

Legal Updates



SUMMARY AND COMMENTS:

CENTRAL BANK OF THE BAHAMAS ACT, 2020 (THE “ACT”)

The Act, which came into force on 1st September, 2020 repeals the Central Bank of The Bahamas Act (Ch. 351) (the “Act”) as well as consolidates and modernizes the law governing the Central Bank of The Bahamas (the “Bank”).

1. Functions of the Bank

The Act expands the functions of the Bank by including clearly defined and prioritized objectives, sufficient authority to achieve those objectives and provisions that underpin its autonomy. Some of its new defined functions include to – (i) 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, (ii) act as the Resolution Authority for banks[1], (iii) determine and implement monetary policy and (iv) hold and manage all official external reserves of The Bahamas[2].

2. Currency

Under the Act, the currency of The Bahamas comprises of notes and coins issued by the Bank with the unit of the currency being the Bahamian dollar divided into one hundred cents[3].

3. Advances to the Government

The Act provides that the Bank may make advances to the Government and it specifies the requirements by which the Bank may provide temporary loans to the Government particularly where – (i) the amount of the loans, which may be outstanding at any one time, taken together with any Treasury Acts or securities issued or guaranteed by the Government or a public corporation cannot exceed, in the aggregate, thirty per centum of the average ordinary revenue of the Government or thirty per centum of the estimated ordinary revenue of the Government whichever is less; (ii) the loan will mature within ninety-one days and (iii) the interest rate on the loan is based on market-related interest rates[4].

4. Subscription to Government securities from primary markets

Under the Act, the Bank may only purchase or subscribe from primary markets Treasury Acts and

securities issued or guaranteed by the Government or a public corporation for the purpose of replacing maturing securities, implementing monetary policy, maintaining financial system stability or supporting the working of the clearing and settlement systems[5].

5. Power to fine

The Act vests the Bank with broad powers to impose a fine on a financial institution that the Bank believes has committed an offence under the Act[6].

6. Lender of last resort

According to the provisions of the Act, the Bank may act as a lender of last resort to commercial banks[7]. The Act further specifies the parameters within which the Bank may grant loans or advances to a commercial bank. These parameters include where – (i) the loans or advances will mature within ninety-one days; (ii) the interest rates on the loans or advances are more than those applied to loans or advances made pursuant to the powers of the Bank[8]; (iii) adequate collateral property is provided to the Bank by the commercial bank and (iv) the commercial bank, in the opinion of the Bank, is solvent and requests such loans or advances for the propose of improving liquidity conditions.

7. Coverage of shortfall in capital

The Act provides for coverage where an external audit reveals a shortfall in the Bank’s authorized capital. According to the provisions of the Act, the Bank is required to transmit to the Minister a report concerning the causes and extent of the shortfall of the assets and request the Minister to make payments from the Consolidated Fund to the authorized capital for the purpose of increasing the authorized capital to the amount prescribed in accordance with the Act[9].



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8. Accounting Standard

The Bank is now mandated to prepare, in accordance with the Act and the International Financial Reporting Standards, the statements of the accounts of the Bank to reflect its operations and financial conditions[10].

9. Committees

In an effort to limit the risk of undue interference and governmental pressure in exercise of the Bank's powers, the Act establishes several committees. They are as follows:

Audit Committee[11]

The Act provides for the establishment of an Audit Committee that will generally be responsible for overseeing and advising on internal and external audits of the Bank and other matters in relation thereto. The committee members will be appointed by the Board of Directors of the Bank (the “Board”).

Investment Committee[12]

The Act provides for the establishment of an Investment Committee that will be responsible for overseeing, advising on and managing the external reserves of the Bank and its external reserve management in accordance with the investment policy and guidelines while also proposing nominees for the appointment of external reserve managers.

Monetary Policy Committee[13]

The Act provides for the establishment of a Monetary Policy Committee whose functions are to determine the monetary policy of the Bank, approve basic assessments of the conditions of the economy and the financial system as well as perform any other function as may be determined by the Board.

Dormant Funds Investment Committee[14]

The Act also provides for the establishment of a Dormant Funds Investment Committee whose functions are to prepare an investment policy and investment fund plan which must be submitted to the Board for approval.

10. Exemption

The Act provides that the Bank is exempt from tax under the Real Property Tax Act, Ch 375 and other taxes and levies on the import and domestic supply of gold, banknotes and coins [15].

11. Conflict of Interest

Under the Act, the Bank is mandated to establish a code of conduct requiring that the Governor, directors and Bank employees avoid any situation likely to give rise to a conflict of their personal interest with the interest of the Bank[16].

12. The Bank may impose general penalties

The Act establishes the circumstances and conditions by which the Bank may impose general penalties[17]. The Act also empowers the Bank to designate certain contraventions and impose fixed penalties in relation to such violations[18]. Under the Act, violations are classified as minor, serious and very serious and may attract a penalty of two thousand dollars, five thousand dollars or ten thousand dollars.

13. Institution of legal proceedings

With respect to the institution of legal proceedings, the Act provides that a person may appeal to the Supreme Court of the Commonwealth of The Bahamas any decision of the Bank imposing a penalty in relation to a designated violation that is deemed serious or very serious [19].

14. Preferential Right

Under the Act, Section 59 gives the Bank an unconditional preferential right to use any collateral or assets (“valuable”) of a debtor, in settlement of or as security for claims of the Bank against the debtor, if such valuable is in the possession of the Bank.

15. Immunity

Immunities of the Bank

Under the Act, the Bank is granted certain immunities. For instance, where any legal action has been commenced in a court in The Bahamas, no order of attachment or writ of execution with



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regard to any property held by or deposited with the Bank may be granted before a final judgement in the action has been issued[20].

Immunity of officials and staff of the Bank
According to the Act, no civil or criminal liability shall attach to a director, Deputy Governor, employee or agent of the Bank or correspondent acting under the direction of the Bank [21]. Such

immunity will persist even after the termination of their respective functions or duties.

16. The Board

Pursuant to the Act, the Board members are appointed by the Governor-General on the advice of the Minister after consultation with the Board and will consist of a Governor, two Deputy Governors of the Bank and six directors[22].

This summary does not constitute legal advice and is general and non-exhaustive in nature. It may not cover all material aspects of the legislation which could impact you or your clients. Please contact Graham Thompson if you have any questions on the legislation or require specific advice.



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- [1] Under Section 5 (3) of the Central Bank of The Bahamas Act, 2020, Resolution Authority means the authority which is responsible for the resolution of banks carrying on business in accordance with Section 2 of the Banks and Trust Companies Regulation Act, 2020.
- [2] Section 5 Central Bank of The Bahamas Act, 2020
- [3] Section 8 Central Bank of The Bahamas Act,2020
- [4] Section 21 (4) Central Bank of The Bahamas Act,2020
- [5] Section 22 Central Bank of The Bahamas Act,2020
- [6] Section 24 Central Bank of The Bahamas Act,2020
- [7] Section 26 Central Bank of The Bahamas Act, 2020
- [8] Section 23 Central Bank of The Bahamas Act,2020
- [9] Section 33 Central Bank of The Bahamas Act, 2020
- [10] Section 34 Central Bank of The Bahamas Act, 2020
- [11] Schedule paragraph 9 Central Bank of The Bahamas Act, 2020
- [12] Schedule paragraph 10 Central Bank of The Bahamas Act, 2020
- [13] Schedule paragraph 11 Central Bank of The Bahamas Act, 2020
- [14] Schedule paragraph 12 Central Bank of The Bahamas Act, 2020
- [15] Section 52 Central Bank of The Bahamas Act,2020
- [16] Section 56 Central Bank of The Bahamas Act, 2020
- [17] Section 46(1) Central Bank of The Bahamas Act, 2020
- [18] The Bank under Section 47(1)(b) Central Bank of The Bahamas Act, 2020 may make regulations classifying each violation as a minor violation, a serious violation or a very serious violation.
- [19] Section 55 Central bank of The Bahamas, Act, 2020
- [20] Section 60 Central Bank of The Bahamas Act, 2020
- [21] Section 61 Central Bank of The Bahamas Act, 2020
- [22] Schedule paragraph 2 Central Bank of The Bahamas Act,2020