



For Public Consultation:

SECURITIES INDUSTRY (AMENDMENT) BILL, 2019

The Securities Commission of The Bahamas (“the Commission”) in its capacity as regulator of the investment funds market, has issued the Securities Industry (Amendment) Bill, 2019 (the “Bill”) for public consultation. This Bill will amend the Securities Industry Act, 2011. It may be found on the Commission’s website at <http://www.scb.gov.bs/consultation.html>.

Summary

The amendments to the Securities Industry Act, 2011 serve several objectives. Principally, the amendments introduce new terms and provide important clarifications with respect to the administrative structure and powers of the Commission. They address the nature of assistance to overseas authorities, the scope of investigations and how appeals of Commission decisions are administered. They also clarify the activities of those engaged in securities business.

Further, these amendments introduce provisions recognising the recent introduction of the Financial Transactions Reporting Act, 2018, thereby ensuring compliance with international standards on anti-money laundering and countering terrorism financing, and securities laws.

Additionally, the amendments facilitate the anticipated repeal of the existing Investment Funds Act, 2003 and its replacement with the Investment Funds Bill, 2019, currently under Parliamentary debate.

Scope

The Bill will apply to all persons engaged in securities activities regulated by the Securities Industry Act, 2011.

Consultation Period:

The consultation period commences on **6 March 2019** and ends on **5 April 2019**, during which time the Commission invites the public to share comments with regard to the Securities Industry (Amendment) Bill, 2019. Comments may be submitted via email to siaconsultation@scb.gov.bs.

Alternatively, comments may be submitted to:

The Executive Director

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SECURITIES INDUSTRY (AMENDMENT) BILL, 2019
A BILL FOR AN ACT TO AMEND THE SECURITIES INDUSTRY ACT

1. Short title.

This Act, which amends the Securities Industry Act¹, may be cited as the Securities Industry (Amendment) Act, 2019.

2. Amendment of section 4 of the principal Act.

The principal Act is amended in section 4 as follows by –

- (a) in paragraph (a) of the definition of “approved foreign issuer”, the deletion of the words “securities laws” and the substitution of the words “securities legislation”;
- (b) the insertion, immediately after the definition “control block holder”, of the following –

““custodian” means a person providing custodial services with respect to securities or other property;

“custodial services” includes:

 - (a) holding, possessing or controlling securities or other property in safekeeping or segregation for the benefit of another person, whether on trust, or under a custodial agreement or other arrangement;
 - (b) acting as a custodian or depository of an investment fund;
 - (c) carrying out such other activities as may be prescribed;”;
- (c) in the definition of “decision” insert the words “other than a final decision” immediately after the words “securities laws” in paragraph (a);
- (d) in the definition of the term “file” the deletion of the words “securities laws” and substitution of the words “the Act”;
- (e) the insertion, immediately after the definition “file”, of the following –

“final decision” means any decision reached by the Commission at the conclusion of a hearing under section 139 and any decision made in the context of such hearing;”
- (f) the insertion, immediately after the definition “financial institution”, of the following

““Financial Transactions Reporting Act” means the Financial Transactions Reporting Act, 2018 (No. 5 of 2018);” and

¹ No 10 of 2011

- (g) the deletion of the definition of “regulated person” and the substitution of ““regulated person” means a registrant or a person registered under Part V of the Act;”.

3. Insertion of new section to Part II of the principal Act.

The principal Act is amended in Part II by the insertion immediately before section 10 of the following new section –

“9A. Interpretation

For the purposes of this Part “regulated person” includes a registrant, a person registered under Part V of the Act, an investment fund, an investment fund administrator, an investment fund manager and an AIFM as defined in the Investment Funds Act, 2019”.

4. Amendment of section 10 of the principal Act.

The principal Act is amended in section 10 by –

- (a) the deletion of subsection (3) and the substitution of –
“The Commission shall –
 - (a) consist of a Chairman, a Deputy Chairman and such other Members as the Minister may from time to time appoint; and
 - (b) have a maximum of eight Members, including the Chairman, Deputy Chairman, and those appointed ex-officio under subsection (6).”
- (b) the deletion of subsection (6) and the substitution of:
“The Executive Director of the Commission shall be an ex-officio Member of the Commission. “.

5. Amendment of section 13 of the principal Act.

The principal Act is amended in section 13 by –

- a) the deletion of the words “registrants, marketplaces, investment fund administrators” in subsection (c) and the substitution of the words “regulated persons”;
- (b) the insertion immediately after subsection (g) of the following new subsection (g1) –
“(g1.) supervise the activities of regulated persons and other market participants with respect to compliance with the provisions of the Financial Transactions Reporting Act;” and
- (c) the insertion, immediately after the words “securities laws” in subsection (h), of the words “or the Financial Transactions Reporting Act”.

6. Amendment of section 15 of the principal Act.

The principal Act is amended in section 15 by the deletion of section 15 and the substitution of the following–

“15. Executive Director

- (1) The Minister shall appoint an Executive Director on the recommendation of the Commission.
- (2) The Executive Director shall hold office for five years and shall be eligible for re-appointment for only one additional term on the recommendation of the Commission.
- (3) The remuneration, allowances and other terms and conditions in respect of the Executive Director’s office shall be as the Commission may determine from time to time.
- (4) The Minister may terminate the appointment of the Executive Director on the recommendation of the Commission if the Commission is satisfied that the person—
 - (a) has become bankrupt or made arrangements with his creditors;
 - (b) is incapacitated by physical or mental illness;
 - (c) has been, in The Bahamas or in any other jurisdiction, convicted of a criminal offence involving fraud or dishonesty, or found liable in a civil or regulatory action for activities involving fraud or dishonesty; or
 - (d) is otherwise unable or unfit to discharge the functions of the position to which that person was appointed.”.

7. Amendment of section 33(6) of the principal Act.

The principal Act is amended in section 33(6) by addition of the words “or a review under section 157A” immediately after the word “appeal”.

8. Amendment of section 37 of the principal Act.

The principal Act is amended in section 37 by the insertion, immediately after subsection (1), of the following –

- “(1A) Without limiting the generality of subsection (1), the material the Commission may order be furnished under subsection (1) includes –
- (a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;
 - (b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and
 - (c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the identity of subscribers (name and address), payment details,

length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.”

9. Amendment of the title of Part IV of the principal Act.

The principal Act is amended by the deletion of the title of Part IV and the substitution of “Investigations, Inspection and General Access to Information”.

10. Amendment of section 41 of the principal Act.

The principal Act is amended in by the deletion of section 41 and the substitution of the following –

“41. Interpretation

For the purposes of this Part, “securities laws” means the Act“.

11. Amendment of section 42 of the principal Act.

The principal Act is amended in section 42 by the insertion, immediately after the words “securities laws” in subsections (1)(a) and (1)(b) of the words “or the Financial Transactions Reporting Act”.

12. Amendment of section 43 of the principal Act.

The principal Act is amended in section 43 by the insertion, immediately after subsection (1), of the following new subsection

“(1A) Without limiting the generality of subsection (1), the information, documents and explanations that the Commission may request or access during an investigation includes –

- (a) auditing information including, but not limited to, audit working papers, communications, and other information relating to the audit or review of financial statements;
- (b) subscriber records held or maintained by telephone service providers located in The Bahamas that include the identity of subscribers (name and address), payment details and incoming and outgoing communications with date, time, duration and identification of phone numbers from which communications are made or received, and such other details as prescribed; and
- (c) subscriber records held or maintained by internet service providers or other electronic communication providers located in The Bahamas that include the identity of subscribers (name and address), payment details, length of service, type of service utilized, network addresses, session times, dates and durations, and such other details as prescribed.”

13. Amendment of the title of Division 4 of Part IV of the principal Act.

The principal Act is amended by the deletion of the title of Division 4 of Part IV and the substitution of “Provision of Other Information to the Commission”

14. Insertion of new section 50A of the principal Act.

The principal Act is amended by the insertion, immediately after section 50, of the following new section –

“50A. General authority to access records and to request information.

- (1) The Commission shall be entitled at all reasonable times to exercise its authority to have access to or to request the books, records or any information of or from a regulated person for the purpose of—
 - (a) satisfying itself that the provisions of this Act are being complied with;
 - (b) satisfying itself that the provisions of the Financial Transactions Reporting Act, 2018 (No. 5 of 2018) are being complied with; or
 - (c) assisting in the administration of the securities legislation in another jurisdiction.
- (2) After the conclusion of any examination conducted under subsection (1), the Commission may prepare a report on its findings.
- (3) In any case where the Commission is unable to conduct an examination described in subsection (1), it may appoint an auditor, at the expense of the regulated person or market participant, to conduct such examination and to report thereon to the Commission.
- (4) The Commission may assess charges to recover the cost of such examination.
- (5) If requested to do so by the Commission, a regulated person shall give the Commission access to or provide at any reasonable time all records relating to the regulated person.
- (6) The Commission may copy or take an extract of a document it is given access to, or provided with in accordance with this section.
- (7) If requested to do so by the Commission, a regulated person shall give the Commission such information or such explanation in respect of the regulated person as Commission may reasonably request to enable the Commission it to carry out its duties under this Act.

15. Amendment of section 58(6) of the principal Act.

The principal Act is amended in section 58(6) by the deletion of the words “file an appeal pursuant to section 157” and the substitution of the words “apply for review under section 157A.”

16. Amendment of section 69 of the principal Act.

The principal Act is amended in section 69 by –

- (a) the insertion, immediately after subsection (3), of the following new subsections (3A) and (3B) –
 - “(3A) The categories of registration and the applicable terms, conditions and requirements for initial registration and on an on-going basis, including for any ancillary services provided, shall be as prescribed.

- (3B) The terms, conditions and requirements for each prescribed category may, without limitation, impose provisions that differ by:
- (a) the type of securities activity carried on or proposed to be carried on;
 - (b) the securities or class of securities in which the person carries on or proposes to carry on a securities activity;
 - (c) the characteristics of the clients of the person; or
 - (d) such other basis as is prescribed.”;
- (b) the deletion of the “or” at the end of paragraph (11)(d) and the insertion of new paragraphs (d1) and (d2) –
- “(d1) the registrant fails to pay within the time prescribed –
- (i) all prescribed annual fees and charges; and
 - (ii) any penalties imposed as prescribed;
- (d2) the registrant fails to file within the time prescribed –
- (i) all applicable notices required under section 70;
 - (ii) all applicable documents and reports required under section 77; and
 - (iii) all other documents and materials as may be prescribed; and”;
- (c) the deletion of the word “appeal” in subsection 69(12) and the substitution of the words “apply for a review under section 157A of”.

17. Amendment of section 75 of the principal Act.

The principal Act is amended in section 75 by deletion of the words “and parties related to an investment fund”.

18. Amendment of section 78 of the principal Act.

The principal Act is amended by the deletion of section 78 and the substitution of

“78. Responsibility for actions of persons acting on behalf of registered firm

A registered firm shall be responsible for all acts and omissions of each partner, director, officer, representative, employee and agent acting on its behalf.”.

19. Amendment of section 91(3) of the principal Act.

The principal Act is amended in section 91(3) by the deletion of the word “appeal” and the substitution of the words “apply for a review under section 157A of”.

20. Amendment of section 104 of the principal Act.

The principal Act is amended in section 104(c) by the deletion of the words “securities laws” and the substitution of the words “securities legislation”.

21. Insertion of new section 106A into the principal Act.

The principal Act is amended by the insertion, immediately after section 106, of a new section as follows –

“106A. Separation of role of Chairman and Chief Executive Officer of public issuer.

The person appointed Chairman of the board of directors of a public issuer may not, at the same time, also serve as Chief Executive Officer of that public issuer.”

22. Amendment of section 108 of the principal Act.

The principal Act is amended in subsection 108(1) by the deletion of the words “Sections 109, 110, 111, 114, 119 and 120 do” and the substitution of the words “This Part does”.

23. Insertion of new section to Part XV of the principal Act.

The principal Act is amended in Part XV by the insertion, immediately before section 132, of the following new section –

“131A. Interpretation

For the purposes of this Part, “securities laws” means the Act.”

24. Amendment of section 132 of the principal Act.

The principal Act is amended in section 132 by the insertion, immediately after the words “securities laws”, of the words “or the Financial Transactions Reporting Act,”.

25. Amendment of section 133 (1) of the principal Act.

The principal Act is amended in section 133(1) by –

- (a) the deletion of subsection 133(1)n and the substitution of –
 - “(n) apply to the court for an order to take such action as it considers necessary to protect the interests of –
 - (i) clients or creditors of a registrant; or
 - (ii) investors or creditors of a public issuer;” and
- (b) the deletion of the word “or” at the end of paragraph (r) and the insertion of the following new paragraph (r1) immediately after paragraph (r) –
 - “(r1) impose any sanctions or remedies that are available to the Commission under the Financial Transactions Reporting Act; or”.

26. Amendment of section 133 (2) of the principal Act.

The principal Act is amended in section 133(2) by the deletion in paragraphs (b) and (c) of the words “securities laws” and the substitution of the words “securities legislation”.

27. Amendment of section 133A of the principal Act.

The principal Act is amended in section 133A by the deletion of the section and the substitution of –

“133A. Powers of Commission to conduct investigations and hearings and impose sanctions

The Commission may, where it appears that a person has breached a provision of securities laws or the Financial Transactions Reporting Act, or failed to comply with a requirement, directive or order given by the Commission, –

- (a) conduct investigations;
- (b) conduct hearings under section 139 or such other hearings as may be prescribed; and
- (c) impose one or more of the sanctions, remedies or other relief as may be prescribed in securities laws or the Financial Transactions Reporting Act.”

28. Amendment of section 135 of the principal Act.

The principal Act is amended in section 135 by the insertion of the following new subsections –

- “(3) If the Commission considers that it is not contrary to the public interest, the Commission may waive the whole or any part of any automatic penalty imposed under subsection (2).
- (4) The Commission may publish notice of the imposition of an automatic penalty under subsection (1) in a periodical published by the Commission, on its website, or in a daily newspaper circulating in The Bahamas.”.

29. Insertion of new section to Part XVII of the principal Act.

The principal Act is amended in Part XVII by the insertion immediately before section 148 of the following new section –

“147A. Interpretation

For the purposes of this Part, "securities laws" means the Act.”

30. Amendment of section 157 of the principal Act

The principal Act is amended by the deletion of section 157 and the substitution of –

“Section 157 Appeals from Hearing Decisions.

- (1) A person directly affected by a final decision of the Commission, other than those stated not to be subject to appeal, may appeal to the Supreme Court in accordance with the rules of court – Supreme Court Order 55 - within thirty days after the later of the making of the final decision or the issuing of the reasons for the final decision.
- (2) Notwithstanding the fact that an appeal is taken under this section, the final decision appealed from takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the appeal.
- (3) The Secretary shall certify to the Supreme Court –
 - (a) the final decision of the Commission, together with a statement of reasons for that decision;
 - (b) the record of the proceedings before the Commission; and

- (c) all written submissions to the Commission or other material that is relevant to the appeal.
- (4) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorised and empowered to do under securities laws and as the court considers proper, having regard to the material and submissions before it and to securities laws, and the Commission shall make such decision or do such act accordingly.
- (5) Notwithstanding an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.”

31. Insertion of new section 157A in the principal Act

The principal Act is amended by the insertion immediately after section 157 of new Section 157A –

“Section 157A Judicial Review of Other Commission Decisions.

- (1) A person directly affected by a decision of the Commission, other than a final decision or a decision stated not to be subject to appeal, may apply to the Supreme Court for judicial review of that decision in accordance with the Rules of The Supreme Court within thirty days after the later of the making of the decision or the issuing of reasons for the decision.
- (2) Notwithstanding the fact that an application for judicial review is taken under this section, the decision under review takes effect immediately, but the Commission or the Supreme Court may grant a stay until disposition of the application.
- (3) Where a judicial review takes place under this section, the court may make such orders as are set out in the Supreme Court rules of court for a judicial review.
- (4) Notwithstanding an order of the court on a judicial review, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section.”

32. Amendment of Part 3 of the First Schedule of the principal Act.

The principal Act is amended in Part 3 of the First Schedule by the insertion of the following -

“The activities specified in this Part are not considered securities business in the following circumstances –

1. Dealing in securities

- (1) Securities evidencing indebtedness –
Where a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar

- financial accommodation or assurance which such person or his principal has made, granted or provided.
- (2) Issuing, redeeming or repurchasing securities –
Where a company, partnership or trust issues, redeems or repurchases any of its securities falling within sections 1 to 3 of Part 1.
- (3) Risk management –
Where a person buys, sells, subscribes for or underwrites securities and –
- (a) the transaction relates to securities falling within section 5, 6(1), 7 or 9 of Part 1;
 - (b) none of the parties to the transaction are individuals;
 - (c) the sole or main purpose for which the person concerned enters into the transaction, either by itself or in combination with other such transactions, is to limit the extent to which a relevant business will be affected by any identifiable risk arising otherwise than as a result of the carrying on of any activities specified in Part 2 and which is not excluded by virtue of this Part; and
 - (d) the relevant business is a business other than securities business carried on by–
 - (i) the person entering into the transaction;
 - (ii) a company within the same group of companies as such person; or
 - (iii) another person who is or is proposing to become a participator in a joint enterprise with such person.
- (4) Disposal of goods or supply of services –
Where a person buys, sells, subscribes for or underwrites securities for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer and the supplier is acting –
- (a) as a principal; or
 - (b) as an agent,
- and the supplier does not hold himself out generally as engaging in the buying, selling, subscribing for or underwriting of securities and does not regularly solicit members of the public to buy, sell, subscribe for or underwrite securities.
- (5) Incidental activity
Where a person buys, sells, subscribes for or underwrites securities in the course of carrying on any profession or business not otherwise constituting securities business and where such transaction is a

necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(6) Employee schemes –

Where an employer buys, sells, subscribes for or underwrites securities in connection with the operation of a share or pension scheme for the benefit of employees or former employees, or of their spouses, widows, widowers or children or step-children under the age of eighteen.

(7) Application of proprietary assets –

Where a company, partnership or trust, acting as principal and dealing only on its own behalf buys, sells or subscribes for securities by applying its proprietary assets, otherwise than as described in section 1 (b) of Part 2.

2. Arranging deals in securities

(1) Arranging own deals –

Where a person makes arrangements relating to a transaction to which that person will himself be a party as principal or which will be entered into by that person as agent for one of the parties to the transaction.

(2) Incidental activities –

Where a person makes arrangements and such arrangements are made in the course of carrying on any profession or business not otherwise constituting securities business and where the making of the arrangements is a necessary or incidental part of other services provided in the course of carrying on that profession or business and is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.

(3) Enabling parties to communicate –

Where a person makes arrangements to provide means by which one party to a transaction, or potential transaction, is able to communicate with other parties to the transaction or potential transaction.

(4) Arrangements in connection with securities evidencing indebtedness –

Where a person makes arrangements in respect of a transaction referred to in section 1 (1) of this Part.

(5) Provision of finance –

Where a person makes arrangements for the sole purpose of providing finance to enable a person, as principal or agent, to buy, sell, subscribe for or underwrite securities.

(6) Introducing –

Where a person makes arrangements to introduce a person to another person and –

- (a) the person to whom introductions are to be made is a person referred to in Part 4; and
 - (b) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to securities generally or in relation to any class of securities to which the arrangements relate.
- (7) Arrangements for the issue of securities –
Where a person makes arrangements in respect of a transaction referred to in sections 1 (1) and 1 (7) of this Part.
- (8) Disposal of goods or supply of services –
Where a supplier makes arrangements made for, or with a view to, a transaction that is to be entered into by a customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.
- (9) Employee schemes –
Where a person makes arrangements in connection with the operation by an employer of a share or pension scheme for the benefit of employees or former employees, or of their spouse, widows, widowers or children or step-children under the age of eighteen.

3. Managing securities

- (1) Disposal of goods or supply of services
Where a person manages securities that are or are to be managed for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply by a supplier to a customer.

4. Advising on securities

- (1) Disposal of goods or supply of services
Where a supplier gives advice to his customer for the purposes of or in connection with the disposal of goods or supply of services or a related disposal or supply.
- (2) Publications –
Where a person gives advice in any communications media and –
- (a) the principal purpose of the publication, taken as a whole including the advertisements, is not to induce persons to buy, sell, subscribe for or underwrite particular securities; or
 - (b) the person responsible does not derive any direct benefit from any such purchase, disposal, subscription or underwriting.

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- (3) Incidental activities
- Where a person gives legal, accounting or other advice and –
- (a) the securities related advice is given in the course of carrying on any profession or business not otherwise constituting securities business;
 - (b) the giving of the advice is a necessary or incidental part of other services provided in the course of carrying on that profession or business; and
 - (c) is not separately remunerated otherwise than as part of any remuneration received in respect of such other services.”
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OBJECTS AND REASONS

The amendment Bill seeks to amend the Securities Industry Act, 2011 to enhance the Commission’s, and thus The Bahamas’, compliance with evolving international standards in the areas of anti-money laundering (the Caribbean Financial Action Task Force – CFATF), and securities regulation (the International Organization of Securities Commissions - IOSCO). It also seeks to make improvements to the principal Act aimed at lifting The Bahamas’ ratings on the World Bank’s Ease of Doing Business Index.

With the introduction of new legislation to govern the Investment Funds industry (the Investment Funds Bill, 2019), the principal Act also must be amended to properly reflect the interaction of the two laws, eliminate overlap and thus reduce the potential for conflicts. Further, the responsibilities and powers of the Commission under the new Financial Transactions Reporting Act, 2018 require additions to the principal Act.

Finally, the amendment seeks to correct some minor drafting errors, clarify the application of certain provisions, and enhance the provisions with respect to access to information, hearings and appeals.

Clause 2 amends section 4 of the Act to

- (i) correct the improper use of a defined term (clause 2(a));
- (ii) add definitions of custodian and custodial services to add clarity to use of those terms in the Act and the regulations made thereunder (clause 2(b));
- (iii) add a definition of final decision and modify the definition of decision to clarify the application of the Commission’s hearing and appeals processes (clauses 2(c) and (d); and
- (iv) adjust certain defined terms to reflect the interaction of the Act with the new Investment Funds Bill (clauses 2(e) and (f)).

Clause 3 inserts a new interpretation section (section 9A) in the principal Act to clarify the application of Part II of the principal Act, which addresses the general powers and functions of the Commission, to matters covered by both the Act and the Investment Funds legislation. The language is taken from the Investment Funds Bill.

Clause 4 is intended to improve the governance structure, and thereby the efficiency and independence, of the Commission by amending section 10 of the principal Act to set a clear, lower maximum of Members and reduce the number of ex-officio Members. These changes are consistent with IOSCO expectations for the independence and accountability of the regulator and best corporate governance standards.

Clause 5 amends section 13 of the principal Act to clarify the Commission's powers with respect to parties governed by the principal Act, the Investment Fund legislation and under other legislation administered by the Commission, such as the Financial Transactions Reporting Act, 2018.

Clause 6 amends section 15 of the principal Act to enhance the independence and efficiency of the Commission, in particular with respect to the role of the Executive Director as the key officer of the Commission, and reflect the direct relationship of that person with the Commission, consistent with expectations set by IOSCO and the usual practices in many other major jurisdictions.

Clauses 8 and 12 amend section 37 and 43 of the principal Act, respectively, to ensure the Commission's authority to access information for the purposes of an investigation or to share information with another regulator makes express reference to the expanded types of information now required by IOSCO under its Enhanced Multilateral Memorandum of Understanding on the Exchange of Information to which the Commission is a signatory.

Clauses 9 and 13 amend certain titles in Part IV of the principal Act dealing with investigations, inspections and other Commission access to information to more accurately reflect the contents of Part IV.

Clause 10 amends section 41 of the principal Act to reflect the fact that the investigation, inspection and access powers of the Commission regarding In and parties related to Investment Funds are now set out in the Investment Funds Bill.

Clause 11 amends section 42 of the principal Act to enable the Commission to use its investigation powers to ensure compliance with the FTRA.

Clause 14 inserts a new section 50A in the principal Act to clarify the Commission's authority to access all information at regulated persons for the purposes of carrying out the Commission's functions, and responsibilities under the Act and the FTRA. This brings the Commission into compliance with IOSCO's expectations under its Enforcement Principles. A similar power is included in the new Investment Funds Bill.

Clause 16 adds provisions to section 69 of the principal Act to

- (a) make it clear that the categories of registration of firms and individuals are to be set under the regulations and may differ based on the nature of the business carried on. This is to address recent changes to international standards, and to ensure the rules applicable to each category of license can be tailored to the riskiness of the business engaged in and the supervisory demands of these activities; and

- (b) provide additional clarity on when a registration under Part VI of the principal Act ceases to be effective.

Clauses 17 and 18 amend sections 75 and 78 of the principal Act to eliminate references to entities operating under the Investment Funds legislation, to reflect the respective scope of the Act and the new Investment Funds Bill.

Clause 20 amends section 104 of the principal Act to correct the improper use of a defined term.

Clause 21 adds a new section 106A to the principal Act to require the Chairman and Chief Executive Officers of public issuers be separate persons as the World Bank's Ease of Doing Business Survey in the Extent of Ownership and Control Index questions require. This is also consistent with corporate governance best practices internationally.

Clauses 22 and 23 amends section 108 of the principal Act and add a new section 131A to the principal Act to reflect the respective scope of the Act and the Investment Funds Bill.

Clause 24 amends section 132 of the principal Act to permit the Commission to use its enforcement powers to take appropriate action where a person under the Commission's supervision appears to be in breach of the FTRA.

Clause 25 amends the actions the Commission may take under section 133(1) of the principal Act when a breach of the law is found to have occurred. The amendments:

- (i) reflect the respective scope of the Act and the Investment Funds Bill by deleting references to taking action with respect to Investment Funds or related parties in paragraph (1) (n);
- (ii) add the ability in paragraph (1)(n) for the Commission to apply to the court for an order to protect investors and creditors of a public issuer, as is needed to improve the jurisdiction's score under the Ease of Doing Business Survey in the Extent of Director Liability Index section; and
- (iii) add express reference to the Commission exercising the sanctions or remedies provided under the FTRA (new paragraph (1)(r1).

Clause 26 amends section 133(2) of the principal Act to correct the improper use of a defined term in paragraphs (b) and (c).

Clause 27 replaces section 133A of the principal Act with a similar provisions that clarifies the drafting and ensures the Commission's process and powers regarding investigations and hearings also apply to breaches of the FTRA. This will ensure due process and make taking action against breaches of the FTRA more effective as required by the CFATF standards.

Clause 28 amends section 135 of the principal Act to provide the Commission with the flexibility to waive automatic fees for late filing of documents in appropriate circumstances and to give the Commission authority to publish notice of the imposition of late filing fees. The publication authority is consistent with IOSCO's expectations for an effective enforcement program and the general transparency of regulatory actions.

Clause 29 adds a new section 147A to the principal Act to reflect the respective scope of the Act and the Investment Funds Bill.

Clauses 30 and 31 replace section 157 and add new section 157A of the principal Act to clarify the processes that applies when a party aggrieved by a decision of the Commission wishes to have that decision reviewed by the Supreme Court. The regime distinguishes between a decision made as a result of a hearing by the Commission and other decisions made by the regulator. As is the case in most common law countries for decisions made by administrative bodies such as the Commission, the latter type of decision would be subject to the Supreme Court's judicial review process. See also the related consequential amendments to sections 33(6), 58(6), 69(12) and 91(3) set out in clauses 7, 15, 16(c) and 19, respectively.

Clause 22 amends the First Schedule to the principal Act to fix a gap between the requirements of the principal Act and the Investment Funds Bill, as required under IOSCO expectations, and to reflect the interaction of the two laws.