

ANTIGUA AND BARBUDA



**EASTERN CARIBBEAN CENTRAL BANK ACT (AMENDMENT OF SCHEDULE)
ORDER, 2013**

STATUTORY INSTRUMENT

2013, No. 56

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Eastern Caribbean Central Bank (Amendment of Schedule) Order made by the Minister in exercise of the powers conferred upon him under section 6 (1) of the Eastern Caribbean Central Bank Act.

1. Short title

This Order may be cited as the Eastern Caribbean Central Bank Act (Amendment of Schedule) Order, 2013.

2. Interpretation

In this Order, "Agreement" means the Agreement establishing the Eastern Caribbean Central Bank, done at Port of Spain, Trinidad and Tobago on the 5th day of July 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Act, Cap.142.

3. Amendment of Article 5A

Article 5A of the Agreement is amended in paragraph (1) by inserting in the appropriate alphabetical order the following definitions-

"claim" means any claim whatsoever without limitation, including claims which are secured or unsecured, present or future, actual, prospective or contingent, or arising out of contract, tort, bailment, restitution, breach of trust or any other cause of action and whether or not made by a creditor, shareholder, depositor or any other person;

"creditor" means a person having a claim against or in respect of a financial institution or its property or assets;

"secured creditor" means a creditor who—

- (a) has a mortgage in respect of any property of a financial institution;
- (b) has a fixed or floating charge, a lien or any other security interest whatsoever without limitation in or over or in respect of any property or assets of a financial institution; or

- (c) is a party to an agreement designed to create the economic equivalent of a security interest.

“security agreement” means any agreement creating a security interest or making a creditor a secured creditor;

“security interest” means any interest in or charge upon any property of a financial institution by way of mortgage, assignment, bond, lien, pledge or other means, that is created or is taken to secure the payment of a debt or the performance of any other obligation of the financial institution”.

4. Amendment of Article 5C

Article 5C of the Agreement is amended by inserting immediately after paragraph (4) the following paragraphs—

“(5) On and after the publication of a notification under paragraph (1)—

- (a) no creditor, shareholder, depositor or any other person shall have any remedy against the financial institution in respect of any claim, and without prejudice to the generality of the foregoing, no creditor, shareholder, depositor or any other person shall commence or continue any action, execution or other proceedings or seek to enforce in any way any judgment or order obtained against the financial institution or its successor or the transferee of the whole or any part of any property, assets or undertaking of the financial institution for the recovery of any claim or in respect of any other liability, until the publication of a notification under Article 5E(1) in relation to the financial institution or without the prior leave of the court unless the court directs otherwise;
- (b) where the Bank has not yet published a notification under Article 5E(1) in relation to a financial institution, the Bank may, where it is of the opinion that it is no longer necessary to impose a stay, publish in the *Gazette* and in such newspaper as it thinks appropriate in the territory where it has assumed control of the financial institution, a notification to lift the stay under sub-paragraphs (a), (d) or (e), except that no person shall take any steps to institute winding up, receivership, administration or any other related proceedings in relation to that financial institution without the prior leave of the court unless the court directs otherwise;
- (c) no creditor, shareholder, depositor or any other person shall commence or continue any claim, action, execution or other proceedings or seek to enforce in any way any judgment or order obtained against the Bank, its directors, officers, employees or any person acting on behalf of the Bank or appointed by the Bank under Article 5B in respect of any act, commission, claim fact or matter connected with or arising out of the acts or omissions of the Bank in respect of the financial institution, until the

publication of a notification under Article 5E(1) in relation to the financial institution or without the prior leave of the court unless the court directs otherwise;

- (d) no provision of a security agreement, lease or licence between the financial institution and a secured or other creditor that provides, in substance, that on
- (i) the winding up of the financial institution or any related entity or any insolvency restructuring or reorganization proceedings being commenced, continued or ordered in respect of the financial institution or any related entity ; or
 - (ii) the default by the financial institution of an obligation under the security agreement, lease or licence,

the financial institution ceases to have such rights to use or deal with assets secured or dealt with under the agreement, lease or licence as the financial institution would otherwise have, or is given lesser rights or priorities in respect of any assets or property as the financial institution would otherwise have, has any force or effect, until the publication of a notification under sub-paragraph (b) or Article 5E (1) in relation to the financial institution or without the prior leave of the court unless the court directs otherwise; and

- (e) no provision in any contract or agreement or any other document which gives any party a right to acquire any property or assets of the financial institution on the grounds of any change of control or on any analogous ground or on the grounds of insolvency shall have any effect, until the publication of a notification under sub-paragraph (b) or Article 5E(1) in relation to the financial institution or without the prior leave of the court unless the court directs otherwise.”

(6) For the purposes of paragraph (5)—

- (a) the rights, property and assets referred to in this Article are taken to be rights, property and assets wheresoever located; and
- (b) the agreement, lease or licences referred to in this Article are taken to be an agreement, lease or licence governed by any law.”

(7) The Bank shall report quarterly to the High Court on—

- (a) The proposals to restructure a financial institution in relation to which a notification has been published under paragraph (1); and
- (b) the progress of the proposals referred to in sub-paragraph (a),

until a notification under paragraph (5) (a) or Article 5E (1) has been published in relation to that financial institution.

(8) A notification published pursuant to paragraph (1) shall only operate as a temporary stay of a claim against the financial institution and shall not have or be taken to have the effect of extinguishing such a claim.

(9) Where a claim is stayed pursuant to paragraph (5), for the purposes of the computation of time limits under any applicable law on limitation of actions, the period of time commencing with the date of publication of the notification under paragraph (1) and ending with the date of the publication of the notification under paragraph (5) (b) or Article 5E (1) shall be excluded.”

5. Commencement

This Order shall come into force on the 31st day of December, 2013.

Made this 16th day of December, 2013.

Harold E. Lovell,
Minister of Finance.