

THE BANKING (DEPOSIT PROTECTION FUND) REGULATIONS

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THE BANKING (DEPOSIT PROTECTION FUND) REGULATIONS

[Legal Notice 10 of 2003]

1. Citation

These Regulations may be cited as the Banking (Deposit Protection Fund) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Board” means the Deposit Protection Fund Board established under section 36 of the Act;

“contributory institution” means a bank, a mortgage finance company or financial institution which has received a notice to contribute under section 38(2) of the Act;

“Fund” means the Deposit Protection Fund established by section 37 of the Act.

3. Convening of Board meetings

Meetings of the Board shall be convened by the chairman not less than once in every three months, or whenever the business of the Fund so requires.

4. Proceedings of the Board

(1) A quorum for any meeting of the Board shall be the four members and where the chairman is unable to attend any meeting of the Board the other members present may elect one of their number to be the chairman of the meeting.

(2) The validity of any proceedings of the Board shall not be affected by any vacancy in the membership of the Board, or by any defect in the appointment of any member which is discovered subsequent to those proceedings.

(3) The decision of the Board shall be authenticated by signature of the chairman or any other person authorized by the chairman for that purpose.

5. Keeping of account and other records

(1) Subject to the Act and these Regulations, the Board shall—

- (a) keep proper accounts and proper records in relation to its accounts; and
- (b) in every financial year, prepare a statement of accounts showing its state of affairs, income and expenditure.

(2) The accounts shall include contributions by contributory institutions and investment by the Fund.

(3) A statement of accounts prepared in accordance with subregulation (1) shall be audited by auditors appointed by the Board.

(4) For the purposes of this regulation, no person shall be appointed as an auditor unless he is qualified under section 161 of the Companies Act (Cap. 486) and is approved by the Central Bank.

(5) Members of the Board appointed by the Cabinet Secretary under section 36(4)(c) of the Act shall hold office for a period of four years and shall be eligible for re-appointment.

(6) The Board shall publish the report prepared under section 42(1) of the Act within three months of its submission to the Cabinet Secretary.

6. Board to determine average deposit liabilities

Subject to the Act, the average of a contributory institution's total deposit liabilities shall be the amount which the Board determines as representing its average deposit liabilities over a period of twelve months preceding the levying of contributions.

[Subsidiary]

7. Power of Board to waive contributions

The Board may waive a contribution by a contributory institution if it appears to the Board that an institution which is licensed is carrying on substantially the same business as that previously carried on by one or more institutions which are, or were contributory institutions, but nothing in these Regulations shall entitle any institution to a repayment of the contributions previously made to the Fund.

8. Payments out of the Fund

(1) Whenever an contributory institution shall become insolvent in accordance with section 39(6) of the Act and if at that time the institution is a contributory institution whose deposits are protected, the Board shall, as soon as is practicable, pay out of the Fund by cash, cheque or bank transfer to a depositor who has a protected deposit with the institution an amount equal to his protected deposit.

(2) In the event of uncertainty of records, the Board may only pay such percentage of the protected deposit as it may deem appropriate in the circumstances.

(3) No account whatsoever shall be taken of any liability unless proof of the debt which gives rise to it has been given to the Board in such manner and at such times as the Board shall determine.

9. Protected deposit defined

(1) Subject to the Act, and in relation to a contributory institution, any reference to a protected deposit is a reference to the total liability of the institution to the depositor limited to a maximum of one hundred thousand shillings:

Provided that the Cabinet Secretary may, by Order, and with the approval of the Board, increase the sum specified under this regulation to a sum specified in the Order.

(2) In determining the liability of a contributory institution to a depositor, no account shall be taken of any liability in respect of a deposit if it is no longer protected or if it was made after termination of the protection of deposits of that institution under section 38(5) of the Act.

(3) In all cases before termination of protection of deposit, the Board shall publish a notice in the *Gazette* and in one national newspaper of its intention to terminate protection of deposits in an institution.

(4) Unless the Board otherwise directs, there shall be deducted the amount of any liability of a depositor to the contributory institution in respect of which a right of set-off existed immediately before the institution became insolvent in accordance with section 39 (6) of the Act against any such deposit or in respect of which such a right would then have existed if the deposit in question had been payable on demand and the liability in question had fallen due.

10. Liability of insolvent institution to the Board

(1) Subject to the Act and these Regulations, where a contributory institution is insolvent and the Board has made or is under a liability to make an insolvency payment to a depositor, the institution shall become liable to the Board, as in respect of contractual debt incurred immediately before the institution became insolvent, for an amount equal to the Board's liability.

(2) In all cases, no payment shall be made by the insolvent institution to a depositor unless full satisfaction has been given to the Board in respect of all moneys paid by the Board to the depositor.

(3) The liability of the insolvent contributory institution to a depositor shall be reduced by an amount equal to insolvency payment made or to be made by the Board to the depositor.

11. Liquidator's duty to the Board

The duty of the liquidator of an insolvent contributory institution shall be to pay to the Board instead of the depositor the amount referred to under regulation 8, and if the amount paid to the Board equals the insolvency payment made to the depositor by the Board, the liquidator shall thereafter pay to the depositor instead of the Board any excess amount.

12. Furnishing of information by a liquidator or an institution

The Board may, by notice in writing served on an contributory institution or the liquidator of an insolvent institution, require him or such institution at such place as may be specified in the notice to furnish to the Board such information and such books, papers or records as the Board may require to carry out its functions under the Act.

13. Inspection of books, etc.

Where as a result of a contributory institution having become insolvent, any books, papers or records have come into the possession of the official receiver or liquidator he shall permit any person duly authorized by the Board to inspect such books, papers or records.

14. Revocation of L.N. 24/2002

The Banking (Deposit Protection Fund) (Amendment) Regulations, 2002 (L.N. 24/2002) are hereby revoked.
