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CHAPTER 323

DEPOSIT INSURANCE

An Act to establish a deposit insurance fund for the protection of insured depositors, to establish a corporation to manage the fund, and for related purposes. 2006-29.

[8th June, 2007] Commence-
ment.
2007/47.

Citation

1. This Act may be cited as the *Deposit Insurance Act*. Short title.

Interpretation

2. In this Act, Interpretation.
"affiliate", in relation to a member institution, means a company which is or has been, within the meaning of the *Companies Act*, Cap. 308.
- (a) a holding company or a subsidiary of the member institution;
 - (b) a subsidiary of a holding company of the member institution;
 - (c) a holding company of a subsidiary of the member institution; or
 - (d) a holding company of a holding company or a subsidiary of a subsidiary of the member institution;

"auditor" includes a partnership of auditors;

"Board" means the Barbados Deposit Insurance Corporation Board of Directors established by section 4;

Cap. 323C. "Central Bank" means the Central Bank of Barbados established under the *Central Bank of Barbados Act*;

"Chairman" means the Chairman of the Board;

"deposit" means

- (a) the unpaid balance of the aggregate of money or its equivalent received or held by a member institution from or on behalf of a person in the usual course of its deposit-taking business, including interest
 - (i) for which the member institution has given or is obliged to give credit to that person's chequing, savings, demand or time account; or
 - (ii) for which the member institution has issued a certificate, receipt, cheque, money order, draft or other instrument in respect of which it is primarily liable; and
- (b) any other type of deposit that the Minister may by regulations prescribe;

"Deposit Insurance Corporation" or "Corporation" means the Corporation established under section 3 of this Act;

"Deposit Insurance Fund" or "Fund" means the Deposit Insurance Fund established under section 17 of this Act;

"director" means a director of the Board;

Cap. 324A. "financial institution" means a company licensed to carry on banking business under the *Financial Institutions Act*;

"insured deposit" means a deposit which is insured under the terms and conditions set out in this Act;

"insured limit" means the maximum sum that is payable under this Act in respect of insured deposits;

"member institution" or "member" means a member of the Fund;

"Minister" means the Minister responsible for Finance;

"special contribution" means a contribution prescribed by the Minister under section 28;

"trust account" includes

- (a) an interest held by a beneficiary in an account pursuant to an irrevocable express trust created by law or by a trust instrument;
- (b) an account established with a member institution on behalf of a client by an attorney-at-law, accountant, estate agent or any other fiduciary which
 - (i) is in the name of a firm, a company or any other fiduciary; and
 - (ii) includes in its title an appropriate description to distinguish the funds from those of the firm, the company or the other fiduciary;
- (c) money which is held in a common trust fund.

PART I

Barbados Deposit Insurance Corporation

3. (1) There is hereby established a corporation to be known as the Barbados Deposit Insurance Corporation. Establishment of Corporation.

(2) Section 21 of the *Interpretation Act* applies to the Corporation. Cap. 1.

4. (1) There shall be a Board of Directors of the Corporation which shall be responsible for the policy and general administration of the Corporation. Board of Directors.

(2) The *Schedule* has effect with respect to the constitution of the Board and otherwise in relation thereto. Schedule.

Objects of
Act.

5. (1) The objects of this Act are

- (a) to provide insurance against the loss of insured deposits not exceeding the insured limit;
- (b) to promote standards of sound business and financial practices with respect to member institutions; and
- (c) to attain the objects set out in paragraphs (a) and (b) for the benefit of persons having insured deposits with member institutions in such manner as will minimize the exposure of the Corporation to loss.

(2) The Corporation shall be responsible for the administration of this Act.

Functions
and powers
of the
Corporation.

6. (1) The functions of the Corporation are

- (a) to manage the Deposit Insurance Fund and to provide, through that Fund, insurance up to the insured limit against the loss of insured deposits;
- (b) to levy the initial contributions and premiums in relation to the Fund in accordance with this Act;
- (c) to charge any fees necessary for the administration of this Act;
- (d) to act as liquidator or manager of member institutions in accordance with this Act;
- (e) to facilitate the reorganization or takeover of a member institution pursuant to the *Financial Institutions Act* in the appropriate circumstances; and
- (f) to carry out any other function which is necessary for the management of the Fund.

Cap. 324A.

(2) The Corporation may

- (a) borrow from the Central Bank or the Government, and lend, give guarantees and issue bonds and other securities;

-
- (b) purchase, or enter into arrangements with a member institution to purchase, assets, and assume the liabilities, of a member institution that is being wound-up or whose management and control has been seized pursuant to the *Financial Institutions Act*; Cap. 324A.
- (c) incorporate a company for the purposes of facilitating, in the appropriate circumstances, the acquisition, management or disposal of real property or other assets of a financial institution which holds insured deposits, and which is being wound-up or whose management and control has been seized pursuant to the *Financial Institutions Act*; and the shares in any such company shall be held by or on behalf of or in trust for the Corporation; and
- (d) generally, do all such other things as are necessary for the attainment of the objects of this Act.

(3) Where the Corporation borrows from the Central Bank, the sums shall be subject to such terms and conditions that are more favourable than those accorded to financial institutions in the ordinary course of business.

7. (1) A director who holds any office or has any interest whereby, directly or indirectly, his functions under this Act are likely to be in conflict with his personal interests shall disclose the nature, character and extent of that office or interest to the directors at a meeting thereof. Disclosure of interest.

- (2) The disclosure referred to in subsection (1) shall be made,
- (a) in a case where the interest or office is held by the person before he became a director, at the first meeting of the directors that is held after he becomes a director; and
- (b) in any other case, at the first meeting of the directors that is held after the acquisition by the director of that relevant office or interest.

(3) A director who has any interest or concern in a company with which the Corporation proposes to make a contract or otherwise transact business shall disclose to the Corporation the particulars of that interest.

(4) The details of any disclosure made under this section shall be recorded in the minutes taken at the meeting at which the disclosure is made.

(5) A director who has made a disclosure under this section shall not take part in any deliberation or discussion of the Board relating to that contract, business or interest.

Remunera-
tion.

8. The directors of the Corporation are entitled to such remuneration as the Board with the approval of the Minister determines.

Appoint-
ment of
Chief
Executive
Officer.

9. The Board shall, with the approval of the Minister, appoint a Chief Executive Officer, by whatever name called, who shall be responsible to the Board for the execution of its policy and the management of the Corporation.

Appoint-
ment of
employees.

10. The Board may employ at such remuneration and on such terms and conditions as it thinks fit, such persons as it deems necessary for the proper discharge of the functions of the Corporation.

Pension
rights and
service with
Corporation.

11. (1) The Corporation shall within a period of 2 years from the date of the commencement of this Act provide for the establishment and maintenance of a pension fund for the benefit of the employees of the Corporation.

(2) Where an employee is seconded from the Corporation to the Central Bank or from the Central Bank to the Corporation, the period for which the employee is seconded shall count for pension as if the employee had not been so seconded.

(3) Where a public officer is seconded or temporarily transferred from a pensionable office within the meaning of section 2(1) of the *Pensions Act* to perform any service with the Corporation, his service with the Corporation shall, unless the Governor-General otherwise decides, count for pension under that Act as if the officer had not been so seconded or transferred. Cap. 25.

(4) If the services of a person employed by the Corporation are on loan to the Government, that person is entitled to such benefits and terms of employment as are applicable to the post which he occupies, and the service with the Corporation shall be taken into account as continuous service with the Government; and the *Pensions Act* and *Pensions Regulations, 1947* shall apply to him as if his service with the Corporation were service within the meaning of that Act. Cap. 25.
1947/20.

(5) Where

(a) a public officer is transferred to an office in the service of the Corporation; or

(b) an officer of the Corporation is transferred to an office in the public service,

the *Pensions Act* shall apply to him as if his service with the Corporation was other public service within the meaning of that Act, and the *Pensions Regulations, 1947* shall apply to him accordingly. Cap. 25.
1947/20.

(6) Where a public officer is transferred to the service of the Corporation under subsection (5), the Corporation shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Corporation.

(7) For the purposes of this section, service of a person referred to in subsections (3) to (6) shall be aggregated with his service with the Corporation for the purpose of computing any pension or other retiring allowance to which he may be entitled.

Corporation
to maintain
an account.
Cap. 71.

12. The Corporation may maintain an account with any member of the Fund and, subject to the *Exchange Control Act*, may maintain an account with a financial institution outside of Barbados.

Capital.

13. (1) The capital of the Corporation shall be a sum of not less than \$1 000 000, which shall be subscribed by the Central Bank, \$500 000 of which shall be paid within 3 months of the commencement of this Act and the balance within one year of the commencement of this Act.

(2) The Minister may, on the advice of the Board and the Central Bank, increase the capital of the Corporation, and the increase shall be subscribed by the Central Bank or the Government or by both, as the Minister may direct.

Accounts
and audit.

14. (1) The financial year of the Corporation shall coincide with the calendar year.

(2) The Corporation shall keep proper accounts and such accounts shall be audited annually by a qualified auditor.

(3) For the purposes of this section, "qualified auditor" means a person

(a) who is in good standing as a member of an association of chartered or public accountants or other similar body; and

(b) who is authorized to practise in Barbados.

Statements
etc. to be
submitted at
end of
financial
year.

15. (1) The Corporation shall, not later than 3 months after the end of every financial year, submit to the Minister

(a) a statement of the Corporation's audited accounts and the auditor's report relating thereto;

(b) an audited statement of the Fund and the auditor's report relating thereto; and

(c) a general report on the discharge of the Corporation's functions during the preceding financial year.

(2) The Minister shall lay the reports and the statements submitted under subsection (1) before Parliament within 6 weeks of the receipt thereof; and shall cause the reports and the statements to be published in the *Official Gazette*.

(3) The Corporation shall provide a copy of the documents referred to in subsection (1) to the Central Bank and to each member of the Fund.

16. (1) The *Insurance Act* shall not apply to the Corporation.

Exemption
of Corpora-
tion.
Cap. 310.

(2) The Corporation is exempt from the payment of corporation tax, stamp duty or any other impost.

PART II

Deposit Insurance Fund

17. (1) The Corporation shall establish and maintain a Fund to be known as "the Deposit Insurance Fund".

Establish-
ment of
Fund.

(2) The Fund shall consist of

- (a) initial contributions, special contributions and premiums paid by member institutions;
- (b) sums payable by the Central Bank under this Act;
- (c) sums voted by Parliament for the purposes of this Act;
- (d) any moneys borrowed by the Corporation for the purposes of this Act;
- (e) amounts realized from investment proceeds; and
- (f) moneys that may accrue from fees or the operations of the Fund.

Fund
membership.
Cap. 324A.

18. (1) On the commencement of this Act, all financial institutions that are licensed under the *Financial Institutions Act* and are permitted to accept in the course of business deposits that are insurable under this Act shall be deemed to be members of the Fund.

(2) The Corporation may by notice in writing require each member of the Fund to transmit the following to the Corporation

(a) a copy of the member's articles of incorporation or articles of continuance, by-laws or other instrument under which the member is incorporated or organized;

(b) a copy of the accounts of the member,

(i) for the period of 3 years immediately preceding the commencement of this Act; or

Cap. 324A.

(ii) where the member was licensed under the *Financial Institutions Act* for less than 3 years, for the period since it was licensed;

(c) a statement in respect of the deposit liabilities of the member.

(3) The Central Bank shall transmit to the Corporation inspection reports and any other information related to the operations of member institutions that the Corporation may require for the administration of this Act.

New
members of
Fund.

19. (1) After the commencement of this Act, every financial institution that is licensed under the *Financial Institutions Act* which is permitted to accept in the course of its business deposits that are insurable under this Act shall be deemed to be a member of the Fund immediately after its licence has been granted.

Cap. 324A.

(2) Where a financial institution is licensed under the *Financial Institutions Act* after the commencement of this Act, the Central Bank shall, as soon as is practicable after the issue of the licence to that institution, notify the Corporation of the issue and provide the Corporation with copies of the application and the information which the institution submitted with its application.

20. (1) The Corporation shall issue a certificate of membership to a member institution referred to in sections 18 and 19 as soon as is practicable. Certificate of membership.

(2) A member institution shall display prominently in each place of business a copy of its certificate of membership issued under this Act.

21. The Corporation shall Investment.

(a) develop an investment policy in relation to the Fund; and

(b) invest the Fund in such low-risk securities as the Board considers appropriate.

22. (1) Each member of the Fund Initial contribution.

(a) to which section 18 applies shall pay into the Fund in accordance with this section an initial contribution based on a percentage of the insurable deposits held by the member for the calendar year preceding the commencement of this Act;

(b) to which section 19 applies shall pay into the Fund in accordance with this section an initial contribution based on a percentage of the insurable deposits held by the member during the first 12 months of its operation.

(2) The percentage referred to in subsection (1) shall be prescribed by the Minister by order after consultation with the Board and the Central Bank.

(3) The Corporation shall, as soon as is practicable after the commencement of this Act, serve a notice on each member of the Fund to which section 18 applies specifying in accordance with subsection (1)(a)

(a) the initial contribution which each member must pay; and

(b) the date on which it is payable.

(4) The Corporation shall as soon as practicable serve a preliminary notice of assessment on each member of the Fund to which section 19 applies, specifying, based on the member's projected insurable deposits for the first 12 months of its operation,

- (a) the initial contribution which that member must pay; and
- (b) the date on which it is payable.

(5) Where the amount specified in the notice under subsection (4)

- (a) exceeds the amount payable by the member under subsection (1)(b), the balance shall be refunded by the Corporation;
- (b) is less than the amount payable by the member under subsection (1)(b), the Corporation shall notify the member of the date on which the balance is payable.

Sums payable by Central Bank.

23. (1) The Central Bank shall pay into the Fund a sum equal to the total amount of the initial contributions payable by the members of the Fund under section 22.

(2) Where the amount paid by the Central Bank under subsection (1) exceeds or is less than the amount payable by the member under section 22(1)(b), the provisions of section 22(5) shall apply to the Central Bank, with the necessary modifications.

Annual premium and first premium.

24. (1) Subject to section 25 and subsection (5), each member of the Fund shall every calendar year pay a premium into the Fund, one half of which is payable on or before 15th February each year and the balance on or before 15th July each year.

(2) Subject to section 25 and subsection (5), the Corporation shall notify every member in writing on or before 31st January each year of the annual premium that is payable by that member under subsection (1).

(3) Subject to section 25, the annual premium payable by each member of the Fund under subsection (1) shall be based on a percentage of the insurable deposits held by that member during the calendar year preceding the calendar year for which the premium is payable.

(4) The percentage referred to in subsection (3) shall be prescribed by the Minister by order after consultation with the Board and the Central Bank.

(5) The Corporation shall, as soon as is practicable after the commencement of this Act, serve a notice on each member of the Fund specifying

- (a) the premium that is payable by that member in respect of the period for which coverage will be given under this Act for that calendar year; and
- (b) the date on which it is payable.

25. (1) Where a financial institution becomes a member of the Fund in accordance with section 19, the premium payable by that member for the first calendar year and the second calendar year of its operation shall be based on the prescribed percentage of the insurable deposits held by that member during those respective calendar years.

First
premium
and second
premium
payable by
new
members.

(2) The Corporation shall, in respect of the first calendar year and the second calendar year of the operation of a member institution referred to in subsection (1), serve a preliminary notice of assessment on that member specifying, based on that member's projected insurable deposits for those respective calendar years,

- (a) the premium which that member must pay; and
 - (b) the date on which it is payable.
- (3) Where the amount specified in the notice under subsection (2)
- (a) exceeds the amount payable by the member under subsection (1), the balance shall be refunded by the Corporation;

- (b) is less than the amount payable by the member under subsection (1), the Corporation shall notify the member of the date on which the balance is payable.

Filing of
deposit
liabilities.

26. (1) For the purposes of section 24(3), every member institution shall, on or before 21st January in each year, transmit to the Corporation a report, certified by its Chief Executive Officer and 2 of its directors, of its deposit liabilities for each quarter of the preceding year.

(2) Notwithstanding subsection (1), a member institution shall, when requested in writing by the Corporation, transmit to the Corporation, a return of its deposit liabilities certified by its Chief Executive Officer and two of its directors.

(3) Where the directors of a member institution are unable to certify the report as required under subsection (2), they may authorize such persons as they think fit to certify the report on their behalf.

(4) Where the report referred to in subsection (1) is not transmitted within the time specified or the information contained therein is fundamentally inaccurate, the Central Bank may impose on that member institution a charge not exceeding \$500 for every day during which the contravention continues.

Payments
from the
Fund.

27. The following payments may be made from the Fund:

- (a) the payment of deposit insurance claims;
- (b) refunds of any payments paid in excess or in error;
- (c) any expense incurred by the Corporation as liquidator where the assets of the member institution are insufficient to meet those expenses;
- (d) any expense incurred in the reorganization, takeover or sale of a member institution by the Corporation;

- (e) the fees and other expenses in respect of the audit of the Fund;
and
- (f) the expenses incurred by the Corporation in respect of the administration of this Act.

28. (1) Where in the opinion of the Board the Fund is likely to be exhausted as a result of the payment of deposit insurance claims from the Fund, the Board shall furnish the Minister with an estimate of the amount necessary to meet the obligations of the Fund in the following year; and the Minister may by order prescribe that a special contribution be paid by member institutions.

(2) The special contribution referred to in subsection (1) may be payable in addition to any premium payable under this Act.

29. (1) Where

- (a) any sum payable to the Fund by a member institution remains outstanding after 6 months, the institution's membership may be suspended or cancelled by the Minister;
- (b) an institution's membership is cancelled under paragraph (a), that institution's licence under the *Financial Institutions Act* may be revoked in accordance with section 11 of that Act;
- (c) any amount payable to the Fund by a member under this Part is outstanding, that member is liable to pay such interest as the Minister may by regulations prescribe.

(2) All sums due and payable to the Fund under this Act are recoverable as debts due to the Corporation and, without prejudice to any other remedy, may be recovered summarily as a debt due to the Corporation in civil proceedings.

(3) In the recovery of unpaid sums in pursuance of subsection (2), the Chief Executive Officer may, in a certificate called an "Unpaid Fund Certificate", certify in relation to the person who owes those sums the sums due and payable by that person.

(4) An Unpaid Fund Certificate may be filed by the Chief Executive Officer in the High Court or in a magistrate's court for District 'A'; and it shall be registered in the court in which it is filed.

(5) Subject to subsection (8), a certificate referred to in this section has, after the expiration of 7 days from the date on which it is filed, the same force and effect as a judgment of the court in which it is registered in favour of the Corporation against the person named in the certificate for the sum specified in the certificate, and also for all reasonable costs and charges upon the registration of the certificate.

(6) Proceedings may be taken on an Unpaid Fund Certificate as if it were a judgment of the court in which it was registered.

(7) Where an Unpaid Fund Certificate is filed by the Chief Executive Officer in the High Court or in a magistrate's court for District 'A', the Chief Executive Officer shall, without delay, deliver a copy of the Unpaid Fund Certificate to the person to whom that Certificate relates and, if the copy of the Certificate is not so delivered within 7 days from the date of the filing, then subsections (5) and (6) cease to have effect with respect to that Certificate.

(8) Proceedings for the summary recovery of amounts owing to the Fund may be brought at any time within 3 years from the time when the matter complained of arose.

PART III

Insurable Deposits

Insurable
deposits.

30. (1) Subject to subsections (2) to (6), the Corporation shall insure every deposit held by a member of the Fund and payable in the currency of Barbados to an amount not exceeding the insured limit that is prescribed by the Minister by order.

(2) Subsection (1) does not apply to foreign currency deposits, letters of credit, stand-by letters of credit or instruments of similar nature, inter-bank deposits and deposits from an affiliate.

(3) Except in the case of a joint account or a trust account, where a depositor holds more than one insurable deposit with the same member institution, each such deposit shall be combined and insured as a single deposit for the purposes of subsection (1).

(4) Where a depositor holds more than one insurable deposit in a joint account with the same member institution, the amount of that depositor's interest in each such deposit shall be combined and insured as a single deposit for the purposes of subsection (1) except where any such account is a trust account.

(5) Where a minor, ward of court, mental patient or other beneficiary of a trust account holds an interest in more than one trust account with the same member institution, each insurable deposit in any such account shall be combined and insured as a single deposit for the purposes of this Act.

(6) A deposit which relates to a trust account shall not be combined with any other account which is held by the trustee.

PART IV

Payment of Deposit Insurance Claims

31. (1) Subject to subsection (2) and section 34, the Corporation shall pay deposit insurance claims in respect of insured deposits where the High Court grants a winding-up order in respect of a member of the Fund. When deposit insurance claims payable.

(2) Where the Central Bank seizes the management and control of a member institution under the *Financial Institutions Act* and begins proceedings in the High Court under that Act for the compulsory winding-up of the member institution, Cap. 324A.

(a) all accounts held with that member shall be frozen forthwith;

- (b) any interest on deposits shall cease to accrue; and
- (c) all demand loans owing to the member being wound-up become due unless the Corporation on the application of the debtor agrees to enter into a new agreement for the repayment of the demand loan.

Cap. 324A. (3) No deposit insurance claim is payable under subsection (1) where the insured deposits of the member institution are transferred to a bank licensed under the *Financial Institutions Act* under an agreement made between that bank and the Corporation as liquidator to purchase the assets and assume the liabilities of the member being wound-up.

(4) Where an insured depositor is in default of payment in respect of any debt obligation owed to a member institution that is being wound-up, the Corporation may deduct from the deposit insurance payable to that person the amount that is due to the member institution.

(5) For the purposes of subsection (4) "debt obligation" includes unsecured obligations, called in guarantees and outstanding overdrafts.

Exclusion
from
coverage.

32. (1) Where any person has directly contributed to the circumstances giving rise to the winding-up of a member of the Fund, that person shall not be entitled to any payment from the Fund.

(2) Subsection (1) does not apply to persons who acted in good faith in a professional capacity for the member institution.

Central
Bank to
notify of
imminent
payment.

33. Where the Central Bank believes that the making of a payment out of the Fund in respect of insured deposits is imminent, it shall notify the Corporation that preparations be made for such payments and provide details of deposits, loans, obligations, assets and any other relevant information in respect of the member institution that is necessary to facilitate the Corporation in this function.

34. (1) Every deposit insurance claimDeposit
insurance
claims.

- (a) must be made, within 15 months of the publication of the third notice referred to in subsection (2), in such form as may be approved by the Corporation,
- (i) in the name of the person shown on the records of the member institution to be the depositor; or
- (ii) in the name of the person shown on the records of the member institution to be beneficially entitled to the deposit;
- (b) must be made on a separate form, whether or not the claim is in respect of the whole or part of an insured deposit;
- (c) must be accompanied by evidence showing that the claimant holds an account at the financial institution that is being wound-up; and
- (d) must, where the claimant is unable to produce the evidence referred to in paragraph (c), be accompanied by an affidavit stating that the claimant holds an account at the financial institution that is being wound-up and the reasons why such evidence cannot be produced.

(2) Where a winding-up order is issued by the High Court in respect of an institution which holds insured deposits, the Corporation shall forthwith publish once a week, for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados to notify depositors and creditors of the issue of the order.

(3) Where a claim is made after the time specified in subsection (1), payment shall be made in accordance with section 41(2).

(4) For the purposes of payment from the Fund, the records of the member institution shall be *prima facie* evidence of the name of the depositor or the name of any other person who is beneficially entitled to the deposit, and also of the terms and the amount of the deposit.

Joint
accounts.

35. For the purposes of payment from the Fund, each holder of a joint account shall be deemed to have an equal interest in the account unless the records of the member institution indicate otherwise.

Commence-
ment of
payment of
deposit
insurance
claims.

36. (1) The Corporation shall,

(a) not later than 2 weeks before it proposes to commence the payment of deposit insurance claims, publish once a week, for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados, indicating:

- (i) the manner in which deposit insurance claims will be paid;
- (ii) the dates and times of payment; and
- (iii) where relevant, the office or place where the payment of deposit insurance will be made;
- (iv) the place where the documents referred to in section 39(3) may be inspected; and
- (v) the manner in which depositors may make objections to the statements referred to in section 39(3);

(b) subject to section 34, commence the payment of deposit insurance claims or authorize payment thereof as appropriate, not later than 3 months after the issue of a winding-up order by the High Court in respect of the member institution.

(3) Payment of deposit insurance claims may be made to a person other than the claimant where the claimant so authorizes by declaration witnessed by a notary public, by whatever name called.

Payment of
deposit
insurance
claims.

37. The Corporation may pay deposit insurance claims in any manner that in the view of the Corporation is appropriate in the particular circumstances.

PART V

Liquidation and Reorganization of Member Institutions

- 38.** (1) Part V of the *Financial Institutions Act* shall apply
- Application
of Part V of
Cap. 324A.
- (a) to the Corporation in its capacity as liquidator or manager of a member institution; and
- (b) to institutions which hold insured deposits in so far as that Part is not inconsistent with the provisions of this Act.
- (2) The Corporation may employ such agents as it considers necessary for the purposes of subsection (1).
- 39.** (1) Where the High Court grants a winding-up order in respect of a member institution upon the application of the Central Bank under the *Financial Institutions Act*, the Corporation shall, subject to the directions of the Court, be responsible for the winding-up of the member institution.
- Liquidation
of member
institutions.
Cap. 324A.
- (2) The Corporation in its capacity as liquidator of a member institution shall ensure that
- (a) the books are balanced and all of the depositors' accounts are updated;
- (b) a list of the depositors with loans from the institution is prepared, as well as a list of those loans which can be set-off against deposits or deposit insurance, as the case may be;
- (c) statements in respect of all accounts are prepared;
- (d) a list of depositors with deposits in excess of the insured limit is prepared, being persons to whom the liquidator must issue certificates for the excess, as well as a list of depositors of uninsured deposits;

- (e) a list of all other uninsured liabilities is prepared and an estimate is made of the amount of such liabilities;
- (f) an inventory of the assets of the institution is prepared; and
- (g) any other duties necessary for meeting its responsibilities as liquidator are carried out.

(3) The documents prepared under paragraphs (e) and (f) of subsection (2), as well as a statement in respect of the account of each depositor, shall be made available by the Corporation for inspection by interested persons at all reasonable times.

(4) A depositor or any other interested person may make an objection to the statement prepared under subsection (3); and the Corporation shall make the necessary correction to the statement where the statement is shown to be incorrect.

Priority of
claims.

40. The following claims have priority against the general assets of a member institution that is being compulsorily wound-up namely:

Cap. 324A.

(a) first, the necessary and reasonable expenses incurred by the liquidator and any costs incurred by the Central Bank pursuant to Part V of the *Financial Institutions Act*;

Cap. 324A.

(b) second, the wages and salaries of the officers and employees of the member institution that accrued during the 3 months immediately preceding the closure of the member institution under the *Financial Institutions Act*;

(c) third, all taxes and moneys owing to the Government of Barbados;

(d) fourth, outstanding premiums and contributions owing to the Fund;

(e) fifth, any fees, assessments or other moneys owing to the Central Bank;

(f) sixth, the recovery of deposit insurance payments made by the Corporation to insured depositors;

- (g) seventh, deposits in excess of the insured limit, uninsured deposits, deposits in respect of which no claim from the Fund was made within the specified time and monies owing to other unsecured creditors.

41. (1) Where an insured depositor holds an account with a balance in excess of the insured limit, the Corporation shall provide the insured depositor with a liquidator's certificate specifying the amount of their additional claim on the liquidator; and the insured depositor shall be paid that balance from the assets of the member institution being wound-up *pro rata* in accordance with section 40.

Payment of uninsured deposits and deposits that are out of time.

(2) After the expiration of the time for the payment of deposit insurance claims under this Act, any depositor may make a claim to the Corporation in respect of their deposit; and payment shall be made *pro rata* as the assets are collected in accordance with section 40.

42. No payment may be made to the shareholders of a member institution which has been put into liquidation unless

Payment of share-holders.

- (a) all the depositors and other creditors of the member have received payment in full on their claims; and
- (b) creditors have received interest, where the High Court so determines, at such rate as the High Court fixes.

PART VI

General

43. (1) Subject to this Act, the Corporation may, with the approval of the Central Bank and without the consent of a member institution, disclose information received

Sharing of information.

- (a) to the Commissioner of Inland Revenue;
- (b) to any other supervisory or regulatory authority of financial institutions in Barbados; or

- (c) subject to subsection (2), to the appropriate supervisory authority of financial institutions outside Barbados at the request of that authority, where there is a branch, holding company or affiliate of the member institution operating in that country,

if the Corporation is satisfied that the authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.

(2) In the case of paragraph (c) of subsection (1), information may only be given where there is a reciprocal arrangement with that authority for the exchange of information.

Requests for
information
from
members
etc.

44. (1) The Corporation may by notice in writing

- (a) require from any member institution or any director, manager, auditor, officer or agent of a member institution, any information in relation to the business of that member; or
- (b) require through the Central Bank from an affiliate of a member institution or from any director, manager, auditor, officer or agent of an affiliate of a member institution, any information relating to its business.

(2) Where an institution referred to in subsection (1) or a director, manager, auditor, officer or agent of an institution referred to in subsection (1) fails to comply with a request for information under that subsection, relating to the affairs of the institution, that person is guilty of an offence and is liable on summary conviction to a fine of \$20 000.

(3) A director, manager, auditor, officer or agent of an institution who is required under this Part to make any disclosure to the Corporation shall not, by reason of making that disclosure, be regarded as being in breach of his duty to that institution.

(4) For the purposes of this section, the words "director", "manager", "auditor", "officer" or "agent" include a former director, manager, auditor, officer or agent of the institution, if that person's service or association ended for a period of 6 years or less prior to the time when the information is requested.

45. (1) A director, manager, auditor, officer or agent of an institution referred to in section 44(1) is guilty of an offence where that person

Offences relating to information.

- (a) wilfully destroys, or conceals from the Corporation, any material information relating to the affairs of the institution;
- (b) provides false or misleading information to the Corporation; or
- (c) falsifies or tampers with any record or document of the institution so as to mislead.

(2) A person who is guilty of an offence under this section is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 years or to both.

46. Where

Offences of falsification and fraud.

- (a) a person falsifies a passbook, certificate of deposit, bank statement or any document claiming title to a deposit with a member institution that is being wound-up;
- (b) a person fraudulently claims to be a depositor; or
- (c) a person fraudulently obtains deposit insurance,

that person is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of one year or to both.

47. In calculating the assessable income of a member of the Fund for any income year for the purposes of the *Income tax Act*, amounts paid under this Act by the member to the Fund as initial or special contributions or premiums shall be deducted.

Income tax deduction. Cap. 73.

Confidential
information.

48. (1) A person who has acquired confidential information concerning a member of the Fund as an employee of the Corporation, shall not disclose that information except as permitted under subsection (2), or use that information for any personal benefit not related to the duties through which the information was acquired.

(2) Confidential information may be disclosed where,

- (a) the information is given in the course of that person's duty;
- (b) the information is required to be disclosed by an order of the High Court; or
- (c) the information is required to be disclosed by law.

(3) In this section "confidential information" means information concerning the identity of a depositor, settlor, trustee or beneficiary of a trust, or concerning the assets, liabilities, transactions or other information in respect of a depositor, settlor, trustee or beneficiary of a trust.

(4) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for 12 months or to both.

Immunity.

49. Neither

- (a) the Governor of the Central Bank; nor
- (b) any officer of the Central Bank; nor
- (c) any officer of the Corporation

shall be liable in damages for anything done or omitted in the discharge or purported discharge of any function under this Act, unless it is shown that the act or omission was in bad faith.

50. The Minister may, after consultation with the Board, make Regulations.
regulations

(a) to provide for any matters required to be provided for by this Act; and

(b) generally for the efficient operation of this Act.

51. This Act binds the Crown.

Act binds
Crown.

SCHEDULE

*(Section 4(2))**Board of Directors*Constitution
and
appoint-
ment.

1. (1) The Board of Directors shall comprise the following persons:

- (a) the Governor of the Central Bank, *ex officio*;
- (b) the Director of Bank Supervision of the Central Bank, *ex officio*;
- (c) the Chief Executive Officer of the Corporation, *ex officio*;
- (d) a representative of the Ministry of Finance;
- (e) 3 other persons appointed by the Minister by instrument in writing who are qualified and experienced in actuarial science, accounting, banking, commerce, finance, insurance or law.

(2) A reference to any person specified in sub-paragraph (1)(a) to (d) includes the nominee of that person where the person specified is unable to attend.

(3) The Minister shall appoint

- (a) a director of the Board to be Chairman for such period, not being less than 3 years; and
- (b) a director of the Board to be Deputy Chairman for such period,

as the Minister may specify in the instrument of appointment.

Tenure.

2. (1) A director shall hold office for such period, not being less than 3 years, as the Minister may specify in the instrument of appointment.

(2) A person who is appointed to fill a vacancy created by the death, resignation or removal from office of a former director shall hold office only for the unexpired portion of the term of that former director.

(3) Every director is on the expiration of the term of his appointment eligible for re-appointment for a further term.

3. The Minister may, in writing, grant leave of absence to a director; and in the case of the inability of any director appointed under paragraph 1(1)(e) to act, the Minister may appoint a person to act temporarily in the place of that director. Temporary appointment.

4. (1) A director, other than the Chairman, may resign his office by instrument in writing addressed to the Minister transmitted through the Chairman; and from the date of the receipt of the instrument by the Minister, that director ceases to be a director of the Corporation. Resignation.

(2) The Chairman may, at any time by instrument in writing addressed to the Minister, resign his office; and from the date of the receipt of such instrument by the Minister, the Chairman ceases to be Chairman and, if the instrument so specifies, ceases to be a director of the Corporation.

5. A person is not eligible to be and, if appointed, to remain a director if Disqualification.

(a) he is a member of Parliament;

(b) he is a director, officer or auditor of a member institution;

(c) he was a director, officer or auditor of a member institution during the 3 years preceding his proposed appointment or appointment, as the case may be;

(d) he is a shareholder holding more than 5 per cent of the voting shares of a member institution; or

(e) he is a magistrate or a Judge of the Supreme Court.

6. (1) The Minister may by instrument in writing revoke the appointment of the Chairman, Deputy Chairman or any other director if he is satisfied that the person Revocation of appointment.

(a) is incapacitated physically or mentally to such an extent as to impair his ability to perform his duties, or is otherwise unable or unfit to perform his duties,

(b) is bankrupt or compounds with or suspends payment to his creditors; or

(c) is guilty of serious misconduct in relation to his duties under this Act.

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- (2) A person's membership of the Board shall be deemed vacant where
- (a) that person has become a person who would be disqualified for appointment pursuant to paragraph 5;
- (b) that person is convicted and sentenced to a term of imprisonment;
- (c) that person is convicted of any offence involving dishonesty; or
- (d) that person is absent without leave of the Board from 3 or more consecutive ordinary meetings of the Board.
- Notices to be published. **7.** Notice of the appointment and cessation of appointment of the Chairman or a director shall be published in the *Official Gazette*.
- Meetings. **8.** (1) The Board shall meet at such times as it considers necessary for the transaction of the business of the Corporation; but shall meet at least 4 times a year.
- (2) The Chairman shall preside at meetings of the Board and, in the case of the absence of the Chairman, the Deputy Chairman shall preside.
- (3) Where neither the Chairman nor the Deputy Chairman is present, the directors present and constituting a quorum may elect a chairman from among the directors present, who shall preside at that meeting.
- Decisions. **9.** The decisions of the Board shall be by a majority of votes and, in the event of an equality of votes, the Chairman has a casting vote.
- Signature and seal. **10.** (1) All decisions made by the Board and all documents of the Board shall be signed by the Chairman, the Deputy Chairman or any other person authorized to act as Chairman.
- (2) The seal of the Corporation shall be kept in the custody of the Chairman or such other director as the Board may approve, and may be affixed to documents or instruments in the presence of the Chairman and the Secretary to the Board.
- (3) The seal of the Corporation shall be authenticated by the signature of the Chairman or Deputy Chairman and the Secretary to the Board.

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- 11.** The quorum shall consist of 4 directors including Quorum.
- (a) the Chairman or, in the absence of the Chairman, the director who is presiding in accordance with paragraph 8(2) or (3); and
- (b) a director appointed pursuant to paragraph 1(1)(e).
- 12.** Minutes of each meeting shall be kept in proper form by the Secretary or Minutes. such other person as the Board may appoint for the purpose; and shall be confirmed in writing at the next meeting.
- 13.** (1) The Board may appoint committees of its members or other persons to Committees. assist with the proper discharge of its functions.
- (2) Where the Board appoints a person who is not a director to a committee, that person shall be a person who is not disqualified to serve as a director of the Corporation under paragraph 5.
- (3) Where a person who is not a director is appointed to a committee, the Board may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.
- 14.** Subject to the provisions of this Act, the Board may regulate its own Procedure. proceedings.