



No. 18 of 2001

[Date of Assent - 31st August, 2001]

AN ACT TO AMEND THE FINANCIAL AND CORPORATE
SERVICE PROVIDERS ACT, 2000

Enacted by the Parliament of The Bahamas

- Short title. 41 of 2000.
1. This Act which amends the Financial and Corporate Service Providers Act, 2000 may be cited as the Financial and Corporate Service Providers (Amendment) Act, 2001.
- Repeal of Section 10 of the principal Act.
2. Section 10 of the principal Act is repealed.
- Amendment of the principal Act.
3. The principal Act is amended by the insertion after section 12 of the following -
- "Confidentiality. 12A. (1) Subject to subsections (2) and (3), the Inspector or any officer, employee, agent or adviser of the Inspector who discloses any information relating to -
- (a) the affairs of the Inspector;
 - (b) any application made to the Inspector;
 - (c) the affairs of a licensee; or
 - (d) the affairs of a

client of a
licensee,
that he has acquired in the course
of his duties or in the exercise of
the Inspector's functions under this
or any other law is guilty of an
offence and shall be liable on
summary conviction to a fine not
exceeding fifty thousand dollars or
to imprisonment for a term not
exceeding three years.

(2) Subsection (1) shall not
apply to a disclosure -

(a) lawfully required or
permitted by any
court of competent
jurisdiction within
The Bahamas;

(b) for the purpose of
assisting the
Inspector to
exercise any
functions conferred
on him by this Act,
by any other Act or
by regulations made
thereunder;

(c) in respect of the
affairs of a
licensee or of a
client of a
licensee, with the
consent of the
licensee or client,
as the case may be,
which consent has
been voluntarily
given;

(d) where the
information
disclosed is or has

been available to the public from any other source;

(e) where the information disclosed is in a manner that does not enable the identity of any licensee or of any client of a licensee to which the information relates to be ascertained;

(f) to a person with a view to the institution of, or for the purpose of -

(i) criminal proceedings,

(ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties,

(iii) disciplinary proceedings relating to the discharge by a public officer, or a member or

- employee of the
Inspector of
his duties; or
- (g) in any legal
proceedings in
connection with -
 - (i) the winding-up
or dissolution
of a licensee,
or
 - (ii) the appointment
or duties of a
receiver of a
licensee.

(3) Subject to subsection (6), the Inspector may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Inspector may take into account -

- (a) whether the
inquiries relate to
the possible breach
of a law or other
requirement which
has no close
parallel in The
Bahamas or involve
the assertion of a
jurisdiction not
recognised by The
Bahamas; and
- (b) the seriousness of

the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Inspector may decline to exercise its power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Inspector considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Inspector unless -

- (a) the Inspector has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or
- (b) the Inspector has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Inspector; and
- (c) the Inspector is satisfied that the assistance requested

by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) the Inspector is satisfied that information provided following the exercise of his power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Inspector it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Inspector shall immediately notify the Attorney-General with particulars of the request, and

shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(8) The Inspector may provide information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law to any other regulatory authority in The Bahamas where it considers such information may be relevant to the functions of such other regulatory authority.

(9) In this section-

"overseas regulatory authority" means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Inspector."

Amendment
of section
14 of the
principal
Act.

4. Section 14 of the principal Act is amended -
(a) by the insertion after subsection (3) of the following -

"(4) The following shall be exempt from the provisions of subsections (2)(b) and (3) -

(a) any financial institution regulated by the Central Bank of The Bahamas, The Securities Commission of The Bahamas, The Registrar of Insurance, or the Gaming Board; only

where the financial institution is instructing a licensee on behalf of its client;

- (b) a financial institution located in a jurisdiction specified in the First Schedule to the Financial Transactions Reporting Act, 2000 which is regulated by a body having equivalent regulatory and supervisory responsibilities as the Central Bank of The Bahamas, the Securities Commission of The Bahamas, The Registrar of Insurance, or the Gaming Board; only where the financial institution is instructing a licensee on behalf of its client;
- (c) a publicly traded company or mutual fund listed on The Bahamas International Stock Exchange or any other Stock Exchange prescribed by Regulations made under the Financial Transactions Reporting Act, 2000 and approved by the Securities Commission of The Bahamas;
- (d) a regulated mutual fund as defined in section 2(1) of the Mutual Funds Act, 1995 or a regulated mutual fund located in a

country specified in the First Schedule to the Financial Transactions Reporting Act, 2000 and regulated by a body having equivalent regulatory and supervisory responsibilities as the Securities Commission of The Bahamas.".

(b) by the renumbering of subsection (4) as subsection (5).

Amendment
of the
Schedule
to the
principal
Act.

5. Paragraph 11 of the Schedule to the principal Act is amended by the insertion after the words "the Bank and Trust Companies Regulation Act" of the words "or registered in a country specified in the First Schedule to the Financial Transactions Reporting Act, 2000".