

**BANKS AND TRUST COMPANIES REGULATION (AMENDMENT)
BILL, 2010**

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**BANKS AND TRUST COMPANIES REGULATION (AMENDMENT)
BILL, 2010**

**A BILL FOR AN ACT TO AMEND THE BANKS AND TRUST
COMPANIES REGULATION ACT TO STRENGTHEN AND EXPAND
THE REGULATORY AND ENFORCEMENT POWERS OF THE
CENTRAL BANK AND FOR CONNECTED MATTERS**

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Banks and Trust Companies Regulation Act ¹, may be cited as the Banks and Trust Companies Regulation (Amendment) Act, 2010.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the following —

- (a) the repeal and replacement of the definition of the word “bank” as follows —
““**bank**” means any person lawfully carrying on banking business including the accepting of deposits of money withdrawable by cheque;”;
- (b) the insertion in the appropriate alphabetical order of the following word and definition —
““**deposit**” means —
 - (a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person

¹(Ch. 316)

in the usual course of business and for which the institution has given or is obliged to give credit to that person's chequing, savings, demand or time account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; and

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

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

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

3. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended in subsection (1) by the deletion of the words “or certificates of deposit”.

4. Amendment of section 8 of the principal Act.

Section 8 of the principal Act is amended as follows —

- (a) in subsection (1), by the deletion where they appear of the words “in the Gazette” and of the words “, and the auditor of the licensee shall have the right of access at all times to the books, accounts and vouchers of the licensee”;
- (b) by the repeal and replacement of subsection (3) as follows —

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

5. Repeal and replacement of section 10 of the principal Act.

Section 10 of the principal Act is repealed and replaced by the following —

“10. Failure to comply with the requirements of sections 8 and 9.

- (1) Subject to subsection (2), any person or licensee —
 - (a) who fails to comply with the requirements of section 8 within a period of four months of the end of the financial year of the person or licensee; or
 - (b) fails to comply with the requirements of section 9 for forty-two days after the date appointed by the Central Bank for so doing,shall be in default and liable to imposition by the Central Bank of a penalty of two hundred and fifty dollars for each day of such default.
- (2) The Central Bank may, for such further period not exceeding sixty days as the Bank deems expedient, extend the time periods referred to in paragraphs (a) and (b) of subsection (1).

6. Repeal and replacement of section 12 of the principal Act.

Section 12 of the principal Act is repealed and replaced as follows —

“12. Appointment, powers and duties of auditors.

- (1) Subject to subsection (2), a licensee shall, within fourteen days of the appointment, notify the Central Bank of the appointment of the auditor of a licensee.
- (2) The Central Bank may at any time require a licensee to replace an auditor by notice in writing delivered to the usual place of business of the licensee and auditor.
- (3) An auditor of a licensee shall —
 - (a) have the right of access at all times to the books, accounts and vouchers of the licensee and be entitled to require from the licensee such information and explanations as he reasonably considers necessary for the performance of his duties as auditor;
 - (b) give the Inspector immediate written notification of the following matters —

- (i) his intention to resign before the expiration of his term of office as auditor;
 - (ii) his intention not to seek to be re-appointed as auditor; and
 - (iii) a decision to include a modification of his report on the licensee's financial statements and, in particular, a qualification or denial of his opinion or the statement of an adverse opinion;
- (4) An auditor or former auditor of a licensee shall give written notice to the Inspector of any fact or matter of which he has or had become aware and which is, or 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) 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.
- (6) This section shall apply to any matter of which an auditor or former auditor of a licensee has or had become aware in his capacity as auditor and which relates to the business or affairs of the licensee or any related company.
- (7) In this section "related company", in relation to a licensee, means —
- (a) a parent, subsidiary, or associate, company of the licensee;
 - (b) a subsidiary company of a parent company of the licensee;
 - (c) a parent company of a subsidiary company of the licensee; or
 - (d) a company wherein a controlling shareholder of the licensee, either alone or with one or more associates, holds ten per cent (10%) or more of the shares or is entitled to exercise, or to control the exercise of, more than ten per cent (10%) of the voting power at a general meeting."

7. Amendment of section 13 of the principal Act.

Section 13 of the principal Act is amended as follows —

- (a) in paragraph (b) of subsection (2) —

- (i) by the deletion immediately after the words “for the purpose of satisfying himself that the provisions of this Act” of the word “or” and the substitution of a comma;
- (ii) by the insertion immediately before the words “the Financial Transactions Reporting Act” of the words “any other relevant Act administered by the Bank or”;
- (b) by the repeal and replacement of subsection (5) as follows —
 - “(5) No duty of confidentiality to which an auditor or former auditor of a licensee may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector any information or opinion which is relevant to the functions and responsibilities of the Inspector under this Act, whether or not such information or opinion is provided in response to a request made by the Inspector.”.

8. Insertion of new section 13A into the principal Act.

The principal Act is amended by the insertion immediately after section 13 of a new section as follows —

“13A Protection from liability.

- (1) Subject to subsection (2), no civil or criminal liability for anything done or omitted in the discharge or purported discharge of their respective functions under this Act shall attach to —
 - (a) any Director, officer, employee or agent of the Central Bank;
 - (b) any person duly authorised by the Inspector pursuant to subsection (4) of section 13;
 - (c) any person duly authorised by the Central Bank under or pursuant to —
 - (i) paragraphs (e), (f) and (g) of subsection (1) of section 18;
 - (ii) subsection (9) of section 18;
 - (iii) paragraph (f) of subsection (1) of section 18B.
- (2) Subsection (1) shall not apply in any case where it is shown that an act or omission was in bad faith.
- (3) The Board of Directors may indemnify the Governor against the cost of defending his actions while discharging his functions in good faith and the Governor may likewise

indemnify against the cost of defending their actions while discharging their functions in good faith —

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

9. Amendment of section 18 of the principal Act.

Section 18 of the principal Act is amended as follows —

- (a) in subsection (1) —
 - (i) in paragraph (f), by the insertion immediately after the word “receiver” wherever it appears of the words “or receiver-manager” and by the deletion of the word “and”;
 - (ii) by the insertion immediately after paragraph (f) of the following new paragraphs —
 - “(g) at the expense of the licensee assume the temporary management of the licensee if, in the opinion of the Central Bank, the licensee —
 - (i) is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or other creditors; or
 - (ii) is, either in The Bahamas or elsewhere, contravening the provisions of this or any other Act, or of any order or regulations made under this Act, or any term or condition subject to which its licence was issued;
 - (h) issue directions requiring a licensee to cease or refrain from committing an act or pursuing a course of conduct that is an unsafe or unsound practice, or that is in contravention of any law, or to perform a remedial act, or to do anything required to be done; and”;
 - (iii) by re-lettering paragraph (g) as paragraph (i);

- (b) by the insertion immediately after subsection (6) of the following new subsections —
- “(7) Where a petition for the winding up of a licensee, or a person who has at any time been a licensee, is presented by a person other than the Central Bank, the petitioner shall serve the Central Bank with a copy of the petition and the Central Bank may appear at the hearing of the petition.
 - (8) The petitioner shall, in addition to service of a copy of the petition, forward to the Central Bank a copy of any document which relates to the petition for winding up and which is required to be sent to a licensee or former licensee or any of their respective depositors, beneficiaries, or other creditors.
 - (9) A person appointed for the purpose by the Central Bank may —
 - (a) attend a meeting of creditors of a licensee or former licensee;
 - (b) attend a meeting of a committee established to discuss a compromise or arrangement; and
 - (c) make representations as to any matter for decision at any such meeting.”.

10. Insertion of sections 18A, 18B, 18C and 18D into the principal Act.

The principal Act is amended by the insertion immediately after section 18 of the following new sections —

“18A. Surrender of licence.

- (1) A licensee which has ceased to carry on the business in respect of which a licence was granted may apply to the Central Bank to surrender its licence if the licensee —
 - (a) produces evidence that it has ceased to carry on such business, repaid all deposits held by it and transferred all trust assets held or administered by it; or
 - (b) is being wound up voluntarily and produces evidence that it is solvent, able forthwith to repay all deposits held by it and all its other creditors, and has transferred all trust assets held or administered by it.
- (2) Subject to subsection (3), the Central Bank may upon an application made pursuant to subsection (1) approve the surrender upon such terms and conditions as the Bank deems appropriate.

- (3) The Central Bank may, where an application is made under paragraph (b) of subsection (1), apply to the Supreme Court for the licensee to be wound up by the Court or subject to its supervision.
- (4) The provisions of the Companies Act (*Ch. 308*) relating to the winding up of a company by or subject to the supervision of the Supreme Court shall, *mutatis mutandis*, apply upon the making of an order by the Court pursuant to an application by the Central Bank under subsection (3).

18B. Temporary management of licensees.

- (1) The Central Bank shall, upon assuming the temporary management of a licensee under paragraph (g) of subsection (1) of section 18, have full and exclusive powers of management and control of the licensee including, without prejudice to the generality of the foregoing, power to —
 - (a) continue or discontinue its operations;
 - (b) stop or limit the payment of its obligations;
 - (c) employ any necessary officers or employees;
 - (d) execute any instrument in the name of the licensee;
 - (e) initiate, defend and conduct in the name of the licensee any action or proceedings to which the licensee may be a party; and
 - (f) appoint any person to manage on its behalf the licensee.
- (2) The Central Bank shall, within ninety days of assuming the temporary management of a licensee —
 - (a) restore full and exclusive powers of management and control of the licensee to its board of directors or owners as the case may be; or
 - (b) revoke its licence and apply to the Supreme Court for an order that the licensee be forthwith wound up by that Court in accordance with the provisions of the Companies Act (*Ch. 308*).

18C. Chief Justice may make rules.

The Chief Justice may make rules governing the procedure in relation to applications to the Supreme Court pursuant to sections 18, 18A and 18B.

18D. Central Bank may publish actions.

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

11. Amendment of section 19 of the principal Act.

Section 19 of the principal Act is amended as follows —

- (a) by re-numbering subsection (8) as subsection (10); and
- (b) by the insertion immediately after subsection (7) of the following new subsections —
 - “(8) The Central 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 Central Bank of any of its functions or duties under this Act.”.

12. Amendment of section 23 of the principal Act.

Section 23 of the principal Act is amended by the addition immediately after subsection (2) of the following new subsections —

- “(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 the evidence referred to in subsection (3) came to his knowledge shall be conclusive.

13. Amendment of section 24 of the principal Act.

Section 24 of the principal Act is amended as follows —

- (a) by re-lettering paragraph (c) as paragraph (d).
- (b) by the insertion immediately after paragraph (b) of the following new paragraph —
 - “(c) 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;”.

14. Insertion of section 24A into the principal Act.

The principal Act is amended by the insertion immediately after section 24 of the following new section —

“24A. Fines.

- (1) The Central Bank may order a person or licensee to pay a fine not exceeding two thousand dollars in any case where it is satisfied that the person or licensee has committed an offence against —
 - (a) regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations, 2000; or
 - (b) the Financial Transactions (Wire Transfers) Regulations, 2008.
- (2) The Central Bank may, where it is satisfied that a person or licensee is liable to the penalty prescribed under subsection (1) of section 10, order the person or licensee to pay the prescribed penalty.
- (3) The Central Bank may order the payment of such fine as may be prescribed by regulations made under this Act if satisfied that a person or licensee has contravened —
 - (a) any provision of this Act;
 - (a) any regulations made under this Act; or
 - (c) any direction issued by the Bank pursuant to paragraph (h) of subsection (1) of section 18.
- (4) The Central Bank, where it makes an order under this section, shall —
 - (a) put the order in writing;
 - (b) specify in the order the nature of the default or offence which the person or licensee has committed and the penalty or fine imposed by the Central Bank; and
 - (c) give a copy of the order to the person or licensee.
- (5) An order made under this section may be enforced by the Central Bank in the same manner as an order of the court.”.

15. Amendment of Third Schedule to the principal Act.

The principal Act is amended in the Third Schedule as follows—

- (a) in paragraph 1, —
 - (i) by the deletion of subparagraph (a) and (b);
 - (ii) by the re-lettering of subparagraph (c) through (t) as subparagraph (a) through (r);

- (iii) by the deletion, in subparagraph (b), of the bracketed letter “(c)” and the substitution of the bracketed letter “(a)”;
- (iv) by the deletion, in subparagraph (c), of sub-subparagraph “(ii)” and the substitution of the following —
 - “(ii) has not been appointed as mentioned in subparagraph (a) of this paragraph or as a licensee as mentioned in subparagraph (a) of paragraph 1 of the Schedule to the Business Licence (Banks and Trust Companies Fees) Regulations, 2010”;
- (v) by the deletion, in subparagraph (d), of the bracketed letter “(e)” and the substitution of the bracketed letter “(c)”;
- (vi) by the deletion, in subparagraph (e), of sub-subparagraph “(ii)” and the substitution of the following —
 - “(ii) has not been appointed as mentioned in subparagraph (a) of this paragraph or as a licensee as mentioned in subparagraph (a) of paragraph 1 of the Schedule to the Business Licence (Banks and Trust Companies Fees) Regulations, 2010”;
- (vii) by the deletion, in subparagraph (f), of the bracketed letter “(g)” and the substitution of the bracketed letter “(e)”;
- (viii) by the deletion, in subparagraph (h), of the bracketed letter “(i)” and the substitution of the bracketed letter “(g)”;
- (ix) by the deletion, in subparagraph (j), of the bracketed letter “(k)” and the substitution of the bracketed letter “(i)”;
- (x) by the deletion, in subparagraph (l), of the bracketed letter “(m)” and the substitution of the bracketed letter “(k)”;
- (xi) by the deletion, in subparagraph (m), of the bracketed letters and words “(e), (g), (i), (k) or (m) of this paragraph” and the substitution of the bracketed letters and words “(c), (e), (g), (i) or (k) of this paragraph”;
- (xii) by the deletion, in subparagraph (n), of the bracketed letter “(o)” and the substitution of the bracketed letter “(m)”;
- (xiii) by the deletion, in subparagraph (p), of the bracketed letter “(q)” and the substitution of the bracketed letter “(o)”;
- (b) in paragraph 2, —
 - (i) by the deletion of the bracketed letter “(p)” and the substitution of the bracketed letter “n”; and
 - (ii) by the deletion of the proviso;

- (c) at the commencement of paragraph 3, by the deletion of the bracketed letters “(l), (n) and (p)” and the substitution of the bracketed letters “(l) and (n)”;
- (d) by the deletion of paragraph 4.

16. Replacement of Governor by Central Bank.

- (1) Subject to subsection (2), the principal Act is, unless the context otherwise requires, amended by deleting the word “Governor” wherever it appears in the Act and substituting the words “Central Bank”.
- (2) Subsection (1) shall not apply to section 2, subsection (4) of section 3, section 13, subsection (6) of section 19 and section 24 of the principal Act.
- (3) The Regulations specified in the Schedule are amended in the manner and to the extent specified in that Schedule.

SCHEDULE (Section 16(3))**AMENDMENTS**

Regulations	Extent of Amendment
Banks and Trust Companies Regulations, Chapter 316 —	The word“Governor” is deleted and the words“Central Bank” are substituted in the provisions specified below —
1. Banks and Trust Companies (Licence Application) Regulations	Regulation 3; Schedule — Paragraphs 1(1)(g)(iv), 1(2)(g)(iii), 2(2)(b)(iii) and (iv), 3(b)(iii), (iv) and (v), and 6.
2. Banks and Trust Companies (Licence Application) (Amendment) Regulations, (S.I. No. 31 of 2008)	Regulation 4; Schedule — Paragraphs 1(2)(g) (iv) and 3(b)(iii).
3. Banks and Trust Companies (Restrictions on Use of Banking Names and Descriptions) Regulations	Regulation 3(b); Schedule — Paragraph 2(2)(c), (d) and (e).
4. Banks and Trust Companies (Acquisition of Shares) Regulations	Regulations 3(1)(a) and (b), 4, 5, 6, 7 and 8; Schedule — Paragraphs 1(c)(iii) and (iv), 2(b)((iv), (v) and (vi).
5. Banks and Trust Companies (New Appointments) Regulations	Regulations 3, 4(d), (e), (f) and (h), and 5.
6. Banks and Trust Companies	

	(Large Exposures) Regulations	Solely at the commencement of Regulation 16 where the word "Governor" first appears.
7.	Banks and Trust Companies (Private Trust Companies) Regulations	Regulations 3(4)(b), 6(1)(b), 6(2)(b) and (d), 6(3), 6(4), 6(5)(a) and (c), 9(2), 10 and 11.
8.	Banks and Trust Companies (Money Transmission Business) Regulations, (S.I. No. 30 of 2008)	Regulations 3(1) and (2), 4(1), (2) and (3), 5(1),(2), (3) and (4), 6(2)(c), 6(3), (4) and(5), 8(d), 12 and 13.
9.	Banks and Trust Companies (Foreign Currency Position) Regulations	Regulation 7.
10.	Banks and Trust Companies (Equity Investment) Regulations	Regulations 3 and 5.
11.	Banks and Trust Companies (Payment of Dividends) Regulations	Regulations 3 and 5.
12.	Banks and Trust Companies (Temporary Business Continuity Operations) Regulations, 2009 S.I. No. 33 of 2009	Regulations 4(1)(d)(ii), 4(2), 4(3)(c), 6(2), 8(b)(c) and (d).

OBJECTS AND REASONS

The purpose of the amendment is to augment and strengthen the existing regulatory framework of the Bank as supervisor of banks, trust companies, registered representatives and money transmission businesses.

Clause 1 provides for the Minister to appoint a date for the amendment to come into force.

Clause 2 seeks to make the definition of the word "bank" in the Act consistent with its definition in the Central Bank of The Bahamas Act and to include a definition of the word "deposit" consistent with that in the Protection of Depositors Act.

Clause 3 removes the reference to "certificates of deposit" in the Act and the requirement for licensees to obtain prior approval for their issue.

Clause 4 removes the requirement in section 8 of the Act for licensees to publish financial statements in the Gazette and gives the Central Bank discretion as to how to permit publication.

Clause 5 amends section 10 of the Act and empowers the Central Bank to impose a daily penalty of \$250 for non-compliance with the time periods stated in sections 8 and 9 of the Act and gives the Bank discretion to extend the time periods for compliance.

Clause 6 repeals and replaces section 12 of the Act setting out the requirements for the appointment, powers and duties of auditors.

Clause 7 amends section 13 of the Act to expand the Inspector's powers of review of licensees and to protect auditors from good faith disclosure of confidential information.

Clause 8 inserts a new clause 13A into the Act and expands the category of persons protected from civil or criminal liability and whom the Board of Directors may indemnify in respect of good faith discharge of their functions.

Clause 9 amends section 18 of the Act and provides for the Central Bank's appointment of a receiver-manager or temporary manager of a licensee.

Clause 10 introduces new sections into the Act to provide for the surrender of licence by a licensee who has ceased to carry on business, the temporary management of a licensee by the Central Bank, to empower the Chief Justice to make rules in respect of certain applications by the Bank and to empower the Bank to publish its actions taken in respect of a licensee.

Clause 11 amends section 19 of the Act to empower the Central Bank to enter into memoranda of understanding with Supervisory Authorities in order to facilitate consolidated supervision of licensees.

Clause 12 amends section 23 of the Act to extend the time within which the Attorney General may prosecute offences against the Act.

Clause 13 amends section 24 of the Act to expand upon the matters for which the Minister may make regulations.

Clause 14 introduces a new section 24A into the Act to enable the Central Bank to order payment of fines for certain offences against the Financial Intelligence (Transactions Reporting) Regulations, 2000 and Financial Transactions (Wire Transfers) Regulations, 2008, and provides for the enforcement of such orders.

Clause 15 amends the Third Schedule of the Act to remove from its jurisdiction the imposition of specific fees (to be imposed under the Business Licence Act 2009).

Clause 16 facilitates the transfer of certain functions from the Governor to the Central Bank.