



For Public Consultation:

FINANCIAL AND CORPORATE SERVICE PROVIDERS BILL, 2019

The Securities Commission of The Bahamas (“the Commission”), in its capacity as the Inspector of Financial and Corporate Services (“the Inspector”) has issued the Financial and Corporate Service Providers Bill, 2019 for public consultation. The Bill may be found on the Commission’s website at: www.scb.gov.bs/consultation.html.

An earlier draft of the Bill, the “Financial and Corporate Service Providers Bill, 2017,” was previously issued for public consultation, from 20 July 2017 to 16 October 2017. Subsequent to a review of the comments received and other developments, the revised version of the Bill, attached, has been issued for consultation.

Summary

The Financial and Corporate Service Providers Bill, 2019 seeks to repeal and replace the current Financial and Corporate Service Providers Act (Ch. 369) to:

- a) establish a robust regulatory regime and eliminate the deficiencies and inconsistencies in the current legislation;
- b) enhance the regulatory authority and oversight of the Inspector;
- c) clarify and establish clear and distinct categories of activities that are considered financial or corporate services and that are licensable pursuant to the provisions of the Bill;
- d) establish appropriate standards of conduct and obligations for financial and corporate service providers;
- e) establish appropriate capital, financial and reporting obligations that are commensurate with the various services being provided; and
- f) provide appropriate transitional provisions.

The Bill has been updated to include the following additional financial services activities:

- a) Financial Leasing;
- b) Financial Intermediation Services;
- c) Financial Advisory or Consultancy Services;
- d) Financial Intermediation Services;
- e) Trading in Commodities and Other Financial Instruments;
- f) Custody of Digital Assets; and
- g) Digital Wallet Providers.

Further, the exemption from the requirements for regulation for licensees of the Central Bank of The Bahamas has been removed.

Consultation Period

The consultation period commences 9 July 2019 and ends on 19 August 2019. All comments received by this date 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:

The Executive Director
Securities Commission of The Bahamas
Poinciana House, North Building
31A East Bay Street
Nassau, The Bahamas
Tel: (242) 397-4100
Fax: (242) 356-7330
Email: info@scb.gov.bs

Issued: 8 July 2019

FINANCIAL AND CORPORATE SERVICE PROVIDERS ACT, 2019

An Act to update and modernise the law relating to the regulation of non-bank financial and corporate services in The Bahamas

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short Title and commencement

This Act may be cited as the Financial and Corporate Service Providers Act, 2019.

(2) This Act shall come into force on such date as the Minister may appoint, by notice published in the Gazette, and the Minister may appoint different dates for the entry into force of Part VI herein.

2. Interpretation

(1) In this Act –

“Auditor” means a public accountant licensed under the provisions of the Bahamas Institute of Chartered Accountants Act, 2015;

“bill paying service” refers to the service offered by a third-party company contracted by vendors or utility service providers, whereby the third-party company acts as agent in the collection of payments due to those vendors or utility service providers;

“Commission” means the Securities Commission of The Bahamas;

“Compliance Officer” means a person appointed by a licensee and approved by the Commission as Compliance Officer, and includes a person to whom compliance functions and obligations have been outsourced.

“court” means the Supreme Court of The Bahamas;

“credit extension” refers to in-house financing arrangements by a seller of goods or services which permits purchases on condition that the purchaser thereafter discharges the debt by instalment payments but does not include lay-away arrangements;

“custody of digital assets” means any arrangement under which a person is authorized to hold, directly or indirectly an investor’s digital assets.

“debt collection” means the collection of any debts or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due to a third party;

“financial advisory or consultancy service” includes the provision of a financial advisory or consultative service in private and commercial transactions, which are not subject to the Securities Industry Act, 2011 (*no. 10 of 2011*) and includes assisting with the creation of financial plans;

“financial intermediation” means the process by which a financial institution acts as the intermediary between a lender and a borrower, or borrows money from a non-bank

company or a private individual to give another person seeking funding, investment or resources;

“financial leasing” means the transfer of all risks and rewards incidental to ownership of an asset from a finance company or other lessor to a client or lessee, similar to a secured financing or lending or a loan agreement;

“licence” means a licence granted under section 9;

“licensee” means a person holding a licence under this Act;

“Minister” means the Minister of Finance;

“money broking” means organizing money lenders and borrowers enabling them to enter into a contract for a money transaction, and includes mortgage broking;

“Money Laundering Reporting Officer” or “MLRO” means the person appointed by a licensee and approved by the Commission as the Money Laundering Reporting Officer having responsibility for receiving and disclosing suspicious transaction reports to the Financial Intelligence Unit;

“money lending” with respect to non-bank persons, includes –

- (a) the granting of short term loans which may be in the form of payday and cash advances;
- (b) the granting of consumer or mortgage loans; and
- (c) any ancillary activity related to money lending;

“mortgage broking” means arranging mortgage financing and negotiating terms of the mortgage on behalf of a borrower or lender;

“mortgage lending” refers to the provision of loans to finance the purchase of real property and includes lease-to-own arrangements which provide the lessor with an option to purchase and applies either a portion of or the total lease payment toward paying down the loan amount of the relevant real property;

“partnership” means a partnership formed under the Partnership Act (*Ch. 310*) or the Exempted Limited Partnership Act (*Ch. 312*);

“payday and cash advances” means the provision of small loans of five thousand dollars or less that may be offered by non-bank persons.”

“person” includes individuals or a company or other organized group, whether corporate or incorporate.

“trading in commodities and other financial transactions” means any purchase or sale or deposition o or dealing or any solicitation for valuable consideration of a commodity or other financial instrument not defined as a security under the Securities Industry Act, 2011 (*No. 10 of 2011*) including but not limited to oil, gold, silver, copper and currencies;

“wallet provider” means a person who provides digital wallet service by use of a software program that interfaces with fiat currencies, stores private and public keys and interacts

with distributed ledger technology to enable users to send, receive and monitor their digital assets;

(2) For the purposes of this Act,

(a) “corporate service provider” means any person operating in or from within The Bahamas, who, by way of business –

- (i) forms, registers, or manages an international business company;
- (ii) acts, or arranges for another person to act as a director, secretary, or officer of an international business company, or as a partner in an Exempted Limited partnership;
- (iii) acts or arranges for another person to act as a nominee director, nominee secretary, nominee officer or nominee shareholder of an Bahamian-incorporate or registered entity;
- (iv) provides registered agent or registered office services for a Bahamian-incorporated or registered entity, an international business company, or an exempted limited partnership;
- (v) provides Compliance Officers or Money Laundering Reporting Officers as outsourced compliance services; or
- (vi) is appointed as –
 - (aa) an agent of an executive entity registered or existing under the Executive Entities Act, 2011 (*No. 52 of 2011*);
 - (bb) an agent of a foundation established under section 5 and registered under section 21 of the Foundations Act (*Ch. 369D*);
 - (cc) a trustee of an authorized purpose trust existing under the Purpose Trusts Act (*Ch. 176A*);
 - (dd) the registered representative of a firm managing or advising on securities under the provisions of the Securities Industry Act, 2011 (*No. 10 of 2011*), or of a private trust company as defined by section 2 of the Banks and Trust Companies Regulation Act (*Ch. 316*);
 - (ee) the governing administrator of an investment condominium registered or existing under the Investment Condominium Act, 2014 (*No. 38 of 2014*); or
 - (ff) the representative of a segregated accounts company registered under section 6 pursuant to section 3(1)(e) of the Segregated Accounts Companies Act (*Ch. 369A*).

(b) “financial service provider” or “non-bank financial service provider” means a person not licensed under the Banks and Trust Companies Regulation Act, Ch. 316 or not registered under the Bahamas Co-operative Credit Union Act, (*No.9 of 2015*) and engaged in any of the following activities in or from within The Bahamas –

- (i) money lending;
- (ii) money broking;
- (iii) payday and cash advances;
- (iv) credit extension;
- (v) bill paying services;
- (vi) debt collection;
- (vii) financial leasing;
- (viii) financial advisory or consultancy services;
- (ix) financial intermediation services;

- (x) trading in commodities and other financial instruments;
- (xi) custody of digital assets; or
- (xii) wallet provider.

3. Application

(1) Unless exempted, this Act shall apply to all persons who are engaged in the business of providing financial services or corporate services as defined by this Act in or from within The Bahamas.

(2) A person shall be deemed to be –

(a) “in the business of providing financial services or corporate services” if such person’s income or part thereof is derived from providing such service; and

(b) “providing financial services or corporate services” –

(i) “in The Bahamas”, if, regardless of physical location, the person offers financial services or corporate services to Bahamian residents from anywhere in the world; and

(ii) “from within The Bahamas”, if, the person being physically located in The Bahamas, offers financial services or corporate services to persons outside The Bahamas.

PART II – LICENCES

4. Requirement for licence

(1) Subject to section 6 and section 7 and notwithstanding any other law or practice, no person shall –

(a) offer any financial service or corporate service;

(b) be engaged in or carry on the business of providing financial services or corporate services; or

(c) act as a financial service or corporate service provider;

in or from within The Bahamas unless that person has either obtained a licence issued by the Commission under the provisions of this Act for the specific financial services or corporate services being offered, or is exempted from the requirement to obtain a licence.

(2) No person shall transfer a licence issued under this Act, and no such licence may vest by operation of law in any person other than a person licensed under this Act.

5. Licence types

For the purpose of this Act, the Commission shall issue licences to applicants, subject to such terms and conditions as the Commission deems appropriate, and the Commission shall list upon each licence the prescribed financial service or corporate service activity for which the licence has been issued.

6. Application for licence

(1) All applications for a licence, or the renewal, or variation thereof, under this Act shall be in the prescribed form and include such information and documents as the Commission may reasonably require for the purpose of determining the application, including, in the case of an application for a new licence –

(a) particulars of the policies and procedures to be adopted by the applicant to meet anti-

money laundering and anti-terrorist financing requirements under the Financial Transactions Reporting Act, 2018; and

- (b) a business plan setting out the nature and scale of the financial services or corporate services being offered, which plan shall include financial information concerning capitalization and source of funds.

(2) A disqualified person may not apply to be licensed under this Act, and a person is disqualified if, –

- (a) in the case of an individual, the individual is disqualified under subsection (3); or
- (b) in the case of a person who is not an individual, the person has a controlling owner, director, or senior manager who is disqualified under subsection (3).

(3) The following persons are disqualified –

- (a) an undischarged bankrupt;
- (b) any person prohibited from being a director or officer, or concerned in the management of an incorporated or unincorporated entity;
- (c) a person who has been convicted of an offence under the provisions of any laws related to the regulation of financial services or corporate services, or under the Financial Transactions Reporting Act, 2018 or the Proceeds of Crime Act, 2018; or
- (d) a person whose licence or registration has been revoked for cause by a regulatory authority.

7. Approval or refusal of application

(1) The Commission may, on an application for a licence, or the renewal, amendment or variation thereof, made in accordance with the provisions of this Act, approve or refuse such application.

(2) In considering an application for a licence, the Commission shall take into account, among other factors, the following –

- (a) whether the applicant is a fit and proper person;
- (b) whether the applicant is qualified to carry out the business of a financial or corporate service provider;
- (c) the professional reputation and experience of the applicant;
- (d) whether each officer, director or manager of the applicant is a fit and proper person;
- (e) in the case of an application by a partnership, whether each partner is a fit and proper person;
- (f) whether the applicant, any officer, director or manager, if an individual, is resident in The Bahamas or, if a company, is incorporated or registered under the Companies Act, (Ch. 308) or the International Business Companies Act, (Ch. 309); and
- (g) the nature of the activity for which the applicant has sought the licence.

(3) In considering an application for the renewal, amendment or variation of a licence, the Commission shall take into account whether, since the Commission issued the licence which is the subject of the application for renewal, amendment or variation, –

- (a) the licensee has complied with the provisions of this Act, any regulations, rules or guidelines issued by the Commission;
- (b) in the case of an individual, the licensee has obtained any relevant qualification or training;
- (c) in the case of a company or partnership, there were any changes to the licensee's operations, capital, or organizational structure; and
- (d) any other matter determined to be relevant by the Commission.

8. Application fee

All applicants for a new license or for the variation thereof shall pay to the Securities Commission of The Bahamas the prescribed fee at the time the application is made to the Commission.

9. Issuance of new licence

(1) Subsequent to the approval of an application for a new licence, the Commission shall issue a licence to the applicant upon payment of the prescribed annual fee by the applicant.

- (2) A licence approved by the Commission shall only be valid if –
- (a) the prescribed annual fee has been paid; and
 - (b) it has been issued by the Commission.

(3) The Commission shall enter an approved license into the register upon its issue.

- (4) A Licence issued under this section shall continue either –
- (a) until it is revoked under section 27; or
 - (b) upon its surrender by the licensee.

10. Annual renewal

(1) A licence issued under the provisions of this Act shall be renewed annually on or before January 31 each year.

(2) For the purpose of renewal, a licensee shall submit to the Commission the prescribed annual fee, the prescribed annual update and declaration form, and, where applicable, a current copy of the licensee's insurance policy.

(3) A licensee who fails to submit the prescribed annual update and declaration form and pay the prescribed annual fee by January 31 shall be subject to an administrative penalty of ten percent of the annual fee due.

(4) Notwithstanding section 27, the Commission shall automatically revoke a licence for which the prescribed annual update and declaration form has not been filed or for which the prescribed annual fee remains unpaid and outstanding for more than thirty days after the prescribed renewal date.

(5) Where a licence has been revoked under subsection (3), the Commission may restore the licence if, within thirty days of the revocation date, the licensee applies to the Commission for restoration, pays an administrative penalty of twenty percent of the annual fee due and, as applicable, –

- (a) files the annual update and declaration form; or
- (b) pays the outstanding annual fee.

11. Withdrawal of application

An application for a licence, or variation thereof, may be withdrawn by notice in writing to the Commission at any time before a determination is made on the application, but any fees paid relevant to such application shall be non-refundable and non-transferable.

12. Replacement of licence

Where the Commission is satisfied that a licence has been inadvertently lost, destroyed or defaced, the Commission shall replace the licence upon payment by the licensee of the prescribed fee.

13. Licence Variation or Certified copies

(1) A licensee may apply for the variation of or a certified copy of the licence issued by the Commission under the provisions of this Act.

(2) Where the Commission approves an application for variation of a licence, the Commission shall reissue the licence to the licensee, who shall upon receipt of the reissued licence, immediately return the previously issued licence to the Commission.

14. Surrender of licence

(1) With the approval of the Commission, a licensee may voluntarily surrender a licence by written notice to the Commission at any time after the licence has been issued, and such surrender shall be irrevocable.

(2) Where a licensee surrenders a licence, such licensee shall immediately return the previously issued licence to the Commission.

(3) Where the Commission approves a surrender of a licence, the provisions of section 29 of the Act shall apply to the licensee.

15. Public register of licensees

(1) The Commission shall keep and maintain a register setting out the particulars of each licence it has issued to include –

- (a) the name and address of the licensee;
- (b) the address of the licensee's registered office;
- (c) the names of the Chief Executive Officer or equivalent officer of the licensee;
- (d) where applicable, the name of the Compliance Officer and the MLRO of the licensee;
- (e) the type or types of financial services or corporate services for which the licensee is registered;
- (f) the date on which the licence was issued, varied, suspended or revoked; and
- (g) any conditions imposed on or any exemptions granted to the licensee by the Commission.

(2) Where in the opinion of the Commission, the inclusion on the register of a condition imposed on or an exemption granted to a licensee by the Commission would be detrimental to the interest of the licensee, the Commission may waive the inclusion of such condition or exemption .

(3) The register may be kept in such format as the Commission deems fit, and shall be maintained to permit inspection by the public.

16. Publication of licensees

The Commission shall cause notice of the registration, suspension, or revocation of a licence to be published on the Commission's website.

PART III – CONDUCT OF FINANCIAL AND CORPORATE SERVICES BUSINESS

17. Duty to maintain professional conduct

In addition to compliance with any prescribed requirements, every licensee shall in conducting its business activities –

- (a) act honestly and fairly;
- (b) act with due skill, care and diligence;
- (c) observe and maintain a high standard of professional conduct; and
- (d) refrain from engaging in any improper or illegal conduct.

18. Adequate financial resources and solvency

(1) Every licensee shall –

- (a) maintain and be able to demonstrate adequate financial resources for the nature and scope of their financial or corporate service operations; and
- (b) maintain solvency and be able to meet the risks of its financial services or corporate services operations;

(2) All licensees shall maintain regulatory capital as may be prescribed, which regulatory capital may include a requirement for indemnity insurance.

19. Indemnity insurance

(1) Except where specifically exempted, every licensee shall secure and maintain adequate insurance coverage in an amount appropriate to the activities, scale, and complexity of their business operations to cover at least professional indemnity.

(2) The licensee shall review on an annual basis the amount and type of insurance held and ensure that such coverage continues to be sufficient to cover the insurable risks of the licensee's business.

(3) The Commission shall not renew any licence if in its opinion the amount or extent of the coverage is inadequate.

(4) The Commission may require a licensee to amend its insurance coverage.

20. Auditors

(1) A licensee shall only appoint an auditor approved by the Commission.

(2) The approved auditor appointed by the licensee shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements of the licensee.

(3) A licensee shall submit to the Commission on an annual basis, the annual financial statements prepared by the auditor and any other financial records.

21. Licensee's general duty to comply and co-operate

(1) In addition to complying with any prescribed requirements, a licensee shall comply with the provisions of this Act concerning the conduct of its business, and shall –

- (a) deal openly and honestly and co-operatively with the Commission;

- (b) provide as the Commission duly requires, information relevant to its operations; and
- (c) submit to on-site or off-site examinations as required by the Commission in the exercise of its functions.

(2) Every licensee shall in the conduct of its business, comply with any rules, guidelines or directives made and issued by the Commission and such compliance shall be considered as a part of the minimum criteria for continued licensing.

(3) Any licensee, or any of its employees, managers, officers or other connected person, who

–

- (a) fails to co-operate with; or
- (b) obstructs or assaults any person appointed by or acting on behalf of the Commission

in the conduct of an examination, inspection or investigation of the licensee, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) For the purposes of subsection (3), it shall not be relevant whether the employee, manager, officer or connected person was acting on the specific instruction of any individual having control of or responsibility for the management or operation of the licensee.

22. Prevention of money laundering

(1) For the purpose of risk management and the prevention of money laundering, all licensees shall in the conduct of its business, comply with the provisions of the Financial Transactions Reporting Act, 2018, the Financial Transactions Reporting Regulations, 2018, the Financial Intelligence (Transactions Reporting) Regulations, 2018, and the Financial Intelligence (Transactions Reporting) Regulations, 2001.

(2) Notwithstanding subsection (1), the Commission shall be empowered to exempt any licensee from the requirement under regulation 6 of the Financial Intelligence (Transactions Reporting) Regulations, 2001 to appoint a Money Laundering Reporting Officer.

23. Duty to notify changes relating to registration

Where a change occurs in the particulars of a licensee as set out in the application for the licence, the licensee shall immediately notify the Commission and specifically upon the occurrence of any change of –

- (a) address for service;
- (b) contact information, including email address and phone or fax address;
- (c) residential and postal addresses;
- (d) principal place of business;
- (e) insurance coverage; or
- (f) attorneys and corporate officers.

24. Commission's prior approval for certain changes

No licensee shall, without first obtaining the written approval of the Commission –

- (a) merge with another licensee or other entity;
- (b) issue, transfer or otherwise dispose of shares in a company or partnership licensed under this Act;

- (c) appoint any director of a company licensed under this Act;
- (d) add to or reduce the shareholders of a company licensed under this Act;
- (e) change or modify its name; or
- (f) make any change to its auditors.

25. Duty to display licence

A licensee shall prominently display the licence issued under this Act on the premises of its business in such a manner as to be readily visible to the public.

PART IV – ENFORCEMENT ACTION

26. Suspension of licence

(1) Notwithstanding any provision of this Act, or any other law or any action the Commission may take pursuant to section 31, the Commission may suspend any licence which it has issued for the purpose of conducting an investigation into the activities of any licensee, or to determine whether a licensee has failed to comply with any prescribed requirement or direction or order made by the Commission.

(2) Where the Commission suspends a licence, the length of such suspension or any extension thereof shall be in the Commission's discretion but shall not exceed a period of fifteen (15) days at any one time.

(3) Notwithstanding subsection (2), the Commission may apply to the court for an order extending any period of suspension on the grounds that it is in the public interest that the suspension continue, which order shall specify the duration of such period of further suspension.

(4) The Commission shall issue a written notice to a licensee setting out the reason for the suspension and stipulating the duration of such suspension and how the scope of the licensee's business may be restricted during the suspension.

(5) During the period of any suspension, the Commission shall be empowered to direct the licensee to remediate any matters which led to the suspension and the licensee shall immediately comply with the Commission's directions.

(6) Any suspension made under this section shall not act to limit the Commission in taking any further enforcement action against a licensee.

27. Revocation of licence

(1) The Commission may revoke any licence issued under the provisions of this Act if satisfied that the licensee –

- (a) is no longer qualified to be a licensee;
- (b) having had its licence suspended pursuant to section 26, failed to comply with the Commission's directives within the required period;
- (c) is not in the position to commence operations providing a financial service or corporate service;
- (d) has not begun operations as a financial service or corporate service provider ninety days after being licensed;
- (e) has been licensed based on false or misleading representation or information;
- (f) has ceased to provide financial services or corporate services;
- (g) is insolvent or bankrupt;
- (h) has resolved to enter into voluntary liquidation or dissolution;

- (i) has failed to pay the prescribed annual fees or submit relevant annual renewal documents;
- (j) has failed to meet and maintain minimum regulatory capital requirements; or
- (k) has failed to acquire indemnity insurance or maintain indemnity insurance.

(2) Upon the revocation of a licence issued under the provisions of this Act, the Commission shall notify –

- (a) any relevant licensing or regulatory authority; and
- (b) members of the public, by notice posted on the Commission’s website and published in the *Gazette* for a period of not less than ten days.

28. Notice to Revoke

(1) The Commission shall issue a written notice to a licensee of its intention to revoke a licence.

(2) The Commission’s revocation notice shall set out –

- (a) the relevant circumstance under subsection 27(1) which applies to the licensee’s revocation;
- (b) the reasons for the revocation;
- (c) the duration of the notice period before the revocation occurs; and
- (d) the right of the licensee to object to the revocation.

(3) For the purpose of this section, the Commission shall not issue a notice to a licensee where the decision to revoke is based on a circumstance under section 27 (1) (h) or section 27(1)(i), however the requirements of section 29 shall apply to such a licensee *mutatis mutandis*.

29. Process following licence revocation or surrender

(1) Where –

- (a) a licensee has voluntarily surrendered its license; or
- (b) the Commission has issued a notice pursuant to subsection 28(1) without objection from the licensee,

the licensee shall, within seven days of submitting its written notice of surrender or of receiving the Commission’s revocation notice, prepare and submit a written plan to the Commission setting out the steps the licensee intends to take to cease operations as a financial service or corporate service provider.

(2) The plan required under subsection (1) shall stipulate and provide details with respect to –

- (a) the name of the individual who will manage the licensee’s cessation of operations;
- (b) the length of time required to cease business operations;
- (c) how client files will be closed and secured;
- (d) client notification procedures; and
- (e) client transfer procedures where applicable.

(3) A licensee shall submit the plan required under subsection (1) to the Commission for approval, and the Commission –

- (a) shall supervise the execution of the plan; and
- (b) may give directions to the licensee to protect the interest of clients, with which directions the licensee shall comply.

30. Winding up or dissolution

Where the Commission has revoked a licence in any of the circumstances under section 27(1), the Commission may apply to the court for the –

- (a) licensee to be wound up or dissolved; or
- (b) court supervision of any application by the licensee for winding up or dissolution.

31. Commission's Action

(1) Notwithstanding any action which may be taken by the Commission under section 26, section 27 or section 32, the Commission may by written notice, for the purpose of any investigation being carried out by the Commission, order –

- (a) any person having on deposit, under control or for safekeeping any sums or property reasonably believed to be the proceeds of unlicensed activity to cease dealing with such funds or property for a period not to exceed five days; and
- (b) any licensee to cease operations for a prescribed period of time as determined by the Commission, and such period not to exceed ten days at any one time.

(2) The Commission may apply by *ex parte* application to the court for an extension of the times stipulated under subsections (1)(a) and 1(b).

(3) Any person aggrieved by the action taken by the Commission under subsection (1) may apply to a judge in chambers for an *inter partes* hearing to discharge the Commission's order.

32. Imposition of administrative penalty or sanction

(1) The Commission may impose any administrative penalty as provided in the *First Schedule* on a licensee –

- (a) for breach of the provisions of this Act, any prescribed rules, guidelines, or directives; or
- (b) where the licensee is carrying on its business in a manner detrimental to the public interest, the interest of any clients, or to the reputation of The Bahamas.

(2) Notwithstanding subsection (1) or any other provisions of this Act, the Commission may impose an administrative sanction on or take such action with respect to a licensee, which sanction or action may include –

- (a) issuing a public reprimand;
- (b) banning a licensee from carrying on certain activities or operations;
- (c) temporarily suspending a manager;
- (d) removing a director, officer, or other senior manager or general partner;
- (e) setting conditions or restrictions on a licence;
- (f) an order –
 - (i) requiring that a licensee complies with a direction issued by the Commission;
 - (ii) withdrawing an exemption or waiver;
 - (iii) prohibiting a person from acting as a director, partner, or officer of another person;
 - (iv) prohibiting a person from being appointed as auditor;
 - (v) requiring a licensee to make changes to its practices and procedures;
 - (vi) for restitution; or
 - (vii) for disgorgement of profits or unjust enrichment;
- (g) appointing a person, at the expense of the licensee, to –

- (i) oversee the affairs of the licensee and report to the Commission; or
 - (ii) assume control of a licensee's affairs who shall, subject to necessary modifications, have all of the powers of a person appointed as a receiver or manager of a business appointed under the law governing bankruptcy or winding up.
- (h) applying to the court for an order to take such action as the Commission considers necessary to protect the interest of clients or creditors of a licensee;
 - (i) with respect to subsection (1)(f)(vii), requiring a licensee to pay an administrative penalty not exceeding twice the amount of such profits or unjust enrichment;
 - (j) revoking a licence pursuant to section 27; or
 - (k) imposing any other penalties, sanctions, or remedies as the justice of the case may require.

(3) The sanctions and actions under subsection (2) may be imposed by the Commission where satisfied that a licensee has –

- (a) violated any provisions of this Act;
 - (b) failed to comply with any regulations, or rules, guidelines, or directives made and issued by the Commission pursuant to section 40;
 - (c) failed to comply with any codes of practice issued by the Commission pursuant to provisions of the Financial Transactions Reporting Act, 2018; or
 - (d) failed to comply with any guidelines issued by the Financial Intelligence Unit pursuant to section 15 of the Financial Intelligence Unit Act, *Ch. 367*.
- (4) Where the Commission imposes a sanction or takes action pursuant to subsection (2) –
- (a) the order shall be in writing;
 - (b) the order shall specify the breach committed by the licensee and the sanction imposed by the Commission;
 - (c) a copy of the order shall be given to the licensee; and
 - (d) the order may be enforced in the same manner as an order of the court.

33. Criminal complaint

Where the Commission reasonably suspects that an offence has been committed under this Act or any other Act dealing with the regulation of financial services or corporate services in The Bahamas, the Commission may refer the matter for criminal prosecution by filing a complaint with either the police or the Director of Public Prosecutions.

34. Appeals by licensee

(1) Except where specifically prescribed, an appeal lies to the court from any decision of the Commission –

- (a) refusing to grant a licence, or the renewal or variation thereof;
- (b) suspending a licence under section 26 ;
- (c) revoking a licensee under section 27; or
- (d) imposing an administrative sanction on the licensee under section 32.

(3) An appeal against the decision of the Commission shall be by motion and shall be made within twenty-one days from the date on which the Commission has issued notice of its decision, but such an appeal shall not act as a stay of any decision by the Commission.

PART V – OFFENCES

35. Unlicensed activity

Any person who carries on the business of a financial service or corporate service provider as defined by this Act, or provides non-bank financial services or corporate services in or from within The Bahamas without first obtaining a licence under this Act, commits an offence and is liable on summary conviction –

- (a) to a fine not exceeding seventy-five thousand dollars and on any subsequent conviction to double the fine imposed on first conviction and imprisonment up to four years; and
- (b) where the offence continues subsequent to conviction, to a fine of one thousand dollars for each day the offence continues.

36. Other Offences

(1) Any person who with intent to deceive, by any act or omission, contravenes any provision or requirement of this Act, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

(2) Any licensee who advertises in or from within The Bahamas, inviting other persons either directly or indirectly to commit breaches of this Act or any other law of The Bahamas, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

(3) Any person who with intent to deceive, for any purposes of this Act makes any representation that he knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars.

(4) Any person who –
(a) assaults or obstructs the Commission or other person appointed by the Commission in the performance of the Commission's functions or exercise of the Commission's powers under this Act; or
(b) contravenes any provision of this Act for which no punishment is specially provided, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(5) Where it is established that a person, to whom subsection (4) applies, acted upon the instruction or direction, or with the complicity of a director, partner, officer or other person concerned with the management of the company or partnership licensed under the provisions of this Act, such director, partner, officer or other person is also liable to be convicted for the relevant offence.

PART VI – ADMINISTRATION AND REGULATION

37. Administration

This Act shall be administered by the Securities Commission of The Bahamas, a body corporate continued under section 10 of the Securities Industry Act, 2011 (*No. 10 of 2011*) and which is empowered to exercise regulatory control over financial services and corporate services as defined by this Act.

38. Functions of the Commission.

Under this Act, the functions of the Commission are to –

- (a) maintain regulatory authority over and a general review of non-bank financial services and corporate services in The Bahamas;
- (b) advise the Minister on all matters relating to the regulation of non-bank financial services and corporate service providers in The Bahamas;
- (c) protect the non-bank financial services and corporate services market against abuses, market misconduct, and other improper practices; and
- (d) perform any other function reasonably required or incidental to the Commission's functions under this Act.

39. Powers of the Commission under this Act

In the performance of its functions under this Act, the Commission may, at all reasonable times, exercise its powers to –

- (a) regulate and manage the provision of non-bank financial services and corporate services in The Bahamas;
- (b) issue, suspend, or revoke licences as the regulator of financial and corporate services;
- (c) take measures to protect the interests of the public;
- (d) take enforcement action against any person for failing to comply with the provisions of this Act, or any regulations, rules, or guidelines made thereunder;
- (e) publish notices, guidelines, bulletins and policies regarding the interpretation, application, or enforcement of the provisions of this Act;
- (f) refer matters to a hearing panel for consideration and decision;
- (g) make any order as appears to the Commission to be just and equitable under this Act;
- (h) delegate the Commission's functions, duties and powers, except the power of delegation, or enforcement, to any other person by written authorization and subject to any conditions deemed necessary by the Commission;
- (i) co-operate with any other regulatory authority within or outside The Bahamas; and
- (j) do all things and take all actions which may be necessary or expedient or which are incidental to the discharge of any function or power given to the Commission.

40. Power to make and issue rules, guidelines, and directives

(1) Pursuant to section 37, the Commission may make and issue rules, guidelines, and directives –

- (a) for the better management of the provision of non-bank financial services and corporate services under this Act;
- (b) in connection with the manner by which licensees shall carry on activities as a non-bank financial service provider or a corporate service provider; and
- (c) to provide guidance to licensees as to the –
 - (i) duties, requirements and standards with which they must comply; and
 - (ii) sound principles to be observed when carrying on activities as a non-bank financial service provider or a corporate service provider.

(2) The Commission may amend from time to time any rule, guideline or directive made and issued in accordance with this section.

(3) The Commission's power to make and issue rules, guidelines, and directives shall include the power to consult.

41. Power of entry

(1) The Commission, or a person authorized by the Commission, may enter the premises of any licensee at all reasonable times for the purpose of conducting any inspection of or investigation into the activities of a licensee.

(2) Where the Commission or an agent appointed by the Commission is conducting an inspection or investigation, the Commission or its agent shall be entitled to –

- (a) search the premises and take possession of any documents or material appearing to be such documents or material relevant to the inspection or investigation,
- (b) take any steps deemed necessary for their preservation; and
- (c) take copies or extracts from such documents or material.

(3) A person authorized by the Commission to conduct an inspection of or investigation into the activities of a licensee shall produce upon demand identification duly issued by the Commission.

42. Power of Inspection

(1) The Commission, or a person authorized by the Commission, shall carry out inspections for the purpose of ascertaining whether any person –

- (a) is in the business of providing a financial service or corporate service in breach of section 4;
- (b) is representing or has represented that the person is in the business of providing a financial service or corporate service in breach of section 4;
- (c) is complying with the provisions of this Act, the Financial Transactions Reporting Act, 2018 or any other relevant Act;
- (d) is qualified or has been qualified to be licensed in accordance with section 7;
- (e) is resident in The Bahamas;
- (f) has made a false or misleading representation or omission with respect to an application made pursuant to section 6; or
- (g) has breached any order made, directive issued, or condition imposed by the Commission.

(2) With respect to subsection (1), the Commission or an agent authorized by the Commission, shall be entitled at any time to conduct an on-site or off-site examination of the operations of a licensee.

(3) During the course of an examination, the Commission or an agent authorized by the Commission may require that such licensee –

- (a) produce for examination, any books, records and other documents that the licensee is required to maintain;
- (b) supply such information or explanation as may be reasonably required by the Commission; and
- (c) for the purpose of ascertaining whether any information provided by any person is correct, require such person to produce for inspection relevant documents within the person's possession or control.

(4) Where an agent is appointed by the licensee for the purpose of conducting a periodic examination, the periodic examination shall be performed at the expense of the licensee.

(5) Where a licensee fails to appoint an agent for the purpose of conducting a periodic examination, the Commission shall appoint an agent to perform the examination at the expense of the licensee.

(6) Where the Commission deems necessary, it may appoint an agent at the expense of the licensee to conduct an examination.

43. Power of investigation

(1) The Commission shall have power to investigate the activities of a licensee, or any other person purporting to offer financial services or corporate services as defined by this Act, for compliance with the provisions of this Act or any other relevant Act.

(2) The Commission shall commence an investigation by issuing written notice of the investigation to the subject of the investigation, or any other connected person, and such notice shall also direct the subject to –

- (a) provide, at such time and place as may be specified in the notice, such information as the Commission reasonably requires for the purpose of the investigation;
- (b) produce, at such time and place as may be specified in the notice, such documents or material as the Commission reasonably requires for the purpose of the investigation; or
- (c) attend, at such time and place as may be specified in the notice, and answer questions relevant to the investigation.

(3) For the purpose of subsection (2) –

- (a) the Commission shall be entitled to –
 - (i) specify the form in which the documents must be provided, the date by which the documents must be provided, and whether the documents must be verified by the production of original documents or certified copies of original documents;
 - (ii) inspect and take copies of relevant documents; and
 - (iii) take possession of and retain relevant documents for a specified period.

(b) a “connected person” shall include any individual who was a controller, officer, employee, agent, banker, auditor or counsel and attorney-at-law of a licensee.

44. General power to require provision of information or production of documents

(1) The Commission may by written notice served on a licensee, require such licensee to produce within such time and at such place as may be specified in the notice, information or documents of such description being such information or documents as the Commission may reasonably require for the performance of its functions and exercise of its powers under this Act.

(2) The power to require production of specified documents from a licensee shall include the power to require the person –

- (a) producing the documents, to provide an explanation with respect to any such documents; and
- (b) where such documents are not produced, to certify where the documents are or who has custody or control of the documents to the best of his knowledge, information and belief.

(3) A notice under subsection (1) shall have effect notwithstanding any obligation as to confidentiality or non-disclosure imposed by any law or any requirement as imposed thereunder, any rule of law, any contract or any rule of professional conduct.

(4) Notwithstanding subsection (3) shall not apply and a person shall not be required to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings, where such privilege arises from –

- (a) the giving of legal advice to a client, or the client's representative, by a legal advisor;
- (b) communications between a person, or a representative of such person, seeking legal advice from the legal advisor; or
- (c) communications from any person in contemplation of, or in connection with, legal proceedings for the purpose of those proceedings.

(5) A person required to provide any information or explanation, or to produce any document, with respect to a notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dollars or to imprisonment, or both fine and imprisonment, and in the case of a continuing offence, to a fine not exceeding two thousand dollars for each day, or part of a day, during which the offence continues, where such person –

- (a) without reasonable excuse fails to comply with a notice issued under this section by the Commission;
- (b) provides any information or explanation or produces any document which that person knows to be false, does not believe to be true, or is negligent as to whether the information, explanation or document is false; or
- (c) intentionally suppresses any fact material to such information, explanation or document.

(6) The provisions of this section shall apply *mutatis mutandis* to the exercise of the Commission's powers of inspection and investigation under section 42 and section 43.

45. Power to determine administrative fees

Notwithstanding any other fees which may be imposed by the Commission, the Commission shall be entitled to determine the amount of fees which should be imposed in the performance of its functions or powers, which entitlement shall include the right to amend or vary such fees.

46. Cooperation with domestic and overseas regulatory authorities

(1) In exercise of its powers under subsection 39(i) the Commission may cooperate with any other regulatory authority whether such regulatory authority is domestic, being located within The Bahamas, or overseas, being located outside The Bahamas.

(2) Where the Commission receives a request for information from a regulatory authority located within or outside The Bahamas and considers that the request meets the conditions set out in this subsection, it may exercise its powers under subsection 39 (i) for the purpose of assisting that regulatory authority.

(3) including by sharing information that has been acquired in the course of its duties or in the exercise of its function under this or any other law, where –

- (a) the regulatory authority requires such information for the purpose of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority;
- (b) the seriousness of the matter to which the inquiries of the other regulatory authority relate and the importance to those inquiries of the information sought from the Commission; and

- (c) the Commission considers such cooperation or information may be relevant to the functions of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services or corporate services sector.

(4) In exercising its co-operative function under this section and subject to section 44, the Commission may –

- (a) by notice, require its licensees to provide information and material; and
 - (b) where it appears necessary, apply to a Stipendiary and Circuit Magistrate for an order to compel any person who is the subject of the notice to provide the information or material.
- (5) The Commission may decline to exercise its power under this section unless –
- (a) satisfied that the requesting regulatory authority or overseas regulatory authority –
 - (i) is subject to legal restrictions, including provisions for an undertaking of confidentiality, concerning further disclosures;
 - (ii) requires the requested information for the purposes of its regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and
 - (iii) in relation to providing the information, will not use the information obtained by the exercise of the Commission’s powers under this section in criminal proceedings against the person providing the information to the Commission;
 - (b) the requesting regulatory authority has given an undertaking to the Commission not to disclose the information provided without the prior consent of the Commission;
 - (c) the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
 - (d) the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.
- (6) For the purpose of this section, “regulatory authority” and “overseas regulatory authority” means a person who has responsibility for regulating non-bank financial services or corporate services, or ensuring compliance with non-bank financial services or corporate services laws or laws providing for information sharing and cooperation, and shall include a competent authority.

47. Confidentiality

(1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or advisor of the Commission who discloses any information relating to –

- (a) the affairs of the Commission;
- (b) any application made to the Commission;
- (c) the affairs of a licensee; or
- (d) the affairs of the client of a licensee

acquired in the course or performance of duties or in the exercise of the Commission’s functions under this or any other law is guilty of an offence and shall be liable to summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

(2) Subsection (1) shall not apply to disclosure –

- (a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
- (b) for the purpose of assisting the Commission in exercising any functions conferred on it by this Act, by any other Act or by regulations made thereunder;
- (c) in respect of the affairs of a licensee or of a client of a licensee, with the consent of the licensee or client, as the case may be, which consent has been voluntarily made;
- (d) where the information disclosed is or has been available to the public from any other source;
- (e) where the information disclosed is in a format that does not enable the identity of any licensee or of any client of a licensee to which the information relates to be ascertained;
- (f) to a person with a view to the institution of, or for the purpose of –
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, relating to the exercise by a counsel and attorney-at-law, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or
- (g) in any legal proceedings in connection with –
 - (i) the winding-up or dissolution of a licensee; or
 - (ii) the appointment or duties of a receiver of a licensee.

48. Immunities

No civil or criminal liability shall lie against any person who, in compliance with a notice duly issued under section 42(1) or section 43(1), either –

- (a) furnishes the Commission with documents; or
- (b) makes a statement to the Commission which would breach any obligation of confidentiality or non-disclosure imposed by any prescribed written law, any contract or any rule of professional conduct.

PART VI – MISCELLANEOUS

49. Regulations

The Minister may make regulations generally for carrying out the purpose and giving effect to the provisions of this Act, and specifically –

- (a) prescribing anything by this Act authorised or required to be prescribed; and
- (b) exempting any person or business, or classes of persons or businesses, from any provision of this Act.

50. Repeal

The Financial and Corporate Services Providers Act, (Ch. 369) is hereby repealed.

51. Consequential amendments

The Second Schedule, which makes consequential amendments, has effect.

52. Transitional

A person who, at the date of the commencement of this Act, is licensed to carry on the business of a financial service or corporate service provider shall be deemed to be operating and licensed under the provisions of this Act, but shall, upon the expiration of any licence previously issued, apply for a licence under this Act.

**FIRST SCHEDULE
(Section 32(1))
ADMINISTRATIVE PENALTIES**

Column 1	Column 2
Category of Disciplinary Violation and Description	Penalty Range
<p>1. Licensing Contravention Licensee—</p> <ul style="list-style-type: none"> (a) carrying on any type of corporate or financial services business not authorised by its licence; or (b) carrying on any business in breach of a condition of its licence or contrary to any directive issued by the Commission. 	\$5,000 to \$50,000
<p>2. Late filing or Notification Licensee filing any document required to be filed, other than its financial statements, books and records, or notifying the Commission of any matter required to be notified after the last date on which the document is required to be filed or the matter is required to be notified to the Commission—</p> <ul style="list-style-type: none"> (a) 1 – 30 business days late; (b) 31 – 60 business days late; (c) 61 – 90 business days late; (d) 91 – 120 business days late; (e) 121 – 150 business days late; (f) 151 or more business days late. 	<ul style="list-style-type: none"> (a) \$250 to \$1,250 (b) \$1,250 to \$5,000 (c) \$1,875 to \$7,500 (d) \$2,500 to \$10,000 (d) \$6,250 to \$15,000 (e) \$7,500 for each day
<p>3. Failure to notify Commission or obtain Approval Licensee taking any action for which the Commission is to be notified or the approval of the Commission is required without having obtained such approval.</p>	\$2,500 to \$12,500
<p>4. Record Keeping Contravention Licensee failing to maintain any records required to be maintained or failing to maintain records in the manner or at the place required.</p>	\$1,250 to \$12,500
<p>5. Contravention Relating to Policies, Systems and Controls Licensee failing to—</p> <ul style="list-style-type: none"> (i) establish or maintain policies, systems and controls or procedures required by a financial services enactment or the Regulatory Code to be established or maintained by the licensee; (ii) establish or maintain a function required by a financial services enactment or the Regulatory Code to be established or maintained by the licensee, including appointing a compliance officer or a Money Laundering Reporting Officer; (iii) implement data protection measures; (iv) maintain indemnity insurance. 	\$5,000 to \$25,000
<p>6. Contravention of AML/CFT Obligations Licensee contravening any AML or CFT obligation.</p>	\$15,000 to \$100,000
<p>7. Other Contravention Licensee committing any other contravention of a law, guideline, rule or code regulating financial services or corporate services not falling within a category specified above.</p>	\$250 to \$12,500

**SECOND SCHEDULE
CONSEQUENTIAL AMENDMENTS
(Section 51)**

Legislation	Extent of Amendment
Foundations Act, (Ch. 369D)	Section 12(4) is amended by the deletion of the words “as a provider of financial and corporate services” immediately before the words “under the Financial and Corporate Service Providers Act”.
Executive Entities Act, 2011 (<i>No. 52 of 2011</i>)	Section 13(4) is amended by the deletion of the words “as a provider of financial and corporate services” immediately before the words “under the Financial and Corporate Service Providers Act”.
Banks and Trust Companies Regulation Act, (Ch. 316)	Section 2 is amended in the definition of the term “ Registered Representative ” by the insertion of the words “person licensed under the” immediately before the words “Financial and Corporate Service Provider”, by the insertion of an “s” at the end of the word “Provider”, and by the insertion of the words “Act” immediately before the word “approved”.
Companies (Winding Up) Amendment Act, 2011 (<i>No. 53 of 2011</i>)	Section 183 is amended: (a) at the definition for “ regulator ” by the deletion of all words immediately following the word “means”, and substituting therefore the words “the agency designated by law for ensuring compliance with the Securities Industry Act, 2011, the Financial and Corporate Service Providers Act, (Ch. 369) , the Insurance Act, (Ch. 347), or the Banks and Trust Companies Regulation Act, (Ch. 316), or the Financial Transactions Reporting Act, 2018;” and (b) With respect to the term “regulatory laws” deleting all words after the word “means” and substituting therefore the words “laws administered by a regulator”.