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FRIDAY 28TH SEPTEMBER, 2018

THE OFFICIAL GAZETTE 28TH SEPTEMBER, 2018
LEGAL SUPPLEMENT — A



ACT NO. 12 OF 2018

FINANCIAL INSTITUTIONS (AMENDMENT) ACT 2018

I assent.



David Granger,
President.

2018.09.28

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 11 of the Principal Act.
3. Amendment of section 33 of the Principal Act.
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AN ACT to amend the Financial Institutions Act.

A.D. 2018 Enacted by the Parliament of Guyana:-

Short title.
Cap. 85:03

1. This Act, which amends the Financial Institutions Act, may be cited as the Financial Institutions (Amendment) Act 2018.

Amendment
of section
11 of the
Principal
Act.

2. Section 11 of the Principal Act is amended by the substitution for it of the following –

“Revocation
of licence
and appeal.

11. (1) The Bank may, revoke a licence issued under section 6 to carry on banking business or financial business if the bank or other financial institution-

- (a) has not fulfilled, is unlikely to fulfill or no longer fulfills the minimum criteria under section 6(1) for licensing under this Act;
- (b) has provided to the Bank false, misleading or inaccurate information in connection with an application for a licence;
- (c) fails to pay the fee prescribed by section 6(8);
- (d) ceases to carry on a banking or financial business in Guyana;
- (e) fails to comply satisfactorily with any of the provisions of this Act or regulations made under this Act, which are applicable to the financial institution or any other Act to which it is subject;
- (f) fails to comply with any order or direction issued by the Bank under section 33 after having been given a reasonable time to do so;

- (g) fails to commence operations within a period of six months following the issue of a licence under this Act; or
- (h) fails to comply with any condition contained in its licence.

(2) The Bank shall revoke the licence of the bank or other financial institution if –

- (a) the bank or other financial institution has been successfully resolved in accordance with section 45 and the licence is no longer required;
- (b) the Bank after having exhausted the resolution tools set out in section 45(1)(a) to (c) or having determined their inadequacy for the licensed financial institution decides to initiate compulsory liquidation;
- (c) the bank or the financial institution ceases to carry on banking or financial business in Guyana.

(3) Before revoking any licence under subsection (1), the Bank shall give the bank or other financial institution concerned notice in writing of its intention to do so, which shall-

- (a) include a statement of the grounds upon which the Bank proposes to revoke the licence;
- (b) be delivered at least fourteen days prior to the Bank taking any further action;
- (c) invite the bank or other financial institution within the fourteen day period referred to in paragraph (b) to give any reason why its licence should not be revoked.

(4) Upon the expiration of the fourteen day period referred to in subsection (3) and after taking into consideration any reason given by the bank or other financial institution, the Bank shall decide whether to -

- (a) revoke the licence;
- (b) take further action; or
- (c) restrict the licence instead.

(5) Where the Bank decides to revoke the licence, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the right of the licensee to appeal to the Court.

(6) Where a bank or other financial institution is aggrieved by a decision of the Bank to revoke its licence under subsection (4) the bank or other financial institution may appeal to the Court within fourteen days of the date of the receipt of the notice of revocation setting out the grounds of such appeal and the appeal shall be heard by a Judge in Chambers who may confirm or set aside the notice of revocation of the licence, and the court's decision shall be final.

(7) An appeal made under subsection (6) shall not act to stay any of the measures taken by the Bank in accordance with this section and the bank or other financial institution shall cease carrying on the business as from the date notified to it as the date on which the revocation shall take effect.

(8) On revocation of a licence, the bank or other financial institution immediately shall surrender to the Bank every copy of the licence that is on display at its head office or principal place of business, as the case may be, and at each of its branches and the Bank shall publish in the *Gazette* and in a newspaper of general circulation in Guyana, notification of the revocation of any licence after the revocation has become final under subsection (2) or (4).”.

Amendment of
section 33 of
the Principal
Act.

3. Section 33 of the Principal Act is amended by the substitution for it of the following-

“Power to
issue orders,
directions and
monetary
penalties.

33. (1) Where, in the opinion of the Bank, a licensed financial institution, or any affiliate, director, officer, employee or agent of that financial institution, in conducting the business of the financial institution, is committing or pursuing or is about to commit or pursue any act or course of conduct that is an unsafe or unsound practice or a violation of any law, or order, direction, notice or condition imposed in writing by the Bank, the Bank may direct the financial institution or person concerned to –

- (a) cease committing or pursuing the act or course of conduct; or
- (b) perform such acts as, in the opinion of the Bank, are necessary to rectify the situation and in particular, but without limiting the acts that the Bank may direct, the Bank may –
 - (i) require the financial institution to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
 - (ii) impose any limitation on the financial institution’s acceptance of deposits, the granting of credit or the making of investments;
 - (iii) prohibit the financial institution from soliciting deposits either generally or from persons who are not already depositors;
 - (iv) prohibit the financial institution from entering into any other transaction or class of transactions;

- (v) require the revision of any contract to which the financial institution is a party, or order the financial institution to recompense or make restitution to any person aggrieved by its actions;
- (vi) require the suspension or removal from office of any director, officer or other person;
- (vi) appoint a controller for the financial institution pursuant to section 33A;
- (vii) require the implementation of recovery actions as set out in the financial institution's recovery plan described in section 33B, to the extent that the financial institution has not taken recovery actions on its own initiative as set forth in the plan;
- (viii) direct the institution, or its management body, to draw up a plan for negotiation on restructuring of debt with one or more of its creditors in accordance with its recovery plan, where applicable;
- (ix) limit compensation of directors or senior executives;
- (x) restrict new loans, investments and refinancing;
- (xi) require the financial institution to deposit and maintain balances with the Bank;
- (xii) require the reduction of the risk inherent in the activities, products and systems of the institution;

(xiii) request an improvement of risk management control mechanisms;

(xiv) restrict significant shareholders' rights with regard to financial institution governance.

(2) Where a licensed financial institution fails to satisfy the requirements of section 7 pertaining to capital, or the requirements of section 20 pertaining to reserves, the Bank may, by order or direction to the financial institution, require the institution to take any of the following measures –

- (a) submit a plan to the Bank specifying the measures the financial institution shall take to restore its capital or reserves and the time frame for implementation of the plan;
- (b) increase its capital or reserves;
- (c) suspend the payment of dividends;
- (d) restrict its asset growth;
- (e) prohibit transactions with affiliates of the financial institution;
- (f) restrict the activities of the financial institution;
- (g) restore liquidity levels deemed appropriate by the Bank;
- (g) require recognition of losses;
- (h) require a specific provisioning policy;
- (i) impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (j) impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities; or
- (k) require additional disclosures:

Provided that nothing in this subsection prevents the Bank from taking any of the actions outlined herein where capital levels are falling and are generating indications of potential financial fragility, but remain above the prescribed minimum capital levels or above the minimum capital levels otherwise set by the Bank with respect to that licensee.

(3) Any order or direction given under subsection (1) or (2) shall be given by notice in writing to the licensed financial institution and, in the case of any person who is subject to such order or direction including but not limited to an order or direction issued under subsection (1)(b)(vi), also to such person.

(4) Prior to the issue of any order or direction under subsection (1) or (2), the Bank shall cause to be served on or delivered to the financial institution or concerned person a notice containing a statement of the actual or proposed action or course of conduct constituting an unsafe or unsound practice or violation, and specifying a date by which the financial institution shall make representation in writing to the Bank on the matter to allow for a determination as to whether any order or direction under subsection (1) or (2) shall be made.

(5) At any time after the date specified in subsection (4), the Bank, having considered representation, if any was received, may make an order or direction on such terms as it deems fit, a copy of which order or direction shall promptly be served on the financial institution or concerned person.

(6) Where the Bank determines that the acts or course of conduct in question may pose a serious risk to the institution, cause a significant financial loss to the institution or personal gain to the person who is the subject of the order or direction, or otherwise seriously prejudice the interests of depositors, the Bank may issue a summary order or direction which shall take effect promptly on delivery to the institution or person concerned, and the institution or person shall be afforded the

opportunity to present to the Bank reasons why the order or direction in question should be removed or varied.

(7) Where a licensed financial institution or person concerned fails to comply with any order or direction made by the Bank under this section the Bank may impose by written notice to any licensed financial institution or concerned person subject to this Act a monetary penalty not exceeding one million and five hundred thousand dollars in the case of a licensed financial institution or one million dollars in the case of a natural person, and such penalty shall be determined by the Bank in an amount it considers necessary, taking into account the gravity of the conduct, the presence or absence of wrongful intent of the financial institution or the concerned person, the financial resources of the financial institution or the concerned person, and any extenuating or mitigating factors the Bank wishes to consider and shall be paid within thirty days of the issue of the notice directly to the Bank.

(8) Within ten days of the issue of an order, direction or penalty to the financial institution or the person, the financial institution or person may appeal the order, direction or penalty to the Minister or the Court, but the appeal shall not stay the effectiveness of the order, direction or penalty issued under this section.

(9) Any financial institution or person who fails to comply with any order or direction made by the Bank under this section, and of which it has received notice in writing, or fails to pay any penalty as provided in subsection (7), commits an offence and is liable on summary conviction, in addition to payment of the penalty under subsection (7), to a fine of three million dollars and imprisonment for two years.”

Amendment
of section
33A of the
Principal
Act.

4. Section 33A of the Principal Act is amended by the substitution for it of the following-

“Controller.

33A. (1) With a view to preserving or restoring the financial position of a licensed financial institution and taking measures to restore the sound and prudent management of the business of that institution the Bank may appoint any person it deems suitably qualified as controller with one or more of the following powers-

- (a) to assist, in an advisory capacity, in management meetings and meetings of the board of directors of the licensed financial institution on measures to be taken to resolve the problem;
- (b) to submit to the deliberation of the decision making body of the licensed financial institution any proposals it considers adequate;
- (c) to advise the financial institution;
- (d) to oversee the execution of orders by the Bank with which the financial institution is bound to comply.

(2) The controller shall be appointed by the Bank for a term not exceeding six months which term of appointment may be extended by the Bank only twice, for a period not exceeding in each case, three months.

(3) The Bank may specify the circumstances where the prior written general or specific authorisation of the controller is required for any act or decision of the financial institution’s decision making bodies.

(4) The controller may not delegate any of its powers or duties to another person.

(5) The controller shall be an official of the Bank, or another person, who meets such qualifications as the Bank may be prescribe by guidelines.

(6) The Bank shall determine the presence of conflict of interest in relation to any officer of the Bank that affects his duties with the Bank and provide a solution to remedy the conflict and may make internal rules relating to conflict of interest.

(7) The remuneration of the controller and the controller's indemnification from liability to third persons on account of all actions taken in good faith, shall be borne by the financial institution.”.

Amendment
of section 33B
of the
Principal Act.

5. Section 33B of the Principal Act is amended by the substitution for it of the following-

“Recovery
and
resolution
planning.

33B. (1) All licensed financial institutions are subject to recovery planning.

(2) Licensed financial institutions shall draw up and maintain a recovery plan providing for measures to be taken by the licensed financial institution to restore its financial position following a significant deterioration of its financial situation.

(3) Licensed financial institutions shall update their recovery plans at least annually or after a change to the legal or organisational structure of the institutions' business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan and the Bank may require institutions to update their recovery plans more frequently.

(4) The Bank shall review recovery plans within six months of the submission of each plan, and assess the extent to

which it satisfies the requirements of a recovery plan and whether the implementation of the arrangements proposed in the plan are reasonably likely to maintain or restore the viability and financial position of the financial institution or of the group.

(5) If the Bank determines that the recovery plan does not adequately remedy the deficiencies in its financial position, it shall require the financial institution to identify changes to its business to address the deficiencies and if the financial institution fails to identify such changes, the Bank may direct the financial institution to take any measures it considers necessary.

(6) The recovery plan shall also include measures the systemically important financial institution may undertake if all the conditions for early intervention have been met.

(7) The submission of the recovery plan shall not prevent the Bank from imposing measures within its statutory powers regarding the financial institution.

(8) Systemically important licensed financial institutions, as defined by bank indicators in relation to sector-wide financial indicators to be prescribed by the Bank, shall additionally be subject to resolution planning.

(9) The Bank shall draw up a resolution plan for each systemically important licensed financial institution which resolution plan shall provide for the resolution actions which the Bank may take where the financial institution meets the conditions for resolution.

(10) When drawing up the resolution plan, the Bank shall identify any material impediments to resolvability and, where necessary, outline relevant proportionate actions for how those impediments could be addressed.

(11) Resolution plans shall be reviewed, and where appropriate updated, at least annually.

A.D. 2018]

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[No. 12

(12) The content of recovery and resolution plans shall be determined by the Bank.”.

Repeal of sections 33C, 33D, 33E and 33F of the Principal Act.

6. Sections 33C, 33D, 33E and 33F of the Principal Act are repealed.

Amendment of Part VIII of the Principal Act.

7. Part VIII of the Principal Act is amended by the substitution for it of the following Parts -

“PART VIII
RESOLUTION OF
LICENSED FINANCIAL INSTITUTIONS

Resolution Authority.

34. (1) The Bank shall be the authority responsible for resolution of licensed financial institutions.

(2) In order to resolve a licensed financial institution, the Bank shall exercise control over the licensed financial institution, operate and conduct the activities of the licensed financial institution with all the powers of its shareholders and management bodies and manage and dispose of the assets and property of that institution.

(3) When applying the resolution tools and exercising the resolution powers, the Bank shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles-

- (a) priority of payments as set out in section 58A;
- (b) natural and legal persons are made liable, under civil or criminal law for their responsibility for the failure of the institution;
- (c) except where otherwise provided, creditors of the same class are treated in an equitable manner;

(d) no creditor shall incur greater losses than would have been incurred if the institution had been liquidated;

(e) covered deposits are fully protected.

(4) When exercising the resolution powers under section 39 and applying the resolution tools set out in section 45, the Bank shall not be subject to the requirement to obtain approval or consent from any authority or person, including the shareholders or creditors of the licensed financial institution under resolution.

Objectives of resolution.

35. Resolution of licensed financial institutions shall be conducted with the objectives of-

- (a) ensuring the continuity of critical functions of licensed financial institutions;
- (b) avoiding adverse effect on the financial market, in particular by preventing contagion, including market infrastructure and maintaining market discipline;
- (c) protecting the assets of depositors and other clients; and
- (d) protecting public funds by minimizing public financial support.

Least cost principle.

36. The Bank shall seek to minimize the cost of resolution and avoid destruction of value and the Bank shall implement the resolution option, including liquidation of a licensed financial institution that is least costly to the Bank, the financial system or the deposit insurance system.

Triggers for resolution.

37. (1) The Bank shall initiate the resolution of a licensed

financial institution when it determines at its sole discretion that-

- (a) one or more of the grounds indicated in subsection (2) are met;
- (b) there is no reasonable prospect that any alternative measures or supervisory action taken in respect of the licensed financial institution shall restore its viability within a reasonable timeframe;
- (c) the resolution measure is necessary to achieve the resolution objectives; and
- (d) the resolution action is in the public interest.

(2) A licensed financial institution shall not be considered viable or likely to be viable if-

- (a) the licensed financial institution's solvency is compromised by one or more of the following conditions-
 - (i) the licensed financial institution is generally not paying its liabilities in full or can reasonably be expected in the next ninety days to be unable to pay its liabilities in full as they fall due;
 - (ii) the licensed financial institution has incurred or can reasonably be expected to incur losses that will deplete all or substantially all of its regulatory capital;
 - (iii) the licensed financial institution's Tier 1 capital or its regulatory capital ratio, is half or less than the minimum regulatory requirements;
 - (iv) the licensed financial institution's losses registered in its financial statements

constitute more than half of its own funds;

or

- (b) the licensed financial institution has committed a material violation of an applicable law or rule or an order of the Bank that has had or can reasonably be expected to have a material adverse effect upon the capital or liquidity position of the institution or cause the institution to fail;
- (c) the licensed financial institution has not fulfilled an agreement entered into by the institution with the Bank for the restoration of the capital or liquidity of the institution that requires, in that event, the institution to be placed in bank resolution;
- (d) the licensed financial institution has breached any of the prudential ratios established pursuant to this Act triggering resolution as prescribed by regulations made by the Bank;
- (e) early intervention measures have not been successful in mending the institution's situation;
- (f) the licensed financial institution infringes the requirements for continuing authorisation in a way that would justify the withdrawal of the licence; or
- (g) the licensed financial institution has made use of the facilities of the Bank in a manner that indicates that the institution has lost market access;
- (h) the licensed financial institution is engaging in fraudulent or questionable practices in the conduct of its business which endangers its reputation or threatens its solvency;

- (i) the Bank has reasonable cause to believe that the licensed financial institution or its executive officers have engaged or are engaging in criminal activities punishable by imprisonment of six months or more, in such a manner as to threaten the interests of depositors;
- (j) the licensed financial institution fails in any manner to cooperate with the Bank, or its examiners to enable the Bank to perform its supervisory responsibilities, including through concealment or failure to submit for inspection any of the licensed financial institution's books, papers or records; or
- (k) the business of the licensed financial institution is being conducted in a manner that threatens the stability of the financial system.

Notice of
resolution.

38. (1) When the Bank has made a determination under section 37 it shall serve on the licensed financial institution a notice of its decision to initiate resolution of the licensed financial institution, indicating the grounds for the action and may specify the effective date and time in the notice.

(2) If the Bank considers it necessary the notice under subsection (1) may provide that the resolution decision shall take effect immediately.

(3) The decision of the Bank to initiate the resolution of licensed financial institutions shall be immediately enforceable.

(4) Subject to confidentiality requirements being fulfilled, the Bank shall as soon as is practicable notify the Minister and any other relevant domestic or foreign competent authority of the financial sector, of the initiation of a resolution

procedure and exchange information with such authorities about the resolution procedure.

(5) The Bank shall publish on its website and two daily newspapers of general circulation in Guyana its decision to subject a licensed financial institution to a resolution procedure as soon as practicable provided the publication does not prejudice the conduct of the resolution procedure.

Resolution
powers.

39. (1) The Bank shall have the general resolution power to-

- (a) assume all the powers of the shareholders and the management bodies of the financial institution in resolution, and act in the name and for the account of the financial institution concerned;
- (b) take control of the financial institution and, all of its property, books, records and effects, including by exercising the powers under section 41;
- (c) exercise all powers necessary to preserve, protect and recover any of the assets of the financial institution including, exercising the powers under section 42;
- (d) institute any legal proceedings on behalf of the institution and defend suits against it.

(2) In particular, the powers of resolution of the Bank shall include the power to-

- (a) restructure or restore the licensed financial institution, or parts of its business, if possible, or otherwise liquidate it;
- (b) apply to the licensed financial institution one or more resolution tools under section 45 of this Act;

- (c) remove or replace the management bodies and senior management, and operate the licensed financial institution under resolution itself;
- (d) appoint a provisional administrator under section 40 to take control of the licensed financial institution in resolution in accordance with section 41;
- (e) close out and terminate financial contracts or derivatives contracts, or continue or assign contracts;
- (f) adjust the value of the balance sheet and net capital to write-down the value of reported equity and capital to actual levels, and override rights of shareholders of the institution in resolution, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the licensed financial institution's business or its assets and liabilities;
- (g) require any person to provide any information required for the Bank to decide upon and prepare a resolution action, including updates and supplements of information provided in the resolution plans and including requiring information to be provided through on-site inspections;
- (h) take the necessary measures to protect the assets of the licensed financial institution in resolution including imposing –
 - (i) a moratorium with a suspension for a period to be specified by the Bank of payments to unsecured creditors and customers (except for payments and property transfers entered into the

- payment, clearing and settlements systems); and
- (ii) a stay for a period to be specified by the Bank on creditor actions to attach assets or otherwise collect money or property from the licensed financial institution, while protecting the enforcement of eligible netting and collateral agreements;
- (i) claim the rights and actions that correspond to the licensed financial institution and to assume defense against claims of third parties;
- (j) ensure continuity of essential services and functions of the licensed financial institution under resolution by-
- (i) requiring other domestic companies in the same financial group to continue to provide essential services to the licensed financial institution in resolution, or to its successor or acquiring institution, if any;
- (ii) ensuring that the residual institution in resolution can temporarily provide such services to its successor or acquiring institution;
- (iii) procuring necessary services from unaffiliated third parties.
- (k) suspend the exercise of early termination rights that may otherwise be triggered upon entry of a licensed financial institution into resolution or in connection with the use of resolution powers;
- (l) enter into agreements with foreign supervisors and resolution authorities for the exchange of information and cooperation in resolution planning and in the implementation of resolution measures;

(m) effect the liquidation of part of a licensed financial institution with timely payout or transfer of insured deposits and prompt access to transaction accounts and to segregated client funds.

(3) Where applicable, the Bank shall exercise its powers under subsection (1) with respect to financial groups.

Provisional
administrator.

40. (1) In accordance with the provisions of this Act, the Bank may appoint a provisional administrator to take control of the licensed financial institution and manage it with the objective of-

- (a) preserving the value of the institution's assets and continuing its operations;
- (b) assessing the true financial position of the institution;
- (c) developing and managing an action plan specifying the implementation of the resolution tools; and
- (d) recommending the compulsory liquidation of the institution if the other measures of resolution are not practicable.

(2) The provisional administrator shall exercise the resolution powers under section 39 as determined by the Bank in his letter of appointment and in particular, the provisional administrator may take the measures set out in section 41.

(3) The provisional administrator may delegate any of its powers or duties to other persons in accordance with the instructions issued by the Bank.

(4) The provisional administrator shall be an official of the Bank, or another person, who meets such qualifications as may be prescribed by guidelines of the Bank and in any case the provisional administrator will be subject to the same legal protection as the staff of the Bank.

(5) The provisional administrator shall be appointed by the Bank for a term not exceeding six months and that term of appointment may be extended by the Bank only twice, for a period not exceeding three months in each case.

(6) The provisional administrator shall take all measures necessary to promote the resolution objectives and implement resolution actions according to the decision of the Bank and the Bank may set limits to the action of a provisional administrator or require that acts of the provisional administrator be subject to the Bank's prior consent.

(7) The Bank shall set forth the rules on conflict of interests that apply to a provisional administrator in relation to the Bank in the letter of appointment and any transaction involving the licensed institution in which the provisional administrator has a material interest or relationship in the matter shall be engaged in only with the prior approval of the Bank.

(8) The provisional administrator shall act in accordance with the instructions and guidelines given by the Bank at any time during the statutory administration and shall be accountable only to the Bank for the performance of duties and the exercise of powers as provisional administrator.

(9) The remuneration of the provisional administrator shall be fixed by the Bank and is payable by the licensed financial institution under resolution.

(10) The Bank shall have the power to revoke any appointment under this section at any time upon written notice to the person so appointed and that person shall immediately cease to act as provisional administrator.

Control of
the financial
institution in
resolution.

41. (1) The Bank or the provisional administrator shall secure and have unrestricted access to the properties, offices, assets, books and records of the financial institution in resolution, and may take all necessary or appropriate steps aimed at such purpose.

(2) For the purposes of subsection (1), the Bank or the provisional administrator may direct any director, officer, employee or agent of the financial institution to make available any records and information relating to the financial institution that the Bank or provisional administrator may require and any such director, officer, employee or agent of the financial institution shall comply with such direction.

(3) The Bank or the provisional administrator may request the assistance of law enforcement officials, who shall, if necessary, use force to assist the Bank or provisional administrator to gain access to any premises of the licensed financial institution, to gain control over and to secure such properties, offices, assets, books and records of the financial institution and the order of the Bank appointing the provisional administrator shall have the legal force and effect of an enforceable court order requiring law enforcement authorities to provide such assistance and any resistance by the financial institution shall be subject to sanctions.

Revocation
of
decisions
of the
licensed
financial
institution.

42. (1) The Bank or the provisional administrator shall have the power to overrule or revoke decisions of the board of directors and management of the financial institution adopted within seven days immediately before the initiation of the resolution procedure and in particular the Bank or provisional administrator may-

- (a) suspend, in whole or in part, the repayment or withdrawal of deposits and other liabilities of the financial institution:

Provided that deposits and other credits received while the financial institution is under provisional administration shall not be subject to any limitation as to repayment or withdrawal but shall be segregated and not used to liquidate any indebtedness of the financial institution existing at the time the provisional administrator was appointed or subsequent indebtedness incurred in order to discharge such indebtedness;

- (b) repudiate any contract or lease to which the financial institution is a party other than a financial contract:

Provided that the provisional administrator may repudiate a financial contract that in his opinion is fraudulent;

- (c) enforce any contract other than a financial contract entered into by the financial institution notwithstanding any provision of the contract providing for termination, default or acceleration by reason of insolvency.

Legal actions
on behalf of
the financial
institution.

43. (1) The Bank or provisional administrator may employ, at the expense of the licensed financial institution in

resolution, independent attorneys, auditors and consultants to assist, on such terms as the Bank may approve.

(2) If the Bank or provisional administrator has reasonable cause to believe that shareholders, directors, officers, attorneys, auditors or other professionals have engaged or are engaging in criminal activities punishable by imprisonment of six months or more or in any matter involving fraud, it shall pursue any civil action seeking damages and restitution and all costs and expenses incurred in such civil action shall be borne by and charged to the licensed financial institution.

Reports by
the
provisional
administrator.

44. (1) The provisional administrator shall prepare and deliver to the Bank the following reports-

- (a) within five days after its appointment, a report setting out an inventory of the assets and liabilities of the financial institution and the report shall itemise the assets of the financial institution according to their different risk profiles and classify the non-performing loans;
- (b) within thirty days after the appointment, a report on –
 - (i) the financial condition and future prospects of the financial institution subject to resolution, which shall include a new balance sheet and an assessment of the amount of assets likely to be realised in a liquidation of the financial institution; and
 - (ii) the proposed action plan which may involve one or more of the resolution

tools under section 45 or recommend compulsory liquidation.

(2) The provisional administrator shall promptly provide any additional report or information requested by the Bank.

(3) The Bank may approve the report-

- (a) without modification;
- (b) subject to such conditions as it deems necessary; or
- (c) refuse to approve the report with instructions on the action to be taken.

Resolution tools.

45. (1) The Bank shall resolve a licensed financial institution adopting the following tools-

- (a) recapitalisation;
- (b) mergers and acquisitions;
- (c) total or partial transfer of assets, rights or liabilities of the licensed financial institution;
- (d) as a last resort –
 - (i) setting up a bridge bank in accordance with section 49; or
 - (ii) compulsory liquidation in accordance with section 55.

(2) The Bank may apply the tools indicated in subsection (1) to resolve a licensed financial institution alternatively or in any combination.

Recapitalisation.

46. (1) The Bank may recapitalise the licensed financial institution as follows-

(a) by notifying existing shareholders of the amount of additional capital needed to bring the licensed financial institution's capital into compliance with all capital requirements and allow such shareholders to subscribe and purchase additional shares;

(b) by taking the following actions to increase the licensed financial institution's capital through the issuance of shares to new shareholders in the following circumstances-

(i) where binding commitments are not submitted in an amount equal to the full amount of additional capital needed by existing shareholders; or

(ii) without offering shares to existing shareholders, if the Bank determines that-

(A) an expedited resolution of a licensed financial institution to maintain financial stability is necessary;

(B) the existing shareholders are no longer suitable to maintain a significant capital position in the licensed financial institution; or

(C) there has been a failure to comply within a reasonable time with a measure requiring an increase in the licensed financial institution's capital.

(2) Existing shareholders of a licensed financial institution shall have no pre-emptive or other rights to

purchase additional shares issued except as provided in this section.

(3) To carry out a recapitalisation by new shareholders, the Bank shall-

- (a) if necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding any other provision of law;
- (b) determine the amount and type of funding needed to bring the licensed financial institution into compliance with all capital requirements;
- (c) cause the licensed financial institution to issue additional shares in the amount necessary and carry out the sale of shares to new investors.

Mergers and
acquisitions.
Cap. 89:01

47. (1) Notwithstanding, the provisions of the Companies Act, the Bank may approve the merger or acquisition of the licensed financial institution under resolution with another licensed financial institution.

(2) In the application of this resolution tool, the Bank may establish, by regulation, procedural rules and exceptions to the requirements established by other legal provisions, in order to ensure the rapid and effective execution of this tool.

Transfer of
assets and
liabilities.

48. (1) The Bank may transfer, in whole or in part, the licensed financial institution's assets, rights or liabilities to a purchaser and assets shall be selected based on soundness criteria to be prescribed by regulations and transferred together with matching deposits or other liabilities.

(2) The liabilities of the licensed financial institution under resolution shall be transferred without the consent of the creditors.

(3) The transfer of liabilities, including deposits, shall be valid against third parties, including creditors, as of the date of publication of the approval by the Bank on its website.

(4) The total value of liabilities transferred shall not exceed the total value of the rights and assets transferred from the licensed financial institution under resolution or provided by other sources.

(5) Deposit insurance funds shall be available for use as capital gap filling resources, but strictly subject to the least cost principle as defined in section 36.

Bridge
institution.

49. (1) A transfer of the financial institution's assets, rights and liabilities may include a transfer to a bridge institution licensed by the Bank against payment of consideration to the financial institution.

(2) The bridge institution shall be a legal person wholly owned by one or more public authorities and shall be controlled and supervised by the Bank.

(3) The Bank shall approve the bridge institution's constitutional documents, its management body and the remuneration of the members of its management body.

(4) The Bank shall determine the bridge institution's appropriate responsibilities, strategy and risk profile and the bridge institution shall comply with any requirements of the Bank.

(5) The Bank shall provide by regulations the licensing and supervisory requirements from which the bridge institutions shall be exempted.

(6) The Bank shall create the bridge institution for the purpose of receiving the assets, rights and liabilities of a licensed financial institution under resolution with a view to operating it, maintaining access to critical functions, in order to transfer the assets and liabilities to another financial institution, to an asset management company, or otherwise liquidate it pursuant to subsection (7).

(7) The Bank shall terminate the operation of a bridge institution as soon as possible and in any event two years after the date on which the last transfer from an institution under resolution was made, with one possible extension of an additional year, subject to the joint approval of the Bank, the Ministry of Finance and the Deposit Insurance Corporation established under the Deposit Insurance Act 2018.

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(8) Where the operations of a bridge institution are terminated, the bridge institution shall be liquidated under normal insolvency proceedings as specified in this Act and any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit the shareholders of the bridge institution.

Asset
management
company.

50. (1) An asset management company shall be a qualified private sector party with its own capital, for the purpose of receiving some or all of the assets, rights and liabilities of one or more licensed financial institutions under resolution.

(2) The asset management company shall manage the assets transferred to it with a view to maximising their value through eventual sale or orderly liquidation.

(3) The Bank shall approve the asset management company's constitutional documents, its management body, the remuneration of its members and their responsibilities and the strategy and risk profile of the asset management company.

(4) The Bank may transfer assets, rights or liabilities to an asset management company only if-

- (a) the situation of the particular market for those assets is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;
- (b) such transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or
- (c) such transfer is necessary to maximise liquidation proceeds.

(5) The transfer of assets, rights and liabilities to an asset management company shall only be considered once all other resolution tools have been fully exhausted.

(6) The Bank shall terminate the operation of an asset management company as soon as possible and in any event two years after the date on which the last transfer from a licensed financial institution under resolution was made and where the operations of an asset management company are terminated, it shall be liquidated and any proceeds generated as a result of the termination of the operation

of the asset management company shall benefit its creditors.

Resolution
Funding.

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of 2018

51. (1) In the event that the Bank initiates a resolution procedure against a licensed financial institution, the Deposit Insurance Fund, established under the Deposit Insurance Act 2018, shall be authorised to provide financing in the amount necessary to facilitate the implementation of such resolution procedure and the use of the Deposit Insurance Fund shall be strictly subject to the least cost principle as defined in section 36.

(2) In exceptional circumstances, the Bank may grant temporary financial assistance to support the implementation of resolution measures relating to licensed financial institutions under resolution in accordance with this Act and the financial assistance provided by the Bank shall be subject to the following requirements-

- (a) the financial assistance of the Bank is granted under constraints of public interest and is essential to pursue the resolution objectives;
- (b) the financial assistance is justified by the unavailability of private or public funds, and it ends when this unavailability or inconvenience ceases;
- (c) the financial assistance is approved by the Board of Directors of the Bank;
- (d) the maturity of the financial assistance does not exceed a period of ninety days, which may be extended once for the same period;

(e) any credit granted by the Bank under this section shall be guaranteed by the Government.

(3) The loss sustained by the Bank pursuant this section shall be replenished by the Government and where the Government does not replenish such losses and, at the request of the Bank, it does not perform on the guarantee pursuant to subsection (2)(e), the Bank shall be authorised to withhold the allocation of any distributable earnings to the State until the sum of the paid up capital and general reserves equal eight percent of the total monetary liabilities of the Bank.

(4) This section applies notwithstanding any contractual or legal provision to the contrary.

Resolution of
financial
groups and
branches.

52. (1) Where a licensed financial institution is a member of a financial group, the Bank shall apply resolution tools and exercise resolution powers in a way that minimises the impact on the other members of the group and on the group as a whole and minimises the adverse effects on financial stability, in particular, in the countries where the group operates.

(2) The Bank shall be able to take resolution proceedings in relation to a branch of a foreign financial institution that is not subject to any home country resolution proceedings.

(3) If a foreign financial institution is subject to home country resolution proceedings, the Bank shall be able to take resolution proceedings in the following cases-

(a) the home country resolution proceedings shall have adverse effects on financial stability in Guyana;

(b) independent resolution action in relation to a branch is necessary to achieve one or more of the resolution objectives under section 35;

(c) creditors, including in particular depositors would not receive the same treatment as home country creditors and depositors with similar legal rights under the home country resolution proceedings; or

(d) recognition or enforcement of the home country resolution proceedings shall have material fiscal implications for Guyana, or the effects of such recognition or enforcement would be contrary to domestic law.

(4) The Bank may exercise its powers under subsection (2) or (3) where it considers that action is necessary in the public interest if-

(a) the branch no longer meets, or is likely not to meet, the conditions for its authorisation and operation and there is no prospect that any private sector, supervisory or relevant home country action may restore the branch to compliance or prevent its non-viability in a reasonable timeframe;

(b) the foreign financial institution is, in the opinion of the Bank, unable or unwilling, or is likely to be unable, to pay its obligations to domestic creditors, or obligations that have been created or booked through the branch, as they fall due and the Bank is satisfied that no home country resolution proceedings or insolvency proceedings have been or will be

initiated in relation to that foreign financial institution in a reasonable timeframe.

(5) Where the Bank takes an independent action in relation to a branch of a foreign financial institution, it shall have regard to the resolution objectives under section 35.

Irrevocability
and
enforceability.

53. (1) Legal actions against decisions of the Bank that exercise resolution powers shall not have suspensory effect or otherwise constrain the implementation of, or result in a reversal of, such decisions taken by the Bank.

(2) The reparation of justified grievances of parties affected by a decision of the Bank infringing any law shall be restricted to financial compensation.

Termination of
provisional
administration.

54. (1) Subject to subsection (2), the term of the provisional administrator shall expire as specified in the decision appointing him or in the decision extending the term.

(2) Provisional administration shall cease to operate prior to the expiry of the term set out in subsection (1), if the Bank determines that-

- (a) the grounds for appointment of the provisional administrator have ceased to exist;
- (b) the financial institution has been successfully resolved and the licence is no longer required at which point its licence will be revoked by the Bank; or
- (c) the license of the financial institution is revoked and compulsory liquidation initiated.

(3) Within thirty days of the termination of the appointment, the provisional administrator shall prepare and submit to the Bank a final report.

Decision
to
liquidate.

55. (1) After having exhausted the resolution tools set out in section 45(1)(a) to (c) or having determined their inadequacy for the licensed financial institution, or after the financial institution's license has been revoked according to section 11, compulsory liquidation of a licensed financial institution may be ordered by the Bank.

(2) The Bank shall notify the financial institution of the decision and shall publish a notice of the decision to liquidate the licensed financial institution in the *Gazette* and a newspaper of general circulation in Guyana.

Appointment
of liquidator.

56. (1) The Bank may appoint an official of the Bank, or any person who satisfies the qualifications as may be prescribed by guidelines of the Bank to carry out the functions of a liquidator in order to perform the responsibilities assigned to a liquidator under the provisions of this Act with respect to any licensed financial institution and such person shall, subject to the provisions of this Part and notwithstanding anything in any written law, have full power to perform the functions of liquidator for that financial institution.

(2) Notice of the appointment of a liquidator by the Bank shall be published in the *Gazette* and in a newspaper of general circulation in Guyana.

(3) The terms of the liquidator's compensation shall be set by the Bank and may include incentives for meeting the objectives of the liquidation and may include penalties for failure to meet such objectives.

(4) The compensation of the liquidator and experts that he engages, reimbursement of their expenses and expenses of the Bank in execution of its function, shall be paid from the assets of the financial institution in liquidation.

(5) Payments to the liquidator shall be made on a current basis if in the judgment of the liquidator and upon approval of the Bank, there are sufficient liquid assets and any moneys owing to the liquidator at the end of the term of liquidation shall be paid from the proceeds from the sales of the financial institution's assets with the priority of claims.

(6) The Bank may indemnify the liquidator for the costs of any claim, causes of action, judgments, orders, fines, amounts paid in settlements including attorneys' fees actually and reasonably incurred in the discharge of the functions of liquidator if the acts were done in good faith and in a manner consistent with the purposes of this Act.

(7) The Bank shall have the power to revoke the appointment of a liquidator at any time upon written notice to the person so appointed, and that person immediately shall cease to act as liquidator and the Bank may, notwithstanding anything in any written law, elect to carry out such functions on its own behalf or appoint a successor to act as liquidator.

(8) The liquidator shall report, on a monthly basis, to the Bank on the progress of the liquidation in a form as may be prescribed by the Bank and provide any other information upon the request of the Bank.

(9) The liquidator shall act in accordance with the guidelines given by the Bank at any time in the course of the liquidation, and shall be accountable only to the Bank

for the performance of duties and the exercise of powers as liquidator.

Powers and duties of liquidator.

57. (1) On appointment the liquidator shall become the sole legal representative of the financial institution, which maintains legal personality in accordance with this Act.

(2) On appointment the liquidator shall assume control of the financial institution and have the same powers as the provisional administrator under section 41.

(3) As soon as possible after appointment the liquidator shall initiate steps leading to winding up of the licensed financial institution and take any other measure as the liquidator considers appropriate to achieve the resolution objectives in accordance with the following subsections.

(4) The liquidator shall post on the premises of the financial institution a notice of its action pursuant to this Act, specifying the effective date and time of assuming control and that-

- (a) authorisations of persons to engage the financial responsibility of the financial institution have been cancelled;
- (b) persons who previously had authorisation to give instructions on behalf of the financial institution with respect to payment or transfer of the financial institution's assets or assets managed by the financial institution are no longer so authorised; and
- (c) the financial institution's license has been revoked.

(5) A copy of the notice under subsection (4) shall be published in the *Gazette* and in a newspaper of general circulation in Guyana.

(6) After assuming control of a financial institution, the liquidator shall be vested with full and exclusive power of management and control of the institution and succeed to all rights, titles, powers and privileges of the financial institution, of any shareholder, account holder, depositor, officer, or director of the financial institution with respect to the institution and its assets, and the powers of the shareholders, directors and officers responsible for the management of the financial institution shall be terminated during liquidation:

Provided that directors or officers may be instructed by the liquidator to exercise specified functions for the financial institution; and

Provided further, that those directors and officers shall be subject to dismissal by the liquidator from their positions at the financial institution and shall on dismissal cease to receive compensation from the financial institution.

(7) The rights and powers of the liquidator shall include –

- (a) holding title to the books, records, and assets of the financial institution;
- (b) marshalling assets and claims;
- (c) transferring or disposing of assets or liabilities; and
- (d) taking any other action as is necessary for the efficient liquidation of the financial institution and to obtain the maximum amount from the sale of assets, including without limitation –

- (i) continuing or interrupting any operation of the financial institution not requiring a licence;
- (ii) halting, unwinding or terminating the extension of loans and other financial services, the obligations to clients on letters of credits or guarantees, and fiduciary services;
- (iii) borrowing money guaranteed with its assets or without guarantee;
- (iv) suspending or limiting the payment on debts, subject to the approval of the Bank;
- (v) suspending or limiting the payment of contracts and leases;
- (vi) hiring specialists, experts or professional consultants;
- (vii) administering the financial institution's accounts;
- (viii) collecting the debts due to the financial institution and recovering goods owed by the third parties;
- (ix) employing or dismissing any officer, employee or advisor; and
- (x) initiating or defending the financial institution in any legal proceeding and executing any relevant instrument in the name of the financial institution.

(8) After assuming control of a licensed financial institution, the liquidator shall promptly

make an inventory of the assets and property of the institution and transmit a copy of the inventory to the Bank.

(9) The liquidator shall, not later than one hundred and twenty days after appointment, send by mail, to the address shown on the financial institution's books, to all depositors, other creditors, and safe deposit box lessees, information –

- (a) of the nature and amount for which their claims are shown on the financial institution's books;
- (b) that any objection to the statement shall be filed with the liquidator not later than thirty days after the date of the statement; and
- (c) informing safe deposit box lessees to withdraw their property in person within thirty days after the date of the statement.

(10) Any safe deposits which have not been withdrawn before the date specified in the statement shall be opened in the manner prescribed by the Bank or liquidator.

(11) Within a period of twelve months from the date of the publication of the notice of compulsory liquidation, the Bank or liquidator shall -

- (a) determine the amount, if any, owing to each known depositor or other creditor and the priority class of his claim under section 58A;
- (b) notify each person whose claim has not been allowed in full;
- (c) provide for a period of thirty days after notification to depositors or other creditors to consider any objections from claimants.

(12) The Bank or liquidator may, from time to time, make partial distribution to the holders of claims which are undisputed and as soon as possible after all objections have been decided upon, the Bank or liquidator shall make final distribution.

Legal
suspension
of rights.

58. (1) When the liquidator has assumed control of a licensed financial institution-

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the financial institution may expire or be extinguished, shall be suspended;
- (b) the calculation of interests and penalties against the financial institution's obligations shall be suspended and no other charge or liability shall accrue on the obligations of the financial institution;
- (c) all legal proceedings against the financial institution shall be stayed and the exercise of any right on the financial institution's assets shall be suspended;
- (d) no right can be exercised over assets of the financial institution during the financial institution's liquidation, except rights given to the liquidator;
- (e) no creditor may attach, sell or take possession of any assets of the financial institution as a means of enforcing his claim or initiate or continue any legal proceeding to recover the debt or perfect security interests in the financial institution's assets;

- (f) no writ of execution or garnishee order shall be issued against the assets or property of a financial institution in liquidation;
- (g) any attachment or lien, except an attachment or lien existing at least six months prior to the seizure of the institution, shall be vacated and no attachment or lien shall attach to any of the assets or property of the financial institution so long as the control continues;
- (h) shareholders' rights shall be extinguished except for the right to receive proceeds, if any;
- (i) the liquidator may sell the assets of the financial institution or arrange for the assumption of liabilities of the financial institution on terms he considers fair; and
- (j) any transfer of an asset or property of the financial institution made after, or within six months prior to, its insolvency or taking of control by the Bank with intent to effect a preference shall be void provided that –
 - (i) any payment made by the financial institution to a creditor in the ordinary course of business to discharge in whole or in part a debt or other liability of the financial institution to that person; or
 - (ii) any transfer of an asset or property by the financial institution to a third party for valuable consideration at least equal to the fair value of the asset or property so transferred,

shall be presumed to be made not with the intent to effect a preference.

Priority of
claims.

58A. (1) In any compulsory liquidation of a licensed financial institution, or remaining part of a compulsory liquidation following a resolution operation, claims shall be paid by the Bank or liquidator, in the following order-

- (a) necessary and reasonable expenses incurred by the Bank, provisional administrator, or liquidator in application of the provisions of this Part;
- (b) senior and secured debt;
- (c) insured deposits up to an amount not exceeding two million dollars to any depositor or in case of deposit payout by the deposit insurance fund, claims by the deposit insurance fund in the amount of payout;
- (d) wages and salaries of officers and employees of the institution and contractual labor and services for the three month period preceding the entry of the financial institution into resolution, except for salaries of board members and senior management;
- (e) fees, costs, assessments and any debts due to the Bank and the Deposit Insurance Fund established under the Deposit Insurance Act 2018;
- (f) deposits of nationals and residents of Guyana in excess of the amount as determined in the Deposit Insurance Act 2018;
- (g) other deposits,
- (h) unpaid claims for taxes due, whether payable

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to the Government or to any local governmental authority;

- (i) unsecured debt and subordinate debt;
- (j) other remaining claims and equity.

(2) After payment of all claims filed, with interest at a rate to be fixed by the Bank or liquidator, any remaining objections to claims which were not filed within the time prescribed in section 57(11) for the filing of objections, shall be considered and paid.

(3) If the amount available for payment for any specific class of claims listed under subsection (1) is insufficient to provide payment in full, the said claims for that class shall abate in equal proportions.

(4) The priority of creditor claims under subsection (1) shall be applied to all licensed institutions subject to this Act and supersede and obviate any priority claims listed under section 434 and related provisions of the Companies Act.

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Unclaimed funds.

58B. (1) Any unclaimed funds and property held by the financial institution as a bailee, together with the inventories pertaining to them, shall be deposited by the liquidator in the Bank and kept for ten years, unless claimed by the owner before the expiry of that period and on the expiration of the ten years all funds and property not claimed shall be presumed to be abandoned property and shall be disposed of by the Bank as provided in subsection (2).

(2) Unclaimed funds remaining after the final distributions which are not subject to other provisions under this Part, shall be kept by the Bank or the liquidator for the period of ten years, unless claimed

by the owner before the expiration of that period and on the expiration of the said period any funds remaining unclaimed shall be paid to the General Reserve Fund established under the Bank of Guyana Act.

(3) Any person claiming to be entitled to any funds paid into the General Reserve Fund may apply to the Bank for its payment and the Bank may make an order for the payment to that person of the sum due.

(4) Any person who is aggrieved by the decision of the Bank under subsection (3) may appeal to the Court.

Liquidation of a branch of a foreign financial institution.

58C. In case of liquidation of a branch of a foreign financial institution, the proceeds of the assets of the branch shall be distributed with priority to the creditors of the branch, unless the liquidator determines, with the approval of the Bank, that this is not in the interest of the liquidation.

Final reporting.

58D. Once all assets of a licensed financial institution have been distributed pursuant to compulsory liquidation, the liquidator shall render an account to the Bank upon approval of which by the Bank the liquidator shall be relieved of any further obligation in connection with the liquidation.

Accepting deposits while insolvent.

58E. (1) A licensed financial institution that receives any deposit while insolvent commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars.

(2) Any director, officer or employee of a licensed financial institution who knows or, in the proper performance of his duties, should know, of the insolvency of the financial institution, and who receives, or authorises the acceptance of, a deposit commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and imprisonment for one year.

Judicial
review.

58F. (1) A concerned party may file an appeal with the Court against any decision by the Bank or liquidator related to the liquidation and any such appeal shall not have the force to stay the claims payment process underway, and a decision in favour of a claimant will be applied only retroactively.

(2) Legal actions against the decisions referred to in paragraph (1) shall not have suspensory effect or otherwise constrain the implementation of or result in a reversal of such decisions.

(3) The reparation of justified grievances of parties affected by a decision referred to in paragraph (1) infringing legislation shall be restricted to financial compensation.

Protection
from
obstruction.

58G. Any licensed financial institution, any holding company, subsidiary or other affiliate of a financial institution, or any director, officer, employee or agent of such financial institution, company, subsidiary or affiliate, who obstructs or impedes any director, officer or employee of the Bank, or administrator or liquidator appointed by the Bank in the discharge of any of his duties under

this Part commits an offence and is liable on conviction on indictment to a fine of two million dollars and imprisonment for seven years.

PART VIIIA

VOLUNTARY WINDING UP

Voluntary
winding up.
Cap. 89:01

58H. (1) Notwithstanding anything in the Companies Act, a licensed financial institution incorporated under that Act shall not, except with the approval of the Bank, and following submission by the licensed financial institution of any financial and operating information requested by the Bank, pass any decision for voluntary winding up.

(2) A licensed financial institution which is a cooperative institution shall not, except with the approval of the Bank after consultation with the Administration, pass any decision for voluntary winding up.

(3) A licensed financial institution, not incorporated under the Companies Act shall not, except with the approval of the Bank, commence voluntary liquidation under this Act or any other written law.

(4) The Bank shall grant approvals under subsections (1), (2) and (3) on such terms and conditions as it may determine and only if it appears to the Bank that the financial institution is solvent and has sufficient liquid assets to repay its depositors and other creditors in full and without delay.

(5) The Bank shall promptly publish in the *Gazette* and in a newspaper of general circulation in Guyana

any approval granted under this section.

Cessation of
operation.

58I. (1) When a licensed financial institution has received approval of the Bank under section 58H it shall-

- (a) immediately surrender its licence to the Bank, cease to do business and exercise its powers only to the extent necessary to effect its orderly liquidation;
- (b) repay in full its depositors and other creditors; and
- (c) wind up all operations undertaken prior to the receipt of the approval.

(2) A licensed financial institution that acts in compliance with subsection (1) shall not be guilty of an offence under section 58E.

Notice to
depositors
and
creditors.

58J. (1) Within thirty days from the receipt of any approval under section 58H, a notice of voluntary winding up or liquidation of a licensed financial institution, setting forth such information as the Bank may prescribe, shall be published in the *Gazette* and a newspaper of general circulation in Guyana and communicated to the public by any other reasonable means as may be necessary to notify every depositor or creditor of the financial institution, or persons otherwise entitled to any funds or property held by the financial institution as a trustee, fiduciary, lessor of a safe deposit box, or bailee.

(2) The notice also shall be kept displayed in a conspicuous place in the public part of the financial

institution's head office and each of its branch.

Claims
of
creditors.

58K. The approval by the Bank for the voluntary winding up or liquidation of a licensed financial institution shall not prejudice the rights of a depositor or other creditor to payment in full of a claim, nor the right of an owner of funds or other property held by the financial institution to their return and all lawful claims shall be paid promptly and all funds and other property held by the financial institution shall be returned to their rightful owners within a maximum period as the Bank may prescribe.

Creditor
distributions.

58L. (1) When in the judgment of the Bank a licensed financial institution has discharged all the obligations, the remainder of its property shall be distributed to its rightful owners in proportion to their respective rights but no such distribution shall be made before –

- (a) all claims of depositors and other creditors have been paid in full or, in the case of a disputed claim, before the licensed financial institution has deposited with the Bank or a correspondent bank approved by the Bank funds sufficient, in the opinion of the Bank, to meet any liability that may be judicially determined; and
- (b) any funds payable to a depositor or other creditor who has not claimed them have been deposited with the Bank or a correspondent bank approved by the Bank

(2) Any property not claimed within a period of ten

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years following their transfer shall be presumed to be abandoned property and shall be dealt with as determined by the Bank.

(3) Any funds remaining unclaimed for a period of more than five years following their transfer to the Bank shall be dealt with as determined by the Bank.

Insufficient
assets.

58M. If the Bank finds that the assets of a licensed financial institution whose voluntary winding up or liquidation it has approved will not be sufficient for the full discharge of all its obligations, or that completion of the winding up or liquidation is unduly delayed, it may, if it deems fit, assume control as administrator or liquidator of the financial institution as provided in this Act.”.

Passed by the National Assembly on the 12th July, 2018.



Clerk of the National Assembly.

(BILL No. 5/2018)