



Central Bank of The Bahamas

PUBLIC CONSULTATION

on

Proposals to Repeal and Replace

The Central Bank of The Bahamas Act, 2000

June 5th, 2018

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I. INTRODUCTION

- 1.1 This Consultation Paper seeks feedback on the Central Bank of The Bahamas' ("the Central Bank" or "the Bank") proposals to repeal and replace the Central Bank of The Bahamas Act, 2000 ("the Act") with the draft Central Bank of The Bahamas Bill, 2018 ("the Bill"). The purpose of the Bill is to consolidate and modernize the law governing the Central Bank and to provide for the continuance of the Central Bank, its functions, powers and duties.
- 1.2 Aside from a few key changes over the years which were substantially to address challenges facing the Central Bank in its role as a financial services sector regulator, most of the provisions in the Act have been in place since the 1970's, and are not reflective of evolved developments in central banking practices and governance.
- 1.3 Consequently, the Bank undertook a comprehensive review of the Act, with a view to ensuring that the legislation provides the Bank with the ability to carry out its monetary policy mandate effectively and its operational responsibilities with appropriate flexibility. In 2012, the Central Bank received technical assistance from the International Monetary Fund ("the IMF") which recommended a number of comprehensive amendments to the Act.
- 1.4 Generally, these amendments articulate a clearer and more robust legal framework for central bank governance and accountability by:
 - strengthening/clarifying existing provisions regarding the objectives and functions of the Bank, the legal environment of the Bank, and the statutory safeguards to credits to the Government and subscription of public debts in primary markets;
 - providing greater operational flexibility to the Bank in conducting its investment activities;
 - eliminating ambiguity and ensuring clarity and consistency in the Act, and with other legislation which govern the Central Bank's regulatory functions, such as the Banks and Trust Companies Regulation Act, 2000 ("the BTCRA"), and
 - reorganizing provisions in a more logical order and under broad thematic headings as follows:
 - Objectives and Functions
 - Personal Autonomy
 - Financial Autonomy and Credit to the Government
 - External Reserve Management and Exchange Matters
 - Prudential Policy
 - Financial Provisions
 - Governance
 - Legal Environment

- 1.5 The provisions in the Bill are aligned with international best practices for central banking legislation, and the Bill will, once enacted, enhance the corporate governance provisions in the Act, provide needed operational flexibility without compromising the safety principle or introducing new risks and improve the readability of the legislation.
- 1.6 Set out below is an overview of the proposed key provisions of the Bill.
- 1.7 The draft Central Bank of The Bahamas Bill, 2018 is set out in the **Annex**.

II. DETAILS OF THE DRAFT CENTRAL BANK OF THE BAHAMAS BILL, 2018

2.1 THE BANK'S OBJECTIVES AND FUNCTIONS

2.1.1 *Distinction between the Bank's objectives and functions (Clause 5)*

Currently, section 5(1) of the Act outlines five (5) “duties” of the Central Bank, without further distinction between its objectives and functions—as typically articulated in central banking legislation. Clause 5 of the Bill seeks to clearly define the Bank's functions as well as its objectives to guide its decision making on formulating policy.

2.1.2 *Reformulation of the Bank's objectives into three (3) prioritized components.*

Having multiple objectives, without clear hierarchy, could raise conflict among objectives and frustrate the functional operations of the Bank. To clarify the mandates of the Central Bank, clause 5 of the Bill will provide an hierarchical ordering of the Bank's objectives. By means of prioritized, hierarchical objectives, the Bank will be able to make more effective decisions and better interpret the boundaries of its statutory powers.

- (a) *The primary objective of the Central Bank to be: to 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.*

Clause 5(1)(a) combines the key policy objectives of the Bank in a single statement and includes a specific reference to the exchange rate regime, something which is currently missing from the Act. The policy objective formulation is basically consistent with the objectives of other regional central banks, having either a fixed or managed exchange rate regime.

(b) *The secondary objective: To contribute, through collaboration with other domestic and foreign regulatory authorities, to the stability of the financial system*

The formulation of the second objective recognizes that the supervision of financial institutions in The Bahamas is a shared competence among the Central Bank, which supervises and oversees inter alia, banks and payment systems, and other financial services regulators such as the Securities Commission of The Bahamas and the Insurance Commission of The Bahamas. Although the Bank remains the lead regulator in financial stability, the overall stability of the Bahamian financial system can only be achieved through adequate coordination among and contribution from all financial services regulators and bodies.

(c) *The tertiary objective: To support the Government by providing sound economic, financial and monetary advice*

Lastly, the provision of general technical support to the Government would appropriately be presented as a tertiary objective.

2.1.3 *The Bill to reflect the functions that the Central Bank currently discharges*

While the Act lists some of the functional activities of the Central Bank, a number of the activities of the Bank which are well known and supported by its statutory authority, are omitted. Clause 5(2) of the Bill therefore expands the list to include the following activities as functions of the Bank: (i) determining and implementing monetary policy, (ii) implementing exchange rate policy, (iii) holding and managing all official external reserves of The Bahamas, (iv) issuing and managing the currency of The Bahamas, (v) collecting and producing economic and financial statistics, (vi) acting as a fiscal agent of the Government and public corporations, and (vii) cooperating with other domestic and overseas regulatory authorities.

2.1.4 *Expanding the provisions in relation to the Bank's administration of dormant accounts (Clause 27)*

To empower the Central Bank to deal more effectively with dormant account balances held by the Bank, clause 27 of the Bill will introduce new provisions replacing the existing provisions of section 24 of the Act.

When enacted, the new clause 27 will provide for the Central Bank to accept and pay interest on deposits required to be transferred to it by banks under the BTCRA, to pay out money for payment to a person entitled, and for the Central Bank to establish a Fund for deposits so received from the banks under the BTCRA.

Clause 27 also sets out the circumstances and parameters within which (a) money deposited is to be transferred by the Bank to the Treasurer; (b) money deposited may on the direction of the Minister be refunded by the Treasurer to the Bank for payment to an entitled person; (c) an entitled person may apply to the bank which initially transferred the money to the Central Bank for a refund; (d) interest is payable on money deposited; and (e) it is made an offence for a person to make a fraudulent claim for a refund of money deposited.

2.2 PERSONAL AUTONOMY

2.2.1 *Strengthening the personal autonomy of the Central Bank's officials (Paragraphs 2, 4 and 6 of the Schedule to the Bill)*

To strengthen the personal autonomy of the Central Bank's officials, the proposed provisions in the Schedule seek to:

- (i) Establish a legal framework for staggered appointments for members of the Board

The objective of establishing a legal framework for staggered appointment for the officials is to ensure effective continuity of the Central Bank's decision making mechanisms.

- (ii) Further clarify the appointment of Board members

Regarding the appointment procedures, the Schedule seeks to clarify that the Governor, Directors, and Deputy-Governors are appointed by the Governor-General, on the advice of the Minister of Finance, and after consultation with the Central Bank's Board—in line with current international central banking practices.

- (iii) Further clarify dismissal procedures, tenures and qualification requirements

The Schedule will also seek to clarify that: (i) the tenures of the Governor, Directors, and Deputy-Governors are for five years and, as is the current practice, may not be renewed more than twice (the current text used in the Schedule, could suggest some ambiguity in intent); (ii) disqualification criteria include being a member of either House of Parliament, an officer or employee of an agency of the Government or other public entity, as well as disqualification by a competent authority from practicing a profession, and engagement in illegal activity; (iii) grounds for dismissal be limited to disqualification criteria, incapacity by physical or mental illness, or serious misconduct,

and (iv) the vacancies in the office of Governor, Deputy Governor or a director, be filled within sixty days.

The proposed Schedule will when enacted, also increase the complement of the Board and require the reasons for the removal of the Governor from office to be published.

2.3 FINANCIAL AUTONOMY AND CREDIT TO THE GOVERNMENT

2.3A Financial Autonomy

2.3A.1 *Clarify the legal framework for establishing and using reserves other than the General and Revaluation Reserves (Clause 7)*

Section 7 of the Act allows the Central Bank to retain all of its distributable earnings until the amount of the General Reserve exceeds the greater amount of twice the authorized capital of the Bank or fifteen per cent (15%) of the Bank's demand liabilities. However, the Minister of Finance may determine the distribution in a way not prescribed in the Act and there is currently no statutory limitation on the usage of the General Reserve and the procedures to establish other reserves are not clear.

Clause 7 of the Bill, will clarify the legal framework for establishing and using reserves and mandate the Central Bank to establish a General Reserve for the sole purpose of covering losses sustained by the Central Bank and that other reserves may be built by retaining excess distributable earnings which otherwise would be distributed to the government.

2.3A.2 *Establish the provision for covering shortfall in capital (Clause 33)*

Pursuant to section 6(2) of the Act, any capital required to make up the authorised capital of the Bank is to be paid from the Consolidated Fund, at such times and in such amounts as determined by the Board of the Bank, with the approval of the Minister of Finance.

Clause 33 will introduce a more **definitive reporting framework** and process of accountability and provide more specificity on how the Bank is to notify the Minister of Finance of any losses. Specifically, clause 33 will require the Central Bank to report capital shortfalls (when the amount of the Bank's assets falls below the aggregate amount of its demand liabilities and unimpaired authorized capital) to the Minister of Finance within thirty (30) days and to request the Minister of Finance to recover the authorized capital.

2.3B Credit to the Government

2.3B.1 *Strengthen statutory safeguards on short-term lending to the Government (Clause 20)*

Over the years, central banks' provision of credit to the Government has received considerable attention, given the adverse implications of excessive money creation to the monetary stability objective. Given the deleterious effects, many central banking legislative reform exercises have introduced more restrictive provisions for these activities, inclusive of an outright ban. A more middle of the road approach is that if the central bank does provide credit to the Government, it should be strictly limited and always at market interest rates.

The Act, while limiting the amount of advances to the Government, does not contain any limitation as to the maturity of advances to the Government, nor does it require the computation of market-related interest charges. The statutory limitation on the amount of short-term advances is currently 10% of the average or estimated ordinary revenue of the Government, whichever is the lesser.

Reflecting international best practice for central bank loans to the Government, clause 20 of the Bill seeks to: (i) limit the types of credits to intra-day credits and loans with maturity of up to 3 months, and (ii) specify the application of market-related interest to such short-term loans (which codifies the Bank's current practice).

2.3B.2 *Introduce adequate safeguards for the subscription of government and public entity securities (Clause 21)*

Currently, the Act does not specify any limit on the Central Bank's subscription of government and other public securities in primary markets (see section 29(1)(b) through (e) of the Act). Clause 21 therefore seeks to introduce adequate safeguards for such subscriptions including:

- (i) limiting types of securities to negotiable securities with market-related interest rates, and
- (ii) setting the ceiling on subscription of government and public corporation securities in primary markets, to the lesser of 15% of the government's average ordinary revenue or 15% of its estimated ordinary revenue. This would represent a change to the requirement in section 29(1)(c) of the Act that the securities issued or guaranteed by the Government must be greater than 20 years to maturity and that the value is limited to 20% of demand liabilities, as most central banks link lending to the Government to some

measure of revenues.

2.4 EXTERNAL RESERVE MANAGEMENT AND EXCHANGE MATTERS

2.4A External Reserve Management

2.4A.1 Revise the provisions for external reserve management in order to enhance both management flexibility and internal control (Clause 16)

Section 18 of the Act limits the proportion of securities maturing beyond five (5) years that may be held as reserve assets and defines the minimum amount of reserve assets as a percentage of banknotes and coins in circulation. These statutory requirements, which have not been revised since the 1970s, severely circumscribe the Central Bank's flexibility in reserve management. Given the development of extensive secondary market operations for foreign government securities, the maturity profile of securities presents less of a risk for asset disposition and, in today's environment, is more of a liquidity management issue best handled within the context of investment policy guidelines.

To enhance external reserve management accountabilities, clause 16 will, when enacted, empower the Central Bank to manage all official reserves of external assets of The Bahamas giving priority to safety before profitability of such assets, and set out specific powers and parameters of the Bank in the management of the external reserve. The proposed provisions will:

- (i) clarify that reserve assets have to be denominated in freely convertible currencies; and
- (ii) require automatic reporting by the Bank to the Minister of Finance where the reserves decline to a level that may jeopardize the Bank's objectives and the Bank is unable to remedy such decline.

2.4A.2 Increase the Central Bank's flexibility in holding deposits of other External Agencies (Clause 22)

Section 29 of the Act, provides for the Central Bank to open accounts for, accept deposits from, and collect money for or on account of the Government, public corporations and commercial banks.

Clause 22 will make explicit the Bank's existing practice of holding deposits for a number of international entities, including the IMF, the Bank for International Settlements, the International Bank for Reconstruction and Development and regional central banks—which is common among central

banks.

2.4B Exchange Matters

2.4B.1 Clarify the institutional allocation of responsibilities for the exchange rate regime and policy (Clause 15)

Clause 15 seeks to clarify the institutional allocation of responsibilities for the exchange rate regime and policy currently in the Act. In that regard, the current exchange rate regime and policy were decided in the 1970s by the Minister of Finance, in consultation with the Central Bank. The Minister is also empowered by the Exchange Control Regulations Act to prescribe the exchange control regulations to be implemented by the Bank. In light of these positions on exchange matters, the new legislative proposal prescribes that the exchange rate regime and policy be decided by the Minister of Finance, in consultation with the Bank.

Also when enacted, the Bill will exclude the provisions of section 9 of the Act, which relates to the parity of the Bahamian dollar and which express the value of a Bahamian dollar in terms of gold. The proposal is based on the fact that the value of the Bahamian dollar is no longer expressed in this manner; the Bahamian currency is currently pegged to the U.S. dollar, according to a parity of one Bahamian dollar for one U.S. dollar.

2.5 PRUDENTIAL POLICY

2.5A Macro-/Micro-prudential Policies

2.5A.1 Strengthen the provisions for the Statutory Reserve requirement (Clause 23)

In the current practice, the Statutory Reserve is considered as a subset of other micro-prudential liquidity requirements (Liquid Assets requirement). As the Statutory Reserve may also be used as a monetary policy instrument, clause 23 seeks to distinguish the policy objectives pursued by the Statutory Reserve from those of other prudential requirements. The Bill also removes the provisions which relate to the Statutory Reserve from Part VI of the Act *Relations with the Commercial Banks*, to Part IX *General Powers of the Bank*.

2.5A.2 Strengthen credit control tools in the Act in line with the Central Bank's possible macro-prudential mandate (Clause 25)

Credit control tools in the Act have been mainly regarded as direct methods of monetary control, while other credit control tools, including standards on Loan-to-Value (LTV) and Debt-to-Income (DTI) ratios, have been introduced

by the decisions of the Bank’s Monetary Policy Committee. So that these credit control tools, which could serve macro-prudential policy, as well as monetary policy, are appropriately supported by legal underpinning, clause 25 will empower the Central Bank to make regulations establishing these other credit control tools.

2.5A.3 *Modernize the provisions for the conduct of credit operations (Clause 22 (amends section 29 of the Act))*

Section 29 of the Act enables the Central Bank to conduct credit operations by taking goods and warehouse warrants as collateral. However as the continued use of warehouse warrants and goods as loan collateral is antiquated, clause 22 removes these provisions in order to strengthen safeguards to the Central Bank’s credit operations.

2.5B Lender of Last Resort

2.5B.1 *Providing adequate safeguards for the emergency liquidity assistance and lending as solvency support (Clause 26)*

The current provisions of the Act (sections 29(1)(f) and (2)), provide for the Bank to make loans to commercial banks or any public corporation, with a specified restriction on maturity and at a stated discount rate.

Because of the nature of the Central Banks’ activities vis-à-vis the banking sector, the proposed provisions in the Bill seek to establish a discrete provision on its lender of last resort facility—the short-term emergency liquidity assistance to be accessed by commercial banks. Clause 26 will, when enacted, empower the Bank to:

- require that a commercial bank be solvent but illiquid,
- demand adequate collateral with adequate haircut rates or where the Government guarantees the repayment. The current collateral requirement has been reformulated from the 85% haircut rate of the market value of the relevant instrument to a minimum value of collateral of 120% of the value of the loans or advances,
- limit the maturity,
- charge the above-average interest rates; and
- clarify that the purpose of the emergency liquidity assistance is to ensure the stability of the financial system.

2.6 FINANCIAL PROVISIONS

2.6.1 *Introduction of new requirements for the Bank’s financial reporting*

Clauses 31, 32, 33 and 34 seek to introduce new requirements which will:

- provide that the net profit or loss of the Central Bank is to be determined in accordance with the International Financial Reporting Standards (IFRS) and mandate how the distributable earnings of the Bank are to be determined. The Central Bank already uses the IFRS as standards for its financial reporting, and the Bill would reflect the Bank's current practices (clause 31 and 32);
- amend the provisions for calculating the amount of the distributable earnings to be allocated to the General Reserve, to fifteen per cent of the **average** amount (instead of the current single year formulation) of demand liabilities over a three year period (clause 32);
- provide for the allocation of all distributable earnings to the General Reserve within 30 days after the Bank has submitted its statement of accounts to the Minister of Finance (clause 32);
- clarify that other reserves may be built by retaining excess distributable earnings which otherwise would be distributed to the government, with the approval of the Minister of Finance (clause 32);
- stipulate the process for the treatment of negative distributable earnings (clause 32);
- establish provisions for covering shortfall in capital (clause 33), and
- mandate the Central Bank to prepare the statement of the accounts of the Bank to reflect its operations and financial condition, in accordance with the IFRS (clause 34).

2.6.2 External Audit (Clause 37)

Section 34(1) of the Act only provides that the Bank's accounts be audited annually by auditors appointed by the Board, on the approval of the Minister of Finance. In practice, the Central Bank's financial statements are audited by internationally recognized external auditors, in accordance with the International Standards of Audit; while the rotation-cycle of external auditors is three years. The external auditors also currently provide Management Reports to the Audit Committee of the Bank.

Clause 37 of the Bill seeks to clarify and codify the Bank's current practices, by explicitly providing that the external audit is to be conducted in accordance with the International Standards on Auditing by independent, reputable and experienced external auditors appointed by the Board with the approval of the Minister for a minimum period of three consecutive years and a maximum period of six consecutive years. Clause 37 will also provide for the establishment, by statute, of

the Audit Committee and for the external auditors to report to that 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.

2.7 GOVERNANCE

Functional and operational support is also served through a number of committees that provide input into the decision and administrative processes of the Central Bank.

The following proposed new provisions set out in the Schedule of the Bill, seek to clearly delineate the powers of these decision-making bodies and provide for their legal underpinning.

2.7.1 *Allocation of responsibilities between the Board and the Monetary Policy Committee (MPC) (Paragraph 11 of the Schedule)*

Under the Act, the Board is “responsible for the policy and general administration” of the Central Bank and the Governor is the “chief executive officer”. In line with these provisions, internal oversight and policy setting, except monetary policy, is carried out by the Board and policy implementation is carried out by the Governor. Monetary policy is determined by the Bank’s Monetary Policy Committee, chaired by the Governor and composed of the Deputy Governor, Management and other high-level staff. Paragraph 11 of the Schedule to the Bill will include provisions which set out the composition of the MPC and define its functions.

2.7.2 *Provide the legal underpinnings to the Audit Committee and Investment Committee (Paragraphs 9 and 10 of the Schedule)*

Paragraphs 9 and 10 of the Schedule to the Bill will provide for the legal underpinning of the Audit Committee and the Investment Committee—both of which are already in place within the Central Bank—thereby enhancing the effectiveness and robustness of their functions. In order to increase the effectiveness of the Audit Committee’s functions to resolve possible disagreements between external auditors and the Bank’s management and Board, the new provisions will, *inter alia*, expand the composition of the Audit Committee (which currently comprises only members of the Board of Directors), to include one external financial expert, in line with recent trends in central bank governance.

2.8 LEGAL ENVIRONMENT

2.8.1 *Designated contraventions and fixed penalties (Clause 47)*

Clause 47 sets out the powers of the Central Bank to impose administrative monetary penalties and makes it clear that in addition to imposing a fine or administrative monetary penalty, the Central Bank may also exercise other relevant enforcement powers under the Central Bank of The Bahamas Act or the Banks and Trust Companies Regulation Act.

2.8.2 *Provision for the integrity of the central banking legislation (Clause 58)*

Clause 58 of the Bill introduces new provisions which, when enacted, would provide for the supremacy of the Act where a conflict arises in relation to the provisions of any other Act and that the Act is not to be repealed, amended, or suspended, in whole or in part, by other laws, unless the subsequent legislation specifically amends the Act; and, further, that the Act may only be repealed or amended on a recommendation from, or after consultation with the Central Bank. The proposed provisions reflect the trend among benchmarked jurisdictions which have such supremacy of law provisions, including New Zealand, Bangladesh, India and Pakistan.

2.8.3 *Judicial Review (Clause 62)*

The scope of judicial review over the Central Bank's actions is not specified in the Act or the BTCRA. In order to strike balance between the complex and technical nature of the Bank's policy decisions and the right to judicial review, Clause 62 will insert new provisions for delineating the extent of judicial or administrative reviews and arbitration proceedings and proposes limits on the scope of such reviews or proceedings to grounds of bad faith and gross negligence. The Bill provides that a court may award monetary damages but may not enjoin, stay, modify, suspend or set aside the action in question.

2.8.4 *Confidentiality, Collection of Statistics and Exchange of Information (Clauses 39, 41 and 43)*

The Central Bank proposes to further enhance the legal environment of the Central Bank by amending existing provisions which address the Bank's duties and powers to collect, exchange and to keep information confidential.

(1) Information Exchange and Confidentiality (clauses 41 and 43)

Section 38 of the Act, currently combines the separate and distinct provisions that address the Bank's duty to keep information confidential, and its ability to exchange information with domestic and overseas regulatory authorities. The Bank is recommending that where

appropriate, existing provisions relating to the Bank's disclosure of confidential information be streamlined and revised to avoid reiteration and the information exchange provisions be addressed in a separate clause 41 under the heading '*Information exchange*'.

(2) Collection of Statistics (clause 39)

Clause 39 seeks to insert provisions that will increase the Central Bank's flexibility to collect information by including a more explicit recognition of the Bank's powers to collect statistical information and data, consistent with its current practice and stated functions.

2.8.5 *Preferential rights, Immunities and Immunity of officials and staff (Clauses 59, 60 and 61)*

Clauses 59, 60 and 61 of the Bill, will insert provisions for the Bank's preferential rights and immunity that seek to:

- (1) confer on the Central Bank preferential status in respect of collateral provided to secure a failing bank's obligations to the Central Bank;
- (2) grant certain immunities to the Central Bank by prohibiting orders of attachment or writs of execution against the Bank's properties or accounts prior to final judgment in any legal proceeding, and
- (3) expand the category of persons protected from civil and criminal liability and whom the Central Bank may indemnify in respect of good faith discharge of their functions.

III. CONSULTATION PERIOD

3. The Central Bank invites your comments on the proposed legislation, which should be submitted no later than July 31st, 2018. Your comments and questions regarding the proposals should be directed to:

The Policy Unit
 Bank Supervision Department
 Central Bank of The Bahamas
 Frederick & Market Streets
 P.O. Box N 4868
 Nassau, Bahamas
 Tel (242) 302-2615

Fax (242) 356-3909

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ANNEX**CENTRAL BANK OF THE BAHAMAS BILL, 2018****Arrangement of Sections**

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CENTRAL BANK OF THE BAHAMAS BILL, 2017

A BILL FOR AN ACT TO CONSOLIDATE AND MODERNISE THE LAW GOVERNING THE CENTRAL BANK OF THE BAHAMAS; TO PROVIDE FOR THE CONTINUANCE OF THE CENTRAL BANK, ITS FUNCTIONS, POWERS AND DUTIES 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, 2018.
- (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 —

“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 question under subsection (4) of section 20 is raised;

“Bank” or **“Central Bank”** means the Central Bank of The Bahamas, continued as a body corporate by section 3 of the repealed Act, and which continues under section 3 and is governed in accordance with and for the purposes of this Act;

- “bank”** has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act¹;
- “banking business”** has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act and “banker” shall be construed accordingly;
- “Board”** means the Board of Directors of the Central Bank appointed pursuant to paragraph 2(1) of the *Schedule*;
- “civil and administrative investigations and proceedings”** means proceedings in any court of law, including in the jurisdiction of an overseas regulatory authority and 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 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 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 37;
- “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 37;
- “financial institution”** means a person carrying on a business regulated under the laws 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;

¹ *Vol. VII, (Ch. 316)*

- “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 Central Bank of The Bahamas 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;
- “penalty”** means an administrative monetary penalty imposed by the Bank and includes a fine payable pursuant to section 46;
- “public corporation”** means a body corporate established directly by statute for public purposes;
- “regulations”** means regulations made under this Act or any other law;
- “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*);
- “securities”** has the meaning assigned in section 2 of the Securities Industry Act, 2011;
- “year”** means the financial year of the Central Bank.

PART II – CONTINUANCE, OBJECTIVES AND FUNCTIONS OF THE BANK

3. Continuance of the Central Bank of The Bahamas.

- (1) The Central Bank of The Bahamas, continued as a body corporate under section 3 of the repealed Act, continues to exist for the purposes of and shall be governed in accordance with this Act.
- (2) The Bank is a body corporate with full legal capacity and administrative and financial autonomy, having 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, etc.

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. Objectives and functions of the Central Bank.

- (1) The main objectives of the Central 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.
- (2) The functions of the Bank are to —
 - (a) determine and implement monetary policy;
 - (b) advise the Minister on the exchange rate policy and implement the exchange rate policy determined by the Minister;

- (c) hold and manage all official external reserves of The Bahamas;
 - (d) issue and manage the currency of The Bahamas;
 - (e) collect and produce statistics in respect of the economy and the financial system of The Bahamas;
 - (f) promote and ensure the establishment and oversight of a safe, sound and efficient national payment system;
 - (g) regulate and supervise financial institutions;
 - (h) act as fiscal agent of the Government and of any public corporation of The Bahamas;
 - (i) advise the Minister on any matter of a financial or monetary nature referred by the Minister to the Bank for its advice; and
 - (j) 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.
- (3) 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.

PART III – CAPITAL AND RESERVES

6. Capital of the Central Bank.

- (1) The authorised capital of the Central 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 Bank and approved by the Minister.
- (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 Central Bank shall establish and maintain a General Reserve.
- (2) The General Reserve may not be used except for the purposes of covering losses sustained by the Bank.
- (3) The Bank shall establish 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.

PART IV – CURRENCY

8. Currency of The Bahamas.

- (1) The currency of The Bahamas shall be the notes and coins issued by the Central 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.

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 Central Bank to issue notes and coins.

- (1) The Central 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 Central 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) Notes issued by the Central Bank are legal tender in The Bahamas at their face value for the payment of any amount.
- (2) Coins issued by the Central 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 —
- (a) shall not be legal tender in The Bahamas and shall be withdrawn from circulation;
 - (b) notwithstanding subsection (4) and subject to section 13, is redeemable at any time by the Bank on the demand of any person; and
 - (c) 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.
- (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.

13. Damaged currency, etc.

- (1) No person is entitled as of right to recover from the Central 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 Central Bank, make, design, engrave, print, reproduce, use, issue, or publish any article or thing resembling or having a likeness to a note or coin as to be likely to be confused with or mistaken for such note or coin.
- (2) The Bank shall require a person to withdraw from circulation any note or coin 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 or coin 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.

PART V – GOLD, FOREIGN EXCHANGE, EXTERNAL RESERVE, ETC.

15. Power of Central Bank in relation to foreign exchange, etc.

Without prejudice to the objective of the Central 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).

16. External reserve.

- (1) The Central 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 COMMERCIAL BANKS

17. 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 Central 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 22(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.

PART VII – NATIONAL PAYMENT SYSTEM

18. Central Bank to regulate payment systems.

The Central Bank may, in the exercise of its functions pursuant to sections 5(1) (b) and 5(2)(f) —

- (a) establish, operate, organise, promote, participate or assist in the establishment, operation, organisation 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
- (b) 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.

PART VIII – RELATIONS WITH THE GOVERNMENT

19. Bank as fiscal agent for Government.

- (1) The Central 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, where the Bank can so act consistently with its functions under this Act.
- (2) Without prejudice to section 22, the Bank may 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.

20. Advances to the Government.

- (1) Subject to the provisions of this section, the Central 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 loan, which may be outstanding at any one time, shall not exceed ten per centum of the average ordinary revenue of the Government or ten 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.

21. Subscription to Government securities from primary markets.

- (1) Subject to the provisions of this section, the Central 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 purchase or subscribe from primary markets Treasury Bills and securities issued or guaranteed by the Government or a public corporation where —
- (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 fifteen per centum of the average ordinary revenue of the Government, or fifteen per centum of the estimated ordinary revenue of the Government, whichever is the less;
 - (b) the Treasury Bills and securities are negotiable; and
 - (c) the interests rates on the Treasury Bills and securities are based on market related interest rates.

PART IX – GENERAL POWERS OF THE BANK

22. Powers of the Central Bank.

The Central 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, a commercial bank 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) buy, and sell on spot and forward and under repurchase agreements, hold, lend, and borrow securities;
- (f) buy, sell, and hold gold and other precious metal; and
- (g) 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).

23. Commercial banks must maintain Statutory Reserve.

- (1) Every commercial bank shall establish and maintain a statutory reserve (“the Statutory Reserve”) of not less than that percentage of the amount of the basis for the Statutory Reserve that is at any time fixed by the Central Bank.
- (2) The Central Bank shall by order fix, and may from time to time vary, the percentage and the basis for the Statutory Reserve required by subsection (1).
- (3) An order made by the Bank under subsection (2) —
 - (a) may fix different percentages for different classes of commercial banks; and
 - (b) shall specify the basis and require all of the Statutory Reserve to be lodged with the Bank.
- (4) A commercial 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 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.

24. Power of Bank to fine.

- (1) Notwithstanding section 45, the Central Bank may, where the Bank is satisfied that a commercial bank has committed an offence, order the commercial bank to pay a fine —
 - (a) in the case of an offence committed under section 23, of such percentage of the deficiency, as may by order be fixed by the Bank from time to time, for every day during which the contravention or failure continues;
 - (b) in the case of an offence committed under section 17, 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 order 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 23 or 17 is committed.
- (3) Where the Bank makes an order under this section —
 - (a) the order shall be put in writing;
 - (b) the order shall specify the offence which the commercial bank committed and the penalty imposed by the Bank;
 - (c) a copy of the order shall be given to the commercial bank; and

- (d) once the commercial bank pays the fine as ordered, the commercial bank 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 commercial bank 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 Central Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, including to require the bank in question to take corrective measures.

25. Credit controls.

- (1) Subject to subsection (2), the Central 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 Central 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 22;
 - (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 Central Bank from time to time by [regulations/orders/directives] and as determined by the Central Bank at the time of a particular transaction, and such discount levels prescribed by the Central Bank shall reflect the risk characteristics 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.

27. Transfer of the Central Bank's dormant account balances to the Treasurer.

- (1) The Central Bank may accept deposits that are required to be transferred to it in accordance with the Banks and Trust Companies Regulation Act (*Ch. 316*), pay interest on money so deposited and pay out money for payment to a person entitled thereto.
- (2) The Central 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 Central 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 Central Bank, in equal amount where the funds were paid to the Central Bank in Bahamian dollars and in an equivalent amount where the funds were paid to the Central Bank in any other currency, together with interest accrued on such amount while it was held by the Central 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 Central Bank.
- (5) The Central 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 Central 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 Central 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 Central Bank represents to the Central 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 Central Bank in any other currency; and
- (b) the entitled person makes a claim to the bank that paid the funds to the Central Bank within ten years of the transfer to the Central Bank.
- (8) The Minister shall, on application made by the Central 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 Central 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 Central Bank may invest and reinvest any amount transferred to the Bank pursuant to section 20(4) of the Banks and Trust Companies Regulation Act (*Ch. 316*).
- (11) The Central 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.

28. Ancillary business.

- (1) The Central 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 29th December, 2000.

29. Prohibited activities.

Except as expressly authorised by this Act, the Central 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
- (b) shall not grant unsecured loans or advances to any person.

PART X – 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 Central 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 30 days after submitting a statement of the accounts under section 35(1), the Central 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 Central 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 Central 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 Central 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 Central 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 Central 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 financial institutions.
- (4) The audit under subsection (1) shall be conducted in accordance with the International Standards of Auditing.
- (5) Subject to subsection (7) 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 at any time by the Board for a good cause.

PART XI – 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 Central 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 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; or
 - (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) applies 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 Central 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(2).
- (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 Central 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 Central 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) an international financial organization.
- (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 Central 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 director, officer, employee, agent or adviser of the Central Bank 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 or any other law.
- (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 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 XII – OFFENCES, CONTRAVENTIONS AND PENALTIES

44. Procedure in relation to offences.

- (1) Every offence under this Act shall, where prosecuted, be tried summarily.
- (2) The Central Bank shall, where an offence under this Act also constitutes a designated contravention under section 47, make an election in accordance with section 48.

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. Central Bank may impose general penalties.

- (1) The Central Bank may order a person to pay a penalty not exceeding two [hundred] thousand dollars in any case where it is satisfied that the person has committed an offence under —
 - (a) regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations; or
 - (b) the Financial Transactions Reporting Act or any regulations made pursuant to that Act
- (2) The Bank may order the payment of such penalty as may be prescribed by regulations if satisfied that any person has committed a contravention or an offence under or in relation to —
 - (a) a provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (b) a condition or limitation imposed by the Bank;
 - (c) a direction issued by the Bank pursuant to section 6C(1) or section 18(1)(h) of the Banks and Trust Companies Regulation Act (*Ch.316*);
 - (d) section 47; or
 - (e) an order made by the Bank under this or any other Act or a regulation made pursuant to this or any other Act.
- (3) 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 contravention or an offence;
 - (ii) nature of the contravention or offence which the person is believed to have committed;
 - (iii) penalty imposed by the Bank; and
 - (b) give a copy of the order to the person named in the order.
- (4) An order made under this Part may be enforced in the same manner as an order of the court.

47. Designated contraventions and fixed penalties.

- (1) The Central Bank may by regulation designate contraventions of this or any other Act or a regulation made pursuant to this or any other Act and impose fixed penalties in respect of such designated contraventions.

- (2) The Bank may pursuant to subsection (1) —
- (a) designate as a contravention —
 - (i) a breach of, or non-compliance with, a specified provision of this or any other Act or a regulation made pursuant to this or any other Act;
 - (ii) a non-compliance with any of the following —
 - (A) a condition or limitation imposed by the Bank;
 - (B) a direction issued by the Bank pursuant to section 6C(1) or section 18(1)(h) of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (C) an order made by the Bank under this or any other Act or a regulation made pursuant to this or any other Act;
 - (b) classify a designated contravention as a minor, serious or very serious contravention; and
 - (c) subject to subsections (3), (4), and (6), impose a fixed penalty or a range of fixed penalties in respect of a designated contravention.
- (3) The maximum penalty fixed for a designated contravention shall be —
- (a) for a contravention committed by an individual, in the case of—
 - (i) a minor contravention, two thousand five hundred dollars;
 - (ii) a serious contravention, five thousand dollars; and
 - (iii) a very serious contravention, ten thousand dollars;
 - (b) for a contravention committed by a company, in the case of—
 - (i) a minor contravention, ten thousand dollars;
 - (ii) a serious contravention, fifty thousand dollars; and
 - (iii) a very serious contravention, one hundred thousand dollars.
- (4) A minor contravention shall, where it consists of a late or erroneous filing, constitute a separate contravention for each day, or part of a day, during which it is continued.
- (5) The Bank shall determine the amount of the penalty for a designated contravention by taking into account —
- (a) the degree of intention or negligence on the part of the person who committed the contravention;
 - (b) the harm done by the contravention;
 - (c) the history of the person or financial institution that committed the contravention having regard to any prior contravention or conviction under this Act within the five year period immediately before the contravention;
 - (d) whether the financial institution or person concerned brought the contravention to the attention of the Bank;
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- (e) the seriousness of the contravention;
 - (f) whether or not the contravention was inadvertent;
 - (g) the efforts, if any, made to rectify the breach or non-compliance 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 the purposes of this section —
- (a) a designated contravention does not include a breach referred to in section 46(1); and
 - (b) subsection (5) does not apply to a penalty fixed under subsection (2)(c).

48. Central Bank must make an election.

- (1) The Central Bank, where a breach or non-compliance described in section 46 or 47(a) 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 Central Bank elects to proceed with a breach or non-compliance as a contravention, this shall not preclude the Bank from exercising any of its other powers under this Act or any other law.

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

The Central Bank shall, where the Bank pursuant to section 48 elects to proceed with a matter by imposing a penalty on a person, give to such person prior to imposing the penalty a written notice containing 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 contravention or offence;
- (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 contravention or offence and the Bank may issue an order imposing 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 contravention or offence and all proceedings in respect of such contravention or offence terminates upon such payment.
- (2) The Central Bank —
 - (a) where a person makes representations in accordance with a notice under section 49, shall decide on a balance of probabilities whether such person committed the contravention or offence; and
 - (b) may in accordance with this or any other Act or a regulation made pursuant to this or any other Act, do either one of the following —
 - (i) where the Bank decides a contravention or offence has been committed, by order impose the penalty proposed or a lesser penalty;
 - (ii) where the Bank decides a contravention or offence 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 contravention or offence and the Bank may in accordance with this or any other Act or a regulation made pursuant to this or any other Act—
 - (a) by order impose the penalty proposed or a lesser penalty; or
 - (b) impose no penalty.

51. Publication of penalties.

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

PART XIII – MISCELLANEOUS

52. Exemption.

- (1) The Central 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 and coins 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 Central 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 Central Bank shall not commence proceedings in respect of a designated contravention —
 - (a) in the case of a minor contravention, later than six months after the subject-matter of the proceedings become known to the Bank; or
 - (b) in the case of a serious contravention or a very serious contravention, 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 Central Bank imposing a penalty in respect of a serious contravention or a very serious contravention 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.

56. Conflicts of interest.

- (1) The Central 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 Central 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 other laws, 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 Central Bank.

59. Preferential right.

- (1) The Central 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 Central Bank, if such asset or collateral is in the possession of the Bank.
- (3) 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 (*Ch 316*), any collateral provided by a debtor to the Central Bank under section 26 of this Act, shall have the effect of a fixed charge over the underlying assets in favor of the Central 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 Central 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 Central 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 Central Bank.

- (1) No civil or criminal liability shall attach to a director, Deputy Governor, employee or agent of the Central Bank, or correspondent acting under the direction of the Bank, 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 —
 - (a) the exercise or purported exercise of any power under this Act or any other law;
 - (b) the performance or purported performance of any function or duty under this Act or any other law; or
 - (c) the compliance or purported compliance with this Act or any other 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, even after the termination of their functions or duties, against the cost of defending their actions in connection with paragraphs (a), (b) or (c) of subsection (1).

62. Judicial or administrative review and arbitration.

In any court, administrative review 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 law —

- (a) the court, administrative body or arbitration panel may examine only whether the defendant acted unlawfully in bad faith, or with gross negligence, the burden of proof of which shall be borne by the claimant;
- (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, administrative body or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, modify, stay, suspend, or set aside the action in question.

63. Repeal.

The Central Bank of The Bahamas Act (*Ch. 351*) is 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 Central 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 un-liquidated, 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, have been continued or commenced by or against the Bank.
- (2) A reference to the Central 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 Central 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 Central Bank.

Every act or thing done by the Central 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 Central 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 (*Ch. 316*), or any other law;
 - (d) adopt sanctions imposed by the Bank under this Act, the Banks and Trust Companies Regulation Act (*Ch. 316*), or any other 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, Monetary Policy Committee, Investment 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 16;
 - (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; and
 - (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 re-appointment 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 5 and 6, such terms and conditions may not be altered to his disadvantage during his tenure of office;
 - (b) not more than two deputy governors (“Deputy Governors”) of the Bank each of whom shall be appointed for a term of five years and eligible for re- appointment for no more than two additional terms; and
 - (c) not less than four and not more than 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 re-appointment 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 directors other than the Governor or Deputy Governors 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 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 sub-paragraph (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 sub-sub-paragraph (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 sub-paragraph (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 sub-paragraph (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 sub-paragraphs (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 21 days of the date of a decision made under sub-paragraph (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 months' 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 sub-paragraph (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) Three 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 Governor-General by the Board.
- (2) The amount of remuneration determined under sub-paragraph (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 sub-paragraph (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
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- (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. 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 sub-paragraph (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).

13. 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 purpose of the Bill is to consolidate and modernise the law governing the Central Bank of The Bahamas and to provide for the continuance of the Bank, its functions powers and duties.

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

Clause 2 defines key words and phrases used in the Bill.

Clause 3 provides for the continuance of the Central Bank as a body corporate subject to the provisions of the Bill.

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

Clause 5 provides for the objectives and functions of the Central Bank.

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

Clause 7 mandates the Central Bank to establish a General Reserve for the purposes of covering losses sustained by the Bank and 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.

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

Clause 9 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 empowers the Central Bank as the sole authority with the right to issue notes and coins in The Bahamas.

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

Clause 12 provides for the notes and coins issued by the Central 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 provides that no person is entitled as of right to recover from the Central 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 prohibits the counterfeiting and reproduction of notes and coins issued by the Central Bank and creates criminal offences in respect of such counterfeiting and reproduction. Production, issuance or publication of any note or coin in The Bahamas requires the consent of the Bank.

Clause 15 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 16 empowers the Central 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 17 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 Central Bank and empowers the Bank by order to fix and from time to time vary the percentage. Clause 17 makes it an offence, punishable by a fine, for a bank not to comply with its liquid assets percentage requirements.

Clause 18 gives the Central Bank broad powers to regulate the payments system in The Bahamas.

Clause 19 empowers the Central 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 20 prohibits the Central 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 21 generally prohibits the Central 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 22 specifies certain general powers of the Central Bank in the discharge of its functions.

Clause 23 provides for every commercial bank to establish and maintain the Statutory Reserve, for the Central Bank by order to fix and from time to time vary the percentage and basis for the Statutory Reserve and for the requirements of an order made by the Bank. Clause 23 makes it an offence where a commercial bank fails to establish or maintain its Statutory Reserve and the commercial bank becomes 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.

Clause 24 gives the Central Bank broad powers to impose by order a fine on a commercial bank that the Central Bank believes to have committed specified offences under the Act and provides for a bank that pays a fine in full to be absolved from prosecution for the offence to which the fine relates but does not preclude the Central Bank from exercising other relevant powers under the Banks and Trust Companies Regulation Act, including to require the bank in question to take corrective measures.

Clause 25 empowers the Central Bank to make regulations establishing credit controls which regulations 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.

Clause 26 provides for the Central 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 provides for the Central Bank to accept deposits required to be transferred to the Bank in accordance with the Banks and Trust Companies Regulation Act and to pay interest on money deposited and pay out money to any entitled person. The Bank is required to establish a Fund for the deposits received and Clause 27 sets out the circumstances and parameters within which (a) money deposited is to be transferred by the Bank to the Treasurer and (b) money deposited may on the direction of the Minister be refunded by the Treasurer to the Bank for payment to an entitled person and (c) an entitled person may apply to the bank which initially transferred the money to the Central Bank for a refund and (d) interest is payable on money deposited and (e) it is made an offence for a person to make a fraudulent claim for a refund of money deposited.

Clause 28 gives the Central Bank 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 prohibits the Central 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 establishes the thirty-first day of December as the end of the financial year of the Central Bank.

Clause 31 provides that the net profit or loss of the Central 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 mandates when and how distributable earnings are to be allocated by the

Central Bank.

Clause 33 provides for coverage where an external audit reveals the Central 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 mandates the Central 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 provides for the Central 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 provides for the Central 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 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 empowers the Central 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. Documents provided become the property of the Bank but a person is not required 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. The Bank may in its discretion return a document to the person who supplied it to the Bank. Clause 38 makes it an offence not to comply with a requirement of the Bank and, where a body corporate commits an offence, its officers or persons acting in that behalf also commit the offence and are liable to be proceeded against and punished accordingly.

Clause 39 provides for the collection of statistics by the Central Bank and empowers the Bank to obtain information from any person for the purpose of discharging the

Bank's functions under section 5(2). 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 empowers the Central 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. The grantee of a power by the Bank must, where required by a person, produce evidence of the grantee's authority and make a report to the Bank on the exercise of the authority and its results.

Clause 41 empowers the Central Bank to exchange information with other regulatory authorities in The Bahamas, an overseas regulatory authority or an international financial organisation. 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 makes it an offence for any person to supply to the Central 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 provides for the confidentiality of information and prohibits any person who is or has been a director, officer, employee, agent or adviser of the Central 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 or any other law. Clause 43 specifies the exceptional conditions and circumstances in which disclosure may be made and makes any unauthorised disclosure an offence with liability on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or both.

Clause 44 provides that every offence under the Act, where tried, is to be tried summarily and the Central Bank must where an offence also constitutes a designated contravention elect to proceed one way only, either by trial or the imposition of a penalty.

Clause 45 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 Central Bank may by order impose general penalties and the requirements of an order issued by the Bank.

Clause 47 empowers the Central Bank by regulation to designate certain breaches and offences as contraventions and to impose fixed penalties in respect of such designated contraventions. Contraventions may be classified as minor, serious or very serious.

Clause 48 mandates the Central Bank to make an election on the manner in which to treat a breach or non-compliance 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 mandates specific procedures to be followed by the Central Bank where the Bank elects to proceed with a matter by imposing a penalty on a person.

Clause 50 provides that a person who pays in full a penalty imposed by the Central Bank on an election is deemed to have committed the contravention or offence and all proceedings in respect of such contravention or offence 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 contravention or offence and impose by order a penalty only where the Bank decides a contravention or offence has been committed.

Clause 51 provides that the Central Bank may publish a statement of a contravention or offence in respect of which the Bank imposed a penalty.

Clause 52 exempts the Central 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 and coins 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 empowers the Central 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 provides for the admissibility and proof of documents appearing to have been issued by the Central 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 contravention later than six months after the subject-matter of the proceedings become known to the Bank and, in the case of a serious contravention or a very serious contravention, later than six years after the subject-matter of the proceedings became known to the Bank.

Clause 55 gives a person a right of appeal to the Supreme Court from any decision of the Bank imposing a penalty in respect of a designated contravention 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. A person 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 may extend the time prescribed as the Supreme Court deems fit. The Attorney-General must transmit to the Registrar of the Supreme Court without delay a copy of the Bank's decision and all papers relating to the appeal but is not compelled to disclose any information if the Attorney General considers that the public interest would suffer by such disclosure. The appellant at the hearing of an appeal must, before commencing his case, state all the grounds of appeal on which he intends to rely and must not, except by leave of the Supreme Court, go into any matters not raised by the stated grounds of appeal.

Clause 56 mandates the Central 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. A director who has disclosed a conflict of interest is not to be counted for the purpose of determining whether a quorum is satisfied when a relevant decision is voted on.

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

Clause 58 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 Central Bank.

Clause 59 gives the Central Bank an unconditional preferential right to use any collateral or assets which have been provided by a debtor in settlement of, or to secure its obligations to the Central Bank, if such asset or collateral 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. Where insolvency proceedings have commenced against a debtor under the Banks and Trust Companies Regulation Act, any collateral provided by a debtor to the Central Bank, shall have the effect of a fixed charge over the underlying assets in favor of the Central Bank, and such assets shall not be available to other creditors of the debtor. The Bank is not to be hindered in the exercise of its preferential right by any claim of a third party.

Clause 60 grants certain immunities to the Central 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 gives certain immunities to the officials and staff of the Central Bank. No civil or criminal liability may attach to a director, Deputy Governor, employee or agent of the Central 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. The Bank must indemnify 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, against the cost of defending their actions in connection with this section.

Clause 62 provides for judicial or administrative review and arbitration proceedings to be brought against the Central Bank, its officers, employees and agents et al. The court, administrative body or arbitration panel may examine only whether the defendant acted unlawfully in bad faith, or with gross negligence, the burden of proof of which shall be borne by the claimant. 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, administrative body or arbitration panel may if appropriate award monetary damages to an injured party but shall not enjoin, modify, stay, suspend, or set aside the action in question.

Clause 63 repeals the Central Bank of The Bahamas Act (*Ch. 351*).

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

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

Clause 66 provides that every act or thing done by the Central 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.