

OBJECTS AND REASONS

This Bill would amend the *Financial Institutions Act inter alia*

- (a) to make different provision for the liquidation and re-organisation of banks licensed under the Act; and
- (b) to provide for necessary consequential changes as a result of the introduction of deposit insurance in respect of deposit taking financial institutions.

Arrangement of Sections

Section

1. Short title.
2. Amendment of section 2 of Cap. 324A.
3. Amendment of section 3 of Cap. 324A.
4. Amendment of section 5 of Cap. 324A.
5. Amendment of section 10 of Cap. 324A.
6. Amendment of section 11 of Cap. 324A.
7. Amendment of section 12 of Cap. 324A.
8. Amendment of section 25 of Cap. 324A.
9. Amendment of section 44 of Cap. 324A.
10. Amendment of section 46 of Cap. 324A.

Sections

11. Amendment of section 47 of Cap. 324A.
12. Amendment of section 48 of Cap. 324A.
13. Insertion of new section 48A into Cap. 324A.
14. Amendment of section 50 of Cap. 324A.
15. Amendment of section 51 of Cap. 324A.
16. Deletion and substitution of Part V of Cap. 324A.
17. Deletion of section 93 of Cap. 324A.
18. Deletion and substitution of section 109 of Cap. 324A.
19. Commencement.

BARBADOS

A Bill entitled

An Act to amend the *Financial Institutions Act*

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Financial Institutions (Amendment) Act, 2006*. Short title.

2. Section 2 of the *Financial Institutions Act*, in this Act referred to as the principal Act, is amended by inserting the following definitions in their appropriate alphabetical order: Amendment of section 2 of Cap. 324A.

"Deposit Insurance Corporation" means the Deposit Insurance Corporation established under the *Deposit Insurance Act*, Act 2006-

Act 2006- "Deposit Insurance Fund" means the Deposit Insurance Fund established under the *Deposit Insurance Act*;

"immediate relative" in respect of any person means the spouse, parent, brother, sister, child or step-child of that person or the spouse of that person's parent, brother, sister, child or step-child;

"insured deposit" means a deposit which is insured under the *Deposit Insurance Act*;

"re-organise" in relation to a licensee, includes the restructuring of the licensee;"

Amendment
of section 3
of
Cap. 324A.

3. Section 3 of the principal Act is amended by deleting the definition "group" and substituting the following:

" "group" means,

- (a) in relation to a company, that company and
 - (i) any other company which is its holding company or subsidiary;
 - (ii) any other company which is a subsidiary of its holding company;
 - (iii) any company which directly or indirectly controls or is controlled by any company referred to in sub-paragraph (i) or (ii);
 - (iv) any company which is controlled by a person who directly or indirectly controls a company referred to in sub-paragraph (i), (ii) or (iii);
 - (v) any company in which a group of immediate relatives has a controlling interest;

- (b) in relation to a person other than a company,
 - (i) a group of immediate relatives where each member of the group is substantially dependent upon the same income source;
 - (ii) a group of persons in which one member has power directly or indirectly to control the other members;
 - (iii) any other group of persons that may be prescribed by the Central Bank;".

4. Section 5 of the principal Act is amended by inserting the following new subsection immediately after subsection (2):

Amendment
of section 5
of
Cap. 324A.

"(3) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation thereto."

5. Section 10 of the principal Act is amended

Amendment
of section 10
of
Cap. 324A.

(a) in subsection (1) by deleting paragraph (b)(i) and substituting the following:

"(i) that no person shall, without the approval of the Minister and subject to such conditions as he may consider necessary, directly or indirectly acquire or hold any significant interest in a licensee;".

(b) by inserting immediately after subsection (1), the following new subsection:

"(1A) For the purposes of subsection (1)(b)(i), a significant interest is any interest or combination of interests that exceed

(a) in aggregate 10 per cent of the value of the stated capital of a licensee; or

(b) 10 per cent of any class of shares of a licensee."

Amendment
of section 11
of
Cap. 324A.

6. Section 11 of the principal Act is amended

(a) in subsection (1) by

(i) deleting the full stop at the end of paragraph (f) and substituting a semicolon;

(ii) adding the following new paragraphs immediately after paragraph (f):

"(g) if the licensee provides any false or misleading information in respect of its application under this Act or fails to inform the Minister where there is a material change in respect of the information so supplied;

(h) if the licensee does not take the remedial action directed by the Minister under subsection (4);

(i) if the membership of the licensee in respect of the Deposit Insurance Fund is cancelled in accordance with the *Deposit Insurance Act.*"; and

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(b) adding the following new subsections immediately after subsection (3):

"(4) Where it appears to the Minister that there are grounds on which his power to revoke a licence is exercisable, but the circumstances are such as to allow for remedial measures, he may impose on the licensee such remedial measures as the Central Bank recommends instead of revoking the licence.

(5) A licensee that is required to take remedial measures under subsection (4) may, within 14 days of the notification, make representation in writing to the Minister as to why the Minister should not take the action intended.

(6) Where the Minister revokes a licence, he shall give notice in writing to the company whose licence is revoked and the Central Bank shall

(a) assume forthwith the management and control of the company; and

(b) subject to section 12, apply to the High Court for a winding-up order."

7. Section 12 of the principal Act is amended by deleting the words "within 30 days" appearing in line 2 of subsection (1) and substituting the words "within 14 days".

Amendment of section 12 of Cap. 324A.

8. Section 25 of the principal Act is amended by inserting the following new subsection immediately after subsection (3):

Amendment of section 25 of Cap. 324A.

"(4) Where an application is made under subsection (1), the applicant shall pay such fee as may be prescribed in relation thereto."

9. Section 44 of the principal Act is amended by

Amendment of section 44 of Cap. 324A.

(a) deleting subsection (2) and substituting the following:

"(2) The Central Bank may, without the consent of a licensee, disclose information received

(a) to the Commissioner of Inland Revenue;

(b) to the Deposit Insurance Corporation;

- (c) to any other supervisory or regulatory authority of financial institutions in Barbados; or
- (d) subject to subsection (3), to the appropriate supervisory authority of financial institutions outside Barbados at the request of that authority, where there is a branch, holding company or affiliate of the licensee operating in that country,

if the Central Bank is satisfied that the authority has given appropriate undertakings for protecting the confidentiality of the information and for controlling the use that will be made of it.";

(b) adding the following immediately after subsection (2):

"(3) In the case of paragraph (d) of subsection (2), information may only be given where there is a reciprocal arrangement with that authority for the exchange of information."

Amendment
of section 46
of
Cap. 324A.

10. The principal Act is amended by deleting section 46(14) and substituting the following:

"(14) For the purposes of this Act, an auditor is a person

- (a) who is in good standing as a member of an association of chartered or public accountants or other similar body;
- (b) who is authorised to practise in Barbados; and
- (c) who is approved by the Central Bank."

11. Section 47 of the principal Act is amended by
- Amendment
of section 47
of
Cap. 324A.
- (a) deleting the words "as it considers necessary" appearing at the end of the opening words;
- (b) deleting the full stop at the end of paragraph (e) and substituting a semi-colon; and
- (c) adding the following new paragraph as paragraph (f):
- "(f) on the receipt of any information where the Central Bank considers it necessary."
12. Section 48 of the principal Act is amended by deleting subsection (3).
- Amendment
of section 48
of
Cap. 324A.
13. The principal Act is amended by inserting the following new section immediately after section 48:
- Insertion of
new section
48A into
Cap. 324A.
- 48A.** (1) The Central Bank may impose on licensees such charges as may be prescribed to meet the expenses relating to
- (a) an examination under this Part of a licensee or any company that is affiliated with the licensee; and
- (b) the provision of banking supervision services under this Part to the licensee.
- (2) The Central Bank may impose on the applicants in respect of an examination made under paragraph (d) of section 47 such charges as are necessary to meet the expenses relating to that examination."
14. Section 50 of the principal Act is amended by
- Amend-
ment of
section 50
of
Cap. 324A.
- (a) deleting the words "3 months" appearing in line 3 of paragraph (c) of subsection (1) and substituting the words "1 month";
- (b) deleting the words "within 21 days" appearing in line 2 of subsection (3) and substituting the words "within 14 days";

Examina-
tion and
supervi-
sion
charges.

- (c) deleting the words "30 days" appearing in line 2 of subsection (4) and substituting the words "7 days".

Amendment
of section 51
of
Cap. 324A.

15. Section 51 of the principal Act is amended by

- (a) deleting the word "cancel" appearing in line 1 of subsection (1) and substituting the word "revoke";
- (b) deleting the word "cancellation" appearing at the end of subsection (2) and substituting the word "revocation";
- (c) deleting subsection (3) and substituting the following:

"(3) Sections 11(6) and 12(1) shall apply where a licence is revoked pursuant to this section."

Deletion
and
substitution
of Part V of
Cap. 324A.

16. The principal Act is amended by deleting Part V and substituting the following:

"PART V

**WINDING-UP, RE-ORGANISATION AND
SEIZURE OF LICENSEES**

Voluntary
winding-
up.

53. (1) Except with the prior written approval of the Central Bank no licensee may be wound-up voluntarily.

(2) Approval for a voluntary winding-up of a licensee may be given by the Central Bank only if it is satisfied that

- (a) the licensee is solvent and has sufficient assets to repay its depositors and other creditors without delay; and
- (b) subject to subsection (3), the winding-up has been approved by the holders of at least two-thirds of the issued voting shares of the licensee.

(3) Where the Central Bank finds in respect of a licensee that there is imminent danger of its insolvency and certifies to the Minister the existence of an emergency, the Minister may waive the requirement for the approval of the shareholders of the voluntary winding-up of the licensee, if

- (a) the winding-up is to be effected in whole or in part through the sale of any of the assets of the licensee to another licensee; and
- (b) the deposit liabilities of the licensee to be wound-up are to be assumed by that other licensee.

Obligations
at com-
mencement
of voluntary
winding-up.

54. When a licensee receives the approval of the Central Bank to its voluntary winding-up, the licensee shall

- (a) cease to do business immediately, and retain only such staff as is necessary for an ordinary winding-up;
- (b) repay its depositors and other creditors; and
- (c) wind-up all operations undertaken before the receipt of the approval to wind-up.

Notice of
winding-
up.

55. (1) Within 30 days of the receipt of the approval of the Central Bank to the winding-up of a licensee, a notice of voluntary winding-up, which must contain the prescribed information, shall be sent by the licensee in the prescribed manner or by personal service to the depositors and creditors of the licensee and other persons having any interest in its funds or other property.

(2) The notice mentioned in subsection (1) shall be published in the *Official Gazette* and placed in a conspicuous place on the premises of each office or branch of the licensee to be wound-up.

Settlement
of claims.

56. (1) The approval of the Central Bank to the voluntary winding-up of a licensee does not adversely affect the rights of

- (a) a depositor or other creditor of the licensee to settlement in full of his claim; or
- (b) any person having an interest in the funds or property of the licensee to settlement of that interest.

(2) All claims made by persons referred to in subsection (1) shall be settled by the licensee concerned within such time as the Central Bank may determine.

Distribu-
tion of
remaining
assets.

57. (1) The assets of a licensee being voluntarily wound-up that remain after settlements mentioned in section 56 are completed are to be distributed among the shareholders of the licensee in proportion to their respective rights.

(2) Notwithstanding subsection (1), no distribution of the remaining assets of a licensee may be made

- (a) before all claims of depositors and other creditors have been settled or, in the case of a disputed claim, before the licensee has deposited with the Central Bank sufficient funds to meet any liability that could arise under that claim;
- (b) before any funds that are payable to a depositor or other creditor who has not made his claim have been deposited with the Central Bank; or

- (c) before any funds or property held by the licensee that could not be returned, in accordance with section 55 to the persons who have an interest therein, have been deposited with or transferred to the Central Bank together with the relevant records.

Interrup-
tion of
winding-up.

58. (1) If the Central Bank determines that the assets of a licensee which is being voluntarily wound-up are not sufficient for the full discharge of the obligations of the licensee, or that the completion of such a winding-up is being unduly delayed, the Central Bank may seize the management and control of the licensee by posting a notice to that effect on the premises of the licensee and by putting officers of the Central Bank or any person authorised by the Central Bank into the offices of the licensee.

(2) When the Central Bank seizes the management and control of a licensee under subsection (1), it shall immediately begin proceedings for the compulsory winding-up of the licensee or its re-organisation, in accordance with this Act.

Seizure.

59. (1) Where

- (a) in the opinion of the Central Bank it is necessary to protect the interest of depositors or creditors of a licensee;
- (b) in the opinion of the Central Bank, a licensee is unlikely to meet its financial obligations or is about to suspend or has suspended payments to its creditors;
- (c) in the opinion of the Central Bank, a licensee is not maintaining high standards of financial probity or following sound business practices;

- (d)* a licensee does not facilitate an audit in accordance with section 46(4) by an auditor appointed by the Central Bank or does not submit to an examination in accordance with section 47; or
- (e)* a licence has been suspended or revoked under this Act,

the Central Bank may,

- (i)* after notifying the Minister, seize to any extent necessary, the management and control of the licensee;
- (ii)* issue any directions to the licensee that it considers necessary.

(2) Where the management and control of a licensee is seized under subsection (1), the Central Bank may, through its officers or through any person authorised by it,

- (a)* investigate the affairs of the licensee and any institution affiliated with it;
- (b)* take any action to protect the interest of depositors and other creditors of the licensee;
- (c)* re-organise the business of the licensee, including its capital base;
- (d)* provide financial assistance to the licensee; and
- (e)* generally, manage and control the business of the licensee.

(3) A seizure of the management and control of a licensee under this section shall be effected by placing a notice to that effect on the premises of the licensee and by putting into the offices of the licensee

- (a) officers of the Central Bank;
- (b) such other persons as may be authorised by the Central Bank; or
- (c) a combination of the persons referred to in paragraphs (a) and (b).

(4) Where subsection (3) applies, the officers of the licensee shall be deemed to be officers of the Central Bank.

(5) At any time after the Central Bank has seized the management and control of a licensee under this section the Central Bank may apply to the High Court for the compulsory winding-up of the licensee.

Effect of seizure.

60. (1) When the management and control of a licensee is seized under this Act,

- (a) any statutory, contractual, or other term or condition on the expiration of which a claim or right of the licensee would expire or be extinguished is extended by 6 months from the date of the seizure;
- (b) an attachment or lien, other than a lien that was in existence during the 6 months immediately preceding the seizure, is vacated and no attachment or lien, other than a lien created by a manager in the application of this Act, attaches to any of the assets of the licensee during the period the seizure continues; and

- (c) a transfer of any assets of the licensee that is made after or in contemplation of its insolvency or seizure, with intent to effect a preference, is void.

(2) No writ of execution or garnishee order may be returned against the assets of a licensee whose management and control has been seized under this Act except such as the High Court may order in respect of an execution effected pursuant to a judgement that was rendered before the seizure for an amount not exceeding \$5 000.

Effect of
appoint-
ment of
manager.

61. Where the Central Bank authorises a person to manage pursuant to section 59(3), the business of a licensee, the appointment shall take effect as though made by the depositors and other creditors of the licensee pursuant to a charge over all the fixed and floating assets of the licensee.

Re-
organisa-
tion.

62. For the purposes of re-organising a licensee and subject to section 65, the Central Bank or the manager as the case may be

- (a) shall take possession of, collect and get in any property of the licensee;
- (b) may bring any action or proceeding in any court that is necessary;
- (c) may raise or borrow on the security of any property of the licensee, any money that may be required;
- (d) may purchase, sell, lease or otherwise deal with any real property of the licensee;
- (e) may make any arrangement or compromise which the Central Bank may consider necessary;

- (f) may make and effect any improvement of the licensee's equipment and effects;
- (g) may employ such staff, agents and other persons as may be necessary;
- (h) generally, may take any action that is considered necessary for the proper management of the licensee.

Inventory
of Assets.

63. (1) Where the Central Bank assumes the management and control of a licensee for the purpose of re-organising the licensee, the Central Bank or the manager, as the case may be, shall make an inventory of the licensee's assets and shall transmit a copy of the inventory to the Registrar of the Supreme Court.

(2) The Registrar shall make the copy of the inventory referred to in subsection (1) available at all reasonable times for the inspection of interested persons.

Notice re
winding-
up and
reorgani-
sation.

64. Forthwith after it makes an application to the High Court for the winding-up of a licensee, or where the Central Bank proposes to re-organise a licensee, the Central Bank shall publish, once a week for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados indicating

- (a) to the directors and shareholders of the licensee; and
- (b) to the depositors and other creditors of the licensee,

that an application has been made to the High Court for the winding-up of the licensee or that it proposes to re-organise the licensee, as the case may be.

- Re-organisation plan. **65.** (1) Where a licensee is re-organised under this Act, the Central Bank or the manager, as the case may be, must draw up a plan of re-organisation and the plan
- (a) must as far as possible be equitable to all classes of depositors;
 - (b) must as far as possible be equitable to all classes of creditors;
 - (c) must as far as possible provide for bringing in new funds;
 - (d) must establish such prudential ratios as the Central Bank considers necessary;
 - (e) may provide for the issue of new shares;
 - (f) may provide for the reconstitution of a board of directors and the appointment of new officers as may be necessary;
 - (g) may provide for the amalgamation of the licensee with any other licensee;
 - (h) may provide for the removal of any director, officer or employee responsible for the circumstances that led to the seizure of the licensee.
- (2) The plan referred to in subsection (1) must be transmitted to the Registrar of the Supreme Court.
- (3) The Registrar shall make a copy of the plan referred to in subsection (2), available at all reasonable times for the inspection of interested persons.

Notice of
re-
organisa-
tion plan.

66. The Central Bank shall publish, once a week for 3 consecutive weeks a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados

- (a) indicating that the re-organisation plan is available for inspection; and
- (b) that objections to the re-organisation plan may be delivered to the manager not later than 30 days after the publication of the notice.

Objections
to re-
organisa-
tion plan.

67. (1) Any person may, not later than 30 days after the publication of the third notice referred to in section 66, object to the re-organisation plan by delivering a written objection to the manager.

(2) Where after an objection is made, the plan is not modified to the satisfaction of the person making the objection, that person may make an application to the High Court in relation thereto and the High Court may make such order as it considers just in the circumstances.

End of
seizure.

68. (1) Where the Central Bank seizes the management and control of a licensee under this section, the directors of the licensee may institute proceedings in the High Court for the recovery of the management and control of the licensee.

(2) The Central Bank shall relinquish the management and control of the licensee

- (a) where in the opinion of the Central Bank, the management and control of the licensee is no longer necessary; or

- (b) from such date as the High Court specifies pursuant to an application by the directors of a licensee under subsection (1).
- (3) With respect to,
 - (a) subsection (2)(a), the Central Bank may impose such conditions on the licensee as it considers necessary;
 - (b) subsection (2)(b), the High Court may impose such safeguards or conditions as it considers necessary for the protection of depositors and creditors.

Appoint-
ment of
liquidator.

69. Where the High Court orders the compulsory winding-up of a financial institution,

- (a) the High Court shall, in the case of an institution which is not permitted to hold insured deposits, appoint as liquidator, such person as is nominated by the Central Bank to be responsible to the Court for the winding-up of that institution;
- (b) which is permitted to hold insured deposits, the Deposit Insurance Corporation shall be the liquidator and shall be responsible to the Court for the winding-up of that institution.

Compul-
sory
winding-
up.

70. (1) Where the High Court orders the compulsory winding-up of a licensee, the liquidator may, subject to subsection (2), perform the functions of the licensee.

(2) The liquidator of a licensee described in subsection (1) may not, without an order of the High Court to do so

- (a) sell any assets or transfer any property of the licensee that has a value exceeding such amount as may be fixed by the High Court;
- (b) create a security interest in any assets or property of the licensee in favour of a creditor who extends new credit to the licensee;
- (c) compromise or release any claim which exceeds such amount as may be fixed by the High Court; or
- (d) pay any claim, other than one in respect of an obligation incurred by the liquidator in the exercise of his winding-up functions, before the schedule referred to in section 77(b) has been approved by the High Court.

Termination
of employ-
ment.

71. Subject to any law of Barbados governing conditions of employment, the liquidator of a licensee that has been ordered by the High Court to be compulsorily wound-up shall terminate, not later than 3 months after the order of the High Court,

- (a) any employment contract of the licensee;
- (b) any contract for services to which the licensee is a party; and
- (c) any obligations of the licensee as a lessee of property.

- Right of Lessor. **72.** A lessor of any property referred to in section 71
- (a) must be given such notice as is required under the lease agreement or 90 days' notice, whichever is less, of the intended termination of the obligations of a licensee under the lease agreement;
 - (b) has no claim for rent thereunder other than rent accrued on the date of the termination of the obligation of the licensee; and
 - (c) has no right to damages by reason only of any termination of the obligations of the licensee, notwithstanding any term of the lease to the contrary.
- Settlement of trust accounts. **73.** It is the duty of the liquidator of a licensee that has been ordered to be wound-up to take such action as is necessary to terminate all the trust functions of the licensee and to settle its trust accounts.
- Statements in respect of creditors and lessees. **74.** (1) Within 60 days after the granting of an order for the compulsory winding-up of a licensee, the liquidator shall
- (a) prepare statements in respect of creditors, lessees of safe-deposit boxes and any bailors of property held by the licensee;
 - (b) publish, once a week for 3 consecutive weeks, a notice in the *Official Gazette* and in at least one daily newspaper published and circulated in Barbados indicating
 - (i) the time when and the place where the statements may be inspected; and

- (i) the time when and the place where the statements may be inspected; and
- (ii) the manner and time in which objections to the statements may be made.

(2) The statements referred to under subsection (1) are statements of the nature and amount for which a claim of a creditor, lessee or bailor mentioned in that subsection is shown on the books of the licensee.

(3) Any interested person may make an objection to the statement prepared under subsection (1) within 14 days of the publication of the third notice referred to in that subsection.

Notice to bailors and lessees.

75. The statements relating to lessees of safe-deposit boxes and bailors, referred to in section 74, must be delivered to those lessees and bailors together with a notice requesting them to withdraw their property from the licensee within a specified time.

Contents of boxes.

76. When the contents of any safe-deposit boxes maintained by a licensee that is being compulsorily wound-up have not been withdrawn before the expiration of the period specified in a notice under section 75, the safe-deposit boxes may be opened in the manner specified by the liquidator of the licensee.

Claims.

77. Not later than 90 days after the granting of an order for the compulsory winding-up of a licensee, the liquidator shall

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- (a) determine the amount owing to each depositor or other creditor, and the priority of his claim under this Act or the *Deposit Insurance Act*, where the licensee is a member of the Deposit Insurance Fund;

- (b) file with the High Court, a schedule of the actions proposed to be taken for the purpose of the compulsory winding-up of the licensee;
- (c) publish once a week for 3 consecutive weeks in the *Official Gazette* and in at least one newspaper published and circulated in Barbados, a notice indicating
 - (i) the time when and place where the schedule referred to in paragraph (b) may be inspected;
 - (ii) that objections to the schedule may be made to the High Court within 30 days of the publication of the notice;
 - (iii) the manner in which claims may be made;
 - (iv) the last day for the filing of claims, which day shall not be earlier than 90 days after the publication of the notice;
 - (v) the place where claims are to be paid.

Objections
to schedule.

78. (1) Within 30 days of the publication of the notice referred to in section 77(c), a depositor, any other creditor or a shareholder of the licensee concerned, or any other interested person, may file with the High Court any objection he has to any action proposed in the schedule referred to in section 77(b).

(2) After notice is served on the liquidator and such interested parties as the High Court may require, the High Court shall hear the objection and make such order thereon as it considers just in the circumstances.

(3) When the High Court allows an objection, the order must set out the manner in which the schedule referred to in section 77(b) is to be modified.

Priority of
claims.

79. (1) The following claims have priority against the general assets of a licensee being compulsorily wound-up under this Act, if that licensee does not hold insured deposits, namely:

- (a) firstly, the necessary and reasonable expenses incurred by the liquidator in carrying out his functions under this Act and any costs incurred by the Central Bank pursuant to this Part;
- (b) secondly, the wages and salaries of the officers and employees of the licensee that accrued during the 3 months immediately preceding the seizure of the licensee under this Act;
- (c) thirdly, all taxes and dues owing to the Government of Barbados;
- (d) fourthly, the fees and assessments owing to the Central Bank;
- (e) fifthly all remaining claims against the licensee.

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(2) All claims against the licensee that were not filed within the time limit specified under this Act or the *Deposit Insurance Act*, may only be paid after payment of all other claims filed against the licensee in accordance with this Act and the *Deposit Insurance Act*, with interest at such rate as the High Court determines.

(3) Where the amount available to pay the claims of any class of claimant specified in this section in respect of priorities is not sufficient to provide payment in full to all claimants in that class, the amount available shall be distributed by the liquidator on a *pro rata* basis among the claimants in that class.

Left over assets.
Act 2006- **80.** The assets of a licensee being compulsorily wound-up that remain after the final distribution to claimants pursuant to this Act and the *Deposit Insurance Act*, shall be distributed by the liquidator among the shareholders of the licensee in proportion to their respective rights.

Abandoned Funds.
Act 2006- **81.** (1) Any funds of a licensee being compulsorily wound-up that remain unclaimed after the final distribution and not subject to distribution under any other provision of this Act or the *Deposit Insurance Act*, shall be deposited with the Central Bank by the liquidator of the licensee.

(2) Funds deposited with the Central Bank under subsection (1) must be held by that Bank for 10 years unless earlier claimed by a person entitled thereto.

(3) On the expiration of the 10 years referred to in subsection (2) in respect of any funds, those funds remaining unclaimed become abandoned property.

Completion of winding-up. **82.** (1) When all the assets of a licensee being wound-up have been distributed or dealt with as required by this Act, the liquidator shall render an audited statement to the High Court.

Cap. 308. (2) If the High Court is satisfied with the audited statement rendered by the liquidator in respect of a licensee being wound-up, it may by order, direct the Registrar of Companies to strike the name of the licensee from the register of companies in accordance with the *Companies Act* and publish notice thereof in the *Official Gazette*.

(3) When its name is struck off the register of companies, the licensee is thereupon dissolved and its licence under this Act is revoked.

Applica-
tions under
the Act. **83.** (1) Where this Part states that a person may apply to the High Court, unless the Court otherwise directs, the application may be made *ex parte* by motion supported by affidavit but subject to any order respecting notice to interested parties, costs, undertakings or any other order the court thinks fit.

(2) Any party affected by an order made *ex parte* under subsection (1) may apply for it to be set aside.

Applica-
tion of
this Part.
Act 2006- **83A.** This Part shall apply to institutions that hold insured deposits only in so far as this Part is not inconsistent with the *Deposit Insurance Act*."

17. The principal Act is amended by deleting section 93.

Deletion of
section 93 of
Cap. 324A.

18. The principal Act is amended by deleting section 109 and substituting the following:

Deletion and
substitution
of section
109 of
Cap. 324A.

"Prosecution
of certain
offences. **109.** (1) Proceedings for an offence under section 105, 106, 107 or 108 of this Act may be instituted by the Central Bank.

(2) An officer of the Central Bank may, although not an attorney-at-law, prosecute or conduct before a court of summary jurisdiction, any proceedings relating to an offence referred to in subsection (1).

(3) Proceedings in respect of an offence referred to in subsection (1) may be commenced at any time within the period of 6 months from the date on which evidence, sufficient in the opinion of the Central Bank to justify a prosecution for the offence, comes to its knowledge.

Commence-
ment.

19. This Act shall come into operation on a date to be fixed by proclamation.