

AS AMENDED IN THE H.O.R.

No. 27 of 2011

Second Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Central Bank Act,
Chap. 79:02

THE CENTRAL BANK (AMENDMENT) BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of the Bill is to amend the Central Bank Act.

Clause 1 would provide for the short title.

Clause 2 would provide for an interpretation provision.

Clause 3 would make provision for the Act's inconsistency with sections 4 and 5 of the Constitution.

Clause 4 would amend section 44C of the Act to insert definitions for the following words: "claim"; "creditor"; "secured creditor"; "security agreement"; and "security interest".

Clause 5 would amend section 44E of the Act by inserting a new subsection (5) which deals with a stay of proceedings.

THE CENTRAL BANK (AMENDMENT)
BILL, 2011

Arrangement of Clauses

Clause

1. Short title
2. Interpretation
3. **Act inconsistent with Constitution**
4. Section 44C amended
5. Section 44E amended

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[, 2011]

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title 1. This Act may be cited as the Central Bank (Amendment) Act, 2011.

Intepretation 2. In this Act, “the Act” means the Central Bank Act.

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Act inconsistent with Constitution 3. **This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.**

Section 44C amended

4. Section 44C of the Act is amended by inserting in the appropriate alphabetical sequence, the following definitions:

“claim” means any claim whatsoever without limitation, including, without prejudice to the generality of the foregoing, claims which are secured or unsecured, present or future, actual, prospective or contingent, or arising out of contract, tort, bailment, restitution, breach of trust or any other cause of action, and whether or not made by a creditor, shareholder, depositor, policyholder or any other person;

“creditor” means a person having a claim against or in respect of an institution or its property or assets;

“secured creditor” means a creditor who—

- (a) has a mortgage in respect of any property of an institution;
- (b) has a fixed or floating charge, a lien or any other security interest whatsoever without limitation in or over or in respect of any property or assets of an institution; or
- (c) is a party to an agreement or arrangement designed to create the economic equivalent of a security interest;

“security agreement” means any agreement creating a security interest or making a creditor a secured creditor;

“security interest” means any interest in or charge upon any property of an institution by way of mortgage, assignment, bond, lien, pledge or other means, that is created or is taken to secure the payment of a debt or the performance of any other obligation of the institution;”.

5. Section 44E of the Act is amended—

Section 44E amended

- (a) in the marginal note, by inserting after the word “control”, the words “and stay of proceedings”;
- (b) by inserting after subsection (4), the following subsections:
 - “ (5) On and after the publication of a notification under subsection (1)—
 - (a) no creditor, shareholder, depositor, policyholder or any

other person shall have any remedy against the institution in respect of any claim, and without prejudice to the generality of the foregoing, no creditor, shareholder, depositor, policyholder or any other person shall commence or continue any action, execution or other proceedings or seek to enforce in any way whatsoever without limitation in Trinidad and Tobago, any judgment or order obtained in Trinidad and Tobago or any other jurisdiction, against the institution or its successor or the transferee of the whole or any part of any property, assets or undertaking of the institution for the recovery of any claim or in respect of any other liability, until the publication of a notification under section 44G(1) in relation to the institution;

(b) where the Bank has not yet published a notification under section 44G(1) in relation to an institution, the Bank may where it deems appropriate publish a notification to lift the stay under paragraphs (a), (d) or (e), except that no person shall take any steps to institute winding up,

receivership, administration or any other related proceedings in relation to that institution.

- (c)** no creditor, shareholder, depositor, policyholder or any other person shall commence or continue any claim, action, execution or other proceedings or seek to enforce in any way whatsoever without limitation in Trinidad and Tobago, any judgment or order obtained in Trinidad and Tobago or any other jurisdiction, against the Bank, its directors, officers, employees or any person acting on behalf of the Bank or appointed by the Bank under section 44D in respect of any act, omission, claim, fact or matter connected with or arising out of the acts or omissions of the Bank in respect of the institution, until the publication of a notification under section 44G(1) in relation to the institution;
- (d)** no provision of a security agreement, lease or licence between the institution and a secured or other creditor that provides, in substance, that on—
- (i)** the winding up of

the institution or any related entity or any insolvency restructuring or reorganization proceedings being commenced, continued or ordered in respect of the institution or any related entity; or

- (ii) the default by the institution of an obligation under the security agreement, lease or licence,

the institution ceases to have such rights to use or deal with assets secured or dealt with under the agreement, lease or licence as the institution would otherwise have, or is given lesser rights or priorities in respect of any assets or property as the institution would otherwise have, has any force or effect until the publication of a notification under paragraph **(b)** or section 44G(1) in relation to the institution; and

- (e) no provision in any contract or agreement or any other document whatsoever without limitation which gives any party a right to acquire any property or assets of the institution on the grounds of any change of control

or on any analogous ground or on the grounds of insolvency shall have any effect until the publication of a notification under paragraph **(b)** or section 44G(1) in relation to the institution.

(6) For the purposes of subsection (5)—

(a) the rights, property and assets referred to in this section are taken to be the rights, property and assets located in Trinidad and Tobago or in any other jurisdiction; and

(b) the agreement, lease or licence referred to in this section are taken to be, not only an agreement or lease or licence governed under the laws of Trinidad and Tobago, but also an agreement, lease or licence governed by any other law.

(7) The Bank shall report quarterly to the High Court on—

(a) the proposals to restructure an institution in relation to which a notification has been published under subsection (1); and

(b) the progress of the proposals referred to in paragraph (a),

I confirm the above.

Speaker

Passed in the Senate this day of , 2011.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 27 of 2011

SECOND SESSION
TENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time

Second time

Third time