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PROTECTION OF DEPOSITORS (AMENDMENT) BYE-LAWS, 2020

Arrangement of Bye-laws

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MINISTRY OF FINANCE

S.I. No. 203 of 2020

**PROTECTION OF DEPOSITORS ACT
(CHAPTER 317)**

**PROTECTION OF DEPOSITORS (AMENDMENT) BYE-
LAWS, 2020**

In exercise of the powers conferred by section 28 of the Protection of Depositors Act (*Ch. 317*), the Corporation, on the recommendation of the Bank, makes the following bye-laws —

1. Citation.

These Bye-laws, which amend the Protection of Depositors Bye-laws¹, maybe cited as the Protection of Depositors (Amendment) Bye-laws, 2020.

2. Amendment of bye-law 2 of the principal Bye-laws.

Bye-law 2 of the principal Bye-laws are amended as follows —

- (a) by the renumbering of the bye-law as paragraph (1); and
- (b) by the insertion immediately after paragraph (1) of the following new paragraph (2) —
 - “(2) Words and phrases not defined in paragraph (1) and used in these Bye-laws have, unless the context otherwise requires, the same meaning ascribed to them in the Act.”.

3. Revocation and replacement of bye-law 3 of the principal Bye-laws.

Bye-law 3 of the principal Bye-laws is revoked and replaced as follows —

“3. Bank to transmit information to Corporation.

Within such time as may be allowed by the Corporation the Bank shall transmit to the Corporation in respect of every institution —

- (a) a copy of its memorandum and articles of association;

¹Sub. Leg., Vol. V, *Ch. 317*, p. 1.

- (b) a copy of its accounts for the immediately preceding three years or for the period since it was licensed or registered, whichever is the shorter;
- (c) a statement as to its deposit liabilities.”.

4. Revocation and replacement of bye-law 4 of the principal Bye-laws.

Bye-law 4 of the principal Bye-laws is revoked and replaced as follows —

“4. Display of certificate of insurance.

Where an institution has been issued with a certificate of insurance pursuant to section 4 of the Act, the institution shall display prominently in all of its offices a copy of its certificate of insurance certified by the Corporation.”.

5. Insertion of new bye-laws 4A and 4B into the principal Bye-laws.

The principal Bye-laws are amended by the insertion immediately after bye-law 4 of the following new bye-laws —

“4A. Cancellation of certificate of insurance.

- (1) The Corporation may, by notice in writing to an institution, cancel a certificate of insurance where —
 - (a) in the opinion of the Bank, the institution is or is about to become insolvent;
 - (b) an institution’s license or registration to carry on its business operations has been revoked or cancelled by the Bank, as the case may be;
 - (c) the Bank confirms in writing that by reason of insolvency, an institution has ceased to accept deposits;
 - (d) an institution has not begun to accept deposits within a period of two years beginning on the day on which it became a member of the Deposit Insurance Fund; or
 - (e) in the opinion of the Bank, an institution has engaged or is engaging in unsafe or unsound practices in conducting its business.
- (2) If an institution intends to cease to accept deposits, it must notify the Corporation and the institution’s policy of deposit insurance may, subject to paragraph (3)(a), be cancelled by the Corporation.

- (3) The Corporation shall, prior to taking action —
 - (a) under paragraph (1) or (2), notify the Minister of such intended action and shall not proceed to take such action if advised by the Minister that such action would not be in the public interest;
 - (b) under paragraph (1) —
 - (i) not later than twenty-one days before it intends to take such action, notify the institution in writing of the intention, stating the reasons therefor;
 - (ii) afford to the institution an opportunity at a date and time specified in the notice (being not less than seven days' after the date thereof) to show cause why the certificate of insurance should not be cancelled.
- (4) If an institution who is notified under paragraph (3) fails to show cause why the certificate of insurance should not be cancelled the Corporation shall —
 - (a) notify the institution in writing of —
 - (i) its intention to cancel the certificate of insurance as from a date specified in the notice; and
 - (ii) the right of appeal conferred by bye-law 18; and
 - (b) send a copy of the notice referred to in subparagraph (a) (i) to the Minister and to the Bank.
- (5) The Corporation shall cancel a certificate of insurance if no appeal is made by an institution under bye-law 18 or if an appeal by an institution under that section is dismissed.
- (6) Where an institution's certificate of insurance is cancelled, the institution forthwith shall notify the depositors in writing of the fact and shall remove all references to deposit insurance under this act from all forms of advertising by the institution.
- (7) The Corporation may, in the manner and through any news media that it considers appropriate, give public notice of the termination or cancellation of the policy of deposit insurance of an institution if, in the opinion of the Corporation, the public interest requires that such notice be given.
- (8) Notwithstanding the cancellation of a certificate of insurance, the amount of any insured deposit on the date of cancellation, less any subsequent withdrawals therefrom, shall continue to be so insured for a period of two years or, in the case of a

term deposit with a remaining term exceeding two years, to the maturity of the term deposit.

- (9) Cancellation of a certificate of deposit insurance does not relieve a former institution from any obligations and liabilities to the Corporation that have accrued before the cancellation.
- (10) If the certificate of deposit insurance of an institution is cancelled by the Corporation under paragraph (1), the Central Bank must, under section 10(2) of the Banks and Trust Companies Regulation Act, 2020 or section 5(2) or 88(7) (b) of The Bahamas Co-operative Credit Unions Act, 2015 (*No. 9 of 2015*), as the case may be, impose conditions on the institution to prohibit the institution from accepting deposits.
- (11) For the purposes of this bye-law, **“certificate of insurance”** means a certificate issued by the Corporation to every institution under bye-law 4.

4B. Signs and logos of Institutions.

- (1) The Corporation shall issue to every institution within three months of the commencement of this paragraph, signs and logos of the Corporation.
- (2) An institution shall prominently display the signs and logos issued by the Corporation —
 - (a) in all of its offices and branches; and
 - (b) on its website and mobile applications,and may display the logos and signage using physical or digital displays.
- (3) Every institution shall include on its website or on any printed and promotional material relating to a financial product, a statement indicating whether or not that financial product or facility being offered by the institution is insured pursuant to the Act and such statement shall be prominently displayed.
- (4) Every institution —
 - (a) must disclose in all audio and visual advertisements promoting the institution that it is a member of the Deposit Insurance Fund;
 - (b) must not, in advertising materials, provide any further information about deposit insurance beyond referring to the fact that the product advertised is or is not covered by deposit insurance, and to any further factual information required by law;

- (c) shall provide information about the Corporation in terms and in the format required by the Corporation.”.

6. Amendment of bye-law 5 of the principal Bye-laws.

Bye-law 5 of the principal Bye-laws are amended by the deletion of paragraph 2.

7. Revocation and replacement of bye-law 6 of the principal Bye-laws.

The principal Bye-laws are amended by the revocation and replacement of bye-law 6 as follows —

“6. Bank to supply Corporation with information regarding institutions.

Within one week of the issue of a licence or certificate of registration to an institution the Bank shall notify the Corporation of the same and shall transmit to the Corporation copies of the information which the institution has submitted to the Bank under section 6 of the Banks and Trust Companies Regulation Act, 2020 or section 8 of The Bahamas Co-operative Credit Unions Act, 2015.”.

8. Insertion of new bye-laws 8A - 8C into the principal Bye-laws.

The principal Bye-laws are amended by the insertion immediately after bye-law 8, of the following new bye-laws —

“8A. Information to new depositors.

- (1) An institution shall, as part of the account opening process for a deposit that is eligible to be insured —
 - (a) provide a depositor, if all account opening documents are provided —
 - (i) in digital form, with the digital form of a brochure supplied by the Corporation;
 - (ii) in physical form with a printed version of the digital form of the brochure; or
 - (iii) in any other case, with either the digital form of the brochure or a printed version of that digital form;
 - (b) before entering into a contract on deposit-taking, inform each intending depositor whether their deposit is covered by deposit insurance under the Act.
- (2) The physical and digital form of the brochures referred to in paragraph (1) shall contain the following —

- (a) general information about the Corporation;
- (b) contact information for the Corporation;
- (c) the Corporation's logo or other identifiers;
- (d) information as to what constitutes a deposit that is eligible to be insured by the Corporation;
- (e) the maximum amount or deposit insurance coverage provided by the Corporation; and
- (f) information as to what a depositor needs to know when the Corporation is obliged to make an insurance payment.

8B. Warning statements for ineligible deposits.

- (1) subject to paragraph (2), if an institution issues an instrument to a person evidencing that the institution has received or is holding money that constitutes a deposit that is not eligible to be insured by the Corporation, the institution shall include on the face of the instrument a warning statement in substantially the same words as one of the following statements —
 - (a) “not insured by the Deposit Insurance Corporation (“DIC”);
 - (b) “not insured by the DIC”; or
 - (c) “the deposit evidenced by this instrument does not constitute a deposit that is insured under the Protection of Depositors Act (*Ch. 317*).
- (2) If an institution issues an instrument to a person evidencing that the institution has received or is holding money that constitutes both a deposit that is eligible to be insured by the Corporation and a deposit that is not eligible to be insured by the Corporation, the institution shall include on the face of the instrument, in the location specified, if any, a warning statement in substantially the same words as one of the following statements —
 - (a) “the following deposits evidenced by this instrument do not constitute deposits that are insured under the Protection of Depositors Act:” before the list of deposits that are not eligible to be insured by the Corporation;
 - (b) “not insured by the DIC” beside the reference to each deposit that is not eligible to be insured by the Corporation;

- (c) “not insured by the Deposit Insurance Corporation” beside the reference to each deposit that is not eligible to be insured by the Corporation; or
 - (d) “not insured by the DIC” in a footnote the reference mark for which is located beside the reference to each deposit that is not eligible to be insured by the Corporation.
- (3) If an institution enters into a transaction with a person by means of telecommunications, or by electronic or other means, with respect to an instrument, the institution shall —
- (a) in the case of an oral communication —
 - (i) make an oral representation that is substantially the same as one of the statements set out in paragraph (2); and
 - (ii) issue to the person in writing, by telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2); or
 - (b) in the case of a communication in writing, issue to the person in writing, by means of telecommunications or by electronic or other means, a notice that includes one of the statements set out in paragraph (2).

8C. Obligations and required capabilities of Institutions.

- (1) The Corporation must —
 - (a) provide a copy of its Data Requirements to each institution and make them available on the Corporation’s website.
 - (b) notify every member institution of any changes that it makes to the Data requirements by sending a notice of those changes to the chief executive officer of the institution and must make those changes available on the Corporation’s website.
- (2) Every institution must —
 - (a) implement a method of identifying, capturing, organizing and producing its deposit liability data, in accordance with the Data Requirements not later than such date as may be determined by the Corporation by notice.

- (b) develop and implement policies and procedures to ensure that it has the capabilities referred to in subparagraph (a).
- (c) mark insured deposits in a way that allows for the immediate identification of such deposits.
- (d) mark accounts (including client accounts and trust accounts) which are held on behalf of beneficiaries and which contain or may contain insured deposits in a way that allows immediate identification of such accounts;
- (e) ensure that its Single Customer View or SCV system —
 - (i) automatically identifies the amount of insured deposits payable to each depositor; and
 - (ii) includes a facility which identifies any portion of an insured deposit that is over the insured level provided for in subsection 6(2) of the Act;
- (f) be able to —
 - (i) provide the Corporation with the aggregated amount of insured deposits of every depositor;
 - (ii) calculate the interest accrued or payable on each deposit as of the determination date;
 - (iii) restrict and resume access to the deposit liabilities or a portion of the deposit liabilities;
 - (iv) produce, at the determination time, the deposit liability data as it exists at that time;
 - (v) reproduce at any time after the determination time the deposit liability data as it existed at the determination time;
- (g) take reasonable steps to ensure the accuracy of the data it holds to satisfy the requirements of the byelaws and the Act;
- (h) be capable of providing the information required by paragraph (4) by secure electronic transmission and in a format which is readily

transferable to and compatible with the Corporation's systems.

- (3) The information required by paragraph (2) must be electronically stored.
- (4) The Corporation may, at any time, to enable it to prepare for and pay compensation, in accordance with the Act, request that an institution provide or make available to the Corporation the deposit liability data, or any portion of it, and the institution must provide that data to the Corporation at the Corporation's request and within the time frame stated by the Corporation.
- (5) For the purposes of this bye-law —
 - (a) **“business day”**, in respect of an institution, means a weekday that is not a public holiday;
 - (b) **“Data Requirements”** means the Data and System Requirements issued by the Corporation, as amended from time to time.
 - (c) **“determination date”**, in respect of an institution, means —
 - (i) if a winding-up order is made in respect of the institution before the day on which the Corporation makes a payment under section 16 of the Act, the day on which the petition or other originating process is filed in respect of the winding-up; and
 - (ii) if a winding-up order is not made in respect of the institution, the day on which any of the circumstances described in section 6(8) of the Act first occurred in respect of the institution;
 - (d) **“determination time”** in respect of the deposit liabilities of an institution, means —
 - (i) if the determination date is a business day, the time by which all of the transactions made on that business day are processed and posted to the deposit records of the depositors of the institution; and
 - (ii) if the determination date is not a business day, the time by which all of the transactions made on the business day immediately preceding the determination

date are processed and posted to the deposit records of the depositors of the institution.”.

9. Amendment of bye-law 9 of the principal Bye-laws.

The principal Bye-laws are amended in Bye-law 9 —

- (a) by the deletion of paragraph (a) and the substitution of the following—
 - “(a) payment of insured deposits will be made within the applicable time period prescribed by section 6(9) of the Act and the public notice shall also set out whether the applicable time period is twenty business days, ten business days or seven business days following the date of publication of the notice of closure of the institution;”
- (b) by the deletion of paragraph (b) and the substitution of the following —
 - “(b) if the depositor does not claim his insured deposit from the Corporation within twelve months after the date of publication of the notice by the Corporation under section 16(1), all rights of the depositor against the Corporation concerning the insured deposit are barred, but without prejudice to the rights of the depositor against the institution.”.

10. Amendment of bye-law 10 of the principal Bye-laws.

Bye-law 10 of the principal Bye-laws is amended by the deletion of subparagraph (d) and the substitution of the following—

- “(d) prepare a list of the depositors with loans from the institution and a list of each loan in respect of which a loan payment or instalment amount is due or past due so that the amount of the payment or instalment may be deducted from moneys from the Fund due to the depositor, pursuant to section 15(e) of the Act.”.

11. Repeal and replacement of bye-law 11 of the principal Bye-laws.

Bye-law 11 of the principal Bye-laws is is repealed and replaced as follows—

“11. Payment by the Corporation to a depositor.

In calculating the sum to be paid to the depositor under section 15(d) of the Act, there shall be deducted only any loan payment or instalment amount due to the institution by the depositor, as may be owed or past due.”

12. Insertion of new bye-laws 18 - 19 into the principal Bye-laws.

The principal Bye-laws are amended by the insertion immediately after bye-law 17 of the following new bye-laws —

“18. Appeal against cancellation.

- (1) An institution notified under bye-law 4A of the intention of the Corporation to cancel its certificate of insurance may, within three days of the date of receipt of the notice, appeal in writing to the Minister against the decision of the Corporation.
- (2) The Minister shall hear an appeal within seven days after it is lodged and on hearing such appeal, may —
 - (a) dismiss the appeal; or
 - (b) direct the Corporation to withdraw the notice of the intention to cancel the certificate of insurance.

19. Merger or consolidation.

- (1) A bank or cooperative credit union, as the case may be, which results from the merger, consolidation or amalgamation of institutions, or from the merger or consolidation of a non-member institution with an institution, shall continue as an institution.
- (2) The depositors of a surviving merged or amalgamated institution shall have coverage of their deposits in each of the institutions existing before the merger or amalgamation, up to the amount prescribed by subsection 6(2) of the Act for a period of two years.
- (3) A surviving merged or amalgamated institution shall notify its depositors of the merger or amalgamation and of the date on which the separate coverage of deposits referred to in paragraph (2) shall cease.”.

Made this 24th day of December, 2020.

Signed
JOHN ROLLE
Chairman
Board of Deposit Insurance Corporation