

THE MAURITIUS DEPOSIT INSURANCE SCHEME BILL
(No. XXIV of 2018)

Explanatory Memorandum

The main object of the Bill is to establish the Mauritius Deposit Insurance Scheme which shall be administered and managed by the Mauritius Deposit Insurance Corporation Ltd, a company incorporated and registered under the Companies Act.

2. The purpose of the Mauritius Deposit Insurance Scheme shall be to –
- (a) protect insured depositors of a bank or non-bank deposit taking institution by providing insurance against the loss of insured deposits; and
 - (b) contribute to the stability of the financial system in Mauritius by ensuring that depositors have prompt access to their insured deposits, in the event of failure by a bank or non-bank deposit taking institution.

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Minister of Finance and Economic Development*

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ARRANGEMENT OF CLAUSES

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A BILL

To provide for the establishment of the Mauritius Deposit Insurance Scheme

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Mauritius Deposit Insurance Scheme Act 2018.

2. Interpretation

In this Act –

“Agency” means the Mauritius Deposit Insurance Corporation Ltd incorporated and registered as such under the Companies Act;

“Bank” has the same meaning as in the Bank of Mauritius Act;

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

“Board” means the Board referred to in section 7;

“Chief Executive Officer” means the Chief Executive Officer of the Agency;

“coverage limit” means the amount that is payable on a per depositor – per member institution basis, as determined under section 23;

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

“depositor” means an individual who is a resident of Mauritius and who is eligible to compensation for an insured deposit in the event of failure of a member institution, whether or not the deposit is made by him;

“failed member institution” means a member institution in respect of which the Board has determined that compensation shall be paid out of the Fund to insured depositors in the circumstances specified in section 21(1);

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

“Fund” means the Deposit Insurance Fund referred to in section 13;

“insured deposit” –

(a) means any of the following deposits in Mauritius currency or foreign currency, including any interest accrued thereon, placed with a member institution in Mauritius and protected within the coverage limit of –

(i) deposits in a savings account;

(ii) deposits in a current account;

(iii) time deposits;

(iv) such other deposits or amounts as the Board may determine; but

(b) does not include –

(i) where there is a contractual set-off agreement between a member institution and a depositor, any deposit up to the amount of any debt owing by a depositor to the member institution if such debt is matured or past due, or the maximum amount that would otherwise be eligible for compensation, whichever is lower;

(ii) any deposit of a related party;

(iii) any deposit which is frozen by a Court order;

(iv) such other deposits or amounts as the Board may determine;

“insured depositor” means the holder of insured deposits by –

- (a) an account holder individually in his own right;
- (b) an account holder in his own right, jointly with one or more persons, in a joint account; or
- (c) such other person or class of persons as the Board may determine;

“member institution” means a member of the Scheme under section 16;

“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;

“officer” –

- (a) means a person employed as such by the Agency under section 8(2); and
- (b) includes an employee of the Bank posted at the Agency pursuant to section 8(4);

“purchase and assumption transaction” means a transaction in which a financially sound institution purchases the whole or part of the assets of a failed member institution and assumes the whole or part of the liabilities, including all insured deposits;

“related party” has the same meaning as in the Banking Act;

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

“Scheme” means the Mauritius Deposit Insurance Scheme established under section 4;

“time deposit” means deposits which are placed with a pre-determined maturity period.

3. Application

- (1) The following Acts shall not apply to the Agency –
 - (a) the Insolvency Act; and

(b) the Insurance Act.

(2) In the event of any conflict or inconsistency between this Act and any other enactment, other than the Banking Act and the Bank of Mauritius Act, this Act shall prevail.

PART II – MAURITIUS DEPOSIT INSURANCE SCHEME

4. Establishment of Scheme

(1) There is established for the purposes of this Act the Mauritius Deposit Insurance Scheme.

(2) The objects of the Scheme shall be to –

- (a) protect insured depositors of a member institution by providing insurance against the loss of insured deposits; and
- (b) contribute to the stability of the financial system in Mauritius by ensuring that depositors have prompt access to their insured deposits, in the event of failure by a member institution.

5. Administration and management of Scheme

The Scheme shall be administered and managed by the Agency.

PART III – THE MAURITIUS DEPOSIT INSURANCE CORPORATION LTD

6. Functions and powers of Agency

(1) The Agency shall, in the discharge of its functions and exercise of its powers –

- (a) collect premium contributions levied on member institutions;
- (b) when required, make payments of compensation in respect of insured deposits or otherwise provide depositors with access to their insured deposits in accordance with this Act;
- (c) pursue claims of the Agency against the assets of failed member institutions on account of payments made in respect of insured deposits, as authorised under section 24;
- (d) invest, subject to this Act, the assets of the Fund;
- (e) educate the public on the Scheme;

- (f) apply principles of transparency and accountability in relation to its activities; and
- (g) carry out such activities as may be necessary in the administration and management of the Scheme.

(2) The Agency may, subject to this Act, enter into contracts, acquire, hold and dispose of property, whether movable or immovable.

(3) Notwithstanding any other enactment, no person, other than the Agency, shall insure deposit liabilities or guarantee payments to depositors of member institutions operating in Mauritius.

(4) Any person who contravenes subsection (3) shall commit an offence and shall, on conviction, be liable –

- (a) in the case of an individual, to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years;
- (b) in the case of a body corporate, to a fine of 100,000 rupees in respect of each day when the breach occurs.

7. The Board

(1) The members of the Board shall, subject to subsection (2), be appointed in accordance with the constitution of the Agency.

(2) Notwithstanding subsection (1), the first Board shall consist of members to be appointed by the Bank with the concurrence of the Minister.

8. Staff of Agency

(1) There shall be a Chief Executive Officer of the Agency who shall be appointed by the Board on such terms and conditions as it may determine.

(2) (a) The Board may employ, on such terms and conditions as it may determine, such persons as may be necessary for the proper discharge of its functions under this Act.

(b) Every officer shall be under the administrative control of the Chief Executive Officer.

(3) An officer of the Agency may, with the approval of the Bank, be posted at the Bank for such period and on such terms and conditions as the Board may determine.

(4) An employee of the Bank may, with the approval of the Board, be posted at the Agency for such period and on such terms and conditions as the Bank may determine.

9. Disqualification

(1) Without prejudice to section 133 of the Companies Act, a person shall be disqualified as a Board member or officer if he –

- (a) commits any default or breach of trust or is guilty of serious misconduct in the performance of his duties under this Act or has otherwise engaged in conduct which, in the opinion of the Board, renders him unfit to be appointed or to continue in office;
- (b) is suffering from such mental or physical infirmity as to render him unfit to perform his duties under this Act;
- (c) is a director or an employee of a financial institution or owns or controls a significant interest in shares of a financial institution; or
- (d) has been convicted of an offence involving fraud or dishonesty or of an offence of such nature which, in the opinion of the Board, renders him unfit to continue in office.

(2) In this section –

“significant interest” has the same meaning as in the Banking Act.

10. Consultants and other persons engaged to provide services

The Agency may, on such terms and conditions as the Board may determine, engage any consultant or any other person suitably qualified to provide such services to the Agency as it may determine.

11. Cooperation, coordination and information-sharing agreements

(1) The Agency may, with the approval of the Board, enter into agreements, memoranda of understanding or arrangements for cooperation, coordination and the exchange of information between the Agency and the Bank, or any other relevant public sector or law enforcement agency –

- (a) in Mauritius, where the Agency is satisfied that the public sector or law enforcement agency has the obligation and capacity to protect the confidentiality of the information exchanged; or

- (b) in another country, where the Agency is satisfied that the public sector or law enforcement agency has –
 - (i) the obligation and capacity to protect the confidentiality of the information exchanged; and
 - (ii) appropriate safeguards in place to fulfil its obligation.

(2) Any information exchanged under subsection (1) shall be subject to such terms and conditions as the Agency may determine.

(3) The Agency and the Bank shall make an arrangement under which the Bank shall provide the information required to be shared with the Agency, including but not limited to –

- (a) keeping the Agency apprised of the condition of any bank or non-bank deposit taking institution which is experiencing difficulties and notifying the Agency whenever it appears likely that a bank or non-bank deposit taking institution shall be placed in receivership or liquidation, to ensure that the Agency can plan the possibility of a payout in respect of deposit insurance; and
- (b) periodic reports of recoveries on assets to be submitted to the Agency by the receiver or liquidator of a failed member institution.

(4) The arrangement referred to in subsection (3) shall also establish the policies and procedures under which the Bank and the Agency shall treat such information with the utmost confidentiality.

(5) In this section –

“any other relevant public sector or law enforcement agency” includes any agency with responsibility for –

- (a) the regulation and supervision of insurance companies, securities firms or any other similar financial entities;
- (b) the recovery and resolution planning and preparing for or carrying out resolution, as well as any other aspects of financial stability or crisis preparedness and management.

12. Confidentiality

(1) Every Board member, officer or person engaged by the Agency shall –

- (a) in the case of a Board member, a Chief Executive Officer or the head of a department, take an oath of confidentiality in accordance with 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 accordance with the form set out in the Second Schedule,

before he begins to perform any duties under this Act.

(2) Except –

- (a) for the purpose of –
 - (i) the performance of his duties under this Act; or
 - (ii) meeting the requirements of an agreement or understanding reached by the Agency with any other relevant body; or
- (b) where lawfully required to do so –
 - (i) by an order of the Judge in Chambers or any Court; or
 - (ii) under any enactment,

no person referred to in subsection (1) shall, during and after his relationship with the Agency, disclose, directly or indirectly, to any person any information relating to the affairs of the Agency, of the member institutions or insured depositors, which he has acquired in the performance of his duties.

(3) 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 10 years.

(4) 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 under section 11.

PART IV – DEPOSIT INSURANCE FUND

13. Deposit Insurance Fund

(1) (a) There shall be for the purposes of the Scheme a Deposit Insurance Fund.

(b) The Agency shall administer and manage the Fund.

(2) The Fund shall be kept in an account opened in the name of the Agency at the Bank.

(3) There shall be paid –

(a) into the Fund –

- (i) all annual and extraordinary premium contributions paid by member institutions under section 18;
- (ii) such funds as may be advanced to the Agency by the Bank;
- (iii) any interest or other income derived through investment made out of the Fund under section 15;
- (iv) all monies recovered by the Agency from, or out of the assets of, failed member institutions;
- (v) all monies lawfully paid into the Fund; and
- (vi) all other monies received as grants, donations or other facilities from such other source as the Board may approve;

(b) out of the Fund –

- (i) all expenses incurred in or incidental to –
 - (A) the day to day running of the Agency;
 - (B) the administration, management and operation of the Fund;
- (ii) all monies payable in respect of insured depositors in accordance with this Act; and

(iii) the repayment of money borrowed, including interest and other charges thereon, by the Agency.

(4) Payments of insured deposits in foreign currency shall be made in Mauritius currency at such rate of exchange as the Agency may determine.

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

14. Liquidity and emergency funding

The Agency may, for the purpose of meeting its obligations under this Act, borrow or establish pre-arranged funding arrangements with the Bank and with private lenders on such terms and conditions as may be mutually agreed between them.

15. Investment

(1) There shall be an investment policy of the Fund which shall be approved by the Board.

(2) The investment policy referred to in subsection (1) shall –

- (a) authorise investment in safe and liquid assets;
- (b) authorise investments in foreign currency denominated instruments which meet the requirements of the policy, so long as the amount of such investments does not exceed, as a percentage of the overall portfolio, the percentage of insured deposits which are foreign currency deposits;
- (c) prohibit investments in member institutions; and
- (d) prohibit investment in high risk instruments.

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

PART V – MEMBERSHIP AND PREMIUM

16. Membership

(1) The members of the Scheme shall comprise all banks and non-bank deposit taking institutions, provided that –

- (a) existing banks and non-bank deposit taking institutions shall be deemed to be members of the Scheme on the commencement of this Act; and

- (b) where a banking licence is granted on or after the commencement of this Act, the bank shall become a member of the Scheme on the date on which it begins to accept deposits.

(2) The Agency shall issue a certificate of membership to every member institution in such form as it may determine.

(3) Every member institution shall display a copy of the certificate of membership at its main office and all its branches and shall make openly and readily available copies of the materials explaining coverage provided by the Agency.

(4) A bank or non-bank deposit taking institution shall cease to be a member institution upon –

- (a) the surrender, cancellation or revocation of its licence by the Bank;
- (b) the transfer of its deposit liabilities in Mauritius to any other bank or non-bank deposit taking institution;
- (c) the appointment of a liquidator pursuant to a resolution for its voluntary winding up; or
- (d) the 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 the termination of membership of a member institution under subsection (4), cause to be published a notice to that effect on the Agency's website, in the Gazette and in 2 newspapers in Mauritius.

(6) Where a bank or non-bank deposit taking institution ceases to be a member institution, it shall –

- (a) surrender its certificate of membership to the Agency;
- (b) not assume, hold out or in any other way give the impression that it is a member institution; and
- (c) not be relieved from its obligations or liabilities to the Agency that have accrued before the cessation of its membership.

(7) No member institution shall indicate that its deposits are insured or use any reference to the Agency or the Fund in any manner whatsoever, except as the Agency may specifically permit.

(8) (a) Any –

- (i) bank or non-bank deposit taking institution which contravenes this section; or
- (ii) person who advertises himself as, or claims to be, a member institution,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees.

(b) The chief executive officer or any board member of any bank or non-bank deposit taking institution 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 10 years.

17. Duty to provide information to public

(1) The Agency shall maintain a public website which is separate from, but linked to, the website of the Bank.

(2) The Agency shall, at all times, maintain an updated list of all member institutions which contribute to the Fund and whose deposits are insured.

(3) The Agency shall –

- (a) make the list referred to in subsection (2) available to the public, through its website and other media; and
- (b) provide such other information as may be necessary or appropriate to enable depositors to determine the extent of coverage under this Act for any deposit account maintained with a member institution.

18. Contributions to Fund

(1) Every member institution shall be a contributor to the Fund and shall, on the commencement of this Act, pay into the Fund an initial contribution of an amount determined in accordance with the Third Schedule.

(2) Every member institution shall be a contributor to the Fund and shall, in addition to the initial contribution referred to in subsection (1), pay into the

Fund a premium of 20 cents per hundred rupees on its insurable deposits or calculated at such rate and on such basis as may be prescribed.

(3) The Minister may, by regulations, also impose, in an emergency situation on a temporary basis, a special premium increase during a year whenever the Minister considers that it is necessary to replenish the Fund.

(4) The annual premium shall be set based on reasonable assumptions and projections.

(5) Any regulations made under subsection (2) may be modified at any time after the targeted amount has been reached to establish annual premiums that are risk-based.

(6) The Minister may, on the recommendation of the Board, by regulations, reduce the premium amount for any year where –

(a) the targeted fund is achieved; and

(b) no borrowing under section 14 remains outstanding.

(7) The Agency shall serve on a member institution a notice specifying the amount payable into the Fund within a period of 21 days after the date of service of the notice.

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

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

(10) In this section –

“insurable deposit” means the total Mauritius currency and foreign currency deposits of depositors with the member institution;

“targeted fund” means the size of the Fund sufficient to meet the expected future obligations and the operational and related costs of the Agency.

19. Maintenance of data and submission of returns

(1) Every member institution shall maintain data on its insured deposits in such form and medium, and including such information, as the Agency may determine.

(2) Every member institution shall, not later than the tenth working day of the month following the quarter under review, forward to the Agency quarterly returns of insured deposits, in such form and medium, and including such information, as the Agency may determine.

(3) The Agency may require member institutions to furnish relevant information in such form and frequency as it may determine for the proper discharge of its functions.

(4) The Agency may require periodic reports of recoveries on assets to be submitted to it by the liquidator of a failed member institution.

20. Examination by officers

(1) The Agency may, at any time, designate one or more of its officers to conduct off-site and on-site examinations of one or more member institutions, jointly with the Bank or on its own, or it may request the Bank to designate one or more of its supervisory staff to –

- (a) ascertain the type, number and value of insured deposits held by the member institution;
- (b) verify the accuracy and reliability of depositor records and the data systems generating such records; and
- (c) ensure that the Agency may promptly and accurately identify insured deposits eligible for insurance coverage, both by individual depositors and in the aggregate,

and to submit a report thereon to the Agency.

(2) The costs incurred for any examination under subsection (1) shall be borne by the member institution.

(3) Where, in relation to any member institution, the Agency, in the light of the report submitted to it under subsection (1), determines that the member institution has submitted inaccurate or misleading information to it, the Agency may –

- (a) require the member institution to take such steps as the Agency may determine to remedy the situation; or
- (b) refer the matter to the Bank which may, under the Banking Act –

- (i) take such action, including the appointment of a conservator or receiver, as it deems appropriate against the member institution;
- (ii) revoke its licence under section 11 or 17 of the Banking Act on the ground that it is carrying on business in a manner which is contrary to the interests of the public.

PART VI – COMPENSATION

21. Compensation

(1) The obligation of the Agency to pay compensation to depositors of a failed member institution shall arise where –

- (a) a liquidator, conservator or receiver for the member institution is appointed in accordance with the Banking Act; or
- (b) a member institution is resolved through a purchase and assumption transaction where the Bank determines this method to be the least cost resolution.

(2) The obligation of the Agency in respect of the insured depositors of a failed member institution shall be fulfilled in accordance with this Part.

(3) The Agency shall, as soon as practicable, publish in the Gazette and in 2 newspapers in Mauritius, and also post on its website, a notice informing the public that compensation with respect to the specific member institution shall be made available and providing the information required under the guidelines issued on the compensation process established by the Agency under this Part.

22. Guidelines on compensation process

The Agency shall, as soon as practicable, issue guidelines establishing the process for compensation of insured depositors and specifying that a notice required under section 21(3) shall include the following –

- (a) the manner in which insured depositors shall be provided with access to their funds;
- (b) the information which insured depositors shall provide in order to obtain payment;
- (c) information on whether advance or interim payments are being made; and
- (d) information on whether insured depositors shall lose funds.

23. Computation of compensation

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

(2) (a) Subject to this section, where an insured depositor has one or more insured deposits placed with a failed member institution, which –

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

the insured depositor shall, subject to paragraph (b), be entitled to compensation of the specified amount.

(b) The specified amount shall not exceed the aggregate amount of such insured deposits or the coverage limit, whichever is lower, regardless of the number or amount of insured deposits which the insured depositor has placed with the failed member institution.

(3) For the purpose of this section, the coverage limit per insured depositor shall be 300,000 rupees or such other amount as may be prescribed.

(4) In 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 member institution.

24. Claims by depositors

(1) Where a liquidator for a member institution is appointed under the Banking Act or a member institution in receivership is resolved through a purchase and assumption transaction, the liquidator or receiver shall, within the least possible delay and in any case not later than 3 working days from the date of the winding up order or the date of the purchase and assumption transaction, furnish to the Agency a list of all insured deposits of the member institution in such form and manner as the Agency may determine, showing separately the deposits in respect of each depositor.

(2) The Agency may, before paying any claim, require from the depositor such additional information or documents as the Agency considers necessary.

(3) The Agency may decline to make any payment to a depositor under this section where the Bank or liquidator determines that the depositor was at fault for, or may have profited directly or indirectly from, the circumstances leading to the appointment of the liquidator for the member institution.

(4) The Agency may require the liquidator or receiver to submit information in such form or manner as it may determine.

(5) Payment of claims shall be made –

(a) directly to the eligible insured depositors out of the Fund, except as provided for in paragraph (b);

(b) in lieu of payment under paragraph (a), whenever required by the Bank, as resolution authority, to a financially sound institution which agrees to assume all insured deposits of the failed member institution under a purchase and assumption transaction so long as –

(i) the Bank determines that the transfer of deposits facilitates the least costly resolution of the failed member institution; and

(ii) the amount spent by the Fund shall not exceed the amount that would have been spent by direct payment to insured depositors under paragraph (a).

(6) Any payment made under subsection (5) shall fulfil the insurance obligation of the Agency with respect to the insured depositors of the failed member institution.

(7) Upon payment of insured deposits, the Agency shall –

(a) furnish to the liquidator information on the amount paid; and

(b) be subrogated to the rights of each depositor on whose account payment was made and shall have a claim against the assets of the failed member institution for the amount paid with the same priority for payment as the depositor would have had.

25. Recovery

(1) The Agency 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; or

(a) any compensation which is wrongly paid to any person, in such manner and within such period as the Board may specify to that person.

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

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

PART VII – MISCELLANEOUS

26. Financial statements and annual report

(1) The Board shall, within 3 months from the date on which its accounts are closed, furnish to the Bank a copy of its audited financial statements.

(2) The Agency shall prepare an annual report on its operations and transmit it to the Board for its approval within a time frame which ensures that the report can be transmitted as required under subsection (5).

(3) The Board shall, not later than 4 months after the close of its financial year, submit to the Minister a copy of the audited financial statements together with the annual report on the Agency's operations.

(4) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited financial statements before the National Assembly.

(5) The Agency shall, not later than 6 months after the close of its financial year, cause to be published in the Gazette and post on its website a copy of its audited financial statements

27. Exemption from tax, levy or duty

The Agency shall be exempted from the payment of any taxes, levies or duties in respect of its profits, transactions and operations.

28. Directives, instructions and guidelines

(1) The Agency may make such directives, and issue such instructions or guidelines, as it may determine for the purposes of this Act.

(2) Any directives made, or instructions or guidelines issued, under subsection (1) shall –

- (a) apply to all member institutions or to one or more categories of member institutions;
- (b) be binding and of general application and shall be posted on the website of the Agency; and
- (c) take effect on the date they are made or issued to the member institutions or on such later date as the directives, instructions or guidelines may specify.

(3) Notwithstanding subsection (2), any instructions issued under subsection (1) may –

- (a) apply to a specific member institution or any other person under this Act;
- (b) be binding and of individual application; and
- (c) take effect on the date they are issued to the member institution or on such later date as the instructions may specify, provided that no instructions may enter into force prior to the Agency giving notice thereof to the member institution.

(4) A member institution who fails to comply with any directives made, or instructions or guidelines issued, under this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

29. Liquidation and reduction of capital of Agency

Notwithstanding any other enactment, the Agency shall not be placed in liquidation, nor shall its capital be reduced, except pursuant to an Act enacted for that purpose.

30. Offences and penalties

(1) Any member institution which contravenes this Act shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding one million rupees.

(2) Any director or chief executive officer of a member institution who fails to comply with this Act 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 10 years.

(3) Any person who contravenes any regulations made under this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 3 years.

31. Prosecution

No prosecution for an offence under this Act or any regulations made under it shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

32. Compounding of offence

(1) The Agency may, with the consent of the Director of Public Prosecutions, compound any offence, committed by a person under this Act, which is prescribed as a compoundable offence, where the person agrees in writing to pay such amount not exceeding the maximum penalty specified for the offence, acceptable to the Agency.

(2) Every agreement to compound shall be final and conclusive and, on payment of the agreed amount, no further proceedings in relation to the offence shall be taken against the person who agreed to the compounding.

(3) (a) The Agency may cause to be published, in such form and manner as it may determine, a public notice setting out the particulars of the agreed amount under subsection (1).

(b) A notice under subparagraph (a) shall not contain any information which the Agency considers to be sensitive.

33. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for –

(a) the offences which shall be compoundable offences for the purpose of section 32;

(b) the amendment of the Schedules; and

(c) any other matter which may be prescribed under this Act.

34. Consequential amendments

(1) The Bank of Mauritius Act is amended –

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

“Mauritius Deposit Insurance Corporation Ltd” means the Mauritius Deposit Insurance Corporation Ltd incorporated and registered under the Companies Act and referred to in the Mauritius Deposit Insurance Scheme Act 2018;

- (b) in section 26, in subsection (4), by inserting, after paragraph (aa), the following new paragraph –

- (ab) the disclosure by the Bank to the Mauritius Deposit Insurance Corporation Ltd of such information as the Mauritius Deposit Insurance Corporation Ltd may require for the purpose of assisting it in the discharge of its functions;

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

60. Mauritius Deposit Insurance Scheme

The Bank may –

- (a) subscribe to all or part of the share capital of the Mauritius Deposit Insurance Corporation Ltd;
- (b) advance funds to the Mauritius Deposit Insurance Corporation Ltd, on such repayment terms and conditions as the Bank may determine, for the administration and management of the Mauritius Deposit Insurance Scheme established under the Mauritius Deposit Insurance Scheme Act 2018;
- (c) open and maintain accounts in the name of the Mauritius Deposit Insurance Corporation Ltd; and
- (d) provide such other resources as it considers necessary to enable the Mauritius Deposit Insurance Corporation Ltd to discharge its functions under the Mauritius Deposit Insurance Scheme Act 2018.

- (2) The Banking Act is amended –
- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“Mauritius Deposit Insurance Corporation Ltd” means the Mauritius Deposit Insurance Corporation Ltd incorporated and registered under the Companies Act and referred to in the Mauritius Deposit Insurance Scheme Act 2018;

- (b) in section 27, in subsection (1), by adding the following new paragraph, the full stop at the end of paragraph (c) being deleted and replaced by the words “; and” and the word “and” at the end of paragraph (b) being deleted –

- (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 Mauritius Deposit Insurance Corporation Ltd.

- (c) by inserting, after section 30, the following new section –

30A. Prohibition of floating charge on assets

(1) Notwithstanding section 30, a bank or non-bank deposit taking institution shall not 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 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 floating charge under subsection (1) created without the approval of the Bank shall be null and void.

- (d) in section 64, in subsection (3), by adding the following new paragraph, the full stop at the end of paragraph (o) being deleted and replaced by the words “; or” and the word “or” at the end of paragraph (n) being deleted –

- (p) the information is required for transmission to the Mauritius Deposit Insurance Corporation Ltd.

- (e) in section 86, in subsection (1) –
 - (i) by repealing paragraph (d) and replacing it by the following paragraph –
 - (d) any premium contributions due and payable by the bank or non-bank deposit taking institution to the Mauritius Deposit Insurance Corporation Ltd;
 - (ii) by inserting, after paragraph (d), the following new paragraph –
 - (da) liabilities incurred by the Mauritius Deposit Insurance Corporation Ltd in respect of insured deposits, up to the amount of compensation paid or payable out of the Deposit Insurance Fund referred to in the Mauritius Deposit Insurance Scheme Act 2018;
- (f) by repealing section 93.

35. 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 sections of this Act.

FIRST SCHEDULE
[Section 12(1)(a)]

IN THE SUPREME COURT OF MAURITIUS

OATH OF CONFIDENTIALITY

I, , being appointed ,
(name) *(post)*

do hereby swear/solemnly affirm/declare that I shall maintain during or after my relationship with the Mauritius Deposit Insurance Corporation Ltd (“the Agency”), 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 Agency, the Bank of Mauritius or any other bank or financial institution or the affairs of any of their customers, otherwise than for the purpose of the performance of my duties under the Mauritius Deposit Insurance Scheme Act 2018 or meeting the requirements of an agreement or understanding reached by the Agency with the Bank of Mauritius or any relevant body or when lawfully required to do so by the Judge in Chambers, or any Court, or under any enactment.

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

Before me

.....
Signature of deponent

.....
Master and Registrar
Supreme Court

SECOND SCHEDULE

[Section 12(1)(b)]

DECLARATION OF CONFIDENTIALITY

I,, being appointed,
(name) *(post)*

do hereby declare that I shall maintain during or after my relationship with the Mauritius Deposit Insurance Corporation Ltd (“the Agency”), 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 Agency, the Bank of Mauritius or any other bank or financial institution or the affairs of any of their customers, otherwise than for the purpose of the performance of my duties under the Mauritius Deposit Insurance Scheme Act 2018 or meeting the requirements of an agreement or understanding reached by the Agency with the Bank of Mauritius or any relevant body or when lawfully required to do so by the Judge in Chambers, or any Court, or under any enactment.

.....
Name of declarant

.....
Name of Chairperson of the
Board of the Agency

.....
Signature of declarant

.....
Date

.....
Signature of Chairperson

THIRD SCHEDULE

[Section 18(1)]

INITIAL CONTRIBUTION

1. The initial contribution of member institutions shall constitute one tenth of the targeted fund of the Scheme.

2. The share of each member institution in the initial contribution shall be based on insurable deposits and shall be computed as follows –

$$\frac{\text{insurable deposits of the member institution}}{\text{total insurable deposits of member institutions}} \times \text{initial contribution}$$
