



Central Bank of The Bahamas

PUBLIC CONSULTATION

on

Proposals for:

- (a) Amendments to:**
 - i. The Banks and Trust Companies Regulation Act, 2000;**
 - ii. The Protection of Depositors Act, 1999; and**
 - iii. The Protection of Depositors Byelaws, 1999**

- (b) Inclusion of provisions for a bank resolution framework in the draft Central Bank of The Bahamas Bill, 2018**

June 5th, 2018

TABLE OF CONTENTS

I. Introduction

II. The existing Bahamian regime

III. Models for the resolution of banks

IV. Details of the draft amendments

- 4.1 Draft Banks and Trust Companies Regulation (Amendment) Bill, 2018:
 - 4.1.2 The Proposed Bank Resolution Framework
 - 4.1.3 Proposed measures to strengthen the Central Bank's Supervisory regime
- 4.2 Draft Central Bank of The Bahamas Bill, 2018
- 4.3 Draft Protection of Depositors (Amendment) Bill, 2018
- 4.4 Draft Protection of Depositors (Amendment) Byelaws, 2018

V. Consultation Period

Annex 1: Draft Banks and Trust Companies Regulation (Amendment) Bill, 2018

Annex 2: Draft Protection of Depositors (Amendment) Bill, 2018

Annex 3: Draft Protection of Depositors (Amendment) Byelaws, 2018

I. INTRODUCTION

- 1.1 This Consultation Paper invites comments on the Central Bank of The Bahamas' ("the Central Bank") proposed revisions to the legislative framework for resolving problem banks. The Central Bank proposes amendments to the Banks and Trust Companies Regulation Act, 2000 ("BTCRA"), the Central Bank of The Bahamas Act, 2000 ("CBBA"), the Protection of Depositors Act, 1999 ("PDA") and the Protection of Depositors Byelaws, 1999 ("PDB") to inter alia enhance and strengthen the statutory powers available to the Central Bank to resolve¹ failing banks. The proposed amendments will, once enacted, establish the Central Bank as the resolution authority for problem banks and streamline the role and powers of the Deposit Insurance Corporation (the Corporation). Additionally, the proposed amendments will allow the Central Bank to use an administrative approach² to resolve problem institutions.
- 1.2 The Central Bank received technical assistance from the International Monetary Fund (IMF) to identify measures to strengthen The Bahamas' financial crisis management planning and resolution framework. This assistance was sought as a result of recommendations made by the Financial Sector Assessment Program (the "FSAP") mission to The Bahamas in 2012 to assess the country's compliance with best practices in the areas of financial sector supervision and regulation. The IMF recommended a number of reforms to improve the jurisdiction's capacity to respond to systemic financial shocks and the overall resiliency of the financial sector. Among the priority recommendations were measures to strengthen the resolution regime and establish an appropriate legal and regulatory framework for the early intervention and resolution of failed banks. An overview of the key recommendations made by the IMF, and an analysis of the international approaches to resolution of failed banks, are set out below.
- 1.3 In 2015 the Central Bank also coordinated meetings between the IMF and various public and private sector stakeholders including the Ministry of Finance, the judiciary, members of BICA³ and the Bar to discuss the various approaches for resolving problem banks.
- 1.4 The Central Bank issued a Discussion Paper on May 12, 2015 to various stakeholders who attended meetings with the IMF, to gauge early views on the preferred approach to bank resolution (judicial, hybrid or administrative) however, responses were limited. Since issuing the Discussion Paper, the Bank has adjusted its position with regard to its approach to bank resolution given the impact that a failed institution could have on financial stability, together with the need for swift intervention by the resolution authority. The Bank initially proposed the adoption of a hybrid approach to resolving problem banks but has determined that an

¹ Resolution is the process by which the resolution authority can step in to make sure that a bank that is failing does so in an orderly way.

² See paragraph 3.5 which describes the administrative approach.

³ Bahamas Institute of Chartered Accountants

administrative approach would be more effective to ensure swift intervention to address systemic and other issues where an institution might be facing imminent failure.

1.5 International Standards and Best Practices

1.5.1 The lessons learned from the 2008-2009 global financial crisis reinforced the need for more emphasis on crisis management and for a special resolution regime for banks and other financial institutions, given their unique role in the economy and the potentially systemic nature of their failure. This recognition by international standard setters led them to develop new guidance for the resolution of financial institutions; namely, the Key Attributes of Effective Resolution Regimes for Financial Institutions (the “Key Attributes”). The Central Bank’s proposals for resolution of banks are based on the Key Attributes.

II. THE EXISTING BAHAMIAN REGIME

2.1 In The Bahamas, the existing legal framework for bank resolution includes a number of measures for dealing with a failing institution. The IMF, however, highlighted several areas where the legislation could be strengthened, including:

- (a) giving the Central Bank power to impose a moratorium on a failing bank’s activities to prevent a run on deposits. While the Corporation has power to restructure a bank under its control, under the PDA the Corporation may return the bank to the existing shareholders and management without proceeding with restructuring of the failed institution (See section 24(2) and (3) of the PDA);
- (b) incorporating tools such as purchase and assumption and use of a bridge bank in the legislation to allow the Central Bank to administratively transfer good assets and deposits out of a failed bank into a healthy operating entity ahead of a liquidation. Also the power to override shareholders and creditors in forcing recapitalization and mergers is not included in the existing legislation;
- (c) several provisions⁴ in the BTCRA require a seven-day notice period from the Central Bank to a licensee before intervention measures may be implemented. These due process requirements may impede the Bank’s ability to intervene early in a bank failure;
- (d) affording certain safeguards to the creditors of a bank in resolution, to ensure that they receive residual distributions “no worse off” than what they would likely have received under general insolvency proceedings. International good practices are leaning towards awarding ex post compensation, determined by an independent valuer. Restructuring a bank without such safeguards may increase legal risks for the resolution authority, based on claims that resolution actions infringe upon private rights under property and/or constitutional law.

⁴ See, for example, section 18(2) BTCRA.

To prevent creditors from benefiting from resolutions, such compensation should be calculated based on the bank's liquidation value;

- (e) Supervisory or resolution actions of the Central Bank (and also in the case of resolution actions of the Corporation), could be suspended and reversed by the courts. For instance, under s. 26 (6) of the BTCRA, the Supreme Court may confirm, vary, modify, or reverse a decision of the Central Bank. The court also has discretion to allow or dismiss Central Bank's petition for winding up. There is no time limit within which the court is required to make a decision. The PDA also currently lacks clear limits on judicial review. This could create uncertainty for stakeholders as well as have serious implications for financial stability;
- (f) any creditor or shareholder can initiate insolvency proceedings;
- (g) liquidation proceedings can be lengthy, with access to critical deposits frozen for the duration of the liquidation, as no explicit power is given to the liquidator to make interim payments. Further, the court appointed liquidator is not subject to supervision or direction by the Central Bank, and is not required by law to have regard to the stability of the financial sector.

III. MODELS FOR THE RESOLUTION OF BANKS

- 3.1 There are mainly three (3) possible models for the liquidation of banks: (i) a wholly judicial model; (ii) a wholly administrative model and (iii) a hybrid model, using a court-based framework with sufficient involvement of the resolution authority⁵. By virtue of their legal status as companies, banks were traditionally subject to the corporate insolvency framework, which is court-based. Traditionally, this was consistent with the fact that no special resolution regime existed in many countries for dealing with failing banks. With the adoption of special resolution regimes, the extent of involvement of the courts in bank resolution has come under increased scrutiny.

3.2 *Judicial Model*

- 3.2.1 The existing regime in The Bahamas for bank liquidation is based on a judicial model which follows the same winding-up procedures used for companies that are not financial institutions. The Central Bank may petition the court to wind-up an insolvent bank or trust company, but this is not exclusive to the Central Bank,⁶ and the liquidation is subject wholly to

⁵ The "resolution authority" is the entity responsible for exercising resolution powers over firms within the scope of the resolution regime.

⁶ See section 18(5) of the BTCRA and sections 186, 190(1),(2) and (4) of the Companies (Winding Up Amendment) Act, 2011.

the court's supervision⁷. The courts may appoint a liquidator or provisional liquidator, who is not subject to the supervision or direction of the Central Bank⁸.

- 3.2.2 As mentioned above, the existing Bahamian regime is based on a wholly judicial approach, subjecting banks to the same court-based liquidation framework applicable to general corporate entities.
- 3.2.3 This model involves the appointment of a liquidator by the court, upon the application of a creditor or resolution authority. The court typically hears the views of the institution's shareholders or creditors as to why liquidation may not be appropriate, and the court has discretion to decide one way or the other. The liquidator is then subject to the court's oversight and direction. Often, there is no provision in the legal framework for the resolution authority to provide direction to the liquidator, if necessary, with a view to protecting the interest of depositors and the financial system, at large. As such, this approach would typically create more challenges for resolution authorities to resolve banks with the necessary speed and flexibility, as well as to achieve the objective of maintaining financial stability, compared to the other approaches.

3.4 Hybrid Model

- 3.4.1 A hybrid model for bank liquidation would involve the resolution authority having an increased role in resolution, while the courts have a somewhat modified role. Under this approach, the resolution authority would have the power to take administrative action to transfer critical functions of a failed bank, without court approval and by overriding shareholder rights. Thereafter, the resolution authority initiates a court based liquidation process, over which it has a fair amount of control. Under this approach, minimum requirements for an effective bank liquidation regime would include: (i) the appointment by the resolution authority of a liquidator (either directly or by petitioning the court to nominate a suitable person(s) to act as liquidator(s)), simultaneously with or immediately following revocation of a bank's licence; (ii) clarifying the primary objective of liquidation to be the preservation of financial stability; (iii) oversight of the liquidator by the resolution authority/bank supervisor with the liquidator under a duty to respect their directions; (iv) effective coordination by the liquidator with the resolution authority and/or bank supervisor and reporting by the former to the latter; and (v) legal protection for the liquidator for good faith actions.

⁷ See section 184 and 191 of the Companies (Winding Up Amendment) Act, 2011.

⁸ See sections 199 and 200 of the Companies (Winding Up Amendment) Act, 2011.

3.5 *Administrative Model*

- 3.5.1 This approach would have banks subject to an administrative regime initiated and supervised by the resolution authority. Administrative procedures to liquidate failed banks involve a series of extra-judicial powers exercised by the resolution authority. Jurisdictions that adopt this approach confer powers on the resolution authority to initiate and fully carry out the liquidation. The resolution authority appoints a liquidator administratively, sets the terms of his or her compensation, makes its own regulations or guidelines for the process and oversees the entire liquidation process, without court involvement.
- 3.5.2 Usually, an administrative resolution approach will require an explicit carve out for liquidation of banks and other financial institutions from the relevant provisions of the company law and/or insolvency law. Aggrieved persons may typically seek judicial review of the liquidation proceedings, but within a limited scope.

3.6 *A Proposed Administrative Model in The Bahamas*

- 3.6.1 The Central Bank is proposing an administrative approach to bank resolution. Under this approach, the Bank may appoint a statutory administrator to resolve a failing bank. It is proposed that the statutory administrator have power to inter alia, exercise shareholders' rights and powers, preserve and safeguard the assets and property of the bank under statutory administration, carry out a merger of the bank or transfer the bank's assets and liabilities to a bridge bank or to an asset management vehicle and restructure the liabilities of the bank under administration. The statutory administrator would be subject to the directions of the Central Bank. Where a statutory administrator determines that a failing bank should be wound up, the Central Bank would appoint a liquidator to wind up the bank without recourse to the courts. The liquidation would be subject to the regulations, rules, orders, or directions the Central Bank may issue regarding the winding-up proceedings. The liquidator would have an obligation to report to the Central Bank. Certain actions of the liquidator, such as borrowing money, would require prior Central Bank approval. To ensure prompt payouts to depositors, certain legal proceedings by creditors would be restricted.

IV. **DETAILS OF THE DRAFT AMENDMENTS**

4.1 *Draft Banks and Trust Companies Regulation (Amendment) Bill, 2018*

- 4.1.1 The draft Banks and Trust Companies Regulation (Amendment) Bill, 2018 ("the BTCR Bill") is set out at **Annex 1**.
- 4.1.2 The key provisions of the BTCR Bill propose amendments to the principal Act to enhance the Central Bank's powers to resolve problem banks and include new powers to appoint a statutory administrator and a liquidator

without obtaining a court order. Set out below is an overview of the BTCR Bill:

4.1.3 The Proposed Bank Resolution Framework

- *Introduction of requirements for recovery and resolution plans*
 - (i) Clause 11 seeks to insert new sections 11, 11A and 11B in the principal Act to address the following matters:
 - (a) The proposed section 11 would, when enacted, authorize the Central Bank to require a bank to prepare and submit a *recovery* plan that anticipates the steps the bank would take in the event of financial distress or failure.
 - (b) The proposed section 11A would authorize the Central Bank to prepare *resolution* plans for a bank with the cooperation of the bank and its supervisory authority. The purpose of the resolution plan would be to provide options for how the Central Bank would use its resolution powers and tools to resolve a bank with a view to continuing, as far as possible, the bank's critical functions. The Central Bank would also have power to direct a bank to address or remove significant impediments to orderly resolution.
 - (c) The proposed section 11B sets out the objectives of resolution and would require the Central Bank to exercise its resolution powers (i.e. powers relating to statutory administration and compulsory liquidation) in pursuance of those objectives. The objectives include maintaining financial stability, protecting public confidence in the banking system by ensuring prompt payouts of insured deposits of a bank in liquidation, ensuring continuity of critical financial services, minimizing the costs of resolution, avoiding unnecessary destruction and minimizing the impact of resolution on other jurisdictions.
- *Introduction of a statutory administration regime*
 - (i) Clause 16 of the BTCR Bill proposes an amendment to section 18(1) (g) of the principal Act to empower the Central Bank to appoint a statutory administrator.
 - (ii) Clause 19 proposes the repeal and replacement of section 18B of the principal Act to authorize the Central Bank to appoint a statutory administrator where certain prescribed criteria has been met such as, for example, where a bank has engaged in an unsafe and unsound practice leading to the weakening of the bank's condition, undermining of depositors' interests or which dissipates the bank's assets. The statutory administrator may be appointed for twelve

months initially and this period may be extended for a further twelve months.

- (iii) Clause 20 seeks to introduce new sections 18BA, 18BB, 18BC, 18BD, 18BE, 18BF, 18BG, 18BH, 18BI and 18BJ in the principal Act to establish the legislative framework governing the appointment and duties of a statutory administrator, as follows:
 - (a) The proposed section 18BA will provide for the expenses of the statutory administrator to be borne by the bank under statutory administration.
 - (b) The proposed section 18BB sets out the powers of the statutory administrator and would nullify any action taken by or on behalf of a bank under administration, without the statutory administrator's approval. It is proposed that the statutory administrator would have full and exclusive powers to manage and operate a bank under administration inclusive of conducting the business of the bank, exercising shareholders' rights and powers, initiating or defending proceedings or actions to which the bank may be a party and developing and implementing a plan of action to resolve the bank, subject to the approval of the Central Bank.
 - (c) The proposed section 18BC will provide that the statutory administrator is subject to directions of and accountable only to the Central Bank for the performance of his or her duties under the Act.
 - (d) The proposed section 18BD will authorize the statutory administrator to suspend payment of capital distributions as well as payments to directors, officers and significant shareholders except for base compensation to directors and officers for services rendered to the statutory administrator.
 - (e) The proposed section 18BE will empower the Central Bank to impose a moratorium temporarily suspending some or all payments by a bank under statutory administration to protect the interest of depositors and the stability of the financial sector.
 - (f) The proposed section 18BF will authorize the statutory administrator to take control of the physical premises and the books, records and assets of a bank under administration; and to request any director, officer, employee or agent of the bank to make available to the statutory administrator any records and information relating to the bank that the statutory administrator may require.

- (g) The proposed section 18BG will authorize the Central Bank to require a statutory administrator to prepare a written inventory of the assets and liabilities of a bank under administration as well as inter alia a report on the financial condition and future prospects of the bank and a plan of action recommending either a plan of corrective actions to return the bank to compliance with the law; compulsory liquidation in the absence of reasonable prospects for the return of the bank to financial soundness; or, if a bank cannot be rehabilitated, such other course of action as may be designed to minimize disruption to depositors and preserve the stability of the banking sector.
- (h) The proposed section 18BH will allow the statutory administrator, subject to the Central Bank's approval, to take action to increase the capital of a bank under statutory administration. The statutory administrator may notify existing shareholders of the amount of the capital shortfall and invite them to subscribe and purchase additional shares. Existing shareholders would, however, otherwise have no pre-emptive or other rights to purchase additional shares. Where existing shareholders cannot or decline to meet the shortfall or are deemed to be not fit or proper, or where an expedited resolution of a bank is necessary to maintain financial stability, the statutory administrator would have the option of offering shares to new shareholders.
- (i) The proposed section 18BI would authorize the statutory administrator to carry out a merger of the bank under statutory administration or a transfer of all or some of the bank's assets and liabilities to a bridge bank licensed under the principal Act or to an asset management vehicle. The Central Bank would be required in the case of a transfer, to have an independent valuer ascertain the adequacy of compensation provided to the transferor. The proposed section 18BI would also empower the statutory administrator to restructure the liabilities of a bank under statutory administration through arrangements with the bank's creditors.
- (j) The proposed section 18BJ will provide the basis on which the statutory administration may be terminated.

- *Proposed New Provisions for Liquidation of banks*

- (iv) Clause 21 of the BTCR Bill seeks to repeal section 18C and introduce a new provision to make it clear that in the case of

the liquidation of a bank, the provisions of the Companies Act will apply only to the extent that they are modified by the provisions of the principal Act.

- (v) Clause 22 of the Bill seeks to introduce a new framework for the liquidation of banks as follows:
 - (a) The proposed section 18CA will prohibit the voluntary liquidation of a bank unless it is first approved by the Central Bank. The clause also sets out the basis on which the Central Bank may approve a voluntary liquidation of a bank and the steps to be taken by the bank following such approval.
 - (b) The proposed section 18CB will provide the circumstances in which the Central Bank may appoint a liquidator for the compulsory winding up of a bank.
 - (c) The proposed sections 18CC, 18CD and 18CE describe the powers and duties of a liquidator appointed by the Central Bank.
 - (d) The proposed section 18CH will empower the liquidator to declare void inter alia any pre-liquidation transfers found to be based on forged or fraudulent documentation executed within five years before the effective date of the liquidation; gratuitous transfers to directors, officers, principal shareholders or related parties within five years preceding the effective date of the liquidation; and gratuitous transfers to third parties made within three years preceding the effective date of the liquidation. The liquidator would have one year from the date of the commencement of the liquidation to initiate an action to declare a transfer void.
 - (e) The proposed section 18CI will prescribe the priority of unsecured claims where a bank is compulsorily wound up.
 - (f) The proposed section 18CM will provide protections for shareholders and creditors of banks under statutory administration so that they are not worse off following a merger, purchase and assumption, sale or restructuring of a bank, than they would have been if the bank had been liquidated. It is proposed that where an independent valuer establishes that a creditor or shareholder is placed in a worse position than if the bank had been liquidated, the shareholder or creditor would be entitled to be restored to the same position he or she would have been in had the bank been liquidated, provided that recoveries

from the liquidation assets would have exceeded other claims.

4.1.4 Proposed measures to Strengthen the Central Bank's Supervisory Regime

- (i) Set out below is an overview of other provisions of the BTCR Bill as follows:
 - (a) Clause 2 will insert new definitions in section 2 of the principal Act, including the definition of the terms “bridge bank”, “indirect controller”, and “insolvent”. The latter term has the meaning ascribed to it in the Companies Act. The term “bridge bank” refers to an entity that is licensed under the BTCRA, owned by the Central Bank or the Government and which is specifically created to receive and dispose of the assets and liabilities of a bank under statutory administration.
 - (b) Clause 3 will amend section 3(3) of the principal Act by replacing the requirement for the Central Bank to grant approval to Financial and Corporate Service Providers (FCSPs) to offer Registered Representative services with a requirement for FCSPs to be registered with the Central Bank.
 - (c) Clause 4 will amend section 3E(1) of the principal Act to clarify that the fit and proper requirement for entities that are supervised by the Central Bank, is an ongoing one.
 - (d) Clause 5 will inter alia remove the requirement in section 4(9) of the principal Act for the Central Bank to petition the court for the transfer of a trust to a new trustee.
 - (e) Clause 6 will insert a new subsection 6(3) in the principal Act to clarify that persons who wish to become indirect controllers of Central Bank licensees, must first obtain the permission of the Central Bank.
 - (f) Clause 8 will repeal and replace section 6B(1) of the principal Act and authorize the Central Bank to object to a controller or indirect controller of a licensee on prescribed grounds which include ceasing to be a fit and proper person.
 - (g) Clause 9 will amend section 7 of the principal Act to prohibit the use of certain words relating to money transmission businesses and Registered Representatives.
 - (h) Clause 10 will amend section 10 of the principal Act by inserting new subsections (4) and (5) to make it an offence for a bank that is

insolvent to receive deposits; and to make it an offence for an officer or director of an insolvent bank to knowingly authorize the taking of a deposit by the failed institution.

- (i) Clause 14 will amend subsection 13A(3) of the principal Act to authorize the Central Bank to indemnify, among others, a statutory administrator's legal costs arising in respect of the defence of an action while discharging his or her functions in good faith.
- (j) Clause 16 will amend section 18(1)(h) of the principal Act to expand the type of directions which the Central Bank may issue, particularly as it relates to resolving a problem bank.
- (k) Clause 17 will repeal and replace section 18A of the principal Act to afford the Bank a wider discretion as to the terms or conditions to be imposed on applications for the surrender of a licence or certificates of registration.
- (l) Clause 18 will introduce a new section 18AA in the principal Act which will require non-bank licensees to obtain the prior approval of the Central Bank before winding up their operations.
- (m) Clause 23 will amend the principal Act by repealing and replacing section 20 of the principal Act which deals with dormant accounts. The new provisions will, among other things, expand the categories of dormant accounts.
- (n) Clause 25 will amend the principal Act by repealing the provisions relating to administrative penalties (sections 24A through 24H) which are to be included in the Central Bank of The Bahamas Act.
- (o) Clause 26 will amend section 25 of the principal Act by including new provisions to establish that the principal Act shall prevail wherever there is any inconsistency with other laws of general application; and where the principal Act and the Companies Act conflict in respect of any business that is regulated or supervised by the Central Bank, clause 24 seeks to give precedence to the provisions of the principal Act.
- (p) Clause 27 will amend section 26 of the principal Act to provide that the appointment of a statutory administrator constitutes a ground of appeal. Also, the court's review of an appeal, with regard to bank resolution would be limited to whether the defendant acted unlawfully, in bad faith, or with gross negligence and the burden of proof would be borne by the plaintiff/claimant. It is proposed that the action appealed against may not be stayed

or set aside by the court but instead the court may, if appropriate, award monetary damages to an injured party.

4.2 *Draft Central Bank of The Bahamas Bill, 2018*

- (i) The draft Central Bank of The Bahamas Bill, 2018 (“the CBB Bill” or “the Bill”) is itself the subject of another Consultation Paper, given the sweeping changes proposed to the Central Bank of The Bahamas Act by the Bill. However, as the CBB Bill includes several provisions designed to complement and support the proposed bank resolution framework, this Consultation Paper provides an overview of clauses set out in the CBB Bill that are relevant to the resolution framework as follows:
 - (a) Clause 5 of the CBB Bill seeks to give the Central Bank a clear financial stability mandate.
 - (b) Clause 26 will authorize the Bank to grant loans or advances to, or purchase or subscribe any securities of an insolvent commercial bank, provided the government guarantees the repayment and the loan or advance is required to preserve financial system stability.
 - (c) Clauses 46 through 51 of the CBB Bill set out the powers of the Bank to impose administrative monetary penalties. Clause 48 makes it clear that in addition to imposing a fine or administrative monetary penalty, the Central Bank may also exercise other relevant enforcement powers under the Central Bank of The Bahamas Act, the Banks and Trust Companies Regulation Act or any other law.
 - (d) Clause 59 seeks to confer on the Central Bank preferential status in respect of collateral provided to secure a failing bank’s obligations to the Central Bank.
 - (e) Clause 62 seeks to insert provisions for delineating the extent of judicial or administrative review and arbitration proceedings and proposes limits on the scope of such reviews and proceedings to grounds of bad faith and gross negligence. The CBB Bill provides that a court, administrative body or arbitration panel may award monetary damages but may not inter alia, stay, modify or set aside the action in question.

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

- (i) The Protection of Depositors (Amendment) Bill, 2018 seeks to strengthen the legal framework for bank resolution and to enhance depositor protection. Key amendments are set out below:

- (a) Clause 2 of the Bill will amend section 5(2) of the principal Act to remove the fixed premium which members pay to the Deposit Insurance Fund and instead will give the Deposit Insurance Corporation (“the Corporation”) the discretion to adjust the percentage of the average sum of deposits to be paid to the Corporation, from time to time.
- (b) Clause 3 of the Bill will –
 - (i) amend section 6(8) of the principal Act to include instances where deposits of a bank under resolution are transferred to another bank under a purchase and assumption (P & A) arrangement. The proposed amendment will require payouts to commence “within thirty days of the date of publication of the notice referred to in section 16(1)” and will facilitate the Corporation’s ability to provide funding to an acquiring bank under a P & A transaction;
 - (ii) amend section 6(9) of the principal Act to clarify that the Corporation has priority over other uninsured, unsecured creditors of a bank in resolution.
- (c) Clause 4 of the Bill will—
 - (i) amend section 15(e) of the principal Act to restrict the netting of payments of insured deposits due to depositors, to loan payments/instalments that are either due or past due at the time of the payout and to authorize the Corporation to set off deposits pledged as collateral;
 - (ii) amend section 15(g) of the principal Act to allow the Corporation to borrow via the issue of bonds whether or not these are backed by the government;
 - (ii) authorize the Corporation to provide capital for a bridge bank and to provide financing to an institution that acquires the business of a member institution in financial difficulty, up to a maximum sum representing the costs which the Corporation would have incurred in paying out insured depositors if the institution were liquidated.
- (d) Clause 5 will amend section 16 of the principal Act –
 - (i) to give the Corporation the discretion to require proof of claims to be filed with the Corporation (clause 5(2));
 - (ii) for consistency with the proposed revisions to section 15(e) and will restrict netting of insured deposit payments to depositors to amounts owed by the depositor to the member, which are due or past due;

- (iii) to require the Corporation to issue certificates to depositors for amounts which exceed the insured limit (clause 5(4)).
- (f) Clause 6 will repeal and replace section 18 of the principal Act to remove the stipulation that deposit accounts are frozen upon the closure of an institution. This will facilitate consistency with the Central Bank's proposed new resolution powers under the Banks and Trust Companies Regulation (Amendment) Bill, 2018.
- (g) Clauses 7, 8, 9, 10 and 12 of the Bill will repeal sections 21, 22, 23, 24 and 26, respectively, of the principal Act to remove the Corporation's resolution powers as it is proposed that the Central Bank become the sole resolution authority.
- (h) Clause 14 of the Bill will amend section 28 of the principal Act to authorize the Corporation to make byelaws in respect of matters pertaining to the operation and functions of the Corporation.
- (i) Clause 15 of the Bill will repeal and replace section 30 of the principal Act and will prescribe the basis on which a director, officer, employee, or agent of the Corporation who has obtained confidential information in the performance of his or her duties or in the exercise of his or her functions under the principal Act, may disclose such information.

4.4 *Draft Protection of Depositors (Amendment) Byelaws, 2018*

- (j) The draft Protection of Depositors (Amendment) Byelaws, 2018 ("the draft Byelaws") is set out at **Annex 3**. Consequential amendments to the Protection of Depositors Byelaws, 1999 are being proposed for consistency with amendments proposed to the Protection of Depositors Act, 1999. Key provisions are set out below.
 - (a) Clause 2 of the draft Byelaws will amend:
 - (i) bye-law 9(a) to make it mandatory for payment of insured deposits to be made within thirty days of the date of the publication of the notice referred to in section 16(1), in contrast to the existing six month period.
 - (ii) bye-law 9(b) to give depositors one year after the Corporation publishes notice of the closure of a member institution, within which to claim their insured deposit. After this period the depositor's rights to claim funds from the Corporation would be extinguished but their rights against the bank in resolution would survive.
 - (b) Clause 3 will amend bye-law 11 to re-inforce restrictions on netting of insured sums by limiting deductions made to such sums to loan payments/instalments that are due or past due and that are owed by a depositor to a bank in resolution.

V. CONSULTATION PERIOD

5. The Central Bank invites your comments on the proposed legislation, which should be submitted no later than July 31st, 2018. Your comments and questions regarding the proposals should be directed to:

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ANNEX 1

BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) BILL, 2018

Arrangement of Sections

Section

1.	Short title and commencement.....	3
2.	Amendment of section 2 of the principal Act.....	3
3.	Amendment of section 3 of the principal Act.....	6
4.	Amendment of section 3E of the principal Act.....	6
5.	Amendment of section 4 of the principal Act.....	6
6.	Amendment of section 6 of the principal Act.....	6
7.	Amendment of section 6A of the principal Act.....	7
8.	Amendment of section 6B of the principal Act.....	7
9.	Amendment of section 7 of the principal Act.....	8
10.	Amendment of section 10 of the principal Act.....	9
11.	Insertion of new section 11, 11A and 11B in the principal Act.....	10
12.	Amendment of section 12 of the principal Act.....	12
13.	Amendment of section 13 of the principal Act.....	14
14.	Amendment of section 13A of the principal Act.....	14
15.	Amendment of section 14 of the principal Act.....	14
16.	Amendment of section 18 of the principal Act.....	14
17.	Repeal and replacement of section 18A of the principal Act.....	16
18.	Insertion of new section 18AA in the principal Act.....	17
19.	Repeal and replacement of section 18B of the principal Act.....	17
20.	Insertion of new sections 18BA, 18BB, 18BC, 18BD, 18BE, 18BF, 18BG, 18BH, 18BI and 18BJ	20
21.	Repeal and replacement of section 18C of the principal Act.....	29
22.	Insertion of new sections 18CA, 18CB, 18CC, 18CD, 18CE, 18CF, 18CG, 18CH, 18CI, 18CJ, 18CK, 18CL, 18CM.....	29
23.	Repeal and replacement of section 20 of the principal Act.....	46

24. Repeal and replacement of section 24 of the principal Act.....	53
25. Repeal of sections 24A, 24B, 24C, 24D, 24E, 24F, 24G and 24H of the principal Act.....	53
26. Repeal and replacement of section 25 of the principal Act.....	54
27. Amendment of section 26 of the principal Act.....	54
28. Amendment of the section 27 of the principal Act.....	55
29. Repeal and replacement of Third Schedule of the principal Act.....	56
OBJECTS AND REASONS.....	63



BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) BILL, 2018

A BILL FOR AN ACT TO AMEND THE BANKS AND TRUST COMPANIES REGULATION ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE CENTRAL BANK AS THE SOLE RESOLUTION AUTHORITY FOR BANKS AND TO EXPAND THE REGULATORY TOOLKIT AVAILABLE TO THE CENTRAL BANK TO ADDRESS ISSUES RELATING TO FAILING BANKS; AND TO CLARIFY CERTAIN PROVISIONS OF THE PRINCIPAL ACT; AND FOR OTHER RELATED PURPOSES

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the Banks and Trust Companies Regulation Act, may be cited as the Banks and Trust Companies Regulation (Amendment) Act, 2018.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Amendment of Section 2 of the principal Act.

Section 2 of the principal Act is amended by the insertion in the appropriate alphabetical order of the following words together with their definitions—

“bridge bank” is a company that is—

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

“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;

“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 financial institution —

- (a) in accordance with whose directions, instructions or wishes the directors of the designated financial institution 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 designated financial institution, but does not include any person —
 - (i) who is a director or other officer of the designated financial institution whose appointment has been approved by the Central Bank; or
 - (ii) in accordance with whose directions, instructions or wishes the directors of the designated financial institution are accustomed to act by reason only that they act on advice given by him in his professional capacity.”

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

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

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

3. Amendment of Section 3 of the principal Act

Section 3 of the principal Act is amended—

- (a) in subsection (3) by the deletion of the words “who has obtained the prior approval of” and the substitution of the words “who is registered with”.
- (b) in the chapeau of subsection (6) by the deletion of the word and comma “(b),” immediately following the words and number “18(1)”.
Bank.

4. Amendment of section 3E of the principal Act

Section 3E of the principal Act is amended in subsection (1) by the insertion, immediately after the words “whether a person is”, of the words “or remains”.

5. Amendment of Section 4 of the principal Act.

Section 4 of the principal Act is amended—

- (a) by the repeal of subsections (7) and (8) and the substitution therefor of the following new subsections (7), (8) and (9)—

“(7) Subject to subsection (8) the Central Bank may, by notice in writing—

(a) cancel any registration granted pursuant to section 3(3) or 3A(b);Bahamas;

(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.”

- (b) in subsection (9) by the deletion of the words “petition the court for that purpose” and the substitution of the following words “order the

transfer of any such trust to a new trustee, and make such supplemental orders or give such directions, as it deems fit.”

- (c) by the re-numbering of subsection (9) as subsection (10); and
- (d) by the deletion of subsection (10).

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended—

- (a) in subsection (1) by the deletion of the proviso;
- (b) by the insertion of the following new subsections (3), (4) and (5), immediately after subsection (2):

- “ (3) No person shall become 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.”

7. Amendment of Section 6A of the principal Act.

Section 6A of the principal Act is amended in subsection (1) by the insertion of the words “or subsection (3)” immediately after the words “under subsection (1)”.

8. Amendment of Section 6B of the principal Act.

The principal Act is amended—

- (a) by the repeal of subsection 6B(1) and the substitution of the following new subsection:

- “(1) The Central Bank may serve a written notice of objection on a person referred to in subsection 6A(1) 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, the licensee is no longer likely—
 - (i) to conduct, or is no longer conducting, its business prudently; or
 - (ii) to comply with, or is no longer complying with, the provisions of this Act;
 - (c) a condition of approval imposed on the person under subsection 6A(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 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; or
 - (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 or an indirect controller, as the case may be, of a licensee.
- (b) in subsection (4) by the deletion of the word “controller” and the substitution of the word “person”.

9. Amendment of Section 7 of the principal Act.

The principal Act is amended in section 7 by—

- (a) the deletion of the word “his” from the chapeau and the substitution of the word “its”;
- (b) the deletion of the words, “banking business or trust business” from paragraph (b) and the substitution of the following words “banking business, trust business; or money transmission business”;
- (c) the re-lettering of paragraphs (b) and (c) as paragraphs (c) and (d) respectively;
- (d) the insertion immediately after paragraph (a) of the following new paragraph (b):

- “(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.”
- (e) in subsection (3) by the deletion of the word “his” and the substitution of the word “its”.
- (f) in subsection (4) by the deletion of the word “he” and the substitution of the words “the Central Bank.”
- (g) the repeal and replacement of subsection (5) with the following new subsection (5):
 - “(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.”

10. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended by the insertion of the following new subsection (4) immediately after subsection (3):

- “(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. Insertion of new section 11, 11A, and 11B in the principal Act

The principal Act is amended, by the insertion, immediately after section 10, of the following new sections 11, 11A and 11B:

“11. Recovery Plans

- (1) The Central Bank may 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) 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”.
- (3) (a) Where the Central Bank is of the opinion that a recovery plan submitted by a bank pursuant to subsection (1)—
- (i) is not credible; or
 - (ii) is not likely to facilitate an orderly recovery of the bank under the relevant provisions of this Act, 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 be required by the Central Bank.
- (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.

- (4) 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.
- (5) A bank shall update its recovery plans as frequently as required by the Central Bank.
- (6) 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.
- (7) 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) 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.
- (3) Where the Central Bank is of the opinion that significant impediments to orderly resolution exist, it shall direct the bank in writing to address or remove such impediments and the bank shall comply with such direction of the Central Bank.

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

11B. Objectives of Resolution

- (1) The powers of the Central Bank under section 18(1)(g) and 18B relating to statutory administration and liquidation shall be exercised by the Central Bank or a statutory administrator 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 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.

12. Amendment of Section 12 of the principal Act.

The principal Act is amended by the deletion of section 12 and the substitution of the following:

- “(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.
- (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 come 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.

13. Amendment of Section 13 of the principal Act

Section 13 of the principal Act is amended in subsection (2)(b) by the deletion of the words “this Act, any other relevant Act administered by the Bank or the Financial Transactions Reporting Act, 2000” and the substitution therefore of the following words “this Act or any other Act or regulation relating to compliance with anti-money laundering or countering the financing of terrorism requirements.”

14. Amendment of Section 13A(3) of the principal Act

Section 13A(3) of the principal Act is repealed and replaced by the following:

“(3) 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 its actions while discharging their functions in good faith.”

15. Amendment of section 14 of the principal Act

Section 14 of the principal Act is amended in subsection (1)(b) by the deletion of the word “bank’s” and the substitution therefore of the words “bank or trust company’s”.

16. Amendment of Section 18 of the principal Act.

Section 18 of the principal Act is amended—

- (a) in subsection (1)—

- (i) by the deletion of the word “or” immediately after the words “trust business” in paragraph (a)(ii);
- (ii) by the repeal of paragraph (b);
- (iii) by the repeal of paragraph (g) and the substitution of the following:
 - “(g) 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.
- (iv) by the repeal of paragraph (h) and the substitution of the following:
 - (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 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) 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—
 - (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) 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
 - (ix) require shareholders of the licensee to contribute additional capital: and:
- (b) in subsection (5) by the deletion of the letters and numbers “Ch. 308.”
- (c) by the deletion of subsections (7), (8) and (9).

17. Repeal of section 18A of the principal Act

The principal Act is amended by the repeal of section 18A and the substitution of the following—

- “(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.

18. Insertion of new Section 18AA in the principal Act

The principal Act is amended by the insertion of the following new section immediately after section 18A:

“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 business 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.

19. Repeal of section 18B of the principal Act

The principal Act is amended by the repeal of section 18B and the replacement with the following—

“18B. Appointment of a Statutory Administrator

- (1) The Central Bank may, by notice in writing, appoint a statutory administrator pursuant to section 18(1)(g) where—
 - (a) in the opinion of the Central Bank, a bank has—
 - (i) engaged 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
 - (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,
- (b) the bank's capital level falls below 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 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 likely to be 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.

20. Insertion of new sections 18BA, 18BB, 18BC, 18BD, 18BE, 18BF, 18BG, 18BH, 18BI, and 18BJ in the principal Act

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) employ any necessary officers or employees;
 - (f) execute any instrument in the name of the bank;

- (g) initiate, defend and conduct in the name of the bank any action or proceedings to which the bank may be a party;
 - (h) preserve and safeguard the assets and property of the bank; or
 - (i) 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 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.

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 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 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 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,¹ 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's power under subsection (1) may be exercised 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
 - (b) 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 (5) may be exercised by a statutory administrator subject to the written authorization of the Central Bank.

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.
- (2) A transfer of the bank's assets and liabilities pursuant to subsection (1) may include a transfer to a bridge bank 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.
- (3) A bridge bank 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.
- (4) 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.
- (5) 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.

- (6) When action is taken by the Central Bank or the statutory administrator pursuant to subsection (1), the Central Bank shall appoint an independent valuer to verify the adequacy of the compensation provided to the transferor regarding the transferred assets and liabilities.
- (7) 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 (*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) 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.
- (6) 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.

21. Repeal and Replacement of section 18C of the principal Act

Section 18C of the principal Act is repealed and replaced with the following:

“18C. Liquidation of banks

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

22. Insertion of new sections 18CA, 18CB, 18CC, 18CD, 18CE, 18CF, 18CG, 18CH, 18CI, 18CJ, 18CK, 18CL and 18CM in the principal 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.

- (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.
- (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 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 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 other records, and other assets of a bank, 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 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 18CI(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 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.
- (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
- (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 (*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; and
 - (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.
- (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) where 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.

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 (*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;
 - (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.
- (2) 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.
 - (3) 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.
 - (4) 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-
 - (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.

23. Repeal and replacement of section 20 of the Principal Act.

The principal Act is amended by the repeal and replacement of section 20 as follows:

- “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 Governor 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 Governor 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 29(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;
 - (i) signing authorities;
 - (ii) 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; and
 - (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 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.”.

24. Repeal and replacement of section 24 of the Principal Act.

The principal Act is amended by the repeal and replacement of section 24 as follows:

“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. Repeal of sections 24A, 24B, 24C, 24D, 24E, 24F, 24G and 24H of the Principal Act.

The principal Act is amended by the repeal of sections 24A, 24B, 24C, 24D, 24E, 24F, 24G and 24H.

26. Repeal and replacement of section 25 of the Principal Act.

The principal Act is amended by the repeal and replacement of section 25 as follows:

“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.

27. Amendment of section 26 of the Principal Act.

Section 26 of the principal Act is amended—

- (a) in paragraph (a) of subsection (1) by the insertion of the following comma, words, numbers and symbols immediately following the numbers and symbol “section-7(5)”:
“, section 18BJ(3)”.
- (b) in paragraph (b) of subsection (1) by the insertion of the following words immediately before the words “withdrawing any approval”-
“cancelling any registration or withdrawing any exemption under section 4(7) or”;
- (c) in paragraphs (d), (e) and (f) by the deletion of the word “serving” and the substitution of the words “to serve”;
- (d) by inserting the following new paragraphs immediately after paragraph (f):
“(g) appointing a statutory administrator pursuant to section 18(1)(g);”

- (e) by the repeal of subsection (6) and the substitution of the following provision:

“(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)(g), 18B, 18BB, 18BD, 18BE, 18BI, 18BJ, 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.”

28. Amendment of section 27 of the Principal Act.

The principal Act is amended by the repeal and replacement of section 27(1) and the substitution of the following:

“27. Fees

- (1) The provisions of the Third Schedule shall have effect for the payment of fees in respect of the matters mentioned in that Schedule, and all such fees shall be collected by the Central Bank.

29. Repeal and Replacement of the Third Schedule of the Principal Act.

The Third Schedule of the principal Act is repealed and replaced by the following new Schedule:

THIRD SCHEDULE																	
(Section 27)																	
Fees																	
1.	Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say –																
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: none;">Matters in respect of which fee is payable</th> <th style="text-align: right; border-bottom: none;">Amount of fee \$</th> </tr> </thead> <tbody> <tr> <td style="border-top: none;">(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 –</td> <td style="border-top: none;"></td> </tr> <tr> <td style="padding-left: 20px;">(i) has assets not exceeding \$250 million</td> <td style="text-align: right; vertical-align: bottom;">450,000</td> </tr> <tr> <td style="padding-left: 20px;">(ii) has assets exceeding \$250 million but not exceeding \$500 million</td> <td style="text-align: right; vertical-align: bottom;">600,000</td> </tr> <tr> <td style="padding-left: 20px;">(iii) has assets exceeding \$500 million but not exceeding \$1 billion</td> <td style="text-align: right; vertical-align: bottom;">1,200,000</td> </tr> <tr> <td style="padding-left: 20px;">(iv) has assets exceeding \$1 billion but not exceeding \$1.5 billion</td> <td style="text-align: right; vertical-align: bottom;">1,800,000</td> </tr> <tr> <td style="padding-left: 20px;">(v) has assets exceeding \$1.5 billion but not exceeding \$2 billion</td> <td style="text-align: right; vertical-align: bottom;">2,400,000</td> </tr> <tr> <td style="padding-left: 20px;">(vi) has assets exceeding \$2 billion</td> <td style="text-align: right; vertical-align: bottom;">3,750,000</td> </tr> </tbody> </table>	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 assets not exceeding \$250 million	450,000	(ii) has assets exceeding \$250 million but not exceeding \$500 million	600,000	(iii) has assets exceeding \$500 million but not exceeding \$1 billion	1,200,000	(iv) has assets exceeding \$1 billion but not exceeding \$1.5 billion	1,800,000	(v) has assets exceeding \$1.5 billion but not exceeding \$2 billion	2,400,000	(vi) has assets exceeding \$2 billion	3,750,000
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 –																	
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(v) has assets exceeding \$1.5 billion but not exceeding \$2 billion	2,400,000																
(vi) has assets exceeding \$2 billion	3,750,000																
	(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 audited financial statements-	
	(i) has assets not exceeding \$250 million	450,000
	(ii) has assets exceeding \$250 million but not exceeding \$500 million	600,000
	(iii) has assets exceeding \$500 million but not exceeding \$1 billion	1,200,000
	(iv) has assets exceeding \$1 billion but not exceeding \$1.5 billion	1,800,000
	(v) has assets exceeding \$1.5 billion but not exceeding \$2 billion	2,400,000
	(vi) has assets exceeding \$2 billion	3,750,000
(c)	Appointment of a licensee as authorised agent for a beneficial owner of investment currency for foreign currency securities pursuant to the Exchange Control Regulations in the case where the licensee as per its last audited financial statement -	
	(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
(d)	Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (c) 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
	(e)	Grant of a 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 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 (c) of this paragraph	70,000
	(f)	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	70,500
	(g)	Grant of licence to carry on banking business or 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 sub-paragraph (a) of this paragraph or as a licensee as mentioned in subparagraph (a) of paragraph 1 of Part II of the First	

	Schedule to the Business License Act	52,500
(h)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (g) of this paragraph	52,500
(i)	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 not to be resident in The Bahamas; and (ii) has not been appointed as mentioned in subparagraph (a) or (c) of this paragraph	70,000
(j)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (i) of this paragraph	70,000
(k)	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— (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 subparagraph (a) or (c) of this paragraph	52,500

(l)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (k) of this paragraph	52,500
(m)	Grant of licence to carry on banking business solely with a person specified in the licence	30,000
(n)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (m) of this paragraph	30,000
(o)	Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence	30,000
(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	30,000
(q)	Grant of license solely to carry on the trust Business specified in the licence	10,000
(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	10,000
(s)	Grant of any licence not mentioned in subparagraph (e), (g), (i), (k), or (m) of this paragraph	2,000
(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	2,000
(u)	On commencement of the business of a private trust company	5,250

	<p>(v) Continuance in being on the first day of January in any year as a private trust company mentioned in paragraph (u) 3,750</p> <p>(w) On commencement of the business of a Money Transmission Service Provider 10,000</p> <p>(x) Continuance in being on the first day of January in any year as a Money Transmission Service Provider mentioned in paragraph (w) 10,000</p>
2	<p>Where any person by reason of falling within a class mentioned in subparagraphs (a) to (x) of paragraph 1 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>
3	<p>As respects the fees specified at subparagraphs (b), (d), (f), (h), (j), (l) -(n), (p), (r), (t), (v) and (x) of paragraph 1 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 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</p>

	preceding year.
4	Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 3 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.

OBJECTS AND REASONS

The purpose of the Bill is to amend the Banks and Trust Companies Regulation Act, 2000 to provide for the establishment of the Central Bank as the sole resolution authority for problem banks and to expand the Bank's powers to address issues relating to the resolution of failing banks and to clarify certain provisions of the principal Act.

Clause 1 of the Bill provides for its short title and empowers the Minister to appoint a date for its commencement after enactment.

Clause 2 of the Bill introduces definitions of the terms “bridge bank”, and “indirect controller”, among others.

Clause 3 of the Bill seeks to remove the reference to the Central Bank approving Registered Representatives and replace this with the requirement that Registered Representatives be registered with the Central Bank.

Clause 4 of the Bill seeks to clarify that fit and proper requirements for licensees and registrants of the Central Bank are ongoing throughout the duration of licensing or registration.

Clause 5 of the Bill seeks to empower the Bank to inter alia order the transfer of a trust to a new trustee in prescribed circumstances without having to apply to the court.

Clause 6 of the Bill seeks to provide inter alia that approval is required to become an indirect controller of a licensee.

Clause 7 of the Bill seeks to provide for the Central Bank to approve an application to become an indirect controller of a licensee.

Clause 8 of the Bill seeks to provide for inter alia the deletion of the word “licensee” in subsection 6B(1) and the substitution of the word “person”.

Clause 9 of the Bill seeks to require a person desirous of using the words “money transmission business” in the description or title under which the person is conducting business to obtain the prior approval of the Central Bank to use such words.

Clause 10 of the Bill seeks to make it an offence for banks to receive deposits while insolvent and to make it an offence for the directors and officers of such banks to knowingly receive or authorize the acceptance of a deposit.

Clause 11 seeks to insert new sections 11, 11A and 11B in the principal Act to authorize the Central Bank to require a bank to prepare recovery plans to address potential failures of the bank and to submit the plan to the Central Bank. Clause 11 also seeks to authorize the Central Bank to prepare a resolution plan for a bank in consultation with the bank and to direct the bank to remove impediments to the orderly resolution of the bank. Clause 11 further seeks to provide for the objectives of resolution of problem banks.

Clause 12 of the Bill seeks to provide for the deletion and replacement of section 12 of the principal Act to re-number the subsections.

Clause 13 of the Bill seeks to expressly provide that the Inspector of Bank and Trust Companies may review compliance of firms that are supervised by the Central Bank with any legislation relating to anti-money laundering or countering the financing of terrorism standards.

Clause 14 of the Bill seeks to authorize the Central Bank to indemnify a statutory administrator.

Clause 15 of the Bill seeks to remove the word “bank’s” from subsection 14(1)(b) of the principal Act and replace it with the words “bank or trust company”.

Clause 16 of the Bill seeks to provide for the Central Bank to appoint a statutory administrator and to expand the types of directions which the Bank may issue.

Clause 17 of the Bill seeks to repeal and replace section 18A of the principal Act to require licensees and registrants of the Central Bank to obtain the approval of the Bank before surrendering a licence or certificate of registration. The Clause also seeks to afford the Bank greater discretion as to the terms on which a surrender may be approved.

Clause 18 of the Bill provides for a new provision (section 18AA) requiring non-bank licensees and registrants to obtain the Central Bank’s prior written approval to be wound up whether voluntarily or by the Supreme Court.

Clause 19 of the Bill seeks to provide for the circumstances under which the Central Bank may appoint a statutory administrator.

Clause 20 of the Bill provides for 10 new provisions (sections 18BA, 18BB, 18BC, 18BD, 18BE, 18BF, 18BG, 18BH, 18BI, and 18BJ) dealing with payment of the expenses of a statutory administrator, the general powers and duties of the statutory administrator including the power to carry out a merger of a bank under statutory administration or to transfer some or all of a bank’s assets and liabilities, to issue new shares in the name of the bank or to write down the debt or other capital instruments of the bank.

Clause 21 of the Bill seeks to provide for the winding up of a bank to be carried out only pursuant to the provisions of the principal Act or the provisions of the Companies Act as modified by the principal Act.

Clause 22 of the Bill provides for 13 new provisions (sections 18CA, 18CB, 18CC, 18CD, 18CE, 18CF, 18CG, 18CH, 18CI, 18CJ, 18CK, 18CL and 18CM) dealing with inter alia the voluntary liquidation of banks; the Central Bank’s power to appoint a liquidator of a bank; the powers and duties of the liquidator; notice of claims, distributions by the liquidator, avoidance of pre-liquidation transfers, priority of claims; and creditor safeguards.

Clause 23 of the Bill seeks to provide for an enhanced framework for the administration of dormant accounts, including bringing dormant securities under the dormant accounts regime and for the calculation of the seven year period for dormant accounts.

Clause 24 of the Bill seeks to replace the reference to “the Governor” with the “Central Bank” with regard to making regulations.

Clause 25 of the Bill seeks to repeal sections 24A, 24B, 24C, 24D, 24E, 24F, 24G and 24H of the principal Act.

Clause 26 of the Bill seeks to provide inter alia that the provisions of the principal Act will prevail in the case of any inconsistencies with other laws of general application.

Clause 27 of the Bill seeks to provide for an appeal to be lodged with the court in respect of the appointment of a statutory administrator by the Bank; and inter alia to limit the court's review in any administrative or arbitration proceedings brought against the Bank, its directors, employees or agents, to the following matters, i.e. whether the Central Bank, its directors, employees or agents acted in bad faith or with gross negligence.

Clause 28 of the Bill seeks to provide that fees paid pursuant to the Third Schedule of the principal Act shall be collected by the Central Bank.

Clause 29 of the Bill repeals and replaces the Third Schedule of the principal Act.

ANNEX 2

PROTECTION OF DEPOSITORS (AMENDMENT) BILL, 2018

Arrangement of Sections

Section

1. Short title and commencement.....	2
2. Amendment of section 5 of the principal Act.....	2
3. Amendment of section 6 of the principal Act.....	2
4. Amendment of section 15 of the principal Act.....	3
5. Amendment of section 16 of the principal Act.....	4
6. Repeal and Replacement of section 18 of the principal Act.....	4
7. Repeal of section 21 of the principal Act.....	4
8. Repeal of section 22 of the principal Act.....	4
9. Repeal of section 23 of the principal Act.....	4
10. Repeal of section 24 of the principal Act.....	5
11. Amendment of section 25 of the principal Act.....	5
12. Repeal of section 26 of the principal Act.....	5
13. Amendment of section 27 of the principal Act.....	5
14. Repeal and replacement of section 28 of the principal Act.....	5
15. Repeal and replacement of section 30 of the principal Act.....	5
OBJECTS AND REASONS.....	7

PROTECTION OF DEPOSITORS (AMENDMENT) BILL, 2018

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, 2018.
- (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 5 of the principal Act.

The principal Act is amended in section 5 by 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.”

3. 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 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 member institution becomes the subject of liquidation, or its banking license is otherwise revoked by the Central Bank, payments in respect of the insured deposits in such institution shall be made by the Corporation within thirty days of the date of publication of the Notice referred to in section 16(1), unless such deposits are transferred by or on the instructions of the Central Bank to another institution.”
(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.”; and
- (e) re-numbering subsections (4) through (9) as subsections (3) through (8).

4. 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/instalment amount as is due or past due, and to set-off deposits pledged as collateral;
- (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, funds collected, to borrow by the issuance of bonds 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.

5. Amendment of section 16 of the principal Act

Section 16 of the principal Act is amended 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).”

6. 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.”

7. Repeal of section 21 of the principal Act

Section 21 of the principal Act is repealed.

8. Repeal of section 22 of the principal Act

Section 22 of the principal Act is repealed.

9. Repeal of section 23 of the principal Act

Section 23 of the principal Act is repealed.

10. Repeal of sections 24 of the principal Act

Section 24 of the principal Act is repealed.

11. Amendment of section 25 of the principal Act

Section 25 of the principal Act is amended by the deletion of the number “21” and the substitution thereof of the number and word “15(a)” .

12. Repeal of section 26 of the principal Act

Section 26 of the principal Act is repealed.

13. Amendment of section 27 of the principal Act

Section 27 of the principal Act is amended—

- (a) in subsection (1) by the deletion of the words “or to co-operate in the inspection or investigation of the institution”.

14. Repeal and replacement of section 28 of the principal Act

Section 28 of the principal Act is repealed and replaced by the following—

“28. 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.

15. 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) to the Central Bank of The Bahamas;
 - (c) 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.

OBJECTS AND REASONS

The Object of the Bill is to remove overlaps in the resolution powers of the Deposit Insurance Corporation and the Central Bank in the areas of taking control of a bank, appointing a receiver/manager or a liquidator of a bank and to clarify the Corporation's role as being responsible for financing payouts where a member institution has failed.

PART I -PRELIMINARY

Clause 1 prescribes the short title and commencement of the Bill.

Clause 2 provides for the amendment of section 5 of the principal Act to empower the Deposit Insurance Corporation to utilize subsidiary legislation to prescribe the premiums to be paid by member institutions so as to ensure greater flexibility where amendments to the premium amount may be required from time to time.

Clause 3 amends section 6 of the principal Act and seeks to ensure that the Corporation's right to subrogation prevails in the event of inconsistency with the provisions of other laws; and that payouts to depositors following failure of a member institution are made within thirty days of the date of publication of the notice referred to under section 16(1).

Clause 4 amends section 15(e) of the principal Act to provide consistency with the amendments proposed to section 6 of the Act.

Clause 5 amends section 16 of the principal Act and seeks to clarify the circumstances under which payouts are made; give the Corporation the discretion to require evidence of claims as necessary and clarify that depositors may file claims up to one year from the date on which a Notice inviting claims is published by the Corporation.

Clause 6 amends section 18 of the principal Act and seeks to provide consistency with the Bank's resolution powers under the Banks and Trust Companies Regulation Act.

Clause 7, 8, 9, 10 and 12 repeal sections 21, 22, 23 and 24 and 26, respectively, of the principal Act, given the more streamlined role of the Corporation.

Clause 11 and 13 make consequential amendments to sections 25 and 27, respectively, of the principal Act.

Clause 14 amends section 28 of the principal Act to authorize the Corporation to make byelaws for all matters pertaining to the operations and functions of the Corporation, on the recommendation of the Central Bank.

Clause 15 expands the permitted disclosures of confidential information under section 30 of the principal Act.

ANNEX 3

PROTECTION OF DEPOSITORS (AMENDMENT) BYELAWS, 2018

Arrangement of Sections

Section

1. Short title and commencement.....	1
2. Amendment of bye-law 9.....	2
3. Amendment of bye-law 10.....	2
4. Amendment of bye-law 11.....	3

PROTECTION OF DEPOSITORS (AMENDMENT) BYELAWS, 2018

PROTECTION OF DEPOSITORS ACT, 1999 (CHAPTER 317)

PROTECTION OF DEPOSITORS (AMENDMENT) BYELAWS, 2018

The Corporation, on the recommendation of the Central Bank of The Bahamas, in exercise of the powers conferred by section 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.
- (2) These Byelaws shall come into force on such date as the Minister may, by Notice published in the Gazette, appoint.

2. Amendment of byelaw 9

Bye-law 9 is amended—

- (a) 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 referred to in section 16(1)”.
- (b) 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.”

3. Amendment of bye-law 10

Bye-law 10 is amended—

- (a) by the deletion of paragraph (d) and the substitution of the following:

