

ANTIGUA AND BARBUDA



**THE BANKING ACT (BANK OF NOVA SCOTIA BANKING BUSINESS VESTING)
ORDER, 2021**

STATUTORY INSTRUMENT

2021, No. 65

*[Published in the Official Gazette Vol. XLI No. 52
dated 12th August, 2021]*

Printed at the Government Printing Office, Antigua and Barbuda,
by Noel F. Abraham, Government Printer
— By Authority, 2021.

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**THE BANKING ACT (BANK OF NOVA SCOTIA BANKING BUSINESS VESTING)
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STATURORY INSTRUMENT

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The Banking Act (Bank of Nova Scotia Banking Business Vesting) Order made by the Minister of Finance under section 175 of the Banking Act, No. 10 of 2015.

WHEREAS by Purchase and Sale Agreement made on the 13th day of October 2020 (hereinafter referred to as “the Agreement”) the BANK OF NOVA SCOTIA (hereinafter called the “Transferor Financial Institution”) agreed to transfer to EASTERN CARIBBEAN AMALGAMATED BANK LIMITED (hereinafter called “the Transferee Financial Institution”) certain specified assets and liabilities of BANK OF NOVA SCOTIA;

AND WHEREAS the Closing Date of the Agreement is the 31st day of August 2021;

AND WHEREAS pursuant to section 175 of the Banking Act, the Minister responsible for Finance is authorized to make a Banking Business Vesting Order to transfer to and vest in the Transferee Financial Institution those assets and liabilities of the Transferor Financial Institution which are intended to be transferred and vested by the Agreement;

I, Gaston Browne, Minister for Finance do hereby order and it is hereby ordered as follows:

1. Citation and Commencement

- (1) **This Order may be cited as the Bank of Nova Scotia Banking Business Vesting Order, 2021.**
- (2) **This Order shall come into force on the 31st day of August, 2021 (hereinafter called the “appointed day”).**

2. Interpretation

In this Order —

“Agreement” means the Purchase and Sale Agreement made on the 13th day of October 2020 between the Transferor Financial Institution and the Transferee Financial Institution relating to the transfer of the Banking Business of the Transferor Financial Institution to the Transferee Financial Institution;

“Assumed Liabilities” has the meaning assigned to it in the Agreement, as more particularly described in Schedule 1 to this Order;

“Purchased Assets” has the meaning assigned to it in the Agreement, as more particularly described in Schedule 2 to this Order;

“Banking Business” means the banking business carried on by the Transferor Financial Institution in Antigua and Barbuda comprising all the Purchased Assets, Assumed Liabilities, property, rights and obligations as specified in and intended by the Agreement;

“Transferee Financial Institution” or “Buyer” means Eastern Caribbean Amalgamated Bank Limited, a company duly registered and licensed to carry on banking business in Antigua and Barbuda; and

“Transferor Financial Institution” or “Seller” means The Bank of Nova Scotia, a Schedule I bank existing under the laws of Canada and registered and licensed to carry on banking business in Antigua and Barbuda.

3. Vesting of Banking Business

The Banking Business of the Transferor Financial Institution is, without further assurance, hereby transferred to and vested in the Transferee Financial Institution with effect from the appointed day.

SCHEDULE 1

- (1) With effect as of the Closing, on and subject to the terms and conditions of the Agreement and in addition to, and not to in any way limit or restrict the Liabilities assumed by the Buyer pursuant to section 175 of the Banking Act, No. 10 of 2015, the Buyer assumes in full in accordance with their terms, and agrees faithfully to pay when due and perform and discharge in full in accordance with their terms, the Assumed Liabilities.
- (2) Assumed Liabilities means the following Liabilities of the Seller or its Affiliates as at the Effective Time:
 - (a) all accounts payable, accrued charges and other Liabilities in connection with the Business that remain unpaid or exist/arise as of the Effective Time and that are either reflected in the Financial Statements or arose in the operation of and related to the Business or as a result of the Closing;
 - (b) all Liabilities arising at or after the Effective Time relating to the Purchased Assets, including the Real Property, the Unfunded Commitments and any Contract assigned to the Buyer pursuant to the Agreement;
 - (c) without limiting the other Subsections in this definition, all Liabilities in respect of the Continuing Employees that exist following the Effective Time related to or in connection with the Business including the liability to pay severance as and when required under the applicable laws of Antigua and Barbuda; this liability does not include applicable Pre-Closing Employment Liabilities that the Seller has responsibility for;
 - (a) without limiting the other Subsections in this definition, all Liabilities in respect of the New ECAB Employees that exist following the Effective Time other than Pre-Closing Employment Liabilities and the Severance Payments which will be paid in full by the Seller;
 - (e) all Liabilities expressly and specifically assumed by or agreed to be performed by the Buyer pursuant to the terms of the Agreement or any other Transaction Document;
 - (j) all Liabilities included on the Final Closing Statement;

- (g) all Liabilities for Taxes imposed on, or arising with respect to, any of the Purchased Assets or the Business for any taxable period (or portion thereof) beginning at or after the Effective Time, other than (i) any deferred tax liability of the Seller, and (ii) except as provided in Section 7.3 of the Agreement, any Taxes of the Seller or its Affiliates that arise directly from the consummation of the Transactions contemplated herein,
- (h) all Liabilities for Taxes for which the Buyer is liable pursuant to the express terms of Article 7 of the Agreement that are not paid by the Buyer at Closing; and
- (i) those Liabilities set forth on Section 2.4 of the Seller's Disclosure Schedule.

(2) Capitalized terms used in this Schedule but not otherwise defined herein shall have the meaning assigned to such terms in the Agreement.

SCHEDULE 2

(1) Purchased Assets means the following assets of the Banking Business:

- (a) the Cash Items;
- (b) the Loans;
- (c) the Real Property leases;
- (a) the Owned Real Property;
- (e) the Receivables;
- (j) the Fixed Assets;
- (g) the Contracts described in Section 2.1(g) of the Seller's Disclosure Letter;
- (h) the Assigned Permits;
- (i) the Branch Bank Books and Records;
- (j) the Customer Books and Records;

- (k) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Contracts in Section 2.1(g) of the Agreement;
- (l) all insurance benefits under third party Business insurance policies that are Contracts of the Business and exclusively apply to and cover the risk of the Business including rights and proceeds, arising from or relating to the Purchased Assets or the Assumed Liabilities; and
- (m) all goodwill and the going concern value solely related to the Business (except as otherwise expressly excluded in the Agreement).

(2) Capitalized terms used in this Schedule but not otherwise defined herein shall have the meaning assigned to such terms in the Agreement.

Made the 9th day of August, 2021.

Hon. Gaston A Browne,
*Prime Minister
and the Minister for Finance and Corporate Governance.*