

THE DEPOSIT INSURANCE ACT

ARRANGEMENT OF SECTIONS

PART I. *Preliminary*

1. Short title.
2. Interpretation.

PART II. *The Jamaica Deposit Insurance Corporation*

3. Establishment of the Corporation.
4. Principal objects of Corporation.
5. Functions of Corporation.
6. Report by Corporation.
7. Relationship with the Bank of Jamaica.
8. Insurance Act not applicable to Corporation.

PART III. *Financial*

9. Capital of Corporation.
10. Accounts and Audit.
11. Annual report.

PART IV. *Deposit Insurance*

12. Application by financial institutions for deposit insurance.
13. Insurance of Deposits.
14. Insurance of policy and certificate.
15. Cancellation of policy.
16. Appeal against cancellation.

PART V. *The Deposit Insurance Fund*

17. Deposit Insurance Fund.

*DEPOSIT INSURANCE**PART VI. Payments out of Fund*

18. Payments out of Fund.
- 18A. Payment out of Fund in relation to foreign currency account deposits.
- 18B. Cessation of accrual of interest on deposit accounts.
- 18C. Beneficial interest in trust and nominee accounts.
- 18D. Deposits of depositor with policyholders that subsequently amalgamate.
19. Persons entitled to payment.
- 19A. Payment by transferred deposit.
20. No payment to depositor who profited from insolvency of institution.

PART VII. General

21. Exemption from tax, stamp duty, etc.
22. Carrying on business, without insurance.
23. Offences by corporate officers.
24. Obligation for secrecy.
- 24A. Minister may amend monetary penalties.
25. Regulations.
26. Applications by existing institutions.

SCHEDULE

THE DEPOSIT INSURANCE ACT

Acts
3 of 1998,
36 of 1999,
1 of 2011.

[31st August, 1998.]

PART I. *Preliminary*

1. This Act may be cited as the Deposit Insurance Act.

Short title.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation.

“Bank” means the Bank of Jamaica established under the Bank of Jamaica Act;

“Board” means the Board of Directors of the Corporation appointed under the Schedule;

Schedule.

“Corporation” means the Jamaica Deposit Insurance Corporation established under section 3;

“deposit” means—

(a) a sum of money paid on terms—

(i) under which the sum will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and

(ii) which are not referable to the provision of property or services or to the giving of security, and for the purposes of this paragraph, money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if—

(A) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable

DEPOSIT INSURANCE

only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or

- (B) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
- (C) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise,

and includes any interest payable in respect of the sum of money;

- (b) a share in a building society, other than a capital share, a deferred share or a preference share;
- (c) such other liabilities as may be determined by the Minister, on the advice of the Board,

and for the purposes of this definition the terms “capital share” and “deferred share” shall have the meaning assigned to them respectively under the Bank of Jamaica (Building Societies) Regulations, 1995;

“financial institution” means—

- (a) a bank licensed under the Banking Act or a financial institution licensed under the Financial Institutions Act;
- (b) a building society licensed under the Building Societies Act; or
- (c) subject to subsection (3), any other person or undertaking whose business includes the accepting of deposits and who has been declared by the Minister under section 2 of the Bank of Jamaica Act to be a specified financial institution;

“functions” includes powers and duties;

“Fund” means the Deposit Insurance Fund established under this Act;

“government company” means a company registered under the Companies Act, being a company in which the Government or an agency of the Government, by the holding of shares, is in a position to direct the policy of that company;

“insurable deposit” means a deposit received or held by a policyholder from or on behalf of a depositor other than a deposit from—

1/2011
S. 2(a)(i).

(a) another policyholder;

(b) a statutory body or authority or government company;

(c) a Ministry, department or agency of the Government;

1/2011
S. 2(a)(iii).

(d) a Parish Council, the Kingston and St. Andrew Corporation or a Municipal Council;

1/2011
S. 2(a)(iii).

“insured deposit” means that portion of an insurable deposit which is covered by insurance under this Act;

“nominee” includes—

1/2011
S. 2(b).

(a) an agent;

(b) a guardian;

(c) a custodian; and

(d) the Supreme Court, or a Resident Magistrate’s Court in the case of property the value of which is within the monetary jurisdiction of that Court, pursuant to section 29(1) of the *Mental Health Act*;

“nominee account” means monies held on account by a nominee for the benefit of a principal or ward of the nominee, or of a minor or patient, as the case may be;

1/2011
S. 2(b).

“policyholder” means a financial institution to which a policy of deposit insurance has been issued pursuant to section 14.

1/2011
S. 2(b).

“trust account” includes monies held on account for the purpose of a trust.

(2) For the purposes of this Act a financial institution is in a state of financial distress if—

- (a) it becomes insolvent that is to say, a winding up order has been made by a court against that institution or a resolution for a creditor’s voluntary winding up has been passed;
- (b) there exists in relation to the institution any condition precedent to the exercise of the powers of the Minister in the interest of and for the protection of depositors, to take such steps or apply such sanctions as authorized under the Banking Act, Bank of Jamaica Act, Building Societies Act, or Financial Institutions Act, as the case may require;
- (c) the institution has failed to satisfy prudential criteria and minimum solvency standards prescribed by or under the Banking Act, Bank of Jamaica Act, Building Societies Act or Financial Institutions Act, as the case may be; or
- (d) it is unable to pay its debts.

(3) The Minister may, by order, exempt from the application of this Act a person or undertaking referred to in paragraph (c) of the definition of “financial institution” in subsection (1).

PART II. *The Jamaica Deposit Insurance Corporation*

Establishment
of the Corpo-
ration.

3.—(1) There is hereby established for the purposes of this Act, a body to be called the Jamaica Deposit Insurance Corporation which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

Schedule.

(2) The provisions of the Schedule shall have effect as to the constitution of the Corporation and otherwise in relation thereto.

4.—(1) The principal objects of the Corporation are to establish and manage a scheme for the insurance of deposits or parts thereof against the risk of loss.

Principal
objects of
Corpora-
tion.

(2) In carrying out the objects referred to in subsection (1) the Corporation shall take all such measures as may be necessary to ensure that there is the least possible exposure of the Corporation of loss.

5.—(1) The functions of the Corporation shall be to carry out such activities as may be necessary to give effect to the objects specified in section 4, and without limiting the generality of the foregoing such functions shall include the duty—

Functions
of Corpo-
ration.

(a) to provide, in accordance with the provisions of this Act, insurance against the loss of deposits;

(b) to manage and administer the Fund or any other income of the Corporation;

(c) to levy premiums for the Fund and fees or other amounts payable in accordance with the provisions of this Act.

(2) For the purpose of the performance of its functions under this Act, and subject to the provisions of this Act, the Corporation may do anything and enter into any transaction which, in the opinion of the Corporation, is necessary or incidental to its functions; and in particular, and without limiting the generality of the foregoing the Corporation may—

(a) make such enquiries of a policyholder as to the conduct of its affairs as may be prescribed;

(b) make recommendations to the Minister for action to be taken in accordance with the Banking Act, Bank of Jamaica Act, Building Societies Act or Financial Institutions Act, as the case may require, in respect of any policyholder which appears to the Corporation to be in financial distress;

(c) in accordance with such rules as may be prescribed, act as receiver, liquidator, or judicial manager of any policyholder, or of its holding company or subsidiary

which becomes insolvent, or appoint any person to act as such; and in acting in any such capacity may arrange for the restructuring of a policyholder whether by merger with or acquisition by another financial institution or otherwise;

- (d) deduct from payments made to a depositor out of the Fund in respect of an insured deposit, arrears in respect of any credit facilities, deposits pledged as collateral, called-in guarantees and unsecured overdrafts due from the depositor to the policyholder in question;
- (e) subject to section 17—
 - (i) make loans or advances with security;
 - (ii) borrow or raise funds;
- (f) guarantee, indemnify or become liable for the payment of monies or the performance of any obligation thereto.

1/2011
S. 3(b).

1/2011
S. 3(b).

Report by
Corporation.

6. The Corporation shall—

- (a) furnish to the Minister, such operating plans and forecasts, returns, accounts and other information as the Minister may require with respect to the property and activities of the Corporation; and
- (b) afford to the Minister facilities for verifying such information in such manner and at such times as he may reasonably require.

Relationship
with the Bank
of Jamaica.

7.—(1) In carrying out its functions under paragraph (a) or (c) of subsection (1) of section 5, the Corporation shall act after consultation with the Bank.

(2) For the purposes of the performance of its functions—

- (a) the Corporation shall be entitled to receive from the Bank upon request, copies of its on-site examination reports on policyholders which fall under its purview and all material information relating to the safety and financial soundness of policyholders, including reports and returns submitted by them and directions issued by the Bank to them; and
- (b) the Corporation shall make available to the Bank any report or information which may be utilized by the Bank to enhance the development of sound financial practice in Jamaica.

(3) An appointment by the Corporation of a receiver, liquidator, or judicial manager under paragraph (c) of subsection (2) of section 5 shall not be made except with the approval of the Minister.

8. The Insurance Act shall not apply to the Corporation.

Insurance Act not applicable to Corporation.

PART III. *Financial*

9.—(1) Subject to the provisions of this section, the authorized capital of the Corporation shall be the sum of one million dollars which shall be subscribed by the Government.

Capital of Corporation.

(2) The Minister may, after consultation with the Corporation, from time to time by order subject to negative resolution, increase the amount of the authorized capital of the Corporation, notification whereof shall be published in the *Gazette*.

10.—(1) The Corporation shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

Accounts and audit.

(2) Transactions relating to the administration of the Fund under this Act shall be distinguished from transactions relating to other activities of the Corporation and shall be recorded and dealt with separately in the annual accounts and reports of the Corporation.

(3) The accounts of the Corporation shall be audited by an auditor or auditors appointed annually by the Corporation and approved by the Minister.

(4) So soon as the accounts of the Corporation have been audited, the Corporation shall send the statement of

its accounts referred to in subsection (1) to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Corporation.

(5) The auditors' fees and any expenses of the audit shall be paid by the Corporation.

(6) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Corporation.

Annual
report.

11.—(1) The Corporation shall, not later than three months after the end of each financial year, cause to be made and transmitted to the Minister, a report dealing generally with the activities of the Corporation during the preceding financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditors' report thereon to be laid on the Table of the House of Representatives and of the Senate.

(3) Copies of the Corporations report together with its annual statement of accounts and the auditors' report on that statement or on the accounts of the Corporation shall be published in such manner as the Minister may direct.

PART IV. *Deposit Insurance*

Application
by financial
institutions
for deposit
insurance.

12.—(1) Every financial institution shall apply in writing in the prescribed form and manner to the Corporation for deposit insurance.

(2) A policy of deposit insurance shall be issued by the Corporation to a financial institution which is duly licensed to carry on the business of accepting deposits and which has made an application under subsection (1) and has paid the initial premium pursuant to section 14.

13. The Corporation shall insure the insurable deposits of a depositor with a policyholder on the basis of the provisions set out in this Part and in section 18.

Insurance
of deposits.

14.—(1) Where a financial institution is notified that its application for deposit insurance has been approved it shall pay an initial premium of the amount prescribed pursuant to section 25.

Insurance of
policy and
certificate.
1/2011
S. 4(a).

(2) On receipt of the initial premium the Corporation shall issue to the relevant financial institution a policy of deposit insurance and a certificate to that effect, a copy of which certificate shall be displayed in a prominent place in each place of business of the financial institution.

(3) [*Deleted by Act 1 of 2011.*]

(4) Subject to satisfactory compliance with the requirements of this Act and of the enactment under which the policyholder is licensed, a policy issued under subsection (2) shall be renewable annually on or before the anniversary of its issue (in this Act called the “policy due date”) on payment of an annual premium by a policyholder which shall be a percentage of the total value of insurable deposits held at the 31st December of the year immediately preceding and may be paid in such instalments as the Corporation may prescribe.

(5) Where any premium or part thereof payable by a policyholder remains unpaid after the policy due date, the policyholder shall be liable to pay to the Corporation a penalty in respect of such unpaid amount at a rate equivalent to the rate applicable to overdraft facilities extended to financial institutions by the Bank.

(6) The Corporation, with the approval of the Minister, may prescribe different percentages of insurable deposits and different methods of payment for different categories of financial institution.

Cancellation of
policy.

15.—(1) Subject to the provisions of this section, the Corporation may, by notice in writing to a policyholder, cancel a policy issued under section 14 in any of the following circumstances—

(a) when the Corporation and the Bank are of the opinion that the policyholder is or is about to become insolvent:

Provided that where on any occasion there is no concurrence between the Corporation and the Bank, the Minister shall make a determination as to the action to be followed and the Corporation shall act in accordance with such determination;

(b) when the policyholder's licence to carry on its business operations has been revoked by the Minister;

(c) when the Bank confirms in writing that by reason of insolvency, the policyholder has ceased to accept deposits.

(2) The Corporation shall notify the Minister of the action it is proposing to take under subsection (1) and shall not take such action if it is advised by the Minister that taking the action proposed would not be in the public interest.

(3) Before taking action under subsection (1) the Corporation shall—

- (a) not later than twenty-one days before it intends to take such action, notify the policyholder in writing of the intention, stating the reasons therefor;
- (b) afford to the policyholder an opportunity at a date and time specified in the notice (being not less than seven days after the date thereof) to show cause why the policy should not be cancelled.

(4) If a policyholder who is notified under subsection (3) fails to show cause why the policy should not be cancelled the Corporation shall—

- (a) notify the policyholder in writing of—
 - (i) its intention to cancel the policy as from a date specified in the notice; and
 - (ii) the right of appeal conferred by section 16;
- (b) send a copy of the notice referred to in paragraph (a) to the Minister and to the Bank.

(5) Subject to the provisions of subsection (2), the Corporation shall cancel a policy if no appeal is made by a policyholder under section 16 or if an appeal by a policyholder under that section is dismissed.

(6) Where a policy issued under section 14 is cancelled, the Corporation forthwith shall notify the depositors in writing of the fact and make public notification of the cancellation of the policy in such news media as it may consider appropriate.

(7) Notwithstanding the cancellation of a policy, the amount of any insured deposit on the date of cancellation less any subsequent withdrawals therefrom, shall continue to be so insured for a period of eighteen months from the date of such cancellation.

Appeal
against can-
cellation.

16.—(1) A policyholder notified under section 15 of the intention of the Corporation to cancel its policy may, within three days of the date of receipt of the notice, appeal in writing to the Minister against the decision of the Corporation.

(2) The Minister shall hear an appeal within seven days after it is lodged and on hearing such appeal the Minister may—

- (a) dismiss the appeal; or
- (b) direct the Corporation to withdraw the notice of the intention to cancel the policy.

PART V. *The Deposit Insurance Fund*

Deposit
Insurance
Fund.

17.—(1) There is hereby established a fund to be known as the Deposit Insurance Fund—

- (a) into which shall be paid—
 - (i) initial, annual and other premiums paid by policyholders pursuant to this Act or any regulations made hereunder;
 - (ii) such contributions by way of advances which may be made by the Government from time to time;
 - (iii) any amounts representing the proceeds of investments made out of the Fund;
 - (iv) any amounts borrowed by the Corporation for the Fund;
 - (v) amounts realized from the liquidation of assets of policyholders;
 - (vi) any amount representing the repayment of loans or advances made out of the Fund;
- (b) upon which shall be charged—
 - (i) payments to depositors made pursuant to section 19;

1/2011
S. 5(a)(i).

- (ii) the payment of principal and interest in respect of moneys borrowed by the Corporation for the purposes of the Fund and paid into the Fund;
- (iii) any other payments legally due to a policyholder or third party arising out of the administration of the Fund;
- (iv) the payment of expenses incurred by the Corporation in the exercise of its functions under this Act;
- (v) any loans or advances made out of the Fund.

1/2011
S. 5(a)(ii).
1/2011
S. 5(b)(ii).

(2) The Corporation may invest any part of the Fund in one or more of the following, namely—

- (a) securities issued or guaranteed by the Bank;
- (b) securities issued by the Government or in such foreign securities as may from time to time, be approved by the Board; or
- (c) any other investment approved by the Minister, upon the recommendation of the Board.

(3) Moneys comprising the Fund (not invested as aforesaid) may be held in the Bank or in such bank or banks as the Corporation may, from time to time, determine.

(4) The Corporation shall, from time to time, but in any event not less often than once in each year review the size of the Fund having regard to its liabilities and potential liabilities and taking into account the advice of duly qualified professionals and, as necessary, make such recommendation to the Minister as it deems appropriate.

PART VI. *Payments Out of Fund*

18.—(1) Subject to the provisions of this Part, the Corporation shall make a payment out of the Fund in respect of an insured deposit up to a maximum of \$600,000 in Jamaican currency to every depositor of a policyholder in the following circumstances—

Payments
out of Fund.
L.N.
95²A/2007.

- (a) the policyholder's licence to carry on its business operations has been revoked by the Minister;
- (b) a winding up order has been made by a court against the policyholder or a resolution for a creditor's voluntary winding up has been passed;
- (c) the policyholder is unable, by reason of an order of a court or of any action taken by the Minister or the Bank, to make any payment in respect of the deposit;
- (d) the policy of deposit insurance issued to the policyholder has been cancelled subsequent to the making of the insurable deposit.

(2) Where the Corporation is obliged to make payments out of the Fund on the occurrence of any event specified in paragraph (a), (b), (c) or (d) of subsection (1), such payments shall commence not later than three months after the occurrence of that event (hereinafter referred to as the specified date).

(3) If payments are not commenced by the specified date, the Corporation shall be liable to pay interest thereon, in respect of the period commencing on the specified date and ending on the date of payment, at a rate equivalent to the average rate of interest payable by commercial banks on savings accounts at the date on which the obligation to make the payments arose.

(4) Where a deposit is held in the names of two or more persons, each such person shall, for the purposes of subsection (1), be deemed to be entitled to payment out of the Fund of an amount arrived at by dividing the insured deposit by the number of persons as aforesaid unless there is, at the specified date, an express provision to the contrary in the records of the policyholder.

(5) Where a depositor holds more than one deposit in a policyholder—

- (a) in different capacities and with different rights in relation thereto, each such deposit shall be treated as a

(b) in the same capacity and with the same rights, all such deposits shall be treated as a single deposit for the purposes of subsection (1):

(6) The Corporation shall be discharged from all liability to the extent of the amount of any payment made by it in respect of any insured deposit.

(7) Where the Corporation makes a payment under this section to a depositor, the Corporation—

(a) is subrogated, to the extent of the amount of that payment, to all rights and interests of the depositor as against the policyholder; and

(b) may maintain an action in respect of those rights and interests in the name of the depositor or in the name of the Corporation.

(8) Where the Corporation makes a payment under this section in respect of any depositor with a policyholder that is being or has been wound up, the Corporation ranks *pari passu* with other unsecured creditors.

(9) The Minister may by order published in the *Gazette*, and subject to negative resolution amend subsection (1) so as to increase the maximum amount specified therein.

18A.—(1) Where the Corporation is obliged to make payment out of the Fund in respect of an insured deposit that is in a currency other than Jamaican currency, the equivalent amount in Jamaican currency of the foreign currency payment amount calculated in accordance with subsection (2) shall be paid out.

Payment
out of Fund
in relation
to foreign
currency
account
deposits.
1/2011
S. 7.

(2) The equivalent amount referred to in subsection (1) shall be calculated in accordance with the weighted average selling rate of the foreign currency payable by the Bank at the date on which the circumstance that obliged the payment occurred.

Cessation of
accrual of
interest on
deposit
accounts.
1/2011
S. 7.

18B. Where the Corporation is obliged to make payments out of the Fund on the occurrence of any event specified in paragraphs (a), (b), (c) or (d) of subsection (1) of section 18, interest on deposits shall cease to accrue from the date on which the specified event occurred, whether or not the date of maturity of the deposit is after the date of the specified event.

Beneficial
interest in
trust and
nominee
accounts.
1/2011
S. 7.

18C.—(1) Where a deposit with a policyholder is held in a trust account or in a nominee account—

- (a) a beneficiary under the trust or nominee arrangement relating to the deposit account shall be regarded as a depositor of the policyholder; and
- (b) the rights of that depositor in that deposit account shall be treated as distinct from his rights in any other deposit held with the policyholder in any other capacity.

(2) For the purposes of payment out of the Fund in respect of an insured deposit—

- (a) the policyholder shall indicate on its records—
 - (i) for a trust account, that the account is held by the trustee for the named beneficiaries;
 - (ii) for a nominee account, that the account is held by the nominee for the named beneficiaries; or
 - (iii) for a joint account, the names of the individual joint owners;
- (b) the trustee or the nominee, as the case may be, shall—
 - (i) maintain such detailed records as may be prescribed by the Corporation;
 - (ii) submit to the policyholder such records as may, from time to time, be required by the policyholder; and

(iii) when so required by the policyholder, file a statutory declaration, certifying the accuracy of the records submitted under subparagraph (ii); and

(c) in maintaining and submitting any record on the trust accounts and the nominee accounts required under paragraph (b), the trustee or the nominee, as the case may be, shall ensure that the records are—

(i) true, correct and complete; and

(ii) free of false or deceptive information,

and the policyholder shall rely on such records for the purposes of paragraph (a).

(3) The trustee or the nominee, as the case may be, shall indemnify the policyholder in the event of any legal proceedings relating to such records which do not comply with subsection (2)(c).

(4) The Corporation shall not separately insure deposits held in a trust account or in a nominee account for any beneficiary if, in the opinion of the Corporation, the trust account or the nominee account exists primarily for the purpose of obtaining or increasing deposit insurance.

18D.—(1) This section applies where a depositor holds insurable deposits with two or more policyholders that—

(a) subsequently merge; and

(b) continue operations as one policyholder.

(2) The insurable deposits of the depositor in the policyholders concerned that existed before the amalgamation may, for a period of up to two years after the merger, be treated as separate insurable deposits.

Deposits of
depositor
with policy-
holders that
subsequently
amalgamate.
1/2011
S. 7.

Persons
entitled to
payment.

19.—(1) Payments out of the Fund shall be made—

- (a) to persons in whose names deposits are listed in the records of the policyholder concerned on production of evidence of deposit ownership satisfactory to the Corporation;
- (b) to persons having a right to receive deposits or part thereof, as have been notified to the policyholder by the depositor concerned;
- (c) to such other persons who establish to the satisfaction of the Corporation, or failing that, to the satisfaction of a court of competent jurisdiction that they are either depositors of the policyholder concerned or have a right to receive deposits or part thereof,

and claims for payment may be made by depositors or such other persons, either in person or in writing supported by affidavit.

(2) Depositors who have deposits with a policyholder in excess of the insured deposit shall upon receiving payment of the insured deposit be issued with a certificate by the Corporation for the amount in excess of the insured deposit.

(3) Persons entitled to payment pursuant to subsection (1) may submit claims for payment out of the Fund up to eighteen months after the date on which the Corporation becomes obliged to make a payment under subsection (1) of section 18 in respect of the policyholders with which the deposit was made.

(4) Claims for payment out of the Fund which are made after the time specified in subsection (3) shall be made against the assets of the policyholder and shall be paid *pro rata* as the assets of the policyholder are collected and sold.

(5) Persons who have credit facilities outstanding to policyholders in respect of which the Corporation is obliged to make a payment under subsection (1) of section 18 shall make payments to the Corporation in respect of such credit facilities on the same terms as were agreed with the policyholders.

19A.—(1) Where the Corporation is obliged to make payments out of the Fund pursuant to section 18, the payments in respect of the policyholder concerned may be made, by way of transferred deposit held by another policyholder, in such manner as may be determined by the Corporation.

Payments
by trans-
ferred
deposit.
1/2011
S. 8.

(2) A depositor who is paid in accordance with subsection (1), may access his insured deposit payment from a branch location of the other policyholder who holds the transferred deposit, or in accordance with the terms of the deposit account agreement entered into between the other policyholder and the Corporation.

(3) An agreement made pursuant to subsection (2)(b), shall not exclude the making of a payment by electronic or other similar means.

(4) In this section “transferred deposit” means an insurable deposit transferred from one policyholder to another policyholder.

20.—(1) Where the Corporation is satisfied that a depositor has been a party to or has benefited from the circumstances which gave rise to the insolvency of a policyholder, the Corporation shall not make any payment out of the Fund to that deposits.

No payment
to depositor
who profited
from insol-
vency of
institution.

(2) Subsection (1) shall not apply to a depositor who acted solely in his capacity as a professional adviser to the policyholder and whose *bona fides* are not in question.

PART VII. *General*

21.—(1) The income of the Corporation and the earnings of the Fund shall be exempt from income tax.

Exemptions
from tax,
stamp duty,
etc.

(2) Any instrument relating to the administration of this Act and executed by or on behalf of the Corporation shall be exempt from stamp duty and recording and registration fees.

(3) There shall be exempt from taxation under the Transfer Tax Act any transfer by the Corporation of property belonging to it or of any right or interest created in, over or otherwise with respect to any such property.

Carrying on
business,
without
insurance.
1/2011
S. 9.

22. Any financial institution that carries on the business of accepting deposits without being the holder of a valid policy of deposit insurance commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars;
- (b) on conviction on indictment in a Circuit Court to a fine.

Offences by
corporate
officers.

23.—(1) Where an offence under this Act committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any such director, manager, secretary or other officer or person to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other officer or person as aforesaid, as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them act.

Obligation
for secrecy.

24.—(1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with as secret and confidential all documents, information and records relating to—

- (a) any matter being dealt with by the Corporation;
- (b) any policyholder,

and shall upon assuming such duty or employment make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every such person as is referred to in subsection (1) having possession or control over any such documents, information or records, who at any time communicates or attempts to communicate such information or anything contained in such documents or records to any person—

(a) other than a person to whom he is authorized by the Corporation or the Minister to communicate it; or

(b) otherwise than for the purposes of this Act,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding eighteen months or to both such fine and imprisonment.

24A. The Minister may, by order, subject to affirmative resolution, amend the monetary penalties specified in this Act.

Minister
may amend
monetary
penalties.
1/2011
S. 10.

25.—(1) The Minister may, on the recommendation of the Corporation, make regulations generally for giving effect to the provisions of this Act, and in particular regulations may be made—

Regulations.

(a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;

(b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund;

(c) for the keeping of records so as to ensure the identification of trust accounts, nominee accounts and joint accounts, and of beneficial interests in deposits, for the purposes of facilitating deposit insurance payments and computation in relation thereto.

1/2011
S. 11(a)(ii).

(2) Regulations made under subsection (1) shall be subject to negative resolution.

(3) Notwithstanding section 29 of the *Interpretation Act*, regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding five hundred thousand dollars or of imprisonment for a term not exceeding six months or of both such fine and imprisonment.

1/2011
S. 11(b).

Applications
by existing
institutions.

26.—(1) A financial institution which immediately before the 31st day of August, 1998, was duly carrying on the business of accepting deposits shall within thirty days after that date, apply for a policy of deposit insurance under this Act.

(2) An institution which has made an application in accordance with subsection (1) shall be entitled to continue to carry on such business until the application for a policy has been granted or refused, as the case may be, or the application is withdrawn.

SCHEDULE

(Sections 2 and 3)

BOARD OF DIRECTORS

Establishment
and constitu-
tion of
Board.

1. There shall be a Board of Directors of the Corporation which, subject to the provisions of this Act, shall be responsible for the policy and general administration of the Corporation and the management of the Fund and shall consist of the following—

36/1999
S. 2.

- (a) three *ex officio* directors, namely the Governor of the Bank or his nominee, the Financial Secretary or his nominee and the chief executive officer of the Corporation or his nominee;
- (b) four other directors appointed by the Minister by instrument in writing (hereinafter referred to as appointed directors) as follows—
 - (i) one of whom the Minister shall appoint to be Chairman for a period not exceeding three years;
 - (ii) the other three directors shall be appointed for a period not exceeding two years.

2. The Chairman and the other appointed directors shall be eligible for reappointment for two consecutive periods. Chairman.

3. A person may not be appointed or remain a director who—

- (a) is a member of either House of Parliament;
- (b) is or has during the three years preceding such appointment been a director, officer, employee or auditor of a policyholder;
- (c) is a shareholder holding more than 10% of the voting shares of a policyholder.

Qualifying
criteria.

4.—(1) A director, other than the Chairman, may resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman, and from the date of receipt by the Minister of such instrument, that director shall cease to hold office. Resignation.

(2) The Chairman may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of receipt by the Minister of such instrument.

5. The Minister may terminate the appointment of any director who— Termination
of appoint-
ment.

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with or suspends payment to his creditors;
- (c) is convicted and sentenced, to a term of imprisonment or to death;
- (d) is convicted of any offence involving dishonesty;
- (e) is reported to the Minister by a majority of the Board as failing to carry out the functions imposed or conferred on him under this Act;
- (f) becomes disqualified to hold office by virtue of paragraph 3.

6.—(1) The Board shall meet as often as it considers necessary and at such times and places as it determines, provided that it shall meet at least six times in every calendar year. Meetings.

(2) Four directors shall constitute a quorum.

(3) The Chairman, or in the event of his absence or inability to act, such director as the other directors elect, shall preside at the meetings of the Board.

(4) The decision of the Board shall be by a majority of votes and the Chairman (or other person presiding over the meeting) shall have both an original and a casting vote.

Validity of proceedings.

7. The validity of any proceedings of the Board shall not be affected by any vacancy amongst the directors or by any defect in the appointment of a director.

Publication of membership.

8. The names of all members of the Board as first constituted and any change in the membership thereof shall be published in the *Gazette*.

Regulating proceedings.

9. Subject to the provisions of this Schedule the Board may regulate its own proceedings.

Seal.

10.—(1) The seal of the Corporation shall be authenticated by the signatures of the Chairman or one director of the Corporation authorized to act in that behalf and the secretary of the Board.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the chairman or any director authorized to act in that behalf or the secretary of the Board.

Remuneration.

11. The Chairman and other directors shall be paid such remuneration whether by way of honorarium, salary or fees, and such allowances, and on such conditions, as the Board may decide subject to the approval of the Minister.

Office not public office.

12. The office of Chairman or of a director of the Board shall not be a public office for the purpose of Chapter V of the Constitution.

Indemnity against suit.

13. No action, suit, prosecution or other proceedings shall be brought or instituted against the Corporation or against any director, officer, employee or any person acting on behalf of the Corporation in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

STAFF

Chief executive officer and other staff.

14.—(1) The Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, a chief executive officer, a secretary and such other officers, agents and employees as it deems necessary for the proper carrying out of its functions under this Act.

(2) The chief executive officer shall be responsible to the Board for the day-to-day administration of the business of the Corporation and for the execution of the policy of the Corporation.

(3) The Governor-General may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of the Government to any office with the Corporation and any public officer so appointed shall, in relation to any pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

(4) It shall be lawful for the Corporation, with the approval of the Minister—

(a) to enter into arrangements respecting schemes whether by way of insurance policies or not;

(b) to make regulations,

for pensions, gratuities and other retiring or disability or death benefits relating to employees of the Corporation and such arrangements or regulations may include provisions for the grant of benefits to the dependants or legal personal representatives of such employees.