
CHAPTER 351**CENTRAL BANK OF THE BAHAMAS**

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SCHEDULE — The Bank

CHAPTER 351
CENTRAL BANK OF THE BAHAMAS

An Act to repeal the Central Bank of The Bahamas Act and to make fresh provisions for the establishment of a Central Bank, its functions and duties; and for connected purposes.

37 of 2000
S.I. 128/2001
23 of 2006
17 of 2007
2 of 2008
24 of 2010
4 of 2015

[Commencement 29th December, 2000]

PART I
PRELIMINARY

- 1.** This Act may be cited as the Central Bank of The Bahamas Act. Short title.
- 2.** In this Act — Interpretation.
- “authorised dealer” has the meaning assigned to it under regulation 42 of the Exchange Control Regulations; *4 of 2015, s.2.*
- “Bank” means the Central Bank of The Bahamas established by section 3;
- “bank” has the same meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act; *4 of 2015, s.2.*
Ch. 316.
- “banking business” means — *2 of 2008, s. 2.*
- (i) the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice, and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them; and “banker” shall be construed accordingly;
- (ii) the provision of money transmission services;
- “Board” means the Board of Directors of the Bank provided for by subsection (4) of section 3;
- “civil and administrative investigations and proceedings” means proceedings in any court of law in the jurisdiction of an overseas regulatory authority and investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;

4 of 2015, s.2.	<p>“coins” means coins of the currency of The Bahamas; “commercial bank” means a bank —</p>
	<p>(a) licensed to carry on banking business in The Bahamas; and (b) designated as an authorised dealer;</p>
	<p>“company” means a company incorporated under any law in force whether in The Bahamas or elsewhere;</p>
2 of 2008, s.2.	<p>“director”, in relation to the Bank, includes the Governor unless the context otherwise specifies;</p>
4 of 2015, s.2.	<p>“financial institution” means a person carrying on a business regulated under the laws enforced by the Bank;</p>
4 of 2015, s.2.	<p>“foreign financial institution” means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;</p>
Schedule.	<p>“Governor” means the person appointed as such under paragraph 1 of the Schedule;</p>
	<p>“Minister” means the Minister of Finance;</p>
	<p>“notes” means notes of the currency of The Bahamas;</p>
	<p>“overseas regulatory authority” * means an authority which, in a country or territory outside The Bahamas, exercises functions corresponding to —</p>
	<p>(a) any functions of the Bank; or (b) any additional regulatory functions in relation to companies or financial services as the Bank may specify by order including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority;</p>
	<p>“public corporation” means a body corporate established directly by statute for public purposes;</p>
	<p>“regulatory functions” means functions of the Bank, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified by the Bank;</p>

* Section 2 of S.I. 49/2001 provides as follows:

“2. For the purposes of section 2 of the Act, an overseas regulatory authority also includes an authority, which in a country or territory outside The Bahamas, regulates securities markets, securities exchanges and trading in securities.”.

“securities” means shares, stocks, bonds, debentures or debenture stock;

“trust business” means the business of acting as trustee or executor and administrator;

“trust company” means a company carrying on trust business;

“year” means financial year of the Bank.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE BANK

3. (1) There shall continue to be a bank, to be called “the Central Bank of The Bahamas” having the functions assigned to it by the following provisions of this Act.

The Central Bank of The Bahamas.

(2) The Bank shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Act, with power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and to do all things necessary for the purpose of its functions.

(3) The Bank may sue and be sued in its corporate name and may for all purposes be described by that name.

(4) There shall be a Board of Directors of the Bank, who, subject to the provisions of this Act, shall be responsible for the policy of the Bank and shall manage its affairs and business.

(5) The provisions of the Schedule shall have effect as to the Board of Directors and otherwise in relation to the Bank.

Schedule.

4. The Bank shall have its principal place of business in the City of Nassau and may in The Bahamas or elsewhere —

Places of business, etc.

- (a) establish and maintain such branch offices; and
- (b) appoint such agents and correspondents,

as the Bank thinks fit.

5. (1) It shall be the duty of the Bank, subject to the provisions of this Act —

The Bank’s functions.

- (a) to promote and maintain monetary stability and credit and balance of payments conditions conducive to the orderly development of the economy;
- (b) to ensure the stability of the financial system;

24 of 2010, s. 2.

*24 of 2010, s.2.
4 of 2015, s.3.*

- (c) to promote and ensure the establishment and oversight of a sound and efficient national payment system;
- (d) to regulate and supervise financial institutions;
- (e) to advise the Minister on any matter of a financial or monetary nature referred to by him to the Bank for its advice.

(2) The Bank shall, subject to the provisions of subsections (4), (5) and (7) of section 38, have the power to assist and co-operate with overseas regulatory authorities.

(3) The Bank shall, subject as aforesaid, have power to do anything, whether in The Bahamas or elsewhere, which is calculated to facilitate, or is incidental or conducive to the discharge of its duty under this section.

PART III CAPITAL AND RESERVES

Capital of the
Bank.

6. (1) The authorised capital of the Bank shall be three million dollars.

(2) Any capital required to make up the authorised capital of the Bank shall be paid from the Consolidated Fund at such times and in such amounts as the Board, with the approval of the Minister, may determine.

General Reserve.

7. (1) The Bank shall establish and maintain a General Reserve, to which, subject to the provisions of this section, at the end of each year the net profit of the Bank shall be credited (after the making of such deductions and allowances for other reserves and contingencies as the Bank may think fit) or the net loss incurred by the Bank debited, as the case may require.

(2) Whenever at the end of any year the amount in the General Reserve exceeds —

- (a) twice the authorised capital of the Bank;
- (b) fifteen per centum of the demand liabilities of the Bank,

whichever is greater, then the amount of any such excess shall be paid over to the Consolidated Fund, unless the Minister otherwise determines.

PART IV CURRENCY

8. (1) The currency of The Bahamas shall be the notes and coins issued by the Bank under the provisions of this Act. Currency of The Bahamas.

(2) The unit of the said currency shall be the dollar, which shall be divided into one hundred cents.

9. The parity of the dollar shall be equivalent to 0.736662 grams of fine gold, so, however, that the Minister may, after consultation with the Bank, by order alter the said parity whether in terms of gold or any other standard. Parity of the dollar.

10. Every contract, sale, payment, bill, note or security for money and every transaction, dealing, proceeding, matter or thing whatever relating to money or involving the payment of, or the liability to pay, money shall be deemed to be made, executed or entered into in or in relation to the currency of The Bahamas unless it is expressly made executed or entered into in or in relation to the currency of some other country. Contracts, etc., deemed to be in Bahamian currency.

11. (1) The Bank shall have the sole right and authority to issue notes and coins throughout The Bahamas. Sole right of Bank to issue notes and coins.

(2) No person other than the Bank shall issue in The Bahamas notes or coins or any documents or tokens having the appearance of notes or coins.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

12. The Bank shall from time to time as circumstances may require — Issue, etc., of notes and coins.

- (a) arrange for the printing of notes and the minting of coins; and
- (b) issue, re-issue and redeem notes and coins.

13. The Minister may, after consultation with the Bank, by order prescribe — Denominations and form of notes and coins.

- (a) the denominations (being multiples or fractions of a dollar), forms and designs of the notes and coins; and

(b) the standard weight and composition of such coins, and the amount of tolerance and the variation which shall be allowed therein.

Legal tender.

14. (1) Subject to the provisions of this section —

(a) notes issued by the Bank shall be legal tender in The Bahamas at their face value for the payment of any amount;

(b) coins issued by the Bank shall be legal tender in The Bahamas at their face value up to an amount not exceeding one hundred dollars in the case of coins of a denomination of not less than one dollar, and up to an amount not exceeding five dollars in the case of coins of a lesser denomination.

(2) All notes and coins lawfully in circulation immediately before commencement of this section shall be deemed for all purposes to be notes and coins issued by the Bank under this Act and to be legal tender until withdrawn from circulation under the provisions of subsection (3).

(3) The Bank may, on giving not less than one month's notice in the *Gazette*, call in any notes or coins on payment of the face value thereof, and any such notes or coins shall, on the expiration of the notice, cease to be legal tender but, subject to the provisions of section 15, shall be redeemable by the Bank on demand.

(4) A coin which has been impaired, diminished in size or lightened otherwise than by fair wear and tear, or which has been defaced by stamping, engraving or piercing shall not be legal tender.

Damaged
currency, etc.

15. No person shall be entitled as of right to recover from the Bank the value of any lost, stolen, mutilated or imperfect note or coin; but the Bank may in its discretion as an act of grace refund to any person the value of any mutilated or imperfect note or coin.

Exemption from
stamp duty.

16. Notes and coins issued by the Bank shall be exempt from the payment of stamp duty.

PART V GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC.

Power of Bank in
relation to
foreign exchange,
etc.

17. Subject to the provisions of this Act, the Bank may —

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- (a) buy and sell gold, foreign exchange, foreign bills of exchange and securities of foreign governments;
 - (b) maintain deposits in any foreign financial institution and utilise any such deposit in such manner as the Bank may think expedient for the due performance of the functions of the Bank;
 - (c) make arrangements with any foreign financial institution to borrow, on such terms and conditions as the Bank may think fit, any foreign currency.

18. (1) The Bank shall at all times maintain a reserve of external assets consisting of all or any of the following — External reserve.

- (a) gold (whether coins or bullion);
- (b) notes and coins (other than gold coins);
- (c) balances payable on demand held with financial institutions or agents;
- (d) money at call;
- (e) bills in the nature of Treasury Bills maturing within one hundred and eighty-four days issued by any foreign government;
- (f) marketable securities issued or guaranteed by any foreign government;
- (g) any reserve asset deemed by the Board to be an internationally recognised reserve asset:

Provided that at no time shall any securities held by the Bank pursuant to paragraph (f) which mature beyond five years constitute more than thirty per centum in value of the whole of the assets in the reserve of external assets.

(2) The value of the said reserve shall not at any time be less than fifty per centum of the value of the aggregate of notes and coins in circulation and other demand liabilities of the Bank. 24 of 2010, s.3.

PART VI RELATIONS WITH THE COMMERCIAL BANKS

19. (1) Subject to the provisions of this section, every commercial bank shall establish and maintain a reserve to be called “the Statutory Reserve” of not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Bank under this section. Statutory Reserve.

(2) The Bank may by order fix and from time to time vary the percentage required by subsection (1):

Provided that —

- (a) the percentage fixed as aforesaid shall not at any time be less than five nor more than twenty per centum;
- (b) different percentages may be so fixed for different classes of commercial banks;
- (c) any such order may require a proportion of the said reserve (which shall be specified in the order) to be lodged with the Bank; and
- (d) no such order shall be made increasing any percentage at the time in force by more than five per centum in any period of thirty days.

2 of 2008, s.3.

(3) If any bank contravenes or fails to comply with any provision of an order made under this section, it shall be guilty of an offence, and shall be liable on conviction thereof to a fine based on a percentage of the deficiency not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

Liquid assets.

20. (1) Every commercial bank shall so conduct its business as to ensure, taking one month with another, that its liquid assets are on average not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Bank under this section.

(2) The Bank may by order fix and from time to time vary the percentage required by subsection (1):

Provided that —

- (a) the percentage fixed as aforesaid shall not at any time be less than ten nor more than thirty per centum;
 - (b) different percentages may be so fixed for different classes of commercial banks; and
 - (c) no such order shall be made increasing any percentage at the time in force by more than five per centum in any period of thirty days.
- (3) In this section “liquid assets” means —
- (a) notes and coins;
 - (b) any cash balance held at the Bank;

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- (c) money at call and demand balances at any financial institution carrying on business in The Bahamas;
 - (d) Treasury Bills;
 - (e) stock of the Government;
 - (f) any instrument or security of a kind referred to in subsection (1)(f)(ii) of section 29;
 - (g) any freely convertible foreign currency;
 - (h) money at call and demand balances at any financial institution abroad being money at call or demand balances held in freely convertible foreign currency;
 - (i) any other asset designated for the purposes of this subsection by the Bank.
- (4) In subsection (3) —

“freely convertible foreign currency” means any foreign currency which at the time in question is in the opinion of the Bank a currency that is freely negotiable and transferable in international exchange markets at exchange rate margins consistent with the Articles of Agreement of the International Monetary Fund;

“money at call and demand balances at any financial institution” means money at call and demand balances held by any commercial bank at any financial institution less money at call and demand balances held at that bank by any financial institution.

(5) If any bank contravenes or fails to comply with any provision of an order made under subsection (2), it shall be guilty of an offence, and shall be liable on conviction thereof to a fine based on a percentage of the net average deficiency, taking one month with another, not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues. *2 of 2008, s. 4.*

21. (1) Notwithstanding section 39, the Governor may where he is satisfied that a bank has committed an offence order the bank to pay a fine —

*Power of
Governor to fine.
2 of 2008, s. 5.*

- (a) in the case of an offence committed under section 19, of such percentage of the deficiency, as may by order be fixed by the Bank from time to time, for every day during which the contravention or failure continues;

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- (b) in the case of an offence committed under section 20, such percentage, as may by order be fixed by the Bank from time to time, of the net average deficiency, taking one month with another, for every day during which the contravention or failure continues.

2 of 2008, s. 5.

- (2) The Bank may by order fix and from time to time vary the percentage required by subsection (1) provided that such percentage shall not exceed twice the annual discount rate prevailing at the time an offence against section 19 or 20 is committed.

2 of 2008, s. 5.

- (3) Where the Governor makes an order under this section —

- (a) the order shall be put in writing;
- (b) the order shall specify the offence which the bank committed and the penalty imposed by the Governor;
- (c) a copy of the order shall be given to the bank;
- (d) once the bank pays the fine as ordered, the bank shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the bank to prove that the offence with which it is charged has been dealt with under this section; and
- (e) the order may be enforced in the same manner as an order of the court.

Credit controls.

- 22.** (1) Subject to subsection (2), the Bank may by regulations prescribe —

- (a) the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations;
- (b) the purposes for which, the maturities for which and the security on which loans or advances may or may not be made by commercial banks;
- (c) the methods of computation, the minimum and maximum amounts of interests payable in respect to loans, advances and deposits or classes thereof.

- (2) Any such regulations —

- (a) may be made applicable to all the loans and advances of any specified commercial bank or to

- any specified class or classes of loans or advances of any specified class or classes of such banks;
- (b) shall not have effect so as to impose in respect of any loan or advance any limit or restriction that is more rigorous than applies to that loan or advance at the date of the coming into force of the regulations;
- (c) shall fix a date for the coming into force of the regulations, which shall not be earlier than thirty days after the date of the receipt of written notice by the relevant bank at its principal place of business in The Bahamas.

23. The Bank may act as banker to any commercial bank in The Bahamas and as banker, agent or correspondent to any bank abroad.

Bank as banker to commercial banks.

24. The Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act, pay interest on money so deposited and pay out money to any person entitled thereto.

Transfer of money.

Ch. 316.

PART VIA NATIONAL PAYMENT SYSTEM

24 of 2010, s. 4.

25. The Central Bank may, in the exercise of its functions pursuant to paragraphs (b) and (c) of subsection (1) of section 5 —

Central Bank to regulate payment systems.

24 of 2010, s. 5.

- (a) establish, operate, organise, promote, participate or assist in the establishment, operation, organisation and promotion of, and regulate and oversee any system —
- (i) for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
- (ii) for the clearing and settlement of securities and other arrangements for the exchange of securities; and
- (iii) to facilitate the clearing and settlement including other arrangements for the making or exchange of payments or the exchange of securities as well as links among systems;
- (b) regulate and oversee the issuance, provision and functioning of payment instruments, operating either with or without the opening of an account,

including the issuance of electronic money or any other forms of stored value.

PART VII RELATIONS WITH THE GOVERNMENT

Bank as banker to Government.

26. The Bank may act as banker to the Government or any public corporation.

Bank as agent for Government.

27. The Bank may act generally as agent for the Government on such terms and conditions as may be agreed between the Government and the Bank where the Bank can so act consistently with its functions under this Act and, in particular, the Bank may act as the agent of the Government in the management of the public debt.

Advances to the Government.

28. (1) Subject to the provisions of this section, the Bank may make temporary advances to the Government on such terms and conditions as may be agreed between the Minister and the Bank.

(2) Every such advance made by the Bank to the Government shall be repaid by the Government as soon as possible.

(3) The amount of any such advances by the Bank to the Government which may be outstanding at any one time shall not exceed ten per centum of the average ordinary revenue of the Government or ten per centum of the estimated ordinary revenue of the Government, whichever is the less.

(4) In subsection (3) —

“ordinary revenue” means all income or contributions to Government revenue not being loans, capital grants or other receipts of a capital nature;

“average ordinary revenue” means the annual average of the ordinary revenue of the Government over the three years (for which accounts have been laid before Parliament) next before the year in which any question under the subsection is raised;

“estimated ordinary revenue” means the ordinary revenue, as estimated in the estimates of the Government as laid before Parliament, for that year.

PART VIII
GENERAL POWERS OF THE BANK

- 29.** (1) Subject to the provisions of this Act, the Bank may, in the discharge of its functions — Powers of the Bank.
- (a) open accounts for, accept deposits from, and collect money for or on account of, the Government or any commercial bank or any public corporation;
 - (b) buy, hold, sell, discount or re-discount —
 - (i) bills of exchange, promissory notes or other credit instruments maturing within one hundred and eighty days from the date of their acquisition by the Bank;
 - (ii) Treasury Bills;
 - (c) buy, hold and sell securities issued or guaranteed by the Government, being securities issued to the public and maturing within twenty years from the date of their acquisition by the Bank, but so that the total amount of any such securities at any time held by the Bank which mature beyond five years after their date of issue (including any such securities held by the Bank as security for any loans or advances) shall not exceed twenty per centum of the demand liabilities of the Bank;
 - (d) for the purpose of promoting the development of a securities market, buy, hold and sell fixed term and fixed interest securities of any company, but so that the total amount of any such securities at any time held by the Bank (including any such securities held by the Bank as security for any loans or advances) shall not exceed five per centum of the total liabilities of the Bank;
 - (e) with the approval of the Minister, buy, hold and sell securities of any public corporation or any company, being a public corporation or company established for the purpose of developing a securities market, or financing economic development, in The Bahamas;
 - (f) make to any commercial bank or any public corporation, on such terms and conditions as may be determined by the Bank, loans or advances on the security of any of the following, that is to say —
 - (i) gold coins or gold bullion;

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- (ii) bills of exchange, promissory notes, other credit instruments, Treasury Bills or securities, being bills of exchange, promissory notes, credit instruments, Treasury Bills or securities of any kind mentioned in paragraph (b) or (c);
 - (iii) warehouse warrants or other documents to goods duly insured and secured by a letter of hypothecation from the owner; or
 - (iv) securities of any kind mentioned in paragraph (d) or (e).
- (2) Where any loan or advance is made on the security of any instrument mentioned in subsection (1)(f)(ii) —
- (a) the loan or advance shall not extend beyond the maturity date of the instrument itself or ninety-three days, whichever is the longer; and
 - (b) the amount of any such loan or advance shall not exceed eighty-five per centum of the market value of the instrument at the date of its acquisition by the Bank.
- (3) Subject to the provisions of this Act, the Bank may in the discharge of its functions do any other banking business incidental to or consequential upon the functions of the Bank.

24 of 2010, s. 6.

(4) Subject to the provisions of this Act, the Bank may purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and may provide ancillary services in connection with such activities.

Prohibited activities.

30. Except as expressly authorised by this Act, the Bank shall not —

- (a) engage in trade or otherwise have a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank, but so that it shall be the duty of the Bank to dispose as soon as may be of any such interest so acquired; or
- (b) grant unsecured loans or advances to any person.

24 of 2010, s. 7.

PART IX
ACCOUNTS, STATEMENTS AND AUDIT

31. The financial year of the Bank shall end on the thirty-first day of December. Financial year.

32. (1) The Bank shall, within four months after the end of each financial year, cause to be made and transmit to the Minister — Publication of accounts.

(a) a report of the operations of the Bank during that year; and

(b) a statement of the accounts of the Bank in respect of that year certified by the auditors appointed under subsection (1) of section 34.

(2) The Bank —

(a) shall, in the preparation of the said accounts, exclude from its calculations any profit or loss arising from any revaluation of any assets or liabilities of the Bank occasioned by any change in the value of the currency of The Bahamas or any foreign currency;

(b) shall credit or debit, as the case may require, any such profit or loss to an account (to be established and maintained by the Bank and called “the Exchange Equalisation Account”); and

(c) may from time to time transfer to the General Reserve provided for by section 7 any balance at any time in the said Account, or any part thereof, as the Bank thinks fit.

(3) The Minister shall as soon as possible after their receipt —

(a) cause a copy of the said report and statement of accounts to be laid before each House of Parliament; and

(b) cause a copy of the said statement of accounts to be published in the *Gazette*.

33. The Bank shall on or before the end of every month prepare and transmit to the Minister and publish in the *Gazette* a statement of the assets and liabilities of the Bank as at the last working day of the preceding month. Publication of statements.

34. (1) The accounts of the Bank shall be audited annually by auditors appointed by the Board with the approval of the Minister. Audit.

(2) Without prejudice to the provisions of subsection (1), the Minister may at any time require the Auditor-General to examine and report on the accounts of the Bank as a whole or any aspect of the operations of the Bank, and the Bank shall provide the Auditor-General with all necessary and proper facilities for such an examination.

PART X MISCELLANEOUS

Information may be required from financial institutions.
4 of 2015, s.4.

35. (1) The Bank may require by notice in writing a person to which this section applies to supply to the Bank in such form and within such time as specified in the notice such information or document as the Bank considers necessary to carry-out its functions under this Act and any other written law.

4 of 2015, s.4.

(2) This section applies to —

- (a) a financial institution;
- (b) a connected person; or
- (c) a person reasonably believed to have information relevant to an enquiry by the Bank.

4 of 2015, s.4.

(3) The Bank may exercise the power vested under subsection (1) for the purpose of assisting an overseas regulatory authority.

4 of 2015, s.4.

(4) Where a person fails to comply with a requirement under subsection (1), the Bank may apply to a Stipendiary and Circuit Magistrate for an order requiring the person to comply with the requirement or direction.

4 of 2015, s.4.

(5) Where, in connection with a requirement under subsection (1), the Bank considers it necessary to examine a person on oath, the Bank may apply to a Stipendiary and Circuit Magistrate to have that person examined by the court and to have the results of that examination sent to the Bank.

(6) The court shall process an application under subsection (5) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.

4 of 2015, s.4.

(7) Where documents are produced pursuant to subsection (1) the Bank may take copies of them or extracts from them.

(8) A person shall not be required under this section to disclose information or to produce a document which he

would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.

(9) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(10) In this section, “document” means a medium in which information is recorded. *4 of 2015, s.4.*

(11) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him —

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person —
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(12) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(13) In this section, “connected person” means a person who — *4 of 2015, s.4.*

- (a) is a director, officer, partner, employee, or agent of the financial institution’s group;
- (b) is a controller of the financial institution; or
- (c) is required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.

(14) A person who without reasonable cause —

- (a) fails to comply with a requirement of the Bank under subsection (1);
- (b) with intent to avoid the provisions of subsection (1) destroys, mutilates, defaces, hides or removes a document; or

4 of 2015, s.4.

- (c) wilfully obstructs an inquiry by the Bank made in accordance with the provisions of subsection (1),

shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one hundred thousand dollars and if the offence of which he is convicted is continued after conviction he commits a further offence and shall be liable to a fine of ten thousand dollars for every day on which the offence is continued.

- (15) Where —

- (a) an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly;
- (b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

- 36.** (1) The Bank may —

- (a) seek the assistance of the Commissioner of Police in the exercise of its powers under this law; and
- (b) authorise a competent person to exercise any of those powers.

(2) No such assistance shall be sought or authority granted under subsection (1) except for the purpose of investigating —

- (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or
- (b) a subject matter specified by the Bank, being a person who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.

(3) No person shall be bound to comply with a requirement imposed by a person exercising powers by

Assistance in
obtaining
information.

virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.

(4) Where the Bank seeks assistance or grants an authority under subsection (1), the assistance or authority shall be provided or executed in such manner as the Bank may determine; and where the Bank grants such an authority to a person, he shall make a report to the Bank in such manner as the Bank may require, on the exercise of that authority and the results of exercising it.

37. Any person who supplies or is concerned in supplying to the Minister or the Bank or any other person any statement, account, report or other information pursuant to this Act or any purpose for which any such statement, account, report or information is lawfully required thereunder, knowing the same to be false in a material particular, shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.

Supplying false statement.

38. (1) Subject to subsections (2) and (3), where a director, officer, employee, agent or adviser of the Bank discloses any information that he has acquired in the course of his duties or in the exercise of the Bank's functions under this or any other law, that director, officer, employee, agent or adviser of the Bank commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

Confidentiality.
4 of 2015, s.5.

- (2) Subsection (1) shall not apply to a disclosure —
- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
 - (b) for the purpose of assisting the Bank to exercise any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
 - (c) in respect of the affairs of a financial institution, or of a customer of a financial institution, with the authority of the financial institution, or customer, as the case may be, which consent has been voluntarily given;
 - (d) if the information disclosed is or has been available to the public from any other source;

23 of 2006, s. 4.

4 of 2015, s.5.

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- 4 of 2015, s.5.* (e) where the information disclosed is in a manner that does not enable the identity of any financial institution, or of any customer of a financial institution to which the information relates, to be ascertained;
- 2 of 2008, s. 7.*
4 of 2015, s.5. (f) to a person with a view to the institution of, or for the purpose of —
- (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; or
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Bank of his duties;
- 2 of 2008, s. 7.*
4 of 2015, s.5. (g) for the purposes of any legal proceedings in connection with —
- (i) the winding-up or dissolution of a financial institution; or
 - (ii) the appointment or duties of a receiver of a financial institution.

(3) Subject to subsection (7), the Bank may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Bank may take into account —

- (a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
- (b) the seriousness of the matter to which the inquiries relate, or the importance to the inquiries of the information sought in The Bahamas.

(5) The Bank may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Bank considers appropriate.

(6) In subsection (4)(a) “relevant country or territory” means the country or territory from which the request for assistance is made.

(7) Nothing in subsection (3) authorises a disclosure by the Bank unless —

- (a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank; and
- (c) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority’s regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
- (d) the Bank is satisfied that information provided following the exercise of its powers under subsection (3) will not be used in criminal proceedings against the person providing the information.

(8) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in the manner contemplated by subsections (4) and (5) of section 35, the Bank shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(9) The Bank, through any of its directors, officers, employees, agents or advisors may cooperate with, including, by sharing information that has been acquired in the course of exercising any functions under this or any other law, any other regulatory authority in The Bahamas where it is considered by the Governor that such cooperation or information may be relevant to the

17 of 2007, s. 2.

functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

Offences. **39.** Every offence against this Act shall be tried summarily.

Offences by corporations. **40.** Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against accordingly.

Exemption. Ch. 375. **41.** The Bank shall be exempt from tax under the Real Property Tax Act.

PART XI REPEAL, TRANSITIONAL, ETC.

Repeal. **42.** The Central Bank of The Bahamas Act is hereby repealed.

Transitional provisions. **43.** (1) Upon the day of the coming into operation of this Act —

- (a) every person who immediately before that day was appointed a director to the Board of Directors shall be deemed to have been appointed under this Act and shall continue to serve in that office for the unexpired portion of the term remaining to be served;
- (b) all real and personal property and every right and interest in property that immediately before that day was vested in the Bank under the repealed Act, shall, by force of this section, continue to be vested in the Bank for the purposes of this Act subject to any debts, trusts and liabilities affecting them;
- (c) all rights accruing or accrued to the Bank in respect of any property vested in the Bank by virtue of this section are vested in the Bank and may be enforced against the Bank;
- (d) all contracts, agreements, leases and undertakings made by the Bank and all securities

lawfully given to or by the Bank and in force immediately before that day shall have effect as contracts, agreements, leases and undertakings by and with the Bank and may be enforced by and against the Bank accordingly;

- (e) all debts due and moneys payable by the Bank and all claims, liquidated or unliquidated, recoverable against the Bank shall be debts due and moneys payable by and claims recoverable against the Bank;
- (f) any legal or other proceedings that might, but for this section, have been continued or commenced by or against the Bank may be continued or commenced by or against the Bank.

(2) A reference —

- (a) in a law of The Bahamas; and
- (b) in any document,

in force immediately before the date of the coming into operation of this Act to the Bank shall be read, deemed and taken to refer to the Bank.

(3) The persons who immediately before the coming into operation of this Act were appointed the Governor and Deputy Governor under the repealed Act shall continue under the title of Governor and Deputy Governor respectively under this Act as if those persons had been appointed under this Act on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.

(4) Any officer or servant appointed or employed by the Bank shall continue in office or employment with the Bank on the same terms and conditions as existed before the coming into operation of this Act.

44. Any licence, authority, approval or exemption granted by the Bank which is in force immediately before the coming into force of this Act —

- (a) shall continue to have effect after the coming into force of this Act as if granted by the Bank;
- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

45. Every act or thing done by the Bank prior to the commencement of this Act that would have been lawful if

Savings.

S.I. 128/2001.

Validation of acts
of the Bank.
24 of 2010, s. 8.

subsection (4) of section 29 had been in force at the time when it was done is hereby validated and declared to have been lawfully done by the Bank.

SCHEDULE (Section 3(5))*2 of 2008, s. 8***THE BANK***The Board of Directors*

1. There shall be a Board of Directors of the Bank which shall be responsible for the policy and general administration of the Bank and without affecting the generality of the foregoing keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs.

2. (1) The Board of Directors shall consist of the following persons to be appointed by the Governor-General —

- (a) a Governor, who shall be a person of recognized experience in financial matters and who shall be appointed for a period not exceeding five years and shall be eligible for re-appointment; he shall be appointed on such terms and conditions as may be set out in his instrument of appointment, and subject to paragraphs 6 and 7, such terms and conditions may not be altered to his disadvantage during his tenure of office; and
- (b) four other Directors, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, financial or commercial matters, industry, law or administration; such directors shall not be appointed or re-appointed for a period exceeding four years.

(2) Each Director shall, subject to the provisions of this paragraph, hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(3) The Board may make bye-laws regulating the conduct of the Bank's business and may make regulations and issue orders for the purpose of giving effect to the provisions of this Act.

3. (1) There shall be two Deputy Governors of the Bank, appointed by the Governor-General, who shall perform the functions conferred on them by this Act and under the supervision of the Governor such other functions as may be conferred on them by the Board, and in the event

of the inability to act or a vacancy in the office of Governor, one of the Deputy Governors designated by the Board shall exercise the functions of Governor.

24 of 2010, s. 9.

(2) Subject to subparagraph (1), a person may not be appointed or remain a director who is a member of either House of Parliament.

(3) The Deputy Governors may attend all meetings of the Board but shall not have the right to vote at those meetings.

(4) Notwithstanding subparagraph (3) of this paragraph where a Deputy Governor presides as Chairman under paragraph 4(1)(a) he shall have the right to vote.

4. The Governor, or in case of his absence or disability, a Deputy Governor designated by the Board, shall —

- (a) preside as chairman at the meetings of the Board;
- (b) serve as chief executive officer of the Bank responsible to the Board for the execution of its policy and the management of the Bank; and
- (c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, have the power to act, contract, and sign instruments and documents on behalf of the Bank and, pursuant to the resolutions of the Board, delegate such power to other officers of the Bank.

5. (1) The Governor and the Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not without the prior approval of the Minister receive any salary or supplementation thereto from any source other than the Bank nor occupy any other office or employment, whether remunerated or not.

(2) Notwithstanding subparagraph (1), the Governor and the Deputy Governors may —

- (a) act as a member or director of any board, committee or commission established by the Government whether by statute or otherwise; or
- (b) become a Governor, director or member of the board, by whatever name called, or any

international bank or international financial institution of which The Bahamas is a member.

6. Subject to paragraph 5, a person may not be appointed or remain a Director who —

- (a) is a member of either House of Parliament;
 - (b) has been convicted by a court of an indictable offence or other offence involving dishonesty;
 - (c) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas; or
 - (d) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution regulated by the Central Bank . *24 of 2010, s. 9.*
- 4 of 2015, s.6.*

7. If the Governor-General is satisfied that a Director —

- (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
- (b) is incapacitated by physical or mental illness; or
- (c) is otherwise unable or unfit to discharge the functions of a Director, the Governor-General may declare his office as Director to be vacant and shall notify that fact in such manner as the Governor-General thinks fit, and thereupon that office shall become vacant.

8. The Governor-General may appoint any person eligible to be appointed a Director to act temporarily in the place of any Director designated under paragraph 2 (b), where the substantive Director is absent or unable to act.

9. (1) Any Director may at any time by notice in writing to the Governor-General resign his office subject to subparagraph (2).

(2) Subject to subparagraph (3) a Director to which this paragraph refers may resign his office on giving to the Minister in writing —

- (a) in the case of the Governor; not less than three month's notice; or

(b) in the case of any other Director, not less than one month's notice.

(3) The Minister may waive the period of notice required by subparagraph (2).

10. The names of all the directors and every change therein shall be published in the Gazette.

11. The Bank shall pay to the Directors such remuneration (if any), whether by way of salary, honorarium or fees, as the Governor-General may determine and, if a person ceases to be a director and it appears to the Governor-General that there are special circumstances which may make it right that the person should receive compensation, the Governor-General may require the Bank to pay to that person a sum of such amount as the Governor-General may determine.

12. (1) The Board shall meet as often as may be required for the due performance of its functions and in any case at least once in every month.

(2) A meeting of the Board —

(a) may be convened by the Governor or, in his absence, a Deputy Governor designated pursuant to paragraph 4; or

(b) shall be convened on the written requisition of three Directors specifying the reasons for which the meeting is required.

(3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by a Deputy Governor designated pursuant to paragraph 4.

(4) Three Directors (of whom one shall be either the Governor or a Deputy Governor designated pursuant to paragraph 4) shall form a quorum at any meeting.

(5) A decision shall be adopted by a simple majority of the directors present and in the case of an equality of votes the person presiding at the meeting shall have and exercise a casting vote.

(6) A Director who is directly or indirectly interested otherwise than as a director or in common with other directors in a contract or other transaction made or proposed to be made by the Bank, shall disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge and any such disclosure shall be recorded in the

minutes of the Board and after the disclosure that the Director shall not take part in any deliberation or decision of the Board with respect to that contract or transaction.

(7) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.

(8) No act or proceeding of the Board shall be invalidated merely by reason of any vacancy in the Board or of any defect in the appointment of a director.

(9) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any director in respect of any act done bona fide in pursuance of the execution or intended execution of this Act.

(10) Where any director is exempt from liability by reason only of the provisions of subparagraph (9) the Bank shall be liable to the extent that it would be if that member were an employee or agent of the Bank.

Staff

13. The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Bank.

14. The Bank shall have power —

- (a) to pay to or in respect of officers or servants of the Bank such pensions or gratuities;
- (b) to make such payments towards the provisions for them of pensions or gratuities; or
- (c) to maintain for them such pension schemes (whether contributor or not), as the Bank may determine.

Authentication of Documents

15. (1) The seal of the Bank shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or a Deputy Governor and one other Director authorized by the Board to act in that behalf.

(2) Any document purporting to be a document duly executed under the seal of the Bank shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.