

CHAPTER 233

MORTGAGE INSURANCE

ARRANGEMENT OF SECTIONS

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SCHEDULE

CHAPTER 233

MORTGAGE INSURANCE

An Act to empower the Insurance Corporation of Barbados Limited to issue insurance policies in respect of loans secured by mortgages of dwelling-houses or of land on which a house is to be erected, and for matters connected therewith or incidental thereto.

1962-45. 2005-11.
1965-52. 2008/24.
1971-4.
1981-4.
1988-14.
1999-1.
2000-25.
2002-10.
2004-22.

[22nd November, 1962] Commence-
ment.

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

2. For the purposes of this Act, the expression Interpretation.

"administer", in relation to an insured loan, means to have the right to collect interest and other payments in respect of the loan, and the power to enforce any security for the loan;

"appraised value" means the value for lending purposes of a house as determined by the Corporation;

"approved lender" means a lender for the time being approved by the Minister for the purpose of making loans which may be insured under this Act;

"approved loan" means a loan in respect of which the Corporation has given an undertaking pursuant to paragraph (b) of subsection (1) of section 3;

"borrower's charges" means prescribed charges advanced by an approved lender to safeguard the interests of the mortgagee or the Corporation or both;

"chattel building" means a chattel building used as a dwelling house; 1981-4.

s.3

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- 1981-4. "Chattel Building Mortgage Fund" means the Chattel Building Mortgage Fund established under section 9A;
- 2000-25.
Cap. 308. "Corporation" means the Insurance Corporation of Barbados Limited incorporated under the *Companies Act*;
- "house" means a building, together with the curtilage thereof, intended for human habitation;
- "insured loan" means a loan in respect of which an insurance policy issued under this Act is in force;
- "lender" means
- (a) any of the following, namely:
 - (i) a loan company, insurance company, trust or other company or corporation; or
 - (ii) a building society, co-operative credit society, co-operative housing society, or other society, authorised to lend money on the security of real property; or
 - (b) a bank;
- "Minister" means the Minister responsible for Finance;
- 1981-4. "Mortgage Insurance Fund" means the Mortgage Insurance Fund established under section 9.
- Insurance of loans.
1981-4. **3.** (1) The Corporation may in accordance with this Act
- (a) effect contracts of insurance and issue insurance policies in respect of loans insurable under this Act;
 - (b) prior to the issue of an insurance policy in respect of a loan, give an approved lender an undertaking that the Corporation will issue the insurance policy if the loan is made in accordance with this Act;

(c) charge fees (in this Act called "insurance fees") in respect of such contracts of insurance;

(d) administer any fund established by or pursuant to this Act.

(2) Where an approved loan is made by an approved lender and the insurance fee in respect thereof has been paid, the Corporation shall, at the request of the approved lender, issue to the approved lender an insurance policy in respect of the loan.

(3) Where the Corporation has given an approved lender an undertaking that it will issue an insurance policy if the loan is made in accordance with this Act and the borrower subsequently requests that the loan be of an amount less than that stated in the undertaking and the insurance fee in respect of such lesser amount is paid, the Corporation shall at the request of the approved lender issue to the approved lender an insurance policy in respect of such lesser amount if the loan has, in all other respects, been made in accordance with this Act and with the undertaking to issue an insurance policy.

4. (1) A loan is insurable under this Act where

Insurable
loans.
1981-4.

(a) it is made by an approved lender to a person, in this Act referred to as "the borrower", in order that

(i) the borrower may purchase, erect or extend a house that conforms to standards of construction approved by or acceptable to the Corporation, or purchase the land on which the house is to be erected;

1999-1.

(ii) the lender may take over an existing mortgage of the borrower in circumstances that the lender considers expedient;

(b) it is up to 100 per cent of the appraised value and for the amount of the insurance fee payable in respect of the loan where the maximum limit of the loan does not exceed the amount specified in the *Schedule*;

1999-1.
2002-10.
2004-22.
2005-11.
Schedule.

(c) it bears interest at a rate not exceeding the prescribed rate;

s.4A

- 1991-1. (d) it is secured by
- (i) a first mortgage on the house or land in a form acceptable to the Corporation in favour of the approved lender, or such other security, assignments, assurances and agreements as may be required by the Corporation; or
 - (ii) a second mortgage on the house or land where the total of the amount secured by the first and second mortgages does not exceed 80 per cent of the value of the property being held as security;
- (e) it is for a term of not more than 30 years;
- (f) it is made on such terms as to the payment of principal, interest and taxes by monthly instalments or otherwise as are acceptable to or specified by the Corporation; and
- (g) it is made upon such terms and conditions in addition to those specified in paragraphs (a) to (f) as are
- (i) prescribed by regulations; or
 - (ii) agreed upon between the approved lender and the Corporation.

(2) With the approval of the Corporation, borrower's charges accruing during the term of an insured loan may be added to the principal thereof.

(3) Notwithstanding anything in this section, a loan referred to in subsection (1) may be for an amount less than the amount specified therein or for a period shorter than the period specified therein if a loan for such lesser amount or for such shorter period, as the case may be, is requested in writing by the borrower or is made in such other circumstances as may be prescribed.

Amendment
of Schedule.
2005-11.
Schedule.

- 4A.** (1) The Minister may by order amend the *Schedule*.
- (2) An order made under subsection (1) shall be subject to negative resolution.

5. (1) An insurance fee of 1.5 per cent of the amount of any loan to be insured under this Act shall be paid by the lender to the Corporation but may be charged to the borrower and collected by the lender from the borrower at such times and in such manner as may be agreed between the borrower and the lender.

Collection
of insurance
fee on loans.
1981-4.

(2) For the purposes of this section, the insurance fee shall be calculated on the amount advanced to the borrower without taking into account the insurance fee component of the loan.

6. (1) An insurance policy issued under this Act in respect of a loan ceases to be in force if the loan is transferred to a person other than ^{Termination of policy.}

(a) an approved lender; or

(b) the Corporation; or

(c) such other person as the Corporation, subject to such conditions as it thinks fit, may approve.

(2) The Corporation may, by not less than 15 days' notice to an approved lender, terminate an insurance policy issued under this Act if the approved lender fails to comply with this Act or with any directions of the Corporation pursuant to section 7 or with any regulations, and thereupon the Corporation shall be discharged from all its obligations in respect of the insurance policy.

(3) The Corporation may administer an insured loan pursuant to an agreement made with the holder thereof.

(4) Nothing in subsection (1) shall be construed as terminating an insurance policy by reason only that the Minister revokes his approval of any lender as an approved lender, and, in relation to any insured loan being administered by that lender at the time of such revocation, this Act and the regulations shall continue to apply as if such lender continued to be an approved lender.

7. (1) Where

Insurance settlement.

(a) a borrower defaults in the payment of principal or interest or in the performance or observance of any covenant expressed in any mortgage securing an insured loan; and

(b) because of such default an approved lender has the power to sell the mortgaged property,

the approved lender shall give notice to the Corporation of such default, and, if the default continues for the period specified in the insurance policy, shall, subject to subsection (7), exercise the power of sale in accordance with this section.

(2) The exercise of the power of sale shall be subject to the condition that the sale shall be by public auction with a reserve price not less than the settlement value of the property.

(2A) Notwithstanding subsection (2) the approved lender may at any time sell by private treaty prior to giving notice to the Corporation under subsection (4), but no such sale shall be made at a price less than the reserve price except with the consent of the Corporation which, if it consents to the sale, shall pay to the approved lender out of the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be, the difference between the price obtained on such sale and the settlement value of the property.

1981-4.

(3) Where the reserve price is obtained by the approved lender pursuant to subsection (2) or (2A) or the approved lender sells at a price less than the reserve price without the consent of the Corporation, the Corporation shall thereby be discharged from all its obligations in respect of the insured loan.

(4) Where in any case the approved lender does not obtain the reserve price pursuant to subsection (2) or (2A), the approved lender shall forthwith notify the Corporation and the Corporation shall thereupon, at its option, subject to subsection (5)

(a) authorise the approved lender to sell the property at the best price reasonably obtainable (whether by public auction or otherwise) and, if upon sale such price is less than the settlement value of the property, the Corporation shall pay to the approved lender the difference between such price and the settlement value of the property; or

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- (b) require the approved lender to transfer to the Corporation or its nominee all rights to or in respect of the insured loan and all collateral or other securities therefor on payment of the settlement value of the property by the Corporation to the approved lender; or
- (c) require the approved lender to sell the mortgaged property to the Corporation or its nominee at a price equivalent to the settlement value of the property; or
- (d) direct the approved lender
- (i) to acquire title to the mortgaged property (whether by proceedings for foreclosure or otherwise) free from all encumbrances except as prescribed by regulations; and
 - (ii) to convey such title within the prescribed time to the Corporation or to a nominee of the Corporation (with or without vacant possession of the property as the Corporation may require) on payment of the settlement value of the property by the Corporation to the approved lender.
- (5) The Corporation may in any insurance policy undertake to restrict the option referred to in subsection (4) to paragraphs (a), (b) and (c) only of subsection (4).
- (6) Any amount payable by the Corporation pursuant to subsection (4) shall be paid out of the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be. 1981-4.
- (7) The Corporation may agree with the approved lender to postpone the exercise of the power of sale on such terms and conditions as may be agreed upon.
- (8) For the purpose of this section, the expression "relevant date" means,
- (a) in relation to a sale pursuant to subsection (2) or (2A), the date of such sale; and

- (b) in relation to a sale, transfer or conveyance pursuant to subsection (4), the date of such sale, transfer or conveyance, as the case may be;

"settlement value of the property" means the aggregate of the following amounts, namely:

- (a) the principal owing on the mortgage at the relevant date;
- (b) borrower's charges paid before the relevant date;
- (c) interest at the mortgage interest rate on each amount specified in paragraphs (a) and (b) of this definition
 - (i) for the period for which interest thereon was due or accrued and unpaid at the relevant date, or
 - (ii) for a period of 12 months or such longer period as may from time to time be prescribed,

whichever is the shorter period; and

- (d) all costs and expenses reasonably and properly incurred and either agreed between the approved lender and the Corporation or, in default of agreement, as may be taxed by the Registrar of the Supreme Court,

and in calculating the amount payable, amounts received for the credit of the mortgage account shall be appropriated at the date of the receipt thereof first to interest then owing on the mortgage account, secondly to borrower's charges, and thirdly to the principal owing on the mortgage account.

(9) Except where notice is given to the Corporation pursuant to subsection (1), nothing in this section shall prevent an approved lender from exercising without reference to the Corporation a power of sale which has arisen in relation to an insured loan, but no claim in respect of the insurance may be made under this Act unless such notice is given.

8. Notwithstanding anything in section 7, where in any particular case the Corporation is of opinion that the procedure under that section would unduly increase the loss in respect of any insured loan, the Corporation may agree with the holder of the loan to pay to him out of the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be, upon such terms and conditions as may be agreed upon, such amount as may be agreed upon in lieu of a settlement under section 7.

Alternative
insurance
settlement.

1981-4.

9. (1) The Corporation shall establish a fund to be known as the Mortgage Insurance Fund into which shall be paid four-fifths of all insurance fees received by the Corporation under this Act.

Mortgage
Insurance
Fund.

(2) The Corporation may invest any part of the Mortgage Insurance Fund in securities approved either generally or specifically by the Minister.

(3) Property acquired by the Corporation under this Act and investments made out of the Mortgage Insurance Fund under subsection (2) shall be assets of that Fund.

(4) Save as otherwise provided in section 12, insurance fees paid into the Mortgage Insurance Fund and the return on investments and assets of the Mortgage Insurance Fund shall be deemed not to be income of the Corporation.

(5) All payments required to be made by the Corporation under section 7 or 8 or in the upkeep of any property or mortgage acquired pursuant to section 7 or 8 or in respect of any debentures issued under section 10 shall be paid out of the Mortgage Insurance Fund, or the Chattel Building Mortgage Fund, as the case may be.

1981-4.

9A. (1) There is established a Chattel Building Mortgage Fund for the purpose of guaranteeing loans made to a borrower by an approved lender for the purchasing, erecting or extending of a chattel building; and there shall be paid into that fund

Chattel
Building
Mortgage
Fund.
1981-4.

(a) moneys voted for the purpose by Parliament; and

s.10

(b) four-fifths of all insurance fees received for the purpose of insuring those loans.

(2) The Corporation shall, before guaranteeing a loan under this section, be satisfied that

(a) the loan is insurable within the meaning of section 4; and

(b) the chattel building in respect of which the loan is made is insured against fire and all other perils.

Payment in
debentures.
1981-4.

10. (1) Where the Corporation is required to make any payments out of the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be, pursuant to section 7 or 8 in settlement of an insured loan, the Corporation in its discretion may, in lieu of the portion of such payment representing the principal of the insured loan, issue to the person holding or administering the insured loan debentures (payable out of and charged on the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be) up to a nominal value equivalent to the principal of the insured loan outstanding at the date on which such payment is required to be made.

1981-4.

(2) No debentures shall be issued pursuant to subsection (1) unless such debentures

(a) bear interest at the rate of interest at which the insured loan was made; and

(b) are redeemable by the Corporation not later than the date of expiration of the term of the insured loan; and

L.N. 168/
1967.

(c) are guaranteed by the Crown.

(3) Where the Minister is satisfied that there has been default in the repayment of principal moneys or interest guaranteed under this section, he shall direct the repayment out of the Consolidated Fund of the amount in respect of which there has been such default.

(4) Any sums required by the Minister for the purpose of subsection (3) shall be charged on and issued out of the Consolidated Fund.

11. The aggregate amount of all loans in respect of which insurance policies have been issued under this Act shall not exceed the amount specified in the *Schedule*.

Limit on total amount of insurance to be undertaken by Corporation.
1981-4.
1999-1.
2002-10.
2005-11.
Schedule.

12. (1) One-fifth of all insurance fees received by the Corporation under this Act shall be income of the Corporation and may be applied towards defraying the expenses of the Corporation in the administration of this Act.

Administrative expenses of Corporation.

(2) Where the amount received by the Corporation pursuant to subsection (1) is not sufficient to defray the expenses of the Corporation in the administration of this Act in any year, the income of the Corporation for that year may be supplemented

- (a) by withdrawals from the Mortgage Insurance Fund or the Chattel Building Mortgage Fund, as the case may be, not exceeding 50 per cent of the return on investments and assets of either Fund for that year; and
- (b) if the amount so withdrawn is not sufficient for the purpose, by advances made by the Minister pursuant to section 13.

1981-4.

13. At the request of the Corporation, the Minister may, out of moneys provided by Parliament, from time to time advance to the Corporation for the purposes of this Act, on such terms and conditions as to repayment or otherwise as the Minister may determine, such amounts as will enable the Corporation to discharge its functions under this Act.

Advances to Corporation from public funds.

14. Transactions relating to the functions of the Corporation under this Act shall be distinguished so far as possible from transactions relating to other activities of the Corporation, and shall be recorded and dealt with separately in the annual accounts and reports of the Corporation.

Accounts and annual report.

Increased powers of approved lenders.

15. Notwithstanding any restrictions on the power of an approved lender to lend or invest money, an approved lender may

- (a) in accordance with this Act make approved loans on the security of a first mortgage in favour of the lender;
- (b) sell or purchase insured loans together with the security taken in respect thereof;
- (c) administer an insured loan for or on behalf of the holder thereof.

Income tax concessions to approved lenders.
Cap. 73.

16. (1) Notwithstanding Division S of the *Income Tax Act*, an approved lender shall be liable to income tax at the rate of 12.5 cents on every dollar of income which is chargeable with income tax being income arising from profits and gains derived from interest of money, fees, commissions and other profits and gains in respect of loans approved under this Act.

- (2) Where an approved lender is a company,
 - (a) such company shall place in a separate account all profits and gains specified in subsection (1) and, if it intends to pay a dividend to its shareholders out of such profits and gains, such dividend shall be paid out of such account;
 - (b) any shareholder of such company who is not resident in Barbados and to whom a dividend is paid out of the profits and gains specified in subsection (1) shall, notwithstanding Division S of the *Income Tax Act*, be liable to income tax at the rate of 12.5 cents on every dollar of such dividend.

Cap. 73.

(3) For the purposes of this section, the expressions “company” and “shareholder” have the meanings respectively assigned to them in section 85 of the *Income Tax Act*.

Regulations.

17. (1) The Minister may make regulations generally for giving effect to this Act, and in particular may make regulations

- (a) in respect of any matter required by this Act to be prescribed;

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- (b) fixing from time to time the maximum rate of interest (not exceeding the maximum rate allowed in the *Rate of Interest Act*) payable by a borrower in respect of loans which after the date of commencement of any such regulation may be insured under this Act; Cap. 316.
- (c) subject to this Act, determining the maximum charges that may be made in respect of the making and administration of an insured loan;
- (d) prescribing the form and terms of the insurance policy that may be issued in respect of an insured loan.
- (2) All regulations are subject to negative resolution.

SCHEDULE

2005-11.
2008/24.

(Sections 4, 4A and 11)

1. The maximum loan limit under section 4 shall not exceed \$600 000. 2008/24.
2. The aggregate amount of all loans in respect of which insurance policies have been issued under this Act shall not exceed \$500 000 000. 2008/24.