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Bahamas

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Bahamas.

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BAHAMAS BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

Banking business in the Commonwealth of The Bahamas ("The Bahamas") is primarily governed by the Central Bank of The Bahamas ("CBB") pursuant to the Banks and Trust Companies Regulations Act 2020 ("BTCRA").

Banks are also subject to regulation by the Financial Intelligence Unit ("FIU") with respect to anti-money laundering and the countering of financial terrorism.

2. Which type of activities trigger the requirement of a banking licence?

The requirement to obtain a banking licence is triggered by an entity engaging in the business of:

1. accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them (banking business) or
2. accepting cash, cheques, other monetary instruments or other stores of value in one location and the payment of a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money transfer business belongs (money transmission business).

3. Does your regulatory regime know

different licenses for different banking services?

Yes, banking licensees may be designated as:

- Resident - designates that the licensee may provide services to persons designated resident for exchange control purposes.
- Non-resident - designates that the licensee may only provide services to persons designated non-resident for exchange control purposes.
- Unrestricted - designates that the licensee is unrestricted in the clients it can take on subject to residency restrictions.
- Restricted - designates that the licensee may only take on as clients those specifically authorised by the CBB. It should be noted that, as a matter of policy, the CBB has decided to discontinue the issuance of restricted banking licences.

Additionally, a resident licensee may be designated as an Authorised Dealer capable of dealing in gold and all currencies and, for this purpose, can open and maintain accounts in such currencies subject to the limits set by the CBB.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

No, in order to deal in, arrange deals in, advise on or manage securities ('securities business') in or from within The Bahamas, a bank is required to be licenced by the Securities Commission of The Bahamas ("SCB") under the Securities Industry Act 2011 ("SIA").

5. Is there a "sandbox" or "license light" for specific activities?

There is not a “sandbox” or “license light” in respect of certain banking activities. However, the CBB does tailor the restrictions, if any, placed on a licence to the circumstances surrounding a licensee. In this regard, the CBB may licence a licensee with similar restrictions as a “sandbox” or “license light”.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

There is currently no moratorium in place on the issuance or custody of crypto currencies under the relevant legislation governing the issue and custody of crypto currencies.

7. What is the general application process for bank licenses and what is the average timing?

The Application takes the form of a letter containing background information of the business, including a business plan and projected financials, as well as the managers and the beneficial owners, including references. It is customary that prior to an application being submitted to the CBB, a representative party of the applicant would meet with the CBB to inform them of the pending submission of the application and get an understanding from the CBB whether there are any issues specific to the applicant that the CBB would like the application to address.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

No person may carry on banking activity from within The Bahamas without a licence from the CBB. Where a regulated activity is carried on a pure cross-border basis, i.e. not from within The Bahamas, there is no requirement for that entity to hold a licence from the CBB. The BTCRA is silent on what constitutes carrying on a banking business from within The Bahamas. However, an entity will be deemed to be carrying on a business from within The Bahamas if it does so from a physical location in The Bahamas or using a Bahamian company.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

The BTCRA restricts ability to apply for a banking licence to companies. The definition of company in the BTCRA includes company incorporated either under the laws of The Bahamas or under the laws of any other country or place. In order to do business from within The Bahamas a company incorporated under the laws of another country would need to register as a foreign company under the Companies Act, 1992.

10. What are the organizational requirements for banks, including with respect to corporate governance?

The CBB has issued guidelines for the corporate governance of banks licensed to do business within and from within The Bahamas (Corporate Governance Guidelines). The Corporate Governance Guidelines focus on accepted best practices for effective organization-wide corporate governance and risk management which the Central Bank expects its licensees to adopt. The Corporate Governance Guidelines can be found on the CBB’s website and covers:

1. the process of corporate governance;
2. the responsibilities of the board of directors;
3. operations of the board of directors;
4. the role of independent non-executive directors;
5. the requirements for independent non-executive directors;
6. disclosure;
7. duties of directors;
8. key risks for banks and trust companies; and
9. key specialized committees for board of directors.

11. Do any restrictions on remuneration policies apply?

According to the Corporate Governance Guidelines, non-executive directors are not to be paid a salary, but rather, a fee for their services. In the instance where non-executive directors have received or receive additional remuneration from the company apart from a director’s fee, the same should be documented in the annual review along with the rationale and disclosed to the CBB by way of the annual Corporate Governance Certificate.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major

deviations, e.g., with respect to certain categories of banks?

The CBB has implemented the Basel III framework with respect to regulatory capital. In doing so, it has imposed a responsibility on licensees to develop and implement its own Internal Capital Adequacy Assessment Process (ICAAP) for the purpose of setting internal capital targets and developing strategies for achieving those internal targets that are consistent with its business plans, risk profile and current operating environment. The CBB conducts periodic reviews and assessments of licensees' ICAAPs against the ten principles of the Committee of European Banking Supervisors ("CEBS").

13. Are there any requirements with respect to the leverage ratio?

Presently there are no leverage ratio requirements applicable to licensees of the CBB.

14. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Currently no decision has been made with respect to the implementation of the Basel III liquidity requirements. In 2016, the CBB produced a discussion paper liquidity coverage ratio (LCR) and net stable funding ratio (NSFR). However, the CBB never made the necessary revisions to the existing liquidity risk management framework following the discussion period to implement the proposals set out in the discussion paper.

15. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

N/A

16. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Yes, the CBB has recognized for a long time the importance of consolidated supervision of Bahamian banks, being the regulator of a multitude of banks with wide-ranging international interests. As a result, the CBB has had to liaise with foreign regulatory bodies to ensure the consolidated supervision of licensees.

One practical effect of consolidated supervision is that the CBB would not licence a banking institution in The Bahamas that is part of a group that is regulated by another regulatory body without that other regulatory body approving such licensing. Similarly, changes to a licence or licensee that requires the approval of a foreign regulator would not be approved by the CBB until such foreign regulator has granted its approval.

17. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

No person may acquire direct or indirect control of a licensed bank without obtaining the prior approval of the CBB. Furthermore, the acquisition of any direct or indirect interest in a licensed bank requires the approval of the CBB.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

The CBB will only approve a controller of a licensed bank where the CBB is of the opinion that:

- the person is a fit and proper person;
- having regard to the likely influence of the person, the licensee will or will continue to conduct its business prudently and to comply with the provisions of this Act; and
- it is in the best interest of the financial system of The Bahamas to approve the application.

What constitutes fit and proper is detailed in guidelines produced by the CBB (Guidelines for Assessing the Fitness and Propriety of Applicants for Regulated Functions), which can be found on the CBB's website.

19. Are there specific restrictions on foreign shareholdings in banks?

Presently, there are no specific restrictions on foreign shareholdings of banks licensed by the CBB.

20. Is there a special regime for domestic and/or globally systemically important banks?

Currently, there is no special regime for systemically important banks, although the CBB did produce a Discussion Paper in 2018 recommending the adoption of Basel Committee's "A Framework for dealing with

domestic systemically important banks” and instituting a minimum framework to identify Domestic Systemically Important Banks (D-SIBs) and the higher loss absorbency (HLA) capital requirements for banks that have been identified as D-SIBs. The CBB has, instead maintained a single capital adequacy ratio for all licensed banks.

21. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Sanctions available to the CBB range from fines, to the suspension or revocation of a license, to imprisonment, depending on the nature of the offense.

22. What is the resolution regime for banks?

The BTCRA empowers the CBB to intervene as a statutory administrator or liquidator of a licensee in order to maintain financial stability, protect depositors and enhance public confidence in the stability of the Bahamian banking system. Where the CBB intervenes, it could require that the licensed bank prepare and submit recovery plans to the CBB periodically or it could prepare a resolution plan for the bank.

23. How are client’s assets and cash deposits protected?

Pursuant to the Protection of Depositors Act, 1999, the Deposit Insurance Corporation shall insure each deposit in a member institution which is payable in The Bahamas in Bahamian currency up to an amount of fifty thousand dollars. The limit of fifty thousand dollars applies cumulatively to all accounts held by a depositor at a member institution, except where such accounts are held in different capacities and rights with the same member institution.

Furthermore, pursuant to the BTCRA, the CBB will only approve the voluntary winding-up of a bank on the condition, amongst others, that the bank repays its depositors in full within three days.

24. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Under the BTCRA, a statutory administrator appointed by the CBB can:

1. write down equity or other instruments of

- ownership of a bank, unsecured and uninsured creditor claims; or
2. convert into equity or other instruments of ownership of a bank all or parts of unsecured and uninsured creditor claims,

provide the statutory administrator respects the hierarchy of claims in liquidation set out in the BTCRA.

25. Is there a requirement for banks to hold gone concern capital (“TLAC”)?

As part of the CBB’s minimum capital adequacy requirements, a bank’s regulatory capital consists of both Tier 1 (going-concern) capital and Tier 2 (gone-concern) capital. The sum of the two must be at least 8% of the bank’s risk-weighted assets.

26. In your view, what are the recent trends in bank regulation in your jurisdiction?

The key trend in the bank regulation in The Bahamas has been a focus on enforcement. The CBB has for a long time maintained a standard on par with or exceeding the top international standard. Nevertheless, the CBB has continuously faced pressures from foreign bodies as it relates to enforcing the standards that it has in force against its licensees. In this regard, the CBB has not only taken steps to increase its enforcement powers by amending key legislation but has made a policy decision to commence more enforcement actions to ensure that all licensees are meeting the lofty standards set by the CBB.

The CBB and the SCB sought to consolidate and modernise their primary legislation. The CBB repealed and replaced the BTCRA. The new BTCRA greatly enhanced the ability of the Central Bank to take steps to maintain financial stability, protect depositors and enhance public confidence in the stability of the Bahamian banking system. In particular, the new BTCRA empowered the Central Bank to intervene as a statutory administrator or liquidator of a licensee in order to accomplish those aims. The SCB also expanded its oversight over its regulated firms and enhanced the investor/consumer protection regime in respect of investment funds and financial and corporate services, repealing and replacing the Investment Funds Act (IFA) and the Financial and Corporate Services Providers Act (FCSP Act), respectively.

2020 also saw the Bahamian regulators push forward the Government of The Bahamas’ FinTech agenda. The CBB launched a digitized version of the Bahamian Dollar,

called Sand Dollars. Sand Dollars are backed by the CBB and issued through authorised financial institution. Currently, Sand Dollars can only be used within The Bahamas but, as with fiat Bahamian currency, it can be exchanged for foreign currency through authorised financial institutions. The SCB introduced the Digital Assets and Registered Exchanges Act, 2020 (DARE Act) regulating the issuance and sale of digital tokens, as well as the conduct of those issuing digital tokens and those providing intermediary services related to the issuance of digital tokens.

The recent legislative amendments and the introduction of new FinTech legislation reposition reset and reposition the jurisdiction for continued relevance and growth.

27. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The biggest threat to the success of the financial sector in The Bahamas is the shifting goalposts with respect to

what it means to be compliant with international measures to counter money laundering. Despite maintaining high standards in the fight against money laundering, terrorist financing and other identified financial crimes risks, the financial sector in The Bahamas has been in a state of flux in recent years, as it has had to adapt to swathes of legislation being implemented by the Government of The Bahamas to satisfy such pan-national regulatory bodies of its commitment to maintaining such high standards. As a result of steps taken by the government of The Bahamas, including the implementation of a host of legislation, including the Commercial Entities (Substance Requirements) Act, 2018 (CESRA) and the Multinational Entities Financial Reporting Act, 2018 (MEFRA), in 2020 The Bahamas was removed from the European Union's watch list after being deemed fully compliant with the European Union's tax standards and the Financial Action Task Force (FATF) removed The Bahamas from the list of Jurisdictions under Increased Monitoring in December 2020. congratulating The Bahamas for the significant progress it made in improving its AML/CFT regime in the process.

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