

GUYANA

BILL No. 7 OF 2018

DEPOSIT INSURANCE BILL 2018

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A BILL

Intituled

An Act to establish a Deposit Insurance Scheme for the protection of insured depositors comprising a Deposit Insurance Fund and a Deposit Insurance Corporation responsible for managing the Fund and for connected purposes.

A.D. 2018

Enacted by the Parliament of Guyana:-

PART I GENERAL PROVISIONS

Short title and
commencement.

1. (1) This Act may be cited as the Deposit Insurance Act 2018.

(2) This Act shall come into operation on such date as the Minister may by order appoint with the exception of Parts V, VI, VII, VIII, and IX which shall come into operation on another date as the Minister may by order appoint.

Interpretation.

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

Cap. 85:02

- (a) “Bank” means the Bank of Guyana established under the Bank of Guyana Act;
- (b) “Board” means the Board of Directors of the Deposit Insurance Corporation established by section 12;
- (c) “Chief Executive Officer” means the Chief Executive Officer of the Deposit Insurance Corporation appointed under section 16;

- (d) “Chairperson” means the Chairperson of the Board of the Deposit Insurance Corporation appointed under section 13(a);
- (e) “Corporation” means the Deposit Insurance Corporation established under section 5;
- (f) “deposit” means a deposit within the meaning of section (2)(1)(q) of the Financial Institutions Act;
- (g) “depositor” means a natural or legal person who owns a deposit;
- (h) “Director” means a member of the Board of the Deposit Insurance Corporation appointed under section 13;
- (i) “financial institution” means a bank or a financial institution engaged in the business of receiving deposits from the public licensed under the Financial Institutions Act;
- (j) “Fund” means the Deposit Insurance Fund established under section 26(1);
- (k) “insured deposit” means a deposit or any part of a deposit which is insured under this Act;
- (l) “insured depositor” means a depositor who holds an insured deposit;
- (m) “insured event” means the entry into liquidation of a member financial institution under Part VIII of the Financial Institutions Act;
- (n) “insured limit” means the maximum amount that is reimbursable in respect of an insured deposit;
- (o) “liquidation” means the wind-down of all or part of the business of a financial institution under Part VIII of the Financial Institutions Act;

- (p) “member financial institution” means a financial institution which is a member of the Scheme.
- (q) “Minister” means the Minister responsible for Finance;
- (r) “officer” means any advisor, director, manager, employee, auditor, or agent including a former advisor, director, manager, employee, auditor or agent;
- (s) “resolution” means the resolution of a financial institution under Part VIII of the Financial Institutions Act;
- (t) “Scheme” means the deposit insurance scheme established under this Act to insure depositors;

PART II

SCOPE OF THE ACT AND OBJECTIVES OF THE DEPOSIT INSURANCE SCHEME

Scope of Act.

3. (1) This Act establishes the Deposit Insurance Scheme, the Deposit Insurance Corporation and the Deposit Insurance Fund, and provides for the authority and the governance of the Corporation and for the administration of the Fund.

(2) All financial institutions shall immediately be deemed to be members of the Scheme.

(3) A financial institution ceases to be a member of the Scheme upon revocation of its licence.

(4) Notwithstanding subsection (2), overseas branches of financial institutions shall not be covered by the Scheme.

Objectives of the Scheme.

4. The objectives of the Scheme shall be to foster the stability of the financial sector of Guyana by protecting the depositors of the financial

institutions operating in Guyana, and by contributing resources to the resolution of member financial institutions.

PART III
ESTABLISHMENT, MANDATE, AND INDEPENDENCE OF THE CORPORATION

Establishment of
the Corporation.

5. (1) There is established a body corporate to be known as the Deposit Insurance Corporation.

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

(3) The Corporation shall have its principal place of business in Georgetown or at such other place within Guyana as the Board may decide.

Authorised capital
of the
Corporation.

6. (1) The Corporation shall have an authorised capital of three hundred million dollars which shall be fully subscribed and paid up by the Bank within three months of the establishment of the Corporation.

(2) The Bank shall be the sole subscriber of the capital of the Corporation.

(3) The authorised capital may be increased by such an amount as the Board may determine.

(4) Any increase of the authorised capital shall be notified by publication in the *Gazette*.

Signature and
seal.

7. (1) The seal of the Corporation shall be authenticated by the signature of the Chairperson or by the co-signature of two Directors.

(2) All decisions of the Board and all documents of the Board which are not required by law to be under seal shall be signed by the Chairperson, or by any other Director authorised to act in that capacity.

(3) The seal of the Corporation shall be kept in the custody of the Chairperson or other Director as the Board may approve.

Functions and powers of the Corporation.

8. (1) The Corporation shall be tasked to -

- (a) collect premiums from member financial institutions;
- (b) manage the assets of the Fund;
- (c) reimburse insured depositors up to the insured limit upon the occurrence of an insured event;
- (d) contribute funds for the resolution of member financial institutions; and
- (e) promote public awareness and education on the Scheme.

(2) The Corporation shall have the power to do all such things necessary to discharge its functions under this Act or which is incidental or conducive to the discharge of those functions.

Independence.

9. (1) The Corporation shall be independent in performing its functions and operations.

(2) The Government, the Bank or any other entity shall not unduly interfere with the exercise of the functions and operations of the Corporation.

(3) The Corporation shall have sufficient financial and human resources to ensure its operational independence.

Premises, facilities and staff.

10. (1) The Bank shall place its premises at the disposal of the Corporation and shall provide the necessary technical and information technology facilities.

(2) The Corporation shall have a team of staff which shall be supplemented with staff seconded by the Bank.

(3) The staff of the Corporation shall be remunerated in line with the remuneration of the staff of the Bank.

(4) The Corporation shall hold an account on the books of the Bank.

Relationship with
the Bank.

Cap. 85:03

11. (1) In carrying out its functions under section 8, the Corporation may advise the Bank at any time of circumstances which may require the Bank to conduct an examination of a member financial institution in accordance with sections 31 and 32 of the Financial Institutions Act and to provide the Corporation with a copy of the findings of the examination.

(2) The Corporation shall be entitled to receive from the Bank the latest examination reports and all material information relating to the safety and financial condition of a member financial institution, including reports and returns submitted by them and any directives issued by the Bank to them that the Corporation may require for the administration of this Act.

(3) Where a financial institution is licensed after the entry into force of this Act, within two weeks after the issue of the licence the Bank shall notify the Corporation of the issue and provide the Corporation with copies of the approval letter, the licence, the application and all other information submitted by the institution in its application.

PART IV

GOVERNANCE OF THE CORPORATION

Board of Directors
and Chief
Executive Officer.

12. (1) There shall be a Board of Directors of the Corporation which shall be responsible for the general direction of the operations of the Corporation, for the making of internal policies, regulations and decisions within the legal authorities of the Corporation and for the supervision of the daily operations of the Corporation.

(2) The Chief Executive Officer of the Corporation shall be responsible for conducting the daily operations of the Corporation according to the general direction of the Board, and for proposing and executing the internal policies, regulations and decisions of the Board.

Composition of
the Board.

13. (1) The Board of the Corporation shall comprise -

- (a) the Governor of the Bank who shall be the Chairperson;
- (b) a representative of the Minister responsible for Finance;
and
- (c) three independent members with qualifications and experience in accounting, auditing, banking, finance, insurance, law or related discipline.

(2) The independent Directors shall be appointed by the Bank for a period of three years and such appointments shall be non-coincidental and at least one year apart.

(3) The independent Directors shall be eligible for reappointment.

Duties and
Powers of the
Board.

14. The Board shall have the authority to -

- (a) establish the appropriate strategic direction for the Corporation;
- (b) act as the policy-making body of the Corporation and constitute committees to oversee the management, operations and administration of the Scheme;
- (c) ensure compliance with internal controls, internal audit procedures and financial and operations reporting;
- (d) approve a risk management framework for the Corporation;
- (e) approve and issue regulations, by-laws, rules of procedure, internal policies and decisions as it considers necessary for the effective discharge of the responsibilities of the Corporation;

- (f) establish a human resource management system which shall govern the selection, hiring, appointment, transfer, promotion and dismissal of the staff of the Corporation;
- (g) approve the compensation and benefits structure for the staff of the Corporation;
- (h) approve the annual budget of the Corporation, and authorise such expenditures by the Corporation as are considered necessary for the effective administration and operation of the Corporation;
- (i) appoint the Chief Executive Officer of the Corporation;
- (j) appoint the external auditors of the Corporation;
- (k) approve the audited financial statements and the annual report of the Corporation;
- (l) approve the minimum target level of the Fund and the insured limit for deposits;
- (m) adopt the investment policy and the annual investment plan of the Fund;
- (n) approve the methodology for calculation and the procedure for collection of insurance premiums;
- (o) approve the level of initial, regular and extraordinary insurance premiums;
- (p) adopt a regulation on the procedure for the reimbursement of insured depositors;
- (q) approve the reimbursement of insured depositors upon occurrence of an insured event;
- (r) approve contributions to the funding of the resolution of a member financial institution;
- (s) approve a public awareness and education programme on the benefits and limitations of the Scheme;
- (t) approve and adopt a Code of Ethics and Conduct for the Corporation;

- (u) impose administrative penalties in accordance with the provisions of this Act;
- (v) constitute committees for the discharge of its responsibilities;
- (w) adopt the rules of procedure of the Board; and
- (x) perform all other duties not assigned to the Chief Executive Officer under this Act.

Duties and powers
of the Chief
Executive Officer.

15. The Chief Executive Officer shall serve on a full-time basis and shall have the duty to -

- (a) manage the daily operations of the Corporation;
- (b) identify and assess the various risks to which the Corporation may be exposed and insure against those risks;
- (c) propose regulations, by-laws, rules of procedure, internal policies and directives to the Board;
- (d) implement the policies, regulations and decisions of the Board;
- (e) manage the staff of the Corporation;
- (f) develop the compensation and benefits structure for the employees of the Corporation;
- (g) prepare the draft annual budget of the Corporation;
- (h) prepare the financial statements and the annual report of the Corporation;
- (i) propose to the Board the target level of the Fund and the insured limit for deposits;
- (j) develop the investment policy and the annual investment plan of the Fund;
- (k) develop the methodology for calculation, and the procedure for collection, of premiums;

- (l) propose the level of initial, regular and extraordinary premiums;
- (m) develop the procedure for the reimbursement of insured depositors;
- (n) propose the reimbursement of insured depositors to the Board upon occurrence of an insured event;
- (o) propose the contribution to the funding of the resolution of a member financial institution to the Board;
- (p) develop a public awareness and education programme on the benefits and limitations of the Scheme;
- (q) develop a Code of Ethics and Conduct for the Corporation;
- (r) propose the imposition of administrative penalties in accordance with the provisions of this Act;
- (s) represent the Corporation in its interactions with third parties; and
- (t) perform all other duties assigned to the Chief Executive Officer under this Act.

Appointment of
the Chief
Executive Officer.

16. (1) The Chief Executive Officer shall be appointed by the Board for a term of five years and shall have professional or academic experience in the fields of economics, finance, banking, or law.

(2) The Chief Executive Officer may be reappointed once.

Eligibility of the
Chief Executive
Officer and the
Independent

17. (1) The Chief Executive Officer and the independent Directors shall be persons of recognised integrity.

(2) A person shall not be eligible to be appointed or remain a Chief Executive Officer or independent Director if that person -

- (a) is or becomes a member of Parliament;

- (b) is or becomes a Magistrate or a Judge of the Supreme Court;
 - (c) holds an office or a position in a political party;
 - (d) is or becomes a member of Government or an officer in the Public Service;
 - (e) is or becomes a director or officer of a financial institution;
 - (f) is or becomes a shareholder holding more than five percent of the voting rights in a financial institution;
 - (g) has been a member of the Supervisory Board, Executive Board or senior management of an institution which was placed under liquidation or resolution;
 - (h) has been or is convicted of a felony or offence involving fraud, dishonesty, or breach of trust;
 - (i) has been or is convicted and sentenced to a term of imprisonment;
 - (j) is an undischarged bankrupt;
 - (k) has been disqualified or suspended from practising a profession on grounds of personal misconduct, or has been prohibited from serving as a director or officer of any public or commercial entity;
 - (l) has engaged in business practices considered deceitful, oppressive or otherwise improper, whether lawful or not, or which further reflect discredit on that person's method of conducting business;
 - (m) is or becomes mentally incompetent or unable to perform that person's duties by reason of ill health;
- or

(n) has been absent without leave from three consecutive meetings of the Board.

Dismissal of the Chief Executive Officer and the independent Directors.

18. (1) The appointment of the Chief Executive Officer shall be terminated by the Board -

- (a) on a determination that any of the grounds under section 17(2) applies; or
- (b) on the Chief Executive Officer's own request in writing addressed to the Board giving not less than two months' notice of resignation.

(2) The Bank may terminate the appointment of an independent Director -

- (a) on a determination that any of the grounds under section 17(2) applies; or
- (b) on that independent Director's own request in writing addressed to the Bank giving not less than two months' notice of resignation

Conflicts of interest.

19. (1) The Chief Executive Officer, Directors, officers, employees and any other persons in the service of the Corporation shall have a fiduciary duty to the Corporation to place its interests before their own and shall avoid any situation likely to give rise to a conflict of interest.

(2) A conflict of interest shall arise where the persons enumerated in subsection (1) have personal interests which may influence or appear to influence the impartial and objective performance of their duties.

(3) Personal interests within the meaning of subsection (2) shall comprise any potential advantage for oneself or one's family, relatives up to the second degree, friends, or acquaintances.

(4) The Chief Executive Officer shall perform the duties of Chief Executive Officer on a full-time basis and shall not engage in any other occupation, whether gainful or not, except with the approval of the Board in exceptional cases.

(5) Where a Director has an interest in a member financial institution and a matter concerning this financial institution is under consideration before the Board, the Director shall disclose the interest at the beginning of the deliberations and shall not participate in the deliberation or in the making of a decision on such matter.

(6) The presence of the Director abstaining from deliberation and decision-making pursuant to subsection (5) shall not be counted for determining a quorum and the disclosure of the conflicting interest shall be recorded in the minutes of the meeting.

(7) The independent Directors shall not provide professional services to the Corporation in a personal capacity for financial gain.

(8) A former Director shall not be eligible to provide professional services to the Corporation until two years after the expiry of that Director's term as a Director.

(9) A Director, officer, employee or other person in the service of the Corporation shall not accept any gifts, benefits, rewards or remuneration, whether financial or otherwise, connected in any way to the discharge of their duties to the Corporation in excess of a customary or negligible amount.

(10) Where an independent Director fails to disclose a material conflict of interest, the Bank may, by written order, suspend the Director from office for a period not exceeding one year.

(11) A Director, officer, employee or any other person in the service of the Corporation who contravenes subsection (9) shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for a term of one year.

Meetings of
the Board.

20. (1) The Board shall hold ordinary meetings at least once every calendar quarter.

(2) The Chairperson may convene extraordinary meetings of the Board whenever it is necessary for the transaction of the business of the Corporation, or at the written request of at least two Directors.

(3) The Chairperson or the Chairperson's legal substitute shall preside over the meetings of the Board.

(4) The Board shall appoint a Secretary from among the staff of the Corporation who shall be responsible for -

- (a) arranging the business of the Board;
- (b) keeping records of the proceedings of the Board; and
- (c) performing such other duties as the Board may from time to time determine.

(5) The Secretary of the Board shall be present at the meetings of the Board without a right to vote.

(6) The Chairperson shall decide on the agenda of the meetings which shall be communicated to the members of the Board at least ten days prior to the date set for the meeting and in case of an emergency, the meetings may be convened at shorter notice.

(7) At a meeting of the Board, the quorum shall consist of four Directors, including the Chairperson.

(8) The decisions of the Board shall be adopted by a majority of votes:

Provided that in the event of an equality of votes the Chairperson shall have a casting vote.

(9) The validity of the proceedings of the Board shall not be affected by a vacancy amongst the Directors or by an irregularity in the appointment of a Director.

(10) The minutes of the meetings of the Board shall be signed by the Chairperson and the Secretary and kept in proper form by the Secretary.

Committees of the Board.

21. (1) The Board may establish such committees as it may deem appropriate to assist with the proper discharge of its functions.

(2) The Board shall appoint the chairperson of a committee established under subsection (1) from amongst its members.

(3) All decisions taken by the committees appointed under subsection (1) shall be ratified by the Board.

(4) The Board may appoint advisory committees comprising representatives of the private sector, Government and academia for specific purposes and periods.

PART V

ACCOUNTABILITY AND TRANSPARENCY OF THE CORPORATION

Accountability.

22. (1) The Corporation shall submit its certified financial statements and annual report to the Minister and the Bank within three months of the close of the financial year.

(2) After submission to the Minister and the Bank, the Corporation shall publish the financial statements in two newspapers of general circulation in Guyana and the annual report on its website.

Financial reporting.

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

(2) The Corporation shall maintain proper accounts and records in accordance with the International Financial Reporting Standards and shall prepare in respect of each financial year a statement of accounts as at end December 31 of each year.

(3) The transactions relating to the administration of the Fund shall be distinguished from the transactions relating to other activities of the Corporation and shall be recorded and dealt with separately in the annual accounts and reports of the Corporation.

Internal
audit.

24. (1) The Corporation shall develop an internal audit function which shall report directly to the Board.

(2) The Corporation shall develop internal audit procedures and practices for proper risk management and, once such procedures and practices have been instituted, supervise their implementation and review their effectiveness on a continuing basis and such practices shall include the conduct of internal audits approved by the Board.

External
audit.

25. (1) The accounts of the Corporation shall be audited at least annually in accordance with the International Standards on Auditing by an independent external auditor who -

(a) is professionally qualified and has knowledge and experience in the audits of financial and insurance institutions satisfactory to the Board;

- (b) is in good standing as a member of an association of chartered or public accountants or a similar body; and
- (c) is authorised to practise in Guyana.

(2) The external auditor shall not be appointed for a period exceeding seven consecutive years.

PART VI DEPOSIT INSURANCE FUND

Establishment and financing of the Deposit Insurance Fund.

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

(2) The Fund shall be financed by-

- (a) an initial contribution by the Bank, guaranteed by the Government, and by the member financial institutions;
- (b) regular and extraordinary premiums paid by the member financial institutions;
- (c) funds borrowed from the Government;
- (d) funds borrowed from the Bank and guaranteed by the Government;
- (e) funds borrowed from private financial institutions or public international financial institutions;
- (f) any interest, dividend and other income derived from the investments of the Fund;
- (g) funds that may accrue from fees or the operation of the Fund;
- (h) funds realized from the resolution or liquidation of a member financial institution; and
- (i) all other funds lawfully paid into the Fund.

Minimum target size of the Fund.

27. (1) The target size of the Fund shall be five percent of the insured deposits, to be reached within ten years of the establishment of the Fund.

(2) The Board shall review the size of the Fund periodically and at least once per year with regards to its actual and potential liabilities.

(3) Based on a review under subsection (2), the Board may set a higher minimum target size for the Fund commensurate with the objectives of protecting the interests of depositors and contributing to the resolution of member financial institutions.

(4) Where the Board determines that the Fund has reached the minimum target level and all outstanding funding provided by the Government and the Bank have been fully repaid, it may introduce a moratorium on premiums either indefinitely or for a fixed period or refund any excess amounts to the member financial institutions *pro rata*.

Initial contributions.

28. (1) The Bank shall make an initial contribution to the Fund with a guarantee by the Government.

(2) The initial contribution of the Bank shall be fully repaid by the member financial institutions through the assessment of regular or extraordinary premiums before the Corporation may reduce the rate at which regular premiums are assessed on the member financial institutions.

(3) Within three months of the establishment of the Fund, each member financial institution shall pay into the Fund an initial contribution of up to 1.5 percent of the average amount of the insured deposits held at the start and at the end of the calendar year preceding the entry into force of this Act.

(4) Each member financial institution licensed after the entry into force of this Act shall pay into the Fund an initial contribution calculated as a percentage of the average amount of insured deposits held at the start and at the end of the first year of operations, as determined by the Board.

Regular premiums.

29. (1) Each member financial institution shall pay regular premiums into the Fund on a biannual basis.

(2) The assessment periods shall start on the first day of January and July of each year.

(3) The regular premiums shall be calculated at a percentage ranging between 0.2 percent and 1.5 percent of the average amount of insured deposits held by each member financial institution over the preceding assessment period.

(4) The Board shall determine and announce the rate at which regular premiums shall be set prior to the commencement of each assessment period.

(5) The Board may increase at any time the rate at which the regular premiums are assessed, but it may only decrease such rate provided the Fund has reached the minimum target level and all outstanding funding provided by the Government and the Bank have been fully repaid.

(6) The regular premium shall be paid to the Corporation by drawing from the accounts of the member financial institutions at the Bank.

(7) The Corporation may, acting after consultation with the Minister, make regulations on the method for calculating the regular premiums and

the procedure for collecting these premiums, which shall be reviewed at least every five years.

Extraordinary premiums.

30. (1) The Corporation may impose extraordinary premiums on the member financial institutions in addition to the regular premiums where the Corporation has made or is likely to make payments to depositors which have exhausted or are likely to exhaust the Fund.

(2) The Board shall determine the rate of the extraordinary premiums not exceeding 1.00 percent of the average amount of insured deposits held by each member financial institution over the preceding assessment period at such a level that enables the Fund to return to its minimum target size within a reasonable period of time.

(3) The extraordinary premiums shall be paid to the Corporation by drawing from the accounts of the member financial institutions at the Bank.

Emergency funding.

31. If the imposition of extraordinary premiums is insufficient to reimburse insured depositors or to restore the Fund to its minimum target size within a reasonable period of time, the Corporation may borrow funds from the Government, or from the Bank with a Government guarantee, at an interest rate equivalent to that charged on Government securities of similar maturity.

Outstanding premiums.

32. (1) Where any amount payable to the Fund by a member financial institution is outstanding, that member is liable to pay interest as the Board may determine.

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

Investment of
the Fund.

33. (1) The Corporation shall manage the resources of the Fund consistent with international best practices, prioritizing safety and liquidity over return, and ensuring adequate risk management and internal control safeguards, as reflected in the investment policy and the annual investment plan of the Corporation as adopted by the Board.

(2) The resources of the Fund shall be invested in low-risk securities in such a manner as to maintain an adequate level of liquidity to protect the resources of the Fund while generating a level of income that is likely to maintain or increase the real value of the Fund.

(3) The Fund may invest its resources in the following assets -

- (a) debt securities issued by the Government of Guyana;
- (b) banknotes and coins denominated in freely convertible foreign currencies; and
- (c) readily marketable financial securities issued by governments, central banks or public international financial institutions denominated in freely convertible currencies with a high credit rating, as determined by the Board in the investment policy of the Corporation.

(4) The Fund shall not invest in the member financial institutions.

(5) The Corporation may outsource to the Bank the investment of the resources of the Fund.

Use of Fund
resources.

34. (1) The resources of the Fund shall be used to -

- (a) reimburse insured deposits upon the occurrence of an insured event;
- (b) contribute to the resolution of a member financial institution;
- (c) repay any borrowings;
- (d) pay for expenses incurred in or incidental to –
 - (i) the establishment and maintenance of the Scheme; and
 - (ii) the administration and management of the Corporation and the Fund; or
- (e) pay for any other expenses considered necessary in accordance with this Act.

PART VII INSURANCE LIMIT AND LIQUIDATION OF A MEMBER INSTITUTION

Insured limit.

35. (1) The Corporation shall insure every depositor, including principal and interest, held at a member financial institution to an amount not exceeding two million dollars.

(2) The Corporation shall review the adequacy of the insured limit at least every five years.

(3) The Corporation may, with the approval of the Minister and the Bank, vary the insured limit.

(4) A joint account shall be considered one account and shall be insured up to the insured limit.

Excluded
deposits.

36. The following deposits shall not be reimbursed under the Scheme -

- (a) deposits above the insured limit;
- (b) deposits of financial institutions, including insurance companies and pension funds;
- (c) deposits of central and local government authorities;
- (d) deposits of branches of financial institutions which operate outside Guyana;
- (e) deposits of members of the Supervisory Board or the Executive Board of a Financial Institution under resolution or liquidation, or their relatives, or third parties acting on their behalf;
- (f) deposits of shareholders, their relatives, or third parties acting on their behalf, owning at least 5 percent of the capital of a financial institution under liquidation or resolution; and
- (g) deposits of persons under criminal investigation or who are suspected of being involved in money laundering or terrorist financing.

Liquidation of a member financial institution.

37. (1) In a case where the Bank decides that the liquidation of a member financial institution is imminent, the Bank shall notify the Corporation which shall begin preparations for the payout of the insured deposits.

(2) Upon the public notification of the liquidation of a member financial institution, the Corporation shall

- (a) notify this event to each depositor in writing at the address shown on the records of the member financial institution; and

(b) make public in the *Gazette*, in newspapers of general circulation, on its website and via other communication channels such information as may be necessary for the timely and efficient payout of the insured deposits.

(3) The notification referred to in subsection 2(a) shall inform that all deposit accounts at the member financial institution have been frozen and that interest has ceased to accrue from the time of the insured event.

Powers of the corporation in relation to liquidated member financial institutions.

38. The Corporation shall have the following data at its disposal to be provided by the Bank or the liquidator -

- (a) a final balance of the books of the member financial institution and an update of all of its deposit accounts;
- (b) a list of the assets of the member financial institution;
- (c) a list of all depositors and the amounts owed to each depositor;
- (d) a list of the depositors who have outstanding loans from the member financial institution, including a specification of the amounts that can be set off against their deposits;
- (e) a list of depositors with deposits in excess of the insured limit;
- (f) a list of other uninsured obligations of the member financial institution and an estimate of the amount of such obligations; and
- (g) any other statements or forms necessary for the record-keeping of the Corporation.

PART VIII
REIMBURSEMENT OF INSURED DEPOSITS

Calculation of the reimbursement.

39. (1) The Corporation shall reimburse the combined amount of insured deposits of each natural or legal person at a member financial institution, including interest accrued until the time of the insured event, up to the insured limit.

(2) Funds held by a nominee for the benefit of a principal, ward, minor or patient and deposited in one or more deposit accounts shall be added to any individual accounts of the principal, ward, minor or patient and reimbursed up to the insured limit.

(3) Funds held in a trust account shall not be combined with the individual accounts of a trustee, settlor or beneficiary under the trust.

(4) In the case of a joint account, the reimbursable amounts shall be divided equally among the account holders unless otherwise justified as documented by the member financial institution.

(5) In the event of a merger of member financial institutions, the depositors of the merged bank shall remain covered for their insured deposits at the merged financial institution for a period of six months following the merger.

Reimbursement process.

40. (1) The Corporation shall reimburse the insured depositors within thirty calendar days after the insured event.

(2) The depositors shall be reimbursed in Guyanese dollars and foreign currency deposits shall be paid out in Guyanese dollars according to the exchange rate set by the Bank at the date of the insured event.

(3) The Corporation shall have the following options to reimburse the insured depositors -

- (a) direct payment in cash or electronic form;
- (b) payment via a payment agent in cash or electronic form; and
- (c) other payment options as approved by the Board.

(4) The Corporation may reimburse the insured depositors in a single payment or a series of payments over the course of the maximum reimbursement period.

(5) Where the Corporation contributes funds to the resolution of a member financial institution to enable a transfer of insured deposits to an existing purchaser or a bridge bank, the depositors whose deposits are transferred shall have no claim against the Corporation.

(6) The deposit account records of a member financial institution are *prima facie* evidence of the existence, validity, nature and ownership of the insured deposits.

(7) To be entitled to reimbursement, the depositors shall provide evidence of their identity, as determined by the Board.

(8) Upon reimbursement of an insured depositor, the Corporation shall be discharged from any liabilities to such insured depositor to the extent of the reimbursement.

(9) The reimbursement process shall be subject to an independent audit, the results of which shall be reported to the Corporation and the Bank.

Subrogation and
priority of claims.

41. (1) The Corporation shall subrogate to the rights and obligations of the depositors that it reimburses.

(2) The claims of the Corporation and the claims of the depositors excluded from deposit insurance coverage or whose deposits exceed the insured limit shall rank in liquidation according to the priority of claims provided for in Part VIII the Financial Institutions Act.

Cap. 85:03

PART IX

CONTRIBUTION TO RESOLUTION

Funding of a
transfer of assets
and liabilities.

42. (1) The Corporation may contribute funds to the resolution of a member financial institution in the event that the Bank decides to transfer some or all of the assets and liabilities of the member financial institution under resolution to an existing purchaser or a bridge bank, if the value of the liabilities is greater than the value of the assets.

(2) The Corporation shall observe the following conditions in relation to the contribution -

- (a) the depositors whose deposits are transferred continue to have access to their deposits;
- (b) the contribution of the Corporation shall not be greater than the disbursements of the Corporation had the member financial institution been placed in liquidation;

- (c) the contribution of the Corporation shall not be greater than fifty percent of the minimum target size of the Fund;
- (d) the contribution of the Corporation shall be in cash, debt securities of the Government of Guyana or marketable securities issued by governments, central banks or public international financial institutions denominated in freely convertible currencies.
- (e) the claims of the Corporation arising from the funding of resolution shall have the same rank in liquidation as insured deposits.
- (f) the contribution of the Corporation shall be subject to an independent audit whose results shall be reported to the Corporation and the Bank.

**PART X
MISCELLANEOUS**

Confidentiality.

43. (1) Any information made available to or otherwise obtained by the Corporation shall be confidential and shall be used by the Corporation solely for the performance of its functions under this Act.

(2) No director, officer, employee or person in the service of the Corporation who for any reason has access to or acquires any record, document, material or information relating to the business and affairs of the Corporation, a member financial institution or a customer of a member financial institution shall divulge, publish or otherwise disclose to any person such document, material or information unless the disclosure is required -

- (a) under the provisions of any law;
- (b) to comply with a court order;
- (c) in the interest of the Corporation in legal proceedings;
- (d) to perform their duties and functions;
- (e) to be given to the external auditor of the Corporation;
- (f) to be given to other domestic safety-net participants; or
- (g) to be given to foreign supervisory, resolution or regulatory authorities or to foreign deposit insurers, pursuant to section 44(1) (c).

(3) This section shall not apply to any document, material or information which at the time of the disclosure is or has already been lawfully made available to the public from any source.

(4) No person who has any document, material or information which to their knowledge has been disclosed in contravention of subsection (2) shall in any manner disclose it to any other person.

(5) Any person who contravenes subsections (2) and (4) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for a term of twelve months.

44. (1) The Corporation shall enter into agreements for the sharing of information and cooperation with –

- (a) the Bank;
- (b) other domestic financial authorities contributing to the stability of the financial system of Guyana; or
- (c) foreign supervisory, resolution or regulatory authorities and foreign deposit insurers in countries where a holding company, parent bank, subsidiary, branch or affiliate of a member financial institution is located.

Cooperation and sharing of information.

(2) The Corporation shall enter into such agreements provided it is satisfied that the institutions listed in subsection (1) are subject to requirements on the confidentiality of information equivalent to those of this Act and will use the information for purposes equivalent to those allowed under this Act.

45. (1) The Corporation or any person authorised on behalf of the Corporation may, by notice in writing, require from any member financial institution or any director, manager, auditor, officer, employee or agent of a member financial institution any information relating to the business of that member and needed to achieve the objectives and functions of the Corporation, as specified in the notice.

(2) The member financial institutions shall provide all requested information to the Corporation.

(3) The member financial institutions shall maintain their depositors' records in a format prescribed by the Corporation in order to expedite the reimbursement of insured deposits.

(4) When collecting information, the Corporation shall rely as much as possible on the information already provided by the member financial institutions to the Bank in its supervisory capacity.

(5) The Bank shall provide the Corporation with information regarding weak member financial institutions on its own initiative or at the request of the Corporation.

(6) The Bank and the Corporation shall inform each other immediately should an insured event be likely or should the stability of the financial system of Guyana be threatened.

(7) The Corporation, independently or in cooperation with the Bank, may undertake on-site and off-site examinations to verify the reliability of the depositor records of the member financial institutions and to examine the capability of the member financial institutions to provide accurate information.

(8) A director, manager, auditor, officer or agent of a member financial institution who is required under this section to make a disclosure to the Corporation shall not be regarded as being in breach of a duty to the member financial institution by reason of making such a disclosure.

(9) Where a member financial institution or an officer of a member financial institution fails to comply with a request by the Corporation for information under subsection (1) within the period of time stipulated, such a member financial institution or officer commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for a term of one year.

Offences
relating to
information.

46. (1) An officer of a member financial institution commits an offence where the officer -

- (a) wilfully destroys or conceals from the Corporation any material information relating to the financial affairs of the member financial institution;
- (b) provides false or misleading information to the Corporation; or
- (c) falsifies or tampers with accounts, records, papers, or documents of the member financial institution with an intent to mislead.

(2) A member financial institution or an officer who is found guilty of an offence under this section is liable on summary conviction to a fine of two hundred thousand dollars and imprisonment for a term of one year.

Offences
relating to
depositors.

47. Where a depositor falsifies a passbook, certificate of deposit, bank statement or any document claiming title to a deposit held with a member financial institution under liquidation or where a person fraudulently claims to be a depositor to obtain reimbursement from the Scheme, that depositor or person who claims to be a depositor commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and imprisonment for a term of one year.

Immunity.

48. The Directors, officers, employees and any other persons in the service of the Corporation, including persons previously holding such positions, shall not be personally liable for actions or omissions in the discharge of their duties under this Act, unless it is proven that these actions or omissions were committed in bad faith.

Indemnity.

49. (1) The Corporation shall indemnify the Director, officer, employee or any other person in the service of the Corporation for all costs, charges and expenses reasonably incurred in respect of any proceedings arising from the discharge of their duties under this Act, including costs incurred in the defense of a legal action brought against such persons, and costs to settle an action or to satisfy a court ruling.

(2) Subsection (1) shall not apply where the Director, officer, employee or person in the service of the Corporation has acted in bad faith.

Administrative sanctions.

50. (1) After consultation with the Bank, the Board may impose administrative sanctions on a member financial institution or on a natural or legal person for a violation of this Act or any regulations or decisions of the Corporation under this Act.

(2) The administrative sanctions may take the form of -

- (a) written warnings;
- (b) orders to comply with specific instructions; or
- (c) pecuniary penalties.

Information to depositors, and public awareness and education programmes.

51. (1) The Corporation shall develop and promote a comprehensive deposit insurance public awareness and education programme using a variety of activities and communication channels.

(2) Such activities shall inform the public about -

- (a) where, how and when insured depositors will be provided with access to their funds;
- (b) what type of deposits are insured and the applicable insured limit;
- (c) the member financial institutions;
- (d) the rights of depositors in relation to their insured deposits;
- (e) the information that an insured depositor must provide in order to obtain reimbursement; and
- (f) any other relevant information.

(3) Upon occurrence of an insured event, the Corporation shall provide via the media all relevant information to the insured depositors.

(4) The member financial institutions shall inform their clients on the coverage of their deposits in accordance with the regulations of the Corporation.

Insurance Act not applicable.
Cap. 91:02

52. The Insurance Act shall not apply to the Scheme.

Power to make
Subsidiary
Legislation and
issue directives.

53. (1) The Corporation may, acting after consultation with the Minister, make regulations, orders, by-laws, notices or guidelines generally for the purpose of carrying out of the provisions of this Act.

(2) The Corporation may issue directives to a member financial institution and such directives shall be applicable and binding on the institution to which the directives are given.

PART XI TRANSITIONAL AND FINAL PROVISIONS

Transitional
Provisions.

54. (1) Within one month of entry into force of this Act, the Bank shall appoint the independent Directors who shall initially serve for two and three years, respectively.

(2) Within two months of entry into force of this Act, the Board shall appoint the Chief Executive Officer and shall approve the staffing schedule for the Corporation and the salaries of its officers.

(3) Within four months of entry into force of this Act, the Board shall appoint the external auditor.

(4) Within six months of entry into force of this Act, the Board shall approve regulations and internal policies on -

(a) the provision of information to depositors;

- (b) the collection of data from the member financial institutions;
- (c) the methodology for calculating regular insurance premiums;
- (d) the investment policy and the annual investment plan of the Fund;
- (e) preparation of the annual budget;
- (f) the rules of procedure of the Board; and
- (g) the Code of Ethics and Conduct of the Corporation.

(5) Within nine months of entry into force of this Act, the Board shall approve the initial disbursement plan and the disbursement procedures for insured deposits.

(6) Within twelve months of entry into force of this Act, the Board shall determine the rate at which regular insurance premiums shall be assessed.

EXPLANATORY MEMORANDUM

This Bill seeks to establish a Deposit Insurance Scheme (the “Scheme”) and to lay out a regime governing its core elements - the Deposit Insurance Corporation (the “Corporation”) and the Deposit Insurance Fund (the “Fund”).

Deposit insurance being one of the components of the financial sector safety net, alongside supervision, resolution, and emergency liquidity assistance, this Bill seeks to address the inherent instability of maturity transformation in the banking sector, that is, the financing of long-term assets through the issuance of demand or short-dated deposits, which makes banks vulnerable to depositor runs and to contagion from less sound institutions. The advent of deposit insurance has proven to prevent major banking crises the world over and plays a central role in maintaining financial stability.

DEPOSIT INSURANCE SCHEME

Clause 3 of the Bill seeks to establish the Scheme. Clause 4 sets out the objectives of the Scheme to foster financial stability by protecting depositors and by contributing funds to the resolution of member institutions. These objectives inform the design of all elements of the Scheme and provide a yardstick for holding the Corporation accountable in the performance of its functions.

DEPOSIT INSURANCE CORPORATION

Clause 8 seeks to establish the Corporation as the deposit insurer and seeks to give it a pay-box plus mandate, with functions and powers instrumental to the objective of fostering financial stability through depositor protector and resolution financing. It sets out the core functions of the Corporation which are to reimburse the funds held by insured depositors at a failed member institution and to finance the resolution of a member institution. Incidental to these functions, it is also tasked to collect premiums, manage the assets of the Fund, and promote public awareness. To enable the discharge of its core and incidental functions, clause 9 seeks to give the Corporation an open-ended assignment of powers enabling it to take any action deemed necessary.

Clauses 9 and 10 set out the governance framework of the Corporation which is designed to ensure its ability to exercise its functions without undue pressure from the Government or the industry. Notwithstanding being independent, the Corporation relies on the Bank for material support to carry out its operations.

Clauses 12 to 21 set out the decision-making structure of the Corporation which is made up of the Board of Directors and the Chief Executive Officer (CEO). The rules governing the composition of the Board, the division of responsibilities between the Board and the CEO and appointments aim to put in place a system of checks and balances that support the independence

of the Corporation and prevent its powers from being abused. The Board is responsible for the approval of policies and regulations and for the supervision of management, while the CEO is symmetrically tasked with proposing the formulation of policies and regulations and with the performance of daily management.

These clauses also set out the requirements on integrity, qualification, and conflicts of interest which apply to the CEO and to the independent Directors, further supporting the independence of the Corporation. To avoid undue influence from political or private interests, certain individuals are also ineligible to serve as CEO or independent Director, namely members of Parliament, Government or the Supreme Court, public officers, political party officers, and directors, officers or qualified owners of a financial institution.

Clauses 22 to 25 seek to provide that, as a counterweight to its independence, the Corporation is bound to render account of the discharge of its functions and the fulfilment of its objectives.

Clauses 48 and 49 seek to provide that, in support of the independence of the Corporation, its current and former CEOs, Directors, and employees, as well as other individuals in its service enjoy legal immunity.

DEPOSIT INSURANCE FUND

Clauses 26 to 36 seek to provide that funding for the Scheme is provided on an ex-ante basis (which is based on the forecasted need for funding as opposed to the actual need for funding) thus giving the Corporation immediate access to the necessary resources to reimburse depositors promptly. The minimum target size of the Fund and the timeframe to achieve it will be determined following a quantitative assessment of the risks to which the member financial institutions are exposed. Start-up funds are provided by the Bank, with a government guarantee, and by the member financial institutions through initial contributions. In addition, regular premiums are assessed biannually on the member financial institutions at a rate of 0.2 - 1.5% of covered deposits, as determined by the Board.

These clauses also seek to provide that the resources of the Fund must be managed so as to ensure their immediate availability should an insured event come about. Hence, the funds must be invested in safe assets, following a strategy that prioritizes liquidity over return, and subject to adequate risk management and internal control mechanisms.

Clauses 37 to 43 seek to provide that insurance coverage needs to be set at a level that is low enough to be credible and mitigate moral hazard, but high enough to afford protection to small depositors. Based on these considerations, the Act sets the coverage limit at 2 million dollars. Certain classes of deposits are excluded from coverage, such as deposits of financial institutions, deposits of government authorities, deposits held at overseas branches of financial institutions, deposits of persons affiliated with a failed financial institution, and deposits of individuals engaged in money laundering or financing of terrorism.

These clauses also seek to provide that to avoid bank runs and panics, the Corporation must be able to complete the payout process shortly after a financial institution is placed in liquidation.

Clause 42 seeks to empower the Corporation to extend funds for resolution, provided the amounts involved are less than what would be necessary should the financial institution be liquidated. Financing can be provided to fill a balance-sheet gap in the event of a transfer of assets and liabilities to a willing purchaser or to a bridge bank, up to 50% of the minimum target size of the Fund. Here, too, the Corporation is entitled to recover from the liquidation estate with the same rights and rank as insured depositors.

Because advance planning is essential for the Corporation to be able to react promptly to an insured event, clause 38 seeks to provide that the Corporation is entitled to receive supervisory data from the Bank with a view to monitoring the likelihood and magnitude of an insured event.

Clause 45 also empowers the Corporation to obtain other relevant information directly from the member financial institutions, in particular their depositor records, through on-site or off-site examinations and the liquidator.

Clause 44 seeks to provide that the Corporation has the authority to share information and cooperate with other domestic and foreign safety-net participants apart from the Bank. Such participants may include authorities with responsibilities over the financial sector in and outside Guyana, such as the Ministry of Finance, deposit insurance agencies, financial supervisors, and resolution authorities.

Clause 43 seeks to provide that in general, all private information obtained by the Corporation in the discharge of its duties must be kept confidential. Exceptions apply, nonetheless, where information is released to law enforcement authorities, to a court of law, to the external auditors, to domestic or foreign safety-net participants, or is used in the interest of the Corporation in legal proceedings.

Clause 54 seeks to provide transitional provisions to establish a timetable for the implementation of the Act. Actions that are expected to be implemented in one to twelve months include the appointment of the independent Directors, the appointment of the CEO, the approval of the employment and the salary schedule, the appointment of the external auditor, the approval of policies and regulations on a number of matters, the approval of the initial disbursement plan and the disbursement procedures, and the determination of the regular insurance premiums.

Hon Winston Jordan MP
Minister of Finance