BANKS AND TRUST COMPANIES (ADMINISTRATIVE MONETARY PENALTIES) REGULATIONS

S.I. 55/2016

(SECTION 24(A))

[Commencement 5th September, 2016]

Citation.

1. These Regulations may be cited as the Banks and Trust Companies (Administrative Monetary Penalties) Regulations.

Interpretation.

2. In these Regulations —

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"licensee" means a person holding a licence under the provisions of the Banks and Trust Companies Regulation Act;

"Money Transmission Agent" means a person registered by the Central Bank pursuant to secton 3A(b) of the Act;

"Money Transmission Service Provider" has the meaning ascribed in section 2 of the Act;

"person" means a natural person or company;

"Private Trust Company" has the meaning ascribed in section 2 of the Act;

"Registered Representative" has the meaning ascribed in section 2 of the Act;

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"the Act" means the Banks and Trust Companies Regulation Act.

Designation of contraventions.

3. (1). Pursuant to section 24(A) of the Act —

(a) the breach by a person of a provision of the Act of a regulation set out in the second and third columns of the First Schedule are designated contraventions of the Act or of the regulation respectively; and

First Schedule.

(b) the non-compliance of a person with a direction issued or order made or any conditions and limitations imposed under a provision of the Act or a regulation set out in the second and third columns of the First Schedule are designated contraventions of the Act or of the regulation respectively.

First Schedule.

First Schedule.

(2) A contravention set out in the First Schedule may be proceeded with under section 24(B) of the Act.

Classification.

4. A contravention shall be classified as a minor, serious or very serious contravention, as indicated in the fourth column of the First Schedule.

First Schedule.

Penalties for late of erroneous filings.

5. (1) Subject to paragraph (2), the penalty in respect of a contravention that is classified as minor —

(a) which consists of a late or erroneous filing; and

(b) which is listed under items 3, 13, 14, 15, 16, 34, 35, 36, 37, 57, 63, 69, 75, 84, 89 and 90 of the fourth column of the First Schedule,

First Schedule.

shall be two hundred and fifty dollars.

(2) A minor contravention referred to in paragraph (1) which is continued for more than one day shall, pursuant to subsection (3) of section 24(A) of the Act, be subject to —

(a) a penalty of two hundred and fifty dollars for each day or part of a day during which the contravention continues; and

(b) an aggregrate maximum penalty of ten thousand dollars.

FIRST SCHEDULE (Regulations 3-5)

ADMINISTRATIVE MONETARY PENALTIES

No.	Description of Contravention	Act or Regulation	Classification
BANKS AND TRUST COMPANIES REGULATION ACT			
1	Carrying on a business without being licensed, approved or registered by the Central Bank.	Sections 3(1), (2) and (3), 3A(a) and (b)	Very Serious
2	Failure of a specified person or class of persons to comply with the terms and conditions of an exemption granted by the Central Bank.	Sections 3(4) and 6(1)	Very Serious
3	Failure by a licensee to forthwith notify the Central Bank in writing of any change in the licensee's principal office in The Bahamas.	Section 4(5)(a)	Minor
4	Failure by a licensee to notify the Central Bank in writing of any change in the officers designated by the licensee pursuant to paragraph (a)(ii) or (iii) of subsection 4(4) of the Act.	Section 4(5)(b)	Very Serious

5	Failure by a licensee to obtain approval of the Central Bank to establish outside of The Bahamas a subsidiary, branch, agency or representative office.	Section 5	Very Serious
6	Failure by a company which is a licensee under the Act to obtain the prior approval of the Central Bank to issue, transfer or dispose of its shares, or any other securities of such licensee.	Section 6(1)	Very Serious
7	Failure by a person referred to in section 6A(1) (a) or (b) to obtain the approval of the Central Bank before acquiring shares or other securities in a licensee.	Section 6A(l)(a) or (b)	Very Serious
8	Failure by a person referred to in section 6A(l)(a) or (b) to comply with any condition imposed by the Central Bank.	Section 6A(3)	Very Serious
9	Failure by a person referred to in section 6A(l)(a) or (b) to comply with any notice of objection issued by the Central Bank.	Section 6B(3)	Very Serious
10	Failure by a person referred to in section 6A(l)(a) or (b) to comply with any direction issued by the Central Bank.	Section 6C(2)	Very Serious
11	Failure by a person to obtain the Central Bank's approval to use or continue to use a "prohibited word" in contravention of section 7(l)(a) and or (b) of the Act.	Section 7(1)(a) and or (b)	Serious
12	Failure to obtain the Central Bank's approval to solicit or receive deposits from the public.	Section 7(1)(c)	Very Serious
13	Failure by a licensee to publish a true and full yearly statement of its accounts on time.	Section 8(1)	Minor
14	Failure by a licensee to provide a copy of its annual audited financial statements to the Central Bank on time.	Section 8(4)	Minor

15	Failure to furnish the Central Bank with information at the time or in the form specified.	Section 9(1)	Minor, if the contravention relates to information required as part of periodic reports. Serious, in any other case.
16	Failure by a licensee to notify the Central Bank of an auditor's appointment on time.	Section 12(1)	Minor
17	Failure by a licensee to replace an auditor on the request of the Central Bank.	Section 12(2)	Serious
18	Failure by a licensee to provide an auditor of the licensee access to books, accounts and vouchers of the licensee or with requested information.	Section 12(3)(a)	Very Serious
19	Failure of an auditor or former auditor to give notice to the Inspector pursuant to section 12(3)(b) and or 12(4) of the Act.	Section 12(3)(b) and/or Section 12(4)	Very Serious
20	Failure by a licensee to provide the Inspector with access to its books, records, vouchers, documents, cash and or securities.	Section 13(3)(a)	Very Serious
21	Failure to provide the Inspector with such information or explanation, within the time frame required by the Inspector, as the Inspector may reasonably require for the purpose of enabling him to perform his functions under the Act.	Section 13(3)(b)	Serious

22	Failure by an auditor of a licensee to provide the Inspector with such auditor's reports, working papers, information or explanation within the time frame required by the Inspector, as the Inspector may reasonably require for the purpose of enabling him to perforin his functions under the Act.	Section 13(3)(c)	Serious
23	The making of untrue statements by an auditor in an audit report or the omission of essential facts in such report or the failure of such auditor to request pertinent information from a licensee which is being or has been audited by the auditor or failure by such auditor to report his findings to the Inspector.	Section 13(3)(d) or Section 13(3)(e)	Very Serious
24	Failure of a licensee to notify the Central Bank of any material information that may negatively affect the fitness and propriety of a director or senior manager of the licensee.	Section 13B(1)	Very Serious
25	Failure by a licensee to pennit a foreign Supervisory Authority approved by the Inspector to conduct an inspection.	Section 14(2)	Very Serious
26	Making an unauthorised disclosure of a confidential report of examination.	Section 16(1) and (2)	Serious
27	Failure by a licensee to comply with the terms and conditions of its licence.	Section 18(1)(c)	Very Serious
28	Failure by a licensee to comply with a direction of the Central Bank.	Section 18(l)(h)	Very Serious
29	Failure by an individual against whom a prohibition order has been issued pursuant to section 18F(4) of the Act, to comply with the order.	Section 18F(4)	Serious

30	Disclosure of information relating to (a) the identity, assets, liabilities, transactions or accounts of a customer of a licensee; or (b) any application by any person under the provisions of the Act where such disclosure is made in contravention of section 19(1).	Section 19(1)	Very Serious
31	Failure by a licensee to transfer dormant account balances to the Central Bank.	Section 20(1)	Minor
32	Failure by a licensee to keep all signature cards, signing authorities and records relating to dormant account balances transferred to the Central Bank.	Section 20(2)	Very Serious
33	Failure by licensee to expressly and specifically agree charges with customers.	Section 21	Serious
BANKS AND TRUST COMPANIES (ACQUISITION OF SHARES) REGULATIONS			
34	Failure by a licensee to notify the Inspector of the acquisition of three per cent or more of the issued share capital of a publicly traded licensee, on time.	Regulation 3(2)	Minor
BANKS AND TRUST COMPANIES (FOREIGN CURRENCY POSITION) REGULATIONS			
35	Failure by a licensee to maintain the larger of the sum of net short or long positions in all foreign currencies including all outstanding spot and forward foreign exchange contracts and all on and off balance sheet assets and liabilities of the licensee at the appropriate spot exchange rates, at ten percent or less of its capital base.	Regulation 3	Minor
36	Failure by a licensee to immediately notify the Inspector of a contravention of Regulation 3 in such form as the Inspector shall determine.	Regulation 4	Minor

37	Failure by a licensee to take any remedial action required to be taken by the Inspector to ensure compliance with regulation 3.	Regulation 5	Serious
BANKS AND TRUST COMPANIES (EQUITY INVESTMENTS) REGULATIONS			
38	Failure by a licensee to obtain the prior approval of the Bank to acquire or hold the shares, securities or other interests in a related party or to acquire, either directly or indirectly, more than five percent of the shares, securities, or any other interests in any other person.	Regulation 3	Serious
BANKS AND TRUST COMPANIES (PAYMENT OF DIVIDENDS) REGULATIONS			
39	Failure by a licensee to obtain the prior approval of the Central Bank to declare or pay out dividends on its shares in the circumstances described in regulation 3.	Regulation 3	Very Serious
40	Failure by a licensee to comply with restrictions imposed by the Inspector on the payment of dividends.	Regulation 4	Very Serious
BANKS AND TRUST COMPANIES (NEW APPOINTMENTS) REGULATIONS			
41	Failure by a licensee to obtain the prior approval of the Central Bank for the appointment or replacement of a director or executive officer or to provide the specified information in relation thereto.	Regulations 3 and 4	Serious
BANKS AND TRUST COMPANIES (LARGE EXPOSURES) REGULATIONS			
42	Incurring exposures on an aggregate basis to any individual counter-party or group of connected parties which exceed twenty-five percent of the licensee's capital base.	Regulation 3(1)	Serious
43	Holding non-capital investments in securities of a single issuer which exceed ten percent of the licensee's capital base.	Regulation 3(2)	Serious

44	Incurring exposures to related parties which in aggregate exceed fifteen percent of the licensee's capital base.	Regulation 4(1)	Serious
45	Incurring large exposures which in aggregate exceed eight hundred percent of the licensee's capital base.	Regulation 6	Very Serious
46	Failure to implement and maintain internal policies and internal limits and or to review internal policies.	Regulations 9 and 10	Serious
47	Failure by a licensee to report all large exposures to the Inspector when required by the Central Bank and in the manner required by the Inspector.	Regulation 11	Very Serious
48	Failure by a licensee to notify the Inspector of any breach of regulations 3, 4 or 6 pursuant to regulation 12.	Regulation 12	Very Serious
49	Failure by a licensee to provide the Inspector with particulars of any breach of regulations 3,4 or 6 in the manner determined by the Inspector, within two working days after breaching the regulations.	Regulation 12	Very Serious
50	Failure by a licensee to take immediate action to bring the exposure, which results in a breach of regulations 3, 4 or 6, within established limits, within ten working days of the breach.	Regulation 12	Very Serious
51	Failure by a licensee to take any remedial action required by the Inspector to ensure compliance with regulations 3, 4 or 6.	Regulation 14	Very Serious
BANKS AND TRUST COMPANIES (PRIVATE TRUST COMPANIES) REGULATIONS			
52	Failure by a Registered Representative to certify that a trust company for which it provides services qualifies for an exemption under paragraph (1) of regulation 3.	Regulation 3(4)	Serious

53	Failure by a Registered Representative to notify the Inspector if a private trust company ceases to meet the requirements of paragraph (1) of regulation 3.	Regulation 3(5)	Serious
54	Failure by a private trust company to have a Registered Representative in The Bahamas.	Regulation 4(1)(a)	Very Serious
55	Failure by private trust company to have at least one Special Director where an officer of a licensee is not its Registered Representative.	Regulation 4(1)(b)	Serious
56	Failure by a private trust company to maintain at the offices of the Registered Representative a copy of the Designating Instrument pertaining to the private trust company.	Regulation 4(1)(c)	Serious
57	Failure by a Registered Representative to notify the Inspector of any change in its principal address and or that it has ceased to act as a Registered Representative, on time.	Regulation 4(2)	Minor
58	Failure by a private trust company to maintain a paid up share capital of not less than $5,000 or be limited by guarantee in the sum of not less than $5,000.	Regulation 4(3)	Serious
59	Failure by a private trust company to provide its Registered Representative with requested information on time.	Regulation 4(4)	Serious
60	Amendment by a private trust company of its Memorandum or Articles of Association in a manner inconsistent with the definition of private trust company as set out in the Act.	Regulation 4(5)(a)	Minor
61	Failure of a Registered Representative, to restrict its business to the provision of Registered Representative services only.	Regulation 6(1)	Very Serious

62	Failure by a Registered Representative to maintain a minimum paid up share capital of $50,000.	Regulation 8	Very Serious
63	Failure by a Registered Representative to advise changes in particulars provided in its application on time.	Regulation 10	Minor
64	Failure by a Registered Representative to display its approval to act as a Registered Representative on its premises.	Regulation 11	Minor
65	Failure of a Registered Representative to obtain possession of a Designating Instrument identifying the Designated Person or Designated Persons in respect of the private trust company for which it acts.	Regulation 12(a)	Serious
66	Failure by a Registered Representative to reasonably satisfy itself that the private trust company has been established for lawful purposes.	Regulation 12(b)	Very Serious
67	Failure by a Registered Representative to reasonably satisfy itself that the private trust company shall operate as a private trust company as defined in section 2 of the Act.	Regulation 12(c)	Serious
68	Failure by a Registered Representative to at all times maintain in The Bahamas copies of the documents specified in regulation 13(l)(a) through (d) and (f).	Regulation 3(1)	Very Serious
69	Failure by a Registered Representative to obtain from the directors of a private trust company a duly completed Compliance Certificate on time.	Regulation 13(2)	Minor

70	Failure by a Registered Representative that acts as a Bahamas Agent of a private trust company to enter into a service agreement with the private trust company to provide administrative services.	Regulation 13(3)	Minor
71	Failure by a Registered Representative to (i) verify the identities of persons listed in regulation 13(4)(a)(i) through (iv) and or (ii) make a suspicious transaction report to the Financial Intelligence Unit.	Regulation 13(4) (a) and (b)	Very Serious
BANKS AND TRUST COMPANIES (MONEY TRANSMISSION BUSINESS) REGULATIONS			
72	Failure by a Money Transmission Service Provider to have and maintain a minimum capital of $50,000 or such other sum as the Central Bank may require.	Regulation 5(1)	Very Serious
73	Failure by a Money Transmission Service Provider to have and maintain insurance coverage in such amount as the Central Bank may require.	Regulation 5(2)	Serious
74	Failure by a Money Transmission Service Provider to have the accounts of its business audited annually or at such other times as the Central Bank may require.	Regulation 5(3)	Very Serious
75	Failure by a Money Transmission Service Provider to submit its audited accounts to the Inspector on time.	Regulation 5(4)	Minor
76	Failure by a Money Transmission Agent to comply with the terms, and conditions of its registration.	Regulation 6(3)	Very Serious
77	Failure by a Money Transmission Service Provider and Money Transmission Agent to comply with the provisions of the Financial Transactions Reporting Act and Financial Transactions Reporting Regulations.	Regulation 8(a) and (b)	Very Serious

78	Failure by a Money Transmission Service Provider and Money Transmission Agent to maintain its head office or registered office in The Bahamas or to obtain the Central Bank's approval to establish its head office or registered office outside The Bahamas.	Regulation 8(d)	Very Serious
79	Failure by a Money Transmission Service Provider to keep and preserve books, accounts and other records listed in regulation 9(1) for a period of five years.	Regulation 9(1)	Serious
80	Failure by a Money Transmission Service Provider to keep and preserve books, accounts and other records in the form and manner specified in regulation 9(2).	Regulation 9(2)	Serious
BANKS AND TRUST COMPANIES (TEMPORARY BUSINESS CONTINUITY OPERATIONS) REGULATIONS			
81	Carrying on exempted activities, without being registered or failing to apply for registration, on time.	Regulation 4(1)	Serious
82	Failure by a licensee to notify the Inspector of matters specified in regulation 5(1).	Regulation 5(1)	Serious
83	An exempt person (i) establishing a permanent place of business in The Bahamas; (ii) carrying on any banking or trust business in or from The Bahamas other than the exempted activities; (iii) holding itself out as carrying on any banking or trust business other than the exempted activities.	Regulation 5(2)(a), (b) and (c)	Very Serious
84	Failure by an exempt person to notify the Inspector of changes in the name, address and occupation of any required person on time.	Regulation 5(3)	Minor

85	Failure to comply with any conditions of an extension or series of extensions of the time in which exempted activity may be carried out.	Regulation 8(d)	Minor
BANKS AND TRUST COMPANIES (LIQUIDITY RISK MANAGEMENT) REGULATIONS			
86	Failure by a licensee to establish and maintain, a liquidity risk management strategy appropriate to the nature, scale and complexity of its activities.	Regulation 3	Serious
87	Failure by a licensee to implement its liquidity risk management strategy and or to review the strategy on a regular basis, and at a minimum, annually.	Regulation 4(a) and 4(b)	Serious
88	Failure by a licensee to provide the Inspector with a copy of its liquidity risk management strategy.	Regulation 5(1)	Minor
89	Failure by a licensee to notify the Inspector of any change to its risk management strategy, on time and to provide the Inspector with a copy of the revised risk management strategy.	Regulation 5(2)	Minor
90	Failure by a licensee other than a licensee which is subject to section 19 and 20 of the Central Bank of The Bahamas Act to maintain a liquidity ratio of not less than twenty per cent.	Regulation 6(1)	Minor
91	Failure by a licensee to provide the Inspector with such particulars of its liquidity position, in such manner, frequency and form as may be specified by the Inspector.	Regulation 9(a)	Very Serious
92	Failure by a licensee to immediately inform the Inspector of any concerns it has about its current or future liquidity position as well as plans to address such concerns.	Regulation 9(b)	Very Serious

93	Failure by a licensee to take such remedial action as the Inspector directs to ensure compliance with paragraph (1) of regulation 6.	Regulation 11	Very Serious