



For Public Consultation:

The Securities Commission of The Bahamas, in its capacity as the regulator of investment funds, securities and the capital markets, has issued the **Securities Industry (Amendment) Bill, 2021** (attached) for public consultation.

The Bill proposes to amend Sections 99, 101 and 166 of the Securities Industry Act, 2011 (SIA, 2011) and to introduce new subsections 58A and 69A of the Act. These proposed amendments address World Bank Ease of Doing Business Survey (EODB) deficiencies and strengthen the Commission's powers to revoke licenses.

The proposed amendments address outstanding deficiencies in the protection of minority interests regime, identified in EODB. The identified deficiencies have been largely addressed by the Commission's Corporate Governance and Takeover Rules, however, some deficiencies required amendments to the Act. The outstanding EODB deficiencies addressed in this Bill are amendments to:

- i. Section 99 of SIA, 2011 to require disclosure where a material contract is entered into with a public issuer and a director of the issuer is a party or beneficiary to that contract;
- ii. Section 101 of SIA, 2011 to require a public issuer to cause its financial statements to be posted on the company's website or published in the newspaper; and
- iii. Section 166 of the SIA, 2011 to make the provision of a register of public issuers mandatory.

The above amendments related to the EODB deficiencies were originally issued for consultation from 26 February through 11 March 2020.

The Commission is re-issuing this Bill for consultation as it seeks to take the opportunity to address other technical gaps in the Act identified by the Commission. The additional proposed amendments provide for the automatic revocation of a license, where a licensee fails to meet requirements to:

- i. renew its license;
- ii. submit its annual filings; or
- iii. pay its annual fees.

These additional amendments will address gaps in the Commission's enforcement regime and provide consistency in the standards and obligations entrenched in the other pieces of legislation which the Commission administers.

Comments:

Comments may be submitted via email to siaconsultation@scb.gov.bs. Alternatively comments may be submitted to:

Executive Director
Securities Commission of The Bahamas
Poinciana House
North Building 2nd Floor
31A East Bay Street
P.O. Box N-8347
Nassau, The Bahamas

SECURITIES INDUSTRY (AMENDMENT) BILL, 2021

Arrangement of Sections

Section

1.	Short title.....	2
2.	Amendment of section 58 of the principal Act.	2
3.	Amendment of section 69 of the principal Act.....	3
4.	Repeal and replacement of section 99 of the principal Act.....	3
5.	Amendment of section 101 of the principal Act.....	5
6.	Amendment of section 166 of the principal Act.....	5



SECURITIES INDUSTRY (AMENDMENT) BILL, 2021

A BILL FOR AN ACT TO AMEND THE SECURITIES INDUSTRY ACT

Enacted by the Parliament of The Bahamas

1. Short title.

This Act may be cited as the Securities Industry (Amendment) Act, 2021.

2. Amendment of section 58 of the principal Act.

Section 58 of the principal Act is amended by the insertion immediately after subsection 5 of the following new subsections —

- “(5A) The registration of a person under this section shall be automatically revoked where that regulated person fails to —
- (a) renew the registration prior to the annual renewal date;
 - (b) submit the prescribed Annual Update and Declaration Form;
 - (c) where applicable, submit a current copy of the regulated person’s insurance policy to the Commission; or
 - (d) pay the prescribed annual fee for more than thirty days after the annual renewal date.
- (5B) An automatic penalty of ten percent of the prescribed annual fee, which shall not be set off against the prescribed annual fee, shall be payable to the Commission by a regulated person whose registration is revoked pursuant to subsection (5A)(a).
- (5C) Where a registration has been revoked pursuant to subsection (5A), the Commission may restore the registration if, within thirty days of the revocation date, the regulated person —
- (a) applies in writing 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 regulated person’s insurance policy; or
 - (iii) pays the outstanding annual fee.”.

3. Amendment of section 69 of the principal Act.

Section 69 of the principal Act is amended by the insertion immediately after subsection 11 of the following new subsection —

“(11A) The registration of a person under this section shall be automatically revoked where that person fails to —

- (e) renew the registration prior to the annual renewal date;
- (f) submit the prescribed Annual Update and Declaration Form;
- (g) where applicable, submit a current copy of the registrant’s insurance policy to the Commission; or
- (h) pay the prescribed annual fee for more than thirty days after the annual renewal date.

(11B) An automatic penalty of ten percent of the prescribed annual fee, which shall not be set off against the prescribed annual fee, shall be payable to the Commission by a registrant whose registration is revoked pursuant to subsection (11A)(a).

(11C) Where a registration has been revoked pursuant to subsection (11A), the Commission may restore the registration if, within thirty days of the revocation date, the registrant —

- (d) applies in writing to the Commission for restoration;
- (e) pays an administrative penalty of twenty percent of the annual fee due; and
- (f) as applicable —
 - i. submits the annual update and declaration form;
 - ii. submits a copy of the registrant’s insurance policy; or
 - iii. pays the outstanding annual fee.”.

4. Repeal and replacement of section 99 of the principal Act.

Section 99 of the principal Act is repealed and replaced as follows —

“99. Timely disclosure of material changes and material contract.

“(1) Subject to subsection (2) —

- (a) where a material change occurs in the affairs of a public issuer; or
 - (b) where a material contract is entered into with a public issuer and a director of the issuer is a party or beneficiary to that contract,
the issuer shall —
 - (i) immediately, and in any event within one day of the material change occurring or upon becoming aware of the director's interest in the material contract, issue a press release that discloses the nature and substance of the contract and the director's connection thereto; and
 - (ii) file a report with the Commission in the prescribed form within five days of issuing the press release.
- (2) If the public issuer is of the opinion that the disclosure required by subsection (1), would be unduly detrimental to its interests, it must immediately advise the Commission in writing of the material change and the reasons why the issuer is of the opinion that public disclosure should be withheld.
 - (3) Where the Commission is of the opinion that the disclosure of the material change would not be unduly detrimental to the interests of a public issuer, the Commission may, after giving the public issuer an opportunity to be heard —
 - (a) require disclosure to the public of the material change in accordance with subsection (1); or
 - (b) permit non-disclosure of the material change by the public issuer provided non-disclosure does not continue beyond the time set out in subsection (5).
 - (4) A decision of the Commission under subsection (3) is final and no appeal from such a decision shall be available.
 - (5) Notwithstanding any permitted non-disclosure under subsection (2) or (3)(b), the public issuer shall disclose such material change no later than the thirtieth day following the date on which the public issuer would have been required to issue a press release in respect of the material change under subsection (1).
 - (6) The public issuer shall, notwithstanding a report has been given to the Commission under subsection (2), promptly disclose the material change in the manner referred to in subsection (1), upon the public issuer becoming aware, or having reasonable grounds to believe, that persons are

purchasing or selling securities of the issuer with knowledge of the undisclosed material change.

- (7) For the purpose of this section —
- (a) a “material change” means any change in any material information regarding the public issuer that impacts —
 - (i) corporate governance matters of the issuer;
 - (ii) the price of the shares; or
 - (iii) investors decision to buy or to sell shares.
 - (b) a “material contract” means a contract that has a transaction value of more than two percent of the revenues of a company.”.

5. Amendment of section 101 of the principal Act.

Section 101 of the principal Act is amended by the deletion and substitution of in subsection (2) as follows —

“(2) Every financial statement referred to in subsection (1), shall be accompanied by a report of the auditor of the public issuer and the public issuer shall, upon filing the annual financial statements and auditor’s report with the Commission, cause the financial statements to be posted on the company’s website or in the newspaper.”.

6. Amendment of section 166 of the principal Act.

Section 166 of the Principal Act is amended in subsection (2) by the deletion of the word “may” and the substitution therefor of the word “shall”.

OBJECTS AND REASONS

This Bill seeks to amend the Securities Industry Act, 2011 to address deficiencies identified in the World Bank’s Ease of Doing Business Survey, achieve consistency between the principal pieces of legislation which the Securities Commission of The Bahamas administers, and enhance the Commission’s powers in relation to the revocation of registrations under the Act.

In addition to addressing deficiencies identified by the World Bank Survey, the introduction of principal legislation to govern the investment funds industry, as well as financial and corporate service providers has given rise to the need to amend the principal Act to achieve consistency between it and the Investment Funds Act and the Financial and Corporate Service Providers Act.

The amendments also seek to clarify, define and modify legislative obligations, and the optionality of certain provisions.

Clauses 2 and 3 of the Bill are to amend sections 58 and 69 of the Act respectively, with the insertion of new subsections 58 (5A) (5B) and (5C), and 69 (11A) (11B) and (11C).. These amendments are intended to provide for the automatic revocation of registrations granted under Part V and VI in instances of failure to renew by the annual renewal date, submit required documentation, or pay the required annual fee for more than thirty days after the renewal date. Clauses 2 and 3 further intend to give the Commission the authority to restore registrations which have been revoked in prescribed circumstances.

Clause 4 of the Bill, in accordance with World Bank Ease of Doing Business Survey standards, is intended to amend section 99 of the Act to include a definition for “material contract” as well as a requirement for disclosure of material contracts to which a Director is connected, or has an interest in.

Clause 5 of the Bill seeks to amend section 101 of the Act, and enhance the transparency of public issuers, by implementing a requirement for public issuers to post the required annual financial statements and auditor’s reports on the company website, or in the newspaper.

Clause 6 of the Bill amends section 166 of the Act to make public access to the register of current and former regulated persons, kept by the Commission, mandatory rather than permissible.