

Canada Deposit Insurance Corporation Act

CHAPTER C-3

An Act to establish the Canada Deposit Insurance Corporation

SHORT TITLE

Short title 1. This Act may be cited as the Canada Deposit Insurance Corporation Act. R.S., c. C-3, s. 1.

INTERPRETATION

Definitions

2. In this Act,

"affairs" « affaires internes »

"affairs", with respect to a member institution, means its business and the relationships among the member institution and its affiliates and the shareholders, directors and officers of the member institution and its affiliates;

"affiliate" « groupe »

"affiliate", in respect of a member institution that is (a) a bank, means an entity that is affiliated with the bank within the meaning of the Bank Act, or (b) other than a bank, means an entity that would be affiliated with the member institution within the meaning of the Bank Act if the member institution were a bank to which that Act applies;

"appropriate provincial minister" « ministre provincial compétent »

"appropriate provincial minister", in relation to a provincial institution, means the minister of the Crown of the province of incorporation of the institution responsible for the supervision of the provincial institution;

"bank" « banque »

"bank" means a bank listed in Schedule I or II to the Bank Act;

"Board" « conseil »

"Board" means the Board of Directors of the Corporation;

"by-laws" « règlements administratifs »

"by-laws" means the by-laws of the Corporation; "Chairman" [Repealed, 1996, c. 6, s. 21]

"Chairperson" « président »

"Chairperson" means the Chairperson of the Board;

"Corporation" « Société » "Corporation" means the Canada Deposit Insurance Corporation established by section 3;

"deposit" and

"depositor" « dépôt » et « déposant »

"deposit" and
"depositor" mean respectively a deposit and a depositor as defined in the schedule;
"deposit insurance" « assurance-dépôts »
"deposit insurance" means the insurance referred to in paragraph 7(a);
"federal institution" «institution fédérale»
"federal institution" means a bank or company referred to in section 8;
"federal member institution" «institution fédérale membre»
"federal member institution" means a federal institution that is a member institution;
"member institution" «institution membre»
"member institution" means a corporation any of whose deposits are insured by the Corporation pursuant to this Act;
"Minister" «ministre»
"Minister" means the Minister of Finance;
"policy of deposit insurance" or
"policy" «police d'assurance-dépôts» ou «police»
"policy of deposit insurance" or
"policy" means the instrument evidencing the deposit insurance of a member institution;
"premium year" «exercice comptable des primes»
"premium year" means, in relation to the calculation and payment of premiums pursuant to this Act, the period beginning on May 1 in one year and ending on April 30 in the next year;
"provincial institution" «institution provinciale»
"provincial institution" means a company referred to in section 9;
"provincial member institution" «institution provinciale membre»
"provincial member institution" means a provincial institution that is a member institution;
"provincial supervisor" «contrôleur provincial»
"provincial supervisor", in relation to a provincial institution, means the official of the province of incorporation of the provincial institution who supervises the affairs of the provincial institution;
"receiver" «séquestre»
"receiver" includes a receiver-manager;
"representation" « déclaration »
"representation" means any oral or written statement and includes any advertisement and any mark, sign, trade name or other device;
"share" « action »
"share" includes (a) a conversion or exchange privilege that is convertible at any time into a share, and (b) an option or a right to acquire a share or a privilege referred to in paragraph (a) issued by a member institution;
"subordinated debt" « dette subordonnée »
"subordinated debt" means debt of a member institution that, by the terms of any instrument evidencing the debt, will, in the event of the insolvency or winding-up of the member institution, be subordinate in right of payment to all

deposit liabilities of the member institution and all other liabilities of the member institution except those that, by their terms, rank equally with or are subordinate to that debt and includes (a) a conversion or exchange privilege that is convertible at any time into subordinated debt, and (b) an option or a right to acquire subordinated debt or a privilege referred to in paragraph (a) issued by a member institution;

"Superintendent" «surintendant»

"Superintendent" means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the Office of the Superintendent of Financial Institutions Act. R.S., 1985, c. C-3, s. 2; R.S., 1985, c. 18 (3rd Supp.), s. 47; 1992, c. 1, s. 142, c. 26, s. 1; 1996, c. 6, s. 21; 1999, c. 28, s. 98.

HER MAJESTY

Binding on Her Majesty

2.1 This Act is binding on Her Majesty in right of Canada or a province. 1992, c. 26, s. 2.

POWERS, ETC., OF MINISTER

Delegation

2.2 The Minister may delegate any of the Minister's powers, duties and functions under this Act to any Minister of State appointed pursuant to the Ministries and Ministers of State Act to assist the Minister. 1996, c. 6, s. 21.1.

CONSTITUTION OF THE CORPORATION

Corporation established

3. (1) There is hereby established a corporation, to be called the Canada Deposit Insurance Corporation. Agent of Her Majesty

(2) The Corporation is, for all purposes of this Act, an agent of Her Majesty in right of Canada. R.S., c. C-3, s. 3; 1984, c. 31, s. 14.

Head office

4. (1) The head office of the Corporation shall be at the city of Ottawa. Offices and agents

(2) The Corporation may establish offices or employ agents in any part of Canada. R.S., c. C-3, s. 4.

Board of Directors

5. (1) There shall be a Board of Directors of the Corporation consisting of

(a) the person appointed as the Chairperson;

(b) the persons who for the time being hold the offices of the Governor of the Bank of Canada, the Deputy Minister of Finance and the Superintendent of Financial Institutions;

- (b.1) a Deputy Superintendent of Financial Institutions appointed by the Minister; and
- (c) not more than four other members appointed by the Minister with the approval of the Governor in Council.

Disqualifications

(1.1) A person is not eligible to be appointed under paragraph (1)(c) or, having been appointed under that paragraph, to continue as a member of the Board, if the person is

- (a) employed in any capacity in the public service of Canada or holds any office or position for which any salary or other remuneration is payable out of public moneys;
- (b) a member of the Senate or House of Commons of Canada or a member of a provincial legislature; or
- (c) a director, officer or employee of a federal institution or provincial institution.

Alternate director

(2) A director referred to in paragraph (1)(b) may, from time to time with the approval of the Minister, designate in writing an alternate to attend in the director's absence at any meeting of the Board of Directors, and the alternate shall be deemed to be a member of the Board while so attending a meeting of the Board.

Vacancy

(3) A vacancy on the Board does not impair the right of the remaining directors to act.

Acting chairperson

(4) Where the office of Chairperson is vacant, the Minister may appoint, for a period not exceeding ninety days, an acting Chairperson who shall, while so acting, be a member of the Board and have all the powers of the Chairperson.

Expenses of directors

(5) A director shall be paid by the Corporation reasonable travel and living expenses incurred by the director while absent from his ordinary place of residence in the course of his duties as a director but no director referred to in paragraph (1)(b) shall receive any other remuneration for his services on the Board.

Remuneration of certain directors

(5.1) A director referred to in paragraph (1)(c) shall be paid by the Corporation for attendance at meetings of the Board such remuneration as may be fixed by the Governor in Council. R.S., 1985, c. C-3, s. 5; R.S., 1985, c. 18 (2nd Supp.), s. 1, c. 18 (3rd Supp.), s. 48; 1996, c. 6, s. 47(E).

Chairperson

6. (1) The Governor in Council shall appoint a person of proven financial ability to be Chairperson of the Board.

Term of office

(2) Notwithstanding subsection 105(5) of the Financial Administration Act, the Chairperson shall be appointed to hold office during good behaviour for such term as the Governor in Council deems appropriate but may be reappointed on the expiration of his term of office and may be removed at any time by the Governor in Council for cause.

Disqualification

(3) No person is eligible to be appointed or to continue as Chairperson who

- (a) is not a Canadian citizen ordinarily resident in Canada;
- (b) is a member of the Senate or House of Commons or a member of a provincial legislature;
- (c) is a director, officer or employee of a federal institution or provincial institution; or
- (d) has reached the age of seventy-five years.

Presiding at meetings

(4) The Chairperson shall preside at all meetings of the Board but where at any meeting the Chairperson is absent, one of the directors present thereat who is chosen so to act by the directors present shall preside and have all the powers of the Chairperson.

Remuneration of Chairperson

(5) The Chairperson shall be paid by the Corporation such remuneration as may be fixed by the Governor in Council. R.S., 1985, c. C-3, s. 6; 1996, c. 6, s. 47(E).

OBJECTS, POWERS AND DUTIES

Objects

7. The objects of the Corporation are

- (a) to provide insurance against the loss of part or all of deposits;
- (b) to be instrumental in the promotion of standards of sound business and financial practices for member institutions and to promote and otherwise contribute to the stability of the financial system in Canada; and
- (c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss. R.S., 1985, c. C-3, s. 7; R.S., 1985, c. 18 (3rd Supp.), s. 49; 1996, c. 6, s. 22.

Federal institutions

8. For the purposes of this Act, the following are federal institutions:

- (a) a bank; and
- (b) a company to which the Trust and Loan Companies Act applies.
- (c) [Repealed, 1991, c. 45, s. 541] R.S., 1985, c. C-3, s. 8; 1991, c. 45, s. 541; 1999, c. 28, s. 99.

Provincial institutions

9. For the purposes of this Act, an incorporated company that carries on, under an Act of the legislature of a province or a constating instrument under provincial jurisdiction, a business substantially similar to the business of a company to which the Trust and Loan Companies Act applies and that is authorized by or under an Act of the legislature of a province to accept deposits from the public is a provincial institution. R.S., 1985, c. C-3, s. 9; 1991, c. 45, s. 542.

Powers of Corporation

10. (1) The Corporation may do all things necessary or incidental to the objects of the Corporation and in particular, but without limiting the generality of the foregoing, the Corporation may, in furtherance of its objects,

(a) for the purpose of reducing a risk to the Corporation or reducing or averting a threatened loss to the Corporation,

(i) acquire assets from a member institution,

(ii) make or guarantee loans or advances, with or without security, to a member institution, and

(iii) make or guarantee a deposit with a member institution;

(a.1) [Repealed, 1996, c. 6, s. 23]

(a.2) enter into an agreement with the government of a province, or an agent of the government of a province, respecting any matter relating to the insurance of deposits with provincial institutions in that province;

(b) make any investment and enter into any transaction necessary or desirable for the financial management of the Corporation;

(c) act as liquidator, receiver or inspector of a member institution or a subsidiary thereof, when duly appointed as such and appoint qualified and competent persons, whether employees of the Corporation or not, to carry out any or all of the functions of the Corporation under the appointment of the Corporation;

(d) assume the costs of a winding-up of a member institution when the Corporation is appointed to act as a liquidator in the winding-up, or assume the costs of the receiver when the Corporation is appointed to act as such and charge those costs to the Accumulated Net Earnings of the Corporation;

(e) guarantee the payment of the fees of, and the costs incurred by any person as, the liquidator or receiver of a member institution when that person is appointed as such and charge any amounts paid under the terms of the guarantee to the Accumulated Net Earnings of the Corporation;

(f) acquire assets of a member institution from a liquidator or receiver thereof;

(f.1) acquire, by way of security or otherwise, shares and subordinated debt of a member institution and to hold and dispose of those shares and subordinated debt;

(g) make an advance for the purpose of paying a claim, against a member institution for which the Corporation is acting as receiver or liquidator, in respect of any insured deposit and of becoming subrogated as an unsecured creditor for the amount of the advance;

(h) make or cause to be made such inspections of a member institution as may be authorized under this Act or a policy of deposit insurance;

- (i) acquire, hold and alienate real and personal property; and
- (j) do all such other things as may be necessary for the exercising of any power of the Corporation.

Subsidiary corporations

(2) For the purposes of facilitating the acquisition, management or disposal of real property or other assets of a member institution that the Corporation may acquire as the result of its operations, the Corporation may, when authorized by order of the Governor in Council,

(a) procure the incorporation of a corporation, all the shares of which, on incorporation, would be held by, on behalf of or in trust for the Corporation; or

(b) acquire all of the shares of a corporation that, on acquisition, would be held by, on behalf of or in trust for the Corporation.

Subsidiary not an agent

(3) A corporation described in paragraph (2)(a) or (b) is deemed not to be an agent of the Corporation or of Her Majesty in right of Canada. Conditions applicable to the exercise of certain powers

(4) The Corporation shall, in exercising its powers under paragraph (1)(b), comply with such directions of general application as the Minister may, in writing, give to the Corporation. R.S., 1985, c. C-3, s. 10; R.S., 1985, c. 18 (3rd Supp.), s. 50; 1992, c. 26, s. 3; 1996, c. 6, s. 23.

Loans to Corporation

10.1 (1) At the request of the Corporation, the Minister may, out of the Consolidated Revenue Fund, lend money to the Corporation on such terms and conditions as the Minister may establish.

Other borrowing

(2) The Corporation may borrow money otherwise than under subsection (1) and may borrow by any means, including the issuance and sale of bonds, debentures, notes or any other evidence of indebtedness.

Total indebtedness

(3) The total principal indebtedness outstanding at any time in respect of borrowings under this section shall not exceed

(a) six billion dollars; or

(b) such greater amount as may be authorized for the purposes of this subsection by Parliament under an appropriation Act.

Fees for borrowing

(4) The Minister may fix a fee to be paid by the Corporation to the Receiver General in respect of any borrowings by the Corporation and the Minister shall notify the Corporation in writing of any such fee. 1996, c. 6, s. 24; 1997, c. 15, s. 111(E).

Powers of directors

11. (1) The Board shall administer the affairs of the Corporation in all things and make, or cause to be made, for the Corporation any description of contract that the Corporation may by law enter into.

By-laws

(2) The Board may make by-laws,

- (a) for the administration, management and control of the property and affairs of the Corporation;
- (b) governing the functions, duties and remuneration of all officers, agents and employees of the Corporation;
- (b.1) concerning conflicts of interest and post-employment matters relating to conflicts of interest in respect of directors, officers and employees of the Corporation;
- (c) governing the appointment and activities of any special committees created for the purposes of the Corporation;
- (d) governing the time and place for the holding of meetings of the directors, and the quorum and procedure in all things at those meetings;
- (e) respecting standards of sound business and financial practices for member institutions;
- (f) respecting representations by member institutions and other persons with respect to
 - (i) what constitutes, or does not constitute, a deposit,
 - (ii) what constitutes, or does not constitute, a deposit that is insured by the Corporation, and
 - (iii) who is a member institution;
- (g) prescribing anything that, by virtue of any provision of this Act, is to be prescribed by the by-laws;
- (h) prescribing the form and manner in which payments under this Act are to be made by the Corporation; and
- (i) governing the conduct in all other particulars of the affairs of the Corporation.

Inspection powers

(3) In carrying out any inspection authorized by this Act or by a policy of deposit insurance, the directors of the Corporation have all the powers conferred on commissioners appointed under Part II of the Inquiries Act for the purpose of obtaining evidence under oath, and the directors may delegate those powers as occasion requires. R.S., 1985, c. C-3, s. 11; R.S., 1985, c. 18 (2nd Supp.), s. 2, c. 18 (3rd Supp.), s. 51; 1992, c. 26, s. 4.

DEPOSIT INSURANCE

Duty to insure

12. The Corporation shall insure each deposit with a member institution except

- (a) a deposit that is not payable in Canada or in Canadian currency;

- (b) a deposit in respect of which Her Majesty in right of Canada would be a preferred claimant; and
- (c) so much of any one deposit as exceeds sixty thousand dollars. R.S., c. C-3, s. 13; 1980-81-82-83, c. 148, s. 3.

Deposits with amalgamating institutions

13. (1) Where a person has deposits with two or more member institutions that amalgamate and continue in operation as one member institution, in this section referred to as the "amalgamated institution", a deposit of that person with an amalgamating institution on the day on which the amalgamated institution is formed, less any withdrawals from the deposit, shall, for the purpose of deposit insurance with the Corporation, be deemed to be and continue to be separate from any deposit of that person on that day with the other amalgamating institution or institutions that become part of the amalgamated institution.

Deposits with amalgamated institution

(2) A deposit made by a person referred to in subsection (1) with an amalgamated institution after the day on which the amalgamated institution is formed shall be insured by the Corporation only to the extent that the aggregate of that person's deposits with the amalgamated institution, exclusive of the deposit in respect of which the calculation is made, is less than sixty thousand dollars.

Where assets acquired (3) For the purpose of deposit insurance with the Corporation, where a member institution assumes deposit liabilities of another member institution, those member institutions are deemed to be amalgamating institutions and subsections (1) and (2) apply where a person has deposits with both institutions.

Deemed deposits (4) Where a member institution assumes deposit liabilities of another member institution, the deposits in respect of those liabilities are, for the purposes of sections 21, 23 and 25.1, deemed to be deposited with the member institution that assumes them as of the day on which they are assumed. R.S., 1985, c. C-3, s. 13; 1992, c. 26, s. 5; 1996, c. 6, s. 25.

How payment to be made

14. (1) Where the Corporation is obliged to make payment in respect of any deposit insured by deposit insurance, the Corporation as soon as possible after the obligation arises shall, in respect of the deposit, make payment to such person as in the opinion of the Corporation appears to be entitled thereto,

- (a) by making available to that person a transferred deposit with another member institution for so much of the person's deposit as is insured by the Corporation; or
- (b) by paying that person an amount of money equal to so much of the person's deposit as is insured by the Corporation.

Obligatory payment

(2) The Corporation shall, in the manner described in subsection (1), make payment in respect of any deposit insured by deposit insurance where a winding-up order has been made in respect of the member institution that holds the deposit.

Discretionary payment

(2.1) The Corporation may, in the manner described in subsection (1), make payment in respect of any deposit insured by deposit insurance where

(a) the member institution that holds the deposit is unable, by reason of an order of a court or of any action taken by a supervisory or regulatory body, to make any payment in respect of the deposit;

(b) the policy of deposit insurance of the member institution that holds the deposit is terminated or cancelled; or

(c) an order is made in respect of the federal member institution under subsection 39.13(1).

(2.2) [Repealed, 1996, c. 6, s. 26]

How interest on deposit to be calculated

(2.3) For the purpose of calculating the payment of the Corporation in respect of any deposit insured by deposit insurance where a winding-up order has been made in respect of the member institution that holds the deposit, the interest accruing and payable in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Corporation may pay interest

(2.4) Where the Corporation makes a payment pursuant to subsection (2), the Corporation may pay, in addition to the amount the Corporation is obliged to pay, interest on that amount at a rate determined in accordance with rules prescribed by the by-laws for the period commencing on the date of the commencement of the winding-up in respect of the member institution that holds the deposit and ending on the date of the making of the payment in respect of the deposit, but the aggregate of the payments made under this subsection and subsection (2) in relation to the deposit shall in no case exceed sixty thousand dollars.

How interest and deposit to be calculated

(2.5) For the purpose of calculating the payment of the Corporation in respect of any deposit insured by deposit insurance where the Corporation makes a payment pursuant to subsection (2.1),

(a) subject to paragraph

(b), the interest accruing and payable in relation to the deposit shall be included only to the date of the payment by the Corporation; or (b) if a proceeding for the winding-up of the member institution that holds the deposit has been commenced before the date of the payment by the Corporation but a winding-up order has not yet been made, the interest accruing and payable in relation to the deposit shall be included only to the date of the commencement of the winding-up.

Interest on index-linked deposits

(2.51) The interest referred to in subsection (2.3) or (2.5) in relation to a deposit held by a member institution shall be determined in accordance with rules prescribed by the by-laws if a payment to be made by the member institution in respect of the deposit is to be determined, in whole or in part, by reference in any way to

- (a) the market price of a security, commodity or financial instrument;
- (b) the exchange rate between any two currencies;
- (c) a reference rate determined by reference to any one or more of those prices or rates; or
- (d) any other kind of variable index or reference point that may be described in rules prescribed by the by-laws.

Exception

(2.6) Where a winding-up order is made in respect of a member institution, subsection (2) does not apply to any deposit in respect of which payment was made pursuant to subsection (2.1).

Preparatory examination

(2.7) Where the Corporation believes that the making of a payment under this Act in respect of a deposit held by a member institution is imminent and that it would be in the best interest of both the depositors with the member institution and the Corporation that preparations be made to make that payment as soon as possible, the Corporation may,

- (a) with the approval of the Superintendent, in the case of a federal institution, or
- (b) after consultation with the appropriate provincial supervisor, in the case of a provincial institution, make or cause to be made by any person designated by the Corporation, an examination of the books, records and accounts of the member institution relating to its deposit liabilities and, for the purposes of the examination, the Corporation and the person designated by it have a right of access to those books, records and accounts and are entitled to require the directors, officers and auditors of and any receiver or liquidator thereof to furnish such information and explanations regarding the deposits held by the member institution as the Corporation or person may require.

Costs of examination

(2.8) The costs incurred by the Corporation in carrying out an examination in respect of a member institution under subsection

(2.7) shall be paid by the member institution and may be recovered by the Corporation as a debt due and payable to the Corporation.

Date of computing liability

(2.9) For the purposes of calculating the payment to be made by the Corporation in respect of any deposit insured by deposit insurance, the amount of the deposit shall be determined, where the Corporation makes a payment pursuant to

- (a) subsection (2), as of the date of the commencement of the winding-up;
- (b) subsection (2.1) in the winding-up circumstances described in paragraph (2.5)(b), as of the date of the commencement of the winding-up; or
- (c) subsection (2.1), otherwise than in the winding-up circumstances described in paragraph (2.5)(b), as of the date on which any of the circumstances described in subsection (2.1) first occurs in respect of the member institution concerned.

Discharge of liability

(3) Payment under this section by the Corporation in respect of any deposit insured by deposit insurance discharges the Corporation from all liability to the extent of the amount of the payment made in respect of that deposit, and in no case is the Corporation under any obligation to see to the proper application in any way of the payment so made.

Subrogation

(4) Where the Corporation makes a payment under this section in respect of any deposit with a member institution, the Corporation is subrogated, to the extent of the amount of the payment made, to all the rights and interests of the depositor and may maintain an action in respect of those rights and interests in the name of the depositor or in the name of the Corporation.

Priority

(4.1) Where the Corporation makes a payment under this section in respect of any deposit with a member institution that is being wound up, the Corporation ranks,

- (a) to the extent that the payment was made pursuant to subsection (2) or (2.1), equally with the depositor in respect of his deposit; and
- (b) to the extent that the payment includes any interest paid pursuant to subsection (2.4), equally with the depositor in respect of interest accruing and payable on his deposit after the date of the making of the winding-up order.

Assignment

(5) Where the Corporation deems it advisable, it may withhold payment in respect of any deposit with a member institution until it has received an assignment in writing of all the rights and interests of the depositor in relation to the deposit.

Time limitation for claims

(6) No action may be taken against the Corporation in respect of the obligation of the Corporation to make a payment in relation to a deposit held by a member institution that is being wound up unless the action is commenced within ten years after the date of the commencement of the winding-up.

Interpretation

(7) In this section, "commencement of the winding-up" means the time a winding-up is deemed to commence pursuant to section 5 of the Winding-up and Restructuring Act. R.S., 1985, c. C-3, s. 14; R.S., 1985, c. 18 (3rd Supp.), s. 52; 1992, c. 26, s. 6; 1996, c. 6, s. 26; 1997, c. 15, s. 112.

Sale of information to liquidator

14.1 (1) The Corporation may sell to the liquidator of a member institution appointed under the Winding-up and Restructuring Act any information that was gathered or produced at the expense of the Corporation, if that expense is not one that may be recovered by the Corporation from the member institution under subsection 14(2.8).

Payment part of winding-up costs

(2) Any amount paid by the liquidator for that information is deemed for the purpose of section 94 of the Winding-up and Restructuring Act to be a cost incurred in the winding-up of the member institution. 1997, c. 15, s. 113.

Premiums recoverable

15. A premium assessed by the Corporation against a member institution for the purposes of this Act constitutes a debt owing to Her Majesty in right of Canada and the amount thereof together with any interest levied by the Corporation as an overdue charge is recoverable by action in any court of competent jurisdiction. R.S., 1985, c. C-3, s. 15; R.S., 1985, c. 18 (2nd Supp.), s. 3, c. 18 (3rd Supp.), s. 53.

16. [Repealed, R.S., 1985, c. 18 (3rd Supp.), s. 53] Insurance of federal and provincial institutions

17. (1) On the application of a federal institution or provincial institution, the Corporation may insure the deposits held by the institution in the manner and to the extent provided in this Act and the by-laws, if

(a) the Corporation approves the institution for deposit insurance; and

(b) where the applicant is a provincial institution,

(i) the institution is authorized by the province of its incorporation to apply for deposit insurance,

(ii) the institution agrees, in carrying on its business, not to exercise powers substantially different from the powers exercisable by a company to which the Trust and Loan Companies Act applies, and

(iii) the Corporation is satisfied that at all times the Corporation will have adequate access to information regarding the institution.

Deemed application

(2) Every federal institution that is a member institution on the day on which this subsection comes into force shall be deemed to have applied for a policy of deposit insurance and to have obtained a policy. Where conversion to federal institution

(3) Where a provincial member institution becomes a federal institution, the institution is deemed to have applied for deposit insurance as a federal institution and to have obtained a policy of deposit insurance on the day it became a federal institution. R.S., 1985, c. C-3, s. 17; R.S., 1985, c. 18 (3rd Supp.), s. 54; 1991, c. 45, s. 543.

Form of application for deposit insurance

18. (1) An application for deposit insurance shall be in the form, and accompanied by a fee of the amount and type, that may be prescribed by the by-laws.

(2) [Repealed, R.S., 1985, c. 18 (3rd Supp.), s. 55] Form of policy

(3) A policy of deposit insurance shall be in such form and contain such provisions as may be prescribed by the by-laws. Policies deemed to be amended

(4) Where a by-law respecting the form or content of the policy of deposit insurance is amended, or revoked and replaced, every policy of deposit insurance, including policies of deposit insurance deemed to have been obtained under section 17, is deemed to be amended or replaced accordingly, and the Corporation may issue new policies of deposit insurance as a consequence of the amendment or revocation and replacement. R.S., 1985, c. C-3, s. 18; R.S., 1985, c. 18 (3rd Supp.), s. 55; 1992, c. 26, s. 7; 1999, c. 28, s. 100.

19. [Repealed, R.S., 1985, c. 18 (3rd Supp.), s. 56]

Deposit Insurance Fund

20. The Corporation shall maintain a fund, to be called the Deposit Insurance Fund, to which shall be credited all premiums received by the Corporation. R.S., c. C-3, s. 18.

Assessment and collection of premiums

21. (1) The Corporation shall, for each premium year, assess and collect from each member institution an annual premium in an amount equal to the lesser of

- (a) the annual premium for that member institution determined under the by-laws, and
- (b) the maximum annual premium.

By-laws re premiums

(2) The Board may make by-laws respecting the determination of annual premiums for member institutions and, without restricting the generality of the foregoing, may make by-laws

- (a) for the establishment of a system of classifying member institutions in different categories;
- (b) respecting the criteria or factors to be taken into account or procedures to be followed by the Corporation in determining the category in which a member institution is classified; and
- (c) fixing the amount of, or providing for the manner of determining the amount of, the annual premium applicable to each category.

When by-law not effective

(3) A by-law made under subsection (2) is not effective unless it has been approved in writing by the Minister.

Maximum annual premium

(4) In this section, "maximum annual premium" means, in respect of a member institution, the greater of

(a) \$5,000, and

(b) one third of one per cent, or such smaller proportion of one per cent as may be fixed in respect of the premium year by the Governor in Council, of an amount equal to the sum of so much of the deposits as are considered to be insured by the Corporation and deposited with the member institution as of April 30 in the immediately preceding premium year.

Calculation of deposits

(5) For the purposes of this section, a member institution may use any method approved by the Corporation to determine the aggregate amount of its deposits that are considered to be insured by the Corporation. R.S., 1985, c. C-3, s. 21; R.S., 1985, c. 18 (3rd Supp.), s. 57; 1996, c. 6, s. 27.

Returns

22. (1) The premium payable by a member institution shall be based on returns to be certified by the institution and submitted in such form and at such time as the Corporation may require.

Payable in installments

(2) One half of the premium payable by a member institution shall be paid to the Corporation on or before July 15 in the premium year for which the premium is payable and the remainder shall be paid to the Corporation, without interest, on or before December 15 in that premium year. R.S., 1985, c. C-3, s. 22; 1996, c. 6, s. 28.

Calculation of first premium

23. (1) The premium payable by a member institution in respect of the premium year in which it becomes a member institution shall be the same proportion of the greater of

(a) the annual premium for that member determined under section 21, and

(b) the greater of

(i) \$5,000, and

(ii) one third of one per cent, or such smaller proportion of one per cent as may be fixed in respect of the premium year by the Governor in Council, of an amount equal to the sum of so much of the deposits as are considered to be insured by the Corporation and deposited with the member institution as of the end of the month in which it becomes a member institution, as the number of days in which any of the deposits with that member institution are insured by the Corporation in that premium year is of 365.

Payment of first premium

(2) Notwithstanding subsection 22(2),

(a) one-half of the premium payable by a member institution under subsection (1) shall be paid to the Corporation, without interest, within sixty days after the end of the month in which the member institution becomes a member institution; and

(b) the remainder of the premium shall be paid to the Corporation, without interest, on or before December 31 immediately following the month in which the member institution becomes a member institution. R.S., 1985, c. C-3, s. 23; R.S., 1985, c. 18 (3rd Supp.), s. 58; 1996, c. 6, s. 29.

Where premiums payable

24. All premiums payable under sections 21 and 23 shall be paid to the Corporation at its head office. R.S., 1985, c. C-3, s. 24; R.S., 1985, c. 18 (3rd Supp.), s. 58.

No set-off on premium payment

24.1 Unless the Corporation otherwise agrees, no premium payment shall be made to the Corporation by a member institution that has been reduced or otherwise adjusted on the basis of a set-off or claim that the member institution has against the Corporation. 1996, c. 6, s. 30.

Overdue charges

25. Notwithstanding anything in sections 21 to 23, the Corporation may charge interest at a rate equal to the rate prescribed pursuant to subsection 161(1) of the Income Tax Act plus two per cent on the unpaid amount of any premium installment not paid on or before the due date of that installment. R.S., 1985, c. C-3, s. 25; R.S., 1985, c. 18 (3rd Supp.), s. 58.

Premium surcharge

25.1 (1) Notwithstanding sections 21 to 25, where, in the opinion of the Corporation, a member institution is engaging in such practice as may be prescribed in the by-laws as warranting a premium surcharge, the Corporation, after

(a) consultation with the Superintendent or the provincial supervisor, as the case may be, and

(b) giving the member institution an opportunity to be heard, may assess and collect from the member institution a premium surcharge in respect of the premium year or any part thereof.

Amount of premium surcharge

(2) The amount of the premium surcharge that may be assessed against and collected from a member institution under subsection (1) in respect of any premium year shall be such amount as the Corporation may determine to be fair in the circumstances and in no case shall exceed an amount equal to one sixth of one per cent of so much of each deposit as is considered to be insured by the Corporation and deposited with the member institution as of April 30 in the immediately preceding premium year.

Application of sections 21 to 25

(3) The provisions of sections 21 to 25 that are not inconsistent with subsections (1) and (2) apply, with such modifications as the circumstances require, in respect of any premium surcharge assessed under subsection (1). R.S., 1985, c. 18 (2nd Supp.), s. 4, c. 18 (3rd Supp.), s. 59; 1996, c. 6, s. 31.

Accumulated Net Earnings

26. (1) The Corporation shall maintain an account, to be called the Accumulated Net Earnings, to which shall be credited all earnings, including realized profits on the sale of securities, and to which shall be charged all operating expenses, losses and specific provisions for losses in respect of insurance operations and losses on the sale of securities.

(2) [Repealed, 1996, c. 6, s. 32] R.S., 1985, c. C-3, s. 26; 1996, c. 6, s. 32.

INSPECTION OF MEMBER INSTITUTIONS

Annual inspections

27. (1) The Superintendent shall, notwithstanding any other Act of Parliament, examine on behalf of the Corporation the affairs of each federal member institution once in each year and at the times that the Corporation may require for a specified purpose.

Costs

(2) Where an examination under subsection (1) is made for a specified purpose, such costs incurred in relation thereto as in the opinion of the Superintendent are extraordinary shall be borne by the Corporation. R.S., 1985, c. C-3, s. 27; R.S., 1985, c. 18 (3rd Supp.), s. 60; 1991, c. 45, s. 544; 1999, c. 28, s. 104.

Provincial member institutions

28. It is a condition of the policy of deposit insurance of a provincial member institution that

(a) the Corporation or a person designated by the Corporation may, at least once in each year and at such other times as the Corporation deems appropriate, make or cause to be made such inspections of the affairs of the provincial member institution as the Corporation or that person may deem to be necessary or expedient;

(b) the Corporation and the person designated by the Corporation have, for the purposes referred to in paragraph (a), a right of access to the records of the member institution; and

(c) the member institution will cause its officers and auditors to furnish such information and explanations pertaining to its affairs as the Corporation or the person designated by the Corporation may require. R.S., 1985, c. C-3, s. 28; R.S., 1985, c. 18 (3rd Supp.), s. 60.

Costs may be charged back

28.1 Where an examination or an inspection is carried out other than once in each year, the Corporation may

- (a) pay the costs of the examination or inspection;
- (b) charge the costs to the member institution in respect of which they were incurred; and
- (c) recover the costs from the member institution as a debt due and payable to the Corporation. 1996, c. 6, s. 33; 1999, c. 28, s. 105.

Examination considerations

29. (1) A person who conducts an examination under section 27 or an inspection under section 28 in respect of a member institution shall make such examination or inspection as the person deems necessary for the purposes of determining whether

- (a) the operations of the member institution are being conducted in accordance with the standards of sound business and financial practices established by the by-laws;
- (b) the member institution is in sound financial condition;
- (c) there has been any change in the circumstances of the member institution that might materially affect the position of the Corporation as an insurer;
- (d) the returns made by the member institution on which its premiums are based are substantially correct; and
- (e) where the member institution is a provincial institution and the Corporation and the person agree, the provisions of the statutes governing the provincial institution are being complied with.

Report

(2) On the completion of the examination or inspection, the person who conducted it shall make a report thereon to the Corporation.

Other reports to be provided to Corporation

(3) Where a report is sent by the Superintendent to the Minister under section 643 of the Bank Act or section 505 of the Trust and Loan Companies Act as to whether the provisions of that Act are being duly observed by a member institution, the Superintendent shall send a copy of the report at the same time to the Corporation. R.S., 1985, c. C-3, s. 29; R.S., 1985, c. 18 (3rd Supp.), s. 61; 1992, c. 26, s. 8(E); 1996, c. 6, s. 34; 1999, c. 28, s. 106.

Reporting defects or breaches

30. (1) Where, in the opinion of the Corporation, a member institution

- (a) is not following a standard of sound business and financial practices established under the by-laws,
- (b) is in breach of any by-laws of the Corporation applicable thereto, or
- (c) is in breach of any of the conditions of its policy of deposit insurance, the Corporation may send by registered mail or deliver by hand a report of the facts to the chief executive officer or chairperson of the board of directors of the member institution and shall provide a copy of the report to the Minister.

Presentation of report to directors

(2) The chief executive officer or chairman of the board of directors of a member institution to whom a report has been sent or delivered under subsection (1) shall, within fifteen days after the receipt of the report, cause

(a) the report to be presented to a meeting of the board of directors of the member institution and to be incorporated in the minutes of the meeting; and

(b) a certified copy of that portion of the minutes of the meeting that relates to the presentation of the report to be sent by registered mail to the chief executive officer of the Corporation at its head office. R.S., 1985, c. C-3, s. 30; R.S., 1985, c. 18 (3rd Supp.), s. 62; 1992, c. 26, s. 9(E); 1996, c. 6, s. 35.

TERMINATION AND CANCELLATION OF INSURANCE

Notice of termination

31. (1) Where a report has been sent or delivered under subsection 30(1) with regard to the failure of a member institution to follow a standard of sound business and financial practices established under the by-laws or in regard to the breach by the member institution of any of the by-laws applicable to it or of the conditions of its policy of deposit insurance and the progress made by the member institution in following the standard or in remedying the breach is not satisfactory to the Corporation, the Corporation shall, by notice,

(a) where the member institution is a federal member institution, so inform the institution and the Minister; and

(b) where the member institution is a provincial member institution, give the institution not less than thirty days notice of the termination of its policy of deposit insurance.

Copy to provincial Minister

(2) Where a notice of termination is given to a provincial member institution under subsection (1), the Corporation shall forthwith send a copy thereof to the appropriate provincial Minister.

Termination of policy

(3) The policy of deposit insurance of a provincial member institution shall terminate on the expiration of the period specified in the notice given under subsection (1) unless, before the expiration of that period,

(a) the Corporation is satisfied that the member institution is taking the necessary action to follow the standard or to remedy the breach to which the notice relates; or

(b) the appropriate provincial Minister requests an extension of the period to enable the necessary remedial action to be taken, in which case the termination may be deferred by the Corporation for a further period not exceeding sixty days.

Where report on federal member institution

(4) Where a report has been sent or delivered under subsection 30(1) in respect of a federal member institution and the member institution and the Minister have been informed in accordance with subsection (1) by the Corporation that the Corporation is not satisfied with the member institution's progress in following the standard or in remedying the breach to which the report relates, the Corporation may, unless the Minister advises the Corporation that the

Minister is of the opinion that it is not in the public interest to do so, give the member institution not less than thirty days notice of the termination of its policy of deposit insurance.

Termination of policy

(5) The policy of deposit insurance of a federal member institution shall terminate on the expiration of the period specified in the notice given under subsection (4) or such later period not exceeding sixty days as the Corporation may determine unless, before the expiration of that period, the Corporation is satisfied that the member institution is taking the necessary action to follow the standard or to remedy the breach to which the notice relates.

Conditions of extension

(5.1) The Corporation may impose conditions on a federal member institution in connection with any extension of the period referred to in subsection (5) and failure by the federal member institution to comply with any such condition constitutes a termination of the extension.

Revoking notice

(6) Where, at any time after a notice of termination has been given to a member institution under subsection 31(1) or (4), the Corporation is satisfied that as the result of any action by the member institution, or any other person, the risk to depositors or to the Corporation has been averted or substantially reduced, the Corporation may revoke its notice of termination. R.S., 1985, c. C-3, s. 31; R.S., 1985, c. 18 (3rd Supp.), s. 62; 1992, c. 26, s. 10(E); 1996, c. 6, s. 36.

Acceleration of termination of deposit insurance

31.1 (1) Notwithstanding any other provision of this Act, where, at any time after a notice of termination has been given to a provincial member institution under subsection 31(1), the Corporation concludes that

- (a) the financial condition of the provincial member institution has deteriorated since the giving of the notice, and
- (b) the interests of depositors will be adversely affected by any further delay in terminating the provincial member institution's policy of deposit insurance, the Corporation shall forthwith send a notice by registered mail, or deliver a notice by hand, to the provincial member institution and to the appropriate provincial Minister, to the effect that the deposit insurance of the institution will be terminated on the expiration of a period of five days after the receipt of the notice by the institution.

Hearing

(2) A provincial member institution to which a notice is sent or delivered under subsection (1) may, by notice in writing sent to and received at the head office of the Corporation before the expiration of the period specified in the notice, request an opportunity to be heard.

Confirmation or revocation

(3) Where a hearing is requested under subsection (2), the Board of Directors of the Corporation or a committee thereof established by the Board for the purpose shall, before the expiration of the period specified in the notice sent or delivered under subsection (1), hear the provincial member institution in such manner as the Board or the committee, as the case may be, deems appropriate and the Board or the committee shall thereafter confirm or revoke the notice.

Revocation

(4) The Corporation shall revoke a notice sent or delivered under subsection (1) where the appropriate provincial Minister or provincial supervisor, as the case may be, has taken control of the provincial member institution or its assets.

Termination of policy

(5) Unless a notice sent or delivered under subsection (1) is revoked under subsection (3) or (4), the policy of deposit insurance of the provincial member institution to which the notice was sent or delivered shall terminate on the expiration of the period specified in the notice.

Effect of revocation

(6) The revocation of a notice under subsection (3) or (4) does not revoke a notice given under subsection 31(1). R.S., 1985, c. 18 (3rd Supp.), s. 62; 1996, c. 6, s. 37.

Termination of policy by provincial member institution

32. (1) A provincial member institution may terminate a policy of deposit insurance by giving such notice of termination as may be required by the policy.

Effect of termination

(2) Unless the policy of deposit insurance of a provincial member institution otherwise provides, section 34 applies in respect of deposits with the institution on the termination of the policy by the institution. R.S., 1985, c. C-3, s. 32; R.S., 1985, c. 18 (3rd Supp.), s. 62.

Cancellation

33. (1) Subject to subsection (2), the deposit insurance of a member institution may be cancelled forthwith by the Corporation

- (a) when in the opinion of the Corporation the member institution is or is about to become insolvent; or
- (b) when the member institution ceases to accept deposits.

No cancellation in certain cases

(2) The Corporation shall notify the Minister of the action it is proposing to take under subsection (1) and shall not take the action if it is advised by the Minister that in the opinion of the Minister taking the action would not be in the public interest. R.S., 1985, c. C-3, s. 33; R.S., 1985, c. 18 (3rd Supp.), s. 62; 1996, c. 6, s. 38.

Effect of termination or cancellation

34. (1) Where the deposit insurance of a member institution is terminated or cancelled by the Corporation, the deposits with the institution on the day the termination or cancellation takes effect, less any withdrawals from those deposits, continue to be insured under the terminated or cancelled deposit insurance for a period of two years or, in the case of a term deposit with a remaining term exceeding two years, to the maturity thereof. Non-application of continued coverage (2) Subsection (1) does not apply in respect of a deposit with a member institution where the deposit has been assumed by another member institution. R.S., 1985, c. C-3, s. 34; 1996, c. 6, s. 39.

Creditor remedies available

35. (1) Where in the opinion of the Corporation a member institution is or is about to become insolvent, the Corporation is deemed to be a creditor of the member institution and the Corporation may initiate and take any measures or proceedings that a creditor of the member institution may initiate or take under law to preserve the assets of the member institution or to have it wound up or liquidated.

No measures to be taken in certain cases

(1.1) The Corporation shall notify the Minister of the action it is proposing to take under subsection (1) and shall not take the action if it is advised by the Minister that in the opinion of the Minister taking the action would not be in the public interest.

Presumption

(2) For the purposes of this section, the Corporation is deemed to be a creditor of a member institution notwithstanding that the deposit insurance of the institution has been terminated or cancelled. R.S., 1985, c. C-3, s. 35; R.S., 1985, c. 18 (3rd Supp.), s. 63; 1992, c. 27, s. 90; 1993, c. 34, s. 14; 1996, c. 6, s. 40.

Removal of references to deposit insurance

36. (1) Where the deposit insurance of a member institution is terminated or cancelled, the member institution shall notify its depositors of that fact and shall remove all references to deposit insurance under this Act from all forms of advertising by the institution.

Public notice

(2) The Corporation may, in such manner and through such news media as it deems expedient, give public notice of the termination or cancellation of any deposit insurance of a member institution if, in the opinion of the Corporation, the public interest requires that such notice be given. R.S., c. C-3, s. 30.

PROVINCIAL INSURING ARRANGEMENTS

Provincial deposit insurance

37. (1) Where under the law of any province the government of the province or an agent of that government guarantees or insures any of the deposits with a provincial institution operating within the province, the Corporation, subject to any agreement entered into under subsection (3), may

- (a) insure some or all of the deposits with the institution; or
- (b) amend an existing policy of deposit insurance issued by the Corporation to the institution, to exclude from the policy any of the deposits with the institution.

Conditions

(2) Section 17 applies in respect of any policy of deposit insurance that may be issued, or any amendment of a policy of deposit insurance that may be made, pursuant to subsection (1).

Agreement with province

(3) The Corporation may, with the approval of the Governor in Council, enter into an agreement with the government, or an agent of the government, of a province referred to in subsection (1), to provide for reciprocal arrangements relating to the administration or operation of the law of that province and of this Act.

Regulations

(4) For the purpose of enabling the Corporation to carry out an insuring arrangement referred to in subsection (1) or provided for in an agreement under subsection (3), the Governor in Council may, by regulation, make provision for any matter or thing arising from the insuring arrangement or agreement.

Refund of premiums

(5) Where the Corporation during any premium year ceases to insure any of the deposits held by a member institution that is a provincial institution, by reason of the fact that such deposits are guaranteed or insured pursuant to the law of a province, the Corporation may refund to that provincial institution the proportion of the premium paid by the provincial institution to the Corporation for that premium year in respect of those deposits that bears the same relation to the premium for the full premium year in respect of those deposits that the unexpired part of the premium year bears to the full premium year, but in no case shall a refund be made that will reduce the premium paid by the provincial institution to the Corporation for the premium year to less than five thousand dollars.

Saving

(6) Nothing in this section shall be construed as authorizing the Corporation to insure deposits contrary to section 12.

Definition of "deposits"

(7) In this section, "deposits" includes a part of a deposit. R.S., 1985, c. C-3, s. 37; R.S., 1985, c. 18 (3rd Supp.), s. 64.

Agreements for examination of provincial institutions

38. (1) Notwithstanding section 28, the Corporation may enter into an agreement with the government, or an agent of the government, of a province referred to in subsection 37(1) to provide for

(a) the exchange between the Corporation and that government or agent of information that is obtained by any examination of provincial institutions required by this Act or the law of that province; and

(b) special examinations, by representatives of both parties to the agreement and at the request of either party, of any of the provincial institutions that are member institutions operating in that province.

In lieu of examination

(2) The Corporation may accept information received from an exchange of information referred to in paragraph (1)(a) in lieu of any examination required by this Act. R.S., c. C-3, s. 32.

Short term loans to insuring agents

39. The Corporation may, with the approval of the Governor in Council and on such terms and conditions as the Governor in Council may prescribe, enter into an agreement with an agent of the government of a province that guarantees or insures deposits with provincial institutions in that province, to extend to that agent short term loans, secured by such security as the Corporation deems adequate, to enable that agent to meet short term requirements for liquid funds arising from its operations. R.S., c. C-3, s. 33.

RESTRUCTURING OF FEDERAL MEMBER INSTITUTIONS

Vesting of Shares and Subordinated Debt of Federal Member Institutions in Corporation Report of Superintendent

39.1 (1) Where the Superintendent is of the opinion that

(a) a federal member institution has ceased, or is about to cease, to be viable, and

(b) the viability of the federal member institution cannot be restored or preserved by the exercise of the Superintendent's powers under the Bank Act or the Trust and Loan Companies Act, the Superintendent, after providing the federal member institution with a reasonable opportunity to make representations, shall, in writing, report thereon to the Corporation.

Forming opinion

(2) For the purposes of subsection (1), the Superintendent may take into account all matters the Superintendent considers relevant, but in all cases the Superintendent shall have regard to whether, in the opinion of the Superintendent,

(a) the federal member institution is dependent to an excessive extent on loans, advances, guarantees or other financial assistance to sustain its operations;

(b) the federal member institution has lost the confidence of depositors and the public;

(c) the federal member institution's regulatory capital, within the meaning assigned to that expression by the Bank Act or the Trust and Loan Companies Act, whichever is applicable, is or is about to become substantially deficient; or

(d) the federal member institution has failed to pay any liability that has become due and payable or will not be able to pay its liabilities as they become due and payable.

Report by Superintendent on winding-up circumstances

(3) Where the Superintendent is of the opinion that

(a) circumstances exist in respect of a federal member institution that would allow the Superintendent to take control of the federal member institution under the Bank Act or the Trust and Loan Companies Act, and

(b) if such control were taken, grounds would exist for the making of a winding-up order in respect of the federal member institution, the Superintendent, after providing the federal member institution with a reasonable opportunity to make representations, shall, in writing, report thereon to the Corporation. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Request of Corporation

39.11 On receipt of a report made by the Superintendent pursuant to section 39.1 and after having taken into account whether

(a) an agreement for a transaction referred to in section 39.2 is reasonably likely to be expeditiously entered into after the making of the order, and

(b) any such transaction would be consistent with the objects of the Corporation, the Corporation may request the Minister to recommend that one or more orders be made under subsection 39.13(1). 1992, c. 26, s. 11; 1996, c. 6, s. 41; 1999, c. 31, s. 28(F).

Recommendation of Minister

39.12 Where a request referred to in section 39.11 is made by the Corporation, the Minister may, if the Minister is of the opinion that it is in the public interest to do so, recommend to the Governor in Council that one or more orders be made in respect of the federal member institution under subsection 39.13(1). 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Order of Governor in Council

39.13 (1) The Governor in Council may, on the recommendation of the Minister pursuant to section 39.12, do either or both of the following:

- (a) by order, vest the shares and subordinated debt of the federal member institution in the Corporation; or
- (b) by order, appoint the Corporation as receiver in respect of the federal member institution.

Effects of vesting order

(2) An order made under paragraph (1)(a)

- (a) vests the shares and subordinated debt of the federal member institution in the Corporation free from any adverse claim, including any claim that a transfer was wrongful or that a particular adverse person was the owner of or had an interest in the shares or subordinated debt, even though the Corporation knows of the adverse claim;
- (b) extinguishes any such adverse claim to the extent that the claim is a claim that a person other than the Corporation is the owner of or has an interest in the shares or subordinated debt;
- (c) does not extinguish any such adverse claim to the extent that the claim is a personal claim against a person other than the Corporation or a person claiming under it; and
- (d) does not prevent a secured creditor or assignee or successor in interest of the person who was the holder of the shares or subordinated debt immediately before the making of the order from being entitled to receive compensation under section 39.28 or 39.32.

Effects of receivership order

(3) An order made under paragraph (1)(b)

- (a) constitutes the Corporation as the exclusive receiver of the assets and undertaking of the federal member institution or of such part thereof as may be specified in the order;
- (b) gives the Corporation, as receiver, in respect of the assets and undertaking of the federal member institution or such part thereof as may be specified in the order, the power to
 - (i) enter the federal member institution and take possession and control of the assets and require any person therein to account for and deliver up to the Corporation possession and control of the assets,
 - (ii) subject to subparagraph
 - (iii), sell or otherwise dispose of the assets and undertaking by private or public sale or in such other manner and on such terms and conditions as the Corporation deems appropriate, (iii) sell or otherwise dispose of any asset that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest,
 - (iv) arrange for the assumption by any person of all or any part of the federal member institution's liabilities,
 - (v) carry on the business of the federal member institution to the extent that the Corporation deems is necessary or beneficial to the receivership,
 - (vi) sue for, defend, compromise and settle, in the name of the federal member institution, any claim made by or against it,
 - (vii) in the name of the federal member institution, do all acts and execute all receipts and other documents and for that purpose, when necessary, use its seal, and

(viii) do all such other things as may be necessary or incidental to the exercise of the Corporation's rights, powers, privileges and immunities as receiver; and

(c) gives the Corporation the right to recover out of the assets of the federal member institution all the costs, charges and expenses properly incurred by the Corporation in the receivership, in priority to all other claims.

General, re orders

(4) For greater certainty,

(a) shares and subordinated debt of a federal member institution that, immediately before the making of an order under paragraph (1)(a), are vested in a trustee in bankruptcy under the Bankruptcy and Insolvency Act are vested in the Corporation; and

(b) an order made under paragraph (1)(b) prevents any person, other than the Corporation, who is the holder of shares or subordinated debt of the federal member institution, and any secured creditor or assignee or successor in interest of such person, from exercising any voting or other rights attached to the shares or subordinated debt or arising from the holder's status as such in any manner that would or might tend to defeat or interfere with the rights, powers, privileges and immunities of the Corporation as receiver.

Receiver order dealings

(5) Where an order is made under paragraph (1)(b),

(a) the Corporation, as receiver, may exercise its powers, rights, privileges and immunities without leave, approval or other intervention of a court, but may seek the assistance of a superior court in order to give effect to those powers, rights, privileges and immunities,

(b) an asset of the federal member institution that is acquired from the Corporation, as receiver, shall, except to the extent that it is an asset referred to in paragraph (3)(b)(iii), be acquired free of any adverse claim of the federal member institution or any other person, and

(c) the Corporation, as receiver, may cause or refrain from causing any obligation of the federal member institution to be performed and may cause the federal member institution to incur an obligation or do so on its behalf, and the Corporation shall not, by reason of its appointment as receiver or any action taken by it, be held to have assumed or incurred any obligation of the federal member institution for its own account.

Order conclusive

(6) An order of the Governor in Council under this section is for all purposes final and conclusive and shall not be questioned or reviewed in any court. 1992, c. 26, ss. 11, 16; 1996, c. 6, s. 41.

Powers of Corporation

39.14 (1) Where an order in respect of a federal member institution is made under

(a) paragraph 39.13(1)(a), the powers, duties, functions, rights and privileges of the directors of the federal member institution and those of its officers responsible for its management are suspended, or

(b) paragraph 39.13(1)(b), the powers, duties, functions, rights and privileges of the directors of the federal member institution and those of its officers responsible for its management are suspended as regards the assets and undertaking of which the Corporation has been appointed receiver and the Corporation may exercise or perform those powers, duties, functions, rights and privileges.

Persons to assist

(2) The Corporation may appoint one or more persons to assist it in the management of any federal member institution or in carrying out the Corporation's functions as receiver and may delegate to those persons any of the powers, duties, functions, rights or privileges of the directors and officers of the federal member institution referred to in paragraph (1)(a) or (b).

Certain powers, etc., of directors not affected

(3) Nothing in subsection (1) shall be construed as preventing the directors of the federal member institution from exercising the powers, duties, functions, rights and privileges of directors in respect of the rights of the federal member institution under sections 39.23 to 39.36. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Stay of proceedings

39.15 (1) Where an order is made under subsection 39.13(1),

(a) no action or other civil proceeding may be commenced or continued against the federal member institution or in respect of its assets other than a proceeding under the Winding-up and Restructuring Act commenced by the Corporation;

(b) no attachment, garnishment, execution or other method of enforcement of a judgment or order against the federal member institution or its assets may take place or continue;

(c) no creditor of the federal member institution has any remedy against the federal member institution or its assets;

(d) no creditor has any right of set-off against the federal member institution, which, for greater certainty, does not include the consolidation of accounts maintained in the normal course for the purpose of providing clearing and settlement services or the services referred to in paragraph (5)(c); and

(e) no person may terminate or amend any agreement with the federal member institution or claim an accelerated payment under any such agreement with the federal member institution by reason only of

(i) the federal member institution's insolvency,

(ii) a default, before the order was made, by the federal member institution in the performance of its obligations under the agreement, or

(iii) the making of the order.

Agreements overridden

(2) Where an order is made under subsection 39.13(1), any stipulation in an agreement is of no force or effect if it

(a) has the effect of providing for, or permitting, anything that, in substance, is contrary to paragraph (1)(e) or 39.13(3)(b); or

(b) provides, in substance, that on

(i) the federal member institution's insolvency,

(ii) the default by the federal member institution in the performance of an obligation, or

(iii) the making of the order the federal member institution ceases to have the rights to use or deal with assets that the federal member institution would otherwise have.

Clearing arrangements

(3) Subsections (1) and (2) do not apply so as to prevent a member of the Canadian Payments Association from acting or ceasing to act as a clearing agent for a federal member institution in accordance with the Canadian Payments Association Act and the by-laws and rules of that Association.

Rights subject to set-off

(4) A federal member institution in respect of which an order is made under subsection 39.13(1) may not enforce against a person a right to receive an amount against which the person, but for paragraph (1)(d), would have a right of set-off.

Further supplies and advances

(5) Nothing in subsection (1) or (2) shall be construed

(a) as prohibiting a person from requiring payments to be made in cash for goods, services, use of leased or licensed property or other valuable consideration provided after the making of the order;

(b) as requiring the advance to a federal member institution in respect of which an order is made under subsection 39.13(1) of money or credit after the making of the order; or

(c) as requiring the provision to a federal member institution in respect of which an order is made under subsection 39.13(1) of any of the following services where to do so would be likely, in the reasonable opinion of the person providing the service, to result in that person advancing money or credit to the federal member institution after the making of the order or to give rise, after the making of the order, to a claim of that person against the federal member institution, namely,

(i) cash management services,

(ii) services related to the redemption of debt instruments,

(iii) services related to the issuance of letters of credit or guarantees,

(iv) cheque certification services,

(v) currency supply services,

(vi) funds transfer services and remittance order services,

(vii) securities delivery and settlement services,

(viii) charge, credit, debit and payment card services,

- (ix) automated banking and teller machine services,
- (x) electronic funds transfer at point of sale services,
- (xi) consignment cheque services,
- (xii) other services similar to those referred to in subparagraphs (i) to (xi),
- (xiii) any service of a kind prescribed by the regulations, and
- (xiv) a guarantee of liabilities in respect of any of the services referred to in subparagraphs (i) to (xiii).

Security agreements

- (6) Paragraphs (1)(b) to (e) and subsection (2) do not apply in respect of a remedy under, or a stipulation of, a security agreement creating a security interest in assets of a federal member institution if
- (a) an obligation secured by the security agreement is to the Bank of Canada or the Corporation; or
 - (b) the Superintendent, on approving the creation of the security interest, exempted the security agreement from the application of those paragraphs and that subsection.

Financial contracts

- (7) Nothing in subsection (1) or (2) prevents the termination of any of the following agreements in accordance with their terms or the setting off of an amount payable under or in connection with any of the following agreements, namely,
- (a) a currency or interest rate swap agreement;
 - (b) a basis swap agreement;
 - (c) a spot, future, forward or other foreign exchange agreement;
 - (d) a cap, collar or floor transaction;
 - (e) a commodity swap;
 - (f) a forward rate agreement;
 - (g) a repurchase or reverse repurchase agreement;
 - (h) a spot, future, forward or other commodity contract;
 - (i) an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities;
 - (j) any derivative, combination or option in respect of, or agreement similar to, an agreement or contract referred to in paragraphs (a) to (i);
 - (k) any master agreement in respect of any agreement or contract referred to in paragraphs (a) to (j);
 - (l) any master agreement in respect of a master agreement referred to in paragraph (k);
 - (m) a guarantee of the liabilities under an agreement or contract referred to in paragraphs (a) to (l); and
 - (n) any agreement of a kind prescribed by the regulations.

Regulations

- (8) The Governor in Council may make regulations prescribing

- (a) kinds of services for the purposes of subparagraph (5)(c)(xiii); and
 - (b) kinds of agreements for the purposes of paragraph (7)(n). 1992, c. 26, s. 11; 1996, c. 6, s. 41.
- 39.151 [Repealed, 1996, c. 6, s. 41]

Exemption

39.16 The Governor in Council may, in an order made under subsection 39.13(1), provide that subsection 39.15(1) or (2) or any portion thereof does not apply in respect of the federal member institution. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Leave of court

39.17 (1) A superior court may, on such terms as it considers proper, grant leave to a person to do any thing that the person would otherwise be prevented from doing by section 39.15, if the court is satisfied

- (a) that the person is likely to be materially prejudiced if leave is not granted; or
- (b) that it is equitable on other grounds to grant leave.

Corporation to be made party

(2) The Corporation must be joined as a respondent in any application under subsection (1) and is entitled to such notice of the application as the court considers proper.

Orders of national effect

(3) An order of a superior court of a province under subsection (1) may, if the order so provides, have effect in all or a part of Canada outside the province. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Termination

39.18 Sections 39.14 and 39.15 cease to apply in respect of a federal member institution

- (a) on the date specified in a notice described in subsection 39.2(3) in respect of the federal member institution; or
- (b) on the date that a winding-up order is made in respect of the federal member institution. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Part VII of Bank Act, etc., inapplicable

39.19 (1) The following enactments do not apply in respect of shares of a federal member institution that are vested in the Corporation by an order made under paragraph 39.13(1)(a):

- (a) sections 372, 377, 378, 381 and 398 and subsection 400(2) of the Bank Act;
- (b) sections 407 and 411 of the Insurance Companies Act; and
- (c) sections 375, 376, 379 and 396 and subsection 399(2) of the Trust and Loan Companies Act.

Public holding requirement re parent

(2) An exemption from the application of section 381 of the Bank Act, section 411 of the Insurance Companies Act or section 379 of the Trust and Loan Companies Act that is granted under section 384 of the Bank Act, section 414 of the Insurance Companies Act or section 382 of the Trust and Loan Companies Act continues in force notwithstanding that the entity that controls the bank, insurance company, trust company or loan company is a federal member institution the shares of which are vested in the Corporation by an order made under paragraph 39.13(1)(a).

Termination

(3) Subsections (1) and (2) cease to apply in respect of a federal member institution on the date specified in a notice described in subsection 39.2(3) in respect of the federal member institution. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Restructuring Transactions

39.2 (1) Where an order has been made under paragraph 39.13(1)(a), the Corporation may, in addition to and not in lieu of any other of its rights and powers, carry out, or cause the federal member institution to carry out,

(a) a transaction or series of transactions that involves the sale of all or part of the shares or subordinated debt of the federal member institution;

(b) a transaction that involves the amalgamation of the federal member institution;

(c) a transaction or series of transactions that involves the sale or other disposition by the federal member institution of all or part of its assets or the assumption of all or part of its liabilities, or both; or

(d) any other transaction or series of transactions the purpose of which is to restructure a substantial part of the business of the federal member institution.

Transactions for disposition of assets, etc., or restructuring

(2) Where an order has been made under paragraph 39.13(1)(b), the Corporation, as receiver, may, in addition to any other of its rights and powers, carry out

(a) a transaction or series of transactions that involves the sale or other disposition by the Corporation as receiver of all or part of the assets of the federal member institution or the assumption by another person of all or part of its liabilities, or both; or

(b) any other transaction or series of transactions the purpose of which is to restructure a substantial part of the business of the federal member institution.

Completion of transaction

(3) Where the Corporation considers that a transaction or series of transactions referred to in subsection (1) or (2) has been substantially completed, it shall cause a notice to that effect, specifying the date on which the transaction or series of transactions was, in the opinion of the Corporation, substantially completed, to be published in the Canada Gazette.

Negative pledges inapplicable

(4) No restriction on the right of the federal member institution to amalgamate, to sell or otherwise dispose of any of its assets or to provide for the assumption of any of its liabilities, other than a restriction provided for in an Act of Parliament, applies so as to prevent the Corporation, the federal member institution or any other person from carrying out a transaction described in subsection (1) or (2).

Approval by Minister

(5) A transaction referred to in subsection (1) or (2) has no force or effect until it has been approved by the Minister.

Novation

(6) On approval of a transaction referred to in subsection (1) or (2), any person who assumes a liability of the federal member institution under the transaction becomes liable instead of the federal member institution to discharge the liability assumed. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Right transferable

39.21 Where the assets of a federal member institution that is a bank that are sold under a transaction described in section 39.2 include any outstanding security pursuant to section 426 or 427 of the Bank Act, the buyer of the assets may hold the security for the life of the loan to which the security relates and all the provisions of the Bank Act relating to the security and its enforcement continue to apply to the buyer as though the buyer were a bank. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Winding-up

39.22 (1) The Corporation shall apply for a winding-up order in respect of a federal member institution under the Winding-up and Restructuring Act if, in the opinion of the Corporation, a transaction or series of transactions referred to in section 39.2 is not substantially completed on or before the date that is

- (a) sixty days after the making of the order under subsection 39.13(1); or
- (b) the expiration of any extension of that period.

Deeming

(2) For the purposes of the Winding-up and Restructuring Act, the Corporation is deemed to be a creditor of the federal member institution.

Extension

(3) The Governor in Council may, on the recommendation of the Minister, grant one or more extensions of the period set out in subsection (1) for a further period of not more than thirty days but the last extension must expire not later than one hundred and eighty days after the making of the order under subsection 39.13(1). 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Compensation

Definitions

39.23 In sections 39.24 to 39.37,

"assessor" « évaluateur »

"assessor" means a person who is appointed as assessor under section 39.29;

"dissenting offerees" « pollicités opposants »

"dissenting offerees" means the persons

(a) who, immediately before the shares and subordinated debt of a federal member institution are vested in the Corporation by an order made under paragraph 39.13(1)(a), together held at least 10 per cent of the shares of a given class, or at least 10 per cent of the principal amount of the subordinated debt of a given class, of the federal member institution, or the assignees or successors in interest of those persons, and

(b) who notify the Corporation within thirty days after the date of the notice of the Corporation under section 39.24 of their objection to the offer or to the fact that no offer is being made. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Offer of compensation

39.24 (1) Where an order has been made under paragraph 39.13(1)(a), the Corporation shall, within forty-five days after the date specified in a notice described in subsection 39.2(3) or the making of a winding-up order, give each person who, immediately before the making of the order under paragraph 39.13(1)(a), was the holder of shares or subordinated debt of the federal member institution, or the assignee or successor in interest of that person,

(a) a notice containing an offer of compensation in an amount or with a value estimated by the Corporation to be equal to the compensation to which that person would be entitled under paragraph 39.32(1)(a); or

(b) a notice stating that no offer of compensation is being made because the amount estimated by the Corporation to be equal to the compensation to which that person would be entitled under paragraph 39.32(1)(a) is zero.

Offer of compensation - federal member institution

(2) Where an order has been made under paragraph 39.13(1)(b), the Corporation shall, within forty-five days after the date specified in a notice described in subsection 39.2(3) or the making of a winding-up order, give the federal member institution

(a) a notice containing an offer of compensation in an amount or with a value estimated by the Corporation to be equal to the compensation to which the federal member institution would be entitled under paragraph 39.32(2)(a); or

(b) a notice stating that no offer of compensation is being made because the amount estimated by the Corporation to be equal to the compensation to which the federal member institution would be entitled under paragraph 39.32(2)(a) is zero.

Compensation may be cash or other compensation

(3) The compensation offered under paragraph (1)(a) or (2)(a) may be wholly or partly in cash or wholly or partly in such other form as the Corporation considers appropriate. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

39.241 [Repealed, 1996, c. 6, s. 41]

Contents of notice

39.25 (1) A notice under subsection 39.24(1) must be accompanied by the prescribed information and state

(a) that an order has been made vesting the shares and subordinated debt of the federal member institution in the Corporation;

(b) that each person who held, or is the assignee or successor in interest of a person who held, shares or subordinated debt of the federal member institution has thirty days from the date of the notice to accept or object to the offer or the fact that no offer is being made and to notify the Corporation of that acceptance or objection;

(c) that, if the offer or the fact that no offer is being made is objected to by the persons, or the assignees or successors in interest of the persons, who together held at least 10 per cent of the shares of a given class, or at least 10 per cent of the principal amount of the subordinated debt of a given class, the compensation to be paid to those persons will be determined by an assessor; and

(d) that a person who does not notify the Corporation of his or her objection within that period will receive the offered compensation or no compensation, if no compensation is being offered, but will have no right to contest its amount or value or the fact that no compensation is being offered.

Contents of notice

(2) A notice under subsection 39.24(2) must be accompanied by the prescribed information and state

(a) that the federal member institution has ninety days from the date of the notice to accept or object to the offer or the fact that no offer is being made and to notify the Corporation of that acceptance or objection;

(b) that, if the offer or the fact that no offer is being made is objected to by the federal member institution, the compensation to be paid will be determined by an assessor; and

(c) that, if the federal member institution does not notify the Corporation of its objection within that period, it will receive the offered compensation or no compensation, if no compensation is being offered, as the case may be, and will have no right to contest the amount or value of offered compensation or the fact that no compensation is being offered.

Contents of notice

(3) A notice under subsection 39.24(1) may state that a transaction or series of transactions referred to in subsection 39.2(1) has been substantially completed and that the shares or subordinated debt are re-vested on the persons who held those shares or that debt immediately before the making of the order vesting those shares or that debt in the Corporation or, where, after the making of the order, the rights of those persons in respect of those shares or that subordinated debt have been assigned to or have devolved on other persons, those other persons.

Effects of notice

(4) A notice referred to in subsection (3) vests the shares or subordinated debt of the federal member institution on the date of the notice in the persons who held those shares or that debt immediately before the making of the order vesting those shares or that debt in the Corporation or, where, after the making of the order, the rights of those persons in respect of those shares or that subordinated debt have been assigned to or have devolved on other persons, those other persons.

Notice to Corporation

(5) A notice of a person's or a federal member institution's acceptance of or objection to an offer or to the fact that no offer is being made must be sent or delivered to the Corporation in accordance with the regulations. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Publication of notice

39.26 A notice under subsection 39.24(1) shall be published twice in the Canada Gazette and in a newspaper in general circulation at or near the place where the head office or principal place of business of the federal member institution is located. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Securities in registered form

39.27 (1) A notice under subsection 39.24(1) shall be given to persons who, immediately before the making of the order under paragraph 39.13(1)(a), were registered as the holders of shares or subordinated debt by sending or delivering it to them in accordance with the regulations.

Securities in bearer or order form

(2) A notice under subsection 39.24(1) shall be given to persons who, immediately before the making of the order under paragraph 39.13(1)(a), were the holders of shares or subordinated debt in bearer or order form by publishing it in accordance with section 39.26. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Acceptance, etc., of offer

39.28 (1) An offeree is entitled to receive the offered compensation from the Corporation if the offeree, within thirty days after the date of the notice under subsection 39.24(1),

(a) notifies the Corporation of his or her acceptance of the offer;

(b) does not notify the Corporation of his or her acceptance of or objection to the offer; or

(c) notifies the Corporation of his or her objection to the offer but there are no dissenting offerees in respect of the offer.

Acceptance, etc., of offer

(2) A federal member institution is entitled to receive the offered compensation from the Corporation if the federal member institution, within ninety days after the date of the notice under subsection 39.24(2), notifies the Corporation of its acceptance of the offer. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Appointment of assessor where offerees dissent

39.29 The Governor in Council shall, within sixty days after the date of a notice under subsection 39.24(1) or within one hundred and twenty days after the date of a notice under subsection 39.24(2), appoint as assessor a judge who is in receipt of a salary under the Judges Act, if, in the case of a notice under

- (a) subsection 39.24(1), there are dissenting offerees in respect of the offer or the fact that no offer was made; or
- (b) subsection 39.24(2), the federal member institution notifies the Corporation that it objects to the offer or the fact that no offer was made. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Notice to dissenters

39.3 The Corporation shall, in accordance with the regulations, send or deliver to each of the dissenting offerees or the federal member institution, as the case may require, a notice of

- (a) the appointment of the assessor;
- (b) the right of each of the dissenting offerees or the federal member institution to appear before and be heard by the assessor in person or by counsel; and
- (c) the fact that each of the dissenting offerees or the federal member institution will be bound by the assessor's determination as to the amount of compensation to be paid to
 - (i) the dissenting offeree for the shares or subordinated debt of the class in respect of which there are dissenting offerees, or
 - (ii) the federal member institution, as the case may be. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Determination by assessor

39.31 (1) The assessor shall determine the amount of compensation to be paid to the dissenting offerees for the shares or subordinated debt of the class in respect of which there are dissenting offerees or to the federal member institution, as the case may be.

Factors to consider

(2) The assessor shall take into account such matters as the assessor considers relevant, and in all cases the assessor shall deduct the benefit derived from any special financial assistance provided directly or indirectly to the federal member institution by the Corporation or the Bank of Canada and the value immediately after re-vesting, as determined by the assessor, of any shares or subordinated debt re-vested in the dissenting offerees.

Amount of compensation

(3) The amount of compensation to be paid to dissenting offerees is

- (a) where the assessor determines that the Corporation has carried out or caused the federal member institution to carry out a transaction or series of transactions that involves the sale of all or part of the shares or subordinated debt of the federal member institution, or an amalgamation of the federal member institution, the amount that is equal to the portion of the consideration received under the transaction or transactions that is attributable to the value under the transaction or transactions of the shares or subordinated debt held by the dissenting offerees immediately before the making of an order under subsection 39.13(1);
- (b) where the assessor determines that the consideration obtained for the shares or subordinated debt or for the assets of the federal member institution that were sold or otherwise disposed of in a transaction or series of transactions referred to in subsection 39.2(1) was unreasonable in the circumstances, the amount equal to the value that the shares or subordinated debt that were held by the dissenting offerees immediately before the making of an order under subsection 39.13(1) would have had on the completion of the sale or other disposition had such consideration been reasonable, as determined by the assessor; or
- (c) in any other case, zero.

Amount of compensation

- (4) The amount of compensation to be paid to a federal member institution is
 - (a) where the assessor determines that the consideration obtained for the assets of the federal member institution that were sold or otherwise disposed of in a transaction or series of transactions referred to in subsection 39.2(2) was unreasonable in the circumstances, the amount by which the value of the consideration if it had been reasonable, as determined by the assessor, would have exceeded the value of the consideration obtained; and
 - (b) in any other case, zero. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Compensation

39.32 (1) In a case referred to in subsection 39.31(3), each of the dissenting offerees is entitled to payment from the Corporation of

- (a) the amount of compensation for the shares or subordinated debt of the class in respect of which there are dissenting offerees that were held by that dissenting offeree immediately before the making of the order under subsection 39.13(1);
- (b) if the assessor determines that it is just and reasonable that interest be paid, interest on the amount payable under paragraph (a) from the day on which the order was made under paragraph 39.13(1)(a) at the rate that is determined by the assessor to be just and reasonable; and
- (c) if the assessor determines that it is just and reasonable that costs in the proceeding before the assessor to make the determination referred to in section 39.31 be awarded to the dissenting offeree and against the Corporation, an amount that the assessor determines to be just and reasonable to award in respect of those costs.

Compensation

(2) In a case referred to in subsection 39.31(4), the federal member institution is entitled to payment from the Corporation of

(a) the amount of compensation;

(b) if the assessor determines that it is just and reasonable that interest be paid, interest on the amount payable under paragraph (a) from the day on which the order was made under paragraph 39.13(1)(b) at the rate determined by the assessor to be just and reasonable; and

(c) if the assessor determines that it is just and reasonable that costs in the proceeding before the assessor to make the determination referred to in section 39.31 be awarded to the federal member institution and against the Corporation, an amount that the assessor determines to be just and reasonable to award in respect of those costs. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Costs of Corporation

39.33 If the assessor determines that it is just and reasonable that costs in the proceeding before the assessor to make the determination referred to in section 39.31 be awarded to the Corporation and against some or all of the dissenting offerees or against the federal member institution, the amount that the assessor determines to be just and reasonable to award in respect of those costs constitutes a debt payable by those dissenting offerees or the federal member institution to the Corporation and may be recovered as such in any court of competent jurisdiction. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Determinations binding

39.34 (1) The determinations of an assessor under sections 39.31, 39.32 and 39.33 are final and conclusive and, except for judicial review under the Federal Court Act, are not subject to appeal to or review by any court.

Rights before assessor in lieu of other rights

(2) The rights of an offeree or a federal member institution under sections 39.24 to 39.33 are in lieu of any other right of action that the offeree or federal member institution or any person claiming through the offeree or federal member institution might otherwise have against the Corporation. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Payment of compensation

39.35 (1) The Corporation shall make the payment or delivery required by section 39.28 or 39.32 to the person who in the opinion of the Corporation appears to be entitled to it.

Time for payment

(2) The Corporation shall make the payment or delivery required by section 39.28 within sixty days after the date of the notice referred to in subsection 39.24(1).

Time for payment

(3) The Corporation shall make the payment required by section 39.32 within thirty days after the expiration of the period for making an application for judicial review of the determination of the assessor under the Federal Court Act or, if such an application is made, within thirty days after the application is finally disposed of.

Discharge of liability

(4) Payment or delivery under this section by the Corporation in respect of any share or subordinated debt discharges the Corporation from all liability in respect of the share or subordinated debt and in no case is the Corporation under any obligation to see to the proper application in any way of any such payment. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Sittings and hearings

39.36 (1) An assessor may, for the purpose of making determinations under sections 39.31, 39.32 and 39.33, sit at any place or places and shall arrange for the sittings and hearings that may be required.

Powers of assessor

(2) The assessor has all the powers of a person appointed as a commissioner under Part II of the Inquiries Act for the purpose of obtaining evidence under oath.

Persons to assist

(3) An assessor may appoint one or more appraisers to assist the assessor in making a determination under section 39.31.

Payment of appraisers

(4) Fees and disbursements payable to an appraiser may be included by the assessor in an amount awarded in respect of costs under section 39.32 or 39.33. 1992, c. 26, s. 11; 1996, c. 6, s. 41.

Review by court may be requested

39.361 (1) Notwithstanding subsection 39.34(2), at any time within 180 days after the date of a notice under subsection 39.24(2), the federal member institution or, subject to subsection (2), any creditor or holder of shares or subordinated debt of the federal member institution may, on notice to the Corporation, apply to a superior court to have the court review the allocation of the consideration for the sale or other disposition of all or part of the assets of the federal member institution or the assumption of all or part of its liabilities.

Restriction

(2) A reference in subsection (1) to

(a) a "creditor" means a creditor who is owed at least \$1,000 by the federal member institution, other than by way of subordinated debt; and

(b) a "holder of shares or subordinated debt" means a holder who, whether alone or together with other applicants, holds not less than 10 per cent of the shares or subordinated debt of a given class of the federal member institution.

Court powers

(3) Where, on an application under subsection (1), the court finds that the Corporation has not allocated or caused the allocation of the consideration for the sale or other disposition of all or part of the assets of the federal member institution or the assumption of all or part of its liabilities, or both, among the creditors or, where applicable, the holders of shares or subordinated debt of the federal member institution, in the order in which it would have been allocated by a liquidator of the federal member institution, the court may make such order as the court deems necessary to require the Corporation to rectify the allocation. 1996, c. 6, s. 41.

Regulations

39.37 The Governor in Council may make regulations

(a) prescribing information that must accompany a notice under section 39.24; and

(b) respecting the sending or delivery of notices under sections 39.25, 39.27 and 39.3. 1996, c. 6, s. 41.

RESTRUCTURING OF PROVINCIAL MEMBER INSTITUTIONS

Federal-provincial agreements

39.38 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with an appropriate provincial minister providing for the application of any of sections 39.1 to 39.37 to provincial member institutions incorporated under the laws of that province.

Orders

(2) Where an agreement has been entered into with an appropriate provincial minister, the Governor in Council may make orders, which may not be inconsistent with the agreement, providing for the application of any of sections 39.1 to 39.37 to provincial member institutions incorporated under the laws of that province and adapting any of the provisions of those sections in their application to those provincial member institutions. 1996, c. 6, s. 41.

FINANCIAL

Financial year

40. The financial year of the Corporation shall end on December 31 in each year unless the Governor in Council otherwise directs. R.S., c. C-3, s. 34; 1984, c. 31, s. 14.

Deposit accounts

41. The Corporation may maintain in its own name one or more accounts

- (a) with the Bank of Canada;
- (b) with any member institution; and
- (c) with the approval of the Minister, with any financial institution outside Canada. R.S., 1985, c. C-3, s. 41; R.S., 1985, c. 18 (3rd Supp.), s. 65. 42. [Repealed, 1996, c. 6, s. 42]

Auditor

43. The Auditor General of Canada is the auditor of the Corporation. R.S., c. C-3, s. 38; 1984, c. 31, s. 14.

STAFF

Employment of staff

44. (1) The Corporation may, notwithstanding any other Act, employ such officers, agents and employees as are necessary for the purposes of the Corporation and, subject to section 45, the officers, agents and employees of the Corporation shall be deemed not to be employed in the public service of Canada.

Oath of fidelity and secrecy

(2) Each officer, agent or employee of the Corporation shall, before entering on his duties with the Corporation, take an oath of fidelity and secrecy in the form prescribed by the by-laws.

Use of departmental facilities

(3) In carrying out its functions under this Act, the Corporation may, with the approval of the Minister, make use of the personnel, facilities and services of the Office of the Superintendent of Financial Institutions and the Department of Finance to any extent not incompatible, in the opinion of the Minister, with the administration of that Office or Department. R.S., 1985, c. C-3, s. 44; R.S., 1985, c. 18 (3rd Supp.), s. 67.

Public Service Superannuation Act

45. (1) The officers and employees of the Corporation shall be deemed to be employed in the Public Service for the purposes of the Public Service Superannuation Act and the Corporation shall be deemed to be a Public Service corporation for the purposes of section 37 of that Act.

Application of other Acts

(2) For the purposes of the Government Employees Compensation Act and any regulation made pursuant to section 9 of the Aeronautics Act, the Chairperson and employees of the Corporation shall be deemed to be employees in the public service of Canada.

Superannuation

(3) The Public Service Superannuation Act does not apply to the Chairperson, unless the Governor in Council otherwise directs, or to the director of the Corporation who holds the office of Governor of the Bank of Canada. R.S., 1985, c. C-3, s. 45; 1996, c. 6, s. 47(E).

NO LIABILITY

No liability for acts in good faith

45.1 (1) The Corporation, its directors, officers and employees and any persons acting on the behalf of the Corporation are not liable to any member institution, depositor with, or creditor or shareholder of, any member institution, or to any other person, for any damages, payment, compensation or indemnity that any such member institution, depositor, creditor, shareholder or other person may suffer or claim by reason of anything done or omitted to be done, in good faith, in the exercise, execution or performance of any powers, duties and functions that by this Act are intended to be exercised, executed or performed.

Obligation remains

(2) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act. R.S., 1985, c. 18 (3rd Supp.), s. 68.

CONFIDENTIALITY

Confidentiality

45.2 All information regarding the affairs of a federal institution or provincial institution or of any person dealing therewith that is obtained by the Corporation is confidential and shall be treated accordingly. R.S., 1985, c. 18 (3rd Supp.), s. 68; 1996, c. 6, s. 43.

WINDING-UP

Insolvency and winding-up

46. No statute relating to the insolvency or winding-up of any body corporate applies to the Corporation and in no case shall the affairs of the Corporation be wound up unless Parliament so provides. R.S., c. C-3, s. 41.

ENFORCEMENT PROVISIONS

False statements

47. Every director, officer, employee or agent of a bank or company and every auditor thereof who prepares, signs, approves or concurs in any

(a) account, statement, return, report or other document respecting the affairs of the bank or company required to be submitted to the Corporation pursuant to this Act, the by-laws, an application to become a member institution or a policy of deposit insurance of the bank or company and that contains any false or deceptive information, or

(b) return that does not present fairly information required to be submitted to the Corporation pursuant to this Act, the by-laws or a policy of deposit insurance of the bank or company is guilty of an offence. R.S., 1985, c. C-3, s. 47; 1996, c. 6, s. 45.

Failure to make report known

48. A person who, being a chief executive officer or chairperson of the board of directors of a member institution, fails or neglects to present, as required by section 30, a report of the Corporation made under that section is guilty of an offence and, if the directors fail or neglect to incorporate that report in the minutes of a meeting of the directors as required by that section, each director present at that meeting who directed, authorized, assented to, acquiesced in or participated in the failure or neglect, is guilty of an offence. R.S., 1985, c. C-3, s. 48; R.S., 1985, c. 18 (3rd Supp.), s. 69; 1996, c. 6, s. 45.

Failure to provide information, etc.

49. Every member institution that fails or neglects

(a) within the time limited for so doing, to provide the Corporation with any account, statement, return, report or other document respecting the affairs of the member institution that is required to be submitted to the Corporation pursuant to this Act, the by-laws or the policy of deposit insurance of the member institution, or

(b) to respond, within a reasonable time, to a request for information or explanations respecting the member institution made by or on behalf of the Corporation pursuant to this Act, the by-laws or the policy of deposit insurance of the member institution is guilty of an offence. R.S., 1985, c. C-3, s. 49; 1996, c. 6, s. 45.

General offence

50. Every member institution that, or other person who, without reasonable cause, contravenes

(a) a provision of this Act, other than section 47, 48 or 49, or

(b) the by-laws is guilty of an offence. R.S., 1985, c. C-3, s. 50; R.S., 1985, c. 18 (3rd Supp.), s. 70; 1996, c. 6, s. 45.

Punishment 50.1 Every member institution or other person who commits an offence under this Act is liable on summary conviction

(a) in the case of a natural person, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding twelve months, or to both; or

(b) in any other case, to a fine not exceeding \$500,000. 1996, c. 6, s. 45.

Court may order compliance

51. Where a member institution or other person has been convicted of an offence under this Act, the court may, in addition to any fine or term of imprisonment that may be imposed, order the member institution or person to rectify the contravention of this Act, the by-laws or the policy of deposit insurance in respect of which the member institution or person was convicted. R.S., 1985, c. C-3, s. 51; R.S., 1985, c. 18 (3rd Supp.), s. 71; 1996, c. 6, s. 45.

Additional monetary punishment

52. (1) Where a member institution or other person has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence the convicted member institution or person acquired a monetary benefit or that a monetary benefit accrued to the benefit of the member institution or person, order the convicted member institution or person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of the monetary benefit.

Restraining or compliance order

(2) If a member institution or other person does not comply with any provision of this Act, the by-laws or the policy of deposit insurance that applies in respect of the member institution or person, the Corporation may apply to a superior court for an order directing the member institution or person to comply with or restraining the member institution or person from acting in breach of the provision and, on the application, the court may so order and make any further order it thinks fit. R.S., 1985, c. C-3, s. 52; R.S., 1985, c. 18 (3rd Supp.), s. 71; 1996, c. 6, s. 45.

Appeals

53. Any decision or order of a court that tries an issue under this Act may be appealed to the court having jurisdiction to hear appeals from that trial court. R.S., 1985, c. 18 (3rd Supp.), s. 71; 1996, c. 6, s. 45.

Recovery and application of fines

54. All fines payable under this Act are recoverable and enforceable, with costs, at the suit of Her Majesty in right of Canada, instituted by the Attorney General of Canada and, when recovered, belong to Her Majesty in right of Canada. 1996, c. 6, s. 45.

SCHEDULE

(Section 2)

Definitions

1. In this schedule,

"date of deposit" «date du dépôt»

"date of deposit" means, with respect to any moneys constituting a deposit, the day on which credit for the moneys is given to the account of the depositor or the day on which an instrument is issued for such moneys by the member institution, as the case may be; "depositor" «déposant»

"depositor" means a person whose account has been or is to be credited in respect of moneys constituting a deposit or part of a deposit or a person to whom a member institution is liable in respect of an instrument issued for moneys constituting a deposit or part of a deposit;

"loan company" « société de prêt »

"loan company" means a member institution to which the Trust and Loan Companies Act applies and that is not a trust company pursuant to subsection 57(2) of that Act;

"person" «personne»

"person" includes an association of persons and a government;

"subordinated note" «effet de second rang»

"subordinated note" means an instrument evidencing an indebtedness of a trust company or loan company that by its terms provides that the indebtedness evidenced by it will, in the event of the insolvency or winding-up of the company, rank equally with the indebtedness evidenced by other subordinated notes of the company but be subordinate in right of payment to all other indebtedness of the company except indebtedness in respect of subordinated shareholder loans;

"subordinated shareholder loan" «prêt de dernier rang»

"subordinated shareholder loan" means a loan made to a trust company or loan company by a shareholder of the company, or by a person who controls a shareholder of the company, for a fixed term and under the condition that the indebtedness arising therefrom will, in the event of the insolvency or winding-up of the company, rank equally with the indebtedness in respect of other subordinated shareholder loans but be subordinate in right of payment to all other indebtedness of the company;

"trust company" « société de fiducie »

"trust company" means a member institution to which the Trust and Loan Companies Act applies and that is a trust company pursuant to subsection 57(2) of that Act.

Definition of "deposit"

2. (1) Subject to subsection (2), for the purposes of this Act and the by-laws of the Canada Deposit Insurance Corporation, "deposit" means the unpaid balance of the aggregate of moneys received or held by a federal institution or provincial institution, from or on behalf of a person in the usual course of the deposit-taking business of the institution, for which the institution

(a) has given or is obligated to give credit to that person's account or has issued or is obligated to issue a receipt, certificate, debenture (other than a debenture issued by a bank to which the Bank Act applies), transferable instrument, draft, certified draft or cheque, traveller's cheque, prepaid letter of credit, money order or other instrument in respect of which the institution is primarily liable, and

(b) is obligated to repay the moneys on a fixed day, on demand by that person or within a specified period of time following demand by that person, including any interest accrued or payable to that person.

Included moneys

(1.1) For greater certainty, an unpaid balance of moneys received or held by an institution from or on behalf of a mortgagor in respect of realty taxes on mortgaged property is a deposit. The moneys are considered to be repayable on the earlier of the due date of the taxes or the date the mortgage is discharged.

Excluding moneys

(2) The following moneys are excluded from the moneys referred to in subsection (1):

(a) moneys received or held by the institution if the date of deposit is or was on or after April 17, 1967 unless the institution is or was obligated, or may by the demand of that person become obligated, to repay the moneys on or before the expiration of five years after the date of the deposit; and

(b) moneys held by the institution that were received by it when it was not a federal institution or provincial institution.

Where more than one repayment day

(2.1) For the purposes of subsection (2), where an institution is, in respect of deposit moneys received or held by it, obligated to repay the moneys to a person on a fixed day and also is or may become obligated to repay the moneys

(a) on an earlier date by virtue of a right of withdrawal, reinvestment or other right afforded to the person by the terms under which the moneys were solicited or received or are held, only the fixed day shall be considered, or

(b) on a later date by virtue of a right afforded to any person to extend the term of the deposit at a rate or rates of interest determined at the time the moneys were solicited or received, the later date is deemed to be the fixed day in determining whether the institution is or may become obligated to repay the moneys on or before the expiration of five years after the date of the deposit, whether or not the right is exercised.

Right to extend

(2.2) For greater certainty, a right referred to in paragraph (2.1)(b) does not include a right to renew or reinvest a deposit at a rate or rates of interest prevailing on the date of renewal or reinvestment.

Obligation deemed

(3) For the purposes of subsection (1), if a trust company has deposited moneys in its own guaranteed trust fund on behalf of itself as trustee, it shall be deemed to be obligated to repay the moneys to the same extent as it would have been obligated to repay the moneys had the moneys been deposited by a trustee other than itself.

No deposit

(4) Notwithstanding subsection (1), money received by a trust company or loan company from the issue of subordinated notes or by way of a subordinated shareholder loan shall be deemed not to be a deposit.

Idem

(5) Notwithstanding subsection (1), for the purposes of deposit insurance with the Corporation, where moneys are or were received by a member institution on or after April 1, 1977 for which the institution has issued or is obligated to issue an instrument evidencing a deposit, other than a draft, certified draft or cheque, traveller's cheque, prepaid letter of credit or money order,

(a) the moneys do not constitute a deposit unless the instrument and records of the institution specify the person entitled, at the date of issue of the instrument, to the repayment of the moneys evidenced thereby;

(b) the person referred to in paragraph (a) shall be deemed to be the depositor in respect of the moneys unless particulars of a transfer of the instrument are entered in the records of the institution, in which case the most recent transferee shown in the records shall be deemed to be the depositor; and

(c) the entry of a transfer in the records of a member institution is ineffective for the purposes of paragraph (b), if the entry is made subsequent to the termination or cancellation of the policy of deposit insurance of the member institution.

Idem

(6) Notwithstanding subsection (1), moneys received by a member institution on or after January 1, 1977, for which the institution has issued or is obligated to issue an instrument of indebtedness, other than a draft, certified draft or cheque, traveller's cheque, prepaid letter of credit or money order, do not constitute a deposit where the instrument is payable outside Canada or in a currency other than Canadian currency.

Joint or trust deposit

3. (1) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for another or as joint owner with another, if the trusteeship or joint interest is disclosed on the records of the institution, the deposit of the depositor acting as trustee or as joint owner with another shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the depositor acting in his own right or acting in another joint or trust capacity with the institution.

Joint owners

(1.1) For greater certainty, where two or more persons are joint owners of two or more deposits, the aggregate of those deposits shall be insured to a maximum of \$60,000.

Trust deposit separate

(2) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for a beneficiary, if the trusteeship is disclosed on the records of the institution, the interest of the beneficiary in the deposit shall be

deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the beneficiary made with the institution in his own right for his own use and separate from any interest of the beneficiary in respect of any other trust deposit of which he is a beneficiary.

Deposit of beneficiary

(3) Where a member institution is obligated to repay moneys to a depositor who is acting as trustee for two or more beneficiaries, if the interest of each beneficiary in the deposit is disclosed on the records of the member institution, the interest of each beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the corporation to be a separate deposit.

Trust arrangements

(3.01) A deposit held by a member institution for a depositor who is acting as trustee under a trust is deemed not to be a separate deposit if, in the opinion of the Corporation, the trust exists primarily for the purpose of obtaining or increasing deposit insurance under this Act.

By-laws

(3.1) For the purposes of subsections (1) to (3), the Board of Directors may make by-laws prescribing the time by which and the form and manner in which a joint interest, a trusteeship or the interest of a beneficiary in a deposit is to be disclosed on the records of a member institution.

Not part of deposit

(4) Where a member institution is obligated to repay to a person any moneys that are received or held by the institution, the amount of the moneys shall be deemed not to constitute part of a deposit for the purposes of deposit insurance with the Corporation if the date on which the person acquires his interest in the moneys is a date subsequent to the date on which the policy of deposit insurance of the institution is terminated or cancelled.

Registered retirement savings plan deposits

(5) Notwithstanding subsection (2), for the purposes of deposit insurance with the Corporation, where moneys received by a member institution from a depositor pursuant to a registered retirement savings plan, within the meaning given that expression for the purposes of the Income Tax Act, constitute a deposit or part of a deposit by or for the benefit of an individual, the aggregate of those moneys and any other moneys received from the same depositor pursuant to any other registered retirement savings plan and that constitutes a deposit or part of a deposit by or for the benefit of the same individual shall be deemed to be a single deposit separate from any other deposit of or for the benefit of that individual.

Registered retirement income fund

(6) Notwithstanding subsection (2), for the purposes of deposit insurance with the Corporation, where moneys received by a member institution from a depositor pursuant to a registered retirement income fund, within the meaning given that expression under the Income Tax Act, constitute a deposit or part of a deposit by or for the benefit of an individual, the aggregate of those moneys and any other moneys received from the same depositor pursuant to any other registered retirement income fund and that constitutes a deposit or part of a deposit by or for the benefit of the same individual, is deemed to be a single deposit separate from any other deposit of or for the benefit of that individual.

Realty taxes on mortgaged property

(7) An unpaid balance of money referred to in subsection 2(1.1) is deemed, for the purposes of deposit insurance with the Corporation, to be a deposit separate from any other deposit of that depositor with the member institution. R.S., 1985, c. C-3, Sch.; R.S., 1985, c. 18 (3rd Supp.), ss. 72, 73; 1991, c. 45, s. 545; 1996, c. 6, ss. 45.1, 46; 1999, c. 28, ss. 108, 109.

RELATED PROVISIONS

- 1992, c. 26, s. 14:

Existing security interests

14. Paragraphs 39.15(1)(b) to (d) and subsection 39.15(2) of the said Act do not apply in respect of a remedy under, or a stipulation of, a security agreement creating a security interest in property of a federal member institution if the security interest

(a) was created before the later of

(i) the coming into force of subsection 419(1) of the Trust and Loan Companies Act, in the case of a federal member institution that is a company to which that Act applies, or of subsection 419(1) of the Bank Act, chapter 46 of the Statutes of Canada, 1991, in the case of a federal member institution that is a bank, and

(ii) the coming into force of section 11 of this Act; and

(b) is exempted by the Superintendent from the application of those paragraphs and that subsection.

- 1996, c. 6, s. 45.1(2):

(2) Subsection (1) applies only in respect of deposit moneys received by an institution after that subsection comes into force.

AMENDMENTS NOT IN FORCE

- 1997, c. 15, s. 114:

114. The Act is amended by adding the following after section 26:

BANKS WITHOUT DEPOSIT INSURANCE

Interpretation

26.01 For the purposes of sections 26.02 to 26.06, "deposit" has the meaning that would be given to it by the schedule, for the purposes of deposit insurance, if the schedule were read without reference to subsections 2(2), (5) and (6) of the schedule.

Application

26.02 A bank may apply to the Corporation for authorization to accept deposits payable in Canada without being a member institution. The application must be in a form that is acceptable to the Corporation and must contain such information as the Corporation may require.

Granting of application

26.03 (1) Subject to section 26.04, the Corporation may give that authorization if

- (a) the bank is not affiliated with any member institution;
- (b) the sum of all the deposits held by the bank that are less than \$150,000 and payable in Canada is less than one per cent of the sum of all the deposits held by the bank that are payable in Canada;
- (c) the bank has informed all its depositors, in accordance with such rules as may be prescribed by the by-laws,
 - (i) that the bank has applied to become authorized to accept deposits without being a member institution,
 - (ii) that after the bank receives that authorization, no deposit with the bank will be insured in whole or in part by the Corporation, and
 - (iii) that the bank's obligation to repay the deposit to the depositor will be assumed by a member institution if an option referred to in subparagraph (d)(i) or (ii) is not exercised;
- (d) in respect of each deposit that is held by the bank, the bank has
 - (i) obtained from the depositor an acknowledgement in writing that the deposit will no longer be insured in whole or in part by the Corporation after the bank receives authorization to accept deposits without being a member institution,
 - (ii) at the request in writing of the depositor, paid to the depositor the principal amount of the deposit and interest determined in accordance with rules prescribed by the by-laws, or
 - (iii) except where the depositor has requested that the deposit be paid to the depositor as provided under subparagraph (ii), obtained from a member institution an agreement in writing to assume the bank's liability in relation to the deposit on the same terms and conditions; and
- (e) the bank has paid to the Corporation a fee determined in accordance with rules prescribed by the by-laws.

Exchange rate (2) For the purpose of subsection (1), the rate of exchange that shall be applied on any day in determining the amount in Canadian dollars of a deposit in a currency of a country other than Canada shall be determined in accordance with rules prescribed by the by-laws.

Minister to be informed

26.04 (1) Before giving an authorization under subsection 26.03(1), the Corporation must inform the Minister that it proposes to give the authorization.

Minister may prevent authorization

(2) If the Minister is of the opinion that giving the authorization would not be in the public interest, the Minister may, within thirty days after being informed about the proposal to give the authorization, direct the Corporation not to give the authorization.

Authorization after 30 days

(3) If the Minister does not issue that direction within those thirty days, the Corporation may then give the authorization under subsection 26.03(1).

Fees by-law

26.05 A by-law prescribing rules for the purpose of paragraph 26.03(1)(e) is not effective unless it has been approved in writing by the Minister.

Deposits not insured

26.06 After a bank has been authorized under subsection 26.03(1) to accept deposits without being a member institution, no deposit with the bank is insured in whole or in part by the Corporation.

- 1999, c. 28, ss. 101 to 103:

101. Section 26.01 of the Act, as enacted by section 114 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, is replaced by the following:

Interpretation

26.01 (1) Subject to subsections (2) and (3), for the purposes of sections 26.02 to 26.06, "deposit" has the meaning that would be given to it by the schedule, for the purposes of deposit insurance, if the schedule were read without reference to subsections 2(2), (5) and (6) of the schedule.

Exception

(2) For the purposes of subparagraph 26.03(1)(c)(iii) and paragraph 26.03(1)(d), "deposit" has the meaning that would be given to it by the schedule, for the purposes of deposit insurance, but does not include deposits not payable in Canada or in Canadian currency.

Exception

(3) For the purposes of paragraph 26.03(1)(b) and subsection 26.03(2), "deposit" has the meaning that would be given to it by the schedule, for the purposes of deposit insurance, if the schedule were read without reference to subsections 2(2), (5) and (6) of the schedule, but does not include deposits prescribed by the by-laws.

By-laws

(4) The Board may make by-laws

(a) prescribing the deposits referred to in subsection (3); and

(b) prescribing terms and conditions with respect to the acceptance of those deposits.

102. Subparagraphs 26.03(1)(d)(ii) and (iii) of the Act, as enacted by section 114 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, are replaced by the following:

(ii) at the request in writing of the depositor, paid to the depositor the principal amount of the deposit and interest determined in accordance with rules prescribed by the by-laws and has not charged any fee or penalty in connection with the payment, or

(iii) obtained from a member institution an agreement in writing to assume the bank's liability in relation to the deposit on the same terms and conditions; and

103. Subsection 26.04(3) of the Act, as enacted by section 114 of An Act to amend certain laws relating to financial institutions, being chapter 15 of the Statutes of Canada, 1997, is replaced by the following:

Authorization after 30 days

(3) If the Minister does not issue that direction within those thirty days, the Corporation may then give the authorization under subsection 26.03(1). The giving of the authorization cancels the policy of deposit insurance of the member institution to which the authorization is given.

- 1999, c. 28, s. 107; 1996, c. 6, s. 39

107. Subsection 34(2) of the Act is replaced by the following:

Non-application of continued coverage

(2) Subsection (1) does not apply in respect of a deposit with

(a) a member institution if the deposit has been assumed by another member institution; or

(b) a former member institution that has received authorization to accept deposits payable in Canada without being a member institution and the policy of deposit insurance of which has been cancelled.

Corporations not member institutions

(3) A corporation is not considered to be a member institution by reason only that its deposits continue to be insured under subsection (1).

Continuing obligations

(4) Termination or cancellation of a policy of deposit insurance does not relieve a former member institution from obligations and liabilities to the Corporation that have accrued before the termination or cancellation.