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No. 2 of 2008

**AN ACT TO AMEND THE CENTRAL BANK OF
THE BAHAMAS ACT**

[Date of Assent: – 31st March, 2008]

Enacted by the Parliament of The Bahamas

Short title 1.(1) This Act which amends the Central Bank of
and commence- The Bahamas Act, may be cited as the Central Bank of
ment. The Bahamas (Amendment) Act, 2008.

Ch. 351. (2) This Act shall come into operation on such
day as the Minister may appoint by Notice published in
the Gazette.

Amendment 2. Section 2 of the principal Act is amended -
to section 2 (a) in the definition of “banking business”
of the by numbering the current definition as
principal Act. sub-paragraph (i) and by inserting sub-
paragraph (ii) as follows -
“(ii) the provision of money trans-
mission services”;
(b) by the repeal of the definition of
“director” and the replacement thereof
of the following -

“director”, in relation to the Bank,
includes the Governor unless the
context otherwise specifies;

(c) by the insertion in the appropriate
place of the following -

“money transmission agent” means any
person carrying on money
transmission business on behalf
of a money transmission service
provider;

“money transmission business” means
the business of accepting cash,
cheques, other monetary instru-
ments or other stores of value in
one location and the payment of
a corresponding sum in cash or
other form to a beneficiary in
another location by means of a
communication, message, transfer
or through a clearing network to
which the money transfer
business belongs; and

“money transmission services” shall be
construed accordingly;

“money transmission service provider”
means any person carrying on a
money transmission business.

Repeal of
subsection (3)
of section 19 of
the principal
Act.

3. Subsection (3) of section 19 of the principal Act is repealed and replaced by the following -

“(3) If any bank contravenes or fails to comply with any provision of an order made under this section, it shall be guilty of an offence, and shall be liable on conviction thereof 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.”.

Amendment
of section 20
of the
principal Act.

4. Section 20 of the principal Act is amended by the repeal of subsection (5) and the replacement thereof by the following -

“(5) If any bank contravenes or fails to comply with any provision of an order made under subsection (2), it shall be guilty of an offence, and shall be liable on conviction thereof 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.”.

Amendment
of section 21
of the
principal Act.

5. Section 21 of the principal Act is amended

by -

(a) the repeal of subsection (1) and the replacement thereof by the following -

“(1) Notwithstanding section 39, the Governor may where he is satisfied that a bank has committed an offence order the bank to pay a fine -

(a) in the case of an offence committed under section 19, 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 20, 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.”.

(b) the insertion immediately after subsection (1) of the following subsection -

“(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 19 or 20 is committed.”.

- (c) the re-numbering of subsection (2) as subsection (3).

Amendment
of section 35
of the principal
Act.

6. Section 35 of the principal Act is amended by the repeal of subsection (1) and the replacement thereof by the following -

“(1) The Bank may require any financial institution, trust company, Registered Representative, money transmission service provider or money transmission agent, or any director, officer or servant of such an institution, company, Registered Representative money transmission service provider or money transmission agent, to supply to the Bank in such form and within such time as the Bank may determine such information as the Bank considers necessary to enable the Bank to carry out its functions under this Act.”.

Amendment
of section 38
of the principal
Act.

7. Section 38 of the principal Act is amended -

(a) in subsection (1) (d) by deleting the word “or” at the end thereof;

(b) by inserting immediately after subsection (1) (e) the following -

“(f) the affairs of a money transmission service provider or money transmission agent;
or

(g) the affairs of a customer or client of a money transmission service provider or money transmission agent,”;

(c) by inserting immediately after subsection (2) (g) the following paragraphs-

“(h) in respect of the affairs of a money transmission service provider or money transmission agent or of a customer or client of a money transmission service provider or money transmission agent with authority of the money transmission service provider, money transmission agent, customer or client, as the case may be, which consent has been

voluntarily given;

- (i) where the information disclosed is in a manner that does not enable the identity of any money transmission service provider, money transmission agent or of any client or customer of a money transmission service provider or money transmission agent to which the information relates to be ascertained;”;

- (c) by the re-lettering of paragraphs (h) and (i) as paragraphs (j) and (k) respectively.

Repeal and
replacement
of
Schedule.

8. The Schedule is repealed and replaced by the following -

“Schedule (Section 3(5))

THE BANK

The Board of Directors

1. There shall be a Board of Directors of the Bank, which shall be responsible for the policy and general administration of the Bank and without affecting the generality of the foregoing keeping under review the internal financial controls of the Bank with a view to securing the proper conduct of its financial affairs.

- 2.(1) The Board of Directors shall consist of -
- (a) the following persons to be appointed by the Governor-General -
 - (i) a Governor, who shall be a person of recognized experience in financial matters and who shall be appointed for a period not exceeding five years and shall be eligible for re-appointment; he shall be appointed on such terms and conditions as may be set out in his instrument of appointment, and subject to paragraphs 6 and 7, such terms and conditions may not be altered to his disadvantage during his tenure of office; and
 - (ii) four other Directors, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, financial or commercial matters, industry, law or administration; such directors shall not be appointed or re-appointed for a period exceeding four years.

(2) Each Director shall, subject to the provisions of this paragraph, hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.

(3) The Board may make bye-laws regulating the conduct of the Bank's business and may make regulations and issue orders for the purpose of giving effect to the provisions of this Act.

3.(1) There shall be two Deputy Governors of the Bank, appointed by the Governor-General, who 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, and in the event of the inability to act or a vacancy in the office of Governor, one of the Deputy Governors designated by the Board shall exercise the functions of Governor.

(2) A Deputy Governor may not be appointed or re-appointed for a period exceeding five years.

(3) The Deputy Governors may attend all meetings of the Board but shall not have the right to vote at those meetings.

(4) Notwithstanding subparagraph (3) of this paragraph where a Deputy Governor presides as Chairman under paragraph 4(1)(a) he shall have the right to vote.

4.(1) The Governor, or in case of his absence or disability, a Deputy Governor designated by the Board, shall -

- (a) preside as chairman at the meetings of the Board;
- (b) serve as chief executive officer of the Bank responsible to the Board for the execution of its policy and the management of the Bank; and
- (c) except as may otherwise be provided in this Act, the bye-laws of the Bank or the resolutions of the Board, have the power to act, contract, and sign instruments and documents on behalf of the Bank and, pursuant to the resolutions of the Board, delegate such power to other officers of the Bank.

5.(1) The Governor and the Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not without the prior approval of the Minister receive any salary or supplementation thereto from any source other than the Bank nor occupy any other office or employment, whether remunerated or not.

(2) Notwithstanding subparagraph (1), the Governor and the 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, or any international bank or international financial institution of which The Bahamas is a member.

6. Subject to paragraph 5, a person may not be appointed or remain a Director who -

- (a) is a member of either House of Parliament;
- (b) has been convicted by a court of an indictable offence or other offence involving dishonesty;
- (c) has been adjudged or otherwise declared bankrupt under any law in force in The Bahamas; or
- (d) is a director, officer or employee of, or is a shareholder of, or has a controlling interest in, any financial institution regulated by the Central Bank.

7. If the Governor-General is satisfied that a Director -

- (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 otherwise unable or unfit to discharge the functions of a Director,

the Governor-General may declare his office as Director to be vacant and shall notify that fact in such manner as the Governor-General thinks fit, and thereupon that office shall become vacant.

8. The Governor-General may appoint any person eligible to be appointed a Director to act temporarily in the place of any Director designated under paragraph 2 (a)(ii), where the substantive Director is absent or unable to act.

9.(1) Any Director may at any time by notice in writing to the Governor-General resign his office subject to subparagraph (2).

(2) Subject to subparagraph (3) a Director to which this paragraph refers may resign his office on giving to the Minister in writing -

- (a) in the case of the Governor; not less than three month's notice; or
- (b) in the case of any other Director, not less than one month's notice.

(3) The Minister may waive the period of notice required by subparagraph (2).

10. The names of all the directors and every change therein shall be published in the Gazette.

11. The Bank shall pay to the Directors such remuneration (if any), whether by way of salary, honorarium or fees, as the Governor-General may determine and, if a person ceases to be a director and it appears to the Governor-General that there are special circumstances which may make it right that the person should receive compensation, the Governor-General may require the Bank to pay to that person a sum of such amount as the Governor-General may determine.

12.(1) The Board shall meet as often as may be required for the due performance of its functions and in any case 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 pursuant to paragraph 4; 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 pursuant to paragraph 4.

(4) Three Directors (of whom one shall be either the Governor or a Deputy Governor designated pursuant to paragraph 4) shall form a quorum at any meeting.

(5) A decision 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) A Director who 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, shall disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge and any such disclosure shall be recorded in the minutes of the Board and after the disclosure that the Director shall not take part in any deliberation or decision of the Board with respect to that contract or transaction.

(7) Minutes of each meeting of the Board shall be kept in such form as the Board may determine.

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

(9) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any director in respect of any act done bona fide in pursuance of the execution or intended execution of this Act.

(10) Where any director is exempt from liability by reason only of the provisions of subparagraph (9) the Bank shall be liable to the extent that it would be if that member were an employee or agent of the Bank.

Staff

13. 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.

14. The Bank shall have power -

- (a) to pay to or in respect of officers or servants of the Bank such pensions or gratuities;
- (b) to make such payments towards the provisions for them of pensions or gratuities; or
- (c) to maintain for them such pension schemes (whether contributor or not), as the Bank may determine.

Authentication of Documents

15.(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 duly 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.”.