

**ANTIGUA AND BARBUDA**



**BANKING (AMENDMENT) BILL, 2019**

**NO. OF 2019**



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**ARRANGEMENT OF CLAUSES**

Clauses

1. Short title
2. Interpretation
3. Amendment of section 2 - Interpretation
4. Amendment of section 3 – Requirement for licence
5. Amendment of section 4 – Examination of books of persons carrying on banking business without a licence
6. Insertion of new section 5 – Appointment of Receiver for failure to hold licence
7. Insertion of new section 7 – Application for licence
8. Amendment of section 14 – Revocation of licence
9. Amendment of section 19 – Authorisation of location and approval of new business premises
10. Amendment of section 42 – Revocation of licence of financial holding company
11. Amendment of Part V – Financial Requirement and limitations
12. Amendment of section 44 – Minimum paid-up or assigned capital
13. Amendment of section 45 – Maintenance of reserve fund
14. Amendment of section 49 – Limit on exposures
15. Amendment of section 50 – Restrictions on lending to employees
16. Amendment of section 51 – Restrictions on lending to employees
17. Amendment of section 53 – Prohibition on engaging or investing in trade and outsourcing
18. Amendment of section 54 – Financial subsidiaries permitted
19. Amendment of section 55 – Restrictions in investments in real property
20. Amendment of section 57 – Maintenance of specified assets
21. Amendment of section 60 – Appointment of external auditor
22. Amendment of section 69 – Audited financial statements
23. Amendment of section 80 – Failure to comply with remedial actions
24. Amendment of section 88 – Notification of removal of directors and officers
25. Amendment of section 89 – Submission of returns and production of information as

- required by the Central Bank
26. Amendment of section 92 – Disclosure of basis for charges and fees
  27. Amendment of section 97 – Minimum criteria for determining whether a person is fit and proper
  28. Amendment of section 101 – Notification to Central Bank of appointment of officers and directors
  29. Amendment of section 103 – Removal and disqualification of director of officer
  30. Amendment of section 104 – Right to make representation
  31. Amendment of section 105 – Notice of confirmed removal
  32. Amendment of section 107 – Effective date of removal
  33. Amendment of section 108 – Failure to comply with a direction
  34. Amendment of section 109 – Failure to comply with section 103
  35. Amendment of section 131 – Capital increase by existing shareholders
  36. Amendment of section 137 – Termination of official administration
  37. Amendment of section 138 – Grounds of receivership
  38. Insertion of section 138A
  39. Amendment of section 140 – Commencement and notice of receivership
  40. Amendment of section 147 – Avoidance of pre-receivership transfers
  41. Amendment of section 168 – Report, publication and disposal of abandoned property
  42. Amendment of section 169 – Abandoned property to vest in the Crown
  43. Amendment of section 174 – Failure to file report or to pay property
  44. Amendment of section 178 – Secrecy of information
  45. Amendment of section 180 – Administrative penalties to be paid to the credit of Central Bank
  46. Amendment of section 186 – Bridge financial institutions and asset management vehicles
  47. Amendment of Schedules

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**AN ACT** to amend the Banking Act, 2015, No. 10 of 2015 and for other incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Banking (Amendment) Act, 2019.

**2. Interpretation**

In this Act—

“principal Act” means the Banking Act, 2015, No. 10 of 2015.

**3. Amendment of the section 2 – Interpretation**

Section 2 of the principal Act is amended—

- (a) in subsection (1):
  - (i) in the definition of “affiliate” by deleting paragraph (e) and substituting the following paragraph:
    - “(e) a company which:
      - (i) has the same beneficial owner; or
      - (ii) shares common management,  
and has any interlinked business with F;”;
  - (ii) in the definition of “banking business” by deleting the word “frequent” in sub-paragraph (a)(ii);

- (iii) by inserting immediately after the definition of “borrower group” the following definition:  
““branch” means any office or place of business of a licensed financial institution, other than the principal office where a licensed financial institution carries on any banking business and which facilitates the -  
(a) acceptance of deposits and other repayable funds; or  
(b) issuing and administering means of payment including credit cards, travellers’ cheques, bankers’ drafts, and electronic money,  
but does not include automatic banking machines and bureaux de exchange;”
- (iv) by inserting immediately after the definition of “business of a financial nature” the following definition:  
““CARICOM national” means a national of a member state of the Caribbean Community including the CARICOM Single Market and Economy established by Article 2 of the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5th July 2001”;
- (v) by deleting the definition of “capital base”;
- (vi) in the definition of “exposure”, in paragraph (a), by inserting after the word “acceptance” the words, “or any other asset recognized by the Central Bank as an exposure”;
- (vii) in the definition of “financial group” by deleting the word “conduct” and substituting it with the words, “carry on”;
- (viii) in the definition of “large exposure” by deleting “the capital base” and substituting “tier 1 capital”;
- (ix) in the definition of “licensed financial holding company” by inserting immediately after the word “Act” the following:  
“and includes a former licensed financial holding company”;
- (x) by deleting the definition of “licensed financial institution” and substituting with the following definition:

““licensed financial institution” means a person or incorporated entity licensed to carry on banking business and includes a former licensed financial institution;”

- (xi) in paragraph (a) of the definition of “officer” by inserting after the words “vice-president”, the words, “branch manager, country manager”
- (xii) in paragraph (b) of the definition of “officer” by deleting “by-laws” and substituting “bye-laws”;
- (xiii) by inserting immediately after the definition of “officer” the following definition:

““outsource” means to enter into a contractual arrangement with a third-party service provider, where the service provider manages functions, business activities, processes or products that are, or could be undertaken by the licensed financial institution;”
- (xiv) by deleting the definition of “place of business” and substituting the following definition:

““place of business” means a physical location, site, structure, or other similar facility, through which a licensed financial institution or licensed financial holding company transacts its affairs or carries on business;”
- (xv) by deleting the definition of “relative” and substituting the following definition:

““relative” means a spouse, son, daughter, stepson, stepdaughter, adopted son, adopted daughter, brother, sister, father or mother;”
- (xvi) by inserting immediately after the definition of “significant shareholder” the following definition:

““spouse” includes:
  - (a) a woman who, for a period of not less than five years, has cohabited with a man as if she were in law his wife; and
  - (b) a man who, for a period of not less than five years, has cohabited with a woman as if he were in law her husband;”

(xvii) by inserting immediately after the definition of “subsidiary” the following definition:

““tier 1 capital” means the total of:

- (a) paid-up share capital, statutory reserve fund, share premium account, retained earnings and any other capital account approved by the Central Bank, in the case of local licensed financial institutions, or
- (b) such other capital account or similar measure as approved by the Central Bank, in the case of a licensed branch of a foreign financial institution, less any amount by which that total has been impaired in either case;”

(b) in subsection (2):

- (i) in sub-paragraph (a)(iv) by deleting the words, “an employee or” and substituting these with the words, “a business”; and
- (ii) in sub-paragraph (b)(iii) by deleting the words “or employee”;

(c) by inserting the following subsection:

“(3) In this Act, for the purposes of the payment of licence fees, a reference to a local financial institution includes a foreign financial institution that is a CARICOM national.”

#### **4. Amendment of section 3 – Requirement for licence**

Section 3 of the principal Act is amended in subsection (5) at paragraph (a) by deleting the words, “financial institution” and substituting with the word “corporation”.

#### **5. Amendment of section 4 – Examination of books of persons carrying on banking business without a licence**

Section 4 of the principal Act is amended—

- (a) in subsection (2), by deleting the word, “conduct” and substituting the words “carrying on”; and
- (b) by deleting subsection (4) and substituting the following subsection:  
“A police officer who accompanies an officer in whose name an order has been granted under subsection (2) may in the case of resistance break open a door and remove an impediment or obstruction to the entry, search or seizure.”



## **6. Amendment of section 5 – Appointment of receiver for failure to hold licence**

Section 5 of the principal Act is deleted and the following section is substituted therefor –

“Notwithstanding Section 3(5), if a person is found under section 4(2) to be carrying on banking business without a licence, the Central Bank may appoint a receiver to the banking business.”

## **7. Amendment of section 7 – Application for licence**

Section 7 of the principal Act is amended—

- (a) in subsection (1) at paragraph (e), by deleting the words “holding company” and substituting with the word, “group”; and
- (b) in subsection (2), by inserting after the word “branch” the words, “or subsidiary”.

## **8. Amendment of section 14 – Revocation of licence**

Section 14 of the principal Act is amended in subsection (1) at paragraph (j), by deleting the word “conduct” and substituting “carry on”.

## **9. Amendment of section 19 – Authorisation of location and approval of new business premises**

Section 19 of the principal Act is amended in subsections (7), (8) and (9) by deleting the words “electronic banking system” and substituting with the words “automatic banking machine”.

## **10. Amendment of section 42 – Revocation of licence of financial holding company**

Section 42 of the principal Act is amended in subsection (1) at paragraph (f), by deleting the word “conduct” and substituting “carry on”.

## **11. Amendment of Part V – Financial Requirements and Limitations**

Part V of the principal Act is amended by inserting immediately before section 44, the following new section –

### **“43A. Definition of specified assets**

In this Part “specified assets” means freely transferable assets free from any charge, lien or encumbrance and includes:

- (a) notes and coins which are legal tender in the Currency Union and such foreign notes and coins as the Central Bank may specify;
- (b) balances at the Central Bank;
- (c) net balances at licensed financial institutions in the Currency Union but where the balances are negative they will be subtracted from the specified assets;
- (d) treasury bills and other securities issued or guaranteed by a Participating Government and securities issued by a statutory corporation wholly owned by a Participating Government and approved by the Central Bank;
- (e) bills of exchange and promissory notes eligible for rediscount by the Central Bank and warehouse warrants or their equivalent securing possession of goods against which the Central Bank may grant advances, within the limits and in accordance with the evaluation fixed by the Central Bank;
- (f) net balances at licensed financial institutions in the monetary areas as the Central Bank may approve and the Central Bank may provide for the treatment to be accorded the balance or any portion in respect of the head office of a licensed financial institution organised abroad, and where any balances are negative they will be subtracted from specified assets;
- (g) money at call in monetary areas approved by the Central Bank under paragraph;
- (f) bills of exchange bearing at least two good signatures drawn on and payable at any place in the approved monetary areas, and treasury bills issued by the government of a country in any approved monetary areas and maturing within one hundred and eighty days.”

## **12. Amendment of section 44 – Minimum paid-up or assigned capital**

Section 44 of the principal Act is amended by—

- (a) deleting the word “[Territory]” in subsections (1) and (2) and replacing it with the words “the Currency Union”; and
- (b) deleting the words “Antigua and Barbuda” in paragraph (a) of subsection (3) and replacing these with the words “the Currency Union”;
- (c) inserting after subsection (4) the following new subsection as follows:

“(5) The Central Bank may approve the holding of assigned capital in the form of specified assets.”

### **13. Amendment of section 45 – Maintenance of reserve fund**

Section 45 of the principal Act is amended by—

(a) deleting subsection (2) and substituting the following subsection:

“(2) A licensed financial institution or licensed financial holding company shall not declare, credit or pay any dividend or make any other transfer from profits if the declaration, credit, payment or transfer would result in:

- (a) an impairment of the capital required under section 44;
- (b) inadequate and inappropriate forms of liquidity contrary to section 48; or
- (c) negative retained earnings or accumulated deficit”; and

(b) inserting after subsection (2) the following new subsections:

“(3) Subject to subsections (4) and (5) a licensed financial institution or licensed financial holding company shall not, except with prior written approval of the Central Bank, declare, credit or pay any dividend or make any other transfer from profits if the licensed financial institution or licensed financial holding company realises a net loss for that financial year.

(4) A licensed financial institution or licensed financial holding company shall seek the approval of the Central Bank under subsection (3) at least fifteen days before the intended declaration, credit, payment or transfer.

(5) The Central Bank may grant approval under subsection (3) on such terms and conditions as the Central Bank deems fit.”

### **14. Amendment of section 49 – Limit on exposures**

Section 49 of the principal Act is amended by deleting the words “capital base” in subsections (1) and (6) and substituting these with the words “tier 1 capital”.

### **15. Amendment of section 50 – Restrictions on exposures to related parties**

Section 50 of the principal Act is amended in subsection (4) by deleting the words, “the capital base” and substituting these with the words, “tier 1 capital”.

**16. Amendment of section 51 – Restrictions on lending to employees**

Section 51 is amended by—

- (a) deleting subsection (3) in its entirety and substituting it with the following –  
“(3) A licensed financial institution shall not, except with the prior written approval of the Central Bank, grant or permit to be outstanding to its employees any unsecured advances or credit facilities which in the aggregate amount for any one employee exceeds the annual remuneration of such employee.”; and
- (b) deleting subsection (4) and substituting it with the following –  
“(4) The Central Bank may grant approval under subsection (3) on terms and conditions the Central Bank deems fit.”

**17. Amendment of section 53 – Prohibition on engaging or investing in trade and outsourcing**

Section 53 of the principal Act is amended—

- (a) in subsection (2), by deleting the word “conduct” and substituting it with the words “carry on”; and
- (b) by deleting the words “the capital base” wherever it appears and substituting these with the words “tier 1 capital”.

**18. Amendment of section 54 – Financial subsidiaries permitted**

Section 54 of the principal Act is amended by—

- (a) inserting after subsection (1) the following new subsection:  
  
“(1A) A licensed financial institution shall not own a subsidiary company that does not engage solely in permissible activities.”
- (b) inserting after subsection (4) the following subsection:  
“(5) For the purposes of this section “permissible activities” includes business of a financial nature and any other activities that the Central Bank may determine”; and
- (b) deleting the words “the capital base” wherever it appears and substituting “tier 1 capital”.

**19. Amendment of section 55 - Restrictions on investments in real property**

Section 55 of the principal Act is amended by—

(a) deleting subsection (1) and substituting it with the following subsection :

“(1) A licensed financial institution shall not directly or indirectly, except with the prior approval of the Central Bank, purchase, acquire or lease real or immovable property unless it is necessary for the purpose of carrying on its business as a licensed financial institution including provision for future expansion and housing its officers and employees.”;

(b) deleting subsection (2) and substituting the following subsection:

“(2) If a licensed financial institution holds any real or immovable property held or leased for carrying on its business as a licensed financial institution, the licensed financial institution shall comply with this section within a period of three years or a further period as may be determined by the Central Bank.”; and

(c) inserting the following subsection :

“(4) The Central Bank may grant approval to a licensed financial institution under subsection (1) on terms and conditions the Central Bank may deem fit.”

**20. Amendment of section 57 – Maintenance of specified assets**

Section 57 is amended by repealing subsection (7).

**21. Amendment of section 60 – Appointment of external auditor**

Section 60 of the principal Act is amended—

(a) in subsection (2) by:

- (i) deleting “six” and substituting “nine”; and
- (ii) deleting “three” and substituting “six”; and

(b) by deleting subsection (3) and substituting the following subsection:

“(3) A person who has served the maximum period under section 60(2) may not be re-appointed as the external auditor until after a period of five years has elapsed since the last appointment.”

**22. Amendment of section 69 - Audited financial statements**

Section 69 of the principal Act is amended by deleting subsection (5) and substituting the following subsection-

“(5) Subject to section 91, if a licensed financial institution or a licensed financial holding company fails to comply with the requirements of:

(a) subsection (1) within six months of the end of its financial year; or

(b) subsections (2) to (4),

it is liable to a penalty of fifty thousand dollars and three thousand dollars for every day of the default.”

**23. Amendment of section 80 - Failure to comply with remedial actions**

Section 80 of the principal Act is deleted and the following section is substituted-

“80. Failure to comply with remedial actions

(1) A licensed financial institution or an affiliate of a licensed financial institution that fails to comply with a requirement or prohibition the Central Bank imposes on the licensed financial institution under this Part, is liable to a penalty of one hundred thousand dollars and a further penalty of ten thousand dollars for each day of the default.

(2) A director, officer, employee or significant shareholder of a licensed financial institution who fails to comply with a requirement or prohibition the Central Bank imposes on the director, officer, employee or significant shareholder under this Part, is liable to a penalty of fifty thousand dollars and to a further penalty of five thousand dollars for each day of the default.”

**24. Amendment of section 88 - Notification of removal of directors and officers**

Section 88 of the principal Act is deleted in its entirety and substituted as follows –

**“88. Notification of removal of directors and officers**

(1) If an action under this Part requires the removal of a director or officer of a licensed financial institution, the Central Bank shall serve on the

licensed financial institution and on the director or officer concerned written notice of the intended removal.

(2) The licensed financial institution and the director or officer served with a notice under subsection (1) may, within fourteen days commencing from the day after which the notice is served, make written representations and a request for face to face representation to the Central Bank.

(3) If the Central Bank receives a request for a face to face representation under subsection (2), the face to face representation shall take place within fourteen days of receipt of the request.

(4) The Central Bank shall take the representations into account in deciding whether to remove the director or officer.

(5) If the Central Bank is of the opinion that the public interest may be prejudiced by the director or officer continuing to exercise the powers or carry out the duties and functions of that office during the period for making representations specified in subsections (2) and (3), the Central Bank may make an order suspending the director or officer and the suspension shall not extend beyond the period for making representations.

(6) If the Central Bank decides to remove the director or officer, the Central Bank shall, within seven days of the written or face to face representation notify the director or officer and the licensed financial institution of the removal order made under this Part.

(7) The director or officer ceases to hold office on the date the removal order is made or a later date specified in the removal order.

(8) If the director, officer or licensed financial institution is aggrieved by the decision of the Central Bank under subsection (6), the director, officer or the licensed financial institution may, within fourteen days of the decision, appeal to the High Court but the appeal shall not operate as a stay of the decision under this section unless the High Court directs otherwise.”

**25. Amendment of section 89 - Submission of returns and production of information as required by the Central Bank**

Section 89 of the principal Act is amended in subsection (3) at paragraph (c) by deleting the words “the capital base” and substituting these with the words “tier 1 capital”.

**26. Amendment of section 92 - Disclosure of basis for charges and fees**

Section 92 of the principal Act is amended by inserting the words “to the Central Bank” after the word “made”.

**27. Amendment of section 97 - Minimum criteria for determining whether a person is fit and proper**

Section 97 of the principal Act is amended in subsection (2) by inserting the following paragraph-

“(i) whether the person is a director or officer of, or directly or indirectly concerned in the management of a corporation locally or abroad, that is compounding with or suspending payments to its creditors.”

**28. Amendment of section 101 - Notification to Central Bank of appointment of officers and directors**

Section 101 of the principal Act is deleted and is substituted as follows –

**“101. Notification to Central Bank of appointment of officers and directors**

(1) A licensed financial institution or licensed financial holding company shall give written notice to the Central Bank of the proposed appointment or election of a director or officer at least sixty days prior to the appointment or election of the director or officer.

(2) On receipt of the notice under subsection (1) the Central Bank shall conduct an investigation to determine whether the proposed director or officer satisfies the fit and proper criteria in section 97.



- (2) On completion of its investigation, the Central Bank shall inform the licensed financial institution or licensed financial holding company in writing that:
  - (a) the requirements of section 97 have been satisfied and it has no objections to the proposed appointment or election of the director or officer; or
  - (b) the requirements of section 97 have not been satisfied, the manner in which the requirements have not been met and that it objects to the appointment.
- (3) Despite subsection (1), if prior notification of the appointment or election of a director or officer of a licensed financial institution or licensed financial holding company is not possible, the licensed financial institution or licensed financial holding company:
  - (a) may appoint or elect the director or officer, conditional on the Central Bank's confirmation under subsection (3) that the director or officer satisfies the requirements of section 97; and
  - (b) shall within five days of the appointment or election give written notice to the Central Bank of the conditional appointment or election of the director or officer specifying the reasons for the appointment or election of the director or officer without prior approval.
- (4) If the Central Bank receives a notice under subsection (4) and is not satisfied that a director or officer meets the requirements of section 97, the Central Bank:
  - (a) shall direct the removal of the director or officer; and
  - (b) may notify in writing the person whose removal is required by serving on the person a copy of the direction under paragraph (a).”

## **29. Amendment of section 103 - Removal and disqualification of director or officer**

Section 103 of the principal Act is amended—

- (a) in subsection (1) at paragraph (a), by deleting the words “two-thirds of”;

(b) by deleting subsection (2) and substituting the following subsection:

“(2) Subject to subsection (2A) and prudential standards issued by the Central Bank, a person who:

- (a) has been declared bankrupt;
- (b) has been sentenced for an offence involving, a term of imprisonment exceeding six months or sentenced to imprisonment in default of the payment of a fine;
- (c) has been a director or officer of a company which has been wound up by a court or has been placed in receivership;
- (d) has been a director or officer of, or directly or indirectly concerned in the management of a former licensed financial institution or body corporate locally or abroad, the licence of which has been revoked

shall not, without the prior approval of the Central Bank, act or continue to act as a director or officer of, or be directly or indirectly concerned in any way in the management of any licensed financial institution or licensed financial holding company;” and

(c) by inserting the following subsection:

“(2A) Subsection (2)(d) does not apply if the revocation of the licence was due to:

- (a) its amalgamation with another licensed financial institution or licensed financial holding company or other company; or
- (b) its voluntary winding up.”

### **30. Amendment of section 104 - Right to make representation**

Section 104 of the Act is deleted in its entirety and is substituted as follows –

#### **“104. Right to make representation**

- (1) A licensed financial institution or licensed financial holding company to which a direction is given and a person who is served a copy of the direction under section 101(5) or section 103(4) may, within fourteen days commencing from the day after which the direction is given, make written representations and a request for a face to face representation to the Central Bank.

- (2) If the Central Bank receives a request for a face to face representation under subsection (1), the face to face representation shall take place within fourteen days of receipt of the request.
- (3) The Central Bank shall take the representations into account in deciding whether to confirm the direction.”

### **31. Amendment of section 105 - Notice of confirmed removal**

Section 105 of the principal Act is deleted and substituted as follows –

#### **“105. Notice of confirmed removal**

(1) If the Central Bank decides to confirm the direction it shall, with seven days of the written or face to face representation as the case may be, serve written notice of the confirmation on the licensed financial institution or the licensed financial holding company and the person whose removal is required.

(2) If the licensed financial institution, the licensed financial or the person whose removal is required is aggrieved by the decision of the Central Bank under subsection (1), the licensed financial institution, the licensed financial holding company or the person whose removal is required may, within fourteen days of the decision, appeal to the High Court, but the appeal shall not operate as a stay of the decision under this section unless the High Court directs otherwise.”

### **32. Amendment of section 107 - Effective date of removal**

Section 107 of the principal Act is amended by deleting the words “subsection (2)” and substituting the words “subsection (5)”.

### **33. Amendment of section 108 - Failure to comply with a direction**

Section 108 of the principal Act is amended by deleting the words “subsection (2)” and substituting the words “subsection (5)”.

**34. Amendment of section 109 - Failure to comply with section 103**

Section 109 of the principal Act is deleted and substituted as follows –

**“109. Failure to comply with section 103**

- (1) A licensed financial institution which fails to comply with section 103 is liable to a penalty of one hundred thousand dollars and ten thousand dollars for each day of the default.
- (2) A director or officer of a licensed financial institution who fails to comply with section 103 is liable to a penalty of fifty thousand dollars and five thousand dollars for each day of the default.”

**35. Amendment of section 131 - Capital increase by existing shareholders**

Section 131 of the principal Act is amended in subsection (1) at paragraph (b) by deleting the word “three” and substituting it with the word “ten”.

**36. Amendment of section 137 - Termination of official administration**

Section 137 of the principal Act is amended by deleting paragraph (b) of subsection (2) and substituting it as follows –

“(b) the licensed financial institution or licensed financial holding company cannot be rehabilitated and the Central Bank issues a decision to commence receivership and liquidation proceedings under Part X.”

**37. Amendment of section 138 - Grounds of receivership**

Section 138 of the principal Act is amended by deleting subsection (1) and substituting the following subsection-

- “(1) The Central Bank may appoint a receiver for:
- (a) a licensed financial institution or licensed financial holding company if:
    - (i) it is insolvent;
    - (ii) it is not viable;
    - (iii) its capital is impaired or its condition is otherwise unsound;

- (iv) it has experienced substantial dissipation of assets or earnings due to any of the grounds for action by the Central Bank under section 75(1);
- (v) it or its directors, officers, employees, or significant shareholders wilfully violate or fail to comply with an order or direction of the Central Bank under sections 75 to 87;
- (vi) its business is being conducted in an unlawful or imprudent manner;
- (vii) the continuation of its activities is detrimental to the interests of its depositors;
- (viii) it conceals or refuses to submit any of its records or its operations for examination as provided for in section 74, or has otherwise obstructed such examination;
- (ix) its licence has been revoked in accordance with sections 14 or 76;
- (x) official administration is terminated pursuant to section 137(2)(b);
- (xi) it is a bridge financial institution and its designation as a bridge financial institution terminates pursuant to section 186(3)(a) or the Central Bank initiates receivership pursuant to section 186(5); or

(b) a person who is found under section 4(2) to be carrying on banking business without a licence.”

### **38. Insertion of Section 138A**

The principal Act is amended by inserting after section 138 the following new section as follows –

**“138A. Receivership and compulsory liquidation in respect of a person under section 138(1)(b)**

The provisions of section 138(2) and section 139 through to section 157 shall apply to a person under section 138(1)(b) with the necessary modifications .”

**39. Amendment of section 140 - Commencement and notice of receivership**

Section 140 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “and revocation of licence”;
- (b) in subsection (3), by deleting the words “revocation of the licence and”; and
- (c) by deleting subsection (4) and substituting the following subsection:

“(4) The notice shall also specify that:

- (a) authorisations of persons to engage the financial responsibility of the licensed financial institution or licensed financial holding company have been cancelled; and
- (b) persons who previously had authorisation to give instructions on behalf of the licensed financial institution or licensed financial holding company with respect to payment or transfer of the licensed financial institution’s or licensed financial holding company’s assets or assets managed by the licensed financial institution or licensed financial holding company are no longer so authorised.”

**40. Amendment of section 147 - Avoidance of pre-receivership transfers**

Section 147 of the principal Act is amended in subsection (1) at paragraph (g) by deleting “one hundred” and substituting “two hundred”.

**41. Amendment of section 168 - Report, publication and disposal of abandoned property**

Section 168 of the principal Act is amended in subsection (1) by deleting “ninety days” and substituting “three months”.

**42. Amendment of section 169 - Abandoned property to vest in the Crown**

Section 169 of the principal Act is deleted in its entirety and substituted as follows –

**“169. Abandoned property to vest in the Crown**

(1) Any abandoned property paid into the custody of the Central Bank under section 168(1) shall vest in the Crown fifteen years from the date on which it was paid into the custody of the Central Bank.

(2) Any abandoned property paid into the custody of the Central Bank prior to the commencement of this Act shall vest in the Crown fifteen years from the date of commencement of this Act.”

**43. Amendment of section 174 - Failure to file report or to pay property**

Section 174 of the principal Act is deleted in its entirety and is substituted as follows –

**“174.Failure to file report or to pay property**

A licensed financial institution or licensed financial holding company which fails to comply with sections 168(1) and 168(4) and section 170(2) is liable to a penalty of five thousand dollars and for a further penalty of one thousand dollars for each day of default.”

**44. Amendment of section 178 – Secrecy of information**

Section 178 is amended in subsection (2) by deleting paragraph (b) thereof and substituting the following paragraph –

“(b) a licensed financial institution or a director, officer, secretary, employee, agent, auditor, receiver, official administrator or official liquidator of the licensed financial institution, from providing access to confidential information of the licensed financial institution that is necessary to conduct due diligence in connection with a potential acquisition of assets and liabilities of the licensed financial institution, whether through direct transfer or through a merger or similar corporate transaction.”

**45. Amendment of section 180 - Administrative penalties to be paid to the credit of Central Bank**

Section 180 of the Act is amended by deleting subsection (1) thereof and substituting the following subsection-

“(1) The penalties imposed under sections 9(3), 19(9), 19(10), 44(4), 56(2), 57(8), 68, 69(5), 80, 96, 109 and 174 shall be paid to the Central Bank.”

**46. Amendment of section 186 – Bridge financial institutions and asset management vehicles**

Section 186 of the principal Act is deleted in its entirety and is replaced as follows –

**“186. Bridge financial institutions and asset management vehicles**

(1) A Participating Government may establish a bridge financial institution for the purpose of acquiring and managing the assets and liabilities of a licensed financial institution that is subject to official administration or receivership under Part IX or Part X for a period of up to twelve months.

(2) The Central Bank may grant an extension of the period referred to in subsection (1) for up to four consecutive periods of twelve months each.

(3) The designation of a licensed financial institution as a bridge financial institution shall terminate if:

- (a) the period under subsection (1) and any subsequent extensions under subsection (2) expire;
- (b) the bridge financial institution:
  - (i) is sold to another person, or licensed financial institution or licensed financial holding company, that is not a bridge financial institution; or
  - (ii) amalgamates with another licensed financial institution that is not a bridge financial institution; or
- (c) satisfies the capital requirements of sections 44 and 46.

(4) Where the designation of a licensed financial institution as a bridge financial institution terminates pursuant to subsection (3)(a) the bridge financial institution shall be placed into receivership and liquidated.

(5) The Central Bank may initiate receivership of a bridge financial institution in accordance with Part X, prior to the expiration period identified in subsection (3)(a).



(6) A bridge financial institution established under subsection (1) shall be licensed under this Act and shall be subject to all of the provisions of this Act, except the capital requirements of sections 44 and 46.

(7) A Participating Government may establish an asset management company for the purpose of acquiring, managing, and disposing of problem assets of a financial institution pursuant to Part IX or Part X.”

#### 47. Amendment of Schedules

(1) Schedule I is deleted and replaced as follows-

#### “SCHEDULE I

#### Fees for Licensed Financial Institution

(Sections 7(1), 8(5), 9(1), 36(1), 38(2))

Description	Non Refundable Application Fee	Initial Licence Fee	Annual Licence Fee
Branch - Foreign Financial Institution	\$20 000	\$120 000	\$120 000
Local Licensed Financial Institution	\$20 000	\$80 000	\$80 000
Licensed Financial Holding Company - Foreign	\$20 000	\$60 000	\$60 000
Licensed Financial Holding Company - Local	\$20 000	\$40 000	\$40 000
Branch – Local Licensed Financial Institution	-	-	\$20 000
Additional Branch – Foreign Financial Institution	-	-	\$30 000

”

(2) Schedule III of the principal Act is deleted and replaced as follows –

**“SCHEDULE III**

**Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty**

*(Section 181)*

<b>Offence</b>	<b>Section</b>	<b>Fixed penalty</b>
Carrying on banking business without a licence	3(5)	\$250 000
Refusal to make relevant documents available for examination	4(5)	\$2 500
Use of restricted words, names and practices	16(5)	\$125 000
Failure to disclose transfer	31(1)	\$1 000
Failure to disclose acquisition of interest	31(2)	\$2 500
Failure to disclose and allow access to books and records	74(3)	\$25 000
Providing information that is false in any material particular	74(4)	\$25 000
Restriction on advertising likely to mislead the public	93(2)	\$25 000
Failure to declare related interest	110	\$5000
Deceiving statements and obstruction of audit or authorised examination	111	\$15 000
Failure of management to comply with the law	112	\$7 500
Failure to assist the official administrator	129(5)	\$7 500
Interference with receivers access to or control over office, books of accounts and other records	145(4)	\$7 500

Passed the House of Representatives

Passed the Senate

No. of 2019

*Banking (Amendment) Bill 2019*

this the day of

2019.

this day of

2019

*Speaker*

*President*

*Clerk to the House of Representatives*

*Clerk to the Senate*

### EXPLANATORY MEMORANDUM

The proposed amendments to the Banking Act 2015 are comprehensive and aim to improve the legislative framework of banking in the Eastern Caribbean Currency Union. For the purpose of achieving the objectives several amendments are being proposed. The Interpretation section is amended to eliminate ambiguities. Key examples include:

- the introduction of the term “*branch*”. This is significant as financial institutions will be expected to pay annual licence fees for each branch that operates in the ECCU.
- the replacement of the term “*capital base*” with the term “*tier 1 capital*” as the latter is a term with which the industry is more familiar.
- narrowing of the definition of the term “*relative*”. The current expansive nature of the definition is problematic for the industry as securing compliance with the requirements of the Act upon which this definition has some bearing, is proving impractical and near impossible.

Certain provisions in the Act were identified as requiring amendment to ensure clarity of intent and consistency in language. Examples of this include the following: An anomaly was identified in section 5 where reference is made to “*conducting banking business*”. However, the term that is intended to be used throughout the Act and is indeed used in all other areas of the Act is “*carrying on banking business*”. The use of the former terminology has the potential to create interpretational issues and therefore must be adjusted accordingly.

There are certain provisions which speak to licences throughout the bill which have been amended. For example, Clause 6 amends section 5 of the Act and now states that a receiver

may be appointer for a person who is found carrying on banking business contrary to section 4(2).

The Act imposes limitations on certain activities of banks including the following:

- Prohibitions on declaring or distributing dividends during any financial year that the licensed financial institution experiences a loss;
- Restrictions on investments in real estate; and
- Restrictions on unsecured lending to employees to fifty percent (50%) of the annual remuneration of the employee.

The amendments confer the discretion on the Bank to grant approval to financial institutions to: **(i)** engage in the activities referenced in (a) and (b) above; and **(ii)** in the case of (c) to lend unsecured to employees up to one hundred percent (100%) of the employee's remuneration.

The current provisions on auditing require financial institutions to change their external auditors every six (6) years and the lead and concurring partner every three (3) years.

The current time frames for the rotation of external auditors were considered too short in light of the limited number of auditing firms (without conflicts) in the region. The Bank therefore proposes to revert to the previous position which would allow financial institutions to change their external auditors every nine (9) years and the lead and concurring partner every six (6) years.

Based on the definition of "*foreign financial institutions*" in the Act, financial institutions that are CARICOM nationals but are non-ECCU nationals would be considered foreign and therefore be subject to higher licence fees than "*local financial institutions*" (ECCU nationals) according to the fee structure.

We are advised by CARICOM that the fee structure is inconsistent with the prohibition against discrimination based on nationality only, under Article 7 of the Revised Treaty of Chaguaramas and that financial institutions incorporated within CARICOM but outside the ECCU should not be charged higher fees than their ECCU counterparts. In an effort to ensure compliance with the existing treaty obligations of member states, the fee structure has been revisited to allow CARICOM nationals that are non-ECCU nationals to pay the same license fees as ECCU nationals.

Other areas included in the Amendment are as follows:

- Clause 11 of the Bill amends section 44 of the Act, the **Minimum paid-up or assigned capital** provision. The amendment would allow foreign branch banks to hold assigned capital in the Currency Union in the form of specified assets as defined in section 57(7) of the Act as approved by the Central Bank.
- The treatment of discharged bankrupt persons under the fit and proper provisions; a person who has been declared bankrupt would be required to seek the prior approval of the Bank to serve as a director or officer of a licensed financial institution.
- Section 54 speaks to licensed financial institutions that “*may acquire or establish a subsidiary company*”. In its current formulation only future subsidiaries will be captured. However, the provision is intended to not only govern future subsidiaries but also existing subsidiaries. The section would therefore be amended to give effect to that intent.
- Introduction of an appeals process for persons aggrieved by the decisions of the Bank under the fit and proper provisions.
- Introduction of a process by which officers and directors could be vetted by the Bank to determine compliance with the fit and proper criteria prior to appointment or nomination/election to boards of licensed financial institutions respectively.

- Clause 44 of the Bill amends section 178, the **Secrecy of Information** provision. Section 178 provides for specific exceptions to the obligation to treat banking information as secret and confidential. The amendment would allow licensed financial institutions to disclose confidential information where necessary in the conduct of due diligence in relation to a potential transaction. This amendment will be particularly helpful to the Eastern Caribbean Asset Management Corporation (ECAMC). The proposed amendment would provide the legal authority for a licensed financial institution to disclose confidential information to the ECAMC.

Section 186 of the Banking Act is being amended to provide for:

- the establishment of a bridge bank for an initial period of twelve months with the possibility of extension by the ECCB for up to four (4) years;
- specific circumstances under which bridge bank status may automatically be terminated, that is, by effluxion of time, sale to or amalgamation with another institution, or satisfaction of the capital requirements;
- mandatory receivership and liquidation only where bridge bank status terminates by effluxion of time; and
- retention of discretion by the ECCB to initiate receivership and liquidation even prior to the expiration of the period of the bridge bank.

A consequential amendment is being proposed to section 138 (the Receivership provisions).

**Hon. Gaston Browne**

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*Prime Minister and Minister of  
Finance and Corporate Governance*