

BANKS AND TRUST COMPANIES (LARGE EXPOSURES) REGULATIONS

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BANKS AND TRUST COMPANIES (LARGE EXPOSURES) REGULATIONS

(SECTION 24)

[Commencement 27th January, 2006]

Citation

1. These Regulations may be cited as the Banks and Trust Companies (Large Exposures) Regulations.

Interpretation

2. In these Regulations —

“capital base” means the total of shareholders funds plus other capital items permitted by the Central Bank and subject to any deduction required by the Central Bank and reported in the most recent form BSDI;

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“Central Bank” means the Central Bank of The Bahamas established pursuant to section 3 of the Central Bank of The Bahamas Act;

“concessive terms” means conditions and requirements that are less demanding than or inconsistent with the conditions and requirements imposed upon the general range of non-related party clients in similar circumstances;

“counterparty” means the borrower (customer), the person guaranteed, the issuer of a security in the case of an investment in a security or the party with whom the contract is made in the case of a contract;

“connected party” means —

- (a) any party that, either directly or indirectly, controls the counterparty;
- (b) any party that is controlled, either directly or indirectly, by any party that controls, either directly or indirectly, the counterparty;
- (c) a subsidiary or associate company of the counterparty;
- (d) directors, executive officers, senior staff, and controlling shareholders of the counterparty;
- (e) directors, executive officers, senior staff, and controlling shareholders of any person identified in (a), (b) and/or (c), above;

“exposure” means —

- (a) claims on a counterparty including actual claims and potential claims which would arise from the drawing down in full of undrawn advised facilities (whether revocable, irrevocable, conditional or unconditional), which the licensee has committed itself to purchase or underwrite;
- (b) contingent liabilities arising in the normal course of business and liabilities that would arise from the drawing of undrawn advised facilities;
- (c) holdings of equity capital, bonds, bills or other financial instruments;
- (d) any other assets that constitute a claim on a counterparty for the licensee and which are not included in paragraphs (a), (b), or (c) above;

“large exposure” means an exposure which is equal to or exceeds ten percent of the capital base of a licensee;

“licensee” means any Bank or Trust company which is incorporated in The Bahamas and which holds a licence granted under section 4 of the Act;

“related party” includes —

- (a) a person that controls, whether directly or indirectly, a licensee;
- (b) a person that is controlled, whether directly or indirectly, by the person that controls the licensee;
- (c) the subsidiaries or associate companies of a licensee;
- (d) the directors, executive officers, senior staff of —
 - (i) a licensee;
 - (ii) any person identified in paragraphs (a),(b), or (c) above;
- (e) any person who, either alone or together with any associate, is entitled to exercise control over ten percent or more of the share capital of —
 - (i) a licensee;
 - (ii) any person identified in paragraphs (a), (b) or (c) above;
- (f) the immediate family members of persons identified in paragraphs (a), (d) or (e) above;
- (g) partnerships, companies, trusts or other entities in which an immediate family member referred to in paragraph (f) above, has a controlling interest; and
- (h) any person that manages or is managed by a licensee under a management contract;

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“the Act” means the Banks and Trust Companies Regulation Act;

“Zone A countries” means all countries which are full members of the Organization for Economic Co-operation and Development (OECD), together with those countries which have concluded lending arrangements with the International

Monetary Fund associated with the General Agreement to Borrow, excluding those countries which have rescheduled their external debts during the preceding five years and those countries whose rating for long-term liabilities in foreign currencies is lower than “investment grade” or which have no rating and whose yield to maturity and remaining duration are not comparable with those of long-term liabilities with an investment grade rating.

3. (1) No licensee shall incur an exposure to any individual counterparty or group of connected parties, which exceeds twenty- five percent of the licensee’s capital base. Single exposure limit.

(2) No licensee shall hold investments in securities of an issuer which exceed ten percent of the licensee’s capital base.

4. (1) No licensee shall incur any exposure, whether on an individual or aggregate basis, to related parties of greater than fifteen percent of the licensee’s capital base. Limit on exposures to related parties.

(2) All exposures to related parties must be:

(a) negotiated on an arms length basis for clear commercial advantage of the licensee at market rates and without concessive terms;

(b) specifically approved by the licensee’s Board of Directors.

5. The Central Bank shall monitor all exposures to related parties and may deduct them from the capital base of the licensee if they are, in the opinion of the Central Bank, of the nature of a capital investment or made on concessionary terms. Central Bank to monitor.

6. No licensee shall incur non-exempt large exposures which in aggregate exceed eight hundred percent of its capital base. Aggregate limits on large exposures.

7. (1) The following exposures are exempt from the limits outlined in regulations 3, 4 and 6 — Exempt exposures.

(a) exposures to the Government of The Bahamas and non-commercial Bahamian government institutions;

(b) exposures to Zone A Central Governments with a Moody’s rating above Baa2 for foreign currency debt;

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- (c) exposures to Zone A Central Banks; and
 - (d) exposures secured by Zone A Central Government securities or guarantees with a Moody's rating above Baa2 for foreign currency debt;
 - (e) short-term inter-bank deposits (where limits have been pre-approved by the Inspector) of not more than 6 months maturity, booked with Zone A banks which are located in Zone A countries;
 - (f) exposures which are fully collateralized throughout their tenure by cash deposits, including certificates of deposit and equivalent instruments, held with the specific right of offset, where the release of the deposit is conditional on the repayment of the related extension(s) of credit.

(2) In Regulation 7(1)(e) "Zone A banks" means banks which have Home Supervisors that are located in Zone A countries.

Exemption from exposure limits.

8. The Inspector of Banks and Trust Companies may, upon receiving prior notice from a licensee of any of the exposures set out in paragraphs (a), (b), (c), (d), (e) and (f) hereof, exempt the licensee from the exposure limits outlined in regulations 3, 4 and 6 —

- (a) exposures which are collateralized by marketable securities throughout their tenure having a market value equal to at least one hundred percent of the extension of credit or such higher percentage as the Inspector shall require;
- (b) exposures which are supported by a guarantee or letter of comfort from a bank, which is acceptable to the Inspector;
- (c) underwriting exposures which do not exceed 90 days duration. Any residual holdings of securities, which are held for more than 90 days, are no longer eligible for exemption under this regulation and are subject to the limits outlined in regulations 3, 4 and 6;
- (d) certain exposures to related parties which are subject to supervision and which have been pre-approved by the Inspector.

(e) off-balance sheet exposures (such as derivative contracts) to banks which are acceptable to the Inspector.

9. Licensees shall implement and maintain internal policies and internal limits which will ensure compliance with regulations 3, 4 and 6. Compliance and internal policies.

10. Licensees shall regularly, but not less than once annually, review their internal policies to take account of changing operating circumstances. Review of internal policies.

11. Licensees shall report to the Inspector all large exposures, exempt or otherwise, on a quarterly basis (or more frequently if required by the Central Bank) in the manner determined by the Inspector. Reporting requirements.

12. On becoming aware of any breach of regulations 3, 4 or 6 a licensee shall immediately notify the Inspector of the breach and provide the Inspector with particulars of the breach in the manner determined by the Inspector. Notification of breach.

13. Where a licensee is in breach of regulation 3, 4 or 6 the licensee and the Inspector shall enter into discussions for the purpose of determining what remedial action is required. Remedial action by the Central Bank.

14. The Inspector may, by notice in writing served on the licensee, require the licensee to take such remedial action as he thinks fit to ensure compliance with regulations 3, 4 and 6. Notice of remedial action for compliance.

15. The Inspector may, by notice in writing served on a licensee, vary any of the limits specified in regulation 3, 4 or 6 in relation to that licensee. Variation of limits.

16. The Governor may impose a fine not exceeding five thousand dollars where a licensee fails to comply with the provisions of any of regulations 3, 4 or 6: Penalty for non-compliance.

Provided that the Governor may, if he thinks fit, exempt a licensee from the provisions of this regulation.