



BERMUDA

DEPOSIT INSURANCE ACT 2011

2011 : 36

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WHEREAS it is expedient to make provision to promote stability in Bermuda's financial system and economy by protecting insured depositors through prompt payment of compensation in the event of bank failure;

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:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Deposit Insurance Act 2011.

Interpretation

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

“appointed day” means the date or dates of the coming into operation of the provisions of this Act as provided in section 44;

“appointed director” means a director appointed by the Minister under section 6(2);

“Authority” means the Bermuda Monetary Authority established under section 2 of the Bermuda Monetary Authority Act 1969;

“bank” means an institution that holds a banking licence or a deposit company licence issued under section 14 of the Banks and Deposit Companies Act 1999 ;

“BDIC” means the Bermuda Deposit Insurance Corporation established under section 4;

“books” includes any record, register, document or other record of information, and any account or accounting record, however compiled, recorded or stored, whether in written or printed form or on microfilm or in electronic form or otherwise;

“Chief Executive Officer” means the Chief Executive Officer of the BDIC appointed under section 8 and includes any person acting in that capacity;

“Chairman” means the Chairman of the board of directors of the BDIC appointed by the Minister under section 6;

“client account” in relation to a depositor, means an account maintained by the depositor with a Scheme member for the purpose of holding moneys held by the depositor for a client of the depositor, whether or not other moneys may be held in the account;

“credit union” means a body corporate licensed as a credit unions under section 9 of the Credit Union Act 2010;

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“deposit” has the meaning given in section 3 of the Banks and Deposit Companies Act 1999;

“depositor” means any person who is entitled to repayment of a deposit, whether or not the deposit is made by him;

“effective date” means the date appointed by the Minister under section 15(3);

“Fund” means the Deposit Insurance Fund established under section 12;

“insured deposit” has the meaning as specified in subsection (2);

“insured deposit base” has the meaning given in section 3;

“insured depositor” means any of the following depositors—

- (a) an individual;
- (b) an individual who places a deposit in an account with a Scheme member in the name of a partnership, an unincorporated association or sole proprietorship;
- (c) a charitable organisation as defined in section 1 of the Charities Act 1978, which is registered under section 4 of that Act;
- (d) a company that is registered in the Register of Small Businesses maintained by the Bermuda Economic Development Corporation under the Bermuda Economic Development Corporation Act 1980; and
- (e) such other person or class of persons as may be prescribed;

“investment” has the meaning given in section 3(1)(a) of the Investment Business Act 2003;

“liquidator” means a liquidator appointed under section 170 of the Companies Act 1981;

“Minister” means the Minister of Finance;

“officer” in relation to a body corporate, means any director, senior executive, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity;

“premium year”, in relation to the determination and payment of premium contributions, means such period as may be prescribed as a premium year under section 16(3);

“prescribed” means prescribed in rules made by the BDIC under section 9;

“quantification date” means—

- (a) the date on which a Scheme member is wound up; or
- (b) where a Scheme member is not wound up, the date on which the notice of payment of compensation is published in the Gazette under section 23(2);

“relevant insured deposits” has the meaning given in section 3(2);

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“Scheme” means the Deposit Insurance Scheme established under section 10;

“Scheme member” means a member of the Scheme.

(2) In this Act, “insured deposit” means—

- (a) any of the following deposits in Bermuda Dollars, including any accrued interest for each such deposits, placed with a Scheme member in any of its branches in Bermuda—
 - (i) a deposit in a savings account;
 - (ii) a deposit in a fixed deposit account;
 - (iii) a deposit in a current account; and
 - (iv) a deposit in a credit union members’s share account;
- (b) any other type of moneys placed with a Scheme member as may be prescribed, but does not include—
 - (i) any deposit which is pledged, charged or secured as collateral; and
 - (ii) in a case where there is a contractual set-off agreement between a Scheme member and a depositor, any deposit or part thereof placed with the Scheme member—
 - (A) which is set aside in respect of any debt owing by the depositor to that Scheme member; and
 - (B) which, after it has been set aside, cannot be withdrawn by the depositor unless and until the debt is fully paid up.

[“Insured depositor” definition updated in paragraph (d) after Royal Assent to refer to “Bermuda Economic Development Corporation” made under the Attorney-General’s powers to update the legislative database set out in the Computerization and Revision of Laws Act 1989 s. 6(2)]

Meaning of “insured deposit base” and “relevant insured deposits”

3 (1) In this Act, “insured deposit base”, in relation to a Scheme member, means the aggregate of the amount of the relevant insured deposits of all the insured depositors of the Scheme member.

(2) For the purposes of subsection (1), “relevant insured deposits”, in relation to an insured depositor of a Scheme member, means the aggregate of the amount of any insured deposits placed with the Scheme member and held by that insured depositor in his own right or in his own right jointly with one or more persons in a joint account.

(3) For the purposes of subsection (2)—

- (a) a reference to an insured deposit includes a reference to part of the insured deposit; and

- (b) where an insured depositor holds an insured deposit in his own right jointly with one or more depositors in a joint account, each of the depositors, whether or not he is an insured depositor, shall be deemed to have an equal share in the insured deposit unless there is an express provision to the contrary in the books of the Scheme member.

PART 2

BERMUDA DEPOSIT INSURANCE CORPORATION

Establishment of the Bermuda Deposit Insurance Corporation

4 (1) There is established a body corporate to be known as the Bermuda Deposit Insurance Corporation ('BDIC') .

(2) The BDIC has perpetual succession and a common seal and may sue and be sued in its corporate name.

[Section 4 effective 31 December 2011 by BR 75 / 2011 para. 2]

Objects, functions and powers of BDIC

5 (1) Subject to the provisions of this Act, the objects of the BDIC shall be—

- (a) to administer the Scheme; and
- (b) to administer and manage the Fund.

(2) Without prejudice to the generality of subsection (1), the functions of the BDIC shall include the following—

- (a) to collect premium contributions levied on Scheme members;
- (b) to make prompt payments of compensation in respect of insured deposits to insured depositors out of the Fund after the BDIC has determined the eligibility and entitlement of the depositors;
- (c) to make interim payments of compensation out of the Fund to insured depositors of such amounts as the BDIC considers appropriate;
- (d) to claim from a failed Scheme member for reimbursement of the amount of compensation paid to the insured depositors concerned out of the Fund, together with any interest accrued thereon;
- (e) to claim payment from the liquidator or provisional liquidator of a failed Scheme member, out of the assets of the failed Scheme member, for reimbursement of the amount of compensation paid to the insured depositors concerned out of the Fund, together with any interest accrued thereon; and
- (f) to educate the public about the Scheme.

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(3) The BDIC shall have the power to do anything for the purpose of discharging its functions under this Act or any other statutory provision, or which is incidental or conducive to the discharge of those functions.

Appointment of board of directors

6 (1) There shall be a board of directors of the BDIC appointed by the Minister, which shall consist of—

- (a) a Chairman;
- (b) the Chief Executive Officer;
- (c) the Chief Executive Officer of the Authority;
- (d) the officer of the Bermuda Monetary Authority responsible for the supervision of Scheme members;
- (e) the Financial Secretary;
- (f) not less than two but not more than four other directors.

(2) The Minister shall appoint the Chairman and the directors referred to in subsection (1)(f) from amongst persons with proven experience in banking or financial services.

(3) Schedule 1 shall have effect with respect to the tenure and qualifications of appointed directors and with respect to the procedure for meetings of the board.

[Section 6 effective 31 December 2011 by BR 75 / 2011 para. 2]

Salaries, fees and allowances payable to Chairman and directors

7 There shall be paid to the Chairman and appointed directors out of the Fund such salaries, fees and allowances as the Minister may, from time to time, determine.

[Section 7 effective 31 December 2011 by BR 75 / 2011 para. 2]

Appointment of Chief Executive Officer, officers and employees, etc.

8 (1) The board shall appoint a Chief Executive Officer on such terms and conditions as the board may determine.

(2) The Chief Executive Officer shall be responsible to the board for the proper administration and management of the functions and affairs of the BDIC in accordance with the policies, procedures, and directions established by the board.

(3) The board may appoint any other person to perform the duties of the Chief Executive Officer whenever the Chief Executive Officer is unable to perform his duties for any period because of absence from Bermuda, illness or any other reason.

(4) The BDIC may, from time to time, appoint and employ, on such terms and conditions as it may determine, such other officers, employees, consultants and agents as may be necessary for the performance of its functions.

[Section 8 effective 31 December 2011 by BR 75 / 2011 para. 2]

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Rules by BDIC

9 (1) The BDIC may make rules for any matter relating to its functions under this Act or for any matter which may be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may provide for—

- (a) the manner and method of collection of premium contributions and late payment fees;
- (b) the disclosure by Scheme members as to whether their financial products are insured deposits and the manner of such disclosure;
- (c) the particulars to be recorded in, or in respect of, books kept by Scheme members for the purpose of computing the amount of insured deposits placed with the Scheme members;
- (d) the manner in which compensation is to be paid to insured depositors from the Fund; and in particular –
 - (i) the person to whom, or the account into which, payment of compensation is to be made for the benefit of an insured depositor who is entitled to compensation under this Act;
 - (ii) the payment of compensation in respect of a depositor holding insured deposits in different accounts; and
 - (iii) the payment of compensation into an equivalent account with another Scheme member and for such compensation to be held in that account in a manner equivalent to the manner of holding of the original insured deposit;
- (e) the collection from any Scheme member by the BDIC of any information in relation to its insured deposits and insured depositors for the purpose of computing the premium which is to be paid by Scheme members and the amount of compensation which is to be paid to the insured depositors.

(3) The BDIC may at any time, amend or revoke the rules in whole or part made under this section.

(4) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Rules made under this section.

(5) The BDIC shall publish the rules in such manner as it considers appropriate to bring them to the attention of Scheme members and the public.

(6) If the BDIC proposes to make a Rule under this section, it shall publish a draft of the Rule in such manner as it considers most appropriate for the purpose of bringing it to the attention of the public.

(7) The draft must be accompanied by—

- (a) an explanation of the purpose of the proposed Rule; and

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- (b) a notice that representation about the proposals may be made to the BDIC within a specified time being not more than 28 days from the date of publication.

(8) Before making the proposed Rule the BDIC must have regard to any representations made to it in accordance with subsection (7).

[Section 9 effective 31 December 2011 by BR 75 / 2011 para. 2]

PART 3

DEPOSIT INSURANCE SCHEME

Establishment of Deposit Insurance Scheme

10 (1) There shall be established a scheme to be called the Deposit Insurance Scheme for the benefit of insured depositors in respect of their insured deposits placed with Scheme members.

(2) The object of the Scheme is to provide for compensation payable from the Fund to insured depositors, in accordance with this Act and Rules, in respect of their insured deposits placed with Scheme members.

(3) The Scheme shall be administered by the BDIC in accordance with this Act.

Membership of Scheme

11 (1) Every bank and every credit union shall be a Scheme member as from the date as provided in subsection (2) with respect to a bank, and as from the date as provided in subsection (3) with respect to a credit union.

(2) Every bank that is licensed by the Authority—

- (a) immediately before the appointed day, shall be deemed to be a Scheme member from the appointed day; or
- (b) on or after the appointed day, shall be a Scheme member from the date on which its licence is granted.

(3) Every credit union that is licensed by the Authority—

- (a) immediately before the appointed day shall be deemed to be a Scheme Member from the date on which its licence is granted; or
- (b) on or after the appointed day, shall be a Scheme member from the date on which its licence is granted.

PART 4

DEPOSIT INSURANCE FUND

Establishment of Deposit Insurance Fund

12 (1) There shall be a fund, to be called the Deposit Insurance Fund (the Fund), which shall be controlled and administered by the BDIC.

(2) The Fund shall consist of—

- (a) all premium contributions and late payment fees paid by Scheme members;
- (b) all moneys borrowed by the BDIC for the purpose of performing its functions under this Act;
- (c) all moneys recovered by the BDIC from, or out of the assets of, failed Scheme members;
- (d) any interest, dividend and other income derived from the investment of the moneys in the Fund;
- (e) all such sums as may be appropriated by the Legislature for the purposes of the BDIC; and
- (f) all other moneys lawfully paid into the Fund.

(3) The Fund shall be used for the objects and purposes of the Scheme set out in this Act.

Expenditure of moneys of Fund

13 In carrying out the objects of the Scheme, the BDIC shall pay out of the Fund as required and at such time as the BDIC considers proper—

- (a) compensation to insured depositors in accordance with the provisions of this Act;
- (b) all expenses incurred in or incidental to—
 - (i) the establishment and maintenance of the Scheme;
 - (ii) the administration and management of the Fund;
 - (iii) the administration and management of the BDIC and the performance of the duties and functions of the BDIC under this Act; and
 - (iv) the conduct of any investigations by the BDIC for the purpose of determining the eligibility and entitlement of insured depositors to compensation;
- (c) any fees payable to consultants or agents appointed by the BDIC for the purposes of this Act; and
- (d) all other moneys payable out of the Fund in accordance with this Act.

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Investment

14 (1) The BDIC may invest any moneys in the Fund in one or more of the following—

- (a) securities issued or guaranteed by the government of the country of issue being a country whose currency is freely convertible;
- (b) securities issued or guaranteed by the International Bank for Reconstruction and Development or any other international organisation recognised as such by the Minister by Order;
- (c) securities denominated in a freely convertible currency issued by a government sponsored enterprise recognised by the Minister by Order ;
- (d) US dollar deposits with overseas commercial banks;
- (e) securities issued by the Government of Bermuda denominated in a freely convertible currency to an amount not exceeding 5% of the value of the Fund;
- (f) such other investments as it considers appropriate, with the objects of capital preservation and maintenance of liquidity.

(2) The BDIC shall not invest any moneys in—

- (a) securities denominated in Bermuda dollars;
- (b) balances and money with any Scheme member at call (other than monies held for operational expenses of the BDIC); or
- (c) securities issued by a corporation established by statute in Bermuda.

(3) The BDIC may delegate, on such conditions or restrictions as it thinks fit, all or any of its powers and functions under subsection (1) to any employee or agent as it may appoint.

(4) In this section “freely convertible” in relation to any currency means freely convertible, in the hands of a non-resident holder of the currency, into gold or any other currency.

(5) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to an Order made under subsection (1)(b).

PART 5

PREMIUMS

Premium contributions payable by Scheme members

15 (1) Every Scheme member shall, from the effective date, pay a premium contribution for any premium year or part thereof in respect of the insured deposits placed with the Scheme member.

(2) The premium year shall be such period as may be prescribed.

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(3) For the purposes of this Act, the Minister shall by notice published in the Gazette, appoint a date to be the effective date.

Determination of premium rates and premium contributions

16 (1) The BDIC shall assess and determine the premium rates for the purposes of computing the premium contributions payable by Scheme members.

(2) The BDIC shall, on the basis of the premium rates determined under subsection (1) and the insured deposit base of a Scheme member, compute the amount of premium contribution payable by the Scheme member for any premium year or part thereof.

(3) For the purposes of assessing and determining the premium rates and computing the amounts of premium contributions payable, the BDIC may prescribe all or any of the following matters—

- (a) the establishment of a system of classifying Scheme members into different categories;
- (b) the criteria and procedure for determining the category in which a Scheme member is to be classified;
- (c) the premium rate applicable to each category of Scheme members;
- (d) the manner in which the premium rate for each category of Scheme members is to be determined;
- (e) flat rate premium contributions payable;
- (f) the minimum premium contributions payable;
- (g) the manner in which the amount of premium contribution for each category of Scheme members is to be determined;
- (h) the computation of premium contributions on a pro rata basis where a bank becomes a Scheme member at any time during a premium year;
- (i) the size of the Fund;
- (j) such other matters as the BDIC considers necessary.

(4) Rules made pursuant to or dealing with the matters referred to in subsection (3) (c) or (d) may provide for different premium rates for different categories of Scheme members.

Notice of payment of premium contribution

17 The BDIC shall, within such time as may be prescribed in the rules, give the Scheme member notice in writing of the—

- (a) amount of premium contribution that the Scheme member is required to pay under the Scheme for that premium year or part thereof; and
- (b) date by which the premium contributions are to be paid.

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Additional premium contributions where Fund insufficient to pay compensation

18 (1) Where the Fund is insufficient to pay any compensation due to insured depositors under this Act, the BDIC may determine—

- (a) that Scheme members shall be required to pay additional premium contributions for any premium year or part thereof; and
- (b) the premium rate or rates for the purposes of computing the additional premium contributions.

(2) Where a determination is made under subsection (1)—

- (a) the BDIC shall, as soon as practicable, compute the additional premium contributions payable by Scheme members for that premium year or part thereof; and
- (b) the BDIC shall, give notice in writing to every Scheme member of the additional premium contribution that the Scheme member is required to pay for that premium year or part thereof and the date by which the additional premium contribution shall be paid.

(3) A Scheme member shall not be required to pay additional premium contribution for any premium year exceeding 0.5% of the insured deposit base of the Scheme member.

(4) For the purposes of subsection (3), the insured deposit base of a Scheme member shall be determined on the date prescribed by the BDIC for computing the amounts of premium contributions payable by Scheme members.

Payment of premium contributions and late payment fees

19 (1) Where a Scheme member is given notice in writing to pay a premium contribution under section 17 or an additional premium contribution under section 18(2) for any premium year or part thereof, the Scheme member shall pay to the BDIC—

- (a) in the case of the premium contribution, on or before the prescribed date of payment; and
- (b) in the case of the additional premium contribution, on or before the date of payment specified in the notice,

the amount of premium contribution or additional premium contribution, as the case may be, that the Scheme member is required to pay for that premium year or part thereof.

(2) Subject to subsection (3), if a Scheme member fails to pay the premium contribution or additional premium contribution or any part thereof in contravention of subsection (1)—

- (a) the BDIC may, by notice in writing, impose on the Scheme member such late payment fee as the BDIC may in the rules determine; and
- (b) the Scheme member shall pay to the BDIC the late payment fee together with the unpaid premium contribution or additional premium

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contribution, as the case may be, on or before the date of payment specified in the notice.

(3) The late payment fee referred to in subsection (2) shall not exceed the amount of premium contribution or additional premium contribution, as the case may be, owing by the Scheme member.

(4) The amount of premium contribution or additional premium contribution owing by the Scheme member and the late payment fee shall be paid in such manner as may be prescribed.

(5) Without prejudice to any other remedy, any premium contribution, additional premium contribution or late payment fee payable under this Act shall be recoverable as a debt due to the BDIC by the Scheme member.

(6) Where the BDIC has commenced any legal proceedings in a court to recover a premium contribution, an additional premium contribution or a late payment fee from a Scheme member, the BDIC shall be entitled to claim costs on a full indemnity basis from that Scheme member.

Refund of premium contributions paid in excess

20 Where it appears to the BDIC that a Scheme member has a paid premium contribution in excess of the amount payable under this Act, the BDIC shall refund to the Scheme member the amount of premium contribution paid in excess.

Re-computation of premium contributions

21 (1) Where it appears to the BDIC that the (premium contribution for any premium year or part thereof—

- (a) computed under section 16(2) and notified by the BDIC under section 17; or
- (b) in respect of which a Scheme member has been required to pay under section 19(1),

is of an amount less than that which ought to have been computed, imposed or paid, as the case may be, the BDIC may within the same premium year re-compute such amount of premium contribution which ought to have been computed, imposed or paid, as the case may be, under this Act.

(2) Sections 19 and 20 shall apply, with the necessary modifications, to any amount of premium contribution re-computed under subsection (1) and the recovery of any shortfall in premium contribution upon a re-computation under that subsection—

- (a) as if the reference to premium contribution were a reference to the difference between the amount of premium contribution as re-computed and the amount of premium contribution that was originally computed, imposed or paid, as the case may be, under this Act; and
- (b) the reference in section 19(1)(a) to the “prescribed date of payment” shall be read as a reference to the date of payment specified in the notice.

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Disclosure of information relating to premium contributions

22 (1) Subject to subsections (2) and (3), no Scheme member or officer of any Scheme member shall disclose to any person—

- (a) the premium rate applicable to the Scheme member;
- (b) the category in which the Scheme member is classified pursuant to section 16(3);
- (c) where the system of classifying a Scheme member incorporates a rating of the Scheme member based on the assessment by the BDIC of the risks arising from the activities of the Scheme member, the rating of the Scheme member; and
- (d) any information which if disclosed, would enable any of the information referred to in paragraph (a), (b) or (c) to be identified or deduced.

(2) Notwithstanding subsection (1), a Scheme member or an officer of a Scheme member may disclose to—

- (a) any director or officer of the Scheme member;
- (b) the parent company or supervisory authority of the parent of the Scheme member;
- (c) an affiliated company (within the meaning of section 86(3) of the Companies Act 1981) of the Scheme member;
- (d) the Scheme members auditors, attorneys or other professional advisers; or
- (e) such other person or class of persons as the BDIC may approve,

any of the matters referred to in subsection (1) where such disclosure is necessary for the performance of the duties of the person referred to in paragraph (a), (b) (c), (d) or (e), as the case may be.

(3) No person to whom the Scheme member or officer of the Scheme member has disclosed information pursuant to subsection (2) shall disclose that information to any other person except as approved by the BDIC.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and be liable on summary conviction to a fine of \$50,000 or to imprisonment for 12 months or to both.

PART 6

COMPENSATION

Occurrence of events precipitating payment of compensation

23 (1) Where, on or after the effective date—

- (a) an order is made by a court in Bermuda or elsewhere to wind up a Scheme member; or

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- (b) the BDIC, after consulting with the Authority, is of the opinion that a Scheme member is insolvent, or that it is unable to meet its obligations as they fall due,

the BDIC may determine that compensation shall be paid out of the Fund to the insured depositors of the Scheme member in accordance with this Act.

(2) The BDIC shall, as soon as practicable after making such a determination, publish a notice in the Gazette stating that a payment of compensation shall be made out of the Fund.

Entitlement to compensation

24 (1) Subject to sections 26 and 27, where an insured depositor has one or more insured deposits placed with a failed Scheme member, which—

- (a) the insured depositor holds in his own right;
- (b) the insured depositor holds in his own right jointly with one or more other persons in a joint account; or
- (c) a depositor holds in a client account for the insured depositor as the depositor's client,

the insured depositor shall be entitled to compensation from the Fund of a specified amount which shall not exceed \$25,000 regardless of the number or amount of insured deposits that the insured depositor has placed with the failed Scheme member.

(2) For the purposes of this section—

- (a) “specified amount” means the amount by which the aggregate amount, as at the quantification date, of insured deposits which the insured depositor has placed with the failed Scheme member exceeds the aggregate amount, as at the quantification date, of liabilities of the insured depositor to that failed Scheme member in respect of which a right of set-off would have existed had a winding-up order been made in respect of the failed Scheme member; and
- (b) in determining the amount of liabilities of the insured depositor to the failed Scheme member, the same rules shall apply with regard to future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of persons adjudged bankrupt, as if the failed Scheme member were a person so adjudged.

Deposits in own right and joint accounts

25 (1) Where an insured depositor holds an insured deposit in his own right, the insured depositor is entitled, in respect of the insured deposit as at the quantification date, to compensation from the Fund.

(2) Where there are two or more insured depositors in respect of any insured deposit, each of those insured depositors is entitled, in respect of his share in the insured deposit as at the quantification date, to compensation from the Fund.

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(3) For the purposes of determining the share of an insured depositor in an insured deposit under subsection (2), each depositor holding such an insured deposit, whether or not he is an insured depositor, shall be deemed to have an equal share in the insured deposit unless there is an express provision to the contrary in the books of the failed Scheme member.

(4) For the purpose of this section—

- (a) any insured deposit of a deceased person held in an estate account shall be treated as an insured deposit held by the deceased person in his own right; and
- (b) subsection (3) does not affect any rights as between the depositors themselves.

Restrictions on entitlement to compensation

26 Where the BDIC has paid an insured depositor the full amount of compensation payable to the insured depositor in respect of his insured deposits in accordance with this Act, no other person is entitled, in respect of the insured deposits, to compensation under this Act.

Computation and method of payment of compensation

27 (1) The BDIC shall compute the amount of compensation due to an insured depositor in respect of his insured deposits placed with a failed Scheme member in accordance with this Act.

(2) In determining the eligibility and entitlement of an insured depositor to compensation and computing the amount of compensation due to an insured depositor, the BDIC is entitled to rely on the books of the failed Scheme member and any other books which, in the opinion of the BDIC, are relevant for such computation.

(3) The BDIC shall pay the compensation in such form and manner as may be prescribed.

Subrogation

28 (1) On payment out of the Fund of any compensation under this Act to, or for the benefit of, any insured depositor in respect of his insured deposits, the BDIC shall be subrogated to the extent of such payment to all the rights and remedies of—

- (a) the insured depositor;
- (b) the person who received the compensation on behalf of the insured depositor; or
- (c) in the case where payment is made to an insured depositor who is a client in a client account, the depositor who held the insured deposit in that client account,

as the case may be.

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(2) Such rights and remedies in respect of the insured deposit shall have priority over—

- (a) the rights and remedies of the insured depositor, the person who received the compensation on behalf of the insured depositor or the depositor of a client account, as the case may be, in relation to that insured deposit; and
- (b) the rights and remedies of any person who is subrogated, whether or not before the BDIC's subrogation, to the rights and remedies of any of the persons referred to in paragraphs (a), (b) and (c) of subsection (1) in relation to that insured deposit.

and may maintain an action in respect of those rights and remedies in the name of the person referred to in paragraphs (a), (b) or (c) of subsection (1), as the case may be, or in the name of the BDIC.

(3) The persons referred to in paragraphs (a), (b) and (c) of subsection (1), or any person who is subrogated, whether or not before the BDIC's subrogation, to the rights and remedies of those persons, shall not be entitled to receive any amount from, or out of, the assets of the failed Scheme member until the BDIC has been reimbursed in full the amount of compensation paid to those persons.

(4) The BDIC shall be entitled—

- (a) in the case where the failed Scheme member is wound up, to be reimbursed out of the assets of the failed Scheme member for the expenses incurred in—
 - (i) the payment of any compensation to insured depositors; and
 - (ii) the lodging of a claim with the liquidator of the failed Scheme member for any compensation that has been paid out to insured depositors; or
- (b) in any other case, to be reimbursed by the failed Scheme member or the provisional liquidator of the failed Scheme member, as the case may be, for the expenses incurred in—
 - (i) the payment of any compensation to insured depositors; and
 - (ii) where a claim has been lodged with the provisional liquidator of the failed Scheme member for any compensation that has been paid out to insured depositors, the lodging of the claim.

Recovery of compensation paid in excess or wrongly paid

29 (1) If—

- (a) any compensation paid to, or for the benefit of, an insured depositor out of the Fund is in excess of what ought to have been paid to the insured depositor under this Act; or
- (b) any compensation is wrongly paid to any person,

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the BDIC may recover the amount paid in excess or wrongly paid from the person who received the compensation paid out by the BDIC in such manner and within such period as may be specified by the BDIC to that person.

(2) Without prejudice to any other remedy, any amount paid in excess or wrongly paid to any person shall be recoverable as a debt due to the BDIC by that person.

(3) Upon the recovery of any amount paid in excess or wrongly paid from any person under this section, the BDIC shall pay such amount into the Fund.

PART 7 OFFENCES

Offences committed by bodies corporate

30 (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 an officer; or
- (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

False statements regarding membership and insured deposits

31 (1) No person shall, knowingly or recklessly, make a false or misleading statement as to whether or not—

- (a) any person is a Scheme member; or
- (b) any deposit, or other financial product, is an insured deposit.

(2) Any person who contravenes subsection (1) shall, notwithstanding that a contract does not come into being, be guilty of an offence and shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 12 months or to both and on conviction on indictment to a fine of \$200,000 or imprisonment for three years, or both.

Offence by officer

32 (1) Any officer of a Scheme member who fails to take all reasonable steps to secure—

- (a) compliance by the Scheme member with any provision of this Act; or
- (b) the accuracy and correctness of any statement submitted to the BDIC or such other person as may be required under this Act,

shall be guilty of an offence and shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 12 months or to both.

(2) In any proceedings against a person under subsection (1), it shall be a defence for the person to prove that he had reasonable grounds for believing that another person was charged with the duty of securing compliance with the requirements of this Act, or with the duty of ensuring that those statements were accurate and correct, as the case may be, and that that person was competent, and in a position, to discharge that duty.

Duty not to furnish false information to BDIC

33 (1) Any person who furnishes the BDIC with any information under or for the purposes of any provision of this Act shall use due care to ensure that the information is not false or misleading in any material particular.

(2) Subsection (1) applies only to a requirement in relation to which no other provision of this Act creates an offence in connection with the furnishing of information.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$50,000 or to imprisonment for 12 months or to both.

PART 8

FINANCIAL AND AUDIT PROVISIONS

Financial provisions with respect to BDIC

34 The financial provisions set out in the Schedule 2 shall have effect with respect to the BDIC.

Annual report of BDIC

35 (1) The BDIC shall, as soon as practicable but no later than four months after the end of each financial year, cause to be prepared and transmitted to the Minister a report dealing generally with the activities of the BDIC during the preceding financial year.

(2) The BDIC shall cause such report to be published in such manner as it considers appropriate.

(3) The Minister shall as soon as practicable after receipt of the report and annual statement of accounts cause a copy to be laid before both Houses of the Legislature.

Annual estimates

36 (1) The BDIC shall, in every financial year, prepare or cause to be prepared annual estimates of income and expenditure of the BDIC for the ensuing financial year.

(2) All annual estimates shall be presented to the Minister for his approval.

Reporting to Minister

37 If the auditor in the course of the performance of his duties as an auditor of the BDIC is satisfied that—

- (a) there has been a serious contravention of any provisions of this Act or that an offence involving fraud or dishonesty has been committed; or
- (b) serious irregularities have occurred, including irregularities that jeopardise the interests of insured depositors,

the auditor shall immediately report the matter in writing to the Minister.

PART 9
MISCELLANEOUS

Protection from personal liability

38 No suit or other legal proceedings shall lie against—

- (a) the BDIC;
- (b) any director, officer, employee or agent of the BDIC; or
- (c) any person acting under the direction of the BDIC,

for anything done (including any statement made) or omitted to be done in good faith in—

- (i) the exercise or purported exercise of any power under this Act;
- (ii) the performance or purported performance of any function or duty under this Act; or
- (iii) the execution or purported execution of this Act.

Restricted information

39 (1) Except as provided by sections 40 and 41—

- (a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and
- (b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of \$50,000 and to imprisonment for 12 months or to both;

- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for three years or to both.

Disclosure for facilitating the discharge of functions of the BDIC

40 (1) Section 39 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the BDIC to discharge its functions under this Act.

(2) Without prejudice to the generality of subsection (1), section 39 does not preclude the disclosure of information by the BDIC to the auditor of a Scheme member if it appears to the BDIC that disclosing the information would enable or assist the BDIC to discharge the functions mentioned in that subsection or would otherwise be in the interests of the depositors.

Disclosure for facilitating the discharge of functions by other authorities

41 (1) Section 39 does not preclude the disclosure of information to the Minister or the Authority in any case in which the disclosure is for the purpose of enabling or assisting the Minister or the Authority as the case may be, to discharge their regulatory functions.

(2) Section 39 does not preclude the disclosure of information—

- (a) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;
- (b) in connection with any other proceedings arising out of this Act.

Power to require production of documents

42 (1) The BDIC may—

- (a) by notice in writing served on a Scheme member require it to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;
- (b) authorise an officer, servant or agent of the BDIC, on producing evidence of his authority, to require any such Scheme member to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the BDIC may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the BDIC or any officer, servant or agent of the BDIC has the power to require the production of any documents from a Scheme member, the BDIC or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them.

(3) The power under this section to require a Scheme member or other person to produce any documents includes the power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that Scheme member or person, or any other person

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who is a present or past director, controller or senior executive of, or is or was at any time employed by or acting as an employee of, the Scheme member in question, to provide an explanation of any of them; and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to a fine of \$20,000 or to imprisonment for six months or to both.

Insurance Act not to apply

43 The Insurance Act 1978 shall not apply to the BDIC and the Scheme.

Commencement

44 The appointed day on which the provisions of this Act shall come into operation shall be such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

SCHEDULE 1

(section 6(3))

BOARD OF DIRECTORS

Part 1: Tenure and qualifications for appointment of directors of the board

Terms of Office

1. A director shall hold office for a term of not less than three years and not more than five years, and shall be eligible for reappointment.
2. The first appointments may be for shorter and different periods of time so as to secure that appointments expire at different times.
3. A person appointed as a director of the BDIC 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.
4. A person appointed as a director of the BDIC may resign his office by notice in writing to the Chairman and to the Minister.
5. The BDIC shall cause to be published in the Gazette the name of every person appointed as a director of the BDIC.

Qualification for appointment

6. (1) A person is disqualified for appointment as a director if—
 - (a) he is a shareholder controller, a director or an employee of—
 - (i) any Scheme member; or
 - (ii) a related company of any Scheme member;
 - (b) he is a member of either House of the Legislature or a person serving in a government department in employment in respect of which remuneration is payable out of money provided from the Consolidated Fund.
- (2) In this paragraph—

"related company" has the meaning given in section 6 of the Banks and Deposit Companies Act 1999;

"shareholder controller" has the meaning given in section 7(5) of the Banks and Deposit Companies Act 1999;

Removal from office

7. A person appointed as a director shall vacate office if he becomes a person to whom paragraph 6 applies.

8. The Minister, acting after consultation with the board of directors, may remove a person from office as a director of the BDIC—
- (a) if he is satisfied that such person—
 - (i) has been absent from three consecutive meetings of the board without the consent of the Chairman;
 - (ii) 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
 - (iii) is unable or unfit to discharge his functions as a member; or
 - (b) by giving such person notice of termination of appointment.

Part 2: Procedure for meetings of the board of directors

Powers

9. The board of directors may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.
10. The board of directors may appoint such committees, as it thinks fit.

Meetings

11. (1) The board of directors shall meet as often as necessary or expedient for the due performance of its functions.
- (2) The Chairman may summon a meeting of the board of directors at any time on giving such notice as in his judgment the circumstances may require.
12. (1) At a meeting of the board of directors, the proceedings shall be regulated as follows—
- (a) the quorum shall be four members;
 - (b) the Chairman shall chair meetings of the board of directors;
 - (c) if the Chairman is absent from a meeting of the board of directors, the members present at the meeting shall nominate one of their number to chair the meeting.
- (2) If a member of the board of directors has any direct or indirect interest in any dealing or business with the BDIC—
- (a) he shall disclose his interest to the board of directors 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 of directors has resolved that the interest does not give rise to a conflict of interest.
- (3) A member of the board of directors shall have no vote in relation to any question arising which touches or concerns him.

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(4) Subject to subparagraphs (1) to (3), the board of directors shall determine its own procedure.

SCHEDULE 2

(section 34)

FINANCIAL PROVISIONS WITH RESPECT TO BDIC

Financial year

1. The financial year of the BDIC shall begin on 1 April of every year and end on 31 March of the following year, except that the first financial year of the BDIC shall begin on the appointed day and end on 31 March of the following year.

Accounts of BDIC

2. The BDIC shall keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of its moneys are properly authorised and correctly made and that adequate control is maintained over the assets of, or in the custody of, the BDIC and over the expenditure incurred by the BDIC.

Auditor

3. The accounts of the BDIC shall be audited by the Auditor-General or such other auditor as may be appointed annually by the Auditor General.

Appointment of auditor

4. A person shall not be qualified for appointment as an auditor under paragraph 3 unless he is a public accountant who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973.

Remuneration of auditor

5. The remuneration of the auditor shall be paid out of the Fund.

Annual financial statements

6. The BDIC shall, as soon as practicable but not later than four months after the close of each financial year, prepare and submit financial statements in respect of that year to the auditor of the BDIC.

Duties of auditor

7. The auditor shall in his report state—
- (a) whether the financial statements show fairly the financial transactions and the state of affairs of the BDIC;
 - (b) whether proper accounting and other records have been kept, including records of all assets of the BDIC, whether purchased, donated or otherwise;
 - (c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the BDIC during the financial year were in accordance with the provisions of this Act; and
 - (d) such other matters arising from the audit as he considers necessary.

Auditor's report

8. The auditor shall, as soon as practicable after the accounts have been submitted for audit, send a report of his audit to the BDIC. He shall also submit such periodical and special reports to the Minister and to the BDIC as may appear to him to be necessary or as the Minister or the BDIC may require.

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Powers of auditor

9. (1) The auditor or any person authorised by him shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the BDIC and may make copies of or extracts from any such accounting and other records.

(2) The auditor or any person authorised by him may require any person to furnish him with such information in the possession of that person or to which that person has access as the auditor considers necessary for the purposes of his functions under this Act.

Presentation of audited financial statements and auditor's report

10. The BDIC shall, as soon as the financial statements have been audited in accordance with the provisions of this Act, but not later than four months from such audit, cause to be published in such manner as it considers appropriate the audited financial statements together with the auditor's report.

[Schedule 2 paragraph 4 amended by 2014 : 8 s. 16 effective 11 April 2014]

[Assent Date: 10 August 2011]

[Operative Date: 20 August 2016]

[Amended by:

2014 : 8]