



SUPERVISORY AND REGULATORY GUIDELINES: 2003-04
Procedures for Liquidations and Revocations
16th September, 2003
Amended 24th May, 2004

PROCEDURES FOR VOLUNTARY
LIQUIDATIONS AND THE SUBSEQUENT REVOCATION
OF A BANKING OR TRUST LICENCE

I. INTRODUCTION

The Central Bank of The Bahamas (*“the Central Bank”*) is responsible for the licensing, regulation and supervision of banks and trust companies operating in and from within The Bahamas pursuant to The Banks and Trust Companies Regulation Act, 2000 (Chapter 316 of the revised Statute Laws of The Bahamas, 2001), and The Central Bank of The Bahamas Act, 2000 (Chapter 351 of the revised Statute Laws of The Bahamas, 2001). Additionally, The Central Bank has the duty, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the provision of banking and trust services.

All licensees are expected to adhere to the Central Bank’s licensing and prudential requirements and ongoing supervisory programmes, including periodic on-site inspections, and required regulatory reporting. Licensees are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

II. PURPOSE

The Banks and Trust Companies Regulation Act, 2000 (the Act) together with the Companies Act, 1992 (Chapter 308 of the revised Statute Laws of The Bahamas, 2001) lay out the requirements for the revocation of bank and trust licences and liquidation of companies, respectively. These Guidelines provide an overview of the procedures for voluntary liquidation and subsequent revocation of bank and trust licences. Revocations of banking or trust licences which are effected due to supervisory action, are not detailed within this Guideline.

III. RELEVANT LEGISLATION

The Central Bank of The Bahamas, in accordance with section 18 of the Act is empowered to revoke the licences of banks and trust companies operating within and from within the Commonwealth of The Bahamas.

The liquidation process involves the settling of a company's liabilities via the disposition of its assets and is governed by the Companies Act, 1992. In the case of banks and trust companies, however, the Central Bank must carefully monitor the process to ensure that the winding up is conducted in the best interests of the licensee's depositors or other creditors.

IV. GENERAL GROUNDS FOR THE REVOCATION OF A LICENCE

Section 18(1)(a) of the Act empowers the Governor, by order, to revoke the licence of a licensee –

- (a) if in the opinion of the Governor, the licensee is carrying on its business in a manner detrimental to the public interest or the interests of its depositors or other creditors either in The Bahamas or elsewhere (18(1)(a)(i));
- (b) if the licensee has ceased to carry on banking business or trust business (18(1)(a)(ii)); or
- (c) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved (18(1)(a)(iii)).

V. THE REVOCATION PROCESS

As a matter of practice, only the licences of those licensees which have substantially completed their liquidation are considered for revocation by the Governor. A Licensee which is contemplating winding up should:-

- (a) advise the Central Bank, in writing, of its intention to discontinue its operations and request that its licence be downgraded to Non-Active status pending revocation; or,
- (b) advise the Central Bank in writing that it has:-
 - ceased to carry on banking and/or trust business; or
 - become bankrupt or has gone into liquidation or is being wound up or otherwise dissolved and therefore requests that the Governor revoke its licence in accordance with Section 18 (1)(a) (ii) or (iii) of the Act.

In some instances, the Central Bank may revoke a licence prior to the substantial completion of a liquidation. In these cases, the Central Bank has a duty, pursuant to the

provisions of section 18(6) of the Act to monitor the orderly progression of the liquidation.

Section 18(6) of the Act provides that the Governor may, in any case in which a licensee or a person who has at any time been a licensee is being wound up voluntarily, apply to the Supreme Court if he considers that the winding up is not being conducted in the best interests of its depositors, the beneficiaries of any trusts or other creditors, and the court shall make such order as it shall consider appropriate in the winding up of the licensee.

VI. DOCUMENTATION REQUIRED

Licensees seeking to voluntarily wind up their operations should provide the following information and documentation to the Central Bank:

- (a) The Board of Directors Resolution sanctioning the winding up/ voluntary liquidation of the licensee;
- (b) A detailed plan, including relevant timeframes of the completion of the wind up in an orderly manner;
- (c) Confirmation from the directors that the licensee has ceased to carry on any banking and/or trust business except in so far as may be required for the orderly winding up of the licensee;
- (d) A balance sheet, as at the date of the commencement of the liquidation of the licensee, submitted by the liquidator reflecting all existing assets and liabilities of the licensee; and
- (e) A listing of all unresolved, unsatisfied or un-discharged complaints or legal actions against the licensee.

VII. PUBLIC NOTIFICATION

Under section 238 of the Company's Act, 1992, notice of any resolution passed for the winding up of a company should be published in the Gazette and a copy of the same should be forwarded to the Central Bank.

VIII. NOTIFICATION OF THE LIQUIDATOR

Licenses are required to notify the Central Bank of the appointment of the official liquidator. In the case of a liquidator located in a country other than The Bahamas, a joint liquidator, who is resident in The Bahamas, must also be appointed.

In relation to the appointment of liquidators, licensees should provide the following information: -

- (a) The relevant Board Resolution appointing the liquidator; and
- (b) The mailing address, telephone number(s) and other contact information (such as an e-mail address) of the liquidator(s).

IX. REQUIREMENTS FOR THE LIQUIDATOR

Once voluntary liquidation has commenced, the liquidator shall:-

- (a) Supply to The Central Bank, a report of the financial condition of the licensee as at the date of the commencement of the voluntary liquidation;
- (b) Supply to The Central Bank, on a quarterly basis, reports of assets and liabilities, until the liquidation is complete; and
- (c) On completion of the liquidation, supply to The Central Bank certification that all liabilities have been settled and any remaining assets appropriately distributed.

X. THE REVOCATION ORDER

A revocation order will be made once the liquidator has confirmed that the liquidation is complete (i.e. all claims on the licensee have been satisfactorily settled) or substantially complete and all required documentation has been received.