



Securities Industry (AMENDMENT) BILL, 2021

**The Most Hon. Dr. Hubert Minnis
Prime Minister and Minister of Finance**

**The House of Assembly
Wednesday, May 5, 2021**

Mr. Speaker:

I rise to address the House on the Securities Industry (Amendment) Bill, 2021.

This legislation proposes to amend the Securities Industry Act 2011 and brought into force on the 30th of December 2011.

The Securities Industry Bill, 2021 proposes to amend Sections 99, 101 and 166, and to introduce new subsections to sections 58 and 69 of the Act.

Mr. Speaker:

Since coming into office in 2017, improving the ease of doing business has been one of the key priority areas which my Government has systematically and deliberately pursued.

Our Government remains resolute in strengthening the protection of minority investors through the implementation of legislative amendments.

Mr. Speaker:

The objectives of the Securities Industry (Amendment) Bill, 2021, are twofold and address deficiencies in the protection of minority investors' regime, identified in the World Bank's Doing Business report and to address technical gaps in the current Securities Industry Act.

Mr. Speaker:

The securities industry is a critical component of financial services industry in The Bahamas.

As at the 31st of December 2019 there were 164 participants in the securities industry registered with the Commission to conduct various registrable activities in the securities industry.

This number was up from 157 registrants in 2018, and 2020 numbers, currently under audit, indicate a slight increase in spite of COVID-19.

Mr. Speaker:

The current securities industry legislation is administered by the Securities Commission of The Bahamas.

The Commission is also responsible for the administration of the Investment Funds

Act, 2019 and as such regulates, supervises and oversees the securities and capital markets as well as investment funds.

The Commission also has regulatory control over financial and corporate services and is responsible for the administration of the Financial and Corporate Services Providers Act, 2020.

The Commission administers the Digital Assets and Registered Exchanges Act, 2020.

Mr. Speaker:

Allow me to provide the background for the need to amend the Act and to provide a summary of the proposed amendments.

The proposed amendments are prompted by the need to address outstanding deficiencies in the protection of minority investors' regime identified in the World Bank's Doing Business Report.

This Report compares the ease of doing business across economies.

The proposed amendments will enable the Commission to address technical gaps in the Act.

The proposed amendments will provide for the automatic revocation of a registration, where a registrant fails to renew its registration, submit its annual filings, or to pay its annual fees as required.

Mr. Speaker:

The World Bank's Doing Business Project provides an analysis of domestic small and medium-size enterprises and measures the regulatory framework applying to them through their life cycles.

The project assesses and objectively scores the business regulations and enforcement of 190 economies.

The final ranking of the various countries assessed is published in the World Bank's Doing Business report.

Additionally, there are specific metrics that measure:

- efficiency of local infrastructure;
- access to finance;
- efficiency and protection in trade and operations;
- legislative protections and enforcement as well as;

- the protection of minority investors, which these amendments specifically address.

Mr. Speaker:

A country's Doing Business ranking indicates how "SME friendly" the country is.

This refers to how easy is it for entrepreneurs to start and operate a business.

A robust SME friendly regime will therefore: provide employment opportunities, increase productivity of a country's workforce and facilitate GDP growth.

Mr. Speaker:

The overall Doing Business ranking for The Bahamas in 2017 was 121 out of 190.

In response, this government appointed a team of advisory professionals, who along

with the staff of the Prime Minister's Delivery Unit facilitated amendments to the Companies Act, the Securities Industry (Corporate Governance) Rules, 2019 and the Securities Industry (Takeover) Rules, 2019, as well as numerous other actions.

Because of these actions, The Bahamas improved its ranking on the metric for the protection of minority investors from 132 to 88 – a jump of 44 spots.

Our overall ranking in the ease of doing business improved from 121 to 119 in the 2020 Report.

While all of this showed progress, we understood that we had a ways to go and there was still much work to be done.

Mr. Speaker:

In reviewing the 2019 score, various deficiencies remained in relation to the World Bank's various indices related to minority rights.

As a result, further amendments were made in 2020 to the Securities Industry (Corporate Governance) Rules, 2019 and the Securities Industry (Takeover) Rules, 2019 and the Securities Industry Regulations, 2012 (SIR).

These changes largely addressed the outstanding deficiencies.

Mr. Speaker:

The amendments proposed by the Securities Industry Bill, 2021 to sections 99,

101 and 166 of the current Act are intended to address the remaining outstanding deficiencies related to the protection of minority investors.

The outstanding deficiencies relate to the requirements for disclosure by the issuer of its financial statements and any material contracts.

The amendments also make the provision of a register of public issuers mandatory as opposed to discretionary.

Mr. Speaker:

The Commission is responsible for the administration of the Securities Industry Act, 2011.

Accordingly, the additional amendments being sought by the Commission came to the attention of the Commission in the course of its ordinary administration of the current Securities Industry Act.

Mr. Speaker:

The Commission noted certain technical gaps in relation to its ability to enforce against those failing to renew their registration in a timely and appropriate manner.

The Commission is currently conducting a full review of the Securities Industry Act to assess the need to modernize the Act.

Still, the Commission determined that this amendment was imminently required and therefore sought to amend the legislation and to address these gaps now.

Mr. Speaker:

The substance of these amendments already exists in the other legislation administered by the Commission.

This will therefore create consistency in the standards and obligations entrenched in

the various pieces of legislation as well as equalize the treatment of noncompliance.

I note that equity is essential to good regulation.

Mr. Speaker:

I have provided the background for the impetus of the amendments.

I wish to now provide a summary of the proposed amendments and to discuss changes this Amendment Bill will introduce.

Mr. Speaker:

The Bill proposes to amend Sections 99, 101 and 166 and introduces new Sections 58(A), 69(A) to the Securities Industry Act, 2011.

In summary, the proposed amendments:

(1) Provide for the automatic revocation of a registration under Parts V and VI of the current Act where a registrant fails to

-

- a. renew its license;
- b. submit its annual filings;

c. pay its annual fees.

(2) Provides for the disclosure of material contracts;

(3) Provides a requirement for a public issuer to post its annual financial statements and auditor's reports on the company's website or in the newspaper; and

(4) Provides that it is mandatory to make the register available to the public.

Mr. Speaker:

Each of the proposed amendments is substantive.

The need to enhance the enforcement regime to include automatic revocation of registration – where registrants failed to renew their registration and to submit the required annual filing or pay their annual fees – became apparent during the Commission's day to day administration of the Securities Industry Act.

The Commission has historically found that it had very few options to address these failings in an efficient and effective manner.

This challenge was also identified in relation to other legislation administered by the Commission.

Similar shortcomings were therefore addressed in relation to the Investment Funds (Amendment) Act, 2020 and the Financial and Corporate Services Providers

Act, 2020, which are both administered by the Securities Commission.

These provisions duplicate the regimes established in those legislations.

Mr. Speaker:

The proposed enforcement regime provides for the automatic revocation of the registration of a marketplace or ancillary facility registered under Part V of the Act, as well any person registered to conduct any of

the activities registerable under Part VI of the Act.

Therefore, the registration of any Registered Exchange, Clearing Facility, or person registered to deal, arrange deals, advise or manage securities that fails to renew their registration will be automatically revoked should they fail to take any of these required actions.

Mr. Speaker:

The amendments provide that where the registered person fails to renew its registration before its annual renewal date the registration shall be automatically revoked.

Further, the registrant shall be liable to pay an automatic penalty of 10 percent of its prescribed license fee to the Commission.

The additional monetary penalty is an administrative fine.

This is meant to be a deterrent and to ensure that the industry operates at its optimum compliance with licensing requirements.

Where a registrant fails to submit its annual filings or insurance information the registration will automatically be revoked immediately.

There will be no further redress.

Where the registrant fails to pay its annual fee within 30 days of it being due, the registration will automatically be revoked.

Mr. Speaker:

The amendments also provide for the ability to restore one's registration within a 30-day period.

The process and conditions for restoration include an administrative penalty to address the delinquency and provide deterrence against non-compliance.

It also includes a requirement for the registrant to submit the outstanding filings or fees.

Mr. Speaker:

The Commission relies on registrants providing required information to do its job effectively and on a timely basis.

Moreover, for the regulation to be effective there must be real consequences for failure to meet the requirements established.

The proposed amendments will enhance the Commission's regulatory toolkit providing swift and real consequences in the face of delinquency.

Mr. Speaker:

I note also that the automatic application of the penalty is applied to specific cases where breach or failure of compliance is 'factual' and there is no room for nuance in compliance and therefore little excuse for non-compliance.

The amendment is balanced.

It provides for restoration upon the payment of a small administrative penalty and a simple application requiring primarily, that the registrant has addressed the deficiencies.

Mr. Speaker:

Having explained the amendments proposed to enhance the enforcement regime of the Act, I now turn to discuss the

proposed amendments related specifically to the Doing Business report.

Let me begin with the provision to expand the disclosure requirements of public issuers to include a requirement to disclose material contracts.

Mr. Speaker:

The issue contemplated by the Doing Business project is the protection of minority investors where a director of a public

company has an interest in contracts executed between a public company and a third party contractor.

The current legislation requires a public issuer to disclose prescribed information about its business operations to the public.

This includes significant developments about the issuer's business and any material information.

There is however, no provision, which clearly provides that a Director must disclose interests he or she may have in material contracts with a public company on whose board he or she serves.

Mr. Speaker:

It is notable that the Securities Industry (Corporate Governance) Rules defines 'material contract' as a transaction with a value of more than two percent of the revenues of a public company.

However this definition is applicable only to the provisions regulating the disclosure of conflicts of interest and not to requirements for related-party transactions.

The proposed amendments define ‘material change’ and ‘material contract’.

The amendments clarify the distinction between the two and requires the disclosure of material contracts thereby closing the gap in the requirement for the disclosure of third-party contracts.

Mr. Speaker:

I now turn to discuss very briefly the proposed amendment to require public issuers to post audited financial statements and annual reports on the company's website or in the newspaper.

Here the issue to be addressed in the Doing Business report is the access to financial information by the public to ensure that there is transparency in the market so that minority interest holders are not

disadvantaged by a lack of information when making investment decisions.

The current Securities Industry Act requires public issuers to file annual audited financial statements with the Commission. The Commission however does not facilitate public inspection of these statements.

Mr. Speaker:

The proposed amendment requires all public issuers to publish the annual report

and audited financials that they file with the Commissions.

The reports can be published either on the public issuers' website or in the newspaper.

This is in fact a simple amendment which has a major impact both for the investing public locally who will have the advantage of availability of information being a matter of law, as well as the benefits that the country

will garner as a result of increasing its ranking on the Doing Business report.

Mr. Speaker:

Please allow me to again discuss very briefly the final proposed amendment.

Again, this amendment is based on the need to provide accessibility and transparency.

These are key elements of a good regulatory regime and thus required to

improve our Doing Business rankings on the World Bank's survey.

The final amendment proposes to make the provision of a registry for public issuers mandatory, rather than discretionary.

The current legislation requires that the Commission maintains a register of prescribed information regarding the various registrants under the Act.

The legislation however provides that the Commission 'may' make such register available to the public on prescribed terms.

This provides the Commission with the discretion of making the register public.

The amendment will make access to the register by the public mandatory thereby protecting minority investors by ensuring their access to information.

This is a cornerstone in enabling them to make informed investment decisions.

Mr. Speaker:

The proposed amendments to the Securities Industry Act, 2011 before us today are necessary for the continued provision of good regulation.

They are necessary to keep improving our rankings in the World Bank's Doing Business report.

Improved rankings for The Bahamas will encourage increased investment activity and competitiveness.

The Bahamas must continue to strive to be more competitive while ensuring that the regulatory environment remains robust and current.

These proposed amendments: provide good regulation, set standards that encourage investment activity and enhance the ease of doing business in The Bahamas.

Mr Speaker,

I am also presenting the Insurance (Amendment) Bill 2021 to this House.

The Insurance Commission of The Bahamas is the regulatory body charged with the supervision of the insurance industry and all related matters.

The functions of the Commission include the promotion and encouragement of sound and prudent insurance management in

accordance with the provisions of the Insurance Act, Chapter 347 and the External Insurance Act, Chapter 348.

Mr Speaker,

The Caribbean Financial Action Task Force (CFATF) conducted an onsite examination of The Bahamas' anti-money laundering and terrorist financing regime in 2015.

This examination identified numerous gaps and deficiencies in the AML/CFT framework across the financial services sector. Following the onsite visit, a Mutual Evaluation Report for The Bahamas was published in July 2017.

The Commission has various powers as outlined in the Insurance Act, including the power to prescribe conditions of registration for insurance companies.

Section 30 of the Insurance Act requires companies to obtain prior approval from the Commission whenever there is a change in the beneficial ownership of the company.

However, there is no specific requirement for companies to obtain prior approval whenever there is a change in senior management.

The CFATF considered this a deficiency in the insurance legislation.

It was deemed to affect the Commission's ability to prevent criminals from doing business in the insurance sector after the initial company registration.

FATF Recommendation 26 requires that financial supervisors take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or

being the beneficial owner holding a management function in a company.

It was determined that insurance companies should obtain prior approval from the Insurance Commission for any change in senior management in the company, to mitigate against this risk.

Mr Speaker,

In carrying out its power to supervise insurance companies under the Insurance

Act, the Commission determined that it was necessary to require insurance companies to obtain prior approval of the Commission whenever there is a change in senior management in the company.

This requirement is important to the Commission in the exercise of its mandate to properly supervise its licensees for both prudential and AML/CFT purposes.

The proposed amendment to sections 28 and 30 of the Insurance Act would achieve this end.

Mr Speaker,

I now present the Insurance (Amendment) Bill 2021 to this House.

I thank you, Mr. Speaker.

—