

No. 7 2016

VIRGIN ISLANDS
VIRGIN ISLANDS DEPOSIT INSURANCE ACT, 2016
ARRANGEMENT OF SECTIONS

Section

PART 1
PRELIMINARY

- 1...Short title and commencement.
- 2...Interpretation.

PART II
DEPOSIT INSURANCE CORPORATION

- 3...Establishment of the Corporation and its Board.
- 4...Principal objectives of the Corporation.
- 5...Powers of the Cabinet.
- 6...Taking effect of exemption.
- 7... Powers and functions of Corporation.
- 8...Exemption- shares of member institution.
- 9...Loans to Corporation.
- 10..Powers of directors.
- 11..Minister's direction.
- 12..Publication.
- 13..Recovery of loss.
- 14..Functions of Corporation- data requirement.
- 15..Data requirement.
- 16..Non-application of Insurance Act, 2008.

PART III
RESOLUTION OF FAILING INSURED INSTITUTION

- 17..Financial assistance.
- 18..Management and resolution.
- 19..Bridge Bank.

PART IV
FINANCIAL

- 20..Capital of the Corporation.

- 21..Accounts and audit.
- 22..Annual report.

**PART V
INSURANCE DEPOSIT**

- 23..Insurance of deposits.
- 24..Issuance of deposits.
- 25..Issuance of policy and certificate.
- 26..Cancellation of policy.

**PART VI
DEPOSIT INSURANCE FUND**

- 27..Deposit Insurance Fund.
- 28..Annual premium.
- 29..Special contribution.
- 30..Outstanding payments.

**PART VII
PAYMENTS OUT OF FUND**

- 31..Payments out of Fund.
- 32..Restructuring transactions.
- 33..Deposits of depositor with member institutions that subsequently amalgamate.
- 34..Persons entitled to payment.
- 35..Payment by transferred deposit.
- 36..No payment to depositor who profited from insolvency of member institution.

**PART VIII
THE DEPOSIT INSURANCE APPEAL PROCESS**

- 37..The Appeal Board.
- 38..Duty to disclose interest
- 39..Decisions of Appeal Board.

**PART IX
MISCELLANEOUS**

- 40..Appointment of Chief Executive Officer.
- 41..Duties of Chief Executive Officer
- 42..Appointment of secretary, officers and other.
- 43..Pensions.
- 44..Non-liability of employees of the Corporation.
- 45..Confidentiality.
- 46..Financial year.
- 47..Disclosure of interest.
- 48..Exemptions from tax, stamp duty etc.
- 49..Carrying on business without (deposit) insurance.
- 50..Offences by corporate officers.

- 51..Failure to make report known.
- 52..Failure to provide information, etc.- member institutions.
- 53..Additional monetary penalties.
- 54..Recovery and application of fines.
- 55..Offences relating to depositors.
- 56..Confidential information.
- 57..Insolvency and winding-up.
- 58..Annual inspections.
- 59..Costs may be charged back.
- 60..Examination considerations.
- 61..Review of returns.
- 62..Certain Reports to be provided to Corporation.
- 63..Regulations.

SCHEDULE

I Assent

(Sgd) John S. Duncan, OBE
Governor

3rd May, 2016

VIRGIN ISLANDS

No. 7 of 2016

An Act to establish the Virgin Islands Deposit Insurance Corporation and the Virgin Islands Deposit Insurance Fund for the purpose of providing limited compensation to insured depositors under certain circumstances and to provide for matters connected therewith.

[Gazetted 19th May, 2016]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY

Short title and
commencement.

1. (1) This Act may be cited as the Virgin Islands Deposit Insurance Act, 2016.

(2) The provisions of this Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

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

No. 12 of 2001.

“Appeal Board” means the Financial Services Appeal Board established under section 42 of the Financial Services Commission Act, 2001;

“bank” has the same meaning assigned to it under section 2 of the Banks and Trusts Companies Act, 1990;

“Board” means the Board of Directors of the Corporation established under the section 3;

“Chief Executive Officer” means the person appointed as such under section 40;

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

“deposit” means

(a) the unpaid balance of money or its equivalent received or held by a member institution from or on behalf of a person in the usual course of the deposit taking business and for which the institution has given or is obliged to give credit to that person’s account; and

(b) such other monies as may be prescribed by the Minister on the recommendation of the Corporation after consultation with the Financial Services Commission;

“depositor” means a person whose account has been or is to be credited in respect of moneys constituting a deposit or part of a deposit or a person to whom a member institution is liable in respect of an instrument issued for moneys constituting a deposit or part of a deposit;

“deposit insurance” means insurance provided by the Corporation in accordance with this Act against the loss of part or all of deposits;

"director" means a director of the Board;

“financial institution” means

(a) a bank; or

(b) any other person or undertaking whose business includes the accepting of deposits and who has been declared by the Financial Services Commission under this Act, 2001 or any other applicable enactment to be a specified financial institution;

No. 12 of 2001.

“Financial Services Commission” has the meaning assigned to it under section 2 of the Financial Services Commission Act, 2001;

“financial statement” has the meaning assigned to it under section 17A of the Banks and Trusts Act, 1990;

No. 9 of 1991

“financial year” has the meaning assigned to it in section 46;

“Fund” means the Deposit Insurance Fund established under section 27;

“government company” means a company registered under the BVI Business Companies Act, 2004, being a company in which the Government or an agency of the Government, by the holding of shares, is in a position to direct the policy of that company;

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

(a) another member institution;

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

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

“Minister” means the Minister responsible for Finance;

“policy of deposit insurance” or “policy” means the instrument evidencing the deposit insurance of a member institution;

"special contribution" means a contribution payable under section 29;

"trust account" includes

(a) money deposited by a trustee on behalf of the 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 trustee by a legal practitioner, 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 fund from those of the firm, the company or the other fiduciary;

(c) moneys held on account for the purpose of a trust.

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

(a) there exists in relation to the institution any condition precedent to the exercise of the powers of the Financial Services Commission in the interest of and for the protection of depositors, to take such steps or apply such sanctions as authorised under the Banks and Trusts Act, 1990, the Financial Services Commission Act, 2001 or any other applicable enactment;

(b) the institution has in the opinion of the Financial Services Commission failed to satisfy prudential criteria and minimum solvency standards prescribed by or under the Banks and Trusts Act, 1990, the Financial Services Commission Act, 2001 or any other applicable enactment;

No. 9 of 1990
No. 12 of 2001

(c) it is unable to pay its debts; or

(d) proceedings has commenced in court for, a winding up against that institution or a resolution for a creditor's voluntary winding up has been passed.

PART II DEPOSIT INSURANCE CORPORATION

3. (1) There is hereby established for the purposes of this Act, a body to be called the Virgin Islands Deposit Insurance Corporation which shall be a body corporate to which section 21 of the Interpretation Act shall apply.

Establishment of
the Corporation
and its Board.

Cap136

(2) There shall be a Board of Directors of the Corporation and the provisions of the Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

Schedule

(3) The Minister may, by Order published in the *Gazette*, amend the Schedule.

4. The principal objectives of the Corporation are to

(a) establish and manage a system for the insurance of deposits or parts thereof against the risk of loss to depositors;

Principal
objectives of the
Corporation.

(b) promote and otherwise contribute to the stability of the financial system in the Virgin Islands;

(c) assess and mitigate against financial institutions risk exposure to loss in order to minimise claims against the Fund.

(d) pursue the objects set out in this section for the benefit of persons having deposits with member institutions and in such a manner as will minimise the exposure of the Corporation to loss.

Powers of
Cabinet.

5. (1) The Cabinet may exempt the Corporation from the requirement that it pursue its objects in a manner that will minimise its exposure to loss when it takes any action to address a situation that is specified in the exemption.

(2) The Cabinet may exempt the Corporation under subsection (1) only if the Minister is of the opinion, after consultation with the Board, the Financial Services Commission, that the requirement that the Corporation pursue its objects in a manner that will minimise its exposure to loss, in respect of a situation that will be specified in the exemption, might have an adverse effect on the stability of the financial system in Virgin Islands or public confidence in that stability.

(3) The Cabinet may revoke the exemption only if the Minister is of the opinion that the requirement that the Corporation pursue its objects in a manner that will minimise its exposure to loss, in respect of the situation specified in the order, will no longer have an adverse effect on the stability of the financial system in the Virgin Islands or public confidence in that stability.

(4) Nothing in this section shall be construed as limiting in any way the powers conferred on the Cabinet under the Virgin Islands Constitution Order, 2007 or any other enactment.

U.K. S.I. 2007
No. 1678

Taking effect of
exemption.

6. An exemption made under subsection 5(1) has effect from the time that it is communicated to the Corporation and ceases to have effect once revoked under section 5 (3).

Powers and
functions of
the
Corporation.

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

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

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

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

(d) subject to section 27, provide financial assistance to insured institutions, in case of imminent or actual financial difficulties

particularly where suspension of payments is threatened to avoid damage to public confidence in the financial system by

- (i) making loans or advances with security to a member institution;
- (ii) making deposits to member institutions; and
- (iii) borrowing or raising funds;
- (e) guarantee, indemnify or become liable for the payment of moneys or the performance of any obligation thereto;
- (f) the ability to expense assets;
- (g) make any investment and enter into any transaction necessary or desirable for the financial management of the Corporation;
- (h) sensitise consumers on the Corporation's role and the rights of depositors in the event of failure of an insured institution; and
- (i) the ability to enter into an agreement or memorandum of understanding with any person or organisation to further or carry out any purpose or function of the Corporation.

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

- (a) make such enquiries, including carrying out inspections, of a member institution as to the conduct of its affairs as may be prescribed;
- (b) make recommendations to the Financial Services Commission for action to be taken in accordance with the Financial Services Commission Act, 2001 in respect of any member institution which appears to the Corporation to be in financial distress;
- (c) in accordance with such rules as may be prescribed, act as receiver or liquidator of any member institution, or of its holding company or subsidiary which becomes insolvent, or appoint any person to act as such; and in acting in any such capacity may arrange for the restructuring of a member institution whether by merger with or acquisition by another financial institution or otherwise;

- (d) assume the costs of a winding-up of a member institution when the Corporation is appointed to act as a liquidator in the winding-up, or assume the costs of the receiver when the Corporation is appointed to act as such and charge those costs to the Accumulated Net Earnings of the Corporation;
- (e) guarantee the payment of the fees of, and the costs incurred by any person as, the liquidator or receiver of a member institution when that person is appointed as such and charge any amounts paid under the terms of the guarantee to the Accumulated Net Earnings of the Corporation;
- (f) make an advance for the purpose of paying a claim, against a member institution for which the Corporation is acting as receiver or liquidator, in respect of any insured deposit and of becoming subrogated as an unsecured creditor for the amount of the advance.

(3) For the purposes of facilitating the acquisition, management or disposal of real property or other assets of a member institution that the Corporation may acquire as the result of its operations, the Corporation may, when authorised by order of the Cabinet

- (a) procure the incorporation of a corporation, all the shares of which, on incorporation, would be held by, on behalf of or in trust for the Corporation;
- (b) acquire all of the shares of a corporation that, on acquisition, would be held by, on behalf of or in trust for the Corporation; or
- (c) settle or compromise any claim by or against the Corporation.

(4) A corporation described in paragraph (3) (a) or (b) is deemed not to be an agent of the Corporation.

(5) The Corporation shall, in exercising its powers under paragraph (1) (g), comply with such directions of general application as the Cabinet may, in writing, give to the Corporation.

Exemption-
shares in member
institution.

8. (1) To enable the Corporation to acquire, hold or dispose of shares in a member institution, the Cabinet may, by order exempt any person or share specified in the order.

(2) The exemption may be subject to such conditions as may be prescribed by regulations.

(3) The exemption ceases to have effect five years after the day on which it comes into force.

(4) The Cabinet may, by order, extend the duration of the exemption if general market conditions so warrant.

9. (1) At the request of the Corporation, the Minister may, out of the Consolidated Fund, lend money to the Corporation on such terms and conditions as the Minister may establish. Loans to Corporation.

(2) The Corporation may borrow money otherwise than under subsection (1) and may borrow by any means, including the issuance and sale of bonds, debentures, notes or any other evidence of indebtedness.

(3) The total principal indebtedness outstanding at any time in respect of borrowings under subsections (1) and (2) shall not exceed

(a) \$12,500,000 or, if it is greater, the amount determined in accordance with subsections (4) to (8); or

(b) such greater amount as may be authorised for the purposes of this subsection by House of Assembly under an appropriation Act.

(4) Subject to subsections (6) and (7), the amount that the total principal indebtedness outstanding at any time in respect of borrowings under subsections (1) and (2) shall not exceed the amount determined by the formula

$$A + (A \times B)$$

where

A is \$12,500,000; and

B is the rate determined by the formula set out in subsection (5).

(5) The rate referred to in the description of B in subsection (4) is determined by the formula

$$(C - D) / D$$

where

C is the total amount of deposits insured by the Corporation on July 1 of the current year; and

D is the total amount of deposits insured by the Corporation on December 1, 2016.

(6) The amount determined under subsection (4) shall be rounded to the nearest million dollars or, if the amount is equidistant from two consecutive multiples of one million dollars, it shall be rounded to the higher of those two multiples.

(7) The amount that the total principal indebtedness outstanding at any time in respect of borrowings under subsections (1) and (2) shall not change if the amount determined under subsection (4) for the current year is less than the amount published under subsection (9) for the previous year.

(8) The new amount that the total principal indebtedness outstanding at any time in respect of borrowings under subsections (1) and (2) comes into effect on December 31 of the current year.

(9) The Corporation shall publish the new amount that the total principal indebtedness outstanding at any time in respect of borrowings under subsections (1) and (2) in its annual report following the day on which the new amount comes into effect.

(10) The Minister may fix a fee to be paid by the Corporation to the Accountant General in respect of any borrowings by the Corporation and the Minister shall notify the Corporation in writing of any such fee.

Powers of Directors.

10. The Board shall administer the affairs of the Corporation in all things and make, or cause to be made, for the Corporation any description of contract that the Corporation may by law enter into.

Minister's direction.

11. (1) The Minister may, after consultation with the Board and the Financial Services Commission, give a written direction to the Corporation if the Minister is of the opinion that not giving the direction might have an adverse effect on the stability of the financial system in the Virgin Islands or public confidence in that stability.

(2) The Corporation shall comply with the direction without regard to the requirement referred to in section 4(c) that it pursue its objects in a manner that will minimise its exposure to loss.

(3) After implementing the direction the Corporation shall, without delay, notify the Minister that the direction has been implemented.

Publication.

12. The Minister shall cause a notice to be published in the *Gazette* that a direction was given under section 11(1), as soon as the Minister is of the opinion

that the publication of the notice will not have an adverse effect on the stability of the financial system in the Virgin Islands or public confidence in that stability.

13. After the publication of a notice in the *Gazette* that a direction was given under section 11 (1), the Corporation shall, in accordance with its regulations, collect a special premium from member institutions or any class of member institutions in order to recover the loss that the Corporation determines it incurred as a result of complying with the direction. Recovery of loss.

14. (1) The Corporation shall Functions of Corporation- data requirement.

(a) furnish to the Minister, such operating plans and forecasts, returns, accounts and other information as the Minister may require with respect to the property and activities of the Corporation; and

(b) afford to the Minister facilities for verifying such information in such manner and at such times as he or she may reasonably require.

15. (1) For the purposes of the performance of its functions the Corporation shall Data Requirement

(a) be entitled to receive from the Financial Services Commission upon request, copies of its on-site examination reports on member institutions or any report sent to the Minister which fall under its purview and all material information is relating to the safety and financial soundness of member, including reports and returns submitted by them and directions issued by the Financial Services Commission to them; and

(b) make available to the Financial Services Commission any report or information which may be utilised by the Financial Services Commission to enhance the development of sound financial practice in the Virgin Islands.

(2) An appointment by the Corporation of a receiver, liquidator, or judicial manager under section 7 (2) (c) shall not be made except with the consultation of the Financial Services Commission.

16. The Insurance Act, 2008 shall not apply to the Corporation. Non application of Insurance Act. No. 1 of 2008

PART III RESOLUTION OF FAILING INSURED INSTITUTION

17. (1) Pursuant to section 4(c), the Corporation shall, at the request of an insured institution and subject to such conditions as may be specified by the Corporation, assist an insured institution if the insured institution Financial assistance.

- (a) has difficulty in meeting its obligations to its depositors and other creditors;
- (b) persistently suffers liquidity deficiency;
- (c) is systemically important as determined by the Financial Services Commission; or
- (d) meets other criteria prescribed by the Corporation.

(2) Subject to subsection (3), the Corporation may take one or a combination of any of the following actions to assist a failing insured institution

- (a) grant loans on such terms as may be agreed upon between the Corporation and the failing insured institution; and
- (b) give guarantee for a loan taken by the insured institution.

(3) The interest rates applicable to facilities extended to the failing institution under subsection (2), shall be at the ruling Bank Rate or any other rate as determined by the Board.

Management and resolution.

18. (1) The Corporation in carrying out its powers under section 7 (2) (c) and, in consultation with the Financial Services Commission, may

- (a) direct specific changes to be made in the management of the failing insured institution within such time as the Corporation may specify;
- (b) arrange a merger with or acquisition by another insured institution or contract to have the deposit liabilities assumed by another insured institution; in which case
 - (i) the receiving or acquiring insured institution shall assume all the insured deposits of the failing insured institution;
 - (ii) the receiving insured institution shall receive those assets of the failing insured institution that are acceptable and an amount equal to the difference between the assumed deposit liabilities and acceptable assets shall be advanced to the receiving insured institution by the Corporation;
 - (iii) the Corporation may receive such assets from the failing insured institution as it may consider acceptable as collateral for the advance to the receiving insured institution or purchase the assets from the failing insured institution, and

- (iv) subject to paragraph (iii) above, any asset (including land) of the failing insured institution shall be transferred or be vested in the receiving insured institution or the Corporation;
- (c) acquire, manage and dispose of impaired assets of a failing insured institution, either directly or through an asset management company and the failing insured institution shall offer its assets for sale to the Corporation or the asset management company or as security for loans from the Corporation or the asset management company; or
- (d) take such other measures as are reasonably necessary for the purpose of securing and resolving the failing insured institution.

19. (1) The Corporation, in consultation with the Financial Services Commission, may create and incorporate, and the Financial Services Commission shall issue a licence to one or more banks or deposit taking financial institutions, to be referred to as a bridge bank which shall be an insured institution to assume such deposits or liabilities, and shall purchase such assets of a failing insured institution and perform such other function or business as the Corporation may determine. Bridge bank.

(2) The Corporation shall appoint, remove and fix the remuneration of the Board of Directors and management of such bridge bank.

(3) Notwithstanding the provisions of the BVI Business Companies Act, the Financial Services Commission Act, the Banks and Trust Companies Act or any other applicable law, the bridge bank shall not be subject to any requirement relating to issued or paid up capital, and the Corporation may make available to the bridge bank, upon such terms and conditions, and in such form and amounts, as the Corporation may determine, funds for the operation of the bridge bank.

(4) The Financial Services Commission, may at the request of the Corporation, grant forbearance, exemptions and waivers to the bridge bank in respect of its operations.

(5) The operation of a bridge bank shall terminate at the expiry of 2 years from the date it was issued a licence and the Corporation may extend the period of operation of the bridge bank subject to a maximum of 3 additional one year periods.

(6) The status of a bridge bank shall terminate upon the earliest of-

- (a) the merger or consolidation of the bridge bank with an insured institution that is not a bridge bank; or
- (b) the sale of the majority of the equity of the bridge bank to any person other than the Corporation and another bridge bank; or

- (c) the assumption of all or substantially all deposits and other liabilities or the acquisition of all or substantially all of the assets of the bridge bank by an insured institution other than a bridge bank; or
- (d) the expiration of the period provided in subsection (5) above or the earlier dissolution of the bridge bank by the Corporation before the expiration of the time specified in this provision or as extended by the Corporation pursuant to this Act.

(7) The Corporation shall be appointed liquidator of a bridge bank whose status as a bridge bank has been terminated.

(8) Following the merger or consolidation or sale of the equity or assumption of the deposits or acquisition of the assets of the bridge bank as provided in subsection (6) above, the resulting entity shall for all purposes be an insured institution.

PART IV FINANCIAL

Capital of the Corporation.

20. (1) Subject to the provisions of this section, the authorised start-up capital of the Corporation shall be the sum of four million dollars which shall be subscribed by the Government.

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

Accounts and audit.

21. (1) The Corporation shall

(a) keep proper books of account of its income and other receipts and expenditure; and

(b) ensure that

(i) all monies received are properly brought to account;

(ii) all payments out of its moneys are correctly made and properly authorised; and

(iii) adequate control is maintained over its property and over the incurring of liabilities by the Corporation.

(2) The books of account kept under subsection (1) shall be maintained in such form and manner that they

- (a) are sufficient to record and explain the Corporation's transactions;
 - (b) enable the Corporation's financial position to be determined with reasonable accuracy at any time; and
 - (c) are sufficient to enable the Corporation's financial statements to be prepared and audited in accordance with this section; and
 - (d) are satisfactory to the Minister, and shall conform with established accounting principles.
- (3) Within three months after the end of each financial year, the Corporation shall prepare and approve accounts containing
- (a) a statement of the assets and liabilities of the Corporation at the end of the financial year;
 - (b) a statement of the revenue and expenditure of the Corporation during the financial year;
 - (c) such other financial statement for the financial year as may be specified by the Board; and
 - (d) proper and adequate explanatory notes to the financial statements.
- (4) The accounts of the Corporation shall within six months after the end of each financial year, be audited by such person as may be appointed in respect of each financial year by the Chief Executive Officer and approved by the Board, but until such appointment is made the Auditor General shall be responsible for auditing the accounts of the Corporation.
- (5) Transactions relating to the administration of the Fund under this Act shall be distinguished from transactions relating to other activities of the Corporation and shall be recorded and dealt with separately in the annual account and reports of the Corporation.
- (6) As soon as the accounts of the Corporation have been audited, the Corporation shall send the statement of its accounts referred to in subsection (1) to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Corporation.
- (7) The auditors' fees and any expenses of the audit shall be paid by the Corporation.

Annual report.

22. (1) Within three months of the completion of the audit of the Corporation's accounts in respect of any financial year, the Corporation shall submit to the Cabinet

(a) a copy of its audited accounts;

(b) a written report of its operations and activities for that financial year together with a copy of the audited financial statements.

(2) Within three months of receiving the Corporation's audited accounts, report and audited financial statements, the Cabinet shall cause them to be laid in the House of Assembly.

(3) Where the Corporation's audited accounts, report and audited financial statements are laid in the House of Assembly and they are subsequently referred to a Select Committee of the House of Assembly, the Chief Executive Officer and other senior staff of the Corporation may be required in writing by the Speaker to appear before the Select Committee of the House of Assembly to assist with and respond to any matter concerning the audited accounts, report and audited financial statements.

(4) Where the Corporation's audited accounts, report and audited financial statements are not laid in the House of Assembly within the time frame provided in subsection (2), the Corporation may publish the audited accounts, report and audited financial statements in a manner as the Board considers fit.

PART V DEPOSIT INSURANCE

23. (1) On the commencement of this Act, all financial institutions that are licensed under the Banks and Trust Companies Act, 1990 which are permitted to accept in the course of business, deposits that are insurable under this Act, shall be deemed to be members of the Corporation.

(2) The Corporation may, by notice in writing, require members of the Corporation to transmit the following to the Corporation:

(a) a copy of the member's memorandum and articles of association;

(b) a copy of the financial statement of the member,

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

Corporation
membership.
No. 9 of 1990

(ii) where the member was licensed under the Banks and Trust Companies Act, 1990, 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) After the commencement of this Act, every financial institution that is licensed under the Banks and Trust Companies Act, 1990, 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 Corporation immediately after its license has been granted under that Act.

(4) Where a financial institution is licensed under the Banks and Trust Companies Act, 1990 after the commencement of this Act, the Financial Services Commission shall, as soon as is practicable after the issue of the license 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.

No. 9 of 1990

24. (1) The Corporation shall insure every insurable deposit held by a member of the Corporation and payable in the currency of the Virgin Islands to an amount prescribed in regulations.

Insurance of deposits.

(2) Single, Joint and Trust accounts are treated in accordance with section 31(4).

25. (1) Where a member institution pays the initial compulsory premium under this Act, the Corporation shall issue to that member, a policy of deposit insurance and a certificate to that effect, a copy of which certificate shall be displayed in a prominent place in each place of business of the member institution.

Issuance of policy and certificate.

(2) The policy of deposit insurance is renewable annually with payments of a premium into the Fund as stipulated in section 27.

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

26. (1) Subject to the provisions of this section, the Corporation may, by notice in writing to a member institution, cancel a policy issued under section 25 in any of the following circumstances:

Cancellation of policy.

(a) when the Corporation and the Financial Services Commission are of the opinion that the member is or is about to become insolvent;

- (b) when the member's licence to carry on its business operations has been revoked by the Financial Services Commission;
- (c) where the Corporation is proceeding against the member under section 30.
- (d) where the member never accepted deposits within a period of two years, beginning on the day on which it became a member institution;
- (e) where the member fails to pay annual premiums.

(2) The Corporation shall notify the Minister of the action it is proposing to take under subsection (1).

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

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

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

- (a) notify the member in writing of
 - (i) its intention to cancel the policy as from a date specified in the notice; and
 - (ii) the right of appeal conferred by section 39(3);
- (b) send a copy of the notice referred to in paragraph (a) (i) to the Financial Services Commission.

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

(6) Where a policy issued under section 25 is cancelled, the Corporation forthwith shall notify the depositors in writing of the fact and make public notification of the cancellation of the policy in such news media as it may consider appropriate.

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

(8) Termination or cancellation of a policy of deposit insurance does not relieve a former member institution from obligations and liabilities to the Corporation that have accrued before the termination or cancellation.

(9) Where in the opinion of the Corporation a member institution is or is about to become insolvent, the Corporation is deemed to be a creditor of the member institution and the Corporation may initiate and take any measures or proceedings that a creditor of the member institution may initiate or take under law to preserve the assets of the member institution or to have it wound up or liquidated.

(10) For the purposes of this section, the Corporation is deemed to be a creditor of a member institution despite the termination or cancellation of the institution's policy of deposit insurance.

(11) If the policy of deposit insurance of a member institution is terminated or cancelled, the member institution shall notify its depositors of that fact and shall remove all references to deposit insurance under this Act from all forms of advertising by the institution.

(12) The Corporation may, in the manner and through any news media that it considers appropriate, give public notice of the termination or cancellation of the policy of deposit insurance of a member institution if, in the opinion of the Corporation, the public interest requires that such notice be given.

PART VI THE DEPOSIT INSURANCE FUND

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

Deposit
Insurance Fund.

(a) into which shall be paid

- (i) initial, annual and other premiums paid by member institutions pursuant to this Act or any regulations made hereunder;
- (ii) such contributions by way of advances which may be made by the Government from time to time;
- (iii) any amounts representing the proceeds of investments made out of the Fund;

- (iv) any amounts borrowed by the Corporation for the Fund;
 - (v) amounts realised by the corporation from the liquidation of assets;
 - (vi) any amount representing the repayment of loans or advances made out of the Fund to member institutions;
 - (vii) any amounts received from penalties;
- (b) upon which shall be charged
- (i) payments to depositors made under this Act;
 - (i) the payment of principal and interest in respect of moneys borrowed by the Corporation for the purposes of the Fund and paid into the Fund;
 - (iii) any other payments legally due to a member institution or third party arising out of the administration of the Fund;
 - (iv) the payment of expenses incurred by the Corporation in the exercise of its functions and operations under this Act; and
 - (v) any loans or advances made out of the Fund.

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

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

(3) Moneys comprising the Fund (not invested as stated in subsection (2)) may be held in such bank or banks as the Corporation may, from time to time, determine.

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

(5) Each member of the Corporation

- (a) to which section 23 (1) applies, shall within sixty days of the commencement of this Act, pay into the Fund in accordance with this section, an initial compulsory premium based on
 - (i) a percentage of the insurable deposits held by the member for the calendar year preceding the commencement of this Act; or
 - (ii) a flat rate as may be prescribed by regulations;
- (b) to which section 23 (3) applies, shall pay into the Fund in accordance with this section an initial compulsory premium based on
 - (i) a percentage of the insurable deposits held by the member during the first twelve months of its operation; or
 - (ii) a flat rate as may be prescribed by regulations.

(6) The percentage or flat rate referred to in subsection (5) shall be prescribed by Order by the Board.

(7) The Corporation shall, as soon as is practicable after the commencement of this Act, serve a notice on each member of the Corporation to which section 23 (1) applies specifying in accordance with subsection 5(a)

- (a) the initial compulsory premium which each member must pay; and
- (b) the date on which it is payable.

(8) For the purposes of this section, every member institution shall, on or before 21st January each year, transmit to the Corporation, a report certified by its Chief Executive Officer and one of its directors, of its insurable deposits for each quarter of the preceding year.

(9) Notwithstanding subsection (8), a member institution shall, when requested in writing by the Corporation, transmit to the Corporation, a return of its insurable deposits certified by its Chief Executive Officer and one of its directors.

(10) Where the directors of a member institution are unable to certify the report as required under subsection (9), they may authorise such persons as they think fit to certify the report on their behalf.

(11) Where the report referred to in subsection (8) is not transmitted within the time specified or the information contained therein is fundamentally inaccurate, the Corporation may impose on that member institution, a charge not

exceeding five hundred dollars for every day during which the contravention continues.

(12) The Corporation shall, as soon as practicable, serve a preliminary notice of assessment on each member of the Corporation to which section 23 (3) applies, specifying in accordance with subsection 5(b)

(a) the initial compulsory premium which that member must pay;
and

(b) the date on which it is payable.

(13) Where the amount specified in the notice under subsection (8),

(a) exceeds the amount payable by the member under subsection (5)(b), the balance shall be refunded by the Corporation;

(b) is less than the amount payable by the member under subsection (5)(b), the Corporation shall notify the member of the date on which the balance is payable.

Annual premium.

28. (1) Each member of the Corporation shall every calendar year, pay a premium into the Fund, half of which is payable on or before 15th February each year and the balance on or before 15th July each year.

(2) 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) The annual premium payable by each member of the Corporation under subsection (1) shall be based on

(a) a percentage of the insurable deposits held by that member during the calendar year preceding the calendar year for which the premium is payable; or

(b) a flat rate as may prescribed by regulations.

(4) The percentage or flat rate referred to in subsection (3) shall be prescribed by Order by the Board.

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

(6) Where a financial institution becomes a member of the Corporation in accordance with section 23 (3), the premium payable by that member for the first calendar year and the second calendar year of its operation shall be based on

- (a) the prescribed percentage of the insurable deposits held by that member during those respective calendar years; or
- (b) a flat rate as may be determined by the Minister after consultation with the Board.

(7) 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 (6), 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.

(8) Where the amount specified in the notice under subsection (7)

- (a) exceeds the amount payable by the member under subsection (3), the balance shall be refunded by the Corporation;
- (b) is less than the amount payable by the member under subsection (6), the Corporation shall notify the member of the date on which the balance is payable.

(9) Premiums payable shall not be chargeable to depositors in any form.

29. (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 and Cabinet may by Order prescribe that a special contribution be paid by member institutions.

Special
Contribution.

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

30. (1) Where

Outstanding
Payments.

(a) any sum payable to the Fund by a member institution remains outstanding after 3 months, the institution's membership may be cancelled by the Corporation;

No. 9 of 1990

(b) an institution's membership is cancelled under paragraph (a), that institution's license under the Banks and Trusts Companies Act, 1990 may be revoked by the Financial Services Commission in accordance with the Financial Services Commission Act, 2001;

No.12 of 2001

(c) any amount payable to the Fund by a member under this Act is outstanding, that member is liable to pay such interest as may be prescribed by the Board.

(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 certify in relation to the person who owes those sums, in a certificate called an "Unpaid Fund Certificate", the sums due and payable by that person and the Chief Executive Officer shall inform about and submit to the Financial Services Commission, a copy of the Unpaid Fund Certificate.

(4) An Unpaid Fund Certificate may be filed by the Chief Executive Officer in the High Court and it shall be registered in the court when 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 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.

(7) Where an Unpaid Fund Certificate is filed by the Chief Executive Officer in the High Court, 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.

(9) For the purposes of this section, a member institution may use any method approved by the Corporation to determine or estimate the aggregate amount of its deposits that are considered to be insured by the Corporation.

(10) The premium payable by a member institution shall be based on returns to be certified by the institution and submitted in such form and at such time as the Corporation may require.

(11) All premiums payable shall be paid to the Corporation in the method and place prescribed by the corporation.

(12) No member institution shall, without the prior agreement of the Corporation, reduce or extinguish a premium payment, interest or other payment to be made to the Corporation by reason of a set-off or claim by the member institution against the Corporation.

PART VII PAYMENTS OUT OF FUND

31. (1) Subject to the provisions of this Part, the Corporation shall make a payment out of the Fund in respect of an insured deposit as referred to in section 24 (1), to every depositor of a member institution in the following circumstances:

Payments out of Fund.

- (a) the member licence to carry on its business operations has been revoked by the Financial Services Commission;
- (b) a winding up order has been made by a court against the member or a resolution for a creditor's voluntary winding up has been passed;
- (c) the member is unable, by reason of an order of a court or of any action taken by the Corporation or the Financial Services Commission, to make any payment in respect of the deposit;
- (d) the policy of deposit insurance issued to the member has been cancelled.
- (e) to provide financial assistance to any insured institution subject to section 17.

(2) Where the Corporation is obliged to make payments out of the Fund on the occurrence of any event specified in subsection (1), such payments shall commence not later than seven days after the occurrence of that event (hereinafter referred to as the specified date).

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

(4) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for another or as joint owner with another, if the trusteeship or joint interest is disclosed on the records of the institution, the deposit of the depositor acting as trustee or as joint owner with another shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the depositor acting in their own right or acting in another joint or trust capacity with the institution.

(5) For greater certainty, where two or more persons are joint owners of two or more deposits, the aggregate of those deposits shall be insured to a maximum of one hundred thousand dollars.

(6) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for a beneficiary, if the trusteeship is disclosed on the records of the institution, the interest of the beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the beneficiary made with the institution in their own right for their own use and separate from any interest of the beneficiary in respect of any other trust deposit of which the beneficiary is a beneficiary.

(7) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for two or more beneficiaries, if the interest of each beneficiary in the deposit is disclosed on the records of the member institution, the interest of each beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the corporation to be a separate deposit.

(8) A deposit held by a member institution for a depositor who is acting as trustee under a trust is deemed not to be a separate deposit if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit insurance under this Act.

(9) 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.

(10) Where a depositor holds more than one deposit in a member institution

(a) in different capacities and with different rights in relation thereto, each such deposit shall be treated as a separate deposit for the purposes of subsection (1);

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

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

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

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

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

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

32. Where the Corporation is obliged to make payments out of the Fund on the occurrence of any event specified in of section 31, interest on deposits shall cease to accrue from the date on which the specified event occurred, whether or not the date of maturity of the deposit is after the date of the specified event.

Restructuring transactions.

33. (1) This section applies where a depositor holds insurable deposits with two or more member institutions that

Deposits of depositor with member institutions that subsequently amalgamate.

(a) subsequently merge; and

(b) continue operations as one member institution.

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

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

Persons entitled to payment.

(a) to persons in whose names deposits are listed in the records of the member institution concerned on production of evidence of deposit ownership satisfactory to the Corporation;

- (b) to persons having a right to receive deposits or part thereof, as have been notified to the member by the depositor concerned;
- (c) to such other persons who establish to the satisfaction of the Corporation, or failing that, to the satisfaction of a court of competent jurisdiction that they are either depositors of the member concerned or have a right to receive deposits or part thereof, and claims for payment may be made by depositors or such other persons, either in person or in writing supported by affidavit.

(2) Depositors who have deposits with a member institution in excess of the insured deposit shall upon receiving payment of the insured deposit be issued with a certificate by the Corporation for the amount in excess of the insured deposit to be claimed against the assets of the failed institution.

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

(4) Payment out of the Fund which are made after the time specified in subsection (3), shall be made against the assets of the member institution and shall be paid *pro rata* as the assets of the member are collected and sold.

(5) Persons who have credit facilities outstanding to member institutions in respect of which the Corporation is obliged to make a payment under this Act, shall make payments to the Corporation in respect of such credit facilities, on the same terms as were agreed with the members.

35. (1) Where the Corporation is obliged to make payments out of the Fund under this Act, the payments in respect of the member institution concerned may be made, by way of transfer to another member institution, in such manner as may be determined by the Corporation.

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

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

(4) In this section "transferred deposit" means an insurable deposit transferred from one member institution to another member.

Payment by transferred deposit.

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

No payment to depositor who profited from insolvency of member institution.

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

PART VIII THE APPEAL BOARD

37. (1) The Appeal Board as established under the Financial Services Commission Act shall also perform the functions and powers imposed or conferred on it under this Act.

Appeal Board.

(2) For purposes of this Part, sections 42 to 48 of the Financial Services Commission Act shall apply, *mutatis mutandis*, to appeals under this Act.

38. (1) A member of the Appeal Board who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of appeal before the Appeal Board shall, as soon as reasonably practicable, declare his or her interest to the Secretary in writing stating the nature of the interest; and recuse himself or herself from participating in the hearing of, or discussing any matter relating to, the appeal concerned.

Duty to disclose interest.

(2) A member of the Appeal Board who fails to declare an interest as required under subsection (1) shall be liable to be removed from office as a member of the Appeal Board.

39. (1) The Board may, after hearing an appeal,

Decisions of Appeal Board.

(a) dismiss the appeal;

(b) allow the appeal; or

(c) make an order remitting the case to the Corporation, for further hearing with such directions as it may consider fit.

(2) No cost shall be awarded by Appeal Board to any party in respect of any matter heard by it.

(3) Decisions of the Appeal Board may be appealed to a court of competent jurisdiction.

**PART XI
MISCELLANEOUS**

Appointment of
Chief Executive
Officer.

40. (1) The Board shall, with the approval of the Cabinet, appoint a fit and proper person to be the Chief Executive Officer of the Corporation, on such terms and conditions as the Board considers appropriate.

(2) The Board shall, before making an appointment under subsection (1), recommend to the Cabinet the person who is to be appointed.

Duties of Chief
Executive
Officer.

41. (1) The Chief Executive Officer is an employee of the Corporation and shall in his duties

- (a) be responsible to the Board for the daily administration of the Corporation and supervision of the staff of the Corporation;
- (b) balance the interests of depositors, the system and government while ensuring the Corporation's compliance with the Act;
- (c) provide the Board of Directors with all relevant information and recommendations to allow them to make informed policy decisions;
- (d) perform any such duties as may be assigned or delegated by the Board.

(2) In discharging his or her functions under subsection (1), the Chief Executive Officer shall use his or her best effort to ensure that,

- (a) the resources of the Corporation are utilised economically and efficiently;
- (b) the internal financial and management controls of the Commission are adequate;
- (c) the Corporation is operated in accordance with principles of good governance; and
- (d) the Corporation fulfills its statutory obligations and properly discharges its functions.

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

Appointment of
secretary,
officers etc.

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

43. (1) The Corporation shall within a period of two 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.

Pensions.

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

Cap. 161

(3) 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 or she 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 shall apply to him as if his or her service with the Corporation were service within the meaning of that Act.

(4) 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 or her service with the Corporation was public service within the meaning of that Act and the Pensions Regulations shall apply to him accordingly.

(5) Where a public officer is transferred to the service of the Corporation under subsection (3), the Corporation shall refund to the Consolidated Fund all moneys payable as pension in respect of the service of that officer with the Corporation.

(6) For the purposes of this section, service of a person referred to in subsections (1) to (5) shall be aggregated with his or her service with the Corporation for the purpose of computing any pension or other retiring allowance to which he or she may be entitled.

(7) Nothing in this section shall be deemed to affect the right of the Corporation to terminate the employment of any such officer or employee

transferred to the service of the Corporation or to vary his rate of pay or conditions of service, in the manner and to the extent that Government could have done had he continued in the service of the Government.

(8) No officer or employee shall be entitled to be paid any pension, gratuity or other allowances that may have accrued to such officer or employee whilst in the service of the Government until such officer or employee would have qualified for a pension, gratuity or other allowances under the Pensions Act, had such officer or employee continued in the service of the Government.

(9) All officers, agents and employees of the Corporation shall be required to take and sign an oath of fidelity and secrecy in the form prescribed by regulations.

Non-liability of employees of the corporation.

44. (1) The Corporation, its directors, officers, employees, retirees and any persons acting on the behalf of the Corporation are not liable to any member institution, depositor with, or creditor or shareholder of, any member institution, or to any other person, for any damages, payment, compensation or indemnity that any such member institution, depositor, creditor, shareholder or other person may suffer or claim by reason of anything done or omitted to be done, in good faith, in the exercise, execution or performance of any powers, duties and functions that by this Act are intended to be exercised, executed or performed.

(2) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act.

Confidentiality.

45. All information regarding the affairs of a member institution or of any person dealing with one, that is obtained or produced by or for the Corporation is confidential and shall be treated accordingly.

Financial year.

46. Unless the Cabinet otherwise directs, the financial year of the Corporation shall be a period commencing 1st January and ending 31st December in each year.

Disclosure of interest.

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

(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 or she became a director, at the first meeting of the directors that is held after he or she 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.

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

Exemptions from tax, stamp duty, etc.

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

49. Any financial institution that carries on the business of accepting deposits without being the holder of a valid policy of deposit insurance commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars and, in the case of a continuing offence, to a further penalty not exceeding ten thousand dollars for each day during which the offence continues after conviction.

Carrying on business without insurance.

50. (1) A director, manager, auditor, officer or agent of an member institution commits an offence under this Act, where that person

Offences by corporate officers.

- (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 that is required to be submitted to the corporation.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both.

51. A person who, being a chief executive officer or chairperson of the board of directors of a member institution, fails or neglects to present, as required under section 62, a report of the Corporation made under that section commits an

Failure to make report known.

offence and, if the directors fail or neglect to incorporate that report in the minutes of a meeting of the directors as required by that section, each director present at that meeting who directed, authorised, assented to, acquiesced in or participated in the failure or neglect, commits an offence.

Failure to provide information, etc.- member institutions.

52. Every member institution that fails or neglects

- (a) within the time limited for so doing, to provide the Corporation with any financial statement, return, report or other document respecting the affairs of the member institution that is required to be submitted to the Corporation pursuant to this Act, the regulations or the policy of deposit insurance of the member institution; or
- (b) to respond, within a reasonable time, to a request for information or explanations respecting the member institution made by or on behalf of the Corporation pursuant to this Act, the regulations or the policy of deposit insurance of the member institution

commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars and, in the case of a continuing offence, to a further penalty not exceeding ten thousand dollars for each day during which the offence continues after conviction.

Additional monetary penalties.

53. (1) Where a member institution has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence, the convicted member institution acquired a monetary benefit or that a monetary benefit accrued to the benefit of the member institution, order the convicted member institution to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of the monetary benefit.

(2) If a member institution does not comply with any provision of this Act, the regulations or the policy of deposit insurance that applies in respect of the member institution, the Corporation may apply to the High Court for an order directing the member institution to comply with or restraining the member institution from acting in breach of the provision and, on the application, the Court may so order and make any further order it thinks fit.

Recovery and application of fines.

54. All fines payable under this Act are recoverable and enforceable, with costs, at the suit of the Corporation and, when recovered, belong to the Corporation.

55. Where

- (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;

Offences relating to depositors.

(b) a person fraudulently claims to be a depositor; or

(c) a person fraudulently obtains deposit insurance,

that person commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both.

56. (1) A person who has acquired confidential information concerning a member of the Corporation 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.

Confidential
information.

(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" includes 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) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both.

Insolvency and
winding up.

57. No statute relating to the insolvency or winding-up of any corporation applies to the Corporation and in no case shall the affairs of the Corporation be wound up unless House of Assembly by resolution so provides.

58. (1) The Financial Services Commission shall, notwithstanding any other law, examine on behalf of the Corporation, the affairs of each member institution once in every two years and at the times that the Corporation may require for a specified purpose.

Annual
inspections.

(2) Where an examination under subsection (1) is made for a specified purpose, such costs incurred in relation thereto as in the opinion of the Financial Services Commission are extraordinary shall be borne by the Corporation.

Costs may be charged back.

59. (1) Where an examination or an inspection is carried out other than once in every two years, the Corporation may

- (a) pay the costs of the examination or inspection;
- (b) charge the costs to the member institution in respect of which they were incurred; and
- (c) recover the costs from the member institution as a debt due and payable to the Corporation.

Examination considerations.

60. (1) The person who conducts an examination under section 58 in respect of a member institution shall make all examinations or inspections that the person considers necessary to

- (a) provide, by way of a rating or any other means, an assessment of the safety and soundness of the member institution, including its financial condition;
- (b) comment on the operations of the member institution; and
- (c) if the Corporation and the person agree, comment on whether the provisions of the memorandum and articles of association of the institution are being complied with.

(2) The person shall provide written reports to the Corporation on the matters referred to in subsection (1) in a timely manner.

(3) The Corporation is entitled to all information obtained by or produced by or for the person, whether in the course of conducting an examination or inspection or otherwise, regarding the affairs of the member institution or any of its affiliates or subsidiaries or of any person dealing with the member institution or any of its affiliates or subsidiaries, that relates to the safety and soundness, or the operations, of the member institution.

(4) Without limiting subsection (3), the person shall provide the Corporation with any information that the person considers relevant to any matter referred to in any of subsection (1) or to any report provided under subsection (2).

(5) The person shall without delay inform the Corporation if, at any time, whether in the course of conducting an examination or inspection or otherwise, there comes to the attention of the person any change in the circumstances of the

member institution that might materially affect the position of the Corporation as an insurer.

61. If requested to do so by the Corporation, the person who conducts an examination under section 58 in respect of a member institution shall review, or cause another person to review on the person's behalf, within the time specified by the Corporation, the correctness of the returns made by the member institution on which its premiums are based and through which its premium classification is in part determined.

Review of returns.

62. (1) Where, in the opinion of the Corporation, a member institution

Certain reports to be provided to corporation.

- (a) is in breach of any regulations of the Corporation applicable thereto, or
- (b) is in breach of any of the conditions of its policy of deposit insurance, the Corporation may send by registered mail or deliver by hand a report of the facts to the chief executive officer or chairperson of the board of directors of the member institution and shall provide a copy of the report to the Financial Services Commission .

(2) The Chief Executive Officer or chairperson of the board of directors of a member institution to whom a report has been sent or delivered under subsection (1) shall, within fifteen days after the receipt of the report, cause

- (a) the report to be presented to a meeting of the board of directors of the member institution and to be incorporated in the minutes of the meeting; and
- (b) a certified copy of that portion of the minutes of the meeting that relates to the presentation of the report to be sent by registered mail to the Chief Executive Officer of the Corporation at its head office and the Financial Services Commission.

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

Regulations.

- (a) prescribing the percentage basis to be used for the calculation of initial and annual premiums payable into the Fund;
- (b) with respect to the circumstances in which different premiums may be prescribed based on the assessment of the degree of risk to the Fund.

- (c) so as to increase the maximum insurable deposit coverage amount;
- (d) prescribing conditions for purposes of section 8.

SCHEDULE

[Section 3]

Board of Directors.

1. (1) There shall be a Board of Directors of the Corporation which, subject to the provisions of this Act, shall be responsible for the policy and general administration of the Corporation and the management of the Corporation and the Board shall consist of the following: Establishment and constitution of Board.

- (a) the Chief Executive Officer of the Corporation (ex-officio director);
- (b) the Managing Director of the Financial Services Commission or his or her nominee (director).
- (c) four other directors appointed with the approval of Cabinet, by the Minister by instrument in writing (hereinafter referred to as appointed directors).

(2) In appointing persons under subsection (1) (c), the Minister shall ensure that such persons have knowledge and experience in banking, commerce, finance, accounting, insurance or law.

(3) The Minister shall appoint one of the appointed directors as the Chairperson for a period not exceeding six years.

(4) The other three appointed directors shall be appointed for a period not exceeding four years.

(5) All members of the Board of Directors shall be required to take and sign an oath of fidelity and secrecy.

(6) The Chairperson and the other appointed directors shall be eligible for reappointment for one additional term.

2. A person may not be appointed or remain a director who Disqualification.

- (a) is a member of the House of Assembly;
- (b) is or has during the three years preceding such appointment been a director, officer, employee or auditor of a member institution;
- (c) is a shareholder holding more than 5% of the voting shares of a member institution.

- Resignation. **3.** (1) A director, other than the Chairperson, may resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson, and from the date of receipt by the Minister of the instrument that director shall cease to hold office.
- (2) The Chairperson may at any time resign his or her office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of receipt by the Minister of such instrument.
- (3) A vacancy on the Board does not impair the right of the remaining directors to act.
- (4) Where the office of Chairperson is vacant, the Minister may appoint, for a period not exceeding ninety days, an acting Chairperson who shall, while so acting, be a member of the Board and have all the powers of the Chairperson.
- (5) A director shall be paid by the Corporation reasonable travel and living expenses incurred by the director while absent from his or her ordinary place of residence in the course of his or her duties as a director.
- Chairperson to preside at meetings. **4.** The Chairperson shall preside at all meetings of the Board but where at any meeting the Chairperson is absent, one of the directors present thereat who is chosen so to act by the directors present shall preside and have all the powers of the Chairperson.
- Termination of appointment. **5.** The Minister with the approval of the Cabinet may terminate the appointment of any director who
- (a) becomes of unsound mind or becomes permanently unable to perform his or her functions by reason of ill health;
 - (b) becomes bankrupt or compounds with or suspends payment to his or her creditors;
 - (c) is convicted and sentenced to a term of imprisonment exceeding three months;
 - (d) is convicted of any offence involving dishonesty;
 - (e) is reported to the Minister by a majority of the Board as failing to carry out the functions imposed or conferred on him under this Act.
- Meetings. **6.** (1) The Board shall meet as often as it considers necessary and at such times and places as it determines, provided that it shall meet at least six times in every calendar year.

(2) Three directors shall constitute a quorum.

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

- 7.** The validity of any proceedings of the Board shall not be affected by any vacancy amongst the directors or by any defect in the appointment of a director. Validity of proceedings.
- 8.** The names of all members of the Board as first constituted and any change in the membership thereof shall be published in the *Gazette*. Publication of membership.
- 9.** Subject to the provisions of this Schedule the Board may regulate its own proceedings. Regulating proceedings.
- 10.** (1) All decisions made by the Board and all documents of the Board shall be signed by the Chairperson, the Deputy Chairperson or any other person authorised to act as Chairperson. Signature and Seal.

(2) The seal of the Corporation shall be kept in the custody of the Chairperson or such other director as the Board may approve and may be affixed to documents or instruments in the presence of the Chairperson and the Secretary to the Board.

(3) The seal of the Corporation shall be authenticated by the signature of the Chairperson or Deputy Chairperson and the Secretary to the Board.

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

Passed by the House of Assembly this 19th day of April, 2016.

(Sgd) Ingrid Moses-Scatliffe,
Speaker.

(Sgd) Phyllis Evans,
Clerk of the House of Assembly.