u>(14)</u>	<u>Notwithstanding the provisions of any other law, the vesting of an interest in land under a property transfer instrument does not –</u> <u>(a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest;</u> <u>(b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest;</u> <u>(c) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest or in any instrument concerning or affecting that interest;</u> <u>(d) operate as a breach of covenant or condition against alienation;</u> <u>(e) give rise to any forfeiture, damages or other right of action; or</u> <u>(f) invalidate or discharge any contract or security interest.</u>	
	<u>(15)</u>	<u>In this paragraph –</u> <u>“Registry” has the meaning ascribed to it by section 2 of the Registration of Records Act, (Ch. 187)</u> <u>“restriction” includes –</u>	

		<p><u>(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and</u></p> <p><u>(b) a requirement for consent (however described);</u></p> <p><u>“transfer” means a transfer of assets, rights or liabilities under a property transfer instrument.</u></p>	
	<u>5</u>	<u>Application to Court</u>	
	<u>(1)</u>	<u>The Central Bank may, if of the opinion that a transferee has breached a condition of a transfer imposed under subparagraph 4(4) of this Schedule, apply to the Court for an order under subparagraph (2).</u>	
	<u>(2)</u>	<u>On an application under subparagraph (1), the Court may, if satisfied that the transferee has breached a condition mentioned in that subparagraph, make any order that it thinks fit, including in order that the transferee effects a transfer back to the original transferor.</u>	
	<u>6</u>	<u>Transferable property</u>	
		<p><u>A property transfer instrument may transfer any assets, rights or liabilities of a prescribed entity including, in particular-</u></p> <p><u>(a) assets, rights or liabilities acquired or arising between the making of the instrument and the transfer date;</u></p> <p><u>(b) rights or liabilities arising on or after the transfer date in respect of matters occurring before that date;</u></p> <p><u>(c) assets outside The Bahamas;</u></p> <p><u>(d) rights or liabilities under a non-Bahamian law; and</u></p> <p><u>(e) rights or liabilities arising under an Act to which the prescribed entity is entitled or subject.</u></p>	
	<u>7</u>	<u>Continuity</u>	
	<u>(1)</u>	<p><u>A property transfer instrument may provide –</u></p> <p><u>(a) for a transfer to be, or to be treated as, a succession; and</u></p> <p><u>(b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.</u></p>	
	<u>(2)</u>	<u>A property transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.</u>	
	<u>(3)</u>	<u>A property transfer instrument may provide for any (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.</u>	

	(4)	<u>A property transfer instrument that transfers, or enables the transfer of, a contract of employment may include provision about continuity of employment.</u>	
	(5)	<u>A property transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.</u>	
	(6)	<u>In so far as rights and liabilities in respect of anything transferred are enforceable after the transfer, a property transfer instrument may provide for apportionment between the transferor and the transferee to a specified extent and in specified ways.</u>	
	(7)	<u>A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instruments, but a modification –</u> <u>(a) must achieve a result that could have been achieved by the instrument; and</u> <u>(b) may not transfer (or arrange for the transfer of) assets, rights or liabilities.</u>	
	(8)	<u>A property transfer instrument may permit or require –</u> <u>(a) a transferor to provide a transferee with information and assistance; and</u> <u>(b) a transferee to provide a transferor with information and assistance.</u>	
	8	<u>De-listing</u>	
		<u>A property transfer instrument may provide for a listing of securities on a recognized stock exchange to be cancelled or dealings in securities on recognized stock exchanges to be suspended.</u>	
	9	<u>Removal of directors etc.</u>	
	(1)	<u>A property transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from such date as may be specified in the instrument.</u>	
	(2)	<u>The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.</u>	
	10	<u>Licences</u>	
	(1)	<u>A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.</u>	
	(2)	<u>A property transfer instrument may disapply subparagraph (1) to a specified extent.</u>	

<u>(3)</u>	<u>If a licence confers rights or imposes obligations, a property transfer instrument may apportion responsibility for the exercise of, or compliance with, those rights or obligations between the transferor and the transferee.</u>
<u>(4)</u>	<u>In this paragraph – “licence” includes permission and approval and any other permissive document in respect of anything transferred.</u>
<u>11</u>	<u>Creation of liabilities</u>
<u>(1)</u>	<u>The provision that may be made by a property transfer instrument includes provision for the creation of liabilities.</u>
<u>(2)</u>	<u>The provision may be framed by reference to an agreement that has been or is to be entered into, or anything else that has been or is to be done, by any person.</u>
<u>12</u>	<u>Insured Deposits</u>
<u>(1)</u>	<u>This paragraph applies if a property transfer instrument transfers an insured deposit and both the transferor and transferee are members of the deposit insurance fund under the Protection of Depositors Act.</u>
<u>(2)</u>	<u>Any insured deposit held by a depositor with the transferee immediately before the transfer date continues to be an insured deposit.</u>
<u>(3)</u>	<u>An insured deposit mentioned in subparagraph (2) is not affected by any increase in the number or amount of deposits held by the depositor with the transferee as a result of a transfer caused by the property transfer instrument.</u>
<u>(4)</u>	<u>Any insured deposit held by a depositor with the transferor immediately before the transfer date that is transferred by the property transfer instrument (transferred insured deposit) continues to be an insured deposit for the period of 6 months beginning on the transfer date, even if it matures on or after the transfer date and is renewed with the transferee.</u>
<u>(5)</u>	<u>Notwithstanding the provisions of sub-paragraph (4), where the transferred insured deposit has an original maturity date that is after the expiry of the period of 6 months beginning on the transfer date, it continues to be an insured deposit until it first matures after the transfer date.</u>
<u>(6)</u>	<u>Subparagraph (4) has effect despite the number or amount of deposits held by the depositor with the transferee immediately before the transfer date.</u>
<u>(7)</u>	<u>This paragraph has effect despite anything to the contrary in the Protection of Depositors Act.</u>
<u>13</u>	<u>Non—Bahamas property</u>

	<u>(1)</u>	<u>This paragraph applies if a property transfer instrument transfers non-Bahamian property.</u>	
	<u>(2)</u>	<u>The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of the law of the jurisdiction where the property is located (if it is not otherwise so effective).</u>	
	<u>(3)</u>	<u>Until the transfer is effective as a matter of non-Bahamian law, the transferor must –</u> <u>(a) hold the asset or right for the benefit of the transferee (together with any additional asset or right accruing by operation of the original asset or right);</u> <u>or</u> <u>(b) discharge the liability on behalf of the transferee.</u>	
	<u>(4)</u>	<u>If the Central Bank determines that, despite any steps taken by the transferee or the transferor, it is not possible for the transfer of certain non-Bahamian property to be effective under the law of the jurisdiction where the property is located or (if the property consists of rights or liabilities) the law under which it arises</u> <u>(a) subparagraph (3) ceases to apply; and</u> <u>(b) the provisions of the property transfer instrument relating to that property are void.</u>	
	<u>(5)</u>	<u>The Central Bank must give written notice of any determination under subparagraph (4) to the transferor and the transferee.</u>	
	<u>(6)</u>	<u>The transferor must meet any expenses of the transferee in complying with this paragraph.</u>	
	<u>(7)</u>	<u>The transferor must comply with any directions of the Central Bank in respect of the obligations under subparagraphs (2) and (3).</u>	
	<u>(8)</u>	<u>A direction under subparagraph (7) may disapply subparagraph (2) or (3) to a specified extent.</u>	
	<u>(9)</u>	<u>An obligation imposed by or under this paragraph is enforceable as if created by contract between the transferor and transferee.</u>	
	<u>14</u>	<u>Incidental provision</u>	
	<u>(1)</u>	<u>A property transfer instrument may include incidental, consequential or transitional provisions.</u>	
	<u>(2)</u>	<u>In relying on subparagraph (1), a property transfer instrument –</u> <u>(a) may make provision generally or only for specified purposes, cases or circumstances; and</u> <u>(b) may make different provision for different purposes, cases or circumstances.</u>	
		<u>Part 2</u> <u>Supplemental Property Transfer Instrument</u>	

	<u>15</u>	<u>Supplemental property transfer instrument</u>	
	<u>(1)</u>	<u>This Part applies if the Central Bank has made a property transfer instrument under section 18BI (original instrument).</u>	
	<u>(2)</u>	<u>The Central Bank may make one or more supplemental property transfer instruments.</u>	
	<u>(3)</u>	<u>A supplemental property transfer instrument is a property transfer instrument that –</u> <u>(a) provides for assets, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument); or</u> <u>makes provision of a kind that a property transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).</u>	
	<u>(4)</u>	<u>The possibility of making a supplemental property transfer instrument in reliance of subparagraph (2) does not prevent the making of a new instrument under Section 18BL (and not in reliance on subparagraph (2)).</u>	
	<u>(5)</u>	<u>Paragraph 25 does not apply to the making of a supplemental property transfer instrument.</u>	
	<u>(6)</u>	<u>Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental property transfer instrument in the same way as it applies with respect to an original instrument.</u>	
		<u>Part 3</u> <u>Reverse Property Transfer Instrument</u>	
	<u>16</u>	<u>Reverse property transfer instrument</u>	
	<u>(1)</u>	<u>This Part applies if a Central Bank has made a property transfer instrument under Section 18BL (original instrument) providing for the transfer of assets, rights or liabilities of a prescribed entity (original transferred assets, rights or liabilities) to another entity (original transferee).</u>	
	<u>(2)</u>	<u>The Central Bank may make one or more reverse property transfer instruments in respect of original transferred assets, rights or liabilities held by the original transferee.</u>	
	<u>(3)</u>	<u>A reverse property transfer instrument is a property transfer instrument that –</u> <u>(a) provides for the transfer of original transferred assets, rights or liabilities held by the original transferee to the transferor under the original instrument; and</u> <u>(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred assets, rights or liabilities (whether or</u>	

		<u>not the transfer was the subject of that instruments).</u>	
	<u>(4)</u>	<u>The Central Bank must not make a reverse property transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.</u>	
	<u>(5)</u>	<u>Nothing in this paragraph prevents the making of a supplemental property transfer instrument under Part 2 of this Schedule in respect of assets, rights or liabilities that have been the subject of a reverse property transfer instrument.</u>	
	<u>(6)</u>	<u>Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse property transfer instrument in the same way as it applies with respect to an original instrument.</u>	

BANKS AND TRUST COMPANIES REGULATION BILL, 2019

ARRANGEMENT OF SECTIONS

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Repealed

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Securities Transfer Instruments

FIFTH SCHEDULE (SECTION 18B((5))

Property Transfer Instruments



BANKS AND TRUST COMPANIES REGULATION BILL, 2019

A BILL FOR AN ACT TO MAKE PROVISIONS TO REGULATE BANKS AND TRUST COMPANIES WITHIN THE BAHAMAS; FOR THE PROVISION OF A SPECIAL RESOLUTION FRAMEWORK FOR BANKS AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

1.

Short Title and Commencement.

- (1) This Act may be cited as the Banks and Trust Companies Regulation Act, 2019.

2.

Interpretation.

In this Act -

“asset management vehicle” means a company that is—

- (a) incorporated under the Companies Act;
- (b) limited by shares;
- (c) wholly or partially owned by the Central Bank and or the Government;
- (d) created for receiving some or all of the assets, rights and liabilities of a bank under statutory administration or a bridge institution.

“authorised agent” means a person designated by a bank or trust company under the provisions of section 4;

“Bahamas Agent” means a Registered Representative who provides administrative services to a private trust company under a service agreement;

“Bank” or “Central Bank” has the meaning assigned by section 3 of the Central Bank of The Bahamas Act;

“bank” means any person lawfully carrying on banking business including the accepting of deposits of money withdrawable by cheque;

“banking business” means

- (i) the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them; and
- (ii) without limiting the generality of the foregoing, includes the provision of money transmission services, and “banker” shall be construed accordingly;

“bridge institution” is a company that is-

- (a) incorporated under the Companies Act;
- (b) limited by shares;
- (c) owned by the Central Bank; and
- (d) created for receiving a transfer, and effecting a timely disposal of the assets, rights and liabilities of a bank under statutory administration; and
- (e) licensed under this Act.

“company” means a company incorporated either under the laws of The Bahamas or under the laws of any other country or place;

“controller” means a person—

- (a) in accordance with whose directions, instructions or wishes the directors or officers of a licensee, or of another company of which the licensee is a subsidiary, are accustomed or are under an obligation, whether formal or informal, to act;
- (b) who is able to exercise a significant influence over the management of a licensee, or of another company of which it is a subsidiary by virtue of—
 - (i) a holding of shares or other securities in the licensee or such other company;

- (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the licensee, or such other company;
- (c) who is in a position to determine the policy of the licensee but who is not-
 - (i) a director or officer of the licensee whose appointment has been approved by the Central Bank; or
 - (ii) a person in accordance with whose directions, instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by such person in a professional capacity;

“deposit” means—

- (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person's chequing, savings, demand or time account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; and
- (b) such other payments as the Bank may by regulation prescribe, excluding, subject to sub-paragraph (iii), any unpaid balance of money or its equivalent received or held in relation to the provision of property other than currency, or services or the giving of security; and, for the purposes of this Act, an unpaid balance of money or its equivalent is referable to the provision of property or services or the giving of security only if—
 - (i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is or are not sold, hired or otherwise provided;

- (ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (iii) it is paid by way of security for the delivery or return of any property whether in a particular state of repair or otherwise.

“Designated Person” means the individual or individuals (whether living or deceased) described as such within a Designating Instrument provided that if more than one Designated Person is described as such each Designated Person must be related to a Designated Person so described by consanguinity or some other family relationship;

“Designating Instrument” means an instrument in the form specified in the First Schedule to the Banks and Trust Companies (Private Trust Companies and Qualified Executive Entities) Regulations;

“Domestic Systemically Important Institution” or “DSII” means a bank licensed under this Act and which reported total consolidated domestic liabilities of such amount as the Governor may determine by notice, to the Central Bank for the preceding financial year of that bank;

“Executive Entity” has the meaning ascribed to the term by section 2 of the Executive Entities Act;

“Executive Entity Agent” has the meaning ascribed to the term by section 2 of the Executive Entities Act;

“Financial and Corporate Service Provider” means a person that is licensed pursuant to the Financial and Corporate Service Provider’s Act (Ch.369);

“Governor” means the person appointed as Governor under paragraph 2 of the Schedule to the Central Bank of The Bahamas Act;

“indirect controller” means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in a licensee--

- (a) in accordance with whose directions, instructions or wishes the directors and officers of the licensee are accustomed or under an obligation, whether formal or informal, to act; or
- (b) who is in a position to determine the policy of the licensee, but does not include any person –
 - (i) who is a director or other officer of the licensee whose appointment has been approved by the Central Bank; or
 - (ii) in accordance with whose directions; instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by him in his professional capacity.

“Inspector” means the office of Inspector of Banks and Trust Companies established under section 13;

“insolvent” has the meaning ascribed to it in section 187 of the Companies Act.

“levy” means the amount payable by a DSII for the DSII’s preceding financial year pursuant to section 27(2);

“levy threshold amount” means such sum as the Governor may determine by Notice;

“licence” means a licence granted under section 4 or deemed to be so granted in accordance with that section;

“licensee” means any person holding a licence under the provisions of this Act and for the purposes of this Act “licensee” includes the branches or subsidiaries of a licensee operating outside of The Bahamas;

“Minister” means the Minister of Finance;

“Money Transmission Agent” means any person carrying on money transmission business

on behalf of a Money Transmission Service Provider.

“Money Transmission Business” means the business of accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs and “money transmission services” shall be construed accordingly;

“Money Transmission Service Provider” means any person carrying on a money transmission business;

“Other family relationships” means personal relationship between two persons —

- (a) by marriage or former marriage; or
- (b) which exists if —
 - (i) one is the child of the other, natural or adopted, legitimate or illegitimate; or
 - (ii) one is regarded by the other as his child;

“Penalty” means an administrative monetary penalty imposed by the Central Bank pursuant to section 46 of the Central Bank of The Bahamas Act;

“Private Trust Company” means a company incorporated under the provisions of the Companies Act, or the International Business Companies Act, which by its Memorandum and Articles of Association —

- (a) acts as trustee only for a trust or trusts created or to be created by or at the direction of a Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated

Persons need not be named in such company's Memorandum and/or Articles of Association;

- (b) is required to have a Registered Representative; and
- (c) is not the subject of a notice of withdrawal made under section 4(7);

“Qualified Executive Entity” means an Executive Entity registered in accordance with the provisions of the Executive Entities Act which by its Charter and Articles —

- (a) acts as trustee for a trust or trusts created or to be created by or at the direction only of a Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated Persons need not be named in such Executive Entity's Charter and/or Articles except where the Designated Person or Designated Persons is also the Founder or Founders of the Executive Entity;
- (b) owns, manages and holds trust assets;
- (c) is required to have a Registered Representative; and
- (d) is not the subject of a notice of withdrawal made under section 4(7).

“Registered Representative” means a person resident in The Bahamas that is--

- (a) licensed pursuant to section 3(2) to provide to--
 - (i) a Private Trust Company, the services of a —
 - (aa) secretary;
 - (bb) director; or
 - (cc) Bahamas Agent, and
 - (ii) a Qualified Executive Entity, the services of an Executive Entity Agent, and
 - (iii) a Foundation, the services of a Foundation Agent; or.

- (b) a licensed Financial and Corporate Service Provider registered with the Central Bank to provide the services referred to in (i) and (ii);

“Securities Commission” means the Securities Commission of The Bahamas referred to in section 10(1) of the Securities Industry Act, 2011.

“Stabilization option” refers to a power that may be exercised in relation to a bank under statutory administration, pursuant to section 18BH or 18BI.

“Supervisory Authority” in relation to a country or territory outside The Bahamas means a foreign entity charged with the responsibility of conducting consolidated supervision of banking and trust business in a licensee’s home country;

“Total domestic liabilities amount” means an amount equal to the total domestic liabilities of a DSII as reported by the DSII to the Central Bank for the DSII’s preceding financial year”.

“trust business” means the business of acting as trustee, executor or administrator;

“trust company” means any company carrying on trust business.

3.

Licence required to carry on banking business or trust business.

- (1) No banking business shall be carried on from within The Bahamas, whether or not such business is carried on in The Bahamas except by a company in possession of a valid licence granted by the Central Bank authorising it to carry on such business.
- (2) No trust company or Executive Entity shall carry on trust business from within The Bahamas whether or not such business is carried on in The Bahamas unless it is in possession of a valid licence granted by the Central Bank authorising it to carry on such business.
- (3) No person shall be a Registered Representative (whether or not such business is carried on in or

from within The Bahamas) unless that person is-

- (a) in possession of a valid licence granted by the Central Bank pursuant to section 3(2) of this Act; or
- (b) a licensee under the Financial and Corporate Service Providers Act (*Ch. 369*), who is registered with the Central Bank to carry on such business.

(4) The Governor may by Regulation exempt any specified person or class of persons, or any specified class or part of any class of banking or trust business from the provisions of sections 3(1), 3(2) and 4(1), or of any regulations made pursuant to this Act, subject to such terms and conditions as may, in the Governor's opinion, be appropriate.

(5) Subject to subsection (4), the provisions of this Act shall, unless the context otherwise requires, apply *mutatis mutandis* to Private Trust Companies, Qualified Executive Entities and to Registered Representatives.

(6) For the avoidance of doubt, the Central Bank may impose any of the sanctions set out in section 18 (1) (c),(d), (e), (f), (g), (h) and (i) of this Act, against a Private Trust Company, Qualified Executive Entity or a Registered Representative where, in the opinion of the Central Bank, the Private Trust Company or a Registered Representative is, whether in The Bahamas or elsewhere —

- (a) contravening any of the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which registration pursuant to subsection 3(3), or an exemption pursuant to subsection 3(4), was granted; or
- (b) contravening or failing to comply with a direction of the Central Bank; or
- (c) carrying on its business in a manner that is detrimental to the reputation of The Bahamas.

(7) Every person who contravenes the provisions of this section or of section 3A shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand five hundred dollars for each day during which the offence continues.

3A.	<p>Stand-alone Money Transmission Businesses.</p> <p>Any person, other than a bank or trust company licensed under this Act, who desires to carry on the business of providing money transmission services as-</p> <p>(a) a Money Transmission Service Provider shall submit an application to the Central Bank for a licence to carry on such services, in such form, and shall furnish the Central Bank with such information as the Bank may require;</p> <p>(b) a Money Transmission Agent shall, subject to such terms and conditions as the Central Bank may require, register with the Central Bank.</p>
3B.	<p>Application.</p> <p>The provisions of this Act shall, unless the context otherwise requires, apply <i>mutatis mutandis</i> to Money Transmission Service Providers.</p>
3C.	<p>Non-Applicable Provisions.</p> <p>The provisions of sections 4, 8, 14, 15, 17, 20 and 21 shall not apply to Money Transmission Service Providers.</p>
3D.	<p>Application in case of a proposed company.</p> <p>A group of persons may, where the group proposes to form a company for the purpose of carrying on a banking business or a trust business, make application to the Central Bank for an intimation as to whether or not the company will be authorised to carry on such business upon its incorporation.</p>
3E.	<p>Criteria to determine if person is fit and proper.</p> <p>(1) The Central Bank shall, in determining for the purposes of this Act whether a person is or remains a fit and proper person, have regard to all the circumstances, including such person's —</p> <p>(a) honesty, integrity and reputation;</p> <p>(c) competence and capability;</p> <p>(b) financial soundness; and</p> <p>(c) previous disciplinary record, general compliance history including whether the Central Bank or any other domestic regulatory authority, a Supervisory Authority, or other foreign regulatory body, has previously imposed a disciplinary sanction on such person.</p>

- (2) Without limiting the generality of subsection (1), the Central Bank shall consider whether the applicant, or any other person the Bank deems relevant, is a fit and proper person where an application is made —
- (a) pursuant to
 - (i) section 3A;
 - (ii) section 3D;
 - (iii) subsection (1) of section 4; or
 - (b) by a licensed Financial and Corporate Service Provider for registration as a Registered Representative.
- (3) For the purpose of subsection (2), a relevant person includes a person who is or is to be a controller, director, or officer of the business to which the application relates.
- (4) The Central Bank shall refuse to grant a licence or to register a person, where the Bank is of the opinion that the business to which the application relates would not be carried on by fit and proper persons.

4. Application shall be made to the Central Bank.

- (1) Any company desirous of carrying on banking business and any company desirous of carrying on trust business from within The Bahamas shall make application to the Central Bank for the grant of a licence.
- (2) An application made pursuant to subsection (1) shall be in writing and contain such information and particulars, and be accompanied by such references, as may be prescribed and the Central Bank —
- (a) shall, in considering the application, have regard to —
 - (i) the incorporation and ownership structure of the company;
 - (ii) the nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the bank or trust company, as the case may be;
 - (iii) the soundness and feasibility of the business plan; and
 - (iv) the best interests of the financial system in The Bahamas;

- (b) may, if satisfied with respect to the matters set out in subsection (1) of section 3E, grant a licence to the applicant subject to such terms and conditions, if any, as the Bank deems necessary;
- (c) shall, in every case in which application is made pursuant to subsection (1), advise the Minister of the Bank's decision to either grant or refuse the grant of a licence to the applicant.
- (3) Whenever the Central Bank considers it to be in the public interest, the Central Bank may refuse to grant a licence.
- (4) A licence shall not be granted to any bank or trust company having its head office or its registered office outside The Bahamas unless -
- (a) such bank or trust company designates and notifies to the Central Bank-
 - (i) a principal office in The Bahamas,
 - (ii) by name one of its officers who is to be the bank's or trust company's authorised agent in The Bahamas, and
 - (iii) by name another of its officers who in the absence or inability of the officer named under sub-paragraph (ii) is to be the bank's or trust company's authorised agent in The Bahamas;
 - (b) the Central Bank is satisfied that the bank or trust company is subject to adequate consolidated supervision by the Supervisory Authority and that the Supervisory Authority makes no objection to the establishment of the branch or subsidiary in The Bahamas;
 - (c) the Supervisory Authority is permitted to examine, wherever they are kept, the books of the bank or trust company;
 - (d) there are no constraints on internal and external audits imposed by the Supervisory Authority;
 - (e) the Supervisory Authority is informed where the bank or trust company will be managed;
 - (f) the Supervisory Authority has agreed to inform the Central Bank as soon as reasonably possible of any circumstances that arise which may seriously jeopardise the interests of creditors of the bank or trust company.
- (5) It shall be a condition of every licence granted to a bank or trust company to which subsection (4)

applies, that the bank or trust company shall forthwith notify the Central Bank in writing of any change of -

- (a) its principal office in The Bahamas; or
- (b) either or both of the officers designated pursuant to paragraph (a)(ii) or (iii) of subsection (4).

- (6) In respect of a licence granted under subsection (2), the Central Bank may at any time -
- (a) make the licence subject to such conditions or limitations that are consistent with this Act and that relate to the business of the bank or trust company as the Central Bank considers necessary;
 - (b) amend or revoke any authorization contained in the licence or any condition or limitation to which the licence is subject:

Provided that before taking any action under paragraph (a) or (b) the Central Bank shall provide the bank or trust company with an opportunity to make representation regarding any proposed action.

- (7) Subject to subsection (8) the Central Bank may, by notice in writing-
- (a) cancel any registration granted pursuant to section 3(3) or 3(A)(b);
 - (b) withdraw any exemption granted pursuant to section 3(4).

- (8) The Central Bank shall, before cancelling a registration or withdrawing an exemption, afford a person in respect of whom it proposes to take action pursuant to paragraph (a) or (b) of subsection (7), an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being less than seven days.

- (9) Whenever the Central Bank shall cancel a registration or withdraw any exemption under subsection (7) the Bank may cause notice of such action to be published in the Gazette.

- (10) Notwithstanding anything to the contrary in any trust instrument, where the Central Bank is satisfied that in the interests of a trust it is necessary for all or any of the trusts for which the company is acting as trustee to be transferred to a new trustee for administration by such trustee,

the Central Bank may order the transfer of any such trust to a new trustee, and make such supplemental orders or give such directions, as it deems fit.

5. Approval of Central Bank.

A licensee incorporated or registered in The Bahamas shall not without the prior written approval of the Central Bank establish, outside of The Bahamas, a subsidiary, branch, agency or representative office.

6. Shares, etc., not to be issued or transferred without approval.

(1) No shares in a company or any other securities of such company which is a licensee under this Act shall be issued and no issued shares shall be transferred or disposed of in any manner without the prior approval of the Central Bank.

(2) All dividends of the shareholders of a bank or trust company shall be paid out of the profits and not out of the subscribed capital of the bank or trust company.

(3) No person shall become a controller or an indirect controller of a licensee without obtaining the prior approval of the Central Bank.

(4) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

(5) The Central Bank may by Notice in writing exempt any person or class of persons or any class or description of shares or interest in shares from the provisions of this section subject to such terms and conditions, if any, as the Central Bank may deem necessary and may make such further transitional provisions as the Central Bank considers necessary or expedient for the purposes of this section.

6A. Grant of Approval in relation to controllers of a licensee.

(1) The Central Bank may approve an application made by a person pursuant to subsection (3) of section 6, if satisfied that –

(a) the person is a fit and proper person;

- (b) having regard to the likely influence of the person, the licensee will or will continue to conduct its business prudently and to comply with the provisions of this Act; and
- (c) it is in the best interest of the financial system of The Bahamas to approve the application.

- (2) Any approval under this section may be granted to any person subject to such conditions as the Central Bank may determine, including but not limited to any condition –
- (a) restricting the controller’s disposal or further acquisition of shares, or other securities, or voting power, in the licensee; or
 - (b) restricting the controller’s exercise of voting power in the licensee.

- (3) The Central Bank may at any time add to, vary or revoke a condition imposed under subsection (2).

- (4) A condition imposed under subsection (2) shall have effect notwithstanding any provision of the Companies Act, any other law, or anything contained in the memorandum or articles of association of the licensee.

6B. Objection to an existing controller or indirect of a licensee.

- (1) The Central Bank may serve a written notice of objection on a person referred to in subsection 6(3) if the Central Bank is satisfied that—
- (a) the person has ceased to be a fit and proper person;
 - (b) having regard to the likely influence of the person, there is a material risk that, the licensee—
 - (i) will fail to conduct, or is failing to conduct, its business prudently; or
 - (ii) will fail to comply with, or is failing to comply with, the provisions of this Act;
 - (c) a condition of approval imposed on the person under subsection 6(3) has not been complied with;
 - (d) the person has furnished a false or misleading document or information in connection with an application made under subsection 6(1);

- (e) the person has knowingly failed or refused to cooperate with the Central Bank in the performance of its duties
- (f) the Central Bank would not have been satisfied as to any matters specified in subsection (1) had it been aware, at that time, of circumstances relevant to the person's application under subsection 6 (3); or
- (g) it is no longer in the best interests of the financial system in The Bahamas for the person to continue to be a controller or an indirect controller, as the case may be, of a licensee.

- (2) The Central Bank shall, in any written notice of objection, specify a reasonable period within which the person named in the notice shall -
- (a) take such steps as are necessary to ensure that he ceases to be a controller or an indirect controller, as the case may be; or
 - (b) comply with such direction or directions as the Central Bank may make under section 6C.

- (3) A person served with a notice of objection under this section shall comply with the notice.

- (4) Notwithstanding the provisions of subsections (2) and (3), a person who has been served with a notice of objection pursuant to subsection (1) may, within a period of seven days commencing the day after which the notice is served, make written representations to the Central Bank which the Bank shall take into account in determining whether to vary or revoke the notice.

6C. Power to make directions.

- (1) Subject to section 6D, the Central Bank -
- (a) where the Bank is satisfied that a person has failed to comply with a condition imposed under subsection (3) of section 6A; or
 - (b) where the Bank has served a written notice of objection under section 6B, may by notice in writing -
 - (i) direct the transfer or disposal of all or any of the shares or other securities in a licensee held by such person or an associate of such person within such

- time, or subject to such conditions, as the Central Bank considers appropriate;
- (ii) restrict the transfer or disposal of shares or other securities specified pursuant to sub-paragraph (i); or
 - (iii) make such other direction as the Central Bank considers appropriate.

(2) A person to whom a notice is given under subsection (1) shall comply with such direction or directions as may be specified in the notice.

(3) Notwithstanding any of the provisions of the Companies Act, any other law, or anything contained in the memorandum or articles of association of a licensee, a direction or restriction by the Central Bank under subsection (1) shall apply so that, until a transfer or disposal is effected in accordance with the direction, or the restriction on the transfer or disposal is removed—

- (a) no voting rights shall be exercisable in respect of the specified shares or other securities unless the Central Bank expressly permits such rights to be exercised;
- (b) no shares or other securities of the licensee shall be issued or offered, whether by way of rights, bonus or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly permits such issue or offer; and
- (c) except in a liquidation of the licensee, no payment shall be made by the licensee of any amount, whether by way of dividends or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly authorises such payment.

(4) For the purposes of this section, a person, A is an associate of another person B where —

- (a) A is the spouse, parent, remoter lineal ancestor step-parent, son, daughter, remoter issue, step-son, step-daughter, brother or sister of B;
- (b) A is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes —
 - (i) of B, or
 - (ii) where B is a company, of the directors of B;
- (c) B is a company whose directors are accustomed or under an obligation, whether

- formal or informal, to act in accordance with the directions, instructions or wishes -
- (i) of A, or
 - (ii) where A is a company, of the directors of A;
- (d) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
 - (e) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
 - (f) A is a related company of B;
 - (g) A is a company in which B, alone or together with other associates of B as referred to in paragraphs (b) to (f), is in a position to control not less than twenty per cent of the voting power in A;
 - (h) B is a company in which A, alone or together with other associates of A as described in paragraphs (b) to (f), is in a position to control not less than twenty per cent of the voting power in B; or
 - (i) A is a person with whom B has an agreement or arrangement, whether oral or in writing, express or implied, to act together with respect to the –
 - (i) acquisition, holding or disposal, of shares or other interests in the licensee; or
 - (ii) exercise of their voting power in relation to the licensee.

6D.

Offences, penalties and defences.

- (1) A person who –
 - (a) contravenes subsection (1) of section 6;
 - (b) contravenes subsection (3) of section 6;
 - (c) contravenes subsection (3) of section 6B;
 - (d) contravenes subsection (2) of section 6C; or
 - (e) fails to comply with a condition imposed under subsection (3) of section 6A, commits an offence and shall be liable on summary conviction –
 - (i) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or

- to both such fine and imprisonment;
- (ii) in the case of a company, to a fine not exceeding one hundred thousand dollars;
- (iii) in the case of a continuing offence by an individual, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues; and
- (iv) in the case of a continuing offence by a company, to a further fine not exceeding one thousand dollars or each day, or part of a day, during which the offence continues.

- (2) It shall be a defence for a person who is charged with an offence in respect of a contravention of subsection (1) of section 6 to prove that such person –
- (a) was not aware that he had committed the contravention; and
 - (b) within fourteen days of becoming aware that he had committed the contravention –
 - (i) notified the Central Bank of the contravention; and
 - (ii) within such time as was determined by the Bank, took such actions in relation to his shareholding or control of the voting power in the licensee as was directed by the Bank.

7. Use of the word “bank”, etc.

- (1) Except with the approval of the Central Bank no person, other than a licensee acting under and in accordance with the terms of its licence, shall -
- (a) use or continue to use the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language, in the description or title under which such person is carrying on business from within The Bahamas whether or not such business is carried on in The Bahamas;
 - (b) use words representing that that person is carrying on money transmission business, in

English or in any other language, in the description or title under which that person carries on business from within The Bahamas whether or not such business is carried on in The Bahamas.

- (c) make, or continue to make, whether directly or indirectly, any representation in any bill-head, letter, letter-head, circular, paper, notice or advertisement or by any other means whatsoever, whether similar to the foregoing or not, that such person is carrying on banking business, trust business, or money transmission business or is authorised by the law of The Bahamas to carry on such respective business;
- (d) in any manner whatsoever, solicit or receive deposits from the public.

- (2) Except with the approval of the Central Bank -
 - (a) the Registrar General shall not register a company; and
 - (b) no company if already registered immediately before the twenty-fifth day of November, 1968, shall be entitled to remain registered on or after that date, with a name which contains the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language.
- (3) Before giving its approval under subsection (1) or subsection (2) the Central Bank may require of any person such references and such other information and particulars as may be prescribed.
- (4) Whenever the Central Bank considers it to be in the public interest the Central Bank may withdraw any approval given under subsection (1).
- (5) The Central Bank may refuse to grant a licence to, or to register, as the case may be, a person, or if such person is already in possession of a licence or certificate of registration, as the case may be, the Central Bank may revoke such licence or cancel such registration, if in the Bank’s opinion such person is carrying on or intending to carry on banking or trust business, money transmission business or the business of

acting as a Registered Representative, as the case may be, under a name which —

- (a) is identical with that of any company, firm or business house, whether within The Bahamas or not, or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated to suggest, falsely, the patronage of, or connection with some person or authority whether within The Bahamas or not; or
- (c) is calculated to suggest, falsely, that such person has a special status in relation to or derived from the Government of The Bahamas or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognized in The Bahamas as a national or central bank or trust company, money transmission service provider or Registered Representative, as the case may be; or
- (d) is calculated to mislead the public as to the nature of the person's business arrangements.

(6) Every person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.

(7) Where it appears to the Central Bank-

- (a) that a company has contravened any prohibition contained in subsection (1), and that no other effective means exists of dealing with the company in relation to the contravention; or
- (b) that a company is disentitled to remain registered by reason of being in breach of paragraph (b) of subsection (2), then in either such case the Bank may direct the Registrar General to give notice in writing to the company requiring it to show cause within thirty days why it should not be struck off the register of companies; and the Registrar General shall serve such notice accordingly, specifying the contravention or breach complained of, by causing the same

to be delivered personally or sent by prepaid registered post to the secretary of the company at its registered office; and in the case of a notice sent by post it shall be deemed to have been served on the fifth day after the posting of the registered envelope or packet containing the same.

(8) If any company fails within thirty days of the service of a notice under the provisions of subsection (7) to show cause why it should not be struck off the register or to satisfy the Central Bank that the contravention or breach complained of has been discontinued and will not be repeated, then the Central Bank may in writing direct the Registrar General to strike the company off the register; and the Registrar General shall act accordingly and thereupon the company shall be dissolved.

(9) Upon the removal of a company pursuant to this section the provisions of section 271(4) to 274 (inclusive) of the Companies Act shall have effect in relation to such company as they have effect in relation to any company removed from the register pursuant to that Act.

8.

Yearly financial statements to be published.

(1) Every licensee shall, within four months of the end of its financial year, publish a true and full yearly statement of its accounts and the auditor of the licensee shall certify that such statement is properly drawn up so as to exhibit a true and correct view of the state of the licensee's affairs as shown by the books of the licensee; provided that the Central Bank may, if the Bank sees fit, exempt any licensee from the provisions of this section.

(2) Such statement shall be signed by the manager or by such other person or officer of the licensee as may from time to time be authorised by the licensee to sign such statement on behalf of the licensee; and the correctness thereof shall be declared to in such manner and by such persons as the Central Bank may direct.

(3) Such statements shall be published in such form and manner and shall contain such particulars as the Central Bank may from time to time direct.

(4) Every licensee shall provide within four months of the end of its financial year a copy of its annual financial statement to the Central Bank, unless prior written approval for an extension of time has been granted by the Bank.

(5) The Central Bank may, for such further period not exceeding sixty days it deems expedient, extend the time periods referred to in subsections (1) and (4).

9. Information to be furnished to the Central Bank.

(1) Every person who is subject under this Act to the supervision of the Central Bank shall furnish the Bank with such information including returns at such times and in such form as the Bank may reasonably require for the proper discharge of its functions under this Act or any regulations made under this Act.

(2) A person who fails without reasonable excuse to furnish any information required by the Bank under this section commits an offence and shall be liable on summary conviction –

(a) in the case of an individual, to a fine not exceeding fifty thousand dollars (\$50,000) dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred dollars (\$500) for each day, or part of a day, during which the offence continues; or

(b) in the case of a company, to a fine not exceeding one hundred thousand dollars (\$100,000) and, in the case of a continuing offence, to a further fine not exceeding one thousand (\$1,000) for each day, or part of a day, during which the offence continues.

10. Information on Insolvency.

(1) A licensee shall immediately inform the Central Bank where such licensee –

(a) is, or is likely to become, insolvent;

(b) is, or is likely to become, unable to meet its obligations; or

(c) has suspended, or is about to suspend, payments.

(2) The Central Bank may in writing –

(a) where a licensee is, or appears likely to become, unable to meet its obligations; or

- (b) where a licensee, in the opinion of the Bank, is carrying on business in a manner detrimental to the interest of the
 - (i) public;
 - (ii) depositors of the licensee;
 - (iii) beneficiaries of any trust; or
 - (iv) other creditors of the licensee,
 - (A) require the manager or authorised agent of such licensee to supply within such reasonable time as may be specified-the financial statements of such licensee, as of a date determined by the Central Bank, audited by an auditor who is a chartered accountant or a certified public accountant approved by the Bank; and
 - (B) such other information relating to the licensee as the Bank may specify

- (3) A person who –
 - (a) fails to comply with the written requirements of the Central Bank made pursuant to subsection (2); or
 - (b) in response to the written requirements of the Central Bank made pursuant to subsection (2), knowingly or wilfully supplies false information to the Bank, Commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

- (4) A bank that receives any deposit while insolvent commits an offence, and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

- (5) Any director or officer of a bank described in subsection (4) who knows or, in the proper performance of his duties, should know of the insolvency of such bank, and who receives, or authorizes the acceptance of a deposit, commits an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand dollars and to imprisonment for a term not exceeding two years.

11. Recovery Plans.

- (1) (a) The Central Bank shall require a bank to prepare and submit periodically to the Central Bank, a plan for the rapid and orderly recovery of such bank based on different scenarios of financial distress or failure, whether on an individual basis or on a group basis.
- (b) A bank's senior management shall be responsible for the development and maintenance of the bank's recovery planning process.
- (2) (a) The Central Bank may issue a direction to a bank specifying the matters which shall be included in a plan required under subsection (1) and such plan shall be referred to as a "recovery plan" or "the plan".
- (b) A bank shall—
- (i) review its recovery plan at least annually; and
- (ii) keep its recovery plan up to date, including updating the plan to reflect any change to the legal or organizational structure of the bank, its business, its financial situation, and any other matter which could have a material effect on or necessitate a change to the recovery plan;
- (iii) notify the Central Bank promptly of any material changes to its recovery plan and, in any event, within one month of making such change.
- (3) A bank shall update its recovery plans as frequently as required by the Central Bank.
- (4) Where the Central Bank is of the opinion that a recovery plan submitted by a bank pursuant to subsection (1) is deficient in any material respect it shall notify the bank in question of the deficiencies in the plan and require such bank to resubmit the recovery plan within a specified timeframe and with such revisions as may reasonably be required by the Central Bank to address any deficiency in the plan.
- (5) Revisions required by the Central Bank to a bank's recovery plan, pursuant subsection (1) may include proposals for changes in the business operations and corporate structure of the bank to facilitate implementation of the plan.

- (6) Where a bank fails to submit or resubmit a recovery plan in the period required by the Central Bank, the Central Bank may –
- (a) impose more stringent prudential requirements, and/or restrictions on the growth, activities, or operations of the bank, or any branch or subsidiary thereof; or
 - (b) take any other actions the Central Bank may determine, until such time as the bank resubmits a plan that in the opinion of the Central Bank, remedies the deficiencies.

(7) The Central Bank may direct a bank to implement all or a specified part of the bank's recovery plan.

(8) A plan submitted in accordance with this section shall not be binding on the Central Bank or its agents, in the recovery of a bank.

(9) No private right of action may be based on any plan submitted in accordance with this section.

11A. Resolution Plans.

(1) The Central Bank may prepare a resolution plan for a bank (including at a consolidated level in consultation with any other domestic regulatory authority or a Supervisory Authority), using information and analysis submitted by the bank.

(2) A bank shall cooperate with the Central Bank in the exercise of its powers under subsection (1).

(3) The plan referred to in subsection (1) shall set out options for resolving the bank in different scenarios including systemic instability, and shall include details of how resolution powers and tools may be applied to resolve the bank where necessary, in a manner that promotes continuity in its critical functions.

(4) The Central Bank shall update the resolution plan of a bank as frequently as is necessary given the risk profile of the bank.

(5) Where the Central Bank is of the opinion that significant impediments to orderly resolution exist, it may issue a notice directing the bank in writing to address or remove such impediments and the bank shall comply with such direction of the Central Bank.

- (6) The Central Bank shall—
- (a) give reasons for issuing a direction under subsection (5);
 - (b) state when the direction takes effect; and
 - (c) specify a reasonable period within which the bank may make representations to the Central Bank about the direction.

- (7) The Central Bank must consider representations made pursuant to subsection (6)(c) and decide—
- (a) whether to confirm or revoke the notice; and
 - (b) if the notice is revoked, whether to serve a new notice containing a different direction

- (8) The Central Bank must serve written notice on the bank of its decision under subsection (7).

- (9) If no representation is made by the bank within the period specified under subsection (6)(c), the Central Bank must serve written notice on the bank that the notice under section 11A(5) is confirmed.

11B. Objectives of Resolution.

- (1) The powers of the Central Bank under section 18, 18(1)(f) or 18B relating to statutory administration and liquidation shall be exercised by the Central Bank, a statutory administrator or liquidator appointed by the Central Bank, as the case may be, to achieve the objectives of –
- (a) maintaining financial stability ;
 - (b) protecting and enhancing public confidence in the stability of the banking system of The Bahamas;
 - (c) protecting depositors including by ensuring prompt payouts of deposits of a bank in liquidation;
 - (d) minimizing the costs of resolution and avoiding unnecessary destruction of value;
 - (e) protecting public funds;

- (2) In subsection (1)(a) the reference to financial stability includes, in particular, a reference to the continuity of critical banking services.

- (3) The order in which the objectives are listed in this section is not significant; they are to be balanced by the Central Bank as appropriate in each case.

Appointment powers and duties of auditors.

12.

(1) Subject to subsection (2), a licensee shall, within fourteen days of the appointment, notify the Central Bank of the appointment of the auditor of the licensee.

(2) The Central Bank may at any time require a licensee to replace an auditor by notice in writing delivered to the usual place of business of the licensee and the auditor.

(3) An auditor of a licensee shall—

- (a) have the right of access at all times to the books, accounts and vouchers of the licensee and be entitled to require from the licensee such information and explanations as he reasonably considers necessary for the performance of his duties as auditor;
- (b) give the Inspector immediate written notification of the following matters—
 - (i) his intention to resign before the expiration of his term of office as auditor;
 - (ii) his intention not to seek to be reappointed as auditor; and
 - (iii) a decision to include a modification of his report on the licensee's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(4) An auditor or former auditor of a licensee shall give written notice to the Inspector of any fact or matter—

- (a) of which such auditor has or had become aware; and
- (b) which is likely to be of material significance for the discharge, in relation to the licensee, of the functions of the Inspector under this Act.

(5) A Notice under subsection (4) shall be given—

- (a) in the case of an auditor, immediately after the auditor, becomes aware of the matters in respect of which notice is to be given to the Inspector; and
- (b) in the case of a former auditor, as soon as reasonably practicable after this provision comes into force.

(6) An auditor or former auditor who fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of twenty-five thousand dollars.

- (7) This section shall apply to any matter of which an auditor or former auditor of a licensee has or had become aware in his capacity as auditor and which relates to the business or affairs of the licensee or any related company.
- (8) In this section "related company", in relation to a licensee, means—
- (a) a parent company, subsidiary company or associate company of that licensee;
 - (b) a subsidiary company of a parent company of the licensee;
 - (c) a parent company of a subsidiary company of the licensee; or
 - (d) a company wherein a controlling shareholder of that licensee, either alone or with one or more associates, holds ten per cent or more of the shares or is entitled to exercise, or to control the exercise of more than ten per cent of the voting power at a general meeting.
- (9) No duty of confidentiality to which an auditor or former auditor of a licensee may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector, pursuant to—
- (a) paragraph (b) of subsection (3);
 - (b) subsection (4); or
 - (c) paragraphs (a), (b) and (c) of subsection 13(3), any information or opinion which is relevant to the Inspector's functions and responsibilities under this Act.

13. Power and duties of the Inspector.

- (1) There is hereby established within the Central Bank of The Bahamas the Office of Inspector of Banks and Trust Companies and the functions of that office shall be performed by such person as the Governor considers suitable for the purpose of performing the powers and duties assigned to such Inspector under this Act.
- (2) It shall be the duty of the Inspector -
- (a) to maintain a general review of bank and trust company practice in The Bahamas;
 - (b) whenever he thinks fit and when required by the Governor to conduct on-site examinations and off-site supervision of the business of the licensee for the purpose of satisfying himself

that the provisions of this Act or any other Act or regulation relating to compliance with anti-money laundering or countering the financing of terrorism and proliferation financing requirements are being complied with, that the licensee is in sound financial position and, after the conclusion of each examination or supervision, to report to the Governor, or in such cases where the Inspector is unable to conduct such examination or supervision, to appoint an auditor, at the expense of the licensee, to conduct such examination or supervision and to report thereon to the Governor; and the Governor may assess charges to recover the cost of such examination or supervision;

- (c) to examine and to report on the several returns delivered to the Governor pursuant to section 8 of this Act;
- (d) to examine and make recommendations to the Governor with respect to applications for licences;
- (e) to examine, by way of receipt of regular returns or in such other manner as he thinks necessary the affairs or business of any licensee carrying on business in or from within The Bahamas for the purpose of satisfying himself that the Act is being complied with and that the licensee is in sound financial position;
- (f) to inspect and supervise banks and trust companies in accordance with the Rules for Inspection and Supervision set out in the First Schedule.

- (3) In the performance of his functions under this Act and subject to the provisions of section 19, the Inspector shall be entitled at all reasonable times –
 - (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee or;
 - (b) to call upon the manager or any officer of any licensee for such information or explanation;
 - (c) to call upon the auditors of any licensee for such auditor's reports, working papers, information or explanation;
 - (d) to require that the auditor of a licensee report to the Inspector on the extent of the procedures of the auditor in the examination of the annual financial statements and may require that the auditors enlarge the scope of that examination or direct that any other

particular procedure be performed in any particular case;

- (e) to require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the licensee for the safety of its creditors and shareholders, or the beneficiaries of any trust, or any other examination, at the expense of the licensee, as considered necessary by the Inspector as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(4) The Inspector with the approval of the Governor may in writing authorise any other person to assist the Inspector in the performance of his functions under this Act.

- (5) Where any person -
- (a) fails to comply with any requirement made by the Inspector, pursuant to subsection (3), within the period determined by the Inspector or within such further period as the Inspector may determine, it shall be presumed, in the absence of satisfactory evidence being furnished by the licensee justifying such a failure to comply with such requirement, that the licensee concerned has been carrying on business in contravention of the terms of its licence with effect from the date of such failure;
 - (b) knowingly or intentionally supplies false or misleading information to the Inspector or any person authorised to assist the Inspector;
 - (c) as an auditor of a licensee in the performance of an audit, grossly violates the duties of such auditor as set out in subsection (1) of section 8; or makes untrue statements in an audit report or omits essential facts or fails to request pertinent information from the licensee or fails to report his findings to the Inspector; or
 - (d) perpetrates a fraud or a crime which involves the making of misrepresentations in advertising or otherwise or using the domicile of The Bahamas for such purposes he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.

13.A Notice to the Central Bank.

- (1) A licensee shall immediately notify the Central Bank of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.
- (2) (a) A licensee which contravenes or fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars.
- (b) Where a licensee is convicted of an offence pursuant to paragraph (a) of subsection (2), every director, manager, secretary or other officer of the licensee is guilty of the offence where it is proved that the default which constituted the offence took place with that person's knowledge, authority, permission or implied or express consent and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

14. Inspection by supervisory authority.

- (1) A Supervisory Authority which is responsible for regulating a bank or trust company with a branch or subsidiary incorporated inside The Bahamas may upon written notification to and approval by the Inspector, conduct an inspection, under conditions of confidentiality, and subject to the conditions set out in subsection (2), solely for purposes of consolidated supervision, of the books and accounts of any branch or subsidiary of that bank or trust company in The Bahamas and may gather only such information as is necessary for the performance of consolidated supervision of any branch or subsidiary of that bank or trust company in The Bahamas, being information as to whether such branch or subsidiary of that bank or trust company as a constituent of the banking group -
- (a) is adequately organized;
- (b) has adequate risk management systems and appropriately identifies, limits and monitors risks inherent in that bank or trust company's business activities;
- (c) is managed by persons who are fit and proper for the conduct of business activities;
- (d) complies with capital-adequacy and risk-diversification requirements on a consolidated basis; and
- (e) correctly complies with its reporting duties to the Supervisory Authority.

- (2) Any branch or subsidiary of a bank or trust company to which subsection (1) applies shall, subject to the conditions set out below, permit the Supervisory Authority at all reasonable times, to conduct its inspection under subsection (1) where -
- (a) the Supervisory Authority has obtained the prior written approval of the Inspector;
 - (b) the Supervisory Authority is prohibited by its domestic laws from divulging information obtained in the course of the inspection to any other person or where the Supervisory authority has given such written undertaking, as the Inspector may require, as to the confidentiality of the information obtained;
 - (c) the Supervisory Authority has given to the Inspector a written undertaking to comply with the provisions of this Act and any condition imposed by the Inspector under this section;
 - (d) the Supervisory Authority has given to the Inspector a written undertaking to use the information obtained exclusively for the purpose of consolidated supervision;
 - (e) the Supervisory Authority has given to the Inspector a written undertaking that it shall not transmit information obtained during the course of its inspection to any other authorities or bodies without the written consent of the Inspector;
 - (f) the Supervisory Authority agrees to subsequently report to the Inspector on the general results of the inspection.

- (3) Where information concerning criminal or penal matters comes to the attention of the Supervisory Authority in the course of an inspection, and the Supervisory Authority wishes to convey such information to any person or entity in the Supervisory Authority's home country, or elsewhere, the Supervisory Authority shall not, without first obtaining the consent in writing of the Inspector, divulge such information to any person or entity in the home country of the Supervisory Authority or elsewhere:

Provided that in all cases, the Supervisory Authority shall inform the Inspector of any information concerning criminal or penal matters which come to the Supervisory Authority's attention in the course of an inspection.

- (4) The Supervisory Authority, in carrying out an inspection under subsection (1), shall not have

access to information relating to the assets under management or deposit operations of individual customers of a licensee:

Provided however, that where the Supervisory Authority during an inspection within The Bahamas wishes to gain access to information, which directly or indirectly relates to assets under management or deposit operations of any individual customer for the purpose of assessing any risks and addressing any specific supervisory concerns, the Supervisory Authority shall inform the Inspector and the Inspector shall gather the information himself and shall, upon being satisfied that the information meets the requirements set out in this subsection, transmit it to the Supervisory Authority requesting it.

- (5) The Inspector or any authorized agent of the Inspector may, whenever the Inspector thinks fit or upon the request of a licensee accompany a Supervisory Authority during its inspection within The Bahamas of a licensee, pursuant to this section.

15. Appointed body to conduct inspection.

- (1) A Supervisory Authority may, with the prior written approval of the Inspector, appoint another body to conduct the inspection referred to in subsection (1) of section 14 and in such event the provisions of this section and subsections (1), (2), (3), (4) and (5) of section 14 shall apply to the appointed body in the same way as they apply to the Supervisory Authority.

- (2) The Inspector may, at any time after granting approval for an inspection under this section require the Supervisory Authority to comply with such other conditions as the Inspector may determine.

16. Confidentiality of reports of Inspector and Supervisory Authority.

- (1) Any person who has, by any means, access to a report or other information or document produced by the Inspector or a Supervisory Authority upon examination or inspection of a licensee under section 13 or 14, by reason of his acting in any of the following capacities -
- (a) director, officer, employee or agent of any licensee or former licensee;
 - (b) counsel and attorney, consultant or auditor of The Central Bank or as an employee or agent

- of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;
- (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor, shall not communicate the report or other information or document or any part thereof to any person other than a director, officer, employee or agent of the licensee without the prior written permission of the Inspector.

(2) The Inspector may grant permission under subsection (1) subject to such conditions as may be determined by the Inspector.

(3) If any person receives a report or any part of a report or other information or document referred to in subsection (1), knowing or having reasonable grounds to believe, that such report or other information or document or part thereof was communicated to him in contravention of this section, that person shall be guilty of an offence unless he proves -

(a) that the report or other information or document or part thereof, as the case may be, was communicated to him contrary to his intention; and

(b) where the communication was effected in any written form, that he has conveyed or has taken reasonable steps to convey the report or other information or document or part thereof, as the case may be, to the Inspector.

(4) Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

17. Rules for inspection and supervision of banks.

The rules set out in the First Schedule shall be observed by the Inspector for the purpose of supervising banks and trust companies and their operations so as to ensure the preservation of the soundness and efficiency of the banking system.

18.

Powers of the Central Bank.

- (1) The Central Bank may -
- (a) by order, revoke the licence of a licensee -
 - (i) if, in the opinion of the Central Bank, the licensee is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or the beneficiaries of any trust or other creditors or is either in The Bahamas or elsewhere contravening the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which the licence was issued;
 - (ii) if the licensee has ceased to carry on banking business or trust business; or
 - (iii) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved;
 - (iv) if a licensee is, or appears likely to become, unable to meet its obligations as they fall due;
 - (v) if a licensee has failed to comply with a direction of the Central Bank made pursuant to paragraph (h) of subsection (1) of section 18;
 - (vi) if it appears to the Central Bank that the licensee has furnished information or documents to the Bank in connection with its application for a licence which is or are false or misleading in a material particular or has failed to inform the Central Bank of a material change in respect of information so furnished and the Bank shall subsequently advise the Minister of its decision;
 - (b) impose, amend or vary conditions upon the licence;
 - (c) require the substitution or removal of any director or officer of the licensee;
 - (d) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Central Bank thereon within three months of the date of his appointment;
 - (e) at the expense of the licensee, appoint a receiver or receiver manager to assume control of the licensee's affairs in the interest of creditors who will have all the powers of a receiver under the Companies Act; and

- (f) at the expense of the bank, appoint a statutory administrator of the bank, who meets the qualifications established by the Central Bank including fit and proper person criteria required to be met by directors and officers of banks, to manage the bank on its behalf.
- (g) issue directions requiring a licensee to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or that is in contravention of any law in The Bahamas or elsewhere, or to perform a remedial act, or to do anything required to be done and such directions include the power to—
 - (i) restrict the licensee or a subsidiary of a licensee from further lending;
 - (ii) limit a licensee's maximum individual and aggregate exposures, including off-balance sheet transactions, investments, or capital expenditure;
 - (iii) require the licensee or a subsidiary to dispose of specified assets;
 - (iv) require the licensee to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Central Bank has caused material losses to the licensee or its subsidiary, is detrimental to the interest of depositors, the beneficiaries of any trust or other creditors or presents excessive risk to the licensee or its subsidiary;
 - (v) prohibit the licensee or its subsidiary from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to shareholders or to any person claiming under their authority;
 - (vi) require shareholders of the licensee to contribute additional capital; and
 - (vi) require such action to be taken by the licensee as the Central Bank considers necessary.
- (h) where a bank has been placed under statutory administration, issue directions:
 - (i) to require the bank or its subsidiary to sell, liquidate, or otherwise dispose of its subsidiary or part of its business;
 - (ii) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions require the bank—

- (a) to change its legal or operational structure, or
- (b) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
- (iii) to prohibit payment of bonuses or incentive compensation to any director or officer; and
- (vii) to require such action to be taken by the bank as the Central Bank considers necessary.

- (2) Whenever the Central Bank is of the opinion that any action under subsection (1)(a)(i) and (b) should be taken against a licensee, the Bank may forthwith suspend the licence of such licensee and before taking such action the Central Bank shall give that licensee notice in writing of its intention so to do setting out in such notice the grounds on which it proposes to act and shall afford the licensee within such time as may be specified therein, not being less than seven days, an opportunity of submitting to the Bank a written statement of objection to such action, and thereafter the Central Bank shall advise the licensee of its decision.
- (3) Whenever the Central Bank shall suspend a licence under subsection (2) the Bank may cause notice of such suspension to be published in the Gazette.
- (4) Any suspension of a licence under subsection (2) shall be for a period of ninety days, or until the Central Bank takes action under subsection (1)(a)(i) or (b) or until the Central Bank notifies the licensee that the suspension is removed, whichever period is the shorter.
- (5) Where the Central Bank suspends or revokes a licence under this section, the Bank may apply to the Supreme Court for an order that the licensee be forthwith wound up by the court in which case the provisions of the Companies Act relating to the winding up of a company by the court shall, mutatis mutandis, apply.
- (6) The Central Bank may, in any case in which a licensee or person who has at any time been a licensee is being wound up voluntarily, apply to the Supreme Court if the Bank considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trust or other creditors, and the court shall make

such order as it shall consider appropriate in the winding up of the licensee.

18A. Surrender of Licence.

- (1) A licensee or a person registered pursuant to subsections 3(3)(b) or 3A(b), which has ceased to carry on the business in respect of which a licence or certificate of registration, as the case may be, was granted, shall apply to the Central Bank to surrender its licence or certificate of registration.
- (2) The Central Bank may upon an application made pursuant to subsection (1) approve the surrender upon such terms and conditions as the Bank deems appropriate.

18AA. Winding up of non-bank licensees and registrants.

Notwithstanding section 190(1) and 211 of the Companies Act (Ch. 308), no trust company, money transmission service provider licensed under this Act or person registered pursuant to subsection 3(3)(b) or 3A(b) may-

- (a) be wound up voluntarily; or
- (b) petition the Supreme Court to be wound up, except with the prior written approval of the Central Bank.

18B. Appointment of a Statutory Administrator.

- (1) The Central Bank may, by notice in writing, appoint a statutory administrator pursuant to section 18(1) (f) where—
- (a) in the opinion of the Central Bank, a bank has—
 - (i) engaged or is engaging in any unsafe and unsound practice in such a manner as to weaken the bank's condition, threaten depositors' interests or dissipate the bank's assets;
 is either in The Bahamas or elsewhere, contravening the provisions of this or any other Act, or of any order or regulations made under this Act, or any directive issued by the Central Bank pursuant to this Act, or any term or condition subject to which its licence was issued;
 - (b) the bank's capital level falls below (or is likely to fall below within the next twelve months) the minimum regulatory capital required by the Central Bank;
 - (c) the capital and value of the assets of the bank have, in the opinion of the Central Bank, reached or are likely to reach a level or are eroding in a manner that may detrimentally

- affect its depositors or creditors, with no reasonable prospects of timely restoration of such capital and value;
- (d) the Central Bank has reasonable cause to believe that the bank or its directors, officers or a significant shareholder has engaged or is engaging in illegal activities in a manner which jeopardizes depositors' interests;
 - (e) the Central Bank is of the opinion that the realizable value of the assets of the bank is not sufficient to give adequate protection to the depositors and creditors of the bank, or is less than its liabilities, or the bank's financial condition suggests that it will shortly be in that circumstance;
 - (f) the Central Bank is of the opinion that the bank is unable to or is likely to become unable to meet its liabilities and other obligations as they mature or become due, or pay its depositors' demands in the normal course of business;
 - (g) the bank fails in any manner to cooperate with its external auditors; or
 - (h) the bank fails to cooperate with the Central Bank to enable the Central Bank to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the bank's books, papers or records.

(2) Where the Central Bank determines that a statutory administrator should be appointed pursuant to subsection (1), the Central Bank shall notify the Minister of its decision.

(3) Where the Central Bank appoints a statutory administrator of a bank, the Central Bank shall promptly notify the bank of the appointment and shall specify in the notice, the grounds for the appointment.

(4) The Central Bank may simultaneously publish notice of the appointment of a statutory administrator in the Gazette and in a newspaper of general circulation.

(5) The statutory administrator may be a person from the private sector or an official of the Central Bank.

(6) The statutory administrator may be appointed for—

- (a) a period not exceeding twelve months; and
- (b) a further period not exceeding twelve months, if it appears to the Central Bank that additional

time is required to ensure an orderly restructuring of the bank under this Act.

- (7) The Central Bank may—
- (a) vary the terms of appointment of a statutory administrator;
 - (b) at any time replace a statutory administrator; and
 - (c) remove a statutory administrator prior to the end of any of the periods specified in subsection (6)(a) or (b), by written notice to the statutory administrator.
- (8) The variation of the terms of appointment of a statutory administrator or the termination of such appointment shall take place on such date as is specified in the notice referred to in subsection (7).
- (9) If a statutory administrator has any direct or indirect interest in a bank under statutory administration he shall disclose his interest to the Central Bank as soon as possible.
- (10) Any transaction involving a bank in statutory administration in which the statutory administrator has a direct or indirect material interest in the matter may be engaged in only with the prior written approval of the Central Bank.

18BA. Expenses of the statutory administrator.

The statutory administrator shall receive such remuneration as the Central Bank may determine and all costs and expenses incurred on account of the statutory administration shall be borne by and charged to the bank under statutory administration.

18BB. General powers of the statutory administrator.

- (1) Upon the appointment of a statutory administrator—
- (a) all powers, functions and responsibilities of the shareholders, directors and officers of a bank under statutory administration shall vest in the statutory administrator, except where the statutory administrator requests the shareholders or directors or officers to carry out any activity provided under this Act; and
 - (b) any action or decision taken by or on behalf of the bank subject to statutory administration shall, unless they are taken by or under the

authority of the statutory administrator, be null and void.

- (2) The statutory administrator shall have full and exclusive powers to manage and operate the bank, including taking any action as necessary or appropriate to—
- (a) carry on the business of the bank;
 - (b) exercise shareholders' rights and powers;
 - (c) continue or discontinue any or all of its operations;
 - (d) stop or limit the payment of the bank's obligations;
 - (e) remove any or all directors and officers;
 - (f) employ any necessary officers or employees;
 - (g) execute any instrument in the name of the bank;
 - (h) initiate, defend and conduct in the name of the bank any action or proceedings to which the bank may be a party;
 - (i) preserve and safeguard the assets and property of the bank; or
 - (j) implement a plan of action with respect to the bank that has been approved by the Central Bank.

- (3) The statutory administrator may employ, at the expense of the bank under statutory administration, counsel and attorneys at law, auditors and other independent professionals or consultants to assist the statutory administrator on such terms as the Central Bank may approve.

18BC. Central Bank Oversight of Statutory Administrator.

- (1) The statutory administrator shall act in accordance with regulations made pursuant to this Act or directions issued by the Central Bank to facilitate the purposes of this Act or of regulations made under this Act and shall only be accountable to the Central Bank for the performance of his duties and the exercise of his powers as statutory administrator.
- (2) The statutory administrator may delegate any of his powers or duties to other persons, subject to the prior written approval of the Central Bank.
- (3) The Central Bank may issue its approval pursuant to subsection (2) and may make such approval subject to such conditions as the Central Bank deems appropriate.

18BD. Suspension of Dividends.

The statutory administrator shall immediately suspend the payment of capital distributions in general and payment of any kind to directors, officers and significant shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the statutory administrator.

18BE. Moratorium and effect of statutory administration on proceedings.

(1) The Central Bank may impose a moratorium temporarily suspending some or all payments by a bank under statutory administration as the Central Bank may consider necessary to protect the interest of depositors and the stability of the financial sector.

(2) No person or class of persons shall, without the prior written consent of the statutory administrator begin or continue a proceeding or petition in a court or other forum against a bank under statutory administration or exercise rights under a mortgage, charge, or other security or collateral over the property of a bank under statutory administration, or issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a bank under statutory administration.

(3) For the purposes of this section, proceedings or petitions include counterclaims or cross-claims against the bank and the appointment of a statutory administrator against subsidiaries of the bank but excludes actions taken by the Central Bank, regulatory authorities, the Public Prosecutor and other public agencies, in respect of any matter in existence or violations or misconduct prior to the statutory administration.

(4) Where statutory administration has not yet been terminated, the Central Bank may, where it is of the opinion that it is no longer necessary to impose a stay, publish in the Gazette a notice that the stay has been lifted.

18BF.**Taking control of the bank.**

- (1) The statutory administrator shall immediately upon appointment, secure the property, offices, books, records, and assets of a bank under statutory administration to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:
 - (a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;
 - (b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;
 - (c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises;
 - (d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties; and
 - (e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the statutory administrator, and persons authorized by the statutory administrator have such authority.
- (2) The statutory administrator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.
- (3) The statutory administrator may call upon any director, officer, employee or agent or any former, director, officer, employee or agent of a bank under statutory administration to make available to the statutory administrator any records and information relating to the bank that the statutory administrator shall require and such director, officers, employee or agent of the bank shall

provide such records or information to the statutory administrator, as the case may be.

- (4) The statutory administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the statutory administrator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank.
- (5) Any person who shall obstruct the statutory administrator in the exercise of his functions under this Act commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of one thousand dollars for each day during which the offence continues.

18BG.**Inventory and plan of action to resolve the bank.**

- (1) Within a period specified by the Central Bank, the statutory administrator shall prepare and deliver to the Central Bank –
- (a) a written inventory of the assets and liabilities of the bank under statutory administration, classifying the assets according to their different risk profiles and classifying the non-performing loans according to the Central Bank's directives;
 - (b) a written assessment of the amount of assets likely to be realized in a liquidation of the bank;
 - (c) a written report on the financial condition and future prospects of the bank under statutory administration and propose a plan of action which, as appropriate, shall recommend—
 - (i) returning the bank to compliance with the law by carrying out a plan of corrective actions that may include a capital increase;
 - (ii) compulsory liquidation of the bank if there is no reasonable prospect for the return of the bank to financial soundness through re-organization or otherwise; or,
 - (iii) if the bank cannot be rehabilitated, any other course of action designed to

minimize disruption to depositors and preserve the stability of the banking sector.

(2) The statutory administrator shall promptly provide any additional report or information requested by the Central Bank.

(3) The Central Bank may—

- (a) approve the report or additional report mentioned in subsection (1)(c) or (2), as the case may be, without modification;
- (b) approve the report or additional report mentioned in subsection (1)(c) or (2), as the case may be, subject to such conditions as it thinks necessary; or
- (c) refuse to approve the report.

(4) The statutory administrator may, subject to the written approval of the Central Bank, implement the plan of action mentioned in subsection (1)(c) on the basis of the report provided to the Central Bank.

18BH.

Capital increase by existing shareholders.

(1) On the basis of the report produced under subsection 18BG(1)(c) or 18BG(2) and with the approval of the Central Bank, the Statutory Administrator may take the following actions to increase the bank's capital through the issuance of new shares:

- (a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital; and
- (b) notify existing shareholders of the amount of additional capital needed to bring the bank's capital into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed, within three business days of such notification.

- (2) Existing shareholders of a bank under statutory administration shall have no pre-emptive or other rights to purchase additional shares issued except as provided in this section.
- (3) The statutory administrator may take action to increase the bank's capital through the issuance of shares to new shareholders in the following circumstances:
- (a) in the event that binding commitments are not submitted by existing shareholders in an amount equal to the full amount of additional capital needed by existing shareholders; or
 - (c) without offering shares to existing shareholders, if the Central Bank determines that:
 - (i) an expedited resolution of a bank is necessary to maintain financial stability, or
 - (ii) the existing shareholders are no longer fit and proper to maintain a controlling shareholding in the bank.
- (4) For the purpose of carrying out a recapitalization by new shareholders of a bank under statutory administration, the statutory administrator shall:
- (a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital;
 - (b) if necessary to reflect losses, reduce the par value of outstanding shares, restructure or write down debt or other capital instruments, notwithstanding the provision of any other law;
 - (c) determine the amount and type of funding needed to bring the bank into compliance with all capital requirements; and
 - (d) cause the bank to issue additional shares in the amount necessary, carry out the sale of shares and facilitate the purchase of such shares by new investors.
- (5) Notwithstanding any existing law or other laws that may come into effect to regulate the securities market and other disclosures by issuers of securities, the Securities Commission shall take the necessary action to permit issuance of a bank's securities in accordance with the provisions of this section within a maximum of three business days.

- (6) The powers provided in subsections (1), (3) and (4) and section 18BI(1), (2) and (9) may be exercised by a statutory administrator subject to the written authorization of the Central Bank.
- (7) Where a statutory administrator pursuant to subsection (4)—
- (a) writes down equity or other instruments of ownership of a bank, unsecured and uninsured creditor claims;
 - (b) converts into equity or other instruments of ownership of a bank all or parts of unsecured and uninsured creditor claims,
- the statutory administrator shall take the action referred to in paragraph (a) and (b) in a manner that respects the hierarchy of claims in liquidation under this Act

18BI. Mergers, sales and other restructurings.

- (1) Subject to section 18BF, and on the basis of the report produced under subsection 18BG(1)(c) or (2), the statutory administrator may carry out a merger of the bank under statutory administration or a transfer, in whole or in part--
- (a) shares or other securities issued by the bank;
 - (b) the bank's assets, rights and liabilities.
- (2) A transfer of the bank's shares or other securities, assets, rights and liabilities pursuant to subsection (1) may be to—
- (a) a purchaser;
 - (b) a bridge institution for a temporary period for the purpose of resolving the bank;
 - (c) an asset management vehicle for the purpose of resolving the bank.
- (3) The statutory administrator may transfer to a purchaser, a bridge institution or an asset management vehicle-
- (a) shares or other securities of a bank under statutory administration by making one or more securities transfer instruments;
 - (b) assets, rights or liabilities of a bank under statutory administration by making one or more property transfer instruments.
- (4) Where a statutory administrator has first transferred any securities issued by or any assets, rights or liabilities of a bank under statutory

administration to a bridge institution, the statutory administrator may—

- (a) by making one or more securities transfer instruments, transfer securities issued by the bridge institution or securities issued by a bank under statutory administration and held by the bridge institution to--
 - (i) another bridge institution (an onward bridge institution); or
 - (ii) another entity.
- (b) by making one or more property transfer instruments, transfer assets, rights or liabilities of the bridge institution (however accruing or arising) to another entity.

- (5) The fourth schedule has effect with respect to securities transfer instruments.
- (6) The fifth schedule has effect with respect to property transfer instruments.
- (7) The transferee of assets of the bank under statutory administration shall have no liability to depositors, creditors, or shareholders of the bank except to the extent liabilities are explicitly assumed.
- (8) Where a transfer is made under subsection (3) the Central Bank shall inform the Minister of Finance about the transfer as soon as practicable after the transfer is completed.
- (9) The Minister of Finance shall cause a copy of each report under subsection (7) to be laid before each House of Parliament.
- (10) Subject to the written approval of the Central Bank, the statutory administrator may carry out a restructuring of the liabilities of a bank under statutory administration, through arrangements with the bank's creditors, including a reduction, modification, re-scheduling or novation of their claims.

- (11) When action is taken by the statutory administrator pursuant to subsection (1), the Central Bank shall—
- (a) by instrument in writing appoint an independent valuer to verify the adequacy of the compensation provided to the transferor regarding the transferred assets, rights and liabilities; and
 - (b) publish notice of the appointment of the independent valuer in the Gazette.

- (12) Any measure conducted under statutory administration under this section will not constitute a voidable preference, a transaction at undervalue or a fraudulent trading pursuant to sections 241, 242 and 243 of the Companies Act (*Ch 308*);

18BJ. Termination of Statutory Administration.

- (1) Subject to subsection (2) the statutory administration shall terminate at the expiry of the term specified in the notice appointing the statutory administrator or any extension of the term of such appointment by the Central Bank.

- (2) Statutory administration shall be terminated prior to the expiry of the term set out in subsection (1) if the Central Bank determines that:
- (a) statutory administration is no longer necessary because the grounds for appointment of the statutory administrator have ceased to exist; or
 - (b) the bank under statutory administration cannot be rehabilitated or restructured and the Central Bank issues a decision to revoke the bank's license under section 18(1)(a) and to commence liquidation proceedings under section 18CB.

- (3) Where the statutory administration is terminated in circumstances mentioned in subsection (1) and the reason for the appointment of the statutory administrator continues to exist, the Central Bank shall issue a decision to revoke the licence under section 18(1)(a) and commence a compulsory winding-up proceeding under section 18CB.

(4) In the case of a termination of statutory administration that does not involve a closure of the bank, the statutory administrator shall carry out the duties of the bank's directors and officers, until nomination or election of new directors and appointment of officers, at which time all powers of control over the affairs of the bank and its properties, offices, assets books and records that were vested in the statutory administrator shall vest in the bank.

(5) Within thirty days of the termination of the appointment or such further period as the Central Bank may approve, the statutory administrator shall prepare and submit to the Central Bank a final report and accounting of the statutory administration.

18BK**Bridge Institution**

(1) Upon the incorporation of a body corporate by the Central Bank pursuant to section 28(4) of the Central Bank of The Bahamas Act, the Central Bank shall grant a license to the body corporate to carry on the business of a bridge institution.

(2) The Bank may exempt the bridge institution from such requirements, or grant such approvals, under this Act as may be necessary to facilitate the carrying on of its licensed business.

(3) The Central Bank shall publish notice of the grant of a licence pursuant to subsection (1) in the gazette.

(4) (a) A company incorporated pursuant to subsection 28 of the Central Bank of The Bahamas Act, may be designated as a bridge institution for a period of two years;
(b) The Minister may, by order, grant up to three extensions – of one year each – of the period referred to in paragraph (a).

(5) The Central Bank may—
(a) hold any shares of a bank under statutory administration that the Central Bank acquires in the course of a sale or other disposition of its shares of the bridge institution or that a bridge institution acquires in the course of a sale or other disposition of its assets.

(b) hold the shares for a period of no more than five years from the day on which they are acquired and may dispose of them.

(6) The Minister may, by order, extend the period referred to in paragraph (d) if general market conditions so warrant.

(7) A company's licence as a bridge institution terminates if--

(a) the Central Bank is no longer the sole shareholder; or

(b) the bridge institution is amalgamated with a body corporate that is not a bridge institution.

(8) If a bridge institution's licence has not terminated under subsection (7), the bridge institution's board of directors shall take all necessary steps to dissolve the bridge institution if

(a) all or substantially all of the bridge institution's assets have been sold or otherwise disposed of; and

(b) all or substantially all of its liabilities have been assumed or discharged.

(9) If the Central Bank considers that substantially all of the transfers of assets, rights and liabilities or shares or other securities of a bank to a bridge institution have been substantially completed, the Central Bank shall apply for a winding-up order under the Companies Act, (Ch. 308) in respect of the bank.

(10) An employee or officer of the Central Bank shall not receive remuneration or benefits from a bridge institution for being a director or officer of that bank.

(11) If a bridge institution becomes the employer of employees of a bank, the bridge institution is not liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the bank or a predecessor of the bank or in respect of a pension plan for the benefit of those employees or former employees; and

(b) that exists before the bridge institution becomes the employer or that is calculated by

reference to a period before the bridge institution becomes the employer.

- (12) Subsection (12) does not affect the liability of a successor employer other than the bridge institution.
- (13) (a) The Central Bank may give directions to the board of directors of a bridge institution.
(b) The board of directors of the bridge institution shall ensure that the directions are implemented in a prompt and efficient manner and shall, after implementing a direction, notify the Central Bank without delay that it has been implemented.
- (14) (a) The Central Bank may give directions to the board of directors of a bridge institution to make, amend or repeal any by-law.
(b) The board of directors of a bridge institution may, with the prior approval of the Central Bank, make, amend, or repeal any by-law.
(c) For the purposes of paragraphs (a) and (b), by-law means a by-law of the bridge institution.
- (15) (a) Any action or other civil proceeding before a judicial or quasi-judicial body and any arbitration, to which a bridge institution may become a party by virtue of acquiring an asset or assuming a liability of a bank under statutory administration shall be stayed for a period of 90 days from the day on which the bridge institution acquires the asset or assumes the liability.
(b) The bridge institution may waive the stay referred to in paragraph (a).
- (16) Without prejudice to section 18CM, the following persons shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the bridge institution or its management:
(a) shareholders of the bank under statutory administration;
(b) creditors of the bank under statutory administration, or
(c) other third parties whose assets, rights or liabilities have not been transferred.

- (17) The bridge institution, and the members of its senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and the senior management of the bridge institution and shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

18BL Transfer to Asset Management Body

- (1) A statutory administrator may transfer the assets, rights or liabilities of--
- (a) a bank under statutory administration; or
 - (b) a bridge institution, to an asset management vehicle by making one or more property transfer instruments.
- (2) Without prejudice to section 18CM, shareholders or creditors of a bank under statutory administration and other third parties whose assets, rights or liabilities have not been transferred to the asset management vehicle shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the asset management vehicle, or to its management body.
- (3) An asset management vehicle, its management body and senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and the management body and senior management of the vehicle shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

18BM Management of assets by asset management vehicle

An asset management vehicle must manage the assets transferred to it with a view to maximizing their value through eventual sale or orderly wind down.

18BN Onward property transfer from asset management vehicle

- (1) This section applies if the Central Bank or statutory administrator has made a property transfer instrument under section 18BL (hereafter referred to as “the original instrument”) in respect of an asset management vehicle.

(2) The Central Bank or statutory administrator may, by making one or more property transfer instruments, transfer assets, rights or liabilities of the asset management vehicle (whether accruing or arising before or after the original instruments is made) to another entity.

(3) A property transfer instrument may relate to assets, rights or liabilities of an asset management vehicle whether or not they were transferred to that vehicle by an instrument made under this Section.

18BO**Report**

(1) If the statutory administrator transfers to an asset management vehicle under section 18BL any assets, rights or liabilities of a bank under statutory administration or of a bridge institution, the Central Bank must report to the Minister of Finance on—
 (a) the activities and audited financial position of the asset management vehicle; and
 (b) the progress that has been made towards maximizing the value of the assets transferred to it through eventual sale or orderly wind down.

(2) The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which a transfer is first made to the asset management vehicle.

(3) A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).

(4) The reporting obligation under subsection (3) does not apply in respect of any year during which the asset management vehicle does not hold any assets or rights, or have any liabilities, mentioned in subsection (1).

(5) The Minister of Finance must cause a copy of each report under subsection (1) to be laid before each House of Parliament.

18BP**Disposal of Proceeds**

(1) This section applies to any money received by the Central Bank as a shareholder of an asset management vehicle.

(2) The money must be paid into the resolution funding account.

18BQ Power to direct a residual financial institution

- (1) This section applies in a case where some, but not all, of the assets, rights or liabilities of a bank under statutory administration have been transferred to a purchaser, a bridge institution or an asset management vehicle pursuant to sections 18BI.
- (2) The Central Bank may serve a notice under subsection (3) if of the opinion that doing so is reasonably required for facilitating the orderly resolution of the bank under statutory administration in accordance with the resolution objectives.
- (3) The Central Bank may, by notice in writing, direct the bank under statutory administration to continue to provide, on reasonable commercial terms, to another entity to which any assets, rights or liabilities of the bank under statutory administration have been transferred in the application of a stabilization option, services that are essential to the continued performance of critical financial functions in The Bahamas.
- (4) The Central Bank must revoke a notice served by it under subsection (3) as soon as practicable after it ceases to be of the opinion mentioned in subsection (2).
- (5) A bank under statutory administration that, without reasonable excuse, fails to comply with a notice served on it under subsection (3) commits an offence and is liable –
- (a) on summary conviction to a fine of \$200,000 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.
- (6) If a bank under statutory administration commits an offence under subsection (5), an officer of the institution also commits an offence under that subsection if the officer –
- (a) authorized or permitted the commission of the offence by the institution; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the institution.

- (7) An officer who commits an offence under subsection (6) is liable on summary conviction to a fine of \$50,000 and or to imprisonment for one year and, in the case of a continuing offence, to a further fine of \$1,000 for every day during which the offence continues.
- (8) An officer of a bank under statutory administration may commit an offence under subsection (6) whether or not the bank has been prosecuted for, or found guilty of, an offence under that subsection.

18BR**Recovery of costs following application of stabilization option**

- (1) This section applies in the, case of a bank under statutory administration where the Central Bank is of the view that--
- (a) the bank has ceased, or is likely to cease to be viable;
 - (b) there is no reasonable prospect that private sector action (outside of resolution) would result in the bank again becoming viable within a reasonable period;
 - (i) the non-viability of the bank poses risks to the stability and effective working of the financial system of The Bahamas, including to the continued performance of critical financial functions; and
 - (ii) resolution will avoid or mitigate those risks.
- (2) The Central Bank or the Minister of Finance may charge to the bank under statutory administration all reasonable costs properly incurred by the Central Bank or the Minister of Finance, as the case requires, in or in connection with a matter mentioned in section 18BS(1).
- (3) However, the Central Bank or the Minister of Finance must not charge costs under subsection (2) if, or to the extent that, the charging of the costs might, in the opinion of the Central Bank or the Minister of Finance (having consulted the Central Bank), undermine the meeting of the resolution objectives.
- (4) Any costs charged to an entity under subsection (2) may be recovered from the entity as a civil debt due to the Central Bank or the Government, as the case requires, in any court of competent jurisdiction.

- (5) Any money received in respect of costs charged to an entity under subsection (2) (including under subsection (4)) must be paid into the resolution funding account.

18BS**Payment from resolution funding account**

- (1) Subject to subsection (5), money standing to the credit of the resolution funding account may only be used by –
- (a) the Central Bank in, or in connection with –
 - (i) preparing for the making of a transfer instrument in respect of a bank that, in the opinion of the Central Bank, is likely to become a bank under statutory administration;
 - (ii) the making of a transfer instrument in respect of a bank under statutory administration; or
 - (iii) the resolution of a bank under statutory administration, including payment of any compensation due under section 18CM and any associated costs.
- (2) Money standing to the credit of the resolution funding account may not be used to meet-
- (a) expenses incurred by the Central Bank in performing functions under, or otherwise carrying out duties under section 11, 11A, 13 or 22; or
 - (b) general operational expenses incurred by the Central Bank unrelated to a matter mentioned in subsection (1)(a).
- (3) Before the Central Bank may use money standing to the credit of the resolution funding account in regards to the exercise of a power by the statutory administrator under section 18BH or 18BI it must have regard to the extent to which the bank's own resources can be utilized, including the extent to which-
- (a) liabilities of the bank can be written off or converted to enable it to absorb losses and re-establish its capital position;
 - (b) assets of the bank can be sold; or
 - (c) private sector funding can be obtained by the bank.
- (4) Without limiting subsection (1)(a), the purposes for which money standing to the credit of the resolution funding account may be used by the Central Bank include-
- (a) providing a guarantee or indemnity in respect of the assets, rights or liabilities of bank under

- statutory administration, a group company of bank under statutory administration, a bridge institution or an asset management vehicle;
- (b) lending money to a bank under statutory administration, a group company of a bank under statutory administration, a bridge institution or an asset management vehicle; and
- (c) if necessary, providing, or underwriting the provision of, capital to a bank under statutory administration, a group company of a bank under statutory administration, a bridge institution or an asset management vehicle.

- (5) Any money standing to the credit of the resolution funding account that neither the Central Bank nor the Minister of Finance intends to use for a purpose mentioned in subsection (1) must be used to repay resolution funds and, to that end, must be paid –
- (a) out of the resolution funding account; and
- (b) into the account from which resolution funds were paid into the resolution funding account.

- (6) For the purposes of subsection (5)(b), if resolution funds were paid into the resolution funding account from more than one account, the money must be paid into those accounts in proportion to the amounts paid from those accounts.

- (7) Interest, by reference to prevailing market rates, may be charged to the resolution funding account on the outstanding principal amount of resolution funds until repaid under subsection (5) or section 18BT.

- (8) The use of the resolution funding account is subject to audit in accordance with regulations made pursuant to this subsection.

18BT**Repayment of resolution funds**

- (1) Any money standing to the credit of the resolution funding account on completion of the resolution must be used to repay any resolution funds or pay interest charged under section 18BS(8).
- (2) Money used for a purpose mentioned in subsection (1) must be paid into the account out of which the resolution funds, or the resolution funds to which the interest relates, were paid into the resolution funding account and, if resolution funds were paid into the resolution funding

account out of more than one account, in proportion to the amounts paid out of those accounts.

18C.**Liquidation of banks.**

- (1) The winding-up of a bank shall be undertaken pursuant only to the provisions of this Act, and the Companies Act, (*Ch. 308*) as modified by this Act.
- (2) The Central Bank may issue regulations, rules, orders, directions, or other instruments regarding the winding-up of a bank pursuant to this Act.

18CA.**Voluntary liquidation of banks.**

- (1) Notwithstanding sections 190(1) and 211 of the Companies Act, (*Ch 308*), no bank may petition the court to be wound-up voluntarily, except with the prior written approval of the Central Bank.
- (2) The Central Bank may, subject to such terms and conditions as it deems appropriate, approve the voluntary winding-up of a bank if it is satisfied that—
 - (a) the bank is solvent and has sufficient liquid assets to repay its depositors and other creditors in full and without delay;
 - (b) the winding-up has been approved by the holders of at least two-thirds of the issued voting shares of the bank; and
 - (c) there are clear procedures in place for repayment of the bank's depositors and creditors within three days.
- (3) Where the Central Bank approves the voluntary winding up of a bank pursuant to subsection (2), the bank shall—
 - (a) surrender its license and all copies thereof to the Central Bank which shall forthwith accept the surrender of such license;
 - (b) apply to the Supreme Court for its winding up;
 - (c) cease to do business, retaining only such staff as is necessary for an orderly winding-up under the supervision of a voluntary liquidator appointed with the approval of the Central Bank, and thereafter exercise its powers only to the extent, necessary to effect its orderly liquidation;
 - (d) repay in full its depositors within three days and other creditors within a reasonable period of time; and
 - (e) wind-up all operations which were commenced or undertaken prior to the receipt of the approval to wind-up.

- (4) Notwithstanding section 212 of the Companies Act, (Ch. 308), a voluntary winding-up is deemed to commence from the time the Central Bank approves the voluntary winding-up pursuant to subsection (2).
- (5) (a) Notwithstanding the provisions of section 216 of the Companies Act, (Ch. 308)—
- (i) no person shall pass a resolution to remove a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) from office unless that person gives the Central Bank prior notice of his intention to pass such a resolution;
 - (ii) a person who makes an application to the court pursuant to section 216(3) of the Companies Act, (Ch. 308) for an order that a voluntary liquidator appointed under paragraph (c) of subsection (3) be removed from office, shall notify the Central Bank of the application within twenty-four hours of the filing of the application.
- (c) Notwithstanding the provisions of section 217 of the Companies Act, (Ch. 308), where a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) intends to resign, he shall notify the Central Bank of his intention prior to his resignation.
- (6) Notwithstanding section 218(1) of the Companies Act, (Ch. 308), notice of a voluntary winding-up shall be filed, served or published within ten days of receipt of the approval of the Central Bank given pursuant to subsection (2).
- (7) The voluntary liquidator shall notify the Central Bank in any case where an application for a supervision order is made to the Supreme Court or where a court issues a supervision order pursuant to sections 219, 225, 226 and 227 of the Companies Act, (Ch. 308).
- (8) The voluntary liquidator shall submit a report and an account of the winding-up to the Central Bank, every six months.
- (9) The voluntary liquidator shall submit a report and an account of the winding-up within twenty-one days of the date on which the bank's affairs are fully wound up.

- (10) The Central Bank shall have power to issue directives to a voluntary liquidator and require the voluntary liquidator to produce such other reports as the Central Bank may require.

18CB. Compulsory winding up and appointment of liquidator.

- (1) The Central Bank shall appoint a liquidator for a bank if:
- (a) the Central Bank has revoked the license of the bank pursuant to subsection 18(1)(a) (i), (iii) or (iv) of this Act; or
 - (b) a statutory administration is terminated pursuant to subsection 18BJ(2)(b) of this Act.
- (2) The Central Bank may appoint a liquidator for a bank where it has revoked the licence of the bank pursuant to section 18(1)(a) (ii), (v) or (vi).
- (3) The liquidator shall be a person from the private sector or an officer of the Central Bank who meets the qualifications established by the Central Bank.
- (4) The Central Bank shall—
- (a) have the power to vary or revoke the appointment of the liquidator at any time upon written notice to the person so appointed, and that person immediately shall cease to act as liquidator; and
 - (b) appoint a replacement who shall be a person from the private sector or an officer of the Central Bank who meets such qualifications as may be established by the Central Bank.
- (5) The terms of the liquidator’s compensation shall be set by the Central Bank and may include incentives for meeting the objectives described in section 18CC and may include penalties for failure to meet such objectives.
- (6) The compensation of the liquidator and experts that he engages, reimbursement of their expenses and expenses of the Central Bank in execution of provisions of this section with respect to a bank, shall be paid from the assets of the bank.
- (7) Payments to the liquidator shall be made on a current basis if in the judgment of the liquidator and upon approval of the Central Bank, there are sufficient liquid assets.
- (8) Any moneys owing to the liquidator at the end of the term of liquidation shall be paid from the

proceeds of the sales of the bank's assets in accordance with the priority described in section 18Cl.

18CC. Powers and duties of the liquidator.

- (1) Where the Central Bank appoints a liquidator of a bank pursuant to section 18CB, the liquidator shall become the sole legal representative of the bank, and, shall succeed to all rights and powers of the shareholders and directors and officers responsible for the management of the bank.
- (2) The liquidator shall exercise his powers with due regard to the objectives of resolution as set out in section 11B of the Act.
- (3) The liquidator may borrow money guaranteed with the bank's assets, or without guarantee, with the prior approval of the Central Bank.
- (4) The liquidator may—
 - (a) not take any new deposits;
 - (b) extend credit only to an existing customer in accordance with the terms of an agreement in force at the time of the appointment of the liquidator and with the prior approval of the Central Bank provided however that the liquidator shall have the power to repudiate such loan commitments where such repudiation is in the best interest of the insolvency estate.
- (5) The liquidator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.
- (6) The liquidator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the liquidator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank.
- (7) Any person who wilfully obstructs the liquidator in the exercise of his functions under this Act, commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of one thousand

dollars for each day during which the offence continues.

- (8) The liquidator shall secure the property, offices, books, records, and assets of the bank to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following:
- (a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;
 - (b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;
 - (c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises;
 - (d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties;
 - (e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the liquidator and persons authorized by the liquidator have such authority; and
 - (f) suspending the payment of capital distributions in general and payment of any kind to directors, officers and principal shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the liquidator.
- (9)
- (a) The liquidator shall establish a new balance sheet for the bank, based on his determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in the liquidation of a bank's assets.
 - (b) The liabilities of a bank placed in liquidation under section 18CB shall be deemed due and

payable and interest shall cease to accrue as of the date of the appointment of the liquidator.

- (10) Within one month of taking possession of a bank—
- (a) the liquidator shall make an inventory of the assets and property of the bank and transmit a copy thereof to the Central Bank; and
 - (b) the Central Bank shall make a copy of the inventory available for examination by the public.
- (11) The powers of the shareholders and directors and officers responsible for the management of the bank shall be terminated upon the appointment of the liquidator; provided, however, that directors or officers may be instructed by the liquidator to exercise specified functions for the bank; and further, provided that such persons shall be subject to dismissal by the liquidator from their positions at the bank and shall thereupon cease to receive compensation from the bank.
- (12) When part of the business of a bank is sold in accordance with section 18BI(1), the liquidator must cooperate with any request of the Central Bank to enter into an agreement for the residual entity to provide services or facilities to the transferor.
- (13) The liquidator shall immediately, following his appointment—
- (a) file a copy of his instrument of appointment with the Registrar; and
 - (b) post in each branch of the bank a notice of—
 - (i) the revocation of the license of the bank in liquidation; and
 - (ii) his appointment as liquidator of the bank and specify in such notice:
 - (aa) the effective date and time when he took possession of the bank; and
 - (bb) specify that persons who previously had authorization to act or give instructions on behalf of the bank are no longer so authorized;
- (14) The liquidator shall—
- (a) publish notice of his appointment in the Gazette and in a local newspaper of general circulation, each week for four consecutive weeks; and
 - (b) co-ordinate such publication with the Deposit Insurance Corporation for the purpose of payment of insured deposits to eligible

depositors pursuant to the Protection of Depositors Act (Ch. 317).

- (15) Within sixty days after the appointment of a liquidator, the liquidator shall:
- (a) deliver a notice of his appointment to all known depositors, creditors and lessees of safe-deposit boxes held by the bank;
 - (b) publish in the Gazette and a local newspaper of general circulation a notice specifying the manner and time in which any claim against the bank may be filed with the liquidator, not being earlier than sixty days from the date of delivery or publication of the notice.
- (16) As of the date of appointment of a liquidator:
- (a) any claim or right of the bank which would expire or be extinguished upon the expiration of a statutory, contractual or other term, shall be suspended;
 - (b) the calculation of interest and penalties against the bank's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the bank;
 - (c) all legal proceedings against the bank are stayed and the exercise of any right in respect of the bank's assets shall be suspended;
 - (d) no right shall be exerted over the bank's assets during the bank's liquidation, except rights given to the liquidator;
 - (e) no creditor may attach, sell or take possession of any assets of the bank as a means of enforcing his claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the bank's assets;
 - (f) any attachment or security interest (except one existing six months prior to the effective date of the liquidation) shall be vacated, and no attachment or security interest, except one created by the liquidator in the application of this section shall attach to any of the assets or property of the bank so long as such liquidation continues;
 - (g) shareholders' rights shall be extinguished except for the right to receive proceeds, if any, under subsection 18Cl(4);

18CD.**Termination of Contracts.**

- (1) (a) A liquidator may, within thirty days of the date of his appointment, repudiate any unfulfilled or partially fulfilled contract, to the extent that the fulfilment of such contract is determined to be

burdensome for the bank and the repudiation would promote the orderly administration of the bank's affairs and protect depositors' interests.

- (b) Notwithstanding any other law, any liability arising from a repudiation pursuant to subsection 1(a) shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.

(2) Subject to any law governing conditions of employment, the liquidator of a bank may terminate, not later than three months after his appointment:-

- (a) any employment contract of the bank;
 (b) any contract for services to which the bank is a party; and
 (c) any obligations of the bank as a lessee of property.

(3) A lessor of any property referred to in subsection (2):-

- (a) shall be given notice of not less than thirty days of the intended termination of the obligations of a bank;
 (b) has no claim for rent other than rent accrued up to and including the date of the termination of the obligation of the bank; and
 (d) has no right to consequential or other damages which arise by reason only of any termination of the obligations of the bank, notwithstanding any term of the lease to the contrary.

18CE.

Notice of Claims.

- (1) A liquidator shall, not later than ninety days after the last day specified in the notice for filing claims against a bank being compulsorily wound-up-
- (a) where he doubts the validity of any claim, reject the claim;
- (b) determine the amount, if any, owing to each known depositor or other creditor, and the priority of each claim under this Act;
- (c) file with the Central Bank a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the bank provided that such filing shall exclude deposits that are uninsured but which are included in the definition of "deposits" under section 2(1) of the Protection of Depositors Act (*Ch. 317*), and

- which have been fully paid out or transferred to another entity;
- (d) notify each person whose claim is allowed in full; and
 - (e) publish, once a week for three consecutive weeks, in the Gazette and in a newspaper of general circulation in The Bahamas—
 - (i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection; and
 - (ii) the last date, not being earlier than thirty days from the date of publication, on which the liquidator will file that schedule with the Central Bank.
 - (f) The Central Bank may approve the schedule of actions referred to in subsection (1)(c) subject to such terms and conditions as it may require.
 - (g) The Central Bank shall, in approving the schedule referred to in subsection (1)(c), ensure that all of the deposits that are uninsured but which are included in the definition of “deposits” under section 2(1) of the Protection of Depositors Act (*Ch. 317*) are paid out in an expeditious manner.

18CF.**Objections.**

- (1) Within twenty days of the filing of a schedule under section 18CE(1)(c), a depositor or other creditor or shareholder of the bank concerned, or other interested person, may file with the Central Bank any objection that person has to any action proposed in such schedule.
- (2) The Central Bank may direct that an objection filed pursuant to subsection (1) be served on the liquidator and such interested parties as the Central Bank may require, and shall subsequently hear the objection and issue a Notice setting out its determination thereon as it considers appropriate in the circumstances.
- (3) When the Central Bank allows an objection, the Notice shall set out the manner in which the schedule referred to in section 18CE is to be modified.

18CG.**Distributions.**

- (1) Where a liquidator has filed a schedule in respect of a bank, pursuant to subsection 18CE(1)(c), the liquidator shall make periodic distributions of recoveries on liquidated assets to claimants, if the liquidator establishes an adequate reserve (as

determined by the Central Bank) for the payment of disputed claims against the bank.

- (2) As soon as practicable after all objections against the distribution proposed by the liquidator have been heard and determined, final distribution of the assets of the bank concerned shall be made by the liquidator.

18CH. Avoidance of pre-liquidation transfers.

- (1) The liquidator may declare void a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors within the five years preceding the effective date of the liquidation.
- (2) The liquidator may declare void the following transactions affecting the assets of the bank or to recover from third parties the transfers by the bank –
- (a) gratuitous transfers to, or to persons related to, directors and officers and principal shareholders of or holders of significant interests in the bank made within the five years preceding the effective date of the liquidation;
 - (b) gratuitous transfers to third parties made within the three years preceding the effective date of the liquidation;
 - (c) transactions in which the consideration given by the bank considerably exceeded the received value obtained, made within the three years preceding the effective date of the liquidation;
 - (d) any act done within the five years preceding the effective date of the liquidation, with the intention of all parties involved to withhold assets from the bank's creditors, or otherwise impair their rights;
 - (e) transfers of property of the bank to, or for the benefit of, a creditor on account of a debt incurred within the six months preceding the effective date; of the liquidation which has the effect of increasing the amount that the creditor would receive in a liquidation of the bank; provided however that payment of deposits in an amount equal to or less than two thousand dollars per depositor shall not be subject to this provision.
 - (f) transactions with persons related to the bank conducted within one year prior to the effective date of the liquidation, if detrimental to the interest of depositors and other creditors; and

(g) any attachment or security interest, except one existing six months prior to the effective date of the liquidation.

(3) An action to declare a transfer void may be brought by the liquidator within one year following the effective date of the liquidation.

(4) Notwithstanding the foregoing subsections, the liquidator may not declare void a payment or transfer by the bank if it was made in the ordinary course of the bank's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the liquidation.

(5) The liquidator may recover property or the value of property transferred by the bank from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set aside.

(6) The liquidator may file notice of an action to declare a transfer void in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his or her title or interest subject to the rights of the bank to recover the property.

(7) Notwithstanding subsection (1) –

(a) irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by the Central Bank shall be legally enforceable and binding on third parties, even upon a decision revoking the bank's license and appointing a liquidator, but only if the transfer orders become irrevocable before such decision takes effect; or

(b) a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system after the decision revoking the bank's license and appointing a liquidator takes effect and the transfer orders are carried out on the day of such decision, the transfer orders shall be legally enforceable and binding on third parties, unless the liquidator proves

that the system operator was aware of the decision before the transfer orders became irrevocable.

- (8) No law, regulation or practice on the setting aside of contracts and transactions issued or adopted before the decision revoking the bank's license and appointing a liquidator takes effect shall, as a consequence of such decision, lead to the unwinding of a netting by a payment or securities settlement system recognized as such by the Central Bank because of that decision.
- (9) For the purposes of subsections (7) and (8) -
 (a) a payment order entered into a money or securities settlement system becomes irrevocable at the time defined by the regulations of that system; and
 (b) "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.
- (10) Nothing in this Act and no decision made under this Act shall prevent or prohibit the set off by operation of law of obligations between a bank being subject to the liquidation proceedings under this Act and its counterparties.
- (11) (a) In determining the rights and obligations between a bank in liquidation and its contractual counterparties—
 (i) effect shall be given to the termination provisions of eligible financial contracts between them;
 (ii) the net termination value determined in accordance with an eligible financial contract between them, shall be a claim of the bank on the counterparty or shall be admitted after its validation as a claim of the counterparty on the bank.
 (b) For the purposes of this subsection —
 (i) "eligible financial contract" means swaps, options and other derivative transactions related to interest rates, foreign exchange swaps, commodities, and guarantee of liabilities, but also includes any type of financial contract from time to time

specified by the Central Bank by regulation for such purpose ; and

- (ii) “net termination value” means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

- (12) Except as provided under this subsection, no set-off shall be allowed with respect to claims against the bank after the decision to revoke the bank’s license and the appointment of a liquidator takes effect or within three months before such decision.

- (13) Save for deposits insured under the Protection of Depositors Act (*Ch 317*), claims against the bank arising from deposits shall be set-off against any sum due by a depositor to the bank as of the date on which the license is revoked and the liquidator is appointed –
- (a) automatically if such sum is matured or past due;
 - (b) at the option of the depositor, if the sum is not matured or past due.

18Cl. Priority of claims.

- (1) In any liquidation of a bank’s assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor.

- (2) The following unsecured claims have priority against the general assets of a bank being compulsorily wound-up under this Act, namely-
- (a) necessary and reasonable expenses incurred by the statutory administrator or liquidator, including professional fees in carrying out their functions under this Act;
 - (b) subrogated claims of the Deposit Insurance Corporation under the Protection of Depositors Act (*Ch. 317*) in respect of insured deposits;
 - (c) deposits that are uninsured but not excluded from the definition of “deposits” under section 2(1) of the Protection of Depositors Act (*Ch. 317*);
 - (d) credits extended to the bank by the Central Bank until the appointment of the liquidator to the extent not sufficiently secured by collateral;
 - (e) wages and salaries of the officers and employees of the bank (whether or not earned wholly or in any part by way of commission) including any amount payable by way of

allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, that accrued during the three months immediately preceding the appointment of a statutory administrator or liquidator under this Act, provided that such amount does not exceed ten thousand dollars per person;

- (f) all taxes due and other imposts owing to the Government of The Bahamas;
- (g) the fees, and assessments owing to the Central Bank;
- (h) credits extended to the bank after the appointment of the liquidator;
- (i) all other unsecured claims of creditors;
- (j) subordinated debt.

(3) After payment of all other claims against the bank, all remaining claims against the bank that were not filed within the time limited therefore under this Act may then be paid.

(4) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the liquidator on a pro rata basis among the claimants in that class.

(5) The assets of a bank being compulsorily wound-up that remain after the final distribution to claimants pursuant to subsection (2) shall be distributed by the liquidator among the shareholders of the bank in proportion to their respective rights.

18CJ. Final reporting.

(1) A liquidator appointed pursuant to section 18CB shall, prepare a report and an account of the winding up showing how it has been conducted and how the bank's property has been disposed of and thereupon shall call a general meeting of the bank for the purpose of laying before it the account and giving an explanation for it.

(2) The liquidator shall submit the report and an account of the winding up described in subsection (1) to the Central Bank.

(3) At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each

contributory in any manner authorised by the company's articles and published in the Gazette.

- (4) The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed form specifying -
- (a) the date upon which the meeting was held; and
 - (b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.

- (5) A liquidator who fails to call a general meeting of the company as required by subsection (1) or fails to make a return as required by subsection (3) shall be liable to pay a penalty not exceeding ten thousand dollars.

18CK. Automatic Termination Rights.

The entry into resolution and the exercise of any resolution powers shall not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of a bank in resolution, to exercise contractual acceleration or early termination rights, provided the substantive obligations under the contract continue to be performed.

18CL. Creditor Safeguards.

- (1) The powers of the Central Bank or statutory administrator under section 18B shall not be used to-
- (a) transfer assets of a bank in resolution against which a liability is secured (under a lien, mortgage or any other type of security interest) unless the liability and the benefit of the security interest is also transferred; or
 - (b) transfer only some but not all of the rights and liabilities protected under a netting clause contained in an eligible financial contract.
 - (c) For the purposes of this section – “eligible financial contract” has the meaning ascribed under subsection 18CH(11)(b).

18CM. Shareholder and Creditor Safeguards.

- (1) If, in accordance with a valuation determined by an independent valuer, who meets qualification requirements prescribed by the Central Bank, any shareholder or creditor of the bank under statutory administration establishes that as a result of any merger, purchase and assumption, sale or restructuring under section 18BI, it is in a position that is worse than if the bank had been liquidated (not taking into account the effects of any financial

or other support from the Central Bank, the Government, or the Deposit Insurance Corporation to the bank or an acquirer of the bank under section 18BI of this Act), that shareholder or creditor shall be entitled to compensation in an amount that would restore the shareholder or creditor to the same position as he would have been in had the bank been liquidated provided however that such compensation will only be payable to the shareholder or creditor if recoveries from the liquidation of assets would have exceeded other claims.

- (2) For the purposes of subsection (1) the Central Bank shall pay the compensation and shall decide whether to pay it wholly or partly in cash or wholly or partly in any other form, including shares, that the Central Bank considers appropriate.
- (3) Subject to subsection (1) in determining the amount of compensation to which a person is entitled, the following shall not be taken into account:
- (a) any shares or other interest or right received by another person as a result of a transfer made pursuant to section 18BI or retained by another person; and
 - (b) any common shares received by another person as a result of a conversion of shares or liabilities in accordance with the contractual terms of those shares or liabilities.
- (4) Payment of the compensation by the Central Bank under subsection (2) discharges the Central Bank from its obligations under that subsection and in no case is the Central Bank under any obligation to see to the proper application in any way of any such payment.
- (5) An independent valuer may appoint a person to assist in the performance of the independent valuer's functions, subject to the written approval of the Central Bank.
- (6) The Central Bank shall determine the remuneration to be paid to an independent valuer and any person appointed pursuant to subsection (5).
- (7) The valuation under subsection (1) shall determine the following:
- (a) the treatment that shareholders and creditors, would have received if the institution under

- resolution had entered liquidation at the time when the decision was made to place the bank under statutory administration;
- (b) the actual treatment that shareholders and creditors have received in the resolution of the institution under statutory administration;
- (c) whether there is any difference between the treatment referred to in paragraph (a) and the treatment referred to in paragraph (b).
- (8) The valuation under subsection (1) shall—
- (a) assume that the bank under statutory administration would have entered normal liquidation proceedings at the time when the decision referred to in section 18(1)(f) was taken,
- (b) assume that the resolution action or actions had not been effected, and
- (c) disregard any provision of extraordinary public financial support to the institution under resolution.
- (9) Where the valuation carried out under subsection (1) determines that any shareholder or creditor referred to in that subsection, has incurred greater losses than they would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the Fund in compensation.
- (10) Any affected shareholder or creditor may apply to the independent valuer appointed under subsection 18BI(11) for compensation in accordance with subsection (1).
- (11) The independent valuer to whom an application is made shall determine the amount of compensation due to any person who has made an application under subsection (10).
- (12) Before any determination under subsection (11) has been made, the following persons may make submissions to the independent valuer concerned and the independent valuer shall consider any such submissions:
- (a) the Central Bank;
- (b) the Minister;
- (c) any affected shareholders or creditors.
- (13) Where the independent valuer has determined, in accordance with subsection (11) the amount of compensation, if any, payable to each person who

- has applied for it, the independent valuer shall report in writing to the Central Bank the following:
- (a) the name of each such person;
 - (b) whether compensation is payable to each such person;
 - (c) the amount of compensation, if any, payable to each such person.
- (14) A report under subsection (13) shall set out the following:
- (a) a summary of the evidence on which the independent valuer relied in making his or her determination;
 - (b) the independent valuer's reasons for making the determination.
- (15) As soon as practicable after the publication of the independent valuer's report, the Central Bank shall—
- (a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and
 - (b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.
- (16) The Central Bank shall cause the independent valuer's report under subsection (13) to be published as soon as is practicable.
- (17) As soon as practicable after the publication of the independent valuer's report, the Central Bank shall—
- (a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and
 - (b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.
- (18) The Central Bank, or a shareholder or creditor who has or claims a right to compensation, may lodge an appeal with the Supreme Court against the determination of the independent valuer under subsection (13).
- (19) The independent valuer is to be the respondent to an appeal under subsection (18)
- (20) On hearing an appeal under subsection (13), the Court may substitute its own determination or

confirm, annul or vary the determination appealed from and may make any other consequential order.

- (21) In deciding, for the purposes of an appeal under subsection (13) whether the independent valuer's determination should be confirmed, annulled or varied, the test to be applied by the Supreme Court is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the independent valuer and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors

18CN**Compensation**

- (1) A person may not be appointed as an independent valuer by the Central Bank unless they meet the qualifications specified in writing by the Central Bank.
- (2) The Central Bank must exercise the powers that it has under this Act to, as far as practicable, provide access, or procure the provision of access, for the independent valuer of any records and documents of the bank under statutory administration, or of a connected person, that are, or any other information that is, relevant to the performance by the independent valuer of functions under this Act.
- (3) For the purposes of subsection (2) "connected person" has the meaning given in subsection 38(10)(d) of the Central Bank of The Bahamas Act.
- (4) The Central Bank may revoke the appointment of an independent valuer if_
- (a) the person is incapable of performing the functions of an independent valuer;
 - (b) the person is not performing the functions of an independent valuer impartially and independently;
 - (c) the person is guilty of serious misconduct;
 - (d) the person no longer satisfies the criteria for appointment specified by the Central Bank.
- (5) Where the Central Bank revokes the appointment of an independent valuer pursuant to subsection (4), or where the independent valuer resigns the Bank shall appoint a new independent valuer as soon as practicable following such revocation or resignation.

- (6) As soon as practicable after a new independent valuer is appointed under subsection (5), the Central Bank may, by notice in writing served on the person who has ceased to hold the office of independent valuer, require the person to provide the documents, records or accounts to which this subsection applies to the person appointed as the successor of the person in that office within the period, and in the manner, specified in the notice.
- (9) Subsection (6) applies to—
 (c) any document provided to the person in the capacity of independent valuer;
 (d) any records or accounts kept by the person as required under subsection (6); and
 (c) any other records made by the person in the capacity of independent valuer that are relevant to the performance by a successor independent valuer of functions under this Act.
- (10) A person who, without reasonable excuse, fails to comply with a requirement under subsection (8) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of one thousand dollars for every day during which the offence continues.
- (11) A person who produces any document for complying with a requirement under subsection (8) that the person knew, or ought reasonably to have known, to be false in a material particular commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for six months.
- (12) The acts of a person acting as an independent valuer are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the independent valuer, other than a defect arising because the independent valuer did not meet the criteria specified by the Central Bank.

18D. Central Bank may publish action.

The Central Bank may, if satisfied that the circumstances so warrant, at any time make public and publish notice of any action it has taken under paragraphs (a) through (f) or (h) of subsection (1) of section 18, section 18A, section 18E or under section 18F.

18E.	Prohibition orders.
(1)	The Central Bank may, where it appears to the Bank that an individual is not or is no longer a fit and proper person to perform a regulated function, make an order prohibiting such individual from performing a regulated function.
(2)	For the purposes of this section, “regulated function” includes— <ul style="list-style-type: none"> (a) serving as a director of a licensee, a Registered Representative or a money transmission agent; (b) serving as an officer of a licensee, a Registered Representative or a money transmission agent; (c) acting as the auditor of a licensee, a Registered Representative or a money transmission agent; and (d) performing any other function in or for a licensee, a Registered Representative or a money transmission agent which requires approval, supervision or monitoring by the Central Bank.
(3)	An individual who is in breach of a prohibition order, performs or agrees to perform a regulated function commits an offence and shall be liable on summary conviction — <ul style="list-style-type: none"> (a) to a fine not exceeding fifty thousand dollars; and (b) in the case of a continuing breach, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues.
(4)	It is a defence to a charge against a person in relation to a contravention of subsection (3) if the defendant proves that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
(5)	The Central Bank may, on the application of the individual named in the prohibition order, vary or revoke the order.
18F.	Bank to issue warning, decision notices.
(1)	The Central Bank shall, where it proposes to make a prohibition order, issue a warning notice to all interested parties including — <ul style="list-style-type: none"> (a) the individual affected by the proposed order; and

- (b) if the Bank deems fit, the relevant licensee Registered Representative, or Money Transmission Agent

(2) A warning notice issued under subsection (1) shall —

- (a) set out the terms of the prohibition and the grounds on which the Bank proposes to act; and
 (b) afford the individual named in the notice within such time as is specified in the notice, an opportunity to submit to the Bank a written statement of objection to the proposed prohibition order.

(3) The Bank shall, following the issuance of a warning notice under subsection (1), advise the individual named in the notice of its decision.

(4) The Bank shall, where it decides to make a prohibition order, issue to the individual named in the warning notice, a written notice of the Bank's decision.

(5) A decision notice issued under subsection (4) shall —

- (a) name the individual to whom the prohibition order applies;
 (b) set out the terms of the order;
 (c) state the date on which the Bank's decision is to take effect;
 (d) be delivered to the individual named in the order; and
 (e) if the Bank deems fit, be delivered to the relevant licensee Registered Representative, or Money Transmission Agent.

(6) An individual against whom a decision to make a prohibition order is made may refer the matter to the Supreme Court.

18G. Variation, revocation of prohibition order.

(1) An individual against whom a prohibition order has been made may apply to the Central Bank to have the order varied or revoked.

(2) The Central Bank shall —
 (a) where it decides to grant an application for variation or revocation of a prohibition order, give the applicant and if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission

Agent a written notice of the Bank's decision;
and

- (b) where the Bank proposes to refuse such application, issue to the applicant and, if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent a written warning notice.

- (3) A warning notice issued under paragraph (b) of subsection (2) shall —
- (a) set out the reasons for the Bank's proposed refusal to vary or revoke the prohibition order; and
- (b) contain a statement that the individual named in the warning notice may, within such time as is specified in the notice, submit to the Bank a written statement of objection to such proposed refusal.

- (4) The Bank shall, following the issuance of a warning notice under paragraph (b) of subsection (2), advise the individual named in the notice of its decision.

- (5) The Bank shall, where it decides to refuse the application for variation or revocation, issue to the applicant a written decision notice which shall comply with the requirements of subsection (5) of section 18F.

- (6) An applicant issued a decision notice under subsection (5) may refer the matter to the Supreme Court.

19.

Preservation of confidentiality.

- (1) No person who has acquired information in his capacity as -
- (a) director, officer, employee or agent of any licensee or former licensee;
- (b) counsel and attorney, consultant or auditor of the Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;

- (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor;
- (e) the Inspector under the provisions of this Act;
- (f) a Supervisory Authority or as a director, officer, employee or agent of a Supervisory Authority; shall, without the express or implied consent of the customer concerned, disclose to any person any such information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee or relating to any application by any person under the provisions of this Act, as the case may be, except -
 - (i) for the purpose of the performance of his duties or the exercise of his functions under this Act, if any;
 - (ii) for the purpose of the performance of his duties within the scope of his employment;
 - (iii) when a licensee is lawfully required to make disclosure by any court of competent jurisdiction within The Bahamas, or under the provisions of any law of The Bahamas;
 - (iv) for the purpose of enabling or assisting the Central Bank to exercise any functions conferred upon the Bank by any written law;
 - (v) in the case of a bridge institution, to the Minister of Finance or his designate;
 - (viii) in the case of an asset management vehicle, to the Minister of Finance or his designate;
 - (vii) to a person with a view to the institution of, or for the purpose of-
 - (a) criminal proceedings;
 - (b) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; or
 - (c) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Central Bank of his duties.

- (2) Subsection (1) shall not apply in any case where in accordance with such conditions as the Inspector may determine, information of such class or classes as the Inspector may from time to time approve, is transmitted from a licensee to the head office, a branch or subsidiary of that licensee outside of The Bahamas, solely for the purposes of carrying out

collation, synthesis or processing of information on behalf of the licensee.

- (3) In any civil proceedings where information is likely to be disclosed in relation to a customer's bank account, those proceedings may, if the court, of its own motion or on the application of a party to the proceedings, so orders, be held in camera and the information shall be confidential as between the court and the parties thereto.
- (4) No person shall publish the name, address or photograph of any parties to those civil proceedings as are referred to in subsection (3) or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or after they have been terminated.
- (5) The Central Bank may, subject to the provisions of section 14(2), provide information on the beneficial owners, directors, officers and operations of a licensee (including any report produced by the Inspector pursuant to any inspection or examination of the licensee) to the Supervisory Authority which is responsible for regulating the head office of the licensee for the purpose of consolidated supervision of the licensee by the Supervisory Authority.
- (6) To facilitate regulatory cooperation within The Bahamas, the Governor or any director, officer, employee, agent or advisor of the Bank may cooperate with any other domestic regulatory authority, including, by sharing information on the beneficial owners, directors, officers and operations of a licensee and any of its affiliates, or any other information acquired in the discharge of functions and duties under this or any other Act, where the Governor considers that such cooperation or information may be relevant to the functions of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

- (7) Nothing contained in this section shall -
- (a) prejudice or derogate from the rights and duties subsisting at common law between a licensee and its customer;
 - (b) prevent a licensee from providing upon a legitimate business request in the normal course of business a general credit rating with respect to a customer; or
 - (c) prevent the Inspector from sharing information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee with the Financial Intelligence Unit where he believes that a suspicious transaction was not reported as required under the Financial Transactions Reporting Act.

(8) The Central Bank in the exercise of its co-operative functions may, with the approval of the Governor, enter into memoranda of understanding with Supervisory Authorities for the purpose of facilitating the consolidated supervision of its licensees.

(9) No memorandum of understanding entered into pursuant to subsection (8) may call for assistance beyond that which is provided for by this Act, or relieve the Central Bank of any of its functions or duties under this Act.

(10) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

20. Treatment of dormant accounts held by banks.

- (1) This section applies to —
- (a) a deposit account, including demand, savings, and fixed term deposit account;
 - (b) a chequing account;
 - (c) a bank draft, cashier cheque, certified cheque and money order;
 - (d) a traveller's cheque;
 - (e) a credit balance on a credit card;
 - (f) a credit balance on a loan;
 - (g) collateral held on a loan, including cash and non-cash collateral;
 - (h) funds paid for shares or other interest in a licensee;
 - (i) a custody account or safety deposit box;

- (j) a deposit account of precious metals and precious gemstones;
- (k) all securities listed in Part I of the *First Schedule* to the Securities Industry Act (No. 10 of 2011); and
- (l) such other deposit account or other facility as the Central Bank may, by notice, determine.

(2)

For the purposes of this section —

“customer” means —

- (a) a person who holds an account or other facility;
- (b) a person who, in respect of an account or other facility, is authorised, in writing, to act as the agent of the person who holds the account or other facility;
- (c) a person who is authorised under a power of attorney to manage and control an account or other facility;
- (d) where a person who holds an account or other facility is deceased, the heirs, executors, administrators and assigns of that person;
- (e) such other person as the Central Bank may by notice determine;

“dormant account” means a deposit account or other facility at a bank where the customer has initiated no transaction, for a period of seven years, with respect to —

- (a) the deposit account or other facility;
- (b) any other deposit account or facility of the customer held with the bank;

“other facility” means any account or arrangement —

- (a) that is provided by a bank to a customer;
- (b) by, through or with which a customer may conduct transactions, including instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;

“precious gemstones” does not include jewelry;

“recognized foreign securities exchange” has the meaning assigned in section 2 of the Securities Industry Act, 2011;

“registered securities exchange” means a securities exchange that is registered pursuant to Part V of the Securities Industry Act, 2011;

“transaction” means an action initiated by a customer, in person or by electronic or other non-physical means, in respect of a deposit account or other facility that such customer has with a bank and includes —

- (a) a deposit, withdrawal, exchange or transfer of funds in any currency denomination whether in cash, by cheque, payment order, or other instrument;
- (b) a communication, acknowledgement, request, or instruction where evidenced in writing and signed by the customer;
- (c) a contemporaneous record of the customer's verbal instruction prepared by the bank.

(3) The seven year period, referred to in the definition of dormant account in subsection (2), shall be calculated in the case of —

- (a) a deposit account made for a fixed period, from the date on which the fixed period terminated, or the date the customer terminates his instructions to automatically renew the deposit, whichever is the later;
- (b) a deposit account not made for a fixed period, from the date on which the customer last conducted a transaction with respect to the deposit account; and
- (c) a facility other than one referred to in paragraphs (a) or (b), from the date on which the facility was issued, established, or the obligation to make a payment in respect of the facility accrued, whichever is the later.

(4) A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, within two months after the end of the calendar year in which the applicable seven year period expired —

- (a) pay to the Central Bank an amount equal to and in the same currency denomination as the amount owing by the bank in respect of the dormant account, including cash from a dormant safety deposit box; or
- (b) subject to subsection (10), liquidate a dormant account, including a safety deposit box, containing precious metals, precious gemstones or securities, and after deducting the reasonable costs incurred in connection with the liquidation of the account, pay the balance of the proceeds of sale of such account

to the Central Bank, provided that, the Central Bank may exempt a bank in writing from this subsection where extenuating circumstances exist.

- (5) For the purposes of paragraph (b) of subsection (4)—
- (a) securities listed on a registered securities exchange or a recognized foreign securities exchange shall be sold at prices prevailing on the exchange at the time of sale;
 - (b) securities that are not listed on an established stock exchange may be sold over the counter at prices prevailing at the time of the sale or by any reasonable method selected by the bank using its best efforts and prudence and having regard to market conditions at the time of the sale, which sale shall take place within two months after the end of the calendar year in which the applicable seven year period expired or within such longer period as the Central Bank may, in its sole discretion, approve;
 - (c) a purchaser acquiring property at a sale takes the property free of all claims of the owners and of all persons claiming through or under the owners;
 - (d) a person making a claim for liquidated property —
 - (i) is entitled to receive the proceeds of sale of such property, less deductions for —
 - (aa) costs of sale;
 - (bb) reasonable expenses incurred by the Bank, pursuant to section 24(2) of the Central Bank of The Bahamas Act (Ch. 351); and (ii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.
- (6) Subsection (4)(b) shall not apply where the precious metals, precious gemstones or securities do not have a ready buyer, cannot be sold, are worthless or are not cost-effective to sell and, in such cases, the bank —
- (a) shall transfer the property to the Central Bank or to an agent appointed by the Central Bank; or
 - (b) at the discretion of the Central Bank, shall continue to hold the precious metals, precious

gemstones or securities, as the case may be, as an agent for the Central Bank.

- (7) Subject to subsection (12), no person shall have a claim for any act done pursuant to paragraph (b) of subsection (4) against —
- (a) a bank;
 - (b) a registrar and transfer agent; or (c) any other person acting for or on behalf of the bank.
- (8) A bank shall retain —
- (a) for a period of fifteen years after the date the bank makes a payment to the Central Bank pursuant to subsection (4); or
 - (b) for a period of five years after the bank makes a payment to a claimant pursuant to subsection (12), all records relating to the dormant account in respect of which such payment was made including all —
 - (i) registers;
 - (ii) signature cards;
 - (iii) signing authorities;
 - (iv) microfilm or electronically stored copies of such records.
- (9) Notwithstanding subsection (8), the relevant periods for the retention of records where a bank makes a payment pursuant to subsection (4) or subsection (12) with respect to a securities account shall be seventeen years and seven years, respectively.
- (10) Notwithstanding subsection (4), a bank shall —
- (a) subject to paragraph (b), not make payment to the Central Bank with respect to —
 - (i) dormant accounts which have any one or more of the following characteristics —
 - (aa) are non-cash collateral;
 - (bb) are a custody account or safety deposit box, except for cash, precious metals, precious gemstones or securities found in such boxes;
 - (ii) such other characteristics as the Governor may, by regulation, determine;
 - (b) continue to administer the dormant accounts referred to in paragraph (a) in the best interest of the customer in accordance with the bank's contractual obligations and subject to heightened internal monitoring by the bank, in accordance with guidelines issued by the Central Bank;

- (c) deduct a reasonable sum for the administration of the dormant account referred to in paragraph (a) only where —
- (i) there is an enforceable written contract between the bank and the customer under which the bank may impose a charge; and
 - (ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled.

(11) A bank which holds a dormant account of the kind referred to in subsection (10)(a) shall make a report to the Central Bank at such intervals, and in such form containing such particulars, as the Bank may require.

(12) Where a bank has made a payment to the Central Bank pursuant to subsection (4) and —

- (a) the bank represents to the Central Bank that it is satisfied that a person is entitled to receive an equal amount where the funds were paid in Bahamian dollars and an equivalent amount where the funds were paid in any other currency; and
- (b) the person has brought a claim to the bank for the amount so paid prior to the expiry of ten years from the date of the Central Bank's receipt of such amount, a liability shall arise —
 - (i) on the Central Bank, to repay to the bank an equal or equivalent amount, as the case may be, together with interest if interest was payable by the bank, at a rate and computed in a manner that the Central Bank may by written notice determine; and
 - (ii) on the bank, to pay the amount received from the Central Bank under subparagraph (i) to the claimant.

(13) A bank which makes a payment to the Central Bank pursuant to subsection (4), or transfers property to the Central Bank or an agent of the Bank pursuant to subsection (6)(a), shall be discharged from further liability in respect of such payment or transfer.

(14) The Central Bank shall, where the Bank makes a payment pursuant to subsection (12) of this section or section 24(1) of the Central Bank of The Bahamas Act (Ch. 351), be discharged from further liability in respect of such payment.

- (15) A bank shall maintain a register of dormant accounts containing in respect of each account the —
- (a) full name and last known address of each customer;
 - (b) last known telephone number or other contact of each customer;
 - (c) name of the bank and location of the branch at which the dormant account is held;
 - (d) account number;
 - (e) type of facility;
 - (f) full description of assets, including amount and currency where appropriate;
 - (g) fee status, indicating whether the account was subject to any fees immediately prior to transfer to the Central Bank and the amount of such fees;
 - (h) interest status, indicating whether the account was subject to any interest earned immediately prior to transfer to the Central Bank and the amount of such interest;
 - (i) date of last transaction on the account;
 - (j) measures, briefly described, taken to contact the customer;
 - (k) in the case of funds in transit, file copy of the instrument or transfer;
 - (l) date funds were paid to the Central Bank pursuant to subsection (4), where applicable; and
 - (m) other information that the Central Bank may, in writing, require a bank to maintain in the register.

21.

Charges for account to be by agreement.

No bank shall directly or indirectly charge or receive any sum of money for the establishment, maintenance or service of an account unless such charge is made by express and specific agreement between the bank and the customer.

22.

Power of search.

- (1) If a Magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 13(4) to assist the Inspector either -
- (a) that a licence has been suspended; or
 - (b) that there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information or in any vehicle, vessel or aircraft so specified; or

(c) that any books, records, vouchers, documents, cash or securities which ought to have been produced under section 13(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft, he may grant a search warrant authorising the Inspector or such person authorised under section 13(4) or any police officer together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.

(2) The person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under section 13(3):

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

(3) Where by virtue of this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.

- (4) Every person who shall obstruct the Inspector or any other person in the exercise of any powers conferred on him by virtue of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

23. Attorney-General's fiat.

- (1) No prosecution in respect of any offence committed under this Act shall be instituted except by or with consent of the Attorney-General.

- (2) Any penalty incurred under this Act shall be paid to the Central Bank.

- (3) Notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence committed under this Act may be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Attorney General, to justify a prosecution for the offence comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires;

- (4) For the purposes of this section, a certificate purporting to be signed by the Attorney General as to the date on which such evidence referred to in subsection (3) comes to his knowledge shall be conclusive.

24. Regulations.

The Central Bank may make regulations for all or any of the following purposes —

- (a) to prescribe the information, particulars and references which may be prescribed under section 4(2) and section 7(3);
- (b) to prescribe the facts or matters which are likely to be of material significance for the discharge of the Inspector's functions under this Act;
- (c) generally for carrying out the purposes or provisions of this Act into effect.

25. No Derogation.

(1) The provisions of the Act shall have effect in addition to and not in derogation of any other provisions having the force of law in The Bahamas, provided however that the provisions of the Act shall prevail to the extent of any inconsistency with other laws of general application.

(2) This Act shall have effect notwithstanding anything to the contrary in the Companies Act (*Ch. 308*) and the provisions of that Act, insofar as they relate to banking business or such other business as may be regulated or supervised by the Central Bank in or from within The Bahamas, shall have effect only subject to the provisions of this Act.

26.

Appeal.

(1) An appeal shall lie to the Supreme Court from any decision of the Central Bank -

- (a) revoking a licence under section 4(6), section 7(5), section 18BJ(3) or section 18;
- (b) cancelling any registration or withdrawing any exemption under section 4(7) or withdrawing any approval under section 7(4);
- (c) requiring a licensee to take certain steps which the Central Bank may specify under section 18.
- (d) to serve a notice of objection under subsection (1) of section 6B.
- (e) to serve a decision notice under subsections (4) of 18F or subsection (5) of section 18G.
- (f) to serve a notice in respect of a serious contravention or a very serious contravention under section 24E.
- (g) appointing a statutory administrator pursuant to section 18(1)(f);

(2) An appeal against the decision of the Central Bank shall be on motion and the appellant within twenty-one days after the day on which the Central Bank has given its decision shall serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of his intention to appeal and of the general ground for his appeal:

Provided that any person aggrieved by the decision of the Central Bank may upon notice to the Attorney-General apply to the Supreme Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.

(3) The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Central Bank's decision and all papers relating to the appeal:

Provided that the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.

(4) The Registrar shall set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by such statement.

(6) In any court, administrative, or arbitration proceedings brought against the Central Bank, the Inspector, a director, officer, employee, correspondent or agent of the Central Bank, including any statutory administrator, or liquidator appointed by the Central Bank under this Act for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions or against the Bank for any actions or inactions pursuant to sections 18(1)(f), 18B, 18BB, 18BD, 18BE, 18BI, 18BJ, 18BK, 18CA(10), 18CB(3), 18CC, 18CH, 18CD, 18CE and 18CI of this Act relating to intervening in or resolving banks:

- (a) the court, administrative body, or arbitration panel may examine only whether the respondent acted unlawfully, in bad faith, or with gross negligence, the burden of proof of which shall be borne by the plaintiff/claimant;
- (b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and
- (c) the court, administrative body, or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.

- (7) An appeal against a decision of the Central Bank shall not have the effect of suspending the execution of such decision.

27. Fees and levy.

- (1) Notwithstanding the provisions of any other law, a bank that is a DSII at any time during a financial year that ends after the commencement of this section is liable to pay a levy in respect of that financial year.

- (2) The provisions of the Third Schedule shall have effect for the payment of the fees in respect of the matters mentioned in that Schedule and all fees and levy listed in the Third Schedule shall be collected by the Central Bank.

- (3) Subject to subsection (4) all fees and any levy amount paid pursuant to subsection (2) shall be placed in the Consolidated Fund.

- (4) For the purpose of funding regulatory activity of the Central Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas and the Compliance Commission, the Central Bank shall withhold such amount of the fees and levy collected under subsection (2) as may be agreed with the Minister and shall remit the balance to the Treasurer.

- (5) The Minister may by regulations—
- (a) provide for the refund (or other application) of over payment of levy;
 - (b) vary the fees or amount of levy prescribed in the Third Schedule, to provide that any such regulations which increase the amount of any fees or levy payable under this Act shall be exempt from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament;

- (6) The Central Bank may, if the Central Bank considers it appropriate to do so, waive the payment of the whole or a part of an amount of levy that is payable by a DSII.

- (7) In subsection (5) the expression “affirmative resolution of both Chambers of Parliament” in relation to regulations means that the regulations are not to come into operation unless and until affirmed by a resolution of each of those Chambers.

- (8) If any person fails to comply with any requirement of subsections (1), (2) and the Third Schedule, he, or, where such person is a company, the company and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default, shall on summary conviction be liable, for every day during which the default continues, to a fine not exceeding one thousand dollars.

28. Repeal.

The Banks and Trust Companies Regulation Act and the Banks Act are hereby repealed.

29. Saving

Any licence, authority, approval or exemption granted under the repealed Act which is in force immediately before the coming into force of this Act -

- (a) shall continue to have effect after the coming into force of this Act as if granted under this Act;
- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

FIRST SCHEDULE (Section 17)

RULES FOR INSPECTION AND SUPERVISION OF BANKS AND TRUST COMPANIES

1. Duties of Inspector

The Inspector shall -

- (a) regularly evaluate the condition, solvency and liquidity of all licensees;
- (b) establish appropriate and prudent standards for conducting safe and sound banking and trust business;
- (c) set prudent and appropriate capital adequacy requirements for banks not less than those established in the Basel Capital Accord and its Amendments;
- (d) evaluate banks' policies, practices and procedures related to the granting of loans and making of investments and the on-going management of the loan and investment portfolios;

- (e) ensure that banks and trust companies have management information systems that enable management to identify portfolio concentration in line with established limits;
- (f) ensure that banks and trust companies have in place and use systems that accurately measure, monitor and adequately control market and other risks;
- (g) ensure that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and loan-loss reserves;
- (h) ensure that banks and trust companies have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including strict know-your-customer rules that promote high ethical and professional standards, and so prevent the use of the bank for criminal purposes;
- (i) co-operate with inspectors and supervisors in other jurisdictions to the extent necessary for the purposes of cross-border supervision consistent with the policy established by the Basel Committee for cross-border supervision.

2.

Interpretation

In this schedule -

“Basel Committee on Banking Supervision” or “Basel Committee” means the committee of central banks and bank supervisors that is the primary global standard setter for the prudential regulation of banks.

Second Schedule.*Repealed by No. 21 of 2007***THIRD SCHEDULE****(Section 27)****FEES AND LEVY**

1.

(1)

The amount of levy payable by a DSII for a financial year is the amount worked out using the following formula —

Levy = Rate of Assessment per annum	x	(Consolidated Domestic amount of DSII	Total Liabilities	--	Levy threshold	+ Regulatory capital amount equivalent to 16 percent of a DSII's risk assets)
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- (2) The amount of levy payable by a DSII for a financial year shall in no case be less than zero.
- (3) The annual rate of assessment to be used to calculate the levy shall be 0.30% or such other percentage as the Minister may by regulation determine from time to time
- (4) Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say –

2	Matters in respect of which fee is payable	Amount of fee \$
	(a) Appointment of a licensee by the Controller of Exchange as an authorised dealer as defined in paragraph (1) of regulation 42 of the Exchange Control Regulations in the case where the licensee as per its last audited financial statement –	
	(i) has domestic assets not exceeding \$500 million	\$250,000
	(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$500,000
	(iii) has domestic assets exceeding \$1 billion	\$1 million
	(b) Continuance in being on the first day of January in any year as a person appointed as mentioned in sub-paragraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements-	
	(i) has domestic assets not exceeding \$500 million	\$275,000
	(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$550,000
	(iii) has domestic assets exceeding \$1 billion but not exceeding \$1.5 billion	\$1 million
	(iv) has domestic assets exceeding \$1.5 billion	\$1.2 million
	(c) A further fee payable on the first day of January in any year as a person appointed as mentioned in subparagraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements--	
		\$50,000

- | | |
|--|---------------|
| (i) has domestic liabilities not exceeding \$100 million | |
| (ii) has domestic liabilities exceeding \$100 million but not exceeding \$500 million | \$450,000 |
| (iii) has domestic liabilities exceeding \$500 million but not exceeding \$1 billion | \$1.5 million |
| (iv) has domestic liabilities exceeding \$1 billion | \$2 million |
| (d) Appointment of a licensee as authorised agent pursuant to the Exchange Control Regulations in the case where the licensee as per its last consolidated audited financial statements - | |
| (i) has assets not exceeding \$5million | \$90,000 |
| (ii) has assets exceeding \$5 million but not exceeding \$20 million | \$150,000 |
| (iii) has assets exceeding \$20 million | \$225,000 |
| (e) Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (d) of this paragraph in the case where the licensee as per its last audited financial statement – | |
| (i) has assets not exceeding \$5 million | \$90,000 |
| (ii) has assets exceeding \$5 million but not exceeding \$20 million | \$150,000 |
| (iii) has assets exceeding \$20 million | \$225,000 |
| (f) Grant of license to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee- | |
| (i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and | |
| (ii) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph | \$80,000 |
| (g) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (f) of this paragraph | \$80,000 |
| (h) Grant of licence to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee— | \$80,000 |

- (i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and
- (ii) has not been appointed as mentioned in sub-paragraph (a) or (d) of this paragraph

(i) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (e) of this paragraph \$80,000

(j) Grant of licence to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee—

- (i) Has been declared by the Controller of the Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and
- (ii) has not been appointed as mentioned in sub-paragraph (a) or (d) of this paragraph

\$80,000

(k) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (j) of this paragraph \$80,000

(l) Grant of license to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee-

- (i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and
- (ii) has not been appointed as mentioned in sub-paragraph (a) or (d) of this paragraph

\$58,000

(m) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (l) of this paragraph \$58,000

(n) Continuance in being on the first day of January in any year as a person licensed to carry on banking business solely with a person specified in the licence \$35,000

(o) Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence \$35,000

(p) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (o) of this paragraph	\$35,000
(q) Grant of license solely to carry on the trust Business specified in the licence	\$11,000
(r) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (q) of this paragraph	\$11,000
(s) Grant of any licence not mentioned in subparagraph (f), (h), (j), (l), (o) or (q) of this paragraph	\$2,500
(t) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (s) of this paragraph	\$2,500
(u) On commencement of the business of a private trust company	\$6,000
(v) Continuance in being on the first day of January in any year as a private trust company mentioned in subparagraph (u) of this paragraph	\$4,000
(w) On commencement of the business of a Money Transmission Service Provider	\$11,000
(x) Continuance in being on the first day of January in any year as a Money Transmission Service Provider mentioned in paragraph (w)	\$11,000

3.

Where any person by reason of falling within a class mentioned in subparagraphs (a) to (w) of paragraph 2 of this Schedule has paid a fee therein prescribed in respect of that class for any year and would, but for provisions of this paragraph of this Schedule, be required to pay in that year a further fee or further fees by reason of such person during that year coming additionally within another such class as aforesaid, such person shall not be required to pay in respect of fees under this Act for that year more in total than the highest fee prescribed in respect of any of the classes within which such person falls:

Provided that any person in any year falling within a class mentioned at subparagraph (a) or (b) and at the same time within a class mentioned at subparagraph (c), (d) or (e) of the said paragraph 1 of this Schedule shall, subject to paragraphs 4 and 5 of this Schedule, be required to pay the fee prescribed in respect of both such classes for that year.

4. As respects the fees specified at subparagraphs (b), (e), (g), (i), (k), (m), (n), (p), (s), (u) and (w) of paragraph 2 of this Schedule –
- (a) not more than sixty days grace, to be calculated from the first day of January in each year, may be allowed by the Treasurer for the payment of the fees payable in any year; and
 - (b) no such fees shall be payable in any year where the original appointment or licence to which such fee relates was made or granted on or after the first day of September in the preceding year.

5. Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 2 of the Third Schedule to, the Companies Act and pursuant to subsection (1) of section 176 of, and paragraph 3 of the Schedule to, the International Business Companies Act shall be deducted from any fees payable by such person in that year under this Act.

FOURTH SCHEDULE
(Section 18BI(4))
Securities Transfer Instruments

Part 1
General

1 Interpretation

In this Schedule –

“prescribed entity” means –

- (a) a bank under statutory administration;
- (b) a holding company of a bank under statutory administration;
- (c) an affiliated operational entity of a bank under statutory administration;
- (d) a bridge institution to which –
 - (i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or
 - (ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument;
- (e) an asset management vehicle to which assets, rights or liabilities mentioned in

paragraph 18BI(2) have been transferred by a property transfer instrument.

“securities” includes—

- (a) shares and stock;
- (b) debentures, including—
 - (i) debenture stock,
 - (ii) loan stock,
 - (iii) bonds,
 - (iv) certificates of deposit, and
 - (v) any other instrument creating or acknowledging a debt.
- (c) warrants or other instruments that entitle the holder to acquire anything in paragraph (a) or (b);

2 Securities transfer instrument

- (1) A securities transfer instrument is an instrument that –
 - (a) provides for the transfer of securities issued by a prescribed entity; and
 - (b) makes any other provision for the purpose of, or in connection with, the transfer of securities issued by a prescribed entity (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).
- (2) A securities transfer instrument may relate to –
 - (a) specified securities; or
 - (b) securities of a specified description.

3 Procedure

As soon as practicable after making a securities transfer instrument in respect of a prescribed entity, the Central Bank or statutory administrator must –

- (a) Send a copy to –
 - (i) the transferor;
 - (ii) the transferee; and
 - (iii) the Minister of Finance;
- (b) publish a copy of the instrument on its internet website;
- (c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and
- (d) cause notice of the making of the instrument to be published in the Gazette.

4 Effect of securities transfer instrument

- (1) A transfer of securities and any other provision contained in a securities transfer instrument takes effect by operation of this Act.
- (2) A transfer takes effect at the times, or on the date, specified in the securities transfer instrument.
- (3) A transfer takes effect despite any restriction arising under contract or legislation or in any other way.
- (4) A securities transfer instrument may provide for a transfer to take effect free of any trust, liability or other encumbrance (and may include provision about the extinguishment of any trust, liability or other encumbrance).
- (5) A securities transfer instrument may extinguish rights to acquire securities.
- (6) This paragraph does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a securities transfer instrument.
- (7) In this paragraph –
 “restriction” includes –
 (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and
 (b) a requirement for consent (however described);
 “transfer” means a transfer of securities under a securities transfer instrument.

5 Continuity

- (1) A securities transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.
- (2) A securities transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A securities transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A securities transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(5) A securities transfer instrument may permit or require –
 (a) a transferor to provide a transferee with information and assistance; and
 (b) a transferee to provide a transferor with information and assistance.

6 Conversion and de-listing

(1) A securities transfer instrument may provide for securities to be converted from one form or class to another.

(2) A securities transfer instrument may provide for the listing of securities on a recognized stock exchange to be cancelled or dealings in securities on a recognized stock exchange to be suspended.

7 Removal of directors etc.

(1) A securities transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.

(2) The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

8 Instruments

(1) A securities transfer instrument may permit or require the execution, issue or delivery of an instrument.

- (2) A securities transfer instrument may provide for a transfer to have effect irrespective of –
- (a) whether an instrument has been produced, delivered, transferred or otherwise dealt with;
 - or
 - (b) registration.
- (3) A securities transfer instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the securities transfer instrument.
- (4) A securities transfer instrument may modify or annul the effect of an instrument.
- (5) A securities transfer instrument may –
- (a) entitle a transferee to be registered in respect of a security; and
 - (b) for that purpose, require a person to effect registration.

9 Incidental provision, etc.

- (1) A securities transfer instrument may include incidental, consequential or transitional provisions.
- (2) In relying on subparagraph (1), a securities transfer instrument –
- (a) may make provision generally or only for specified purposes, cases or circumstances; and
 - (b) may make different provision for different purposes, cases or circumstances.

Part 2

Supplemental Securities Transfer Instrument

10 Supplemental securities transfer instrument

- (1) This Part applies if the Central Bank has made a securities transfer instrument under section 18BI (original instrument).
- (2) The Central Bank or statutory administrator or statutory administrator may make one or more supplemental securities transfer instruments.

- (3) A supplemental securities transfer instrument is a securities transfer instrument that –
- (a) provides the transfer of securities that were issued by the prescribed entity before the original instruments and were not the subject of the original instrument or another supplemental securities transfer instrument; or
 - (b) makes provision of a kind that a securities transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).
- (4) The possibility of making a supplemental securities transfer instrument in reliance on subparagraph (2) does not prevent the making of a new instrument under section 18BI (and not in reliance on subparagraph (2)).
- (5) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental securities transfer instrument in the same way as it applies with respect to an original instrument.

Part 3

11 Reverse Securities Transfer Instrument

- (1) This Part applies if the Central Bank or statutory administrator has made a securities transfer instrument under section 18BI (original instrument) providing for the transfer of securities issued by a prescribed entity (original transferred securities) to another entity (original transferee).
- (2) The Central Bank or statutory administrator may make one or more reverse securities transfer instruments in respect of original transferred securities held by the original transferee.
- (3) A reverse securities transfer instrument is a securities transfer instrument that –
- (a) provides for the transfer of original transferred securities held by the original transferee to the transferor under the original instrument; and
 - (b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred securities (whether or not the transfer was the subject of that instrument).
- (4) The Central Bank or statutory administrator must not make a reverse securities transfer instrument

without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.

- (5) Nothing in this subparagraph prevents the making of a supplemental securities transfer instrument under Part 2 of this Schedule in respect of securities that have been the subject of a reverse securities transfer instrument.
- (6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse securities transfer instrument in the same way as it applies with respect to an original instrument.

FIFTH SCHEDULE (Section 18BI(5))

Property Transfer Instruments Part 1 General

1 Interpretation

In this Schedule –

“prescribed entity” means –

- (a) a bank under statutory administration;
- (b) a holding company of a bank under statutory administration;
- (c) an affiliated operational entity of a bank under statutory administration;
- (d) a bridge institution to which –
 - (i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or
 - (ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument; or
- (e) an asset management vehicle to which assets, rights or liabilities mentioned in section 18BI(2) have been transferred by a property transfer instrument.

2 Property transfer instrument

- (1) A property transfer instrument is an instrument that –
- (a) provides for the transfer of assets, rights or liabilities of a prescribed entity; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of assets, rights or liabilities of a prescribed entity (whether or not the transfer was the subject of that instrument).

- (2) A property transfer instrument may relate to –
- (a) all assets, rights and liabilities;
 - (b) all assets, rights and liabilities subject to specified exceptions;
 - (c) specified assets, rights or liabilities; or
 - (d) assets, rights or liabilities of a specified description.

3 Procedure

As soon as practicable after making a property transfer instrument in respect of a prescribed entity, the Central Bank or statutory administrator must –

- (a) Send a copy to—
 - (i) the transferor;
 - (ii) the transferee; and
 - (iii) the Minister of Finance;
- (b) publish a copy of the instrument on its internet website;
- (c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and
- (d) cause notice of the making of the instrument to be published –
 - (i) in the Gazette; and
 - (ii) in the Gazette to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

4 Effect of property transfer instrument

- (1) A transfer of assets, rights or liabilities and any other provision contained in a property transfer instrument takes effect by operation of this Act.
- (2) A transfer takes effect at the time, or on the date, specified in the property transfer instrument.
- (3) Subject to any condition imposed under subparagraph (4), a transfer takes effect despite any restriction arising under contract or legislation or in any other way.
- (4) A property transfer instrument may make a transfer subject to such conditions as the Central Bank or statutory administrator determines, provide for a transfer to be a conditional or a specified event or situation –

- (a) occurring or arising; or
(b) not occurring or arising.
- (5) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subparagraph (4).
- (6) Consequences mentioned in subparagraph (5) may include any of the following –
(a) automatic vesting in the original transferor;
(b) an obligation to effect a transfer back to the original transferor;
(c) provision making a transfer or anything done in connection with a transfer void or voidable.
- (7) If a property transfer instrument makes provision in respect of assets held on trust (however arising), it may also make provision about –
(a) the terms on which the assets are to be held after the instrument takes effect, which provision may remove or alter the terms of the trust but only to the extent that the Central Bank or statutory administrator thinks it necessary or expedient for transferring –
(i) the legal or beneficial interest of the transferor in the assets; or
(ii) any powers, rights or obligations of the transferor in respect of the assets; or
(c) how any powers, provisions and liabilities in respect of the assets are to be exercisable or have effect after the instrument takes effect.
- (8) Provision may not be made under sub-subparagraph (7)(a) that affects the beneficial interest of a client in the client's assets held on trust, however arising.
- (9) In subparagraph (7), a reference to the transferor is a reference to the transferor under the property transfer instrument.
- (10) Nothing in paragraph 4 affects the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a creditor or shareholder who is or was the trustee under the trust or a counterparty to the contract prior to the appointment of a statutory administrator if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a property transfer instrument.

- (11) A transfer of an interest in land under a property transfer instrument does not extinguish, affect, vary, diminish or postpone any priority of that interest, whether under any Act or in equity.
- (12) The Central Bank or statutory administrator must register or cause to be recorded in the Registry –
- (a) a copy of the property transfer instrument under which an interest in land is transferred;
 - (b) a copy of an instrument that states whether any condition imposed on the transfer under subparagraph (4) is satisfied; and
 - (c) a copy of an instrument that evidences an automatic vesting in the original transferor in consequence of a breach of such condition.
- (13) The production of the instruments mentioned in sub-subparagraph (12)(a) and (b) is conclusive evidence for proving and deducing title in favour of the transferee. However, in the case of an automatic vesting in the original transferor, the production of the instruments mentioned in sub-subparagraph (12)(a), (b) and (c) is conclusive evidence for proving and deducing title in favour of the original transferor.
- (14) Notwithstanding the provisions of any other law, the vesting of an interest in land under a property transfer instrument does not –
- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest;
 - (b) constitute an assignment or under lease of, or an agreement to assign or underlet, that interest;
 - (c) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest or in any instrument concerning or affecting that interest;
 - (d) operate as a breach of covenant or condition against alienation;
 - (e) give rise to any forfeiture, damages or other right of action; or
 - (f) invalidate or discharge any contract or security interest.
- (15) In this paragraph –

“Registry” has the meaning ascribed to it by section 2 of the Registration of Records Act, (Ch. 187)

“restriction” includes –

- (a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and
- (b) a requirement for consent (however described);

“transfer” means a transfer of assets, rights or liabilities under a property transfer instrument.

5 Application to Court

(1) The Central Bank may, if of the opinion that a transferee has breached a condition of a transfer imposed under sub-paragraph 4(4) of this Schedule, apply to the Court for an order under subparagraph (2).

(2) On an application under subparagraph (1), the Court may, if satisfied that the transferee has breached a condition mentioned in that subparagraph, make any order that it thinks fit, including in order that the transferee effects a transfer back to the original transferor.

6 Transferable property

A property transfer instrument may transfer any assets, rights or liabilities of a prescribed entity including, in particular-

- (a) assets, rights or liabilities acquired or arising between the making of the instrument and the transfer date;
- (b) rights or liabilities arising on or after the transfer date in respect of matters occurring before that date;
- (c) assets outside The Bahamas;
- (d) rights or liabilities under a non-Bahamian law; and
- (e) rights or liabilities arising under an Act to which the prescribed entity is entitled or subject.

7 Continuity

(1) A property transfer instrument may provide –

- (a) for a transfer to be, or to be treated as, a succession; and

(b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A property transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A property transfer instrument may provide for any (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A property transfer instrument that transfers, or enables the transfer of, a contract of employment may include provision about continuity of employment.

(5) A property transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(6) In so far as rights and liabilities in respect of anything transferred are enforceable after the transfer, a property transfer instrument may provide for apportionment between the transferor and the transferee to a specified extent and in specified ways.

(7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instruments, but a modification –
 (a) must achieve a result that could have been achieved by the instrument; and
 (b) may not transfer (or arrange for the transfer of) assets, rights or liabilities.

(8) A property transfer instrument may permit or require –
 (a) a transferor to provide a transferee with information and assistance; and
 (b) a transferee to provide a transferor with information and assistance.

8 De-listing

A property transfer instrument may provide for a listing of securities on a recognized stock exchange to be cancelled or dealings in securities on recognized stock exchanges to be suspended.

9 Removal of directors etc.

- (1) A property transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from such date as may be specified in the instrument.
- (2) The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

10 Licences

- (1) A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.
- (2) A property transfer instrument may disapply subparagraph (1) to a specified extent.
- (3) If a licence confers rights or imposes obligations, a property transfer instrument may apportion responsibility for the exercise of, or compliance with, those rights or obligations between the transferor and the transferee.
- (4) In this paragraph –
“licence” includes permission and approval and any other permissive document in respect of anything transferred.

11 Creation of liabilities

- (1) The provision that may be made by a property transfer instrument includes provision for the creation of liabilities.
- (2) The provision may be framed by reference to an agreement that has been or is to be entered into, or anything else that has been or is to be done, by any person.

12 Insured Deposits

- (1) This paragraph applies if a property transfer instrument transfers an insured deposit and both the transferor and transferee are members of the deposit insurance fund under the Protection of Depositors Act.

- (2) Any insured deposit held by a depositor with the transferee immediately before the transfer date continues to be an insured deposit.
- (3) An insured deposit mentioned in subparagraph (2) is not affected by any increase in the number or amount of deposits held by the depositor with the transferee as a result of a transfer caused by the property transfer instrument.
- (4) Any insured deposit held by a depositor with the transferor immediately before the transfer date that is transferred by the property transfer instrument (transferred insured deposit) continues to be an insured deposit for the period of 6 months beginning on the transfer date, even if it matures on or after the transfer date and is renewed with the transferee.
- (5) Notwithstanding the provisions of sub-paragraph (4), where the transferred insured deposit has an original maturity date that is after the expiry of the period of 6 months beginning on the transfer date, it continues to be an insured deposit until it first matures after the transfer date.
- (6) Subparagraph (4) has effect despite the number or amount of deposits held by the depositor with the transferee immediately before the transfer date.
- (7) This paragraph has effect despite anything to the contrary in the Protection of Depositors Act.

13 Non—Bahamas property

- (1) This paragraph applies if a property transfer instrument transfers non-Bahamian property.
- (2) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of the law of the jurisdiction where the property is located (if it is not otherwise so effective).
- (3) Until the transfer is effective as a matter of non-Bahamian law, the transferor must –
- (a) hold the asset or right for the benefit of the transferee (together with any additional asset or right accruing by operation of the original asset or right); or

(b) discharge the liability on behalf of the transferee.

- (4) If the Central Bank determines that, despite any steps taken by the transferee or the transferor, it is not possible for the transfer of certain non-Bahamian property to be effective under the law of the jurisdiction where the property is located or (if the property consists of rights or liabilities) the law under which it arises –
- (a) subparagraph (3) ceases to apply; and
 - (b) the provisions of the property transfer instrument relating to that property are void.

- (5) The Central Bank must give written notice of any determination under subparagraph (4) to the transferor and the transferee.

- (6) The transferor must meet any expenses of the transferee in complying with this paragraph.

- (7) The transferor must comply with any directions of the Central Bank in respect of the obligations under subparagraphs (2) and (3).

- (8) A direction under subparagraph (7) may disapply subparagraph (2) or (3) to a specified extent.

- (9) An obligation imposed by or under this paragraph is enforceable as if created by contract between the transferor and transferee.

14 Incidental provision

- (1) A property transfer instrument may include incidental, consequential or transitional provisions.

- (2) In relying on subparagraph (1), a property transfer instrument –
- (a) may make provision generally or only for specified purposes, cases or circumstances; and
 - (b) may make different provision for different purposes, cases or circumstances.

Part 2

Supplemental Property Transfer Instrument

15 Supplemental property transfer instrument

- (1) This Part applies if the Central Bank has made a property transfer instrument under section 18BI (original instrument).

- (2) The Central Bank may make one or more supplemental property transfer instruments.
- (3) A supplemental property transfer instrument is a property transfer instrument that –
- (a) provides for assets, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument); or
 - (b) makes provision of a kind that a property transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).
- (4) The possibility of making a supplemental property transfer instrument in reliance of subparagraph (2) does not prevent the making of a new instrument under Section 18BL (and not in reliance on subparagraph (2)).
- (5) Paragraph 25 does not apply to the making of a supplemental property transfer instrument.
- (6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental property transfer instrument in the same way as it applies with respect to an original instrument.

Part 3

Reverse Property Transfer Instrument

16 Reverse property transfer instrument

- (1) This Part applies if a Central Bank has made a property transfer instrument under Section 18BL (original instrument) providing for the transfer of assets, rights or liabilities of a prescribed entity (original transferred assets, rights or liabilities) to another entity (original transferee).
- (2) The Central Bank may make one or more reverse property transfer instruments in respect of original transferred assets, rights or liabilities held by the original transferee.
- (3) A reverse property transfer instrument is a property transfer instrument that –
- (a) provides for the transfer of original transferred assets, rights or liabilities held by the original transferee to the transferor under the original instrument; and

- (b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred assets, rights or liabilities (whether or not the transfer was the subject of that instruments).
- (4) The Central Bank must not make a reverse property transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.
- (5) Nothing in this paragraph prevents the making of a supplemental property transfer instrument under Part 2 of this Schedule in respect of assets, rights or liabilities that have been the subject of a reverse property transfer instrument.
- (6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse property transfer instrument in the same way as it applies with respect to an original instrument.

ANNEX 3

PROTECTION OF DEPOSITORS (AMENDMENT) BILL, 2019

A BILL FOR AN ACT TO AMEND THE PROTECTION OF DEPOSITORS ACT, 1999 TO PROVIDE FOR THE STREAMLINING OF THE ROLE AND FUNCTIONS OF THE DEPOSIT INSURANCE CORPORATION AND FOR ENHANCED PROTECTIONS FOR DEPOSITORS

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Protection of Depositors Act, may be cited as the Protection of Depositors (Amendment) Act, 2019.
- (2) This Act shall come into force on such date as the Minister may, by Notice published in the Gazette, appoint.

2. Amendment of Section 2 of the principal Act.

Subsection 2(1) of the principal Act is amended by--

- (a) the deletion of the definition of
 - (i) "Board of Management";
 - (ii) "Chairman";
 - (iii) "deposit"; and
 - (iv) "Institution".

- (b) the insertion in the appropriate alphabetical order of the following new definitions:

"Board " means the Board of Directors of the Corporation appointed pursuant to paragraph 2 of the Schedule";

"Chairperson" means the chairperson of the Board;

"Certificate of insurance" means a certificate of deposit insurance issued by the Corporation;

"deposit" means —

- (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give

credit to that person's checking, savings, demand or time account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, subordinated debts, preference shares, inter- bank deposits, foreign currency deposits, deposits of Government and statutory corporations, deposits of foreign Governments, deposits in any financial institution wholly owned by the Government, deposits from affiliates; and a co-operative credit union's stabilization fund, liquidity deposits or capital as defined in subsection 2(1) of The Bahamas Co-operative Credit Unions Act, 2015; and

- (b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank;

"Deputy chairperson" means the deputy chairperson of the board;

"Governor" has the meaning assigned;

"Inspector" has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, (*Ch. 316*);

"institution" means-

- (i) any person carrying on banking business wholly or partly in Bahamian currency;
- (ii) a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015"

(c) by the deletion of subsection (3) and the substitution of the following:

"(3) For the purposes of this Act, an institution is deemed to be closed when—

- (a) the licence of the institution is revoked by the Central Bank under section 18 of the Banks and Trust Companies Regulation Act;
- (b) the registration of the institution is cancelled pursuant to subsection 14(5) of The Bahamas Co-operative Credit Unions Act, 2015.

3. Amendment of Section 3 of the principal Act.

Section 3 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (2):

- (3) The Fund shall consist of—

-
- (a) initial contributions, special contributions and premiums paid by member institutions;
 - (b) sums payable by the Central Bank under this Act;
 - (c) sums voted by Parliament for the purposes of this Act;
 - (d) any moneys borrowed by the Corporation for the purposes of this Act;
 - (e) amounts realized from investment proceeds;
 - (f) moneys that may accrue from fees or the operations of the Fund; and
 - (g) dividends from the Liquidator consisting of income earned in the orderly liquidation process or from the sale of assets of a failed member institution.

4. Insertion of new section 3A.

The principal Act is amended by the insertion of the following new section immediately after section 3:

3A. Objects of the Corporation

- (1) The objects of the Corporation are:
 - (a) to provide insurance against the loss of part or all of deposits;
 - (b) to promote and otherwise contribute to the stability of the financial system in The Bahamas; and
 - (c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss.
- (2) The Governor General may, by order, exempt the Corporation from the requirement that it pursue its objects in a manner that will minimize its exposure to loss when it takes any action to address a situation that is specified in the order.
- (3) The Governor General may make the order only if the Minister is of the opinion, after consultation with the Board of the Corporation and the Inspector of Banks and Trust Companies that the requirement that the Corporation pursue its objects in a manner that will minimize its exposure to loss, in respect of a situation that will be specified in the order, might have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.
- (4) The Governor General may repeal the order only if the Minister is of the opinion that the requirement that the Corporation pursue its objects in a manner that will minimize its exposure to loss, in respect of the situation specified in the order, will no longer have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.
- (5) An order made under subsection (2) has effect from the time that it is made.
- (6) The Minister shall cause a notice to be published in the Gazette that the order has been made or repealed as soon as the Minister is of the opinion that the publication of the notice will not have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.

- (7) After the publication of a notice in the Gazette that an order was made under subsection (2) the Corporation shall, in accordance with its byelaws, collect a special premium from member institutions or any class of member institutions in order to recover the loss that the Corporation determines it incurred as a result of pursuing its objects without regard to the requirement that it do so in a manner that minimizes its exposure to loss.

5. Repeal and replacement of Section 4 of the principal Act.

Section 4 of the principal Act is repealed and replaced by the following:

“4. Membership in the Fund compulsory.

- (1) Membership in the Fund is compulsory for-
- (a) every institution carrying on banking business wholly or partly in Bahamian currency and licensed under the Banks and Trust Companies Regulation Act; and
 - (b) every co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015”.
- (2) For the purposes of paragraphs (a) and (b) of subsection (1), an institution is deemed to have obtained a policy of deposit insurance on the day on which it became a member institution.
- (3) The policy of deposit insurance referred to in subsection (2) shall consist of the provisions that may be prescribed by the byelaws.
- (4) The Corporation shall issue to a member institution a certificate of deposit in the legal name of the institution within four weeks of the institution becoming a member of the Fund.
- (5) Where the legal name of a member institution has been changed subsequent to the issuance of the certificate mentioned in subsection (4), the member institution shall submit to the Corporation, prima facie evidence showing the Bank's approval of the change of name within thirty days of the approval, and shall make application to the Corporation for the issuance of a certificate of deposit insurance in the new name, provided that, all copies of the previous certificate of deposit insurance have been returned to the Corporation for cancellation.

6. Amendment of Section 5 of the principal Act.

The principal Act is amended in section 5 by--

- (a) the deletion of subsection (2) and the substitution of the following:

“(2) Every member of the Fund shall pay an annual premium to the Fund, equal to a percentage to be determined from time to time by the Corporation by Notice of the average of the sum of those deposits insured by the Corporation and deposited with the member institution as of March 31 and September 30 in the immediately preceding premium year.”

- (b) the deletion of subsection (4) and the substitution of the following:

“(4) The annual premium payable by a member institution pursuant to subsection (2) shall be based on--

- (a) the amount of insured deposits and the Corporation's assessment of the degree of risk incurred by the member institution; and
- (b) returns to be certified by the member institution and submitted in such form and at such time as the Corporation may require.
- (c) the deletion of subsection (5) and the substitution of the following:

“(5) One half of the premium payable by a member institution shall be paid to the Corporation on or before March 31 in the premium year for which the premium is payable, and the remainder shall be paid to the Corporation on or before September 30 in the premium year.”
- (d) in subsection (6) by the deletion of the words “one twentieth” immediately after the words “the same proportion” and the substitution of the words “one tenth”
- (e) by the insertion of a new subsection (10) by immediately following subsection (9) as follows:

“(10) The Corporation shall, from time to time, but in any event, not less than once every two years review the size of the Fund and make such recommendations to the Board regarding the amount of premiums payable and the target ratios for the Fund as it deems appropriate.”

7. Amendment of Section 6 of the principal Act

The principal Act is amended in section 6 by—

- (a) the deletion of subsection (2) and the substitution of the following:

(2) Deposit Insurance coverage is limited to fifty thousand dollars or such greater or lesser amount as the Minister may, by Order, prescribe on the advice of the Central Bank after consultation with the member institutions, and shall be paid by the Corporation in respect of every depositor notwithstanding the number of accounts held by the depositor in the same capacity in the institution, provided, however, that a depositor shall be entitled to a separate insured deposit for each account held in different capacities and rights with the same member institution, and for each account held with different member institutions.

- (b) the deletion of subsection (3);

- (c) the deletion of subsection (5) and the substitution of the following:

“(5) Notwithstanding the provisions of any other law, when payment is made by the Corporation under this section in respect of an insured deposit with a member institution, the Corporation is subrogated up to the insured limit to all the rights of the depositor as against that member institution and may maintain an action in respect of such rights in the name of the depositor or in the name of the Corporation.”

- (d) the deletion of subsections (8) and (9) and the substitution of the following:

“(8) In the event that—

- (a) a member institution's

- (i) banking license is revoked by the Central Bank;

- (ii) registration as a co-operative credit union is cancelled by the Central Bank;
- (iii) a member institution's policy of deposit insurance is cancelled subsequent to the making of an insurable deposit;
- (b) a liquidator is appointed by the Central Bank in respect of a member institution, payments in respect of the insured deposits in such institution shall be made by the Corporation within the applicable time period, unless such deposits are transferred by or on the instructions of the Central Bank to another institution."

(9) The applicable time period referred to in subsection (8) is the period starting on the day after the date of publication of the Notice referred to in section 14(1) and ending:

- (a) until 31 December 2022, twenty business days later;
- (b) from 1 January 2023 until 31 December 2025, ten business days later;
- (c) from 1 January 2026 until 31 December 2030; seven business days later."

(e) by the re-numbering of subsections (4) through (9) as subsections (3) through (8).

(f) by the insertion of the following new subsection immediately after subsection (8)

"(9) The Corporation shall in respect of rights of a depositor to which it is subrogated, have priority over other uninsured unsecured creditors of the member institution."

8. Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended by

(a) the deletion of subsection (2) and the substitution of the following:

"(2) The Corporation shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Act, with power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and to do all things necessary for the purpose of its functions.

(b) the insertion of the following new subsections immediately after subsection (2)—

"(3) The Corporation shall have its principal place of business in the island of New Providence and may in The Bahamas, establish such offices and branches as the Corporation thinks fit.

(4) At the request of the Corporation, the Minister may, out of the Consolidated Fund, lend money to the Corporation on such terms and conditions as the Minister may establish."

9. Repeal of section 8 of the principal Act

Section 8 of the principal Act is repealed and replaced by the following:

"8. Board of the Corporation

(1) There shall be a Board of Directors who shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Corporation.

- (2) The Schedule has effect in relation to the constitution and functioning of the Board and the Corporation.

10. Repeal of section 9 of the principal Act

Section 9 of the principal Act is repealed and replaced by the following:

“9. Conflicts of interest

- (1) The Corporation shall establish a code (“Code” or “Codes of Conduct”) requiring the directors and officers of the Corporation to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Corporation.
- (2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Corporation —
 - (a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;
 - (b) the disclosure shall be recorded in the minutes of the Board; and
 - (c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or decision of the Board with respect to the contract or transaction.
- (3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

11. Repeal of section 10 of the principal Act

Section 10 of the principal Act is repealed.

12. Repeal of section 11 of the principal Act

Section 11 of the principal Act is repealed.

13. Repeal of section 12 of the principal Act

Section 12 of the principal Act is repealed.

14. Amendment of section 13 of the principal Act

Section 13 of the principal Act is amended in subsection (2) by the deletion of the symbols “28” and the substitution of the symbols “17”.

15. Amendment of section 15 of the principal Act

Section 15 of the principal Act is amended by—

- (a) the deletion of paragraph (e) and the substitution of the following:

“(e) subject to prior claims being paid, to deduct from moneys from the Fund due to a depositor, only such loan payment **or** instalment amount as is due or past due, and to set-off deposits pledged as collateral;

(b) **the amendment of paragraph (f) by the insertion of the words “in such format and within such time as may be specified by the Corporation” immediately after the words “custody or control”.**

(c) the deletion of paragraph (g) and the substitution of the following:

“(g) on the advice of the Bank —

(i) to levy authorised contributions and premia on member institutions;

(ii) to accumulate, manage and to invest so far as possible, in government and quasi government instruments, ~~and~~ short term deposits **and any other type of instrument or investment as the Board may approve**, funds collected, to borrow by the issuance **and sale** of bonds, debentures, notes or any other evidence of indebtedness or otherwise whether or not against the guarantee of the government in accordance with applicable law and procedure, lend or give guarantees to an entity acquiring a member institution which is in financial difficulty;

(iii) provide capital for a bridge bank and provide financing in the amount of insured deposits to an entity that acquires the business or all or part of the assets and/or liabilities, of a member institution in financial difficulty as shall be advised by the Central Bank, provided however that such financing shall be no more than the costs the Corporation would have incurred in paying out insured depositors should the institution have been placed under liquidation.

(h) **to charge any fees necessary for the administration of this Act;**

(i) **to do all things necessary or incidental for the furtherance of the objects of the Corporation**

16. Amendment of section 16 of the principal Act

Section 16 of the principal Act is amended—

(a) by the deletion of subsections (1), (2), (3) and (4) and the substitution of the following:

(1) Where the Central Bank advises the Corporation that a member institution is being liquidated or otherwise has had its banking license revoked by the Central Bank, the Corporation shall notify depositors by making public notification of the closure in such newspapers as may be considered appropriate, indicating the dates, times and places at which insurance payments shall be made.

(2) The Corporation, at its discretion, may require proof of claims for insured deposits to be filed within a specified time.

- (3) Persons who have deposits with a member institution shall be paid the insured portion of their deposits less any amounts or instalments owed to the institution by the depositor, for which payment is due or past-due.
- (4) Subject to subsection (3), where a person has a deposit with a member institution in excess of the insured limit, the Corporation shall issue to that person a certificate for the amount in excess of the insured limit.
- (5) Depositors may submit claims for deposit insurance up to one year after the date on which a notice is published by the Corporation under subsection (1).”

(b) by renumbering subsection (5) as subsection (6);

(c) by the deletion of subsection (6), and the substitution of the following:

- “(6) Where the Corporation is satisfied that a depositor has been a party to or has benefited from the circumstances which gave rise to the insolvency of a member institution, the Corporation shall not make any payment out of the Fund to that depositor.
- (7) Subsection (6) shall not apply to a depositor who acted solely in his capacity as a professional advisor to the member institution and whose bona fides are not in question.

17. Repeal and replacement of section 18 of the principal Act

The principal Act is amended by the repeal of section 18 and the substitution of the following:

“18. Effect of closure

Where an institution is closed, interest on deposits immediately ceases to accrue whether or not the date of maturity of the deposit was beyond the date of closure.”

18. Repeal and replacement of section 19 of the principal Act

The principal Act is amended by the repeal of section 19 and the substitution of the following:

- (1) The financial year of the Corporation shall end on the thirty-first day of December.
- (2) The Corporation shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Corporation to reflect its operations and financial condition.
- (3) The statement of accounts of the Corporation shall be audited annually by independent external auditors appointed by the Board with the approval of the Minister.
- (4) The audit under subsection (3) shall be conducted in accordance with the International Standards of Auditing.
- (5) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions.
- (6) Subject to subsection (5) the external auditors shall be appointed for —
 - (a) a minimum period of three consecutive years; and

- (b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.
- (7) The Corporation shall not later than June 30th following the end of the previous financial year, cause to be made and transmit to the Minister—
 - (a) a report of the operations of the Corporation in respect of the previous financial year, approved by the Board; and
 - (b) a statement of the accounts of the Corporation in respect of that year, approved by the Board and signed by the Chairperson and certified by the external auditors, together with the report of the external auditors.
- (8) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (7)(a) and (b) —
 - (a) cause a copy of the said report and statement of accounts (together with the external auditors report) to be laid before each House of Parliament; and
 - (b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.
- (9) The Corporation shall publish on its website the reports and statement of the accounts submitted to the Minister under subsection (1).

19. Repeal of section 21 of the principal Act

Section 21 of the principal Act is repealed and replaced by the following:

“21. Examination of Member Institutions

- (1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament, examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess-
 - (a) the reliability of depositor records; and
 - (b) whether a member institution has the IT systems and data necessary to produce such records.
- (2) Where an examination under subsection (1) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.
- (3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to-
 - (a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;
 - (b) comment on the operations of the member institution;
 - (c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act,

provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank.

- (4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.
- (5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.
- (6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).
- (7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.
- (8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.

20. Repeal of section 22 of the principal Act

Section 22 of the principal Act is repealed and replaced by the following:

- (1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament, examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess--
 - (a) the reliability of depositor records; and
 - (b) whether a member institution has the IT systems and data necessary to produce such records.
- (2) Where an examination under subsection (2) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.
- (3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to--
 - (a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;

- (b) comment on the operations of the member institution;
 - (c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act, provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank;
- (4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.
 - (5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.
 - (6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).
 - (7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.
 - (8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.

21. Repeal of section 23 of the principal Act

Section 23 of the principal Act is repealed.

22. Repeal of sections 24 of the principal Act

Section 24 of the principal Act is repealed.

23. Repeal of section 25 of the principal Act

Section 25 of the principal Act is repealed and replaced by the following:

25. Protection from liability

- (1) The Minister or the Corporation, its directors, officers, employees or agents, the Inspector of Banks and Trust Companies or any person appointed pursuant to section 22(1)(a) are not subject to any action, claim or demand by, or any liability to any person even after the termination of their functions or duties, in respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Corporation under this Act.

- (2) The Corporation shall indemnify a director, employee or agent of the Corporation, even after the termination of their functions or duties, against the cost of defending their actions in connection with subsection (1).

24. Repeal of section 26 of the principal Act

Section 26 of the principal Act is repealed.

25. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended—

- (a) in subsection (1) by the insertion of the words “or a person mentioned in subsection 22(1)” immediately after the words “any request by the Corporation”
- (b) by the deletion of subsection (2) and the substitution of the following:

“(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals any material information regarding the financial affairs of the member institution from, provides false or misleading information to, or falsifies or tampers with the books, records, accounts, papers or documents of the institution so as to mislead the Corporation or a person mentioned in subsection 22(1), that director, agent, servant or employee is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

26. Repeal and replacement of section 28 of the principal Act

Section 28 of the principal Act is repealed and replaced by the following—

“28. Bye-laws and Regulations

- (1) The Corporation on the recommendation of the Bank, may make such byelaws as are necessary for all matters pertaining to the operations and functions of the Corporation.
- (2) Without limiting the generality of subsection (1) the Corporation may make byelaws, for all or any of the following purposes -
 - (a) regarding representations by member institutions with respect to--
 - (i) what constitutes, or does not constitute a deposit,
 - (ii) what constitutes, or does not constitute a deposit insured by the Corporation,
 - (iii) who is a member institution, and
 - (iv) representations of membership,
 - (v) representations of deposits and deposit insurance,
 - (vi) representations of financial products; and
 - (vii) representations of trade names
 - (b) to prescribe the information, particulars and references which may be prescribed under sections 5(2), 5(3), 5(4), 5(5), 5(6), 5(7), 5(8), 5(9), 5(10), 13(f), 13(g), 13(h) and 191(a) and 191(b);

- (c) generally, for carrying out the purposes or provisions of this Act into effect.
- (3) The Corporation on the recommendation of the Bank, may make regulations, generally for giving effect to the provisions of this Act, and in particular regulations may be made—
 - (a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;
 - (b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund.

27. Repeal and replacement of section 30 of the principal Act

Section 30 of the principal Act is repealed and replaced by the following—

“30. Confidentiality

- (1) Subject to subsection (2), any person who is or has been a director, officer, employee or agent of the Corporation and who discloses any information relating to the affairs of the Corporation or of any person that he has acquired in the performance of his duties or in the exercise of his functions under this Act is guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.
- (2) Subsection (1) shall not apply to a disclosure—
 - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) necessary for fulfilling functions and duties required or permitted by this Act, or by any other law;
 - (c) which is made with the voluntary consent of the person to whom the disclosed information relates;
 - (d) if the information disclosed is or has been available to the public from any other source;
 - (e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;
 - (f) to the authorities in the Bahamas to the extent necessary for—
 - (i) criminal proceedings; or
 - (ii) disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or a member or employee of the Bank of his duties; or
 - (g) for the purposes of any legal proceedings in connection with—
 - (i) the winding-up or dissolution of a member institution;
 - (ii) the appointment or duties of a receiver of a member institution.
 - (iii) the appointment or duties of a Statutory Administrator appointed pursuant to section 18B of the Banks and Trust Companies Regulation Act.

- (3) Notwithstanding the provisions of subsection (1) the Corporation may exchange information with--
- (a) any government agency or body that regulates or supervises financial institutions in The Bahamas;
 - (b) the Apex Body of a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015;
 - (c) the Minister of Finance, or any officer of the Ministry of Finance authorized in writing by the Minister of Finance,
for purposes related to recovery and resolution planning and preparing for or carrying out resolution in respect of a member institution as well as any other aspects of financial stability or crisis preparedness and management;
 - (d) the Governor of the Central Bank or any officer of the Central Bank of The Bahamas authorized in writing by the Governor, for the purposes of assisting the Corporation in the exercise of its functions under this Act or for assisting the Central Bank in the exercise of its functions;
 - (e) a foreign deposit insurer or compensation scheme located in a country where the holding company, parent bank, subsidiary, branch or affiliate of a member institution is located, for purposes related to the foreign deposit insurer's or compensation scheme's operation.
- (4) The Corporation shall not supply to a foreign deposit insurer or compensation scheme any information which is not disclosed to the public, unless —
- (a) the Corporation has satisfied itself that the intended recipient insurer or compensation scheme is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Corporation has been given an undertaking by the insurer or compensation scheme not to disclose the information provided without the consent of the Corporation;
 - (A) the Corporation is satisfied that the assistance requested by a foreign deposit insurer or compensation scheme is required for the purposes of their respective regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by them; and
 - (c) the Corporation is satisfied that information provided pursuant to subsection (3)(d) will not be used in criminal proceedings against the person providing the information.
- (5) Where in the opinion of the Corporation it appears necessary in relation to any request for assistance received from a foreign deposit insurer or compensation scheme to invoke the jurisdiction of a Magistrate in the manner contemplated by subsection 13(1)(f) —

- (a) the Corporation shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and
 - (b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.
- (6)
- (a) The Corporation may enter memoranda of understanding with foreign deposit insurers or compensation schemes with regard to mutual cooperation and exchange of information relating to a member institution's compliance with this Act or any byelaws or regulations made under this Act or to the repayment of depositors.
 - (b) The Corporation may enter into memoranda of understanding with any person mentioned in subsection (3)(a),(b),(c) or (d) with regard to resolution and crisis preparedness and management for mutual cooperation.
 - (c) No memorandum of understanding entered into pursuant to paragraph (a) or (b) may call for assistance beyond that which is provided for by this Act, or relieve the Corporation of any of its functions or duties under this Act.

SCHEDULE

(Section 8(2))

CONSTITUTION AND FUNCTIONING OF THE BOARD

1. Role and duties of the Board of Directors.

- (1) There shall be a Board of Directors responsible for the formulation of the policies of the Corporation and oversight of the implementation of such policies and of the operations and internal controls of the Corporation.
- (2) The duties and powers of the Board are to —
 - (a) formulate any policy of the Corporation for the performance of its functions;
 - (b) approve bye-laws and regulations issued by the Corporation;
 - (c) approve a guideline, note, notice, order, and any other document issued by the Corporation, to require or expect compliance by a person outside the Corporation;
 - (d) approve the annual budget of the Corporation;
 - (e) approve a statement of the accounts and a report submitted to the Minister under section 17;
 - (f) establish committees and determine their composition, duties, and procedures; and

- (g) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

2. Constitution and tenure of Board of Directors.

- (1) The Board of the Corporation shall consist of —
 - (a) the Governor of the Central Bank, ex officio who shall be the chairperson of the Board;
 - (b) a senior manager from the Bank Supervision Department of the Central Bank and one other senior manager of the Central Bank, ex officio;
 - (c) the Financial Secretary, ex officio; and
 - (d) not less than five and not more than seven other directors, appointed by the Minister by instrument in writing, each being a person who appears to the Minister to have wide experience, and to have shown capacity in, financial or commercial matters, industry, law or administration.
- (2) The Minister shall appoint a director mentioned in paragraph 1(d) as deputy chairperson of the Corporation.
- (3) Members of the Board mentioned in paragraph 1(d) shall be appointed for a term of three years and shall be eligible for re-appointment for no more than one additional term.
- (4) Each director shall, subject to the Act and this *Schedule*, hold and vacate office in accordance with the terms of his appointment.
- (5) The directors other than the chairperson and deputy chairperson shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.
- (8) A person shall not be appointed a director who —
 - (a) is a member of either House of Parliament;
 - (b) is an officer or employee of an agency of the Government or any public entity;
 - (c) has been convicted by a court of an indictable offence or other offence involving dishonesty;
 - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;

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- (e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;
 - (f) on the grounds of personal misconduct, has been —
 - (i) disqualified or suspended by a competent authority from practicing a profession; or
 - (ii) prohibited from being a director or officer of any public entity or business undertaking.
 - (9) For the purpose of sub-paragraph (8), a professor of a university shall not be deemed to fall within sub-paragraph (8)(b).
 - (10) The Corporation shall cause the names of all the members of the Board, and every change in membership, to be published in the Gazette.

3. Role of the Governor and the deputy chairperson.

The Governor and the deputy chairperson appointed by the Minister, except as may otherwise be provided in this Act, the bye-laws of the Corporation or the resolutions of the Board, may —

- (i) act, contract, and sign instruments and documents on behalf of the Corporation; and
- (ii) pursuant to the resolutions of the Board, delegate the powers referred to in sub-sub-paragraph (i) to other officers of the Corporation.

4. Removal from the Board.

- (1) A director who falls within paragraph 2(4) shall be removed from office.
- (2) A director may be removed from office if the director —
 - (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
 - (b) is incapacitated by physical or mental illness; or
 - (c) is guilty of serious misconduct.

5. Resignation from the Board.

- (1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing not less than one months' notice.
- (2) The Minister may waive the period of notice required by sub-paragraph (1).

6. Vacancies.

A vacancy in the office of a director shall be filled within sixty days by the Minister appointing a person to the office for the ordinary term in accordance with paragraph 2.

7. Meetings.

- (1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every quarter.
- (2) A meeting of the Board —
 - (a) may be convened by the Governor or, in his absence, the deputy chairperson;
or
 - (b) shall be convened on the written requisition of three directors specifying the reasons for which the meeting is required.
- (3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by the deputy chairperson.
- (4) Four directors, of whom one shall be either the Governor or deputy chairperson shall form a quorum at any meeting.
- (5) A decision of the Board shall be adopted by a simple majority of the directors present and, in the case of an equality of votes, the person presiding at the meeting shall have and exercise a casting vote.
- (6) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.
- (7) No act or proceeding of the Board shall be invalidated merely by reason of a vacancy on the Board or of a defect in the appointment or qualification of a director.

8. Remuneration of the Board.

- (1) The Corporation shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.
- (2) The amount of remuneration determined under sub-paragraph (1) — (a) shall be stated in the instrument of appointment of the director and--
 - (a) shall not be diminished during the term of office of the director receiving the remuneration; and
 - (b) shall not be determined by reference to the profits of the Corporation.

9. Staff and remuneration.

- (1) The Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Corporation.
- (2) Remuneration paid under sub-paragraph (1) shall not be determined by reference to the profits of the Corporation.
- (3) The Corporation may, as the Corporation determines —
 - (a) pay to or in respect of officers or servants of the Corporation pensions or gratuities;
 - (b) make payments towards the provisions for employees of pensions or gratuities; or
 - (c) maintain for employees pension schemes (by being a contributor or otherwise).

10. Seal.

- (1) The seal of the Corporation shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or the deputy chairperson and one other director authorized by the Board to act in that behalf.
- (2) Any document purporting to be a document executed under the seal of the Corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

Annex 3

PROTECTION OF DEPOSITORS (AMENDMENT) BILL, 2018

A BILL FOR AN ACT TO AMEND THE PROTECTION OF DEPOSITORS ACT, 1999 TO PROVIDE FOR THE STREAMLINING OF THE ROLE AND FUNCTIONS OF THE DEPOSIT INSURANCE CORPORATION AND FOR ENHANCED PROTECTIONS FOR DEPOSITORS

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Protection of Depositors Act, may be cited as the Protection of Depositors (Amendment) Act, 2019.
- (2) This Act shall come into force on such date as the Minister may, by Notice published in the Gazette, appoint.

2. Amendment of Section 2 of the principal Act.

Subsection 2(1) of the principal Act is amended by--

- (a) the deletion of the definition of
 - (i) "Board of Management";
 - (ii) "Chairman";
 - (iii) "deposit"; and
 - (iv) "Institution".

- (b) the insertion in the appropriate alphabetical order of the following new definitions:

"Board " means the Board of Directors of the Corporation appointed pursuant to paragraph 2 of the Schedule";

"Chairperson" means the chairperson of the Board;

"Certificate of insurance" means a certificate of deposit insurance issued by the Corporation;

"deposit" means —

- (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person's checking, savings, demand or time account, or for which the institution has issued

a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, subordinated debts, preference shares, inter-bank deposits, foreign currency deposits, deposits of Government and statutory corporations, deposits of foreign Governments, deposits in any financial institution wholly owned by the Government, deposits from affiliates; and a co-operative credit union's stabilization fund, liquidity deposits or capital as defined in subsection 2(1) of The Bahamas Co-operative Credit Unions Act, 2015; and

- (b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank;

“Deputy chairperson” means the deputy chairperson of the board;

“Governor” has the meaning assigned;

“Inspector” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, (*Ch. 316*);

“institution” means-

- (i) any person carrying on banking business wholly or partly in Bahamian currency;
- (ii) a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015”

- (c) by the deletion of subsection (3) and the substitution of the following:

“(3) For the purposes of this Act, an institution is deemed to be closed when—

- (a) the licence of the institution is revoked by the Central Bank under section 18 of the Banks and Trust Companies Regulation Act;
- (b) the registration of the institution is cancelled pursuant to subsection 14(5) of The Bahamas Co-operative Credit Unions Act, 2015.

3. Amendment of Section 3 of the principal Act.

Section 3 of the principal Act is amended by the insertion of the following new subsection immediately after subsection (2):

- (3) The Fund shall consist of—
 - (a) initial contributions, special contributions and premiums paid by member institutions;

-
- (b) sums payable by the Central Bank under this Act;
 - (c) sums voted by Parliament for the purposes of this Act;
 - (d) any moneys borrowed by the Corporation for the purposes of this Act;
 - (e) amounts realized from investment proceeds;
 - (f) moneys that may accrue from fees or the operations of the Fund; and
 - (g) dividends from the Liquidator consisting of income earned in the orderly liquidation process or from the sale of assets of a failed member institution.

4. Insertion of new section 3A.

The principal Act is amended by the insertion of the following new section immediately after section 3:

3A. Objects of the Corporation

- (1) The objects of the Corporation are:
 - (a) to provide insurance against the loss of part or all of deposits;
 - (b) to promote and otherwise contribute to the stability of the financial system in The Bahamas; and
 - (c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss.
- (2) The Governor General may, by order, exempt the Corporation from the requirement that it pursue its objects in a manner that will minimize its exposure to loss when it takes any action to address a situation that is specified in the order.
- (3) The Governor General may make the order only if the Minister is of the opinion, after consultation with the Board of the Corporation and the Inspector of Banks and Trust Companies that the requirement that the Corporation pursue its objects in a manner that will minimize its exposure to loss, in respect of a situation that will be specified in the order, might have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.
- (4) The Governor General may repeal the order only if the Minister is of the opinion that the requirement that the Corporation pursue its objects in a manner that will minimize its exposure to loss, in respect of the situation specified in the order, will no longer have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.
- (5) An order made under subsection (2) has effect from the time that it is made.
- (6) The Minister shall cause a notice to be published in the Gazette that the order has been made or repealed as soon as the Minister is of the opinion that the publication of the notice will not have an adverse effect on the stability of the financial system in The Bahamas or public confidence in that stability.
- (7) After the publication of a notice in the Gazette that an order was made under subsection (2) the Corporation shall, in accordance with its byelaws, collect a special premium from member institutions or any class of member institutions in order to

recover the loss that the Corporation determines it incurred as a result of pursuing its objects without regard to the requirement that it do so in a manner that minimizes its exposure to loss.

5. Repeal and replacement of Section 4 of the principal Act.

Section 4 of the principal Act is repealed and replaced by the following:

“4. Membership in the Fund compulsory.

- (1) Membership in the Fund is compulsory for-
 - (a) every institution carrying on banking business wholly or partly in Bahamian currency and licensed under the Banks and Trust Companies Regulation Act; and
 - (b) every co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015”.
- (2) For the purposes of paragraphs (a) and (b) of subsection (1), an institution is deemed to have obtained a policy of deposit insurance on the day on which it became a member institution.
- (3) The policy of deposit insurance referred to in subsection (2) shall consist of the provisions that may be prescribed by the byelaws.
- (4) The Corporation shall issue to a member institution a certificate of deposit in the legal name of the institution within four weeks of the institution becoming a member of the Fund.
- (5) Where the legal name of a member institution has been changed subsequent to the issuance of the certificate mentioned in subsection (4), the member institution shall submit to the Corporation, prima facie evidence showing the Bank's approval of the change of name within thirty days of the approval, and shall make application to the Corporation for the issuance of a certificate of deposit insurance in the new name, provided that, all copies of the previous certificate of deposit insurance have been returned to the Corporation for cancellation.

6. Amendment of Section 5 of the principal Act.

The principal Act is amended in section 5 by--

- (a) the deletion of subsection (2) and the substitution of the following:

“(2) Every member of the Fund shall pay an annual premium to the Fund, equal to a percentage to be determined from time to time by the Corporation by Notice of the average of the sum of those deposits insured by the Corporation and deposited with the member institution as of March 31 and September 30 in the immediately preceding premium year.”
- (b) the deletion of subsection (4) and the substitution of the following:

“(4) The annual premium payable by a member institution pursuant to subsection (2) shall be based on--

 - (a) the amount of insured deposits and the Corporation’s assessment of the degree of risk incurred by the member institution; and

- (b) returns to be certified by the member institution and submitted in such form and at such time as the Corporation may require.
- (c) the deletion of subsection (5) and the substitution of the following:

“(5) One half of the premium payable by a member institution shall be paid to the Corporation on or before March 31 in the premium year for which the premium is payable, and the remainder shall be paid to the Corporation on or before September 30 in the premium year.”
- (d) in subsection (6) by the deletion of the words “one twentieth” immediately after the words “the same proportion” and the substitution of the words “one tenth”
- (e) by the insertion of a new subsection (10) by immediately following subsection (9) as follows:

“(10) The Corporation shall, from time to time, but in any event, not less than once every two years review the size of the Fund and make such recommendations to the Board regarding the amount of premiums payable and the target ratios for the Fund as it deems appropriate.”

7. Amendment of Section 6 of the principal Act

The principal Act is amended in section 6 by—

- (a) the deletion of subsection (2) and the substitution of the following:

(2) Deposit Insurance coverage is limited to fifty thousand dollars or such greater or lesser amount as the Minister may, by Order, prescribe on the advice of the Central Bank after consultation with the member institutions, and shall be paid by the Corporation in respect of every depositor notwithstanding the number of accounts held by the depositor in the same capacity in the institution, provided, however, that a depositor shall be entitled to a separate insured deposit for each account held in different capacities and rights with the same member institution, and for each account held with different member institutions.
- (b) the deletion of subsection (3);
- (c) the deletion of subsection (5) and the substitution of the following:

“(5) Notwithstanding the provisions of any other law, when payment is made by the Corporation under this section in respect of an insured deposit with a member institution, the Corporation is subrogated up to the insured limit to all the rights of the depositor as against that member institution and may maintain an action in respect of such rights in the name of the depositor or in the name of the Corporation.”
- (d) the deletion of subsections (8) and (9) and the substitution of the following:

“(8) In the event that—

 - (a) a member institution’s
 - (i) banking license is revoked by the Central Bank;
 - (ii) registration as a co-operative credit union is cancelled by the Central Bank;

- (iii) a member institution's policy of deposit insurance is cancelled subsequent to the making of an insurable deposit;
 - (b) a liquidator is appointed by the Central Bank in respect of a member institution, payments in respect of the insured deposits in such institution shall be made by the Corporation within the applicable time period, unless such deposits are transferred by or on the instructions of the Central Bank to another institution.”
- (9) The applicable time period referred to in subsection (8) is the period starting on the day after the date of publication of the Notice referred to in section 14(1) and ending:
 - (a) until 31 December 2022, twenty business days later;
 - (b) from 1 January 2023 until 31 December 2025, ten business days later;
 - (c) from 1 January 2026 until 31 December 2030; seven business days later.”
- (e) by the re-numbering of subsections (4) through (9) as subsections (3) through (8).
- (f) by the insertion of the following new subsection immediately after subsection (8)
 - “ (9) The Corporation shall in respect of rights of a depositor to which it is subrogated, have priority over other uninsured unsecured creditors of the member institution.”

8. Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended by

- (a) the deletion of subsection (2) and the substitution of the following:
 - “(2) The Corporation shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Act, with power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and to do all things necessary for the purpose of its functions.
- (b) the insertion of the following new subsections immediately after subsection (2)—
 - “(3) The Corporation shall have its principal place of business in the island of New Providence and may in The Bahamas, establish such offices and branches as the Corporation thinks fit.
 - (4) At the request of the Corporation, the Minister may, out of the Consolidated Fund, lend money to the Corporation on such terms and conditions as the Minister may establish.”

9. Repeal of section 8 of the principal Act

Section 8 of the principal Act is repealed and replaced by the following:

- “8. Board of the Corporation
 - (1) There shall be a Board of Directors who shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Corporation.
 - (2) The Schedule has effect in relation to the constitution and functioning of the Board and the Corporation.

10. Repeal of section 9 of the principal Act

Section 9 of the principal Act is repealed and replaced by the following:

“9. Conflicts of interest

- (1) The Corporation shall establish a code (“Code” or “Codes of Conduct”) requiring the directors and officers of the Corporation to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Corporation.
- (2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Corporation —
 - (a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;
 - (b) the disclosure shall be recorded in the minutes of the Board; and
 - (c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or decision of the Board with respect to the contract or transaction.
- (3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

11. Repeal of section 10 of the principal Act

Section 10 of the principal Act is repealed.

12. Repeal of section 11 of the principal Act

Section 11 of the principal Act is repealed.

13. Repeal of section 12 of the principal Act

Section 12 of the principal Act is repealed.

14. Amendment of section 13 of the principal Act

Section 13 of the principal Act is amended in subsection (2) by the deletion of the symbols “28” and the substitution of the symbols “17”.

15. Amendment of section 15 of the principal Act

Section 15 of the principal Act is amended by—

- (a) the deletion of paragraph (e) and the substitution of the following:

“(e) subject to prior claims being paid, to deduct from moneys from the Fund due to a depositor, only such loan payment or instalment amount as is due or past due, and to set-off deposits pledged as collateral;

- (b) the amendment of paragraph (f) by the insertion of the words “in such format and within such time as may be specified by the Corporation” immediately after the words “custody or control”.
- (c) the deletion of paragraph (g) and the substitution of the following:
 - “(g) on the advice of the Bank —
 - (i) to levy authorised contributions and premia on member institutions;
 - (ii) to accumulate, manage and to invest so far as possible, in government and quasi government instruments, ~~and~~ short term deposits and any other type of instrument or investment as the Board may approve, funds collected, to borrow by the issuance and sale of bonds, debentures, notes or any other evidence of indebtedness or otherwise whether or not against the guarantee of the government in accordance with applicable law and procedure, lend or give guarantees to an entity acquiring a member institution which is in financial difficulty;
 - (iii) provide capital for a bridge bank and provide financing in the amount of insured deposits to an entity that acquires the business or all or part of the assets and/or liabilities, of a member institution in financial difficulty as shall be advised by the Central Bank, provided however that such financing shall be no more than the costs the Corporation would have incurred in paying out insured depositors should the institution have been placed under liquidation.
 - (h) to charge any fees necessary for the administration of this Act;
 - (i) to do all things necessary or incidental for the furtherance of the objects of the Corporation

16. Amendment of section 16 of the principal Act

Section 16 of the principal Act is amended—

- (a) by the deletion of subsections (1), (2), (3) and (4) and the substitution of the following:
 - (1) Where the Central Bank advises the Corporation that a member institution is being liquidated or otherwise has had its banking license revoked by the Central Bank, the Corporation shall notify depositors by making public notification of the closure in such newspapers as may be considered appropriate, indicating the dates, times and places at which insurance payments shall be made.
 - (2) The Corporation, at its discretion, may require proof of claims for insured deposits to be filed within a specified time.
 - (3) Persons who have deposits with a member institution shall be paid the insured portion of their deposits less any amounts or instalments owed to the institution by the depositor, for which payment is due or past-due.

- (4) Subject to subsection (3), where a person has a deposit with a member institution in excess of the insured limit, the Corporation shall issue to that person a certificate for the amount in excess of the insured limit.
 - (5) Depositors may submit claims for deposit insurance up to one year after the date on which a notice is published by the Corporation under subsection (1).”
- (b) by renumbering subsection (5) as subsection (6);
- (c) by the deletion of subsection (6), and the substitution of the following:
- “(6) Where the Corporation is satisfied that a depositor has been a party to or has benefited from the circumstances which gave rise to the insolvency of a member institution, the Corporation shall not make any payment out of the Fund to that depositor.
- (7) Subsection (6) shall not apply to a depositor who acted solely in his capacity as a professional advisor to the member institution and whose bona fides are not in question.

17. Repeal and replacement of section 18 of the principal Act

The principal Act is amended by the repeal of section 18 and the substitution of the following:

“18. Effect of closure

Where an institution is closed, interest on deposits immediately ceases to accrue whether or not the date of maturity of the deposit was beyond the date of closure.”

18. Repeal and replacement of section 19 of the principal Act

The principal Act is amended by the repeal of section 19 and the substitution of the following:

- (1) The financial year of the Corporation shall end on the thirty-first day of December.
- (2) The Corporation shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Corporation to reflect its operations and financial condition.
- (3) The statement of accounts of the Corporation shall be audited annually by independent external auditors appointed by the Board with the approval of the Minister.
- (4) The audit under subsection (3) shall be conducted in accordance with the International Standards of Auditing.
- (5) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions.
- (6) Subject to subsection (5) the external auditors shall be appointed for —
 - (a) a minimum period of three consecutive years; and
 - (b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.

- (7) The Corporation shall not later than June 30th following the end of the previous financial year, cause to be made and transmit to the Minister—
 - (a) a report of the operations of the Corporation in respect of the previous financial year, approved by the Board; and
 - (b) a statement of the accounts of the Corporation in respect of that year, approved by the Board and signed by the Chairperson and certified by the external auditors, together with the report of the external auditors.
- (8) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (7)(a) and (b) —
 - (a) cause a copy of the said report and statement of accounts (together with the external auditors report) to be laid before each House of Parliament; and
 - (b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.
- (9) The Corporation shall publish on its website the reports and statement of the accounts submitted to the Minister under subsection (1).

19. Repeal of section 21 of the principal Act

Section 21 of the principal Act is repealed and replaced by the following:

“21. Examination of Member Institutions

- (1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament, examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess-
 - (a) the reliability of depositor records; and
 - (b) whether a member institution has the IT systems and data necessary to produce such records.
- (2) Where an examination under subsection (1) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.
- (3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to-
 - (a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;
 - (b) comment on the operations of the member institution;
 - (c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act, provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank.

- (4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.
- (5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.
- (6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).
- (7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.
- (8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.

20. Repeal of section 22 of the principal Act

Section 22 of the principal Act is repealed and replaced by the following:

- (1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament, examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess--
 - (a) the reliability of depositor records; and
 - (b) whether a member institution has the IT systems and data necessary to produce such records.
- (2) Where an examination under subsection (2) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.
- (3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to--
 - (a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;
 - (b) comment on the operations of the member institution;

- (c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act, provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank;
- (4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.
- (5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.
- (6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).
- (7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.
- (8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.

21. Repeal of section 23 of the principal Act

Section 23 of the principal Act is repealed.

22. Repeal of sections 24 of the principal Act

Section 24 of the principal Act is repealed.

23. Repeal of section 25 of the principal Act

Section 25 of the principal Act is repealed and replaced by the following:

25. Protection from liability

- (1) The Minister or the Corporation, its directors, officers, employees or agents, the Inspector of Banks and Trust Companies or any person appointed pursuant to section 22(1)(a) are not subject to any action, claim or demand by, or any liability to any person even after the termination of their functions or duties, in respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Corporation under this Act.

- (2) The Corporation shall indemnify a director, employee or agent of the Corporation, even after the termination of their functions or duties, against the cost of defending their actions in connection with subsection (1).

24. Repeal of section 26 of the principal Act

Section 26 of the principal Act is repealed.

25. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended—

- (a) in subsection (1) by the insertion of the words “or a person mentioned in subsection 22(1)” immediately after the words “any request by the Corporation”
- (b) by the deletion of subsection (2) and the substitution of the following:

“(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals any material information regarding the financial affairs of the member institution from, provides false or misleading information to, or falsifies or tampers with the books, records, accounts, papers or documents of the institution so as to mislead the Corporation or a person mentioned in subsection 22(1), that director, agent, servant or employee is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

26. Repeal and replacement of section 28 of the principal Act

Section 28 of the principal Act is repealed and replaced by the following—

“28. Bye-laws and Regulations

- (1) The Corporation on the recommendation of the Bank, may make such byelaws as are necessary for all matters pertaining to the operations and functions of the Corporation.
- (2) Without limiting the generality of subsection (1) the Corporation may make byelaws, for all or any of the following purposes -
 - (a) regarding representations by member institutions with respect to--
 - (i) what constitutes, or does not constitute a deposit,
 - (ii) what constitutes, or does not constitute a deposit insured by the Corporation,
 - (iii) who is a member institution, and
 - (iv) representations of membership,
 - (v) representations of deposits and deposit insurance,
 - (vi) representations of financial products; and
 - (vii) representations of trade names
 - (b) to prescribe the information, particulars and references which may be prescribed under sections 5(2), 5(3), 5(4), 5(5), 5(6), 5(7), 5(8), 5(9), 5(10), 13(f), 13(g), 13(h) and 191(a) and 191(b);

- (c) generally, for carrying out the purposes or provisions of this Act into effect.
- (3) The Corporation on the recommendation of the Bank, may make regulations, generally for giving effect to the provisions of this Act, and in particular regulations may be made—
- (a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;
 - (b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund.

27. Repeal and replacement of section 30 of the principal Act

Section 30 of the principal Act is repealed and replaced by the following—

“30. Confidentiality

- (1) Subject to subsection (2), any person who is or has been a director, officer, employee or agent of the Corporation and who discloses any information relating to the affairs of the Corporation or of any person that he has acquired in the performance of his duties or in the exercise of his functions under this Act is guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.
- (2) Subsection (1) shall not apply to a disclosure—
 - (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) necessary for fulfilling functions and duties required or permitted by this Act, or by any other law;
 - (c) which is made with the voluntary consent of the person to whom the disclosed information relates;
 - (d) if the information disclosed is or has been available to the public from any other source;
 - (e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;
 - (f) to the authorities in the Bahamas to the extent necessary for—
 - (i) criminal proceedings; or
 - (ii) disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or a member or employee of the Bank of his duties; or
 - (g) for the purposes of any legal proceedings in connection with —
 - (i) the winding-up or dissolution of a member institution;
 - (ii) the appointment or duties of a receiver of a member institution.
 - (iii) the appointment or duties of a Statutory Administrator appointed pursuant to section 18B of the Banks and Trust Companies Regulation Act.

- (3) Notwithstanding the provisions of subsection (1) the Corporation may exchange information with--
- (a) any government agency or body that regulates or supervises financial institutions in The Bahamas;
 - (b) the Apex Body of a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015;
 - (c) the Minister of Finance, or any officer of the Ministry of Finance authorized in writing by the Minister of Finance,
for purposes related to recovery and resolution planning and preparing for or carrying out resolution in respect of a member institution as well as any other aspects of financial stability or crisis preparedness and management;
 - (d) the Governor of the Central Bank or any officer of the Central Bank of The Bahamas authorized in writing by the Governor, for the purposes of assisting the Corporation in the exercise of its functions under this Act or for assisting the Central Bank in the exercise of its functions;
 - (e) a foreign deposit insurer or compensation scheme located in a country where the holding company, parent bank, subsidiary, branch or affiliate of a member institution is located, for purposes related to the foreign deposit insurer's or compensation scheme's operation.
- (4) The Corporation shall not supply to a foreign deposit insurer or compensation scheme any information which is not disclosed to the public, unless —
- (a) the Corporation has satisfied itself that the intended recipient insurer or compensation scheme is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Corporation has been given an undertaking by the insurer or compensation scheme not to disclose the information provided without the consent of the Corporation;
 - (A) the Corporation is satisfied that the assistance requested by a foreign deposit insurer or compensation scheme is required for the purposes of their respective regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by them; and
 - (c) the Corporation is satisfied that information provided pursuant to subsection (3)(d) will not be used in criminal proceedings against the person providing the information.
- (5) Where in the opinion of the Corporation it appears necessary in relation to any request for assistance received from a foreign deposit insurer or compensation scheme to invoke the jurisdiction of a Magistrate in the manner contemplated by subsection 13(1)(f) —

- (a) the Corporation shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and
 - (b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.
- (6)
- (a) The Corporation may enter memoranda of understanding with foreign deposit insurers or compensation schemes with regard to mutual cooperation and exchange of information relating to a member institution's compliance with this Act or any byelaws or regulations made under this Act or to the repayment of depositors.
 - (b) The Corporation may enter into memoranda of understanding with any person mentioned in subsection (3)(a),(b),(c) or (d) with regard to resolution and crisis preparedness and management for mutual cooperation.
 - (c) No memorandum of understanding entered into pursuant to paragraph (a) or (b) may call for assistance beyond that which is provided for by this Act, or relieve the Corporation of any of its functions or duties under this Act.

SCHEDULE

(Section 8(2))

CONSTITUTION AND FUNCTIONING OF THE BOARD

1. Role and duties of the Board of Directors.

- (1) There shall be a Board of Directors responsible for the formulation of the policies of the Corporation and oversight of the implementation of such policies and of the operations and internal controls of the Corporation.
- (2) The duties and powers of the Board are to —
 - (a) formulate any policy of the Corporation for the performance of its functions;
 - (b) approve bye-laws and regulations issued by the Corporation;
 - (c) approve a guideline, note, notice, order, and any other document issued by the Corporation, to require or expect compliance by a person outside the Corporation;
 - (d) approve the annual budget of the Corporation;
 - (e) approve a statement of the accounts and a report submitted to the Minister under section 17;
 - (f) establish committees and determine their composition, duties, and procedures; and

- (g) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

2. Constitution and tenure of Board of Directors.

- (1) The Board of the Corporation shall consist of —
 - (a) the Governor of the Central Bank, ex officio who shall be the chairperson of the Board;
 - (b) a senior manager from the Bank Supervision Department of the Central Bank and one other senior manager of the Central Bank, ex officio;
 - (c) the Financial Secretary, ex officio; and
 - (d) not less than five and not more than seven other directors, appointed by the Minister by instrument in writing, each being a person who appears to the Minister to have wide experience, and to have shown capacity in, financial or commercial matters, industry, law or administration.
- (2) The Minister shall appoint a director mentioned in paragraph 1(d) as deputy chairperson of the Corporation.
- (3) Members of the Board mentioned in paragraph 1(d) shall be appointed for a term of three years and shall be eligible for re-appointment for no more than one additional term.
- (4) Each director shall, subject to the Act and this *Schedule*, hold and vacate office in accordance with the terms of his appointment.
- (5) The directors other than the chairperson and deputy chairperson shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.
- (8) A person shall not be appointed a director who —
 - (a) is a member of either House of Parliament;
 - (b) is an officer or employee of an agency of the Government or any public entity;
 - (c) has been convicted by a court of an indictable offence or other offence involving dishonesty;
 - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;

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- (e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;
 - (f) on the grounds of personal misconduct, has been —
 - (i) disqualified or suspended by a competent authority from practicing a profession; or
 - (ii) prohibited from being a director or officer of any public entity or business undertaking.
 - (9) For the purpose of sub-paragraph (8), a professor of a university shall not be deemed to fall within sub-paragraph (8)(b).
 - (10) The Corporation shall cause the names of all the members of the Board, and every change in membership, to be published in the Gazette.

3. Role of the Governor and the deputy chairperson.

The Governor and the deputy chairperson appointed by the Minister, except as may otherwise be provided in this Act, the bye-laws of the Corporation or the resolutions of the Board, may —

- (i) act, contract, and sign instruments and documents on behalf of the Corporation; and
- (ii) pursuant to the resolutions of the Board, delegate the powers referred to in sub-sub-paragraph (i) to other officers of the Corporation.

4. Removal from the Board.

- (1) A director who falls within paragraph 2(4) shall be removed from office.
- (2) A director may be removed from office if the director —
 - (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
 - (b) is incapacitated by physical or mental illness; or
 - (c) is guilty of serious misconduct.

5. Resignation from the Board.

- (1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing not less than one month's notice.
- (2) The Minister may waive the period of notice required by sub-paragraph (1).

6. Vacancies.

A vacancy in the office of a director shall be filled within sixty days by the Minister appointing a person to the office for the ordinary term in accordance with paragraph 2.

7. Meetings.

- (1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every quarter.
- (2) A meeting of the Board —
 - (a) may be convened by the Governor or, in his absence, the deputy chairperson;
or
 - (b) shall be convened on the written requisition of three directors specifying the reasons for which the meeting is required.
- (3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by the deputy chairperson.
- (4) Four directors, of whom one shall be either the Governor or deputy chairperson shall form a quorum at any meeting.
- (5) A decision of the Board shall be adopted by a simple majority of the directors present and, in the case of an equality of votes, the person presiding at the meeting shall have and exercise a casting vote.
- (6) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.
- (7) No act or proceeding of the Board shall be invalidated merely by reason of a vacancy on the Board or of a defect in the appointment or qualification of a director.

8. Remuneration of the Board.

- (1) The Corporation shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.
- (2) The amount of remuneration determined under sub-paragraph (1) — (a) shall be stated in the instrument of appointment of the director and--
 - (a) shall not be diminished during the term of office of the director receiving the remuneration; and
 - (b) shall not be determined by reference to the profits of the Corporation.

9. Staff and remuneration.

- (1) The Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Corporation.
- (2) Remuneration paid under sub-paragraph (1) shall not be determined by reference to the profits of the Corporation.
- (3) The Corporation may, as the Corporation determines —
 - (a) pay to or in respect of officers or servants of the Corporation pensions or gratuities;
 - (b) make payments towards the provisions for employees of pensions or gratuities; or
 - (c) maintain for employees pension schemes (by being a contributor or otherwise).

10. Seal.

- (1) The seal of the Corporation shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or the deputy chairperson and one other director authorized by the Board to act in that behalf.
- (2) Any document purporting to be a document executed under the seal of the Corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

ANNEX 3

PROTECTION OF DEPOSITORS ACT, 1999 (CHAPTER 317)

PROTECTION OF DEPOSITORS (AMENDMENT) BYELAWS, 2018-2019

The Corporation, on the recommendation of the Central Bank of The Bahamas, in exercise of the powers conferred by section ~~22~~ 28 of the Protection of Depositors Act makes the following byelaws —

1. Citation

- (1) These Byelaws may be cited as the Protection of Depositors (Amendment) Byelaws, 2018 2019.
- ~~(2) These Byelaws shall come into force on such date as the Minister My, by Notice published in the Gazette, appoint.~~

2. Interpretation

In these Byelaws—

“certificate of insurance” has the meaning assigned to it in the Act.

3. Amendment of byelaw 4

The principal byelaws are amended in byelaw 4 by the insertion of the following new paragraphs immediately after paragraph (2):

- (3) The Corporation shall issue to every institution signs and logos of the Corporation within three months of the date on which this paragraph comes into force.
- (2) An institution shall prominently display the signs and logos issued by the Corporation:
 - (a) in all of its offices and branches;
 - (b) on its website and on its mobile applications in a way that best brings the information to depositors’ attention.
- (3) An institution may display the Corporation’s logos and signage using physical or digital displays.
- (4) An institution shall include a statement indicating whether or not a financial product or facility being offered by the institution is insured pursuant to the Act-
 - (a) on its website pages advertising or promoting the financial product;
 - (b) on printed and promotional materials relating to the financial product.
- (5) A statement pursuant to paragraph (4) must be prominently displayed in a way that best brings the information to depositors’ attention.

- (6) An institution must disclose that it is a member of the deposit insurance fund in all audio and visual advertisements promoting the institution.
- (7) A member institution must not, in advertising materials, provide any further information about deposit insurance beyond referring to the fact that the product advertised is or is not covered by deposit insurance, and to any further factual information required by law.
- (8) Institutions shall provide information about the Corporation in terms and in the format required by the Corporation.

4. Insertion of new byelaws 4A, 4B and 4C

The principal byelaws are amended by the insertion, immediately after byelaw 4 of the following new byelaws:

“4A. Cancellation of Certificate of insurance

- (1) The Corporation may, by notice in writing to a member institution, cancel a certificate of insurance issued pursuant to the byelaws of the Corporation in any of the following circumstances-
 - (a) when in the opinion of the Bank, that member institution is or is about to become insolvent;
 - (b) when the member institution's licence or registration to carry on its business operations has been revoked or cancelled by the Bank, as the case may be;
 - (c) when the Bank confirms in writing that by reason of insolvency, the member institution has ceased to accept deposits; or
 - (d) has not begun to accept deposits within a period of two years beginning on the day on which it became a member institution;
 - (e) when in the opinion of the Bank, a member institution has engaged or is engaging in unsafe or unsound practices in conducting its business.
- (2) If a member institution intends to cease to accept deposits, it must notify the Corporation and the institution's policy of deposit insurance may, subject to paragraph (3), be cancelled by the Corporation.
- (3) The Corporation shall notify the Minister of the action it is proposing to take under paragraph (1) and shall not take such action if it is advised by the Minister that taking the action proposed would not be in the public interest.
- (4) Before taking action under paragraph (1) the Corporation shall
 - (a) not later than twenty-one days before it intends to take such action, notify the member institution in writing of the intention, stating the reasons therefor;
 - (b) afford to the member institution an opportunity at a date and time specified in the notice (being not less than seven days' after the date thereof) to show cause why the certificate of insurance should not be cancelled.
- (5) If a member institution who is notified under paragraph (4) fails to show cause why the certificate of insurance should not be cancelled the Corporation shall—

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- (a) notify the member institution in writing of-
 - (i) its intention to cancel the certificate of insurance as from a date specified in the notice; and
 - (ii) the right of appeal conferred by byelaw 4B;
 - (b) send a copy of the notice referred to in subparagraph (a) to the Minister and to the Bank.
- (6) Subject to the provisions of paragraph (3), the Corporation shall cancel a certificate of insurance if no appeal is made by a member institution under byelaw 4B or if an appeal by a member institution under that section is dismissed.
 - (7) Where a member institution's certificate of insurance is cancelled, the Corporation forthwith shall notify the depositors in writing of the fact and make public notification of the cancellation of the certificate of insurance in the Gazette, on its website and in such other media as it may consider appropriate.
 - (8) Notwithstanding the cancellation of a certificate of insurance, the amount of any insured deposit on the date of cancellation less any subsequent withdrawals therefrom, shall continue to be so insured for a period of two years or, in the case of a term deposit with a remaining term exceeding two years, to the maturity of the term deposit.
 - (9) The Corporation shall immediately take steps to notify depositors of the matters referred to in paragraph (6).
 - (10) If the policy of deposit insurance of a member institution is cancelled, the member institution shall notify its depositors of that fact and shall remove all references to deposit insurance under this Act from all forms of advertising by the institution.
 - (11) The Corporation may, in the manner and through any news media that it considers appropriate, give public notice of the termination or cancellation of the policy of deposit insurance of a member institution if, in the opinion of the Corporation, the public interest requires that such notice be given.
 - (12) Paragraph (11) does not apply in respect of a deposit with a member institution if the deposit has been assumed by another member institution
 - (13) Cancellation of a certificate of deposit insurance does not relieve a former member institution from obligations and liabilities to the Corporation that have accrued before the cancellation.
 - (14) If the certificate of deposit insurance of a member institution is cancelled by the Corporation under paragraph (1), the Central Bank must, under subsection 4(6) of the Banks and Trust Companies Regulation Act or subsection 10(7) of the Cooperative Credit Unions Act, as the case may be, impose conditions on the member institution to prohibit the institution from accepting deposits.

4B. Appeal against cancellation

- (1) A policyholder notified under byelaw 4A of the intention of the Corporation to cancel its certificate of insurance may, within three days of the date of receipt of the notice, appeal in writing to the Minister against the decision of the Corporation.

- (2) The Minister shall hear an appeal within seven days after it is lodged and on hearing such appeal the Minister may-
 - (a) dismiss the appeal; or
 - (b) direct the Corporation to withdraw the notice of the intention to cancel the certificate of insurance.
- (3) Where a member institution has had its membership cancelled the member shall take steps to notify its depositors of this fact.

4C. Merger or consolidation

- (1) A bank or cooperative credit union, as the case may be, which results from the merger, consolidation or amalgamation of member institutions, or from the merger or consolidation of a non-member institution with a member institution, shall continue as a member institution.
- (2) The depositors of a surviving merged or amalgamated member institution shall have coverage of their deposits in each of the member institutions existing before the merger or amalgamation, up to the amount prescribed by subsection 6(2) of the Act for a period of two years.
- (3) A surviving merged or amalgamated institution shall notify its depositors of the merger or amalgamation and of the date on which the separate coverage of deposits referred to in paragraph (2) shall cease.

5. Insertion of new byelaw 8A, 8B and 8C

The principal byelaws are amended by the insertion of the following new byelaw immediately after byelaw 8—

“8A Information to new depositors

- (1) A member institution shall, as part of the account opening process for a deposit that is eligible to be insured by the Corporation, provide a depositor--
 - (a) if all account opening documents are provided only in digital form, with the digital form of a brochure supplied by the Corporation;
 - (b) if all account opening documents are provided only in physical form, with a printed version of the digital form of the brochure; or
 - (c) in any other case, with either the digital form of the brochure or a printed version of that digital form.
- (2) A member institution shall, before entering into a contract on deposit-taking, inform each intending depositor whether their deposit is covered by deposit insurance under the Act.
- (3) The physical and digital form of the brochures shall contain the following:
 - (a) general information about the Corporation;
 - (b) contact information for the Corporation;
 - (c) the Corporation’s logo or other identifiers;

- (d) information as to what constitutes a deposit that is eligible to be insured by the Corporation;
- (e) the maximum amount of deposit insurance coverage provided by the Corporation; and
- (f) information as to what a depositor needs to know when the Corporation is obliged to make an insurance payment.

8B Warning Statements for ineligible deposits

- (1) Subject to paragraph (2), if a member institution issues an instrument to a person evidencing that the member institution has received or is holding money that constitutes a deposit that is not eligible to be insured by the Corporation, the member institution shall include on the face of the instrument a warning statement in substantially the same words as one of the following statements:
 - (a) “Not insured by the DIC”;
 - (b) “Not insured by the Deposit Insurance Corporation”; or
 - (c) “The deposit evidenced by this instrument does not constitute a deposit that is insured under the Protection of Depositors Act”.

- (2) If a member institution issues an instrument to a person evidencing that the member institution has received or is holding money that constitutes both a deposit that is eligible to be insured by the Corporation and a deposit that is not eligible to be insured by the Corporation, the member institution shall include on the face of the instrument, in the location specified, if any, a warning statement in substantially the same words as one of the following statements:
 - (a) “The following deposits evidenced by this instrument do not constitute deposits that are insured under the Protection of Depositors Act:” before the list of deposits that are not eligible to be insured by the Corporation;
 - (b) “Not insured by the DIC” beside the reference to each deposit that is not eligible to be insured by the Corporation;
 - (c) “Not insured by the Deposit Insurance Corporation” beside the reference to each deposit that is not eligible to be insured by the Corporation; or
 - (d) “Not insured by the DIC” in a footnote the reference mark for which is located beside the reference to each deposit that is not eligible to be insured by the Corporation.

- (3) If a member institution enters into a transaction with a person by means of telecommunications, or by electronic or other means, with respect to an instrument, the member institution shall
 - (a) in the case of an oral communication,
 - (i) make an oral representation that is substantially the same as one of the statements set out in paragraph (2), and

- (ii) issue to the person in writing, by telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2); or
- (b) in the case of a communication in writing, issue to the person in writing, by means of telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2).

8C. Obligations and Required Capabilities of Member Institutions

- (1) The Corporation must provide a copy of its Data Requirements to each member institution and make them available on the Corporation's website.
- (2) The Corporation must notify every member institution of any changes that it makes to the Data Requirements by sending a notice of those changes to the chief executive officer of the institution and must make those changes available on the Corporation's website.
- (3) Every member institution must implement a method of identifying, capturing, organizing and producing its deposit liability data, in accordance with the Data Requirements
- (4) A member institution must implement the method referred to in paragraph (3) not later than (date).
- (5) The Corporation may, at any time, for the purpose referred to in paragraph (3), request that a member institution provide or make available to the Corporation the standardized data, or any portion of it, and the institution must provide that standardized data to the Corporation at the Corporation's request and within the timeframe stated by the Corporation.
- (6) A member institution must mark insured deposits in a way that allows for the immediate identification of such deposits.
- (7) A member institution must mark accounts (including client accounts and trust accounts) which are held on behalf of beneficiaries and which contain or may contain insured deposits in a way that allows immediate identification of such accounts.
- (8) A member institution must be able to provide the Corporation with the aggregated amount of insured deposits of every depositor.
- (9) Upon receipt of a request by the Corporation, a member institution must provide the information in paragraph (8) to the Corporation.
- (10) A member institution must be able to provide the Corporation with all information necessary to enable the Corporation to prepare for the payment of compensation pursuant to the Act.
- (11) Upon receipt of a request by the Corporation, a member institution must provide the information in paragraph (10) so as to enable the Corporation to prepare for and pay compensation in accordance with the Act.
- (12) A member institution must take reasonable steps to ensure the accuracy of the data it holds to satisfy the requirements of the byelaws and the Act.

- (13) The information required by paragraphs (6) and (7) must be electronically stored
- (14) A member institution must provide the information required by paragraphs (3) and (4) by secure electronic transmission and in a format which is readily transferable to and compatible with the Corporation's systems.
- (15) A member institution must ensure that its Single Customer View or SCV system:
 - (i) automatically identifies the amount of insured deposits payable to each depositor; and
 - (ii) includes a facility which identifies any portion of an insured deposit that is over the insured level provided for in subsection 6(2) of the Act.
- (16) A member institution must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of these byelaws.
- (17) A member institution must be able to:
 - (a) calculate the interest accrued or payable on each deposit as of the determination date;
 - (b) restrict and resume access to the deposit liabilities or a portion of the deposit liabilities;
 - (c) produce, at the determination time, the standardized data as it exists at that time; and
 - (d) reproduce at any time after the determination time, the standardized data as it existed at the determination time.
- (18) For the purposes of byelaw 8B—
 - (a) “business day”, in respect of a member institution, means a weekday that is not a holiday;
 - (b) “Data Requirements” means the Data and System Requirements issued by the Corporation, as amended from time to time.
- (c) “determination date”, in respect of a member institution, means--
 - (i) if a winding-up order is made in respect of the institution before the day on which the Corporation makes a payment under section 14 of the Act, the day on which the petition or other originating process is filed in respect of the winding-up; and
 - (ii) if a winding-up order is not made in respect of the institution, the day on which any of the circumstances described in byelaw 14(2.1) of the Act first occurred in respect of the institution;
- (d) “determination time” means--
 - (aa) in respect of the deposit liabilities of a member institution--
 - (i) if the determination date is a business day, the time by which all of the transactions made on that business day are processed and posted to the deposit records of the depositors of the member institution, and

-
- (ii) if the determination date is not a business day, the time by which all of the transactions made on the business day immediately preceding the determination date are processed and posted to the deposit records of the depositors of the member institution;
 - (e) “standardized data” means deposit liability data presented in accordance with the Data Requirements.

6. Amendment of byelaw 9

Bye-law 9 is amended—

(3) in paragraph (a) by the deletion of the words “six months from the date of closure” and the substitution therefore of the words “~~thirty days from the date of publication of the notice~~ within the applicable period referred to in section 16(1)”.

(4) by the deletion of paragraph (b) and the substitution therefore of the following:

“(b) if the depositor does not claim his insured deposit from the Corporation within twelve months after the date of publication of the notice by the Corporation under section 16(1), all rights of the depositor against the Corporation concerning the insured deposit are barred, but without prejudice to the rights of the depositor against the institution.”

7. Amendment of bye-law 10

Bye-law 10 is amended—

(a) by the deletion of paragraph (d) and the substitution of the following:

“(d) prepare a list of the depositors with loans from the institution and a list of any loan payment amounts in respect of those loans which are due or past due which can be set off against deposits, under section 15(e) of the Act.

8. Repeal and replacement of bye-law 11

Bye-law 11 is repealed and replaced by the following:

“11. In calculating the sum to be paid to the depositor under section 15(d) of the Act, there shall be deducted only such loan payment/instalment amount due to the institution by the depositor, as may be due or past due.”

Dated this day of A. D., ~~2018~~ **2019**

John A. Rolle
Chairman
Deposit Insurance Corporation

ANNEX 3

PROTECTION OF DEPOSITORS ACT, 1999 (CHAPTER 317)

PROTECTION OF DEPOSITORS (AMENDMENT) BYELAWS, 2019

The Corporation, on the recommendation of the Central Bank of The Bahamas, in exercise of the powers conferred by section ~~22~~ 28 of the Protection of Depositors Act makes the following byelaws —

1. Citation

These Byelaws may be cited as the Protection of Depositors (Amendment) Byelaws, 2019.

2. Interpretation

In these Byelaws—

“certificate of insurance” has the meaning assigned to it in the Act.

3. Amendment of byelaw 4

The principal byelaws are amended in byelaw 4 by the insertion of the following new paragraphs immediately after paragraph (2):

- (3) The Corporation shall issue to every institution signs and logos of the Corporation within three months of the date on which this paragraph comes into force.
- (2) An institution shall prominently display the signs and logos issued by the Corporation:
 - (a) in all of its offices and branches;
 - (b) on its website and on its mobile applications in a way that best brings the information to depositors’ attention.
- (3) An institution may display the Corporation’s logos and signage using physical or digital displays.
- (4) An institution shall include a statement indicating whether or not a financial product or facility being offered by the institution is insured pursuant to the Act-
 - (a) on its website pages advertising or promoting the financial product;
 - (b) on printed and promotional materials relating to the financial product.
- (5) A statement pursuant to paragraph (4) must be prominently displayed in a way that best brings the information to depositors’ attention.
- (6) An institution must disclose that it is a member of the deposit insurance fund in all audio and visual advertisements promoting the institution.

- (7) A member institution must not, in advertising materials, provide any further information about deposit insurance beyond referring to the fact that the product advertised is or is not covered by deposit insurance, and to any further factual information required by law.
- (8) Institutions shall provide information about the Corporation in terms and in the format required by the Corporation.

4. Insertion of new byelaws 4A, 4B and 4C

The principal byelaws are amended by the insertion, immediately after byelaw 4 of the following new byelaws:

“4A. Cancellation of Certificate of insurance

- (1) The Corporation may, by notice in writing to a member institution, cancel a certificate of insurance issued pursuant to the byelaws of the Corporation in any of the following circumstances-
 - (a) when in the opinion of the Bank, that member institution is or is about to become insolvent;
 - (b) when the member institution's licence or registration to carry on its business operations has been revoked or cancelled by the Bank, as the case may be;
 - (c) when the Bank confirms in writing that by reason of insolvency, the member institution has ceased to accept deposits; or
 - (d) has not begun to accept deposits within a period of two years beginning on the day on which it became a member institution;
 - (e) when in the opinion of the Bank, a member institution has engaged or is engaging in unsafe or unsound practices in conducting its business.
- (2) If a member institution intends to cease to accept deposits, it must notify the Corporation and the institution's policy of deposit insurance may, subject to paragraph (3), be cancelled by the Corporation.
- (3) The Corporation shall notify the Minister of the action it is proposing to take under paragraph (1) and shall not take such action if it is advised by the Minister that taking the action proposed would not be in the public interest.
- (4) Before taking action under paragraph (1) the Corporation shall
 - (a) not later than twenty-one days before it intends to take such action, notify the member institution in writing of the intention, stating the reasons therefor;
 - (b) afford to the member institution an opportunity at a date and time specified in the notice (being not less than seven days' after the date thereof) to show cause why the certificate of insurance should not be cancelled.
- (5) If a member institution who is notified under paragraph (4) fails to show cause why the certificate of insurance should not be cancelled the Corporation shall—
 - (a) notify the member institution in writing of-

- (i) its intention to cancel the certificate of insurance as from a date specified in the notice; and
 - (ii) the right of appeal conferred by byelaw 4B;
- (b) send a copy of the notice referred to in subparagraph (a) to the Minister and to the Bank.
- (6) Subject to the provisions of paragraph (3), the Corporation shall cancel a certificate of insurance if no appeal is made by a member institution under byelaw 4B or if an appeal by a member institution under that section is dismissed.
- (7) Where a member institution's certificate of insurance is cancelled, the Corporation forthwith shall notify the depositors in writing of the fact and make public notification of the cancellation of the certificate of insurance in the Gazette, on its website and in such other media as it may consider appropriate.
- (8) Notwithstanding the cancellation of a certificate of insurance, the amount of any insured deposit on the date of cancellation less any subsequent withdrawals therefrom, shall continue to be so insured for a period of two years or, in the case of a term deposit with a remaining term exceeding two years, to the maturity of the term deposit.
- (9) The Corporation shall immediately take steps to notify depositors of the matters referred to in paragraph (6).
- (10) If the policy of deposit insurance of a member institution is cancelled, the member institution shall notify its depositors of that fact and shall remove all references to deposit insurance under this Act from all forms of advertising by the institution.
- (11) The Corporation may, in the manner and through any news media that it considers appropriate, give public notice of the termination or cancellation of the policy of deposit insurance of a member institution if, in the opinion of the Corporation, the public interest requires that such notice be given.
- (12) Paragraph (11) does not apply in respect of a deposit with a member institution if the deposit has been assumed by another member institution
- (13) Cancellation of a certificate of deposit insurance does not relieve a former member institution from obligations and liabilities to the Corporation that have accrued before the cancellation.
- (14) If the certificate of deposit insurance of a member institution is cancelled by the Corporation under paragraph (1), the Central Bank must, under subsection 4(6) of the Banks and Trust Companies Regulation Act or subsection 10(7) of the Cooperative Credit Unions Act, as the case may be, impose conditions on the member institution to prohibit the institution from accepting deposits.

4B. Appeal against cancellation

- (1) A policyholder notified under byelaw 4A of the intention of the Corporation to cancel its certificate of insurance may, within three days of the date of receipt of the notice, appeal in writing to the Minister against the decision of the Corporation.

- (2) The Minister shall hear an appeal within seven days after it is lodged and on hearing such appeal the Minister may-
 - (a) dismiss the appeal; or
 - (b) direct the Corporation to withdraw the notice of the intention to cancel the certificate of insurance.
- (3) Where a member institution has had its membership cancelled the member shall take steps to notify its depositors of this fact.

4C. Merger or consolidation

- (1) A bank or cooperative credit union, as the case may be, which results from the merger, consolidation or amalgamation of member institutions, or from the merger or consolidation of a non-member institution with a member institution, shall continue as a member institution.
- (2) The depositors of a surviving merged or amalgamated member institution shall have coverage of their deposits in each of the member institutions existing before the merger or amalgamation, up to the amount prescribed by subsection 6(2) of the Act for a period of two years.
- (3) A surviving merged or amalgamated institution shall notify its depositors of the merger or amalgamation and of the date on which the separate coverage of deposits referred to in paragraph (2) shall cease.

5. Insertion of new byelaw 8A, 8B and 8C

The principal byelaws are amended by the insertion of the following new byelaw immediately after byelaw 8—

“8A Information to new depositors

- (1) A member institution shall, as part of the account opening process for a deposit that is eligible to be insured by the Corporation, provide a depositor--
 - (a) if all account opening documents are provided only in digital form, with the digital form of a brochure supplied by the Corporation;
 - (b) if all account opening documents are provided only in physical form, with a printed version of the digital form of the brochure; or
 - (c) in any other case, with either the digital form of the brochure or a printed version of that digital form.
- (2) A member institution shall, before entering into a contract on deposit-taking, inform each intending depositor whether their deposit is covered by deposit insurance under the Act.
- (3) The physical and digital form of the brochures shall contain the following:
 - (a) general information about the Corporation;
 - (b) contact information for the Corporation;
 - (c) the Corporation’s logo or other identifiers;

- (d) information as to what constitutes a deposit that is eligible to be insured by the Corporation;
- (e) the maximum amount of deposit insurance coverage provided by the Corporation; and
- (f) information as to what a depositor needs to know when the Corporation is obliged to make an insurance payment.

8B Warning Statements for ineligible deposits

- (1) Subject to paragraph (2), if a member institution issues an instrument to a person evidencing that the member institution has received or is holding money that constitutes a deposit that is not eligible to be insured by the Corporation, the member institution shall include on the face of the instrument a warning statement in substantially the same words as one of the following statements:
 - (a) “Not insured by the DIC”;
 - (b) “Not insured by the Deposit Insurance Corporation”; or
 - (c) “The deposit evidenced by this instrument does not constitute a deposit that is insured under the Protection of Depositors Act”.

- (2) If a member institution issues an instrument to a person evidencing that the member institution has received or is holding money that constitutes both a deposit that is eligible to be insured by the Corporation and a deposit that is not eligible to be insured by the Corporation, the member institution shall include on the face of the instrument, in the location specified, if any, a warning statement in substantially the same words as one of the following statements:
 - (a) “The following deposits evidenced by this instrument do not constitute deposits that are insured under the Protection of Depositors Act:” before the list of deposits that are not eligible to be insured by the Corporation;
 - (b) “Not insured by the DIC” beside the reference to each deposit that is not eligible to be insured by the Corporation;
 - (c) “Not insured by the Deposit Insurance Corporation” beside the reference to each deposit that is not eligible to be insured by the Corporation; or
 - (d) “Not insured by the DIC” in a footnote the reference mark for which is located beside the reference to each deposit that is not eligible to be insured by the Corporation.

- (3) If a member institution enters into a transaction with a person by means of telecommunications, or by electronic or other means, with respect to an instrument, the member institution shall
 - (a) in the case of an oral communication,
 - (i) make an oral representation that is substantially the same as one of the statements set out in paragraph (2), and

- (ii) issue to the person in writing, by telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2); or
- (b) in the case of a communication in writing, issue to the person in writing, by means of telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2).

8C. Obligations and Required Capabilities of Member Institutions

- (1) The Corporation must provide a copy of its Data Requirements to each member institution and make them available on the Corporation's website.
- (2) The Corporation must notify every member institution of any changes that it makes to the Data Requirements by sending a notice of those changes to the chief executive officer of the institution and must make those changes available on the Corporation's website.
- (3) Every member institution must implement a method of identifying, capturing, organizing and producing its deposit liability data, in accordance with the Data Requirements
- (4) A member institution must implement the method referred to in paragraph (3) not later than (date).
- (5) The Corporation may, at any time, for the purpose referred to in paragraph (3), request that a member institution provide or make available to the Corporation the standardized data, or any portion of it, and the institution must provide that standardized data to the Corporation at the Corporation's request and within the timeframe stated by the Corporation.
- (6) A member institution must mark insured deposits in a way that allows for the immediate identification of such deposits.
- (7) A member institution must mark accounts (including client accounts and trust accounts) which are held on behalf of beneficiaries and which contain or may contain insured deposits in a way that allows immediate identification of such accounts.
- (8) A member institution must be able to provide the Corporation with the aggregated amount of insured deposits of every depositor.
- (9) Upon receipt of a request by the Corporation, a member institution must provide the information in paragraph (8) to the Corporation.
- (10) A member institution must be able to provide the Corporation with all information necessary to enable the Corporation to prepare for the payment of compensation pursuant to the Act.
- (11) Upon receipt of a request by the Corporation, a member institution must provide the information in paragraph (10) so as to enable the Corporation to prepare for and pay compensation in accordance with the Act.
- (12) A member institution must take reasonable steps to ensure the accuracy of the data it holds to satisfy the requirements of the byelaws and the Act.

- (13) The information required by paragraphs (6) and (7) must be electronically stored
- (14) A member institution must provide the information required by paragraphs (3) and (4) by secure electronic transmission and in a format which is readily transferable to and compatible with the Corporation's systems.
- (15) A member institution must ensure that its Single Customer View or SCV system:
 - (i) automatically identifies the amount of insured deposits payable to each depositor; and
 - (ii) includes a facility which identifies any portion of an insured deposit that is over the insured level provided for in subsection 6(2) of the Act.
- (16) A member institution must take reasonable steps to ensure the accuracy of the data it holds in order to satisfy the requirements of these byelaws.
- (17) A member institution must be able to:
 - (a) calculate the interest accrued or payable on each deposit as of the determination date;
 - (b) restrict and resume access to the deposit liabilities or a portion of the deposit liabilities;
 - (c) produce, at the determination time, the standardized data as it exists at that time; and
 - (d) reproduce at any time after the determination time, the standardized data as it existed at the determination time.
- (18) For the purposes of byelaw 8B—
 - (a) “business day”, in respect of a member institution, means a weekday that is not a holiday;
 - (b) “Data Requirements” means the Data and System Requirements issued by the Corporation, as amended from time to time.
 - (c) “determination date”, in respect of a member institution, means—
 - (i) if a winding-up order is made in respect of the institution before the day on which the Corporation makes a payment under section 14 of the Act, the day on which the petition or other originating process is filed in respect of the winding-up; and
 - (ii) if a winding-up order is not made in respect of the institution, the day on which any of the circumstances described in byelaw 14(2.1) of the Act first occurred in respect of the institution;
 - (d) “determination time” means--
 - (aa) in respect of the deposit liabilities of a member institution--

- (i) if the determination date is a business day, the time by which all of the transactions made on that business day are processed and posted to the deposit records of the depositors of the member institution, and
 - (ii) if the determination date is not a business day, the time by which all of the transactions made on the business day immediately preceding the determination date are processed and posted to the deposit records of the depositors of the member institution;
- (e) “standardized data” means deposit liability data presented in accordance with the Data Requirements.

6. Amendment of byelaw 9

Bye-law 9 is amended—

- (1) in paragraph (a) by the deletion of the words “six months from the date of closure” and the substitution therefore of the words within the applicable period referred to in section 16(1)”.
- (2) by the deletion of paragraph (b) and the substitution therefore of the following:
 - “(b) if the depositor does not claim his insured deposit from the Corporation within twelve months after the date of publication of the notice by the Corporation under section 16(1), all rights of the depositor against the Corporation concerning the insured deposit are barred, but without prejudice to the rights of the depositor against the institution.”

7. Amendment of bye-law 10

Bye-law 10 is amended—

- (a) by the deletion of paragraph (d) and the substitution of the following:
 - “(d) prepare a list of the depositors with loans from the institution and a list of any loan payment amounts in respect of those loans which are due or past due which can be set off against deposits, under section 15(e) of the Act.

8. Repeal and replacement of bye-law 11

Bye-law 11 is repealed and replaced by the following:

- “11. In calculating the sum to be paid to the depositor under section 15(d) of the Act, there shall be deducted only such loan payment/instalment amount due to the institution by the depositor, as may be due or past due.”

Dated this day of A. D., 2019

**John A. Rolle
Chairman
Deposit Insurance Corporation**