

Industry Briefing

on

Key Legislative Reforms

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Overview of Proposed Legislation

- 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



Central Bank of The Bahamas Bill, 2019

A. Proposed Crisis Management Framework: Central Bank as resolution authority for banks

- **Clause 5** proposes that one of the objectives of the Central Bank is to act as the resolution authority for banks.
- **Clause 28** proposes that the Central Bank's powers be enhanced to:
 - incorporate a company or acquire shares of an existing company to carry out the functions of a bridge institution or an asset management vehicle; and
 - provide financial assistance to bridge institutions subject to terms and conditions (including repayment).



Central Bank of The Bahamas Bill, 2019

B. Other Proposed Amendments:

Digital Currency

Clauses 8, 12 and 14A propose that the Central Bank be authorized to:

- Issue electronic money as legal tender, along with banknotes and coins.
- Make regulations for a framework relating to the public's holding and use of digital currency in keeping with best international practices for the development and functioning of the payments system.



Central Bank of The Bahamas Bill, 2019

B. Other Proposed Amendments:

Loans to the Government

- **Clause 20** proposes that
 - the amount of temporary advances which the Central Bank may make to the government, at any time, taken together with Treasury Bills and securities issued or guaranteed by the Government or a public corporation - be reduced to 10 percent [from 15 percent] of the average ordinary revenue of the government or ten percent of the estimated ordinary revenue whichever is less.
- **Clause 21** proposes that the Central Bank may purchase or subscribe from primary markets Treasury Bills or securities issued or guaranteed by the Government or a public corporation only
 - 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; and



Central Bank of The Bahamas Bill, 2019

B. Other Proposed Amendments:

Statutory reserve

- If the aggregate value of the T-Bills and securities do not exceed 5 percent of the average ordinary revenue of the government or 5 percent of the estimated ordinary revenue whichever is less [reduced from 10 percent]
- **Clauses 22 and 23:** It is proposed that
 - The Central Bank be authorized
 - to open accounts for or accept deposits from non-bank financial institutions
 - Issue its own interest bearing securities to support monetary policy.
 - the category of entities that may maintain statutory reserve balances with the Central Bank be expanded to include non-bank financial institutions.
 - the reserve balance be determined by the Central Bank and calculated as such percentage of an institution's liabilities as may be fixed by the Central Bank.



Central Bank of The Bahamas Bill, 2019

B. Other Proposed Amendments:

Confidentiality

Clause 43 proposes that Confidentiality requirements be imposed on:

- A statutory administrator appointed by the Central Bank;
- An independent valuer appointed by the Central Bank;
- 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;
- Bridge institutions and asset management vehicles.



Central Bank of The Bahamas Bill, 2019

B. Other Proposed Amendments: Immunity and indemnity

- **Clause 61** proposes the consolidation of the categories of persons who may be afforded legal protection for their good faith actions in the course of their functions and who may be indemnified by the Central Bank – as follows:
 - persons listed under the existing section 13A of the Banks and Trust Companies Regulation Act, 2000;
 - Statutory administrator
 - directors and officers of bridge institutions and asset management vehicles; and
 - independent valuers appointed under the Banks and Trust Companies Regulation Act.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Recovery Plans

- **Clause 11** proposes that
 - A bank's senior management be responsible for the development and maintenance of a recovery plan.
 - Banks review their recovery plans annually.
 - Recovery plans be kept up to date so as to reflect changes in the legal or organizational structure or any matter which could materially affect or require a change to the plan.
 - A bank be required to notify the Central Bank promptly of any material changes to its recovery plan but no later than one month after making such change.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Recovery Plans

- The Central Bank may direct a bank:
 - ❖ on what must be included in the recovery plan
 - ❖ to implement all or a part of the recovery plan
 - ❖ to address or remove impediments to orderly resolution.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Resolution Objectives

Clause 11B proposes that the resolution objectives be expanded to include protection of public funds.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Directions

- **Clause 18(1)(h)** Sets out proposed directions which the Central Bank may issue to a bank placed under statutory administration:
 - require the bank or its subsidiary to sell, liquidate, or otherwise dispose of its subsidiary or part of its business;
 - 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—
 - to change its legal or operational structure, or
 - so far as it is able to do so, to change the legal or operational structure of a subsidiary;
 - to prohibit payment of bonuses or incentive compensation to any director or officer; and
 - to take such action as the Central Bank considers necessary.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Directions

- **Clause 18BQ** proposes that the Central Bank may direct a bank under statutory administration to continue to provide essential services to another entity to which its assets and liabilities have been transferred – if of the opinion that this would assist in the orderly wind down of the bank.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: **Statutory Administration**

Clause 18B proposes the expansion of the bases upon which a statutory administrator may be appointed to include cases where, in the opinion of the Central Bank:

- a bank has engaged or is engaging in an unsafe or unsound practice;
- 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;
- the capital and value of the assets of the bank have 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;
- 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.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Statutory Administration

- Clause 18BB (2) proposes that a statutory administrator have power to remove any or all directors and officers of a bank.
- 18BE(4) proposes that the Central Bank be authorized to publish in the Gazette a notice that a moratorium on payments has been lifted.
- 18BH(7) proposes that a statutory administrator be authorized to write down creditor claims or convert them into equity – in a way that respects the hierarchy of claims in liquidation.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: **Statutory Administration**

- **Clause 18BI** proposes that the statutory administrator may transfer the securities or assets, rights and liabilities of a bank under statutory administration to:
 - a bridge institution
 - an asset management vehicle
 - a purchaser.through a property transfer or securities transfer instrument.
- The statutory administrator would also be able to transfer property or securities
 - of a bank under statutory administration and which are held by a bridge institution; or
 - issued by the bridge institution,to another bridge institution (an onward bridge institution) or another entity .



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Statutory Administration

- The Central Bank must inform the Minister of Finance about a transfer of assets, rights or liabilities or of the securities of a bank under statutory administration and the Minister lay the report before Parliament.
- An independent valuer must be appointed in writing to verify the adequacy of compensation provided to the transferor for the transferred shares, other securities, assets, rights and liabilities of a bank under statutory administration.
- Notice of the independent valuer's appointment must be published in the gazette.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Shareholder and creditor safeguards

- **Clause 18CM** proposes that a shareholder or creditor of a bank under statutory administration is entitled to compensation if they establish that as a result of any merger, purchase and assumption, sale or restructuring the bank they are in a worse position than if the bank had been liquidated.
- The shareholder or creditor must first apply to an independent valuer appointed by the Central Bank, to assess their claim. The independent valuer must determine whether compensation is due to the applicant and if so, the amount of compensation.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Shareholder and creditor safeguards

- When conducting a valuation the independent valuer must determine the following:
 1. 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;
 2. the actual treatment that shareholders and creditors have received in the resolution of the institution under statutory administration;
 3. whether there is any difference between the treatment referred to in 1 and the treatment referred to in 2.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Shareholder and creditor safeguards

- The independent valuer must report in writing to the Central Bank the following:
 - (a) the name of each person claiming compensation;
 - (b) whether compensation is payable;
 - (c) where compensation is payable, the amount of compensation payable.
- Compensation would be due to a creditor or shareholder if the independent valuer determines that they are in a worse position than if the bank had been liquidated.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework

Shareholder and creditor safeguards

- Compensation would be paid by the Central Bank wholly or partly in cash or wholly or partly in any other form, including shares, that the Central Bank considers appropriate.
- Payment of the compensation by the Central Bank would discharge the Central Bank from its obligations.
- The Central Bank must determine the remuneration to be paid to an independent valuer and any person assisting him or her.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework

Shareholder and creditor right of appeal

- 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.
- On appeal, the Court may substitute its own determination or confirm, reverse or vary the determination of the independent valuer.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Bridge Institutions

Clause 18BK proposes that

- A bridge institution be licensed by the Central Bank for up to two years to carry on the business of a bridge institution.
- Notice of the grant of the licence must be published in the gazette
- The Minister may grant up to three one year extensions
- Where the bridge institution becomes the employer of the employees or former employees of the bank under statutory administration or a predecessor of the bank, the bridge institution assumes no responsibility for any pre-existing liability in respect of employees of the bank or of a predecessor of such a bank.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Bridge Institutions

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



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Bridge Institution

- Civil proceedings or 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 be stayed for 90 days from the date on which the bridge institution acquired the asset or assumed the liability.
- The Central Bank may give directions to the board of a bridge institution who are under a duty to promptly comply with the directions and notify the Central Bank of compliance. Directions include requirements relating to the making, amendment or repeal of any by-law of the bridge institution.
- No remuneration or benefits would accrue to employees of the Central Bank who are directors or officers of a bridge institution.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Bridge Institution

- A bridge institution may be dissolved by its board of directors if all or substantially all of its assets have been sold or otherwise disposed of and all or substantially all of its liabilities have been discharged.
- Where all or substantially all of the transfers of the 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.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Asset Management Vehicle

- **Clause 18BL** proposes that a statutory administrator may transfer the assets, rights or liabilities of a bank under statutory administration or a bridge institution, to an asset management vehicle through property transfer instruments and may subsequently transfer those assets, rights or liabilities from the asset management vehicle to another entity.
- **Clause 18BM** proposes that an asset management vehicle manage the assets transferred to it with a view to maximizing their value through eventual sale or orderly wind down.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework: Asset Management Vehicle

Clause 18B0 proposes that where a transfer has been made to an asset management vehicle, the Central Bank must report to the Minister on

- the activities and audited financial position of the asset management vehicle
- the progress that has been made towards maximizing the value of the assets transferred through eventual sale or orderly wind down

This report must be laid before Parliament.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Resolution Funding Account

- **Clause 18BP** proposes that money received by the Central Bank as the shareholder of an asset management vehicle must be paid into the resolution funding account.
- **Clause 18BR** proposes that a bank under statutory administration may be charged all reasonable costs of resolution only where this would not undermine the resolution process. Funds received must be paid into the resolution funding account.
- **Clause 18BS** proposes that before using funds from the resolution funding account the Central Bank must have regard to the extent to which the failing bank's own resources can be utilized, including the extent to which-
 - liabilities of the bank can be written off or converted to enable it to absorb losses and re-establish its capital position;
 - assets of the bank can be sold; or
 - private sector funding can be obtained by the bank.



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Resolution Funding Account

- Limits on use of monies in resolution funding account:
 - 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;
 - the making of a transfer instrument in respect of a bank under statutory administration;
 - the resolution of a bank under statutory administration, including payment of any compensation due to shareholders and creditors and any associated costs;
 - lending money to a bank under statutory administration or a bridge institution; and



Banks and Trust Companies Regulation Bill, 2019

A. Proposed Crisis Management Framework:

Resolution Funding Account

- providing, or underwriting the provision of capital to a bank under statutory administration, a bridge institution or an asset management vehicle.



Banks and Trust Companies Regulation Bill, 2019

B. Other Proposed Amendments: Liability of Directors and Officers

- **Clause 13A** proposes that where a licensee fails to notify the Central Bank of any material information which may negatively impact the fitness and propriety of a director or senior manager of a licensee, every director, manager or officer is guilty of an offence if it is proved that the default which constituted the offence took place with that person's knowledge, authority, permission or consent. Such persons are liable on summary conviction to a fine not exceeding \$50,000.



Thank You.

