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CHAPTER 317

PROTECTION OF DEPOSITORS

An Act to establish a Deposit Insurance Fund for the protection of depositors; to establish a Deposit Insurance Corporation to manage the Fund; to give special powers to the Corporation; and for connected purposes. *40 of 1999*

*[Assent 30th September, 1999]
[Commencement 10th November, 1999]*

**PART I
PRELIMINARY**

1. This Act may be cited as the Protection of Depositors Act, 1999. Short title
2. (1) In this Act — Interpretation
- “affiliate” has the same meaning as in section 2 of the Companies Act; Ch 308
- “agent” in relation to an institution, includes its bankers and any persons, whether officers of the institution or not, who are employed as its auditors, but does not include its legal advisers;
- “the Bank” means the Central Bank of The Bahamas established by section 3 of the Central Bank of The Bahamas Act; Ch 351
- “Board of Management” means the Board of Directors of the Corporation;
- “Chairman” means the Chairman of the Board of Management;
- “Corporation” means the Deposit Insurance Corporation established under section 7;
- “deposit” means —
- (a) the unpaid balance of money or its equivalent received or held by a institution from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person’s checking, savings, demand or time

account, or for which the institution has issued a certificate, receipt, cheque, money-order, draft or other instrument in respect of which it is primarily liable; but shall not include letters of credit, stand-by letters of credit or instruments of a similar nature, subordinated debts, preference shares, inter-bank deposits, foreign currency deposits, deposits of Government and statutory corporations, deposits of foreign Governments, deposits in any financial institution wholly owned by the Government, and deposits from affiliates; and

- (b) such other deposits as may be prescribed by the Minister on the recommendation of the Bank;

“directors” includes any category of persons performing the functions of directors or analogous functions;

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

“institution” means any person carrying on banking business wholly or partly in Bahamian currency;

“Minister” means the Minister of Finance;

“officer” in relation to an institution, includes any category of managers as well as any person in the employment of the institution;

“parent company” means a company that owns at least fifty per cent of the outstanding voting shares in another company;

“premium year” means in relation to the calculation and payment of premiums pursuant to this Act the period beginning on January 1 and ending on December 31 in any year;

“subsidiary company” means a company at least fifty percent of whose outstanding voting shares are owned by another company.

(2) In this Act a reference to a director, officer or agent of an institution includes a reference to a person who has been but is no longer a director, officer or agent thereof.

(3) For the purposes of this Act , an institution is deemed to be closed when the institution is ordered by the Governor to wind up its business under section 14 of the Banks and Trust Companies Regulation Act.

Ch 316

PART II DEPOSIT INSURANCE FUND

3. (1) There is established for the protection of depositors a fund to be known as the Deposit Insurance Fund.

Establishment of
Deposit
Insurance Fund

(2) The Fund shall be managed by the Board of Management of the Corporation.

4. Membership in the Fund is compulsory for every institution carrying on banking business wholly or partly in Bahamian currency and licensed under the Banks and Trust Companies Regulation Act.

Membership in
the Fund
compulsory
Ch 316

5. (1) A compulsory initial contribution of one million dollars shall be paid to the Fund within ninety days of the coming into force of this Act, five hundred thousand dollars of which shall be paid by the Bank as capital in accordance with subsection (2) of section 13 and five hundred thousand dollars in aggregate of which shall be paid by member institutions; the contribution to be paid by member institutions shall be calculated based on their *pro rata* percentage share of all deposits insured by the Corporation on the last day of the month in which this Act comes into force.

Financing of the
Fund

(2) Every member of the Fund shall pay an annual premium to the Fund, equal to one twentieth of one per cent of an amount equal to the average of the sum of those deposits insured by the Corporation and deposited with the member institution as of March 31 and September 30 in the immediately preceding premium year.

(3) For the purpose of making the calculation referred to in subsection (2), a member institution may use any method approved by the Corporation to determine the aggregate amount of its deposits that are insured by the Corporation.

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

(5) One half of the premium payable by a member institution shall be paid to the Corporation on or before June 15 in the premium year for which the premium is payable, and the remainder shall be paid to the Corporation on or before December 15 in the premium year.

(6) Notwithstanding subsection (2), the premium payable by a member institution in respect of the premium year in which it becomes a member institution shall be the same proportion of one twentieth of one percent of the amount equal to the sum of those deposits insured by the Corporation and deposited with the member institution as at the end of the month in which it becomes a member institution, as the number of days in which any of the deposits with that member institution are insured by the Corporation in that premium year is of three hundred and sixty five.

(7) Notwithstanding subsection (5) —

- (a) one half of the premium payable by a member institution under subsection (6) shall be paid to the Corporation within sixty days after the end of the month in which the member institution becomes a member institution; and
- (b) the remainder of the premium shall be paid to the Corporation on or before December 31 immediately following the month in which the member institution becomes a member institution.

(8) Where in the opinion of the Corporation the Fund had made or is likely to make payments to depositors which have exhausted or are likely to exhaust the Fund, the Corporation shall furnish the Minister with an estimate of the amount necessary to meet the obligations of the Fund in the year next succeeding and the Minister on the advice of the Bank after consultation with the member institutions, may by order require that special contributions be levied on them.

(9) Where the Corporation determines that the Fund has reached a satisfactory level it may refund any excess moneys to the member institutions *pro rata*.

6. (1) The Corporation shall insure each deposit in a member institution which is payable in The Bahamas in Bahamian currency.

Insurance cover

(2) Deposit Insurance coverage is limited to fifty thousand dollars or such greater amount as the Minister may, by order, prescribe on the advice of the Bank after consultation with the member institutions save that where a depositor maintains deposits in more than one institution or in different capacities and rights, the limit shall apply to the principal amounts including interest up to the date of closure less any amounts owed to the institution by the depositor, and maintained on deposit in each institution in each capacity and right.

(3) A depositor is protected by deposit insurance only when the member institution in which he has a deposit is closed.

(4) Payment to the person *prima facie* entitled under this section by the Corporation in respect of any deposit insured discharges the Corporation from liability in respect of that deposit.

(5) When payment is made by the Corporation under this section in respect of a deposit with a member institution the Corporation is subrogated up to the insured limit to all the rights of the depositor as against that member institution and may maintain an action in respect of such rights in the name of the depositor or in the name of the Corporation.

(6) Subject to subsection (7) the benefit of insurance cover shall not be extended to any depositor who is shown to have been a party to or profited from the circumstances giving rise to the member institution's failure.

(7) Subsection (6) shall not apply to depositors who are professional advisors of the member institution and whose *bona fides* are not in question.

(8) Payments to depositors of closed institutions shall commence not later than six months after closure of the member institution.

(9) The Corporation shall in respect of rights to which it is subrogated have priority over other insured unsecured creditors of the closed institution.

PART III
DEPOSIT INSURANCE CORPORATION

Management of
the Fund.

7. (1) There is hereby established for the purposes of this Act a corporation to be known as the Deposit Insurance Corporation.

(2) The Corporation shall be a body corporate having perpetual succession and a common seal.

Composition of
Board.

8. The Board of Management and Members of the Corporation shall be appointed by the Minister and shall consist of —

- (a) the Governor of the Bank;
- (b) the manager of Bank Supervision and one other manager of the Bank;
- (c) the Financial Secretary; and
- (d) two persons who have knowledge and experience in banking, commerce, finance, accounting, insurance or law.

Terms of office
of members of
Board.

9. (1) Members of the Board shall be appointed for a term of not less than three years and shall be eligible for re-appointment.

(2) Members of the Board shall be paid such remuneration (whether by way of honorarium, salary or fees) as the Minister may determine.

Chairman of the
Board.

10. (1) The Governor of the Bank shall be Chairman of the Board.

(2) The Chairman shall in the event of an equality in the voting, in addition to his original vote, have a casting vote.

Procedure.

11. The Corporation shall determine its own procedure save that the quorum for meetings shall be four members.

Validity of
proceedings.

12. No vacancy in the membership of the Corporation or irregularity in the appointment of its members shall invalidate its proceedings.

Capital of
Corporation.

13. (1) The authorised capital of the Corporation shall be one million dollars which may be increased by order of the Minister.

(2) Notwithstanding section 28 of the Central Bank of The Bahamas Act, upon the establishment of the Corporation there shall be paid-up by the Bank in respect of the capital a sum of five hundred thousand dollars. Ch 351

(3) The paid-up portion of the authorised capital may be increased by such amount as the Minister on the recommendation of the Bank may approve.

(4) Any increase in the authorised or paid-up capital shall be notified by publication in the *Gazette*.

14. The Corporation shall be exempt from the provisions of the Insurance Act and the Stamp Act. Exemption
Ch 347

15. For the proper management and administration of the Fund, the Corporation shall have power — Powers of The Corporation
Ch 370

- (a) to appoint and employ such number of managers, employees and officers and other persons as it considers necessary or desirable for the efficient performance of its functions and upon such terms and conditions as agreed;
- (b) to enter into agreement with the Bank for the secondment of staff and the provision of services;
- (c) to establish committees;
- (d) to pay off depositors up to the insured limit;
- (e) subject to prior claims being paid, to deduct from moneys from the Fund due to a depositor, any loans due, call, called-in guarantees and overdrafts and to set-off deposits pledged as collateral;
- (f) to require from any director, manager, agent or employee of a member institution or from such person in its parent company or any of its subsidiary companies any information in relation to its business or the production of any document or record under his custody or control;
- (g) on the advice of the Bank —
 - (i) to levy authorised contributions and premia on member institutions;
 - (ii) to arrange for restructuring of a failed member whether by merger with a financially sound member or otherwise;

- (iii) to accumulate, manage and to invest so far as possible, in Government and quasi Government instruments and short term deposits, funds collected, to borrow by the issuance of bonds or otherwise, lend, give guarantees and acquire the undertaking of any institution which is in financial difficulty.

Insurance
payment
procedures

16. (1) Where the Bank advises the Corporation that a member institution has closed, the Corporation shall notify depositors by making public notification of the closure in such newspapers as may be considered appropriate, indicating the dates, times and places at which insurance payment shall be made.

(2) No payment may be made unless a depositor produces satisfactory evidence of his deposit to the Corporation and that evidence shall be surrendered to the Corporation on receipt of payment.

(3) Persons who have deposits in excess of the insured limit shall be paid the insured portion of their deposits less any amounts owed to the institution by the depositor, and shall be issued with a certificate for the amount in excess of the limit.

(4) Depositors may submit claims for deposit insurance up to one year after closure of the institution with which the deposit was made.

(5) Claims made after the time specified in subsection (4) shall be made against the assets of the institution and shall be paid *pro rata* as the assets of the institution are collected and sold.

(6) Claims shall be supported by evidence of deposit ownership and may be made by depositors in person or in writing supported by affidavit.

Business with
closed
institutions

17. (1) Persons who have borrowed money from institutions that have been closed shall make payments on the same terms and conditions attaching to their loan contracts with the institutions.

(2) Demand loans become due as soon as an institution is closed.

- 18.** Where an institution is closed — Effect of closure.
- (a) all deposit accounts of the institution are frozen forthwith; and
 - (b) interest on deposits immediately ceases to accrue whether or not the date of maturity of the deposit was beyond the date of closure.

19. (1) The Corporation shall keep proper accounts of all transactions and shall prepare in respect of each financial year a statement of accounts as at December 31 of each year, or at such other date and in such form as the Minister may direct. Accounts and audit.

(2) Such accounts shall be audited annually by an auditor appointed by the Corporation with the approval of the Minister.

(3) The Minister shall cause a copy of the statement of accounts and the auditor's report to be laid on the table of both Houses of Parliament.

PART IV SPECIAL POWERS OF THE CORPORATION

20. In the performance of its functions and in the exercise of its powers under this Act, the Corporation shall comply with any general or specific directions of the Bank and shall act only on the advice of the Bank. Corporation to act on advice of the Bank.

- 21.** (1) Where the Bank advises the Corporation — Corporation may take over control, etc.
- (a) that the rights of depositors or creditors of an institution are threatened;
 - (b) that an institution is likely to become unable to meet its obligations or is about to suspend or has suspended payments; or
 - (c) that an institution is not maintaining high standards of financial probity or sound business practices,

the Corporation, for the protection of depositors, shall, in addition to any other powers conferred on it by any other law, have power —

- (d) to investigate the affairs of the institution concerned and any of its affiliate and to appoint a person or persons for that purpose;

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- (e) to such extent as it thinks fit, to assume control of and carry on the affairs of the institution and, if necessary, to take over the property and undertaking of the institution;
 - (f) to take all steps it considers necessary to protect the interests, and to preserve the rights of depositors and creditors of the institution;
 - (g) to restructure the business or undertaking of the institution or to reconstruct its capital base;
 - (h) to provide such financial assistance to the institution as it considers necessary to prevent the collapse of the institution;
 - (i) to acquire or sell or otherwise deal with the property, assets and undertaking of or any shareholding in the institution, at a fair market price;
 - (j) to appoint such persons as it considers necessary to assist in the performances of the functions conferred by paragraphs (d) to (i).

(2) Pursuant but without prejudice to its powers under subsection (1), the Corporation may appoint any person or persons to act as Receiver or Receiver-Manager of the institution and such appointment shall take effect as though made by the depositors and other creditors of the institution pursuant to a charge over all the fixed and floating assets of the institution and without prejudice to any other powers vested in such Receiver or Receiver-Manager the Receiver or Receiver-Manager shall exercise his powers in accordance with sections 139 to 151 of the Companies Act.

Ch 308

Notification of
takeover of
property and
control

22. (1) Where the Corporation proposes to exercise powers under subsection (1)(e) of section 21 it shall publish in the *Gazette* and in such newspapers as it thinks appropriate a notification to that effect.

- (2) The notification shall state —
 - (a) the property and undertaking it proposes to take over;
 - (b) the powers of control it proposes to exercise,

and shall give such particulars as the Corporation considers necessary for the information of persons having business dealings with the institution.

(3) Upon the publication of the notification the property and the powers of control stated therein shall vest in the Corporation.

(4) A notification under this section may be amended or supplemented from time to time by subsequent notification in the *Gazette* and the notification shall have effect as so amended or supplemented.

23. (1) Where the Corporation has under section 21 assumed control of an institution, it may terminate, retain or engage locally the services of any or all of the directors, managers, agents, officers and employees of the institution and the persons so retained or engaged shall manage the affairs of the institution subject however to any directions of the Corporation; and no acts done or resolution, rules, bye-laws or decisions made or conveyances, transfers, assignments or instruments executed during such period relating to the business affairs, property, undertaking or management of the institution shall have effect unless they are approved by or are in conformity with the directions of the Corporation.

Duty to assist
where
Corporation
assumes control

(2) Where the Corporation is exercising powers under section 21, in relation to any institution, that institution, its affiliate and their directors, officers and agents other than their auditors shall give every assistance to the Corporation for the purpose of facilitating the performance of functions under section 21, including the supply of information or explanation in such form as may be required the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function under section 21, save that in the case of their auditors they shall only be required to supply any information which is in their possession or knowledge.

(3) Any person appointed under section 21 shall have all the powers of a commissioner under the Commissions of Inquiry Act to summon and examine persons required under subsection (2) to assist the Corporation in the performance of its functions, and the provisions of section 13 of the Commissions of Inquiry Act shall apply in all respects to persons summoned under this subsection.

Ch 184

(4) In any particular case, the Corporation may appoint the Bank to perform any or all of its functions under section 21 subject to such conditions as may be specified in the appointment.

Termination of
control

24. (1) Where the Corporation has under section 21 assumed control of an institution, the Corporation shall, subject to subsection (2), remain in control of, and may continue to carry on the business of that institution until such time as the Corporation publishes in the *Gazette* and in such newspapers as it thinks appropriate a notification that it has ceased to be in control of the institution.

(2) The Corporation shall relinquish control and shall not continue to carry on the business of an institution where —

- (a) the circumstances on the basis of which the Corporation assumed control of the institution under section 21 have ceased to exist;
- (b) the Corporation is of the opinion that it is no longer necessary for it to remain in control of the business of the institution; or
- (c) the Corporation has sold or otherwise disposed of the property, assets and undertakings of the institution.

(3) Upon publication of a notification under subsection (1) and subject to such conditions as may be specified therein, all property not sold or otherwise disposed of by the Corporation and all powers of control over the affairs of the institution vested in the Corporation by or in consequence of the previous notification published under subsection (1) of section 22 shall vest in the institution if it still subsist as a corporate entity and be deemed to have been transferred from the Corporation to the institution.

(4) Where the Corporation has, in pursuance of section 21, assumed control of an institution, the Supreme Court may, upon the application of the directors of the institution acting independently of the Corporation if it is satisfied that it is no longer necessary for the protection of the depositors or creditors of the institution that the Corporation should remain in control of the business of that institution, order that the Corporation cease to control the business of that institution as from a date specified in the Order.

Protection of
persons acting
under this Part

25. The Crown, the Minister or the Corporation its directors and officers and any person appointed by the Corporation under section 21 are not subject to any action, claim or demand by, or any liability to, any person in

respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Corporation under this Part.

26. (1) Any person to whom subsection (2) of section 23 applies who — Offences under Part IV

- (a) fails to assist or to facilitate the Corporation in any function conferred by section 21;
- (b) obstructs the Corporation in the performance of any such function; or
- (c) in the performance of his obligations under subsection (2) of section 23, provides any false or misleading information,

is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

(2) While the Corporation is in control of the business of an institution, any person who, without the approval or authority of the Corporation or in a manner contrary to the directions of the Corporation, receives, disposes of or otherwise deals with any assets of the institution, or who tampers whether by making entries in or otherwise, with any books, records or documents of the institution is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

(3) Any person to whom subsection (2) of section 23 applies who fails to comply with a requirement or demand by the Corporation to do or refrain from doing any act or to assist or to facilitate the Corporation in any function vested in it by section 21 is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

PART V MISCELLANEOUS

27. (1) Where a member institution of the Fund, or any director, agent, servant or employee (including a former director, agent, servant or employee) of that institution fails to comply with any request by the General offences

Corporation for information relating to the affairs of the institution or to co-operate in the inspection or investigation of the institution, that institution or that director, agent, servant or employee is guilty of an offence and shall be liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for two years or to both.

(2) Where a director, agent, servant, employee (including a former director, agent, servant or employee) of a member institution deliberately conceals from the Corporation any material information regarding the financial affairs of the member institution or provides false or misleading information to the Corporation or falsifies or tampers with the books, records, accounts, papers or documents of the institution, so as to mislead the Corporation, that director, agent, servant or employee is guilty of an offence and shall be liable on conviction on information to a fine of fifty thousand dollars or to imprisonment for five years or to both.

(3) Where a depositor falsifies any passbook, certificate of deposit, bank statement or any document claiming title to a deposit with a failed member institution or where a person fraudulently claims to be a depositor either for payment or for the purpose of claiming an insured deposit, that depositor or person is guilty of an offence and shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for one year or to both.

Bye-laws

28. The Minister on the recommendation of the Bank may make such bye-laws as are necessary for all matters pertaining to the operations and functions of the Corporation.

Application

29. (1) Notwithstanding the provisions of this Act, depositors of Gulf Union Bank (Bahamas) Ltd which is in liquidation shall be qualified depositors under this Act and each depositor shall be paid from the Fund the amount of his deposit up to the insured limit prescribed in subsection (2) of section 6 within ninety days of the coming into force of this Act upon making a claim in accordance with subsection (6) of section 16.

(2) In this section, “Gulf Union Bank (Bahamas) Ltd” means the institution known by that name which was

granted a licence by the Minister on December 27, 1985 and which licence was suspended by the Minister on October 2, 1997 and which was put into liquidation by the court on December 12, 1997.

30. (1) No person shall disclose any information relating to the affairs of an institution or of any customer of an institution which is acquired in the performance of normal duties or the exercise of any functions under this Act unless lawfully required to do so by any court of competent jurisdiction. Confidentiality

(2) Every person who contravenes the provisions of subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars or to imprisonment for three months or to both.