

**ANNEX IV: CENTRAL BANK OF THE BAHAMAS
(AMENDMENT) BILL, 2013**

Arrangement of Sections

Section

1. Short title and commencement.....	2
2. Amendment of section 2 of the principal Act.....	2
3. Amendment of section 5 of the principal Act.....	3
4. Repeal and replacement of section 35 of the principal Act.....	3
5. Amendment of section 38 of the principal Act.....	5
6. Amendment of the Schedule to the principal Act.....	6

OBJECTS AND REASONS

7

DRAFT

CENTRAL BANK OF THE BAHAMAS (AMENDMENT) BILL, 2013

1. Short title and commencement.

- (1) This Act may be cited as the Central Bank of The Bahamas (Amendment) Act, 2013.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice in the published in the Gazette.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended—

- (a) by the deletion of the word “bank” together with its definition and the substitution of the following—

“**bank**” has the same meaning as in section 2 of the Banks and Trust Companies Regulation Act (*Ch 316*);

- (b) by the deletion of the words “commercial bank” together with their definition and the substitution of the following—

“**commercial bank**” means a bank—

- (a) licensed to carry on banking business in The Bahamas under the Banks and Trust Companies Regulation Act (*Ch 316*); and
- (b) designated as an authorised dealer within the meaning of paragraph (1) of regulation 42 of the Exchange Control Regulations (*Ch 360*).

- (c) the deletion of the words “money transmission agent” together with their definition;
- (d) the deletion of the words “money transmission business” together with their definition;
- (e) the deletion of the words “money transmission services” together with their definition;
- (f) the deletion of the words “money transmission service provider” together with their definition;
- (g) the deletion of the words “Registered Representative” together with their definition;
- (h) the deletion of the words “regulatory laws” together with their definition;

- (i) the deletion of the words “financial institution” together with their definition and the substitution of the following—

“**financial institution**” means a person carrying on a business regulated under the laws enforced by the Bank;

- (j) the insertion in its appropriate alphabetical position of the following —

“**foreign financial institution**” means a person carrying on business similar to that of a bank and subject to supervision by an overseas regulatory authority;

3. Amendment of section 5 of the principal Act.

Section 5 of the principal Act is amended—

- (a) by the deletion of subsection (1)(d) and the substitution of the following —

“(d) to regulate and supervise financial institutions which are subject to the laws enforced by the Bank;”.

4. Repeal and replacement of section 35 of the principal Act.

Section 35 of the principal Act is repealed and replaced by the following

“35. Information may be required from financial institutions

- (1) The Bank may require by notice in writing a person to which this section applies to supply to the Bank in such form and within such time as specified in the notice such information or document as the Bank considers necessary to enable the Bank to carry out its functions under this Act and any other written law.
- (2) This section applies to—
- (a) a financial institution;
 - (b) a connected person; or
 - (c) a person reasonably believed to have information to an enquiry by the Bank.
- (3) The Bank may exercise the power vested under subsection (1) for the purpose of assisting an overseas regulatory authority.
- (4) Where a person fails to comply with a requirement under subsection (1) the Bank may apply to a Stipendiary and Circuit Magistrate for an order requiring the person to comply with the requirement.
- (5) Where, in connection with a requirement under subsection (1), the Bank considers it necessary to examine a person on oath, the Bank may apply to a Stipendiary and Circuit

Magistrate to have that person examined by the court and to have the results of that examination sent to the Bank.

- (6) The 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 (1) shall be the property of the Bank.
- (8) A person shall not be required under this section to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings.
- (9) The Bank may return a document to a person who provided the document to the Bank under subsection (1), if the Bank thinks proper.
- (10) In this section, "document" means a medium in which information is recorded.
- (11) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him —
 - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person in contemplation of, or in connection with, legal proceedings.
- (12) 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 any criminal purpose.
- (13) In this section, "connected person" means a person who —
 - (a) is a director, officer, partner, employee, or agent of the financial institution's group;
 - (b) a controller of the financial institution; or
 - (c) is required to be consolidated with another person in a statement of the accounts of the other person by the International Financial Reporting Standards.
- (14) A person who without reasonable cause —
 - (a) fails to comply with a requirement of the Bank under subsection (1);
 - (b) with intent to avoid the provisions of subsection (1) destroys, mutilates, defaces, hides or removes a document; or
 - (c) wilfully obstructs an inquiry by the Bank made in accordance with the provisions of subsection (1),commits an offence and is liable on conviction thereof to a fine not exceeding one hundred thousand dollars and if the offence of which he is convicted is continued after conviction he

commits a further offence and shall be liable to a fine of ten thousand dollars for every day on which the offence is continued.

(15) Where —

(a) an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits an offence and is liable to be proceeded against and punished accordingly;

(b) the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

5. Amendment of section 38 of the principal Act.

Section 38 of the principal Act is amended—

(a) by the repeal of subsection (1) and the substitution of the following subsection:

(1) Subject to subsections (2) and (3), whoever is a director, officer, employee, agent or adviser of the Bank and who discloses any information that he has acquired in the course of his duties or in the exercise of the Bank's functions under this or any other law, commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars or to imprisonment for three years.

(b) in subsection (2) by —

(i) the deletion of paragraph (c) and substitution of the following:

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

(ii) the deletion of paragraph (e) and substitution of the following:

“(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;”

(iii) the repeal of paragraphs (f), (g), (h) and (i);

(iv) the deletion of the words “bank, trust company, or Registered Representative” in subparagraph (i) of paragraph (k) and the substitution of the words “financial institution”; and

- (v) the deletion of the words “bank, trust company, or Registered Representative” in subparagraph (ii) of paragraph (k) and the substitution of the words “financial institution”.

6. Amendment of the Schedule to the principal Act.

The Schedule of the principal Act is amended in sub-subparagraph (d) of paragraph 6 by the deletion of the comma and words “, any financial institution, trust company or money transmission business regulated by the Central Bank” and the substitution of the following “financial institution”.

DRAFT

OBJECTS AND REASONS

The purpose of the amendment is to authorize the Central Bank to supervise and regulate cooperative credit unions.

Clause 1 prescribes the title of the Bill and empowers the Minister to appoint a commencement date for its enforcement.

Clause 2 amends section 2 of the principal Act to define certain words.

Clause 3 amends section 5 of the principal Act by replacing the Bank's duty contained in paragraph (d), with a broader duty to regulate and supervise financial institutions which are subject to the laws enforced by the Bank.

Clause 4 of the Bill repeals and replaces section 35 of the principal Act.

Clause 5 of the Bill amends section 38 of the principal Act by revising and streamlining provisions relating to the Bank's disclosure of confidential information.

Clause 6 of the Bill amends paragraph 6(d) of the Schedule to the principal Act by utilizing the term "financial institution" to refer to the several categories of entities supervised by the Bank.