

---

## CHAPTER 349A

### THE PROTECTION OF DEPOSITORS ACT

#### Arrangement of Sections

##### Section

1. Short title.
  2. Interpretation.
  3. Restriction on carrying on business of accepting deposits.
  4. Application for licence.
  5. Approval and issue of licence.
  6. Renewal of licence.
  7. Licence fees to be part of Consolidated Fund.
  8. Offences.
  9. Provisional licence.
  10. Revocation of licence.
  11. Advertisement.
  12. Liquid Assets.
  13. Returns.
  14. Account to be supplied to depositors.
  15. Change of business.
  16. Meaning of subsidiary company.
  17. Fraudulent inducement to invest on deposit.
  18. Winding up on Minister's petition.
  19. Appointment of Inspector and assistants.
  20. Restriction on power to borrow money.
  21. Duties of Inspector.
  22. Inspector to report on insolvency.
  23. Regulations.
  24. Exemption.
  25. Secrecy.
- SCHEDULE.
-

## PROTECTION OF DEPOSITORS

AN ACT to make provision for the licensing and regulation of the business of accepting deposits and for matters connected therewith.

1511991.

(1st October, 1991.)

1. This Act may be cited as the Protection of Depositors Act. Short title.

2. (1) In this Act—

Interpretation.

"advertisement" includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematography films or by way of sound broadcasting or television and references to the issue of an advertisement shall be construed accordingly;

"advertisement for deposits" means in relation to any person, an advertisement inviting the public to deposit money with that person;

"bank" or "commercial bank" means a financial institution licensed to carry on banking business in Antigua and Barbuda under the Banking Act;

Cap. 40.

"Central Bank" means the Eastern Caribbean Central Bank established under Article 3 of the Schedule to the Eastern Caribbean Central Bank Act;

Cap. 142.

"company" means a company incorporated under the Companies Act or any other statute being in force in Antigua and Barbuda regulating the incorporation of companies and a body corporate incorporated outside Antigua and Barbuda;

"debenture" includes debenture stock, bonds and any other securities of a company whether constituting a charge on the assets of the company or not;

"deposit" includes a loan of money at interest or repayable at a premium but does not include—

(a) a loan to a company or other body corporate upon terms involving the issue of debentures or other securities; or

(b) a loan by a bank;

and references to accepting deposits or to the deposit of money or to the investment of money on deposit shall be construed accordingly;

"depositor" means a person entitled or prospectively entitled to repayment of a deposit, whether made by him or not;

"licence" means a licence issued under this Act;

"licensee" means a person licensed under this Act;

"inspector" means the person designated as inspector pursuant to section 19;

"Minister" means the Minister responsible for Finance;

"the public" includes any section of the public, however selected including in relation to a company a section selected as members of debenture holders of or as depositors with, the company.

(2) For the purposes of this Act an advertisement which contains information calculated to lead directly or indirectly to the deposit of money by the public shall be treated as an advertisement inviting the public to deposit money.

(3) For the purposes of this Act an advertisement issued by any person on behalf of or on the order of another person shall be treated as an advertisement issued by that other person.

(4) For the purposes of proceedings under this Act, an advertisement inviting the public to deposit money with a person specified in the advertisement shall be presumed,

unless the contrary is proved, to have been issued by that person.

**3.** (1) No person other than a company incorporated or registered under the companies Act shall be licensed under this Act to carry on the business of accepting deposits. **Restriction on carrying on business of accepting deposits.**

(2) No person other than a licensee shall, after the expiration of three months from the commencement of this Act, carry on the business of accepting deposits.

(3) No person shall, after the expiration of three months from the commencement of this Act, issue ~~any~~ advertisement inviting the public to deposit money with some other person unless that other person on whose behalf he is acting is a licensee.

(4) Any person who contravenes the provisions of this section is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(5) A person, who in the ordinary course of his business issues an advertisement which constitutes an offence under this section, shall not himself be guilty of the offence if he proves that the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any person under his direction or control.

**4.** Every application for a licence to carry on the business of accepting deposits shall be made to the Minister on the prescribed form and shall be accompanied by— **Application for licence.**

(a) a statement which shall contain the name and description of the applicant, the address of its registered office in Antigua and Barbuda, and the name, address and nationality of each director;

(b) a certified copy of its memorandum of association and articles of association together with a certified copy of its certificate of incorporation or registration, as the case may be;

(c) in the case of an applicant who has been carrying on the business of accepting deposits prior to the coming into operation of this Act, a copy of its profit and loss account and balance sheet and the report of its auditor thereon for the three consecutive years immediately preceding its application, except that where such applicant has been carrying on the business of accepting deposits for less than three years, a copy of its profit and loss account and balance sheet and the report of its auditor thereon for each year it has been in operation;

(d) such proof as the Minister may require that the applicant has a minimum authorised share capital of five million dollars of which two million and five hundred thousand dollars or more is paid up in cash;

(e) such further information as the Minister may require.

**Approval and  
issue of licence.**

**5.** (1) The Minister may upon being satisfied that the provisions of this Act and the regulations made thereunder have been complied with and, after consultation with the Central Bank, within ninety days from the date of the application for a licence approve the application.

(2) Where the Minister has given his approval under subsection (1), he shall issue a licence to the applicant in such form as may be prescribed, and the licence shall take effect on such date as is specified in the licence.

(3) A licence issued under subsection (2) or renewed under section 6(1) shall be subject to such conditions, if any, as may be specified therein.

(4) Subject to subsection (5) a licence fee of ten thousand dollars shall be payable upon the issue of a licence under subsection (2).

(5) A licence issued under this section shall be valid up to the end of the year in which it is issued save that when a licence is issued for the first time after the first quarter in any year, the licence fee payable shall be calculated on a *pro rata* basis of the fee then payable.

(6) The Minister shall, upon the issue of a licence, cause the particulars of that licence to be published in the *Gazette*.

**6.** (1) An application for the renewal of a licence shall be made at the end of every year and if the Minister is satisfied that all the provisions of this Act and the regulations made thereunder have been complied with, he shall renew that licence upon the payment of a renewal fee of five thousand dollars. Renewal of licence.

(2) The Minister may by order vary the fees mentioned in section 5(4) and subsection (1) of this section.

(3) Any order made under this section shall be laid before the House of Representatives and shall be subject to affirmative resolution of the House.

(4) For the purposes of section 5(5) and of this section "year" shall be construed to mean calendar year.

(5) No licence shall be renewed under this section unless the application for renewal is accompanied by the following—

(a) a certificate issued by the General Manager of the Public Utility Authority certifying that the bank in respect of which application is made has paid all charges for utility services provided by the Authority during the twelve months preceding the application;

(b) a certificate issued by the Director of the Social Security Board that the bank in respect of which application is made has fully paid to the Board on behalf of its employees contributions due and payable for the preceding twelve months before the submission of the application;

(c) a certificate issued by the Superintendent of the Medical Benefit Scheme that the bank in respect of which application is made has fully paid to the Scheme contributions due and payable for the preceding twelve months before the submission of the application;

(d) a certificate issued by the Commissioner of Inland Revenue certifying that the bank in respect of which application is made has fully paid the tax imposed

Cap. 212.  
Cap. 65.

under the Income Tax Act and Business Tax Act for the preceding tax year;

(e) in the case where the premises in which the business is carried on is the property of the person applying for the business, a receipt issued by the Commissioner of Inland Revenue indicating that the property tax for the preceding year has been fully paid.

Licence fees to  
be part of  
Consolidated  
Fund.

7. All licence fees paid under this Act shall be credited to the general revenue of the Government and shall form part of the Consolidated Fund.

Offences.

8. (1) Where a company carries on the business of accepting deposits without a licence issued under this Act, the directors of such a company are guilty of an offence and are liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years.

(2) Where a company carries on the business of accepting deposits without a licence issued under this Act it is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars.

(3) A director convicted of an offence under subsection (1) is liable to an additional penalty of one hundred dollars for every day the offence continues.

(4) A company convicted of an offence under subsection (2) is liable to an additional penalty of two thousand dollars for every day that the offence continues.

Provisional  
licence.

9. (1) A company which has been carrying on the business of accepting deposits before the date of the commencement of this Act shall be deemed to be provisionally licensed on that date.

(2) A company to which this section applies shall within ninety days of the date of the commencement of this Act apply for a licence in accordance with the procedure laid down in section 4.

(3) Where a company to which this section applies fails to comply with subsection (2), such failure is an offence under section 8.

(4) Subject to section 10 the Minister may refuse to grant a licence to a company to which this section applies.

**10.** (1) The Minister may at any time, after consultation with the Central Bank, by order published in the *Gazette* revoke a licence— **Revocation of licence.**

(a) for any contravention of this Act or of the regulations or order made thereunder; or

(b) if in the opinion of the Minister the licensee is carrying on the business in a manner detrimental to the public interest or to the interest of depositors of the licensee.

(2) Before making an order under subsection (1), the Minister shall give to the licensee concerned notice in writing of his intention so to do, specifying therein the grounds on which he proposes to revoke the licence, and shall require the licensee to submit to him within thirty days of the date of the notice a written statement of any objection to the making of the order and thereafter the Minister shall inform the licensee in writing of his decision.

(3) Where a licensee is aggrieved by an order made under subsection (1), such licensee may appeal to a Judge of the High Court in chambers setting forth the grounds of appeal within fourteen days of the publication of the order in the *Gazette*, and the Judge may after considering the grounds of appeal vary, reverse or confirm such order.

(4) Where the Minister—

(a) proposes to make an order of revocation under subsection (1); or

(b) is of the opinion that a company is carrying on the business of accepting deposits without being licensed under this Act,

he may direct the Inspector to occupy the premises and to assume control of all or any portion of the assets of the licensee



or the company, as the case may be, for the purpose of safeguarding the interest of depositors until the appeal is determined or the company has been duly licensed, as the case may be.

(5) The Minister may, after consultation with the Central Bank, prescribe the powers of and the procedure to be followed by the Inspector where he acts under subsection (4).

**Advertisement.**

**11.** (1) No person other than a licensee shall issue or cause to be issued any advertisement inviting the public to deposit money with that person or with some other person.

(2) An advertisement issued under this section shall be in such form and shall contain such particulars as may be prescribed by the Minister.

(3) Any person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of twelve months.

**Liquid assets.**

**12.** (1) The Minister may, by order, require every licensee carrying on business of a class or description prescribed in that order so to conduct the business as to ensure that its liquid assets are not less than such percentage of the amount of its deposit liabilities as may be prescribed in that order in relation to a business of that class or description.

(2) In this section "liquid assets" means—

- (a) Eastern Caribbean Currency notes and coins;
- (b) credit balances in Eastern Caribbean Currency with any bank;
- (c) money at call on short notice;
- (d) Treasury Bills of the Government;
- (e) such other assets as the Minister may by order determine to be liquid assets for the purposes of this section.

**Returns.**

**13.** (1) A licensee shall in relation to the business in respect of which the licence is granted deliver to the Minister

---

in such form as the Minister may from time to time approve—

(a) not later than thirty days after the end of the quarter to which it relates a quarterly statement of assets and liabilities;

(b) not later than sixty days after the end of each financial year of such licensee audited accounts comprising balance sheets, and profit and loss accounts in respect of its operations in that financial year;

(c) such other accounts, statements or returns at such intervals as the Minister may require in writing.

**14.** (1) Subject to subsection (3) every licensee shall on receiving a deposit from any person, furnish him without charge with a copy of the last audited accounts delivered by the licensee under this Act, or if no such accounts have been delivered, such other documents as may be prescribed.

Accounts to be supplied to depositors.

(2) Subject to subsection (3) every licensee shall furnish a copy of the accounts mentioned in subsection (1) on demand and without charge to any depositor with the licensee and to any other person who signifies to the licensee that he requires a copy of the accounts with a view to becoming a depositor with the licensee.

(3) A licensee shall not be obliged to furnish under this section a copy of its last audited accounts to any person to whom a copy of such accounts has already been furnished by the licensee and, without prejudice to the foregoing provision, a licensee shall not be obliged to furnish a copy of any accounts—

(a) under subsection (1), on receiving a deposit from a person who is already a depositor with the licensee; or

(b) under subsection (2), to any person (not being a depositor with the licensee) to whom the licensee gives notice that it is unwilling to receive a deposit.

(4) Every licensee shall on or about the date of the delivery of its audited accounts to the Minister under this

---

Act, cause a copy thereof to be published in the *Gazette* and in a newspaper circulating in Antigua and Barbuda.

Change of  
business.

**15.** (1) Subject to this section, if any licensee, having issued after the commencement of this Act an advertisement for depositors describing the business or any particular business carried on or proposed to be carried on by the licensee, thereafter carries on any business not described in that advertisement and not being a business of the same character as a business so described, any deposit to which this section applies shall, notwithstanding anything to the contrary in the terms on which it was made, be repayable on demand.

(2) Within fourteen days after a deposit made with any licensee becomes repayable under this section in consequence of the carrying on by the licensee of any business, the licensee shall give notice in writing to every person appearing to the licensee to be entitled to repayment, describing the business in question and informing him of his right to demand repayment under this section.

(3) The deposits to which this section applies, in relation to any advertisement issued by a licensee, are all deposits made with the licensee after the date on which the advertisement is first issued and before the expiration of fourteen days after the date on which accounts comprising particulars of the business in question are delivered by a licensee under this Act; but a deposit shall not be repayable under this section in consequence of the carrying on by a licensee of any business—

(a) if, before the deposit is made, the licensee has given notice in writing describing the business in question to the person making the deposit; or

(b) if, before the business in question is commenced, the licensee has given notice in writing to the depositor describing that business and the depositor has not within such period as may be specified for that purpose in the notice (not being less than fourteen days) signified to the licensee in writing his intention of demanding repayment if the business is commenced; or

(c) if the notice given in respect of the deposit under subsection (2) specifies a period (not being less than fourteen days) within which a demand for repayment may be made by virtue of this section and no such demand is made within that period.

(4) A notice to be given under this section to any person may be sent to him by post.

(5) For the purposes of this section a company which is duly licensed under this Act shall be treated as carrying on any business carried on by any company which is a subsidiary of that company.

**16.** (1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3), be deemed to be a subsidiary of another if, but only if—

**Meaning of subsidiary company.**

(a) that other either—

(i) is a member of it and controls the composition of its board of directors; or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1), the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; and for the purposes of this provision that other company shall be deemed to have power to appoint a directorship with respect to which any of the following conditions is satisfied, that is to say—

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid; or

(b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (4, any shares held or power exercisable—

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debenture shall be disregarded;

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in the last foregoing paragraph) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) In this section—

"director" includes any person occupying the position of director by whatever name called;

"equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respect

capital, carries any right to participate beyond a specified amount in a distribution;

"member", in relation to a company, means a subscriber of the memorandum of association of the company or any other person whose name is entered in its register of members;

"share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is express, or implied.

**17.** Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person—

**Fraudulent inducement to invest on deposit.**

(a) to invest money or deposit with him or with any other person; or

(b) to enter into or offer to enter into any agreement for that purpose;

is guilty of an offence, and liable on conviction on indictment to a fine of ten thousand dollars or imprisonment with or without hard labour for a term of seven years or to both such fine and imprisonment.

**18.** (1) The Minister may by virtue of this section, present a winding up petition under the Companies Act or any other statute for the time being in force regulating the incorporation of companies in respect of a licensee if—

**Winding up on Minister's petition. (Cap. 94).**

(a) the licensee is unable to pay sums due and payable to its depositors, or is able to pay such sums only by obtaining additional deposits or by defaulting in its obligation to its other creditors; or

(b) the value of the licensee's assets is less than the amount of its liabilities; or

(c) the licensee has been convicted of an offence under section 3(1); or

(d) the licensee has failed to comply with any requirement of this Act as to the delivery of accounts.

(2) A licensee which has been served with a winding up petition presented under this section shall not without the consent of the High Court while any proceedings on the petition are pending—

(a) accept deposits from any person; or

(b) make any payment directly or indirectly to or for the benefit of any person who is, or was at the date of the presentation of the petition, an officer of the licensee.

(3) If any deposit is accepted or any payment made in contravention of subsection (2), the licensee shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term of five years or to both.

(4) Notwithstanding any rule of law, any sum deposited or paid in contravention of subsection (2) may be recovered by the depositor or the licensee, as the case may be, as money had and received.

(5) In determining for the purposes of this section whether the value of a licensee's assets is less than the amount of its liabilities, account shall be taken of contingent and prospective liabilities of the licensee.

**Appointment of  
Inspector and  
assistants.**

**19.** (1) The Minister shall, from time to time and after consultation with the Central Bank, designate a fit and proper person to be Inspector for the purposes of this Act.

(2) The Inspector may, with the approval of the Minister, in writing authorise any other person to assist the Inspector in the performance of his functions under this Act.

**Restriction on  
power to borrow  
money.**

**20.** A person holding the position of Inspector shall not borrow money from a licensee unless he first obtains the permission of the Minister so to do.

**21.** (1) The Inspector shall—**Duties of  
Inspector.**

(a) examine all applications for licences and make recommendations thereon to the Minister;

(b) examine and report to the Minister on the several returns delivered pursuant to section 13;

(c) maintain a general review of the business of accepting deposits with a view to ensuring, by such means as he considers appropriate, compliance with this Act and the protection of persons who deposit money in any such business;

(d) at least once in each year examine in such manner as he thinks necessary the ~~affairs~~ or business of every licensee for the purpose of satisfying himself that the provisions of this Act are being complied with and to report to the Minister the results of every such examination;

(e) publish in relation to the business of accepting deposits such statistics at such interval and in such form as may be approved by the Minister.

(2) In the performance of his duties under this Act, the Inspector shall at all reasonable times—

(a) have access to all books, records, vouchers, documents, cash and securities of any licensee or of any subsidiary of any licensee; and

(b) have the right to call upon any director, officer, auditor or employee of any licensee or any subsidiary of any licensee for any information or explanation or for both such information and explanation;

as he may deem necessary for the performance of his duties.

(3) Any person who fails to comply with a request made pursuant to subsection (2) by the Inspector or by any other person authorised by him in writing to make such a request, shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months.



Inspector to  
report on  
insolvency.

**22.** (1) Where the Inspector is satisfied after examination of the affairs of any licensee or upon information received from it, that it is insolvent or unlikely to meet the demands of its depositors or that its continuation in business is likely to involve a loss to its depositors the Inspector shall report such findings to the Minister.

(2) Where a report is submitted by the Inspector under subsection (1), the Minister may, after considering all the relevant facts and circumstances and after consulting the Central Bank, order the licensee to suspend business forthwith and may direct the Inspector to take charge of all the books, records and assets of the licensee and to take all such measures as may be necessary to prevent the continuation in business by that licensee during the period of suspension.

(3) An order by the Minister under subsection (2) shall cease to have effect—

(a) if the Minister makes an order permitting the licensee to resume business either unconditionally or subject to such conditions as the Minister may deem necessary in the public interest or in the interests of the depositors of such licensee; or

(b) upon the expiration of a period of thirty days from the date on which it is made, unless the Minister causes the Inspector to apply on behalf of the depositors to the High Court for an order for the winding up of the licensee or for the appointment of a receiver thereof.

(4) When an order is made by the Minister under paragraph (3)(a) permitting the resumption of business subject to such conditions as may be specified in the order, the licensee may apply to the High Court for an order to resume business unconditionally, or subject to such modifications of the conditions as the High Court may deem appropriate.

(5) In any case where an application is made by the Inspector for the winding up of a licensee in accordance with paragraph (3) (b)—

(a) the licensee shall not carry on business during the pendency of the application unless it is authorised so to do by the High Court and except in accordance

---

with such conditions, if any, as may be specified by the High Court; and

(b) the High Court, if it is of the opinion after such enquiry as it may consider necessary that the licensee is not insolvent, may permit the licensee to resume business either unconditionally or subject to such conditions as the High Court may consider necessary in the public interest or in the interests of the depositors thereof.

**23.** The Minister may, from time to time, after consultation with the Central Bank make regulations for any matter required to be prescribed under this Act, and generally for giving effect to the provisions of this Act. — **Regulations.**

**24.** (1) The Provisions of this Act shall not apply to the institutions set out in the Schedule. **Exemption-Schedule.**

(2) The Minister may, from time to time, by order, add any institution to the list contained in the Schedule and may, in similar fashion remove any institution from that list whether that institution was included in the list as originally enacted or was added to it by virtue of this subsection.

(3) Notice of any amendment of the Schedule shall be published in the *Gazette*.

**25.** (1) No information or document relating to a licensee which has been obtained by virtue of the provisions of this Act shall, without the previous consent in writing of the licensee, be published or disclosed, except to the Minister or an officer of the Ministry of Finance or the Central Bank unless the publication or disclosure is required for the purposes of any proceedings arising out of this Act, or of any criminal proceedings whether so arising or not, or for the purposes of a report of any such proceedings. **Secrecy.**

(2) Any person who publishes or discloses any information or document in contravention of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment with or without hard labour for a term of two years.

---

**SCHEDULE**

**(Section 24)**

**1. Any Society registered under the Friendly Societies Act (Cap. 184).**

**2. Any undertaking registered under the Co-operative Societies Act (Cap. 103).**

---