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FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2020

Arrangement of Sections

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MINISTRY OF FINANCIAL SERVICES

No. 27 of 2020

AN ACT TO REPEAL AND REPLACE THE FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT; TO MODERNIZE THE LAW REGULATING NON-BANK FINANCIAL AND CORPORATE SERVICES IN THE BAHAMAS AND FOR CONNECTED PURPOSES

[Date of Assent - 24th November, 2020]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Financial and Corporate Service Providers Act, 2020.
- (2) This Act shall come into operation on such date as the Minister may appoint, by notice published in the Gazette.

2. Interpretation.

- (1) In this Act —
 - “**auditor**” means a person licensed as an auditor under the provisions of The Bahamas Institute of Chartered Accountants Act, 2015 (*No. 13 of 2015*);
 - “**bill paying service**” refers to a service offered by a third-party company contracted by vendors or utility service providers, whereby the third-party company acts as agent in the collection of payments due to those vendors or utility service providers;
 - “**Commission**” means the Securities Commission of The Bahamas;

“Compliance Officer” means a person appointed by a licensee and approved by the Commission as Compliance Officer, and includes a person to whom compliance functions and obligations have been outsourced;

“connected person” shall include any person who is or was a director, controller, officer, employee, agent, banker, auditor or counsel and attorney-at-law of a licensee;

“court” means the Supreme Court of The Bahamas;

“credit extension” means the in-house financing arrangements made between a seller of goods or services and a purchaser which permits the purchase of goods or provision of services on condition that the purchaser thereafter discharges the debt by instalment payments, but does not include lay-away arrangements;

“custody of digital assets” means any arrangement under which a person is authorized to hold directly or indirectly a customer’s access keys, smart contracts or other forms of digital assets;

“debt collection” means the collection or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due to a third party;

“financial advisory or consultancy services” include the provision of financial advisory or consultative services in private and commercial transactions which are not subject to the Securities Industry Act, 2011 (*No. 10 of 2011*) and includes assisting with the creation of financial plans;

“financial intermediation” means the process by which a person facilitates financial transactions as the intermediary between a lender and a borrower, or borrows money from a non-bank company or a private individual to lend to a borrower seeking funding, investment or financial resources;

“financial leasing” means the transfer of all risks and rewards incidental to ownership of an asset from a finance company or other lessor to a client or lessee, similar to a secured financing, lending or a loan arrangement;

“financial schemes” includes any scheme in which —

- (a) a business is structured in such a way that the returns an investor or client earns is directly tied to the number of persons they recruit to join the scheme;
- (b) the amount or size of the income any one person earns while participating in the scheme depends on the persons rank in the scheme, which rank is related to when the person joins the scheme;

- (c) the amount or size of the income any one person earns while participating in the scheme is directly tied to or depends on the person's success in recruiting other persons to join the scheme;
- (d) persons are required to first purchase a financial product or financial training offered by the scheme before they can participate in and earn income from the scheme, and neither the product nor training can be offered for resale to the general public;
- (e) persons are required to pay an advance fee, either as a lump sum or by instalments, in order to receive a larger financial return which is solely based on the number of persons recruited to the scheme;
- (f) persons are offered an opportunity to work remotely for compensation but participation depends on the payment of a fee or purchase of financial training products or material;
- (g) persons are promised or paid a commission if they facilitate the transfer of funds to a third party utilizing their bank account;
- (h) part of the marketing or promotion of the scheme involves assertions or statements guaranteeing or promising that participation in the scheme will result in returns which far exceed the returns offered in the investment market;
- (i) any aggregate public scheme that requires contributions to a pool of investment, and guarantees or promises a larger payout based on the number of persons recruited; or
- (j) any other arrangement or scheme which may be prescribed by the Commission in rules;

“licence” means a licence issued under section 7;

“licensee” means a person holding a licence under this Act;

“Minister” means the Minister of Finance;

“money broking” means organizing money lenders and borrowers to enable them to enter into a contract for a money transaction, and includes mortgage broking;

“Money Laundering Reporting Officer” or **“MLRO”** means the person appointed by a licensee and approved by the Commission as the Money Laundering Reporting Officer having responsibility for receiving and making reports concerning suspicious financial transactions;

“money lending” with respect to non-bank persons, includes —

- (a) the granting of short-term loans which may be in the form of payday and cash advances;
- (b) the granting of consumer or mortgage loans; and
- (c) any ancillary activity related to money lending;

“mortgage broking” means arranging mortgage financing and negotiating terms of a mortgage on behalf of a borrower;

“mortgage lending” with respect to non-bank persons, means the provision of loans to finance the purchase of real property, and includes lease-to-own arrangements which provide the lessor with an option to purchase and apply either a portion of or the total lease payment toward paying down the sums owing on the relevant real property;

“partnership” means a partnership formed under the Partnership Act (*Ch. 310*) or the Exempted Limited Partnership Act (*Ch. 312*);

“payday and cash advances” means the provision of small loans of five thousand dollars or less, that may be offered by non-bank persons;

“person” includes an individual, company, partnership, trust, association and any other organized group, whether corporate or incorporate;

“trading in commodities and other financial instruments” means any purchase, sale or disposition of or dealing in or any solicitation for valuable consideration of a commodity or other financial instrument not defined as a security under the Securities Industry Act, 2011 (*No. 10 of 2011*), including but not limited to oil, gold, silver, copper and currencies;

“wallet services provider” means a person who provides digital wallet services by use of a computer software or program that interfaces with fiat and virtual currencies and assets, stores private and public keys, and interacts with distributed ledger technology to enable users to send, receive, and monitor their digital assets.

(2) For the purposes of this Act —

- (a) **“corporate service provider”** means any person operating in or from within The Bahamas, who, by way of business —
 - (i) forms, registers, or manages an international business company;
 - (ii) acts, or arranges for another person to act, as a director, secretary, or officer of an international business company, or as a partner in an Exempted Limited Partnership;

- (iii) acts, or arranges for another person to act, as a director, secretary, officer, or shareholder of a Bahamian incorporated or registered entity;
 - (iv) provides registered agent or registered office services for a Bahamian incorporated or registered entity, an international business company, or an exempted limited partnership;
 - (v) provides Compliance Officers or Money Laundering Reporting Officers as outsourced compliance services; or
 - (vi) is appointed as —
 - (aa) an agent of an executive entity registered or existing under the Executive Entities Act, 2011 (*No. 52 of 2011*);
 - (bb) an agent of a foundation established under section 5 and registered under section 21 of the Foundations Act (*Ch. 369D*);
 - (cc) a trustee of an authorized purpose trust existing under the Purpose Trusts Act (*Ch. 176A*);
 - (dd) the registered representative of a private trust company as defined by section 2 of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (ee) the governing administrator of an investment condominium registered or existing under the Investment Condominium Act, 2014 (*No. 38 of 2014*); or
 - (ff) the representative of a segregated accounts company registered under section 6 pursuant to section 3(1)(e) of the Segregated Accounts Companies Act (*Ch. 369C*); and
- (b) **“financial service provider” or “non-bank financial service provider”** means a person engaged in any of the following activities in or from within The Bahamas —
- (i) money lending;
 - (ii) money broking;
 - (iii) payday and cash advances;
 - (iv) credit extension;
 - (v) bill paying services;
 - (vi) debt collection;
 - (vii) financial leasing;
 - (viii) financial advisory or consultancy services;
 - (ix) financial intermediation services;

- (x) trading in commodities and other financial instruments;
- (xi) custody of digital assets; or
- (xii) wallet services provider.

3. Application.

- (1) Unless otherwise exempted, this Act shall apply to all persons who are engaged in the business of providing financial services or corporate services as defined by this Act in or from within The Bahamas.
- (2) A person shall be deemed to be —
 - (a) a financial services or corporate services provider as defined in section 2, if such person's income or part thereof is derived from any of the activities listed in section 2(a) or 2(b);
 - (b) providing financial service or corporate service —
 - (i) in The Bahamas, if, regardless of physical location, the person offers financial services or corporate services to Bahamian residents from; and
 - (ii) from within The Bahamas, if, the person being a legal entity registered or incorporated under the laws of The Bahamas, offers financial services or corporate services to persons outside or within The Bahamas; or
 - (c) involved in a financial scheme if such person, by way of business, establishes, markets or promotes any financial scheme, or is engaged in the marketing or promotion of a financial scheme.
- (3) Sections 30 to 33 and sections 39 to 41 of the Act shall apply *mutatis mutandis* to any person deemed to be involved in a financial scheme.

PART II – LICENCE TO OPERATE AS A FINANCIAL AND CORPORATE SERVICE PROVIDER

4. Requirement for a licence.

- (1) Subject to section 6 and section 7 and notwithstanding any other law or practice, no person shall —
 - (a) offer any financial service or corporate service;
 - (b) be engaged in or carry on the business of providing financial services or corporate services; or
 - (c) act as a financial service or corporate service provider,in or from within The Bahamas unless that person —

- (i) has obtained a licence under this Act for the specific financial services or corporate services being offered; or
 - (ii) is exempted under section 28 from the requirement to obtain a licence.
- (2) Subsection (1) shall not apply in the case of —
 - (a) a subsidiary of a licensee where the subsidiary is providing corporate services solely on behalf of that licensee; or
 - (b) a financial scheme.

5. Disqualification for a licence.

A person is disqualified to be licensed under this Act, if such person —

- (a) is an un-discharged bankrupt;
- (b) is prohibited from being a director;
- (c) is convicted or has been convicted of an offence under the provisions of any laws relating to the regulation of financial services or corporate services, or under the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*), the Anti-Terrorism Act or the Proceeds of Crime Act, 2018 (*No. 4 of 2018*);
- (d) is a person whose licence or registration has been revoked for cause by an entity having authority to licence, register or regulate the person; or
- (e) being a legal entity, has a controlling owner, director or senior manager who is disqualified under paragraphs (a) to (d).

6. Application for licence.

An application for a licence shall be in the prescribed form and shall be accompanied by —

- (a) detailed policies and procedures to be adopted by the applicant to meet anti-money laundering and anti-terrorism financing requirements under the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*) and the Anti-Terrorism Act, 2018 (*No. 27 of 2018*);
- (b) a business plan setting out the nature and scale of the financial services or corporate services being offered including all financial information concerning capitalization and source of funds;
- (c) such other information and documentation as may be required; and
- (d) the prescribed fee.

7. Issuance of licence.

- (1) Upon the approval of an application for a licence, the applicant shall pay the prescribed annual fee within seven days of receiving notice of the Commission's decision, and thereafter —
 - (a) the Commission shall —
 - (i) issue the licence in the prescribed form on such terms and conditions as the Commission deems appropriate; and
 - (ii) specify thereon the financial service or corporate service activity permitted; and
 - (b) the licence shall be entered in the Register established under section 13.
- (2) A licence issued under this section shall continue —
 - (a) until it is revoked under section 35; or
 - (b) upon its surrender by the licensee under section 12(1).

8. Renewal of licence.

- (1) A licence issued under this Act shall be renewed annually on or before January 31 each year and the licensee shall —
 - (a) pay the prescribed annual fee;
 - (b) submit the prescribed Annual Update and Declaration Form; and
 - (c) where applicable, submit a current copy of the licensee's insurance policy to the Commission.
- (2) The Commission shall automatically revoke a licence where a licensee fails to —
 - (a) renew its licence prior to the annual renewal date and the licensee shall pay an automatic penalty of ten percent of the prescribed annual fee to the Commission, which penalty shall not be set off against the prescribed annual fee;
 - (b) comply with (1)(b) or (c); or
 - (c) pay the prescribed annual fee for more than thirty days after the annual renewal date.
- (3) Where a licence has been revoked pursuant to subsection (2), the Commission may restore the licence if, within thirty days of the revocation date, the licensee —
 - (a) applies to the Commission for restoration;
 - (b) pays an administrative penalty of twenty percent of the annual fee due; and
 - (c) as applicable —
 - (i) submits the annual update and declaration form;

- (ii) submits a copy of the licensee's insurance policy; or
- (iii) pays the outstanding annual fee.

9. Licence variation or duplication.

- (1) A licensee may apply for the amendment or the variation of a licence upon payment of the prescribed fee.
- (2) The Commission may approve an application under subsection (1) and reissue the licence upon the return of the previously issued licence to the Commission.

10. Withdrawal of application.

An application for a licence, or variation thereof, may be withdrawn by notice in writing to the Commission at any time before a determination is made on the application, and any fees paid relevant to such application shall be non-refundable and non-transferable.

11. Replacement of licence.

Where the Commission is satisfied that a licence has been inadvertently lost, destroyed or defaced, the Commission shall replace the licence upon payment of the prescribed fee by the licensee.

12. Surrender of licence.

- (1) With the approval of the Commission, a licensee may voluntarily surrender a licence by written notice to the Commission at any time after the licence has been issued, and such surrender shall be irrevocable.
- (2) Where the Commission approves the surrender of a licence, the provisions of section 37 of this Act shall apply to the licensee.

13. Register to be kept.

- (1) The Commission shall keep and maintain a register setting out —
 - (a) the name and address of each licensee;
 - (b) the address of the registered office of the licensee;
 - (c) the name of the Chief Executive Officer or equivalent officer of the licensee;
 - (d) where applicable, the name of the Compliance Officer and the Money Laundering Reporting Officer of the licensee;
 - (e) the type of financial services or corporate services for which the licensee is registered;
 - (f) the date on which the licence was issued, varied, suspended or revoked; and

- (g) any conditions imposed on or any exemptions granted to the licensee by the Commission.
- (2) Where in the opinion of the Commission, the inclusion on the register of a condition imposed on or an exemption granted to a licensee by the Commission would be detrimental to the interest of the licensee, the Commission may waive the inclusion of such condition or exemption.
- (3) The register may be kept in such format as the Commission deems fit, and shall be maintained to permit inspection by the public.

14. Publication of licensees.

The Commission shall cause notice of the registration, suspension, or revocation of a licence to be published on the Commission's website.

15. Licensee to display licence.

Every licensee shall prominently display the licence issued under this Act, on the premises of its business in such a manner as to be readily visible to the public.

PART III – CONDUCT OF BUSINESS OF FINANCIAL AND CORPORATE SERVICE PROVIDERS

DUTIES OF FINANCIAL AND CORPORATE SERVICE PROVIDERS

16. General duty to comply and cooperate.

- (1) A licensee shall comply with the provisions of this Act concerning the conduct of its business, and shall —
 - (a) deal openly, honestly and cooperatively with the Commission;
 - (b) provide to the Commission, as duly required, information relevant to its operations; and
 - (c) submit to on-site or off-site examinations, as required by the Commission, in the exercise of its functions.
- (2) Every licensee shall, in the conduct of its business, comply with any rules, guidelines or directives made and issued by the Commission and such compliance shall be considered as a part of the minimum criteria for licensing.
- (3) Any licensee, or any of its employees, managers, officers or other connected person, who —
 - (a) fails to cooperate with; or

- (b) obstructs or assaults any person appointed by or acting on behalf of the Commission in the conduct of an examination, inspection or investigation of the licensee, commits an offence.
- (4) For the purposes of subsection (3), it shall not be relevant whether the employee, manager, officer or connected person was acting on the specific instruction of any individual having control of or responsibility for the management or operation of the licensee.

17. Duty to maintain professional conduct.

In addition to complying with any prescribed requirements, every licensee shall in conducting its business activities —

- (a) act honestly and fairly;
- (b) act with due skill, care and diligence;
- (c) observe and maintain a high standard of professional conduct; and
- (d) refrain from engaging in any improper or illegal conduct.

**CONTINUING OBLIGATIONS OF FINANCIAL AND CORPORATE
SERVICE PROVIDERS**

18. Duty to notify changes relating to registration.

Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall immediately notify the Commission upon the occurrence of any change of —

- (a) address for service;
- (b) contact information, including email address, phone contact, or residential and postal addresses;
- (c) principal place of business;
- (d) insurance coverage;
- (e) attorneys and corporate officers; or
- (f) registered office or registered agent.

19. Duty to obtain approval for certain changes.

Each licensee shall obtain the written approval of the Commission prior to —

- (a) merging with another licensee or other entity;
- (b) issuing, transferring or otherwise disposing of shares in a company or partnership licensed under this Act;
- (c) appointing any director of a company licensed under this Act;

- (d) adding to or reducing the shareholders of a company licensed under this Act; or
- (e) making any change to auditors.

20. Duty to maintain adequate financial resources and solvency.

- (1) Every licensee shall —
 - (a) maintain and be able to demonstrate adequate financial resources for the nature and scope of its financial or corporate service operations; and
 - (b) maintain solvency and be able to meet the risks of its financial services or corporate services operations.
- (2) Every licensee shall maintain regulatory capital as may be prescribed, which regulatory capital may include a requirement for indemnity insurance.

21. Indemnity insurance.

- (1) Except where specifically exempted, every licensee shall secure and maintain adequate insurance coverage in an amount appropriate to the activities, scale, and complexity of its business operations to cover at least professional indemnity.
- (2) Every licensee shall review on an annual basis the amount and type of insurance held and ensure that such coverage continues to be sufficient to cover the insurable risks of its business.
- (3) The Commission shall not renew a licence of any licensee where it considers that the amount or extent of the licensee's coverage is inadequate.
- (4) The Commission may require every licensee to amend its insurance coverage.

22. Annual audits.

- (1) The Commission may require a licensee to appoint an auditor who shall make an examination, in accordance with generally accepted auditing standards, of the licensee's annual financial statements.
- (2) A licensee to whom subsection (1) applies shall submit its audited financial statements and any other requested financial records annually to the Commission.

23. Prevention of money laundering.

Subject to any Rules made under the provisions of this Act, a licensee shall, with respect to the conduct of its business, comply with the provisions of the Financial Transactions Reporting Act (*Ch. 368*), the Financial Intelligence

(Transactions Reporting) Regulations, 2001 and the Anti-Terrorism Act 2018 (*No. 27 of 2018*), with respect to the prevention of money laundering and the financing of terrorism.

PART IV – ADMINISTRATION OF ACT

24. Administration of Act.

This Act shall be administered by the Securities Commission of The Bahamas, a body corporate continued under section 10 of the Securities Industry Act, 2011 (*No. 10 of 2011*) and which body shall exercise regulatory control over non-bank financial services and corporate services as defined by this Act.

25. Functions of Commission.

Under this Act, the functions of the Commission are to —

- (a) maintain regulatory control over and a general review of non-bank financial services and corporate services in The Bahamas;
- (b) advise the Minister on all matters relating to the regulation of non-bank financial services and corporate service providers in The Bahamas;
- (c) protect the non-bank financial services and corporate services market against abuses, market misconduct, and other improper practices; and
- (d) perform any other function reasonably required or incidental to the Commission's functions under this Act.

26. General powers of Commission.

In the performance of its functions, the Commission may at all reasonable times, exercise its powers to —

- (a) regulate the provision of non-bank financial services and corporate services in The Bahamas;
- (b) issue, suspend, or revoke licences as the regulator of financial and corporate services;
- (c) take administrative and other actions to protect the interests of the public;
- (d) take enforcement action against any person for failing to comply with the provisions of this Act, or any regulations, rules, Order or guidelines made thereunder;
- (e) make any order as appears to the Commission to be just and equitable under this Act;

- (f) delegate the Commission's functions, duties and powers, except the power of delegation, to any person by written authorization and subject to any conditions deemed necessary by the Commission;
- (g) cooperate with any other regulatory authority within or outside The Bahamas; and
- (h) do all things and take all actions which may be necessary or expedient or which are incidental to the discharge of any function or power given to the Commission.

27. Power of Commission to make and issue rules, etc..

- (1) The Commission may make and issue rules, guidelines, orders and directives, and publish notices and bulletins —
 - (a) regarding the interpretation, application, or enforcement of the provisions of this Act;
 - (b) for the better regulation of the provision of non-bank financial services and corporate services under this Act;
 - (c) in connection with the manner by which licensees shall carry on activities as a non-bank financial service provider or a corporate service provider; and
 - (d) to provide guidance to licensees as to the —
 - (i) duties, requirements and standards with which they shall comply; and
 - (ii) sound principles to be observed when carrying on activities as a non-bank financial service provider or a corporate service provider.
- (2) The Commission may amend from time to time any rule, guideline, Order or directive, or notice or bulletin made and issued or published in accordance with this section.

28. Exemptions and modifications.

The Minister may, on the recommendations of the Commission, make regulations to grant exemptions and modifications to a person or class of persons from all or specified provisions of this Act.

29. Power to determine fees.

The Commission may determine fees to be imposed in the performance of its functions or powers.

PART V – ENTRY, INSPECTION AND INVESTIGATION

30. Power of entry.

- (1) The Commission, or a person authorized by the Commission, may enter the premises of any licensee at a reasonable time for the purpose of conducting any inspection of or investigation into the activities of a licensee.
- (2) Where the Commission or an agent appointed by the Commission is conducting an inspection or investigation, the Commission or its agent shall be entitled to —
 - (a) search the premises and take possession of any documents or material appearing to be such documents or material relevant to the inspection or investigation;
 - (b) take any necessary steps for the preservation of the relevant documents or material; and
 - (c) take copies or extracts from the relevant documents or material.
- (3) A person authorized by the Commission to conduct an inspection of or investigation into the activities of a licensee shall produce upon demand identification duly issued by the Commission.

31. Power of inspection.

- (1) The Commission, or a person authorized by the Commission, shall carry out inspections for the purposes of ascertaining whether any person —
 - (a) is in the business of providing a financial service or corporate service in breach of section 4;
 - (b) is representing or has represented that the person is in the business of providing a financial service or corporate service in breach of section 4;
 - (c) is complying with the provisions of this Act, the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*), the Anti-Terrorism Act, 2018 (*No. 27 of 2018*) or any other relevant Act;
 - (d) is qualified or has been qualified to be licensed in accordance with section 7;
 - (e) has made a false or misleading representation or omission with respect to an application made pursuant to section 6; or
 - (f) has breached any order made or directive issued or condition imposed by the Commission.
- (2) With respect to subsection (1), the Commission or an agent authorized by the Commission, shall be entitled at any time to conduct on-site or off-site examinations of the business of a licensee.

- (3) During the course of an examination, the Commission or an agent authorized by the Commission may require a licensee to —
 - (a) produce for examination, any books, records and other documents that the licensee is required to maintain;
 - (b) supply such information or explanation as may be reasonably required by the Commission; and
 - (c) produce for inspection, relevant documents within the person's possession or control, for the purpose of ascertaining whether any information provided by such person is correct.
- (4) Where an agent is appointed by the licensee for the purpose of conducting a periodic examination, the periodic examination shall be performed at the expense of the licensee.
- (5) Where a licensee fails to appoint an agent for the purpose of conducting a periodic examination, the Commission shall appoint an agent to conduct the examination at the expense of the licensee.
- (6) Where the Commission deems it necessary, it may appoint an agent at the expense of the licensee to conduct an examination.

32. Power of investigation.

- (1) The Commission shall have power to investigate the activities of a licensee, or any other person purporting to offer financial services or corporate services as defined by this Act, for compliance with the provisions of this Act or any other relevant Act.
- (2) The Commission shall commence an investigation by issuing written notice of the investigation to the subject of the investigation, or any other connected person and such notice shall also direct the subject to —
 - (a) provide, at such time and place as may be specified in the notice, such information as the Commission requires for the purpose of the investigation;
 - (b) produce, at such time and place as may be specified in the notice, such documents or material as the Commission requires for the purpose of conducting such investigation; or
 - (c) attend, at such time and place as may be specified in the notice, and answer questions relevant to the investigation.
- (3) For the purposes of subsection (2) the Commission shall be entitled to —
 - (a) specify the form in which the documents must be provided;
 - (b) specify the date by which the documents must be provided;

- (c) specify whether the documents must be verified by the production of original documents or certified copies of original documents;
- (d) inspect and take copies of relevant documents; and
- (e) take possession of and retain relevant documents for a specified period.

33. Power to require provision of information, etc.

- (1) The Commission may, by written notice served on a licensee, require such licensee to produce within such time and at such place as may be specified in the notice, information or documents of such description being such information or documents as the Commission may require for the performance of its functions and exercise of its powers under this Act.
- (2) The power to require the production of specified documents from a licensee shall include the power to require the person to —
 - (a) produce documents; or
 - (b) to state who has custody or control of documents,
 and where such documents are not produced, to certify where the documents are or who has custody or control of the documents to the best of his knowledge, information and belief.
- (3) A notice under subsection (1) shall have effect notwithstanding any obligation as to confidentiality or non-disclosure imposed by any law or any requirement as imposed thereunder, any rule of law, any contract or any rule of professional conduct.
- (4) Notwithstanding subsection (3), a person shall not be required 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, where such privilege arises from —
 - (a) the giving of legal advice to a client, or the client's representative, by a legal advisor;
 - (b) communications between a person, or a representative of such person, seeking legal advice from the legal advisor; or
 - (c) communications from any person in contemplation of, or in connection with, legal proceedings for the purpose of those proceedings.
- (5) A person required to provide any information or explanation, or to produce any document with respect to a notice under subsection (1) who —

- (a) without reasonable excuse fails to comply with a notice issued under this section by the Commission;
- (b) provides any information or explanation or produces any document which that person knows to be false, does not believe to be true, or is negligent as to whether the information, explanation or document is false; or
- (c) intentionally suppresses any fact material to such information, explanation or document;

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment, or to both such fine and imprisonment, or to a fine not exceeding two thousand dollars for each day or part thereof that the offence continues after conviction.

- (6) The provisions of this section shall apply *mutatis mutandis* to the exercise of the Commission's powers of inspection and investigation under sections 31 and 32.

PART VI – ENFORCEMENT

34. Suspension of a licence.

- (1) Notwithstanding any provision of this Act or any other law or action the Commission may take pursuant to section 40, where a licensee fails to comply with any requirement made by the Commission, the Commission may suspend any licence which it has issued, for the purpose of conducting any investigation into the activities of any licensee or any extension thereof, to be determined by the Commission upon its discretion.
- (2) Where the Commission suspends a licence, such suspension shall not exceed a period of fifteen days at any one time unless extended by the Commission for a further period not exceeding fifteen days.
- (3) Notwithstanding subsection (2), the Commission may apply to the court for an order extending any period of suspension on the grounds that it is in the public interest to do so, which order shall specify the duration of such period of further suspension.
- (4) The Commission shall issue a written notice to a licensee setting out —
 - (a) the reason for the suspension;
 - (b) the duration of the suspension; and
 - (c) how the scope of the licensee's business may be restricted during the suspension.

- (5) During the period of any suspension, the Commission may direct the licensee to remediate any matters which led to the suspension and the licensee shall immediately comply with the directions of the Commission.
- (6) Any suspension made under this section shall not limit or restrict the Commission in taking any further enforcement action against a licensee.

35. Revocation of a licence.

- (1) The Commission may revoke a licence issued under the provisions of this Act where the Commission is satisfied that the licensee —
 - (a) is no longer qualified to be a licensee or its continuing operation is not in the public interest;
 - (b) having had its licence suspended pursuant to section 34, has failed to comply with the Commission's directives within the required period;
 - (c) is not functionally in a position to commence operations providing a financial service or corporate service;
 - (d) has not begun operations as a financial service or corporate service provider within ninety days after being licensed;
 - (e) has been licensed based on false or misleading representation or information;
 - (f) has ceased to provide financial services or corporate services consistent with its licence;
 - (g) is insolvent or bankrupt;
 - (h) has resolved to enter into voluntary liquidation or dissolution;
 - (i) has failed to acquire or maintain minimum regulatory capital requirements;
 - (j) has failed to acquire indemnity insurance or maintain indemnity insurance; or
 - (k) has failed to meet any conditions imposed by the Commission for continued licensing.
- (2) Upon the revocation of a licence issued under the provisions of this Act, the Commission shall notify —
 - (a) any relevant licensing or regulatory authority; and
 - (b) members of the public, by notice posted on the Commission's website and published in the Gazette.

36. Notice to revoke a licence.

- (1) The Commission shall issue a written notice to a licensee of its intention to revoke a licence.

- (2) The Commission's revocation notice shall set out —
 - (a) the relevant circumstance under section 35(1) which applies to the licensee's revocation;
 - (b) the reasons for the revocation;
 - (c) the duration of the notice period before the revocation occurs; and
 - (d) the right of the licensee to object to the revocation.
- (3) For the purpose of this section, the Commission shall not issue a notice to a licensee where the decision to revoke is based on a circumstance under section 35(1)(h).

37. Process following licence revocation or surrender.

- (1) Where —
 - (a) the Commission has issued a notice pursuant to section 40(1) without objection from a licensee; or
 - (b) a licensee has voluntarily surrendered its license,
 the licensee shall, within seven days of receiving the Commission's revocation notice or submitting its written notice of surrender, prepare and submit a written plan to the Commission setting out the steps the licensee will follow to cease operations as a financial service or corporate service provider.
- (2) The plan required under subsection (1) shall stipulate and provide the details with respect to —
 - (a) the identity of the individual who will manage the licensee's cessation of business operations;
 - (b) the length of time required to cease business operations;
 - (c) the manner in which client files will be closed and secured;
 - (d) client notification procedures; and
 - (e) client transfer procedures where applicable.
- (3) Upon the Commission's approval of a plan submitted by the licensee, the Commission —
 - (a) shall supervise the execution of the plan; and
 - (b) may give directions to the licensee to protect the interest of clients, with which such directions the licensee shall comply.

38. Winding up or dissolution.

- (1) Where the Commission has revoked a licence in any of the circumstances under section 35(1), the Commission may apply to the court —
 - (a) for the licensee to be wound up or dissolved; or

- (b) for the supervision of the court in respect of the application by the licensee for winding up or dissolution.
- (2) Where the circumstances warrant, the Commission may exercise the power to apply for winding up or dissolution under subsection (1) with respect to the winding up or dissolution of an investment scheme.

39. Commission's power to restrain.

- (1) Notwithstanding any action which may be taken by the Commission under sections 34, 35 or 40, the Commission may by written notice, for the purpose of any investigation being carried out by the Commission, or for the protection of the public interest, order —
 - (a) any person having on deposit, under control or for safekeeping any sums or property reasonably believed to be the proceeds of unlicensed activity, to cease dealing with such funds or property for a period not to exceed five days; and
 - (b) any licensee to cease operations for a prescribed period of time as determined by the Commission and such period shall not exceed ten days at any one time.
- (2) The Commission may apply by *ex parte* application to the court for an extension of the periods specified under subsections (1)(a) and 1(b).
- (3) Any person aggrieved by the action taken by the Commission under subsection (1), may apply to a judge in chambers for an *inter partes* hearing to discharge the Commission's order.

40. Imposition of administrative penalty or sanction.

- (1) The Commission may impose any administrative penalty as provided in the *First Schedule* on a licensee —
 - (a) for breach of the provisions of this Act, any regulations, rules, orders or directions made thereunder; or
 - (b) where the licensee is carrying on its business in a manner detrimental to the public interest, the interest of any clients, or to the reputation of The Bahamas.
- (2) Notwithstanding subsection (1) or any other provisions of this Act, the Commission may impose an administrative sanction on a licensee, which sanction may include —
 - (a) issuing a public reprimand;
 - (b) prohibiting a licensee from carrying on certain activities or operations;
 - (c) temporarily suspending a manager;
 - (d) imposing conditions or restrictions on a licence;
 - (e) an order —

- (i) requiring that a licensee complies with a directive issued by the Commission;
- (ii) withdrawing an exemption or waiver;
- (iii) prohibiting a person from acting as a director, partner, or officer of another person;
- (iv) prohibiting a person from being appointed as an auditor;
- (v) requiring a licensee to make changes to its practices and procedures;
- (vi) requiring the removal of a director, officer or other senior manager or general partner;
- (vii) for restitution; or
- (viii) for disgorgement of profits or unjust enrichment;
- (f) appointing a person, at the expense of the licensee, to —
 - (i) oversee the affairs of the licensee and report to the Commission; and
 - (ii) assume control of a licensee's affairs which person shall, subject to necessary modifications, have all of the powers of a person appointed as a receiver or manager of a business appointed under the law governing bankruptcy or winding up;
- (g) applying to the court for an order to take such action as the Commission considers necessary to protect the interest of clients or creditors of a licensee;
- (h) with respect to subsection (2)(f)(vii), requiring a licensee to pay an administrative penalty not exceeding twice the amount of such profits or unjust enrichment;
- (i) revoking a licence pursuant to section 35(1); or
- (j) imposing any other penalties, sanctions, or remedies as the circumstances of the matter may require.
- (3) The sanctions specified in subsection (2) may be imposed by the Commission where the Commission is satisfied that a licensee has —
 - (a) violated any provisions of this Act or any regulations, rules, or directives made thereunder;
 - (b) failed to comply with the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*); or
 - (c) failed to comply with any guidelines issued by the Financial Intelligence Unit pursuant to section 15 of the Financial Intelligence Unit Act (*Ch. 367*).
- (4) Where the Commission imposes a sanction pursuant to subsection (2) —
 - (a) the order shall be in writing;

- (b) the order shall specify the breach committed by the licensee and the sanction imposed by the Commission;
- (c) a copy of the order shall be given to the licensee; and
- (d) the order may be enforced in the same manner as an order of the court.

41. Criminal complaint.

Where the Commission reasonably suspects that an offence has been committed under this or any other Act dealing with the regulation of financial services or corporate services in The Bahamas, the Commission may refer the matter to either the Commissioner of Police or the Director of Public Prosecutions.

42. Appeals by licensee.

- (1) Except where specifically prescribed, an appeal lies to the court from any decision of the Commission —
 - (a) refusing to grant a licence, or the variation thereof;
 - (b) suspending a licence under section 34;
 - (c) revoking a licence under section 35; or
 - (d) imposing an administrative sanction on a licensee under section 40(2).
- (2) An appeal against the Commission's decision shall be by motion made within twenty-one days from the date on which the Commission has issued notice of its decision.
- (3) An appeal against the decision of the Commission shall not act as a stay of any decision by the Commission.
- (4) Paragraph (d) of subsection (1) and subsections (2) and (3) shall apply *mutatis mutandis* with respect to an investment scheme.

PART VII – INFORMATION SHARING

43. Power to Cooperate.

- (1) At the request of a domestic regulatory authority, the Commission may exercise its powers under this Act to assist with the performance by the domestic regulatory authority of its functions.
- (2) Notwithstanding section 28(1) of the Securities Industry Act, 2011, the Commission may provide information, documents or material it has acquired in the exercise of its functions under this Act to any other domestic regulatory authority where the Commission considers such information may be relevant to the functions of such other domestic

regulatory authority or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

- (3) The Commission may provide assistance to an overseas regulatory authority where satisfied that —
 - (a) such assistance may be relevant to the functions of the overseas regulatory authority and is intended to enable such authority to carry out the supervision, investigation or enforcement to which the request relates;
 - (b) overseas regulatory authority has given a written undertaking that any material obtained pursuant to its request shall not, except with the approval or consent of the Commission be —
 - (i) used for any purpose other than a purpose that is specified at the time of the request; and
 - (ii) disclosed to any third party, other than a designated third party.
 - (c) the material requested is of sufficient importance to the carrying out of the supervision, investigation or enforcement to which the request relates and cannot reasonably be obtained by any other means;
 - (d) the matter to which the request relates is of sufficient gravity; and
 - (e) the provision of the requested assistance will not be contrary to the national interest of The Bahamas or the interest of the investing public.
- (4) The Commission may, in determining whether to provide assistance to an overseas regulatory authority, consider whether —
 - (a) the act or omission that is alleged to have breached the law or regulatory requirement to which the request relates would, if it had occurred in The Bahamas, be enforceable under this Act;
 - (b) the overseas regulatory authority has given or is willing to give an undertaking to the Commission to —
 - (i) comply with a future request by the Commission to the overseas regulatory authority for similar assistance; and
 - (ii) contribute towards the costs of providing the assistance that the overseas regulatory authority has requested.
- (5) Pursuant to subsection (3), and notwithstanding any obligations as to secrecy or restrictions on the disclosure of information by virtue of any written law, any rule of law, any contract or any rule of professional conduct, the Commission may in relation to a request from an overseas regulatory authority —

- (a) transmit to the overseas regulatory authority any material in the possession of the Commission that is requested by the authority;
 - (b) order any person to furnish the Commission with any material that is requested by the overseas regulatory authority, that the Commission may then transmit to that authority;
 - (c) order any person to give the Commission assistance in connection with a request made by an overseas regulatory authority; or
 - (d) order any person to make an oral statement to the Commission on any information requested by the overseas regulatory authority, record such statement, and transmit the recorded statement to that authority.
- (6) A person shall not be required to disclose information or produce a document which that person would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in court proceedings, and the information or documents shall be deemed to be privileged if it was given to the person as a professional legal advisor —
- (a) by, or by a representative of, a client of the advisor in connection with the giving of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the advisor; or
 - (c) by any person —
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (7) Where a person in possession of any document required to be produced in response to an order made under subsection (5) claims a lien on the document —
- (a) the requirement to produce the document shall not be affected by the lien;
 - (b) no fees shall be payable for or in respect of the production; and
 - (c) the production shall be without prejudice to the lien.
- (8) No civil or criminal proceedings, except for an offence under subsection (9) shall lie against any person, who in compliance with an order made under subsection (4), —
- (a) furnishes the Commission with any information or material in any form, including any document or copy thereof;
 - (b) makes a statement to the Commission in good faith; or
 - (c) gives assistance to the Commission by doing or omitting to do any act, the doing or omission of the act is done in good faith.

- (9) It shall be an offence, punishable on summary conviction to a fine not exceeding one hundred thousand dollars, for any person, in response to an order made under subsection (4), to —
- (a) without reasonable excuse, refuse or fail to comply with the order;
 - (b) knowingly furnish the Commission with any false or misleading information or material in any form, including any document or copy thereof; or
 - (c) knowingly make a statement to the Commission that is false or misleading in a material particular.
- (10) In the exercise of its cooperative power under this section, the Commission shall have authority to enter into memoranda of understanding with overseas regulatory authorities subject to the following —
- (a) the memoranda of understanding shall be —
 - (i) for the mutual and reciprocal assistance of an overseas regulatory authority, or any designated third party, in carrying out supervision, investigation or enforcement functions;
 - (ii) related to the consolidated supervision with an overseas regulatory authority, or designated third party; or
 - (iii) for the purpose of the Commission's supervision, investigation or enforcement functions under this Act, or any other lawful purpose;
 - (b) the scope of the memoranda of understanding shall not exceed the Commission's powers under the provisions of this section; and
 - (c) notice of the memoranda of understanding is issued to the Ministry of Finance and published on the Commission's website and in the Gazette.
- (11) For the purpose of this section —
- “designated third party”** includes —
- (a) a person or body responsible for supervising the relevant regulatory authority;
 - (b) any authority responsible for carrying out the supervision, investigation or enforcement of laws alleged to have been breached; or
 - (c) any authority of the foreign jurisdiction, other than the requesting overseas regulatory authority, exercising a function that corresponds to a regulatory function of the Commission under this Act;

“domestic regulatory authority” means the body or person in The Bahamas that exercises regulatory, supervisory, enforcement or similar functions as the Commission, and includes —

- (a) regulators supervising financial institutions;
- (b) securities exchanges;
- (c) Self –regulatory organisations;
- (d) law enforcement agencies; and
- (e) other governmental or regulatory agencies or Competent Authority; and
- (f) any other Bahamian authority, as prescribed.

“enforce” means to enforce through criminal, civil or administrative proceedings;

“material” means any document or information in any form;

“overseas regulatory authority” means an authority in a jurisdiction outside The Bahamas that exercises similar functions as the Commission regulating digital asset businesses and activities, and includes a designated third party.

“supervision” in relation to an overseas regulatory authority, means the taking of any action for the supervision of —

- (a) a digital exchange or any other person regulated or supervised by the overseas regulatory authority; or
- (b) the issue of or trading in digital assets in the foreign jurisdiction of the overseas regulatory authority.

44. Confidentiality.

- (1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to —

- (a) the affairs of the Commission;
- (b) any application made to the Commission;
- (c) the affairs of the licensee; or
- (d) the affairs of the client of a licensee acquired in the course or performance of duties or in the exercise of the Commission’s functions under this or any other law,

commits an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

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

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

- (b) for the purpose of assisting the Commission in exercising any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
- (c) in respect of the affairs of a licensee or client of a licensee, with the consent of the licensee or client, as the case may be, which consent has been voluntarily made;
- (d) where the information disclosed is or has been available to the public from any other source;
- (e) where the information disclosed is in a format that does not enable the identity of any licensee or any client of a licensee to which the information relates, to be ascertained;
- (f) to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, relating to the exercise by a counsel and attorney-at-law, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or
- (g) in any legal proceedings in connection with —
 - (i) the winding up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.

45. Immunities.

No civil or criminal liability shall lie against any person who, in compliance with section 31(3) or a notice duly issued under section 32(2), either furnishes the Commission with documents or makes a statement to the Commission, which would breach any obligation of confidentiality or non-disclosure imposed by any prescribed written law, contract or rule of professional conduct.

PART VIII – OFFENCES

46. Unlicensed activity.

- (1) Any person who, without first obtaining a licence under this Act carries on the business of providing financial services or corporate services as defined by this Act commits an offence and is liable on summary conviction —
 - (a) to a fine not exceeding seventy-five thousand dollars and on any subsequent conviction, to a fine double to that imposed on

the first conviction and imprisonment to a term not exceeding four years; and

- (b) where the offence continues subsequent to any conviction, to a fine of one thousand dollars for each day or part thereof during which the offence continues.

- (2) Any person who —

- (a) launches or establishes, promotes, markets or advertises any financial scheme; or
- (b) invites or recruits any other person to join or participate in any financial scheme,

commits an offence is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

47. Other offences.

- (1) Any person who with intent to deceive, by any act or omission, contravenes any provision or requirement of this Act, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.
- (2) Any licensee who advertises in or from within The Bahamas, inviting other persons either directly or indirectly to commit breaches of this Act or any other law of The Bahamas, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.
- (3) Any person who with intent to deceive, for any purposes of this Act, makes any representation that he knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.
- (4) Any person who —
 - (a) assaults or obstructs the Commission or any other person appointed by the Commission in the performance of the Commission's functions or exercise of the Commission's powers under this Act; or
 - (b) contravenes any provision of this Act for which no punishment is specifically provided, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (5) Where it is established that a person to which subsection (4) applies, acted upon the instruction or direction, or with the complicity of a director, partner, officer or other person concerned with the management of the company or partnership, such director, partner,

officer or other person is also liable to be convicted for the relevant offence.

PART IX – MISCELLANEOUS

48. Regulations.

The Minister may make regulations generally for carrying out the purposes and giving effect to the provisions of this Act, and specifically for —

- (a) prescribing anything by this Act authorised or required to be prescribed; and
- (b) exempting any person or business, or classes of persons or businesses, from any provision of this Act.

49. Transitional.

- (1) A person who, at the date of the commencement of this Act, is licensed to carry on the business of a financial services or corporate services provider, shall be deemed to be operating and licensed under the provisions of this Act.
- (2) Any person who, at the date of the commencement of this Act, is offering any services or conducting any activity for which a licence must be obtained under this Act, shall have six months from this Act's commencement to make application to be licensed.
- (3) For the purpose of subsection (1), a person referred to thereunder shall pay the prescribed annual renewal fees to the Commission within sixty days of the commencement of this Act, and where any person fails to make such payment, the provisions of section 8(2) to (3) shall apply *mutatis mutandis*.

50. Consequential amendments.

The Acts mentioned in the first column of the Second Schedule shall be amended to the extent specified in the second column thereof.

51. Repeal of No. 41 of 2000.

The Financial and Corporate Services Providers Act (*Ch. 369*), is hereby repealed.

FIRST SCHEDULE

(Section 44)

ADMINISTRATIVE PENALTIES

Column 1	Column 2
Category of Disciplinary Violation and Description	Penalty Range
1. Unlicensed Activity or breach of licence conditions. Licensee — (a) carrying on any type of corporate or financial services business not authorised by its licence; or (b) carrying on any business in breach of a condition of its licence, or contrary to any directive issued by the Commission.	\$5,000 to \$50,000
2. Late filing or notification. Licensee filing any document required to be filed or notifying the Commission of any matter required to be notified after the last date on which the document is required to be filed or the matter is required to be notified to the Commission — 1 – 30 business days late; 31 – 60 business days late; 61 – 90 business days late; 91 – 120 business days late; 121 – 150 business days late; 151 or more business days late.	\$250 to \$1,250 \$1,250 to \$5,000 \$1,875 to \$7,500 \$2,500 to \$10,000 \$6,250 to \$15,000 \$7,500 for each day
3. Failure to notify Commission or obtain approval. Licensee taking any action for which the Commission is to be notified or for which the approval of the Commission is required, without having obtained such approval.	\$2,500 to \$12,500
4. Record keeping contravention. Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.	\$1,250 to \$12,500
5. Contravention relating to policies, systems and controls. Licensee failing to — (a) establish or maintain policies, systems and controls or procedures required by a financial services enactment or the Regulatory Code, to be established or maintained by the licensee; (b) establish or maintain a function required by a financial services enactment or the Regulatory Code to be established or maintained by the licensee, including appointing a compliance officer or a Money Laundering Reporting Officer; (c) implement data protection measures;	\$5,000 to \$25,000

(d) maintain an adequate indemnity insurance.	
6. Contravention of AML or CFT obligations. Licensee contravening any AML or CFT obligations.	\$15,000 to \$100,000
7. Other contravention. Licensee committing any other contravention of a financial services enactment or Regulatory Code, not falling within any category specified above.	\$250 to \$12,500

SECOND SCHEDULE
(Section 51)

Legislation	Extent of Amendment
Banks and Trust Companies Regulation Act (<i>No. 22 of 2020</i>)	In section 2 in the definition of “registered representative” insert immediately before the word “Financial” the words “service provider registered as a”.
Executive Entities Act 2011 (<i>No. 52 of 2011</i>)	Section 13(4)(a) is amended by the insertion of the word “service” immediately before the word “provider” and the deletion of the words “of financial and corporate services”.
Foundations Act (<i>Ch. 369D</i>)	Section 12(4) is amended by the insertion of the word “service” immediately before the word “provider” and the deletion of the words “of financial and corporate services”.