
CHAPTER 316**BANKS AND TRUST COMPANIES REGULATION**

LIST OF AUTHORISED PAGES

1 – 58 LRO 1/2017

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.
3. Licence required to carry on banking business or trust business.
- 3A. Stand-alone Money Transmission Businesses.
- 3B. Application.
- 3C. Non-applicable provisions.
- 3D. Application in case of a proposed company.
- 3E. Criteria to determine if person is fit and proper.
4. Application shall be made to the Governor.
5. Approval of Governor.
6. Shares, etc., not to be issued or transferred without approval.
- 6A. Grant of approval in relation to controllers of a licensee.
- 6B. Objection to an existing controller of a licensee.
- 6C. Power to make directions.
- 6D. Offences, penalties and defences.
7. Use of the word “bank”, etc.
8. Yearly statements to be published.
9. Governor may call for further information.
10. Information on insolvency.
11. Repealed.
12. Appointment, powers and duties of auditors.
13. Power and duties of the Inspector.
- 13A. Protection from liability.
- 13B. Notice to the Central Bank.
14. Inspection by foreign supervisory authority.
15. Appointed body to conduct inspection.
16. Confidentiality of reports of Inspector and Supervisory Authority.
17. Rules for inspection and supervision of banks.
18. Powers of the Governor.
- 18A. Surrender of licence.

- 18B. Temporary Management of Licensees.
- 18C. Chief Justice may make rules.
- 18D. Central Bank may publish actions.
- 18E. Prohibition orders.
- 18F. Bank to issue warning, decision notices.
- 18G. Variation, revocation of prohibition order.
- 19. Preservation of confidentiality.
- 20. Transfer to bank of unclaimed balances.
- 21. Charges for account to be by agreement.
- 22. Power of search.
- 23. Attorney-General's fiat.
- 24. Regulations.
- 24A. Contraventions and penalties.
- 24B. Penalties.
- 24C. Election.
- 24D. Publication of penalties.
- 24E. Proceedings.
- 24F. Determination of responsibility and penalty.
- 24G. Time Limit.
- 24H. Remission.
- 25. No derogation.
- 26. Appeal.
- 27. Fees.
- 28. Repeal.
- 29. Savings.

FIRST SCHEDULE — Rules of Inspection and Supervision of Banks.

SECOND SCHEDULE — *Repealed.*

THIRD SCHEDULE — Fees

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CHAPTER 316
BANKS AND TRUST COMPANIES REGULATION
An Act to make fresh provisions to regulate banks and trust companies within The Bahamas; and for connected purposes.

[Commencement 29th December, 2000]

*38 of 2000
S.I. 128/2001
1 of 2003
S.I. 48/2004
24 of 2006
21 of 2007
1 of 2008
23 of 2010
11 of 2011
S.I. 66/2013
25 of 2014
S.I. 33/2014
6 of 2015
24 of 2015*

1. This Act may be cited as the Banks and Trust Companies Regulation Act. Short title.
2. In this Act — Interpretation.
- “authorised agent” means a person designated by a bank or trust company under the provisions of section 4;
- “Bahamas Agent” means a Registered Representative who provides administrative services to a private trust company under a service agreement; *24 of 2006.*
- “Bank” has the meaning ascribed in section 2 of the Central Bank of The Bahamas Act; *6 of 2015, s.2
Ch. 351.*
- “bank” means any person lawfully carrying on banking business including the accepting of deposits of money withdrawable by cheque; *23 of 2010, s.2.*
- “banking business” means — *1 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
- (ii) without limiting the generality of the foregoing, includes the provision of money transmission services,
- and “banker” shall be construed accordingly;
- “Board of Directors” means the Board of Directors of the Central Bank provided for by subsection (4) of section 3 of the Central Bank of the Bahamas Act; Ch. 351.

Ch. 351.

“Central Bank” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act;

“company” means a company incorporated either under the laws of The Bahamas or under the laws of any other country or place;

6 of 2015, s.2.

“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;
- (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;

23 of 2010, s.2.

“deposit” means —

- (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person’s chequing, savings, demand or time account, or for which the institution has issued a certificate, receipt,

cheque, money-order, draft or other instrument in respect of which it is primarily liable; and

- (b) such other payments as the Bank may by regulation prescribe,

excluding, subject to sub-paragraph (iii), any unpaid balance of money or its equivalent received or held in relation to the provision of property other than currency, or services or the giving of security; and, for the purposes of this Act, an unpaid balance of money or its equivalent is referable to the provision of property or services or the giving of security only if —

- (i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services and is repayable only in the event that the property or services is or are not sold, hired or otherwise provided;
- (ii) it is paid by way of security for the performance of a contract or in respect of loss which may result from the non-performance of a contract; or
- (iii) it is paid by way of security for the delivery or return of any property whether in a particular state of repair or otherwise;

“Designated Person” means the individual or individuals (whether living or deceased) described as such within a Designating Instrument provided that if more than one Designated Person is described as such each Designated Person must be related to a Designated Person so described by consanguinity or some other family relationship; *24 of 2006, s. 2.*

“Designating Instrument” means an instrument in the form specified in the First Schedule to the Banks and Trust Companies (Private Trust Companies) Regulations; *24 of 2006, s. 2.*
Ch. 316, Sub.
Leg.

“Governor” means the person appointed as Governor under paragraph 1 of the Schedule to the Central Bank of The Bahamas Act; Ch. 351.

“Inspector” means the office of Inspector of Banks and Trust Companies established under section 13;

“licence” means a licence granted under section 4 or deemed to be so granted in accordance with that section;

“licensee” means any person holding a licence under the provisions of this Act and for the purposes of this Act “licensee” includes the branches or subsidiaries of a licensee operating outside of The Bahamas;

“Minister” means the Minister of Finance;

1 of 2008, s. 2.

“Money Transmission Agent” means any person carrying on money transmission business on behalf of a Money Transmission Service Provider;

1 of 2008, s. 2.

“Money Transmission Business” means the business of accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs and “money transmission services” shall be construed accordingly;

1 of 2008, s. 2.

“Money Transmission Service Provider” means any person carrying on a money transmission business;

24 of 2006, s. 2.

“other family relationships” means personal relationship between two persons —

(a) by marriage or former marriage; or

(b) which exists if —

(i) one is the child of the other, natural or adopted, legitimate or illegitimate; or

(ii) one is regarded by the other as his child;

6 of 2015, s.2.

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

“Private Trust Company” means a company incorporated under the provisions of the Companies Act, or the International Business Companies Act, which by its Memorandum and Articles of Association —

Ch. 308.

Ch. 309.

- (a) acts as trustee only for a trust or trusts created or to be created by or at the direction of a Designated Person or Designated Persons or an individual or individuals who are related by consanguinity or other family relationships to the Designated Person described within the Designating Instrument or, if there is more than one Designated Person so described, to a Designated Person, which Designated Person or Designated Persons need not be named in such company’s Memorandum and/or Articles of Association;
- (b) is required to have a Registered Representative; and
- (c) is not the subject of a notice of withdrawal made under section 4(7);

“Registered Representative” means a licensee or a Financial and Corporate Service Provider approved by the Central Bank, which provides to a private trust company, the services of a —

*24 of 2006, s. 2.**6 of 2015, s.2.*

- (i) secretary;
- (ii) director;
- (iii) Bahamas Agent,

and is resident in The Bahamas.

“Supervisory Authority” in relation to a country or territory outside The Bahamas means a foreign entity charged with the responsibility of conducting consolidated supervision of banking and trust business by organisations licensed in its home country;

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

“trust company” means any company carrying on trust business.

Licence required
to carry on
banking business
or trust business.

6 of 2015, s.3.

3. (1) No banking business shall be carried on from within The Bahamas whether or not such business is carried on in The Bahamas except by a company in possession of a valid licence granted by the Governor authorising the company to carry on such business.

(2) No trust company shall carry on trust business from within The Bahamas whether or not such business is carried on in The Bahamas unless it is in possession of a valid licence granted by the Governor authorising it to carry on such business.

24 of 2006, s. 3.

(3) No person shall be a Registered Representative (whether or not such business is carried on in or from within The Bahamas) unless that person is —

(a) in possession of a valid licence granted by the Governor pursuant to section 3(2) of this Act; or

Ch. 369.

(b) a licensee under the Financial and Corporate Service Providers Act, who has obtained the prior approval of the Governor to carry on such business.

Exemption.

24 of 2006, s. 3.

(4) The Governor may by Regulation exempt any specified person or class of persons, or any specified class or part of any class of banking or trust business from the provisions of subsections (1) and (2) of section 3, or of any regulations made pursuant to this Act, subject to such terms and conditions as may, in the Governor's opinion, be appropriate.

24 of 2006, s. 3.

24 of 2006, s. 3.

(5) Subject to subsection (4), the provisions of this Act shall, unless the context otherwise requires, apply *mutatis mutandis* to Private Trust Companies and to Registered Representatives.

6 of 2015, s.3.

24 of 2006, s. 3.

(6) For the avoidance of doubt, the Governor may impose any of the sanctions set out in section 18 (l)(b), (c), (d), (e), (f), (g), (h) and (i) of this Act, against a Private Trust Company or a Registered Representative where, in the opinion of the Governor, the Private Trust Company or a Registered Representative is, whether in The Bahamas or elsewhere —

(a) contravening any of the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which an approval pursuant to subsection 3(3), or an exemption pursuant to subsection 3(4), was granted; or

- (b) contravening or failing to comply with a direction of the Governor; or
- (c) carrying on its business in a manner that is detrimental to the reputation of The Bahamas.

(7) Every person who contravenes the provisions of this section or of section 3A shall be guilty of 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 five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand five hundred dollars for each day during which the offence continues.

3A. Any person, other than a bank or trust company licensed under this Act, who desires to carry on the business of providing money transmission services as —

- (a) a Money Transmission Service Provider shall submit an application to the Governor for a licence to carry on such services, in such form, and shall furnish the Governor with such information as the Bank may require;
- (b) a Money Transmission Agent shall, subject to such terms and conditions as the Governor may require, register with the Central Bank.

3B. The provisions of this Act shall, unless the context otherwise requires, apply *mutatis mutandis* to Money Transmission Service Providers.

3C. The provisions of sections 4, 8, 14, 15, 17, 20 and 21 shall not apply to Money Transmission Service Providers.

3D. 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. (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;

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- (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.

Application shall be made to the Governor.

6 of 2015, s. 7.

4. (1) Any company desirous of carrying on banking business and any company desirous of carrying on trust business from within The Bahamas shall make application to the Governor for the grant of a licence.

6 of 2015, s. 7.

(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

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- 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;
- (3) Whenever he considers it to be in the public interest, the Governor may refuse to grant a licence.
- (4) A licence shall not be granted to any bank or trust company having its head office or its registered office outside The Bahamas unless —
- (a) such bank or trust company designates and notifies to the Governor —
 - (i) a principal office in The Bahamas;
 - (ii) by name one of its officers who is to be the bank's or trust company's authorised agent in The Bahamas; and
 - (iii) by name another of its officers who in the absence or inability of the officer named under subparagraph (ii) is to be the bank's or trust company's authorised agent in The Bahamas;
 - (b) the Governor is satisfied that the bank or trust company is subject to adequate consolidated supervision by the Supervisory Authority and that the Supervisory Authority makes no objection to the establishment of the branch or subsidiary in The Bahamas;
 - (c) the Supervisory Authority is permitted to examine, wherever they are kept, the books of the bank or trust company;

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- (d) there are no constraints on internal and external audits imposed by the Supervisory Authority;
 - (e) the Supervisory Authority is informed where the bank or trust company will be managed;
 - (f) the Supervisory Authority has agreed to inform the Governor as soon as reasonably possible of any circumstances that arise which may seriously jeopardise the interests of creditors of the bank or trust company.

(5) It shall be a condition of every licence granted to a bank or trust company to which subsection (4) applies, that the bank or trust company shall forthwith notify the Governor in writing of any change of —

- (a) its principal office in The Bahamas; or
- (b) either or both of the officers designated pursuant to paragraph (a)(ii) or (iii) of subsection (4).

(6) In respect of a licence granted under subsection (2), the Governor may at any time —

- (a) make the licence subject to such conditions or limitations that are consistent with this Act and that relate to the business of the bank or trust company as the Governor considers necessary;
- (b) amend or revoke any authorisation contained in the licence or any condition or limitation to which the licence is subject:

Provided that before taking any action under paragraph (a) or (b) the Governor shall provide the bank or trust company with an opportunity to make representation regarding any proposed action.

24 of 2006, s. 4.

(7) The Governor may, by notice in writing, withdraw —

- (a) any approval granted pursuant to section 3(3); or
- (b) any exemption granted pursuant to section 3(4):

Provided that before withdrawing such approval or exemption, the Governor shall afford the Registered Representative or other relevant person an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being a period of less than seven days.

6 of 2015, s. 7.

(8) Whenever the Governor shall withdraw any approval or exemption under subsection (7) the Bank may cause notice of such action to be published in the Gazette. *24 of 2006, s. 4.
6 of 2015, s. 7.*

(9) Notwithstanding anything to the contrary in any trust instrument, where the Governor is satisfied that in the interests of a trust it is necessary for all or any of the trusts for which the company is acting as trustee to be transferred to a new trustee for administration by such trustee, the Governor may petition the court for that purpose. *24 of 2006, s. 4.*

(10) Wherever the Governor takes action pursuant to subsection (9), the court may, after hearing representations from the Governor or any other person appearing to the court to be affected, order the transfer of any such trust to a new trustee, and may make such supplemental or incidental orders or give such directions, as the court thinks fit. *24 of 2006, s. 4.*

5. A licensee incorporated or registered in The Bahamas shall not without the prior written approval of the Governor establish, outside of The Bahamas, a subsidiary, branch, agency or representative office. *Approval of Governor.*

6. (1) No shares in a company or any other securities of such company which is a licensee under this Act shall be issued and no issued shares shall be transferred or disposed of in any manner without the prior approval of the Governor: *Shares, etc., not to be issued or transferred without approval.*

Provided that the Governor may exempt any licensee or group or class of licensees from the provision of this section subject to such terms and conditions if any as the Governor may deem necessary.

(2) All dividends of the shareholders of a bank or trust company shall be paid out of the profits and not out of the subscribed capital of the bank or trust company.

6A. (1) Subject to subsection (2), the Central Bank may approve an application made under subsection (1) of section 6 where — *Grant of approval in relation to controllers of a licensee.*

- (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
- 6 of 2015, s. 8.*

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. (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 —

Objection to an existing controller of a licensee.

6 of 2015, s. 8.

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- (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.** (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

Power to make directions.
6 of 2015, s. 8.

(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 subparagraph (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 —

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- (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

Offences,
penalties and
defences.
6 of 2015, s. 8.

- (ii) exercise of their voting power in relation to the licensee.

6D. (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.

7. (1) Except with the approval of the Governor no person, other than a licensee acting under and in accordance with the terms of his licence, shall —

Use of the word
“bank”, etc.,

- (a) use or continue to use the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language, in the description or title under which such person is carrying on business from within The Bahamas whether or not such business is carried on in The Bahamas;
 - (b) make, or continue to make, whether directly or indirectly, any representation in any bill-head, letter, letter-head, circular, paper, notice or advertisement or by any other means whatsoever, whether similar to the foregoing or not, that such person is carrying on banking business or trust business or is authorised by the law of The Bahamas to carry on such respective business;
 - (c) in any manner whatsoever, solicit or receive deposits from the public.
- (2) Except with the approval of the Governor —
- (a) the Registrar General shall not register a company; and
 - (b) no company if already registered immediately before the twenty-fifth day of November, 1968, shall be entitled to remain registered on or after that date,

with a name which contains the words “bank”, “trust”, “trust company”, “trust corporation”, “savings” or “savings and loan” or any of their derivatives either in English or in any other language.

(3) Before giving his approval under subsection (1) or subsection (2) the Governor may require of any person such references and such other information and particulars as may be prescribed.

(4) Whenever he considers it to be in the public interest the Governor may withdraw any approval given under subsection (1).

(5) The Governor may refuse to grant a licence to a bank or a trust company, or if such bank or trust company is already in possession of a licence, the Bank may revoke

6 of 2015, s.9.

6 of 2015, s.9.

such licence, if in the Bank's opinion such bank or trust company is carrying on or intending to carry on banking or trust business, as the case may be, under a name which —

- (a) is identical with that of any company, firm or business house whether within The Bahamas or not or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated to suggest, falsely, the patronage of or connection with some person or authority whether within The Bahamas or not; or
- (c) is calculated to suggest, falsely, that such bank or trust company has a special status in relation to or derived from the Government of The Bahamas or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognised in The Bahamas as a national or central bank or trust company.

(6) Every person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding one thousand dollars for each day during which the offence continues.

(7) Where it appears to the Governor —

- (a) that a company has contravened any prohibition contained in subsection (1), and that no other effective means exists of dealing with the company in relation to the contravention; or
- (b) that a company is disentitled to remain registered by reason of being in breach of paragraph (b) of subsection (2), then in either such case the Bank may direct the Registrar General to give notice in writing to the company requiring it to show cause within thirty days why it should not be struck off the register of companies; and the Registrar General shall serve such notice accordingly, specifying the contravention or breach complained of, by causing the same to be delivered personally or sent by prepaid registered post to the secretary of the company at its registered office; and in the case of a notice sent by post it shall be deemed to have been served on

6 of 2015, s.9.

the fifth day after the posting of the registered envelope or packet containing the same.

(8) If any company fails within thirty days of the service of a notice under the provisions of subsection (7) to show cause why it should not be struck off the register or to satisfy the Governor that the contravention or breach complained of has been discontinued and will not be repeated, then the Governor may in writing direct the Registrar General to strike the company off the register; and the Registrar General shall act accordingly and thereupon the company shall be dissolved.

(9) Upon the removal of a company pursuant to this section the provisions of section 271(4) to 274 (inclusive) of the Companies Act shall have effect in relation to such company as they have effect in relation to any company removed from the register pursuant to that Act.

Ch. 308.

8. (1) Every licensee shall, within four months of the end of its financial year, publish a true and full yearly statement of its accounts and the auditor of the licensee shall certify that such statement is properly drawn up so as to exhibit a true and correct view of the state of the licensee's affairs as shown by the books of the licensee, provided that the Governor may, if the Bank sees fit, exempt any licensee from the provisions of this section.

Yearly statements to be published.
23 of 2010, s. 4.

6 of 2015, s.10.

(2) Such statement shall be signed by the manager or by such other person or officer of the licensee as may from time to time be authorised by the licensee to sign such statement on behalf of the licensee; and the correctness thereof shall be declared to in such manner and by such persons as the Governor may direct.

(3) Such statements shall be published in such form and manner and shall contain such particulars as the Central Bank may from time to time direct.

23 of 2010, s. 4.

(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.

6 of 2015, s.10.

(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).

6 of 2015, s.10.

9. (1) Every person who is subject under this Act to the supervision of the Central Bank shall furnish the Bank

Information to be furnished to the Central Bank.
6 of 2015, s.11.

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.

10. (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

Information on
insolvency.
6 of 2015, s.12.

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.

11. Repealed

6 of 2015, s.13.

12. (1) Subject to subsection (2), a licensee shall, within fourteen days of the appointment, notify the Central Bank of the appointment of the auditor of a licensee.

Appointment, powers and duties of auditors.

(2) The Central Bank may at any time require a licensee to replace an auditor by notice in writing delivered to the usual place of business of the licensee and auditor.

23 of 2010, s. 6.

(3) An auditor of a licensee shall —

(a) have the right of access at all times to the books, accounts and vouchers of the licensee and be entitled to require from the licensee such information and explanations as he reasonably considers necessary for the performance of his duties as auditor;

(b) give the Inspector immediate written notification of the following matters —

(i) his intention to resign before the expiration of his term of office as auditor;

(ii) his intention not to seek to be re-appointed as auditor; and

(iii) a decision to include a modification of his report on the licensee's financial statements

and, in particular, a qualification or denial of his opinion or the statement of an adverse opinion;

6 of 2015, s.14.

- (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.

6 of 2015, s.14.

- (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.

(6) This section shall apply to any matter of which an auditor or former auditor of a licensee has or had become aware in his capacity as auditor and which relates to the business or affairs of the licensee or any related company.

(7) In this section “related company”, in relation to a licensee, means —

- (a) a parent, subsidiary, or associate, company of the licensee;
- (b) a subsidiary company of a parent company of the licensee;
- (c) a parent company of a subsidiary company of the licensee; or
- (d) a company wherein a controlling shareholder of the licensee, either alone or with one or more associates, holds ten per cent (10%) or more of the shares or is entitled to exercise, or to control the exercise of, more than ten per cent (10%) of the voting power at a general meeting.

Power and duties
of the Inspector.

13. (1) There is hereby established within the Central Bank of The Bahamas the Office of Inspector of Banks and Trust Companies and the functions of that office shall be performed by such person as the Governor considers

suitable for the purpose of performing the powers and duties assigned to such Inspector under this Act.

- (2) It shall be the duty of the Inspector —
- (a) to maintain a general review of bank and trust company practice in The Bahamas;
 - (b) whenever he thinks fit and when required by the Governor to conduct on-site examinations and off-site supervision of the business of the licensee for the purpose of satisfying himself that the provisions of this Act, any other relevant Act administered by the Bank or the Financial Transactions Reporting Act are being complied with, that the licensee is in sound financial position and, after the conclusion of each examination or supervision, to report to the Governor, or in such cases where the Inspector is unable to conduct such examination or supervision, to appoint an auditor, at the expense of the licensee, to conduct such examination or supervision and to report thereon to the Governor; and the Governor may assess charges to recover the cost of such examination or supervision; *23 of 2010, s. 7.*
 - (c) to examine and to report on the several returns delivered to the Governor pursuant to section 8 of this Act; Ch. 368.
 - (d) to examine and make recommendations to the Governor with respect to applications for licences;
 - (e) to examine, by way of receipt of regular returns or in such other manner as he thinks necessary the affairs or business of any licensee carrying on business in or from within The Bahamas for the purpose of satisfying himself that the Act is being complied with and that the licensee is in a sound financial position;
 - (f) to inspect and supervise banks and trust companies in accordance with the Rules for Inspection and Supervision set out in the First Schedule.

(3) In the performance of his functions under this Act and subject to the provisions of section 19, the Inspector shall be entitled at all reasonable times —

- (a) to have access to such books, records, vouchers, documents, cash and securities of any licensee;

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- (b) to call upon the manager or any officer designated by the manager of any licensee for such information or explanation;
 - (c) to call upon the auditors of any licensee for such auditor's reports, working papers, information or explanation;

6 of 2015, s.15.

- (d) to require that the auditor of a licensee report to the Inspector on the extent of the procedures of the auditor in the examination of the annual financial statements and may require that the auditors enlarge the scope of that examination or direct that any other particular procedure be performed in any particular case;

6 of 2015, s.15.

- (e) to require that the auditor make a particular examination relating to the adequacy of the procedures adopted by the licensee for the safety of its creditors and shareholders or the beneficiaries of any trust, or any other examination as considered necessary by the Inspector,

as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(4) The Inspector with the approval of the Governor may in writing authorise any other person to assist the Inspector in the performance of his functions under this Act.

23 of 2010, s. 7.

(5) No duty of confidentiality to which an auditor or former auditor of a licensee may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector any information or opinion which is relevant to the functions and responsibilities of the Inspector under this Act, whether or not such information or opinion is provided in response to a request made by the Inspector.

- (6) Where any person —
 - (a) fails to comply with any requirement made by the Inspector, pursuant to subsection (3), within the period determined by the Inspector or within such further period as the Inspector may determine, it shall be presumed, in the absence of satisfactory evidence being furnished by the licensee justifying such a failure to comply with such requirement, that the licensee concerned has been

carrying on business in contravention of the terms of its licence with effect from the date of such failure;

- (b) knowingly or intentionally supplies false or misleading information to the Inspector or any person authorised to assist the Inspector;
- (c) as an auditor of a licensee in the performance of an audit, grossly violates the duties of such auditor as set out in subsection (1) of section 8; or makes untrue statements in an audit report or omits essential facts or fails to request pertinent information from the licensee or fails to report his findings to the Inspector; or
- (d) perpetrates a fraud or a crime which involves the making of misrepresentations in advertising or otherwise or using the domicile of The Bahamas for such purposes,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment and in the case of a continuing offence to a fine not exceeding two thousand dollars for each day during which the offence continues.

13A. (1) Subject to subsection (2), no civil or criminal liability for anything done or omitted in the discharge or purported discharge of their respective functions under this Act shall attach to —

Protection from liability.
23 of 2010, s.8.

- (a) any Director, officer, employee or agent of the Central Bank;
- (b) any person duly authorised by the Inspector pursuant to subsection (4) of section 13;
- (c) any person duly authorised by the Central Bank under or pursuant to —
 - (i) paragraphs (e), (f) and (g) of subsection (1) of section 18;
 - (ii) subsection (9) of section 18;
 - (iii) paragraph (f) of subsection (1) of section 18B.

(2) Subsection (1) shall not apply in any case where it is shown that an act or omission was in bad faith.

(3) The Board of Directors may indemnify the Central Bank against the cost of defending his actions while discharging his functions in good faith and the Central Bank may likewise indemnify against the cost of defending their actions while discharging their functions in good faith —

- (a) any officer, employee or agent of the Central Bank;
- (b) the Inspector;
- (c) any person duly authorised by the Inspector pursuant to subsection (4) of section 13; and
- (d) any person duly authorised by the Central Bank under or pursuant to —
 - (i) paragraphs (c) or (f) of subsection (1) of section 18;
 - (ii) subsection (9) of section 18;
 - (iii) paragraph (f) of subsection (1) of section 18B.

Notice to the Central Bank. *6 of 2015, s.16.*

13B. (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.

Inspection by foreign supervisory authority.

14. (1) A Supervisory Authority which is responsible for regulating a bank or trust company with a branch or subsidiary incorporated inside The Bahamas may upon written notification to and approval by the Inspector, conduct an inspection, under conditions of confidentiality, and subject to the conditions set out in subsection (2), solely for purposes of consolidated supervision, of the books and accounts of any branch or subsidiary of that bank or trust company in The Bahamas and may gather only such information as is necessary for the performance of consolidated supervision of any branch or subsidiary of that bank or trust company in The Bahamas, being information as to whether such branch or subsidiary of that bank or trust company as a constituent of the banking group —

- (a) is adequately organized;

-
- (b) has adequate risk management systems and appropriately identifies, limits and monitors risks inherent in that bank's business activities;
 - (c) is managed by persons who are fit and proper for the conduct of business activities;
 - (d) complies with capital-adequacy and risk-diversification requirements on a consolidated basis; and
 - (e) correctly complies with its reporting duties to the Supervisory Authority.

(2) Any branch or subsidiary of a bank or trust company to which subsection (1) applies shall, subject to the conditions set out below, permit the Supervisory Authority at all reasonable times, to conduct its inspection under subsection (1) where —

- (a) the Supervisory Authority has obtained the prior written approval of the Inspector;
- (b) the Supervisory Authority is prohibited by its domestic laws from divulging information obtained in the course of the inspection to any other person or where the Supervisory authority has given such written undertaking, as the Inspector may require, as to the confidentiality of the information obtained;
- (c) the Supervisory Authority has given to the Inspector a written undertaking to comply with the provisions of this Act and any condition imposed by the Inspector under this section;
- (d) the Supervisory Authority has given to the Inspector a written undertaking to use the information obtained exclusively for the purpose of consolidated supervision;
- (e) the Supervisory Authority has given to the Inspector a written undertaking that it shall not transmit information obtained during the course of its inspection to any other authorities or bodies without the written consent of the Inspector;
- (f) the Supervisory Authority agrees to subsequently report to the Inspector on the general results of the inspection.

(3) Where information concerning criminal or penal matters comes to the attention of the Supervisory Authority in the course of an inspection, and the Supervisory Authority wishes to convey such information to any person or entity in the Supervisory Authority's home country, or elsewhere, the Supervisory Authority shall not, without first obtaining the consent in writing of the Inspector, divulge such information to any person or entity in the home country of the Supervisory Authority or elsewhere:

Provided that in all cases, the Supervisory Authority shall inform the Inspector of any information concerning criminal or penal matters which come to the Supervisory Authority's attention in the course of an inspection.

(4) The Supervisory Authority, in carrying out an inspection under subsection (1), shall not have access to information relating to the assets under management or deposit operations of individual customers of a licensee:

Provided however, that where the Supervisory Authority during an inspection within The Bahamas wishes to gain access to information, which directly or indirectly relates to assets under management or deposit operations of any individual customer for the purpose of assessing any risks and addressing any specific supervisory concerns, the Supervisory Authority shall inform the Inspector and the Inspector shall gather the information himself and shall, upon being satisfied that the information meets the requirements set out in this subsection, transmit it to the Supervisory Authority requesting it.

(5) The Inspector or any authorized agent of the Inspector may, whenever the Inspector thinks fit or upon the request of a licensee accompany a Supervisory Authority during its inspection within The Bahamas of a licensee, pursuant to this section.

Appointed body
to conduct
inspection.

15. (1) A Supervisory Authority may, with the prior written approval of the Inspector, appoint another body to conduct the inspection referred to in subsection (1) of section 14 and in such event the provisions of this section and subsections (1), (2), (3), (4) and (5) of section 14 shall apply to the appointed body in the same way as they apply to the Supervisory Authority.

(2) The Inspector may, at any time after granting approval for an inspection under this section require the Supervisory Authority to comply with such other conditions as the Inspector may determine.

16. (1) Any person who has, by any means, access to a report or other information or document produced by the Inspector or a Supervisory Authority upon examination or inspection of a licensee under section 13 or 14, by reason of his acting in any of the following capacities —

Confidentiality
of reports of
Inspector and
Supervisory
Authority.

- (a) director, officer, employee or agent of any licensee or former licensee;
- (b) counsel and attorney, consultant or auditor of The Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;
- (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor shall not communicate the report or other information or document or any part thereof to any person other than a director, officer, employee or agent of the licensee without the prior written permission of the Inspector.

(2) The Inspector may grant permission under subsection (1) subject to such conditions as may be determined by the Inspector.

(3) If any person receives a report or any part of a report or other information or document referred to in subsection (1), knowing or having reasonable grounds to believe, that such report or other information or document or part thereof was communicated to him in contravention of this section, that person shall be guilty of an offence unless he proves —

- (a) that the report or other information or document or part thereof, as the case may be, was communicated to him contrary to his intention; and
- (b) where the communication was effected in any written form, that he has conveyed or has taken reasonable steps to convey the report or other information or document or part thereof, as the case may be, to the Inspector.

(4) Any person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Rules for
inspection and
supervision of
banks.
First Schedule.

17. The rules set out in the First Schedule shall be observed by the Inspector for the purpose of supervising banks and trust companies and their operations so as to ensure the preservation of the soundness and efficiency of the banking system.

Powers of the
Governor.
6 of 2015, s.17.

18. (1) The Governor may —

(a) by order, revoke the licence of a licensee —

- (i) if, in the opinion of the Governor, the licensee is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or the beneficiaries of any trust or other creditors or is either in The Bahamas or elsewhere contravening the provisions of this or any other Act or of any order or regulations made under this Act, or any term or condition subject to which the licence was issued;
- (ii) if the licensee has ceased to carry on banking business or trust business; or
- (iii) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved;

6 of 2015, s.17.

and he shall subsequently advise the Minister of his decision;

6 of 2015, s.17.

- (iv) if a licensee is, or appears likely to become, unable to meet its obligations as they fall due;

6 of 2015, s.17.

- (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;

6 of 2015, s.17.

- (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) apply to the Supreme Court for an order compelling the licensee to comply with the direction, cease the contravention or to do anything required to be done where the licensee —
 - (i) is contravening or has failed to comply with a direction of the Governor;
 - (ii) is contravening the Act; or
 - (iii) has omitted to do anything under the Act that is required to be done by the licensee; *6 of 2015, s.17.*
 - (c) impose, amend or vary conditions upon the licence;
 - (d) require the substitution of any director or officer of the licensee;
 - (e) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Governor thereon within three months of the date of his appointment;
 - (f) at the expense of the licensee, appoint a receiver or receiver-manager to assume control of the licensee's affairs in the interest of creditors who will have all the powers of a receiver or receiver-manager under the Companies Act; *23 of 2010, s. 9.*
Ch. 308.
 - (g) at the expense of the licensee assume the temporary management of the licensee if, in the opinion of the Central Bank, the licensee —
 - (i) is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or the beneficiaries of any trust or other creditors; or *6 of 2015, s.17.*
 - (ii) is, either in The Bahamas or elsewhere, contravening the provisions of this or any other Act, or of any order or regulations made under this Act, or any term or condition subject to which its licence was issued;

23 of 2010, s. 9.

- (h) issue directions requiring a licensee to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or that is in contravention of any law, or to perform a remedial act, or to do anything required to be done; and
- (i) require such action to be taken by the licensee as the Governor considers necessary.

6 of 2015, s.17.

6 of 2015, s.17.

6 of 2015, s.17.

6 of 2015, s.17.

6 of 2015, s.17.

6 of 2015, s.17.

6 of 2015, s.17.

(2) Whenever the Governor is of the opinion that any action under subsection (1)(a)(i) and (b) should be taken against a licensee, the Bank may forthwith suspend the licence of such licensee and before taking such action the Governor shall give that licensee notice in writing of the Bank's intention so to do setting out in such notice the grounds on which the Bank proposes to act and shall afford the licensee within such time as may be specified therein, not being less than seven days, an opportunity of submitting to the Bank a written statement of objection to such action, and thereafter the Governor shall advise the licensee of the Bank's decision.

(3) Whenever the Governor shall suspend a licence under subsection (2) the Bank may cause notice of such suspension to be published in the Gazette.

(4) Any suspension of a licence under subsection (2) shall be for a period of ninety days, or until the Governor takes action under subsection (1)(a)(i) or (b) or until the Governor notifies the licensee that the suspension is removed, whichever period is the shorter.

6 of 2015, s.17.

(5) Where the Governor suspends or revokes a licence under this section, the Bank may apply to the Supreme Court for an order that the licensee be forthwith wound up by the court in which case the provisions of the Companies Act relating to the winding up of a company by the court shall, *mutatis mutandis*, apply.

Ch. 308.

6 of 2015, s.17.

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

(7) Where a petition for the winding up of a licensee, or a person who has at any time been a licensee, is presented by a person other than the Central Bank, the petitioner shall without delay serve the Central Bank with a copy of the petition and the Central Bank may appear at the hearing of the petition. *23 of 2010, s. 9.*

(8) The petitioner shall, in addition to service of a copy of the petition, forward to the Central Bank without delay a copy of any document which relates to the petition for winding up and which is required to be sent to a licensee or former licensee or any of their respective depositors, beneficiaries, or other creditors. *23 of 2010, s. 9.*
6 of 2015, s.17.

(9) A person appointed for the purpose by the Central Bank may — *23 of 2010, s. 9.*

- (a) attend a meeting of creditors of a licensee or former licensee;
- (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
- (c) make representations as to any matter for decision at any such meeting.

18A. (1) A licensee which has ceased to carry on the business in respect of which a licence was granted may apply to the Central Bank to surrender its licence if the licensee — *Surrender of licence.*
23 of 2010, s. 10.

- (a) produces evidence that it has ceased to carry on such business, repaid all deposits held by it and transferred all trust assets held or administered by it; or
- (b) is being wound up voluntarily and produces evidence that it is solvent, able forthwith to repay all deposits held by it and all its other creditors, and has transferred all trust assets held or administered by it.

(2) Subject to subsection (3), the Central Bank may upon an application made pursuant to subsection (1) approve the surrender upon such terms and conditions as the Bank deems appropriate.

(3) The Central Bank may, where an application is made under paragraph (b) of subsection (1), apply to the Supreme Court for the licensee to be wound up by the Court or subject to its supervision.

Ch. 308.

(4) The provisions of the Companies Act relating to the winding up of a company by or subject to the supervision of the Supreme Court shall, *mutatis mutandis*, apply upon the making of an order by the Court pursuant to an application by the Central Bank under subsection (3).

Temporary
management of
licensees.

23 of 2010, s. 10.

18B. (1) The Central Bank shall, upon assuming the temporary management of a licensee under paragraph (g) of subsection (1) of section 18, have full and exclusive powers of management and control of the licensee including, without prejudice to the generality of the foregoing, power to —

- (a) continue or discontinue its operations;
- (b) stop or limit the payment of its obligations;
- (c) employ any necessary officers or employees;
- (d) execute any instrument in the name of the licensee;
- (e) initiate, defend and conduct in the name of the licensee any action or proceedings to which the licensee may be a party; and
- (f) appoint any person to manage on its behalf the licensee.

(2) The Central Bank shall, within ninety days of assuming the temporary management of a licensee —

- (a) restore full and exclusive powers of management and control of the licensee to its board of directors or owners as the case may be; or
- (b) revoke its licence and apply to the Supreme Court for an order that the licensee be forthwith wound up by that Court in accordance with the provisions of the Companies Act.

Ch. 308.

Chief Justice
may make rules.
23 of 2010, s. 10.
6 of 2015, s.18.

18C. The Chief Justice may make rules governing the procedure in relation to applications to the Supreme Court pursuant to sections 18, 18A, 18B, 18F(6) and 18G(6).

Central Bank
may publish
actions.
23 of 2010, s. 10.
6 of 2015, s.19.

18D. The Central Bank may, if satisfied that the circumstances so warrant, at any time make public and publish notice of any action it has taken under paragraphs (a) through (f) or (h) of subsection (1) of section 18, section 18A, or under section 18F.

Prohibition
orders.
6 of 2015, s.20.

18E. (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. (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.

Bank to issue warning, decision notices.
6 of 2015, s.20.

(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.

Variation,
revocation of
prohibition order.
6 of 2015, s.20.

18G. (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.

19. (1) No person who has acquired information in his capacity as —

Preservation of confidentiality.

(a) director, officer, employee or agent of any licensee or former licensee;

(b) counsel and attorney, consultant or auditor of the Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;

(c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;

(d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor;

(e) the Inspector under the provisions of this Act;

-
- (f) a Supervisory Authority or as a director, officer, employee or agent of a Supervisory Authority,

shall, without the express or implied consent of the customer concerned, disclose to any person any such information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee or relating to any application by any person under the provisions of this Act, as the case may be, except —

- (i) for the purpose of the performance of his duties or the exercise of his functions under this Act, if any;
- (ii) for the purpose of the performance of his duties within the scope of his employment;
- (iii) when a licensee is lawfully required to make disclosure by any court of competent jurisdiction within The Bahamas, or under the provisions of any law of The Bahamas;
- (iv) for the purpose of enabling or assisting the Governor to exercise any functions conferred upon the Bank by any written law;
- (v) to a person with a view to the institution of, or for the purpose of —
 - (A) criminal proceedings;
 - (B) 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
 - (C) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Central Bank of his duties.

6 of 2015, s.21.

(2) Subsection (1) shall not apply in any case where in accordance with such conditions as the Inspector may determine, information of such class or classes as the Inspector may from time to time approve, is transmitted from a licensee to the head office, a branch or subsidiary of that licensee outside of The Bahamas, solely for the

purposes of carrying out collation, synthesis or processing of information on behalf of the licensee.

(3) In any civil proceedings where information is likely to be disclosed in relation to a customer's bank account, those proceedings may, if the court, of its own motion or on the application of a party to the proceedings, so orders, be held *in camera* and the information shall be confidential as between the court and the parties thereto.

(4) No person shall publish the name, address or photograph of any parties to those civil proceedings as are referred to in subsection (3) or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or after they have been terminated.

(5) The Governor may, subject to the provisions of section 14(2), provide information on the beneficial owners, directors, officers and operations of a licensee (including any report produced by the Inspector pursuant to any inspection or examination of the licensee) to the Supervisory Authority which is responsible for regulating the head office of the licensee for the purpose of consolidated supervision of the licensee by the Supervisory Authority.

(6) To facilitate regulatory cooperation within The Bahamas, the Governor or any director, officer, employee, agent or advisor of the Bank may cooperate with any other domestic regulatory authority, including, by sharing information on the beneficial owners, directors, officers and operations of a licensee and any of its affiliates, or any other information acquired in the discharge of functions and duties under this or any other Act, where the Governor considers that such cooperation or information may be relevant to the 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.

21 of 2007, s. 2.

(7) Nothing contained in this section shall —

- (a) prejudice or derogate from the rights and duties subsisting at common law between a licensee and its customer;
- (b) prevent a licensee from providing upon a legitimate business request in the normal course of business a general credit rating with respect to a customer; or

Ch. 368.

- (c) prevent the Inspector from sharing information relating to the identity, assets, liabilities, transactions or accounts of a customer of a licensee with the Financial Intelligence Unit where he believes that a suspicious transaction was not reported as required under the Financial Transactions Reporting Act.

23 of 2010, s. 11.

(8) The Central Bank in the exercise of its co-operative functions may, with the approval of the Central Bank, enter into memoranda of understanding with Supervisory Authorities for the purpose of facilitating the consolidated supervision of its licensees.

23 of 2010, s. 11.

(9) No memorandum of understanding entered into pursuant to subsection (8) may call for assistance beyond that which is provided for by this Act or relieve the Central Bank of any of its functions or duties under this Act.

(10) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Transfer to Bank
of unclaimed
balances.

20. (1) Where a liability exists by reason of a deposit account at a bank in The Bahamas in respect of which no transaction has taken place, or no statement of account has been requested or no written acknowledgement has been received from the customer, during a period of seven years —

- (a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated; and
- (b) in the case of any other deposit, from the date on which the last customer initiated transaction occurred or a statement of account was requested or acknowledged by the customer, whichever is the later,

the bank shall pay to the Central Bank an amount equal to the amount owing by the bank in respect of the account and payment accordingly discharges the bank from all liability in respect of the account.

(2) Where a bank has paid to the Central Bank an amount in respect of an account, it shall keep all signature cards, signing authorities and records relating to the

account or microfilm or electronically stored copies thereof until notified by the Central Bank that they are no longer required.

(3) In this section “deposit account” includes deposit accounts of gold and silver bullion.

21. No bank shall directly or indirectly charge or receive any sum of money for the establishment, maintenance or service of an account unless such charge is made by express and specific agreement between the bank and the customer.

Charges for account to be by agreement.

22. (1) If a Magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 13(4) to assist the Inspector either —

Power of search.

- (a) that a licence has been suspended; or
- (b) that there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information or in any vehicle, vessel or aircraft so specified; or
- (c) that any books, records, vouchers, documents, cash or securities which ought to have been produced under section 13(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Inspector or such person authorised under section 13(4) or any police officer together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search the premises or, as the case may be, the vehicle, vessel or aircraft.

(2) The person authorised by any such warrant as aforesaid to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing to be evidence of the

commission of any offence against this Act or any such books, records, vouchers, documents, cash or securities found in the premises or in the vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under section 13(3):

Provided that no female shall, in pursuance of any warrant issued under this subsection, be searched except by a female.

(3) Where by virtue of this section a person has any power to enter any premises he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Every person who shall obstruct the Inspector or any other person in the exercise of any powers conferred on him by virtue of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Attorney-
General's fiat.

23. (1) No prosecution in respect of any offence committed under this Act shall be instituted except by or with consent of the Attorney-General.

(2) Any penalty incurred under this Act shall be paid to the Central Bank.

23 of 2010, s. 12.

(3) Notwithstanding any provision in any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence committed under this Act may be commenced at any time within the period of three months from the date on which evidence sufficient, in the opinion of the Attorney General, to justify a prosecution for the offence comes to his knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires.

23 of 2010, s. 12.

(4) For the purposes of this section, a certificate purporting to be signed by the Attorney General as to the date on which the evidence referred to in subsection (3) came to his knowledge shall be conclusive.

Regulations.
6 of 2015, s.22.

24. The Governor may make regulations for all or any of the following purposes —

(a) to prescribe the information, particulars and references which may be prescribed under section 4(2) and section 7(3);

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- (b) to prescribe the facts or matters which are likely to be of material significance for the discharge of the Inspectors functions under this Act;
 - (c) generally for carrying out the purposes or provisions of this Act into effect.

24A. (1) The Governor may make regulations —

Contraventions
and penalties.
6 of 2015, s.23.

(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 —

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- (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).

24B. (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 —

*Penalties.
6 of 2015, s.24.*

- (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.

Election.
6 of 2015, s.25.

24C. 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.

Publication of penalties.
6 of 2015, s.25.

24D. 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.

Proceedings.
6 of 2015, s.25.

24E. 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.

Determination of responsibility and penalty.
6 of 2015, s.25.

24F. (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. (1) The Central Bank may not commence proceedings in respect of a designated contravention —

*Time Limit.
6 of 2015, s.25.*

- (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. (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.

*Remission.
6 of 2015, s.25.*

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- (2) A remission may be conditional or unconditional.
- No derogation. **25.** (1) The provisions of this Act shall have effect in addition to and not in derogation of any other provisions having the force of law in the Bahamas.
- (2) This Act shall not apply to the Post Office Savings Bank.
- Appeal. **26.** (1) An appeal shall lie to the Supreme Court from any decision of the Governor —
- (a) revoking a licence under section 4(6), section 7(5) or section 18;
 - (b) withdrawing any approval under section 7(4);
 - (c) requiring a licensee to take certain steps which the Governor may specify under section 18.
 - 6 of 2015, s.26. (d) serving a notice of objection under subsection (1) of section 6B;
 - 6 of 2015, s.26. (e) serving a decision notice under subsection (4) of section 18F or subsection (5) of section 18G;
 - 6 of 2015, s.26. (f) serving a notice in respect of a serious contravention or a very serious contravention under section 24E.
- (2) An appeal against the decision of the Governor shall be on motion and the appellant within twenty-one days after the day on which the Governor has given its decision shall serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of his intention to appeal and of the general ground for his appeal:
- 6 of 2015, s.26.
- Provided that any person aggrieved by the decision of the Governor may upon notice to the Attorney-General apply to the Supreme Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.
- (3) The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Governor's decision and all papers relating to the appeal:

Provided that the Attorney-General shall not be compelled to disclose any information if he considers that the public interest would suffer by such disclosure.

(4) The Registrar shall set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the Supreme Court may direct.

(5) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely and shall not, unless by leave of the Supreme Court, go into any matters not raised by such statement.

(6) The Supreme Court may adjourn the hearing of the appeal and may upon hearing thereof confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the Supreme Court thereon to the Governor.

(7) An appeal against a decision of the Governor shall not have the effect of suspending the execution of such decision.

27. (1) The provisions of the Third Schedule shall have effect for the payment of fees in respect of the matters mentioned in that Schedule, and all such fees shall be collected by the Central Bank.

Fees.
Third Schedule.
24 of 2015, s.2.

(2) All fees paid pursuant to subsection (1) and the Third Schedule shall be placed in the Consolidated Fund.

25 of 2014, s. 2.
Third Schedule.

(2A) For the purposes of funding regulatory activity of the Central Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas and the Compliance Commission, the Central Bank shall withhold such amount of the fees collected under subsection (2) as may be agreed with the Minister and shall remit the balance to the Treasurer.

24 of 2015, s.2.

(3) Any such regulations which increase the amount of any fees payable under this Act shall be exempt from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament.

Ch. 2.

(4) In subsection (3) the expression “affirmative resolution of both Chambers of Parliament” in relation to regulations means that the regulations are not to come into

operation unless and until affirmed by a resolution of each of those Chambers.

Third Schedule. (5) If any person fails to comply with any requirement of subsection (1) and the Third Schedule, he, or, where such person is a company, the company and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default, shall on summary conviction be liable, for every day during which the default continues, to a fine not exceeding one thousand dollars.

Repeal. **28.** The Banks and Trust Companies Regulation Act and the Banks Act are hereby repealed.

Savings. **29.** Any licence, authority, approval or exemption granted under the repealed Act 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 under this Act;
- (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.

FIRST SCHEDULE (Section 17)*6 of 2015, s.27.***RULES FOR INSPECTION AND SUPERVISION OF
BANKS AND TRUST COMPANIES**

1. 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

Duties of
Inspector.

with the policy established by the Basel Committee for cross-border supervision.

Interpretation.

2. 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.

SECOND SCHEDULE

Repealed by No. 21 of 2007.

THIRD SCHEDULE (Section 27)

FEES

1. Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say —

Matters in respect of which fee is payable	Amount of fee \$
(a) Appointment of a licensee by the Controller of Exchange as an authorised dealer as defined in paragraph (1) of regulation 42 of the Exchange Control Regulations in the case where the licensee as per its last audited financial statement —	
(i) has assets not exceeding \$250 million	450,000
(ii) has assets exceeding \$250 million but not exceeding \$500 million.....	600,000
(iii) has assets exceeding \$500 million but not exceeding \$1 billion.....	1,200,000
(iv) has assets exceeding \$1 billion but not exceeding \$1.5 billion.....	1,800,000
(v) has assets exceeding \$1.5 billion but not exceeding \$2 billion	2,400,000
(vi) has assets exceeding \$2.0 billion	3,750,000
(b) Continuance in being on the first day of January in any year as a person appointed as mentioned in sub-paragraph (a) of this paragraph in the case where the licensee as per its last audited financial statements —	
(i) has assets not exceeding \$250 million	450,000
(ii) has assets exceeding \$250 million but not exceeding \$500 million	600,000

S.I. 48/2004
 24 of 2006
 S.I. 16/2006
 1 of 2008
 S.I. 94/2008
 S.I. 66/2013
 S.I. 33/2014

(iii)	has assets exceeding \$500 million but not exceeding \$ 1 billion.....	1,200,000
(iv)	has assets exceeding \$1 billion but not exceeding \$1.5 billion.....	1,800,000
(v)	has assets exceeding \$1.5 billion but not exceeding \$2 billion.....	2,400,000
(vi)	has assets exceeding \$2.0 billion.....	3,750,000
(c)	Appointment of a licensee as authorised agent for a beneficial owner of investment currency or foreign currency securities pursuant to the Exchange Control Regulations in the case where the licensee as per its last audited financial statement ²	
(i)	has assets not exceeding \$5 million	90,000
(ii)	has assets exceeding \$5 million but not exceeding \$20 million	150,000
(iii)	has assets exceeding \$20 million	225,000
(d)	Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (c) of this paragraph in the case where the licensee as per its last audited financial statement —	
(i)	has assets not exceeding \$5 million	90,000
(ii)	has assets exceeding \$5 million but not exceeding \$20 million	150,000
(iii)	has assets exceeding \$20 million	225,000
(e)	Grant of licence to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee —	
(i)	has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and	
(ii)	has not been appointed as mentioned in subparagraph (a) or (c) of this paragraph	70,000
(f)	Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (e) of this paragraph	70,000
(g)	Grant of licence to carry on trust business without any limitation on the persons with or	

² The fees set out in sub-paragraphs (c) to (t) shall, apply from 1st day of January 2014, S.I. 66/2013

for whom such respective business may be carried on, where the licensee —	
(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and	
(ii) has not been appointed as mentioned in sub-paragraph (a) or (c) of this paragraph	52,500
(h) Grant of licence to carry on banking business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on where the licensee —	
(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and	
(ii) has not been appointed as mentioned in subparagraph (a) or (c) of this paragraph	70,000
(i) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (g) of this paragraph	70,000
(j) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (g) of this paragraph	52,500
(k) Grant of licence to carry on banking business solely with a person specified in the licence.	30,000
(l) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (t) of this paragraph	30,000
(m) Grant of licence to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the license —	
(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and	
(ii) has not been appointed as mentioned in subparagraph (a) or (c) of this paragraph	52,500
(n) Continuance in being on the first day of	52,500

January in any year as a person licensed as mentioned in sub-paragraph (k) of this paragraph	
(o) Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence.	30,000
(p) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (k) of this paragraph	30,000
(q) Grant of licence solely to carry on the trust business specified	10,000
(r) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (m) of this paragraph.	10,000
(s) Grant of any licence not mentioned in subparagraph (e), (g), (i), (k) or (m) of this paragraph.	2,000
(t) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (o) of this paragraph.	2,000
(u) On commencement of the business of a private trust company.	5,250
(v) Continuance in being on the first day of January in any year as a private trust company mentioned in paragraph (q).....	3,750
(w) On commencement of the business of a Money Transmission Service Provider.....	10,000
(x) Continuance in being on the first day of January in any year; as a Money Transmission Service Provider mentioned in paragraph (s).....	10,000

S.I. 33/2014
1 of 2008, s. 5.

2. Where any person by reason of falling within a class mentioned in subparagraphs (a) to (t) of paragraph 1 of this Schedule has paid a fee therein prescribed in respect of that class for any year and would, but for provisions of this paragraph of this Schedule, be required to pay in that year a further fee or further fees by reason of such person during that year coming additionally within another such class as aforesaid, such person shall not be required to pay in respect of fees under this Act for that year more in total than the highest fee prescribed in respect of any of the classes within which such person falls.

1 of 2008, s. 5.
1 of 2008, s. 5.

3. As respects the fees specified at subparagraph (b), (d), (f), (h), (j), (l), (n), (r) and (t) of paragraph 1 of this Schedule —

- (a) not more than sixty days grace, to be calculated from the first day of January in each year, may be allowed by the Treasurer for the payment of the fees payable in any year; and
- (b) no such fees shall be payable in any year where the original appointment or licence to which such fee relates was made or granted on or after the first day of September in the preceding year.

11 of 2011, s.2.

Ch. 308.

Ch. 309.

(4) Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 3 of the *Third Schedule* to, the Companies Act and pursuant to subsection (1) of section 176 of, and paragraph 3 of the *Schedule* to, the International Business Companies Act shall be deducted from any fees payable by such person in that year under this Act.