

**BERMUDA MONETARY AUTHORITY AMENDMENT (NO 2) ACT
2001**



**BERMUDA
2001 : 34**

**BERMUDA MONETARY AUTHORITY AMENDMENT (NO 2)
ACT 2001**

[Date of Assent: 27 December 2001]

[Operative Date: 1 January 2002]

WHEREAS it is expedient to make new provision for the Board of Directors of the Bermuda Monetary Authority, for its management, and for connected matters.

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Short title and commencement

1. This Act may be cited as the Bermuda Monetary Authority Amendment (No 2) Act 2001 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

Interpretation

2. In this Act the "principal Act" means the Bermuda Monetary Authority Act 1969.

Section 1 of principal Act amended

3. Section 1 of the principal Act is amended—

(a) by substituting the following for the definition of "Chairman" —

"Chairman" means the Chairman of the Board;" and

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- (b) by deleting the definition of "General Manager";
- (c) by inserting the following definitions in their appropriate alphabetical positions—

""Deputy Chairman" means the Deputy Chairman of the Board;

"non-executive member" means a member of the Board other than the Chief Executive Officer, the Superintendent of Banking, Trust and Investment and the Supervisor of Insurance;

"officer" in relation to the Authority includes director and secretary;".

Section 4 of principal Act repealed and replaced

4. Section 4 of the principal Act is repealed and replaced by the following section—

"Board of Directors

4. (1) There shall be a Board of Directors of the Authority which shall consist of—

- (a) the Chief Executive Officer of the Authority, who shall be the Chairman;
- (b) four members appointed by the Minister from persons with experience of the financial services industry ;
- (c) four members appointed by the Minister from persons who are members of the Insurance Advisory Committee established by the Insurance Act 1978;
- (d) the Superintendent of Banking, Trust and Investment; and
- (e) the Supervisor of Insurance.

(2) The Minister shall appoint a Deputy Chairman from the non-executive members of the Board.

(3) Part 1 of the First Schedule shall have effect with respect to the tenure and qualifications of office of the non-executive members of the Board, and Part 2 of the First Schedule shall have effect with respect to the procedure for meetings of the Board."

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Section 4A of principal Act repealed and replaced

5. Section 4A of the principal Act is repealed and replaced by the following section—

"Functions of the Board

4A The functions of the Board shall be to manage the affairs and business of the Authority, and to determine the policy objectives and strategy of the Authority."

Section 4B of principal Act repealed and replaced

6. Section 4B of the principal Act is repealed and replaced by the following section—

"Immunity from suit

4B (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against an officer, servant or agent of the Authority in respect of any act done bona fide in pursuance or execution or intended execution of this Act or any other Act and regulations made thereunder.

(2) Where any officer is exempt from liability by reason only of subsection (1), the Authority shall be liable to the extent that it would be if that officer were a servant or agent of the Authority.

(3) Neither the Authority nor any person who is, or is acting as, an officer, servant or agent of the Authority is liable in damages for anything done or omitted in the discharge or purported discharge of the Authority's functions under this Act or any other Act and regulations made thereunder unless it is shown that the act or omission was in bad faith."

Section 4C added to principal Act

7. The principal Act is amended by adding the following section after section 4B—

"Functions to be carried out by non-executive members

4C (1) The functions mentioned in subsection (2) shall be performed by a committee of the Board consisting of all the non-executive members of the Board.

(2) The functions mentioned in subsection (1) are—

(a) keeping under review the question whether the Authority is discharging its functions in accordance with the policy objectives and strategy determined by the Board;

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- (b) keeping under review the question whether the Authority's internal financial controls secure the proper conduct of its financial affairs; and
 - (c) determining the remuneration and other terms of service of the Chief Executive Officer of the Authority, the Superintendent of Banking, Trust and Investment and the Supervisor of Insurance.
- (3) At a meeting of the committee the quorum shall be five.
- (4) The Deputy Chairman shall chair the committee.
- (5) Subject to subsections (3) and (4), the committee shall determine its own procedure.
- (6) The committee may delegate any of its functions to two or more of its members."

Section 4D added to principal Act

8. The principal Act is amended by adding the following section after section 4C—

"Delegation of Authority's powers and duties

4D (1) The Authority may, by instrument in writing, delegate to
—

- (a) an officer or servant of the Authority; or
 - (b) a committee constituted by the Board from persons who are officers or servants of the Authority,
- any function or power vested in the Authority.

(2) A delegation under subsection (1) may —

- (a) be made subject to such conditions, qualifications and exceptions as the Authority may prescribe in the instrument of delegation;
- (b) be revoked or varied by a subsequent instrument.

(3) The Authority may perform any function or exercise any power notwithstanding that it has delegated it to some other person or committee."

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Section 4E added to principal Act

9. The principal Act is amended by adding the following section after section 4D—

"Chief Executive Officer

4E (1) There shall be a Chief Executive Officer of the Authority appointed by the Minister from persons with experience of the financial services industry.

(2) A person is disqualified for appointment as Chief Executive Officer of the Authority if he is a member of either House of the Legislature.

(3) An appointment made pursuant to subsection (1) shall be for a term of not less than three years but not more than five years, and may be renewed.

(4) The Minister acting after consultation with the Authority may terminate the appointment of the Chief Executive Officer of the Authority if he is satisfied —

- (a) that he has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (b) that he is unable or unfit to discharge his functions as Chief Executive Officer of the Authority.

(5) The Chief Executive Officer of the Authority shall, subject to the authority of the Board, administer the affairs of the Authority, and shall have such other functions as the Board may assign to him."

Section 4F added to principal Act

10. The principal Act is amended by adding the following section after section 4E—

"Superintendent of Banking, Trust and Investment

4F (1) There shall be a Superintendent of Banking, Trust and Investment appointed by the Authority.

(2) An appointment made pursuant to subsection (1) shall not have effect until it is approved by the Minister.

(3) The Superintendent of Banking, Trust and Investment shall perform such functions and exercise such powers of the Authority under the Banks and Deposit Companies Act 1999,

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the Trusts (Regulation of Trust Business) Act 2001, the Investment Business Act 1998 and such other functions relating to financial services (other than insurance) as the Authority may delegate to him.

(4) In performing such functions and exercising such powers, the Superintendent of Banking, Trust and Investment shall have regard to the Authority's policies in relation to financial services and shall comply with such general directions as the Board may give from time to time in respect thereof."

Section 4G added to principal Act

11. The principal Act is amended by adding the following section after section 4F—

"Supervisor of Insurance

4G. (1) There shall be a Supervisor of Insurance appointed by the Authority.

(2) An appointment made pursuant to subsection (1) shall not have effect until it is approved by the Minister .

(3) The Supervisor of Insurance shall perform such functions and exercise such powers of the Authority under the Insurance Act 1978 as the Authority may delegate to him.

(4) In performing such functions and exercising such powers, the Supervisor of Insurance shall have regard to the Authority's policies in relation to financial services and shall comply with such general directions as the Board may give from time to time in respect thereof."

Section 5 of principal Act repealed and replaced

12. Section 5 of the principal Act is repealed and replaced by the following section—

"Employment of officers, servants and agents

5 The Authority shall, subject to such terms and conditions as it thinks fit, employ such officers, servants and agents as the Authority considers necessary for the due performance of the Authority's functions."

Section 6 of principal Act repealed

13. Section 6 of the principal Act is repealed.

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Section 27 of principal Act amended

14. Section 27 of the principal Act is amended by repealing subsection (1) and substituting the following subsections—

" (1) The accounts of the Authority shall be audited annually by an auditor approved by the Minister.

(1a) Upon the completion of the audit, the auditor shall present such accounts to the Board."

First Schedule to principal Act repealed and replaced

15. The First Schedule to the principal Act is repealed and replaced by the following schedule—

"FIRST SCHEDULE

(section 4)

BOARD OF DIRECTORS

Part 1: Tenure and qualifications of non-executive members of the Board

Terms of Office

1. Appointment as director of the Authority shall be for a period of not less than three years and not more than five years, except that initially some appointments may be for shorter and different periods so as to secure that appointments expire at different times.
2. A person appointed as director of the Authority in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.
3. A person appointed as director of the Authority may resign his office by written notice to the Authority.
4. The Minister shall cause to be published in the Gazette the name of every person appointed as director of the Authority.

Qualification for appointment

5. A person is disqualified for appointment as director of the Authority if he is a member of either House of the Legislature or a person serving in a government department in employment in

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respect of which remuneration is payable out of money provided by Parliament.

6. The fact that a person has held office as director of the Authority does not disqualify him for re-appointment to that office.

Removal from office

7. A person appointed as director of the Authority shall vacate office if he becomes a person to whom paragraph 5 applies.

8. The Minister acting after consultation with the Authority may remove a person from office as director of the Authority if he is satisfied that that person —

- (a) has been absent from meetings of the Board for more than three months without the consent of the Board;
- (b) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (c) is unable or unfit to discharge his functions as a member.

Remuneration

9. A director of the Authority shall be entitled to be paid by the Authority such remuneration and allowances as the Authority may determine with the approval of the Minister.

Part 2: Procedure for meetings of the Board

Powers

10. The Board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

11. The Board may appoint such committees, as it thinks fit.

Meetings

12.(1) The Board shall meet as often as necessary or expedient for the due performance of its functions.

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(2) The Chairman (or in his absence the Deputy Chairman) may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

13.(1) At a meeting of the Board, the proceedings shall be regulated as follows.

(2) The quorum shall be six of whom a majority shall be non-executive members.

(3) The Chairman or the Deputy Chairman shall chair meetings of the Board.

(4) If the Chairman and the Deputy Chairman are absent from a meeting of the Board, the members present at the meeting shall nominate one of their number to chair the meeting.

(5) If a member of the Board has any direct or indirect interest in any dealing or business with the Authority—

(a) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and

(b) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest.

(6) A member of the Board shall have no vote in relation to any question arising which touches or concerns him .

(7) Subject to subparagraphs (2) to (6), the Board shall determine its own procedure."