BANKS AND TRUST COMPANIES (TEMPORARY BUSINESS CONTINUITY OPERATIONS) REGULATIONS

S.I. 33/2009
23 of 2010

(SECTION 3(4))

[Commencement 20th February, 2009]

Citation.

1. These Regulations may be cited as the Banks and Trust Companies (Temporary Business Continuity Operations) Regulations.

Interpretation.

2. (1) In these Regulations —

"the Act" means the Banks and Trust Companies Regulation Act; Ch. 316.

"the Agreement" means a binding agreement between a person who wishes to register as an exempt person and a licensee for the provision of temporary business continuity arrangements;

"the equipment" means computer apparatus which is located in The Bahamas at a facility operated by a licensee which has entered into an Agreement;

"exempted activities" means transactions and activities which —

(a) are banking or trust business performed in or from The Bahamas by or on behalf of an exempt person;

(b) the exempt person is authorised by a relevant regulator to perform or have performed on its behalf;

(c) cannot be performed by the exempt person in or from a relevant jurisdiction due to the occurrence of a relevant event or are performed outside the relevant jurisdiction solely for the purposes of testing and maintenance; and

(d) are not unlawful under the laws of The Bahamas;

"exempt person" means a person who —

(a) is licensed, authorised or regulated by a relevant regulator at the relevant time to carry on banking or trust business; and

(b) is registered with the Central Bank as an exempt person under regulation 4;

"licensee" means any person who holds a licence granted under section 3 of the Act;

"relevant event" means an unplanned interruption to the operations of or accessibility to the computer apparatus of the exempt person in a relevant jurisdiction due to an event beyond the control of the exempt person occurring in the relevant jurisdiction caused by —

(a) fire, hurricane, tidal wave, tornado, flood, volcanic eruption, act of God or any other kind of natural disaster; or

(b) act of war or terrorism (excluding social upheaval due to political factors or governmental action).

"relevant jurisdiction" means the jurisdiction in which the exempt person is licensed, authorized or regulated by a relevant regulator to carry on banking or trust business;

"relevant regulator" means a Supervisory Authority located in a relevant jurisdiction and charged with the responsibility of regulating banking or trust business by organizations licensed in its home country;

"relevant time" means the duration of the exempted activities calculated in accordance with the provisions of regulations 7 and 8;

"required person" means any person who in or from The Bahamas undertakes exempted activities on behalf of an exempt person;

"testing and maintenance" means exempted activities undertaken by or on behalf of an exempt person for the sole purpose of establishing and/or verifying the effectiveness of temporary business continuity arrangements.

(2) Any terms used in these Regulations without definitions shall unless the context indicates otherwise, have the same meaning ascribed to those terms in the Act.

Exemption.

3. (1) Subsections (1) and (2) of section 3 of the Act shall not apply to an exempt person or a required person in respect of exempted activities undertaken during the relevant time.

(2) Neither an exempt person nor a required person shall be required to obtain a licence under section 4 of the Business Licence Act. Ch. 329.

Application for registration as an exempt person.

4. (1) A person seeking registration as an exempt person shall apply in writing to the Central Bank within seven days of entering into the Agreement. The application shall include —

(a) the terms of the Agreement;

(b) written confirmation from the relevant regulator that the person is licensed, authorised or regulated by the relevant regulator; *23 of 2010, s. 16.*

(c) a list of the name, address and occupation of any required person; and

(d) if the Governor so requires —

(i) a copy of the Agreement; and

(ii) any other documentation or information the Central Bank considers to be relevant to the application. *23 of 2010, s. 16.*

(2) The Central Bank may register an exempt person subject to such terms and conditions, if any, as the Central Bank considers necessary. *23 of 2010, s. 16.*

(3) The Governor may refuse to register a person as an exempt person if —

(a) the relevant regulator does not confirm that the person is licensed, authorised or regulated by the relevant regulator;

(b) the Agreement is not compliant with these Regulations; or

(c) Central Bank considers it to be in the best interest of the financial system in The Bahamas. *23 of 2010, s. 16.*

Conditions.

5. (1) A Licensee shall notify the Inspector in writing forthwith of —

(a) the occurrence of a relevant event resulting in the operation of the equipment on behalf of the exempt person;

(b) the date when the use of the equipment on behalf of the exempt person terminates;

(c) any changes in the use or proposed use of the equipment on behalf of the exempt person; and

(d) any changes to the terms of the Agreement.

(2) An exempt person shall not —

(a) establish a permanent place of business in The Bahamas;

(b) carry on any banking or trust business in or from The Bahamas other than the exempted activities; and

(c) hold itself out as carrying on any banking or trust business in or from The Bahamas other than the exempted activities.

(3) In the event that any information or particulars provided in the list required by regulation 4(1)(c) changes an exempt person shall within 7 days of such change notify the Inspector in writing of such change.

Circumstances pertaining to withdrawal of an exemption.

6. The Governor may withdraw an exemption by giving notice in writing to the exempt person if —

(a) the exempt person or a Licensee breaches a condition specified in regulation 5; or

(b) the Central Bank becomes aware that the exempt person is no longer licensed, authorised or regulated by the relevant regulator or is in breach of the regulatory requirements in the relevant jurisdiction.

Duration of the exemption: testing and maintenance.

7. In relation to testing and maintenance, the relevant time shall commence on the date that the Central Bank confirms registration of the exempt person and shall terminate when the registration ceases or the Agreement terminates, whichever is the earlier.

Duration of the exemption: exempted activities.

8. In relation to the carrying on of exempted activities following the occurrence of a relevant event —

(a) the relevant time shall commence on the date that the Inspector confirms receipt of written notification under regulation 5(1)(a) and, subject to paragraph (b), shall not exceed 30 days where the relevant regulator is unable to continue to exer-

cise its regulatory functions and 60 days in all other events;

(b) on receipt of a written application from an exempt person for an extension of the relevant time under paragraph (a), the Central Bank may grant an extension, or series of extensions, to the relevant time where he is satisfied that such an extension, or extensions, are warranted; *23 of 2010, s. 16.*

(c) in considering an application under paragraph (b) the Central Bank may request any information that he considers relevant; *23 of 2010, s. 16.*

(d) any extension or series of extensions granted may be subject to such conditions as are in the opinion of the Central Bank deemed necessary. *23 of 2010, s. 16.*

9. These regulations shall not apply to Money Transmission Service Providers or Money Transmission Agents. Non-application.

CHAPTER 316

BANKS AND TRUST COMPANIES REGULATION

BANKS (PUBLISHING AND CERTIFYING OF ANNUAL ACCOUNTS) ORDER *G.N. 133/1959*

(SECTION 8)

[Commencement 25th July, 1959]

1. This Order may be cited as the Banks (Publishing and Certifying of Annual Accounts) Order. Citation.

2. The correctness of annual accounts published by a bank under the provisions of section 8 of the Banks Act shall be certified by a chartered accountant or certified public accountant. Annual accounts to be certified.