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TABLE OF CONTENTS

Act No.	TITLE	PAGE
22	Banks And Trust Companies Regulation Act, 2020	5
23	Protection of Depositors (Amendment) Act, 2020	114
24	Central Bank of The Bahamas Act, 2020	138

BANKS AND TRUST COMPANIES REGULATION ACT, 2020

Arrangement of sections

Section

PART I - PRELIMINARY **5**

1. Short title....5
2. Interpretation....5

PART II – BANKING AND TRUST SERVICES 11

3. Application of Act....11

PROHIBITIONS 11

4. Prohibition of the use of the word "bank", etc....13
5. Prohibition against carrying on banking, trust or money transmission business without a licence....13

APPLICATION AND GRANT OF A LICENCE 13

6. Application for a bank or trust company licence....14
7. Consideration of application by the Bank....14
8. Criteria for Bank in determining if a person is fit and proper....15
9. Grant of a licence....15
10. Conditions on grant of a licence....16

MONEY TRANSMISSION BUSINESSES AND AGENTS 16

11. Application for a licence for a Money Transmission Service Provider....16
12. Registration of Money Transmission Agents....17

REGISTERED REPRESENTATIVES 17

13. Registered Representatives....17
14. Bank may cancel registration, etc. 17

PART III – OWNERSHIP OF LICENSEES **18**

TRANSFER OR OTHER DISPOSITION OF SHARES 18

15. Shares, etc., not to be issued or transferred without approval....18

CONTROLLERS 18

16. Grant of approval in relation to controllers of a licensee....19
17. Objection to an existing controller or indirect controller of a licensee....19
18. Power to make directions....20
19. Offences....22

PART IV – DUTIES AND OBLIGATIONS OF LICENSEES 23

20. Licensee to publish statement of accounts....23
21. Licensee to notify Bank of appointment of auditor....24
22. Powers and obligations of auditors....24
23. Licensee to notify Bank of material information....25
24. Licensee to furnish information to Bank....26
25. Licensee to inform on potential Insolvency....26
26. Licensee to obtain approval to have a subsidiary, etc. outside The Bahamas....27

PART V - SUPERVISION OF LICENSEES AND REGISTRANTS 27

INSPECTOR OF BANKS AND TRUST COMPANIES 27

27. Establishment of Office of Inspector of Banks and Trust Companies....27
28. Duties of Inspector....28
29. Sanctions authorized by Bank....30
30. Surrender of Licence....33
31. Winding up of non-banking licensees and registrants....33

FOREIGN SUPERVISORY AUTHORITIES 33

32. Inspection by supervisory authority....33
33. Supervisory Authority may appoint other body to conduct inspection....35
34. Confidentiality of reports of Inspector and Supervisory Authority....35

PART VI – SPECIAL RESOLUTION FRAMEWORK FOR BANKS 36

RECOVERY OF BANKS IN FINANCIAL DISTRESS, ETC. 36

35. Objectives of Resolution framework....36
36. Recovery Plans....37
37. Resolution Plans....38

STATUTORY ADMINISTRATION 39

38. Appointment of a Statutory Administrator....39
39. Expenses of the statutory administrator. 41
40. General powers of the statutory administrator....41
41. Central Bank Oversight of Statutory Administrator....42
42. Suspension of payment of capital distributions....43
43. Moratorium and effect of statutory administration on proceedings....43
44. Taking control of the bank....43
45. Inventory and plan of action to resolve the bank....45
46. Capital increase by existing shareholders....45
47. Mergers, sales and other restructuring....47
48. Termination of statutory administration....49
49. Licensing of body corporate as Bridge Institution....49
50. Transfer of assets, rights or liabilities to asset management vehicle....52
51. Management of assets by asset management vehicle....52
52. Onward property transfer from asset management vehicle....52
53. Central Bank to report to Minister....53
54. Disposal of Proceeds....53

55. Recovery of costs following application of stabilization option 53
56. Payment from the resolution funding account 54
57. Repayment of the resolution funds 56
LIQUIDATION OF BANKS 56
58. Liquidation of banks 56
59. Voluntary liquidation of banks 56
60. Compulsory winding up and appointment of liquidator 58
61. Powers and duties of the liquidator 59
62. Termination of Contracts 62
63. Notice of Claims 63
64. Objections 64
65. Distributions 64
66. Avoidance of pre-liquidation transfers 64
67. Priority of claims 67
68. Final reporting 69
69. Automatic Termination Rights 69
70. Creditor Safeguards 69
71. Shareholder and Creditor Safeguards 70
72. Independent valuer to meet qualifications 73

PART VII - MISCELLANEOUS **74**
73. Central Bank may publish action 74
74. Prohibition orders 74
75. Bank to issue warning and decision notices 75
76. Variation, revocation of prohibition order 76
77. Preservation of confidentiality 77
78. Treatment of dormant accounts held by banks 80
79. Charges for account to be by agreement 85
80. Power of search 85
81. Attorney-General's fiat 87
82. Regulations 87
83. No Derogation 87
84. Appeal 88
85. Fees and levy 89
86. Repeal. 90
87. Savings 90

FIRST SCHEDULE **91**
INSPECTION AND SUPERVISION OF BANKS AND TRUST COMPANIES 91

SECOND SCHEDULE **92**
FEES AND LEVY 92

THIRD SCHEDULE **96**
SECURITIES TRANSFER INSTRUMENTS 96

FOURTH SCHEDULE 103
PROPERTY TRANSFER INSTRUMENTS 103

No. 22 of 2020

BANKS AND TRUST COMPANIES REGULATION ACT, 2020

AN ACT TO REPEAL THE BANKS AND TRUST COMPANIES REGULATION ACT AND TO CONSOLIDATE AND MODERNISE THE LAW REGULATING BANKS AND TRUST COMPANIES WITHIN THE BAHAMAS AND FOR CONNECTED MATTERS

[Date of Assent - 24th July, 2020]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title.

(1) This Act may be cited as the Banks and Trust Companies Regulation Act, 2020.

(2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation.

In this Act —

"asset management vehicle" means a company that is—

(a) incorporated under the Companies Act (*Ch. 308*);

(b) limited by shares;

(c) wholly or partially owned by the Bank and or the Government;

(d) created for receiving some or all of the assets, rights and liabilities of a bank under statutory administration or a bridge institution;

"authorised agent" means a person designated by a bank or trust company under the provisions of section 6;

"Bahamas Agent" means a Registered Representative who provides administrative services to a private trust company under a service agreement;

"bank" means any person lawfully carrying on banking business including the accepting of deposits of money withdrawable by cheque;

"banking business" means —

(a) 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

(b) without limiting the generality of the foregoing, includes the provision of money transmission services, and **"banker"** shall be construed accordingly;

"bridge institution" is a company that is —

(a) incorporated under the Companies Act (*Ch. 308*);

(b) limited by shares;

(c) owned by the Central Bank; and

(d) created for receiving a transfer, and effecting a timely disposal of the assets, rights and liabilities of a bank under statutory administration; and

(e) licensed under this Act;

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

"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 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;

"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 subparagraph (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 by way of security 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;

"Designating Instrument" means an instrument in the form specified in the *First Schedule* to the Banks and Trust Companies (Private Trust Companies) Regulations;

"Domestic Systemically Important Institution" or **"DSII"** means a bank licensed under this Act and which reported total consolidated domestic liabilities of such amount as the Governor may determine by notice, to the Bank for the preceding financial year of that bank;

"Financial and Corporate Service Provider" means a person that is licensed pursuant to the Financial and Corporate Service Providers Act (*Ch. 369*);

"Governor" means the person appointed as Governor under paragraph 2 of the Schedule to the Central Bank of The Bahamas Act, 2020;

"indirect controller" means any person, whether acting alone or together with any other person, and whether with or without holding shares or controlling voting power in a licensee —

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

(b) who is in a position to determine the policy of the licensee, but does not include any person —

(i) who is a director or other officer of the licensee whose appointment has been approved by the Bank; or

(ii) 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 him in his professional capacity;

"Inspector" means the office of Inspector of Banks and Trust Companies established under section 27;

"insolvent" has the meaning ascribed to it in section 187 of the Companies Act (*Ch. 308*);

"levy" means the amount payable by a DSII for the DSII's preceding financial year pursuant to section 85(2);

"levy threshold amount" means such sum as the Governor may determine by Notice;

"licence" means a licence granted under section 9 or 11 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 responsible for Finance;

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

"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;

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

"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;

"penalty" means an administrative monetary penalty imposed by the Bank pursuant to section 47 of the Central Bank of The Bahamas Act, 2020;

"Private Trust Company" means a company incorporated under the provisions of the Companies Act (*Ch. 308*), or the International Business Companies Act (*Ch. 309*), which by its Memorandum and Articles of Association —

(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 Articles of Association or Memorandum or Articles of Association;

(b) is required to appoint a Registered Representative; and

(c) is not the subject of a notice of withdrawal made under section 14(1);

"Registered Representative" means a person resident in The Bahamas that is licensed pursuant to section 13 or a Financial and Corporate Service Provider registered with the Central Bank, which provides to a Private Trust Company, the services of a —

(a) secretary;

(b) director; or

(c) Bahamas Agent;

"Securities Commission" means the Securities Commission of The Bahamas referred to in section 19(1) of the Securities Industry Act 2011 (*No. 10 of 2011*);

"Stabilization option" refers to a power that may be exercised in relation to a bank under statutory administration, pursuant to section 46 or 47;

"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 in a licensee's home country;

"the Bank" has the meaning assigned by section 2 of the Central Bank of The Bahamas Act;

"Total domestic liabilities amount" means an amount equal to the total domestic liabilities of a DSII as reported by the DSII to the Bank for the DSII's preceding financial year";

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

"trust company" means any company carrying on trust business.

PART II – BANKING AND TRUST SERVICES

3. Application of Act.

The provisions of this Act —

(a) except for sections 6, 20, 28(2)(f), 32, 33, 78 and 79 shall, unless the context otherwise requires, apply *mutatis mutandis* to Money Transmission Service Providers that are licensed pursuant to section 11;

(b) subject to section 6(4), shall, unless the context otherwise requires, apply *mutatis mutandis* to Private Trust Companies and Registered Representatives.

PROHIBITIONS

4. Prohibition of the use of the word "bank", etc.

(1) Except with the approval of the Central Bank, no person, other than a licensee acting under and in accordance with the terms of its licence under this Act, shall —

(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) use words representing that that person is carrying on a money transmission business, in English or in any other language, in the description or title under which that person carries on business from within The Bahamas whether or not such business is carried on in The Bahamas;

(c) 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, trust business, or money transmission business or is authorised by the law of The Bahamas to carry on such respective business;

(d) in any manner whatsoever, solicit or receive deposits from the public.

(2) Except with the approval of the Bank —

(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 its approval under subsection (1) or (2), the Bank may require of any person such references and such other information and particulars as may be prescribed.

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

(5) The Bank may refuse to grant a licence to, or to register, as the case may be, a person, or if such person is already in possession of a licence or certificate of registration, as the case may be, the Bank may revoke such licence or cancel such registration, if in the Bank's opinion such person is carrying on or intending to carry on banking or trust business, money transmission business or the business of acting as a Registered Representative, 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;

(c) is calculated to suggest, falsely, that such person 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 recognized in The Bahamas as a national or central bank or trust company, money transmission service provider or Registered Representative, as the case may be; or

(d) is calculated to mislead the public as to the nature of the person's business arrangements.

(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 Bank —

(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 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 Bank that the contravention or breach complained of has been discontinued and will not be repeated, then the Bank 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 (*Ch. 308*) 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.

5. Prohibition against carrying on banking, trust or money transmission business without a licence.

No person shall carry on —

(a) a banking business;

(b) a trust business; or

(c) a money transmission 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 Bank to carry on such business.

APPLICATION AND GRANT OF A LICENCE

6. Application for a bank or trust company licence.

(1) Any company desirous of carrying on—

(a) a banking business; or

(b) a trust business;

from within The Bahamas, shall make application to the Bank for the grant of a licence.

(2) An application made pursuant to subsection (1) shall —

(a) be in writing and contain such information and particulars as may be prescribed;

(b) be accompanied by such references, as may be prescribed.

(3) 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 Bank for an intimation as to whether or not the company will be authorised to carry on such business upon its incorporation.

(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 section 6(1), or of any regulations made pursuant to this Act, subject to such terms and conditions as may, in the Governor's opinion, be appropriate.

7. Consideration of application by the Bank.

The Bank shall, in considering an application made pursuant to section 6(1), have regard to —

(a) the incorporation and ownership structure of the company;

(b) the nature and sufficiency of the financial resources of the applicant to provide continuing financial support for the bank or trust company, as the case may be;

(c) the soundness and feasibility of the business plan;

(d) the best interests of the financial system in The Bahamas;

(e) the public interest;

and shall, in every case in which an application is made, advise the Minister of the Bank's decision to either grant or refuse the grant of a licence to the applicant.

8. Criteria for Bank in determining if a person is fit and proper.

(1) The Bank shall, in considering an application for a licence or registration under this Act, have regard as to whether the applicant is fit and proper.

(2) In determining whether a person is or remains a fit and proper person for the purposes of this Act, the Bank shall have regard to all the circumstances, including the person's —

(a) honesty, integrity and reputation;

(b) competence and capability;

(c) financial soundness; and

(d) previous disciplinary record, general compliance history including whether the Bank or any other domestic regulatory authority, a Supervisory Authority, or other foreign regulatory body, has previously imposed a disciplinary sanction on such person.

(di)

(3) The Bank shall refuse to grant a licence 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.

9. Grant of a licence.

(1) The Bank may if satisfied with respect to the matters set out in subsection (1) of section 8, grant a licence to the applicant, subject to such terms and conditions, if any, as the Bank deems necessary.

(2) The Bank shall not grant a licence to a 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 Bank —

(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 Bank 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) there are no constraints on internal and external audits imposed by the Supervisory Authority;

(d) the Supervisory Authority —

(i) is permitted to examine, wherever they are kept, the books of the bank or trust company;

(ii) is informed where the bank or trust company will be managed; and

(iii) has agreed to inform the Bank as soon as reasonably possible of any circumstances that arise which may seriously jeopardise the interests of creditors of the bank or trust company.

10. Conditions on grant of a licence.

(1) It shall be a condition of every licence granted to a bank or trust company to which section 9 applies, that the bank or trust company shall forthwith notify the Bank in writing of any change of —

(a) its principal office in The Bahamas; or

(b) either or both of the officers designated pursuant to section 9(2)(a)(ii) or (iii).

(2) The Bank may at any time by notice in writing —

(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 Bank considers necessary;

(b) amend or revoke any authorization 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 Bank shall provide the bank or trust company with an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being less than seven days.

MONEY TRANSMISSION BUSINESSES AND AGENTS

11. Application for a licence for a Money Transmission Service Provider.

(1) Any person other than a bank or trust company licensed under this Act, who is desirous of carrying on a money transmission business as a Money Transmission Service Provider from within The Bahamas

shall make application to the Bank for the grant of a licence.

(2) An application made pursuant to subsection (1) shall —

(a) be in writing and contain such information and particulars as may be prescribed;

(b) be accompanied by such number of references, as may be prescribed.

(3) In considering an application made under subsection (1), the Bank shall have regard to such matter as may be prescribed by regulation.

12. Registration of Money Transmission Agents.

Any person who desires to carry on the business of providing money transmission services as a Money Transmission Agent shall, subject to such terms and conditions as the Bank may require, register with the Bank.

REGISTERED REPRESENTATIVES

13. Registered Representatives.

(1) No person shall be registered as 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 Bank pursuant to section 9 of this Act; or

(b) a Financial and Corporate Service Provider, who is registered with the Bank to carry on such business.

(2) A Financial and Corporate Service Provider who is desirous of being registered as a Registered Representative shall first make application to the Bank.

(3) An application made pursuant to subsection (2) shall be in writing and contain such information and particulars as may be prescribed.

(4) In considering an application made under subsection (2), the Bank shall have regard to such matter as may be prescribed by regulation.

14. Bank may cancel registration, etc.

(1) Subject to subsection (2) the Bank may, by notice in writing —

(a) cancel any registration granted pursuant to section 12 or 13(1)(b);

(b) withdraw any exemption granted pursuant to section 6(4).

(2) The Bank shall, before cancelling a registration or withdrawing an exemption, afford a person in respect of whom it proposes to take action pursuant to paragraph (a) or (b) of subsection (1), an opportunity to make written representations regarding any proposed action within such time as may be specified in the notice, but not being less than seven days.

(3) Whenever the Bank shall cancel a registration or withdraw any exemption under subsection (1), the Bank may cause notice of such action to be published in the Gazette.

(4) Notwithstanding anything to the contrary in any trust instrument, where the Bank 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 Bank may order the transfer of any such trust to a new trustee, and make such supplemental orders or give such directions, as it deems fit.

PART III – OWNERSHIP OF LICENSEES

TRANSFER OR OTHER DISPOSITION OF SHARES

15. Shares, etc., not to be issued or transferred without approval.

(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 Bank.

(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.

(3) No person shall become a controller or an indirect controller of a licensee without obtaining the prior approval of the Bank.

(4) In subsection (1) the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

(5) The Bank may by notice in writing exempt any person or class of persons or any class or description of shares or interest in shares from the provisions of this section subject to such terms and conditions, if any, as the Bank may deem necessary and may make such further transitional provisions as the Bank considers necessary or expedient for the purposes of this section .

CONTROLLERS

16. Grant of approval in relation to controllers of a licensee.

(1) The Bank may approve an application made by a person pursuant to subsection (3) of section 15, if satisfied that —

(a) the person is a fit and proper person;

(b) having regard to the likely influence of the person, 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 interest of the financial system of The Bahamas to approve the application.

(2) Any approval under this section may be granted to any person subject to such conditions as the Bank may determine, including but not limited to any 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.

(3) The Bank may at any time add to, vary or revoke a condition imposed under subsection (2).

(4) A condition imposed under subsection (2) shall have effect notwithstanding any provision of the Companies Act *(Ch. 308)*, any other law, or anything contained in the memorandum or articles of association of the licensee.

17. Objection to an existing controller or indirect controller of a licensee.

(1) The Bank may serve a written notice of objection on a person referred to in subsection 15(3) if the Bank is satisfied that —

(a) the person has ceased to be a fit and proper person;

(b) having regard to the likely influence of the person, there is a material risk that, the licensee —

(i) will fail to conduct, or is failing to conduct, its business prudently; or

(ii) will fail to comply with, or is failing to comply with, the provisions of this Act;

(c) a condition of approval imposed on the person under subsection 16(2) has not been complied with;

(d) the person has furnished a false or misleading document or information in connection with an application made under subsection 15(1);

(e) the person has knowingly failed or refused to cooperate with the Bank in the performance of its duties;

(f) the Bank would not have been satisfied as to any matters specified in subsection (1) had it been aware, at that time, of circumstances relevant to the person's application under subsection 15(3); or

(g) it is no longer in the best interests of the financial system in The Bahamas for the person to continue to be a controller or an indirect controller, as the case may be, of a licensee.

(2) The 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 Bank may make under section 18.

(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 person who has been served with a notice of objection pursuant to subsection (1) may, within a period of seven days commencing the day after which the notice is served, make written representations to the Bank which the Bank shall take into account in determining whether to vary or revoke the notice.

18. Power to make directions.

(1) Subject to section 19, the Bank —

(a) where the Bank is satisfied that a person has failed to comply with a condition imposed under subsection (2) of section 16; or

(b) where the Bank has served a written notice of objection under section 17, it —

(i) may by notice in writing, 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 Bank considers appropriate;

(ii) may by notice in writing, restrict the transfer or disposal of shares or other securities specified pursuant to sub-paragraph (i); or

(iii) may by notice in writing, make such other direction as the 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 (*Ch. 308*), any other law, or anything contained in the memorandum or articles of association of a licensee, a direction or restriction by the 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 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 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 Bank expressly authorises such payment.

(4) For the purposes of this section , a person, A is an associate of another person B where —

(a) A is the spouse, parent, remoter lineal ancestor step-parent, son, daughter, remoter issue, step-son, step-daughter, brother or sister of B;

(b) A is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes —

(i) of B; or

(ii) where B is a company, of the directors of B;

(c) B is a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes —

(i) of A; or

(ii) where A is a company, of the directors of A;

(d) A is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of B;

(e) B is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of A;

(f) A is a related company of B;

(g) A is a company in which B, alone or together with other associates of B as referred to in paragraphs (b) to (f), is in a position to control not less than twenty per cent of the voting power in A;

(h) B is a company in which A, alone or together with other associates of A as described in paragraphs (b) to (f), is in a position to control not less than twenty percent 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 —

(a) acquisition, holding or disposal, of shares or other interests in the licensee; or

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

19. Offences.

(1) A person who —

(a) contravenes sections 15(1) or (3), 17(3) or 18(2); or

(b) fails to comply with a condition imposed under subsection (2) or (3) of section 16,

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 or 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 15 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 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.

PART IV – DUTIES AND OBLIGATIONS OF LICENSEES

20. Licensee to publish statement of accounts.

(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 Bank may, if the Bank sees fit, exempt any licensee from the provisions of this section.

(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 Bank may direct.

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

(4) Every licensee shall provide within four months of the end of its financial year a copy of its annual financial statement to the Bank, unless prior written approval for an extension of time has been granted by the Bank.

(5) The Bank may, for such further period not exceeding sixty days it deems expedient, extend the time periods referred to in subsections (1)

and (4).

21. Licensee to notify Bank of appointment of auditor.

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

(2) The 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 the auditor.

22. Powers and obligations of auditors.

(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 reappointed 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.

(4) An auditor or former auditor of a licensee shall give written notice to the Inspector of any fact or matter —

(a) of which such auditor has or had become aware; and

(b) which is likely to be of material significance for the discharge, in relation to the licensee, of the functions of the Inspector under this Act.

(5) A notice under subsection (4) shall be given —

(a) in the case of an auditor, immediately after the auditor, becomes aware of the matters in respect of which notice is to be given to the Inspector; and

(b) in the case of a former auditor, as soon as reasonably practicable after this provision comes into force.

(6) An auditor or former auditor who fails to comply with this section commits an offence and shall be liable on summary conviction to a

fine of twenty-five thousand dollars.

(7) 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.

(8) In this section **"related company"**, in relation to a licensee, means —

(a) a parent company, subsidiary company or associate company of that 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 that licensee, either alone or with one or more associates, holds ten per cent or more of the shares or is entitled to exercise, or to control the exercise of more than ten per cent of the voting power at a general meeting.

(9) 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, pursuant to —

(a) paragraph (b) of subsection (3);

(b) subsection (4); or

(c) paragraphs (a), (b) and (c) of subsection 28(2),

any information or opinion which is relevant to the Inspector's functions and responsibilities under this Act.

23. Licensee to notify Bank of material information.

(1) A licensee shall immediately notify the 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 of 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.

(3) Where a licensee is convicted of an offence pursuant to paragraph (a) of subsection (2), every director, manager, secretary or other officer of the licensee is guilty of the offence where it is proved that the default which constituted the offence took place with that person's knowledge, authority, permission or implied or express consent and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

24. Licensee to furnish information to Bank.

(1) Every person who is subject under this Act to the supervision of the Bank shall furnish the Bank with such information including returns at such times and in such form as the Bank may reasonably require for the proper discharge of its functions under this Act or any regulations made under this Act.

(2) A person who fails without reasonable excuse to furnish any information required by the Bank under this section commits an offence and shall be liable on summary conviction —

(a) in the case of an individual, to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further fine not exceeding five hundred dollars for each day, or part of a day, during which the offence continues; or

(b) in the case of a company, to a fine not exceeding one hundred thousand dollars and, in the case of a continuing offence, to a further fine not exceeding one thousand dollars for each day, or part of a day, during which the offence continues.

25. Licensee to inform on potential Insolvency.

(1) A licensee shall immediately inform the 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 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 interest of the —

(i) public;

(ii) depositors of the licensee;

(iii) beneficiaries of any trust; or

(iv) other creditors of the licensee,

(aa) require the manager or authorised agent of such licensee to supply within such reasonable time as may be specified-the financial statements of such licensee, as of a date determined by the Bank, audited by an auditor who is a chartered accountant or a certified public accountant approved by the Bank; and

(bb) 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 Bank made pursuant to subsection (2); or

(b) in response to the written requirements of the 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.

(4) A bank that receives any deposit while insolvent commits an offence, and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars.

(5) Any director or officer of a bank described in subsection (4) who knows or, in the proper performance of his duties, should know of the insolvency of such bank, and who receives, or authorizes the acceptance of a deposit, commits an offence and shall be liable on summary conviction to a fine not exceeding twenty five thousand dollars and to imprisonment for a term not exceeding two years.

26. Licensee to obtain approval to have a subsidiary, etc. outside The Bahamas.

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

PART V - SUPERVISION OF LICENSEES AND REGISTRANTS

INSPECTOR OF BANKS AND TRUST COMPANIES

27. Establishment of Office of Inspector of Banks and Trust Companies.

There is hereby established within the Central Bank of The Bahamas an office to be known as 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.

28. Duties of Inspector.

(1) It shall be the duty of the Inspector —

(a) to maintain a general review of bank and trust company practice in The Bahamas;

(b) to conduct, whenever he thinks fit and when required by the Governor, 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 or any written law administered by the Bank or relating to compliance with anti-money laundering or countering the financing of terrorism and proliferation financing requirements 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;

(c) to examine and to report on the several returns delivered to the Governor pursuant to section 20 of this Act;

(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 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* so as to ensure the preservation of the soundness and efficiency of the banking system.

(2) In the performance of his functions under this Act and subject to the provisions of section 77, 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 or;

(b) to call upon the manager or any officer 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;

(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;

(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, at the expense of the licensee, 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.

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

(4) Where any person —

(a) fails to comply with any requirement made by the Inspector, pursuant to subsection (2), 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) grossly violates, as an auditor of a licensee in the performance of an audit, his duties as set out in subsection (1) of section 20, 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.

29. Sanctions authorized by Bank.

(1) The Bank may —

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

(i) if, in the opinion of the Bank, 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;

(iii) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved;

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

(v) if it appears to the Bank that the licensee has furnished information or documents to the Bank in connection with its application for a licence which is or are false or misleading in a material particular or has failed to inform the Bank of a material change in respect of information so furnished

and the Bank shall subsequently advise the Minister of its decision;

(b) impose, amend or vary conditions upon the licence;

(c) require the substitution or removal of any director or officer of the licensee;

(d) 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 Bank thereon within three months of the date of his appointment;

(e) 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

under the Companies Act (*Ch. 308*);

(f) at the expense of the bank, appoint a statutory administrator of the bank, who meets the qualifications established by the Bank including fit and proper person criteria required to be met by directors and officers of banks, to manage the bank on its behalf.

(g) issue written 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 in The Bahamas or elsewhere, or to perform a remedial act, or to do anything required to be done and such directions include the power to —

(i) restrict the licensee or a subsidiary of a licensee from further lending;

(ii) limit a licensee's maximum individual and aggregate exposures, including off-balance sheet transactions, investments, or capital expenditure;

(iii) require the licensee or a subsidiary to dispose of specified assets;

(iv) require the licensee to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Bank has caused material losses to the licensee or its subsidiary, is detrimental to the interest of depositors, the beneficiaries of any trust or other creditors or presents excessive risk to the licensee or its subsidiary;

(v) prohibit the licensee or its subsidiary from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to shareholders or to any person claiming under their authority;

(vi) require shareholders of the licensee to contribute additional capital; and

(vii) require such action to be taken by the licensee as the Bank considers necessary.

(2) For the avoidance of doubt, the Bank may impose any of the sanctions set out in section 29(1)(c), (d), (e), (f) and (g) of this Act, against a Private Trust Company or a Registered Representative where, in the opinion of the Bank, 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 registration pursuant to section 13,

or an exemption pursuant to subsection 6(4), was granted;

(b) contravening or failing to comply with a direction of the Bank; or

(c) carrying on its business in a manner that is detrimental to the reputation of The Bahamas.

(3) Every person who contravenes the provisions of this section or of section 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.

(4) Whenever the Bank 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 Bank shall give that licensee notice in writing of its intention so to do setting out in such notice the grounds on which it 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 Bank shall advise the licensee of its decision.

(5) Whenever the Bank shall suspend a licence under subsection (4) the Bank may cause notice of such suspension to be published in the Gazette.

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

(7) Where the Bank 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.

(6) The Bank 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.

30. Surrender of Licence.

(1) A licensee or a registered representative or money transmission agent, which has ceased to carry on the business in respect of which a licence or certificate of registration, as the case may be, was granted by the Bank, shall apply to the Bank to surrender its licence or certificate of registration.

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

31. Winding up of non-banking licensees and registrants.

Notwithstanding section 190(1) and 211 of the Companies Act (*Ch. 308*), no trust company, money transmission service provider licensed under this Act or registered representative or money transmission agent registered with the Bank may —

(a) be wound up voluntarily; or

(b) petition the Supreme Court to be wound up,

except with the prior written approval of the Bank.

FOREIGN SUPERVISORY AUTHORITIES

32. Inspection by supervisory authority.

(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 or trust company'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 the Supervisory Authority —

(a) has obtained the prior written approval of the Inspector;

(b) 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) has given to the Inspector a written undertaking —

(i) to comply with the provisions of this Act and any condition imposed by the Inspector under this section;

(ii) to use the information obtained exclusively for the purpose of consolidated supervision;

(iii) 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;

(d) 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.

33. Supervisory Authority may appoint other body to conduct inspection.

(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 32 and in such event the provisions of this section and subsections (1), (2), (3), (4) and (5) of section 32 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.

34. Confidentiality of reports of Inspector and Supervisory Authority.

(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 28 or 32, by reason of his acting in any of the following capacities —

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

(b) counsel and attorney, consultant or auditor of the 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.

PART VI – SPECIAL RESOLUTION FRAMEWORK FOR BANKS

RECOVERY OF BANKS IN FINANCIAL DISTRESS, ETC.

35. Objectives of Resolution framework.

(1) The powers granted under this Act to —

(a) the Bank;

(b) a statutory administrator appointed by the Bank; or

(c) a liquidator appointed by the Bank,

in relation to statutory administration or liquidation shall be exercised by the Bank, a statutory administrator or liquidator appointed by the Bank, as the case may be, to achieve the following objectives of —

(i) maintaining financial stability;

(ii) protecting and enhancing public confidence in the stability of the banking system of The Bahamas;

(iii) protecting depositors including by ensuring prompt payouts of deposits of a bank in liquidation;

(iv) minimizing the costs of resolution and avoiding unnecessary destruction of value;

(v) protecting public funds.

(2) In subsection (1)(a), the reference to financial stability includes, in particular, a reference to the continuity of critical banking services.

(3) The order in which the objectives are listed in this section is not significant and they are to be balanced by the Bank as appropriate in each case.

36. Recovery Plans.

(1) A bank shall prepare and submit periodically to the Bank, a plan for the rapid and orderly recovery of such bank based on different scenarios of financial distress or failure, whether on an individual basis or on a group basis.

(2) The bank's senior management shall be responsible for the development and maintenance of the bank's recovery planning process.

(3) The Bank may issue a direction to a bank specifying the matters which shall be included in a plan required under subsection (1) and such plan shall be referred to as a **"recovery plan"** or **"the plan"**.

(4) A bank shall —

(a) review its recovery plan at least annually;

(b) keep its recovery plan up to date, including updating the plan to reflect any change to the legal or organizational structure of the bank, its business, its financial situation, and any other matter which could have a material effect on or necessitate a change to the recovery plan; and

(c) notify the Bank promptly of any material changes to its

recovery plan and, in any event, within one month of making such change.

(5) A bank shall update its recovery plans as frequently as required by the Bank.

(6) Where the Bank is of the opinion that a recovery plan submitted by a bank pursuant to subsection (1) is deficient in any material respect it shall notify the bank in question of the deficiencies in the plan and require such bank to resubmit the recovery plan within a specified time frame and with such revisions as may reasonably be required by the Bank to address any deficiency in the plan.

(7) Revisions required by the Bank to a bank's recovery plan, pursuant subsection (1) may include proposals for changes in the business operations and corporate structure of the bank to facilitate implementation of the plan.

(8) Where a bank fails to submit or resubmit a recovery plan in the period required by the Bank, the Bank may —

(a) impose more stringent prudential requirements, and restrictions or restrictions, on the growth, activities, or operations of the bank, or any branch or subsidiary thereof; or

(b) take any other actions the Bank may determine, until such time as the bank resubmits a plan that in the opinion of the Bank, remedies the deficiencies.

(9) The Bank may direct a bank to implement all or a specified part of the bank's recovery plan.

(10) A plan submitted in accordance with this section shall not be binding on the Bank or its agents, in the recovery of a bank.

(11) No private right of action may be based on any plan submitted in accordance with this section.

37. Resolution Plans.

(1) The Bank may prepare a resolution plan for a bank (including at a consolidated level in consultation with any other domestic regulatory authority or a Supervisory Authority), using information and analysis submitted by the bank.

(2) A bank shall cooperate with the Bank in the exercise of its powers under subsection (1).

(3) The plan referred to in subsection (1) shall set out options for resolving the bank in different scenarios including systemic instability, and shall include details of how resolution powers and tools may be

applied to resolve the bank where necessary, in a manner that promotes continuity in its critical functions.

(4) The Bank shall update the resolution plan of a bank as frequently as is necessary given the risk profile of the bank.

(5) Where the Bank is of the opinion that significant impediments to orderly resolution exist, it may issue a notice directing the bank in writing to address or remove such impediments and the bank shall comply with such direction of the Bank.

(6) The Bank shall —

(a) give reasons for issuing a direction under subsection (5);

(b) state when the direction takes effect; and

(c) specify a reasonable period within which the bank may make representations to the Bank about the direction.

(7) The Bank must consider representations made pursuant to subsection (6)(c) and decide —

(a) whether to confirm or revoke the notice; and

(b) if the notice is revoked, whether to serve a new notice containing a different direction.

(8) The Bank must serve written notice on the bank of its decision under subsection (7).

(9) If no representation is made by the bank within the period specified under subsection (6)(c), the Bank must serve written notice on the bank that the notice under subsection (5) is confirmed.

STATUTORY ADMINISTRATION

38. Appointment of a Statutory Administrator.

(1) The Bank may, by notice in writing, appoint a statutory administrator pursuant to section 29(1)(f) where —

(a) in the opinion of the Bank, a bank —

(i) has engaged or is engaging in any unsafe and unsound practice in such a manner as to weaken the bank's condition, threaten depositors' interests or dissipate the bank's assets;

(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 directive issued

by the Bank pursuant to this Act, or any term or condition subject to which its licence was issued; or

(b) the bank's capital level falls below (or is likely to fall below within the next twelve months) the minimum regulatory capital required by the Bank;

(c) the capital and value of the assets of the bank have, in the opinion of the Bank, reached or are likely to reach a level or are eroding in a manner that may detrimentally affect its depositors or creditors, with no reasonable prospects of timely restoration of such capital and value;

(d) the Bank has reasonable cause to believe that the bank or its directors, officers or a significant shareholder has engaged or is engaging in illegal activities in a manner which jeopardizes depositors' interests;

(e) the Bank is of the opinion that the realizable value of the assets of the bank is not sufficient to give adequate protection to the depositors and creditors of the bank, or is less than its liabilities, or the bank's financial condition suggests that it will shortly be in that circumstance;

(f) the Bank is of the opinion that the bank is unable to or is likely to become unable to meet its liabilities and other obligations as they mature or become due, or pay its depositors' demands in the normal course of business;

(g) the bank fails in any manner to cooperate with its external auditors; or

(h) the bank fails to cooperate with the Bank to enable the Bank to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the bank's books, papers or records.

(2) Where the Bank determines that a statutory administrator should be appointed pursuant to subsection (1), the Bank shall notify the Minister of its decision.

(3) Where the Bank appoints a statutory administrator of a bank, the Bank shall promptly notify the bank of the appointment and shall specify in the notice, the grounds for the appointment.

(4) The Bank may simultaneously publish notice of the appointment of a statutory administrator in the Gazette and in a newspaper of general circulation.

(5) The statutory administrator may be a person from the private sector or an official of the Bank.

(6) The statutory administrator may be appointed for —

(a) a period not exceeding twelve months; and

(b) a further period not exceeding twelve months, if it appears to the Bank that additional time is required to ensure an orderly restructuring of the bank under this Act.

(7) The Bank may —

(a) vary the terms of appointment of a statutory administrator;

(b) at any time replace a statutory administrator; and

(c) remove a statutory administrator prior to the end of any of the periods specified in subsection (6)(a) or (b),by written notice to the statutory administrator.

(8) The variation of the terms of appointment of a statutory administrator or the termination of such appointment shall take place on such date as is specified in the notice referred to in subsection (7).

(9) If a statutory administrator has any direct or indirect interest in a bank under statutory administration he shall disclose his interest to the Bank as soon as possible.

(10) Any transaction involving a bank in statutory administration in which the statutory administrator has a direct or indirect material interest in the matter may be engaged in only with the prior written approval of the Bank.

39. Expenses of the statutory administrator.

The statutory administrator shall receive such remuneration as the Bank may determine and all costs and expenses incurred on account of the statutory administration shall be borne by and charged to the bank under statutory administration.

40. General powers of the statutory administrator.

(1) Upon the appointment of a statutory administrator —

(a) all powers, functions and responsibilities of the shareholders, directors and officers of a bank under statutory administration shall vest in the statutory administrator, except where the statutory administrator requests the shareholders or directors or officers to carry out any activity provided under this Act; and

(b) any action or decision taken by or on behalf of the bank subject to statutory administration shall, unless they are taken by or under the authority of the statutory administrator, be null and void.

(2) The statutory administrator shall have full and exclusive powers to manage and operate the bank, including taking any action as necessary or appropriate to —

(a) carry on the business of the bank;

(b) exercise shareholders' rights and powers;

(c) continue or discontinue any or all of its operations;

(d) stop or limit the payment of the bank's obligations;

(e) remove any or all directors and officers;

(f) employ any necessary officers or employees;

(g) execute any instrument in the name of the bank;

(h) initiate, defend and conduct in the name of the bank any action or proceedings to which the bank may be a party;

(i) so far as the statutory administrator is able to do so, sell or otherwise dispose of a subsidiary of the bank;

(j) preserve and safeguard the assets and property of the bank;

(k) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions, change the legal or operational structure of a subsidiary of the bank; or

(l) implement a plan of action with respect to the bank that has been approved by the Bank.

(3) The statutory administrator may employ, at the expense of the bank under statutory administration, counsel and attorneys at law, auditors and other independent professionals or consultants to assist the statutory administrator on such terms as the Bank may approve.

41. Central Bank Oversight of Statutory Administrator.

(1) The statutory administrator shall act in accordance with regulations made pursuant to this Act or directions issued by the Bank to facilitate the purposes of this Act or of regulations made under this Act and shall only be accountable to the Bank for the performance of his duties and the exercise of his powers as statutory administrator.

(2) The statutory administrator may delegate any of his powers or duties to other persons, subject to the prior written approval of the Bank.

(3) The Bank may issue its approval pursuant to subsection (2) and may make such approval subject to such conditions as the Bank deems appropriate.

42. Suspension of payment of capital distributions.

The statutory administrator shall immediately suspend the payment of capital distributions in general and payment of any kind to directors, officers and significant shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the statutory administrator.

43. Moratorium and effect of statutory administration on proceedings.

(1) The Bank may impose a moratorium temporarily suspending some or all payments by a bank under statutory administration as the Bank may consider necessary to protect the interest of depositors and the stability of the financial sector.

(2) No person or class of persons shall, without the prior written consent of the statutory administrator begin or continue a proceeding or petition in a court or other forum against a bank under statutory administration or exercise rights under a mortgage, charge, or other security or collateral over the property of a bank under statutory administration, or issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a bank under statutory administration.

(3) For the purposes of this section, **"proceedings"** or **"petitions"** include counterclaims or cross-claims against the bank and the appointment of a statutory administrator against subsidiaries of the bank but excludes actions taken by the Bank, regulatory authorities, the Public Prosecutor and other public agencies, in respect of any matter in existence or violations or misconduct prior to the statutory administration.

(4) Where statutory administration has not yet been terminated, the Bank may, where it is of the opinion that it is no longer necessary to impose a moratorium, publish in the Gazette a notice that the moratorium has been lifted.

44. Taking control of the bank.

(1) The statutory administrator shall immediately upon appointment, secure the property, offices, books, records, and assets of a bank under statutory administration to prevent their dissipation by theft or other improper action, by taking actions including, but not limited to, the following —

(a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;

(b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;

(c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises;

(d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties; and

(e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the statutory administrator, and persons authorized by the statutory administrator have such authority.

(2) The statutory administrator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.

(3) The statutory administrator may call upon any director, officer, employee or agent or any former, director, officer, employee or agent of a bank under statutory administration to make available to the statutory administrator any records and information relating to the bank that the statutory administrator shall require and such director, officers, employee or agent of the bank shall provide such records or information to the statutory administrator, as the case may be.

(4) The statutory administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the statutory administrator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank.

(5) Any person who shall obstruct the statutory administrator in the exercise of his functions under this Act commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less

than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of one thousand dollars for each day during which the offence continues.

45. Inventory and plan of action to resolve the bank.

(1) Within a period specified by the Bank, the statutory administrator shall prepare and deliver to the Bank —

(a) a written inventory of the assets and liabilities of the bank under statutory administration, classifying the assets according to their different risk profiles and classifying the non-performing loans according to the Bank's directives;

(b) a written assessment of the amount of assets likely to be realized in a liquidation of the bank;

(c) a written report on the financial condition and future prospects of the bank under statutory administration and propose a plan of action which, as appropriate, shall recommend —

(i) returning the bank to compliance with the law by carrying out a plan of corrective actions that may include a capital increase;

(ii) compulsory liquidation of the bank if there is no reasonable prospect for the return of the bank to financial soundness through reorganization or otherwise; or,

(iii) if the bank cannot be rehabilitated, any other course of action designed to minimize disruption to depositors and preserve the stability of the banking sector.

(2) The statutory administrator shall promptly provide any additional report or information requested by the Bank.

(3) The Bank may —

(a) approve the report or additional report mentioned in subsection (1)(c) or (2), as the case may be, without modification or subject to such conditions as it thinks necessary; or

(b) refuse to approve the report.

(4) The statutory administrator may, subject to the written approval of the Bank, implement the plan of action mentioned in subsection (1)(c) on the basis of the report provided to the Bank.

46. Capital increase by existing shareholders.

(1) On the basis of the report produced under subsection 45(1)(c) or 45(2), the Statutory Administrator may take the following actions to

increase the bank's capital through the issuance of new shares —

(a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital; and

(b) notify existing shareholders of the amount of additional capital needed to bring the bank's capital into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed, within three business days of such notification.

(2) Existing shareholders of a bank under statutory administration shall have no pre-emptive or other rights to purchase additional shares issued except as provided in this section.

(3) The statutory administrator may take action to increase the bank's capital through the issuance of shares to new shareholders in the following circumstances —

(a) in the event that binding commitments are not submitted by existing shareholders in an amount equal to the full amount of additional capital needed by existing shareholders; or

(b) without offering shares to existing shareholders, if the Bank determines that —

(i) an expedited resolution of a bank is necessary to maintain financial stability, or

(ii) the existing shareholders are no longer fit and proper to maintain a controlling shareholding in the bank.

(4) For the purpose of carrying out a recapitalization by new shareholders of a bank under statutory administration, the statutory administrator shall —

(a) determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital;

(b) if necessary to reflect losses, reduce the par value of outstanding shares, restructure or write down debt or other capital instruments, notwithstanding the provision of any other law;

(c) determine the amount and type of funding needed to bring the bank into compliance with all capital requirements; and

(d) cause the bank to issue additional shares in the amount necessary, carry out the sale of shares and facilitate the purchase

of such shares by new investors.

(5) Notwithstanding any existing law or other laws that may come into effect to regulate the securities market and other disclosures by issuers of securities, the Securities Commission shall take the necessary action to permit issuance of a bank's securities in accordance with the provisions of this section within a maximum of three business days.

(6) The powers provided in subsections (1), (3) and (4) and section 47(1), (3) and (10) may be exercised by a statutory administrator only upon the written authorization of the Bank.

(7) Where a statutory administrator pursuant to subsection (4) —

(a) writes down equity or other instruments of ownership of a bank, unsecured and uninsured creditor claims;

(b) converts into equity or other instruments of ownership of a bank all or parts of unsecured and uninsured creditor claims,

the statutory administrator shall take the action referred to in paragraph (a) and (b) in a manner that respects the hierarchy of claims in liquidation under this Act.

47. Mergers, sales and other restructuring.

(1) Subject to section 44, and on the basis of the report produced under subsection 45(1)(c) or (2), the statutory administrator may carry out a merger of the bank under statutory administration or a transfer, in whole or in part —

(a) shares or other securities issued by the bank;

(b) the bank's assets, rights and liabilities.

(2) A transfer of the bank's shares or other securities, assets, rights and liabilities pursuant to subsection (1) may be to —

(a) a purchaser;

(b) a bridge institution for a temporary period;

(c) an asset management vehicle,

for the purpose of resolving the bank.

(3) The statutory administrator may transfer to a purchaser, a bridge institution or an asset management vehicle —

(a) shares or other securities of a bank under statutory administration by making one or more securities transfer instruments;

(b) assets, rights or liabilities of a bank under statutory

administration by making one or more property transfer instruments.

(4) Where a statutory administrator has first transferred any securities issued by or any assets, rights or liabilities of a bank under statutory administration to a bridge institution, the statutory administrator may —

(a) by making one or more securities transfer instruments, transfer securities issued by the bridge institution or securities issued by a bank under statutory administration and held by the bridge institution to another —

(i) bridge institution (an onward bridge institution); or

(ii) entity;

(b) by making one or more property transfer instruments, transfer assets, rights or liabilities of the bridge institution (however accruing or arising) to another entity.

(5) The *Third Schedule* has effect with respect to securities transfer instruments.

(6) The *Fourth Schedule* has effect with respect to property transfer instruments.

(7) The transferee of assets of the bank under statutory administration shall have no liability to depositors, creditors, or shareholders of the bank except to the extent liabilities are explicitly assumed.

(8) Where a transfer is made under subsection (3) the Bank shall inform the Minister about the transfer as soon as practicable after the transfer is completed.

(9) The Minister shall cause a copy of each report under subsection (8) to be laid before each House of Parliament.

(10) Subject to the written approval of the Bank, the statutory administrator may carry out a restructuring of the liabilities of a bank under statutory administration, through arrangements with the bank's creditors, including a reduction, modification, re-scheduling or novation of their claims.

(11) When action is taken by the statutory administrator pursuant to subsection (1), the Bank shall —

(a) by instrument in writing appoint an independent valuer to verify the adequacy of the compensation provided to the transferor regarding the transferred assets, rights and liabilities; and

(b) publish notice of the appointment of the independent valuer in the *Gazette*.

(12) Any measure conducted under statutory administration under this section will not constitute a voidable preference, a transaction at undervalue or a fraudulent trading pursuant to sections 241, 242 and 243 of the Companies Act (*Ch. 308*).

48. Termination of statutory administration.

(1) Subject to subsection (2) the statutory administration shall terminate at the expiry of the term specified in the notice appointing the statutory administrator or any extension of the term of such appointment by the Bank.

(2) Statutory administration shall be terminated prior to the expiry of the term set out in subsection (1) if the Bank determines that —

(a) statutory administration is no longer necessary because the grounds for appointment of the statutory administrator have ceased to exist; or

(b) the bank under statutory administration cannot be rehabilitated or restructured and the Bank issues a decision to revoke the bank's license under section 29(1)(a) and to commence liquidation proceedings under section 60.

(3) Where the statutory administration is terminated in circumstances mentioned in subsection (1) and the reason for the appointment of the statutory administrator continues to exist, the Bank shall issue a decision to revoke the licence under section 29(1)(a) and commence a compulsory winding-up proceeding under section 60.

(4) In the case of a termination of statutory administration that does not involve a closure of the bank, the statutory administrator shall carry out the duties of the bank's directors and officers, until nomination or election of new directors and appointment of officers, at which time all powers of control over the affairs of the bank and its properties, offices, assets books and records that were vested in the statutory administrator shall vest in the bank.

(5) Within thirty days of the termination of the appointment or such further period as the Bank may approve, the statutory administrator shall prepare and submit to the Bank a final report and accounting of the statutory administration.

49. Licensing of body corporate as Bridge Institution.

(1) Upon the incorporation of a body corporate by the Bank pursuant to section 28(4) of the Central Bank of The Bahamas Act, 2020, the Bank shall grant a licence to the body corporate to carry on the business of a bridge institution.

(2) The Bank may exempt the bridge institution from such requirements, or grant such approvals, under this Act as may be necessary to facilitate the carrying on of its licensed business.

(3) The Bank shall publish notice of the grant of a licence pursuant to subsection (1) in the *Gazette*.

(4) A company incorporated pursuant to section 28 of the Central Bank of The Bahamas Act, may be designated as a bridge institution for a period of two years.

(5) Notwithstanding subsection (4), the Minister may, by Order, grant up to three extensions, not exceeding twelve months each, during which a company referred to in subsection (4) may continue to be designated as a bridge institution.

(6) The Bank may hold —

(a) any shares of a bank under statutory administration that the Bank acquires in the course of a sale or other disposition of its shares of the bridge institution or that a bridge institution acquires in the course of a sale or other disposition of its assets.

(b) the shares for a period of no more than five years from the day on which they are acquired and may dispose of them.

(7) The Minister may, by order, extend the period referred to in subsection (6)(b) if general market conditions so warrant.

(8) A company's licence as a bridge institution terminates if —

(a) the Bank is no longer the sole shareholder; or

(b) the bridge institution is amalgamated with a body corporate that is not a bridge institution.

(9) If a bridge institution's licence has not terminated under subsection (8), the bridge institution's board of directors shall take all necessary steps to dissolve the bridge institution if —

(a) all or substantially all of the bridge institution's assets have been sold or otherwise disposed of; and

(b) all or substantially all of its liabilities have been assumed or discharged.

(10) If the Bank considers that substantially all of the transfers of assets, rights and liabilities or shares or other securities of a bank to a bridge institution have been substantially completed, the Bank shall apply for a winding-up order under the Companies Act (*Ch. 308*) in respect of the bank.

(11) An employee or officer of the Bank shall not receive remuneration or benefits from a bridge institution for being a director or officer of that bank.

(12) If a bridge institution becomes the employer of employees of a bank, the bridge institution is not liable in respect of a liability, including one as a successor employer —

(a) that is in respect of the employees or former employees of the bank or a predecessor of the bank or in respect of a pension plan for the benefit of those employees or former employees; and

(b) that exists before the bridge institution becomes the employer or that is calculated by reference to a period before the bridge institution becomes the employer.

(13) subsection (12) does not affect the liability of a successor employer other than the bridge institution.

(14) The Bank may give directions to the board of directors of a bridge institution.

(15) The board of directors of a bridge institution, shall ensure that the directions are implemented in a prompt and efficient manner and shall, after implementing a direction, notify the Bank without delay that it has been implemented.

(16) The Bank may give directions to the board of directors of a bridge institution to make, amend or repeal any bye-law.

(17) The board of directors of a bridge institution may, with the prior approval of the Bank, vary or repeal any by-law.

(18) For the purposes of subsections (16) and (17), by-law means a bye-law of the bridge institution.

(19) Any action or other civil proceeding before a judicial or quasi-judicial body and any arbitration, to which a bridge institution may become a party by virtue of acquiring an asset or assuming a liability of a bank under statutory administration shall be stayed for a period of 90 days from the day on which the bridge institution acquires the asset or assumes the liability.

(20) The bridge institution may waive the stay referred to in subsection (19).

(21) Without prejudice to section 71, the following persons shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the bridge institution —

(a) shareholders of the bank under statutory administration;

(b) creditors of the bank under statutory administration, or

(c) other third parties whose assets, rights or liabilities have not been transferred.

(22) The bridge institution, and the members of its senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

50. Transfer of assets, rights or liabilities to asset management vehicle.

(1) A statutory administrator may transfer the assets, rights or liabilities of —

(a) a bank under statutory administration; or

(b) a bridge institution,

to an asset management vehicle by making one or more property transfer instruments.

(2) Without prejudice to section 71, shareholders or creditors of a bank under statutory administration and other third parties whose assets, rights or liabilities have not been transferred to the asset management vehicle shall not have any rights over or in relation to assets, rights or liabilities which have been transferred to the asset management vehicle.

(3) An asset management vehicle, its management body and senior management, shall not owe any legal duty or responsibility to shareholders or creditors of the bank under statutory administration and the management body and senior management of the vehicle shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties.

51. Management of assets by asset management vehicle.

An asset management vehicle must manage the assets transferred to it with a view to maximizing their value through eventual sale or orderly wind down.

52. Onward property transfer from asset management vehicle.

(1) This section applies if the statutory administrator has made a property transfer instrument under section 50 (hereafter referred to as "the original instrument") in respect of an asset management vehicle.

(2) The statutory administrator may, by making one or more property transfer instruments, transfer assets, rights or liabilities of the asset

management vehicle (whether accruing or arising before or after the original instruments is made) to another entity.

(3) A property transfer instrument may relate to assets, rights or liabilities of an asset management vehicle whether or not they were transferred to that vehicle by an instrument made under this section.

53. Central Bank to report to Minister.

(1) If the statutory administrator transfers to an asset management vehicle under section 50 any assets, rights or liabilities of a bank under statutory administration or of a bridge institution, the Bank must report to the Minister on —

(a) the activities and audited financial position of the asset management vehicle; and

(b) the progress that has been made towards maximizing the value of the assets transferred to it through eventual sale or orderly wind down.

(2) The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which a transfer is first made to the asset management vehicle.

(3) A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).

(4) The reporting obligation under subsection (3) does not apply in respect of any year during which the asset management vehicle does not hold any assets or rights, or have any liabilities, mentioned in subsection (1).

(5) The Minister must cause a copy of each report under subsection (1) to be laid before each House of Parliament.

54. Disposal of Proceeds.

(1) This section applies to any money received by the Bank as a shareholder of an asset management vehicle.

(2) The money must be paid into the resolution funding account.

55. Recovery of costs following application of stabilization option.

(1) This section applies in the, case of a bank under statutory administration where the Bank is of the view that —

(a) the bank has ceased, or is likely to cease to be viable;

(b) there is no reasonable prospect that private sector action

(outside of resolution) would result in the bank again becoming viable within a reasonable period;

(i) the non-viability of the bank poses risks to the stability and effective working of the financial system of The Bahamas, including to the continued performance of critical financial functions; and

(ii) resolution will avoid or mitigate those risks.

(2) The Bank or the Minister —

(a) may charge to the bank under statutory administration all reasonable costs properly incurred by the Bank or the Minister, as the case requires, in or in connection with a matter mentioned in section 56(1);

(b) must not charge costs under subsection (2) if, or to the extent that, the charging of the costs might, in the opinion of the Bank or the Minister (having consulted the Bank), undermine the meeting of the resolution objectives.

(3) Any costs charged to an entity under subsection (2) may be recovered from the entity as a civil debt due to the Bank or the Government, as the case requires, in any court of competent jurisdiction.

(4) Any money received in respect of costs charged to an entity under subsection (2) (including under subsection (4) must be paid into the resolution funding account.

56. Payment from the resolution funding account.

(1) Subject to subsection (5), money standing to the credit of the resolution funding account may only be used by the Bank in, or in connection with —

(a) preparing for the making of a transfer instrument in respect of a bank that, in the opinion of the Bank, is likely to become a bank under statutory administration;

(b) the making of a transfer instrument in respect of a bank under statutory administration; or

(c) the resolution of a bank under statutory administration, including payment of any compensation due under section 71 and any associated costs.

(2) Money standing to the credit of the resolution funding account may not be used to meet —

(a) expenses incurred by the Bank in performing functions under, or otherwise carrying out duties under section 36, 37, 28 or 80;

or

(b) general operational expenses incurred by the Bank unrelated to a matter mentioned in subsection (1)(a).

(3) Before the Bank may use money standing to the credit of the resolution funding account in regards to the exercise of a power by the statutory administrator under section 46 or 47 it must have regard to the extent to which the bank's own resources can be utilized, including the extent to which —

(a) liabilities of the bank can be written off or converted to enable it to absorb losses and re-establish its capital position;

(b) assets of the bank can be sold; or

(c) private sector funding can be obtained by the bank.

(4) Without limiting subsection (1)(a), the purposes for which money standing to the credit of the resolution funding account may be used by the Bank include —

(a) providing a guarantee or indemnity in respect of the assets, rights or liabilities of bank under statutory administration, a group company of bank under statutory administration, a bridge institution or an asset management vehicle;

(b) lending money to a bank under statutory administration, a group company of a bank under statutory administration, a bridge institution or an asset management vehicle; and

(c) if necessary, providing, or underwriting the provision of, capital to a bank under statutory administration, a group company of a bank under statutory administration, a bridge institution or an asset management vehicle.

(5) Any money standing to the credit of the resolution funding account that neither the Bank nor the Minister intends to use for a purpose mentioned in subsection (1) must be used to repay resolution funds and, to that end, must be paid —

(a) out of the resolution funding account; and

(b) into the account from which resolution funds were paid into the resolution funding account.

(6) For the purposes of subsection (5)(b), if resolution funds were paid into the resolution funding account from more than one account, the money must be paid into those accounts in proportion to the amounts paid from those accounts.

(7) Interest, by reference to prevailing market rates, may be charged to the resolution funding account on the outstanding principal amount of

resolution funds until repaid under subsection (5) or section 57.

(8) The use of the resolution funding account is subject to audit in accordance with regulations made pursuant to this subsection.

57. Repayment of the resolution funds.

(1) Any money standing to the credit of the resolution funding account on completion of the resolution must be used to repay any resolution funds or pay interest charged under section 56(7).

(2) Money used for a purpose mentioned in subsection (1) must be paid into the account out of which the resolution funds, or the resolution funds to which the interest relates, were paid into the resolution funding account and, if resolution funds were paid into the resolution funding account out of more than one account, in proportion to the amounts paid out of those accounts.

LIQUIDATION OF BANKS

58. Liquidation of banks.

(1) The winding-up of a bank shall be undertaken pursuant only to the provisions of this Act, and the Companies Act (*Ch. 308*) as modified by this Act.

(2) The Bank may issue regulations, rules, orders, directions, or other instruments regarding the winding-up of a bank pursuant to this Act.

59. Voluntary liquidation of banks.

(1) Notwithstanding sections 190(1) and 211 of the Companies Act (*Ch. 308*), no bank may petition the court to be wound-up voluntarily, except with the prior written approval of the Bank.

(2) The Bank may, subject to such terms and conditions as it deems appropriate, approve the voluntary winding-up of a bank if it is satisfied that —

(a) the bank is solvent and has sufficient liquid assets to repay its depositors and other creditors in full and without delay;

(b) the winding-up has been approved by the holders of at least two-thirds of the issued voting shares of the bank; and

(c) there are clear procedures in place for repayment of the bank's depositors and creditors within three days.

(3) Where the Bank approves the voluntary winding up of a bank

pursuant to subsection (2), the bank shall —

(a) surrender its license and all copies thereof to the Bank which shall forthwith accept the surrender of such license;

(b) apply to the Supreme Court for its winding up;

(c) cease to do business, retaining only such staff as is necessary for an orderly winding-up under the supervision of a voluntary liquidator appointed with the approval of the Bank, and thereafter exercise its powers only to the extent, necessary to effect its orderly liquidation;

(d) repay in full its depositors within three days and other creditors within a reasonable period of time; and

(e) wind-up all operations which were commenced or undertaken prior to the receipt of the approval to wind-up.

(4) Notwithstanding the provisions of section 212 of the Companies Act (*Ch. 308*), a voluntary winding-up is deemed to commence from the time the Bank approves the voluntary winding-up pursuant to subsection (2).

(5) Notwithstanding the provisions of section 216 of the Companies Act (*Ch. 308*)—

(a) no person shall pass a resolution to remove a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) from office unless that person gives the Bank prior notice of his intention to pass such a resolution;

(b) a person who makes an application to the court pursuant to section 216(3) of the Companies Act (*Ch. 308)* for an order that a voluntary liquidator appointed under paragraph (c) of subsection (3) be removed from office, shall notify the Bank of the application within twenty-four hours of the filing of the application.

(6) Notwithstanding the provisions of section 217 of the Companies Act, (*Ch. 308*), where a voluntary liquidator appointed pursuant to paragraph (c) of subsection (3) intends to resign, he shall notify the Bank of his intention prior to his resignation.

(7) Notwithstanding section 218(1) of the Companies Act (*Ch. 308*), notice of a voluntary winding-up shall be filed, served or published within ten days of receipt of the approval of the Bank given pursuant to subsection (2).

(8) The voluntary liquidator shall notify the Bank in any case where an application for a supervision order is made to the Supreme Court or

where a court issues a supervision order pursuant to sections 219, 225, 226 and 227 of the Companies Act (*Ch. 308*).

(9) The voluntary liquidator shall submit a report and an account of the winding-up to the Bank, every six months.

(10) The voluntary liquidator shall submit a report and an account of the winding-up within twenty-one days of the date on which the bank's affairs are fully wound up.

(11) The Bank shall have power to issue directives to a voluntary liquidator and require the voluntary liquidator to produce such other reports as the Bank may require.

60. Compulsory winding up and appointment of liquidator.

(1) The Bank shall appoint a liquidator for a bank if —

(a) the Bank has revoked the license of the bank pursuant to subsection 29(1)(a) (i), (iii) or (iv) of this Act; or

(b) a statutory administration is terminated pursuant to subsection 48(2)(b) of this Act.

(2) The Bank may appoint a liquidator for a bank where it has revoked the licence of the bank pursuant to section 29(1)(a)(ii) or (v).

(3) The liquidator shall be a person from the private sector or an officer of the Bank who meets the qualifications established by the Bank.

(4) The Bank shall —

(a) have the power to vary or revoke the appointment of the liquidator at any time upon written notice to the person so appointed, and that person immediately shall cease to act as liquidator; and

(b) appoint a replacement who shall be a person from the private sector or an officer of the Bank who meets such qualifications as may be established by the Bank.

(5) The terms of the liquidator's compensation shall be set by the Bank and may include incentives for meeting the objectives described in section 61(2) and may include penalties for failure to meet such objectives.

(6) The compensation of the liquidator and experts that he engages, reimbursement of their expenses and expenses of the Bank in execution of provisions of this section with respect to a bank, shall be paid from the assets of the bank.

(7) Payments to the liquidator shall be made on a current basis if in the

judgment of the liquidator and upon approval of the Bank, there are sufficient liquid assets.

(8) Any moneys owing to the liquidator at the end of the term of liquidation shall be paid from the proceeds of the sales of the bank's assets in accordance with the priority described in section 67.

61. Powers and duties of the liquidator.

(1) Where the Bank appoints a liquidator of a bank pursuant to section 60, the liquidator shall become the sole legal representative of the bank, and, shall succeed to all rights and powers of the shareholders and directors and officers responsible for the management of the bank.

(2) The liquidator shall exercise his powers with due regard to the objectives of resolution as set out in section 35 of the Act.

(3) The liquidator may borrow money guaranteed with the bank's assets, or without guarantee, with the prior approval of the Bank.

(4) The liquidator may —

(a) not take any new deposits;

(b) extend credit only to an existing customer in accordance with the terms of an agreement in force at the time of the appointment of the liquidator and with the prior approval of the Bank provided however that the liquidator shall have the power to repudiate such loan commitments where such repudiation is in the best interest of the insolvency estate.

(5) The liquidator shall have unrestricted access to and control over the offices, books of account and other records, and other assets of the bank and its subsidiaries.

(6) The liquidator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the liquidator to gain access to any premises of the bank, to gain control over and to secure such properties, offices, assets, books and records of the bank.

(7) Any person who wilfully obstructs the liquidator in the exercise of his functions under this Act, commits an offence and shall be liable on summary conviction thereof to a fine not exceeding one hundred thousand dollars or to imprisonment for a term of not less than one year nor more than five years or to both, and in the case of a continuing offence, to an additional fine of one thousand dollars for each day during which the offence continues.

(8) The liquidator shall secure the property, offices, books, records, and assets of the bank to prevent their dissipation by theft or other

improper action, by taking actions including, but not limited to, the following —

(a) changing the locks and limiting access to the new keys on external entrances to the bank's offices and on doors to internal offices which contain financial assets or information or equipment which could enable a person to gain unlawful access to financial assets;

(b) changing or establishing access codes to the bank's computers and granting access only to a limited number of trustworthy employees;

(c) issuing new photo identification passes for entrance of authorized employees to the bank's premises and controlling the access of other persons to the bank's premises;

(d) cancelling authorizations of persons to conduct financial transactions for or on behalf of the bank and issuing new authorizations, as appropriate, and notifying third parties;

(e) informing correspondent banks, registrars and transfer agents of securities, and external asset managers of the bank's assets that persons who previously had authorization to give instructions on behalf of the bank with respect to dealing in the bank's assets or assets held in trust by the bank are no longer so authorized and that only the liquidator and persons authorized by the liquidator have such authority; and

(f) suspending the payment of capital distributions in general and payment of any kind to directors, officers and principal shareholders; provided, however, that base compensation may be paid to directors and officers for services rendered to the liquidator.

(9) The liquidator shall establish a new balance sheet for the bank, based on his determination of liquidation values of the bank's assets with a corresponding reduction in the value of the bank's liabilities in the reverse order of priority in payment of distributions in the liquidation of a bank's assets.

(10) The liabilities of a bank placed in liquidation under section 60 shall be deemed due and payable and interest shall cease to accrue as of the date of the appointment of the liquidator.

(11) Within one month of taking possession of a bank —

(a) the liquidator shall make an inventory of the assets and property of the bank and transmit a copy thereof to the Bank; and

(b) the Bank shall make a copy of the inventory available for examination by the public.

(12) The powers of the shareholders and directors and officers responsible for the management of the bank shall be terminated upon the appointment of the liquidator; provided, however, that directors or officers may be instructed by the liquidator to exercise specified functions for the bank; and further, provided that such persons shall be subject to dismissal by the liquidator from their positions at the bank and shall thereupon cease to receive compensation from the bank.

(13) When part of the business of a bank is sold in accordance with section 47(1), the liquidator must cooperate with any request of the Bank to enter into an agreement for the residual entity to provide services or facilities to the transferor.

(14) The liquidator shall immediately, following his appointment —

(a) file a copy of his instrument of appointment with the Registrar; and

(b) post in each branch of the bank a notice of —

(i) the revocation of the license of the bank in liquidation; and

(ii) his appointment as liquidator of the bank and specify in such notice:

(aa) the effective date and time when he took possession of the bank; and

(bb) specify that persons who previously had authorization to act or give instructions on behalf of the bank are no longer so authorized.

(15) The liquidator shall —

(a) publish notice of his appointment in the Gazette and in a local newspaper of general circulation, each week for four consecutive weeks; and

(b) co-ordinate such publication with the Deposit Insurance Corporation for the purpose of payment of insured deposits to eligible depositors pursuant to the Protection of Depositors Act (*Ch. 317*).

(16) Within sixty days after the appointment of a liquidator, the liquidator shall —

(a) deliver a notice of his appointment to all known depositors, creditors and lessees of safe-deposit boxes held by the bank;

(b) publish in the Gazette and a local newspaper of general circulation a notice specifying the manner and time in which any claim against the bank may be filed with the liquidator, not being earlier than sixty days from the date of delivery or publication of the notice.

(17) As of the date of appointment of a liquidator —

(a) any claim or right of the bank which would expire or be extinguished upon the expiration of a statutory, contractual or other term, shall be suspended;

(b) the calculation of interest and penalties against the bank's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the bank;

(c) all legal proceedings against the bank are stayed and the exercise of any right in respect of the bank's assets shall be suspended;

(d) no right shall be exerted over the bank's assets during the bank's liquidation, except rights given to the liquidator;

(e) no creditor may attach, sell or take possession of any assets of the bank as a means of enforcing his claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the bank's assets;

(f) any attachment or security interest (except one existing six months prior to the effective date of the liquidation) shall be vacated, and no attachment or security interest, except one created by the liquidator in the application of this section shall attach to any of the assets or property of the bank so long as such liquidation continues;

(g) shareholders' rights shall be extinguished except for the right to receive proceeds, if any, under section 67(4).

62. Termination of Contracts.

(1) A liquidator may, within thirty days of the date of his appointment, repudiate any unfulfilled or partially fulfilled contract, to the extent that the fulfilment of such contract is determined to be burdensome for the bank and the repudiation would promote the orderly administration of the bank's affairs and protect depositors' interests.

(2) Notwithstanding any other law, any liability arising from a repudiation pursuant to subsection (1) shall be determined as of the date of repudiation and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-

monetary damages.

(3) Subject to any law governing conditions of employment, the liquidator of a bank may terminate, not later than three months after his appointment —

(a) any employment contract of the bank;

(b) any contract for services to which the bank is a party; and

(c) any obligations of the bank as a lessee of property.

(4) A lessor of any property referred to in subsection (3) —

(a) shall be given notice of not less than thirty days of the intended termination of the obligations of a bank;

(b) has no claim for rent other than rent accrued up to and including the date of the termination of the obligation of the bank; and

(c) has no right to consequential or other damages which arise by reason only of any termination of the obligations of the bank, notwithstanding any term of the lease to the contrary.

63. Notice of Claims.

A liquidator shall, not later than ninety days after the last day specified in the notice for filing claims against a bank being compulsorily wound-up —

(a) where he doubts the validity of any claim, reject the claim;

(b) determine the amount, if any, owing to each known depositor or other creditor, and the priority of each claim under this Act;

(c) file with the Bank a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the bank provided that such filing shall exclude deposits that are uninsured but which are included in the definition of "deposits" under section 2(1) of the Protection of Depositors Act (*Ch. 317*), and which have been fully paid out or transferred to another entity;

(d) notify each person whose claim is allowed in full; and

(e) publish, once a week for three consecutive weeks, in the Gazette and in a newspaper of general circulation in The Bahamas —

(i) a notice of the date and place where the schedule referred to in paragraph (c) will be available for inspection; and

(ii) the last date, not being earlier than thirty days from the date of publication, on which the liquidator will file that schedule with the Bank.

(f) The Bank may approve the schedule of actions referred to in paragraph (c) subject to such terms and conditions as it may require.

(g) The Bank shall, in approving the schedule referred to in paragraph (c), ensure that all of the deposits that are uninsured but which are included in the definition of "deposits" under section 2(1) of the Protection of Depositors Act (*Ch. 317*) are paid out in an expeditious manner.

64. Objections.

(1) Within twenty days of the filing of a schedule under section 63(c), a depositor or other creditor or shareholder of the bank concerned, or other interested person, may file with the Bank any objection that person has to any action proposed in such schedule.

(2) The Bank may direct that an objection filed pursuant to subsection (1) be served on the liquidator and such interested parties as the Bank may require, and shall subsequently hear the objection and issue a Notice setting out its determination thereon as it considers appropriate in the circumstances.

(3) When the Bank allows an objection, the Notice shall set out the manner in which the schedule referred to in section 63 is to be modified.

65. Distributions.

(1) Where a liquidator has filed a schedule in respect of a bank, pursuant to subsection 63(c), the liquidator shall make periodic distributions of recoveries on liquidated assets to claimants, if the liquidator establishes an adequate reserve (as determined by the Bank) for the payment of disputed claims against the bank.

(2) As soon as practicable after all objections against the distribution proposed by the liquidator have been heard and determined, final distribution of the assets of the bank concerned shall be made by the liquidator.

66. Avoidance of pre-liquidation transfers.

(1) The liquidator may declare void a transaction based on a forged or fraudulent document that the bank has executed to the detriment of creditors within the five years preceding the effective date of the liquidation.

(2) The liquidator may declare void the following transactions affecting

the assets of the bank or to recover from third parties the transfers by the bank —

(a) gratuitous transfers to, or to persons related to, directors and officers and principal shareholders of or holders of significant interests in the bank made within the five years preceding the effective date of the liquidation;

(b) gratuitous transfers to third parties made within the three years preceding the effective date of the liquidation;

(c) transactions in which the consideration given by the bank considerably exceeded the received value obtained, made within the three years preceding the effective date of the liquidation;

(d) any act done within the five years preceding the effective date of the liquidation, with the intention of all parties involved to withhold assets from the bank's creditors, or otherwise impair their rights;

(e) transfers of property of the bank to, or for the benefit of, a creditor on account of a debt incurred within the six months preceding the effective date; of the liquidation which has the effect of increasing the amount that the creditor would receive in a liquidation of the bank; provided however that payment of deposits in an amount equal to or less than two thousand dollars per depositor shall not be subject to this provision.

(f) transactions with persons related to the bank conducted within one year prior to the effective date of the liquidation, if detrimental to the interest of depositors and other creditors; and

(g) any attachment or security interest, except one existing six months prior to the effective date of the liquidation.

(3) An action to declare a transfer void may be brought by the liquidator within one year following the effective date of the liquidation.

(4) Notwithstanding the foregoing subsections, the liquidator may not declare void a payment or transfer by the bank if it was made in the ordinary course of the bank's business, or if it was part of a contemporaneous exchange for reasonably equivalent value, or to the extent that following the transfer the recipient extended new unsecured credit to the bank which had not been satisfied by the bank as of the effective date of the liquidation.

(5) The liquidator may recover property or the value of property transferred by the bank from a transferee of an initial transferee only if the second transferee did not give fair value for the property and knew or reasonably should have known that the initial transfer could be set

aside.

(6) The liquidator may file notice of an action to declare a transfer void in the public records for real estate ownership and any other rights in property and a person taking title to or acquiring any security interest or other interest in such property after the filing of such a notice takes his or her title or interest subject to the rights of the bank to recover the property.

(7) Notwithstanding subsection (1) —

(a) irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by the Bank shall be legally enforceable and binding on third parties, even upon a decision revoking the bank's license and appointing a liquidator, but only if the transfer orders become irrevocable before such decision takes effect; or

(b) a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system after the decision revoking the bank's license and appointing a liquidator takes effect and the transfer orders are carried out on the day of such decision, the transfer orders shall be legally enforceable and binding on third parties, unless the liquidator proves that the system operator was aware of the decision before the transfer orders became irrevocable.

(8) No law, regulation or practice on the setting aside of contracts and transactions issued or adopted before the decision revoking the bank's license and appointing a liquidator takes effect shall, as a consequence of such decision, lead to the unwinding of a netting by a payment or securities settlement system recognized as such by the Bank because of that decision.

(9) For the purposes of subsections (7) and (8) —

(a) a payment order entered into a money or securities settlement system becomes irrevocable at the time defined by the regulations of that system; and

(b) **"netting"** means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

(10) Nothing in this Act and no decision made under this Act shall prevent or prohibit the set off by operation of law of obligations between a

bank being subject to the liquidation proceedings under this Act and its counterparty .

(11) In determining the rights and obligations between a bank in liquidation and its contractual counterparty —

(a) effect shall be given to the termination provisions of eligible financial contracts between them;

(b) the net termination value determined in accordance with an eligible financial contract between them, shall be a claim of the bank on the counterparty or shall be admitted after its validation as a claim of the counterparty on the bank.

(12) For the purposes of this subsection —

(a) **"eligible financial contract"** means swaps, options and other derivative transactions related to interest rates, foreign exchange swaps, commodities, and guarantee of liabilities, but also includes any type of financial contract from time to time specified by the Bank by regulation for such purpose; and

(b) **"net termination value"** means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

(13) Except as provided under this subsection, no set-off shall be allowed with respect to claims against the bank after the decision to revoke the bank's license and the appointment of a liquidator takes effect or within three months before such decision.

(14) Save for deposits insured under the Protection of Depositors Act (*Ch. 317*), claims against the bank arising from deposits shall be set-off against any sum due by a depositor to the bank as of the date on which the license is revoked and the liquidator is appointed —

(a) automatically if such sum is matured or past due;

(b) at the option of the depositor, if the sum is not matured or past due.

67. Priority of claims.

(1) In any liquidation of a bank's assets, allowed secured claims shall be paid to the extent of the realization of the security or the security shall be delivered to the secured creditor.

(2) The following unsecured claims have priority against the general assets of a bank being compulsorily wound-up under this Act, namely

—

(a) necessary and reasonable expenses incurred by the statutory administrator or liquidator, including professional fees in carrying out their functions under this Act;

(b) subrogated claims of the Deposit Insurance Corporation under the Protection of Depositors Act (*Ch. 317*) in respect of insured deposits;

(c) deposits that are uninsured but not excluded from the definition of "deposits" under section 2(1) of the Protection of Depositors Act (*Ch. 317*);

(d) credits extended to the bank by the Bank until the appointment of the liquidator to the extent not sufficiently secured by collateral;

(e) wages and salaries of the officers and employees of the bank (whether or not earned wholly or in any part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, that accrued during the three months immediately preceding the appointment of a statutory administrator or liquidator under this Act, provided that such amount does not exceed ten thousand dollars per person;

(f) all taxes due and other imposts owing to the Government of The Bahamas;

(g) the fees, and assessments owing to the Bank;

(h) credits extended to the bank after the appointment of the liquidator;

(i) all other unsecured claims of creditors;

(j) subordinated debt.

(3) After payment of all other claims against the bank, all remaining claims against the bank that were not filed within the time limited therefore under this Act may then be paid.

(4) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the liquidator on a *pro rata* basis among the claimants in that class.

(5) The assets of a bank being compulsorily wound-up that remain after the final distribution to claimants pursuant to subsection (2) shall be distributed by the liquidator among the shareholders of the bank in

proportion to their respective rights.

68. Final reporting.

(1) A liquidator appointed pursuant to section 60 shall, prepare a report and an account of the winding up showing how it has been conducted and how the bank's property has been disposed of and thereupon shall call a general meeting of the bank for the purpose of laying before it the account and giving an explanation for it.

(2) The liquidator shall submit the report and an account of the winding up described in subsection (1) to the Bank.

(3) At least twenty-one days before the meeting the liquidator shall send a notice specifying the time, place and object of the meeting to each contributory in any manner authorised by the company's articles and published in the Gazette.

(4) The liquidator shall, no later than seven days after the meeting, make a return to the Registrar in the prescribed from specifying —

(a) the date upon which the meeting was held; and

(b) if a quorum was present, particulars of the resolutions, if any, passed at the meeting.

(5) A liquidator who fails to call a general meeting of the company as required by subsection (1) or fails to make a return as required by subsection (3) shall be liable to pay a penalty not exceeding ten thousand dollars.

69. Automatic Termination Rights.

The entry into resolution and the exercise of any resolution powers shall not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of a bank in resolution, to exercise contractual acceleration or early termination rights, provided the substantive obligations under the contract continue to be performed.

70. Creditor Safeguards.

The powers of the Bank or statutory administrator under section 38 shall not be used to —

(a) transfer assets of a bank in resolution against which a liability is secured (under a lien, mortgage or any other type of security interest) unless the liability and the benefit of the security interest is also transferred; or

(b) transfer only some but not all of the rights and liabilities protected under a netting clause contained in an eligible financial contract.

(c) For the purposes of this section, "eligible financial contract" has the meaning ascribed under subsection 66(11)(b).

71. Shareholder and Creditor Safeguards.

(1) If, in accordance with a valuation determined by an independent valuer, who meets qualification requirements specified by the Bank, any shareholder or creditor of the bank under statutory administration establishes that as a result of any merger, purchase and assumption, sale or restructuring under section 47, it is in a position that is worse than if the bank had been liquidated, (not taking into account the effects of any financial or other support from the Bank, the Government, or the Deposit Insurance Corporation to the bank or an acquirer of the bank under section 47 of this Act), that shareholder or creditor shall be entitled to compensation in an amount that would restore the shareholder or creditor to the same position as he would have been in had the bank been liquidated provided however that such compensation will only be payable to the shareholder or creditor if recoveries from the liquidation of assets would have exceeded other claims.

(2) For the purposes of subsection (1) the Bank shall pay the compensation and shall decide whether to pay it wholly or partly in cash or wholly or partly in any other form, including shares, that the Bank considers appropriate.

(3) Subject to subsection (1) in determining the amount of compensation to which a person is entitled, the following shall not be taken into account —

(a) any shares or other interest or right received by another person as a result of a transfer made pursuant to section 47 or retained by another person; and

(b) any common shares received by another person as a result of a conversion of shares or liabilities in accordance with the contractual terms of those shares or liabilities.

(4) Payment of the compensation by the Bank under subsection (2) discharges the Bank from its obligations under that subsection and in no case is the Bank under any obligation to see to the proper application in any way of any such payment.

(5) An independent valuer may appoint a person to assist in the performance of the independent valuer's functions, subject to the written approval of the Bank.

(6) The Bank shall determine the remuneration to be paid to an independent valuer and any person appointed pursuant to subsection (5).

(7) The valuation under subsection (1) shall determine the following —

(a) the treatment that shareholders and creditors, would have received if the institution under resolution had entered liquidation at the time when the decision was made to place the bank under statutory administration;

(b) the actual treatment that shareholders and creditors have received in the resolution of the institution under statutory administration;

(c) whether there is any difference between the treatment referred to in paragraph (a) and the treatment referred to in paragraph (b).

(8) The valuation under subsection (1) shall —

(a) assume that the bank under statutory administration would have entered normal liquidation proceedings at the time when the decision referred to in section 29(1(f) was taken,

(b) assume that the resolution action or actions had not been effected, and

(c) disregard any provision of extraordinary public financial support to the institution under resolution.

(9) Where the valuation carried out under subsection (1) determines that any shareholder or creditor referred to in that subsection, has incurred greater losses than they would have incurred in a winding up under normal insolvency proceedings, it is entitled to the payment of the difference from the Fund in compensation.

(10) Any affected shareholder or creditor may apply to the independent valuer appointed under section 47(11) for compensation in accordance with subsection (1).

(11) The independent valuer to whom an application is made shall determine the amount of compensation due to any person who has made an application under subsection (10).

(12) Before any determination under subsection (11) has been made, the following persons may make submissions to the independent valuer concerned and the independent valuer shall consider any such

submissions —

(a) the Bank;

(b) the Minister;

(c) any affected shareholders or creditors.

(13) Where the independent valuer has determined, in accordance with subsection (11) the amount of compensation, if any, payable to each person who has applied for it, the independent valuer shall report in writing to the Bank the following —

(a) the name of each such person;

(b) whether compensation is payable to each such person;

(c) the amount of compensation, if any, payable to each such person.

(14) A report under subsection (13) shall set out the following —

(a) a summary of the evidence on which the independent valuer relied in making his or her determination;

(b) the independent valuer's reasons for making the determination.

(15) As soon as practicable after the publication of the independent valuer's report, the Bank shall —

(a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and

(b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.

(16) The Bank shall cause the independent valuer's report under subsection (13) to be published as soon as is practicable.

(17) As soon as practicable after the publication of the independent valuer's report, the Bank shall —

(a) notify each applicant in writing whether or not compensation has been determined to be payable to him, and

(b) pay compensation in accordance with the report to each person to whom compensation has been so determined to be payable.

(18) The Bank, or a shareholder or creditor who has or claims a right to compensation, may lodge an appeal with the Supreme Court against the determination of the independent valuer under subsection (13).

(19) The independent valuer is to be the respondent to an appeal under subsection (18).

(20) On hearing an appeal under subsection (13), the Court may substitute its own determination or confirm, annul or vary the determination

appealed from and may make any other consequential order.

(21) In deciding, for the purposes of an appeal under subsection (13) whether the independent valuer's determination should be confirmed, annulled or varied, the test to be applied by the Supreme Court is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the independent valuer and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors.

72. Independent valuer to meet qualifications.

(1) A person may not be appointed as an independent valuer by the Bank unless they meet the qualifications specified in writing by the Bank.

(2) The Bank must exercise the powers that it has under this Act to, as far as practicable, provide access, or procure the provision of access, for the independent valuer of any records and documents of the bank under statutory administration, or of a connected person, that are, or any other information that is, relevant to the performance by the independent valuer of functions under this Act.

(3) For the purposes of subsection (2) **"connected person"** has the meaning given in section 38(10)(d) of the Central Bank of The Bahamas Act, 2020.

(4) The Bank may revoke the appointment of an independent valuer if —

(a) the person is incapable of performing the functions of an independent valuer;

(b) the person is not performing the functions of an independent valuer impartially and independently;

(c) the person is guilty of serious misconduct;

(d) the person no longer satisfies the criteria for appointment specified by the Bank.

(5) Where the Bank revokes the appointment of an independent valuer pursuant to subsection (4), or where the independent valuer resigns the Bank shall appoint a new independent valuer as soon as practicable following such revocation or resignation.

(6) As soon as practicable after a new independent valuer is appointed under subsection (5), the Bank may, by notice in writing served on the person who has ceased to hold the office of independent valuer, require the person to provide the documents, records or accounts to which this subsection applies to the person appointed as the successor

of the person in that office within the period, and in the manner, specified in the notice.

(7) Subsection (6) applies to—

(a) any document provided to the person in the capacity of independent valuer;

(b) any records or accounts kept by the person as required under subsection (6); and

(c) any other records made by the person in the capacity of independent valuer that are relevant to the performance by a successor independent valuer of functions under this Act.

(8) A person who, without reasonable excuse, fails to comply with a requirement under subsection (6) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of one thousand dollars for every day during which the offence continues.

(9) A person who produces any document for complying with a requirement under subsection (6) that the person knew, or ought reasonably to have known, to be false in a material particular commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for six months.

(10) The acts of a person acting as an independent valuer are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the independent valuer, other than a defect arising because the independent valuer did not meet the criteria specified by the Bank.

PART VII - MISCELLANEOUS

73. Central Bank may publish action.

The 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) of subsection (1) of section 29, section 30, section 43 or under section 44, 75(4), 76(2) or 76(5).

74. Prohibition orders.

(1) The 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 a regulated function.

(2) For the purposes of this section, **"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 Bank.

(3) An individual who is 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 Bank may, on the application of the individual named in the prohibition order, vary or revoke the order.

(6) The provisions of this section shall not apply to any controller or shareholder of a licensee or Registered Representative.

75. Bank to issue warning and decision notices.

(1) The Bank shall, where it proposes to make a prohibition order, issue a warning notice to all interested parties including —

(a) the individual affected by the proposed order; and

(b) if the Bank deems fit, the relevant licensee Registered Representative, or Money Transmission Agent.

(2) A warning notice issued under subsection (1) shall —

(a) set out the terms of the prohibition and the grounds on which the Bank proposes to act; and

(b) afford the individual named in the notice within such time as is specified in the notice, an opportunity to submit to the Bank a written statement of objection to the proposed prohibition order.

(3) The Bank shall, following the issuance of a warning notice under subsection (1), advise the individual named in the notice of its decision.

(4) The Bank shall, where it decides to make a prohibition order, issue to the individual named in the warning notice, a written notice of the Bank's decision.

(5) A decision notice issued under subsection (4) shall —

(a) name the individual to whom the prohibition order applies;

(b) set out the terms of the order;

(c) state the date on which the Bank's decision is to take effect;

(d) be delivered to the individual named in the order; and

(e) if the Bank deems fit, be delivered to the relevant licensee Registered Representative, or Money Transmission Agent.

(6) An individual against whom a decision to make a prohibition order is made may refer the matter to the Supreme Court.

76. Variation, revocation of prohibition order.

(1) An individual against whom a prohibition order has been made may apply to the Bank to have the order varied or revoked.

(2) The 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 75.

(6) An applicant issued a decision notice under subsection (5) may refer the matter to the Supreme Court.

77. Preservation of confidentiality.

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

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

(b) counsel and attorney, consultant or auditor of the 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 Bank to exercise any functions conferred upon the Bank by any written law;

(v) in the case of a bridge institution, to the Minister or his designate;

(vi) in the case of an asset management vehicle, to the Minister or his designate;

(vii) to a person with a view to the institution of, or for the purpose of—

(aa) criminal proceedings;

(bb) 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

(cc) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Bank of his duties.

(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 Bank may, subject to the provisions of section 32(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.

(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

(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, 2018 (*No. 5 of 2018*).

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

(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 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.

78. Treatment of dormant accounts held by banks.

(1) This section applies to —

(a) a deposit account, including demand, savings, and fixed term deposit account;

(b) a chequing account;

(c) a bank draft, cashier cheque, certified cheque and money order;

(d) a traveller's cheque;

(e) a credit balance on a credit card;

(f) a credit balance on a loan;

(g) collateral held on a loan, including cash and non-cash collateral;

(h) funds paid for shares or other interest in a licensee;

(i) a custody account or safety deposit box;

(j) a deposit account of precious metals and precious gemstones;

(k) all securities listed in Part I of the *First Schedule* to the Securities Industry Act, 2011 (*No. 10 of 2011*); and

(l) such other deposit account or other facility as the Bank may, by notice, determine.

(2) For the purposes of this section —

"customer" means —

(a) a person who holds an account or other facility;

(b) a person who, in respect of an account or other facility, is authorised, in writing, to act as the agent of the person who holds the account or other facility;

(c) a person who is authorised under a power of attorney to manage and control an account or other facility;

(d) where a person who holds an account or other facility is deceased, the heirs, executors, administrators and assigns of that person;

(e) such other person as the Bank may by notice determine;

"dormant account" means a deposit account or other facility at a bank where the customer has initiated no transaction, for a period of seven years, with respect to —

(a) the deposit account or other facility;

(b) any other deposit account or facility of the customer held with the bank;

"other facility" means any account or arrangement —

(a) that is provided by a bank to a customer;

(b) by, through or with which a customer may conduct transactions,including instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;

"precious gemstones" does not include jewellery;

"recognized foreign securities exchange" has the meaning assigned in section 2 of the Securities Industry Act, 2011 (*No. 10 of 2011*);

"registered securities exchange" means a securities exchange that is registered pursuant to Part V of the Securities Industry Act, 2011;

"transaction" means an action initiated by a customer, in person or by electronic or other non-physical means, in respect of a deposit account or other facility that such customer has with a bank and includes —

(a) a deposit, withdrawal, exchange or transfer of funds in any currency denomination whether in cash, by cheque, payment order, or other instrument;

(b) a communication, acknowledgement, request, or instruction where evidenced in writing and signed by the customer;

(c) a contemporaneous record of the customer's verbal instruction prepared by the bank.

(3) The seven year period, referred to in the definition of dormant account in subsection (2), shall be calculated in the case of —

(a) a deposit account made for a fixed period, from the date on which the fixed period terminated, or the date the customer terminates his instructions to automatically renew the deposit, whichever is the later;

(b) a deposit account not made for a fixed period, from the date on which the customer last conducted a transaction with respect to the deposit account; and

(c) a facility other than one referred to in paragraphs (a) or (b), from the date on which the facility was issued, established, or the obligation to make a payment in respect of the facility accrued, whichever is the later.

(4) A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, within two months after the end of the calendar year in which the applicable seven year period expired —

(a) pay to the Bank an amount equal to and in the same currency denomination as the amount owing by the bank in respect of the dormant account, including cash from a dormant safety deposit box; or

(b) subject to subsection (10), liquidate a dormant account, including a safety deposit box, containing precious metals, precious gemstones or securities, and after deducting the reasonable costs incurred in connection with the liquidation of the account, pay the balance of the proceeds of sale of such account to the Bank, provided that, the Bank may exempt a bank in writing from this subsection where extenuating circumstances exist.

(5) For the purposes of paragraph (b) of subsection (4) —

(a) securities listed on a registered securities exchange or a recognized foreign securities exchange shall be sold at prices prevailing on the exchange at the time of sale;

(b) securities that are not listed on an established stock exchange may be sold over the counter at prices prevailing at the time of the sale or by any reasonable method selected by the bank using its best efforts and prudence and having regard to market conditions at the time of the sale, which sale shall take place within two months after the end of the calendar year in which the applicable seven year period expired or within such longer period as the Bank may, in its sole discretion, approve;

(c) a purchaser acquiring property at a sale takes the property free of all claims of the owners and of all persons claiming through or under the owners;

(d) a person making a claim for liquidated property is entitled to receive the proceeds of sale of such property, less deductions for —

(i) costs of sale;

(ii) reasonable expenses incurred by the Bank, pursuant to section 27(2) of the Central Bank of The Bahamas Act, 2020; and

(iii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.

(6) Subsection (4)(b) shall not apply where the precious metals, precious gemstones or securities do not have a ready buyer, cannot be sold, are worthless or are not cost-effective to sell and, in such cases, the bank —

(a) shall transfer the property to the Bank or to an agent appointed by the Bank; or

(b) at the discretion of the Bank, shall continue to hold the precious metals, precious gemstones or securities, as the case may be, as an agent for the Bank.

(7) Subject to subsection (12), no person shall have a claim for any act done pursuant to paragraph (b) of subsection (4) against —

(a) a bank;

(b) a registrar and transfer agent; or

(c) any other person acting for or on behalf of the bank.

(8) A bank shall retain —

(a) for a period of fifteen years after the date the bank makes a payment to the Bank pursuant to subsection (4); or

(b) for a period of five years after the bank makes a payment to a claimant pursuant to subsection (12), all records relating to the dormant account in respect of which such payment was made including all —

(i) registers;

(ii) signature cards;

(iii) signing authorities;

(iv) microfilm or electronically stored copies of such records.

(9) Notwithstanding subsection (8), the relevant periods for the retention of records where a bank makes a payment pursuant to subsection (4) or subsection (12) with respect to a securities account shall be seventeen years and seven years, respectively.

(10) Notwithstanding subsection (4), a bank shall —

(a) subject to paragraph (b), not make payment to the Bank with respect to —

(i) dormant accounts which have any one or more of the following characteristics —

(aa) are non-cash collateral;

(bb) are a custody account or safety deposit box, except for cash, precious metals, precious gemstones or securities found in such boxes;

(ii) such other characteristics as the Governor may, by regulation, determine;

(b) continue to administer the dormant accounts referred to in paragraph (a) in the best interest of the customer in accordance

with the bank's contractual obligations and subject to heightened internal monitoring by the bank, in accordance with guidelines issued by the Bank;

(c) deduct a reasonable sum for the administration of the dormant account referred to in paragraph (a) only where —

(i) there is an enforceable written contract between the bank and the customer under which the bank may impose a charge; and

(ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled.

(11) A bank which holds a dormant account of the kind referred to in subsection (10)(a) shall make a report to the Bank at such intervals, and in such form containing such particulars, as the Bank may require.

(12) Where a bank has made a payment to the Bank pursuant to subsection (4) and —

(a) the bank represents to the Bank that it is satisfied that a person is entitled to receive an equal amount where the funds were paid in Bahamian dollars and an equivalent amount where the funds were paid in any other currency; and

(b) the person has brought a claim to the bank for the amount so paid prior to the expiry of ten years from the date of the Bank's receipt of such amount, a liability shall arise —

(i) on the Bank, to repay to the bank an equal or equivalent amount, as the case may be, together with interest if interest was payable by the bank, at a rate and computed in a manner that the Bank may by written notice determine; and

(ii) on the bank, to pay the amount received from the Bank under sub-paragraph (i) to the claimant.

(13) A bank which makes a payment to the Bank pursuant to subsection (4), or transfers property to the Bank or an agent of the Bank pursuant to subsection (6)(a), shall be discharged from further liability in respect of such payment or transfer.

(14) The Bank shall, where the Bank makes a payment pursuant to subsection (12) of this section or section 27(2) of the Central Bank of The Bahamas Act, 2020, be discharged from further liability in respect of such payment.

(15) A bank shall maintain a register of dormant accounts containing in respect of each account the —

(a) full name and last known address of each customer;

(b) last known telephone number or other contact of each customer;

(c) name of the bank and location of the branch at which the dormant account is held;

(d) account number;

(e) type of facility;

(f) full description of assets, including amount and currency where appropriate;

(g) fee status, indicating whether the account was subject to any fees immediately prior to transfer to the Bank and the amount of such fees;

(h) interest status, indicating whether the account was subject to any interest earned immediately prior to transfer to the Bank and the amount of such interest;

(i) date of last transaction on the account;

(j) measures, briefly described, taken to contact the customer;

(k) in the case of funds in transit, file copy of the instrument or transfer;

(l) date funds were paid to the Bank pursuant to subsection (4), where applicable; and

(m) other information that the Bank may, in writing, require a bank to maintain in the register.

79. Charges for account to be by agreement.

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.

80. Power of search.

(1) If a Magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 28(4) to assist the Inspector either —

(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 28(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 28(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 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 28(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.

81. Attorney-General's fiat.

(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 Bank.

(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;

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

82. Regulations.

The Bank 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 6(2) and section 4(3);

(b) to prescribe the facts or matters which are likely to be of material significance for the discharge of the Inspector's functions under this Act;

(c) generally for carrying out the purposes or provisions of this Act into effect.

83. No Derogation.

(1) The provisions of the Act shall have effect in addition to and not in derogation of any other provisions having the force of law in The Bahamas, provided however that the provisions of the Act shall prevail to the extent of any inconsistency with other laws of general application.

(2) This Act shall have effect notwithstanding anything to the contrary in the Companies Act (*Ch. 308*) and the provisions of that Act, insofar as they relate to banking business or such other business as may be regulated or supervised by the Bank in or from within The Bahamas, shall have effect only subject to the provisions of this Act.

84. Appeal.

(1) An appeal shall lie to the Supreme Court from any decision of the Bank —

(a) amending or revoking an authorization contained in a licence under section 10(6) or revoking a licence under sections 4(5), 29, or 48(3);

(b) cancelling any registration or withdrawing any exemption under section 14(1) or withdrawing any approval under section 4(4);

(c) requiring a licensee to take certain steps which the Bank may specify under section 29.

(d) to serve a notice of objection under subsection (1) of section 17;

(e) to serve a decision notice under subsections (4) of 75 or subsection (5) of section 76;

(f) appointing a statutory administrator pursuant to section 29(1)(f);

(g) appointing a liquidator pursuant to section 60(1).

(2) An appeal against the decision of the Bank shall be on motion and the appellant within twenty-one days after the day on which the Bank 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:

Provided that any person aggrieved by the decision of the Bank 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 Bank'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) In any court, administrative, or arbitration proceedings brought against the Bank, the Inspector, a director, officer, employee, correspondent or agent of the Bank, including any statutory administrator, or liquidator appointed by the Bank under this Act for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions or against the Bank for any actions or inactions pursuant to sections 29(1)(f), 38, 40, 42, 43, 46, 47, 48, 49, 50, 60(1) or 60(2), 62 and 63 of this Act relating to intervening in or resolving banks —

(a) the court, administrative body, or arbitration panel may examine only whether the respondent acted unlawfully, in bad faith, or with gross negligence, the burden of proof of which shall be borne by the plaintiff or claimant;

(b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and

(c) the court, administrative body, or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.

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

85. Fees and levy.

(1) Notwithstanding the provisions of any other law, a bank that is a DSII at any time during a financial year that ends after the commencement of this section is liable to pay a levy in respect of that financial year.

(2) The provisions of the *Second Schedule* shall have effect for the payment of the fees in respect of the matters mentioned in that Schedule and all fees and levy listed in the *Second* Schedule shall be collected by the Bank.

(3) Subject to subsection (4) all fees and any levy amount paid pursuant to subsection (2) shall be placed in the Consolidated Fund.

(4) For the purpose of funding regulatory activity of the Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas and the Compliance Commission, the Bank shall withhold such amount of the fees and levy collected under subsection

(2) as may be agreed with the Minister and shall remit the balance to the Treasurer.

(5) The Minister may by regulations —

(a) provide for the refund (or other application) of over payment of levy;

(b) vary the fees or amount of levy prescribed in the *Second* Schedule, to provide that any such regulations which increase the amount of any fees or levy 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.

(6) The Bank may, if the Bank considers it appropriate to do so, waive the payment of the whole or a part of an amount of levy that is payable by a DSII.

(7) In subsection (5), 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.

(8) If any person fails to comply with any requirement of subsections (1), (2) and the *Second 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.

86. Repeal.

The Banks and Trust Companies Regulation Act (C*h. 316*), is hereby repealed.

87. Savings.

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

(sections 2, 28 and 78)

INSPECTION AND SUPERVISION OF BANKS AND TRUST COMPANIES

1. In accordance with section 28, the Inspector shall in carrying out inspections and supervision of banks and trusts companies —

(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 for criminal purposes;

(i) co-operate with inspectors and supervisors in other jurisdictions to the extent necessary for the purposes of cross-border supervision consistent with the policy established by the Basel Committee for cross-border supervision.

2. In this Schedule, **"Basel Committee on Banking Supervision"** or **"Basel Committee"** means the committee of central banks and bank supervisors that is the primary global standard setter for the prudential regulation of banks.

SECOND SCHEDULE

(section 85)

FEES AND LEVY

1. Calculation of levy.

(1) The amount of levy payable by a DSII for a financial year is the amount worked out using the following formula —

Levy	=	Rate of Assessment per annum	x	(Consolidated Total Domestic Liabilities amount of DSII	--	Levy Threshold	+	Regulatory capital amount equivalent to 16 per cent of a DSII's risk weighted assets)

(2) The amount of levy payable by a DSII for a financial year shall in no case be less than zero.

(3) The annual rate of assessment to be used to calculate the levy shall be 0.30% or such other percentage as the Minister may by regulation determine from time to time.

(4) Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say —

2. Fees.

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 domestic assets not exceeding $500 million	$250,000
	(ii) has domestic assets exceeding $500 million but not exceeding $1 billion	$500,000
	(iii) has domestic assets exceeding $1 billion	$1 million
(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 consolidated audited financial statements —		
	(i) has domestic assets not exceeding $500 million	$275,000
	(ii) has domestic assets exceeding $500 million but not exceeding $1 billion	$550,000

(iii) has domestic assets exceeding $1 billion but not exceeding $1.5 billion $1 million

(iv) has domestic assets exceeding $1.5 billion $1.2 million

(c) A further fee payable on the first day of January in any year as a person appointed as mentioned in subparagraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements —

(i) has domestic liabilities not exceeding $100 million $50,000

(ii) has domestic liabilities exceeding $100 million but not exceeding $500 million $450,000

(iii) has domestic liabilities exceeding $500 million but not exceeding $1 billion $1.5 million

(iv) has domestic liabilities exceeding $1 billion $2 million

(d) Appointment of a licensee as authorised agent pursuant to the Exchange Control Regulations, 1956, in the case where the licensee as per its last consolidated audited financial statements —

(i) has assets not exceeding $5million $90,000

(ii) has assets exceeding $5 million but not exceeding $20 million $150,000

(iii) has assets exceeding $20 million $225,000

(e) Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (d) 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

(f) Grant of license 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 (d) of this paragraph $80,000

(g) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (f) of this paragraph $80,000

(h) 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 licensee —

(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations, 1956, to be resident in The Bahamas; and

(ii) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph $58,000

(i) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (e) of this paragraph

$58,000

(j) 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 the 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 (d) of this paragraph $80,000

(k) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (j) of this paragraph

$80,000

(l) Grant of license to carry on trust business without any limitation on the persons with or for whom such respective business maybe 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 (d) of this paragraph $58,000

(m) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (l) of this paragraph

$58,000

(n) Continuance in being on the first day of January in any year as a person licensed to carry on banking business solely with a person specified in the licence $35,000

(o) Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence $35,000

(p) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (o) of this paragraph

$35,000

(q) Grant of license solely to carry on the trust Business specified in the licence $11,000

(r) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (q) of this paragraph $11,000

(s) Grant of any licence not mentioned in subparagraph (f), (h), (j), (l), (o) or (q) of this paragraph $2,500

(t) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (s) of this paragraph $2,500

(u) On commencement of the business of a private trust company $6,000

(v) Continuance in being on the first day of January in any year as a private trust company mentioned in subparagraph (u) of this paragraph $4,000

(w) On commencement of the business of a Money Transmission Service Provider $11,000

(x) Continuance in being on the first day of January in any year as a Money Transmission Service Provider mentioned in paragraph (w) $11,000

(y) Grant of a certificate of registration to carry on the business of Registered Representative $2,500

(z) Continuance in being on the first day of January in any year as a person registered as mentioned in subparagraph (y) of this paragraph $2,500

3. Miscellaneous.

Where any person by reason of falling within a class mentioned in subparagraphs (a) to (z) of paragraph 2 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:

Provided that any person in any year falling within a class mentioned at subparagraph (a) or (b) and at the same time within a class mentioned at subparagraph (c), (d) or (e) of the said paragraph 1 of this Schedule shall,

subject to paragraphs 4 and 5 of this Schedule, be required to pay the fee prescribed in respect of both such classes for that year.

4. Extension of time for payment of fees.

As respects the fees specified at subparagraphs (b), (e), (g), (i), (k), (m), (n), (p), (r), (t), (v), (x) and (z) of paragraph 2 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.

5. Deductions in respect of fees.

Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 2 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 (*Ch. 309*) shall be deducted from any fees payable by such person in that year under this Act.

THIRD SCHEDULE

(section 47(5))

SECURITIES TRANSFER INSTRUMENTS

Part I - General

1. Interpretation.

In this Schedule —

"prescribed entity" means —

(a) a bank under statutory administration;

(b) a holding company of a bank under statutory administration;

(c) an affiliated operational entity of a bank under statutory administration;

(d) a bridge institution to which —

(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or

(ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument;

(e) an asset management vehicle to which assets, rights or liabilities mentioned in paragraph 42(3)(b) have been transferred by a property transfer instrument;

"securities" includes —

(a) shares and stock;

(b) debentures, including —

(i) debenture stock,

(ii) loan stock,

(iii) bonds,

(iv) certificates of deposit, and

(v) any other instrument creating or acknowledging a debt.

(c) warrants or other instruments that entitle the holder to acquire anything in paragraph (a) or (b).

2. Securities transfer instrument.

(1) A securities transfer instrument is an instrument that —

(a) provides for the transfer of securities issued by a prescribed entity; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of securities issued by a prescribed entity (whether or not the transfer has been or is to be effected by that instrument, by another share transfer instrument or otherwise).

(2) A securities transfer instrument may relate to —

(a) specified securities; or

(b) securities of a specified description.

3. Procedure.

As soon as practicable after making a securities transfer instrument in respect of a prescribed entity, the Bank must —

(a) send a copy to —

(i) the transferor;

(ii) the transferee; and

(iii) the Minister;

(b) publish a copy of the instrument on its internet website;

(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and

(d) cause notice of the making of the instrument to be published in the Gazette.

4. Effect of securities transfer instrument.

(1) A transfer of securities and any other provision contained in a securities transfer instrument takes effect by operation of this Act.

(2) A transfer takes effect at the times, or on the date, specified in the securities transfer instrument.

(3) A transfer takes effect despite any restriction arising under contract or legislation or in any other way.

(4) A securities transfer instrument may provide for a transfer to take effect free of any trust, liability or other encumbrance (and may include provision about the extinguishment of any trust, liability or other encumbrance).

(5) A securities transfer instrument may extinguish rights to acquire securities.

(6) This paragraph does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a securities transfer instrument.

(7) In this paragraph —

"restriction" includes —

(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and

(b) a requirement for consent (however described);

"transfer" means a transfer of securities under a securities transfer instrument.

5. Continuity.

(1) A securities transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A securities transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A securities transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A securities transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(5) A securities transfer instrument may permit or require —

(a) a transferor to provide a transferee with information and assistance; and

(b) a transferee to provide a transferor with information and assistance.

6. Conversion and de-listing.

(1) A securities transfer instrument may provide for securities to be converted from one form or class to another.

(2) A securities transfer instrument may provide for the listing of securities on a recognized stock exchange to be cancelled or dealings in securities on a recognized stock exchange to be suspended.

7. Removal of directors etc.

(1) A securities transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.

(2) The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

8. Instruments.

(1) A securities transfer instrument may permit or require the execution,

issue or delivery of an instrument.

(2) A securities transfer instrument may provide for a transfer to have effect irrespective of —

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with; or

(b) registration.

(3) A securities transfer instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the securities transfer instrument.

(4) A securities transfer instrument may modify or annul the effect of an instrument.

(5) A securities transfer instrument may —

(a) entitle a transferee to be registered in respect of a security; and

(b) for that purpose, require a person to effect registration.

9. Incidental provision, etc.

(1) A securities transfer instrument may include incidental, consequential or transitional provisions.

(2) In relying on subparagraph (1), a securities transfer instrument —

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

Part II - Supplemental Securities Transfer Instrument

10. Supplemental securities transfer instrument

(1) This Part applies if the Statutory Administrator has made a securities transfer instrument under section 47 (original instrument).

(2) The Statutory Administrator may make one or more supplemental securities transfer instruments.

(3) A supplemental securities transfer instrument is a securities transfer instrument that —

(a) provides the transfer of securities that were issued by the prescribed entity before the original instruments and were not the subject of the original instrument or another supplemental securities transfer instrument; or

(b) makes provision of a kind that a securities transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).

(4) The possibility of making a supplemental securities transfer instrument in reliance on subparagraph (2) does not prevent the making of a new instrument under section 47 (and not in reliance on subparagraph (2)).

(5) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental securities transfer instrument in the same way as it applies with respect to an original instrument.

Part III - Reverse Securities Transfer Instrument

11. Power to make Reverse Securities Transfer Instruments.

(1) This Part applies if the Statutory Administrator has made a securities transfer instrument under section 47(original instrument) providing for the transfer of securities issued by a prescribed entity (original transferred securities) to another entity (original transferee).

(2) The Statutory Administrator may make one or more reverse securities transfer instruments in respect of original transferred securities held by the original transferee.

(3) A reverse securities transfer instrument is a securities transfer instrument that —

(a) provides for the transfer of original transferred securities held by the original transferee to the transferor under the original instrument; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred securities (whether or not the transfer was the subject of that instrument).

(4) The Statutory Administrator must not make a reverse securities transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.

(5) Nothing in this subparagraph prevents the making of a supplemental securities transfer instrument under Part 2 of this Schedule in respect of securities that have been the subject of a reverse securities transfer instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse securities transfer instrument in the same way as it applies with respect to an original instrument.

FOURTH SCHEDULE

(section 47(6))

PROPERTY TRANSFER INSTRUMENTS

Part I – General

1. Interpretation.

In this Schedule —

"prescribed entity" means —

(a) a bank under statutory administration;

(b) a holding company of a bank under statutory administration;

(c) an affiliated operational entity of a bank under statutory administration;

(d) a bridge institution to which —

(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or

(ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument; or

(e) an asset management vehicle to which assets, rights or liabilities mentioned in section 47(2) have been transferred by a property transfer instrument.

2. Property transfer instrument.

(1) A property transfer instrument is an instrument that —

(a) provides for the transfer of assets, rights or liabilities of a prescribed entity; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of assets, rights or liabilities of a prescribed entity (whether or not the transfer was the subject of that instrument).

(2) A property transfer instrument may relate to —

(a) all assets, rights and liabilities;

(b) all assets, rights and liabilities subject to specified exceptions;

(c) specified assets, rights or liabilities; or

(d) assets, rights or liabilities of a specified description.

3. Procedure.

As soon as practicable after making a property transfer instrument in respect of a prescribed entity, the Bank must —

(a) send a copy to—

(i) the transferor;

(ii) the transferee; and

(iii) the Minister;

(b) publish a copy of the instrument on its internet website;

(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and

(d) cause notice of the making of the instrument to be published –

(i) in the Gazette; and

(ii) in the Gazette to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

4. Effect of property transfer instrument.

(1) A transfer of assets, rights or liabilities and any other provision contained in a property transfer instrument takes effect by operation of this Act.

(2) A transfer takes effect at the time, or on the date, specified in the property transfer instrument.

(3) Subject to any condition imposed under subparagraph (4), a transfer takes effect despite any restriction arising under contract or legislation or in any other way.

(4) A property transfer instrument may make a transfer subject to such conditions as the Statutory Administrator determines, provide for a transfer to be a conditional or a specified event or situation —

(a) occurring or arising; or

(b) not occurring or arising.

(5) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subparagraph (4).

(6) Consequences mentioned in subparagraph (5) may include any of the following —

(a) automatic vesting in the original transferor;

(b) an obligation to effect a transfer back to the original transferor;

(c) provision making a transfer or anything done in connection with a transfer void or voidable.

(7) If a property transfer instrument makes provision in respect of assets held on trust (however arising), it may also make provision about —

(a) the terms on which the assets are to be held after the instrument takes effect, which provision may remove or alter the terms of the trust but only to the extent that the Statutory Administrator thinks it necessary or expedient for transferring —

(i) the legal or beneficial interest of the transferor in the assets; or

(ii) any powers, rights or obligations of the transferor in respect of the assets; or

(b) how any powers, provisions and liabilities in respect of the assets are to be exercisable or have effect after the instrument takes effect.

(8) Provision may not be made under subparagraph (7)(a) that affects the beneficial interest of a client in the client's assets held on trust, however arising.

(9) In subparagraph (7), a reference to the transferor is a reference to the transferor under the property transfer instrument.

(10) Nothing in paragraph 4 affects the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a creditor or shareholder who is or was the trustee under the trust or a counterparty to the contract prior to the appointment of a statutory administrator if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a property transfer instrument.

(11) A transfer of an interest in land under a property transfer instrument does not extinguish, affect, vary, diminish or postpone any priority of that interest, whether under any Act or in equity.

(12) The Statutory Administrator must register or cause to be recorded in the Registry —

(a) a copy of the property transfer instrument under which an interest in land is transferred;

(b) a copy of an instrument that states whether any condition imposed on the transfer under subparagraph (4) is satisfied; and

(c) a copy of an instrument that evidences an automatic vesting in the original transferor in consequence of a breach of such condition.

(13) The production of the instruments mentioned in subparagraph (12)(a) and (b) is conclusive evidence for proving and deducing title in favour of the transferee. However, in the case of an automatic vesting in the original transferor, the production of the instruments mentioned in subparagraph (12)(a), (b) and (c) is conclusive evidence for proving and deducing title in favour of the original transferor.

(14) Notwithstanding the provisions of any other law, the vesting of an interest in land under a property transfer instrument does not –

(a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest;

(b) constitute an assignment or under lease of, or an agreement to assign or underlet, that interest;

(c) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest or in any instrument concerning or affecting that interest;

(d) operate as a breach of covenant or condition against alienation;

(e) give rise to any forfeiture, damages or other right of action; or

(f) invalidate or discharge any contract or security interest.

(15) In this paragraph —

"Registry" has the meaning ascribed to it by section 2 of the Registration of Records Act (*Ch. 187*);

"restriction" includes —

(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and

(b) a requirement for consent (however described);

"transfer" means a transfer of assets, rights or liabilities under a property transfer instrument.

5. Application to the Court.

(1) The Statutory Administrator may, if of the opinion that a transferee has breached a condition of a transfer imposed under subparagraph 4(4) of this Schedule, apply to the Court for an order under subparagraph (2).

(2) On an application under subparagraph (1), the Court may, if satisfied that the transferee has breached a condition mentioned in that subparagraph, make any order that it thinks fit, including in order that the transferee effects a transfer back to the original transferor.

6. Transferable property.

A property transfer instrument may transfer any assets, rights or liabilities of a prescribed entity including, in particular —

(a) assets, rights or liabilities acquired or arising between the making of the instrument and the transfer date;

(b) rights or liabilities arising on or after the transfer date in respect of matters occurring before that date;

(c) assets outside The Bahamas;

(d) rights or liabilities under a non-Bahamian law; and

(e) rights or liabilities arising under an Act to which the prescribed entity is entitled or subject.

7. Continuity.

(1) A property transfer instrument may provide —

(a) for a transfer to be, or to be treated as, a succession; and

(b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A property transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A property transfer instrument may provide for any (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A property transfer instrument that transfers, or enables the transfer of, a contract of employment may include provision about continuity of employment.

(5) A property transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(6) In so far as rights and liabilities in respect of anything transferred are enforceable after the transfer, a property transfer instrument may provide for apportionment between the transferor and the transferee to a specified extent and in specified ways.

(7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instruments, but a modification —

(a) must achieve a result that could have been achieved by the instrument; and

(b) may not transfer (or arrange for the transfer of) assets, rights or liabilities.

(8) A property transfer instrument may permit or require —

(a) a transferor to provide a transferee with information and assistance; and

(b) a transferee to provide a transferor with information and assistance.

8. De-listing.

A property transfer instrument may provide for a listing of securities on a recognized stock exchange to be cancelled or dealings in securities on recognized stock exchanges to be suspended.

9. Removal of directors etc.

(1) A property transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from such date as may be specified in the instrument.

(2) The exercise of a power under subparagraph (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

10. Licences.

(1) A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.

(2) A property transfer instrument may expressly exclude the applicability of the provisions of subparagraph (1) to a specified extent.

(3) If a licence confers rights or imposes obligations, a property transfer instrument may apportion responsibility for the exercise of, or compliance with, those rights or obligations between the transferor and the transferee.

(4) In this paragraph, **"licence"** includes permission and approval and any other permissive document in respect of anything transferred.

11. Creation of liabilities.

(1) The provision that may be made by a property transfer instrument includes provision for the creation of liabilities.

(2) The provision may be framed by reference to an agreement that has

been or is to be entered into, or anything else that has been or is to be done, by any person.

12. Insured Deposits.

(1) This paragraph applies if a property transfer instrument transfers an insured deposit and both the transferor and transferee are members of the deposit insurance fund under the Protection of Depositors Act.

(2) Any insured deposit held by a depositor with the transferee immediately before the transfer date continues to be an insured deposit.

(3) An insured deposit mentioned in subparagraph (2) is not affected by any increase in the number or amount of deposits held by the depositor with the transferee as a result of a transfer caused by the property transfer instrument.

(4) Any insured deposit held by a depositor with the transferor immediately before the transfer date that is transferred by the property transfer instrument (transferred insured deposit) continues to be an insured deposit for the period of 6 months beginning on the transfer date, even if it matures on or after the transfer date and is renewed with the transferee.

(5) Notwithstanding the provisions of sub-paragraph (4), where the transferred insured deposit has an original maturity date that is after the expiry of the period of six months beginning on the transfer date, it continues to be an insured deposit until it first matures after the transfer date.

(6) Subparagraph (4) has effect despite the number or amount of deposits held by the depositor with the transferee immediately before the transfer date.

(7) This paragraph has effect despite anything to the contrary in the Protection of Depositors Act (*Ch. 317*).

13. Non-Bahamas property.

(1) This paragraph applies if a property transfer instrument transfers non-Bahamian property.

(2) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of the law of the jurisdiction where the property is located (if it is not otherwise so effective).

(3) Until the transfer is effective as a matter of non-Bahamian law, the transferor must —

(a) hold the asset or right for the benefit of the transferee (together with any additional asset or right accruing by operation of the original asset or right); or

(b) discharge the liability on behalf of the transferee.

(4) If the Statutory Administrator determines that, despite any steps taken by the transferee or the transferor, it is not possible for the transfer of certain non-Bahamian property to be effective under the law of the jurisdiction where the property is located or (if the property consists of rights or liabilities) the law under which it arises —

(a) subparagraph (3) ceases to apply; and

(b) the provisions of the property transfer instrument relating to that property are void.

(5) The Statutory Administrator must give written notice of any determination under subparagraph (4) to the transferor and the transferee.

(6) The transferor must meet any expenses of the transferee in complying with this paragraph.

(7) The transferor must comply with any directions of the Bank in respect of the obligations under subparagraphs (2) and (3).

(8) A direction under subparagraph (7) may expressly exclude the applicability of the provisions of subparagraph (2) or (3) to a specified extent.

(9) An obligation imposed by or under this paragraph is enforceable as if created by contract between the transferor and transferee.

14. Incidental provision.

(1) A property transfer instrument may include incidental, consequential or transitional provisions.

(2) In relying on subparagraph (1), a property transfer instrument —

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

Part II – Supplemental Property Transfer Instrument

15. Supplemental property transfer instrument.

(1) This Part applies if the Statutory Administrator has made a property transfer instrument under section 47 (original instrument).

(2) The Statutory Administrator may make one or more supplemental property transfer instruments.

(3) A supplemental property transfer instrument is a property transfer instrument that —

(a) provides for assets, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument); or

(b) makes provision of a kind that a property transfer instrument may make under paragraph 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).

(4) The possibility of making a supplemental property transfer instrument in reliance of subparagraph (2) does not prevent the making of a new instrument under section 50 (and not in reliance on subparagraph (2)).

(5) Paragraph 25 does not apply to the making of a supplemental property transfer instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental property transfer instrument in the same way as it applies with respect to an original instrument.

Part III – Reverse Property Transfer Instrument

16. Reverse property transfer instrument.

(1) This Part applies if a Statutory Administrator has made a property transfer instrument under section 50 (original instrument) providing for the transfer of assets, rights or liabilities of a prescribed entity (original transferred assets, rights or liabilities) to another entity (original transferee).

(2) The Statutory Administrator may make one or more reverse property transfer instruments in respect of original transferred assets, rights or liabilities held by the original transferee.

(3) A reverse property transfer instrument is a property transfer instrument that —

(a) provides for the transfer of original transferred assets, rights or liabilities held by the original transferee to the transferor under the original instrument; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred assets, rights or liabilities (whether or not the transfer was the subject of that instruments).

(4) The Statutory Administrator must not make a reverse property transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution or an asset management vehicle.

(5) Nothing in this paragraph prevents the making of a supplemental property transfer instrument under Part 2 of this Schedule in respect of assets, rights or liabilities that have been the subject of a reverse property transfer instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse property transfer instrument in the same way as it applies with respect to an original instrument.

PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

Arrangement of Sections

Section

1. Short title and commencement....2
2. Amendment of section 2 of the principal Act....2
3. Amendment of section 3 of the principal Act....4
4. Insertion of new section 3A into the principal Act....4
5. Repeal and replacement of section 4 of the principal Act....5
6. Amendment of section 5 of the principal Act....6
7. Amendment of section 6 of the principal Act....7
8. Amendment of section 7 of the principal Act....8
9. Repeal and replacement of section 8 of the principal Act....9
10. Repeal and replacement of section 9 of the principal Act....9
11. Repeal of section 10 of the principal Act....10
12. Repeal of section 11 of the principal Act....10
13. Repeal of section 12 of the principal Act....10
14. Amendment of section 13 of the principal Act....10
15. Amendment of section 15 of the principal Act....10
16. Repeal and replacement of section 16 of the principal Act....11
17. Repeal and replacement of section 18 of the principal Act....12
18. Repeal and replacement of section 19 of the principal Act....13
19. Repeal and replacement of section 21 of the principal Act....14
20. Repeal of section 22 of the principal Act....16
21. Repeal of section 23 of the principal Act....16
22. Repeal of section 24 of the principal Act....16
23. Repeal and replacement of section 25 of the principal Act....16
24. Repeal of section 26 of the principal Act....16
25. Amendment of section 27 of the principal Act....16
26. Repeal and replacement of section 28 of the principal Act....17
27. Repeal and replacement of section 30 of the principal Act....18
28. Insertion of a new Schedule into the principal Act....20

"SCHEDULE **21**

CONSTITUTION AND FUNCTIONS OF THE BOARD 21

No. 23 of 2020

PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

AN ACT TO AMEND THE PROTECTION OF DEPOSITORS ACT TO STREAMLINE THE ROLE AND FUNCTIONS OF THE DEPOSIT INSURANCE CORPORATION; TO PROVIDE FOR ENHANCED PROTECTIONS FOR DEPOSITORS AND FOR CONNECTED PURPOSES THERETO

[Date of Assent - 24th July, 2020]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

(1) This Act, which amends the Protection of Depositors Act (*Ch. 317*), may be cited as the Protection of Depositors (Amendment) Act, 2020.

(2) This Act shall come into operation on such date as the Minister may appoint by Notice published in the Gazette.

2. Amendment of section 2 of the principal Act.

Subsection (1) of section 2 of the principal Act is amended —

(a) by the deletion of the following definitions —

(i) "**Board of Management**";

(ii) "**Chairman**";

(iii) "**deposit**"; and

(iv) "**institution**";

(b) by the insertion in the appropriate alphabetical order, of the following new definitions —

""**Board**" means the Board of Directors of the Corporation appointed pursuant to paragraph 2 of the *Schedule*";

"bridge institution" has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020;

"**Certificate of deposit insurance**" means a certificate of insurance issued by the Corporation;

"**Chairperson**" means the Chairperson of the Board;

"**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 checking, 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 but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, subordinated debts, preference shares, inter-bank deposits, foreign currency deposits, deposits of Government and statutory corporations, deposits of foreign Governments, deposits in any financial institution wholly owned by the Government, deposits from affiliates, a co-operative credit union's stabilization fund, liquidity deposits or capital as defined in subsection 2(1) of The Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*); and

(b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank;

"**Deputy chairperson**" means the deputy chairperson of the board;

"**Governor**" has the meaning assigned under section 2 of the Central Bank Act of The Bahamas Act, 2020;

"**Inspector**" has the meaning assigned under section 2 of the Banks and Trust Companies Regulation Act, 2020;

"**institution**" means —

(a) any person carrying on banking business wholly or partly in Bahamian currency;

(b) a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015 (*No. 9 of 2015*);";

(c) by the deletion of subsection (3) and the substitution of the following —

"(3) For the purposes of this Act, an institution is deemed to be closed when —

(a) the licence of the institution is revoked by the Central Bank under section 29 of the Banks and Trust Companies Regulation Act, 2020;

(b) the registration of the institution is cancelled pursuant to subsection 14(5) of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*).".

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended —

(a) in subsection (2), by the deletion of the words "of Management of the Corporation";

(b) by the insertion immediately after subsection (2), of the following new subsection —

"(3) The Fund shall consist of —

(a) initial contributions, special contributions and premiums paid by member institutions;

(b) sums payable by the Central Bank under this Act;

(c) sums voted by Parliament for the purposes of this Act;

(d) any moneys borrowed by the Corporation for the purposes of this Act;

(e) amounts realised from investment proceeds;

(f) moneys that may accrue from fees or the operations of the Fund; and

(g) dividends from the Liquidator consisting of income earned in the orderly liquidation process or from the sale of assets of a failed member institution.".

4. Insertion of new section 3A into the principal Act.

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

"**3A. Objects of the Corporation**.

(1) The objects of the Corporation are to —

(a) provide insurance against the loss of part or all of deposits;

(b) promote and otherwise contribute to the stability of the financial system in The Bahamas.

(2) The Corporation has ancillary power to do in The Bahamas or elsewhere, all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and the performance of its functions under this Act.".

5. Repeal and replacement of section 4 of the principal Act.

Section 4 of the principal Act is repealed and replaced by the following —

"**4. Membership in the Fund compulsory**.

(1) Membership in the Fund is compulsory for —

(a) every institution carrying on banking business wholly or partly in Bahamian currency and licensed under the Banks and Trust Companies Regulation Act, 2020; and

(b) every co-operative credit union registered under the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*).

(2) For the purposes of paragraphs (a) and (b) of subsection (1), an institution is deemed to have obtained a policy of deposit insurance on the day on which it became a member institution.

(3) The policy of deposit insurance referred to in subsection (2) shall consist of the provisions that may be prescribed by the bye-laws.

(4) The Corporation shall issue to a member institution a certificate of deposit insurance in the legal name of the institution within four weeks of the institution becoming a member of the Fund.

(5) Where the legal name of a member institution has been changed subsequent to the issuance of the certificate mentioned in subsection (4), the member institution shall submit to the Corporation, *prima facie* evidence showing the Central Bank's approval of the change of name within thirty days of the approval, and shall make application to

the Corporation for the issuance of a certificate of deposit insurance in the new name, provided that, all copies of the previous certificate of deposit insurance have been returned to the Corporation for cancellation.".

6. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended —

(a) by the deletion of subsection (2) and the substitution of the following —

"(2) Every member of the Fund shall pay an annual premium to the Fund, equal to a percentage to be determined from time to time by the Corporation by Notice of the average of the sum of those deposits insured by the Corporation and deposited with the member institution as of March 31 and September 30 in the immediately preceding premium year.";

(b) by the deletion of subsection (4) and the substitution of the following —

"(4) The annual premium payable by a member institution pursuant to subsection (2) shall be based on —

(a) the amount of insured deposits and the Corporation's assessment of the degree of risk incurred by the member institution; and

(b) returns to be certified by the member institution and submitted in such form and at such time as the Corporation may require.";

(c) by the deletion of subsection (5) and the substitution of the following—

"(5) One half of the premium payable by a member institution shall be paid to the Corporation on or before March 31 in the premium year for which the premium is payable, and the remainder shall be paid to the Corporation on or before September 30 in the premium year.";

(d) in subsection (6), by the deletion of the words "one twentieth" and the substitution of the words "one-tenth";

(e) by the insertion immediately after subsection (9), of the following new subsection (10) —

"(10) The Corporation shall, from time to time, but in any event, not less than once every two years review the size of the Fund and make such recommendations to the

Board regarding the amount of premiums payable and the target ratios for the Fund as it deems appropriate.".

7. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended as follows —

(a) by the deletion of subsection (2) and the substitution of the following —

"(2) Deposit Insurance coverage is limited to fifty thousand dollars or such greater or lesser amount as the Minister may, by Order, prescribe on the advice of the Central Bank after consultation with the member institutions, and shall be paid by the Corporation in respect of every depositor notwithstanding the number of accounts held by the depositor in the same capacity in the institution:

Provided that a depositor shall be entitled to a separate insured deposit for each account held in different capacities and rights with the same member institution, and for each account held with different member institutions.";

(b) by the deletion of subsection (3);

(c) by the deletion of subsection (5) and the substitution of the following—

"(5) Notwithstanding the provisions of any other law, when payment is made by the Corporation under this section in respect of an insured deposit with a member institution, the Corporation is subrogated up to the insured limit to all the rights of the depositor as against that member institution and may maintain an action in respect of such rights in the name of the depositor or in the name of the Corporation.";

(d) by the deletion of subsections (8) and (9) and the substitution of the following —

"(8) In the event that —

(a) a member institution's —

(i) banking license is revoked by the Central Bank;

(ii) registration as a co-operative credit union is cancelled by the Central Bank;

(iii) policy of deposit insurance is cancelled

subsequent to the making of an insurable deposit;

(b) a liquidator is appointed by the Central Bank in respect of a member institution,

payments in respect of the insured deposits in such institution shall be made by the Corporation within the applicable time period, unless such deposits are transferred by or on the instructions of the Central Bank to another institution.

(9) The applicable time period referred to in subsection (8) is the period starting on the day after the date of publication of the notice referred to in section 16(1) and ending —

(a) until 31 December 2022, twenty business days later;

(b) from 1 January 2023 until 31 December 2025, ten business days later;

(c) from 1 January 2026 until 31 December 2030, seven business days later.";

(e) by the insertion immediately after subsection (9) of the following new subsection (10) —

"(10) The Corporation shall in respect of rights of a depositor to which it is subrogated, have priority over other uninsured unsecured creditors of the member institution.".

8. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended —

(a) by the deletion of subsection (2) and the substitution of the following —

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

(b) by the insertion immediately after subsection (2) of the following new subsections —

"(3) The Corporation shall have its principal place of business in the island of New Providence and may in The Bahamas, establish such offices and branches as the

Corporation thinks fit.

(4) At the request of the Corporation, the Minister may, out of the Consolidated Fund, lend money to the Corporation on such terms and conditions as the Minister may establish for the purpose of assisting the Corporation to carry out its functions under this Act.".

9. Repeal and replacement of section 8 of the principal Act.

Section 8 of the principal Act is repealed and replaced by the following —

"**8. Board of the Corporation**.

(1) There shall be a Board of Directors who shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Corporation.

(2) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Corporation.".

10. Repeal and replacement of section 9 of the principal Act.

Section 9 of the principal Act is repealed and replaced by the following —

"**9. Conflicts of interest.**

(1) The Corporation shall establish a code ("**Code of Conduct**") requiring the directors and officers of the Corporation to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Corporation.

(2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Corporation —

(a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;

(b) the disclosure shall be recorded in the minutes of the Board; and

(c) after the disclosure has been recorded in the minutes of the Board, the director shall not take

part in any deliberation or decision of the Board with respect to the contract or transaction.

(3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.".

11. Repeal of section 10 of the principal Act.

Section 10 of the principal Act is hereby repealed.

12. Repeal of section 11 of the principal Act.

Section 11 of the principal Act is hereby repealed.

13. Repeal of section 12 of the principal Act.

Section 12 of the principal Act is hereby repealed.

14. Amendment of section 13 of the principal Act.

Subsection (2) of section 13 of the principal Act is amended by the deletion of the word "28" and the substitution of the word "21".

15. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended —

(a) by the deletion of paragraph (e) and the substitution of the following —

"(e) subject to prior claims being paid, to deduct from moneys from the Fund due to a depositor, only such loan payment or instalment amount as is due or past due, and to set-off deposits pledged as collateral'";

(b) in paragraph (f) by the insertion, immediately after the words "under his custody or control" of the words "in such format and within such time as may be specified by the Corporation";

(c) by the deletion of paragraph (g) and the substitution of the following —

"(g) on the advice of the Bank —

(i) to levy authorised contributions and premia on member institutions;

(ii) to accumulate, manage and to invest so far as possible, in government and quasi government instruments and short term deposits, funds collected, and any other type of instrument or investment as the Board may approve, to borrow by the issuance and sale of bonds, debentures, notes or any other evidence of indebtedness or otherwise whether or not against the guarantee of the government in accordance with applicable law and procedure, lend or give guarantees to an entity acquiring a member institution which has been placed under statutory administration by the Central Bank pursuant to section 29(1)(f) of the Banks and Trust Companies Regulation Act, 2020;

(iii) provide capital for a bridge institution and provide financing in the amount of insured deposits to an entity that acquires the business or all or part of the assets and liabilities of a member institution which has been placed under statutory administration by the Central Bank pursuant to section 29(1)(f) of the Banks and Trust Companies Regulation Act, 2020 as shall be advised by the Central Bank, provided however that such financing shall be no more than the costs the Corporation would have incurred in paying out insured depositors should the institution have been placed under liquidation.";

(d) by the insertion immediately after paragraph (g) of the following new paragraphs —

"(h) to charge any fees necessary for the administration of this Act; and

(i) to do all things necessary or incidental for the furtherance of the objects of the Corporation.".

16. Repeal and replacement of section 16 of the principal Act.

Section 16 of the principal Act is repealed and replaced as follows —

"**16. Insurance payment procedures.**

(1) Where the Central Bank advises the Corporation that a member institution is being liquidated or otherwise has

had its banking license revoked by the Central Bank, the Corporation shall notify depositors by making public notification of the closure in such newspapers as may be considered appropriate, indicating the dates, times and places at which insurance payments shall be made.

(2) The Corporation, at its discretion, may require proof of claims for insured deposits to be filed within a specified time.

(3) Every person who has a deposit with a member institution shall be paid the insured portion of their deposits less any amounts or instalments owed to the institution by the depositor, for which payment is due or past-due.

(4) Subject to subsection (3), where a person has a deposit with a member institution in excess of the insured limit, the Corporation shall issue to that person a certificate for the amount in excess of the insured limit.

(5) Every depositor may submit a claim for deposit insurance up to one year after the date on which a notice is published by the Corporation under subsection (1).

(6) Any claim made after the expiry of the period specified in subsection (5) shall be made against the assets of the institution and shall be paid *pro rata* as the assets of the institution are collected and sold.

(7) Where the Corporation is satisfied that a depositor has been a party to or has benefited from the circumstances which gave rise to the insolvency of a member institution, the Corporation shall not make any payment out of the Fund to that depositor.

(8) Subsection (7) shall not apply to a depositor who acted solely in his capacity as a professional advisor to the member institution and whose *bona fide* is not in question.".

17. Repeal and replacement of section 18 of the principal Act.

Section 18 of the principal Act is repealed and replaced by the following —

"**18. Effect of closure.**

Where an institution is closed, interest on deposits immediately

ceases to accrue whether or not the date of maturity of the deposit was beyond the date of closure.".

18. Repeal and replacement of section 19 of the principal Act.

Section 19 of the principal Act is repealed and replaced by the following —

"**19. Accounts and audit.**

(1) The financial year of the Corporation shall end on the thirty-first day of December.

(2) The Corporation shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Corporation to reflect its operations and financial condition.

(3) The statement of accounts of the Corporation shall be audited annually by independent external auditors appointed by the Board with the approval of the Minister.

(4) The audit under subsection (3) shall be conducted in accordance with the International Standards of Auditing.

(5) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions and shall be members of the Bahamas Institute of Chartered Accountants, in good standing.

(6) Subject to subsection (5), the external auditors shall be appointed for —

(a) a minimum period of three consecutive years; and

(b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.

(7) The Corporation shall not later than June 30th following the end of the previous financial year, cause to be made and transmit to the Minister—

(a) a report of the operations of the Corporation in respect of the previous financial year, approved by the Board; and

(b) a statement of the accounts of the Corporation in respect of that year, approved by the Board and signed by the Chairperson and certified by the external auditors, together with the report of the external auditors.

(8) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (7)(a) and (b) —

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

(b) cause a copy of the said statement of accounts, together with the external auditors report, to be published in the Gazette.

(9) The Corporation shall publish on its website the reports and statement of the accounts submitted to the Minister under subsection (1).".

19. Repeal and replacement of section 21 of the principal Act.

Section 21 of the principal Act is repealed and replaced by the following —

"**21. Examination of Member Institutions.**

(1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament,examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess —

(a) the reliability of depositor records; and

(b) whether a member institution has the information technology systems and data necessary to produce such records.

(2) Where an examination under subsection (1) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.

(3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to —

(a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;

(b) comment on the operations of the member institution;

(c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act, 2020, provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank.

(4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.

(5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.

(6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).

(7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.

(8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the

Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.".

20. Repeal of section 22 of the principal Act.

Section 22 of the principal Act is hereby repealed.

21. Repeal of section 23 of the principal Act.

Section 23 of the principal Act is hereby repealed.

22. Repeal of section 24 of the principal Act.

Section 24 of the principal Act is hereby repealed.

23. Repeal and replacement of section 25 of the principal Act.

Section 25 of the principal Act is repealed and replaced by the following —

"**25. Protection from liability.**

(1) The Minister or the Corporation, its directors, officers, employees or agents, the Inspector of Banks and Trust Companies or any person appointed pursuant to section 21(1) are not subject to any action, claim or demand by, or any liability to any person even after the termination of their functions or duties, in respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Corporation under this Act.

(2) The Corporation shall indemnify a director, employee or agent of the Corporation, even after the termination of their functions or duties, against the cost of defending their actions in connection with subsection (1).".

24. Repeal of section 26 of the principal Act.

Section 26 of the principal Act is hereby repealed.

25. Amendment of section 27 of the principal Act.

Section 27 of the principal Act is amended by the deletion of subsection (2)

and the substitution of the following —

"(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals any material information regarding the financial affairs of the member institution from, provides false or misleading information to, or falsifies or tampers with the books, records, accounts, papers or documents of the institution so as to mislead the Corporation or a person mentioned in section 21(1), that director, agent, servant or employee is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.".

26. Repeal and replacement of section 28 of the principal Act.

Section 28 of the principal Act is repealed and replaced by the following —

"**28. Bye-laws and regulations**.

(1) The Corporation on the recommendation of the Bank, may make such bye-laws as are necessary for all matters pertaining to the operations and functions of the Corporation.

(2) Without limiting the generality of subsection (1) the Corporation may make bye-laws, for all or any of the following purposes —

(a) regarding representations by member institutions with respect to —

(i) what constitutes, or does not constitute a deposit;

(ii) what constitutes, or does not constitute a deposit insured by the Corporation;

(iii) who is a member institution;

(iv) representations of membership;

(v) representations of deposits and deposit insurance;

(vi) representations of financial products; and

(vii) representations of trade names;

(b) to prescribe the information, particulars and references which may be prescribed under sections 4(3), 5(2), 5(3), 5(4), 15(f), 15(g) and 15(h);

(c) generally, for carrying out the purposes or

provisions of this Act into effect.

(3) The Corporation on the recommendation of the Bank, may make regulations, generally for giving effect to the provisions of this Act, and in particular regulations may be made —

(a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;

(b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund.".

27. Repeal and replacement of section 30 of the principal Act.

Section 30 of the principal Act is repealed and replaced by the following —

"**30. Confidentiality.**

(1) Subject to subsection (2), any person who is or has been a director, officer, employee or agent of the Corporation and who discloses any information relating to the affairs of the Corporation or of any person that he has acquired in the performance of his duties or in the exercise of his functions under this Act is guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;

(b) necessary for fulfilling functions and duties required or permitted by this Act, or by any other law;

(c) which is made with the voluntary consent of the person to whom the disclosed information relates;

(d) if the information disclosed is or has been available to the public from any other source;

(e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;

(f) to the authorities in The Bahamas to the extent necessary for criminal proceedings; or

(g) for the purposes of any legal proceedings in

connection with —

(i) the winding-up or dissolution of a member institution;

(ii) the appointment or duties of a receiver of a member institution;

(h) to the Governor of the Central Bank or any officer of the Central Bank authorized in writing by the Governor, for the purposes of assisting the Corporation in the exercise of its functions under this Act or for assisting the Central Bank in the exercise of its functions.

(3) Notwithstanding the provisions of subsection (1), the Corporation may disclose information to —

(a) any government agency or body that regulates or supervises financial institutions in The Bahamas for the purposes of that regulation or supervision;

(b) the Apex Body of a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015 (*No. 9 of 2015*), for the purpose of the Apex Body's oversight of co-operative credit unions;

(c) the Minister, or any officer of the Ministry of Finance, authorized in writing by the Minister for the purposes relating to preparing for or carrying out resolution in respect of a member institution as well as any other aspects of financial stability or financial crisis preparedness and management.

(4) Notwithstanding the provisions of subsection (1), and subject to subsection (5) the Corporation may disclose information to a foreign deposit insurer or compensation scheme located in a country where the holding company, parent bank, subsidiary, branch or affiliate of a member institution is located, for purposes related to the foreign deposit insurer's or compensation scheme's operation.

(5) The Corporation may enter memoranda of understanding with foreign deposit insurers or compensation schemes with regard to mutual cooperation and exchange of information relating to a member institution's compliance with this Act or any bye-laws or regulations made under this Act or to the repayment of depositors.

(6) The Corporation may enter into memoranda of understanding with any person mentioned in subsection (3)(a), (b) or (c) with regard to resolution and crisis preparedness and management for mutual cooperation.

(7) No memorandum of understanding entered into pursuant to subsections (5) or (6) may call for assistance beyond that which is provided for by this Act, or relieve the Corporation of any of its functions or duties under this Act.".

28. Insertion of a new Schedule into the principal Act.

The principal Act is amended by the insertion of the following new Schedule —

"**SCHEDULE**

(Sections 2 and 8)

CONSTITUTION AND FUNCTIONS OF THE BOARD

1. Role and duties of the Board of Directors.

(1) There shall be a Board of Directors responsible for the formulation of the policies of the Corporation and oversight of the implementation of such policies and of the operations and internal controls of the Corporation.

(2) The duties and powers of the Board are to —

(a) formulate any policy of the Corporation for the performance of its functions;

(b) approve bye-laws and regulations issued by the Corporation;

(c) approve a guideline, note, notice, order and any other document issued by the Corporation, to require or expect compliance by a person outside the Corporation;

(d) approve the annual budget of the Corporation;

(e) approve a statement of the accounts and a report submitted to the Minister under section 19; and

(f) establish committees and determine their composition, duties and procedures.

2. Constitution and tenure of Board of Directors.

(1) The Board of the Corporation shall consist of —

(a) the Governor of the Central Bank, ex officio who shall be the chairperson of the Board;

(b) a senior manager from the Bank Supervision Department of the Central Bank and one other senior manager of the Central Bank, ex officio;

(c) the Financial Secretary, ex officio; and

(d) not less than five and not more than seven other directors, appointed by the Minister by instrument in writing, each being a person who appears to the Minister to have wide experience, and to have shown capacity in, financial or commercial matters, industry, law or administration.

(2) The Minister shall appoint a director mentioned in paragraph 1(d) as deputy chairperson of the Corporation.

(3) Members of the Board mentioned in paragraph 1(d) shall be appointed for a term of three years and shall be eligible for re-appointment for no more than one additional term.

(4) Each director shall, subject to the Act and the provisions of this *Schedule*, hold and vacate office in accordance with the terms of his appointment.

(5) The directors other than the chairperson and deputy chairperson, shall be divided into two groups and directors who belong to the first group, shall not be appointed at the same time as the directors who belong to the second group.

(6) A person shall not be appointed a director who—

(a) is a member of either House of Parliament;

(b) is an officer or employee of an agency of the Government or any public entity;

(c) has been convicted by a court of an indictable offence or other offence involving dishonesty;

(d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;

(e) is a director, officer or employee of, or is a shareholder with an interest of one percent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;

(f) on the grounds of personal misconduct, has been —

(i) disqualified or suspended by a competent authority from practising a profession; or

(ii) prohibited from being a director or officer of any public entity or business undertaking.

(7) For the purpose of paragraph 6, a professor of a university shall not be deemed to fall within paragraph 6(b).

(8) The Corporation shall cause the names of all the members of the Board, and every change in membership, to be published in the *Gazette*.

3. Role of the Governor and the deputy chairperson.

The Governor and the deputy chairperson appointed by the Minister, except as may otherwise be provided in this Act, the bye-laws of the Corporation or

the resolutions of the Board, may —

(a) act, contract and sign instruments and documents on behalf of the Corporation; and

(b) pursuant to the resolutions of the Board, delegate the powers referred to in paragraph (a) to other officers of the Corporation.

4. Removal from the Board.

(1) A director who falls within paragraph 4(2), shall be removed from office.

(2) A director may be removed from office if the director —

(a) has been absent from meetings longer than three consecutive months without the permission of the Board;

(b) is incapacitated by physical or mental illness; or

(c) is guilty of serious misconduct.

5. Resignation from the Board.

(1) Subject to subparagraph (2), a member of the Board may resign office on giving to the Minister in writing not less than one months' notice.

(2) The Minister may waive the period of notice required by subparagraph (1).

6. Vacancies.

A vacancy in the office of a director shall be filled within sixty days by the Minister appointing a person to the office for the ordinary term in accordance with paragraph 2.

7. Meetings.

(1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every quarter.

(2) A meeting of the Board —

(a) may be convened by the Governor or, in his absence, the deputy chairperson; or

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

(3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by the deputy chairperson.

(4) Four directors, of whom one shall be either the Governor or deputy chairperson shall form a quorum at any meeting.

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

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

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

8. Remuneration of the Board.

(1) The Corporation shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.

(2) The amount of remuneration determined under subparagraph (1) shall be stated in the instrument of appointment of the director and —

(a) shall not be diminished during the term of office of the director receiving the remuneration;and

(b) shall not be determined by reference to the profits of the Corporation.

9. Staff and remuneration.

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

(2) Remuneration paid under subparagraph (1) shall not be determined by reference to the profits of the Corporation.

(3) The Corporation may, as it determines —

(a) pay to or in respect of officers or servants of the Corporation pensions or gratuities;

(b) make payments towards the provisions for employees of pensions or gratuities; or

(c) maintain for employees pension schemes by being a contributor or otherwise.

10. Seal.

(1) The seal of the Corporation shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or the deputy chairperson and one other director authorized by the Board to act in that behalf.

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

CENTRAL BANK OF THE BAHAMAS ACT, 2020

Arrangement of Sections

Section

PART I – PRELIMINARY 4

1. Short title and commencement....4
2. Interpretation....4

PART II – CONTINUANCE AND FUNCTIONS OF THE BANK 7

3. Preservation and continuance of The Central Bank of The Bahamas....7
4. Places of business of the Bank....7
5. Functions of the Bank....8

PART III – CAPITAL AND RESERVES 9

6. Capital of the Bank....9
7. General Reserve and Unrealized Revaluation Reserve....9

PART IV – CURRENCY 10

8. Currency of The Bahamas....10
9. Contracts, etc., deemed to be in currency of The Bahamas....10
10. Sole right of Bank to issue notes and coins....10
11. Denominations and forms of notes and coins....10
12. Legal Tender....11
13. Damaged currency, etc....11
14. Counterfeits and reproduction of currency....12
15. Power of Bank to make regulations for digital currency framework....12

PART V - GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC. 13

16. Power of the Bank in relation to foreign exchange, etc....13
17. External reserve....13

PART VI - RELATIONS WITH THE FINANCIAL INSTITUTIONS AND THE GOVERNMENT 14

18. Liquid assets....14
19. Financial institutions must maintain Statutory Reserve....15
20. Bank to act as fiscal agent for Government....15
21. Advances to the Government....16
22. Subscription to Government securities from primary markets....16

PART VII – GENERAL POWERS OF THE BANK 17

23. Powers of the Bank....17
24. Power of the Bank to fine....18
25. Credit controls....19
26. Lender of last resort....19
27. Transfer of the Bank's dormant account balances to the Treasurer....20
28. Ancillary business....23
29. Prohibited activities....23

PART VIII – ACCOUNTS, STATEMENTS AND AUDIT 24

30. Financial year....24
31. Profits, losses, and distributable earnings....24
32. Allocation of distributable earnings....24
33. Coverage of shortfall in capital....25
34. Accounting standard....25
35. Publication of accounts....25
36. Publication of monthly statements....26
37. External Audit....26

PART IX – INFORMATION AND CONFIDENTIALITY 27

38. Information may be required from financial institutions....27
39. Collection of statistics....29
40. Assistance in obtaining information....29
41. Information exchange....30
42. Supplying false statement....31
43. Confidentiality....32

PART X – OFFENCES, VIOLATIONS AND PENALTIES 33

44. Procedure in relation to offences....33
45. Offences by corporations....33
46. The Bank may impose general penalties....33
47. Designated violations and fixed penalties....34
48. The Bank must make an election....36
49. Procedure for imposition of penalty on making of election....36
50. Determination of responsibility and penalty....37
51. Publication of penalties....37

PART XI – MISCELLANEOUS 37

52. Exemption....37
53. Remission....38
54. Time limits....38
55. Appeal....38
56. Conflicts of interest....39
57. Fees and charges....40

58. Supremacy of this Act....40
59. Preferential right....40
60. Immunities of the Bank....40
61. Immunity of officials and staff of the Bank....41
62. Judicial review and arbitration....42
63. Repeal....42
64. Transitional provisions....42
65. Savings....43
66. Validation of acts of the Bank....44

SCHEDULE **45**

CONSTITUTION AND FUNCTIONING OF THE BOARD AND THE BANK 45

No. 24 of 2020

CENTRAL BANK OF THE BAHAMAS ACT, 2020

AN ACT TO REPEAL THE CENTRAL BANK OF THE BAHAMAS ACT (CH. 351); TO CONSOLIDATE AND MODERNISE THE LAW GOVERNING THE CENTRAL BANK OF THE BAHAMAS AND FOR CONNECTED MATTERS

[Date of Assent - 24th July, 2020]

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Central Bank of The Bahamas Act, 2020.

(2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

2. Interpretation.

In this Act —

"asset management vehicle" has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, 2020;

"average ordinary revenue" means the annual average of the ordinary revenue of the Government over the three years (for which accounts have been laid before Parliament) next before the year in which any loan under subsection (4) of section 21 is raised;

"bank" has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020;

"banking business" has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020 and "banker" shall be construed accordingly;

"Board" means the Board of Directors of the Bank appointed pursuant to paragraph 2(1) of the *Schedule;*

"bridge institution" has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, 2020;

"civil and administrative investigations and proceedings" means —

(a) proceedings in any court of law, including in the jurisdiction of an overseas regulatory authority; and

(b) investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;

"collateral property" means property provided, whether under a pledge, a charge, a repurchase or similar arrangement, or otherwise, for the purpose of securing the performance of an obligation;

"commercial bank" means a bank —

(a) licensed under the Banks and Trust Companies Regulation Act, 2020 to carry on banking business in The Bahamas; and

(b) designated as an authorised dealer within the meaning of paragraph (1) of regulation 42 of the Exchange Control Regulations (*Ch. 360*);

"company" means a company incorporated under any written law in force whether in The Bahamas or elsewhere;

"Consolidated Fund" shall mean the Consolidated Fund within the meaning of *Article 128* of the Constitution;

"demand liabilities of the Bank" means demand liabilities recorded in a statement of the account audited under subsection (2) of section 38;

"Deputy Governor" means the person appointed as such under paragraph 2 of the *Schedule*;

"Director" in relation to the Bank, includes the Governor and each Deputy Governor unless the context otherwise specifies;

"external auditors" means auditors appointed under section 38;

"financial institution" means a person carrying on a business that is regulated under a written law enforced by the Bank;

"foreign financial institution" means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;

"freely convertible foreign currency" means a foreign currency which, is, in the opinion of the Bank, freely negotiable and transferable in international exchange markets;

"Governor" means the person appointed as Governor of the Bank pursuant to paragraph 2(1) of the *Schedule*;

"International Financial Reporting Standards" means, the most recent international accounting standards, and any other pronouncements, issued by the International Federation of Accountants;

"International Standards of Auditing" means, the most recent international auditing standards, and any other pronouncements, issued by the International Federation of Accountants;

"Minister" means the Minister of Finance;

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

"overseas regulatory authority" means an authority which, in a country or territory outside The Bahamas, exercises regulatory functions or other functions corresponding to any functions of the Bank;

"payment instruments" includes cheques, bills of exchange, promissory notes, electronic money, credit cards, and debit cards;

"payment system" has the meaning assigned in section 2 of the Payment Systems Act, 2012 (*No. 7 of 2012*);

"penalty" means an administrative monetary penalty imposed by the Bank;

"public corporation" means a body corporate established directly by statute for public purposes;

"regulations" means regulations made under this Act, unless the context indicates otherwise;

"regulatory functions" means functions of the Bank, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified by the Bank;

"repealed Act" means the Central Bank of The Bahamas Act, (*Ch. 351*);

"Resolution" means a disposition plan and process for a non-viable bank and may include —

(a) the appointment of a statutory administrator, liquidation and depositor reimbursement;

(b) the transfer or sale of assets and liabilities;

(c) the establishment of a temporary bridge institution;

(d) the write-down or conversion of debt to equity; or

(e) the winding up of parts of a bank under the Companies Act, in conjunction with the exercise of resolution powers;

"securities" has the meaning assigned in section 2 of the Securities Industry Act, 2011 (*No. 10 of 2011*);

"the Bank" means the Central Bank of The Bahamas.

PART II – CONTINUANCE AND FUNCTIONS OF THE BANK

3. Preservation and continuance of The Central Bank of The Bahamas.

(1) The Central Bank of The Bahamas under section 3 of the repealed Act, is preserved and continues to be a body corporate for the purposes of this Act.

(2) The Bank under its corporate name, has perpetual succession and a common seal with capacity to —

(a) acquire, hold, administer, and dispose of movable and immovable property of whatever kind;

(b) enter into contracts; and

(c) institute legal proceedings and be subject to such proceedings.

(3) The Board shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Bank.

(4) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Bank.

4. Places of business of the Bank.

The Bank shall have its principal place of business in the City of Nassau and may, in The Bahamas or elsewhere, as the Bank thinks fit —

(a) establish and maintain branch offices; and

(b) appoint agents and correspondents.

5. Functions of the Bank.

(1) The functions of the Bank are to —

(a) promote stable monetary, credit and balance of payment conditions in order to protect the exchange rate regime and facilitate orderly and balanced growth of the economy;

(b) contribute to the stability of the financial system of The Bahamas through collaboration with other domestic and foreign regulatory authorities; and

(c) support the general economic policy of the Government by providing sound economic, financial and monetary advice; and

(d) act as the Resolution Authority for banks;

(e) determine and implement monetary policy;

(f) advise the Minister on the exchange rate policy and implement the exchange rate policy determined by the Minister;

(g) hold and manage all official external reserves of The Bahamas;

(h) issue and manage the currency of The Bahamas;

(i) collect and produce statistics in respect of the economy and the financial system of The Bahamas;

(j) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system;

(k) regulate and supervise financial institutions;

(l) act as fiscal agent of the Government and of any public corporation of The Bahamas;

(m) advise the Minister on any matter of a financial or monetary nature referred by the Minister to the Bank for its advice; and

(n) assist and co-operate with domestic and overseas regulatory authorities, and participate in international financial organizations, concerning matters related to the objectives and functions of the Bank;

(o) establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and oversee any system —

(i) for the clearing and settlement of payments and other arrangements for the making or exchange of payments;

(ii) for the clearing and settlement of payments and other arrangements for the exchange of securities;

(iii) to facilitate the clearing and settlement of securities and other arrangements for the making or exchange of

payments or the exchange of securities, as well as links among systems; and

(p) regulate and oversee the issuance, provision and functioning of payment instruments, operating either with or without the opening of an account, including the issuance of electronic money or any other forms of stored value.

(2) In addition to the powers conferred by Part IX, the Bank has ancillary power to do in The Bahamas or elsewhere all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and performance of its functions under this Act.

(3) For the purposes of this section, **"Resolution Authority"** means the authority which is responsible for the resolution of banks, including carrying out resolution planning functions.

PART III – CAPITAL AND RESERVES

6. Capital of the Bank.

(1) The authorised capital of the Bank shall be three million dollars in the currency of The Bahamas.

(2) The authorised capital shall be solely subscribed by the Government, and fully paid from the Consolidated Fund, and shall not be transferable or subject to encumbrance.

(3) The authorised capital may be increased by such amounts as may be proposed by the Board and approved by the Minister by notice by order published in the Gazette.

(4) There shall be no reduction of the authorised capital, except by way of an amendment made to this Act.

7. General Reserve and Unrealized Revaluation Reserve.

(1) The Bank shall establish and maintain —

(a) a General Reserve; and

(b) an Unrealized Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.

(2) The General Reserve referred to in subsection (1)(a) may not be used except for the purposes of covering losses sustained by the Bank.

PART IV – CURRENCY

8. Currency of The Bahamas.

(1) The currency of The Bahamas shall comprise notes, coins and electronic money issued by the Bank under the provisions of this Act.

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

(3) For the purposes of this Part, **"electronic money"** has the meaning assigned in section 29 of the Payment Systems Act, 2012 (*No. 7 of 2012*);

9. Contracts, etc., deemed to be in currency of The Bahamas.

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

10. Sole right of Bank to issue notes and coins.

(1) The Bank has the sole right and authority to issue notes and coins throughout The Bahamas.

(2) The Bank shall from time to time as circumstances may require —

(a) arrange for the printing of notes and the minting of coins; and

(b) issue, re-issue and redeem notes and coins.

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

11. Denominations and forms of notes and coins.

The Minister may by order, after consultation with the Bank, prescribe the —

(a) denominations, in multiples or fractions of a dollar, forms and designs of the notes and coins issued by the Bank; and

(b) standard, weight and composition of coins, and the amount of tolerance and variation allowed in relation to coins, issued by the Bank.

12. Legal Tender.

(1) All notes and electronic money issued by the Bank are legal tender in The Bahamas at their face value for the payment of any amount.

(2) Coins issued by the Bank are legal tender in The Bahamas at their face value up to an amount —

(a) not exceeding one hundred dollars, in the case of coins of a denomination of not less than one dollar; and

(b) not exceeding five dollars, in the case of coins of a lesser denomination than one dollar.

(3) Subject to subsections (4) and (5), all notes and coins lawfully in circulation immediately before commencement of this Act are deemed for all purposes to be legal tender issued by the Bank under this Act.

(4) The Bank may, on giving not less than one month's notice in the Gazette, call in any notes or coins on payment of the face value thereof, and any such notes or coins shall, on the expiration of the notice, cease to be legal tender.

(5) A note or coin which is mutilated or imperfect is one which has been impaired, diminished in size or lightened otherwise than by fair wear and tear, or which has been defaced by stamping, engraving or piercing —

(a) shall not be legal tender in The Bahamas and shall be withdrawn from circulation; and

(b) notwithstanding subsection (4) and subject to section 13, is redeemable at any time by the Bank on the demand of any person.

(6) The aggregate amount of currency in circulation issued by the Bank shall appear as a liability in a statement of the accounts of the Bank.

(7) The Bank may issue —

(a) notes and coins and electronic money simultaneously; or

(b) electronic money in the place of notes and coins.

13. Damaged currency, etc.

(1) No person is entitled as of right to recover from the Bank the value of any lost, stolen, mutilated or imperfect note or coin.

(2) The Bank may in the Bank's discretion, as an act of grace, refund to any person the value of a mutilated or imperfect note or coin.

14. Counterfeits and reproduction of currency.

(1) No person shall, without the prior consent of the Bank, make, design, engrave, print, reproduce, use, issue, or publish any article or thing resembling or having a likeness to a note, coin or any electronic money issued by the Bank as to be likely to be confused with or mistaken for such note, coin or electronic money.

(2) The Bank shall require a person to withdraw from circulation —

(a) any note, coin or electronic money; or

(b) any article or thing having likeness or resemblance to a note, coin or electronic money,

which the Bank or the person knows or suspects has been counterfeited or altered.

(3) A person commits an offence who —

(a) counterfeits or alters any note, coin or electronic money that is legal tender in The Bahamas or abroad or any payment instrument which is denominated in the Bahamian dollar or a unit of foreign currency;

(b) possesses or transports any counterfeited or altered note, coin or payment instrument with the knowledge that it was counterfeited or altered.

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both.

(5) A person who fails to comply with a requirement of the Bank under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, commits a further offence and is liable to a fine of ten thousand dollars for every day or part thereof on which the offence is continued.

15. Power of Bank to make regulations for digital currency framework.

The Bank shall make regulations for the purpose of prescribing the framework under which electronic money issued by the Bank as legal tender may be held or used by the public in keeping with best international practices for the development and functioning of the payments system.

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

16. Power of the Bank in relation to foreign exchange, etc.

Without prejudice to the functions of the Bank to promote monetary stability —

(a) the Minister, in consultation with the Bank, shall determine the exchange rate policy; and

(b) the Bank shall implement the exchange rate policy determined by the Minister under paragraph (a).

17. External reserve.

(1) The Bank shall manage all official reserves of external assets of The Bahamas and give priority to safety, before profitability, of such assets.

(2) The Bank may, pursuant to subsection (1), hold, manage, acquire, and sell any of the following assets —

(a) gold (in coins or bullion) and other precious metals, including credit balances representing such gold and other precious metals;

(b) notes and coins (other than gold coins) denominated in freely convertible foreign currencies;

(c) balances payable on demand or within a short term which are denominated in freely convertible foreign currencies and held with financial institutions or agents, foreign central banks, foreign financial institutions, regional development banks, or international financial organizations;

(d) money at call denominated in freely convertible foreign currencies;

(e) bills in the nature of Treasury Bills denominated in freely convertible foreign currencies and issued by any foreign government;

(f) claims on international financial organizations, including special drawing rights held with the International Monetary Fund and the reserve position of The Bahamas in the International Monetary Fund;

(g) readily marketable securities issued or guaranteed by any foreign government; and

(h) any reserve asset deemed by the Board to be an internationally recognised reserve asset.

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

(4) Where the external reserve declines or, in the opinion of the Bank, may decline to a level that could jeopardize the Bank's objectives and the Bank is unable to remedy such decline, the Bank shall cause to be made and transmit to the Minister —

(a) a report on the causes leading to the decline of the reserve; and

(b) the Bank's proposals for remedying the decline of the reserve.

(5) The Minister shall in collaboration with the Bank, on receipt of a report under subsection (4), take the necessary remedial action proposed by the Bank.

PART VI - RELATIONS WITH THE FINANCIAL INSTITUTIONS AND THE GOVERNMENT

18. Liquid assets.

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

(2) Subject to subsection (3), the Bank shall by order fix, and may from time to time vary, the percentage required by subsection (1).

(3) An order made by the Bank under subsection (2) —

(a) shall not at any time fix a percentage of less than ten or more than thirty per centum;

(b) may fix different percentages for different classes of commercial banks; and

(c) shall not increase any percentage at the time in force by more than five per centum.

(4) In this section **"liquid assets"** means —

(a) notes and coins;

(b) any cash balance held at the Bank;

(c) money at call and demand balances at any financial institution carrying on business in The Bahamas;

(d) Treasury Bills;

(e) stock of the Government;

(f) any instrument or security of a kind referred to in section 23(d);

(g) any freely convertible foreign currency;

(h) money at call and demand balances at any foreign financial institution, being money at call or demand balances held in freely convertible foreign currency; or

(I) any other asset the Bank designates for the purposes of this section to be liquid assets.

(5) A bank that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the net average deficiency, taking one month with another, not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

19. Financial institutions must maintain Statutory Reserve.

(1) A financial institution shall establish and maintain with the Bank a statutory reserve ("the Statutory Reserve") of such percentage of its liabilities as the Bank may specify by notice.

(2) The Bank shall by notice fix, and may from time to time vary, the percentage and the basis for the Statutory Reserve required by subsection (1).

(3) A notice made by the Bank under subsection (2) —

(a) may fix different percentages for different classes of financial institutions; and

(b) shall specify the basis and require all of the Statutory Reserve to be lodged with the Bank.

(4) A financial institution that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the deficiency not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

20. Bank to act as fiscal agent for Government.

(1) The Bank may act generally as fiscal agent for the Government and any public corporation on such terms and conditions as may be agreed between the Government and the Bank, provided that the Bank can

act consistently with its functions under this Act.

(2) Without prejudice to section 23, the Bank may provide public debt services to the Government, including the provision of advice or services in respect of the issuance, repayment, and management of public debt.

21. Advances to the Government.

(1) Subject to the provisions of this section, the Bank shall not make any direct or indirect advances to the Government or to any public corporation.

(2) Subsection (1) does not apply to intra-day credits which shall be guaranteed by negotiable Government securities.

(3) Every intra-day credit extended by the Bank to the Government or to a public corporation under subsection (2) shall be repaid by the Government or the public corporation, as the case may be, by the end of the same day as that on which such credit was extended.

(4) Notwithstanding subsections (1) and (3), the Bank may provide temporary loans to the Government, where —

(a) the amount of the loans, which may be outstanding at any one time, taken together with any Treasury bills or securities issued or guaranteed by the Government or a public corporation, shall not exceed, in the aggregate, thirty per centum of the average ordinary revenue of the Government or thirty per centum of the estimated ordinary revenue of the Government, whichever is the less;

(b) the loan will mature within ninety-one days; and

(c) the interest rate on the loan is based on market related interest rates.

22. Subscription to Government securities from primary markets.

(1) Subject to the provisions of this section, the Bank shall not purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or any public corporation.

(2) Notwithstanding subsection (1), the Bank may, for the purpose of replacing maturing securities, implementing monetary policy, maintaining financial system stability or to support the working of the clearing and settlement systems, purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or a public corporation if —

(a) the aggregate amount of the Treasury Bills and securities —

(i) issued or guaranteed by the Government or a public corporation; and

(ii) purchased or subscribed by the Bank in the primary markets which may be outstanding at any one time,

shall not exceed twenty per centum of the average ordinary revenue of the Government, or twenty per centum of the estimated ordinary revenue of the Government, whichever is the less; and

(b) the Treasury Bills and securities are negotiable.

(3) For the purposes of paragraph (b) of subsection (2) the interest rates on the Treasury Bills and securities shall be specified by the Bank, after giving consideration to prevailing market rates.

PART VII – GENERAL POWERS OF THE BANK

23. Powers of the Bank.

The Bank may, in the discharge of its functions under this Act —

(a) open accounts for, accept deposits from, and collect money for or on account of, the Government, any commercial bank, any other financial institution or a public corporation;

(b) open accounts in a central bank in any foreign country or in the Bank for International Settlements, accept deposits from central banks in foreign countries, the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development and any other international financial organization, act as agent, mandatory depository or correspondent for any such banks or organizations, and pay interest on deposits;

(c) buy and sell special drawing rights issued by the International Monetary Fund;

(d) buy, hold, sell, discount or re-discount Treasury Bills and bills of exchange, promissory notes or other credit instruments;

(e) issue its own interest-bearing securities for purposes of monetary policy operations and buy, sell, discount or re-discount, or grant loans or advances against, such securities;

(f) buy and sell on spot and forward and under repurchase agreements, hold, lend, and borrow securities;

(g) buy, sell, and hold gold and other precious metal; and

(h) make to any commercial bank, on such terms and conditions as may be determined by the Bank, loans or advances and take adequate collateral in respect of any securities or credit instrument referred to in paragraph (d).

24. Power of the Bank to fine.

(1) Notwithstanding section 46, the Bank may, where the Bank is satisfied that a financial institution has committed an offence, issue a notice requiring that institution to pay a fine —

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

(b) in the case of an offence committed under section 18, of such percentage, as may by order be fixed by the Bank from time to time, of the net average deficiency, taking one month with another, for every day during which the contravention or failure continues.

(2) The Bank may by notice fix and from time to time vary the percentage required by subsection (1) provided that such percentage shall not exceed twice the annual discount rate prevailing at the time an offence against section 19 or 18 is committed.

(3) Where the Bank issues a notice under this section —

(a) the notice shall be put in writing;

(b) the notice shall specify the offence which the financial institution committed and the fine imposed by the Bank;

(c) a copy of the notice shall be given to the financial institution; and

(4) Upon the financial institution paying the fine, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the financial institution to prove that the offence with which it is charged has been dealt with under this section provided however that nothing in this section shall prevent the Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, 2020, including to require the financial institution in question to take corrective measures.

25. Credit controls.

(1) Subject to subsection (2), the Bank may by regulations prescribe —

(a) the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations;

(b) the maturities for which and the security on which loans or advances may or may not be made by commercial banks;

(c) the maximum amounts of increase in loans or advances made by commercial banks as a percentage of the commercial banks' outstanding loans or advances;

(d) the maximum value of loans and advances granted to a borrower by a commercial bank as a percentage of the collateral property, or loans to value, which the borrower provides to the commercial bank;

(e) the maximum aggregate of monthly repayment obligations of a borrower of commercial banks as a percentage of the ordinary monthly income of the borrower;

(f) the methods of computation of, and the maximum difference permitted between, maturities of assets and liabilities held by a commercial bank;

(g) the methods of computation of interest, and the minimum and maximum amounts of interest payable in respect to loans, advances and deposits or classes thereof.

(2) Regulations made under this section may apply to all the loans and advances of any specified commercial bank or to any specified class or classes of loans or advances of any specified class or classes of such banks.

26. Lender of last resort.

(1) In exceptional circumstances, the Bank may on such terms and conditions as may be determined by the Bank grant loans or advances to a commercial bank where —

(a) the loans or advances will mature within ninety-one days;

(b) the interest rates on the loans or advances are more than those applied to loans or advances made pursuant to section 23;

(c) adequate collateral property is provided to the Bank by the commercial bank; and

(d) the commercial bank, in the opinion of the Bank, is solvent and

requests such loans or advances for the propose of improving liquidity conditions.

(2) The types and minimum value of collateral property to secure loans or advances provided by the Bank under subsection (1) shall not be less prudent than the levels prescribed by the Bank from time to time by regulations and as determined by the Bank at the time of a particular transaction, and such discount levels prescribed by the Bank shall reflect the risk profile of the collateral provided.

(3) The Bank may extend the period prescribed under subsection (1)(a) for up to ninety-one days provided a commercial bank undertakes to implement such remedial measures as may be specified by the Bank.

(4) Notwithstanding the provisions of subsection (1), the Bank may grant loans or advances to, or buy or subscribe any securities of, a commercial bank where the circumstances specified in subsection (1)(c) or (1)(d) are not present if —

(a) the Government guarantees the repayment in writing; and

(b) such loans, advances, or purchase or subscription of securities are necessary to preserve the stability of the financial system.

(5) Notwithstanding the provisions of subsection (1), the Bank shall provide the financial assistance that a bridge institution needs in order to discharge its obligations, except for its obligations to the Deposit Insurance Corporation established under section 7 of the Protection of Depositors Act (*Ch. 317*), as they become due.

(6) The bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

27. Transfer of the Bank's dormant account balances to the Treasurer.

(1) The Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act, 2020, pay interest on money so deposited and pay out money for payment to a person entitled thereto.

(2) The Bank shall establish a Fund for the deposits it receives pursuant to subsection (1) from which it may deduct such sums as are required to meet the reasonable expenses incurred by the Bank in connection with the administration of dormant account balances.

(3) Subject to subsections (2) and (4), the Bank shall where an amount is paid to the Bank which is —

(a) less than five hundred dollars; or

(b) five hundred dollars or more, and has been held by the Bank for a minimum period of ten years,

pay to the Treasurer the funds paid to the Bank, in equal amount where the funds were paid to the Bank in Bahamian dollars and in an equivalent amount where the funds were paid to the Bank in any other currency, together with interest accrued on such amount while it was held by the Bank —

(i) within two months after the amount referred to in paragraph (a) is received by the Bank; or

(ii) within two months after the end of the calendar year in which the ten year period referred to in paragraph (b) expires.

(4) Interest shall accrue on an amount referred to in subsection (3)(b) only where interest was payable in respect of that amount by the bank which transferred the funds to the Bank.

(5) The Bank shall —

(a) where a payment has been made to the Treasurer by the Bank pursuant to subsection (3), be discharged from further liability in respect of the amount so paid; and

(b) retain all records relating to amounts paid to the Bank pursuant to —

(i) subsection (3)(a), for a minimum period of fifteen years after payment is made by the Bank to the Treasurer; and

(ii) subsection (3)(b), for a minimum period of five years after payment is made by the Bank to the Treasurer.

(6) An amount paid by the Bank to the Treasurer pursuant to subsection (3) shall —

(a) form part of the Consolidated Fund;

(b) vest in the Treasurer for the benefit of The Bahamas;

(c) subject to subsections (7) and (8), not be disposed of without the prior approval, signified by resolution, of both Houses of Parliament; and

(d) cease to accrue interest.

(7) The Bank shall make application to the Minister on behalf of an entitled person for repayment by the Treasurer to the Bank of a specified amount paid to the Treasurer pursuant to subsection (3) where —

(a) the bank that paid the funds to the Bank represents to the Bank that it is satisfied that the person is entitled to receive an equal amount in Bahamian dollars or an equivalent amount where the funds were paid to the Bank in any other currency; and

(b) the entitled person makes a claim to the bank that paid the funds to the Bank within ten years of the transfer to the Bank.

(8) The Minister shall, on application made by the Bank in accordance with subsection (7), direct the Treasurer to repay to the Bank for payment to the entitled person the amount specified in the application and the Treasurer shall, notwithstanding that no prior approval signified by resolution has been obtained from both Houses of Parliament with respect to the repayment, repay such amount to the Bank.

(9) The Minister, the Treasurer and the Government shall —

(a) where a payment has been made to the Bank by the Treasurer pursuant to subsection (8), be discharged from further liability in respect of the amount so paid; and

(b) not be liable to any person for a payment made pursuant to subsection (8), if afterwards a claim is made by any other person in respect of the amount so paid.

(10) The Bank may, in accordance with the investment plan for the Fund prepared by the dormant funds investment committee, invest and reinvest any amount transferred to the Bank pursuant to section 78(4) of the Banks and Trust Companies Regulation Act, 2020.

(11) The Bank shall, when calculating the length of time during which it has held amounts paid to the Bank for the purpose of determining when such amounts should be paid to the Treasurer pursuant to subsection (3)(b), take account of any period prior to the commencement of this Act during which the Bank held such amounts.

(12) A person who fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

(13) Every director or other officer concerned in the management of a body corporate which fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits the offence committed by such body corporate unless such director or officer proves that —

(a) the offence was committed without the consent or connivance of the director or officer; or

(b) the director or officer exercised reasonable diligence to prevent the commission of the offence.

(14) For the purpose of discharging the Bank's function under subsection (10), there shall be established a dormant funds investment committee, functioning and constituted in accordance with the provisions of the *Schedule*.

28. Ancillary business.

(1) The Bank may in the discharge of its functions do any other business incidental to or consequential upon the functions of the Bank.

(2) Without prejudice to the generality of subsection (1) and subject to the provisions of this Act, the Bank may purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and may provide ancillary services in connection with such activities.

(3) Subsection (2) applies only to real property which —

(a) is necessary for, or incidental to, discharging the functions of the Bank; or

(b) was purchased or acquired by the Bank before the 29th December,

2000.

(4) The Bank may establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of carrying out the functions of —

(a) a bridge institution; or

(b) an asset management vehicle.

29. Prohibited activities.

Except as expressly authorised by this Act, the Bank —

(a) shall not engage in trade or otherwise have a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank;

(b) shall dispose as soon as may be practicable of any interest acquired in the course of the satisfaction of debts due to the Bank; and

(c) shall not grant unsecured loans or advances to any person.

PART VIII – ACCOUNTS, STATEMENTS AND AUDIT

30. Financial year.

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

31. Profits, losses, and distributable earnings.

(1) The net profit or loss of the Bank shall be determined in accordance with the International Financial Reporting Standards.

(2) The distributable earnings of the Bank shall be determined —

(a) by deducting from the net profit the total amount of unrealized revaluation gains;

(b) by allocating an equivalent amount deducted under paragraph (a) to the Unrealized Revaluation Reserve established under section 7(3);

(c) by adding to the amount determined under paragraph (a) the amount of any unrealized profit that was deducted from the net profit for one or more previous years and was realized during the current financial year;

(d) by deducting an equivalent amount added under paragraph (c) from the Unrealized Revaluation Reserve; and

(e) by transferring from the amount determined under paragraph (c) the total amount of unrealized revaluation losses to the Unrealized Revaluation Reserve to the extent that the amount of the Unrealized Revaluation Reserve will be more than zero after such transfer.

32. Allocation of distributable earnings.

(1) Within thirty days after submitting a statement of the accounts under section 35(1), the Bank shall allocate all distributable earnings to the General Reserve established under section 7(1) until the amount of the General Reserve exceeds the greater of —

(a) twice the authorised capital of the Bank; or

(b) fifteen per centum of the average amount of demand liabilities of the Bank over the last three years.

(2) Subject to subsections (3) and (4), all distributable earnings remaining after the allocation under subsection (1) shall be transferred to the Consolidated Fund.

(3) The Bank may, with the approval of the Minister, increase the General

Reserve beyond the maximum prescribed under subsection (1) by allocating the distributable earnings to the General Reserve.

(4) The Bank may, with the approval of the Minister —

(a) establish as part of the capital of the Bank a reserve other than the General Reserve and the Unrealized Revaluation Reserve; and

(b) transfer to the reserve established under paragraph (a) distributable earnings which would otherwise be transferred to the Consolidated Fund under subsection (2).

(5) No distribution of income, profit, or earnings shall be made by the Bank except as permitted by this section.

(6) Where the Bank incurs negative distributable earnings, such earnings shall first be transferred to the General Reserve and subsequently to the authorised capital.

33. Coverage of shortfall in capital.

(1) The Board shall, where in an external audit of the accounts of the Bank under section 37 the amount of assets falls below the sum of demand liabilities and unimpaired authorised capital, after consultation with the external auditors and within a period not exceeding thirty days, cause to be made and transmit to the Minister a report concerning the causes and extent of the shortfall of the assets.

(2) The Bank shall, where a report is transmitted to the Minister in accordance with subsection (1), request the Minister to make payments from the Consolidated Fund to the authorised capital for the purpose of increasing the authorised capital to the amount prescribed by section 6(1).

(3) The Minister shall, on receipt of a request made by the Bank under subsection (2), within a period not exceeding thirty days make such payment as requested by the Bank in currencies or negotiable bonds with a certain maturity issued by the Government at market-related interest rates.

34. Accounting standard.

The Bank shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Bank to reflect its operations and financial conditions.

35. Publication of accounts.

(1) The Bank shall, within four months after the end of each financial

year, cause to be made and transmit to the Minister —

(a) a report of the operations of the Bank during that year, approved by the Board; and

(b) a statement of the accounts of the Bank in respect of that year, approved by the Board and signed by the Governor and certified by the external auditors, together with the report of the external auditors.

(2) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (1)(a) and (b) —

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

(b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.

(3) The Bank shall on its website publish the reports and statement of the accounts submitted to the Minister under subsection (1).

36. Publication of monthly statements.

The Bank shall on or before the end of each month prepare and transmit to the Minister, and publish in the Gazette and on the website of the Bank, a statement of the assets and liabilities of the Bank as at the last working day of the preceding month.

37. External Audit.

(1) There shall be established an audit committee ("Audit Committee") of the Bank.

(2) The accounts, records, and statement of the accounts of the Bank shall be audited, at least annually, by independent external auditors appointed by the Board with the approval of the Minister.

(3) The external auditors shall be of good repute and have recognized international experience in the auditing of international financial institutions.

(4) The audit under subsection (2) shall be conducted in accordance with the International Standards of Auditing.

(5) The external auditors shall be appointed for —

(a) a minimum period of three consecutive years; and

(b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been

replaced whereupon the Board may extend the appointment for a further period not exceeding three years.

(6) The external auditors shall submit a written report to the Audit Committee of the Bank on significant matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process of the Bank.

(7) The external auditors may be dismissed by the Board for a good cause.

PART IX – INFORMATION AND CONFIDENTIALITY

38. Information may be required from financial institutions.

(1) This section applies to —

(a) a financial institution;

(b) a connected person; or

(c) a person reasonably believed to have information relevant to an inquiry by the Bank.

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

(3) The Bank may exercise the power vested in the Bank under subsection (2) for the purpose of assisting an overseas regulatory authority.

(4) The Bank may, where a person fails to comply with a requirement of the Bank under subsection (2), apply to a Magistrate for an order requiring the person to comply with the requirement.

(5) The Bank may, where the Bank considers it necessary in connection with a requirement to examine a person on oath, apply to a Magistrate to have the person examined by the court and the results of the examination sent to the Bank.

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

(7) Any document provided to the Bank under subsection (2) shall be the property of the Bank.

(8) A person is not required under this section to disclose information or

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

(9) The Bank may, where the Bank considers it proper, return a document supplied under subsection (2) to the person who supplied the document to the Bank.

(10) For the purposes of this section —

(a) **"document"** means a medium in which information is recorded;

(b) any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the adviser in any of the following circumstances —

(i) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;

(ii) by, or by a representative of, a person seeking legal advice from the adviser;

(iii) by any person in contemplation of, or in connection with, legal proceedings;

(c) no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering a criminal purpose; and

(d) **"connected person"** means any one of the following —

(i) a director, officer, partner, employee, or agent of the financial institution's group;

(ii) a controller of the financial institution;

(iii) a person required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.

(11) A person who without reasonable cause —

(a) fails to comply with a requirement of the Bank under subsection (2);

(b) with intent to avoid compliance with subsection (2) destroys, mutilates, defaces, hides or removes a document; or

(c) wilfully obstructs an inquiry by the Bank under subsection (2),

commits an offence is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, to a further fine of ten thousand dollars for every day or part thereof during which the offence is continued.

(12) Where —

(a) an offence under this section has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, the officer or person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly; and

(b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

39. Collection of statistics.

(1) Notwithstanding section 40, the Bank may obtain in such form and within such time as may be determined by the Bank information from any person for the purpose of discharging the Bank's functions under section 5(1)(i).

(2) Notwithstanding any other provision of this Act, information obtained by the Bank under subsection (1) shall not be used or supplied to any person in the Government or otherwise for any purpose other than the collection and production of statistical data.

40. Assistance in obtaining information.

(1) The Bank may —

(a) seek the assistance of the Commissioner of Police in the exercise of the Bank's powers under this Act; and

(b) authorise a competent person to exercise any of the Bank's powers under this Act.

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

(a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or

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

(3) No person is bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless the grantee of the power has, where required, produced evidence of the grantee's authority.

(4) Where the Bank seeks assistance or grants an authority under this section, the assistance or authority shall be provided or executed in such manner as the Bank may determine and a person to whom the Bank grants an authority shall make a report to the Bank, in such manner as the Bank may require, on the exercise of the authority and its results.

41. Information exchange.

(1) Notwithstanding section 43(1), the Bank may exchange information with —

(a) any other regulatory authority in The Bahamas, where it is considered by the Governor 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;

(b) an overseas regulatory authority; and

(c) a foreign financial institution.

(2) The Bank shall not supply to an overseas regulatory authority any information which is not disclosed to the public, unless —

(a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank;

(b) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and

(c) the Bank is satisfied that information provided pursuant to

subsection (1) will not be used in criminal proceedings against the person providing the information.

(3) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Magistrate in the manner contemplated by section 38(4) and (5) —

(a) the Bank shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and

(b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.

42. Supplying false statement.

A person who supplies or is concerned in supplying to the Bank any statement, account, report or other information pursuant to this Act knowing the same to be false in a material particular commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a fine not exceeding ten thousand dollars for each day or part thereof during which the offence continues.

43. Confidentiality.

(1) Subject to subsection (2), no person who is or has been —

(a) a director, officer, employee, agent or adviser of the Bank;

(b) a statutory administrator appointed by the Bank under the Banks and Trust Companies Regulation Act, 2020;

(c) an independent valuer appointed by the Bank under section 47(11) of the Banks and Trust Companies Regulation Act, 2020;

(d) potential purchasers of the assets, rights or liabilities of a bank under statutory administration that have been contacted by the Bank or the statutory administrator;

(e) a director, officer, employee, agent or adviser of a bridge institution;

(f) a director, officer, employee, agent or adviser of an asset management vehicle;

(g) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons

referred to in subparagraphs (a) to (f),

shall disclose any information relating to the affairs of the Bank, or of any person, that such person has acquired in the performance or exercise of his duties or functions under this Act.

(2) Subsection (1) does not apply to a disclosure —

(a) lawfully required or permitted by a court of competent jurisdiction within The Bahamas;

(b) necessary for fulfilling functions and duties required or permitted by this Act or any other written law;

(c) made with the voluntary consent of the person to whom the disclosed information relates;

(d) where the information disclosed is or has been available to the public from another source;

(e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;

(f) made to authorities in The Bahamas to the extent necessary —

(i) for the conduct of criminal proceedings; or

(ii) for disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or an employee of the Bank, of his duties;

(g) made for the purposes of any legal proceedings in connection with —

(i) the winding-up or dissolution of a financial institution;

(ii) the appointment or duties of a receiver of a financial institution or agency or Government body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to any application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed; or

(h) made to the Minister or any officer of the Ministry of Finance, or to a Government agency or body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to an application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

PART X – OFFENCES, VIOLATIONS AND PENALTIES

44. Procedure in relation to offences.

Every offence under this Act shall, where prosecuted, be tried summarily.

45. Offences by corporations.

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

46. The Bank may impose general penalties.

(1) The Bank may order the payment of such penalty as may be prescribed by regulations if satisfied that any person has committed a violation of —

(a) a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one of them;

(b) a condition or limitation imposed by the Bank;

(c) a direction issued by the Bank pursuant to section 18(1) and 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 and section 88(7) of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*); or

(d) an order made by the Bank under this or any other Act.

(2) The Bank shall, where it makes an order under this Part —

(a) specify in the order the —

(i) name of the person believed to have committed a violation;

(ii) nature of the violation which the person is believed to have committed;

(b) give a copy of the order to the person named in the order.

(3) An order made under this Part may be enforced in the same manner as an order of the court.

(4) A penalty paid or recovered under this Part is payable to and shall be remitted to the Bank.

47. Designated violations and fixed penalties.

(1) The Bank may make regulations —

(a) designating, as a violation that may be proceeded with under sections 46 to 51 and 53 to 55 —

(i) the contravention of a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one of them; or

(ii) the non-compliance with —

(aa) a condition or limitation imposed by the Bank,

(bb) a direction issued by the Bank pursuant to section 18(1) or 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 or section 88(7) of the Bahamas Cooperative Credit Unions Act, 2015 (*No. 9 of 2015*).

(cc) an order made by the Bank under this Act or any other written law;

(b) classifying each violation as a minor violation, a serious violation or a very serious violation;

(c) fixing, in accordance with subsection (2), a penalty, or a range of penalties, in respect of any violation;

(d) generally for carrying out the purposes and provisions of sections 46 to 51 and sections 53 to 54.

(2) The Bank may, pursuant to subsection (1) —

(a) designate as a violation the—

(i) violation of a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one;

(ii) non-compliance with any of the following —

(aa) a condition or limitation imposed by the Bank;

(bb) a direction issued by the Bank pursuant to section 18(1) or section 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 or section 88(7)

of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*);

(cc) an order made by the Bank under this Act or any other written law.

(3) The maximum penalty fixed for a violation shall be —

(a) for a violation committed by an individual, in the case of —

(i) a minor violation, two thousand five hundred dollars;

(ii) a serious violation, five thousand dollars; and

(iii) a very serious violation, ten thousand dollars;

(b) for a violation committed by a company, in the case of —

(i) a minor violation, ten thousand dollars;

(ii) a serious violation, fifty thousand dollars; and

(iii) a very serious violation, one hundred thousand dollars.

(4) A minor violation shall, where it consists of a late or erroneous filing and is continued on more than one day, constitute a separate violation for each day during which it is continued.

(5) Except if a penalty is fixed pursuant to subsection 47(1)(c), the Bank shall determine the amount of the penalty by taking into account —

(a) the degree of intention or negligence on the part of the person who committed the violation;

(b) the harm done by the violation;

(c) the history of the person or financial institution that committed the violation having regard to any prior violation or conviction under this Act within the five year period immediately before the violation;

(d) whether the financial institution or person concerned brought the violation to the attention of the Bank;

(e) the seriousness of the violation;

(f) whether or not the violation was inadvertent;

(g) the efforts, if any, made to rectify the violation and to prevent a recurrence;

(h) the potential financial consequences to the financial institution or person concerned, and to third parties including customers and creditors of the financial institution, of imposing a penalty;

(i) the penalties imposed by the Bank in other cases; and

(j) any other criteria as may be prescribed by regulation.

(6) For for the purposes of this section, subsection (5) does not apply to a penalty fixed under subsection (1)(c).

48. The Bank must make an election.

(1) The Bank, where a violation described in section 46 or 47 may be proceeded with as a contravention or as an offence —

(a) shall 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), is precluded from proceeding in the other manner.

(2) Where the Bank elects to proceed with a violation as a contravention, this shall not preclude the Bank from exercising any of its other powers under this Act or any other written law.

49. Procedure for imposition of penalty on making of election.

(1) Every contravention or non-compliance that is designated under section 47(2)(a) constitutes a violation and the person who commits the violation is liable to a penalty determined in accordance with section 47(5).

(2) If the Bank is satisfied that a person has committed a violation, the Bank may issue, and shall cause to be served on the person, a written notice of violation.

(3) A notice of violation shall contain the —

(a) name of the person believed to have committed the contravention or offence;

(b) nature of the contravention of the offence;

(c) penalty that the 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 violation;

(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 violation and the Bank may impose a penalty in respect of it.

50. Determination of responsibility and penalty.

(1) A person who pays in full the penalty proposed in a notice under section 49 is deemed to have committed the violation and all proceedings in respect of such violation terminates upon such payment.

(2) Where a person makes representations in accordance with a notice under section 49, the Bank —

(a) shall decide on a balance of probabilities whether such person committed the violation; and

(b) may subject to any regulations made pursuant to section 47(1)(c), do either one of the following —

(i) where the Bank decides a violation has been committed, by order impose the penalty proposed or a lesser penalty;

(ii) where the Bank decides a violation has not been committed, impose no penalty.

(3) A person who does not pay the penalty or make representations in accordance with a notice under section 49 is deemed to have committed the violation and the Bank may subject to any regulations made pursuant to section 47(1)(c) or a regulation made pursuant to this Act or any other law —

(a) by order impose the penalty proposed or a lesser penalty; or

(b) impose no penalty.

51. Publication of penalties.

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

PART XI – MISCELLANEOUS

52. Exemption.

(1) The Bank is exempt from payment of tax under the Real Property Tax Act (*Ch. 375*) and payment of any other taxes and levies on the import and domestic supply of gold, banknotes, and coins.

(2) Notes, coins and electronic money issued by the Bank are exempt from the payment of stamp duty.

(3) The Bank is exempt from the payment of stamp duty and postal charges for money transacted between the offices of the Bank, and with an agency of the Government, in connection with the Bank's functions under this Act.

53. Remission.

(1) The Bank may remit all or part of a penalty imposed under section 46, including interest on such penalty.

(2) A remission may be conditional or unconditional.

54. Time limits.

(1) A document appearing to have been issued by the Bank, certifying the day on which the subject matter of any proceedings by the Bank became known to the Bank —

(a) is 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, is proof of the matter asserted in such document.

(2) The Bank shall not commence proceedings in respect of a violation —

(a) in the case of a minor violation, later than six months after the subject-matter of the proceedings become known to the Bank; or

(b) in the case of a serious violation or a very serious violation, later than six years after the subject-matter of the proceedings became known to the Bank.

55. Appeal.

(1) A person may appeal to the Supreme Court from any decision of the Bank imposing a penalty in respect of a serious violation or a very serious violation under section 47.

(2) Subject to subsection (3), an appellant under subsection (1) must —

(a) make his appeal on motion; and

(b) within twenty-one days after the day on which the Bank imposed the penalty, serve on the Attorney General a notice in writing signed by the appellant or his counsel and attorney of the intention to appeal and the general grounds for the appeal.

(3) A person desiring to appeal a decision of the Bank under subsection (1) may, upon notice to the Attorney-General, apply to the Supreme Court for leave to extend the time within which the notice of appeal may be served and the Supreme Court, upon the hearing of such application, may extend the time prescribed under subsection (2)(b) as the Supreme Court deems fit.

(4) The Attorney-General shall upon receiving a notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal.

(5) Notwithstanding subsection (4), the Attorney-General shall not be compelled to disclose any information if the Attorney General considers that the public interest would suffer by such disclosure.

(6) The Registrar of the Supreme Court shall set an 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.

(7) The appellant at the hearing of an appeal —

(a) before commencing his case, must state all the grounds of appeal on which the appellant intends to rely; and

(b) must not, except by leave of the Supreme Court, go into any matters not raised by the stated grounds of appeal.

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

56. Conflicts of interest.

(1) The Bank shall establish a code ("Code" or "Codes of Conduct") requiring a director, Governor, and the Bank's employees to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Bank.

(2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Bank —

(a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;

(b) the disclosure shall be recorded in the minutes of the Board; and

(c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or

decision of the Board with respect to the contract or transaction.

(3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

57. Fees and charges.

The Bank may charge reasonable fees and charges for the services the Bank provides and the functions the Bank carries out.

58. Supremacy of this Act.

(1) Where a conflict arises between this Act and the provisions of any other Act, the provisions of this Act shall prevail.

(2) The provisions of this Act shall not be repealed, amended, or suspended, in whole or in part, by any other written law, unless the subsequent legislation specifically amends this Act.

(3) This Act may only be repealed or amended on a recommendation from, or after consultation with, the Bank.

59. Preferential right.

(1) The Bank has an unconditional preferential right to use any collateral or assets provided by a debtor in settlement of, or to secure its obligations to the Bank, if such asset or collateral is in the possession of the Bank.

(2) Where a debtor defaults on the debtor's obligations to the Bank, whether or not insolvency proceedings commence against the debtor, the Bank may exercise its preferential right under subsection (1) in such manner as the Bank may think fit, without the authorization or intervention of any court or public entity.

(3) Where insolvency proceedings have commenced against a debtor under the Banks and Trust Companies Regulation Act, 2020, any collateral provided by a debtor to the Bank under section 26 of this Act, shall have the effect of a fixed charge over the underlying assets in favour of the Bank, and such assets shall not be available to other creditors of the debtor.

(4) The Bank shall not be hindered in the exercise of its preferential right under subsection (1) by any claim of a third party.

60. Immunities of the Bank.

(1) Where any legal action has been commenced in a court in The

Bahamas, no order of attachment or writ of execution with regard to any property held by or deposited with the Bank shall be granted before a final judgement in such action has been issued by the court.

(2) The Bank may in whole or in part, in writing, waive the Bank's immunity from attachment or execution under subsection (1), except the Bank's right to a waiver shall not apply with regard to the special drawing rights.

(3) No account with the Bank intended to be used in the performance of the Bank's functions under this Act shall be the subject of any seizure, attachment, sequestration or blocking order.

61. Immunity of officials and staff of the Bank.

(1) No civil or criminal liability shall attach to —

(a) a director, Deputy Governor, employee or agent of the Bank;

(b) correspondent acting under the direction of the Bank;

(c) any person duly authorized by the Inspector under subsection 28(3) of the Banks and Trust Companies Regulation Act, 2020;

(d) any person duly authorized by the Bank under or pursuant to subsections 29(1)(d), (e) or (f); subsection 38(1) or subsection 60(1) or (2) of the Banks and Trust Companies Regulation Act, 2020;

(e) a director or officer of a bridge institution;

(f) a director or officer of an asset management vehicle;

(g) an independent valuer appointed under the Banks and Trust Companies Regulation Act, 2020,

even after the termination of their functions or duties, for anything done or statement made or omitted to be done or made in good faith in the course of or in connection with —

(i) the exercise or purported exercise of any power under this Act or any other written law;

(ii) the performance or purported performance of any function or duty under this Act or any other written law; or

(iii) the compliance or purported compliance with this Act or any other written law.

(2) The Bank shall indemnify a director, Deputy Governor, employee or agent of the Bank, or correspondent acting under the direction of the Bank, a statutory administrator, a liquidator, a director or officer of a

bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, 2020, even after the termination of their functions or duties, against the cost of defending their actions in connection with subparagraphs (i), (ii) or (iii) of subsection (1).

62. Judicial review and arbitration.

In any court or arbitration proceedings brought against a member of the Board, officer, employee, correspondent or agent of the Bank, for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions, or against the Bank for any actions or inactions, under this Act or any other written law —

(a) the court or arbitration panel may examine only whether the defendant acted unlawfully or in an arbitrary or capricious manner;

(b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and

(c) the court or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.

63. Repeal.

The Central Bank of The Bahamas Act (*Ch. 351*) is hereby repealed.

64. Transitional provisions.

(1) On the day of the coming into operation of this Act —

(a) every person who, immediately before that day, was appointed a member of the Board of Directors of the Bank shall be deemed to have been appointed under this Act and shall continue to serve in that capacity for the unexpired portion of the term remaining to be served;

(b) all real and personal property and every right and interest in that property that, immediately before that day, was vested in the Bank under the repealed Act shall continue to be vested in the Bank for the purposes of and subject to this Act, subject to any debts, trusts and liabilities affecting the property, right or interest;

(c) all rights accruing or accrued to the Bank in respect of any property vested in the Bank by virtue of this section are vested

in the Bank and may be enforced against the Bank;

(d) all contracts, agreements, leases and undertakings made and all securities lawfully given to or by the Bank under the repealed Act which, immediately before that day, are in force shall have effect as contracts, agreements, leases and undertakings by and with the Bank as continued under this Act and may be enforced by and against the Bank accordingly;

(e) all debts due and moneys payable to the Bank and all claims, liquidated or unliquidated, recoverable against the Bank under the repealed Act shall be debts due and moneys payable by and claims recoverable against the Bank as continued under this Act;

(f) any legal or other proceedings that might, but for this section, have been continued or commenced by or against the Bank.

(2) A reference to the Bank in a law of The Bahamas and in any document in force immediately before the date of the coming into operation of this Act shall be read, deemed and taken to refer to the Bank as continued under this Act.

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

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

65. Savings.

Any licence, authority, approval or exemption granted by the Bank 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 by the Bank 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.

66. Validation of acts of the Bank.

Every act or thing done by the Bank under the repealed Act prior to 1st September, 2010 that would have been lawful if section 28(2) had been in force at the time when it was done is declared valid and lawful to the extent it would be valid and lawful if done under section 28(2).

SCHEDULE

(Section 3(4))

CONSTITUTION AND FUNCTIONING OF THE BOARD AND THE BANK

1. Role and duties of the Board of Directors.

(1) There shall be a Board of Directors responsible for the formulation of the policies of the Bank and oversight of the implementation of such policies and of the operations and internal controls of the Bank.

(2) The duties and powers of the Board are to —

(a) formulate any policy, other than monetary policy, of the Bank for the performance of its functions;

(b) make decisions with regard to those matters set out in section 28;

(c) adopt an action or measure taken against a person subject to the supervision of the Bank, in accordance with the powers entrusted to the Bank by this Act, the Banks and Trust Companies Regulation Act, 2020, or any other written law;

(d) adopt sanctions imposed by the Bank under this Act, the Banks and Trust Companies Regulation Act, 2020, or any other written law;

(e) approve bye-laws and regulations issued by the Bank;

(f) approve a guideline, note, notice, order, and any other document issued by the Bank, to require or expect compliance by a person outside the Bank;

(g) approve the procedures of the Board, Audit Committee, the Dormant Funds Investment Committee, the Investment Committee, the Monetary Policy Committee and any other body of the Bank;

(h) approve a procedure for risk management of the Bank;

(i) approve the investment policy and guidelines for the management of external reserves by the Bank;

(j) decide the categories of assets that shall constitute the external reserve in accordance with section 17;

(k) make decisions regarding the establishment and abandonment of a branch office of the Bank and the appointment of an agent and correspondent of the Bank;

(l) approve a personnel policy for the Bank, including a policy for remuneration and terms and conditions of employment;

(m) approve the annual budget of the Bank;

(n) approve the exercise of the powers under section 32(3) and (4), and section 33(1);

(o) approve a statement of the accounts and a report submitted to the Minister under section 35(1);

(p) approve the acquisition and disposition of real property and other significant assets of the Bank;

(q) approve the arrangements for printing notes and minting coins and the issuance, re-issuance, and redemption of notes and coins referred to in section 10 and the advice rendered to the Minister under section 11;

(r) establish committees and determine their composition, duties, and procedures;

(s) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

2. Constitution and tenure of Board of Directors.

(1) The Board of Directors shall consist of the following persons to be appointed by the Governor-General on the advice of the Minister after consultation with the Board —

(a) a Governor, who shall be —

(i) a person of recognized experience in financial matters;

(ii) appointed for a term of five years and eligible for reappointment for no more than two additional terms;

(iii) appointed on such terms and conditions as may be set out in the instrument of appointment; and subject to paragraphs 6 and 7, such terms and conditions may not be altered to his disadvantage during his tenure of office;

(b) two deputy governors ("**Deputy Governors**") of the Bank each of whom shall be appointed for a term of five years and eligible for reappointment for no more than two additional terms;

(c) six other directors, each being a person who —

(i) appears to the Governor-General to have wide experience, and to have shown capacity, in financial or commercial matters, industry, law or administration; and

(ii) shall be appointed for a term of five years and eligible for reappointment for no more than two additional terms.

(2) Each director shall, subject to the Act and this Schedule, hold and vacate office in accordance with the terms of his appointment.

(3) The four directors other than the Governor shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.

(4) A person shall not be appointed a director or Deputy Governor who —

(a) is a member of either House of Parliament;

(b) is an officer or employee of an agency of the Government or any public entity;

(c) has been convicted by a court of an indictable offence or other offence involving dishonesty;

(d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;

(e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;

(f) on the grounds of personal misconduct, has been —

(i) disqualified or suspended by a competent authority from practicing a profession; or

(ii) prohibited from being a director or officer of any public entity or business undertaking.

(5) For the purpose of sub-paragraph (4), a professor of a university shall not be deemed to fall within subparagraph (4)(b).

(6) The Bank shall cause the names of all the members of the Board, and every change in membership, to be published in the *Gazette*.

3. Role of the Governor and the Deputy Governors.

(1) The Governor or a Deputy Governor designated by the Board to act as Governor —

(a) shall preside as chairman at the meetings of the Board;

(b) shall serve as chief executive officer of the Bank, responsible to the Board for the execution of the Bank's policy and the day-to-day management and internal control of the Bank;

(c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, may —

(i) act, contract, and sign instruments and documents on behalf of the Bank; and

(ii) pursuant to the resolutions of the Board, delegate the powers referred to in subsubparagraph (i) to other officers of the Bank.

(2) The Deputy Governors shall perform the functions conferred on them by this Act and, under the supervision of the Governor, such other functions as may be conferred on them by the Board.

(3) In the event of the Governor's inability to act or a vacancy in the office of the Governor, the Board shall designate one of the Deputy Governors to act as Governor.

(4) Subject to subparagraph (5), the Governor and Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not —

(a) receive salary or supplementation thereto from any source other than the Bank; and

(b) occupy any other office or employment, whether remunerated or not.

(5) Notwithstanding subparagraph (4), the Governor and Deputy Governors may —

(a) act as a member or director of any board, committee or commission established by the Government whether by statute or otherwise; or

(b) become a Governor, director or member of the board, by whatever name called, of any international financial institution or international financial organization of which The Bahamas is a member.

4. Removal from the Board.

(1) A director or Deputy Governor who falls within paragraph 2(4) shall be removed from office.

(2) A director or Deputy Governor may be removed from office if the Director or Deputy Governor —

(a) has been absent from meetings longer than three consecutive months without the permission of the Board;

(b) in incapacitated by physical or mental illness; or

(c) is guilty of serious misconduct.

(3) A decision to remove a director or Deputy Governor under sub-paragraphs (1) and (2) shall be made by the Governor-General on the advice of the Minister after consultation with the Board.

(4) The Governor-General shall, within twenty-one days of the date of a

decision made under subparagraph (1) or (2), provide the person in question with written reasons for the decision.

(5) The Bank shall cause the reasons for the removal of the Governor from office to be published in the Gazette.

5. Resignation from the Board.

(1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing —

(a) in the case of the Governor, not less than three months notice; or

(b) in the case of any other director or a Deputy Governor, not less than one month's notice.

(2) The Minister may waive the period of notice required by sub-paragraph (1).

6. Vacancies.

(1) A vacancy in the office of the Governor, Deputy Governor or a director shall be filled within sixty days by the Governor-General appointing a person to the office for the ordinary term in accordance with paragraph 2.

(2) Where the Governor and Deputy Governors are unable to act, the Governor-General on the advice of the Minister shall appoint a person, eligible to be appointed as a director, to act temporarily in the place of the Governor and Deputy Governor.

(3) An appointment under subparagraph (2) shall not be for a period exceeding six months.

7. Meetings.

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

(2) A meeting of the Board —

(a) may be convened by the Governor or, in his absence, a Deputy Governor designated to act as Governor pursuant to paragraph 3(3); or

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

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

(4) Four directors, of whom one shall be either the Governor or Deputy Governor designated pursuant to paragraph 3(3), shall form a quorum at any meeting.

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

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

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

8. Remuneration of the Board.

(1) The Bank shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.

(2) The amount of remuneration determined under subparagraph (1) —

(a) shall be stated in the instrument of appointment of the director;

(b) shall not be diminished during the term of office of the director receiving the remuneration; and

(c) shall not be determined by reference to the profits of the Bank.

9. Audit Committee.

(1) There shall be established an audit committee (the "Audit Committee") of the Bank responsible for —

(a) overseeing the internal and external audit of the Bank;

(b) recommending to the Board a person or firm to be appointed as external auditors and the scope of the external audit;

(c) meeting with external auditors to discuss their findings;

(d) reviewing with external auditors the annual statement of the accounts of the Bank;

(e) resolving disagreements between the management and external auditors regarding the financial reporting; and

(f) performing any other functions prescribed by the charter of the Audit Committee.

(2) The Audit Committee shall consist of the following persons appointed by the Board —

(a) two directors, neither of whom shall be the Governor;

(b) one financial expert who —

(i) has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Audit Committee;

(ii) has recognised expertise in accounting or auditing; and

(iii) does not fall within paragraph 2(4) and paragraph 4(2)(a) (b) or (c).

(3) A financial expert under subparagraph (2)(b) shall be appointed for a term of four years and eligible for re-appointment for no more than two additional terms.

(4) A member of the Audit Committee —

(a) shall be removed by the Board if the member falls within paragraph 2(4)(a); and

(b) may be removed by the Board if the member falls within paragraph 2(4)(b).

(5) Without prejudice to this paragraph, the Board shall prescribe duties and procedures of the Audit Committee by establishing a charter ("the Audit Committee Charter").

(6) The Audit Committee shall report to the Board on the performance of its functions, at least quarterly.

10. Investment Committee.

(1) There shall be established an investment committee (the "Investment Committee") of the Bank responsible for —

(a) making recommendations to the Board in respect of the management of the external reserves;

(b) proposing to the Governor eligible counter-parties, risk limits, and benchmarks in respect of external reserve management;

(c) managing the external reserve in accordance with the investment policy and guidelines approved by the Board under this Act;

(d) proposing to the Board nominees for the appointment of external managers of the external reserves;

(e) overseeing external managers of the external reserve; and

(f) performing any other functions prescribed by the approved investment policy and guidelines.

(2) Members of the Investment Committee shall be appointed by the Governor.

(3) Without prejudice to this Act, the Board shall pursuant to the

investment policy and guidelines prescribe the responsibilities, composition, and procedures of the Investment Committee.

11. Monetary Policy Committee.

(1) There shall be a monetary policy committee (the "Monetary Policy Committee") of the Bank —

(a) chaired by the Governor; and

(b) composed of members appointed by the Governor.

(2) The Monetary Policy Committee shall —

(a) determine the monetary policy of the Bank;

(b) approve basic assessments of the conditions of the economy and the financial system; and

(c) perform any other functions as may be determined by the Board.

(3) The Board shall prescribe the responsibilities, composition, and procedures of the Monetary Policy Committee.

12. Dormant Funds Investment Committee.

(1) There shall be established a dormant funds investment committee ("the Dormant Funds Investment Committee") of the Bank composed of —

(a) the Financial Secretary or his designate, *ex officio*;

(b) the following persons appointed by the Governor —

(i) two officers of the Bank;

(ii) a financial expert, who meets the criteria prescribed in paragraph 9(2)(b); and

(iii) one other person, who has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Dormant Funds Investment Committee.

(2) Members of the Dormant Funds Investment Committee appointed by the Governor, must have related skills, knowledge and expertise necessary for the discharge of their responsibilities, each being a person who in the Governor's opinion, appears to have experience in, and to have shown capacity in, financial or commercial matters, industry, law or administration.

(3) Each member of the Dormant Funds Investment Committee shall hold office for a term of three years and be eligible for re-appointment for no more than two additional terms.

(4) The Dormant Funds Investment Committee shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least three times each year.

(5) Subject to subparagraph (6), the functions of the Committee are to —

(a) as soon as practicable after its establishment, prepare an investment policy for the Fund, and.

(b) not later than April in each year, prepare an investment plan for the Fund, and the first investment plan shall be prepared not later than three months after the establishment of the Committee;

(c) periodically review and update as necessary, the policy referred to in subparagraph (a); and

(d) submit to the Board for approval, the policy and the plan referred to in subsubparagraphs (a) and (b) respectively.

(6) The Governor, in consultation with the Minister of Finance, may issue directions or guidelines to the Dormant Funds Investment Committee concerning the preparation of the investment plan and the investment policy, and the Committee shall comply with those directions and prepare the investment plan and the investment policy in accordance with those guidelines.

(7) Without prejudice to this Act, the Board shall prescribe the responsibilities and procedures of the Dormant Funds Investment Committee.

(8) The Dormant Funds Investment Committee shall report to the Board on the performance of its functions, at least quarterly.

13. Staff and remuneration.

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

(2) Remuneration paid under subparagraph (1) shall not be determined by reference to the profits of the Bank.

(3) The Bank may, as the Bank determines —

(a) pay to or in respect of officers or servants of the Bank pensions or gratuities;

(b) make payments towards the provisions for employees of pensions or gratuities; or

(c) maintain for employees pension schemes (by being a

14. Seal.

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

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