

**BANKS AND TRUST COMPANIES REGULATION (AMENDMENT)  
BILL, 2014**

*[Signature]*  
10 Oct. 20

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## BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) BILL, 2014

### A BILL FOR AN ACT TO AMEND THE BANKS AND TRUST COMPANIES REGULATION ACT TO EXPAND AND ENHANCE THE REGULATORY POWERS OF THE CENTRAL BANK

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, 2014.
- (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 —

- (a) the insertion in the appropriate alphabetical order of the following words together with their definitions —

“**Bank**” has the meaning ascribed in section 2 of the Central Bank of The Bahamas Act (*Ch 351*);

“**controller**” means a person —

- (a) in accordance with whose directions, instructions or wishes the directors or officers of a licensee, or of another company of which the licensee is a subsidiary, are accustomed or are under an obligation, whether formal or informal, to act;

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<sup>1</sup>*Vol. VII, (Ch. 316-3)*

- (b) who is able to exercise a significant influence over the management of a licensee, or of another company of which it is a subsidiary, by virtue of —
  - (i) a holding of shares or other securities in the licensee or such other company;
  - (ii) an entitlement to exercise, or control the exercise of, the voting power at any general meeting of the licensee or such other company;
- (c) who is in a position to determine the policy of the licensee but who is not —
  - (i) a director or officer of the licensee whose appointment has been approved by the Central Bank; or
  - (ii) a person in accordance with whose directions, instructions or wishes the directors of the licensee are accustomed to act by reason only that they act on advice given by such person in a professional capacity;

“**penalty**” means an administrative monetary penalty imposed by the Central Bank and includes a fine payable pursuant to section 24B;”;

- (b) the deletion, in the definition of a “Registered Representative”, of the word “Governor” and the substitution of the words “Central Bank”.

**3. Amendment of section 3 of the principal Act.**

Section 3 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the words —
  - (i) “person who is” and the substitution of the word “company”;
  - (ii) “him” and the substitution of the words “the company”; and
- (b) in subsection (6), by the deletion of the words “and (g)” and the substitution of the words “(g), (h) and (i)”.

**4. Amendment of section 3A of the principal Act.**

Section 3A of the principal Act is amended in paragraph (a) by the deletion of the word “he” and the substitution of the words “the Bank”.

**5. Amendment of section 3C of the principal Act.**

Section 3C of the principal Act is amended by the deletion of the numbers and symbols “5,” and “10(a)” respectively.

**6. Insertion of sections 3D and 3E into the principal Act.**

The principal Act is amended by the insertion immediately after section 3C of the following new sections —

**“3D. Application in case of a proposed company.**

A group of persons may, where the group proposes to form a company for the purpose of carrying on a banking business or a trust business, make application to the Central Bank for an intimation as to whether or not the company will be authorised to carry on such business upon its incorporation.

**3E Criteria to determine if person is fit and proper.**

- (1) The Central Bank shall, in determining for the purposes of this Act whether a person is a fit and proper person, have regard to all the circumstances, including such person's —
  - (a) honesty, integrity and reputation;
  - (b) competence and capability;
  - (c) financial soundness; and
  - (d) previous disciplinary record and general compliance history including whether the Central Bank or any other domestic regulatory authority, or a Supervisory Authority, has previously imposed a disciplinary sanction on such person.
- (2) The Central Bank shall consider whether the applicant, or any other person the Bank deems relevant, is a fit and proper person where an application is made —
  - (a) pursuant to —
    - (i) section 3A;
    - (ii) section 3D;
    - (iii) subsection (1) of section 4; or
  - (b) by a licensed Financial and Corporate Service Provider for approval to carry on the business of a Registered Representative.
- (3) For the purposes of subsection (2), a relevant person includes a person who is or is to be a controller, director, or officer of the business to which the application relates.

- (4) The Central Bank shall refuse to grant a licence, or an approval, or to register a person, where the Bank is of the opinion that the business to which the application relates would not be carried on by fit and proper persons.

**7. Amendment of section 4 of the principal Act.**

Section 4 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the word “person” and the substitution of the word “company”;
- (b) by the deletion of subsection (2) and the substitution of the following —

“(2) An application made pursuant to subsection (1) shall be in writing and contain such information and particulars, and be accompanied by such references, as may be prescribed and the Central Bank —

- (a) shall, in considering the application, have regard to —
- (i) the incorporation and ownership structure of the company;
  - (ii) the nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the bank or trust company, as the case may be;
  - (iii) the soundness and feasibility of the business plan;
  - (iv) the best interests of the financial system in The Bahamas;
- (b) may, if satisfied with respect to the matters set out in subsection (1) of section 3E, grant a licence to the applicant subject to such terms and conditions, if any, as the Bank deems necessary;
- (c) shall, in every case in which application is made pursuant to subsection (1), advise the Minister of the Bank's decision to either grant or refuse the grant of a licence to the applicant.”;
- (c) in subsection (7), by the insertion immediately after the words “Registered Representative” of the words “or other relevant person”; and
- (d) in subsection (8), by the deletion of the word “he” and the substitution of the words “the Bank”.

**8. Insertion of new sections 6A, 6B, 6C and 6D into the principal Act.**

The principal Act is amended by the insertion immediately after section 6 of the following new sections —

**“6A. Grant of approval in relation to controllers of a licensee.**

- (1) Subject to subsection (2), the Central Bank may approve an application made under subsection (1) of section 6 where —
  - (a) the issue, transfer or disposal to a person of the shares or other securities of a licensee would result in such person becoming a controller of the licensee; or
  - (b) an existing controller of a licensee is the person acquiring the shares or other securities of the licensee and such acquisition would result in the increase of the controller's influence over the licensee.
- (2) The Bank shall, in approving an application made by a person pursuant to subsection (1) of section 6, satisfy itself that —
  - (a) the person acquiring the shares or other securities of the licensee is a fit and proper person;
  - (b) having regard to the likely influence of the person acquiring the shares or other securities, the licensee will or will continue to conduct its business prudently and to comply with the provisions of this Act; and
  - (c) it is in the best interests of the financial system of The Bahamas to approve the application.
- (3) The Central Bank may, where the Bank grants an approval of an application which results in the circumstances referred to in paragraphs (a) or (b) of subsection (1), impose such conditions as the Bank may determine including, but not limited to, a condition —
  - (a) restricting the controller's disposal or further acquisition of shares, or other securities, or voting power, in the licensee; or
  - (b) restricting the controller's exercise of voting power in the licensee.
- (4) The Central Bank may at any time add to, vary or revoke a condition imposed under subsection (3).
- (5) A condition imposed under subsection (3) shall have effect notwithstanding any provision of the Companies Act, any other law, or anything contained in the memorandum or articles of association of the licensee.

**6B. Objection to an existing controller of a licensee.**

- (1) The Central Bank may, where approval has been granted for the acquisition of shares or other securities in a licensee in the circumstances referred to in paragraphs (a) or (b) of subsection (1) of section 6A, serve a written notice of objection on the controller where the Bank is satisfied that —
  - (a) the controller has ceased to be a fit and proper person;
  - (b) having regard to the likely influence of the controller, the licensee is no longer likely —
    - (i) to conduct, or is no longer conducting, its business prudently;
    - (ii) to comply with, or is no longer complying with, the provisions of this Act;
  - (c) a condition of approval imposed on the controller under subsection (3) of section 6A has not been complied with;
  - (d) the controller has furnished a false or misleading document or information in connection with an application made under subsection (1) of section 6;
  - (e) the Bank would not have granted the approval in relation to the controller had the Bank 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 of a licensee.
- (2) The Central Bank shall, in any written notice of objection, specify a reasonable period within which the person named in the notice shall —
  - (a) take such steps as are necessary to ensure that he ceases to be a controller or an indirect controller, as the case may be; or
  - (b) comply with such direction or directions as the Central Bank may make under section 6C.
- (3) A person served with a notice of objection under this section shall comply with the notice.
- (4) Notwithstanding the provisions of subsections (2) and (3), a controller who has been served with a notice of objection pursuant to subsection (1) may, within a period of fourteen days commencing the day after which the notice is served, make written representations to the Central Bank which the Bank shall take into account in determining whether to vary or revoke the notice.

**6C Power to make directions.**

- (1) Subject to section 6D, the Central Bank —
  - (a) where the Bank is satisfied that a person has failed to comply with a condition imposed under subsection (3) of section 6A;  
or
  - (b) where the Bank has served a written notice of objection under section 6B,  
may by notice in writing —
    - (i) direct the transfer or disposal of all or any of the shares or other securities in a licensee held by such person or an associate of such person within such time, or subject to such conditions, as the Central Bank considers appropriate;
    - (ii) restrict the transfer or disposal of shares or other securities specified pursuant to sub-paragraph (i); or
    - (iii) make such other direction as the Central Bank considers appropriate.
- (2) A person to whom a notice is given under subsection (1) shall comply with such direction or directions as may be specified in the notice.
- (3) Notwithstanding any of the provisions of the Companies Act, any other law, or anything contained in the memorandum or articles of association of a licensee, a direction or restriction by the Central Bank under subsection (1) shall apply so that, until a transfer or disposal is effected in accordance with the direction, or the restriction on the transfer or disposal is removed —
  - (a) no voting rights shall be exercisable in respect of the specified shares or other securities unless the Central Bank expressly permits such rights to be exercised;
  - (b) no shares or other securities of the licensee shall be issued or offered, whether by way of rights, bonus or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly permits such issue or offer; and
  - (c) except in a liquidation of the licensee, no payment shall be made by the licensee of any amount, whether by way of dividends or otherwise, in respect of the specified shares or other securities unless the Central Bank expressly authorises such payment.
- (4) For the purposes of this section, a person A is an associate of another person B where —



- (a) A is the spouse, parent, remoter lineal ancestor, step-parent, son, daughter, remoter issue, step-son, step-daughter, brother or sister of B;
- (b) A is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes —
  - (i) of B; or
  - (ii) where B is a company, of the directors of B;
- (c) B is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes —
  - (i) of A; or
  - (ii) where A is a company, of the directors of A;
- (d) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;
- (e) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;
- (f) A is a related company of B;
- (g) A is a company in which B, alone or together with other associates of B as referred to in paragraphs (b) to (f), is in a position to control not less than twenty per cent of the voting power in A;
- (h) B is a company in which A, alone or together with other associates of A as referred to in paragraphs (b) to (f), is in a position to control not less than twenty per cent of the voting power in B; or
- (i) A is a person with whom B has an agreement or arrangement, whether oral or in writing, express or implied, to act together with respect to the —
  - (i) acquisition, holding or disposal, of shares or other interests in the licensee; or
  - (ii) exercise of their voting power in relation to the licensee.

**6D. Offences, penalties and defences.**

- (1) A person who —
  - (a) contravenes subsection (1) of section 6;
  - (b) contravenes subsection (3) of section 6B;

- (c) contravenes subsection (2) of section 6C; or
  - (d) fails to comply with a condition imposed under subsection (3) of section 6A,  
commits an offence and shall be liable on summary conviction —
    - (i) in the case of an individual, to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;
    - (ii) in the case of a company, to a fine not exceeding one hundred thousand dollars;
    - (iii) in the case of a continuing offence by an individual, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues; and
    - (iv) in the case of a continuing offence by a company, to a further fine not exceeding one thousand dollars for each day, or part of a day, during which the offence continues.
- (2) It shall be a defence for a person who is charged with an offence in respect of a contravention of subsection (1) of section 6 to prove that such person —
- (a) was not aware that he had committed the contravention; and
  - (b) within fourteen days of becoming aware that he had committed the contravention —
    - (i) notified the Central Bank of the contravention; and
    - (ii) within such time as was determined by the Bank, took such actions in relation to his shareholding or control of the voting power in the licensee as was directed by the Bank.”.

**9. Amendment of section 7 of the principal Act.**

Section 7 of the principal Act is amended —

- (a) in subsection (5), by the deletion of the words “he” and “his” and the substitution of the words “the Bank” and “the Bank's” respectively; and
- (b) in subsection (7), by the deletion of the word “he” and the substitution of the words “the Bank”.

**10. Amendment of section 8 of the principal Act.**

Section 8 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the word “he” and the substitution of the words “the Bank”;
- (b) by the insertion immediately after subsection (3) of the following new subsections —
  - “(4) Every licensee shall provide, within four months of the end of its financial year, a copy of its annual financial statement to the Central Bank unless prior written approval for an extension of time has been granted by the Bank.
  - (5) The Central Bank may, for such further period not exceeding sixty days as it deems expedient, extend the time periods referred to in subsections (1) and (4).”.

**11. Repeal and replacement of section 9 of the principal Act.**

Section 9 of the principal Act is repealed and replaced as follows —

**“9. Information to be furnished to the Central Bank.**

- (1) Every person who is subject under this Act to the supervision of the Central Bank shall furnish the Bank with such information, including returns, at such times and in such form as the Bank may reasonably require for the proper discharge of its functions under this Act or any regulations made under this Act.
- (2) A person who fails without reasonable excuse to furnish any information required by the Bank under this section commits an offence and shall be liable on summary conviction —
  - (a) in the case of an individual, to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues; or
  - (b) in the case of a company, to a fine not exceeding one hundred thousand dollars and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for each day, or part of a day, during which the offence continues.

**12. Repeal and replacement of section 10 of the principal Act.**

Section 10 of the principal Act is repealed and replaced as follows —

**“10. Information on insolvency.**

- (1) A licensee shall immediately inform the Central Bank where such licensee —
- (a) is, or is likely to become, insolvent;
  - (b) is, or is likely to become, unable to meet its obligations; or
  - (c) has suspended, or is about to suspend, payments.
- (2) The Central Bank may in writing —
- (a) where a licensee is, or appears likely to become, unable to meet its obligations; or
  - (b) where a licensee, in the opinion of the Bank, is carrying on business in a manner detrimental to the interests of the —
    - (i) public;
    - (ii) depositors of the licensee;
    - (iii) beneficiaries of any trust; or
    - (iv) other creditors of the licensee,require the manager or authorised agent of such licensee to supply within such reasonable time as may be specified —
    - (A) the financial statements of such licensee, as of a date determined by the Central Bank, audited by an auditor who is a chartered accountant or a certified public accountant approved by the Bank; and
    - (B) such other information relating to the licensee as the Bank may specify.
- (3) A person who —
- (a) fails to comply with the written requirements of the Central Bank made pursuant to subsection (2); or
  - (b) in response to the written requirements of the Central Bank made pursuant to subsection (2), knowingly or wilfully supplies false information to the Bank,
- commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.”.

**13. Repeal of section 11 of the principal Act.**

Section 11 of the principal Act is repealed.

**14. Amendment of section 12 of the principal Act.**

Section 12 of the principal Act is amended by the deletion of subsection (4) and the substitution of the following —

- “(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 comes into force.”.

**15. Amendment of section 13 of the principal Act.**

Section 13 of the principal Act is amended by —

- (a) in subsection (3) —
  - (i) the deletion in paragraph (d) of the word “bank” and the substitution of the word “licensee”;
  - (ii) the deletion in paragraph (e) of the word “bank” and the substitution of the word “licensee”;
  - (iii) the insertion in paragraph (e), immediately after the word “shareholders”, of the words “or the beneficiaries of any trust”; and
- (b) the deletion of subsections (7) and (8).

**16. Insertion of new section 13B into the principal Act.**

The principal Act is amended by the insertion immediately after section 13A of a new section 13B as follows —

**“13B. Notice to the Central Bank.**

- (1) A licensee shall immediately notify the Central Bank of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.
- (2) A licensee which contravenes or fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars.”.

**17. Amendment of section 18 of the principal Act.**

Section 18 of the principal Act is amended —

- (a) in paragraph (a) of subsection (1) —
  - (i) by the insertion in sub-paragraph (i), immediately after the word “depositors”, of the words “or the beneficiaries of any trust”;
  - (ii) by the insertion immediately after sub-paragraph (iii) of the following new sub-paragraphs —
    - “(iv) if a licensee is, or appears likely to become, unable to meet its obligations as they fall due;
    - (v) if a licensee has failed to comply with a direction of the Central Bank made pursuant to paragraph (h) of subsection (1) of section 18;
    - (vi) if it appears to the Central Bank that the licensee has furnished information or documents to the Bank in connection with its application for a licence which is false or misleading in a material particular or has failed to inform the Bank of a material change in respect of information so furnished,”;
- (b) in paragraph (b) of subsection (1), by the deletion in sub-paragraph (iii) of the words “bank or trust company” and the substitution of the word “licensee”;
- (c) in paragraph (g) of subsection (1), by the insertion immediately after the word “depositors” of the words “or the beneficiaries of any trust”;
- (d) in subsection (2), by the deletion, wherever it appears, of the word —
  - (i) “he” and the substitution of the words “the Bank”;
  - (ii) “his” and the substitution of the words “the Bank’s”;
  - (ii) “him” and the substitution of the words “the Bank”;
- (e) in subsection (3), by the deletion of the word “he” and the substitution of the words “the Bank”;
- (f) in subsection (5), by the deletion of the word “he” and the substitution of the words “the Bank”;
- (g) in subsection (6), by the deletion of the word “he” and the substitution of the words “the Bank”;
- (h) in subsection (7), by the insertion of the words “without delay” immediately after the words “the petitioner shall”; and

- (i) in subsection (8), by the insertion of the words “without delay” immediately after the words “Central Bank”.

**18. Amendment of section 18C.**

Section 18C of the principal Act is amended by —

- (a) the deletion immediately after the word “18A” of the word “and” and the substitution of a comma; and
- (b) the insertion immediately after the word “18B” of the words “, 18F(6) and 18G(6)”.

**19. Amendment of section 18D.**

Section 18D of the principal Act is amended by —

- (a) the deletion immediately after the words “of section 18” of the words “or under” and the substitution of a comma; and
- (b) the insertion immediately after the words “under section 18A” of the words “or under section 18F.”

**20. Insertion of sections 18E, 18F and 18G into the principal Act.**

The principal Act is amended by the insertion, immediately after section 18D, of the following new sections —

**“18E. Prohibition orders.**

- (1) The Central Bank may, where it appears to the Bank that an individual is not or is no longer a fit and proper person to perform a regulated function, make an order prohibiting such individual from performing the regulated function.
- (2) For the purposes of this section, a “regulated function” includes —
  - (a) serving as a director of a licensee, a Registered Representative or a money transmission agent;
  - (b) serving as an officer of a licensee, a Registered Representative or a money transmission agent;
  - (c) acting as the auditor of a licensee, a Registered Representative or a money transmission agent; and
  - (d) performing any other function in or for a licensee, a Registered Representative or a money transmission agent which requires approval, supervision or monitoring by the Central Bank.
- (3) An individual who, in breach of a prohibition order, performs or agrees to perform a regulated function commits an offence and shall be liable on summary conviction —

- (a) to a fine not exceeding fifty thousand dollars; and
  - (b) in the case of a continuing breach, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues.
- (4) It is a defence to a charge against a person in relation to a contravention of subsection (3) if the defendant proves that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (5) The Central Bank may, on the application of the individual named in a prohibition order, vary or revoke the order.

**18F. Bank to issue warning, decision notices.**

- (1) The Central Bank shall, where it proposes to make a prohibition order, issue a warning notice to all interested parties including —
- (a) the individual affected by the proposed order; and
  - (b) if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent.
- (2) A warning notice issued under subsection (1) shall —
- (a) set out the terms of the prohibition and the grounds on which the Bank proposes to act; and
  - (b) afford the individual named in the notice, within such time as is specified in the notice, an opportunity to submit to the Bank a written statement of objection to the proposed prohibition order.
- (3) The Bank shall, following the issuance of a warning notice under subsection (1), advise the individual named in the notice of its decision.
- (4) The Bank shall, where it decides to make a prohibition order, issue to the individual named in the warning notice a written notice of the Bank's decision.
- (5) A decision notice issued under subsection (4) shall —
- (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order;
  - (c) state the date on which the Bank's decision is to take effect;
  - (d) be delivered to the individual named in the order; and
  - (e) if the Bank deems fit, be delivered to the relevant licensee, Registered Representative, or Money Transmission Agent.
- (6) An individual against whom a decision to make a prohibition order is made may refer the matter to the Supreme Court.

**18G. Variation, revocation of prohibition order.**



- (1) An individual against whom a prohibition order has been made may apply to the Central Bank to have the order varied or revoked.
- (2) The Central Bank shall —
  - (a) where it decides to grant an application for variation or revocation of a prohibition order, give the applicant and, if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent, a written notice of the Bank's decision; and
  - (b) where the Bank proposes to refuse such application, issue to the applicant and, if the Bank deems fit, the relevant licensee, Registered Representative, or Money Transmission Agent, a written warning notice.
- (3) A warning notice issued under paragraph (b) of subsection (2) shall —
  - (a) set out the reasons for the Bank's proposed refusal to vary or revoke the prohibition order; and
  - (b) contain a statement that the individual named in the warning notice may, within such time as is specified in the notice, submit to the Bank a written statement of objection to such proposed refusal.
- (4) The Bank shall, following the issuance of a warning notice under paragraph (b) of subsection (2), advise the individual named in the notice of its decision.
- (5) The Bank shall, where it decides to refuse the application for variation or revocation, issue to the applicant a written decision notice which shall comply with the requirements of subsection (5) of section 18F.
- (6) An applicant issued a decision notice under subsection (5) may refer the matter to the Supreme Court.”.

**21. Amendment of section 19 of the principal Act.**

Section 19 of the principal Act is amended in sub-paragraph (iv) of subsection (1) by the deletion of the word “him” and the substitution of the words “the Bank”.

**22. Amendment of section 24 of the principal Act.**

Section 24 of the principal Act is amended by the deletion of paragraph (b).

**23. Repeal and replacement of section 24A of the principal Act.**

Section 24A of the principal Act is repealed and replaced as follows —

**“24A. Contraventions and penalties.**

- (1) The Governor may make regulations —
  - (a) designating as a contravention that may be proceeded with under section 24B —
    - (i) a breach of, or non-compliance with, a specified provision of this Act or a regulation made pursuant to this Act;
    - (ii) a non-compliance with —
      - (A) a condition or limitation imposed by the Central Bank;
      - (B) a direction issued by the Central Bank pursuant to subsection (1) of section 6C or paragraph (h) of subsection (1) of section 18;
      - (C) an order made by the Central Bank under this Act or under a regulation made pursuant to this Act;
  - (b) classifying a designated contravention as a minor, serious or very serious contravention; and
  - (c) subject to subsections (2), (3), and (5), fixing a penalty or a range of penalties in respect of a designated contravention.
- (2) The maximum penalty for a designated contravention shall be —
  - (a) for a contravention committed by an individual, in the case of —
    - (i) a minor contravention, two thousand five hundred dollars;
    - (ii) a serious contravention, five thousand dollars; and
    - (iii) a very serious contravention, ten thousand dollars;
  - (b) for a contravention committed by a company, in the case of —
    - (i) a minor contravention, ten thousand dollars;
    - (ii) a serious contravention, fifty thousand dollars; and
    - (iii) a very serious contravention, one hundred thousand dollars.
- (3) A minor contravention shall, where it consists of a late or erroneous filing and is continued for more than one day, constitute a separate contravention for each day, or part of a day, during which it is continued.
- (4) The Central Bank shall determine the amount of penalty for a designated contravention by taking into account —

- (a) the degree of intention or negligence on the part of the person who committed the contravention;
  - (b) the harm done by the contravention;
  - (c) the history of the person or licensee who committed the contravention having regard to any prior contravention or conviction under this Act within the five-year period immediately before the contravention;
  - (d) whether the licensee or person concerned brought the contravention to the attention of the Bank;
  - (e) the seriousness of the contravention;
  - (f) whether or not the contravention was inadvertent;
  - (g) the efforts, if any, made to rectify the breach or non-compliance and to prevent a recurrence;
  - (h) the potential financial consequences to the licensee or person concerned, and to third parties including customers and creditors of the licensee, of imposing a penalty;
  - (i) the penalties imposed by the Central Bank in other cases; and
  - (j) any other criteria as may be prescribed by regulation.
- (5) For the purposes of this section —
- (a) a designated contravention does not include a breach referred to in subsection (1) of section 24B; and
  - (b) subsection (4) does not apply to a penalty fixed under paragraph (c) of subsection (1).”.

**24. Insertion of a new section 24B into the principal Act.**

The principal Act is amended by the insertion of a new section 24B as follows

—  
**“24B. Penalties.**

- (1) The Central Bank may order a person to pay a penalty not exceeding two thousand dollars in any case where it is satisfied that the person has committed an offence under —
  - (a) regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations; or
  - (b) the Financial Transactions Reporting (Wire Transfers) Regulations.
- (2) The Central Bank may order the payment of such penalty as may be prescribed by regulations made under this Act if satisfied that a person has contravened —
  - (a) a provision of this Act;

- (b) a regulation made under this Act;
  - (c) a condition or limitation imposed by the Central Bank;
  - (d) a direction issued by the Central Bank pursuant to subsection (1) of section 6C or paragraph (h) of subsection (1) of section 18; or
  - (e) an order made by the Central Bank under this Act or under a regulation made pursuant to this Act.
- (3) The Central Bank shall, where it makes an order under this section —
- (a) specify in the order the —
    - (i) name of the person believed to have committed a contravention or an offence;
    - (ii) nature of the contravention or offence which the person is believed to have committed; and
    - (iii) penalty imposed by the Central Bank.
  - (b) give a copy of the order to the person named in the order.
- (4) An order made under this section may be enforced in the same manner as an order of the court.”.

**25. Insertion of new sections 24C, 24D, 24E, 24F, 24G and 24H into the principal Act.**

The principal Act is amended by the insertion, immediately after section 24B, of the following new sections —

**“24C. Election.**

The Central Bank shall, where a breach or non-compliance may be proceeded with as a designated contravention under section 24B or as an offence —

- (a) elect to proceed with the matter in one manner only; and
- (b) on completion of the proceeding in the manner elected pursuant to paragraph (a), be precluded from proceeding in the other manner.

**24D. Publication of penalties.**

The Central Bank may, where the Bank imposes a penalty on a person, publish in such manner as it deems appropriate a statement of the contravention or offence in respect of which the penalty is imposed.

**24E. Proceedings.**

The Central Bank may, where the Bank is of the opinion that action pursuant to subsections (1) or (2) of section 24B should be taken against a

person, give to such person prior to taking action a written notice containing the —

- (a) name of the person believed to have committed a contravention or an offence;
- (b) nature of the contravention or offence;
- (c) penalty that the Central Bank intends to impose;
- (d) right of the person within thirty days after the notice is served, or within such longer period as the Bank may specify in the notice, to pay the penalty or to make representations to the Bank with respect to the contravention or offence;
- (e) manner in which the person may make representations pursuant to paragraph (d); and
- (f) warning that the person will, where payment or representations are not made in accordance with the notice, be deemed to have committed the contravention or offence and the Bank may issue an order imposing a penalty in respect of it.

**24F. Determination of responsibility and penalty.**

- (1) A person who pays in full the penalty proposed in a notice of contravention or offence pursuant to section 24E shall be deemed to have committed the contravention or offence and all proceedings in respect of such contravention or offence shall terminate upon such payment.
- (2) The Central Bank shall, where a person makes representations in accordance with a notice of contravention or offence, decide on a balance of probabilities whether the person committed the contravention or offence and may in accordance with this Act and the regulations —
  - (a) where the Bank decides a contravention or offence has been committed, by order impose the penalty proposed or a lesser penalty; or
  - (b) where the Bank decides a contravention or offence has not been committed, impose no penalty.
- (3) A person who does not pay the penalty or make representations in accordance with a notice of contravention or offence shall be deemed to have committed the contravention or offence and the Central Bank may in accordance with this Act and the regulations —
  - (a) by order impose the penalty proposed or a lesser penalty; or
  - (b) impose no penalty.

**24G. Time Limit.**

- (1) The Central Bank may not commence proceedings in respect of a designated contravention —
  - (a) in the case of a minor contravention, later than six months after the subject-matter of the proceedings became known to the Central Bank; or
  - (b) in the case of a serious contravention or a very serious contravention, later than six years after the subject-matter of the proceedings became known to the Central Bank.
- (2) A document appearing to have been issued by the Central Bank, certifying the day on which the subject-matter of any proceedings became known to the Central Bank, shall be —
  - (a) admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and
  - (b) in the absence of evidence to the contrary, proof of the matter asserted in such document.

**24H. Remission.**

- (1) The Central Bank may remit all or part of a penalty imposed under section 24B, or any regulation made under this Act, including interest on such penalty.
- (2) A remission may be conditional or unconditional.”.

**26. Amendment of section 26 of the principal Act.**

Section 26 of the principal Act is amended —

- (a) in subsection (1), by the insertion immediately after paragraph (c) of the following new paragraphs —
  - “(d) serving a notice of objection under subsection (1) of section 6B;
  - (e) serving a decision notice under subsection (4) of section 18F or subsection (5) of section 18G;
  - (f) serving a notice in respect of a serious contravention or a very serious contravention under section 24E.”; and
- (b) in subsection (2) by the deletion, where it first occurs, of the word “his” and the substitution of the word “its”.

**27. Repeal and replacement of the First Schedule to the principal Act.**

The First Schedule to the principal Act is repealed and replaced as follows —

**“FIRST SCHEDULE (Section 17)**

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**RULES FOR INSPECTION AND SUPERVISION OF BANKS AND TRUST  
COMPANIES**

**1. Duties of Inspector.**

The Inspector shall —

- (a) regularly evaluate the condition, solvency and liquidity of all licensees;
- (b) establish appropriate and prudent standards for conducting safe and sound banking and trust business;
- (c) set prudent and appropriate capital adequacy requirements for banks not less than those established in the Basel Capital Accord and its Amendments;
- (d) evaluate banks' policies, practices and procedures related to the granting of loans and making of investments and the on-going management of the loan and investment portfolios;
- (e) ensure that banks and trust companies have management information systems that enable management to identify portfolio concentration in line with established limits;
- (f) ensure that banks and trust companies have in place and use systems that accurately measure, monitor and adequately control market and other risks;
- (g) ensure that banks establish and adhere to adequate policies, practices and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and loan-loss reserves;
- (h) ensure that banks and trust companies have in place internal controls adequate to the nature and scale of their operations, and adequate policies, practices and procedures, including strict know-your-customer rules that promote high ethical and professional standards, and so prevent the use of the bank or trust company for criminal purposes;
- (i) co-operate with inspectors and supervisors in other jurisdictions to the extent necessary for the purposes of cross-border supervision consistent with the policy established by the Basel Committee for cross-border supervision.

**2. Interpretation.**

In this Schedule —

**“Basel Capital Accord” or “Basel Committee”** means the committee of banking supervisory authorities established by central bank Governors of the Group of Ten countries in 1975 and its report.”.



### OBJECTS AND REASONS

The purpose of the amendment is to expand and enhance the regulatory powers of the Central Bank.

Clause 1 of the Bill empowers the Minister to appoint a commencement date for its enforcement.

Clause 2 amends section 2 of the principal Act to define certain words.

Clause 3 amends section 3 of the principal Act to clarify the requirement that only a company may be issued with a licence by the Central Bank to carry on any banking business from within The Bahamas.

Clause 4 amends section 3A of the principal Act by deleting and substituting the reference to “he” with a reference to “the Bank”.

Clause 5 amends section 3C of the principal Act by deleting references to sections 5 and 10a.

Clause 6 of the Bill inserts new sections 3D and 3E into the principal Act to allow a group of persons in certain circumstances to apply to the Bank for pre-approval of the proposed business, directs the Bank to consider the fitness of persons to hold particular positions, provides criteria for use by the Bank in determining such fitness, and empowers the Bank to refuse a licence or its approval where it believes a business would not be carried on by fit and proper persons.

Clause 7 amends section 4(2) of the principal Act to update and enhance the factors to be taken into account by the Bank in its consideration of applications for a licence.

Clause 8 inserts new sections 6A, 6B, 6C and 6D into the principal Act to provide the criteria for use by the Bank when determining whether to approve an application for the acquisition of shares by an existing or proposed controller of a licensee, sets out the procedure for the Bank to follow where it objects to an existing or proposed controller of a licensee, authorises the Bank to make directions with regard to the controllers of a licensee, and provides for offences, penalties and defences in connection with obligations of controllers.

Clause 9 amends section 7 of the principal Act by deleting and substituting the references to “he” and “his” with a reference to “the Bank”.

Clause 10 inserts two new subsections into the principal Act to require licensees to submit their annual audited financial statements to the Bank and to authorise the Bank to extend the time for submission and publication of these statements.

Clause 11 repeals and replaces section 9 of the principal Act to require any person that is subject to the supervision of the Central Bank to furnish the Bank with such information (including returns) as the Bank may require.

Clause 12 repeals section 10 of the principal Act and replaces it with a provision to require licensees to immediately inform the Bank where the licensee is or is likely to become insolvent or unable to meet its obligations.

Clause 13 repeals section 11 of the principal Act.

Clause 14 amends section 12 of the principal Act by repealing and replacing subsection (4) to set out the time-frame within which an auditor or former auditor of a licensee must provide the Inspector with written notice of a fact or matter of which he has or had become aware and which is of material significance to the discharge of the Inspector's functions in relation to the licensee.

Clause 15 amends section 13 of the principal Act in subsections (3)(d) and (e) and repeals subsections (7) and (8).

Clause 16 inserts a new section 13B into the principal Act to require licensees to immediately notify the Inspector of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.

Clause 17 amends section 18 of the principal Act to expand the circumstances in which the Bank may revoke the licence of a licensee.

Clause 18 amends section 18C of the principal Act to extend its application to sections 18A, 18F, 18G and 24B.

Clause 19 amends section 18D of the principal Act to extend its application to section 18F.

Clause 20 inserts new sections 18E, 18F and 18G into the principal Act, respectively, to empower the Bank to issue prohibition orders, provide for the procedure to be followed by the Bank in issuing such orders and for the application by affected persons to the Bank, and thereafter to the Supreme Court, to have such orders varied or revoked.

Clause 21 amends section 19 of the principal Act by deleting and substituting the reference to "him" with a reference to "the Bank".

Clause 22 deletes paragraph (b) of section 24 of the principal Act.

Clause 23 repeals and replaces section 24A of the principal Act to provide for contraventions and penalties empowering the Governor to make regulations to designate and classify certain non-compliance as contraventions of the Act and to fix penalties in respect of such contraventions, providing maximum penalties for specific classifications of contraventions and for contraventions committed by specific persons, and for the factors to be taken into account in determining the amount of a penalty.

Clause 24 amends and inserts, in a new section 24B, the provisions of the old section 24A into the principal Act.

Clause 25 inserts new sections 24C, 24D, 24E, 24F, 24G and 24H into the principal

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Act to empower the Bank to proceed with a non-compliance as a contravention or an offence but not both, publish a statement of the contravention or offence, give notice of its intention to impose a penalty, determine whether on a balance of probabilities a person committed a contravention or offence and if so the amount of the penalty payable in respect of the contravention or offence, prescribes the time limit for imposing a penalty, to remit part or all of a penalty with or without conditions.

Clause 26 amends section 26(1) of the principal Act to extend the right of appeal to the Supreme Court to include the case where the Bank serves a notice of objection under section 6B(1), serves a decision notice under sections 18F(4) or 18G(5) or serves a notice in respect of a serious contravention or very serious contravention under section 24E.

Clause 27 repeals and replaces the First Schedule to specifically include references to trust companies in paragraphs (b), (e), (f) and (h).