



For Public Consultation:

FINANCIAL AND CORPORATE SERVICE PROVIDERS (MONEY LENDERS) RULES, 2022

The Securities Commission of The Bahamas (the Commission), has issued the Financial and Corporate Service Providers (Money Lenders) Rules, 2022 (the Rules) for public consultation. The Rules may be found on the Commission's website at: www.scb.gov.bs/consultation.html.

An earlier draft of the Rules was previously issued for public consultation in 2017, which was based on the then existing Financial and Corporate Services Act Ch. 369. Since the initial round of consultation, the Financial and Corporate Services Act, 2020 was promulgated. In the circumstances, the Commission has updated the draft Rules to take account of comments received since the initial consultation, relevant provisions of the 2020 legislation as well as other developments. The attached revised version of the Rules is therefore being issued for a second round of consultation.

Summary

The Financial and Corporate Service Providers (Money Lenders) Rules, 2022 will establish a supervisory framework for non-bank money lenders. The key features of these Rules are:

- a) A money lender's license will only be granted to persons who are duly incorporated or organized under the provisions of the *Companies Act Ch. 308*, *International Business Companies Act Ch. 309*, or *Partnership Act Ch. 310*;
- b) To obtain a license a money lender must satisfy the Commission of their funding capital and other financial obligations. The Rules specifically identify the sources, methods of funding, and financing which can be used for money lenders' operations;
- c) Conduct standards are established to guarantee fair treatment of clients, responsible lending, and to ensure that representatives are fit and proper;
- d) Money lenders will be required to make the usual financial reports to the Commission (i.e. interim financial statements and audited financial statements);
- e) Requirements for mandatory terms to be included in money lenders' agreements (i.e. date, amount of principal loan, term of loan, etc.) In addition, specific consumer protection provisions are included in the rules to prohibit the inclusion of any term that: 1) Provide for penalties for early repayment; and 2) Limits any duty or liability of the lender to the borrower; and
- f) **Contracts for the lending and repayment of money are not enforceable where the loan is made by an unlicensed money lender.**

Consultation Period

The consultation period commences **Wednesday 2 February 2022** and ends on **Tuesday 15 March 2022**. All comments received by the end of the consultation period will be taken into account.

Comments and Responses

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

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Issued: 2 February 2022

FINANCIAL AND CORPORATE SERVICE

PROVIDERS (MONEY LENDERS) RULES, 2022

Arrangement of Paragraphs

Paragraph

<u>PART I – PRELIMINARY</u>		<u>3</u>
1.	<u>Citation</u>	<u>3</u>
2.	<u>Interpretation</u>	<u>3</u>
3.	<u>Application</u>	<u>4</u>
<u>PART II – REGULATION OF MONEY LENDING OPERATIONS</u>		<u>4</u>
4.	<u>Duty of fair dealing</u>	<u>4</u>
5.	<u>Responsible lending</u>	<u>4</u>
6.	<u>Responsible lending policy</u>	<u>5</u>
7.	<u>Information concerning loan products</u>	<u>5</u>
8.	<u>Form of money lender’s contract</u>	<u>6</u>
9.	<u>Interest and fees</u>	<u>6</u>
10.	<u>Mechanisms for repayment</u>	<u>7</u>
11.	<u>Additional payments or early repayments</u>	<u>7</u>
12.	<u>Loan increases</u>	<u>7</u>
13.	<u>Payment credit on instalment loans</u>	<u>8</u>
14.	<u>Late payment fee</u>	<u>8</u>
15.	<u>Borrower’s Collateral</u>	<u>9</u>
16.	<u>Dealing with or disposing of collateral</u>	<u>9</u>
17.	<u>Obligation to provide receipt and statement to the borrower</u>	<u>9</u>
18.	<u>Settlement of instalment loan</u>	<u>10</u>
19.	<u>Communications with borrowers</u>	<u>10</u>
20.	<u>Requirement for money lending advertisement</u>	<u>11</u>
21.	<u>Direct marketing</u>	<u>11</u>
22.	<u>Money broking</u>	<u>12</u>
23.	<u>Assignment or collection of loans in default</u>	<u>12</u>
24.	<u>Intimidation or assault of borrower</u>	<u>12</u>
<u>PART III - REGULATION OF MONEY LENDER</u>		<u>13</u>
25.	<u>Money lender to be legal entity</u>	<u>13</u>
26.	<u>Lending Capital</u>	<u>13</u>
27.	<u>Funding</u>	<u>13</u>
28.	<u>Fit and proper persons</u>	<u>13</u>
29.	<u>Employees</u>	<u>13</u>
30.	<u>Duty to notify the Commission</u>	<u>14</u>
31.	<u>Mergers and acquisitions</u>	<u>14</u>
32.	<u>Disposal of a loan portfolio</u>	<u>14</u>
33.	<u>Duty to keep loan records</u>	<u>14</u>
34.	<u>Accounts to be kept</u>	<u>14</u>
35.	<u>Duty to co-operate with the Commission</u>	<u>14</u>
36.	<u>Duty to report</u>	<u>15</u>
37.	<u>Prevention of money laundering and the financing of terrorism</u>	<u>15</u>

<u>PART IV – MORTGAGE LENDING</u>	<u>15</u>
<u>38. Money lending and mortgages</u>	16
<u>39. Dealing with default mortgages</u>	16
<u>19</u>	
<u>40. Home-owners protection</u>	16
<u>PART V – GENERAL PROVISIONS</u>	<u>16</u>
<u>41. Offences</u>	16
<u>42. Transition</u>	17

CONSULTATION

FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2020

FINANCIAL AND CORPORATE SERVICE PROVIDERS (MONEY

LENDERS) RULES, 2022

In exercise of the powers conferred by section 27(1)(b) of the Financial and Corporate Service Providers Act, The Commission makes these Rules

PART I – PRELIMINARY

1. Citation.

These Rules may be cited as the Financial and Corporate Service Providers (Money Lenders) Rules, 2022.

2. Interpretation.

(1) In these Rules —

“**Act**” means the Financial and Corporate Service Providers Act, 2020;

“**customer**” includes a borrower;

“**money lender**” means a person who, whether as principal or agent, carries on the business of money lending, or purchases loans, whether or not such person's primary business involves any other type of business activities;

(2) For the purposes of these Rules –

(a) a person carries on the business of money lending where in the regular course of business or commercial activity that person lends money or purchases loans for the principle purpose of making a profit;

(b) a person does not carry on the business of money lending where that person lends money or purchases loans as a one-off or occasional private transaction; and

(c) a person is presumed to be a money lender if he is –

(i) lending money or purchasing loans in consideration of a larger sum being repaid by the borrower; or

(ii) advertising as or announcing in any way that the person is a money lender.

3. Application.

(1) These Rules apply to –

(a) persons carrying on the business of money lending; and

(b) contracts for the lending of money or the repayment of money lent at the date of the commencement of these Rules.

(2) Nothing in these Rules shall apply to —

(a) any written agreement to repay money lent, where such agreement does not require the payment of interest or fees by the borrower;

(b) persons deemed non-resident for exchange control purposes lending to borrowers not resident in The Bahamas;

(c) pawnbrokers or secondhand dealers licensed under the Pawnbrokers and Secondhand Dealers Act (No. 46 of 2011);

- (d) to a person licensed by the Central Bank of The Bahamas under the Bank and Trust Regulation Act (No. 22 of 2020).
- (e) an insurance company licensed under the Insurance Act (*Ch. 347*); or
- (f) a co-operative credit union registered under The Bahamas Co-operative Credit Unions Act (*No. 9 of 2015*).

PART II - REGULATION OF MONEY LENDING OPERATIONS

4. Duty of fair dealing.

- (1) A money lender shall, when engaging in a business transaction, deal with its customers fairly and not engage in unfair, deceptive, or abusive acts or practices.
- (2) Fair dealing shall include but not be limited to –
 - (a) responding honestly to customers' needs and requests;
 - (b) offering customers' products and services suitable and appropriate to their needs;
 - (c) communicating with customers in a clear, transparent and timely manner;
 - (d) ensuring that customer representatives are competent and properly trained; and
 - (e) handling customer complaints in an independent, effective, consistent, and prompt manner.

5. Responsible lending.

- (1) Before entering into, or agreeing to vary the terms of a loan contract, a money lender shall assess whether the customer is able to afford to pay the sums that become due under a loan.
- (2) For the purposes of determining whether a customer is able to afford to pay the sums due under a loan, a money lender shall consider, among other factors, if —
 - (a) the customer's income is sufficient to service the loan taking into account the customer's committed expenditure and essential expenses;
 - (b) the term of a loan will extend into the customer's retirement;
 - (c) the extension of the term of the loan with respect to a variation will extend into the customer's retirement;
 - (d) the addition or removal of a guarantor will affect the customer's ability to repay;
 - (e) with respect to a mortgage, the customer is able to afford the mortgage on the basis of both repayments of principal and payment of interest, and the impact of likely future interest rate increases on affordability;
 - (f) the customer's income volatility disqualifies him from being considered for a loan; and
 - (g) the loan or the variation of the sums lent will exceed the customer's Total Debt Service Ratio.
- (3) In assessing a customer's income, and liabilities a money lender shall obtain evidence of —
 - (a) the income declared by the customer;
 - (b) the customer's committed expenditure; and

- (c) if applicable, the customer's credit risk rating
- (4) The evidence required under paragraph (3) shall demonstrate the customer's gross income for a minimum period immediately preceding the application for a loan, as stipulated by the money lender.
- (5) A money lender shall verify any information in relation to a customer's income.
- (6) Notwithstanding the foregoing, a money lender shall not enter into a money lenders contract with a customer utilizing salary deduction as the method of repayment where repaying the new loan will result in the customer's Total Debt Service Ratio being exceeded.
- (7) The provisions of this rule shall apply equally to a guarantor or co-signer of a loan contract.
- (8) For the purposes of this rule —
 - (a) “**committed expenditure**” means the customer's credit and other financial commitments which will continue after the loan is granted;
 - (b) “**essential expenses**” means the customer's household and day-to-day expenses;
 - (c) “**income volatility**” refers to the fluctuations in earnings which a customer may experience due to the nature of his employment, resulting either in an increase or reduction in earnings in a given period; and
 - (d) “**Total Debt Service Ratio**” refers to the ratio of a customer's gross income to debt established by the Minister.

6. Responsible lending policy.

- (1) Every money lender shall have and implement a written policy, approved by its Board or partners as the case may be, setting out the factors it will take into account in assessing a customer's ability to pay the sums due under a loan.
- (2) The policy referred to in paragraph (1) shall address the following matters —
 - (a) how income and expenditure is to be assessed;
 - (b) the details of the types of income which are acceptable;
 - (c) the proportion of different streams of income which is acceptable;
 - (d) what is acceptable evidence of income, including the time period to be covered by the evidence;
 - (e) the calculations used to determine whether the customer can afford a loan;
 - (f) the actions to be taken in the event of a default;
 - (g) the form of the loan contract;
 - (h) how the record keeping requirements are to be met; and
 - (i) any other matters considered relevant by the Commission.

7. Information concerning loan products.

- (1) A money lender shall not enter into a loan contract with a customer unless there has been prior disclosure to that customer of the details related to the specific product which the customer has expressed an interest in, including details of the—
 - (a) loan terms with respect to repayment;
 - (b) interest applied;
 - (c) total cost of the loan over the life of the loan;
 - (d) fees assessed;
 - (e) general criteria upon which the loan eligibility will be assessed; and

- (f) the method or enforcement of the contract or realization of the security interest in the event of default.
- (2) For the purpose of paragraph (1) and subject to paragraph 20, a money lender may provide the customer with flyers or circulars which set out the relevant information concerning its loan products.

8. Form of money lenders contract.

- (1) A contract for the lending of money or for the repayment of money, and any security given by a borrower in respect of any such contract, shall be unenforceable unless in writing and signed by the borrower, guarantor or co-signer.
- (2) A money lending contract shall be in English and contain all of the terms of a contract including —
 - (a) the date on which the loan is made;
 - (b) the amount of the principal of the loan;
 - (c) the interest charged on the loan;
 - (d) the names of the lender and the borrower;
 - (e) the term of the loan;
 - (f) the security (if any);
 - (g) a listing of all fees whether administrative or otherwise,
 - (h) the stamp duty payable; and
 - (i) any other matters considered relevant by the Commission.
- (3) Every money lender shall provide the borrower with a copy of the contract.
- (4) No contract for the lending of money or for the repayment of money shall include any term which —
 - (a) provides for a penalty to be payable by the borrower for early repayment of any loan; or
 - (b) seeks to exclude or restrict, or to rely on any exclusion or restriction, of any duty or liability a money lender may have to a borrower.
- (5) Notwithstanding, paragraph (1), a contract for the lending of money or for the repayment of money and any security given by a borrower with respect to any such contract shall not be enforceable where the loan is made by an unlicensed money lender.

9. Interest and fees.

- (1) Loans made under a money lenders contract shall bear simple interest only, at a rate which does not exceed the prescribed rate under the Rate of Interest Act (*Ch. 341*).
- (2) A term in a money lenders contract shall be unenforceable if it —
 - (a) imposes an interest rate which exceeds the prescribed rates under the Rate of Interest Act, (*Ch. 341*);
 - (b) provides for an increase in the interest rate or the imposition of a fee by reason of any default in the payment of the sums due; or
 - (c) requires payment by the borrower of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of a loan which exceeds two and a half percent of the principal sum.
- (3) With respect to paragraph (2), a borrower shall be entitled to recover as a debt due to the borrower, or to have as a set off against the principal sum—

- (a) any sums assessed as a default fee or interest which exceeds the statutory rate as a result of capitalization; and
- (b) any sums which are paid by the borrower on account of costs, charges or expenses.

10. Mechanisms for repayment.

- (1) A money lender may require that a loan is repaid using any available mechanism for repayment, including salary deduction, direct deposit or cash payments.
- (2) Where the mechanism for repayment is by salary deduction, a money lender shall not refuse to accept other forms of repayment by the borrower where such payment is being offered either as an additional payment or an early repayment of the loan.

11. Additional payments or early repayment.

- (1) A money lenders contract shall include a term granting a borrower the right to make additional payments to reduce the debt, or to discharge the debt fully by making lump sum payments prior to the contract's expiry.
- (2) Where a borrower's–
 - (a) additional payments are insufficient to fully discharge a loan, but is applicable to the principal sum owing, a money lender shall recalculate the amount owing and the relevant interest so as to reduce the repayment term; or
 - (b) lump sum payment discharges the loan fully, accrued interest shall only be calculated up to the date of the lump sum payment.
- (3) A borrower who makes additional payments which are insufficient to fully discharge the loan shall be entitled to determine the proportion of such payments that should be applied to the principal and to the interest owing after any late fee or other fee has been deducted by the money lender.
- (4) A borrower who discharges a loan fully prior to contract expiry shall not be required to pay any fee by reason of such early repayment; however –
 - (a) a borrower shall be required to pay any interest accruing up to the date of such payment; and
 - (b) a money lender shall be entitled to collect any previously assessed fees or fees payable by law associated with the loan.

12. Loan increases.

- (1) Where a borrower with an existing loan applies to the same money lender seeking to borrow additional sums, the effect of which is either that the term of the existing loan is extended or a new loan is made with the borrower, the considerations under paragraphs 5 and 7 shall apply.
- (2) Notwithstanding a borrower's ability to afford to pay the sums due under a loan extension or a new loan with the same lender, such borrower shall –
 - (a) not be allowed to make more than two applications for additional sums with that lender on the existing or original loan; and
 - (b) where the loan is not a payday loan, only be eligible to borrow additional sums where the borrower has made at least six bi-weekly or three monthly consecutive payments of the balance owing on the existing loan.
- (3) Whether the payment term is extended or not, where a money lender lends additional sums to a borrower with an existing loan and the borrower agrees for

the termination of the existing loan and the transfer of the balance owing to the new loan -

- (a) the money lender shall not be entitled, in transferring the principal to the new loan, to assess any fee or apply any accrued interest on that principal to the new loan; and
 - (b) if the payment is extended, the borrower shall be entitled to a reduction in the sum due on each instalment payment to reflect the extended term.
- (4) This rule shall not apply with respect to mortgage loans or in circumstances of a borrower's financial emergency.
- (5) For the purposes of paragraph (4) –
- (a) a **“financial emergency”** shall be one in which the borrower needs a loan to pay for –
 - (i) medical care either for themselves or immediate family as defined in paragraph 38(3);
 - (ii) home repair expenses resulting from natural disasters or fire damage; or
 - (iii) a funeral or related funeral expenses; and
 - (b) a money lender shall require proof of the borrower's financial emergency.

13. Payment credit on instalment loans.

- (1) Where a money lenders contract permits the repayment of a loan by instalments, a money lender shall credit a borrower's account on the date in which the payment is received, or, in the case of a cheque or other instrument, the date on which the cheque or other instrument clears.
- (2) Where a money lender fails to credit a borrower's account as required by paragraph (1) with the result that the borrower is subsequently assessed daily interest charges or fees –
 - (a) the money lender shall not be entitled to retain the assessed interest or fees; and
 - (b) the borrower shall be entitled to institute proceedings to recover the same.
- (3) Notwithstanding the requirements of paragraph (1), where a borrower's payment is received as a result of direct deposit or transfer into a money lender's bank account after the money lender's business closing time, a money lender –
 - (a) shall credit the borrower's account on the next business day following the payment; and
 - (b) shall not assess late fees or daily interest charges with respect to that payment.

14. Late payment fee.

A money lender may assess a nominal flat late payment fee which shall not exceed 4% the of amount of the single payment due to be paid on the loan, but shall not vary the interest rate payable on the loan as penalty for a late payment by the borrower.

15. Borrower's collateral

- (1) Money lenders shall keep a record of all property accepted from a borrower as collateral or security for a loan.
- (2) Upon the completion of any loan secured with a borrower's collateral, the security agreement relevant to that collateral shall terminate and the money lender shall return the collateral or instrument relevant to the collateral to the borrower.

16. Dealing with or disposing of collateral.

- (1) Money lenders shall not deal with or dispose of a borrower's collateral except in circumstances where the borrower has defaulted on the loan and the money lender has taken the necessary steps to enforce the security.
- (2) The money lender shall provide a borrower with written notice of the intent to enforce the security, which notice shall be provided no less than thirty (30) days before the money lender commences enforcement action.
- (3) The notice required under paragraph (2) shall provide the borrower with a statement of the unpaid sums owing on the loan.
- (4) Where the enforcement of the security results in any surplus being realized by the surplus shall be paid over to the borrower within fourteen days following the realization of the security.
- (5) Any term in a security agreement concerning a borrower's collateral is unenforceable if it seeks to waive the borrower's right to –
 - (a) receive the notice of the disposition of the collateral or statement required under paragraphs (2) and (3);
 - (b) receive any surplus required to be paid to the borrower under paragraph (4); or
 - (c) redeem the collateral by payment of the sums owing.

17. Obligation to provide receipt and statement to the borrower.

- (1) A money lender shall provide the borrower with a receipt of all payments made at the time of payment unless some other arrangement has been agreed upon with the borrower.
- (2) A money lender's receipt shall be –
 - (a) in such form as may be used by the money lender or otherwise agreed with the borrower; and
 - (b) adequate proof of a borrower's payment.
- (3) A money lender shall provide each borrower or his authorized representative with a quarterly statement, issued in such form as may be agreed with the borrower, accounting for the amount of –
 - (a) any payment already received by the money lender in respect of the loan and the dates on which such payment was made;
 - (b) the sum due to the money lender but unpaid; and
 - (c) the amount of interest accrued due and unpaid on the principal sum due.
- (4) Subject to paragraph (5), a money lender shall not be required to supply a quarterly statement where the loan term is three months or less, or where the money lending contract is a mortgage contract.
- (5) Notwithstanding paragraph (3), the money lender shall, on any reasonable demand made in person and upon the assessment of an administrative fee, supply a borrower at any time during the loan term with a copy of all statements.

18. Settlement of instalment loan

- (1) Where a money lenders contract provides for a loan to be repaid by instalments at monthly or shorter intervals, the settlement date shall be no more than twenty-eight days after the date on which the final payment was received by the money lender unless the money lender's policies dictate an earlier settlement date, or an earlier settlement date, has been agreed with the borrower.

- (2) Where applicable, a money lender shall provide the borrower with notice of the settlement date, no later than –
 - (a) the fourteenth day during the period leading to the settlement date if that period is twenty-eight days; or
 - (b) forty-eight hours prior to the settlement date if that period is less than twenty-eight days

which notice shall be issued in such form as may be used by the money lender or otherwise agreed with the borrower.

- (3) On the settlement date, the money lender shall provide the borrower, at no cost to the borrower, with a written statement of the discharge of the loan with the word “Settled” marked prominently thereon.
- (4) Where a loan is repaid by salary deduction, the money lender shall –
 - (a) provide the borrower with a stop-payment authorization once it has received the final instalment payment; and
 - (b) where one or more additional instalments were paid prior to the stop payment authorization being issued to the borrower, refund to the borrower any sums, received after the date on which the final instalment due was received as well as any interest accruing on such sums to the credit of the money lender.
- (c) For the purpose of paragraph (b), refunds shall be made no later than seven days after the money lender received the final instalment, but if that time is exceeded, no less than forty-eight hours of the borrower’s demand for the refund.

19. Communications with borrowers.

- (1) A money lender may, with the consent of a borrower, use electronic mail to communicate with the borrower and shall ensure that –
 - (a) there is secure transmission and receipt of such communications; and
 - (b) the authenticity and integrity of the information transmitted or received is able to be verified.
- (2) Notwithstanding paragraph (1), a money lender shall not be liable for ensuring the receipt of an electronic communication with a borrower where a borrower fails to confirm receipt of that communication or changes electronic addresses without notifying the money lender.

20. Requirement for money lending advertisement.

- (1) In advertising its loan products, a money lender shall ensure that advertisements, regardless of form, –
 - (a) use plain and simple language;
 - (b) specify the name of the money lender;
 - (c) inviting members of the public to apply for loans, or offering a facility for which security is or may be required, clearly state , as applicable –
 - (i) the rate of interest, the payment options, and the fees which would be payable on a loan; and
 - (ii) the specific nature of the security where security is required; or
 - (d) relating to a mortgage or other loan secured on real property, contains a warning that the money lender may repossess the property for non-payment of the loan.
- (2) With respect to the statement of the rate of interest payable on a loan, a money lender shall ensure that every advertisement –
 - (a) denotes interest as “% APR”;

- (b) specifies whether the rate of interest is subject to change; and
 - (c) prominently displays as applicable, the word “variable” or “fixed” or both.
- (3) No money lender shall publish or cause to be published in any advertisement a statement which might reasonably imply that the money lender is operating a banking business.
- (4) It shall be an offence for a money lender, any director, partner, agent or employee of a money lender, or any person who is responsible for the management of the money lending business to issue any advertisement to the public which –
- (a) contains any false, misleading or deceptive statement;
 - (b) dishonestly conceals material facts; or
 - (c) fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed.
- (5) For the purpose of paragraph (2), “**APR**” means the annual rate of interest applied to a loan calculated by dividing the total interest to be paid in a year by the balance due.

21. Direct marketing.

- (1) Where a money lender uses direct marketing strategies, including mass electronic mailing, telemarketing, or mail postings, it shall, upon the request of any affected person, remove such person from any mailing or telephone call lists within twenty-four hours of receiving such request.
- (2) A money lender shall maintain a record of all requests for removal made pursuant to paragraph (1) and ensure that –
- (a) any written material used in its direct marketing strategy contains information explaining how affected persons may be removed from any mailing or telephone call lists compiled and maintained by that money lender; and
 - (b) it has a written policy setting out measures to prevent the inclusion of any person who has made a request to be removed from a mailing or telephone call list.
- (3) For the purpose of this rule, where the Commission receives a complaint from an affected person, it may impose an administrative penalty in its discretion upon a money lender who fails to act upon a request for removal or, following such request, fails to prevent the inclusion of such person on its mailing or telephone call lists.

22. Money broking.

- (1) Where a money lender uses the services of a money broker to canvass on its behalf for the purpose of either soliciting any person to borrow money from that money lender or introducing any person to a money lender, such money broker shall –
- (a) be in possession of a financial service provider’s licence for the purpose of money broking; and
 - (b) not directly or indirectly demand or receive any sum or other consideration by way of commission from a customer for introducing or undertaking to introduce that borrower to a money lender.
- (2) A money lender who contracts a money broker’s service shall be wholly responsible to pay to such money broker any commission or other sum charged by that money broker.
- (3) A contract shall be unenforceable if made either between the money lender and the money broker or between the money broker and the customer which requires that a customer pays any part of a commission or other sum charged by a money broker.

- (4) For the purposes of paragraph (1), a “**money broker**” shall be any person who organizes money lenders and borrowers enabling them to enter into a contract for a money transaction, including loans.

23. Assignment or collection of loans in default.

Where a money lender either assigns any debt arising from a defaulted loan or engages the services of a debt collector, such assignment or engagement shall only be made with a person who is in possession of a financial services provider’s licence for the purpose of debt collection.

24. Intimidation or assault of borrower.

- (1) A money lender or debt collector engaged by a money lender, whether licensed or unlicensed, or any agent or person acting on behalf of a money lender or debt collector shall not, in connection with the default of any loan by the borrower, —
- (a) threaten or display or use any threatening or abusive words, behavior, writing, sign or intimidation tactics toward a borrower; or
 - (b) commit any assault against, cause any harm to, or threaten to assault or cause harm to a borrower or any member of the borrower’s immediate family.
- (2) Any money lender or person who commits, attempts to commit or abets any other person to carry out any of the acts specified in paragraph (1) commits an offence.
- (3) For the purpose of paragraph (1) (a), it shall be a question for the court in determining whether a money lender engaged in intimidation of a borrower.

PART III - REGULATION OF MONEY LENDER

25. Money lender to be legal entity.

- (1) No person shall carry on any money lending activities in or from The Bahamas, or purport to do so, unless that person is —
- (a) a person incorporated under the Companies Act, (Ch.308);
 - (b) a person incorporated under the International Business Companies Act, (Ch. 309) or
 - (c) organized under the Partnership Act (Ch. 310).

26. Lending Capital

A money lender must submit at the time of its application for a license, information and documentation concerning its lending capital, disclosing specifically how it is funded, the amount of such funding, the source of such funding, in the case of shareholders, the value of shares held by each shareholder, and, provide any other due diligence documentation required by the Commission.

27. Funding.

- (1) With respect to the funding or financing of its operations, a money lender may source such funding or financing by using any of the following methods or any combination thereof —
- (a) accessing its own capital, including savings, liquidation of assets or real property, or inheritance;
 - (b) issuing promissory notes, debentures or bonds to investors approved by the Commission;
 - (c) accessing overdrafts made in its name with a licensee of the Central Bank of The Bahamas;
 - (d) taking on equity partners approved by the Commission; or

- (e) entering into Bahamian-dollar loans from other persons, a licensee of the Central Bank of The Bahamas, an insurance company licensed by the Insurance Commission of The Bahamas or another licensed money lender.
- (2) A money lender shall –
- (a) maintain records with respect to its funding, including information concerning the source and amount of such funding, and shall produce to the Commission such records as the Commission duly requires; and
 - (b) obtain the approval of the Commission prior to any increase in lending capital

28. Fit and proper persons.

No person who has been convicted of an offence or against whom a regulatory sanction has been applied, shall be engaged in the business of money lending as an organizer, financier, investor, partner, officer, director or manager.

29. Employees.

A money lender shall implement screening procedures for the hiring of fit and proper persons as employees and ensure that such employees, regardless of location, are trained on the money lender's internal policies, procedures and controls for the prevention of money laundering and the financing of terrorism, including the roles and responsibilities of employees and officers of the licensee.

30. Duty to notify the Commission.

A money lender shall notify the Commission and obtain the Commission's written approval prior to taking any action with respect to the following —

- (a) the issue, transfer or disposal of any shares in a company or partnership licensed to carry on money lending;
- (b) the appointment of directors, addition or reduction of shareholders; and
- (c) any change to officers in a company licensed to carry on money lending.

31. Mergers and acquisitions.

A money lender shall notify the Commission and obtain the Commission's prior written approval before taking any action to merge with or acquire an existing money lender.

32. Disposal of a loan portfolio.

- (1) A money lender having existing loans on its books shall notify the Commission of any decision to go into voluntary liquidation or, not being in liquidation, to divest itself of all or a portion of its loan portfolio.
- (2) The notice required under paragraph (1) shall be submitted to the Commission within seven days of the money lender's decision and prior to any steps being taken with respect to the liquidation or loan portfolio divestiture.
- (3) The money lender shall submit to the Commission for approval its divestment plan which shall stipulate the date on which the plan shall come into effect.
- (2) A money lender to whom sub-paragraph (1) applies shall only dispose of its loan portfolio or a portion thereof to a bank, insurance company or other licensed money lender.

33. Duty to keep loan records.

A money lender must keep a record in respect of each loan, which record shall contain entries recording, on the making of the loan, all information relevant to that loan including any security given by the borrower, and all payments made by the borrower.

34. Accounts to be kept.

In complying with Regulation 6, a money lender shall also keep or cause to be kept in a form satisfactory to the Commission —

- (a) such books and records necessary for the proper recording of its business transactions and financial affairs;
- (b) records showing the repayment terms of each loan, the total amount actually paid or to be paid, and the fees required to be paid by the borrower with respect to each loan;
- (c) notes of the money lending contracts; and
- (d) such other documents as may be determined by the Commission.

35. Duty to co-operate with the Commission.

- (1) Pursuant to section 31(3) of the Act, a money lender shall —
 - (a) co-operate with the Commission and provide as the Commission duly requires, any information relevant to its operations; and,
 - (b) submit to inspection and any on-site or off-site examinations required to be conducted by the Commission or any person appointed by the Commission in the exercise of its functions.
- (2) In addition to any sanctions imposed under the Act, the Commission shall impose an administrative penalty upon any money lender, or any of its employees, managers, officers or other person, who fails to co-operate with or obstructs or assaults any person appointed by or acting on behalf of the Commission with respect to the provision of any relevant information or the conduct of an inspection or examination.
- (3) For the purpose of paragraph (2), it shall not be relevant whether a money lender's employee, manager, officer or other person was acting upon the specific instruction of any person having control of or responsibility for the management or operation of the money lending business.

36. Duty to report.

- (1) Pursuant to section 31(4) of the Act, a money lender shall deliver to the Commission within any prescribed period —
 - (a) the annual financial statements in respect of the year along with the report of the auditor;
 - (b) a copy of the annual report of the auditor on results of the audit;
 - (c) interim financial statements and other information as may be prescribed; and
 - (d) all reports or other information as the Commission may determine.
- (2) Notwithstanding the First Schedule of the Act, a money lender who fails to deliver any of the documents set out at paragraph (1) shall pay an administrative penalty of one thousand dollars for each day which elapses from the end of the prescribed period, that is, the last date within the prescribed period during which the document ought to have been submitted, and the date on which the document is submitted to the Commission.
- (3) Notwithstanding the foregoing, where the delivery of the documents is delayed due to the actions of the money lender's auditor, the money lender shall apply to

the Commission for an extension of time within which to deliver such documents, and the application shall –

- (a) stipulate the date on which delivery will be made; and
- (b) be made at least seven (7) days before the end of the prescribed period.

37. Prevention of money laundering and the financing of terrorism.

Pursuant to section 23 of the Act, a money lender shall comply with the provisions of the Financial Transactions Reporting Act, (*Ch. 368*) and the Financial Intelligence (Transactions Reporting) Regulations, 2001 with respect to the prevention of money laundering and the financing of terrorism.

PART IV – MORTGAGE LENDING

38. Money lending and mortgages.

- (1) Subject to rule 37, the provisions of this Part shall apply to a money lender whose business includes mortgage lending or financing.
- (2) For the purpose of paragraph (1), a money lender's business includes mortgage lending or financing, if that money lender –
 - (a) with respect to a dwelling house, lends money to a borrower –
 - (i) for the purchase of vacant property for the construction of a dwelling house;
 - (ii) for the purchase of a dwelling house;
 - (iii) secured on the borrower's dwelling house; or
 - (iv) purchases mortgages in default or loans in default where such loans were secured on a borrower's dwelling house
 - (b) lends money for the purchase of commercial property whether such property is developed or undeveloped.
- (3) For the purpose of this Part —
 - “**dwelling house**” means any building or part thereof which is used primarily as the dwelling house of the mortgagor or members of the mortgagor's immediate family and includes a condominium unit or duplex;
 - “**immediate family**” includes a mortgagor's spouse, his children and parents;
 - “**mortgage**” includes any charge on any property for securing money or moneys loaned for the construction or purchase of a dwelling house to be used primarily as the residence of a mortgagor or members of his immediate family and the terms “mortgagee” and “mortgagor” shall be construed accordingly.
- (4) The provisions of the Rate of Interest Act, (*Ch. 341*) shall not apply to mortgage lending or financing.

39. Dealing with defaulted mortgages.

Where, with respect to a dwelling house, a money lender purchases a mortgage or secured loan in default, the following shall apply —

- (a) the rate of interest applied to the mortgage or loan shall not be varied with the effect that it is higher than the interest rate existing under the former mortgage or loan terms;
- (b) the borrower shall not be required to pay any fees, administrative or otherwise, or charges associated with or arising from the purchase of the mortgage or loan by the money lender; and

- (c) where the money lender offers the borrower new payment terms, such terms shall not place the borrower in a worst position than the borrower would have been in had the loan not been sold.

40. Home-Owners protection.

Where a loan or mortgage made by a money lender secured by or are made with respect to a dwelling house goes into default due to the non-payment of principal or interest by the borrower, or are in default and subsequently purchased by a money lender, the provisions of the Home-Owners Protection Act shall apply.

PART VI – GENERAL PROVISIONS

41. Offences.

- (1) Any person who fails to comply with these Rules commits an offence and shall be subject to a fine, imprisonment or both.
- (2) Notwithstanding paragraph (1), where an offence under these Rules has been committed and it is proved that the offence occurred with the consent or connivance or any neglect of an officer, director, manager, partner, or person purporting to act in any such capacity of that legal entity, the officer, director, manager or person as the case may be as well as the legal entity or partnership shall be guilty of the offence.
- (3) If the affairs of a legal entity or partnership are managed by its members, subparagraph (1) shall not apply.

42. Transition.

- (1) Notwithstanding the provisions of any other law, any person who immediately before the entry into force of these rules was licensed to carry on a money lending business in or from within The Bahamas, shall be deemed to be carrying on business under the provisions of these Rules.
- (2) Any person who was not licensed to carry on a money lending business at the commencement date of these rules shall have ninety days from that date to apply to the Commission to become licensed as a money lender.

Dated of _____, 2021

Securities Commission