



**BERMUDA
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HOUSING LOAN INSURANCE ACT 1984

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[13 March 1984]

[preamble and words of enactment omitted]

HOUSING LOAN INSURANCE ACT 1984

Short title

1 This Act may be cited as the Housing Loan Insurance Act 1984.

Interpretation and construction

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

"administer", in relation to a loan, means —

- (a) to advance any unadvanced part or parts of the loan; or
- (b) to collect payments of interest on, and repayments of principal of, the loan, or both, and otherwise to monitor and enforce on behalf of the lender the fulfilment by the borrower of the latter's obligations under the loan;

"approved lender" means a person designated as an approved lender under section 4(4);

"approved loan" means an insurable loan in respect of which the Corporation has either issued an insurance policy or given an undertaking under section 7(2) to issue one;

"borrower" means a person to whom a loan is made;

"borrower's charges" means charges payable by the borrower of a secured loan either —

- (a) for services, such as insurance or maintenance of property, whose discharge or non-discharge may directly or indirectly affect the value of the lender's security; or
- (b) pursuant to some obligation imposed upon him by the instrument evidencing the security;

"Corporation" means the Bermuda Housing Corporation;

"dwelling unit" means a self-contained entity capable of permanent human habitation, consisting of one or more rooms and having its own cooking, living and sanitary facilities;

"Fund" means the Housing Loan Insurance Fund referred to in section 9(1);

"house" means a building that is capable of permanent human habitation;

"housing loan insurance" means the insurance of loans financing the purchase, construction or improvement of housing in Bermuda;

"housing project" means a project for the construction of one or more dwelling units not amounting to a hotel or a guest-house;

"insurable loan" has the meaning assigned to it by sections 4 to 6;

"insured loan" means a loan insured by the Corporation;

"lender" means a person who makes a loan,

"lending value", in relation to property, means the value of the property for lending purposes;

"Minister" means the Minister responsible for Housing;

"prescribed" means prescribed by regulation;

"principal", in relation to a loan, means the amount of the debt incurred exclusive of financing fees, borrower's charges and insurance or other premiums;

"regulation" means a regulation made under section 18(1);

"rental housing project" means a housing project established for the purpose of renting out to tenants the dwelling units created by the housing project;

"statutory insurance premium" has the meaning assigned to it by section 8;

"to purchase", in relation to a loan, means to purchase from the seller of the loan his interest in the loan; and "to sell", in relation to a loan, has the converse meaning.

(2) This Act shall be construed as one with the Bermuda Housing Act 1980 [*title 29 item 1*], and accordingly any expression defined in that Act that is used in this Act without definition shall have the meaning assigned to it by that Act.

Corporation to carry on housing loan insurance

3 In addition to discharging the functions assigned to the Corporation by the Bermuda Housing Act 1980 [*title 29 item 1*], it shall be the Corporation's duty, by exercising the powers conferred upon it by this Act, to establish and maintain a housing loan insurance business.

Insurable loans

4 (1) This section and sections 5 and 6 shall have effect to define an insurable loan for the purposes of this Act.

(2) Subject to sections 5 and 6, a loan is an insurable loan if the Corporation is satisfied that it meets or will meet the following requirements—

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- (a) it is secured either by a mortgage (being a first mortgage) in a form approved by the Corporation or by some other security so approved;
- (b) it was made by an approved lender for the purpose of financing —
 - (i) the purchase, rehabilitation or improvement of an existing dwelling unit; or
 - (ii) the construction of a new dwelling unit; or
 - (iii) the construction of a rental housing project, being a dwelling unit or rental housing project constructed or, as the case may be, to be constructed in accordance with sound building standards approved by the Corporation;
- (c) it was made —
 - (i) to a person who intends to own and occupy a dwelling unit; or
 - (ii) to a person who intends to sell a house to a person who will own and occupy the house or a dwelling unit in the house; or
 - (iii) subject to subsection (3), to a registered housing association which operates, or intends to operate, a rental housing project; or
 - (iv) to a person (including, subject to subsection (3), a registered housing association) who intends to construct a rental housing project;
- (d) it was made for an amount not exceeding the aggregate of —
 - (i) the relevant prescribed percentage of the lending value; and
 - (ii) the statutory insurance premium;
- (e) it was made on such other terms and conditions as are called for by or under this Act;
- (f) subject to paragraphs (a) to (e), it was made on terms and conditions approved by the Corporation.

(3) A loan made to a registered housing association is not an insurable loan unless at the time the loan was made the Corporation was satisfied that —

- (a) the loan was secured by a mortgage on all the dwelling units; and

(b) none of those units would be occupied by a person who was not a member of the registered housing association.

(4) The Corporation may, if it thinks fit, with the approval of the Minister by instrument in writing designate a person, who has money to lend and has made application to the corporation for the purpose, as an approved lender for the purposes of this Act.

Insurable loans: instalments

5 A loan may be an insurable loan notwithstanding that it to be advanced in instalments.

Loans that are not fully advanced

6 Where —

- (a) an approved loan was intended to be fully advanced; and
- (b) the Corporation is satisfied that supervening events have prevented the loan from being fully advanced; and
- (c) instalments of the loan have been advanced,

the Corporation shall have power at the request of the approved lender, subject to such terms and conditions as may be prescribed, to treat the aggregate of the instalments that have been advanced as an insurable loan, notwithstanding that the approved loan was not fully advanced.

Insurance policies

7 (1) The Corporation shall have power to issue insurance policies in respect of insurable loans.

(2) The Corporation shall have power, before it issues an insurance policy in respect of an insurable loan, to give to an approved lender a binding undertaking that it will issue the policy.

(3) Where either —

- (a) an approved loan has been fully advanced; or
- (b) the Corporation has pursuant to section 6 determined to treat part of an approved loan as an insurable loan,

the Corporation shall be bound to issue an insurance policy in respect of the loan or part if the approved lender so requests.

Insurance premium

8 (1) An approved lender shall pay to the Corporation the statutory insurance premium in respect of an approved loan or, where part of an approved loan has been treated as an insurable loan under

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section 6, that part; and subsections (2) to (5) shall have effect to define the statutory insurance premium.

(2) Subject to subsections (3) to (5), the amount of the statutory insurance premium shall be such amount as the Corporation considers justified in light of —

- (a) the risk involved for the Corporation; and
- (b) the expenses and costs occasioned to the Corporation, by the insurance.

(3) The Minister of Finance may by order fix maximum limits for statutory insurance premiums, whether generally or for any class or classes of case that he may specify in such an order.

(4) Every order made under subsection (3) shall be subject to the negative resolution procedure.

(5) Maximum limits may be fixed by order under subsection (3) either in money amounts or by way of principles not involving money amounts or by a combination of both those methods.

The Housing Loan Insurance Fund

9 (1) The Corporation shall as soon as may be establish, and shall maintain, a fund to be known as the Housing Loan Insurance Fund.

(2) The following shall be assets of the Fund—

- (a) property accruing to the Corporation through the exercise by the Corporation of any rights under a mortgage or other security;
- (b) moneys, whether fees, insurance premiums or payments of any other kind, accruing to the Corporation in the conduct by the Corporation of housing loan insurance under this Act;
- (c) moneys paid by the Government to the Corporation pursuant to subsection (3) or (4);
- (d) assets in a state of investment under subsection (5).

(3) *[omitted]* *[spent]*

(4) The Minister of Finance may from time to time lend to the Corporation such amounts upon such terms and conditions as the Legislature may approve, being amounts needed to discharge any obligations of the Corporation under this Act that the Corporation is not able immediately to discharge from its own sources; and the Corporation shall credit every such amount to the Fund.

(5) The Corporation may from time to time invest any assets of the Corporation, which the Corporation does not immediately need for the performance of its functions under this Act, in investments approved either generally or specifically by the Minister; and the Corporation may from time to time with the like approval realize any such investments.

(6) The Corporation may pay out of the Fund all payments falling due to be made by the Corporation on account of costs and expenses incurred in issuing, or undertaking to issue, insurance policies, settling insurance claims, and otherwise conducting housing loan insurance, under this Act.

Additional powers of the Corporation

10 (1) The Corporation shall have power to purchase an insured loan.

(2) The Corporation shall have power to purchase property securing an insured loan.

(3) The Corporation shall have power to sell a loan made under section 13.

(4) The Corporation shall have power to administer an insured loan, notwithstanding that—

(a) the Corporation did not make the loan in the first place; or

(b) the Corporation sold the loan, after making it, to some other person.

Purchase sale and administration of loans by approved leaders

11 Nothing in this Act prevents an approved lender from purchasing, or selling, or administering, an insured loan if he has the legal capacity to do those things.

Insurance void of loans not administered by Corporation or approved lender

12 The liability of the Corporation under an undertaking to insure given, or an insurance policy issued, by the Corporation in respect of a loan shall forthwith be extinguished if the loan ceases to be administered either by the Corporation or by an approved lender.

Certain Corporation loans to have the status of insurable loans

13 (1) Subsections (3) and (4) shall have effect in relation to a Corporation loan made under this section ("a loan under this section").

(2) A loan is a loan under this section if —

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- (a) the loan would be an insurable loan within sections 4 to 6 if it were made by an approved lender; and
- (b) the Corporation certifies in writing to the Minister that the loan has been made by the Corporation on terms that place the Corporation, in relation to any loss falling upon the Corporation by reason of its making the loan, in the same position *mutatis mutandis* as an approved lender is placed under section 16 in relation to loss falling upon an approved lender by reason of his making a loan; and
- (c) the Corporation charges and collects in respect of the loan a premium in the same amount as would be payable to the Corporation in respect of an insurable loan covering the same risk, and pays that premium into the Housing Loan Insurance Fund.

(3) Where a loan under this section which has been sold by the Corporation is administered by an approved lender or continues to be administered by the Corporation itself, the loan shall be deemed to be an insurable loan for the purposes of section 7; and accordingly the Corporation shall have power to issue an insurance policy, or to give an undertaking to issue an insurance policy, under that section in respect of the loan.

(4) The Corporation may discharge out of the Fund any loss falling upon the Corporation by reason of the Corporation's making a loan under this section.

Reinsurance

14 The Corporation shall have power to reinsure all or any part of its insurance obligations under this Act with any person carrying on reinsurance business, being a person approved, after consultation with the Minister of Finance, by the Minister by instrument in writing for the purposes of this section.

Maximum insurance limit

15 The aggregate amount of the loans in respect of which insurance policies issued by the Corporation, and undertakings to issue such policies, may at any one time be outstanding under this Act shall not exceed \$100 million.

Settlement of claims

16 (1) Where an approved lender has and exercises a power of sale conferred upon him by a mortgage securing an approved loan, payment of an insurance claim brought by him against the Corporation, unless the payment is effected in accordance with subsection (2), shall be

effected, and any insurance policy issued by the Corporation shall be framed, in accordance with the following principles—

- (a) the approved lender shall give to the Corporation not less than ten days notice of the sale in order that the Corporation may, if it thinks fit, attend and bid at the sale in protection of the Corporation's interests;
- (b) the approved lender shall transfer to the Corporation all his rights to have the loan repaid him by the borrower;
- (c) the Corporation shall pay the approved lender the aggregate of —
 - (i) (aa) the prescribed amount of the principal owing under the mortgage;
 - (bb) borrower's charges within the prescribed range to the extent, if any, to which the approved lender has paid those charges without recovering the payments from the borrower;
 - (cc) interest at the prescribed rate; and
 - (ii) where the approved lender made his claim against the Corporation in the prescribed manner and within the prescribed time, interest at the prescribed rate on the amount payable under sub-paragraph (i) of this paragraph from the date of the sale to the date of payment of that amount,

less the prescribed proceeds of sale.

(2) The Corporation may settle an insurance claim brought against it that is not regulated by subsection (1) on such terms and conditions as the Corporation has thought fit to stipulate for in the insurance policy.

Government backing

17 (1) Where—

- (a) it is determined by a court in Bermuda that an obligation is owed by the Corporation to any person, being an obligation arising directly or indirectly out of any provision of this Act; and
- (b) that obligation is not discharged by the Corporation for whatever reason,

the Government shall be bound to discharge that obligation.

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- (2) Where the Government discharges pursuant to subsection (1) an obligation owed by the Corporation to any person then—
- (a) the Government shall have, and may exercise, against that person, in place of the Corporation, any rights that the Corporation had and could have exercised against him; and
 - (b) the Government shall be entitled to be indemnified by the Corporation for any loss or damage suffered by the Government by reason of the Government discharging the Corporation's obligation, but shall give credit for any benefit obtained by the Government under paragraph (a).

Regulations

- 18 (1) The Minister may make regulations —
- (a) empowering the Corporation —
 - (i) to establish lending values differing in differing circumstances; and
 - (ii) to establish percentages of lending values which the amount of approved loans must not exceed;
 - (b) prescribing maximum and minimum amortization periods for approved loans;
 - (c) prescribing procedures to be followed by the Corporation in authorizing advances by approved lenders to borrowers;
 - (d) prescribing conditions (which may include conditions protecting the Corporation from negligence, laxity or other impropriety on the part of approved lenders in arranging, making or administering loans) regulating the making of insurance claims against the Corporation;
 - (e) prescribing sound standards of construction for houses and other buildings;
 - (f) prescribing requirements and procedures in relation to the inspection of houses and other buildings;
 - (g) prescribing fees;
 - (h) prescribing forms;
 - (i) prescribing anything permitted or required by this Act to be prescribed;
 - (j) creating offences and prescribing punishment (including imprisonment) for them;

(k) generally for the better carrying out of the purposes of this Act.

(2) Regulations shall be subject to the affirmative resolution procedure.

Housing Loan Insurance (Mortgage) Regulations to have legal effect

19 (1) The Housing Loan Insurance (Mortgage) Regulations 1984 [title 29 item 5(a)] shall have legal effect by virtue of this section as regulations made under section 18(1), and approved by the House of Assembly and the Senate under section 18(2).

(2) Subsection (1) shall not affect the future power of the Minister to make regulations under section 18(1) (or under any other statutory provision) amending or revoking the Housing Loan Insurance (Mortgage) Regulations 1984 or replacing them with other regulations.

Amendment of Trustee Act 1975

20 [omitted]

Amendment of Insurance Act 1978

21 [omitted]

Commencement

22 [omitted]

[this Act was brought into operation on 28 August 1987 by BR 46/1987]

[Amended by
1984 34]