

ANNEX 1

Table A: Further Proposed Amendments to the Draft Banks and Trust Companies Regulation (Amendment) Bill

	First Round Public Consultation Draft Legislative Provisions	Second Round Public Consultation Draft Legislative Provisions	Summary of Proposed Changes	Rationale For Proposed Changes
<b>Clause 2. Repeal and replacement of section 20 of Ch. 316.</b>				
1.	<p>Section 20 of the Banks and Trust Companies Regulation Act is repealed and replaced as follows —</p> <p>(1) This section applies to —</p> <p>(a) deposit accounts, including fixed term deposit accounts;</p> <p>(b) chequing accounts;</p> <p>(c) bank drafts;</p> <p>(d) cashier and certified cheques;</p> <p>(e) traveller's cheques;</p> <p>(f) money orders;</p> <p>(g) credit card balances;</p> <p>(h) deposit receipts;</p> <p>(i) credit balances on loans and collateral held;</p> <p>(j) security deposits;</p> <p>(k) custody accounts or safety deposit boxes;</p> <p>(l) funds paid for shares or other interest in a licensee;</p> <p>(m) deposit accounts of gold and silver bullion;</p> <p>(n) non-cash collateral;</p> <p>(o) share accounts;</p> <p>(p) savings bonds;</p> <p>(q) undelivered stock certificates;</p> <p>(r) matured bonds;</p> <p>(s) unredeemed bond coupons; and</p> <p>(t) such other deposit account or other facility as the Governor may, by regulation, determine.</p>	<p>Section 20 of the Banks and Trust Companies Regulation Act is repealed and replaced as follows —</p> <p><b><del>“20. Transfer to Central Bank Treatment of unclaimed balances held by banks.</del></b></p> <p>(1) This section applies to —</p> <p>(a) deposit accounts, including <u>demand, savings, and</u> fixed term deposit accounts;</p> <p>(b) chequing accounts;</p> <p>(c) bank drafts, <u>cashier cheques, certified cheques and money orders</u>;</p> <p><del>(d) cashier and certified cheques;</del></p> <p><del>(e) traveller's cheques;</del></p> <p><del>(f) money orders;</del></p> <p><del>(g) credit card balances on credit cards;</del></p> <p><del>(h) deposit receipts;</del></p> <p><del>(i) credit balances on loans and collateral held;</del></p> <p><del>(j) collateral held on loans, including cash and non-cash collateral security deposits;</del></p> <p><del>(k) funds paid for shares or other interest in a licensee custody accounts or safety deposit boxes;</del></p> <p><del>(l) custody accounts or safety deposit boxes funds paid for shares or other interest in a licensee;</del></p>	<p>Subsection (1) has been amended to —</p> <p>(i) group similar types of accounts or assets in one paragraph. For example, the new paragraph (c), which includes “bank drafts, cashier cheques, certified cheques and money orders”, consolidates paragraphs (c), (d) and (f) of the previous draft Bill;</p> <p>(ii) change the reference to “deposit accounts of gold and silver bullion” in paragraph (m) of the previous draft Bill to “precious metals” in the new paragraph (j) which now also includes “precious gemstones”;</p> <p>(iii) delete paragraphs (h), (j) and (o) through (s) of the previous draft Bill and insert a general reference to “all securities listed in Part I of the First Schedule to the Securities Industry Act”.</p>	<p>The amendments to subsection (1) are being proposed to —</p> <p>(i) refine the categories of dormant accounts to which the section applies for ease of reference and to aid clarity;</p> <p>(ii) expand the types of precious metals to which the section applies beyond gold and silver and bring precious gemstones (excluding jewellery) under the dormant accounts regime;</p> <p>(iii) bring dormant securities accounts fully under the dormant accounts regime. At present, banks are required to transfer cash dividends and other cash returns realized on such assets to the Central Bank but to retain custody of the securities themselves. The Association of International Banks and Trust Companies (AIBT) requested that the Central Bank reconsider the status quo treatment of dormant securities and following closed consultations on the issue with AIBT representatives and the Securities Commission of The Bahamas and further research/benchmarking, the Central Bank proposes to include dormant securities accounts in the class of accounts to be transferred to the Central Bank.</p>

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		<p><del>(m)</del> deposit accounts of <del>gold precious metals and precious gemstones silver bullion;</del></p> <p><del>n) non-cash collateral</del><del>(ok)</del> <u>all securities listed in Part I of the First Schedule to the Securities Industry Act; and share accounts;</u></p> <p><del>(p) savings bonds;</del></p> <p><del>(q) undelivered stock certificates;</del></p> <p><del>(r) matured bonds;</del></p> <p><del>(s) unredeemed bond coupons;</del></p> <p>and</p> <p><del>(t)</del> such other deposit account or other facility as the Governor may, by regulation, determine.</p>		
2.	No equivalent term.	<p><u>“customer” means —</u></p> <p><u>(a) a person who holds an account or other facility;</u></p> <p><u>(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;</u></p> <p><u>(c) a person who is authorised under a power of attorney to manage and control an account or other facility;</u></p> <p><u>(d) where a person who holds an account or other facility is deceased, the heirs, executors, administrators and assigns of that person; or</u></p> <p><u>(e) such other person as the Governor may by regulation determine;</u></p>	Subsection (2) has been amended by inserting a new definition for the term “customer”.	AIBT requested that the term “customer” be defined to clarify who is regarded as the customer for the purposes of the section. The definition includes situations that are common to private banking arrangements, including where the customer has authorised another person to operate his/her account (e.g., an external asset manager, an agents or other person acting under a power of attorney or similar appointment), and situations where the account holder is deceased (e.g., an executor).
3.	(2) “other facility” means any account or arrangement — (a) that is provided by a bank to a customer; (b) by, through or with which a	(2) <b>“other facility”</b> means any account or arrangement — (a) that is provided by a bank to a customer; (b) by, through or with which a	The definition of “other facility” in subsection (2) has been amended in paragraph (b) to delete the reference to “two or more [transactions], whether or not they are so used”.	The amendment clarifies the definition by making it more inclusive and applicable to one-off transactions or instruments such as those captured by subsection (1)

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	customer may conduct two or more transactions, whether or not they are so used; (c) including instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;	customer may conduct <del>two or more</del> transactions, <del>whether or not they are so used</del> ; and (c) <del>including</del> <u>includes</u> instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;		(e.g., bank drafts, manager's cheques, money orders, and traveller's cheques, reference in paragraph (c) of the definition).
4.	No equivalent term.	(2) <u>"precious gemstones" shall not include jewellery;</u>	Subsection (2) has been amended by inserting a new definition for "precious gemstones" to make clear that the term does not include jewellery.	The definition of precious gemstones has been inserted to make clear that it does not include jewellery. Jewellery has been excluded because the sentimental value attached to such items could be significant and these types of items may be impossible to replicate in the event a claim is made to recover them.
5.	(2) "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 and whether in cash, by cheque, payment order, or other instrument; and (b) communication, acknowledgement, request, or instruction.	<b>"transaction"</b> 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 and whether in cash, by cheque, payment order, or other instrument; <del>and or</del> (b) communication, acknowledgement, request, or instruction <u>where evidenced by a writing signed by the customer or a contemporaneous record of the customer's verbal instruction prepared by the bank.</u>	The definition of "transaction" in subsection (2) has been amended to make clear what constitutes a "communication, acknowledgement, request, or instruction".	The lack of clarity as to what constitutes a "communication, acknowledgement, request, or instruction" was particularly concerning to licensees that offer private banking services as the nature of the customer relationship often requires them to carry out their customers' verbal instructions issued either via telephone calls or at face-to-face meetings. The definition has been amended to accommodate these circumstances.
6.	(4) A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, pay to the Central Bank within two months after the end of the calendar year in which the applicable seven year period	(4) A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, <del>pay to the Central Bank</del> within two months after the end of the calendar year in which the applicable seven	Subsection (4) has been expanded to — (i) require banks to transfer to the Central Bank amounts equal to and in the same currency as the amounts they owe to customers; (ii) make the requirement in paragraph	(i) The requirement to transfer to the Central Bank an amount equal to and in the same currency as that owed by the Bank codifies existing practice. (ii) A number of banks routinely drill

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	<p>expired, unless exempted in writing by the Central Bank, an amount equal to the amount owing by the bank in respect of the dormant account.</p>	<p>year period expired, unless exempted in writing by the Central Bank –  <u>(a) pay to the Central Bank</u> an amount equal to <u>and in the same currency denomination as the amount</u> owing by the bank in respect of the dormant account, <u>including cash from a dormant safety deposit box; or</u>  <u>(b) liquidate a dormant account, including a dormant 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.</u></p>	<p>(i) above applicable to cash deposits found in dormant safety deposit boxes;            (iii) introduce new obligations that will, inter alia, require banks to treat dormant accounts containing precious metals, precious gemstones (excluding jewellery) and securities as transferrable assets to be liquidated and the proceeds transferred to the Central Bank; and            (iv) permit banks to deduct the reasonable costs of liquidating the assets as required in paragraph (iii) above.</p>	<p>dormant safety deposit boxes and, after deducting outstanding fees (if any) retain the funds along with any other assets found in those boxes indefinitely. As banks are already required to transfer cash deposits to the Central Bank, the amendment will extend this requirement to cash found in safety deposit boxes.            (iii) Precious metals (in the form of gold and silver bullion) and cash deposits are already captured by the dormant accounts regime, as will be dormant securities (see the discussion at row 1, paragraph (iii) above). Therefore, the requirement for the transfer or liquidation and transfer of the proceeds of sale of these types of assets found in safety deposit boxes creates consistency in the way that like assets are treated under the regime.            (iv) Banks should not be required to absorb costs associated with liquidating assets as required by the law and will be permitted to deduct reasonable costs from the proceeds of sale of the assets.</p>
7.	<p>No equivalent provision.</p>	<p><u>(5) For the purposes of paragraph (b) of subsection (4) –</u>  <u>(a) securities listed on an established stock exchange shall be sold at prices prevailing on the exchange at the time of sale;</u>  <u>(b) securities that are not listed on an established stock exchange may be</u></p>	<p>The proposed new subsection (5) establishes –            (i) mechanisms by which the selling price of securities that are required to be liquidated may be determined;            (ii) the title rights of purchasers acquiring liquidated securities;</p>	<p>The proposed amendments provide particulars concerning the treatment of dormant securities and are intended to provide clarity to banks and other stakeholder involved in the sale or purchase of liquidated securities.</p>

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		<p><u>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;</u></p> <p><u>(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;</u></p> <p><u>(d) a person making a claim for liquidated property —</u></p> <p><u>(i) is entitled to receive the proceeds of sale of such property, net of deductions for —</u></p> <p><u>(A) costs of sale; and</u></p> <p><u>(B) reasonable expenses, pursuant to section 24(2) of the Central Bank of The Bahamas Act (Ch. 351);</u></p> <p><u>(ii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.</u></p>	<p>(iii) the entitlements of and restrictions on persons who claim liquidated securities.</p>	
8.	No equivalent provision.	<p><u>(6) Paragraph (b) of subsection (4) 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 —</u></p>	<p>The proposed new subsection (6) establishes the treatment of precious metals, precious gemstones and securities that cannot be sold, are worthless or are not cost-effective to sell. In such cases, there is an exemption from the requirement for</p>	<p>Subsection (6) is necessary to provide a mechanism/process for situations where precious metals, precious gemstones and securities held in a dormant account are worthless, cannot be sold, or are not cost-effective to sell.</p>

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		<p><u>(a) shall transfer the property to the Central Bank or to an agent appointed by the Central Bank; or</u>  <u>(b) at the discretion of the Central Bank, may continue to hold the precious metals, precious gemstones or securities, as the case may be, as an agent for the Central Bank.</u></p>	<p>banks to liquidate these assets and the Central Bank may either require the bank to retain the assets as the Central Bank's agent or appoint another agent to whom the bank would be required to transfer the assets.</p>	
9.	<p>No equivalent provision.</p>	<p><u>(7) Subject to subsection (12), no person shall have a claim for any act done pursuant to paragraph (b) of subsection (4) against —</u>  <u>(a) a bank;</u>  <u>(b) a registrar and transfer agent; or</u>  <u>(c) any other person acting for or on behalf of the bank.</u></p>	<p>The proposed new subsection (7) protects banks, registrar and transfer agents and other persons acting for or on behalf of banks from claims for any act done pursuant to the liquidation requirements.</p>	<p>The amendment provides statutory protection for persons acting in furtherance of the requirements of the Act.</p>
10.	<p>(5) A bank which has made a payment to the Central Bank pursuant to subsection (4) shall retain, in such form and until notified in writing by the Central Bank that they are no longer required, all records relating to the dormant account in respect of which such payment was made including all —  (a) registers;  (b) signature cards;  (c) signing authorities; and  (d) microfilm or electronically stored copies of such records.</p>	<p><u>(58) A bank <del>which has made</del> shall retain, for a period of fifteen years after the date the bank makes</u> a payment to the Central Bank pursuant to subsection (4) <u>shall retain, in such form and until notified in writing by the Central Bank that they are no longer required, or for a period of five years after the bank makes a payment to a claimant pursuant to subsection (12),</u> all records relating to the dormant account in respect of which such payment was made including all —  (a) registers;  (b) signature cards;  (c) signing authorities;  (d) microfilm or electronically stored copies of such records.</p>	<p>Subsection (5) of the previous draft Bill has been reformulated as subsection (8) and limits the period for which banks will be required to retain dormant account records. Subject to the provisions of the proposed new subsection (9), banks will be required to retain records relating to dormant accounts transferred to the Central Bank for a maximum period of fifteen years after the transfer is made or for a period of five years after the bank makes a payment to a claimant with respect to a dormant account.</p>	<p>The Central Bank proposes to reduce the period during which a claim may be brought for dormant account funds from the twenty-five years period, proposed in the previous draft Bill, to ten years. The balance of the fifteen years period and the five years period after a payment is made to a claimant, represent the period for which financial institutions are statutorily required to retain records under the anti-money laundering and countering the financing of terrorism (AML/CFT) framework.</p>
11.	<p>No equivalent provision.</p>	<p><u>(9) Notwithstanding subsection (8), the relevant periods for the retention of records where a bank makes a payment pursuant to</u></p>	<p>The proposed new subsection (9) establishes separate record retention periods for dormant securities accounts (i.e., a maximum period of</p>	<p>This amendment is being made to ensure that the record retention requirements for dormant securities accounts are consistent with the</p>

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		<u>subsection (4) or subsection (12) with respect to a securities account shall be seventeen years and seven years, respectively.</u>	seventeen years after the transfer is made to the Central Bank or for a period of seven years after a payment to a claimant).	general record retention requirements established under the securities laws, which exceeds those under the AML/CFT laws.
12.	<p>(6) Notwithstanding subsection (4), a bank in The Bahamas shall —</p> <p>(a) subject to paragraph (b), not make payment to the Central Bank with respect to dormant accounts which are —</p> <p>(i) automatically renewable fixed term deposit accounts;</p> <p>(ii) deposit accounts of gold and silver bullion;</p> <p>(iii) non-cash collateral;</p> <p>(iv) custody accounts or safety deposit boxes;</p> <p>(v) share accounts;</p> <p>(vi) savings bonds;</p> <p>(vii) undelivered stock certificates;</p> <p>(viii) matured bonds;</p> <p>(ix) unredeemed bond coupons;</p> <p>(x) such other deposit account or other facility as the Governor may, by regulation, determine;</p> <p>(b) continue to administer the dormant accounts referred to in sub-paragraphs (i) through (x) of paragraph (a) —</p> <p>(i) in the best interest of the customer in accordance with the bank's contractual obligations; and</p> <p>(ii) subject to heightened internal monitoring by the bank in accordance with guidelines issued by the Central Bank.</p>	<p><del>(6)</del> Notwithstanding subsection (4), a bank in The Bahamas shall —</p> <p>(a) subject to paragraph (b), not make payment to the Central Bank with respect to dormant accounts which —</p> <p><del>(i) automatically renewable fixed term deposit accounts;</del></p> <p><del>(ii) deposit accounts of gold and silver bullion;</del></p> <p><del>(iii) are non-cash collateral;</del></p> <p><del>(iv) are</del> custody accounts or safety deposit boxes, <u>except for cash, precious metals, precious gemstones or securities found in such boxes; and</u></p> <p><del>(v) share accounts;</del></p> <p><del>(vi) savings bonds;</del></p> <p><del>(vii) undelivered stock certificates;</del></p> <p><del>(viii) matured bonds;</del></p> <p><del>(ix) unredeemed bond coupons;</del></p> <p><del>(xiii) comprise</del> such other deposit account or other facility as the Governor may, by regulation, determine;</p> <p>(b) continue to administer the dormant accounts referred to in <del>sub-paragraph (a) (i) through (x)</del> —</p> <p>(i) in the best interest of the customer in accordance with the bank's contractual obligations; and</p> <p>(ii) subject to heightened internal</p>	<p>Subsection (6) of the previous draft Bill has been reformulated as subsection (10). Paragraph (a) removes from the class of assets that are not required to be transferred to the Central Bank —</p> <p>(i) automatically renewable fixed term deposits, which were inadvertently misclassified in the previous draft Bill;</p> <p>(ii) references to all securities that would be covered by Part 1 of the First Schedule to the Securities Industry Act (see paragraph (k) of subsection (1)); and</p> <p>(iii) precious metals, precious gemstones (excluding jewellery) or securities found in custody accounts or safety deposit boxes.</p> <p>Paragraph (c) establishes requirements for banks in connection with the charging of fees on dormant accounts.</p>	<p>The amendments in paragraph (a) are self-explanatory as the listed items are either required to be transferred to the Central Bank or the assets liquidated and the proceeds of sale transferred to the Central Bank.</p> <p>The amendments to paragraph (c) are consistent with existing provisions in section 21 of the BTCRA which require charges to be by agreement between the bank and the customer.</p>

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		<p>monitoring by the bank in accordance with guidelines issued by the Central Bank;</p> <p><u>(c) deduct a reasonable charge for the administration of the dormant accounts referred to in paragraph (a) only where —</u></p> <p><u>(i) there is an enforceable written contract between the bank and the customer under which the bank may impose the charge; and</u></p> <p><u>(ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled.</u></p>		
13.	<p>(7) A bank which holds dormant accounts of the kind referred to in subparagraphs (i) through (x) of paragraph (a) of subsection (6) shall make a report every three years to the Central Bank in such form and containing such particulars as the Bank may require.</p>	<p><del>(711)</del> A bank which holds dormant accounts of the kind referred to in <del>sub-paragraphs (i) through (x) of paragraph (a)</del> of subsection (610) shall make a report <u>every three years</u> to the Central Bank <u>at such intervals, and</u> in such form <del>and</del> containing such particulars, as the Bank may require.</p>	<p>Subsection (7) of the previous draft Bill, has been reformulated as subsection (11), and instead of requiring banks to report to the Central Bank every three years regarding dormant accounts that they retain custody of (see paragraph (a) of subsection (10)), requires banks to report “at such intervals...as the Central Bank may require”.</p>	<p>The amendment of the interval at which reports are required to be made is designed to provide the Central Bank with greater flexibility as it was considered that it may be necessary to set different reporting intervals for different types of dormant accounts.</p>
14.	<p>(8)(a) Where a bank has made a payment to the Central Bank pursuant to subsection (4) of this section and the Central Bank is satisfied that a person is entitled to the amount so paid and has brought a claim for such amount prior to the expiry of twenty-five years from the date of the Bank’s receipt of the amount, the Central Bank shall be liable to repay the amount to the bank together with interest if interest was payable by the bank in respect of the amount.</p> <p>(b) The bank shall be liable to pay the</p>	<p><del>(812)</del> Where a bank has made a payment to the Central Bank pursuant to subsection (4) <del>and of this section</del> <del>and</del></p> <p><u>(a) the bank represents to the Central Bank that it is satisfied that a person is entitled to the amount so paid to receive, in the case of funds paid to the Central Bank in –</u></p> <p><u>(i) Bahamian dollars, an amount equal to; and</u></p> <p><u>(ii) any other currency, an amount equivalent to the amount paid to the Central</u></p>	<p>Subsection (8) of the previous draft Bill has been reformulated and expanded in subsection (12) to –</p> <p>(i) make the Central Bank liable to pay claims for Bahamian dollar denominated dormant accounts in Bahamian dollars and an equivalent (foreign currency) amount for claims for dormant accounts denominated in other currencies;</p> <p>(ii) reduce the twenty-five years period within which a claim for dormant account funds could be made to a ten years period; and</p>	<p>Subparagraphs (i) and (ii) of paragraph (a) of subsection (12) will enable the Central Bank to repay Bahamian dollar claims in Bahamian dollars and claims for any other currency in an equivalent foreign currency amount. Currently, dormant account funds are transferred to the Central Bank in the currencies in which they are held by the bank and claims are paid in the same currency.</p>



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	<p>amount received from the Central Bank pursuant to paragraph (a) of this section to the entitled person.</p>	<p><del>Bank by the bank;</del> and  <b>(b) the person</b> has brought a claim <del>to the bank</del> for <del>such</del> the amount <del>so paid</del> prior to the expiry of <del>twenty-five</del> <b>ten</b> years from the date of the <del>Central</del> Bank's receipt of <del>the such</del> amount, <del>the Central Bank shall be liable to repay the amount to the bank together with interest if interest was payable by the bank in respect of the amount.</del>  <u>a liability shall arise —</u>  <u>(A) 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 any rate and computed in any manner that the Central Bank by notice in writing, determines to the bank; and</u>  <u>(B) on the bank, to pay the total of the amounts amount- received from the Central Bank under sub-paragraph (A) to the claimant.</u>  <del>(b) the bank shall be liable to pay the amount received from the Central Bank pursuant to paragraph (a) of this section to the entitle person.</del></p>	<p>(iii) Include the mechanism by which the interest is to be calculated which was set out in subsection (9) of the previous draft Bill.</p>	
15.	<p>(9) The Central Bank may from time to time, by notice in writing, determine the rate and manner of computation of interest payable by the Bank pursuant to subsection (8).</p>	<p>No equivalent provision.</p>	<p>Subsection (9) has been deleted from the draft Bill and subsumed into the reformulated subsection (12).</p>	<p>The deletion corresponds to the amendments made in the reformulated subsection (12). See the discussion at row 14 above.</p>
16.	<p>(10) A bank which makes a payment to</p>	<p><del>(10)</del> A bank which makes a payment</p>	<p>Subsection (10) of the previous draft</p>	<p>The amendment corresponds to</p>

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	the Central Bank pursuant to subsection (4) shall be discharged from further liability in respect of such payment.	to the Central Bank pursuant to subsection (4), <u>or transfers property to the Central Bank or an agent of the Bank pursuant to subsection (6)(a)</u> , shall be discharged from further liability in respect of such payment <u>or transfer</u> .	Bill has been reformulated as subsection (13) and has been expanded to provide for banks to be discharged from further liability in respect of securities transferred to the Central Bank or its agent.	existing provisions that discharge banks from further liability with respect to funds transferred to the Central Bank and provides similar protection with respect to securities that they transfer to the Central Bank.
<b>Objects and Reasons</b>				
	The purpose of the amendment is to enhance provisions for the administration and regulation of dormant account balances held by banks.	<p>The purpose of the amendment is to <u>provide enhance provisions</u> for the administration and regulation of dormant account balances held by banks <u>and their transfer to the Central Bank</u>.</p> <p><u>The new section 20 provides for —</u></p> <p><u>(a) in subsection (1), clarification of the types of accounts which may become dormant accounts for the purposes of the section;</u></p> <p><u>(b) in subsection (2), definitions of the key words and phrases used in the section, clarifying who is a 'customer', when an account becomes a 'dormant account' and what constitutes an 'other facility', 'precious gemstones' and a 'transaction';</u></p> <p><u>(c) in subsection (3), how the seven year period for dormant accounts is to be calculated;</u></p> <p><u>(d) in subsection (4), the bank to pay to the Central Bank balances held on dormant accounts or to liquidate certain dormant accounts holding precious metals/securities and pay the sales proceeds net of the reasonable costs of the liquidation to the Central</u></p>	The Objects and Reasons segment of the Bill has been reformulated and expanded to clearly summarize the purpose(s) of each subsection of the proposed new section 20.	The amendments are self-explanatory.

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		<p><u>Bank;</u>  <u>(e) in subsection (5), the time, manner and prices at which securities held in a dormant account are to be sold, for a purchaser at a sale to take the property free of all claims of the owner, and for the entitlement of a claimant to the property to the proceeds of sale of the property;</u>  <u>(f) in subsection (6), where there is no ready buyer for precious metals/securities held in a dormant account, their transfer to the Central Bank or its agent, or in the discretion of the Central Bank their retention by the bank on behalf of the Central Bank;</u>  <u>(g) in subsection (7), the protection of a bank and its agents against claims in respect of the liquidation and sale pursuant to subsection (4)(b) of precious metals/securities held in a dormant account;</u>  <u>(h) in subsections (8) and (9), the time periods for retention of records by a bank, after making payment to the Central Bank, in relation to a dormant account;</u>  <u>(i) in subsections (10) and (11), certain dormant accounts in respect of which a bank shall not pay balances to the Central Bank but shall continue to administer and make reports to the Central Bank;</u>  <u>(j) in subsection (12), the circumstances in which the Central Bank becomes liable to repay to a bank an amount previously received from the bank in respect of a dormant</u></p>		

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		<p><u>account together with interest at a rate and in a manner to be computed by the Central Bank in respect of a dormant account and the bank is liable to pay such amount repaid to it to the person entitled who has made a claim to the bank within the time prescribed;</u></p> <p><u>(k) in subsection (13), the discharge from further liability of a bank after it makes payment to the Central Bank under subsection (4) or transfers property under subsection (6)(a);</u></p> <p><u>(l) in subsection (14), the discharge from further liability of the Central Bank after it repays a bank in respect of a dormant account; and</u></p> <p><u>(m) in subsection (15), a bank to maintain a register of its dormant accounts and the particulars to be kept in the register.</u></p>		

**BANKS AND TRUST COMPANIES REGULATION (AMENDMENT)  
BILL, 2016**

**Arrangement of Sections**

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**BANKS AND TRUST COMPANIES REGULATION (AMENDMENT)  
BILL, 2016**

**A BILL FOR AN ACT TO AMEND THE BANKS AND TRUST  
COMPANIES REGULATION ACT TO PROVIDE FOR THE  
ADMINISTRATION AND REGULATION OF DORMANT ACCOUNT  
BALANCES HELD BY BANKS**

**Enacted by the Parliament of The Bahamas**

**1. Short title and commencement.**

- (1) This Act, which amends the Banks and Trust Companies Regulation Act,<sup>1</sup> may be cited as the Banks and Trust Companies Regulation (Amendment) Act, 2016.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

**2. Repeal and replacement of section 20 of the principal Act.**

Section 20 of the principal Act is repealed and replaced as follows —

**“20. Treatment of unclaimed balances held by banks.**

- (1) This section applies to —
  - (a) deposit accounts, including demand, savings, and fixed term deposit accounts;
  - (b) chequing accounts;
  - (c) bank drafts, cashier cheques, certified cheques and money orders;
  - (d) travellers cheques;
  - (e) credit balances on credit cards;
  - (f) credit balances on loans;
  - (g) collateral held on loans, including cash and non-cash collateral;
  - (h) funds paid for shares or other interest in a licensee;
  - (i) custody accounts or safety deposit boxes;
  - (j) deposit accounts of precious metals and precious gemstones;
  - (k) all securities listed in Part I of the First Schedule to the Securities Industry Act; and
  - (l) such other deposit account or other facility as the Governor may, by regulation, determine.
- (2) For the purposes of this section —

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<sup>1</sup> Vol. VII, (Ch. 316)

“**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; or
- (e) such other person as the Governor may by regulation determine;

“**dormant account**” means a deposit account or other facility of a customer 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; and
- (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; and
- (c) includes instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;

“**precious gemstones**” shall not include jewellery;

“**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 and whether in cash, by cheque, payment order, or other instrument; or
- (b) communication, acknowledgement, request, or instruction where evidenced by a writing signed by the customer or 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 requested or acknowledged a statement of account, or issued instructions, with respect to the deposit account; and
- (c) a facility other than one referred to in paragraphs (a) and (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, unless exempted in writing by the Central Bank —

- (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) liquidate a dormant account, including a dormant 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.
- (5) For the purposes of paragraph (b) of subsection (4) —
- (a) securities listed on an established stock 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, net of deductions for —
      - (A) costs of sale; and
      - (B) reasonable expenses, pursuant to section 24(2) of the Central Bank of The Bahamas Act (Ch. 351);
    - (ii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.
- (6) Paragraph (b) of subsection (4) 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, for a period of fifteen years after the date the bank makes a payment to the Central Bank pursuant to subsection (4) or 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 —
- (a) registers;
  - (b) signature cards;
  - (c) signing authorities;
  - (d) 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 in The Bahamas shall —
- (a) subject to paragraph (b), not make payment to the Central Bank with respect to dormant accounts which —
    - (i) are non-cash collateral;
    - (ii) are custody accounts or safety deposit boxes, except for cash, precious metals, precious gemstones or securities found in such boxes; and
    - (iii) comprise such other deposit account or other facility as the Governor may, by regulation, determine;
  - (b) continue to administer the dormant accounts referred to in paragraph (a) —
    - (i) in the best interest of the customer in accordance with the bank's contractual obligations; and
    - (ii) subject to heightened internal monitoring by the bank in accordance with guidelines issued by the Central Bank;
  - (c) deduct a reasonable charge for the administration of the dormant accounts 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 the charge; and
    - (ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled.
- (11) A bank which holds dormant accounts of the kind referred to in paragraph (a) of subsection (10) 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, in the case of funds paid to the Central Bank in —
    - (i) Bahamian dollars, an amount equal to; and
    - (ii) any other currency, an amount equivalent to the amount paid to the Central Bank by the bank; 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 —
    - (A) 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 any rate and computed in any manner that the Central Bank by notice in writing, determines; and
    - (B) on the bank, to pay the amount received from the Central Bank under sub-paragraph (A) 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 subsection (1) of section 24 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 —

- (i) full name and last known address of each customer;
- (ii) last known telephone number or other contact of each customer;
- (iii) the name of the bank and location of the branch at which the dormant account is held;
- (iv) account number;
- (v) type of facility;
- (vi) full description of assets, including amount and currency where appropriate;
- (vii) fee status, indicating whether the account was subject to any fees prior to transfer to the Central Bank and the amount of such fees;
- (viii) interest status, indicating whether the account was subject to any interest prior to transfer to the Central Bank and the amount of such interest;
- (ix) date of last transaction on the account;
- (x) measures, briefly described, taken to contact the customer;
- (xi) in the case of funds in transit, file copy of the instrument or transfer;
- (xii) date funds were paid to the Central Bank pursuant to subsection (4), where applicable; and
- (xiii) other information that the Central Bank may, in writing, require a bank to maintain in the register.”.

## OBJECTS AND REASONS

The purpose of the amendment is to provide for the administration and regulation of dormant account balances held by banks and their transfer to the Central Bank. The new section 20 provides for —

- (a) in subsection (1), clarification of the types of accounts which may become dormant accounts for the purposes of the section;
- (b) in subsection (2), definitions of the key words and phrases used in the section, clarifying who is a 'customer', when an account becomes a 'dormant account' and what constitutes an 'other facility', 'precious gemstones' and a 'transaction';
- (c) in subsection (3), how the seven year period for dormant accounts is to be calculated;
- (d) in subsection (4), the bank to pay to the Central Bank balances held on dormant accounts or to liquidate certain dormant accounts holding precious metals/securities and pay the sales proceeds net of the reasonable costs of the liquidation to the Central Bank;
- (e) in subsection (5), the time, manner and prices at which securities held in a dormant account are to be sold, for a purchaser at a sale to take the property free of all claims of the owner, and for the entitlement of a claimant to the property to the proceeds of sale of the property;
- (f) in subsection (6), where there is no ready buyer for precious metals/securities held in a dormant account, their transfer to the Central Bank or its agent, or in the discretion of the Central Bank their retention by the bank on behalf of the Central Bank;
- (g) in subsection (7), the protection of a bank and its agents against claims in respect of the liquidation and sale pursuant to subsection (4)(b) of precious metals/securities held in a dormant account;
- (h) in subsections (8) and (9), the time periods for retention of records by a bank, after making payment to the Central Bank, in relation to a dormant account;
- (i) in subsections (10) and (11), certain dormant accounts in respect of which a bank shall not pay balances to the Central Bank but shall continue to administer and make reports to the Central Bank;
- (j) in subsection (12), the circumstances in which the Central Bank becomes liable to repay to a bank an amount previously received from the bank together with interest at a rate and in a manner to be computed by the Central Bank in respect of a dormant account and the bank is liable to pay such amount repaid to it to the person entitled who has made a claim to the bank within the time prescribed;

(k) in subsection (13), the discharge from further liability of a bank after it makes payment to the Central Bank under subsection (4) or transfers securities under subsection (6)(a);

(l) in subsection (14), the discharge from further liability of the Central Bank after it repays a bank in respect of a dormant account; and

(m) in subsection (15), a bank to maintain a register of its dormant accounts and the particulars to be kept in the register.

