



FINANCIAL SERVICES ACT 2008

COMPENSATION OF DEPOSITORS REGULATIONS 2008

Approved by Tynwald 9th October 2008

Coming into operation 9th October 2008

In exercise of the powers conferred on Treasury by section 25 of the Financial Services Act 2008¹, and of all other enabling powers, the following Regulations are hereby made:-

Citation and commencement

1. These Regulations may be cited as the Compensation of Depositors Regulations 2008 and shall come into operation immediately after their approval by Tynwald.

Interpretation

2. (1) The Scheme established by these Regulations is to be known for all purposes as the Depositors' Compensation Scheme (in these Regulations referred to as "the Scheme").

(2) In these Regulations -

"the Act" means the Financial Services Act 2008;

"compensation costs" has the meaning given by regulation 4;

"the compensation sum" has the meaning given by regulation 11;

"default" shall be construed in accordance with regulation 3;

"deposit taker" has the same meaning as in the Financial Services Rule Book 2008²;

"eligible protected deposit" shall be construed in accordance with regulation 9;

"the Fund" has the meaning given by regulation 6(1);

¹ 2008 c.8

² SD 369/08

"middle market rate" means the middle market closing rate of exchange for the currency in question on the day of the default as published in the Financial Times but where no such rate is published it shall be at such rate of exchange as the Scheme Manager determines after consultation with the Bank of England;

"participant" has the meaning given by regulation 7;

"Scheme Manager" has the meaning given by regulation 5(1).

Meaning of "default"

3. (1) A participant is to be regarded as in default where the Scheme Manager determines that it should be so regarded, on the basis that —

- (a) by virtue of one or more of the following paragraphs, the participant may be so determined; and
- (b) the participant is unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred in connection with deposit taking business carried on by it.

(2) Where a participant is a body corporate incorporated in the Island, it may be determined to be in default -

- (a) on the making of a winding up order against it; or
- (b) on the passing of a resolution for a voluntary winding-up in a case in which no statutory declaration has been made under section 218 of the Companies Act 1931; or
- (c) on the holding of a creditors' meeting summoned under section 226 of that Act; or
- (d) on the appointment of a receiver (whether or not by the court); or
- (e) on the making of any voluntary arrangements with its creditors,

and a body corporate incorporated elsewhere may be determined to be in default on the occurrence of an event which appears to the Scheme Manager to correspond as nearly as may be to any of those mentioned above.

(3) A participant may also be determined to be in default where it cannot be traced, does not have sufficient resources available to it in the Island, or is a corporation which has been wound up.

Compensation costs

4. (1) Where a participant has defaulted, compensation costs are those costs which fall to be met by the Scheme Manager, are directly attributable to the default, and arise from the payment of compensation or the establishment of compensation claims.

(2) In relation to a default, compensation costs are taken as including not only compensation sums, but also -

- (a) any interest or other drawdown costs on indebtedness incurred to enable compensation to be paid; and
 - (b) costs of establishing compensation claims, including legal and accountancy services, and other costs.
- (3) The compensation costs of a year are those incurred in that year by the Scheme Manager, in respect of defaults of that or any previous year; and for this purpose -
- (a) any amount payable to a depositor by way of compensation is treated as a cost incurred when, pursuant to a determination of the Scheme Manager, it is to be paid; and
 - (b) any amount payable by way of interest is treated as incurred as it accrues.
- (4) Amounts receivable under policies of insurance and amounts estimated as recoverable under regulation 16 shall be taken as reducing the compensation costs in the relevant year.

The Scheme Manager

5. (1) The Financial Supervision Commission (in these Regulations referred to as "the Scheme Manager") is charged with the administration of the Scheme in accordance with section 25 of the Act.

(2) The first financial year of the Scheme is the period ending on 31st March following the commencement of the Scheme, and thereafter, a financial year of the Scheme begins with 1st April in each year and ends with the 31st March in the following year.

(3) The Scheme Manager shall, in respect of each financial year of the Scheme, and within 3 months after the end of that financial year, make and publish a report to the Treasury on the discharge of its functions as such and on the operation of the Scheme generally.

(4) The report shall include a balance sheet and income and expenditure account for the Scheme.

(5) The Scheme Manager shall cause records to be kept sufficient to show and explain the transactions of the Scheme, such as to -

- (a) disclose with reasonable accuracy, at any time, the financial position of the Scheme at that time; and
- (b) enable the Scheme Manager to make the reports required by this regulation.

(6) Records required to be kept by this regulation shall be kept for a period of 10 years from the end of the financial year of the Scheme to which they relate.

(7) In the application of these Regulations to the financial year ending on 31st March 2009, this regulation shall be treated as if it had been in operation for the whole of that year.

Depositors' Compensation Fund

6. (1) For the purpose of compensating depositors, in cases where a person who is, or has been, a participant is in default, there shall be a fund (in these Regulations referred to as "the Fund") which shall be created from time to time as the need arises.

(2) The Fund shall be held, managed and applied in accordance with these Regulations by the Scheme Manager.

(3) There shall be paid into the Fund —

- (a) money obtained by levying contributions from participants;
- (b) money borrowed by the Scheme Manager for the purposes of the Scheme;
- (c) money received as income from investments;
- (d) money received under any policy of insurance taken out for the purposes of the Scheme; and
- (e) any other money required by these Regulations to be paid into the Fund or received by the Scheme Manager and determined by it to be so paid.

(4) The assets of the Fund shall be invested from time to time in such manner as the Scheme Manager may direct, having regard to the need for prudence.

(5) The Scheme Manager may borrow money or otherwise incur indebtedness, for the purposes of the Scheme, in such manner and on such terms as it thinks fit.

(6) The Scheme Manager may take out policies of insurance for the purposes of the Scheme.

(7) There shall be paid out of the Fund —

- (a) money required by the Scheme Manager for the payment of compensation sums to depositors;
- (b) money required for the arrangement, service and repayment of loans obtained by the Scheme Manager, or for the discharge of other indebtedness incurred for the purposes of the Scheme;
- (c) premiums of policies of insurance taken out by the Scheme Manager for the purposes of the Scheme;
- (d) the compensation costs incurred by the Scheme Manager; and
- (e) such other sums as these Regulations permit.

(8) The provisions of these Regulations do not limit the Scheme Manager's general powers of management.

Participants

7. (1) Every deposit taker licensed under section 7 of the Act is a participant unless it is specified in the Schedule to these Regulations.

(2) A participant is deemed to be a participant for the purpose of compensation in respect of liabilities to depositors incurred by the participant while it was a participant.

(3) A person is deemed to be a participant for the purposes of the levy of contributions in respect of the default of any other participant which occurred while that person was a participant.

Payment of compensation

8. (1) If a participant is in default and the Scheme Manager is satisfied, on an application by or on behalf of a depositor and on the basis of evidence submitted by or on behalf of the depositor or which is otherwise available to the Scheme Manager, that the participant-

- (a) has an eligible protected deposit liability to the depositor; and
- (b) is unable, or likely to be unable, to meet that liability, in whole or in part,

then, as soon as it is so satisfied, and subject to the following regulations, the Scheme Manager shall determine to pay the depositor a compensation sum out of the Fund in respect of that liability.

(2) Despite paragraph (1), the Scheme Manager may, where it is satisfied as there mentioned, but considers that immediate payment in full would not be prudent, having regard to other claims which may be made on the Fund, determine to make to the depositor out of the Fund a payment on account of the compensation sum payable as there mentioned, which payment shall, for the purposes of these Regulations, be treated in all respects as the payment of a compensation sum, but without prejudice to the Scheme Manager's powers to make a determination in respect of the balance of the depositor's claim.

(3) Where a balance remains after the payment of compensation to depositors and other compensation costs, that balance shall be repaid to the contributing participants in proportion to their contributions.

Eligible protected deposits

9. (1) An eligible protected deposit liability is the total liability of the participant to the depositor in respect of the principal and accrued interest on sterling and foreign currency deposits in the name of the depositor at the time of the default and made with an Isle of Man office of the participant.

(2) The Scheme Manager may require that proof of the debt which gives rise to any liability has been lodged with the liquidator, receiver or administrator (as the case requires) of the participant or to such person as appears to the Scheme Manager to correspond as nearly as may be to a liquidator, receiver or administrator.

(3) In determining the amount of the eligible protected deposit due to any individual—

- (a) separate deposits in the same ownership shall be aggregated and treated as one account;
- (b) deposits in joint names shall be divided equally between the parties;
- (c) if the deposit is in a currency other than sterling, it shall be converted into sterling for the purposes of this Scheme by reference to the middle market rate.

(4) Despite anything to the contrary contained in these Regulations, in determining the amount of the eligible protected deposit due to any individual, there shall be excluded the amount of any deposit which becomes held by such individual or comes to be treated as held by such person –

- (a) after a petition is presented for the winding up of the participant; or
- (b) in the case of a participant in respect of which such a petition was presented before the date on which the Banking Business (Compensation of Depositors) Regulations 1991 came into operation.

(5) For the purposes of these Regulations, references to the presentation of a petition for the winding up of a participant means—

- (a) where the participant is determined to be in default on the making of a winding up order against it, the presentation of a petition that the order be made;
- (b) where the participant is determined to be in default on the passing of a resolution for a voluntary winding up in the circumstances described in regulation 3(2)(b), the summoning of a meeting at which such resolution is to be proposed;
- (c) where the participant is determined to be in default on the holding of a creditors' meeting, the summoning of such meeting;
- (d) where the participant is determined to be in default on the appointment of a receiver by the court, the presentation of an application for such appointment;
- (e) where the participant is determined to be in default where it is a company incorporated in England and Wales and an administrator is appointed for it under Schedule B1 to the Insolvency Act 1986 (an Act of Parliament), the presentation of a petition that an order for such appointment be made;
- (f) where the participant is determined to be in default on the occurrence of an event which appears to the Scheme Manager to correspond as nearly as may be to any of those mentioned in regulation 3(2) or (3), the event which appears to the Scheme Manager to correspond as nearly as may be to that mentioned in any of the preceding sub-paragraphs of this paragraph.

Exceptions from entitlement to compensation

10. (1) A depositor's application for compensation shall be rejected —

- (a) if submitted more than 6 months after the depositor became aware, or ought reasonably to have become aware, of the default, unless the Scheme Manager determines that, by reason of exceptional circumstances, it ought to be allowed; or
 - (b) if submitted more than 18 months after the date of the default.
- (2) An application shall be rejected if made in respect of a default occurring before 1st February 1991.
- (3) Compensation shall only be paid to depositors who are individuals beneficially entitled to the proceeds of the deposit, subject to paragraphs (4) and (5).
- (4) Compensation shall not be paid to —
 - (a) a partnership;
 - (b) any individual who, in the opinion of the Scheme Manager, has any responsibility for, or may have profited directly or indirectly from the circumstances giving rise to the participant's default;
 - (c) any individual who was at the time of the participant's default a director or controller of the participant, or who, in the opinion of the Scheme Manager, exercised such functions, and any associate (within the meaning of section 48 of the Act) of such persons;
 - (d) depositors in respect of a deposit which is used as a security for another transaction.
- (5) Compensation shall be reduced by —
 - (a) the amount of any liability of the depositor to the participant in respect of which a right of set-off existed at the time of the default;
 - (b) the amount of any compensation that has been paid or will be paid to the depositor in respect of the depositor's deposit under any scheme for protecting depositors or investors or under any guarantee given by a Government or other authority, or any dividend or distribution relating to that deposit;
 - (c) such other amounts as may be required in the opinion of the Scheme Manager to ensure that the payment to the depositor does not exceed the amount to which the depositor is properly entitled under the Scheme.
- (6) The Scheme Manager may decline to make any payment in respect of a deposit unless the individual claiming to be entitled to it provides adequate information to enable the Scheme Manager to determine the capacity in which the depositor is entitled to the deposit and the amount properly due to the depositor.
- (7) If the Scheme Manager is satisfied that a payment (whether by way of compensation, loan or otherwise) under any scheme for protecting or assisting depositors or investors has been or will be made to a depositor in respect of the eligible protected deposit liability of a participant to the depositor the Scheme Manager may —

- (a) deduct an amount equal to the whole or part of that payment from the payment that would otherwise be made to the depositor under the Scheme; or
- (b) in pursuance of an agreement made by the Scheme Manager with the person, body or authority responsible for the other scheme, make in full the payment required to be made to the depositor under the Scheme and recoup from that person, body or authority such contribution to it as may be specified in or determined under the agreement.

(8) Where compensation is reduced by such an amount as is mentioned in paragraph (5)(b) or where the Scheme Manager makes such a deduction as is mentioned in paragraph (7)(a) the Scheme Manager may agree with the person, body or authority responsible for the scheme or giving the guarantee or making the dividend or distribution (as the case may be) to reimburse that person, body or authority to the extent of the deduction or any lesser sum.

Limits of compensation

11. Subject to these Regulations, the amount of compensation payable under the Scheme in respect of an eligible protected deposit (in these Regulations referred to as "the compensation sum") shall be 100 per cent of the amount of the eligible protected deposit subject to a maximum sum of £50,000 in respect of each eligible depositor.

Levies on participants

12. (1) The amount of contributions which may be levied from a participant in any one financial year of the Scheme is the greater of—

- (a) £50,000; and
- (b) a sum calculated in accordance with paragraph (2).

(2) The sum referred to in paragraph (1)(b) shall be the sum, not exceeding £500,000, that represents 0.125% of such amount as the Scheme Manager determines as representing the average, over such period preceding the levying of the contribution as appears to the Scheme Manager to be appropriate, of sterling and foreign currency deposits of the participant.

(3) Where any of the deposits referred to in paragraph (2) are in a currency other than sterling, they shall be converted into sterling for the purposes of this Scheme by reference to the middle market rate.

(4) In calculating a sum in accordance with paragraph (2), the Scheme Manager shall exclude deposits placed by other licensed deposit takers but such deposits shall be left out of account only if those funds originate from deposits in the hands of those other participants and are available to be taken into account in the calculation of the contribution to be levied from those participants.

(5) A participant shall, if so directed by the Scheme Manager, provide such security as the Scheme Manager considers appropriate in respect of any present or future levy contributions which the participant is, or may become, liable to pay under this the Scheme and any money recovered under such a security shall be credited to the fund.

(6) Where in respect of a default it appears to the Scheme Manager that the compensation costs in any financial year ("the relevant year"), together with (if the Scheme Manager considers it appropriate to take such costs into account) estimated compensation costs in respect of any one or more future years, are likely to be less than the maximum aggregate amount ("the Aggregate Maximum Levy") which the Scheme Manager is entitled to levy in that year by way of contributions from all participants pursuant to this regulation, paragraph (7) applies.

(7) If this paragraph applies, the Scheme Manager, despite the provisions of paragraphs (1) and (2), may determine to levy from each participant by way of contribution in respect of the relevant year an amount equal to such proportion of the maximum amount which the Scheme Manager would otherwise be entitled to levy from such participant pursuant to this regulation as the estimated aggregate compensation costs for the relevant year plus (if the Scheme Manager considers it is appropriate to take such costs into account) any estimated compensation costs in respect of any one or more future years bears to the Aggregate Maximum Levy.

(8) A determination by the Scheme Manager to levy from participants amounts by way of contribution in respect of a relevant year in accordance with paragraph (7) does not limit the right of the Scheme Manager to levy further sums by way of contribution in the same or any subsequent year.

Special levy provisions

13. (1) This regulation shall apply where:
- (a) a participant (hereinafter referred to in this regulation as "the transferor") has entered into an agreement to transfer the whole of its business and assets to a participant (hereinafter referred to in this regulation as "the transferee") which is a subsidiary of the transferor, or a holding company of the transferor, or another subsidiary of the holding company of the transferor, or otherwise in common ownership with the transferor under the terms of which agreement the transferee is, so far as practicable, to assume all the liabilities of the transferor in respect of deposits made with an Isle of Man office of the transferor; and
 - (b) the licence held by the transferor under section 7 of the Act is subject to a condition prohibiting the acceptance by the transferor of funds from depositors other than pursuant to contractual arrangements with depositors which were in existence prior to the imposition of the condition; and
 - (c) the Financial Supervision Commission has been provided with details of the agreement referred to in paragraph (a) and has confirmed by notice in writing to the transferor that the nature and terms of that agreement are such that the provisions of this regulation should apply.

- (2) Paragraph (3) applies where —
- (a) the Scheme Manager has determined that a participant should be regarded as in default;
 - (b) that determination is made on a date when the circumstances set out in paragraph (1) apply; and
 - (c) the agreement referred to in that paragraph remains in force or has been completed.

(3) If this paragraph applies the amount of contributions which may be levied in any one financial year of the Scheme in respect of the default of that participant (despite the provisions of regulation 12) shall be—

- (a) from the transferor, nil; and
- (b) from the transferee, calculated as if for "sterling and foreign currency deposits of the participant" in regulation 12(2) there were substituted "the aggregate sterling and foreign currency deposits of the transferor and the transferee" .

However, in the event that the transferee fails, in any financial year of the Scheme, to pay contributions levied from it pursuant to regulation 12, as amended by this regulation, the provisions of sub-paragraph (a) shall cease to apply in respect of that financial year and the amount of contributions which may be levied from the transferor in that financial year in respect of the default shall be calculated as set out in sub-paragraph (b).

Method and timing of levies

14. (1) Where the Scheme Manager proposes to levy contributions it shall do so by notice in writing to the participant stating -

- (a) the amount of the contribution;
- (b) the method by which it is calculated; and
- (c) the date or dates on which payment of the contribution is to be due.

(2) Contributions under the Scheme are debts due to the Scheme Manager, to be paid into the Fund; and the Scheme Manager is under a duty to enforce payment of such debts, if need be by action at law.

(3) The Scheme Manager may make interim levies.

(4) Where the compensation costs in any financial year exceeds the total sum available by way of levy contributions in that year, the Scheme Manager shall in the succeeding year or years (as the case requires) levy contributions to meet such shortfall.

(5) The Scheme Manager may require levy contributions on the basis of estimates made by it and shall make the necessary adjustments as soon as practicable after such levy is imposed.

Co-operation with Scheme Manager

15. (1) A participant shall co-operate with the Scheme Manager in making available all information, books and documents, and otherwise render all such assistance, as is necessary to assist the Scheme Manager to perform its functions under these Regulations.

(2) The requirement imposed by paragraph (1) shall apply -

- (a) in the case of a participant in relation to which an administration order has been made in England and Wales, to the administrator; and
- (b) in the case of a participant in relation to which a winding up order has been made, to the liquidator; and
- (c) in a case where the members of a participant have resolved that the participant should be wound up, to the liquidator; and
- (d) in the case of a participant where a receiver has been appointed (whether or not by the Court), to the receiver; and
- (e) in the case of a participant which has made any voluntary arrangements, to the supervisor of those arrangements; and
- (f) in any other case where an event occurs which appears to the Scheme Manager to correspond as nearly as maybe to any of the events referred to in sub-paragraphs (a) to (e), to the person corresponding to the administrator, liquidator, receiver or supervisor, as the case may be.

Rights of Scheme Manager against defaulting participant

16. (1) Where a participant is in default, this regulation has effect in relation to depositors who apply for compensation under the Scheme.

(2) Despite any other provision of these Regulations, the Scheme Manager shall not pay or determine to pay a compensation sum out of the Fund in respect of a liability unless the depositor has agreed that —

- (a) the depositor's existing rights in respect of that liability shall vest in the Scheme Manager;
- (b) the depositor will execute any document (including any declaration of trust), do any act or provide any assistance to the Scheme Manager to enable it to exercise those rights;
- (c) the depositor will pay to the Scheme Manager any amount which is received in respect of those rights, after deduction of any amount which under paragraph (4) , the Scheme Manager would have been required to pay to the depositor; and
- (d) if relevant, any prospect of the depositor recovering in excess of the compensation sum payable under these Regulations will be in the hands of the Scheme Manager, who may compromise the claim.

(3) If the depositor so agrees, the participant's liability to the depositor is extinguished or, as the case may be, reduced and the Scheme Manager shall have a right of

recovery against the participant, being a right otherwise identical to the depositor's right in respect of the liability agreed to be vested in the Scheme Manager.

(4) Any amount received by the Scheme Manager by virtue of this regulation, up to a maximum amount in relation to each eligible protected deposit liability equal to the Retained Sum, shall be paid into the Fund. Any amount so received in relation to an eligible protected deposit liability which is in excess of an amount equal to the Retained Sum shall be paid to the depositor.

(5) In paragraph (4) "Retained Sum" in relation to an eligible protected deposit liability means an amount equal to the aggregate of:

- (a) the amount of the compensation sum paid to the depositor in respect of the eligible protected deposit liability of the participant to the depositor; and
- (b) the costs of recovery of sums received by the Scheme Manager by virtue of this regulation in respect of the eligible protected deposit liability of the participant to the depositor in question.

(5) The difference between any amount paid into the Fund under the preceding paragraph and the relevant estimate earlier made shall be treated as reducing or, as the case may be, increasing the compensation costs for the year in which it is so paid for the relevant category of regulated business.

Revocation

17. (1) The Banking Business (Compensation of Depositors) Regulations 1991 ("the 1991 Regulations") are revoked except to the extent specified in paragraph (2).

(2) The 1991 Regulations shall continue to apply for the purposes of the fund established following the default of the Bank of Credit and Commerce International S.A. in respect of which the Scheme Manager made a determination on 16th January 1992 as if they had been remade under section 25 of the Financial Services Act 2008 for those purposes.

regulation 7(1)

SCHEDULE

INSTITUTIONS EXEMPTED FROM THE DEFINITION OF DEPOSIT TAKER

Abbey National Plc
Alliance & Leicester Plc
Bank of Bermuda (Isle of Man) Limited
BNP Paribas Trust Company (IOM) Limited
Celtic Bank Limited
Close Trustees (Isle of Man) Limited
HSBC Custody Services (Isle of Man) Limited
Merrill Lynch Bank and Trust Company (Cayman) Limited
The Co-operative Bank p.l.c.
The Standard Bank of South Africa Limited

Made this 9th day of October 2008.

Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations describe a scheme to provide some compensation to depositors of a deposit taking business licensed in the Isle of Man (with certain exceptions) in the event of the default of the deposit taker.