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3 September 2010

**A BILL**  
**entitled**  
**"BERMUDA DEPOSIT INSURANCE ACT 2010"**

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WHEREAS it is expedient to make provision for the protection of small depositors and for the prompt payment of compensation in the event of a bank failure; to promote stability in Bermuda's financial system and economy by providing prompt access to Insured Depositor's fund.

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

## PART I

### *Preliminary*

#### **Short title and commencement**

1. This Act may be cited as the Bermuda Deposit Insurance Act 2010 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

#### **Interpretation**

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

"appointed day" means the date of commencement of this Act;

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

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

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

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

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

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

"Bermuda Deposit Insurance Corporation" or "BDIC" means the corporation established under section 4;

"deposit-taking business" has the meaning given in section 4 of the Banks and Deposit Companies Act 1999 [and includes a credit union licensed under the Credit Union Act 2010];

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

"Fund" means the Deposit Insurance Fund established under section 12;

"insured deposit" has the meaning as specified in the First Schedule;

"insured deposit base" has the meaning given in section 3;

"insured depositor" means any of the following depositors:

- (a) an individual, including an individual who places a deposit in an account with a Scheme member in the name of a partnership or sole proprietorship;
- (b) a charitable organisation as defined in section 1 of the Charities Act 1978, which is—
  - (i) registered under section 4 of that Act;
  - (ii) specified in the Schedule to that Act; or
  - (iii) excepted by rules made under that Act;
- (c) small companies
- (d) such other person or class of persons as may be prescribed, and includes

in the case of a deposit held by a trustee under a trust, a beneficiary of the trust who is a person specified in paragraph (a) or (b) or the estate of a deceased person.

"investment" has the same meaning as in section 3(1)(a) of the Investment Business Act 2003;

"liquidator" has the same meaning as in section 170 of the Companies Act 1981;

"Minister" means the Minister of Finance;

"officer" has the same meaning as in section 2(1) of the Companies Act 1981;

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"premium year", in relation to the determination and payment of premium contributions, means such period as may be prescribed in rules made by the BDIC as a premium year under section 16(3);

"quantification date" means —

- (a) the date on which a Scheme member is wound up; or
- (b) where a Scheme member is not wound up, the date on which the notice of payment of compensation is published in the *Gazette* under section 24(2);

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

"Scheme" means the Deposit Insurance Scheme established under section 10;

"Scheme member" means a member of the Scheme.

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

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

(2) For the purposes of subsection (1), “relevant insured deposits”, in relation to an insured depositor of a Scheme member, means the aggregate of the amount of any insured deposit placed with the Scheme member and —

- (i) held by that insured depositor in his own right or in his own right jointly with one or more persons in a joint account;
- (ii) held by a depositor as a trustee under a trust and the books of the Scheme member disclose that the insured depositor is a beneficiary of that trust and the share of the insured depositor in the insured deposit under that trust;
- (iii) held by a depositor as a trustee under a trust and the books of the Scheme member disclose that the insured depositor is a beneficiary of that trust and the total number of beneficiaries of that trust;
- (iv) held by a depositor as a trustee under two or more trusts and the books of the Scheme member disclose that the insured depositor is a beneficiary of any of the trusts and the share of the insured

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depositor in the insured deposit under that trust;  
and

- (v) held by a depositor as a trustee under two or more trusts and the books of the Scheme member disclose that the insured depositor is a beneficiary of any of the trusts, the part of the insured deposit under that trust and the total number of beneficiaries of that trust

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

- (a) a reference to an insured deposit includes a reference to part of the insured deposit;
- (b) where an insured depositor holds an insured deposit in his own right jointly with one or more depositors in a joint account, each of the depositors, whether or not he is an insured depositor, shall be deemed to have an equal share in the insured deposit unless there is an express provision to the contrary in the books of the Scheme member; and
- (c) where an insured deposit is held by a depositor as a trustee under a trust for two or more beneficiaries, each of the beneficiaries, whether or not he is an insured depositor, shall be deemed to have an equal share in the insured deposit, unless there is an express provision to the contrary in the books of the Scheme member.

## PART II

### BERMUDA DEPOSIT INSURANCE CORPORATION

#### **Establishment of the Bermuda Deposit Insurance Corporation**

4. (1) There shall be established a body corporate with perpetual succession to be known as the Bermuda Deposit Insurance Corporation ('BDIC') which may sue and be sued in its corporate name.

(2) The BDIC shall have such functions and powers as are assigned to it under this Act.

#### **Objects, functions and powers of BDIC**

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

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

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

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

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

#### **Appointment of board of directors**

6. (1) There shall be a board of directors of the BDIC which shall consist of —

- (a) a Chairman;
- (b) the Chief Executive Officer of the Bermuda Monetary Authority;
- (c) the officer of the Bermuda Monetary Authority responsible for the supervision of banks;
- (d) the Financial Secretary
- (d) not less than 2 but not more than 4 other directors.



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(2) The Minister shall appoint the chairman and other directors of the BDIC from amongst persons with proven experience in banking or financial services.

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

**Salaries, fees and allowances payable to Chairman and directors**

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

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

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

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

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

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

**Rules by BDIC**

9. (1) The BDIC may issue rules for any matter relating to its functions under this Act.

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

- (a) the manner and method of collection of premium contributions and late payment fees;
- (b) the disclosure by Scheme members as to whether their financial products are insured deposits and the manner of such disclosure;
- (c) the particulars to be recorded in, or in respect of, books kept by Scheme members for the purpose of computing the amount of insured deposits placed with the Scheme members;

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- (d) the manner in which compensation is to be paid to insured depositors from the Fund; and
- (e) the collection from any Scheme member by the BDIC of any information in relation to its insured deposits and insured depositors for the purpose of computing the amount of compensation which is to be paid to the insured depositors.
- (3) The BDIC may at any time, amend or revoke the whole or part of rules issued under this section.
- (4) Rules made under this section are not statutory instruments for the purpose of the Statutory Instruments Act 1977.
- (5) The BDIC shall publish the rules in such manner as it considers appropriate to bring them to the attention of Scheme members and the public.

### PART III

#### DEPOSIT INSURANCE SCHEME

##### **Establishment of Deposit Insurance Scheme**

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

##### **Membership of Scheme**

11. (1) Every bank shall be a Scheme member so long as it holds a valid licence under the Banks and Deposit Companies Act 1999.

(2) A bank that holds a valid licence under the Banks and Deposits Companies Act 1999, immediately before the appointed day, shall be deemed to be a Scheme member from the appointed day.

(3) A bank that is granted a licence under the Banks and Deposit Companies Act 1999 on or after the appointed day, shall be a Scheme member from the date on which its licence is granted.

### PART IV

#### DEPOSIT INSURANCE FUND

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**Establishment of Deposit Insurance Fund**

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

(2) The Fund shall consist of —

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

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

**Expenditure of moneys of Fund**

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

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

**Investment**

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

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- (a) sovereign debt issued by member countries of the Group of Seven Industrial Nations or G7;
  - (b) US dollar deposits with the Federal Reserve Bank;
  - (c) securities issued by the Government of Bermuda
  - (d) such other investments as it considers appropriate, with the objects of capital preservation and maintenance of liquidity.

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

## PART V

### PREMIUMS

#### **Premium contributions payable by Scheme members**

15. (1) Every Scheme member shall, from the effective date appointed under section 24(4), pay a premium contribution for any premium year or part thereof in respect of the insured deposits placed with the Scheme member.

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

(3) The BDIC may make rules for the purpose of prescribing the premium year.

#### **Determination of premium rates and premium contributions**

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

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

(3) For the purposes of assessing and determining the premium rates and computing the amounts of premium contributions payable, the BDIC may make rules for or in respect of all or any of the following matters:

- (a) the establishment of a system of classifying Scheme members into different categories;

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

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

**Notice of payment of premium contribution**

17. The BDIC shall, within such time as may be specified in the rules, give the Scheme member notice in writing of the amount of premium contribution that the Scheme member is required to pay under the Scheme for that premium year or part thereof.

**Additional premium contributions where Fund insufficient to pay compensation**

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

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

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

- (a) the BDIC shall, as soon as practicable, compute the additional premium contributions payable by Scheme members for that premium year or part thereof; and

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(b) the BDIC shall, give notice in writing to every Scheme member of the additional premium contribution that the Scheme member is required to pay for that premium year or part thereof and the date by which the additional premium contribution shall be paid.

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

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

**Payment of premium contributions and late payment fees**

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

(a) in the case of the premium contribution, on or before the date of payment specified in the rules; and

(b) in the case of the additional premium contribution, on or before the date of payment specified in the notice,

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

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

(a) the BDIC may, by notice in writing, impose on the Scheme member such late payment fee as the BDIC may by rules determine; and

(b) the Scheme member shall pay to the BDIC the late payment fee together with the unpaid premium contribution or additional premium contribution, as the case may be, on or before the date of payment specified in the notice.

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

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

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

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

**Refund of premium contributions paid in excess**

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

**Re-computation of premium contributions**

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

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

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

(2) Sections 19 and 21 shall apply, with the necessary modifications, to any amount of premium contribution re-computed under subsection (1) and the recovery of any shortfall in premium contribution upon a re-computation under that subsection —

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

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**Disclosure of information relating to premium contributions**

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

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

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

- (a) any director or officer of the Scheme member;
- (b) the head office, parent bank or parent supervisory authority of the Scheme member; or
- (c) such other person or class of persons as BDIC may approve,

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

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

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

PART VI

COMPENSATION

**Occurrence of events precipitating payment of compensation**

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



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- (a) an order is made by a court in Bermuda or elsewhere to wind up a Scheme member; or
  - (b) the BDIC is of the opinion that a Scheme member is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments,

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

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

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

#### **Entitlement to compensation**

24. (1) Subject to sections 29 and 30, where an insured depositor has one or more insured deposits placed with a failed Scheme member, which —

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

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

(2) For the purposes of this section —

- (a) “specified amount” means the amount by which the aggregate amount, as at the quantification date, of insured deposits which the insured depositor has placed with the failed Scheme member exceeds the aggregate amount, as at the quantification date, of liabilities of the insured depositor to that failed Scheme member in respect of which a right of set-off would have existed had a winding-up order been made in respect of the failed Scheme member; and

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- (b) in determining the amount of liabilities of the insured depositor to the failed Scheme member, the same rules shall apply with regard to future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of persons adjudged bankrupt, as if the failed Scheme member were a person so adjudged.

**Deposits in own right and joint accounts**

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

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

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

(4) For the purpose of this section —

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

**Deposits under trust**

26. (1) Where a depositor of an insured deposit placed with a failed Scheme member holds the insured deposit as a trustee under a trust and the books of the Scheme member disclose —

- (a) the identity of a beneficiary of the trust and his share of the insured deposit; or
- (b) the identity of a beneficiary of the trust and the total number of beneficiaries of the trust,

any beneficiary who is an insured depositor, but not the depositor, shall be entitled, in respect of the insured deposit held under the trust as at the quantification date, to compensation from the Fund.

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(2) Where a depositor of an insured deposit placed with a failed Scheme member holds the insured deposit as a trustee under two or more trusts and the books of the Scheme member disclose —

- (a) the identity of a beneficiary of any one of those trusts and his share of the insured deposit; or
- (b) the identity of a beneficiary of any one of those trusts, the part of the insured deposit under that trust and the total number of beneficiaries of that trust,

the beneficiary of each of those trusts who is an insured depositor, but not the depositor, shall be entitled, in respect of the part of the insured deposit held under the trust as at the quantification date, to compensation from the Fund.

(3) For the purposes of subsections (1) and (2), where the beneficiaries of a trust consist of two or more insured depositors, each of those insured depositors shall be entitled, in respect of his share in the insured deposit as at the quantification date, to compensation from the Fund.

(4) For the purposes of determining the share of each insured depositor in an insured deposit under subsection (3), each beneficiary of such an insured deposit held under a trust, whether or not he is an insured depositor, shall be deemed to have an equal share in the insured deposit or part of the insured deposit, as the case may be, unless there is an express provision to the contrary in the books of the failed Scheme member.

(5) For the avoidance of doubt, subsection (4) does not affect any rights as between the beneficiaries themselves.

**Restrictions on entitlement to compensation**

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

**Computation and method of payment of compensation**

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

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

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(3) Subject to subsection (4), the BDIC shall pay the compensation in such form and manner as may be specified in the rules.

(4) The BDIC may make rules for the purposes of payment of compensation by the BDIC.

(5) Without prejudice to the generality of subsection (4), such rules may —

- (a) specify the person to whom, or the account into which, payment of compensation is to be made for the benefit of an insured depositor who is entitled to compensation under this Act;
- (b) provide for the payment of compensation in respect of a depositor holding insured deposits in different accounts; and
- (c) provide for the payment of compensation into an equivalent account with another Scheme member and for such compensation to be held in that account in a manner equivalent to the manner of holding of the original insured deposit.

#### **Subrogation**

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

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

as the case may be, in respect of the insured deposit in priority over —

- (i) the rights and remedies of the insured depositor, the person who received the compensation on behalf of the insured depositor, the trustee or the depositor of a client account, as the case may be, in relation to that insured deposit; and

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- (ii) the rights and remedies of any person who is subrogated, whether or not before the BDIC's subrogation, to the rights and remedies of any of the persons referred to in paragraphs (a), (b), (c) and (d) in relation to that insured deposit,

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

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

(3) The BDIC shall be entitled —

(a) in the case where the failed Scheme member is wound up, to be reimbursed out of the assets of the failed Scheme member for the expenses incurred in —

- (i) the payment of any compensation to insured depositors; and
- (ii) the lodging of a claim with the liquidator of the failed Scheme member for any compensation that has been paid out to insured depositors; or

(b) in any other case, to be reimbursed by the failed Scheme member or the provisional liquidator of the failed Scheme member, as the case may be, for the expenses incurred in —

- (i) the payment of any compensation to insured depositors; and
- (ii) where a claim has been lodged with the provisional liquidator of the failed Scheme member for any compensation that has been paid out to insured depositors, the lodging of the claim.

**Recovery of compensation paid in excess or wrongly paid**

30. (1) If —

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

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

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

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

## PART VII

### OFFENCES

#### **Offences committed by bodies corporate**

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

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

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

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

(3) In this section, “officer”, in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

#### **False statements regarding membership and insured deposits**

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

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

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

**Offence by officer**

33. (1) Any officer of a bank who fails to take all reasonable steps to secure —

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

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

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

**Duty not to furnish false information to BDIC**

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

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

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

**General penalty**

35. Any person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on conviction to a fine of \$50,000.

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## PART VIII

### FINANCIAL AND AUDIT PROVISIONS

#### **Financial provisions with respect to BDIC**

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

#### **Annual report of BDIC**

37. The BDIC shall, as soon as practicable after the end of each financial year, cause to be prepared and transmitted to the Minister a report dealing generally with the activities of the BDIC during the preceding financial year and containing such information relating to the proceedings and policy of the BDIC as the Minister may, from time to time, direct.

#### **Annual estimates**

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

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

#### **Reporting to Minister**

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

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

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

## PART IX

### MISCELLANEOUS



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**Protection from personal liability**

40. No suit or other legal proceedings shall lie against —

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

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

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

**Restricted information**

41. (1) Except as provided by sections 42 and 43 —

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

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

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

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

- (a) on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both;
- (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for five years or to both.

**Disclosure for facilitating the discharge of functions of the BDIC**

42. (1) Section 41 does not preclude the disclosure of information in any case in which disclosure is for the purpose of enabling or assisting the BDIC to discharge its functions under this Act.

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(2) Without prejudice to the generality of subsection (1), section 41 does not preclude the disclosure of information by the BDIC to the auditor of an institution if it appears to the BDIC that disclosing the information would enable or assist the BDIC to discharge the functions mentioned in that subsection or would otherwise be in the interests of the depositors.

**Disclosure for facilitating the discharge of functions by other authorities**

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

(2) Section 41 does not preclude the disclosure of information—

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

**Inspection of books of Scheme members**

44. (1) The BDIC may from time to time inspect the books of a Scheme member for the purposes of this Act.

(2) For the purposes of an inspection under this section —

- (a) the Scheme member and any other person who is in possession of the books of the Scheme member shall produce such books to the BDIC and give such information or facilities as may be required by the BDIC;
- (b) the Scheme member shall procure that any other person who is in possession of its books produce its books to the BDIC and give such information or facilities as may be required by the BDIC; and
- (c) the BDIC may —
  - (i) make copies of, or take possession of, any of such books;
  - (ii) use, or permit the use of, any of such books for the purposes of any proceedings under this Act; and

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(iii) retain possession of any of such books for so long as is necessary —

(A) for the purposes of exercising a power conferred by this section;

(B) for a decision to be made on whether or not proceedings should be commenced under this Act in relation to such books; or

(C) for such proceedings to be commenced and carried on.

(3) No one shall be entitled, as against the BDIC, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.

(4) The BDIC may require a person who produced any book to the BDIC to explain, to the best of his knowledge and belief, any matter about the compilation of the book or to which the book relates.

(5) Any person who, without reasonable excuse, contravenes subsection (2) or a requirement of the BDIC under subsection (4) shall on summary conviction be guilty of an offence and liable to a fine of \$50,000 or to imprisonment for twelve months or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues.

**Provision of information and production of books**

45. (1) The BDIC may, by notice in writing, require a Scheme member to —

(a) provide such information; or

(b) produce any book,

at such time and in such manner as the BDIC may reasonably require for the proper discharge of its functions.

(2) Any Scheme member which fails to or neglects to furnish any information, or produce any book required by the BDIC under this section shall be guilty of an offence.

**Insurance Act not to apply**

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

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## **FIRST SCHEDULE**

Section 2

### **INSURED DEPOSIT**

In this Act, “insured deposit” means —

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

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## SECOND SCHEDULE

Section 36

### FINANCIAL PROVISIONS WITH RESPECT TO BDIC

#### Financial year

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

#### Accounts of BDIC

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

#### Auditor

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

#### Appointment of auditor

4. A person shall not be qualified for appointment as an auditor under paragraph 3 unless he is a public accountant who is registered or deemed to be registered under ICAB.

#### Remuneration of auditor

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

#### Annual financial statements

6. The BDIC shall, as soon as practicable after the close of each financial year, prepare and submit financial statements in respect of that year to the auditor of the BDIC.

#### Duties of auditor

7. The auditor shall in his report state —
- (a) whether the financial statements show fairly the financial transactions and the state of affairs of the BDIC;
  - (b) whether proper accounting and other records have been kept, including records of all assets of the BDIC, whether purchased, donated or otherwise;

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- (c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the BDIC during the financial year were in accordance with the provisions of this Act; and
  - (d) such other matters arising from the audit as he considers necessary.

**Auditor's report**

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

**Powers of auditor**

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

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

**Presentation of audited financial statements and auditor's report**

**10.** The BDIC shall, as soon as the financial statements have been audited in accordance with the provisions of this Act, submit a copy of the audited financial statements, together with a copy of the auditor's report, to the Minister.

**Copy of auditor's report for Auditor-General**

**11.** Where the Auditor-General is not the auditor of the BDIC, the BDIC shall cause to be sent to the Auditor-General a copy of the audited financial statements and any report made by the auditor at the same time they are submitted to the Minister.

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**THIRD SCHEDULE**  
**BOARD OF DIRECTORS**

Section 6 (3)

*Part 1: Tenure and qualifications of non-executive members of  
the Board*

**Terms of Office**

1. Except for ex-officio directors, a director shall hold office for a term of not less than three years and not more than five years, and shall be eligible for reappointment.
2. The first appointments may be for shorter and different periods so as to secure that appointments expire at different times.
3. A person appointed as director of the BDIC in place of a person who ceased to hold office before the end of the term for which he was appointed shall be appointed for the remainder of that person's term of office.
4. A person appointed as director of the BDIC may resign his office by notice in writing to the Chairman and to the Minister.
5. The BDIC shall cause to be published in the Gazette the name of every person appointed as director of the BDIC.

**Qualification for appointment**

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

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

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

#### **Removal from office**

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

8. The Minister acting after consultation with the board may remove a person from office as director of the BDIC if he is satisfied that that person –

- (a) has been absent from meetings of the board for more than three months without the consent of the board;
- (b) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with or granted a trust deed for his creditors; or
- (c) is unable or unfit to discharge his functions as a member.

#### *Part 2: Procedure for meetings of the board*

##### **Powers**

9. The board may act notwithstanding the existence of one or more vacancies in its members or a defect in the appointment of a member.

10. The board may appoint such committees, as it thinks fit.

##### **Meetings**

11. (1) The board shall meet as often as necessary or expedient for the due performance of its functions.

(2) The chairman may summon a meeting at any time on giving such notice as in his judgment the circumstances may require.

12. (1) At a meeting of the board, the proceedings shall be regulated as follows.

- (2) The quorum shall be three members.
- (3) The chairman shall chair meetings of the board.



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(4) If the chairman is absent from a meeting of the board, the members present at the meeting shall nominate one of their number to chair the meeting.

(5) If a member of the board has any direct or indirect interest in any dealing or business with the Authority –

(a) he shall disclose his interest to the Board at the time of the dealing or business being negotiated or transacted; and

(b) he shall have no vote in relation to the dealing or business, unless the Board has resolved that the interest does not give rise to a conflict of interest.

(6) A member of the board shall have no vote in relation to any question arising which touches or concerns him.

(7) Subject to subparagraphs (2) to (6), the Board shall determine its own procedure.



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**DEPOSIT INSURANCE BILL 2009**

**EXPLANATORY MEMORANDUM**

This Bill seeks to introduce

2 The Bill —