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PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

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No. 23 of 2020

PROTECTION OF DEPOSITORS (AMENDMENT) ACT, 2020

AN ACT TO AMEND THE PROTECTION OF DEPOSITORS ACT TO STREAMLINE THE ROLE AND FUNCTIONS OF THE DEPOSIT INSURANCE CORPORATION; TO PROVIDE FOR ENHANCED PROTECTIONS FOR DEPOSITORS AND FOR CONNECTED PURPOSES THERETO

[Date of Assent - 24th July, 2020]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

(1) This Act, which amends the Protection of Depositors Act (*Ch. 317*), may be cited as the Protection of Depositors (Amendment) Act, 2020.

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

2. Amendment of section 2 of the principal Act.

Subsection (1) of section 2 of the principal Act is amended —

(a) by the deletion of the following definitions —

(i) "**Board of Management**";

(ii) "**Chairman**";

(iii) "**deposit**"; and

(iv) "**institution**";

(b) by the insertion in the appropriate alphabetical order, of the following new definitions —

""**Board**" means the Board of Directors of the Corporation appointed pursuant to paragraph 2 of the *Schedule*";

"**bridge institution**" has the meaning assigned to it under section 2 of the Banks and Trust Companies Regulation Act, 2020;

"**Certificate of deposit insurance**" means a certificate of insurance issued by the Corporation;

"**Chairperson**" means the Chairperson of the Board;

"**deposit**" means —

(a) the unpaid balance of money or its equivalent received or held by an institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person's checking, savings, demand or time account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, subordinated debts, preference shares, inter-bank deposits, foreign currency deposits, deposits of Government and statutory corporations, deposits of foreign Governments, deposits in any financial institution wholly owned by the Government, deposits from affiliates, a co-operative credit union's stabilization fund, liquidity deposits or capital as defined in subsection 2(1) of The Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*); and

(b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank;

"**Deputy chairperson**" means the deputy chairperson of the board;

"**Governor**" has the meaning assigned under section 2 of the Central Bank Act of The Bahamas Act, 2020;

"**Inspector**" has the meaning assigned under section 2 of the Banks and Trust Companies Regulation Act, 2020;

"**institution**" means —

(a) any person carrying on banking business wholly or partly in Bahamian currency;

(b) a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015 (*No. 9 of 2015*);";

(c) by the deletion of subsection (3) and the substitution of the following —

"(3) For the purposes of this Act, an institution is deemed to be closed when —

(a) the licence of the institution is revoked by the Central Bank under section 29 of the Banks and Trust Companies Regulation Act, 2020;

(b) the registration of the institution is cancelled pursuant to subsection 14(5) of the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*).".

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended —

(a) in subsection (2), by the deletion of the words "of Management of the Corporation";

(b) by the insertion immediately after subsection (2), of the following new subsection —

"(3) The Fund shall 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.".

4. Insertion of new section 3A into the principal Act.

The principal Act is amended by the insertion immediately after section 3, of the following new section —

"**3A. Objects of the Corporation.**

(1) The objects of the Corporation are 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.

(2) 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.".

5. Repeal and replacement of section 4 of the principal Act.

Section 4 of the principal Act is repealed and replaced by the following —

"**4. Membership in the Fund compulsory.**

(1) Membership in the Fund is compulsory for —

(a) every institution carrying on banking business wholly or partly in Bahamian currency and licensed under the Banks and Trust Companies Regulation Act, 2020; and

(b) every co-operative credit union registered under the Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*).

(2) For the purposes of paragraphs (a) and (b) of subsection (1), an institution is deemed to have obtained a policy of deposit insurance on the day on which it became a member institution.

(3) The policy of deposit insurance referred to in subsection (2) shall consist of the provisions that may be prescribed by the bye-laws.

(4) The Corporation shall issue to a member institution a certificate of deposit insurance in the legal name of the institution within four weeks of the institution becoming a member of the Fund.

(5) Where the legal name of a member institution has been changed subsequent to the issuance of the certificate mentioned in subsection (4), the member institution shall submit to the Corporation, *prima facie* evidence showing the Central Bank's approval of the change of name within thirty days of the approval, and shall make application to

the Corporation for the issuance of a certificate of deposit insurance in the new name, provided that, all copies of the previous certificate of deposit insurance have been returned to the Corporation for cancellation.".

6. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended —

(a) by the deletion of subsection (2) and the substitution of the following —

"(2) Every member of the Fund shall pay an annual premium to the Fund, equal to a percentage to be determined from time to time by the Corporation by Notice of the average of the sum of those deposits insured by the Corporation and deposited with the member institution as of March 31 and September 30 in the immediately preceding premium year.";

(b) by the deletion of subsection (4) and the substitution of the following —

"(4) The annual premium payable by a member institution pursuant to subsection (2) shall be based on —

(a) the amount of insured deposits and the Corporation's assessment of the degree of risk incurred by the member institution; and

(b) returns to be certified by the member institution and submitted in such form and at such time as the Corporation may require.";

(c) by the deletion of subsection (5) and the substitution of the following—

"(5) One half of the premium payable by a member institution shall be paid to the Corporation on or before March 31 in the premium year for which the premium is payable, and the remainder shall be paid to the Corporation on or before September 30 in the premium year.";

(d) in subsection (6), by the deletion of the words "one twentieth" and the substitution of the words "one-tenth";

(e) by the insertion immediately after subsection (9), of the following new subsection (10) —

"(10) The Corporation shall, from time to time, but in any event, not less than once every two years review the size of the Fund and make such recommendations to the

Board regarding the amount of premiums payable and the target ratios for the Fund as it deems appropriate.".

7. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended as follows —

(a) by the deletion of subsection (2) and the substitution of the following —

"(2) Deposit Insurance coverage is limited to fifty thousand dollars or such greater or lesser amount as the Minister may, by Order, prescribe on the advice of the Central Bank after consultation with the member institutions, and shall be paid by the Corporation in respect of every depositor notwithstanding the number of accounts held by the depositor in the same capacity in the institution:

Provided that a depositor shall be entitled to a separate insured deposit for each account held in different capacities and rights with the same member institution, and for each account held with different member institutions.";

(b) by the deletion of subsection (3);

(c) by the deletion of subsection (5) and the substitution of the following—

"(5) Notwithstanding the provisions of any other law, when payment is made by the Corporation under this section in respect of an insured deposit with a member institution, the Corporation is subrogated up to the insured limit to all the rights of the depositor as against that member institution and may maintain an action in respect of such rights in the name of the depositor or in the name of the Corporation.";

(d) by the deletion of subsections (8) and (9) and the substitution of the following —

"(8) In the event that —

(a) 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;

(b) a liquidator is appointed by the Central Bank in respect of a member institution,

payments in respect of the insured deposits in such institution shall be made by the Corporation within the applicable time period, unless such deposits are transferred by or on the instructions of the Central Bank to another institution.

(9) The applicable time period referred to in subsection (8) is the period starting on the day after the date of publication of the notice referred to in section 16(1) and ending —

(a) until 31 December 2022, twenty business days later;

(b) from 1 January 2023 until 31 December 2025, ten business days later;

(c) from 1 January 2026 until 31 December 2030, seven business days later.";

(e) by the insertion immediately after subsection (9) of the following new subsection (10) —

"(10) The Corporation shall in respect of rights of a depositor to which it is subrogated, have priority over other uninsured unsecured creditors of the member institution.".

8. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is amended —

(a) by the deletion of subsection (2) and the substitution of the following —

"(2) The Corporation shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Act, with 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.";

(b) by the insertion immediately after subsection (2) of the following new subsections —

"(3) The Corporation shall have its principal place of business in the island of New Providence and may in The Bahamas, establish such offices and branches as the

Corporation thinks fit.

(4) At the request of the Corporation, the Minister may, out of the Consolidated Fund, lend money to the Corporation on such terms and conditions as the Minister may establish for the purpose of assisting the Corporation to carry out its functions under this Act.".

9. Repeal and replacement of section 8 of the principal Act.

Section 8 of the principal Act is repealed and replaced by the following —

"**8. Board of the Corporation.**

(1) There shall be a Board of Directors who shall in accordance with the provisions of this Act be responsible for the policy, and management of the affairs and business, of the Corporation.

(2) The *Schedule* has effect in relation to the constitution and functioning of the Board and the Corporation.".

10. Repeal and replacement of section 9 of the principal Act.

Section 9 of the principal Act is repealed and replaced by the following —

"**9. Conflicts of interest.**

(1) The Corporation shall establish a code ("**Code of Conduct**") requiring the directors and officers of the Corporation to avoid any situation likely to give rise to a conflict of their personal interests with interests of the Corporation.

(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 Corporation —

(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.".

11. Repeal of section 10 of the principal Act.

Section 10 of the principal Act is hereby repealed.

12. Repeal of section 11 of the principal Act.

Section 11 of the principal Act is hereby repealed.

13. Repeal of section 12 of the principal Act.

Section 12 of the principal Act is hereby repealed.

14. Amendment of section 13 of the principal Act.

Subsection (2) of section 13 of the principal Act is amended by the deletion of the word "28" and the substitution of the word "21".

15. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is amended —

(a) by the deletion of paragraph (e) and the substitution of the following —

"(e) subject to prior claims being paid, to deduct from moneys from the Fund due to a depositor, only such loan payment or instalment amount as is due or past due, and to set-off deposits pledged as collateral";

(b) in paragraph (f) by the insertion, immediately after the words "under his custody or control" of the words "in such format and within such time as may be specified by the Corporation";

(c) by the deletion of paragraph (g) and the substitution of the following —

"(g) on the advice of the Bank —

(i) to levy authorised contributions and premia on member institutions;

(ii) to accumulate, manage and to invest so far as possible, in government and quasi government instruments and short term deposits, funds collected, and any other type of instrument or investment as the Board may approve, to borrow by the issuance and sale of bonds, debentures, notes or any other evidence of indebtedness or otherwise whether or not against the guarantee of the government in accordance with applicable law and procedure, lend or give guarantees to an entity acquiring a member institution which has been placed under statutory administration by the Central Bank pursuant to section 29(1)(f) of the Banks and Trust Companies Regulation Act, 2020;

(iii) provide capital for a bridge institution and provide financing in the amount of insured deposits to an entity that acquires the business or all or part of the assets and liabilities of a member institution which has been placed under statutory administration by the Central Bank pursuant to section 29(1)(f) of the Banks and Trust Companies Regulation Act, 2020 as shall be advised by the Central Bank, provided however that such financing shall be no more than the costs the Corporation would have incurred in paying out insured depositors should the institution have been placed under liquidation.";

(d) by the insertion immediately after paragraph (g) of the following new paragraphs —

"(h) to charge any fees necessary for the administration of this Act; and

(i) to do all things necessary or incidental for the furtherance of the objects of the Corporation.".

16. Repeal and replacement of section 16 of the principal Act.

Section 16 of the principal Act is repealed and replaced as follows —

"**16. Insurance payment procedures.**

(1) Where the Central Bank advises the Corporation that a member institution is being liquidated or otherwise has

had its banking license revoked by the Central Bank, the Corporation shall notify depositors by making public notification of the closure in such newspapers as may be considered appropriate, indicating the dates, times and places at which insurance payments shall be made.

(2) The Corporation, at its discretion, may require proof of claims for insured deposits to be filed within a specified time.

(3) Every person who has a deposit with a member institution shall be paid the insured portion of their deposits less any amounts or instalments owed to the institution by the depositor, for which payment is due or past-due.

(4) Subject to subsection (3), where a person has a deposit with a member institution in excess of the insured limit, the Corporation shall issue to that person a certificate for the amount in excess of the insured limit.

(5) Every depositor may submit a claim for deposit insurance up to one year after the date on which a notice is published by the Corporation under subsection (1).

(6) Any claim made after the expiry of the period specified in subsection (5) shall be made against the assets of the institution and shall be paid *pro rata* as the assets of the institution are collected and sold.

(7) Where the Corporation is satisfied that a depositor has been a party to or has benefited from the circumstances which gave rise to the insolvency of a member institution, the Corporation shall not make any payment out of the Fund to that depositor.

(8) Subsection (7) shall not apply to a depositor who acted solely in his capacity as a professional advisor to the member institution and whose *bona fide* is not in question.".

17. Repeal and replacement of section 18 of the principal Act.

Section 18 of the principal Act is repealed and replaced by the following —

"**18. Effect of closure.**

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.".

18. Repeal and replacement of section 19 of the principal Act.

Section 19 of the principal Act is repealed and replaced by the following —

"**19. Accounts and audit.**

(1) The financial year of the Corporation shall end on the thirty-first day of December.

(2) The Corporation shall prepare, in accordance with this Act and the International Financial Reporting Standards, the statement of the accounts of the Corporation to reflect its operations and financial condition.

(3) The statement of accounts of the Corporation shall be audited annually by independent external auditors appointed by the Board with the approval of the Minister.

(4) The audit under subsection (3) shall be conducted in accordance with the International Standards of Auditing.

(5) The external auditors shall be of good repute and have recognized international experience in the auditing of financial institutions and shall be members of the Bahamas Institute of Chartered Accountants, in good standing.

(6) Subject to subsection (5), the external auditors shall be appointed for —

(a) a minimum period of three consecutive years; and

(b) a maximum period of six consecutive years, except where the significant audit partners involved in an audit have been replaced whereupon the Board may extend the appointment for a further period not exceeding three years.

(7) The Corporation shall not later than June 30th following the end of the previous financial year, cause to be made and transmit to the Minister—

(a) a report of the operations of the Corporation in respect of the previous financial year, approved by the Board; and

(b) a statement of the accounts of the Corporation in respect of that year, approved by the Board and signed by the Chairperson and certified by the external auditors, together with the report of the external auditors.

(8) The Minister shall as soon as possible after receipt of the report and statement referred to in subsection (7)(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.

(9) The Corporation shall publish on its website the reports and statement of the accounts submitted to the Minister under subsection (1).".

19. Repeal and replacement of section 21 of the principal Act.

Section 21 of the principal Act is repealed and replaced by the following —

"**21. Examination of Member Institutions.**

(1) The Inspector of Banks and Trust Companies or any other person appointed by the Central Bank shall, notwithstanding any other Act of Parliament,examine on behalf of the Corporation the affairs of each member institution at the times that the Corporation may require to enable the Corporation to assess —

(a) the reliability of depositor records; and

(b) whether a member institution has the information technology systems and data necessary to produce such records.

(2) Where an examination under subsection (1) is made, such costs incurred in relation thereto as in the opinion of the Central Bank are extraordinary shall be borne by the Corporation.

(3) The person who conducts an examination under subsection (1) in respect of a member institution shall make all examinations or inspections that the person considers necessary to —

(a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;

(b) comment on the operations of the member institution;

(c) if the member institution is a domestic systemically important institution as defined in section 2 of the Banks and Trust Companies Regulation Act, 2020, provide an assessment of its capacity to absorb losses that it is required to maintain by the Central Bank.

(4) The person who conducts an examination under subsection (1) in respect of a member institution shall provide written reports to the Corporation on the matters referred to in paragraphs (3)(a) to (c) in a timely manner.

(5) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting the examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or of any person dealing with the member institution or any of its affiliates.

(6) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of paragraphs (3)(a) to (c) or to any report provided under subsection (4).

(7) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer.

(8) If requested to do so by the Corporation, the person who conducts an examination under subsection (1) in respect of a member institution shall review, or with the

Corporation's prior approval, cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.".

20. Repeal of section 22 of the principal Act.

Section 22 of the principal Act is hereby repealed.

21. Repeal of section 23 of the principal Act.

Section 23 of the principal Act is hereby repealed.

22. Repeal of section 24 of the principal Act.

Section 24 of the principal Act is hereby repealed.

23. Repeal and replacement of section 25 of the principal Act.

Section 25 of the principal Act is repealed and replaced by the following —

"**25. Protection from liability.**

(1) The Minister or the Corporation, its directors, officers, employees or agents, the Inspector of Banks and Trust Companies or any person appointed pursuant to section 21(1) are not subject to any action, claim or demand by, or any liability to any person even after the termination of their functions or duties, in respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Corporation under this Act.

(2) The Corporation shall indemnify a director, employee or agent of the Corporation, even after the termination of their functions or duties, against the cost of defending their actions in connection with subsection (1).".

24. Repeal of section 26 of the principal Act.

Section 26 of the principal Act is hereby repealed.

25. Amendment of section 27 of the principal Act.

Section 27 of the principal Act is amended by the deletion of subsection (2)

and the substitution of the following —

"(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals any material information regarding the financial affairs of the member institution from, provides false or misleading information to, or falsifies or tampers with the books, records, accounts, papers or documents of the institution so as to mislead the Corporation or a person mentioned in section 21(1), that director, agent, servant or employee is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.".

26. Repeal and replacement of section 28 of the principal Act.

Section 28 of the principal Act is repealed and replaced by the following —

"**28. Bye-laws and regulations.**

(1) The Corporation on the recommendation of the Bank, may make such bye-laws as are necessary for all matters pertaining to the operations and functions of the Corporation.

(2) Without limiting the generality of subsection (1) the Corporation may make bye-laws, for all or any of the following purposes —

(a) regarding representations by member institutions with respect to —

(i) what constitutes, or does not constitute a deposit;

(ii) what constitutes, or does not constitute a deposit insured by the Corporation;

(iii) who is a member institution;

(iv) representations of membership;

(v) representations of deposits and deposit insurance;

(vi) representations of financial products; and

(vii) representations of trade names;

(b) to prescribe the information, particulars and references which may be prescribed under sections 4(3), 5(2), 5(3), 5(4), 15(f), 15(g) and 15(h);

(c) generally, for carrying out the purposes or

provisions of this Act into effect.

(3) The Corporation on the recommendation of the Bank, may make regulations, generally for giving effect to the provisions of this Act, and in particular regulations may be made —

(a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;

(b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund.".

27. Repeal and replacement of section 30 of the principal Act.

Section 30 of the principal Act is repealed and replaced by the following —

"**30. Confidentiality.**

(1) Subject to subsection (2), any person who is or has been a director, officer, employee or agent of the Corporation and who discloses any information relating to the affairs of the Corporation or of any person that he has acquired in the performance of his duties or in the exercise of his functions under this Act is guilty of an offence and liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;

(b) necessary for fulfilling functions and duties required or permitted by this Act, or by any other law;

(c) which is made with the voluntary consent of the person to whom the disclosed information relates;

(d) if the information disclosed is or has been available to the public from any other 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) to the authorities in The Bahamas to the extent necessary for criminal proceedings; or

(g) for the purposes of any legal proceedings in

connection with —

(i) the winding-up or dissolution of a member institution;

(ii) the appointment or duties of a receiver of a member institution;

(h) to the Governor of the Central Bank or any officer of the Central Bank authorized in writing by the Governor, for the purposes of assisting the Corporation in the exercise of its functions under this Act or for assisting the Central Bank in the exercise of its functions.

(3) Notwithstanding the provisions of subsection (1), the Corporation may disclose information to —

(a) any government agency or body that regulates or supervises financial institutions in The Bahamas for the purposes of that regulation or supervision;

(b) the Apex Body of a co-operative credit union registered under The Bahamas Co-operative Credit Union Act, 2015 (*No. 9 of 2015*), for the purpose of the Apex Body's oversight of co-operative credit unions;

(c) the Minister, or any officer of the Ministry of Finance, authorized in writing by the Minister for the purposes relating to preparing for or carrying out resolution in respect of a member institution as well as any other aspects of financial stability or financial crisis preparedness and management.

(4) Notwithstanding the provisions of subsection (1), and subject to subsection (5) the Corporation may disclose information to a foreign deposit insurer or compensation scheme located in a country where the holding company, parent bank, subsidiary, branch or affiliate of a member institution is located, for purposes related to the foreign deposit insurer's or compensation scheme's operation.

(5) The Corporation may enter memoranda of understanding with foreign deposit insurers or compensation schemes with regard to mutual cooperation and exchange of information relating to a member institution's compliance with this Act or any bye-laws or regulations made under this Act or to the repayment of depositors.

(6) The Corporation may enter into memoranda of understanding with any person mentioned in subsection (3)(a), (b) or (c) with regard to resolution and crisis preparedness and management for mutual cooperation.

(7) No memorandum of understanding entered into pursuant to subsections (5) or (6) may call for assistance beyond that which is provided for by this Act, or relieve the Corporation of any of its functions or duties under this Act.".

28. Insertion of a new Schedule into the principal Act.

The principal Act is amended by the insertion of the following new Schedule —

"**SCHEDULE**

(Sections 2 and 8)

CONSTITUTION AND FUNCTIONS OF THE BOARD

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 Corporation and oversight of the implementation of such policies and of the operations and internal controls of the Corporation.

(2) The duties and powers of the Board are to —

(a) formulate any policy of the Corporation for the performance of its functions;

(b) approve bye-laws and regulations issued by the Corporation;

(c) approve a guideline, note, notice, order and any other document issued by the Corporation, to require or expect compliance by a person outside the Corporation;

(d) approve the annual budget of the Corporation;

(e) approve a statement of the accounts and a report submitted to the Minister under section 19; and

(f) establish committees and determine their composition, duties and procedures.

2. Constitution and tenure of Board of Directors.

(1) The Board of the Corporation shall consist of —

(a) the Governor of the Central Bank, ex officio who shall be the chairperson of the Board;

(b) a senior manager from the Bank Supervision Department of the Central Bank and one other senior manager of the Central Bank, ex officio;

(c) the Financial Secretary, ex officio; and

(d) not less than five and not more than seven other directors, appointed by the Minister by instrument in writing, each being a person who appears to the Minister to have wide experience, and to have shown capacity in, financial or commercial matters, industry, law or administration.

(2) The Minister shall appoint a director mentioned in paragraph 1(d) as deputy chairperson of the Corporation.

(3) Members of the Board mentioned in paragraph 1(d) shall be appointed for a term of three years and shall be eligible for re-appointment for no more than one additional term.

(4) Each director shall, subject to the Act and the provisions of this *Schedule*, hold and vacate office in accordance with the terms of his appointment.

(5) The directors other than the chairperson and deputy chairperson, 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.

(6) 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 percent 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 practising a profession; or

(ii) prohibited from being a director or officer of any public entity or business undertaking.

(7) For the purpose of paragraph 6, a professor of a university shall not be deemed to fall within paragraph 6(b).

(8) The Corporation 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 chairperson.

The Governor and the deputy chairperson appointed by the Minister, except as may otherwise be provided in this Act, the bye-laws of the Corporation or

the resolutions of the Board, may —

(a) act, contract and sign instruments and documents on behalf of the Corporation; and

(b) pursuant to the resolutions of the Board, delegate the powers referred to in paragraph (a) to other officers of the Corporation.

4. Removal from the Board.

(1) A director who falls within paragraph 4(2), shall be removed from office.

(2) A director may be removed from office if the 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 guilty of serious misconduct.

5. Resignation from the Board.

(1) Subject to subparagraph (2), a member of the Board may resign office on giving to the Minister in writing not less than one months' notice.

(2) The Minister may waive the period of notice required by subparagraph (1).

6. Vacancies.

A vacancy in the office of a director shall be filled within sixty days by the Minister appointing a person to the office for the ordinary term in accordance with paragraph 2.

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 quarter.

(2) A meeting of the Board —

(a) may be convened by the Governor or, in his absence, the deputy chairperson; 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 the deputy chairperson.

(4) Four directors, of whom one shall be either the Governor or deputy chairperson 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 on the Board or of a defect in the appointment or qualification of a director.

8. Remuneration of the Board.

(1) The Corporation shall pay to a director such remuneration, by way of salary, honorarium or fees, as the Governor-General shall determine based on a proposal submitted to the Minister by the Board.

(2) The amount of remuneration determined under subparagraph (1) shall be stated in the instrument of appointment of the director and —

(a) shall not be diminished during the term of office of the director receiving the remuneration;and

(b) shall not be determined by reference to the profits of the Corporation.

9. Staff and remuneration.

(1) The Corporation 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 Corporation.

(2) Remuneration paid under subparagraph (1) shall not be determined by reference to the profits of the Corporation.

(3) The Corporation may, as it determines —

(a) pay to or in respect of officers or servants of the Corporation 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.

10. Seal.

(1) The seal of the Corporation shall be kept under the control of the Governor and the affixing thereof shall be authenticated by the signature of the Governor or the deputy chairperson 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 Corporation shall be received in evidence and shall, unless the contrary is proved, be deemed to be a document so executed.".