

JAMAICA

No. 1 -2011

I assent,

[L.S.]

(Sgd.) P. L. Allen
Governor-General
23rd February 2011

AN ACT to Amend the Deposit Insurance Act.

[24th February 2011]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Deposit Insurance (Amendment) Act, 2011, and shall be read and construed as one with the Deposit Insurance Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

2. Section 2 of the principal Act is amended in subsection (1)—

Amendment
of section 2
of principal
Act.

(a) in the definition of "insurable deposit", by—

- (i) inserting immediately after the words "other than" the words "a deposit from";

- (ii) deleting from paragraphs (a) and (b) the words “a deposit from”; and
 - (iii) inserting next after paragraph (b), the following as paragraphs (c) and (d)—
 - “(c) a Ministry, department or agency of the Government;
 - (d) a Parish Council, the Kingston and St. Andrew Corporation or a Municipal Council”; and
- (b) by inserting in the appropriate alphabetical sequence the following definitions—

“nominee” includes—

- (a) an agent;
- (b) a guardian;
- (c) a custodian; and
- (d) the Supreme Court, or a Resident Magistrate’s Court in the case of property the value of which is within the monetary jurisdiction of that Court, pursuant to section 29(1) of the *Mental Health Act*;

“nominee account” means monies held on account by a nominee for the benefit of a principal or ward of the nominee, or of a minor or patient, as the case may be;

“trust account” includes monies held on account for the purpose of a trust.”.

Amendment
of section 5
of principal
Act.

3. Section 5 of the principal Act is amended in subsection (2) by—
- (a) deleting the full stop at the end of paragraph (d) and substituting therefor a semicolon; and

- (b) inserting next after paragraph (d) the following as paragraphs (e) and (f)—

- “(e) subject to section 17—

- (i) make loans or advances with security;
 - (ii) borrow or raise funds;

- (f) guarantee, indemnify or become liable for the payment of monies or the performance of any obligation thereto.”.

4. Section 14 of the principal Act is amended—

Amendment
of section 14
of principal
Act.

- (a) in subsection (1), by deleting the words “under subsection (3)” and substituting therefor the words “pursuant to section 25”; and

- (b) by deleting subsection (3).

5. Section 17 of the principal Act is amended—

Amendment
of section 17
of principal
Act.

- (a) in subsection (1)—

- (i) in paragraph (a), by inserting next after sub-paragraph (v) the following as sub-paragraph (vi)—

- “(vi) any amount representing the repayment of loans or advances made out of the Fund.”;

- (ii) in paragraph (b), by—

- (A) deleting the full stop at the end of sub-paragraph (iv) and substituting therefor a semicolon; and

- (B) inserting next after sub-paragraph (iv) the following as sub-paragraph (v)—

- “(v) any loans or advances made out of the Fund.”;

(b) by deleting subsection (2) and substituting therefor the following—

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

- (a) securities issued or guaranteed by the Bank;
- (b) securities issued by the Government or in such foreign securities as may from time to time, be approved by the Board; or
- (c) any other investment approved by the Minister, upon the recommendation of the Board.”.

Amendment of section 18 of principal Act.

6. Section 18 of the principal Act is amended in subsection (4), by inserting immediately after the words “as aforesaid” the words “unless there is, at the specified date, an express provision to the contrary in the records of the policyholder”.

Insertion of new sections 18A, 18B, 18C and 18D in principal Act.

7. The principal Act is amended by inserting next after section 18, the following as sections 18A, 18B, 18C and 18D—

“ Payment out of Fund in relation to foreign currency account deposits.

18A.—(1) Where the Corporation is obliged to make payment out of the Fund in respect of an insured deposit that is in a currency other than Jamaican currency, the equivalent amount in Jamaican currency of the foreign currency payment amount calculated in accordance with subsection (2) shall be paid out.

(2) The equivalent amount referred to in subsection (1) shall be calculated in accordance with the weighted average selling rate of the foreign currency payable by the Bank at the date on which the circumstance that obliged the payment occurred.

Cessation of
accrual of
interest on
deposit
accounts

18B. Where the Corporation is obliged to make payments out of the Fund on the occurrence of any event specified in paragraphs (a), (b), (c) or (d) of subsection (1) of section 18, interest on deposits shall cease to accrue from the date on which the specified event occurred, whether or not the date of maturity of the deposit is after the date of the specified event.

Beneficial
interest in
trust and
nominee
accounts.

18C.—(1) Where a deposit with a policyholder is held in a trust account or in a nominee account—

- (a) a beneficiary under the trust or nominee arrangement relating to the deposit account shall be regarded as a depositor of the policyholder; and
- (b) the rights of that depositor in that deposit account shall be treated as distinct from his rights in any other deposit held with the policyholder in any other capacity.

(2) For the purposes of payment out of the Fund in respect of an insured deposit—

- (a) the policyholder shall indicate on its records—
 - (i) for a trust account, that the account is held by the trustee for the named beneficiaries;
 - (ii) for a nominee account, that the account is held by the nominee for the named beneficiaries; or
 - (iii) for a joint account, the names of the individual joint owners;
- (b) the trustee or the nominee, as the case may be, shall—
 - (i) maintain such detailed records as may be prescribed by the Corporation;

- (ii) submit to the policyholder such records as may, from time to time, be required by the policyholder; and
 - (iii) when so required by the policyholder, file a statutory declaration, certifying the accuracy of the records submitted under subparagraph (ii); and
- (c) in maintaining and submitting any record on the trust accounts and the nominee accounts required under paragraph (b), the trustee or the nominee, as the case may be, shall ensure that the records are—
- (i) true, correct and complete; and
 - (ii) free of false or deceptive information,

and the policyholder shall rely on such records for the purposes of paragraph (a).

(3) The trustee or the nominee, as the case may be, shall indemnify the policyholder in the event of any legal proceedings relating to such records which do not comply with subsection (2)(c).

(4) The Corporation shall not separately insure deposits held in a trust account or in a nominee account for any beneficiary if, in the opinion of the Corporation, the trust account or the nominee account exists primarily for the purpose of obtaining or increasing deposit insurance.

Deposits of depositor with policyholders that subsequently amalgamate.

18D.—(1) This section applies where a depositor holds insurable deposits with two or more policyholders that—

- (a) subsequently merge; and

(b) continue operations as one policyholder.

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

8. The principal Act is amended by inserting next after section 19 the following as section 19A—

Insertion of new section 19A in principal Act.

.. Payments by transferred deposit

19A.—(1) Where the Corporation is obliged to make payments out of the Fund pursuant to section 18, the payments in respect of the policyholder concerned may be made, by way of transferred deposit held by another policyholder, in such manner as may be determined by the Corporation.

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

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

(4) In this section “transferred deposit” means an insurable deposit transferred from one policyholder to another policyholder.”.

9. Section 22 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 22 of principal Act

.. Carrying on business, without insurance

22. Any financial institution that carries on the business of accepting deposits without being the holder of a

valid policy of deposit insurance commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars;
- (b) on conviction on indictment in a Circuit Court to a fine.”.

Insertion of new section 24A in principal Act.

10. The principal Act is amended by inserting next after section 24 the following as section 24A—

“ Minister may amend monetary penalties. 24A. The Minister may, by order, subject to affirmative resolution, amend the monetary penalties specified in this Act.”.

Amendment of section 25 of principal Act

11. Section 25 of the principal Act is amended—

- (a) in subsection (1), by—
 - (i) deleting the full stop at the end of paragraph (b) and substituting therefor a semicolon; and
 - (ii) inserting next after paragraph (b) the following as paragraph (c)—
 - “(c) for the keeping of records so as to ensure the identification of trust accounts, nominee accounts and joint accounts, and of beneficial interests in deposits, for the purposes of facilitating deposit insurance payments and computation in relation thereto.”; and
- (b) by inserting next after subsection (2) the following as subsection (3)—
 - “ (3) Notwithstanding section 29 of the *Interpretation Act*, regulations made under subsection (1) may provide for the imposition of penalties on

summary conviction in a Resident Magistrate's Court of a fine not exceeding five hundred thousand dollars or of imprisonment for a term not exceeding six months or of both such fine and imprisonment.”.

Passed in the House of Representatives this 11th day of January, 2011.

DELROY H. CHUCK,
Speaker.

Passed in the Senate this 28th day of January, 2011 with five (5) amendments.

OSWALD G. HARDING, O.J., C.D., Q.C.
President.

On the 1st day of February, 2011 the House of Representatives agreed to the amendments made by the Senate.

DELROY H. CHUCK,
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.