



No.38 of 2000
AN ACT TO MAKE FRESH PROVISIONS TO REGULATE
BANKS AND TRUST COMPANIES WITHIN THE BAHAMAS;
AND FOR CONNECTED PURPOSES

[Date of Assent - 29th December, 2000]
Enacted by the Parliament of The Bahamas

**Short
title
and com-
mencement.**

1. (1) This Act may be cited as the Banks and Trust Companies Regulation Act, 2000.

(2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette appoint.

**Interpre-
tation.**

2. In this Act -
"authorised agent" means a person designated by a bank or trust company under the provisions of section 4 of this Act;

"bank" means any person carrying on banking business;

"banking business" means the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in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 "banker" shall be construed accordingly;

"Board of Directors" means the Board of Directors of the Central Bank provided for by subsection (4) of section 3 of the Central Bank of the Bahamas Act, 2000;

"Central Bank" means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act, 2000;

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

"Governor" means the the person appointed as Governor under paragraph 1 of the Schedule to the Central Bank of The Bahamas Act, 2000;

"Inspector" means the office of Inspector of Banks and Trust Companies established under section 9;

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

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

"Minister" means the Minister of Finance;

"Supervisory Authority" in relation to a country or

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

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

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

**Licence
required to
carry on
banking
business
or trust
business.**

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

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

(3) 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 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.

Application

4. (1) Any person desirous of carrying on banking

shall be business and any company desirous of carrying on trust
made to the business from within The Bahamas shall make application
Governor. to the Governor for the grant of a licence.

(2) Every application made pursuant to subsection (1) shall be in writing and shall contain such information and particulars and shall be accompanied by such references as may be prescribed and the Governor shall consider the following factors -

- (a) that the applicant is a fit and proper person or company to carry on banking business or trust business, as the case may be;
- (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 business record and experience of the applicant;
- (e) whether those who will operate the bank or trust company will do so responsibly and whether such persons have the character, competence and experience for operating a bank or trust company, as the case may be; and
- (f) the best interests of the financial

system in The Bahamas,
and, if satisfied, may grant a licence to such person or
company subject to such terms and conditions, if any, as
the Governor may deem necessary:

Provided that the Governor shall in every
case in which application is made pursuant to subsection
(1) advise the Minister of his decision to either grant
or refuse the grant of such licence.

(3) Whenever he considers it to be in the
public interest, the Governor may refuse to grant a
licence.

(4) A licence shall not be granted to any bank
or trust company having its head office or its registered
office outside The Bahamas unless -

(a) such bank or trust company designates
and notifies to the Governor-

(i) a principal office in The
Bahamas,

(ii) by name one of its officers
who is to be the bank's or
trust company's authorised
agent in The Bahamas, and

(iii) by name another of its
officers who in the absence
or inability of the officer
named under sub-paragraph
(ii) is to be the bank's
or trust company's
authorised agent in The

Bahamas;

- (b) the Governor is satisfied that the bank or trust company is subject to adequate consolidated supervision by the Supervisory Authority and that the Supervisory Authority makes no objection to the establishment of the branch or subsidiary in The Bahamas;
- (c) the Supervisory Authority is permitted to examine, wherever they are kept, the books of the bank or trust company;
- (d) there are no constraints on internal and external audits imposed by the Supervisory Authority;
- (e) the Supervisory Authority is informed where the bank or trust company will be managed;
- (f) the Supervisory Authority has agreed to inform the Governor as soon as reasonably possible of any circumstances that arise which may seriously jeopardise the interests of creditors of the bank or trust company.

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

of -

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

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

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

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

**Approval
of
Governor.

Shares,
etc., not
to be**

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

6. (1) No shares in a company or certificates of deposit or any other securities of such company which is a licensee under this Act shall be issued and no

issued or transferred without approval.

issued shares shall be transferred or disposed of in any manner without the prior approval of the Governor:

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

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

Use of the word "bank", etc.,

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

(a) use or continue to use the words "bank", "trust", "trust company", "trust corporation", "savings" or "savings and loan" or any of their derivatives either in English or in any other language, in the description or title under which such person is carrying on business from within The Bahamas whether or not such business is carried on in The Bahamas;

(b) make, or continue to make, whether directly or indirectly, any representation in any bill-head, letter, letter-head, circular, paper, notice or advertisement or by any other means whatsoever, whether

similar to the foregoing or not, that such person is carrying on banking business or trust business or is authorised by the law of The Bahamas to carry on such respective business;

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

(2) Except with the approval of the Governor -

(a) the Registrar General shall not register a company; and

(b) no company if already registered immediately before the twenty fifth day of November, 1968, shall be entitled to remain registered on or after that date,

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

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

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

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

revoke such licence, if in his opinion such bank or trust company is carrying on or intending to carry on banking or trust business, as the case may be, under a name which -

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

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

the offence continues.

(7) Where it appears to the Governor -

- (a) that a company has contravened any prohibition contained in subsection (1), and that no other effective means exists of dealing with the company in relation to the contravention; or
- (b) that a company is disentitled to remain registered by reason of being in breach of paragraph (b) of subsection (2),

then in either such case he 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 Governor that the contravention or breach complained of has been discontinued and will not be repeated, then the Governor

may in writing direct the Registrar General to strike the company off the register; and the Registrar General shall act accordingly and thereupon the company shall be dissolved.

(9) Upon the removal of a company pursuant to this section the provisions of section 281(4) to 283 (inclusive) of the Companies Act, 1992 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.

**Yearly
statements
to be
published.**

8. (1) Every licensee shall, within four months of the end of its financial year, publish in the Gazette 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, and the auditor of the licensee shall have the right of access at all times to the books, accounts and vouchers of the licensee; provided that the Governor may, if he 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 Governor may direct.

(3) Such statements shall be in such form and

contain such particulars as the Governor may from time to time direct.

**Governor
may call
for further
inform-
mation.**

8A. A licensee shall from time to time, if required by the Governor, furnish to the Governor a special return and such further information as the Governor may reasonably see fit to call for.

**Failure
to comply
with the
require-
ments of
section 8.**

8B. If any licensee -
(a) fails to comply with the requirements of section 8 within a period of four months of the end of its financial year; or
(b) fails to comply with the requirements of section 8A for forty-two days after the date appointed by the Governor under section 8A for so doing, the licensee or person so in default shall be liable to a penalty of two hundred and fifty dollars for every day of such defaults:

Provided that the Governor may extend the time for sending such return for such further period not exceeding sixty days as he thinks expedient.

**The
Governor
may require
financial**

8C. The Governor, in relation to a licensee which is or appears to become unable to meet its obligation or which in the opinion of the Governor is carrying on business in a manner detrimental to the

**statement,
etc. of
licensee.**

public's interest or to the interest of creditors or depositors of such licensee, may by instrument in writing require the manager or authorised agent of such licensee to supply with such reasonable time as may be specified in the instrument -

(a) the financial statement of that licensee as of a date determined by the Governor audited by an auditor who shall be a chartered accountant or a certified public accountant approved of by the Governor; and

(b) such other information relating to the licensee as may be so specified, and any person who contravenes the requirements of such an instrument or who in response to such an instrument knowingly or wilfully supplies false information to the Governor 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 two years or both such fine and imprisonment.

**Appoint-
ment of
auditor.**

8D. The appointment of the auditors of a licensee shall be subject to the approval of the Governor:

Provided that the Governor may at any time withdraw such approval and require the replacement of an

auditor, by notice in writing delivered to the usual place of business of the auditor and licensee.

**Power
and duties
of the
Inspector.**

9. (1) There is hereby established within the Central Bank of The Bahamas the Office of Inspector of Banks and Trust Companies and functions of that office shall be performed by such person as the Governor considers suitable for the purpose of performing the powers and duties assigned to such Inspector under this Act.

(2) It shall be the duty of the Inspector -

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

(b) whenever he thinks fit and when required by the Governor to conduct on-site examinations and off-site supervision of the business of the licensee for the purpose of satisfying himself that the provisions of this Act or the Financial Transactions Reporting Act, 2000 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 8 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.

(3) In the performance of his functions under this Act and subject to the provisions of section 15, 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;
- (b) to call upon the manager or any officer designated by the manager of any licensee for such information or explanation;
- (c) to call upon the auditors of any licensee for such auditor's reports, working papers, information or explanation;
- (d) to require that the auditor of a bank 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 bank for the safety of its creditors and shareholders, or any other examination as considered necessary by the Inspector,

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

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

(5) No duty of confidentiality to which an 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 paragraphs (a), (b) and (c) of subsection (3), any information or opinion which is relevant to the Inspector's functions and responsibilities under this Act.

(6) Where any person -

(a) fails to comply with any requirement made by the Inspector, pursuant to subsection (3), within the period determined by the Inspector or within such further period as the Inspector may determine, it shall be presumed, in the absence of satisfactory evidence being furnished by the licensee justifying such a failure to comply with such requirement, that the licensee concerned has been carrying on business in contravention of the terms of its licence with effect from the date of such failure;

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

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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.

(7) No civil or criminal liability shall attach to the Inspector, or any person duly authorized by the Inspector under subsection (4), for an act done in good

faith in the discharge or purported discharge of such person's functions under this Act.

(8) The Board of Directors may indemnify the Governor and the Governor may indemnify the Inspector or any person duly authorised by the Inspector under subsection (4), against the cost of defending their actions while so discharging their functions.

**Inspection
by foreign
supervisory
authority.**

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

- (a) is adequately organized;
- (b) has adequate risk management systems and appropriately identifies, limits and monitors risks inherent in that bank's business activities;

- (c) is managed by persons who are fit and proper for the conduct of business activities;
- (d) complies with capital-adequacy and risk-diversification requirements on a consolidated basis; and
- (e) correctly complies with its reporting duties to the Supervisory Authority.

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

- (a) the Supervisory Authority has obtained the prior written approval of the Inspector;
- (b) the Supervisory Authority is prohibited by its domestic laws from divulging information obtained in the course of the inspection to any other person or where the Supervisory authority has given such written undertaking, as the Inspector may require, as to the confidentiality of the information obtained;
- (c) the Supervisory Authority has given to the Inspector a written undertaking to

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

- (d) the Supervisory Authority has given to the Inspector a written undertaking to use the information obtained exclusively for the purpose of consolidated supervision;
- (e) the Supervisory Authority has given to the Inspector a written undertaking that it shall not transmit information obtained during the course of its inspection to any other authorities or bodies without the written consent of the Inspector;
- (f) the Supervisory Authority agrees to subsequently report to the Inspector on the general results of the inspection.

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

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

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

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

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

**Appointed
body to
conduct**

11. (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)

inspection. of section 10 and in such event the provisions of this section and subsections (1), (2), (3), (4) and (5) of section 10 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.

**Confiden-
tiality
of reports
of Inspector
and Super-
visory
Authority.**

12. (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 9 or 10, 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 Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;

(d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor, shall not communicate the report or other information or document or any part thereof to any person other than a director, officer, employee or agent of the licensee without the prior written permission of the Inspector.

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

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

(a) that the report or other information or document or part thereof, as the case may be, was communicated to him contrary to his intention; and

(b) where the communication was effected in any written form, that he has conveyed or has taken reasonable steps to convey the report or other information or document or part thereof, as the case may be, to the Inspector.

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

**Rules for
inspection
and super-
vision of
banks.**

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

**First
Schedule.**

**Powers
of the
Governor.**

14. (1) The Governor may -

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

(i) if, in the opinion of the Governor, the licensee is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or other creditors or is either in The Bahamas or elsewhere contravening the provisions of this or any other Act or of any order or regulations made under this

- Act, or any term or condition subject to which the licence was issued,
- (ii) if the licensee has ceased to carry on banking business or trust business, or
 - (iii) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved,
- and he shall subsequently advise the Minister of his decision;
- (b) apply to the Supreme Court for an order compelling the licensee to comply with the direction, cease the contravention or to do anything required to be done where the licensee-
- (i) is contravening or has failed to comply with a direction of the Governor,
 - (ii) is contravening the Act, or
 - (iii) has omitted to do anything under the Act that is required to be done by the bank or trust company;
- (c) impose, amend or vary conditions upon the licence;

- (d) require the substitution of any director or officer of the licensee;
- (e) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Governor thereon within three months of the date of his appointment;
- (f) at the expense of the licensee, appoint a receiver 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, 1992; and
- (g) require such action to be taken by the licensee as the Governor considers necessary.

18 of 1992.

(2) Whenever the Governor is of the opinion that any action under subsection (1)(a)(i) and (b) should be taken against a licensee, he may forthwith suspend the licence of such licensee and before taking such action the Governor shall give that licensee notice in writing of his intention so to do setting out in such notice the grounds on which he 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 him a written statement of objection to such action, and thereafter the Governor shall advise the licensee of his decision.

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

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

(5) Where the Governor suspends or revokes a licence under this section, he 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, 1992 relating to the winding up of a company by the court shall, mutatis mutandis, apply.

(6) The Governor may, in any case in which a licensee or person who has at any time been a licensee is being wound up voluntarily, apply to the Supreme Court if he 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.

**Preserva-
tion of
confiden-
tiality.**

15. (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 Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any licensee or former licensee or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;
- (d) auditor of any customer of any licensee or former licensee or as an employee or agent of such auditor;
- (e) the Inspector under the provisions of this Act;
- (f) a Supervisory Authority or as a director, officer, employee or agent of a Supervisory Authority;

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

- (i) for the purpose of the performance of his duties or the exercise of his

- functions under this Act, if any;
- (ii) for the purpose of the performance of his duties within the scope of his employment;
 - (iii) when a licensee is lawfully required to make disclosure by any court of competent jurisdiction within The Bahamas, or under the provisions of any law of The Bahamas;
 - (iv) for the purpose of enabling or assisting the Governor to exercise any functions conferred upon him by any written law;
 - (v) to a person with a view to the institution of, or for the purpose of-
 - (a) criminal proceedings,
 - (b) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant,

valuer or actuary of his professional duties; or

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

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

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

(4) No person shall publish the name, address or photograph of any parties to those civil proceedings as are referred to in subsection (3) or any information

likely to lead to the identification of the parties thereto either during the currency of the proceedings or after they have been terminated.

(5) The Governor may, subject to the provisions of section 10(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 may provide information on the beneficial owners, directors, officers and operations of a licensee and any of its affiliates to the domestic regulatory authorities specified in the Second Schedule.

**Second
Schedule.**

- (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, 2000.

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

**Transfer
to Bank
of
unclaimed
balances.**

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

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

the bank shall pay to the Central Bank an amount equal to the amount owing by the bank in respect of the account

and payment accordingly discharges the bank from all liability in respect of the account.

(2) Where a bank has paid to the Central Bank an amount in respect of an account, it shall keep all signature cards, signing authorities and records relating to the account or microfilm or electronically stored copies thereof until notified by the Central Bank that they are no longer required.

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

**Charges
for account
to be by
agreement.**

17. 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.

**Power of
search.**

18. (1) If a Magistrate is satisfied by information on oath given by the Inspector or by a person authorised under section 9(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

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ought to have been produced under section 9(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 9(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 the Banks 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 9(3):

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

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

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

**Attorney-
General's
fiat.**

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

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

**Regula-
tions.**

20. The Governor may make regulations for all or any of the following purposes -

(a) to prescribe the information, particulars and references which may be prescribed under section 4(1) and section 7(3);

- (b) to establish fines not exceeding five thousand dollars for failure to comply with any regulation;
- (c) generally for carrying the purposes or provisions of this Act into effect.

**No dero-
gation.**

21. (1) The provisions of this Act shall have effect in addition to and not in derogation of any other provisions having the force of law in the Bahamas.

(2) This Act shall not apply to the Post Office Savings Bank.

Appeal.

22. (1) An appeal shall lie to the Supreme Court from any decision of the Governor -

- (a) revoking a licence under section 4(6), section 7(5) or section 14;
- (b) withdrawing any approval under section 7(4);
- (c) requiring a licensee to take certain steps which the Governor may specify under section 14.

(2) An appeal against the decision of the Governor shall be on motion and the appellant within twenty-one days after the day on which the Governor has given his 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 Governor may upon notice to the Attorney-General apply to the Supreme Court for leave to extend

the time within which the notice of appeal prescribed by this section may be served, and the Supreme Court upon the hearing of such application may extend the time prescribed in this section as it deems fit.

(3) The Attorney-General shall upon receiving the notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Governor's decision and all papers relating to the appeal:

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

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

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

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

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

Fees.
Second
Schedule.

23. (1) The provisions of the Third Schedule shall have effect for the payment of fees in respect of the matters mentioned in that Schedule, and all such fees shall be payable to the Treasurer.

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

(3) The Minister may by regulations vary the fees prescribed in the Third Schedule, so, however, that any such regulations which increase the amount of any fees payable under this Act shall be exempt from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament.

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(4) In subsection (3) the expression "affirmative resolution of both Chambers of Parliament" in relation to regulations means that the regulations are not to come into operation unless and until affirmed by a resolution of each of those Chambers.

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

Repeal.

24. The Banks and Trust Companies Regulation Act and the Banks Act are hereby repealed.

Savings.

25. Any licence, authority, approval or exemption granted under the repealed Act which is in force immediately before the coming into force of this Act -

- (a) shall continue to have effect after the coming into force of this Act as if granted under this Act;
- (b) in the case of a grant for a specific period, shall remain in force for so much of that period as falls after the coming into force of this Act.

FIRST SCHEDULE

(Section 13)

Rules for Inspection and Supervision of Banks

- 1. The Inspector shall -
 - (a) regularly evaluate the condition, solvency and liquidity of all licensees;
 - (b) establish appropriate and prudent standards for conducting safe and sound banking and trust business;
 - (c) set prudent and appropriate capital adequacy requirements not less than those established in the Basle 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 have management information systems that enable management to identify portfolio concentration in line with established limits;
- (f) ensure that banks 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 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) cooperate 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 Basle Committee for cross-border supervision.

2. In this Part -

"Basle Capital Accord" or "Basle Committee" means the committee of banking supervisory authorities established by central-bank Governors of the Group of Ten countries in 1975 and its report.

SECOND SCHEDULE

(Section 15(6))

DOMESTIC REGULATORY AUTHORITIES

1. Financial Intelligence Unit.
2. Registrar of Insurance.
3. Registrar of Companies.
4. Securities Commission of The Bahamas.

THIRD SCHEDULE

(Section 23)

FEEES

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

Matters in respect of
which fee is payable

Amount of
fee
\$

- (a) Appointment of a licensee by the Controller of Exchange as an authorised dealer as defined in paragraph (1) of regulation 44 of the Exchange Control Regulations 250,000
- (b) Continuance in being on the first day of January in any year as a person appointed as mentioned in sub-paragraph (a) of this paragraph 100,000
- (c) Appointment of a licensee as authorised agent for a beneficial owner of investment currency or foreign currency securities pursuant to the Exchange Control Regulations 60,000
- (d) Continuance in being on the first day of January in any year as a person appointed as mentioned in sub-paragraph(c) of this paragraph 60,000
- (e) Grant of licence to carry on banking business or trust 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 sub-paragraph (a) or (c) of this paragraph 25,000

- (f) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (e) of this paragraph 25,000

- (g) Grant of licence to carry on banking business or trust business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on where the licensee -
 - (i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and
 - (ii) has not been appointed as mentioned in sub-paragraph (a) or (c) of this paragraph 25,000

- (h) Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph(g) of this licence 25,000

- (i) Grant of licence to carry on banking business solely with person specified in the licence 5,000

(j)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (i) of this paragraph	5,000
(k)	Grant of licence to carry on banking business and trust business solely with or for persons specified in the licence	5,000
(l)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (k) of this paragraph	5,000
(m)	Grant of licence solely to carry on the trust business specified in the licence	2,500
(n)	Continuance in being on the first day of January in any year as a person licensed as mentioned in sub-paragraph (m) of this paragraph	2,500
(o)	Grant of any licence not mentioned in sub-paragraph (e), (g), (i), (k) or (m) of this paragraph	1,000
(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	1,000

2. Where any person by reason of falling within a class mentioned in sub-paragraphs (a) to (p) of paragraph 1 of this Schedule has paid a fee therein prescribed in respect of

that class for any year and would, but for provisions of this paragraph of this Schedule, be required to pay in that year a further fee or further fees by reason of such person during that year coming additionally within another such class as aforesaid, such person shall not be required to pay in respect of fees under this Act for that year more in total than the highest fee prescribed in respect of any of the classes within which such person falls:

Provided that any person in any year falling within a class mentioned at sub-paragraph (a) or (b) and at the same time within a class mentioned at sub-paragraph (c) or (d) of the said paragraph 1 of this Schedule shall, subject to paragraphs 3 and 4 of this Schedule, be required to pay the fee prescribed in respect of both such classes for that year.

3. As respects the fees specified at sub-paragraphs (b), (d), (f), (h), (j), (l), (n) and (p) of paragraph 1 of this Schedule -

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

4. Any fee paid by any person in any year pursuant to subsection (1) of section 308, and paragraph 3 of the Third Schedule to, the Companies Act shall be deducted from any fees payable by such person in that year under this Act.

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FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE