

Legal Updates

GT

SUMMARY AND COMMENTS:

**ON PROTECTION OF DEPOSITORS
(AMENDMENT) ACT, 2020**

The Protection of Depositors (Amendment) Act, 2020 (the "Act") came into force on the 1st September 2020. The Act was enacted to modify the Protection of Depositors Act, 1999 (the "Principle Act"),

The Principle Act established the Deposit Insurance Fund (the "Fund") with the aim of protecting Bahamian Dollar depositors.

The stated objectives of the Act are:

- i. To Streamline the role and functions of the Deposit Insurance Corporation;
- ii. To provide for enhanced protections for the depositors and for connected purposes thereto.

1. DEPOSIT INSURANCE FUND

1.1. Sections 3 - 7 of the Act amend, repeal and insert provisions relating to Part II of the Principal Act which addresses the establishment, membership and funding of the Deposit Insurance Fund (the "Fund").

1.2. Section 3 inserts a new subsection 3(3) into the Principal Act to make provision for the composition of the deposit insurance fund, providing that the Fund will now consist of-

- a. "initial contributions, special contributions and premiums paid by member institutions;
- b. sums payable by the Central Bank under this Act;
- c. sums voted by Parliament for the purposes of this Act;
- d. any moneys borrowed by the Corporation for the purposes of this Act;
- e. amounts realised from investment proceeds;
- f. moneys that may accrue from fees or the operations of the Fund; and
- g. dividends from the Liquidator consisting of income earned in the orderly liquidation process or from the sale of assets of a failed member institution."

1.3. Notably Section 4 of the Act inserts a new Section 3A into the Principle Act in order to make clear the Objects of the Corporation namely to (a) provide insurance against the loss of part or all of deposits; (b) promote and otherwise contribute to the stability of the financial system in The Bahamas. The new Section 3(A)(2) states that The Corporation 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 the performance of its functions under this Act."

1.4. Section 5 repeals and replaces section 4 of the Principal Act, most notably the proposed replacement of section 4 now makes membership in the Fund compulsory for every co-operative credit union registered under the Bahamas Co-operative Credit Unions Act, 2015 (No. 9 of 2015).

1.5. Section 6 of the Act amends the Principal Act and deletes and replaces a number of sections, most notably the new Section 5 (6) provides for an increase in the annual premiums payable by members of the Fund from one twentieth of one percent to one tenth of one percent of insured deposits.

1.6. Section 7 of the Act makes an important amendment to Section 6 of the Principal Act



SUMMARY AND COMMENTS: ON PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

in that, inter alia, it aims to reduce, over a period prescribed by the Act, the time within which the Corporation must make payouts to depositors. Whereas, the existing section 6(8) of the Principal Act prescribes that “payments to depositors of closed institutions shall commence **not later than six months** after closure of the member institution” Section 7(9) of the Act proposes that section 6 (8) & (9) be deleted and replaced with a new section 6 (8) which provides that the applicable time period for the payments in respect of the insured deposits where a member institution’s:

- i. banking license is revoked by the Central Bank;
- ii. registration as a co-operative credit union is cancelled by the Central Bank;
- iii. policy of deposit insurance is cancelled subsequent to the making of an insurable deposit; will be:
 - i. until 31 December 2022, **twenty business days later;**
 - ii. from 1 January 2023 until 31 December 2025, **ten business days later;**
 - iii. from 1 January 2026 until 31 December 2030, **seven business days later.**”

2. DEPOSIT INSURANCE CORPORATION (THE “CORPORATION”)

2.1. Sections 8 - 18 of the Act amend, repeal and insert provisions relating to Part III of the Principal Act which deals specifically with the Corporation. These Sections make alterations to the configuration, procedure, and function of the Corporation, the most notable of these changes are detailed below.

2.2. Section 8 of the Act amends Section 7 of the Principal Act in order to, inter alia:

- i. Give the Corporation the power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and to do all things

necessary for the purpose of its functions; and to

- ii. give authorization to the Minister to lend funds out of the Consolidated Fund to the Corporation.

2.3. Section 9 makes provisions for a board of directors of the Corporation who are to be responsible for the policy and management and business of the Corporation.

2.4. The Act also requires that the Corporation establish a Code of Conduct along with listing the proposed circumstances upon which directors must disclose their conflicts of interest to the Corporation.

2.5. Section 15 of the Act amends Section 15 of the Principal Act by deleting and replacing paragraph 15 (e) to (i) allow for the deduction from the Fund monies due to a depositor, only in the amount of such loan payment or instalment as is due or past due, and (ii) to set-off deposits pledged as collateral.

2.6. The Act at Section 16 repeals and replaces Section 16 of the Principle Act further making provision for an amended procedure which is to be followed by the Corporation for the purpose of making deposit insurance payments to depositors.

2.7. The Act also removes the requirement mandated by Section 18 of the Principal Act that when an institution closes “all deposit accounts of the institution are frozen forthwith” the remaining requirement is “where an institution is closed, interest on deposits immediately ceases to accrue whether or not the date of maturity of the deposit was beyond the date of closure.”

2.8. Section 18 of the Act provides detailed requirements for the annual audit of the Corporation’s accounts, requirements include:

- the statement of accounts of the



SUMMARY AND COMMENTS: ON PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

Corporation shall be audited annually by independent external auditors appointed by the Board with the approval of the Minister;

- for the Minister to table the Corporation's annual report and statement of accounts in Parliament; and
- for the Corporation to publish on its website the reports and statement of the accounts submitted to the Minister under subsection.

3. SPECIAL POWERS OF THE CORPORATION

3.1. Sections 19 - 24 of the Act amend, repeal and insert provisions relating to Part IV of the Principal Act which deals specifically with the Special Powers of The Corporation.

3.2. Section 19 of the Act repeals and replaces section 21 of the Principal Act and essentially proposes to condense all of the special powers of The Corporation into that section. Most notably the section as amended by Section 19 of The Act provides that the Inspector of Banks and Trust Companies or other person appointed by the Central Bank may examine member institutions on behalf of the Corporation to enable the Corporation to assess inter alia the reliability of depositor records.

3.3. Sections 22 - 24 and section 26 of Part IV of the Principal Act are repealed by the Act including, most notably the Corporation's resolution powers and the "Offences under Part IV" found at Section 26 of the Principal Act.

4. MISCELLANEOUS

4.1. Sections 25 - 28 of The Act amend, repeal and insert provisions relating to Part V of the Principal Act which deals with Miscellaneous provisions.

4.2. These Sections inter alia,

- Amend the requirements for the finding of an offence in relation to a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution;
- Make provision for the Corporation to establish bye-laws and regulations on the recommendation of the Central Bank - the section provides guidance in relation to the purposes for which the Corporation may make bye-laws and regulations;
- Provide for significantly more specific and more far-reaching duties of confidentiality to be imposed on directors, officers, employees, or agents of the Corporation in respect of confidential information obtained in the performance of his or her duties or in the exercise of his or her functions.

5. NEW SCHEDULE - CONSTITUTION AND FUNCTIONS OF THE BOARD

5.1. Section 28 of the Act inserts a new Schedule in the Principal Act detailing the Constitution and functions of the board of the Corporation.

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.

GT

SUMMARY AND COMMENTS:
ON PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020



Sydney Rolle
Associate
Property and Development
Litigation and Dispute Resolution
Email: smr@gtclaw.com