



Contribution to the Debate

On Proposed Revisions
to the Dormant Account Legislative Regime

Dr. the Most Hon. Hubert A. Minnis
Prime Minister
and Member of Parliament for Killarney

Wednesday, 21 November 2018

Mr. Speaker:

I rise to present to this Honorable House the Banks and Trust Companies Regulation (Amendment) Bill, 2018 and the Central Bank of the Bahamas (Amendment) Bill, 2018, which jointly seek to introduce necessary and important reforms to the dormant account regime in The Bahamas.

These legislative amendments aim to address problematic administrative issues encountered by banks to codify existing administrative practices by the Central Bank of The Bahamas, and then to modernize the regime in line with prevailing international practices.

To provide some background, dormant accounts legislation was introduced in The Bahamas in 1989.

The legislation required all banks to transfer dormant account balances to the Central Bank which is charged with the custody and administration of these balances.

A dormant account is defined as one in respect of which banks record no customer transactions or contact for a period of seven (7) years.

Since the legislation was introduced, there have been no changes to the regime.

Over the years, both the banks and the Central Bank have experienced numerous challenges with different aspects of the administrative regime for dormant accounts.

The main issues were how to deal with:

- funds/assets, such as checks, money orders, precious metals and securities that are excluded from the very narrow definition of dormant account;
- how to treat securities that qualify as dormant;
- how interest is to be paid on claims of dormant accounts;
- what should happen to dormant accounts that may never be claimed; and
- what should be the record keeping requirements of various aspects of the regime.

Mr. Speaker:

In efforts to address these issues, and to propose the amendments we have before us today, the Central Bank benchmarked the unclaimed asset regimes of several jurisdictions, including: Australia, Barbados, Canada, Ireland, New Zealand, the United Kingdom, Switzerland and the United States of America.

As is entrenched practice, the Central Bank also conducted extensive consultations with the banks on the proposed amendments, and posted the draft bills on its website on the 20th February 2014 and again on the 29th April 2016, for ninety (90) and thirty (30) day public consultations, respectively.

Beyond these initiatives, an explanatory note, in the form of questions and answers on the existing dormant accounts administration framework, and key aspects

of the legislative proposals, were published in the newspapers and posted to the Central Bank's website.

We are satisfied that a thorough and considered approach was taken in the determination of these amendments.

The Banks and Trust Companies Regulation (Amendment) Bill, 2018:

Mr. Speaker:

I will now address the amendments proposed under the Banks and Trust Companies Regulation (Amendment) Bill, 2018, which seek to repeal and replace section 20 of the Banks and Trust Companies Regulation Act, 2000 ("the BTCRA").

Currently, this section only applies to deposit accounts that contain money and gold or silver bullion and on which the account owner has conducted no transaction for a period of seven (7) years.

However, the replacement section 20 of the Banks and Trust Companies Regulation (Amendment) Bill, 2018 provides for the following new provisions:

Subsection (1) expands and clearly identifies the types of accounts and facilities subject to dormant account requirements.

Included now will be a range of funds and assets, for example, cheques, bank drafts, money orders, and precious metals, such as gemstones.

Jewelry, however, is excluded because of their sentimental value which complicates appraisal. Further, dormant securities accounts are being brought fully under the regime.

Subsection (2) of the Bill also expands the definition of dormant account to capture "other facilities", such as those one-off transactions or instruments I have mentioned.

Importantly, under paragraph (b) of the proposed definition of dormant account, an account will not be treated as dormant where the customer has multiple accounts/facilities with the bank and maintains communications with the bank in respect of any one or more of those accounts and or facilities, which evidences that the business relationship remains active.

Further, the expanded definition will permit banks to consider actions initiated by a customer via electronic and other non-physical means in determining whether the deposit account or other facility is dormant.

Subsection (3) of the amendments provides for the seven (7) year dormancy period to be calculated for a fixed deposit account, "from the date on which the fixed period terminated or the date the customer terminates his instructions to automatically renew the deposit, whichever is the later".

This will remove the lacunae in the existing law which unintentionally captures fixed deposits that customers instruct their banks to automatically renew.

For other facilities, subsection 3(c) provides for the dormancy period to be calculated “from the date on which the facility was issued, established, or the obligation to make a payment in respect of the facility accrued, whichever is the later.”

Subsection (4) retains the existing obligation for banks to pay to the Central Bank dormant account amounts equal to and in the same currency denomination as any liability.

This is inclusive of cash deposits found in dormant safety deposit boxes.

It also codifies the requirement that banks make payments to the Central Bank, unless exempted in writing by the Central Bank, within two (2) months after the end of the calendar year in which the account becomes dormant.

Mr. Speaker:

As I previously noted, these amendments also seek to bring dormant securities fully under this regime.

At present, banks are required to transfer to the Central Bank cash dividends and other cash returns realized on dormant securities but to retain custody of the securities.

Following discussions with industry stakeholders, the amendments seek to introduce a new obligation which will, inter alia, require banks to treat dormant accounts containing precious metals, precious gemstones (excluding jewelry) or securities: as transferrable assets to be liquidated, and the proceeds transferred to the Central Bank upon the expiry of the seven (7) year dormancy period.

Precious metals in the form of gold and silver bullion and cash deposits are already captured by the dormant accounts’ regime.

Therefore, the requirement for the transfer or liquidation and transfer of the proceeds of sale of these types of assets found in safety deposit boxes creates consistency in the way that like assets are treated under the regime.

Additionally, as banks should not be required to absorb costs associated with liquidating assets, as required by the law, subsection (4) will permit banks to deduct reasonable costs when so doing.

Mr. Speaker:

In Subsection (5) there are new obligations and protections for banks and others relating to the treatment of dormant accounts of gold and silver bullion and securities.

This includes:

- specifying the mechanisms by which their selling price, subject to liquidation, may be determined;
- the title rights of purchasers acquiring the liquidated securities; and
- the entitlements of and restrictions on persons who claim liquidated securities.

Specifically, paragraphs (a) and (b) of subsection (5) provide for securities listed on an established stock exchange to be sold at the prices prevailing on the exchange at the time of the sale.

They also provide for securities that are not listed on an established stock exchange to be sold over-the-counter at prevailing prices or by any reasonable method selected by the bank using its best efforts and having regard to current market conditions.

These provisions are intended to protect the interests of account holders by ensuring that banks dispose of dormant assets at the best price, at the time of the sale.

Further, paragraphs (c) and (d) of subsection (5) make provision to protect the purchaser acquiring the disposed property, and to take the property free of all claims of the owners and of all individuals claiming through or under them.

As well, it establishes the deductions that may be made against a dormant account or its proceeds of sale, and makes clear that claimants are not entitled to receive any appreciation in the value of the property occurring after the sale of such property.

Mr. Speaker:

In Subsection (6), there are provisions for the treatment of precious metals, precious gemstones and securities that cannot be sold, that are worthless, or that are not cost-effective to sell.

In such cases, there is an exemption from the requirement for banks to liquidate these assets.

They will be required to either transfer these to the Central Bank or its agent or, at the discretion of the Central Bank, may continue to hold these as the Central Bank's agent.

Subsection (7) provides statutory protection for those acting in furtherance of the requirements of the Act against any claims.

In Subsection (8), there is a record retention requirement for banks in respect to dormant accounts paid over to the Central Bank.

This provision is intended to increase the level of accountability, transparency and record keeping commensurate with the Central Bank's aim of sound depositor protection.

Subject to the provisions of the proposed subsection (9), banks will be required to retain these records for a maximum period of fifteen (15) years after the transfer is made or for a period of five (5) years after making a payment to a dormant account claimant.

Subsection (8) also seeks to impose a duty on banks that retain dormant accounts that are exempted from the transfer requirement, and pursuant to subsection

(6), to report to the Central Bank at such intervals to be determined by the Central Bank.

Subsection (9) establishes separate record retention periods for dormant securities accounts, that is, a maximum period of seventeen (17) years after the transfer is made to the Central Bank or for a period of seven (7) years after a payment to a claimant.

This amendment achieves consistency with the record retention requirements established under domestic securities laws, which exceeds those under the AML/CFT regime.

Subsections (10) and (11) set out the reporting requirements for exempted accounts and facilities.

These are non-cash collateral, custody accounts or safety deposit boxes, except for cash, precious metals, precious gemstones (excluding jewelry) found in such boxes and such other deposit account or facility as the Governor may, by regulation, determine.

Subsection (12) maintains the existing provision for banks to facilitate an entitled individual's claim to a dormant account transferred to the Central Bank by that bank.

But it also introduces an important new limitation which requires that a claim be brought within ten (10) years of the funds being transferred to the Central Bank, effectively extinguishing a claimant's right to dormant accounts after that period has elapsed.

This provision is in keeping with the practice observed in several jurisdictions, including Barbados, Canada and the Cayman Islands.

Currently, dormant account funds are transferred to the Central Bank in the currencies in which they are held by the bank. Claims are paid in the same currency.

So, for example, if an account is in Swiss Francs the claim must also be settled in Swiss Franc. This was found to be administratively cumbersome.

Subparagraphs (i) and (ii) of paragraph (a) of subsection (12) will now enable the Central Bank the flexibility to repay Bahamian dollar claims in Bahamian dollars and claims for any other currency in an equivalent foreign currency amount.

Subsection (12) also replicates the existing power of the Central Bank to pay interest on dormant accounts balances transferred to it, once claimed.

What is new, however, is that it establishes the mechanism by which interest is to be calculated by providing that the Central Bank may, by written notice, determine the rate and manner of computation of interest payable by the Bank.

The Central Bank would establish the interest rate with reference to market conditions and factors affecting the management of the Dormant Account Fund in its custody.

Subsection (13) provides for a bank to be discharged from liability with respect to balances owing on a dormant account once transferred to the Central Bank.

This is a protection that is missing in the existing legislation.

Subsection (14) similarly provides for the Central Bank to be discharged from liability with respect to dormant account balances received from banks when the Central Bank either pays the equivalent of those balances to an individual entitled to claim them, or makes a payment to the Treasurer, pursuant to subsection (1) of section 24 of the Central Bank of The Bahamas (Amendment) Bill, 2018.

The final amendment, Subsection (15), will introduce a new general recordkeeping obligation on banks to maintain a register of all dormant accounts that are either transferred to the Central Bank or its agent or retained by the banks.

The register will be required to be available for inspection by the Central Bank's Examiners.

Central Bank of The Bahamas (Amendment) Bill, 2018 (Repeal and Replacement of Section 24 of the CBBA)

Mr. Speaker:

I now turn to the Central Bank of The Bahamas (Amendment) Bill, 2018, which seeks to repeal and replace section 24 of the Central Bank of The Bahamas Act, 2000,

The amended bill will empower the Central Bank to deal more effectively with dormant account balances.

The Central Bank of The Bahamas (Amendment) Bill, 2018 retains the existing requirements for the Central Bank to accept funds transferred to it, pursuant to section 20 of Banks and Trust Regulation Act, and to pay interest on such funds.

It is proposed to redesignate the existing section 24 as subsection (1) of section 24 and to introduce twelve (12) new subsections immediately following it.

The proposed Subsection (2) codifies the Central Bank's ability to establish a Fund for the administration of dormant account proceeds from banks. This formalizes existing arrangements.

It will also provide for the Central Bank to deduct from the Fund, for the first time, an administrative fee to meet reasonable expenses in connection with its administration of the Fund.

The charging of such a fee is consistent with the practices of several benchmarked jurisdictions, and allows for operational transparency.

Subsection (3) will provide flexibility to the Bank to pay, to the Treasurer, dormant funds received in Bahamian dollars in Bahamian dollars and those received in foreign currency in another currency (e.g., United States dollars).

It is intended to support the new subsection (10), which empowers the Central Bank to invest and to re-invest dormant account funds and to convert dormant account funds to other currencies for investment purposes, as deemed prudent.

This subsection also provides for the Central Bank to pay to the Treasurer:

all dormant account balances valued at five hundred dollars (\$500) or less, within two (2) months after being received by the Bank; and

dormant account balances above five hundred dollars (\$500), plus accrued interest, after ten (10) years of receipt by the Central Bank.

Mr. Speaker:

The purpose of these provisions, along with the provisions of subsections (5), (6) and (7) of the Bill, is to provide a means by which dormant account balances – owned by resident and non-residents – that remain unclaimed for a minimum of seventeen (17) years (including the initial seven-year dormancy period) can be pooled, brought under the control of the Treasurer, and employed for the benefit of the people of The Bahamas.

It is important for me to repeat this Mr. Speaker:

The funds must have been unclaimed for a total of 17 years before they are put under the control of the Treasurer for the benefit of the Bahamian people.

This proposal aligns with the practices pursued by many of the benchmarked jurisdictions.

It provides for an orderly disposition of dormant account balances, which could accumulate ad infinitum if not claimed.

Subsection (5) discharges the Central Bank of all liability with respect to amounts paid to the Treasurer, pursuant to subsection (3), and imposes an obligation on the Central Bank to retain records relating to transferred dormant account balances of up to five hundred dollars (\$500), for a minimum period of fifteen (15) years, and for balances above five hundred dollars (\$500), for a minimum period of five (5) years.

To explain this timeframe, the fifteen (15) year period represents the ten (10) years during which a claimant's right to claim a dormant account balance subsists, plus five (5) years following the extinguishment of such a claim.

The five (5) year period is in line with record keeping requirements under the country's AML/CFT laws.

Subsection (6) provides for funds transferred to the Treasurer to form part of the Consolidated Fund, and vested in the Treasurer for the benefit of The Bahamas, to cease to accrue interest.

Furthermore, subject to subsections (7) and (8) of the Bill, these funds are to be disposed of by a resolution of both Houses of Parliament.

Subsections (7) and (8) provide for dormant account owners, their representatives or successors to reclaim dormant account balances (plus accrued interest, where applicable) at any time prior to the expiry of ten (10) years after receipt of such balances by the Central Bank.

For the purposes of calculating the ten (10) year period, the clock starts upon the transfer of dormant account balances to the Central Bank and, in the case of balances of \$500 or less, continues to run after the funds have been transferred to the Treasurer, but not beyond the ten (10) years.

Therefore, dormant account balances of more than \$500 can only be reclaimed before they are transferred to the Treasurer, upon the expiry of the ten (10) year period.

Subsection (7) (a) will enable the Central Bank to repay Bahamian dollar claims in Bahamian dollars and claims for any other currency in an equivalent foreign currency amount.

Currently, dormant account funds are transferred to the Central Bank in the currencies in which they are held by the bank and claims are paid in the same currency.

Subsection (9) provides the Minister, the Treasurer and the Government, protection from liability for funds paid by the Treasurer to the Central Bank in respect of claims; and to a person who claims funds after they have been paid by the Treasurer to the Central Bank for onward payment to another person.

This provision mirrors the protection from liability given to the Central Bank in subsection (5) and to banks in subsection 20(14) of the Banks and Trust Companies Regulation (Amendment) Bill, 2018.

Similar provisions are found in the legislation of several of the benchmarked countries, including the Cayman Islands.

Subsection (10) will empower the Central Bank to invest and reinvest dormant account balances transferred to it.

This will codifying existing practice, and the Bank's role as a prudent custodian.

Subsection (11) will permit the Central Bank to consider any period prior to the enactment of the Bill, when determining whether dormant balances held meet the relevant time requirement for transfer to the Treasurer.

Subsection (12) makes it a criminal offence for any person to make a fraudulent claim for dormant account balances.

The penalty, on summary conviction, is a fine of five thousand dollars (\$5,000) or imprisonment for a term not exceeding one year or both such fine and imprisonment.

Subsection (13) proposes that every director or other officer concerned with the management of a body corporate be liable for a fraudulent claim made by that body corporate, unless the director or other officer proves that the offence was committed without his consent or connivance, or that he or she exercised reasonable diligence to prevent the commission of the offence.

Mr. Speaker:

Permit me to share with Honorable Members some statistics on dormant accounts, as at the end of June 2018.

Dormant accounts numbered forty-two thousand, four hundred and fifty-two (42,452), with a corresponding value of approximately \$88.716 million (Bahamian Dollar equivalent).

Of the total number, thirty-four thousand five hundred and twenty-eight (34,528) were Bahamian Dollar accounts which were valued at \$18.921 million. Therefore, the average size for Bahamian Dollar accounts was \$548 compared with \$7,837 for US Dollar equivalent balances.

There were thirty-two thousand, five hundred and forty-two accounts (32,542) accounts or 77% of the aggregate number of accounts, having a value of \$500 or less—for a total of \$3.875 million in dormant funds. Of this total, Bahamian Dollar accounts represented 80% or \$3.116 million.

Dormant accounts with values exceeding \$500 and meeting the proposed seventeen (17) years dormancy threshold for extinguishment of claim, totaled five thousand, seven hundred and twenty-four (5,724) bearing a value of \$37.4 million. Of this amount, Bahamian Dollar balances numbered two thousand, nine hundred and ninety-four (2,994) at a value of \$7.584 million, which represented 52.3% of the total number of accounts, but only 20.3% of the value. By comparison, balances in US Dollar equivalents, at \$25.0 million and two thousand, five hundred and nineteen (2,519) in number, accounted for a lesser 44.0% of the number of accounts but a dominant 67% of the value.

Since inception, that is, since 1989, claims have totaled \$29.8 million or approximately one-quarter of the \$118.5 million in original balances transferred to the Central Bank. The corresponding percentage for Bahamian Dollar claims is 19.2% and for the USD equivalent component, 22.0%.

We are advised by the Central Bank that, based on these legislative proposals, the Treasurer would receive an initial flow of at least \$41.3 million assessed at the end

of June 2018, and a further steady stream of transfers as funds meet the seventeen (17) year threshold for extinguishment of claims, should they not be claimed.

Mr. Speaker:

Let me turn my attention to how these funds are to be used. We have compelling needs in any number of areas.

However, it is not my Government's intent to view this as a windfall for use in meeting normal budgetary operations.

As a responsible Government, we are proposing that these funds be utilized for establishing the proposed Disaster Relief Fund that was foreshadowed in the most recent budget exercise.

As a country, we are faced with the increased incidence and severity of hurricanes, which adversely affect fiscal sustainability and economic resilience.

Members will recall that the International Monetary Fund, in its recent Article IV Report on The Bahamas, has placed the optimal size of such a fund at between two percent and four percent of GDP, that is, some \$200 to \$400 million.

We constantly receive inquiries from credit rating agencies, investors in the Government's international bond and institutional lenders about definitive measures being taken by the Government to mitigate the risks associated with natural disasters, which could create havoc on our fiscal situation.

The insurance with the Caribbean Catastrophe Risk Insurance Facility is important, but ultimately, it is insufficient to address all potential needs.

And while the Government, within its long-term fiscal sustainability plans, is intent on setting aside some 0.5% of GDP annually, commencing in 2020, for disaster relief, this recommended use of the dormant account funds provides an excellent opportunity to establish the proposed Disaster Relief Fund at a credible initial level and demonstrate to Bahamians and the international community our seriousness in mitigating this material risk to fiscal sustainability and economic resilience.

Mr. Speaker:

Climate change and global warming have increased both the frequency and ferocity of hurricanes in our region.

Unfortunately, what used to be 1 in 100 year tropical events are now 1 in 10 year tropical events.

So for The Bahamas it is unfortunately not a matter of "IF" we will be hit by a major storm in the medium term, the question is only "WHEN".

Any responsible government must plan accordingly and when presented with an opportunity such as this, it must resist the temptation for short term measures, and instead do the right thing with this windfall, and for the right reasons.

In so doing, we can fund from regular means investments in the Bahamian people in priority areas such as education, health care, combatting crime, youth development and other areas.

When we are inevitably hit by another hurricane or series of hurricanes across our archipelago, we will not have to scale back our expenditure and plans as much in key policy areas in order to divert resources to hurricane response and restitution.

I note that the next hurricane event will not need to disrupt the ordinary resources necessary in delivering the Government's manifesto in various portfolio areas.

Thus, in keeping with best practices, my Government will develop an appropriate governance framework for the proposed Disaster Relief Fund which will be used to address immediate disaster response needs and the restoration of public infrastructure.

The structure, utilization and reporting on this Fund will comport to international standards of accountability and transparency.

Further, all Bahamians can rest assured that the enabling framework for this Fund will come to Parliament and be enshrined in legislation.

No matter who sits in the seat of governance in the future, this should not devolve into some sort of slush fund to be used irresponsibly for narrow political ends; at least not without the public being fully aware.

Those days are hopefully, mercifully over.

The public well remembers the massive abuse of hurricane relief funds by various individuals in the previous administration.

This is a new day with a new approach to doing things in a new era of innovation and transformation.

Until this is in place, Mr. Speaker, we intend to allow the Central Bank to segregate the funds and continue to manage them on behalf of the Disaster Relief Fund.

Mr. Speaker:

As I mentioned earlier, my Government considers the proposed legislative amendments to the dormant account regime, as comprehensive.

These amendments should markedly improve the transparency and effectiveness with which dormant accounts are administered by banks, while enhancing the Central Bank's oversight in this area.

The proposed use of the funds will also redound to the benefit of all Bahamians, as we seek to fortify our ability to respond to natural events that could destabilize the best of economic and fiscal plans.

Mr. Speaker:

I commend the bills to this Honourable House.

May God bless the people of the Commonwealth of The Bahamas, and the wonderful people of Killarney.
