

# CENTRAL BANK OF THE BAHAMAS BILL, 2020

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# CENTRAL BANK OF THE BAHAMAS BILL, 2020

## A BILL FOR AN ACT TO REPEAL THE CENTRAL BANK OF THE BAHAMAS ACT (CH. 351); TO CONSOLIDATE AND MODERNISE THE LAW GOVERNING THE CENTRAL BANK OF THE BAHAMAS AND FOR CONNECTED MATTERS

Enacted by the Parliament of The Bahamas

### PART I – PRELIMINARY

#### 1. Short title and commencement.

- (1) This Act may be cited as the Central Bank of The Bahamas Act, 2020.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the Gazette.

#### 2. Interpretation.

In this Act —

“**asset management vehicle**” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, 2020;

“**average ordinary revenue**” means the annual average of the ordinary revenue of the Government over the three years (for which accounts have been laid before Parliament) next before the year in which any loan under subsection (4) of section 21 is raised;

“**bank**” has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020;

“**banking business**” has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020 and “**banker**” shall be construed accordingly;

“**Board**” means the Board of Directors of the Bank appointed pursuant to paragraph 2(1) of the *Schedule*;

“**bridge institution**” has the meaning assigned in section 2 of the Banks and Trust Companies Regulation Act, 2020;

“**civil and administrative investigations and proceedings**” means —

- (a) proceedings in any court of law, including in the jurisdiction of an overseas regulatory authority; and
- (b) investigations undertaken by the overseas regulatory authority preliminary to bringing such proceedings;

“**collateral property**” means property provided, whether under a pledge, a charge, a repurchase or similar arrangement, or otherwise, for the purpose of securing the performance of an obligation;

“**commercial bank**” means a bank —

- (a) licensed under the Banks and Trust Companies Regulation Act, 2020 to carry on banking business in The Bahamas; and
- (b) designated as an authorised dealer within the meaning of paragraph (1) of regulation 42 of the Exchange Control Regulations (*Ch. 360*);

“**company**” means a company incorporated under any written law in force whether in The Bahamas or elsewhere;

“**Consolidated Fund**” shall mean the Consolidated Fund within the meaning of *Article 128* of the Constitution;

“**demand liabilities of the Bank**” means demand liabilities recorded in a statement of the account audited under subsection (2) of section 38;

“**Deputy Governor**” means the person appointed as such under paragraph 2 of the *Schedule*;

“**Director**” in relation to the Bank, includes the Governor and each Deputy Governor unless the context otherwise specifies;

“**external auditors**” means auditors appointed under section 38;

“**financial institution**” means a person carrying on a business that is regulated under a written law enforced by the Bank;

“**foreign financial institution**” means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;

“**freely convertible foreign currency**” means a foreign currency which, is, in the opinion of the Bank, freely negotiable and transferable in international exchange markets;

“**Governor**” means the person appointed as Governor of the Bank pursuant to paragraph 2(1) of the *Schedule*;

**“International Financial Reporting Standards”** means, the most recent international accounting standards, and any other pronouncements, issued by the International Federation of Accountants;

**“International Standards of Auditing”** means, the most recent international auditing standards, and any other pronouncements, issued by the International Federation of Accountants;

**“Minister”** means the Minister of Finance;

**“ordinary revenue”** means all income or contributions to Government revenue not being loans, capital grants or other receipts of a capital nature;

**“overseas regulatory authority”** means an authority which, in a country or territory outside The Bahamas, exercises regulatory functions or other functions corresponding to any functions of the Bank;

**“payment instruments”** includes cheques, bills of exchange, promissory notes, electronic money, credit cards, and debit cards;

**“payment system”** has the meaning assigned in section 2 of the Payment Systems Act, 2012 (*No. 7 of 2012*);

**“penalty”** means an administrative monetary penalty imposed by the Bank;

**“public corporation”** means a body corporate established directly by statute for public purposes;

**“regulations”** means regulations made under this Act, unless the context indicates otherwise;

**“regulatory functions”** means functions of the Bank, or functions corresponding to such functions, and any other similar functions relating to companies or financial services as may be specified by the Bank;

**“repealed Act”** means the Central Bank of The Bahamas Act, (*Ch. 351*);

**“Resolution”** means a disposition plan and process for a non-viable bank and may include —

- (a) the appointment of a statutory administrator, liquidation and depositor reimbursement;
- (b) the transfer or sale of assets and liabilities;
- (c) the establishment of a temporary bridge institution;
- (d) the write-down or conversion of debt to equity; or
- (e) the winding up of parts of a bank under the Companies Act, in conjunction with the exercise of resolution powers;

**“securities”** has the meaning assigned in section 2 of the Securities Industry Act, 2011 (*No. 10 of 2011*);

**“the Bank”** means the Central Bank of The Bahamas.

## **PART II – CONTINUANCE AND FUNCTIONS OF THE BANK**

### **3. Preservation and continuance of The Central Bank of The Bahamas.**

- (1) The Central Bank of The Bahamas under section 3 of the repealed Act, is preserved and continues to be a body corporate for the purposes of this Act.
- (2) The Bank under its corporate name, has perpetual succession and a common seal with capacity to —
  - (a) acquire, hold, administer, and dispose of movable and immovable property of whatever kind;
  - (b) enter into contracts; and
  - (c) institute legal proceedings and be subject to such proceedings.
- (3) The Board shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Bank.
- (4) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Bank.

### **4. Places of business of the Bank.**

The Bank shall have its principal place of business in the City of Nassau and may, in The Bahamas or elsewhere, as the Bank thinks fit —

- (a) establish and maintain branch offices; and
- (b) appoint agents and correspondents.

### **5. Functions of the Bank.**

- (1) The functions of the Bank are to —
  - (a) promote stable monetary, credit and balance of payment conditions in order to protect the exchange rate regime and facilitate orderly and balanced growth of the economy;
  - (b) contribute to the stability of the financial system of The Bahamas through collaboration with other domestic and foreign regulatory authorities; and
  - (c) support the general economic policy of the Government by providing sound economic, financial and monetary advice; and
  - (d) act as the Resolution Authority for banks;
  - (e) determine and implement monetary policy;
  - (f) advise the Minister on the exchange rate policy and implement the exchange rate policy determined by the Minister;

- (g) hold and manage all official external reserves of The Bahamas;
  - (h) issue and manage the currency of The Bahamas;
  - (i) collect and produce statistics in respect of the economy and the financial system of The Bahamas;
  - (j) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system;
  - (k) regulate and supervise financial institutions;
  - (l) act as fiscal agent of the Government and of any public corporation of The Bahamas;
  - (m) advise the Minister on any matter of a financial or monetary nature referred by the Minister to the Bank for its advice; and
  - (n) assist and co-operate with domestic and overseas regulatory authorities, and participate in international financial organizations, concerning matters related to the objectives and functions of the Bank;
  - (o) establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and oversee any system —
    - (i) for the clearing and settlement of payments and other arrangements for the making or exchange of payments;
    - (ii) for the clearing and settlement of payments and other arrangements for the exchange of securities;
    - (iii) to facilitate the clearing and settlement of securities and other arrangements for the making or exchange of payments or the exchange of securities, as well as links among systems; and
  - (p) regulate and oversee the issuance, provision and functioning of payment instruments, operating either with or without the opening of an account, including the issuance of electronic money or any other forms of stored value.
- (2) In addition to the powers conferred by Part IX, the Bank has ancillary power to do in The Bahamas or elsewhere all that is necessary to facilitate, or is incidental or conducive to, the fulfilment of its objectives and performance of its functions under this Act.
- (3) For the purposes of this section, “**Resolution Authority**” means the authority which is responsible for the resolution of banks, including carrying out resolution planning functions.



## PART III – CAPITAL AND RESERVES

### 6. Capital of the Bank.

- (1) The authorised capital of the Bank shall be three million dollars in the currency of The Bahamas.
- (2) The authorised capital shall be solely subscribed by the Government, and fully paid from the Consolidated Fund, and shall not be transferable or subject to encumbrance.
- (3) The authorised capital may be increased by such amounts as may be proposed by the Board and approved by the Minister by notice by order published in the Gazette.
- (4) There shall be no reduction of the authorised capital, except by way of an amendment made to this Act.

### 7. General Reserve and Unrealized Revaluation Reserve.

- (1) The Bank shall establish and maintain —
  - (a) a General Reserve; and
  - (b) an Unrealized Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.
- (2) The General Reserve referred to in subsection (1)(a) may not be used except for the purposes of covering losses sustained by the Bank.

## PART IV – CURRENCY

### 8. Currency of The Bahamas.

- (1) The currency of The Bahamas shall comprise notes, coins and electronic money issued by the Bank under the provisions of this Act.
- (2) The unit of the currency of The Bahamas shall be the dollar, which shall be divided into one hundred cents.
- (3) For the purposes of this Part, “**electronic money**” has the meaning assigned in section 29 of the Payment Systems Act, 2012 (*No. 7 of 2012*);

### 9. Contracts, etc., deemed to be in currency of The Bahamas.

Every contract, sale, payment, bill, note or security for money and every transaction, dealing, proceeding, matter or thing relating to money or involving the payment of, or the liability to pay money is deemed to be made, executed or entered into, in or in relation to the currency of The

Bahamas unless it is expressly made executed or entered into in or in relation to the currency of some other country.

## **10. Sole right of Bank to issue notes and coins.**

- (1) The Bank has the sole right and authority to issue notes and coins throughout The Bahamas.
- (2) The Bank shall from time to time as circumstances may require —
  - (a) arrange for the printing of notes and the minting of coins; and
  - (b) issue, re-issue and redeem notes and coins.
- (3) No person other than the Bank shall issue in The Bahamas notes or coins or any documents or tokens having the appearance of notes or coins.

## **11. Denominations and forms of notes and coins.**

The Minister may by order, after consultation with the Bank, prescribe the

—

- (a) denominations, in multiples or fractions of a dollar, forms and designs of the notes and coins issued by the Bank; and
- (b) standard, weight and composition of coins, and the amount of tolerance and variation allowed in relation to coins, issued by the Bank.

## **12. Legal Tender.**

- (1) All notes and electronic money issued by the Bank are legal tender in The Bahamas at their face value for the payment of any amount.
- (2) Coins issued by the Bank are legal tender in The Bahamas at their face value up to an amount —
  - (a) not exceeding one hundred dollars, in the case of coins of a denomination of not less than one dollar; and
  - (b) not exceeding five dollars, in the case of coins of a lesser denomination than one dollar.
- (3) Subject to subsections (4) and (5), all notes and coins lawfully in circulation immediately before commencement of this Act are deemed for all purposes to be legal tender issued by the Bank under this Act.
- (4) The Bank may, on giving not less than one month's notice in the Gazette, call in any notes or coins on payment of the face value thereof, and any such notes or coins shall, on the expiration of the notice, cease to be legal tender.
- (5) A note or coin which is mutilated or imperfect is one which has been impaired, diminished in size or lightened otherwise than by fair wear

and tear, or which has been defaced by stamping, engraving or piercing —

- (a) shall not be legal tender in The Bahamas and shall be withdrawn from circulation; and
  - (b) notwithstanding subsection (4) and subject to section 13, is redeemable at any time by the Bank on the demand of any person.
- (6) The aggregate amount of currency in circulation issued by the Bank shall appear as a liability in a statement of the accounts of the Bank.
- (7) The Bank may issue —
- (a) notes and coins and electronic money simultaneously; or
  - (b) electronic money in the place of notes and coins.

### **13. Damaged currency, etc.**

- (1) No person is entitled as of right to recover from the Bank the value of any lost, stolen, mutilated or imperfect note or coin.
- (2) The Bank may in the Bank's discretion, as an act of grace, refund to any person the value of a mutilated or imperfect note or coin.

### **14. Counterfeits and reproduction of currency.**

- (1) No person shall, without the prior consent of the Bank, make, design, engrave, print, reproduce, use, issue, or publish any article or thing resembling or having a likeness to a note, coin or any electronic money issued by the Bank as to be likely to be confused with or mistaken for such note, coin or electronic money.
- (2) The Bank shall require a person to withdraw from circulation —
  - (a) any note, coin or electronic money; or
  - (b) any article or thing having likeness or resemblance to a note, coin or electronic money,which the Bank or the person knows or suspects has been counterfeited or altered.
- (3) A person commits an offence who —
  - (a) counterfeits or alters any note, coin or electronic money that is legal tender in The Bahamas or abroad or any payment instrument which is denominated in the Bahamian dollar or a unit of foreign currency;
  - (b) possesses or transports any counterfeited or altered note, coin or payment instrument with the knowledge that it was counterfeited or altered.

- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both.
- (5) A person who fails to comply with a requirement of the Bank under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, commits a further offence and is liable to a fine of ten thousand dollars for every day or part thereof on which the offence is continued.

**15. Power of Bank to make regulations for digital currency framework.**

The Bank shall make regulations for the purpose of prescribing the framework under which electronic money issued by the Bank as legal tender may be held or used by the public in keeping with best international practices for the development and functioning of the payments system.

## **PART V - GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC.**

**16. Power of the Bank in relation to foreign exchange, etc.**

Without prejudice to the functions of the Bank to promote monetary stability

—

- (a) the Minister, in consultation with the Bank, shall determine the exchange rate policy; and
- (b) the Bank shall implement the exchange rate policy determined by the Minister under paragraph (a).

**17. External reserve.**

- (1) The Bank shall manage all official reserves of external assets of The Bahamas and give priority to safety, before profitability, of such assets.
- (2) The Bank may, pursuant to subsection (1), hold, manage, acquire, and sell any of the following assets —
  - (a) gold (in coins or bullion) and other precious metals, including credit balances representing such gold and other precious metals;
  - (b) notes and coins (other than gold coins) denominated in freely convertible foreign currencies;

- (c) balances payable on demand or within a short term which are denominated in freely convertible foreign currencies and held with financial institutions or agents, foreign central banks, foreign financial institutions, regional development banks, or international financial organizations;
  - (d) money at call denominated in freely convertible foreign currencies;
  - (e) bills in the nature of Treasury Bills denominated in freely convertible foreign currencies and issued by any foreign government;
  - (f) claims on international financial organizations, including special drawing rights held with the International Monetary Fund and the reserve position of The Bahamas in the International Monetary Fund;
  - (g) readily marketable securities issued or guaranteed by any foreign government; and
  - (h) any reserve asset deemed by the Board to be an internationally recognised reserve asset.
- (3) The value of the external reserve shall not at any time be less than fifty per centum of the value of the aggregate of notes and coins in circulation and other demand liabilities of the Bank.
  - (4) Where the external reserve declines or, in the opinion of the Bank, may decline to a level that could jeopardize the Bank's objectives and the Bank is unable to remedy such decline, the Bank shall cause to be made and transmit to the Minister —
    - (a) a report on the causes leading to the decline of the reserve; and
    - (b) the Bank's proposals for remedying the decline of the reserve.
  - (5) The Minister shall in collaboration with the Bank, on receipt of a report under subsection (4), take the necessary remedial action proposed by the Bank.

## **PART VI - RELATIONS WITH THE FINANCIAL INSTITUTIONS AND THE GOVERNMENT**

### **18. Liquid assets.**

- (1) Every commercial bank shall conduct its business so as to ensure, taking one month with another, that its liquid assets are on average not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Bank.

- (2) Subject to subsection (3), the Bank shall by order fix, and may from time to time vary, the percentage required by subsection (1).
- (3) An order made by the Bank under subsection (2) —
  - (a) shall not at any time fix a percentage of less than ten or more than thirty per centum;
  - (b) may fix different percentages for different classes of commercial banks; and
  - (c) shall not increase any percentage at the time in force by more than five per centum.
- (4) In this section “**liquid assets**” means —
  - (a) notes and coins;
  - (b) any cash balance held at the Bank;
  - (c) money at call and demand balances at any financial institution carrying on business in The Bahamas;
  - (d) Treasury Bills;
  - (e) stock of the Government;
  - (f) any instrument or security of a kind referred to in section 23(d);
  - (g) any freely convertible foreign currency;
  - (h) money at call and demand balances at any foreign financial institution, being money at call or demand balances held in freely convertible foreign currency; or
  - (I) any other asset the Bank designates for the purposes of this section to be liquid assets.
- (5) A bank that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the net average deficiency, taking one month with another, not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

## **19. Financial institutions must maintain Statutory Reserve.**

- (1) A financial institution shall establish and maintain with the Bank a statutory reserve (“the Statutory Reserve”) of such percentage of its liabilities as the Bank may specify by notice.
- (2) The Bank shall by notice fix, and may from time to time vary, the percentage and the basis for the Statutory Reserve required by subsection (1).
- (3) A notice made by the Bank under subsection (2) —
  - (a) may fix different percentages for different classes of financial institutions; and

- (b) shall specify the basis and require all of the Statutory Reserve to be lodged with the Bank.
- (4) A financial institution that contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine based on a percentage of the deficiency not exceeding twice the annual discount rate prevailing at the time of the contravention or failure to comply for every day during which the contravention or failure continues.

## **20. Bank to act as fiscal agent for Government.**

- (1) The Bank may act generally as fiscal agent for the Government and any public corporation on such terms and conditions as may be agreed between the Government and the Bank, provided that the Bank can act consistently with its functions under this Act.
- (2) Without prejudice to section 23, the Bank may provide public debt services to the Government, including the provision of advice or services in respect of the issuance, repayment, and management of public debt.

## **21. Advances to the Government.**

- (1) Subject to the provisions of this section, the Bank shall not make any direct or indirect advances to the Government or to any public corporation.
- (2) Subsection (1) does not apply to intra-day credits which shall be guaranteed by negotiable Government securities.
- (3) Every intra-day credit extended by the Bank to the Government or to a public corporation under subsection (2) shall be repaid by the Government or the public corporation, as the case may be, by the end of the same day as that on which such credit was extended.
- (4) Notwithstanding subsections (1) and (3), the Bank may provide temporary loans to the Government, where —
  - (a) the amount of the loans, which may be outstanding at any one time, taken together with any Treasury bills or securities issued or guaranteed by the Government or a public corporation, shall not exceed, in the aggregate, thirty per centum of the average ordinary revenue of the Government or thirty per centum of the estimated ordinary revenue of the Government, whichever is the less;
  - (b) the loan will mature within ninety-one days; and
  - (c) the interest rate on the loan is based on market related interest rates.

## **22. Subscription to Government securities from primary markets.**

- (1) Subject to the provisions of this section, the Bank shall not purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or any public corporation.
- (2) Notwithstanding subsection (1), the Bank may, for the purpose of replacing maturing securities, implementing monetary policy, maintaining financial system stability or to support the working of the clearing and settlement systems, purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or a public corporation if —
  - (a) the aggregate amount of the Treasury Bills and securities —
    - (i) issued or guaranteed by the Government or a public corporation; and
    - (ii) purchased or subscribed by the Bank in the primary markets which may be outstanding at any one time, shall not exceed twenty per centum of the average ordinary revenue of the Government, or twenty per centum of the estimated ordinary revenue of the Government, whichever is the less; and
  - (b) the Treasury Bills and securities are negotiable.
- (3) For the purposes of paragraph (b) of subsection (2) the interest rates on the Treasury Bills and securities shall be specified by the Bank, after giving consideration to prevailing market rates.

## **PART VII – GENERAL POWERS OF THE BANK**

### **23. Powers of the Bank.**

The Bank may, in the discharge of its functions under this Act —

- (a) open accounts for, accept deposits from, and collect money for or on account of, the Government, any commercial bank, any other financial institution or a public corporation;
- (b) open accounts in a central bank in any foreign country or in the Bank for International Settlements, accept deposits from central banks in foreign countries, the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development and any other international financial organization, act as agent, mandatory depository or correspondent for any such banks or organizations, and pay interest on deposits;



- (c) buy and sell special drawing rights issued by the International Monetary Fund;
- (d) buy, hold, sell, discount or re-discount Treasury Bills and bills of exchange, promissory notes or other credit instruments;
- (e) issue its own interest-bearing securities for purposes of monetary policy operations and buy, sell, discount or re-discount, or grant loans or advances against, such securities;
- (f) buy and sell on spot and forward and under repurchase agreements, hold, lend, and borrow securities;
- (g) buy, sell, and hold gold and other precious metal; and
- (h) make to any commercial bank, on such terms and conditions as may be determined by the Bank, loans or advances and take adequate collateral in respect of any securities or credit instrument referred to in paragraph (d).

#### **24. Power of the Bank to fine.**

- (1) Notwithstanding section 46, the Bank may, where the Bank is satisfied that a financial institution has committed an offence, issue a notice requiring that institution to pay a fine —
  - (a) in the case of an offence committed under section 19, of such percentage of the deficiency, as the Bank may, by notice, fix from time to time, for every day during which the contravention or failure continues;
  - (b) in the case of an offence committed under section 18, of such percentage, as may by order be fixed by the Bank from time to time, of the net average deficiency, taking one month with another, for every day during which the contravention or failure continues.
- (2) The Bank may by notice fix and from time to time vary the percentage required by subsection (1) provided that such percentage shall not exceed twice the annual discount rate prevailing at the time an offence against section 19 or 18 is committed.
- (3) Where the Bank issues a notice under this section —
  - (a) the notice shall be put in writing;
  - (b) the notice shall specify the offence which the financial institution committed and the fine imposed by the Bank;
  - (c) a copy of the notice shall be given to the financial institution; and
- (4) Upon the financial institution paying the fine, it shall not be liable to any further prosecution in respect of the offence and where any such prosecution is brought it shall be a good defence for the financial institution to prove that the offence with which it is charged has been

dealt with under this section provided however that nothing in this section shall prevent the Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, 2020, including to require the financial institution in question to take corrective measures.

## **25. Credit controls.**

- (1) Subject to subsection (2), the Bank may by regulations prescribe —
  - (a) the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations;
  - (b) the maturities for which and the security on which loans or advances may or may not be made by commercial banks;
  - (c) the maximum amounts of increase in loans or advances made by commercial banks as a percentage of the commercial banks' outstanding loans or advances;
  - (d) the maximum value of loans and advances granted to a borrower by a commercial bank as a percentage of the collateral property, or loans to value, which the borrower provides to the commercial bank;
  - (e) the maximum aggregate of monthly repayment obligations of a borrower of commercial banks as a percentage of the ordinary monthly income of the borrower;
  - (f) the methods of computation of, and the maximum difference permitted between, maturities of assets and liabilities held by a commercial bank;
  - (g) the methods of computation of interest, and the minimum and maximum amounts of interest payable in respect to loans, advances and deposits or classes thereof.
- (2) Regulations made under this section may apply to all the loans and advances of any specified commercial bank or to any specified class or classes of loans or advances of any specified class or classes of such banks.

## **26. Lender of last resort.**

- (1) In exceptional circumstances, the Bank may on such terms and conditions as may be determined by the Bank grant loans or advances to a commercial bank where —
  - (a) the loans or advances will mature within ninety-one days;
  - (b) the interest rates on the loans or advances are more than those applied to loans or advances made pursuant to section 23;

- (c) adequate collateral property is provided to the Bank by the commercial bank; and
  - (d) the commercial bank, in the opinion of the Bank, is solvent and requests such loans or advances for the propose of improving liquidity conditions.
- (2) The types and minimum value of collateral property to secure loans or advances provided by the Bank under subsection (1) shall not be less prudent than the levels prescribed by the Bank from time to time by regulations and as determined by the Bank at the time of a particular transaction, and such discount levels prescribed by the Bank shall reflect the risk profile of the collateral provided.
- (3) The Bank may extend the period prescribed under subsection (1)(a) for up to ninety-one days provided a commercial bank undertakes to implement such remedial measures as may be specified by the Bank.
- (4) Notwithstanding the provisions of subsection (1), the Bank may grant loans or advances to, or buy or subscribe any securities of, a commercial bank where the circumstances specified in subsection (1) (c) or (1)(d) are not present if —
  - (a) the Government guarantees the repayment in writing; and
  - (b) such loans, advances, or purchase or subscription of securities are necessary to preserve the stability of the financial system.
- (5) Notwithstanding the provisions of subsection (1), the Bank shall provide the financial assistance that a bridge institution needs in order to discharge its obligations, except for its obligations to the Deposit Insurance Corporation established under section 7 of the Protection of Depositors Act (*Ch. 317*), as they become due.
- (6) The bridge institution shall, on demand or at such other time as the Bank specifies, repay or reimburse to the Bank, the financial assistance on such terms and conditions as determined by the Bank.

**27. Transfer of the Bank’s dormant account balances to the Treasurer.**

- (1) The Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act, 2020, pay interest on money so deposited and pay out money for payment to a person entitled thereto.
- (2) The Bank shall establish a Fund for the deposits it receives pursuant to subsection (1) from which it may deduct such sums as are required to meet the reasonable expenses incurred by the Bank in connection with the administration of dormant account balances.
- (3) Subject to subsections (2) and (4), the Bank shall where an amount is paid to the Bank which is —

- (a) less than five hundred dollars; or
  - (b) five hundred dollars or more, and has been held by the Bank for a minimum period of ten years,
- pay to the Treasurer the funds paid to the Bank, in equal amount where the funds were paid to the Bank in Bahamian dollars and in an equivalent amount where the funds were paid to the Bank in any other currency, together with interest accrued on such amount while it was held by the Bank —
- (i) within two months after the amount referred to in paragraph (a) is received by the Bank; or
  - (ii) within two months after the end of the calendar year in which the ten year period referred to in paragraph (b) expires.
- (4) Interest shall accrue on an amount referred to in subsection (3)(b) only where interest was payable in respect of that amount by the bank which transferred the funds to the Bank.
- (5) The Bank shall —
- (a) where a payment has been made to the Treasurer by the Bank pursuant to subsection (3), be discharged from further liability in respect of the amount so paid; and
  - (b) retain all records relating to amounts paid to the Bank pursuant to —
    - (i) subsection (3)(a), for a minimum period of fifteen years after payment is made by the Bank to the Treasurer; and
    - (ii) subsection (3)(b), for a minimum period of five years after payment is made by the Bank to the Treasurer.
- (6) An amount paid by the Bank to the Treasurer pursuant to subsection (3) shall —
- (a) form part of the Consolidated Fund;
  - (b) vest in the Treasurer for the benefit of The Bahamas;
  - (c) subject to subsections (7) and (8), not be disposed of without the prior approval, signified by resolution, of both Houses of Parliament; and
  - (d) cease to accrue interest.
- (7) The Bank shall make application to the Minister on behalf of an entitled person for repayment by the Treasurer to the Bank of a specified amount paid to the Treasurer pursuant to subsection (3) where —
- (a) the bank that paid the funds to the Bank represents to the Bank that it is satisfied that the person is entitled to receive an equal

- amount in Bahamian dollars or an equivalent amount where the funds were paid to the Bank in any other currency; and
- (b) the entitled person makes a claim to the bank that paid the funds to the Bank within ten years of the transfer to the Bank.
- (8) The Minister shall, on application made by the Bank in accordance with subsection (7), direct the Treasurer to repay to the Bank for payment to the entitled person the amount specified in the application and the Treasurer shall, notwithstanding that no prior approval signified by resolution has been obtained from both Houses of Parliament with respect to the repayment, repay such amount to the Bank.
  - (9) The Minister, the Treasurer and the Government shall —
    - (a) where a payment has been made to the Bank by the Treasurer pursuant to subsection (8), be discharged from further liability in respect of the amount so paid; and
    - (b) not be liable to any person for a payment made pursuant to subsection (8), if afterwards a claim is made by any other person in respect of the amount so paid.
  - (10) The Bank may, in accordance with the investment plan for the Fund prepared by the dormant funds investment committee, invest and reinvest any amount transferred to the Bank pursuant to section 78(4) of the Banks and Trust Companies Regulation Act, 2020.
  - (11) The Bank shall, when calculating the length of time during which it has held amounts paid to the Bank for the purpose of determining when such amounts should be paid to the Treasurer pursuant to subsection (3)(b), take account of any period prior to the commencement of this Act during which the Bank held such amounts.
  - (12) A person who fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.
  - (13) Every director or other officer concerned in the management of a body corporate which fraudulently makes a claim for repayment of an amount pursuant to subsection (7)(b) commits the offence committed by such body corporate unless such director or officer proves that —
    - (a) the offence was committed without the consent or connivance of the director or officer; or
    - (b) the director or officer exercised reasonable diligence to prevent the commission of the offence.
  - (14) For the purpose of discharging the Bank's function under subsection (10), there shall be established a dormant funds investment committee,

functioning and constituted in accordance with the provisions of the *Schedule*.

## **28. Ancillary business.**

- (1) The Bank may in the discharge of its functions do any other business incidental to or consequential upon the functions of the Bank.
- (2) Without prejudice to the generality of subsection (1) and subject to the provisions of this Act, the Bank may purchase, acquire, lease, sell, let, sublet or create licences over, or otherwise dispose of, real property or any part thereof and may provide ancillary services in connection with such activities.
- (3) Subsection (2) applies only to real property which —
  - (a) is necessary for, or incidental to, discharging the functions of the Bank; or
  - (b) was purchased or acquired by the Bank before the 29th December, 2000.
- (4) The Bank may establish a body corporate or acquire or hold shares of a body corporate, wholly or partly, for the purposes of carrying out the functions of —
  - (a) a bridge institution; or
  - (b) an asset management vehicle.

## **29. Prohibited activities.**

Except as expressly authorised by this Act, the Bank —

- (a) shall not engage in trade or otherwise have a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank;
- (b) shall dispose as soon as may be practicable of any interest acquired in the course of the satisfaction of debts due to the Bank; and
- (c) shall not grant unsecured loans or advances to any person.

# **PART VIII – ACCOUNTS, STATEMENTS AND AUDIT**

## **30. Financial year.**

The financial year of the Bank shall end on the thirty-first day of December.

### **31. Profits, losses, and distributable earnings.**

- (1) The net profit or loss of the Bank shall be determined in accordance with the International Financial Reporting Standards.
- (2) The distributable earnings of the Bank shall be determined —
  - (a) by deducting from the net profit the total amount of unrealized revaluation gains;
  - (b) by allocating an equivalent amount deducted under paragraph (a) to the Unrealized Revaluation Reserve established under section 7(3);
  - (c) by adding to the amount determined under paragraph (a) the amount of any unrealized profit that was deducted from the net profit for one or more previous years and was realized during the current financial year;
  - (d) by deducting an equivalent amount added under paragraph (c) from the Unrealized Revaluation Reserve; and
  - (e) by transferring from the amount determined under paragraph (c) the total amount of unrealized revaluation losses to the Unrealized Revaluation Reserve to the extent that the amount of the Unrealized Revaluation Reserve will be more than zero after such transfer.

### **32. Allocation of distributable earnings.**

- (1) Within thirty days after submitting a statement of the accounts under section 35(1), the Bank shall allocate all distributable earnings to the General Reserve established under section 7(1) until the amount of the General Reserve exceeds the greater of —
  - (a) twice the authorised capital of the Bank; or
  - (b) fifteen per centum of the average amount of demand liabilities of the Bank over the last three years.
- (2) Subject to subsections (3) and (4), all distributable earnings remaining after the allocation under subsection (1) shall be transferred to the Consolidated Fund.
- (3) The Bank may, with the approval of the Minister, increase the General Reserve beyond the maximum prescribed under subsection (1) by allocating the distributable earnings to the General Reserve.
- (4) The Bank may, with the approval of the Minister —
  - (a) establish as part of the capital of the Bank a reserve other than the General Reserve and the Unrealized Revaluation Reserve; and

- (b) transfer to the reserve established under paragraph (a) distributable earnings which would otherwise be transferred to the Consolidated Fund under subsection (2).
- (5) No distribution of income, profit, or earnings shall be made by the Bank except as permitted by this section.
- (6) Where the Bank incurs negative distributable earnings, such earnings shall first be transferred to the General Reserve and subsequently to the authorised capital.

### **33. Coverage of shortfall in capital.**

- (1) The Board shall, where in an external audit of the accounts of the Bank under section 37 the amount of assets falls below the sum of demand liabilities and unimpaired authorised capital, after consultation with the external auditors and within a period not exceeding thirty days, cause to be made and transmit to the Minister a report concerning the causes and extent of the shortfall of the assets.
- (2) The Bank shall, where a report is transmitted to the Minister in accordance with subsection (1), request the Minister to make payments from the Consolidated Fund to the authorised capital for the purpose of increasing the authorised capital to the amount prescribed by section 6(1).
- (3) The Minister shall, on receipt of a request made by the Bank under subsection (2), within a period not exceeding thirty days make such payment as requested by the Bank in currencies or negotiable bonds with a certain maturity issued by the Government at market-related interest rates.

### **34. Accounting standard.**

The Bank shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Bank to reflect its operations and financial conditions.

### **35. Publication of accounts.**

- (1) The Bank shall, within four months after the end of each financial year, cause to be made and transmit to the Minister —
  - (a) a report of the operations of the Bank during that year, approved by the Board; and
  - (b) a statement of the accounts of the Bank in respect of that year, approved by the Board and signed by the Governor and certified by the external auditors, together with the report of the external auditors.



- (2) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (1)(a) and (b) —
  - (a) cause a copy of the said report and statement of accounts (together with the external auditors report) to be laid before each House of Parliament; and
  - (b) cause a copy of the said statement of accounts (together with the external auditors report) to be published in the Gazette.
- (3) The Bank shall on its website publish the reports and statement of the accounts submitted to the Minister under subsection (1).

### **36. Publication of monthly statements.**

The Bank shall on or before the end of each month prepare and transmit to the Minister, and publish in the Gazette and on the website of the Bank, a statement of the assets and liabilities of the Bank as at the last working day of the preceding month.

### **37. External Audit.**

- (1) There shall be established an audit committee (“Audit Committee”) of the Bank.
- (2) The accounts, records, and statement of the accounts of the Bank shall be audited, at least annually, by independent external auditors appointed by the Board with the approval of the Minister.
- (3) The external auditors shall be of good repute and have recognized international experience in the auditing of international financial institutions.
- (4) The audit under subsection (2) shall be conducted in accordance with the International Standards of Auditing.
- (5) The external auditors shall be appointed for —
  - (a) a minimum period of three consecutive years; and
  - (b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.
- (6) The external auditors shall submit a written report to the Audit Committee of the Bank on significant matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process of the Bank.
- (7) The external auditors may be dismissed by the Board for a good cause.

## PART IX – INFORMATION AND CONFIDENTIALITY

### 38. Information may be required from financial institutions.

- (1) This section applies to —
  - (a) a financial institution;
  - (b) a connected person; or
  - (c) a person reasonably believed to have information relevant to an inquiry by the Bank.
- (2) The Bank may require by notice in writing any person to which this section applies to supply to the Bank, in such form and within such time as may be specified in the notice, information or documents as the Bank considers necessary to enable the Bank to carry out its functions under this Act or any other written law.
- (3) The Bank may exercise the power vested in the Bank under subsection (2) for the purpose of assisting an overseas regulatory authority.
- (4) The Bank may, where a person fails to comply with a requirement of the Bank under subsection (2), apply to a Magistrate for an order requiring the person to comply with the requirement.
- (5) The Bank may, where the Bank considers it necessary in connection with a requirement to examine a person on oath, apply to a Magistrate to have the person examined by the court and the results of the examination sent to the Bank.
- (6) A court shall process an application under subsection (5) within seven days of its receipt and shall send the result of the examination to the Bank within fourteen days of the examination.
- (7) Any document provided to the Bank under subsection (2) shall be the property of the Bank.
- (8) A person is not required under this section to disclose information or to produce a document which the person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in court proceedings.
- (9) The Bank may, where the Bank considers it proper, return a document supplied under subsection (2) to the person who supplied the document to the Bank.
- (10) For the purposes of this section —
  - (a) **“document”** means a medium in which information is recorded;
  - (b) any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated

or given to the adviser in any of the following circumstances —

- (i) by, or by a representative of, a client of the adviser in connection with the giving by the adviser of legal advice to the client;
  - (ii) by, or by a representative of, a person seeking legal advice from the adviser;
  - (iii) by any person in contemplation of, or in connection with, legal proceedings;
- (c) no information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering a criminal purpose; and
- (d) **“connected person”** means any one of the following —
- (i) a director, officer, partner, employee, or agent of the financial institution's group;
  - (ii) a controller of the financial institution;
  - (iii) a person required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.
- (11) A person who without reasonable cause —
- (a) fails to comply with a requirement of the Bank under subsection (2);
  - (b) with intent to avoid compliance with subsection (2) destroys, mutilates, defaces, hides or removes a document; or
  - (c) wilfully obstructs an inquiry by the Bank under subsection (2),
- commits an offence is liable on conviction to a fine not exceeding one hundred thousand dollars and, where the offence is continued after conviction, to a further fine of ten thousand dollars for every day or part thereof during which the offence is continued.
- (12) Where —
- (a) an offence under this section has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, the officer or person as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly; and

- (b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

### **39. Collection of statistics.**

- (1) Notwithstanding section 40, the Bank may obtain in such form and within such time as may be determined by the Bank information from any person for the purpose of discharging the Bank's functions under section 5(1)(i).
- (2) Notwithstanding any other provision of this Act, information obtained by the Bank under subsection (1) shall not be used or supplied to any person in the Government or otherwise for any purpose other than the collection and production of statistical data.

### **40. Assistance in obtaining information.**

- (1) The Bank may —
  - (a) seek the assistance of the Commissioner of Police in the exercise of the Bank's powers under this Act; and
  - (b) authorise a competent person to exercise any of the Bank's powers under this Act.
- (2) No assistance shall be sought or authority granted by the Bank under subsection (1) except for the purpose of investigating —
  - (a) the affairs, or any aspect of the affairs, of a person specified by the Bank; or
  - (b) a person or subject matter specified by the Bank, being a person who or a subject matter which is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.
- (3) No person is bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless the grantee of the power has, where required, produced evidence of the grantee's authority.
- (4) Where the Bank seeks assistance or grants an authority under this section, the assistance or authority shall be provided or executed in such manner as the Bank may determine and a person to whom the Bank grants an authority shall make a report to the Bank, in such manner as the Bank may require, on the exercise of the authority and its results.

#### **41. Information exchange.**

- (1) Notwithstanding section 43(1), the Bank may exchange information with —
  - (a) any other regulatory authority in The Bahamas, where it is considered by the Governor that such cooperation or information may be relevant to the functions of such other regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector;
  - (b) an overseas regulatory authority; and
  - (c) a foreign financial institution.
- (2) The Bank shall not supply to an overseas regulatory authority any information which is not disclosed to the public, unless —
  - (a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures, including the provision of an undertaking of confidentiality, or the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank;
  - (b) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and
  - (c) the Bank is satisfied that information provided pursuant to subsection (1) will not be used in criminal proceedings against the person providing the information.
- (3) Where in the opinion of the Bank it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Magistrate in the manner contemplated by section 38(4) and (5) —
  - (a) the Bank shall immediately notify the Attorney-General with particulars of the request and submit to the Attorney-General copies of all documents relating to the request; and
  - (b) the Attorney-General may, in a manner analogous to *amicus curiae*, appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from the request.

#### **42. Supplying false statement.**

A person who supplies or is concerned in supplying to the Bank any statement, account, report or other information pursuant to this Act knowing

the same to be false in a material particular commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a fine not exceeding ten thousand dollars for each day or part thereof during which the offence continues.

#### **43. Confidentiality.**

- (1) Subject to subsection (2), no person who is or has been —
- (a) a director, officer, employee, agent or adviser of the Bank;
  - (b) a statutory administrator appointed by the Bank under the Banks and Trust Companies Regulation Act, 2020;
  - (c) an independent valuer appointed by the Bank under section 47(11) of the Banks and Trust Companies Regulation Act, 2020;
  - (d) potential purchasers of the assets, rights or liabilities of a bank under statutory administration that have been contacted by the Bank or the statutory administrator;
  - (e) a director, officer, employee, agent or adviser of a bridge institution;
  - (f) a director, officer, employee, agent or adviser of an asset management vehicle;
  - (g) any other persons who provide or have provided services directly or indirectly, permanently or occasionally, to persons referred to in subparagraphs (a) to (f),

shall disclose any information relating to the affairs of the Bank, or of any person, that such person has acquired in the performance or exercise of his duties or functions under this Act.

- (2) Subsection (1) does not apply to a disclosure —
- (a) lawfully required or permitted by a court of competent jurisdiction within The Bahamas;
  - (b) necessary for fulfilling functions and duties required or permitted by this Act or any other written law;
  - (c) made with the voluntary consent of the person to whom the disclosed information relates;
  - (d) where the information disclosed is or has been available to the public from another source;
  - (e) where the information is disclosed in a manner that does not enable the identity of any person to whom the information relates to be ascertained;
  - (f) made to authorities in The Bahamas to the extent necessary —
    - (i) for the conduct of criminal proceedings; or

- (ii) for disciplinary proceedings relating to the discharge by a public officer, a counsel and attorney, auditor, accountant, valuer, actuary or an employee of the Bank, of his duties;
  - (g) made for the purposes of any legal proceedings in connection with —
    - (i) the winding-up or dissolution of a financial institution;
    - (ii) the appointment or duties of a receiver of a financial institution or agency or Government body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to any application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed; or
  - (h) made to the Minister or any officer of the Ministry of Finance, or to a Government agency or body authorized in writing by the Minister, where the Governor considers that such disclosure may be relevant to an application made to the Bank or the Government and is satisfied that the information will be treated as confidential by the agency, body or person to whom it is disclosed.
- (3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

## **PART X – OFFENCES, VIOLATIONS AND PENALTIES**

### **44. Procedure in relation to offences.**

Every offence under this Act shall, where prosecuted, be tried summarily.

### **45. Offences by corporations.**

Where an offence under this Act has been committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, the officer or person, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

#### **46. The Bank may impose general penalties.**

- (1) The Bank may order the payment of such penalty as may be prescribed by regulations if satisfied that any person has committed a violation of —
  - (a) a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one of them;
  - (b) a condition or limitation imposed by the Bank;
  - (c) a direction issued by the Bank pursuant to section 18(1) and 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 and section 88(7) of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*); or
  - (d) an order made by the Bank under this or any other Act.
- (2) The Bank shall, where it makes an order under this Part —
  - (a) specify in the order the —
    - (i) name of the person believed to have committed a violation;
    - (ii) nature of the violation which the person is believed to have committed;
  - (b) give a copy of the order to the person named in the order.
- (3) An order made under this Part may be enforced in the same manner as an order of the court.
- (4) A penalty paid or recovered under this Part is payable to and shall be remitted to the Bank.

#### **47. Designated violations and fixed penalties.**

- (1) The Bank may make regulations —
  - (a) designating, as a violation that may be proceeded with under sections 46 to 51 and 53 to 55 —
    - (i) the contravention of a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one of them; or
    - (ii) the non-compliance with —
      - (aa) a condition or limitation imposed by the Bank,
      - (bb) a direction issued by the Bank pursuant to section 18(1) or 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 or section 88(7) of the Bahamas Cooperative Credit Unions Act, 2015 (*No. 9 of 2015*).



- (cc) an order made by the Bank under this Act or any other written law;
  - (b) classifying each violation as a minor violation, a serious violation or a very serious violation;
  - (c) fixing, in accordance with subsection (2), a penalty, or a range of penalties, in respect of any violation;
  - (d) generally for carrying out the purposes and provisions of sections 46 to 51 and sections 53 to 54.
- (2) The Bank may, pursuant to subsection (1) —
- (a) designate as a violation the—
    - (i) violation of a specified provision of this Act, an Act that is administered by the Bank or of a specified provision of a regulation made under one;
    - (ii) non-compliance with any of the following —
      - (aa) a condition or limitation imposed by the Bank;
      - (bb) a direction issued by the Bank pursuant to section 18(1) or section 29(1)(g) of the Banks and Trust Companies Regulation Act, 2020 or section 88(7) of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*);
      - (cc) an order made by the Bank under this Act or any other written law.
- (3) The maximum penalty fixed for a violation shall be —
- (a) for a violation committed by an individual, in the case of —
    - (i) a minor violation, two thousand five hundred dollars;
    - (ii) a serious violation, five thousand dollars; and
    - (iii) a very serious violation, ten thousand dollars;
  - (b) for a violation committed by a company, in the case of —
    - (i) a minor violation, ten thousand dollars;
    - (ii) a serious violation, fifty thousand dollars; and
    - (iii) a very serious violation, one hundred thousand dollars.
- (4) A minor violation shall, where it consists of a late or erroneous filing and is continued on more than one day, constitute a separate violation for each day during which it is continued.
- (5) Except if a penalty is fixed pursuant to subsection 47(1)(c), the Bank shall determine the amount of the penalty by taking into account —
- (a) the degree of intention or negligence on the part of the person who committed the violation;
  - (b) the harm done by the violation;

- (c) the history of the person or financial institution that committed the violation having regard to any prior violation or conviction under this Act within the five year period immediately before the violation;
  - (d) whether the financial institution or person concerned brought the violation to the attention of the Bank;
  - (e) the seriousness of the violation;
  - (f) whether or not the violation was inadvertent;
  - (g) the efforts, if any, made to rectify the violation and to prevent a recurrence;
  - (h) the potential financial consequences to the financial institution or person concerned, and to third parties including customers and creditors of the financial institution, of imposing a penalty;
  - (i) the penalties imposed by the Bank in other cases; and
  - (j) any other criteria as may be prescribed by regulation.
- (6) For for the purposes of this section, subsection (5) does not apply to a penalty fixed under subsection (1)(c).

**48. The Bank must make an election.**

- (1) The Bank, where a violation described in section 46 or 47 may be proceeded with as a contravention or as an offence —
  - (a) shall elect to proceed with the matter in one manner only; and
  - (b) on completion of the proceeding in the manner elected pursuant to paragraph (a), is precluded from proceeding in the other manner.
- (2) Where the Bank elects to proceed with a violation as a contravention, this shall not preclude the Bank from exercising any of its other powers under this Act or any other written law.

**49. Procedure for imposition of penalty on making of election.**

- (1) Every contravention or non-compliance that is designated under section 47(2)(a) constitutes a violation and the person who commits the violation is liable to a penalty determined in accordance with section 47(5).
- (2) If the Bank is satisfied that a person has committed a violation, the Bank may issue, and shall cause to be served on the person, a written notice of violation.
- (3) A notice of violation shall contain the —
  - (a) name of the person believed to have committed the contravention or offence;
  - (b) nature of the contravention of the offence;

- (c) penalty that the Bank intends to impose;
- (d) right of the person within thirty days after the notice is served, or within such longer period as the Bank may specify in the notice, to pay the penalty or to make representations to the Bank with respect to the violation;
- (e) manner in which the person may make representations pursuant to paragraph (d); and
- (f) warning that the person will, where payment or representations are not made in accordance with the notice, be deemed to have committed the violation and the Bank may impose a penalty in respect of it.

**50. Determination of responsibility and penalty.**

- (1) A person who pays in full the penalty proposed in a notice under section 49 is deemed to have committed the violation and all proceedings in respect of such violation terminates upon such payment.
- (2) Where a person makes representations in accordance with a notice under section 49, the Bank —
  - (a) shall decide on a balance of probabilities whether such person committed the violation; and
  - (b) may subject to any regulations made pursuant to section 47(1)(c), do either one of the following —
    - (i) where the Bank decides a violation has been committed, by order impose the penalty proposed or a lesser penalty;
    - (ii) where the Bank decides a violation has not been committed, impose no penalty.
- (3) A person who does not pay the penalty or make representations in accordance with a notice under section 49 is deemed to have committed the violation and the Bank may subject to any regulations made pursuant to section 47(1)(c) or a regulation made pursuant to this Act or any other law —
  - (a) by order impose the penalty proposed or a lesser penalty; or
  - (b) impose no penalty.

**51. Publication of penalties.**

The Bank may, where the Bank imposes a penalty on a person, publish in such manner as the Bank deems appropriate a statement of the violation in respect of which the penalty is imposed.

## PART XI – MISCELLANEOUS

### 52. Exemption.

- (1) The Bank is exempt from payment of tax under the Real Property Tax Act (*Ch. 375*) and payment of any other taxes and levies on the import and domestic supply of gold, banknotes, and coins.
- (2) Notes, coins and electronic money issued by the Bank are exempt from the payment of stamp duty.
- (3) The Bank is exempt from the payment of stamp duty and postal charges for money transacted between the offices of the Bank, and with an agency of the Government, in connection with the Bank's functions under this Act.

### 53. Remission.

- (1) The Bank may remit all or part of a penalty imposed under section 46, including interest on such penalty.
- (2) A remission may be conditional or unconditional.

### 54. Time limits.

- (1) A document appearing to have been issued by the Bank, certifying the day on which the subject matter of any proceedings by the Bank became known to the Bank —
  - (a) is admissible in evidence without proof of the signature or official character of the person appearing to have signed such document; and
  - (b) in the absence of evidence to the contrary, is proof of the matter asserted in such document.
- (2) The Bank shall not commence proceedings in respect of a violation —
  - (a) in the case of a minor violation, later than six months after the subject-matter of the proceedings become known to the Bank; or
  - (b) in the case of a serious violation or a very serious violation, later than six years after the subject-matter of the proceedings became known to the Bank.

### 55. Appeal.

- (1) A person may appeal to the Supreme Court from any decision of the Bank imposing a penalty in respect of a serious violation or a very serious violation under section 47.

- (2) Subject to subsection (3), an appellant under subsection (1) must —
  - (a) make his appeal on motion; and
  - (b) within twenty-one days after the day on which the Bank imposed the penalty, serve on the Attorney General a notice in writing signed by the appellant or his counsel and attorney of the intention to appeal and the general grounds for the appeal.
- (3) A person desiring to appeal a decision of the Bank under subsection (1) may, upon notice to the Attorney-General, apply to the Supreme Court for leave to extend the time within which the notice of appeal may be served and the Supreme Court, upon the hearing of such application, may extend the time prescribed under subsection (2)(b) as the Supreme Court deems fit.
- (4) The Attorney-General shall upon receiving a notice of appeal transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal.
- (5) Notwithstanding subsection (4), the Attorney-General shall not be compelled to disclose any information if the Attorney General considers that the public interest would suffer by such disclosure.
- (6) The Registrar of the Supreme Court shall set an 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.
- (7) The appellant at the hearing of an appeal —
  - (a) before commencing his case, must state all the grounds of appeal on which the appellant intends to rely; and
  - (b) must not, except by leave of the Supreme Court, go into any matters not raised by the stated grounds of appeal.
- (8) The Supreme Court may adjourn the hearing of the appeal and may upon the hearing thereof confirm, reverse, vary or modify the decision of the Bank or remit the matter with the opinion of the Supreme Court thereon to the Bank.

## **56. Conflicts of interest.**

- (1) The Bank shall establish a code (“Code” or “Codes of Conduct”) requiring a director, Governor, and the Bank's employees to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Bank.
- (2) Where a director is directly or indirectly interested otherwise than as a director, or in common with other directors, in a contract or other transaction made or proposed to be made by the Bank —

- (a) the director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge;
  - (b) the disclosure shall be recorded in the minutes of the Board; and
  - (c) after the disclosure has been recorded in the minutes of the Board, the director shall not take part in any deliberation or decision of the Board with respect to the contract or transaction.
- (3) A director who falls within subsection (2) shall not be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

#### **57. Fees and charges.**

The Bank may charge reasonable fees and charges for the services the Bank provides and the functions the Bank carries out.

#### **58. Supremacy of this Act.**

- (1) Where a conflict arises between this Act and the provisions of any other Act, the provisions of this Act shall prevail.
- (2) The provisions of this Act shall not be repealed, amended, or suspended, in whole or in part, by any other written law, unless the subsequent legislation specifically amends this Act.
- (3) This Act may only be repealed or amended on a recommendation from, or after consultation with, the Bank.

#### **59. Preferential right.**

- (1) The Bank has an unconditional preferential right to use any collateral or assets provided by a debtor in settlement of, or to secure its obligations to the Bank, if such asset or collateral is in the possession of the Bank.
- (2) Where a debtor defaults on the debtor's obligations to the Bank, whether or not insolvency proceedings commence against the debtor, the Bank may exercise its preferential right under subsection (1) in such manner as the Bank may think fit, without the authorization or intervention of any court or public entity.
- (3) Where insolvency proceedings have commenced against a debtor under the Banks and Trust Companies Regulation Act, 2020, any collateral provided by a debtor to the Bank under section 26 of this Act, shall have the effect of a fixed charge over the underlying assets in favour of the Bank, and such assets shall not be available to other creditors of the debtor.
- (4) The Bank shall not be hindered in the exercise of its preferential right under subsection (1) by any claim of a third party.

## **60. Immunities of the Bank.**

- (1) Where any legal action has been commenced in a court in The Bahamas, no order of attachment or writ of execution with regard to any property held by or deposited with the Bank shall be granted before a final judgement in such action has been issued by the court.
- (2) The Bank may in whole or in part, in writing, waive the Bank's immunity from attachment or execution under subsection (1), except the Bank's right to a waiver shall not apply with regard to the special drawing rights.
- (3) No account with the Bank intended to be used in the performance of the Bank's functions under this Act shall be the subject of any seizure, attachment, sequestration or blocking order.

## **61. Immunity of officials and staff of the Bank.**

- (1) No civil or criminal liability shall attach to —
  - (a) a director, Deputy Governor, employee or agent of the Bank;
  - (b) correspondent acting under the direction of the Bank;
  - (c) any person duly authorized by the Inspector under subsection 28(3) of the Banks and Trust Companies Regulation Act, 2020;
  - (d) any person duly authorized by the Bank under or pursuant to subsections 29(1)(d), (e) or (f); subsection 38(1) or subsection 60(1) or (2) of the Banks and Trust Companies Regulation Act, 2020;
  - (e) a director or officer of a bridge institution;
  - (f) a director or officer of an asset management vehicle;
  - (g) an independent valuer appointed under the Banks and Trust Companies Regulation Act, 2020,even after the termination of their functions or duties, for anything done or statement made or omitted to be done or made in good faith in the course of or in connection with —
  - (i) the exercise or purported exercise of any power under this Act or any other written law;
  - (ii) the performance or purported performance of any function or duty under this Act or any other written law; or
  - (iii) the compliance or purported compliance with this Act or any other written law.
- (2) The Bank shall indemnify a director, Deputy Governor, employee or agent of the Bank, or correspondent acting under the direction of the Bank, a statutory administrator, a liquidator, a director or officer of a

bridge institution or an asset management vehicle or an independent valuer appointed by the Bank under the Banks and Trust Companies Regulation Act, 2020, even after the termination of their functions or duties, against the cost of defending their actions in connection with subparagraphs (i), (ii) or (iii) of subsection (1).

## **62. Judicial review and arbitration.**

In any court or arbitration proceedings brought against a member of the Board, officer, employee, correspondent or agent of the Bank, for an act done or omitted to be done by such persons in connection with the discharge or purported discharge of their functions, or against the Bank for any actions or inactions, under this Act or any other written law —

- (a) the court or arbitration panel may examine only whether the defendant acted unlawfully or in an arbitrary or capricious manner;
- (b) the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal; and
- (c) the court or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.

## **63. Repeal.**

The Central Bank of The Bahamas Act (*Ch. 351*) is hereby repealed.

## **64. Transitional provisions.**

- (1) On the day of the coming into operation of this Act —
  - (a) every person who, immediately before that day, was appointed a member of the Board of Directors of the Bank shall be deemed to have been appointed under this Act and shall continue to serve in that capacity for the unexpired portion of the term remaining to be served;
  - (b) all real and personal property and every right and interest in that property that, immediately before that day, was vested in the Bank under the repealed Act shall continue to be vested in the Bank for the purposes of and subject to this Act, subject to any debts, trusts and liabilities affecting the property, right or interest;
  - (c) all rights accruing or accrued to the Bank in respect of any property vested in the Bank by virtue of this section are vested in the Bank and may be enforced against the Bank;



- (d) all contracts, agreements, leases and undertakings made and all securities lawfully given to or by the Bank under the repealed Act which, immediately before that day, are in force shall have effect as contracts, agreements, leases and undertakings by and with the Bank as continued under this Act and may be enforced by and against the Bank accordingly;
  - (e) all debts due and moneys payable to the Bank and all claims, liquidated or unliquidated, recoverable against the Bank under the repealed Act shall be debts due and moneys payable by and claims recoverable against the Bank as continued under this Act;
  - (f) any legal or other proceedings that might, but for this section, have been continued or commenced by or against the Bank.
- (2) A reference to the Bank in a law of The Bahamas and in any document in force immediately before the date of the coming into operation of this Act shall be read, deemed and taken to refer to the Bank as continued under this Act.
  - (3) The persons who, immediately before the coming into operation of this Act, were appointed the Governor and Deputy Governor under the repealed Act shall continue under the title of Governor and Deputy Governor respectively under this Act as if those persons had been appointed under this Act on the same terms and conditions for a term expiring on the day on which the appointment under the repealed Act would expire.
  - (4) Any officer or servant appointed or employed by the Bank under the repealed Act shall continue in office or employment with the Bank as continued under this Act on the same terms and conditions as existed before the coming into operation of this Act.

## **65. Savings.**

Any licence, authority, approval or exemption granted by the Bank 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 by the Bank 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.

## **66. Validation of acts of the Bank.**

Every act or thing done by the Bank under the repealed Act prior to 1st September, 2010 that would have been lawful if section 28(2) had been in

force at the time when it was done is declared valid and lawful to the extent it would be valid and lawful if done under section 28(2).

## **SCHEDULE**

(Section 3(4))

### **CONSTITUTION AND FUNCTIONING OF THE BOARD AND THE BANK**

#### **1. Role and duties of the Board of Directors.**

- (1) There shall be a Board of Directors responsible for the formulation of the policies of the Bank and oversight of the implementation of such policies and of the operations and internal controls of the Bank.
- (2) The duties and powers of the Board are to —
  - (a) formulate any policy, other than monetary policy, of the Bank for the performance of its functions;
  - (b) make decisions with regard to those matters set out in section 28;
  - (c) adopt an action or measure taken against a person subject to the supervision of the Bank, in accordance with the powers entrusted to the Bank by this Act, the Banks and Trust Companies Regulation Act, 2020, or any other written law;
  - (d) adopt sanctions imposed by the Bank under this Act, the Banks and Trust Companies Regulation Act, 2020, or any other written law;
  - (e) approve bye-laws and regulations issued by the Bank;
  - (f) approve a guideline, note, notice, order, and any other document issued by the Bank, to require or expect compliance by a person outside the Bank;
  - (g) approve the procedures of the Board, Audit Committee, the Dormant Funds Investment Committee, the Investment Committee, the Monetary Policy Committee and any other body of the Bank;
  - (h) approve a procedure for risk management of the Bank;
  - (i) approve the investment policy and guidelines for the management of external reserves by the Bank;
  - (j) decide the categories of assets that shall constitute the external reserve in accordance with section 17;
  - (k) make decisions regarding the establishment and abandonment of a branch office of the Bank and the appointment of an agent and correspondent of the Bank;

- (l) approve a personnel policy for the Bank, including a policy for remuneration and terms and conditions of employment;
- (m) approve the annual budget of the Bank;
- (n) approve the exercise of the powers under section 32(3) and (4), and section 33(1);
- (o) approve a statement of the accounts and a report submitted to the Minister under section 35(1);
- (p) approve the acquisition and disposition of real property and other significant assets of the Bank;
- (q) approve the arrangements for printing notes and minting coins and the issuance, re-issuance, and redemption of notes and coins referred to in section 10 and the advice rendered to the Minister under section 11;
- (r) establish committees and determine their composition, duties, and procedures;
- (s) do all such things as are necessary or incidental to the exercise and performance of other powers and functions granted by this Act.

## 2. Constitution and tenure of Board of Directors.

- (1) The Board of Directors shall consist of the following persons to be appointed by the Governor-General on the advice of the Minister after consultation with the Board —
  - (a) a Governor, who shall be —
    - (i) a person of recognized experience in financial matters;
    - (ii) appointed for a term of five years and eligible for reappointment for no more than two additional terms;
    - (iii) appointed on such terms and conditions as may be set out in the instrument of appointment; and subject to paragraphs 6 and 7, such terms and conditions may not be altered to his disadvantage during his tenure of office;
  - (b) two deputy governors (“**Deputy Governors**”) of the Bank each of whom shall be appointed for a term of five years and eligible for reappointment for no more than two additional terms;
  - (c) six other directors, each being a person who —
    - (i) appears to the Governor-General to have wide experience, and to have shown capacity, in financial or commercial matters, industry, law or administration; and
    - (ii) shall be appointed for a term of five years and eligible for reappointment for no more than two additional terms.
- (2) Each director shall, subject to the Act and this Schedule, hold and vacate office in accordance with the terms of his appointment.

- (3) The four directors other than the Governor shall be divided into two groups and directors who belong to the first group shall not be appointed at the same time as the directors who belong to the second group.
- (4) A person shall not be appointed a director or Deputy Governor who —
  - (a) is a member of either House of Parliament;
  - (b) is an officer or employee of an agency of the Government or any public entity;
  - (c) has been convicted by a court of an indictable offence or other offence involving dishonesty;
  - (d) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas or any other jurisdiction;
  - (e) is a director, officer or employee of, or is a shareholder with an interest of one per cent or more in the ordinary paid up share capital of, or has a controlling interest in, any financial institution;
  - (f) on the grounds of personal misconduct, has been —
    - (i) disqualified or suspended by a competent authority from practicing a profession; or
    - (ii) prohibited from being a director or officer of any public entity or business undertaking.
- (5) For the purpose of sub-paragraph (4), a professor of a university shall not be deemed to fall within subparagraph (4)(b).
- (6) The Bank shall cause the names of all the members of the Board, and every change in membership, to be published in the *Gazette*.

### **3. Role of the Governor and the Deputy Governors.**

- (1) The Governor or a Deputy Governor designated by the Board to act as Governor —
  - (a) shall preside as chairman at the meetings of the Board;
  - (b) shall serve as chief executive officer of the Bank, responsible to the Board for the execution of the Bank's policy and the day-to-day management and internal control of the Bank;
  - (c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, may —
    - (i) act, contract, and sign instruments and documents on behalf of the Bank; and
    - (ii) pursuant to the resolutions of the Board, delegate the powers referred to in subsubparagraph (i) to other officers of the Bank.

- (2) The Deputy Governors shall perform the functions conferred on them by this Act and, under the supervision of the Governor, such other functions as may be conferred on them by the Board.
- (3) In the event of the Governor's inability to act or a vacancy in the office of the Governor, the Board shall designate one of the Deputy Governors to act as Governor.
- (4) Subject to subparagraph (5), the Governor and Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not —
  - (a) receive salary or supplementation thereto from any source other than the Bank; and
  - (b) occupy any other office or employment, whether remunerated or not.
- (5) Notwithstanding subparagraph (4), the Governor and Deputy Governors may —
  - (a) act as a member or director of any board, committee or commission established by the Government whether by statute or otherwise; or
  - (b) become a Governor, director or member of the board, by whatever name called, of any international financial institution or international financial organization of which The Bahamas is a member.

#### **4. Removal from the Board.**

- (1) A director or Deputy Governor who falls within paragraph 2(4) shall be removed from office.
- (2) A director or Deputy Governor may be removed from office if the Director or Deputy Governor —
  - (a) has been absent from meetings longer than three consecutive months without the permission of the Board;
  - (b) is incapacitated by physical or mental illness; or
  - (c) is guilty of serious misconduct.
- (3) A decision to remove a director or Deputy Governor under subparagraphs (1) and (2) shall be made by the Governor-General on the advice of the Minister after consultation with the Board.
- (4) The Governor-General shall, within twenty-one days of the date of a decision made under subparagraph (1) or (2), provide the person in question with written reasons for the decision.
- (5) The Bank shall cause the reasons for the removal of the Governor from office to be published in the Gazette.

#### **5. Resignation from the Board.**

- (1) Subject to sub-paragraph (2), a member of the Board may resign office on giving to the Minister in writing —
  - (a) in the case of the Governor, not less than three months notice; or
  - (b) in the case of any other director or a Deputy Governor, not less than one month's notice.
- (2) The Minister may waive the period of notice required by sub-paragraph (1).

**6. Vacancies.**

- (1) A vacancy in the office of the Governor, Deputy Governor or a director shall be filled within sixty days by the Governor-General appointing a person to the office for the ordinary term in accordance with paragraph 2.
- (2) Where the Governor and Deputy Governors are unable to act, the Governor-General on the advice of the Minister shall appoint a person, eligible to be appointed as a director, to act temporarily in the place of the Governor and Deputy Governor.
- (3) An appointment under subparagraph (2) shall not be for a period exceeding six months.

**7. Meetings.**

- (1) The Board shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least once in every month.
- (2) A meeting of the Board —
  - (a) may be convened by the Governor or, in his absence, a Deputy Governor designated to act as Governor pursuant to paragraph 3(3); or
  - (b) shall be convened on the written requisition of three directors specifying the reasons for which the meeting is required.
- (3) Meetings of the Board shall be presided over by the Governor or, in the event of his absence or disability, by a Deputy Governor designated to act pursuant to paragraph 3(3).
- (4) Four directors, of whom one shall be either the Governor or Deputy Governor designated pursuant to paragraph 3(3), shall form a quorum at any meeting.
- (5) A decision of the Board shall be adopted by a simple majority of the directors present and, in the case of an equality of votes, the person presiding at the meeting shall have and exercise a casting vote.
- (6) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.

- (7) No act or proceeding of the Board shall be invalidated merely by reason of a vacancy in the Board or of a defect in the appointment or qualification of a director.

**8. Remuneration of the Board.**

- (1) The Bank shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.
- (2) The amount of remuneration determined under subparagraph (1) —
  - (a) shall be stated in the instrument of appointment of the director;
  - (b) shall not be diminished during the term of office of the director receiving the remuneration; and
  - (c) shall not be determined by reference to the profits of the Bank.

**9. Audit Committee.**

- (1) There shall be established an audit committee (the “Audit Committee”) of the Bank responsible for —
  - (a) overseeing the internal and external audit of the Bank;
  - (b) recommending to the Board a person or firm to be appointed as external auditors and the scope of the external audit;
  - (c) meeting with external auditors to discuss their findings;
  - (d) reviewing with external auditors the annual statement of the accounts of the Bank;
  - (e) resolving disagreements between the management and external auditors regarding the financial reporting; and
  - (f) performing any other functions prescribed by the charter of the Audit Committee.
- (2) The Audit Committee shall consist of the following persons appointed by the Board —
  - (a) two directors, neither of whom shall be the Governor;
  - (b) one financial expert who —
    - (i) has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Audit Committee;
    - (ii) has recognised expertise in accounting or auditing; and
    - (iii) does not fall within paragraph 2(4) and paragraph 4(2)(a) (b) or (c).
- (3) A financial expert under subparagraph (2)(b) shall be appointed for a term of four years and eligible for re-appointment for no more than two additional terms.
- (4) A member of the Audit Committee —



- (a) shall be removed by the Board if the member falls within paragraph 2(4)(a); and
  - (b) may be removed by the Board if the member falls within paragraph 2(4)(b).
- (5) Without prejudice to this paragraph, the Board shall prescribe duties and procedures of the Audit Committee by establishing a charter (“the Audit Committee Charter”).
- (6) The Audit Committee shall report to the Board on the performance of its functions, at least quarterly.

#### **10. Investment Committee.**

- (1) There shall be established an investment committee (the “Investment Committee”) of the Bank responsible for —
- (a) making recommendations to the Board in respect of the management of the external reserves;
  - (b) proposing to the Governor eligible counter-parties, risk limits, and benchmarks in respect of external reserve management;
  - (c) managing the external reserve in accordance with the investment policy and guidelines approved by the Board under this Act;
  - (d) proposing to the Board nominees for the appointment of external managers of the external reserves;
  - (e) overseeing external managers of the external reserve; and
  - (f) performing any other functions prescribed by the approved investment policy and guidelines.
- (2) Members of the Investment Committee shall be appointed by the Governor.
- (3) Without prejudice to this Act, the Board shall pursuant to the investment policy and guidelines prescribe the responsibilities, composition, and procedures of the Investment Committee.

#### **11. Monetary Policy Committee.**

- (1) There shall be a monetary policy committee (the “Monetary Policy Committee”) of the Bank —
- (a) chaired by the Governor; and
  - (b) composed of members appointed by the Governor.
- (2) The Monetary Policy Committee shall —
- (a) determine the monetary policy of the Bank;
  - (b) approve basic assessments of the conditions of the economy and the financial system; and

- (c) perform any other functions as may be determined by the Board.
- (3) The Board shall prescribe the responsibilities, composition, and procedures of the Monetary Policy Committee.

**12. Dormant Funds Investment Committee.**

- (1) There shall be established a dormant funds investment committee (“the Dormant Funds Investment Committee”) of the Bank composed of —
  - (a) the Financial Secretary or his designate, *ex officio*;
  - (b) the following persons appointed by the Governor —
    - (i) two officers of the Bank;
    - (ii) a financial expert, who meets the criteria prescribed in paragraph 9(2)(b); and
    - (iii) one other person, who has not been a director, Deputy Governor, or employee of the Bank for three years preceding the appointment to the Dormant Funds Investment Committee.
- (2) Members of the Dormant Funds Investment Committee appointed by the Governor, must have related skills, knowledge and expertise necessary for the discharge of their responsibilities, each being a person who in the Governor’s opinion, appears to have experience in, and to have shown capacity in, financial or commercial matters, industry, law or administration.
- (3) Each member of the Dormant Funds Investment Committee shall hold office for a term of three years and be eligible for re-appointment for no more than two additional terms.
- (4) The Dormant Funds Investment Committee shall meet at any place and as often as may be required for the performance of its functions and, in any event, at least three times each year.
- (5) Subject to subparagraph (6), the functions of the Committee are to —
  - (a) as soon as practicable after its establishment, prepare an investment policy for the Fund, and.
  - (b) not later than April in each year, prepare an investment plan for the Fund, and the first investment plan shall be prepared not later than three months after the establishment of the Committee;
  - (c) periodically review and update as necessary, the policy referred to in subparagraph (a); and
  - (d) submit to the Board for approval, the policy and the plan referred to in subparagraphs (a) and (b) respectively.

- (6) The Governor, in consultation with the Minister of Finance, may issue directions or guidelines to the Dormant Funds Investment Committee concerning the preparation of the investment plan and the investment policy, and the Committee shall comply with those directions and prepare the investment plan and the investment policy in accordance with those guidelines.
- (7) Without prejudice to this Act, the Board shall prescribe the responsibilities and procedures of the Dormant Funds Investment Committee.
- (8) The Dormant Funds Investment Committee shall report to the Board on the performance of its functions, at least quarterly.

**13. Staff and remuneration.**

- (1) The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Bank.
- (2) Remuneration paid under subparagraph (1) shall not be determined by reference to the profits of the Bank.
- (3) The Bank may, as the Bank determines —
  - (a) pay to or in respect of officers or servants of the Bank pensions or gratuities;
  - (b) make payments towards the provisions for employees of pensions or gratuities; or
  - (c) maintain for employees pension schemes (by being a contributor or otherwise).

**14. Seal.**

- (1) The seal of the Bank shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or a Deputy Governor and one other director authorized by the Board to act in that behalf.
- (2) Any document purporting to be a document executed under the seal of the Bank shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.

## **OBJECTS AND REASONS**

The purposes of the Central Bank of The Bahamas Bill, 2020 (“the Bill”), are to consolidate and modernise the law governing the Bank and to provide for the continuance of the Bank, its functions powers and duties. The Bill is comprised of twelve parts and sixty-six clauses.

Clause 1 of the Bill provides for its short title and empowers the Minister to appoint a date for its commencement after its enactment.

Clause 2 of the Bill constitutes the Interpretation provision which defines key words and phrases used in the Bill.

Clause 3 of the Bill provides for the preservation and continuation of the Bank as a body corporate under section 3 of the repealed Act.

Clause 4 of the Bill provides for the principal place of business of the Bank to be in the City of Nassau and empowers the Bank to establish branch offices, at home and abroad and appoint agents and correspondents.

Clause 5 of the Bill provides for the functions of the Bank.

Clause 6 of the Bill mandates the capitalisation of the Bank at three million dollars in fully paid-up, non-transferable shares solely subscribed by the Government.

Clause 7 of the Bill mandates the Bank to establish a General Reserve for the purposes of covering losses sustained by the Bank and an Unrealised Revaluation Reserve to account for unrealized gains and losses arising from the Bank's positions in foreign currencies, gold securities, and other financial assets.

Clause 8 of the Bill mandates that the currency of The Bahamas are the notes, coins and electronic money issued by the Bank with the unit of currency being the Bahamian dollar, divided into 100 cents.

Clause 9 of the Bill provides that all contracts and transactions, related documents and other matters dealing with or involving money are to be deemed to be made in Bahamian currency, unless expressly stated to be made in a foreign currency.

Clause 10 of the Bill empowers the Bank as the sole authority with the right to issue notes and coins in The Bahamas.

Clause 11 of the Bill empowers the Minister to prescribe the denominations, forms, designs and other attributes of the notes and coins that may be issued by the Bank.

Clause 12 of the Bill provides for the notes, coins and electronic money issued by the Bank to be legal tender in The Bahamas, the recall on notice by the Bank of any notes and coins, the redemption on demand of mutilated or imperfect notes and coins, and for the aggregate amount of currency in circulation issued by the Bank to appear as a liability in the statement of accounts of the Bank.

Clause 13 of the Bill provides that no person is entitled as of right to recover from the Bank the value of any lost, stolen, mutilated or imperfect note or coin but the Bank may in the Bank's discretion, as an act of grace, refund to any person the value of any mutilated or imperfect note or coin.

Clause 14 of the Bill prohibits the counterfeiting and reproduction of notes, coins and electronic money issued by the Bank and creates criminal offences in respect of such counterfeiting and reproduction.

Clause 15 of the Bill empowers the Bank to make regulations for the purposes of prescribing the framework under which electronic money may be held or used by the public in keeping with best international practices for the development and functioning of the payments system.

Clause 16 of the Bill provides for the Minister, in consultation with the Bank, to determine the exchange rate policy and for the Bank to implement the exchange rate policy determined by the Minister.

Clause 17 of the Bill empowers the Bank to manage all official reserves of external assets of The Bahamas giving priority to safety before profitability of such assets and sets out specific powers and parameters of the Bank in the management of the external reserves.

Clause 18 of the Bill provides for every commercial bank to conduct its business so as to ensure, taking one month with another, that its liquid assets are on average not less than that percentage of the amount of its deposit liabilities in Bahamian dollars that is at any time fixed by the Bank and empowers the Bank by order to fix and from time to time vary the percentage. Additionally, clause 18 makes it an offence, punishable by a fine, for a bank not to comply with its liquid assets percentage requirements.

Clause 19 of the Bill mandates a financial institution to establish and maintain with the Bank a statutory reserve of such percentage of its liabilities as the Bank may specify by notice.

Clause 20 of the Bill makes provision for the Bank to act generally as fiscal agent for the Government and public corporations where the Bank can do so consistently with its functions under the Act and to provide public debt services functions to the Government, including the provision of advice or services in respect of the issuance, repayment, and management of public debt.

Clause 21 of the Bill prohibits the Bank from making direct or indirect advances to the Government or public corporations, except in the case of intra-day credits guaranteed by negotiable Government securities and specified categories of temporary loans.

Clause 22 of the Bill prohibits the Bank from purchasing or subscribing from primary markets Treasury Bills and securities issued or guaranteed by the Government or any public corporation but sets out specific circumstances when the prohibition does not apply.

Clause 23 of the Bill makes provision for certain general powers of the Bank in the discharge of its functions.

Clause 24 of the Bill vests the Bank with broad powers to impose by order a fine on a financial institution that the Bank believes to have committed specified offences under the Act and provides for a financial institution that pays a fine in full to be absolved from prosecution for the offence to which the fine relates.

Clause 25 of the Bill empowers the Bank to prescribe by regulations inter alia, the maximum amounts of loans or advances which commercial banks may have outstanding at any time or during such period or periods as may be specified in the regulations.

Clause 26 of the Bill provides for the Bank to act as lender of last resort to the commercial banks and sets out the circumstances and parameters within which the Bank may grant loans or advances to a commercial bank.

Clause 27 of the Bill makes provision for the Bank to accept deposits required to be transferred to the Bank in accordance with the Banks and Trust Companies Regulation Act, 2020 and to pay interest on money deposited and pay out money to any entitled person.

Clause 28 of the Bill makes provision for the Bank's ancillary powers to conduct business incidental to or consequential upon the discharge of its functions, including activities relating to the acquisition of real property or interests in real property which are necessary for, or incidental to, discharging the functions of the Bank or which was purchased or acquired by the Bank before 29th December, 2000.

Clause 29 of the Bill prohibits the Bank from engaging in trade or otherwise having a direct interest in any business undertaking, except such as the Bank may acquire in the course of the satisfaction of debts due to the Bank, mandates the Bank to dispose as soon as may be practicable of any interest acquired in the course of the satisfaction of debts due to the Bank and prohibits the Bank from granting unsecured loans or advances to any person.

Clause 30 of the Bill establishes the thirty-first day of December as the end of the financial year of the Bank.

Clause 31 of the Bill provides that the net profit or loss of the Bank is to be determined in accordance with the International Financial Reporting Standards and mandates how the distributable earnings of the Bank are to be determined.

Clause 32 of the Bill mandates when and how distributable earnings are to be allocated by the Bank.

Clause 33 of the Bill provides for coverage where an external audit reveals the Bank has a shortfall in capital. The Bank is required to submit a report to the Minister and request the Minister to make payments from the Consolidated Fund to the authorised capital for the purpose of increasing the authorised capital to the prescribed amount. The Minister must within 30 days make such payment as requested by the Bank in currencies or negotiable bonds with a certain maturity issued by the Government at market-related interest rates.

Clause 34 of the Bill mandates the Bank to prepare, in accordance with the Act and the International Financial Reporting Standards, the statement of the accounts of the Bank to reflect its operations and financial conditions.

Clause 35 of the Bill provides for the Bank to transmit to the Minister the accounts and a report on the operations of the Bank within four months after the end of each financial year and for the Minister to publish in the Gazette, and lay in Parliament, such accounts and report.

Clause 36 of the Bill provides for the Bank, on or before the end of each month, to prepare and transmit to the Minister, and publish in the Gazette and on the website of the Bank, a statement of the assets and liabilities of the Bank as at the last working day of the preceding month.

Clause 37 of the Bill provides for the establishment of an Audit Committee of the Central Bank and an annual audit of the accounts of the Bank by independent, reputable and experienced external auditors appointed by the Board with the approval of the Minister. The external audit is to be conducted in accordance with the International Standards of Auditing and the external auditors must report to the Audit Committee on significant matters arising from the audit and in particular on material weaknesses in internal controls relating to the financial reporting process of the Bank.

Clause 38 of the Bill empowers the Bank to require by notice in writing specified categories of persons to supply to the Bank information or documents the Bank considers necessary to enable the Bank to carry out its functions under this Act or any other law. The Bank may use its power to assist an overseas regulatory authority and can apply to a Magistrate for an order requiring a person to supply the information or document required by the Bank or to be examined by the court and the results of the examination sent to the Bank.

Clause 39 of the Bill provides for the collection of statistics by the Bank and empowers the Bank to obtain information from any person for the purpose of discharging the Bank's functions under section 5(1)(i). The information obtained by the Bank is to be used or supplied to any person in the Government or otherwise only for the purpose of the collection and production of statistical data.

Clause 40 of the Bill empowers the Bank to obtain the assistance of the Commissioner of Police in the exercise of the Bank's powers and to authorise any competent person to exercise any of the Bank's powers under the Act. Assistance may only be sought or authority granted by the Bank for the purpose of investigating the affairs of a specified person or a person or subject matter specified by the Bank that is the subject of the inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank.

Clause 41 of the Bill empowers the Bank to exchange information with other regulatory authorities in The Bahamas, an overseas regulatory authority or a foreign financial institution. Additionally, clause 41 specifies the conditions and circumstances that must apply before the Bank may supply to an overseas regulatory authority any information which is not disclosed to the public. The Bank in seeking to assist an overseas regulatory authority may apply to a Magistrate for assistance.

Clause 42 of the Bill makes it an offence for any person to supply to the Bank any information knowing the same to be false in a material particular and such a person becomes liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or to both and, in the case of a continuing offence, to a fine not exceeding ten thousand dollars for each day or part thereof during which the offence continues.

Clause 43 of the Bill provides for the confidentiality of information and prohibits any person who is or has been a director, officer, employee, agent or adviser of the Bank from disclosing any information relating to the affairs of the Bank, or of any person, that such person obtained in the exercise or performance of his functions and duties under the Act.

Clause 44 of the Bill provides that every offence under the Act, where tried, is to be tried summarily.

Clause 45 of the Bill provides that where any offence under the Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, the officer or person, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.



Clause 46 specifies the conditions and circumstances in which the Bank may by order impose general penalties and sets out the requirements of an order issued by the Bank.

Clause 47 of the Bill empowers the Bank by regulation to designate certain contraventions as violations and to impose fixed penalties in respect of such violations. Violations may be classified as minor, serious or very serious.

Clause 48 of the Bill mandates the Bank to make an election on the manner in which to treat a violation which may be proceeded with as a contravention or as an offence and, once an election is made, precludes the Bank from proceeding in the other manner.

Clause 49 of the Bill mandates specific procedures to be followed by the Bank where the Bank elects to proceed with a matter by imposing a penalty on a person.

Clause 50 of the Bill provides that a person who pays in full a penalty imposed by the Bank on an election is deemed to have committed the violation and all proceedings in respect of such violation terminates upon such payment. The Bank must allow a person to make representations and decide on a balance of probabilities whether the person committed the violation and impose by order a penalty only where the Bank decides a violation has been committed.

Clause 51 of the Bill makes provision for the Bank to publish a statement of the violation in respect of which the Bank imposed a penalty.

Clause 52 of the Bill exempts the Bank from payment of tax under the Real Property Tax Act and any other taxes and levies on the import and domestic supply of gold, banknotes, and coins. Notes, coins and electronic money issued by the Bank are exempt from the payment of stamp duty and the Bank is exempt from the payment of stamp duty and postal charges for money transacted between the offices of the Bank, and with an agency of the Government, in connection with the Bank's functions under the Act.

Clause 53 of the Bill empowers the Bank to remit all or part of a penalty imposed on an election, including interest on such penalty and such remission may be conditional or unconditional.

Clause 54 of the Bill provides for the admissibility and proof of documents appearing to have been issued by the Bank, certifying the day on which the subject matter of any proceedings by the Bank became known to the Bank. The Bank may not commence proceedings in respect of a designated minor violation later than six months after the subject-matter of the proceedings become known to the Bank and, in the case of a serious violation or a very serious violation, later than six years after the subject-matter of the proceedings became known to the Bank.

Clause 55 of the Bill provides that a person may appeal to the Supreme Court from any decision of the Bank imposing a penalty in respect of a designated violation that is serious or very serious. An appellant must make his appeal on motion within 21 days after the day on which the Bank imposed the penalty and serve on the Attorney-General a notice in writing signed by the appellant or his counsel and attorney of the intention to appeal and the general grounds for the appeal.

Clause 56 of the Bill mandates the Bank to establish a Code or Codes of Conduct requiring a director, Governor, and the Bank's employees to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Bank. Where a conflict arises, a director must disclose the nature of his interest at the first meeting of the Board at which the director is present after the relevant facts have come to the director's knowledge, the disclosure must be recorded in the minutes of the Board and, after the disclosure has been recorded in the Board minutes, the director must not take part in any deliberation or decision of the Board with respect to the contract or transaction giving rise to the conflict.

Clause 57 of the Bill empowers the Bank to charge reasonable fees and charges for the services the Bank provides and the functions the Bank carries out.

Clause 58 of the Bill provides for the supremacy of the Act where a conflict arises in relation to the provisions of any other Act and that this Act is not to be repealed, amended, or suspended, in whole or in part, by other laws, unless the subsequent legislation specifically amends this Act; and, further, that this Act may only be repealed or amended on a recommendation from, or after consultation with, the Bank.

Clause 59 of the Bill gives the Bank an unconditional preferential right to use any money, bill of exchange, securities, gold, and any other movable property or valuable of a debtor, in settlement of or as collateral for claims of the Bank against the debtor, if such valuable is in the possession of the Bank. The Bank may exercise its preferential right in such manner as the Bank thinks fit, whether or not insolvency proceedings commence against the debtor, and without the authorization or intervention of any court or public entity. The Bank is not to be hindered in the exercise of its preferential right by any claim of a third party.

Clause 60 of the Bill grants certain immunities to the Bank. Where legal action has been commenced in a court in The Bahamas, no order of attachment or writ of execution with regard to any property held by or deposited with the Bank may be granted before a final judgement in the action has been issued by the court. The Bank may in whole or in part, in writing, waive the Bank's immunity from attachment or execution, except in the case of the special drawing rights. Further, no account with the Bank intended to be used in the performance of the Bank's functions is to be subject to any seizure, attachment, sequestration or blocking order.

Clause 61 of the Bill gives certain immunities to the officials and staff of the Bank. No civil or criminal liability may attach to a director, Deputy Governor, employee or agent of the Bank, or correspondent acting under the direction of the Bank, even after the termination of their functions or duties, for anything done or omitted to be done in good faith in the course of or in connection with the performance and exercise of their functions and powers under this Act or any other law.

Clause 62 of the Bill provides for judicial review and arbitration proceedings to be brought against the Bank, its officers, employees and agents et al. The court or arbitration panel may examine only whether the defendant acted unlawfully or in an arbitrary or capricious manner, the action in question shall continue without restriction during the period of an appeal and any further appeal or other proceedings related to the appeal, and the court or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, stay, suspend, or set aside the action in question.

Clause 63 of the Bill provides for the repeal of the Central Bank of The Bahamas Act (*Ch. 351*).

Clause 64 of the Bill provides for certain transitional provisions to apply to facilitate the smooth implementation of the Act and the continuance of the Bank under the Act.

Clause 65 of the Bill provides for the savings and continued validity in accordance with its terms of any licence, authority, approval or exemption granted by the Bank under the repealed Act which is in force immediately before the coming into force of this Act.

Clause 66 of the Bill provides that every act or thing done by the Bank prior to 1st September, 2010 that would have been lawful if section 28(2) had been in force at the time when it was done is validated and lawful to the extent it would be valid and lawful if done under section 28(2).

The Schedule makes provisions for the constitution and functioning of the Board and the Bank.