

# **THE DEPOSIT INSURANCE SCHEME BILL**

(No. .... of 2016)

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*Clause*

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**A BILL**

**To provide for the establishment of a Deposit Insurance Scheme and to provide for matters connected therewith and incidental thereto.**

ENACTED by the Parliament of Mauritius, as follows -

**PART I - PRELIMINARY**

**1. Short title**

This Act may be cited as the Deposit Insurance Scheme Act 2016.

**2. Interpretation**

In this Act -

“Bank” means the Bank of Mauritius established under section 3 of the Bank of Mauritius Act;

“bank” has the same meaning as in the Banking Act;

“Board” means the Board of Directors referred to in Section 8;

“Chief Executive Officer” means the chief executive of the Scheme appointed under Section 16;

“coverage limit” means the amount, determined under section 27(3), that is payable on a per depositor per Scheme member basis;

“depositor” means any individual who is a resident and who is entitled to repayment of an insured deposit, whether or not the deposit is made by him;

“Director” means a director of the Board appointed under Section 8(2);

“failed Scheme member” means a Scheme member in respect of which the Board has determined that compensation will be paid out of the Fund to insured depositors;

“Fund” means the Mauritius Deposit Insurance Fund established under Section 23;

“financial institution” has the same meaning as in the Banking Act;

“Governor” refers to the Governor of the Bank;

“insolvent” in respect of a Scheme member, refers to an instance where the Scheme member goes into receivership or liquidation and is wound up or otherwise dissolved under Parts XI-XII of the Banking Act 2004;

“insured deposit” means -

- (a) any of the following deposits in Mauritian rupees or foreign currency, including any interest accrued thereon, placed with a Scheme member and protected within the coverage limit -
  - (i) deposits in a savings account;
  - (ii) deposits in a current account;
  - (iii) time deposits.
- (b) but does not include —
  - (i) any deposit which is pledged, charged or secured as collateral; and
  - (ii) where there is a contractual set-off agreement between a Scheme member and a depositor, any deposit or part thereof placed with the Scheme member which is set aside in respect of any debt owing by the depositor to that Scheme member, and such deposit or part thereof which has been set aside cannot be withdrawn by the depositor unless and until the debt is fully paid up

“insured depositor” means holders of insured deposits by –

- (a) an account holder singly in his own right;
- (b) an account holder in his own right jointly with one or more other persons in a joint account; or
- (b) such other person or class of persons as may be determined by the Board.

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“non-bank deposit taking institution” has the same meaning as in the Banking Act;

“resident” means an individual whose principal place of dwelling is in Mauritius;

“Scheme” means the Mauritius Deposit Insurance Scheme established under Section 3;

“Scheme member” means a member as specified in section 19;

“time deposit” means deposits that are placed with a pre-determined maturity period;

## **PART II – THE SCHEME**

### **3. Establishment**

(1) There shall be established for the purposes of this Act a scheme to be known as the Mauritius Deposit Insurance Scheme, which shall provide insurance to insured depositors in respect of their insured deposits placed with Scheme members.

(2) The Scheme shall –

- (a) be a body corporate with perpetual succession;
- (b) have a common seal;
- (c) be a wholly-owned subsidiary of the Bank;
- (d) subject to the provisions of this Act, be capable of entering into contracts, of acquiring, holding and disposing of property, whether movable or immovable, and of suing or being sued; and
- (e) do or perform all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The Companies Act and the Insurance Act shall not apply to the Scheme.

(4) The Scheme shall be exempted from payment of any taxes, levies or duties in respect of its profits, transactions and operations.

### **4. Objects of the Scheme**

(1) The objects of the Scheme shall be -

- (a) to protect insured depositors of Scheme members by providing insurance against the loss of part or all of the insured deposits in Scheme members; and
- (b) to contribute to the stability of the financial system in Mauritius by, in the event of a bank failure, giving depositors prompt access to their insured deposits, whether by transfer to another bank or by direct payment in a liquidation activity.

(2) Subject to this Act, the Scheme shall, in the pursuit of its objects, perform its functions independently.

## **5. Capital**

(1) The authorized capital of the Scheme shall be 500 million rupees and shall be subscribed and held solely by the Bank.

(2) The issued capital of the Scheme shall

- (a) be not less than 200 million rupees;
- (b) not be transferable or subject to any encumbrance.

(3) The level of issued capital may be increased by such amounts as may be determined by the Board with the approval of the Bank.

## **6. Functions of the Scheme**

(1) The functions of the Scheme shall be to carry out such activities as may be necessary to give effect to the objects and without limiting the generality of the foregoing, such functions shall include the duty –

- (a) to provide, in accordance with the provisions of this Act, insurance against the loss of deposits;
- (b) to manage and administer the Fund or any other income of the Scheme.

(2) The Scheme shall –

- (a) collect premium contributions levied on Scheme members;
- (b) make payments of compensation in respect of insured deposits to insured depositors out of the Fund after the Board has determined the eligibility and entitlement of the depositors;
- (c) specifically be authorized to use its Fund to facilitate the transfer of insured deposits to an acquiring bank in a Purchase and Assumption transaction, not to exceed the amount that

would have been expended in a liquidation activity. The Scheme is authorized to pay a reasonable fee to a bank for this service if necessary;

- (d) in extraordinary situations where insured deposits cannot be repaid promptly, make interim payments of compensation out of the Fund to insured depositors of such amounts as the Board may consider appropriate;
- (e) claim from –
  - (i) failed Scheme members; or
  - (ii) the liquidator or provisional liquidator of a failed Scheme member, out of the assets of the failed Scheme member,

reimbursement of the amount of compensation paid to the insured depositors concerned out of the Fund, together with any interest accrued thereon;

- (f) invest directly or through delegation of authority the assets of the Fund pursuant to the limitations of this Act; and
- (g) educate the public on the Scheme.

(3) For the purpose of the performance of its functions under this Act, and subject to the provisions of this Act, the Scheme may do anything and enter into any transaction which, in the opinion of the Scheme, is necessary or incidental to its functions, and in particular, and without limiting the generality of the foregoing, the Scheme may-

- (a) make such enquiries as to the conduct of its affairs as may be prescribed;
- (b) do such things as are incidental or conducive to the performance of any of its functions under this section.

(4) Notwithstanding any provision contained in any other law, no person other than the Scheme shall insure deposit liabilities or guarantee payments to depositors of Scheme members operating in Mauritius.

(5) Any person who contravenes subsection (4) shall commit an offence and shall be liable on conviction to –

- (a) in case of an individual, a fine not exceeding 500,000 rupees or imprisonment for a term not exceeding 5 years;
- (b) in case of a body corporate, a fine of 100,000 rupees for each day the contravention continues.

## **7. Powers of the Scheme**

(1) The Scheme shall have such powers as are necessary to enable it to effectively discharge its functions and may, in particular –

- (a) issue orders and directions in accordance with this Act;
- (b) levy premiums for the Fund and fees or other amounts payable in accordance with the provisions of this Act.
- (c) borrow funds from the Bank on such terms and conditions as the Bank may determine;
- (c) impose financial penalties or remedies as may be prescribed, on any Scheme member which conducts its business in breach of this Act;
- (d) require banks and non-bank deposit taking institutions to maintain data in format to allow for sorting and aggregation for insurance determination as well as coding excluded deposits;
- (e) enter into such contracts and investments as may be necessary or expedient for the purpose of discharging its functions under this Act;
- (e) impose such charges, penalties or fees as may be required under this Act or regulations made thereunder; and
- (f) require periodic reports of recoveries on assets to be submitted to it by the liquidator following failure of a Scheme member.

(2) The Board may, at any time, require the Bank to carry out a special examination of any Scheme member —

- (a) to ascertain the type, number and value of insured deposits held by the institution; or
- (b) to verify the accuracy of any information the Scheme member may have provided, directly or indirectly, to the Board; or
- (c) to determine the financial soundness of the Scheme member.

## **PART III - BOARD, MANAGEMENT AND STAFF**

### **8. The Board**

(1) There shall be a Board of Directors who shall be responsible for the conduct of the business and affairs of the Scheme and shall exercise all powers and do all acts which may be exercised or done by the Scheme.



- (2) The Board shall consist of :
- (a) the Governor who shall be the Chairperson;
  - (b) a Deputy Governor of the Bank who has not been assigned the responsibility within the Bank for the supervision of the banking sector;
  - (c) A retired banker having relevant qualification and experience in the field of banking, appointed by the Governor;
  - (d) two representatives from Non-Governmental Organisations having relevant qualification and experience in the field of banking, finance or law, appointed by the Governor; and
  - (e) the Chief Executive Officer.

(3) Every Director appointed by the Governor shall be a resident of Mauritius and chosen from among persons of good standing, suitable character and have sufficient experience in business, professional or academic matters to carry out the responsibilities of the Scheme.

(4) The appointment of the Directors under Section 8(2) shall be on such terms and conditions as may be specified by the Governor in their instrument of appointment.

(5) The Board may from time to time make such regulations, with the approval of the Minister as may be necessary or expedient in relation to the administration, management, control, business, assets and affairs of the Scheme including —

- (a) the rules and procedures governing Board meetings, including but not limited to, the appointment of a Secretary to the Board, quorum and conduct of meetings;
- (b) the appointment, terms of reference and activities of committees established by the Board;
- (c) the functions, powers, duties, remuneration, benefits and terms and conditions of service of employees and agents of the Scheme;
- (d) the disclosure of interests of Directors, officers and employees;  
or
- (e) any such other matters as may be required.

(4) Subject to the provisions of this Act, the Board shall administer the Scheme.

(5) In the exercise of its functions, the Board shall not be subject to the direction or control of any other person or authority.

## **9. Tenure of Office**

(1) The Directors appointed by the Governor under Section 8(2) shall hold office for a term not exceeding three years and shall be eligible for reappointment.

(2) The Governor and Deputy Governor of the Bank shall be a Director for the duration of their tenure of office as Governor or Deputy Governor respectively.

## **10. Directors**

(1) The Directors shall be persons of proven financial ability and shall, at all times, act honestly and in the best interest of the Scheme and use reasonable diligence in the discharge of their duties.

(2) A Director or any person who has been a Director shall not—

- (a) make improper use of any information acquired by virtue of his position as a Director to gain, directly or indirectly, an advantage for himself or for any other person; or
- (b) do, say or publish anything which may be detrimental to the interests of the Scheme.

## **11. Disqualification**

(1) No person shall be appointed to the Board or continue to serve on the Board, if such person –

- (a) has committed any default or breach of trust or is guilty of serious misconduct in the discharge of his duties under this Act which, in the opinion of the Chairperson renders him unfit to be appointed or to continue in office;
- (b) has been convicted of an offence of such nature which, in the opinion of the Chairperson, renders it desirable that he should be removed from office;
- (c) is suffering from such mental or physical infirmity as to render him unfit to discharge his duties under this Act;
- (d) is absent, except on leave granted, by the Chairperson from three of the meetings of the Board in any period of twelve months;

- (e) is a Director, officer or employee of a financial institution or owns or controls a significant interest in shares of a financial institution;
- (f) has been declared bankrupt or makes a composition with his creditors; or
- (g) has been convicted of any offence involving fraud or dishonesty.

## **12. Meetings of the Board**

(1) The Board shall meet as often as may be required but not less than four times a year.

(2) The Governor shall preside over the meetings of the Board and in his absence, the Deputy Governor of the Bank shall, with the prior approval of the Governor, preside over the meeting and have all the powers of the Chairperson.

(3) A vacancy on the Board of Directors shall not impair the rights of the remaining Directors to act.

## **13. Decisions of the Board**

Every decision at a meeting of the Board shall be by a majority of the members present and voting and, in the event of an equality of votes, the Chairperson shall have a casting vote.

## **14. Disclosure of interests**

(1) Where a Director, his spouse or next-of-kin has any direct or indirect interest in relation to any matter before the Board, the Director shall -

- (a) disclose, at or before the meeting convened to discuss that matter, the nature of his interests; and
- (b) not take part in any deliberation or decision-making process in relation to that matter.

(2) Every disclosure of interest made under this section shall be recorded in the minutes of the Board.

## **15. Delegation of Powers**

The Board may delegate, on such conditions or restrictions as it thinks fit, all or any of its powers and functions to the Chief Executive Officer of the Scheme.

## **16. Appointment of Chief Executive Officer and staff**

(1) There shall be a Chief Executive Officer who shall be appointed by the Board on such terms and conditions of service as determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall qualify for appointment under this section unless such person—

- (a) has at least a degree in the field of either banking, law, finance, accounting, economics, or insurance;
- (b) has adequate experience at management level; and
- (c) is a fit and proper person.

(3) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Scheme.

(4) The Scheme may employ, on such terms and conditions as it thinks fit, such persons as may be necessary for the proper discharge of its functions under this Act.

(5) Every employee shall be under the administrative control of the Chief Executive Officer.

(6) An employee of the Scheme may, with the concurrence of the Bank, be posted at the Bank for such period as may be determined by the Board and on such terms and conditions as the Board thinks fit.

(7) An employee of the Bank may, with the concurrence of the Board, be posted to the Scheme for such period as may be determined by the Bank and on such terms and conditions as the Bank thinks fit.

#### **17. Consultants and other persons engaged to perform services**

(1) The Scheme may, on such terms and conditions as the Board may determine, engage any consultant, or other person, suitably qualified to provide such services to the Scheme as it thinks fit.

(2) The terms and conditions of the engagement shall be determined by the Board.

#### **18. Confidentiality**

(1) Every Director, officer or employee of the Scheme or any person appointed by the Scheme shall -

- (a) in the case of a Director, Chief Executive Officer or head of department, take an oath of confidentiality in the form set out in the First Schedule; and

- (b) in any other case, make a declaration of confidentiality before the Chairperson of the Board in the form set out in the Second Schedule,

before he begins to perform any duties under this Act.

(2) Except -

- (a) for the purposes of -
  - (i) the performance of his duties or the exercise of his functions under this Act; or
  - (ii) meeting the requirements of an agreement or understanding reached by the Scheme with any other relevant body; or
- (b) when lawfully required to do so -
  - (i) by an order of a Judge in Chambers or any court of law; or
  - (ii) under any enactment,

(3) No person referred to in subsection (1) shall, during and after his relationship with the Scheme, disclose directly or indirectly to any person any information relating to the affairs of the Scheme, of the Scheme members or insured depositors, which he has acquired in the performance of his duties or the exercise of his functions.

(4) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(5) Nothing in this section shall preclude the exchange or disclosure of any information, under conditions of confidentiality, pursuant to any agreement or memorandum of understanding entered into between the Scheme and the Bank or such other relevant bodies performing duties of similar nature or any public sector agency or law enforcement agency, where the Scheme is satisfied that the public sector agency or law enforcement agency has the capacity to protect the confidentiality of the information imparted.

#### **PART IV – MEMBERSHIP AND PREMIUM**

### **19. Membership**

- (1) The members of the Scheme shall comprise all banks and non-bank deposit taking institutions, provided that –
  - (i) existing banks and non-bank deposit taking institutions shall be deemed to be Scheme members as from the date of the coming into operation of this Act; and

- (ii) where a banking licence or non-bank deposit taking licence, as the case may be, is granted after the date of commencement of this Act, the bank or non-bank deposit taking institution shall become a Scheme member as from the date on which the licence is granted.
- (2) The Scheme shall issue a certificate of membership to every Scheme member in such form as it may deem appropriate.
- (3) Every Scheme member shall display copies of the certificate of membership at the main office and all branches and shall make openly and readily available copies of the materials explaining coverage provided by the Scheme.
- (4) A bank or a non-bank deposit taking institution shall automatically cease to be a Scheme member upon the-
  - (a) surrender, cancellation or revocation of its licence by the Bank;
  - (b) issue of a winding up order against the bank or non-bank deposit taking institution;
  - (c) transfer of its deposit liabilities in Mauritius to any other bank or non-bank deposit taking institution;
  - (d) appointment of a liquidator in pursuance of a resolution for its voluntary winding up; or
  - (e) merger or amalgamation of the bank or non-bank deposit taking institution with any other bank or non-bank deposit taking institution;
- (5) The Board shall, as soon as reasonably practicable after termination of membership of a Scheme member under subsection (4), cause the name of that institution to be published in the Gazette and at least three daily newspapers of wide circulation.
- (6) Where a bank or non-bank deposit taking institution ceases to be a member of the Scheme, it shall—
  - (a) surrender its certificate of membership to the Scheme;
  - (b) not assume, hold out or in any other way give the impression that it is a member of the Scheme; and
  - (c) not be relieved from its obligations or liabilities to the Scheme that have accrued before the cessation of its membership.
- (7) (a) Any bank or non-bank deposit taking institution which contravenes this section shall be guilty of an offence and shall

be liable on conviction to a fine not exceeding one million rupees.

- (b) The Chief Executive Officer and board members of any bank or non-bank deposit taking institution which contravenes the provisions of this section shall commit an offence and shall be liable, on conviction, to a term of imprisonment not exceeding 5 years or a fine not exceeding one million rupees.

## **20. List of members**

(1) The Scheme shall maintain a current list of all Scheme members which contribute to the Fund and whose deposits are insured.

(2) The Scheme shall make the list available to the public and provide such other information as is necessary or appropriate to enable depositors to determine the extent of coverage under this Act for any deposit accounts maintained with a Scheme member.

(3) No Scheme member shall indicate that its deposits are insured or use any reference to the Fund in its signage or business literature or otherwise, except as specifically permitted by the Scheme.

(4) Any bank or non-bank deposit taking institution which contravenes this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one million rupees.

## **21. Premium Contribution**

(1) Every Scheme member shall be a contributor to the Fund and shall pay into the Fund a premium of 30 cents per hundred rupee on the insurable deposit at the Scheme member at the coming into force of this Act and subsequently annually at such premium and at such rate and calculated on such basis as may be determined by the Scheme by regulations made by the Board, with the approval of the Minister.

(2) The Scheme shall serve on a Scheme member a notice specifying the amount payable into the Fund within a period which shall not be later than twenty one days after the date of service of the notice.

(3) The amount payable into the Fund by a Scheme member may be recovered, in whole or in part, by the Bank by deduction from any balance held at the Bank, as if it were a civil debt.

(4) The premiums payable under this section shall not be chargeable to depositors in any form.

(5) In this section -

“insurable deposit” means the total rupee and foreign currency deposits with the Scheme member.

## **22. Submission of returns**

(1) Every Scheme member shall, not later than the tenth working day of the month following the quarter under review, forward to the Scheme quarterly returns of insured deposits, in such form and in such medium as may be approved by the Scheme.

(2) The Scheme may require every Scheme member to submit other relevant information in such form and frequency as may be required from time to time.

## **PART V- THE FUND**

### **23. The Fund**

(1) For the purposes of the operation of the Scheme, there shall be established a Fund to be known as the Mauritius Deposit Insurance Fund.

(2) The Fund shall be kept in an account opened in the name of the Mauritius Deposit Insurance Scheme at the Bank.

(3) The Fund shall be administered and managed by the Scheme.

(4) There shall be credited into the Fund all contributions and other receipts, required by this Part to be paid into the Fund and out of which shall be made the payments required to be made out of the Fund.

(5) The Bank may advance funds to the Scheme on such repayment terms and conditions as it deems fit.

(6) The Fund shall consist of —

(a) all premium contributions paid by Scheme members under Section 21;

(b) such funds as may be advanced to the Fund by the Bank;

(c) any interest, or other income derived through investment made out of the Fund;

(d) all monies recovered by the Scheme from, or out of the assets of, failed Scheme members;

(e) all monies lawfully paid into the Fund.

(f) all other monies received as grants, donations or from any other source as may be approved by the Board.

(7) The Fund shall be used for the objects and purposes of the Scheme.

(8) For the avoidance of doubt, the Fund shall not be a fund of the Bank.



## **24. Investment**

(1) The Scheme shall give instructions to the Bank consistent with an investment policy approved by the Board to invest any monies in the Fund in one or more of the following -

- (a) fixed income Government Securities;
- (b) such other investments as may be determined by the Scheme to be suitable investment, taking into account the purposes of the Fund.

(2) Any income from the investments shall be credited to the Fund.

## **25. Payments**

(1) In carrying out the objects of this Act, there shall be paid out of the Fund as required and at such time as the Board considers appropriate –

- (a) all expenses incurred in or incidental to –
  - (i) the establishment and maintenance of the Scheme;
  - (ii) the administration and management of the Fund;
- (b) any fees payable to agents appointed by the Scheme for the purposes of this Act; and
- (c) all other monies payable out of the Fund in accordance with this Act.

(2) There shall be chargeable to the Fund -

- (i) the administrative expenses of the Scheme;
- (ii) the repayment of money borrowed including interest and other charges thereon by the Fund;
- (iii) the payments made in respect of insured deposits; and
- (iv) all other monies payable out of the Fund in accordance with this Act.

(3) Payments of insured deposits in foreign currency shall be made in Mauritian Rupees at such rate of exchange as may be determined by the Scheme.

(4) No payment in respect of insured deposits shall be made by the Scheme out of the Fund, for the first five years of its operation.

## PART VI - COMPENSATION

### 26. Compensation

(1) The Scheme may determine that compensation shall be paid out of the Fund to the insured depositors of the Scheme member in accordance with this Act, where, on or after the relevant date, -

- (a) the licence of the Scheme member is revoked;
- (b) an order is made by a court in Mauritius or elsewhere to wind up a Scheme member; or
- (b) on the basis of information communicated to it by the Bank, the Board is of opinion that a Scheme member is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments.

(2) The Scheme shall, as soon as practicable, publish in the *Gazette* and in at least 3 daily newspapers in wide circulation in Mauritius and also post on its website a notice stating that payment of compensation shall be made out of the Fund or, preferably, that the Scheme has arranged for an acquiring bank to make insured deposits available to depositors.

(3) Upon timely presentation of evidence of ownership as defined under rule by the Scheme, the process for reimbursement shall begin as soon as possible and be completed within sixty (60) days of the insured event. The Scheme shall have the authority to pay the insured deposits in a single payment or a series of payments over the course of the sixty (60) days.

### 27. Computation of compensation

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

(2) Subject to the provisions of this section, where an insured depositor has one or more insured deposits placed with a failed Scheme member, which -

- (a) the insured depositor holds in his own right; or
- (b) the insured depositor holds in his own right jointly with one or more other persons in a joint account.

the insured depositor shall be entitled to compensation from the Fund of a specified amount computed on the basis of the aggregate amount, as at the quantification date, of such insured deposits falling within paragraphs (a) and (b) and such compensation shall not exceed the aggregate amount of such insured deposits or the coverage limit whichever is the lower regardless of the number or amount of insured deposits that the insured depositor has placed with the failed Scheme member.

(3) The Scheme shall, for the purposes of this section, determine the coverage limit by regulations made by the Scheme, with the approval of the Minister.

(4) For the purposes of this section -

“specified amount” means both the principal and the interest amount held by an insured depositor in the same capacity and the same right as on the date of the cessation of operations of the failed Scheme member.

## **28. Claims**

(1) Where –

- (a) the Bank has initiated liquidation of a Scheme member under Parts XI of the Banking Act; or
- (b) the Scheme member is being wound up under Part XII of the Banking Act

receiver or liquidator appointed as the case may be shall, with the least possible delay and in any case not later than one month from the order date, furnish to the Scheme a list of all insured deposits in such form and manner as may be specified by the Scheme showing separately the deposits in respect of each depositor.

(2) The Scheme may, before paying any claim, require the receiver or liquidator to furnish it with such documentary proof as may be proper and the Scheme may decline to make any payment to a depositor under this section where, in the opinion of the Scheme, the depositor had any responsibility for, or may have profited directly or indirectly from the circumstances leading up to the Scheme member becoming insolvent.

(3) The Scheme may require the receiver or liquidator to submit information in such form as may be required.

(4) Notwithstanding subsections (2) and section 27, the employees or agents of the Scheme may carry out special examinations to ascertain the type, number and values of the insured deposits which, would be payable by a failed Scheme member.

(5) The Scheme shall pay the amount payable either directly to the depositor or to the receiver or liquidator.

(6) Upon payment of insured deposits the Scheme shall -

- (a) furnish to the receiver or liquidator or to the Scheme member information as regards the amount so paid; and

(b) be entitled to receive from the failed Scheme member or receiver or liquidator, as the case may be, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any insured depositor and the Scheme shall be subrogated to the rights of the insured depositor.

(7) The Scheme shall be entitled –

(a) in the case where the failed Scheme member is wound up under Part XII of the Banking Act, to be reimbursed, under section 92 of the Banking Act, out of the assets of the failed Scheme member for the expenses incurred in –

(i) the payment of any compensation to insured depositors; and

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

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

(i) the payment of any compensation to insured depositors; and

(ii) where a claim has been lodged with the receiver of the failed Scheme member for any compensation that has been paid out to insured depositors, the lodging of the claim.

## **29. Recovery**

(1) The Scheme may recover –

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

(b) any compensation which is wrongly paid to any person, in such manner and within such period as may be specified by the Board to that person; or

(c) proceeds from the liquidation of the failed bank's assets.

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

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

(4) The Chief Executive Officer shall be a member of any liquidator's creditors committee or any other relevant committee set up following failure of a Scheme member.

## **PART VII – ACCOUNTING, STATEMENTS AND ANNUAL REPORT**

### **30. Financial year**

The financial year of the Scheme shall begin on 1 July of each year and end on 30 June of the succeeding year, in line with the Bank's financial year.

### **31. Accounts and audit**

(1) The accounting of the Scheme shall, at all times, be carried out in conformity with applicable accounting standards and best international practices.

(2) The accounts of the Scheme shall be audited at least once a year by such auditors as may be appointed by the Board.

(3) Subject to subsection (4), no auditor shall be appointed under subsection (2) continuously for a period of more than 5 years.

(4) Where an auditor is appointed continuously for a period of 5 years, that auditor shall not be reappointed before a period of 3 years from the date of termination of his last appointment.

### **32. Budget, annual accounts and annual report**

(1) The budget of the Scheme in respect of a financial year shall be determined by the Board not later than 15 June immediately preceding that financial year.

(2) The annual accounts of the Scheme shall be established in a transparent manner to ensure true and complete data on the financial status of the Scheme.

(3) The Scheme shall furnish to the Bank a copy of its audited accounts within three months from the date on which its accounts are closed.

(4) The Scheme shall, not later than 4 months after the close of its financial year, cause to be made and submit to the Minister a copy of the annual accounts certified by the auditors together with a report on its operations during that year.

## **PART VIII - MISCELLANEOUS**

### **33. Guidelines or instructions**

(1) The Scheme may issue such guidelines or instructions as it thinks fit for the purposes of this Act.

(2) Any guidelines or instructions made under subsection (1) shall apply to all Scheme members or to one or more categories of members and shall take effect on the date of their issue to the Scheme members or on such later date as may be specified in the guidelines or instructions.

(3) Notwithstanding subsection (2), the Scheme may issue specific instructions to any Scheme member and such instructions shall take effect on the date of their issue to the member or on such later date as may be specified in the instructions.

(4) Any Scheme member to whom guidelines or instructions are issued shall comply with those guidelines and instructions.

(5) Any Scheme member who fails to comply with the guidelines or instructions made under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

### **34. Execution of documents**

(1) Subject to subsection (2), a deed, instrument, contract or other document shall be executed by or on behalf of the Scheme if it is signed underneath the name of the Scheme by the Chief Executive Officer.

(2) In the absence of the Chief Executive Officer, the powers under subsection (1) shall be exercised by such officer of the Scheme as may be appointed by the Board for that purpose.

### **35. Authorisation of cheques or payment instructions**

Any cheque or payment instruction upon any banking account kept at the Bank shall be signed or authorised, as the case may be, jointly by any 2 of -

- (a) the Chief Executive Officer;
- (b) officers of the Scheme appointed by the Board for that purpose.

### **36. Indemnity**

(1) The Directors, Chief Executive Officer and every officer or other employee of the Scheme shall be indemnified against all losses and expenses incurred by any of them by reason of any contract entered into, or act or deed done, in the proper discharge of his duties under the Act.

(2) No person referred to in subsection (1) shall be liable to the Scheme for any loss or expense incurred by the Scheme on account of the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Scheme, unless such loss or expense was due to wilful default in the execution of his duties under the Act.

### **37. Service of process**

Service of any process on the Scheme shall be sufficient if made on the Chief Executive Officer.

### **38. Immunity**

No action shall lie against the Scheme, the Board or any Director, officer, employee or agent of the Scheme, in respect of any act done or omitted to be done by the Scheme, the Board or any Director, officer, employee or agent of the Scheme, in the execution, in good faith, of its or his functions under this Act or any regulations made thereunder.

### **39. Liquidation and reduction of capital of the Scheme**

The Scheme shall not be placed in liquidation, nor shall its capital be reduced, except pursuant to an Act passed for that purpose.

### **40. Records**

Every record of the Scheme shall be kept in written form, or on microfilm, magnetic tape, optical disk or any other form of mechanical or electronic data storage and retrieval mechanism, for a period of at least 7 years after the completion of the transaction to which it relates, or the date of the record, as the case may be.

### **41. Offences and Penalties**

(1) Any Scheme member which fails to take any reasonable care to secure compliance with the provisions of this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(2) Any director or chief executive officer of a Scheme member who fails to take any reasonable care to secure compliance with the provisions of this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees or imprisonment not exceeding five years.

### **42. Regulations**

The Scheme may make such regulations as it thinks fit for the purposes of this Act, with the approval of the Minister.

### **43. Consequential Amendments**

- (1) The Banking Act is amended -
- (a) in section 27 –
- (a) by deleting the full stop at the end of paragraph (a) and replacing it by a semi column;
- (b) by deleting the word ‘and’ at the end of paragraph (b);
- (c) by deleting the full stop at the end of paragraph (c) and replacing it by ‘; and’
- (d) by inserting the following new paragraph after paragraph (c) –
- “(d) in the case of a bank or non-bank deposit taking institution, adequate provision, to the satisfaction of the Bank, has been made in respect of premium contribution to the Deposit Insurance Scheme established under the Deposit Insurance Scheme Act.”
- (b) by inserting after section 30, the following section -
- 30A. Prohibition of floating charge on assets**
- (1) Notwithstanding anything contained in section 30, no bank or non-bank deposit taking institution shall create a floating charge on the undertaking or any property of the bank or non-bank deposit taking institution or any part thereof, unless the creation of such floating charge is certified or approved by the Bank as not being detrimental to the interests of the depositors of the bank or non-bank deposit taking institution.
- (2) Any such charge created without the approval of the Bank in subsection (1) shall be null and void.
- (b) in section 64(3) -
- (a) in paragraph (n) by deleting the word ‘or’ at the end of the paragraph;
- (b) in paragraph (o), by deleting the full stop at the end of the paragraph and replacing it by “; or”;
- (c) by adding the following new paragraph after paragraph (o) –



“(p) the information is required for transmission to the Deposit Insurance Scheme established under the Deposit Insurance Scheme Act.”

(c) in section 86 -

(i) in subsection (1), by repealing paragraph (d) and inserting new paragraphs (d) and (e) as follows, the existing paragraphs (e) and (f) being renumbered (f) and (g) accordingly.

(d) any premium contributions due and payable by the bank or non-bank deposit taking institution to the deposit insurance scheme;

(e) liabilities incurred by the deposit insurance scheme set up under the Deposit Insurance Scheme Act in respect of insured deposits, up to the amount of compensation paid or payable out of the Deposit Insurance Fund by the deposit insurance scheme;

(d) by deleting section 93 and replacing it by the following section

### **93. Deposit insurance scheme**

(1) There shall be established and maintained a deposit insurance scheme to provide insurance against the loss of part or all of deposits in a bank and a non-bank deposit taking institution in a manner that will contribute to the stability of the financial system in Mauritius and minimize the exposure to loss.

(2) The Bank may advance funds for the administration of the deposit insurance scheme, on such repayment terms and conditions as it deems fit.

(2) The Bank of Mauritius Act is amended -

(a) in section 2 by inserting, in the appropriate alphabetical order, the following new definition:

“Fund” has the same meaning as in the Deposit Insurance Scheme Act;

(b) in section 26 (4), by adding the following new paragraph (ab) immediately after paragraph (aa) as follows –

(ab) the disclosure by the Bank to the Mauritius Deposit Insurance Scheme established under the Deposit Insurance Scheme Act of such information as may be required by the

Scheme for the purposes of assisting it in the discharge of its functions;

(c) by deleting section 60 and replacing it by the following section –

**60. Deposit insurance**

The Bank may -

- (a) advance funds to the deposit insurance scheme established under the Deposit Insurance Scheme Act, on such repayment terms and conditions as it deems fit for the administration of the scheme;
- (b) where the entity responsible for the administration of the deposit insurance scheme is a body corporate, subscribe to all or part of the share capital of that entity;
- (c) open and maintain accounts in the name of the scheme or the Fund established by the scheme; and
- (d) provide such other resources as it may deem appropriate to enable the deposit insurance scheme perform its duties.

**44. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different provisions of this Act.

**Passed by the National Assembly on the ..... day of .....**

.....  
*Clerk of the National Assembly*

**FIRST SCHEDULE**

*(section 18 (a))*

**Oath of confidentiality**

**IN THE SUPREME COURT OF MAURITIUS**

I ..... being appointed ..... do hereby swear/solemnly affirm/declare that I shall maintain during or after my relationship with ..... the confidentiality of any matter which comes to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information relating to the affairs of the Scheme, the Bank of Mauritius or of any other bank or financial institution or the affairs of any of their customers, otherwise than for the purposes of the performance of my duties or the exercise of my functions under the Deposit Insurance Scheme Act or meeting the requirements of an agreement or understanding reached by the Scheme with the Bank of Mauritius or when lawfully required to do so by a Judge in Chambers, or any court of law, or under any enactment.

Sworn/solemnly affirmed/declared by the above named before me at ..... this ..... day of .....

*Master and Registrar  
Supreme Court*

**SECOND SCHEDULE**

*(section 18 (b))*

**Declaration of confidentiality**

I ..... being appointed ..... do hereby declare that I shall maintain during or after my relationship with ..... the confidentiality of any matter which comes to my knowledge and shall not, on any account and at any time, disclose directly or indirectly to any person, any matter or information relating to the affairs of the Scheme, the Bank of Mauritius or of any other bank or financial institution or the affairs of any of their customers, otherwise than for the purposes of the performance of my duties or the exercise of my functions under the Deposit Insurance Scheme Act or meeting the requirements of an agreement or understanding reached by the Scheme with the Bank or when lawfully required to do so by a Judge in Chambers, or any court of law, or under any enactment.

Signature of declarant ..... Made before me this  
.....

Signature  
.....  
Name .....  
*Chairperson of the Board*