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BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) ACT, 2018

Arrangement of Sections

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(No. 33 of 2018)

BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) ACT, 2018

**AN ACT TO AMEND THE BANKS AND TRUST COMPANIES
REGULATION ACT TO PROVIDE FOR THE ADMINISTRATION AND
REGULATION OF DORMANT ACCOUNT BALANCES HELD BY
BANKS**

[Date of Assent – 20th December, 2018]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Banks and Trust Companies Regulation (Amendment) Act, 2018.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Repeal and replacement of section 20 of Ch. 316.

Section 20 of the Banks and Trust Companies Regulation Act¹ is repealed and replaced as follows —

“20. Treatment of dormant accounts held by banks.

- (1) This section applies to —
 - (a) a deposit account, including demand, savings, and fixed term deposit account;
 - (b) a chequing account;
 - (c) a bank draft, cashier cheque, certified cheque and money order;
 - (d) a traveller's cheque;
 - (e) a credit balance on a credit card;

¹Vol. VII - Ch. 316.

- (f) a credit balance on a loan;
- (g) collateral held on a loan, including cash and non-cash collateral;
- (h) funds paid for shares or other interest in a licensee;
- (i) a custody account or safety deposit box;
- (j) a deposit account of precious metals and precious gemstones;
- (k) all securities listed in Part I of the *First Schedule* to the Securities Industry Act (*No. 10 of 2011*); and
- (l) such other deposit account or other facility as the Governor may, by notice, determine.

(2) For the purposes of this section —

“customer” means —

- (a) a person who holds an account or other facility;
- (b) a person who, in respect of an account or other facility, is authorised, in writing, to act as the agent of the person who holds the account or other facility;
- (c) a person who is authorised under a power of attorney to manage and control an account or other facility;
- (d) where a person who holds an account or other facility is deceased, the heirs, executors, administrators and assigns of that person;
- (e) such other person as the Governor may by notice determine;

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

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

“other facility” means any account or arrangement —

- (a) that is provided by a bank to a customer;
- (b) by, through or with which a customer may conduct transactions,

including instruments such as bank drafts, manager's cheques, money orders, and traveller's cheques;

“precious gemstones” does not include jewellery;

“recognized foreign securities exchange” has the meaning assigned in section 2 of the Securities Industry Act, 2011;

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

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

- (a) a deposit, withdrawal, exchange or transfer of funds in any currency denomination whether in cash, by cheque, payment order, or other instrument;
 - (b) a communication, acknowledgement, request, or instruction where evidenced in writing and signed by the customer;
 - (c) a contemporaneous record of the customer's verbal instruction prepared by the bank.
- (3) The seven year period, referred to in the definition of dormant account in subsection (2), shall be calculated in the case of —
- (a) a deposit account made for a fixed period, from the date on which the fixed period terminated, or the date the customer terminates his instructions to automatically renew the deposit, whichever is the later;
 - (b) a deposit account not made for a fixed period, from the date on which the customer last conducted a transaction with respect to the deposit account; and
 - (c) a facility other than one referred to in paragraphs (a) or (b), from the date on which the facility was issued, established, or the obligation to make a payment in respect of the facility accrued, whichever is the later.
- (4) A bank in The Bahamas shall, where a liability exists by reason of a dormant account held at such bank, within two months after the end of the calendar year in which the applicable seven year period expired —
- (a) pay to the Central Bank an amount equal to and in the same currency denomination as the amount owing by the bank in respect of the dormant account, including cash from a dormant safety deposit box; or
 - (b) subject to subsection (10), liquidate a dormant account, including a safety deposit box, containing precious metals, precious gemstones or securities, and after deducting the

reasonable costs incurred in connection with the liquidation of the account, pay the balance of the proceeds of sale of such account to the Central Bank,

provided that, the Central Bank may exempt a bank in writing from this subsection where extenuating circumstances exist.

- (5) For the purposes of paragraph (b) of subsection (4) —
- (a) securities listed on a registered securities exchange or a recognized foreign securities exchange shall be sold at prices prevailing on the exchange at the time of sale;
 - (b) securities that are not listed on an established stock exchange may be sold over the counter at prices prevailing at the time of the sale or by any reasonable method selected by the bank using its best efforts and prudence and having regard to market conditions at the time of the sale, which sale shall take place within two months after the end of the calendar year in which the applicable seven year period expired or within such longer period as the Central Bank may, in its sole discretion, approve;
 - (c) a purchaser acquiring property at a sale takes the property free of all claims of the owners and of all persons claiming through or under the owners;
 - (d) a person making a claim for liquidated property —
 - (i) is entitled to receive the proceeds of sale of such property, less deductions for —
 - (aa) costs of sale;
 - (bb) reasonable expenses incurred by the Bank, pursuant to section 29(2) of the Central Bank of The Bahamas Act (Ch. 351); and
 - (ii) is not entitled to receive any appreciation in the value of the property occurring after the sale of such property.
- (6) Subsection (4)(b) shall not apply where the precious metals, precious gemstones or securities do not have a ready buyer, cannot be sold, are worthless or are not cost-effective to sell and, in such cases, the bank —
- (a) shall transfer the property to the Central Bank or to an agent appointed by the Central Bank; or
 - (b) at the discretion of the Central Bank, shall continue to hold the precious metals, precious gemstones or securities, as the case may be, as an agent for the Central Bank.

- (7) Subject to subsection (12), no person shall have a claim for any act done pursuant to paragraph (b) of subsection (4) against —
- (a) a bank;
 - (b) a registrar and transfer agent; or
 - (c) any other person acting for or on behalf of the bank.
- (8) A bank shall retain —
- (a) for a period of fifteen years after the date the bank makes a payment to the Central Bank pursuant to subsection (4); or
 - (b) for a period of five years after the bank makes a payment to a claimant pursuant to subsection (12).
- all records relating to the dormant account in respect of which such payment was made including all —
- (i) registers;
 - (ii) signature cards;
 - (iii) signing authorities;
 - (iv) microfilm or electronically stored copies of such records.
- (9) Notwithstanding subsection (8), the relevant periods for the retention of records where a bank makes a payment pursuant to subsection (4) or subsection (12) with respect to a securities account shall be seventeen years and seven years, respectively.
- (10) Notwithstanding subsection (4), a bank shall —
- (a) subject to paragraph (b), not make payment to the Central Bank with respect to —
 - (i) dormant accounts which have any one or more of the following characteristics —
 - (aa) are non-cash collateral;
 - (bb) are a custody account or safety deposit box, except for cash, precious metals, precious gemstones or securities found in such boxes;
 - (ii) such other characteristics as the Governor may, by regulation, determine;
 - (b) continue to administer the dormant accounts referred to in paragraph (a) in the best interest of the customer in accordance with the bank's contractual obligations and subject to heightened internal monitoring by the bank, in accordance with guidelines issued by the Central Bank; and
 - (c) deduct a reasonable sum for the administration of the dormant account referred to in paragraph (a) only where —

- (i) there is an enforceable written contract between the bank and the customer under which the bank may impose a charge; and
 - (ii) the bank regularly imposes the charge and the charge is not regularly reversed or otherwise cancelled.
- (11) A bank which holds a dormant account of the kind referred to in subsection (10)(a) shall make a report to the Central Bank at such intervals, and in such form containing such particulars, as the Bank may require.
- (12) Where a bank has made a payment to the Central Bank pursuant to subsection (4) and —
 - (a) the bank represents to the Central Bank that it is satisfied that a person is entitled to receive an equal amount where the funds were paid in Bahamian dollars and an equivalent amount where the funds were paid in any other currency; and
 - (b) the person has brought a claim to the bank for the amount so paid prior to the expiry of ten years from the date of the Central Bank's receipt of such amount,a liability shall arise —
 - (i) on the Central Bank, to repay to the bank an equal or equivalent amount, as the case may be, together with interest if interest was payable by the bank, at a rate and computed in a manner that the Central Bank may by written notice determine; and
 - (ii) on the bank, to pay the amount received from the Central Bank under subparagraph (i) to the claimant.
- (13) A bank which makes a payment to the Central Bank pursuant to subsection (4), or transfers property to the Central Bank or an agent of the Bank pursuant to subsection (6)(a), shall be discharged from further liability in respect of such payment or transfer.
- (14) The Central Bank shall, where the Bank makes a payment pursuant to subsection (12) of this section or section 24(1) of the Central Bank of The Bahamas Act (*Ch. 351*), be discharged from further liability in respect of such payment.
- (15) A bank shall maintain a register of dormant accounts containing in respect of each account the —
 - (a) full name and last known address of each customer;
 - (b) last known telephone number or other contact of each customer;

- (c) name of the bank and location of the branch at which the dormant account is held;
- (d) account number;
- (e) type of facility;
- (f) full description of assets, including amount and currency where appropriate;
- (g) fee status, indicating whether the account was subject to any fees immediately prior to transfer to the Central Bank and the amount of such fees;
- (h) interest status, indicating whether the account was subject to any interest earned immediately prior to transfer to the Central Bank and the amount of such interest;
- (i) date of last transaction on the account;
- (j) measures, briefly described, taken to contact the customer;
- (k) in the case of funds in transit, file copy of the instrument or transfer;
- (l) date funds were paid to the Central Bank pursuant to subsection (4), where applicable; and
- (m) other information that the Central Bank may, in writing, require a bank to maintain in the register.”.