

# **BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) BILL, 2019**

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## **BANKS AND TRUST COMPANIES REGULATION (AMENDMENT) BILL, 2019**

### **A BILL FOR AN ACT TO AMEND THE BANKS AND TRUST COMPANIES REGULATION ACT TO PROVIDE FOR REVISIONS TO THE LICENCE FEE STRUCTURE OF BANKS AND FOR OTHER RELATED PURPOSES**

**Enacted by the Parliament of The Bahamas**

#### **1. Short title and commencement.**

- (1) This Act, which amends the Banks and Trust Companies Regulation Act (*Ch. 316*), may be cited as the Banks and Trust Companies Regulation (Amendment) Act, 2019.
- (2) This Act shall come into force on the 1<sup>st</sup> day of July, 2019.

#### **2. Amendment of section 2 of the principal Act.**

Section 2 of the principal Act is amended by the insertion in the appropriate alphabetical order of the following —

“**Domestic Systemically Important Institution**” or “**DSII**” means a bank licensed under this Act and which reported total consolidated domestic liabilities of such amount as the Governor may determine by notice, to the Central Bank for the preceding financial year of that bank;

“**levy**” means the amount payable by a DSII for the DSII’s preceding financial year pursuant to section 27(2);

“**levy threshold amount**” means such sum as the Governor may determine by notice;

“**Total Domestic Liabilities amount**” means an amount equal to the total domestic liabilities of a DSII as reported by the DSII to the Central Bank for the DSII’s preceding financial year”.

### 3. Repeal and replacement of section 27 of the principal Act.

Section 27 of the principal Act is repealed and replaced as follows —

#### “27. Fees and levy.

- (1) Notwithstanding the provisions of any other law, a bank that is a DSII at any time during a financial year that ends after the commencement of this section is liable to pay a levy in respect of that financial year.
- (2) The provisions of the *Third Schedule* shall have effect for the payment of the fees in respect of the matters mentioned in that Schedule and all fees and levy listed in the *Third Schedule* shall be collected by the Central Bank.
- (3) Subject to subsection (4), all fees and any levy amount paid pursuant to subsection (2) shall be placed in the Consolidated Fund.
- (4) For the purpose of funding regulatory activity of the Central Bank, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas and the Compliance Commission, the Central Bank shall withhold such amount of the fees and levy collected under subsection (2) as may be agreed with the Minister and shall remit the balance to the Treasurer.
- (5) The Minister may by regulations —
  - (a) provide for the refund (or other application) of over payment of levy;
  - (b) vary the fees or amount of levy prescribed in the *Third Schedule*;
  - (c) provide that any such regulations which increase the amount of any fees or levy payable under this Act shall be exempt from the provisions of section 32 of the Interpretation and General Clauses Act but instead be subject to affirmative resolution of both Chambers of Parliament.
- (6) The Central Bank may, if the Central Bank considers it appropriate to do so, waive the payment of the whole or a part of an amount of levy that is payable by a DSII.

- (7) In subsection (5) the expression “affirmative” resolution of both Chambers of Parliament” in relation to regulations means that the regulations are not to come into operation unless and until affirmed by a resolution of each of those Chambers.
- (8) If any person fails to comply with any requirement of subsections (1), (2) and the *Third Schedule*, he, or, where such person is a company, the company and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the default, shall on summary conviction be liable, for every day during which the default continues, to a fine not exceeding one thousand dollars.”.

**4. Repeal and replacement of the Third Schedule to the principal Act.**

The Third Schedule to the principal Act is repealed and replaced as follows —

**“THIRD SCHEDULE**

(section 27)

**FEES AND LEVY**

1 (1) The amount of levy payable by a DSII for a financial year is the amount worked out using the following formula —

Levy = rate of assessment  $\times$  (Consolidated Total Domestic liabilities amount of DSII - Levy threshold + Regulatory capital amount equivalent to 16 per cent of a DSII's risk assets) per annum

(2) The amount of levy payable by a DSII for a financial year shall in no case be less than zero.

(3) The annual rate of assessment to be used to calculate the DSII levy shall be 0.30% or such other percentage as the Minister may by regulation determine from time to time.

3.	Subject to the following paragraphs of this Schedule, the following shall be the fees under this Act, that is to say —	
	<b>Matters in respect of which fee is payable</b>	<b>Amount of fee \$</b>
	(a) Appointment of a licensee by the Controller of Exchange as an	

	<p>authorised dealer as defined in paragraph (1) of regulation 42 of the Exchange Control Regulations in the case where the licensee as per its last consolidated audited financial statements—</p>	
	(i) has domestic assets not exceeding \$500 million	\$250,000
	(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$500,000
	(iii) has domestic assets exceeding \$1 billion	\$1 million
(b)	Continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements—	
	(i) has domestic assets not exceeding \$500 million	\$275,000
	(ii) has domestic assets exceeding \$500 million but not exceeding \$1 billion	\$550,000
	(iii) has domestic assets exceeding \$1 billion but not exceeding \$1.5 billion	\$1 million
	(iv) has domestic assets exceeding \$1.5 billion	\$1.2 million
(c)	A further fee payable by any person as mentioned in subparagraph (a) of this paragraph in the case where the licensee as per its last consolidated audited financial statements—	
	(i) has domestic liabilities not exceeding \$100 million	\$50,000
	(ii) has domestic liabilities exceeding \$100 million but not exceeding \$500 million	\$450,000

	(iii) has domestic liabilities exceeding \$500 million but not exceeding \$1 billion	\$1.5 million
	(iv) has domestic liabilities exceeding \$1 billion	\$2 million
(d)	Appointment of a licensee as authorised agent pursuant to the Exchange Control Regulations in the case where the licensee as per its last consolidated audited financial statement—	
	(i) has assets not exceeding \$5 million	\$90,000
	(ii) has assets exceeding \$5 million but not exceeding \$20 million	\$150,000
	(iii) has assets exceeding \$20 million	\$225,000
(e)	continuance in being on the first day of January in any year as a person appointed as mentioned in subparagraph (d) of this paragraph in the case where the licensee as per its last consolidated audited financial statement —	
	(i) has assets not exceeding \$5 million	\$90,000
	(ii) has assets exceeding \$5 million but not exceeding \$20 million	\$150,000
	(iii) has assets exceeding \$20 million	\$225,000
(f)	Grant of a licence to carry on banking business or trust business or to carry on both banking business and trust business without any limitation on the persons with or for whom such respective business may be carried on where the licensee—	
	(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and	
	(ii) has not been appointed as	

	mentioned in subparagraph (a) or (d) of this paragraph	\$80,000
(g)	Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (f) of this paragraph	\$80,000
(h)	Grant of licence to carry on trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee—	
	(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and	
	(ii) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph	\$80,000
(i)	Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (f) of this paragraph	\$80,000
(j)	Grant of licence to carry on trust business without any limitations on the persons with or for whom such respective business may be carried on where the licensee —	
	(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations to be resident in The Bahamas; and	
	(ii) has not been appointed as mentioned in subparagraph (a) or (d) of this paragraph	\$80,000
(k)	Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (f) of this paragraph	\$80,000

	<p>(l) Grant of licence to carry on banking trust business without any limitation on the persons with or for whom such respective business may be carried on, where the licensee —</p> <p style="padding-left: 20px;">(i) has been declared by the Controller of Exchange pursuant to the Exchange Control Regulations not to be resident in The Bahamas; and</p> <p style="padding-left: 20px;">(ii) has been appointed as mentioned in subparagraph (a) or (d) of this paragraph</p>	\$58,000
	(m) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (h) of this paragraph	\$58,000
	(n) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (j) of this paragraph	\$35,000
	(o) Grant of license to carry on banking business and trust Business solely with or for persons specified in the licence	\$35,000
	(p) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (l) of this paragraph	\$11,000
	(q) Grant of licence solely to carry on trust business specified in the licence	\$11,000
	(r) Continuance in being on the first day of January in any year as a person licensed as mentioned in subparagraph (n) of this paragraph	\$2,500
	(s) Grant of any licence not mentioned in subparagraphs (f), (h), (j), (l) or (m) of this paragraph	\$2,500
	(t) Continuance in being on the first day of January in any year as a persons	\$2,500

	<p>licensed as mentioned in subparagraph (p) of this paragraph</p> <p>(u) On commencement of the business of a private trust company</p> <p>(v) Continuance in being on the first day of January in any year as a private trust company mentioned in paragraph (r)</p> <p>(w) On commencement of the business of a Money Transmission Service Provider</p> <p>(x) Continuance in being on the first day of January in any year as a Money Transmission Service Provider mentioned in paragraph (t)</p>	<p>\$6,000</p> <p>\$4,000</p> <p>\$11,000</p> <p>\$11,000</p>
4	<p>Where any person by reason of falling within a class mentioned in subparagraphs (a) to (u) of paragraph 1 of this Schedule has paid a fee therein prescribed in respect of that class for any year and would, but for provisions of this paragraph of this Schedule, be required to pay in that year a further fee or further fees by reason of such person during that year coming additionally within another such class as aforesaid, such person shall not be required to pay in respect of fees under this Act for that year more in total than the highest fee prescribed in respect of any of the classes within which such person falls.</p> <p>Provided that any person in any year falling within a class mentioned at subparagraph (a) or (b) and at the same time within a class mentioned at subparagraph (c), (d) or (e) of the said paragraph 1 of this Schedule shall, subject to paragraphs 5 and 6 of this Schedule, be required to pay the fee prescribed in respect of all such classes for that year.</p>	
5	<p>As respects the fees specified at subparagraphs (b), (c), (e), (g), (i), (k), (m), (n), (p), (r), (t), (v) and (x) of paragraph 1 of this Schedule –</p> <p>(a) not more than sixty days grace, to be calculated from the first day of January in each year, may be allowed by the</p>	

	Treasurer for the payment of the fees payable in any year; and  (b) no such fees shall be payable in any year where the original appointment or licence to which such fee relates was made or granted on or after the first day of September in the preceding year.	
6	Any fee paid by any person in any year pursuant to subsection (1) of section 300, and paragraph 3 of the Third Schedule to the Companies Act and pursuant to subsection (1) of section 176 of, and paragraph 3 of the Schedule to, the International Business Companies Act shall be deducted from any fees payable by such person in that year under this Act.”.	

### **OBJECTS AND REASONS**

Clause 2 of the Bill seeks to provide for the inclusion of new definitions into the principal Act for the purposes of the new clause 27.

Clause 3 of the Bill seeks to repeal and replace section 27 of the Act to provide for levy and fees to be payable by a Bank that is a domestic systemically important institutions.

Clause 4 of the Bill seeks to repeal and replace the Third Schedule to provide for the new fees and levy.