



## OVERVIEW OF CRISIS MANAGEMENT LEGISLATION

The Crisis Management Legislative Framework is inclusive of the Central Bank of The Bahamas Act 2020, the Banks and Trust Companies Regulation Act 2020, and the Protection of Depositors (Amendment) Act, 2020.

Collectively, they seek to bring about reforms that will, inter alia:

- Allow the Central Bank to use an administrative approach to resolve failing banks;
- Enlist credit unions in the Deposit Insurance framework;
- Streamline the role and powers of the Deposit Insurance Corporation;
- Improve governance arrangements between the Government and the Central Bank;
- Broaden non-bank participation in the domestic payments system; and
- Empower the Central Bank to issue digital currency.

### Central Bank of The Bahamas Act, 2020

The Central Bank of The Bahamas Act 2000 has been repealed and replaced by the Central Bank of The Bahamas Act, 2020. The Central Bank of The Bahamas Act (“the CBA”) is a critical piece of legislation as it governs all financial institutions supervised by the Central Bank.

The CBA has brought about imperative changes as it seeks to modernize the law governing the Bank and articulate a clearer and more robust legal framework for the Bank’s governance and accountability. Some of these changes include:

1. **The Financial Management Crisis Framework** - which includes a new function for the Bank, to act as the sole Resolution Authority for troubled banks. Other functions include the promotion of financial stability, to hold and manage all official external reserves of The Bahamas, giving priority to safety, before profitability, of such assets; issue and manage the currency of The Bahamas; and to act as fiscal agent of the Government and of any public corporation of The Bahamas. As the Resolution Authority, the Bank can establish bridge institutions to manage on

a temporary basis, the assets of troubled supervised entities in the midst of resolution processes.

2. **The Domestic Payments System-** The CBA establishes that the Central Bank issued digital currency is legal tender. The CBA also makes it an offence for a person to counterfeit digital currency or to reproduce digital currency without the Bank's permission. Further, participation in payment settlements processes has been extended to non-banks (credit unions and payments services firms), through settlement accounts maintained at the Bank.
3. **Financial Autonomy and Credit to the Government-** The CBA introduces provisions that provide greater operational flexibility to the Bank in conducting its investment activities, and improve the governance arrangements between the Bank and the Government. The CBA clarifies the legal framework for establishing and using reserves. The Bank is also mandated to establish a General Reserve for the sole purpose of covering losses sustained by the Bank, and an Unrealised Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.

### [Banks and Trust Companies Regulation Act, 2020](#)

The Banks and Trust Companies Regulation Act, 2020 ("the BTCRA"), modernizes the resolution framework for banks in The Bahamas, in line with best international practices. The BTCRA gives the Central Bank enhanced powers to resolve troubled banks.

Key provisions of the BTCRA include the following:

#### **1. New Bank Resolution Framework**

- Section 35 establishes the objectives to which the Central Bank must have regard when exercising any of its' resolution powers. These objectives include, inter alia protecting depositors, ensuring continuity of critical financial services, minimizing the cost of resolution and protecting public funds.
- Section 36 authorizes the Central Bank to require banks to prepare recovery plans detailing what steps they would take in the event of a financial distress or failure. The Central Bank is also empowered to prepare its own resolution plan, in consultation with a bank, to identify options for the use of its resolution powers and tools; and to direct a bank to remove significant impediments to resolution.

#### **2. Statutory Administration**

- Section 38 authorizes the Central Bank to appoint a statutory administrator, without a court order, in prescribed circumstances such as, for example, if a bank has engaged in an unsafe and unsound practice leading to the weakening of the bank's condition, undermining of depositors' interests or dissipation of the bank's assets. The statutory administrator may be appointed for twelve months initially and the

Central Bank may extend this period for a further twelve months if additional time is required to restructure a bank placed under statutory administration.

### **3. Liquidation of Banks**

- Section 58 of the BTCRA, limits and modifies the application of the Companies Act to the new bank resolution regime particularly in the case of a bank liquidation. Further, there are new provisions that prohibits the voluntary liquidation of a bank without the Bank's pre-approval and outlines the circumstances in which the Bank may appoint a liquidator for the compulsory winding up of a bank.

### **Protection of Depositors (Amendment) Act 2020**

Key amendments under the Protection of Depositors (Amendment) Act 2020 enhance the corporate governance framework of the Corporation, reduced time within which the Corporation must make payouts to depositors following the failure of a member institution. Also co-operative credit unions have been included in the membership of the Deposit Insurance Fund.

A new Schedule has also been added which prescribes the constitution and functions of the board of the Corporation.