

No. of 2023

VIRGIN ISLANDS
VIRGIN ISLANDS DEPOSIT INSURANCE CORPORATION
REGULATIONS, 2023

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2023 NO.
VIRGIN ISLANDS DEPOSIT INSURANCE CORPORATION
ACT, 2016
(NO. 7 OF 2016)

Virgin Islands Deposit Insurance Corporation Regulations, 2023

[Gazetted _____, 2023]

The Cabinet, in exercise of the powers conferred by section 63 of the Virgin Islands Deposit Insurance Corporation Act, No. 7 of 2016, on the recommendation of the Board of Directors, makes the following Regulations:

PRELIMINARY

Citation

1. These regulations may be cited as the Virgin Islands Deposit Insurance Corporation Regulations, 2023.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires,

“Act” means the Virgin Islands Deposit Insurance Act 2016, No. 7 of 2016;

“acquiring institution” means the institution, member of the Corporation or otherwise, with which the Corporation has made arrangements for the transfer of assets or liabilities, including transferring deposit pursuant to section 35(1) of the Act;

“Board” means the Board of Directors of the Virgin Islands Deposit Insurance Corporation;

“bridge bank” means a bank that is licensed under section 19 of the Act to temporarily take over and maintain all or certain assets, operations and liabilities of a failed bank as part of the resolution process with respect to the failed bank;

“business plan” means, in respect of a specified time period,

- (a) the member institution’s business objectives and a description of the short-term and long-term strategies for achieving those objectives;
- (b) the member institution’s market strategy, including a description of the geographic area served by the member institution, and the scope and nature of its business (e.g., types of products offered, volume of

deposit-taking business, details of lending and investment objectives);

- (c) a detailed forecast that includes pro-forma financial statements that cover the specified time period and that identifies the assumptions made in the preparation of the forecast; and
- (d) an explanation of the relationship between the business background and expertise of each officer and the business objectives of the member institution;

“Chairperson” means the Chairperson of the Board;

“Commission” means the Financial Services Commission;

“Corporation” means the Virgin Islands Deposit Insurance Corporation;

“claim” means an assertion of indebtedness of a relevant person to a depositor or to other creditors;

“critical function” means activities, services or operations, the discontinuance of which is likely to

- (a) lead to the disruption of services that are essential to the economy; or
- (b) disrupt financial stability;

“critical shared service” means an activity that is performed by an entity within a bank group or an external provider for one or more business units or legal entities of the bank group or for individual banks and whose absence or failure would lead to the cessation of, or present a material risk to the continuity of, critical functions;

“customer”, in relation to a member institution, means a person, whether resident in or outside the Virgin Islands, to whom the licensee provides, agrees to provide or has provided a service that constitutes licensed business;

“deposit account records” means the records kept at the member institutions for a deposit account;

“Deposit Insurance System” refers to the Virgin Islands Deposit Insurance Corporation and its relationships with its members and with the financial safety-net participants that support deposit insurance functions and resolution processes;

“electronic business site” means a website or other electronic site that is used by a member institution to carry on business and at which a person may make a deposit or commence a transaction to open a deposit account with or without the assistance of a representative of the member institution, and, for greater certainty, includes an automated teller machine;

“financial services business” has the same meaning as assigned under section 2(1) of the Financial Services Commission Act, Revised Edition 2020;

“fit and proper person” means one who is financially sound, competent, reputable and reliable;

“fee” or “fees” refer to any fees, premiums or contributions to be paid by member institutions to the Corporation;

“Fund” refers to the Deposit Insurance Fund;

“insider dealing” has the same meaning as assigned under the Securities and Investment Business Act, Revised Edition 2020;

“insurable deposit” means a deposit received or held by a member institution from or on behalf of a depositor other than a deposit from

- (a) another member institution;
- (b) a statutory body or authority or government company;

“insured deposit” means that portion of an insurable deposit which is covered by deposit insurance under the Act;

“insured limit” means the maximum sum that is payable under the Act in respect of insured deposits;

“licensee” means a person who holds a license as defined in section 2(1) of the Financial Services Commission Act, Revised Edition 2020;

“material change” means a change in a bank or its group’s legal structure, business, operations, critical functions, critical shared services or material legal entities, or in the laws and regulations applicable to the bank and its group, that would require one or more amendments to the bank’s resolution plan;

“material legal entity” means a legal entity or branch within a bank group that meets at least one of the following criteria:

- (a) it performs a critical function or a critical shared service;
- (b) the cessation or disruption of its operations might prevent the implementation of the bank’s resolution strategy; or
- (c) it is a member institution;

“member institution” means a member of the Corporation and as such of the Deposit Insurance System;

“Minister” means the Minister of Finance;

“officer” means, in respect of a member institution, a chief executive officer, president, vice-president, secretary, controller, treasurer, chief financial officer or general manager or any other natural person who performs functions similar to those normally performed by an individual occupying one of those offices;

“person” means a natural person, an entity or a personal representative;

“place of business” means a physical location in the Virgin Islands where a member institution carries on business and where a person may make a deposit or commence a transaction to open a deposit account with the assistance of a representative of the member institution, but does not include an automated teller machine;

“protected information” is defined in regulation 8 of these regulations;

“receiver” means the person charged by any enactment of the Virgin Islands with the duty of winding up the affairs of a relevant person, including an receiver administrative receiver, liquidator, provisional liquidator, or liquidating agent;

“recoveries” refer to the monetary value of assets under resolution proceedings transformed into cash;

“regulatory authority” is a reference to an authority charged with supervising or regulating the operation of financial institutions, capital markets, securities transactions or commodity futures that has jurisdiction over the member institution;

“relevant assets” in relation to the receiver, means the assets of which he or she is or would be the receiver;

“relevant person” means

- (a) a financial institution that is a member of the Corporation;
- (b) a holding company of such a member institution which is established in or formed under the laws of the Virgin Islands; or
- (c) a subsidiary of such a member institution or of such a holding company which
 - (i) is a financial institution authorised by the Financial Services Commission; or
 - (ii) is a non-financial company affiliated to the member institution or to its holding company; and
 - (iii) is established in, or formed under the laws of the Virgin Islands;

“representation” means any oral or written statement and includes any advertisement and any mark, sign, trade name or other device;

“reserve ratio”, when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits, or such comparable percentage of the assessment base;

“resolution” means the exercise by the Corporation of its powers under the Act and any other enactment for the purpose of having the affairs and operations of a relevant person wound up, or the exercise of similar powers by an authority in another jurisdiction within or outside the Virgin Islands;

“resolution plan” means a plan prepared for the purpose of implementing, in whole or in part, a resolution in respect of a relevant person in line with the preferred resolution strategy identified through the resolvability assessment;

“resolvability” means the condition of a relevant person to be wound up in a manner that contributes to attaining the resolution objectives laid out in Part VI;

“specified date” has the meaning as assigned under section 31(2) of the Act;

“subsidiary” has the same meaning as in the Banks and Trust Companies Act, Revised Edition 2020;

“transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, of the relevant person in resolution; and

“VIDIC” means the Virgin Islands Deposit Insurance Corporation.

(2) For the purposes of these Regulations, the following persons shall be treated as affiliates of a member institution and the member institution of them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist

- (a) a holding company or subsidiary of the member institution;
- (b) a subsidiary of a holding company of the member institution;
- (c) a holding company of a subsidiary of the member institution;
- (d) any company of which the member institution has control;
- (e) any company of which the member institution and persons connected with the member institution together have control;
- (f) any company which together with the member institution constitute a group;
- (g) an individual who is a director, manager or a person who has control of the member institution or any partner or any immediate relative of such director, manager or person; and
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(3) A reference to “group entity or entities” or “group” means those undertakings in a group as defined in the Regulatory Code, Revised Edition 2020.

(4) For the purposes of these Regulations, a company is a holding company of any company that is its immediate, intermediate, or ultimate subsidiary.

Application

3. These Regulations apply to financial institutions that are members of the Corporation and to their holding companies and subsidiaries.

PART I

THE DEPOSIT INSURANCE SYSTEM OF THE VIRGIN ISLANDS AND THE CORPORATION’S OBJECTIVES AND GOVERNANCE

The Deposit Insurance System

4. (1) The system for the insurance of deposits or parts thereof against the risk of loss to depositors managed by the Corporation shall be referred to as the Deposit Insurance System.

(2) All members of the Deposit Insurance System shall complete an application process as referred to in Part II to formalise the issuance of a deposit insurance policy and the corresponding certificate as a member of the Deposit Insurance System.

(3) Where a financial institution is licensed under the Banks and Trust Companies Act, Revised Edition 2020, after the commencement of the Act, it shall apply for a deposit insurance policy in order to commence accepting deposits in the course of its business.

Objectives guiding the Deposit Insurance System

5. (1) Notwithstanding the general objectives and powers and functions of the Corporation outlined under section 4 and 7 of the Act, the Corporation shall manage the Deposit Insurance System with the objective to

- (a) provide insurance against the loss of deposits or parts thereof;
- (b) manage and administer the Fund or any other income of the Corporation;
- (c) promote and contribute to the stability of the financial system in the Virgin Islands;
- (d) assess and mitigate against risk exposure to losses of the Fund; and
- (e) promote sensitisation of member institutions, consumers and the general public about the Corporation's roles and responsibilities and the rights of depositors in the event of failure of a member institution.

DIVISION 2

OATH OF FIDELITY, STRATEGIC FOCUS AND CONFIDENTIALITY

Oath of fidelity and secrecy

6. (1) Subject to section 43(9) and paragraph 1(5) of the Schedule of the Act, all members of the Board of Directors shall take and sign an oath of fidelity and secrecy as presented in Form 1 in Schedule 2 to these Regulations.

(2) All officers, agents and employees of the Corporation shall take and sign the oath of fidelity and secrecy as presented in Form 1 of Schedule 2 of these Regulations, upon assuming office, acquiring the legal obligation to keep confidential all information concerning a licensee, financial services business or other person in connection with or relative to a regulated person or financial services business learnt by virtue of one's capacity within or in relation to the Corporation.

(3) The prescriptions on confidentiality and the prohibitions and exceptions on disclosing confidential information contained in the Act, also apply to protected information.

Strategic Focus

7. The Board shall procure that the Corporation builds capabilities to fulfill its functions, including to monitor the financial risks of member institutions, ensuring the implementation of effective resolution mechanisms, continuously strengthening the Deposit Insurance System, securing the availability of sufficient resources to solve probable scenarios of financial crisis, and minimising the use of public funds should these be required.

Confidentiality

8. (1) All matters pertaining to the work, and transacted within the realm, of the Board must be maintained with the utmost confidence and any confidential information in respect thereof must not be divulged except as may be authorised by the Board or otherwise lawfully authorised in accordance with law.

(2) For the purposes of this regulation “protected information” means information which

- (a) relates to the affairs of the Corporation, including any document or information received by or belonging to the Corporation;
- (b) relates to the information or any document received from the Commission;
- (c) relates to the business, a customer or other affairs of any member institution, its subsidiaries and holding company; and
- (d) is required by a person falling within subregulation (3), for the purposes of, or in the discharge of, his or her functions under the Act or any financial services legislation and includes any information that is obtained from a foreign regulatory authority or a law enforcement authority.

(3) Subregulation (2)(d) applies to the following persons:

- (a) the Corporation;
- (b) a member of the Board;
- (c) the Chief Executive Officer of the Corporation;
- (d) an employee of the Corporation;
- (e) a person appointed as an agent of the Corporation;
- (f) any other person acting for, or under the authority of, the Corporation; and
- (g) an employee of a person specified in paragraph (e) or (f).

(4) Information is not confidential information

- (a) if it is or has been available to the public; or
- (b) where it is disclosed in a summary or in statistics expressed in a manner that does not enable the identity of particular persons to whom the information relates.

(5) Subject to a regulation, protected information shall not be disclosed by a recipient of that information, without the consent of

- (a) the person from whom the recipient obtained the information; and
- (b) if different, the person to whom it relates;

(6) Regulation does not apply to a disclosure

- (a) required or permitted by a Court of competent jurisdiction in the Virgin Islands;
- (b) required or permitted by the Act or any other enactment;

- (c) made to a law enforcement agency in or outside the Virgin Islands;
- (d) made to the Financial Investigation Agency established under the Financial Investigation Agency Act, 2003, No. 19 of 2003;
- (e) made to any person for the purpose of discharging any function or exercising any power under the Act or any financial services legislation;
- (f) made to a foreign regulatory authority in accordance with section 33C of the Financial Services Commission Act, Revised Edition 2020;
- (g) made to the Cabinet;
- (h) lawfully made to a person with a view to the institution, or for the purpose, of
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside the Virgin Islands, relating to the discharge by a legal practitioner, auditor, accountant, valuer, actuary or other professional of his or her professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, a member or employee of a statutory board or a Commissioner or employee of the Commission of his or her duties; or
- (i) made for the purpose of legal proceedings in connection with
 - (i) the winding up or dissolution of a licensee, a former licensee or a person who has carried on unauthorised financial services business; or
 - (ii) the appointment or duties of a receiver of a licensee, a former licensee or a person who has carried on unauthorised financial services business.

PART II

MEMBERSHIP

DIVISION 1

GENERAL PROVISIONS ON MEMBERSHIP

Application of this Division

9. This Part provides for the terms and conditions of the deposit insurance policy and the need to maintain membership to the Deposit Insurance System.

Deposit Insurance Application

10. (1) All member institutions shall apply to the Corporation for a deposit insurance policy to formalise coverage for their eligible deposits.

(2) The Board shall act on the application and extend a certificate as evidence of the issuance of a deposit insurance policy.

(3) An application for a deposit insurance policy shall contain

(a) the information and documentation referred to in regulations 12 to 14; and

(b) a completed application as may be specified in form 2 of Schedule 1.

(4) The information and documents included in an application must be current as of not more than 12 months before the day on which the final information or documentation relating to the application is submitted to the Corporation by the applicant in order to complete the application.

Application process

11. (1) The processing of an application under the Act or these Regulations shall not commence until the application is substantially complete.

(2) The Corporation may, where an application remains substantially incomplete for a period of 3 months after its receipt, consider the application to be abandoned and return the incomplete application to the applicant.

(3) The applicant shall satisfy all terms of a conditional approval as specified by the Corporation in writing prior to deposit insurance becoming effective.

(4) A new financial institution shall apply for a deposit insurance policy after the approval and issuance of its licence by the Commission.

(5) A financial institution may file its application with the Corporation at the same time as with its application for licensing to the Commission.

(6) Information provided to the Commission as the licensing authority that is also needed as part of the deposit insurance application may be provided to the VIDIC by appending a copy of the information to the licence application.

Applicant's General Information

12. (1) An application under the Act shall include the following information in respect of the applicant:

(a) its legal name;

(b) the address, telephone number, e-mail address and facsimile number of

(i) its head office;

(ii) its principal place of business, if that place of business is located somewhere other than at the head office; and

(iii) each of its current branches, if any, and each of its proposed branches, if any;

(c) the date of its incorporation, the jurisdiction of its incorporation and the date on which it began to carry on business or proposes to do so;

- (d) the name, title or office, and address of each of its current and proposed directors and officers and a copy of their curriculum vitae or resumé;
- (e) detailed information, for each of the directors and officers referred to in paragraph (d), in respect of
 - (i) a firm conviction of imprisonment, under the laws of any jurisdiction within or outside the Virgin Islands, for a criminal offence;
 - (ii) any proceedings that have been commenced against them in such a jurisdiction in respect of such an offence or violation;
 - (iii) the suspension or revocation, under the laws of any jurisdiction within or outside the Virgin Islands, of any licence held by them in relation to the business or affairs of the applicant;
 - (iv) the suspension or cancellation, under the laws of such a jurisdiction, of any registration in their name in relation to the business or affairs of the applicant; and
 - (v) any investigation that has been or is being conducted in such a jurisdiction in relation to such a licence or registration;
- (f) the legal name, address, telephone number, e-mail address and facsimile number of its auditor;
- (g) the name, address, telephone number, e-mail address and facsimile number of any person who is, or who, within the 24-month period preceding the day referred to in regulation 2(2) has been, a promoter of the applicant; and
- (h) the name, title or office, address, telephone number, e-mail address and facsimile number of the individual who is authorised to represent the applicant with respect to the application.

Applicant's Financial Information

13. (1) The application shall include the following documents in respect of the financial affairs of the applicant:

- (a) if the applicant has been incorporated for less than one financial year, an audited opening balance sheet and unaudited interim financial statements, if any, for the financial period beginning on the day on which it began to carry on its business; and
- (b) if the applicant has been incorporated for one or more financial years
 - (i) unaudited interim financial statements, if any, for the financial period following the period covered by the annual audited financial statements for the most recently completed financial year;
 - (ii) audited financial statements for

- a. each completed financial year from the date of incorporation, if it has been incorporated for one or more, but less than three, financial years; or
- b. each of the last three financial years, if it has been incorporated for three or more financial years; and

(iii) its latest annual report, if any.

(2) Subject to subregulation (3), all financial statements included in the application shall be prepared in accordance with

- (a) the accounting principles and auditing standards accepted under or required by the laws of the jurisdiction of incorporation of the applicant or prescribed by the regulatory authority primarily responsible for regulating the applicant; or
- (b) the accounting standards and guidelines established under the Regulatory Code, Revised Edition 2020.

(3) If financial statements that are included in an application are provided by a foreign entity that controls the applicant, they must be prepared in accordance with

- (a) the generally accepted or applicable accounting principles and auditing procedures in the jurisdiction where the foreign entity was incorporated or established and accompanied by a comparison between the accounting standards used to complete the applicant's financial statements and the accounting standards required in the Virgin Island; or
- (b) the applicable accounting standards required under the Regulatory Code, Revised Edition 2020.

(4) The application shall include a business plan that covers the (3) three-year period beginning on the day on which the applicant proposes to begin carrying on its deposit-taking business and that contains the following information:

- (a) the reasons why it wants to establish a deposit-taking business;
- (b) an analysis of target markets, together with its business objectives for those markets, the short- and long-term strategies it will employ to achieve those objectives and the reasons why it believes that it will be successful in achieving those objectives;
- (c) an overview of each line of business to be conducted and a description of the products and services it will offer in each target market, together with the expected levels of business for those products and services;
- (d) an analysis of the competitive threats it will face in each target market, together with a description of how it plans to respond to those threats and the reasons why it believes that the response will be successful;
- (e) a detailed forecast that includes pro forma financial statements covering that three-year period and identifying the assumptions made in the preparation of the forecast;

- (f) a list of the assumptions that it made for the purposes of paragraphs (b) to (e) and the reasons why it considers those assumptions to be reasonable;
 - (g) a description of the off-balance sheet activities that it proposes to carry on;
 - (h) subject to any laws restricting outsourcing, a description of its proposed outsourcing arrangements and its contingency plans respecting those arrangements;
 - (i) a sensitivity analysis of its projected financial results under various assumptions or scenarios;
 - (j) its projected staff complement during the (3) three-year period; and
 - (k) an explanation of the correlation between the business background and expertise of each director and officer and the applicant's business objectives.
- (5) The application shall include the following information in respect of the applicant's capital:
- (a) its authorised capital level;
 - (b) the sources of its initial and future capital;
 - (c) the amount of its issued and outstanding capital;
 - (d) the amount of its paid-in or stated capital; and
 - (e) a description of any other forms of its capital that are accepted as, or considered to be, capital in the jurisdiction in which the applicant was incorporated.
- (6) The application shall include detailed information in respect of the following:
- (a) any material pending litigation to which the applicant is a party; and
 - (b) any material contingent liabilities, including guarantees, suretyships and indemnity obligations issued by the applicant to its shareholders, directors, officers, connected parties or associates.

Application other required Information

14. (1) The application shall include the following documents:

- (a) a copy of the applicant's memorandum and articles of association;
- (b) a certified copy of the incorporating instrument of the applicant and any amendments made to it;
- (c) a detailed organisation chart that lists all of the current and proposed officers of the applicant and all of the applicant's current and proposed employees;
- (d) a certified copy of the resolution of the board of directors of the applicant consenting to the making of the application and approving its contents; and

- (e) a certified copy of the resolution of the board of directors of the entity that controls the applicant, if applicable, consenting to the making of the application and approving its contents.

Certificate of Deposit Insurance

15. The Corporation shall, upon issuance of a deposit insurance policy, issue a certificate of membership to the deposit insurance system.

DIVISION 2

MEMBERSHIP COSTS - PREMIUM, FEES AND ORDINARY AND EXTRAORDINARY CONTRIBUTIONS

Initial compulsory premium

16. (1) No deposit insurance policy and certificate shall be extended to a member institution until payment to the Corporation of the initial compulsory premium has been satisfied in such amount and such date as required in writing by the Corporation.

(2) The member institution shall, in accordance with section 27(5)(a) of the Act, pay to the Corporation

- (a) an initial compulsory premium in accordance with the amount, and within 60 days of the commencement of the Act, in such manner as required in writing by the Corporation; and
- (b) the required initial compulsory premium based on the projected deposits for the first calendar year and the second calendar year of operations contained in the business plan referred to in these Regulations, and any difference between the actual and projected sum of total insurable deposits shall be treated in accordance with section 27(13) of the Act.

(3) For the purposes of calculating premium by the Corporation, the member institutions shall submit the reports of condition referred to in section 17 of the Act within the time required by the Corporation.

(4) The member institution shall pay to the Corporation the costs of any examination or inspection that are charged to it by the Corporation in accordance with section 59 of the Act.

Payment of premiums, fees and ordinary and extraordinary contributions

17. (1) Each member institution shall pay its premiums, fees and ordinary and extraordinary contributions:

- (a) into the Corporation's 'Deposit Insurance Fund Trust Account' open with the designated bank for payment of premiums, fees, and ordinary and extraordinary contributions as required; and
- (b) within such time and in such manner as required in writing by the Corporation.

DIVISION 3
MEMBERSHIP CONDITIONS

General Conditions of Membership

18. (1) A member institution shall at all times comply with and observe all regulations, rules, orders, codes, by-laws, notifications, limits, practice directions, guidance, policies and standards made, issued, given, or imposed by the Commission.

(2) A member institution shall have in place strategies, policies, and systems and corporate governance and controls in relation to its operations which are appropriate, effective and prudent and support the sound management of its financial position, business, affairs and activities.

(3) The member institution shall comply with the Act, any other applicable enactment, any applicable regulation, the incorporating instrument of the member institution, any undertaking that it has given to the Corporation and any agreement it has made with the Corporation.

(4) All records required to be maintained under these Regulations shall:

- (a) be maintained or caused to be maintained in any form as determined by the Corporation; and
- (b) be accessible by the Corporation at any time without any obstruction.

(5) A member institution shall comply with and fulfill the terms of any requirement pertaining to the objectives of the Corporation, as prescribed in section 4 of the Act, relating to the operations, safety and soundness of the member institution and any agreement it has made with the Corporation relating to the operations, safety and soundness of the member institution.

Bridge bank membership

19. (1) A bridge bank is a member institution of the Deposit Insurance System and shall be required to comply with the obligations and responsibilities detailed in these Regulations.

(2) The effects of amalgamation or merger of member institutions shall not apply to a bridge bank.

DIVISION 4
INFORMATION REQUIREMENTS FOR MEMBER INSTITUTIONS

Information details

20. (1) A member institution shall provide to the Corporation, no later than 120 days after the end of each financial year of the member institution,

- (a) financial statements for that financial year that are

- (i) prepared on a consolidated basis and contain comparative information in respect of the immediately preceding financial year;
- (ii) approved by the board of directors of the member institution; and
- (iii) audited by an auditor approved by the Commission;
- (b) a current list of the subsidiaries and affiliates of the member institution; and
- (c) a current list of each of its directors and officers and their titles or offices, together with their business telephone numbers.

(2) A member institution shall, if requested by the Corporation, provide to the Corporation a current list of the directors and officers and those of its subsidiaries, affiliates and group entities, and their titles or offices, together with their business addresses, including email addresses, and their business and personal telephone numbers, not later than 30 days after the day on which the request is received.

(3) Where requested by the Corporation in accordance with section 23(2)(c) of the Act, for the purpose of monitoring or assessing compliance by a member institution with the Act, these Regulations or any orders, or where the Corporation considers it to be necessary or desirable in furtherance of its objectives, the member institution shall provide to the Corporation

- (a) without delay, financial statements of the member institution or of any of its subsidiaries for the period specified, prepared on a consolidated or unconsolidated basis and including a balance sheet for each of its foreign branches, if any;
- (b) without delay, a statement as provided in section 27(8) and (9) and section 30(9) and (10) of the Act, certified by an officer of the member institution, that sets out
 - (i) a profile and analysis of insured deposits;
 - (ii) a profile and analysis of uninsured deposits;
 - (iii) the number, amounts and sources of all deposits that are, in whole or in part, to the knowledge of the member institution, received or held as the result of the services of a person who carries on business as an agent or broker in the solicitation or placement of deposits on behalf of one or more member institutions or actual or prospective depositors;
 - (iv) a detailed description of the system that is used by the member institution to compile information on insured deposits and of that which is used to compile information on insured deposits;
 - (v) a detailed description of the accounting and information systems and the procedures and controls used by the member institution with respect to deposit liabilities, including the manner in which the member institution identifies depositors for the purpose of calculating insured deposits; and

- (vi) a detailed list of assets, liabilities, derivatives and commitments both on- and off-balance sheet;
 - (c) within 60 days following receipt of the request, a business plan approved by the Board of Directors of the member institution that covers the remainder of the financial year of the member institution, commencing with the quarter in which the request is received and ending with the end of the following financial year; and
 - (d) without delay, any other reports, documents and information specified in the request that pertain to its affairs and those of its subsidiaries, affiliates and group entities, or to the affairs of any other financial institution or any other entity with which the member institution has a relationship.
- (4) A member institution shall, if requested to do so by the Corporation for the purpose of developing and maintaining a resolution plan for the member institution, provide to the Corporation, within the time specified in the request, any of the following information that is specified in the request
- (a) audited financial statements, or if they are not available, unaudited financial statements, for the period specified in the request on a consolidated and unconsolidated basis for the member institution and its subsidiaries, affiliates and group entities that include a balance sheet for each of its foreign branches, if any;
 - (b) a current list of each subsidiary, affiliate and group entity of the member institution identifying its jurisdiction of incorporation and describing its licence or licences to carry on business, including restrictions, if any, and its applicable regulatory authority together with, if known, the name, title, address, telephone number and email address of a contact person at the regulatory authority;
 - (c) a current list of each of the directors and officers of its subsidiaries, affiliates and group entities, and their titles or offices, together with their business addresses and contact information;
 - (d) the legal corporate structure of the member institution, identifying its subsidiaries, affiliates and group entities, including information about ownership of each of those subsidiaries, affiliates and group entities;
 - (e) the financial connections between the member institution and its subsidiaries, affiliates and group entities, including intra-group exposures, guarantees, liquidity support and capital support;
 - (f) detailed information about the payment, clearing and settlement systems that support the operations of the member institution and its subsidiaries, affiliates and group entities;
 - (g) detailed information about the business functions and business operations of the member institution and of its subsidiaries, affiliates and group entities, as well as the manner and extent to which those functions and operations are performed by the entities by external service providers;

- (h) the business continuity or crisis management plans of the member institution and its subsidiaries, affiliates and group entities, together with related communications and employee retention plans;
- (i) detailed information about both on- and off-balance sheet assets, liabilities, derivatives and commitments of the member institution, its subsidiaries, affiliates and group entities; and
- (j) any other reports, documents or information pertaining to the affairs of the member institution or to those of its subsidiaries.

(5) A member institution shall, without delay, notify the Corporation in writing of any material change to any information provided pursuant to regulations 22 to 23.

(6) The member institution authorises the Corporation to have access to any information in the possession of a regulatory authority, the Commission or the Ministry of Finance that pertains to the member institution.

Events to be notified

21. (1) A member institution shall provide the Corporation with a copy of any disclosure made to the Commission in compliance with section 70 of the Regulatory Code, Revised Edition 2020.

(2) Without limiting subregulation (1), a member institution shall notify the Corporation in writing of an approval or any subsequent approval of any of the following events, within 7 days of such approval:

- (a) a change in control of the member institution or any of its subsidiaries;
- (b) a change in control of any group entity related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any group entity of which the member institution is a subsidiary;
- (c) a restructuring, amalgamation, merger, arrangement or other undertaking which involves the member institution, or any of its subsidiaries, or a substantial portion of the assets or liabilities, business or interest in shares of the member institution or any of its subsidiaries;
- (d) a restructuring, amalgamation, merger, arrangement or other undertaking which involves the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any group entity of which the member institution is a subsidiary;
- (e) a transfer, disposal or release of all or a substantial portion of the assets or liabilities, business or interest in shares of the member institution or any of its subsidiaries;
- (f) a transfer, disposal or release of all or a substantial portion of the assets or liabilities, business or interest in shares of any group entity related to the member institution, if it materially affects or may materially affect the operation or financial condition of the member

institution or any group entity of which the member institution is a subsidiary;

- (g) a substantial acquisition of assets or liabilities, business or interest in shares by the member institution or any of its subsidiaries; and
- (h) a substantial acquisition of assets or liabilities, business or interest in shares by any group entity related to the member institution, if it materially affects or may materially affect the operations or financial condition of the member institution or any group entity of which the member institution is a subsidiary.

(3) A member institution shall notify the Corporation in writing regarding any material development to any of the event approvals set out in subregulation (2) within 7 days of the occurrence of the material development or

- (a) where the material development relates to completion of implementation, within 7 days from the date of completion;
- (b) where the material development relates to temporary or permanent deferment of implementation, within 7 days from the date of approval of the board of directors of the member institution for the deferment; or
- (c) where the material development relates to termination of the approved event, within 7 days from the date of approval of the board of directors of the member institution for the termination.

(4) A member institution shall notify the Corporation in writing of any of the following events, that may undermine the safety and soundness of the member institution, immediately upon becoming aware of the following events:

- (a) a substantial withdrawal of deposits or claims from the member institution or any problem or events that could lead to a negative impact on the liquidity of the member institution, which may be considered as not usual in the course of its business;
- (b) commencement of any dissolution process or liquidation proceedings, voluntary or otherwise, in respect to the member institution or any of its subsidiaries including but not limited to a resolution to wind up the member institution or such subsidiary, an appointment of any receiver or manager over the member institution or such subsidiary, and a presentation of a winding up petition against the member institution or such subsidiary;
- (c) commencement of any dissolution process or liquidation proceedings, either voluntary or otherwise, in respect of any group entity related to the member institution including but not limited to a resolution to wind up such group entity, and a presentation of a winding up petition against such group entity, and a presentation of a winding up petition against such group entity, if such commencement materially affects or may materially affect the operations or financial condition of the member institution or any group entity of which the member institution is a subsidiary;
- (d) detection of material fraud and gross mismanagement, which may lead to severe financial losses or exposure experienced by the member institution; and

- (e) inability of the member institution to meet any of its maturing debt obligations or access to funding, which may lead to the potential need of provision of liquidity assistance by the VIDIC.

Notification of other events

22. The member institution shall, without delay, provide to the Corporation a copy of

- (a) any compliance order, cease and desist order, directive, ruling, licence or registration restriction, notice of hearing or other similar document issued at any time in respect of the member institution by or on the application of any regulatory authority; and
- (b) any undertaking given by the member institution to any regulatory authority.

Notification of surrender or revocation of licence

23. A member institution shall submit to the Corporation a copy of the written notice of its surrender of licence or of the notice of revocation of its licence under the Banks and Trust Companies Act, Revised Edition 2020, or the Financial Services Commission Act, Revised Edition 2020, as the case may be, on the date of the corresponding written notice.

Integrity of the information

24. (1) Any information provided or submitted by a member institution to the Corporation pursuant to any regulation, rule, order, code, by-law, notification, guideline, circular, note or directive made or issued by the Corporation shall be true, correct and complete.

(2) The records of deposits required to be prepared and maintained by member institutions shall include records of deposits, whether these are insured or uninsured by the Corporation, and the member institution shall

- (a) have in place a deposit liabilities system that can generate reliable and accurate information on deposits within such period as determined by the Corporation when so required by the Corporation; and
- (b) retain or cause to be retained at all times all records in respect of deposits in such form as determined by the Corporation.

(3) The member institution shall retain the records of deposit liabilities referred to in regulation 20 for a period of at least 5 years after their creation and during that period shall not remove them from the Virgin Islands except with the prior written consent of the Corporation.

(4) A member institution shall use its best endeavours to ensure that all information and documents that it provides to the Corporation are accurate and complete.

(5) If a member institution becomes aware that any information or documentation that it has provided to the Corporation is not accurate or complete, the member institution shall:

- (a) immediately on becoming so aware, notify the Corporation that it has provided inaccurate or incomplete information; and
- (b) within 7 days, or such shorter period as the Corporation may require, provide the Corporation with such information or documentation as is required to ensure that subregulation (1) is complied with.

Examinations or Inspections

25. (1) A member institution shall submit

- (a) to be inspected and examined by the Commission at least once every two years; and
- (b) where required, to an inspection or examination of its affairs by or on behalf of the Corporation for a specified purpose at such times as the Corporation may require.

(2) In furtherance of any examination referred to in subregulation (1)(b) and, without prejudice to the requirements under section 52 of the Act, a member institution shall

- (a) open its records for inspection and examination;
- (b) facilitate the inspection and examination so far as it is in its power;
- (c) cause its directors, officers, employees, agents and representatives to cooperate in such inspection and examination;
- (d) give access to all minutes, accounts, cash, securities, documents and vouchers of the member institution and provide necessary information.

(3) If the Corporation believes that it would be in the best interests of both the depositors with the member institution and the Corporation that preparations be made to make a payment under the Act in respect of a deposit held by a member institution, the Corporation may 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.

(4) For the purposes of the examination referred to in subregulation (3), the Corporation and the person designated by it shall have a right of access to those books, records and accounts and are entitled to require the member institution's directors, officers, auditors and any receiver or liquidator of the member institution to furnish any information and explanations regarding the deposits held by the member institution that the Corporation or person may require.

Notices from the Corporation

26. (1) Any notice or request given or made by the Corporation to a member institution is considered sufficiently given or made if addressed to the Chief Executive Officer or chairperson of the board of directors of the member institution at the principal place of business address of the member institution last shown on the records of the Corporation; and

- (a) delivered personally during normal business hours;
- (b) sent by registered or certified mail; or

- (c) transmitted by an electronic means of sending messages that produces a paper record.
- (2) Any notice or request referred to in subregulation (1) shall be considered to be received
 - (a) on the day of delivery, if delivered personally;
 - (b) on the fifth business day following the post-mark date, if mailed; and
 - (c) on the day of transmission if sent by electronic means on a business day and within the business hours of the recipient, and on the first business day after the day of transmission if sent by electronic means at any other time.

DIVISION 5

ADVERTISEMENT OF DEPOSIT INSURANCE

Deposit insurance public awareness

27. All member institutions shall follow requirements issued by the Corporations in contributing to the Corporation strategies for sensitising consumers on the Corporation's role and the rights of depositors in the event of failure of an insured institution.

General provisions on deposit insurance advertisement

28. (1) No member institution shall make any false, misleading or deceptive representation with respect to what

- (a) constitutes, or does not constitute, a deposit;
- (b) constitutes, or does not constitute, a deposit that is insured by the Corporation; or
- (c) constitutes a member institution.

(2) When a member institution makes representations with respect to any of the matters referred to membership, the representations shall be made in accordance with the requirements of the VIDIC.

(3) A member institution whose policy of deposit insurance is cancelled shall immediately remove from each of its places of business and each of its electronic business sites all references to its status as a member institution and to the deposit insurance provided by the Corporation, including displays of the membership sign, brochure and badge.

(4) When a member institution ceases to use a location as a place of business, it shall remove from the location all references to its status as a member institution and to the deposit insurance provided by the Corporation, including displays of the membership sign, brochure and badge.

(5) When a member institution is required to display or elects to display a membership sign or badge in digital form, changes may be made to its overall size, but only if the proportions of the sign or badge, as supplied by the Corporation, are maintained and the content is clearly visible and legible.

Representations about Membership

29. If a member institution makes a representation about its status as a member institution in its advertising, other than by displaying the membership certificate, sign or badge, it shall use one of the following representations, or a representation in substantially the same words as any of the following representations:

- (a) “Member of the Virgin Islands Deposit Insurance Corporation” (or “A Virgin Islands Deposit Insurance Corporation member”);
- (b) “Member of the VIDIC” (or “A VIDIC member”);
- (c) “(name of the member institution) is a member of the Virgin Islands Deposit Insurance Corporation”; or
- (d) “(name of the member institution) is a member of the VIDIC”.

Display of Membership Certificate

30. A copy of the certificate of membership to the Corporation shall be displayed at each physical place of business of the member institution in a prominent place where the member institution receives insurable deposits.

Display of membership sign

31. (1) A member institution shall prominently display the digital form of a badge supplied by the Corporation at each of the following locations on its electronic business sites, other than automated teller machines:

- (a) the home page;
- (b) the landing page for each deposit product eligible to be insured by the Corporation;
- (c) the first page that appears after logging on that displays deposits that are eligible to be insured by the Corporation; and
- (d) each page where the membership sign is displayed.

(2) A member institution shall prominently display the badge supplied by the Corporation in either physical or digital form at each of its automated teller machines at which a person may make deposits.

(3) A member institution that shares the home page for an electronic business site with a person, other than a member institution, shall not display the badge on the home page.

(4) The badge, whether in physical or digital form, shall contain, at a minimum, the Corporation’s logo or other identifiers as specified by the Corporation in writing.

(5) The badge in digital form shall also contain a hyperlink to the contents of the brochure, unless the badge is being displayed on an automated teller machine.

(6) A member institution shall ensure that the location at which and the way in which the badge or the certificate of membership are displayed do not give the impression that

- (a) a person is a member institution when they are not a member institution; or
- (b) a deposit is insured by the Corporation when it is not eligible to be insured by the Corporation.

(7) A member institution shall prominently display a brochure in physical form, supplied by the Corporation for that purpose, at each of its places of business and shall also make copies of the brochure available there to depositors and other persons.

(8) A member institution shall, as part of the account opening process for a deposit that is eligible to be insured by the Corporation, provide the depositor with a brochure.

(9) The physical and digital form of the brochure shall contain the following:

- (a) general information about the Corporation;
- (b) contact information for the Corporation;
- (c) the Corporation's logo and other identifiers;
- (d) information as to what constitutes a deposit that is eligible to be insured by the Corporation; and
- (e) information as to what a depositor needs to know when the Corporation is obliged to make an insurance payment.

DIVISION 6

POLICY TERMINATION AND CANCELLATION

Deposit Insurance Policy breaches

32. (1) Where, in the opinion of the Corporation, a member institution is in breach of a provision of the Act or these Regulations, a by-law of the Corporation or a condition of its policy of deposit insurance, the Corporation may send by registered mail, e-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 Commission.

(2) The report referred to in subregulation (1) shall be dated not later than 21 days before the date the Corporation intends to cancel the policy of the member institution, which should be stated in the report.

(3) The member institution shall make its representation as to why the policy should not be cancelled not later than 7 days after the report referred to in subregulation (1) has been delivered to the member institution.

Notice of cancellation of policy

33. (1) Where a notification referred to in section 26(3) of the Act has been sent or delivered and the member fails to show cause why the policy should not be cancelled or if having shown cause why the policy should not be cancelled the Corporation deems that progress made by the member institution in remedying the

breach is not satisfactory to the Corporation, the Corporation shall, by notice, so inform the institution, the Minister and the Commission.

(2) The policy of deposit insurance of a member institution shall be cancelled by the Corporation on the intended date specified in the report referred to in subregulation (1), unless, before that date,

- (a) the Corporation is satisfied that the member institution is taking the necessary action to remedy the breach to which the report relates; or
- (b) the Minister gives a written direction to the Corporation pursuant to section 11 of the Act.

Revoking notice

34. Where, at any time after the report referred to in regulation 32 has been delivered to a member institution, 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 cancellation of the deposit insurance policy.

Publication of notice of cancellation

35. The Corporation may publish a revocation of a notice of cancellation of a deposit insurance policy under regulation 33 and the member institution shall give notice of such termination to each of its depositors at his or her last address of record on the books of the member institution, in such manner and at such time as the Board may find to be necessary and may order for the protection of depositors.

Temporary insurance of deposits insured as of cancellation

36. (1) After the cancellation of the deposit insurance policy, the insured deposits of each depositor in the financial institution at the date of such cancellation, less all subsequent withdrawals therefrom, shall continue to be insured for a period of eighteen months from the date of such cancellation.

(2) No additions to any such deposits and no new deposits in such financial institution made after the date of such cancellation shall be insured by the Corporation, and the financial institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured.

(3) In the event that such financial institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such financial institution as in the case of a member institution.

Financial institutions not member institutions

37. A financial institution is not considered to be a member institution by reason only that its deposits continue to be insured after the cancellation of the financial institution's deposit insurance policy.

Obligation of members after cancellation of policy

38. Where the policy of a member institution is cancelled, the institution shall continue to be bound by the provisions of the policy, including the obligation of payment of premium, as if it were still a member of the Deposit Insurance System until it no longer holds any deposits that are insured by the Corporation.

PART III

THE DEPOSIT INSURANCE FUND

DIVISION 1

POLICY OBJECTIVES FOR THE MANAGEMENT OF THE DEPOSIT INSURANCE FUND

Public policy objectives

39. (1) The objects set out in section 4 of the Act shall guide all decisions made by the Corporation when applying resources from the Fund, except when instructed otherwise by the Cabinet in respect of a situation, which in the opinion of the Minister, after consultation with the Board, might have an adverse effect on the stability of the financial system in the Virgin Islands or public confidence in that stability.

(2) It is the Corporation's responsibility to manage and administer the Fund and all other Corporation income.

Recovery of losses

40. (1) A member institution is liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, in connection with

- (a) the failure of a member institution; or
- (b) any assistance provided by the Corporation to any member institution in danger of failure.

(2) When a member institution is in default or requires financial assistance to prevent default, the Corporation shall, in good faith, estimate the amount of the loss the Corporation will incur from such default or financial assistance.

(3) On the basis of the amount estimated according to subregulation (2), the Corporation shall, on a case-by-case basis, establish the procedures and schedule under which any member institution shall reimburse the Corporation for such institution's liability with the Corporation.

(4) The liability of any member institution under this regulation shall have priority with respect to other obligations and liabilities as follows:

- (a) the liability of any member institution shall be superior to the following obligations and liabilities of the member institution:
 - (i) any obligation to shareholders arising as a result of their status as shareholders, including any member institution holding

company or any shareholder or creditor of the member institution holding company;

- (ii) any obligation or liability owed to any affiliate of the member institution;
- (b) the liability shall be subordinate in right and payment to the following obligations and liabilities of the member institution:
 - (i) any deposit liability;
 - (ii) any secured obligation;
 - (iii) any other general or senior liability not included in paragraph (a).

(5) The Corporation shall recover the loss to the Fund arising from any action taken or assistance provided with respect to an insured financial institution for which the Cabinet or the Minister extends an exception to the least cost resolution requirement by means of one or more special contributions to be paid by member institutions, as the Corporation determines to be appropriate.

(6) In determining such special contributions, their defining terms and setting the appropriate premium rate or rates to recover the loss to the Fund, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation might have taken under subregulation (5) and shall consider:

- (a) the nature of the operation of the member institution that benefited from the action taken or assistance provided; and
- (b) the economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided.

(7) Any funds collected that exceed actual losses shall be placed in the Fund.

DIVISION 2

MONEYS OF THE CORPORATION

Separation of the moneys of the Corporation

41. (1) The capital of the Corporation is established with the start-up capital subscribed by the Government pursuant to section 20 of the Act.

(2) The Corporation shall report annually to the Minister on the adequacy of the level of capital of the Corporation.

(3) The capital of the Corporation and the Fund are separate and different and shall be so registered and brought to account.

(4) Transactions relating to the administration of the Fund shall be distinguished from transactions relating to other activities of the Corporation and shall be recorded and dealt with separately in the annual account and reports of the Corporation.

(5) Policies for the manner in which the moneys of the Fund shall be invested shall be issued by the Board from time to time based on the recommendations of the Chief Executive Officer.

Purpose of the Fund

42. (1) The primary purposes of the Fund are to

- (a) insure the deposits and protect the depositors of member institutions; and
- (b) resolve failed member institutions.

(2) Any purpose different from those provided in subregulation (1) shall be prohibited.

(3) The Fund is reduced by loss provisions associated with failed member institutions and by the Corporation operating expenses.

Prohibitions for use of the Corporation Monies

43. (1) Any application of the proceeds and monies of the Corporation different from the prescriptions in the Act and these Regulations shall be prohibited.

(2) The Corporation may not take any action, directly or indirectly, with respect to a member institution that would have the effect of increasing losses to the Fund by protecting

- (a) depositors for more than the insured portion of deposits; or
- (b) creditors other than depositors.

Investment of Corporation's funds

44. The Chief Executive Officer shall determine the bank or banks where the moneys of the Corporation would be held and invested, providing the Board with the elements and criteria on which his or her determination is based.

DIVISION 3

PAYMENTS INTO THE FUND

Initial, annual and other premiums and contributions paid by member institutions

45. (1) Member institutions shall account as an expense their initial, annual and other premiums and contributions pursuant to section 29 of the Act and these Regulations or any other Regulations made under the Act.

(2) Members of the Corporation shall pay to the Corporation the corresponding premiums in the method and place which the Corporation may prescribe to be effective at the beginning of every financial year.

(3) In determining any fee to be paid by member institutions, the Corporations shall give due consideration to the need to establish and maintain the reserve ratio of the Fund.

Deposit Insurance Fund Reserve Ratio

46. (1) Before the beginning of each financial year, the Board shall designate the reserve ratio applicable with respect to the Fund and publish on the Internet site the reserve ratio so designated.

(2) The reserve ratio designated by the Board for any financial year may not be less than 5 percent of estimated insured deposits.

(3) In designating a reserve ratio for any financial year, the Board shall

- (a) take into account the risk of losses to the Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;
- (b) take into consideration economic conditions generally affecting member institutions so as to allow the designated reserve ratio to increase during more favourable economic conditions and to decrease during less favourable economic conditions, notwithstanding the increased risks of loss that may exist during such less favourable conditions, as determined to be appropriate by the Board;
- (c) seek to prevent sharp swings in the assessment rates for member institutions; and
- (d) take into account such other factors as the Board may determine to be appropriate, consistent with the requirements of this regulation.

(4) If, at the end of a financial year, the reserve ratio of the Fund exceeds 5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 5 percent of estimated insured deposits, as dividends to be paid to member institutions.

(5) The Board may, in its sole discretion, suspend or limit the declaration of dividends referred to in regulation (4).

Access to Reports

47. (1) Each member institution shall make to the Corporation reports on the member institution's deposits which shall be in such form and contain such information and on such dates as the Board may require.

(2) A report referred to in subregulation (1) with details for all insurable deposits shall be returned to the Corporation by each member institution pursuant section 27(8) of the Act, and with the frequency that the Corporation deems necessary, for assessment of premiums and of insured deposits of each member institution.

(3) In the reports of condition required to be made in subregulation (2), each member institution shall report the total amount of the liability of the depository institution for deposits in the principal place of business and in any branch located in the Virgin Islands.

(4) The deposits to be reported on such reports of condition shall be segregated between

- (a) time and savings deposits; and

- (b) demand deposits.
- (5) For the purpose of subregulation (4),
 - (a) the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and
 - (b) demand deposits shall consist of all deposits other than time and savings deposits.
- (6) The Board, after consultation with the Commission, may determine the definition of what should be denominated as deposits and classify them as “time”, “savings”, and “demand” deposits, for the purposes of this Division.

Assessment of Premiums

48. The Corporation shall determine premiums to be paid by each member institution based on the total insurable deposits stated in the reports of condition referred to in regulation 47.

Setting Assessments

49. (1) The Board shall set premium assessments for member institutions in such amounts as the Board may determine to be necessary or appropriate considering the following elements:

- (a) the estimated operating expenses of the Corporation;
- (b) the estimated case resolution expenses and income of the Fund;
- (c) the projected effects of the payment of assessments on the capital and earnings of insured depository institutions;
- (d) the risk factors and other factors taken into account to ensure the Fund capacity to contribute to financial stability; and
- (e) any other factors the Board may determine to be appropriate.

(2) The Corporation shall notify each member institution of that institution’s assessment.

Payment upon notice

50. (1) A member institution shall pay the premium amount and any liability to the Corporation pursuant to the Act and these Regulations upon receipt of written notice by the Corporation.

(2) Payment shall be made by a debit to the member institution’s Regulatory Deposit account with the Commission to satisfy the amounts owed to the Corporation, for which the member institution shall make the necessary arrangements not to default on the Regulatory Deposit balance required by the Commission.

Refunds of Overpayments

51. In the case of any payment of a contribution by a member institution in excess of the amount due to the Corporation, the Corporation may

- (a) refund the amount of the excess payment to the member institution;
- or

- (b) credit such excess amount toward the payment of subsequent contributions until such credit is exhausted.

Contributions made by the Government

52. Any contribution by way of advances to the Corporation which may be made by the Government from time to time shall be based on the recommendation of the Corporation under the premise that such a contribution is temporary and reimbursable.

Financial Income

53. Any amounts representing the proceeds of investments made out of the Fund shall be capitalised into the Fund.

Special contributions

54. Whenever special contributions are made, they shall not represent an amount in excess of the assessed sum of the premium due for a member institution for a period of three years.

Amounts borrowed by the Corporation for the Fund

55. (1) Whenever amounts are borrowed by the Corporation for the Fund, reimbursement of such borrowing shall come from recoveries from the operation the borrowing was meant to finance.

(2) The Corporation shall only borrow moneys if such moneys will be applied in such a manner that will result in a viable operation, unless there is an exemption instructed in writing by the Cabinet.

Recoveries from disposal of assets

56. Amounts realised by the Corporation from the disposal of assets shall be accounted for as recoveries for the corresponding resolution proceeding.

Loans or Advances

57. (1) Any amount representing the repayment of loans or advances made out of the Fund to member institutions and any interest earned shall be restituted into the fund.

(2) The Corporation, in its discretion, may make loans on the security, or may purchase and liquidate or sell any part, of the assets of an member institution which is in default.

Penalties

58. Any amounts received from penalties shall be capitalised into the Fund.

DIVISION 4
PAYMENTS OUT OF THE FUND

Least cost resolution required

59.(1) Except as provided in sections 5 and 17(1)(c) of the Act, the Corporation may not exercise any authority under sections 7(2)(c), (d), (e), (f), and 17(2) with respect to any member institution unless

- (a) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and
- (b) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Fund of all possible methods for meeting the Corporation's principal objectives in accordance with section 4 of the Act.

(2) In determining how to satisfy the Corporation's obligations to a member institution's insured depositors in a manner that will minimise the exposure of the Corporation to loss, the Corporation shall comply with the following:

- (a) evaluate alternatives on a present-value basis, using a realistic discount rate;
- (b) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and
- (c) retain the documentation for not less than 5 years.

(3) The determination of the costs of

- (a) providing any assistance under section 7(1)(d) or 17(b) of the Act shall be made as of the date on which the Corporation makes the determination to provide such assistance to the member institution involved in the least-cost resolution evaluation; and
- (b) liquidation of any insured financial institution, or of its holding company or subsidiary which becomes insolvent, shall be made as of the earliest of the date on which
 - (i) a liquidator is appointed for such institution;
 - (ii) a receiver is appointed to such institution; or
 - (iii) the Corporation makes any determination to provide any assistance under section 17 of the Act with respect to such institution.

(4) In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subregulation (1), the amount of such cost

may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subregulation (3)(b), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

Exception for the least cost resolution requirement

60. (1) On the basis of the Cabinet's exemption of the least cost resolution alternative in accordance with section 5 of the Act, the Corporation may make recommendations for alternative action or provide financial assistance for the purpose of winding up the member institution in financial distress as necessary to avoid or mitigate the effects that prompted such an exemption.

(2) The Minister shall document any determination for his or her recommendation or instructions when exercising the powers under section 5 or section 11 of the Act.

Reimbursement of depositors

61. (1) Payments to depositors made under the Act shall be made in such a manner as may be determined by the Corporation that represents the least cost resolution, unless otherwise instructed by the Minister with the approval of the Cabinet.

(2) The Corporation shall determine the mechanism through which depositors will be paid or reimbursed their deposit insurance coverage amount based on the resolution strategy that represents the least cost alternative.

(3) Reimbursement of depositors up to their insured limit may be settled either through a payout, through a transfer of covered deposits to another member institution or any other mechanism determined by the Corporation.

Payments arising from the administration of the Fund

62. (1) Any payments legally due to a member institution or third party, either public or private, arising out of the administration of the Fund must be stated on the service agreement authorised by the Board.

(2) Service charges and fees arising from the administration of the Fund shall represent the fair cost of providing such service prevalent in the market.

Payment of expenses

63. (1) The payment of expenses incurred by the Corporation in the exercise of its functions and operations under the Act and these Regulations shall be in accordance with the annual budget approved by the Board.

(2) The payment of administrative expenses of the Corporation in its role as receiver of relevant persons shall be in accordance with Part VI of these regulations.

DIVISION 5
FINANCIAL ASSISTANCE

Conditions for providing financial assistance

64. (1) Subject to the least-cost provision in regulation, the Corporation shall consider providing financial assistance to a member institution which is in imminent or actual financial distress, in its sole discretion, before the appointment of a receiver for such institution only under the following circumstances:

- (a) such institution presents one or more of the conditions set out in section 17(1) of the Act; and
- (b) the Corporation determines
 - (i) grounds for the appointment of a receiver exist or likely will exist in the future unless the member institution's capital levels are increased; and
 - (ii) it is unlikely that the member institution can meet all currently applicable capital standards without assistance.

(2) At the request of a member institution, the Corporation may extend financial assistance, in its sole discretion and upon such terms and conditions as the Board may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any member institution, if such financial assistance

- (a) is taken in order to minimise loss exposure to the Fund;
- (b) with respect to a member institution in default, is provided to ensure continuity of critical functions of the affected member institution; or
- (c) when severe financial conditions exist which threaten the stability of a significant number of member institutions or of member institutions possessing significant financial resources, is provided to lessen the risk to the Corporation posed by such member institution under such threat of instability.

(3) In order to facilitate a merger or acquisition of a failing member institution with another member institution or the sale of any or all of the assets of such failing member institution or the assumption of any or all of such failing member institution's liabilities by another member institution, or the acquisition of the shares of such member institution, the Corporation may, in its sole discretion and upon such terms and conditions as the Board may prescribe

- (a) purchase any such assets or assume any such liabilities;
- (b) make loans or contributions to, or deposits in, or purchase the securities of, such other member institution or the company which controls or will acquire control of such other member institution;
- (c) guarantee such other member institution or the company which controls or will acquire control of such other member institution against loss by reason of such member institution's merging or consolidating with or assuming the liabilities and purchasing the

assets of the failing member institution or by reason of such company acquiring control of such failing member institution; or

- (d) take any combination of the actions referred to in paragraphs (a) to (c).

(4) In order for a member institution to receive financial assistance from the Corporation, the member institution shall meet the following criteria:

- (a) the Commission and the Corporation have determined that, during such period of time preceding the date of such determination as the Commission or the Corporation considers to be relevant, the member institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders;
- (b) the member institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(5) Where the Corporation provides financial assistance to any member institution subject to section 17 of the Act, the amount of the financial assistance shall not be greater than the total amount in respect of the aggregated insured deposits, and such financial assistance shall be secured in the manner the Corporation determines.

(6) The amounts provided by the Corporation as financial assistance in accordance with this Part may be in subordination to the rights of depositors and other creditors.

PART IV

COVERAGE AND DEPOSIT INSURANCE REIMBURSEMENT

DIVISION 1

GENERAL PROVISIONS

Purpose

65. The purpose of this Division is to clarify the rules and define the terms necessary to afford deposit insurance coverage under the Act and provide guidance for the recognition of deposit ownership in various circumstances.

General Principles

66. (1) The insurance coverage provided by the Act and these Regulations is based upon the ownership rights and capacities in which deposit accounts are maintained at insured member institutions.

(2) All deposits in a member institution which are maintained in the same right and capacity, by or for the benefit of a particular depositor or depositors shall be added together and insured in accordance with these regulations.

(3) Deposits maintained in different rights and capacities, as recognised under these Regulations, shall be insured separately from each other.

(4) The amount of a deposit is the balance of principal and interest credited to the deposit account as of the specified date of the member institution, plus the ascertainable amount of interest to that date, accrued at the contract rate, which the member institution in default would have paid if the deposit had matured on that date and the member institution had not failed.

(5) In the absence of any such announced or anticipated arrangement, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(6) In the event of the death of a depositor, there shall be continuation of deposit insurance coverage.

(7) The Corporation shall seek to ensure that member institutions build the processes and mechanisms that allow for a prompt assessment of covered deposits in preparation for reimbursement.

DIVISION 2

INSURABLE DEPOSITS

Conditions for obligations to be insurable deposits

67. (1) Any deposit received or held by a member institution from or on behalf of a depositor, notwithstanding the commercial denomination used by the member institution, is an insurable deposit.

(2) Regardless of the commercial denomination of an insurable deposit, insurable deposits shall fall within the definition of the following types of deposits:

- (a) savings accounts;
- (b) checking accounts;
- (c) certificate of deposits;
- (d) electronic deposits;
- (e) special savings accounts; and
- (f) other deposits accounts that from time to time the Corporation may add to this list.

(3) All member institutions shall report to the Corporation during the periods required by the Corporation but not less often than on a quarterly basis, all insurable deposits held by the member institutions in accordance with the forms, formats and mechanisms instructed by the Corporation in writing.

Deposits maintained by foreigners

68. The availability of deposit insurance is not limited to citizens and residents of the Virgin Islands and any person who maintains deposits in a member institution is entitled to the deposit insurance provided by the Act and these Regulations.

Continuation of separate deposit insurance after amalgamation of member institutions

69. (1) Whenever the liabilities of one or more member institutions for deposits are assumed by another member institution, whether by merger, acquisition, consolidation, other statutory assumption or contract

- (a) the member status of the institutions whose liabilities have been assumed terminates on the date of receipt by the VIDIC of satisfactory evidence of the assumption; and
- (b) the separate insurance of deposits assumed continues for six months from the date the assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period.

(2) In the case of time deposits under subregulation (1)(b) which mature within six months of:

- (a) the date the deposits are assumed and which are renewed at the same dollar amount, either with or without accrued interest having been added to the principal amount and for the same term as the original deposit, the separate insurance applies to the renewed deposits until the first maturity date after the six-month period; and
- (b) the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

(3) The Corporation may, by Order, extend the six months period referred in subregulation (2) if general market conditions so warrant.

Modalities of insurable deposits

70. (1) Insurable deposits may be subscribed with any member institution as single, joint or trust accounts.

(2) The Corporation shall issue instructions on the format in which insurable deposits shall be registered and maintained at all times by member institutions in their systems.

DIVISION 3

COVERAGE OF INSURED DEPOSITS

Insured limit

71. (1) The maximum amount of coverage shall be prescribed by order of the Board, payable in the currency of the Virgin Islands without regard to the currency in which the deposit was constituted.

(2) In the case of joint accounts, regardless of the number of joint owners, the amount set as the insured limit amount is divided among all joint owners of the account.

(3) The net amount due to any depositor at a member institution shall not exceed the maximum coverage amount as determined in accordance with this Part.

Review of insured limit

72. The Corporation shall review the insured limit amount of coverage once a year, in conjunction with the target fund review, to ensure the Corporation is delivering the objectives for which it was established.

Aggregation of deposits

73. For the purpose of determining the net amount due to any depositor, the Corporation shall aggregate the amounts of all deposits in the member institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust account or as the joined owner of any amount in an account.

Amalgamation or merger of member institutions

74. (1) Where a member institution amalgamates or merges with another member institution or acquires all or substantially all of the assets of another member institution, the institution that results from the amalgamation or acquisition shall retain the records of deposit liabilities of each predecessor member institution for a period of at least six years following the date of the amalgamation, merger or acquisition.

(2) Where

- (a) there is a merger or amalgamation involving a member institution in relation to which the Corporation considers the interest of the public to require a notice to be issued; or
- (b) any deposit in a member institution is transferred to or assumed by another member institution or any other person,

the transferring member institution shall publish in at least one daily newspaper published in the Virgin Islands and at the transferring member institution's electronic business site a notice regarding the period of continued separate deposit insurance coverage for the deposits that had been held or are held by it.

DIVISION 4

REIMBURSEMENT OF INSURED DEPOSITS

Payments to depositors

75. The Corporation may arrange for any type of mechanism, which in the opinion of the Corporation is necessary or incidental, to effect the payment to depositors of the amounts corresponding to their insured deposits up to the insured limit amount.

Recognition of deposit ownership

76. (1) In determining the amount of insurance available to each depositor, the Corporation shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the member institution.

(2) If the Corporation, in its sole discretion, determines that the deposit account records of the member institution are clear and unambiguous, those records shall be considered binding on the depositor, and the Corporation shall consider no other records on the manner in which the funds are owned.

(3) If the deposit account records are ambiguous or unclear on the manner in which the funds are owned, then the Corporation may, in its sole discretion, consider evidence other than the deposit account records of the member institution for the purpose of establishing the manner in which the funds are owned.

(4) Notwithstanding the generalities in this regulation, where the Corporation has reason to believe that the member institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the Corporation may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

Recognition of sole ownership of insurable deposits

77. Funds owned by a person and deposited in one or more deposit accounts in his or her name shall be added together and insured up to the insured limit amount in the aggregate.

Recognition of ownership in joint accounts

78.(1) Qualifying joint accounts shall be insured separately from any individually owned (sole ownership) deposit accounts maintained by the joint owners of the funds in a joint account.

(2) For the purpose of determining the deposit insurance coverage of joint owners, the interests of each joint owner in all qualifying joint accounts shall be added together and the total shall be insured up to the maximum insured amount.

(3) A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this Part, only if

- (a) all joint owners of the funds in the account are natural persons;
- (b) each joint owner has personally signed, which may include signing electronically, a deposit account signature card, or an alternative method approved by the Commission; and
- (c) each joint owner possesses withdrawal rights on the same basis.

(4) All deposit accounts that satisfy the criteria in subregulation (3) shall be deemed to be jointly owned, provided that the Corporation determines that the deposit account records of the member institution are clear and unambiguous as to the ownership of the accounts.

(5) If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the Corporation may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned.

(6) The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account,

although not necessarily an insurable deposit, unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the Corporation, that there is a contrary ownership capacity.

Recognition of deposit ownership in trust accounts

79. (1) The Corporation shall recognise a claim for insurance coverage based on a trusteeship, only if the relationship is expressly disclosed, by way of specific references, in the deposit account records of the member institution and such trusteeship includes, but is not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian pursuant to which funds are deposited.

(2) Where the Corporation determines, in its sole discretion, that the underlying deposit account records sufficiently indicate the existence of a trusteeship, the Corporation may forgo the requirement of the express declaration of the relationship in a trust account.

(3) The exception referred to in subregulation (2) may apply where the deposit account title or records indicate that the account is held by an escrow agent, title company or a company whose business is to hold deposits and securities for others.

(4) If the deposit account records of a member institution disclose the existence of a relationship which might provide a basis for additional insurable beneficiaries, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the member institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some other person that has undertaken to maintain such records for the depositor.

Pass-through Coverage for employee benefit plan accounts

80. (1) Any deposits of an employee benefit plan in a member institution shall be insured on a "pass-through" basis, in the amount of up to the insured limit amount for the non-contingent interest of each plan participant, provided the rules in section 229 (Recognition of deposit ownership) are satisfied.

(2) The value of an employee's non-contingent interest in an employee benefit plan shall be deemed to be the employee's account balance as of the specified date the member institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

DIVISION 5

PAYMENT OF INSURED DEPOSITS

Reimbursement process

81. (1) Subject to section 31(2) of the Act, the Corporation is obliged to commence payment in respect of a deposit insured by deposit insurance, and such payment shall be made available to the person that in the opinion of the Corporation appears to be entitled to be paid in respect to the deposit, an amount of money that is insured by the Corporation.

(2) The amount insured is to be made available by making a monetary payment to the person or a deposit to the credit of the person at another member institution, whether or not the person has an account at that institution and the Corporation may make the amount available in more than one instalment if, in its opinion, it is appropriate to do so.

(3) The Corporation shall, in the manner described in subregulation (2), make payment in respect of any deposit insured by deposit insurance in the circumstances specified in section 31 of the Act.

Payment of insured deposit as discharge from liability

82. Payment of an insured deposit to any person by the Corporation shall discharge the Corporation from liability, and payment of a transferred deposit to any person by the acquiring member institution in which a transferred deposit has been made available shall discharge the Corporation from liability and such acquiring member institution, to the same extent that payment to such person by the member institution in default would have discharged it from liability for the insured deposit.

Recognition of claimant not on depository institution records

83. Except as otherwise prescribed by the Board, neither the Corporation nor an acquiring member institution shall be required to recognise as the owner of any portion of a deposit appearing on the records of the member institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such member institution in default as part owner of the deposit, if such recognition would increase the aggregate amount of the insured deposits in such member institution in default.

Withholding payments to meet liability to depository institution

84. The Corporation may withhold payment of such portion of the insured deposit of any depositor in a member institution in default as may be required to provide for the payment of any liability of such depositor to the member institution in default or its receiver or liquidator, which is not offset against a claim due from such member institution, pending the determination and payment of such liability by such depositor or any other person liable therefor.

Disposition of unclaimed deposits

85. (1) Up to two notices shall be mailed to the last known address of the depositor appearing on the records of the member institution in default, as follows:

- (a) first notice - within 30 days after the initiation of the payment of insured deposits under section 31(1) of the Act, the Corporation shall provide written notice to all insured depositors that they must claim their deposit from the Corporation, or if the deposit has been transferred to another institution, from the transferee institution; and
- (b) second notice - a second notice containing this information shall be mailed by the Corporation to all insured depositors who have not responded to the first notice, 15 months after the Corporation initiates such payment of insured depositors.

(2) Where an insured depositor fails to make a claim for his or her insured or transferred deposit within 18 months after the Corporation initiates the payment of insured deposits under section 31(1) of the Act

- (a) any transferee institution shall refund the deposit to the Corporation, and all rights of the depositor against the transferee institution shall be barred; and
- (b) the Corporation shall deliver the deposit to the custody of the appropriate account designated by the Government, and, upon delivery to the designated account, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 31(1) of the Act.

(3) Where a depositor does not claim the deposit delivered to the designated account within 10 years of the date of delivery, the deposit shall be immediately refunded to the Corporation and become its property and all rights of the depositor with respect to such deposit shall be barred as of the date of the refund to the Corporation.

PART V

ROLE OF THE CORPORATION AS RECEIVER OR LIQUIDATOR

DIVISION 1

PREPARATORY AND PLANNING ACTIVITIES

Data Requirements

86. (1) For the purpose of the performance of its functions in accordance with section 4 of the Act, having regard to the impact that the failure of the member institution may have, due to

- (a) the nature of its business;
- (b) its shareholding structure;
- (c) its legal form;
- (d) its risk profile;
- (e) size and legal status;
- (f) its interconnectedness to other institutions or the financial system in general;
- (g) the scope of the complexity of its activities;
- (h) its membership of the Corporation; and
- (i) how its failure and subsequent winding up may be carried out in an orderly manner,

the Corporation shall be entitled to receive from member institutions, either through the Commission or directly from the member institutions, data and

information to facilitate the performance of proper resolvability assessments and resolution planning.

(2) The Corporation and the Commission shall establish adequate coordination mechanisms to ensure timely information sharing and consultation as appropriate for assessing, in accordance with subregulation (1), the impact of the failure of a member institution on financial markets, on other institutions and on funding conditions.

Resolvability assessments

87. (1) Resolvability assessments shall be carried out to identify obstacles to orderly resolution for all member institutions, and when appropriate, their holding company and subsidiaries.

(2) In assessing the resolvability of a member institution, individually or in a consolidated manner with its holding company and subsidiaries, as adequate, the Corporation shall assess whether the member may exit the financial system and wind up its affairs in a manner that avoids disruption in the financial system and unnecessary losses to its depositors and the economy.

(3) The Corporation, in its sole capacity, shall determine which other institutions for which the Corporation may act as receiver or liquidator shall be included in its assessments of resolvability of the member institution.

(4) Whenever the Corporation determines that a member institution may not exit the financial system and wind up its affairs in a manner that avoids both the disruption in the financial system and unnecessary losses to its depositors and the economy, it shall, in consultation with the Commission, require the removal of the observed impediments to its resolvability as provided for in Part VI of these Regulations.

Resolution Planning

88. (1) Resolution plans reflecting the preferred resolution strategy identified through a resolvability assessment shall be developed by the Corporation for every member institution considering the institution's nature and business model as well as whether it provides critical functions within the financial system.

(2) Resolution plans shall lay out a credible and viable plan to implement the preferred resolution strategy, including the following information

- (a) the main findings of the resolvability assessment;
- (b) the estimate of the time required to resolve the member institution based on the preferred resolution strategy; and
- (c) whether and how the Corporation as liquidator would ensure continuity of critical functions or critical shared services if it determines that to do so would be necessary or in the general public interest.

Continued preparation and planning

89. (1) In performing resolvability evaluations and in developing resolution planning, the Corporation shall consider the elements detailed in Schedule 2.

(2) The Board shall determine how often resolvability evaluations and resolution planning should be carried out for member institutions, on an individual or a group basis, based on the nature of their operations and their systemic importance, but not less often than once every three years.

(3) Regardless of the periodic basis established by the Board to develop resolution plans, the plans shall be updated whenever material changes to the member institution and its group take place.

(4) Where the Corporation believes that it would be in the best interest of both depositors with the member institution and the Corporation, that preparations be made to make a payment under the Act in respect of a deposit held by a member institution, the Corporation may 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.

(5) For the purposes of the examination under subregulation (4), 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 member institution's directors, officers, auditors and any receiver or liquidator of the member institution to furnish any information and explanations regarding the deposits held by the member institution that the Corporation or person may require.

DIVISION 2

THE CORPORATION AS RECEIVER

Principles guiding the Corporation in its role as receiver

90. (1) The Corporation shall perform its duties as receiver in observance of its principal objectives set out in section 4 of the Act.

(2) When acting as receiver, with respect to a relevant person, the Corporation shall have all rights, powers and duties that the Corporation has as receiver under the Act, these Regulations and its rules to be prescribed.

(3) The Corporation acts in a receivership capacity when it performs and discharges its obligations as the receiver or liquidator of a relevant person, separate from its corporate role as the deposit insurance agency.

Organisation of new entities

91. The Corporation may, as receiver, with respect to any member institution, for the purpose of facilitating the acquisition, management, or disposal of assets, including real property, or liabilities of a relevant person organise:

- (a) a new corporation under regulation 96; or
- (b) a bridge bank under regulation 98.

Functions of financial institutions' officers, directors, and shareholders

92. (1) The Corporation may, in writing, provide for the exercise of any function by any shareholder, director, or officer of any relevant person for which the Corporation has been appointed receiver.

(2) The Corporation, upon appointment as receiver, may remove and replace the senior management and directors of a relevant person in the manner it determines to be in the public interest.

Bond not required

93. (1) The Corporation as receiver of a relevant person shall not be required to furnish any bond and may appoint, in consultation with the Commission, an agent or agents to assist it in its duties as such receiver.

(2) All fees, compensation, and expenses of receivership and liquidation shall be fixed by the Corporation and may be paid by it out of funds coming into its possession as such receiver.

DIVISION 3

RESOLUTION MECHANISMS

Least cost resolution required

94. (1) Except as provided in sections 5 and 17(1)(c) of the Act, the Corporation shall not take any action, directly or indirectly, under sections 7(1)(d), 17(2) and 18(b) of the Act with respect to any member institution that would have the effect of increasing losses to the Fund by protecting:

- (a) depositors for more than the insured portion of their deposits (determined without regard to whether such institution is liquidated); or
- (b) creditors other than depositors.

(2) Subject to the requirement of section 4(d) of the Act, the least cost resolution requirement shall not be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution, for which the Corporation has been appointed receiver or liquidator, to acquire uninsured deposit liabilities of such institution as long as the applicable insurance fund does not incur any loss with respect to such uninsured deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

Mergers and acquisitions

95. (1) The Corporation may, as receiver

- (a) merge a member institution with another member institution; or
- (b) transfer any asset or liability of a failed relevant person without any approval, assignment, or consent.

(2) No merger or transfer described in subregulation (1) may be made to a financial institution or another licensee without coordination with the Commission.

(3) The prohibition in subregulation (2) is not applicable when the merger or transfer described in subregulation (1) is to a new corporation or to a bridge bank established pursuant to regulations 96 and 98.

Organisation and management of a new corporation

96. (1) As soon as possible after the determination of non-viability of a member institution, the Corporation may request in writing the authorisation of the Cabinet to procure the incorporation of a corporation to perform temporarily the functions thereafter described.

(2) The Registrar shall register the incorporation of the new corporation upon the sole presentation by the Corporation of the Cabinet Order authorising the incorporation of the new corporation.

(3) The memorandum and articles of the new corporation shall be executed by representatives designated by the Corporation.

(4) No capital stock shall be paid in by the Corporation.

(5) The new corporation shall not have a board of directors but shall be managed by an executive officer appointed by the Board who shall be subject to its directions.

(6) In all other aspects the new corporation shall operate and be organised as determined by the Board and in compliance with the directions and exemptions instructed by the Cabinet in writing.

(7) Funds of the new corporation shall be kept on hand in cash, deposited with the Corporation.

(8) The new corporation shall transact business only as authorised by the Cabinet in writing and as may be incidental to its organisation.

(9) To make the new corporation operational, upon the organisation of the new corporation, the Corporation shall promptly determine the estimated amount of expenses of operating the new corporation, and the Corporation shall make a request to the Minister for a loan out of the Consolidated Fund to the Corporation for the estimated amount.

(10) The earnings of the new corporation shall be paid over or credited to the Corporation to pay back the loan made from the Consolidated Fund.

(11) If any new corporation, during the period it continues its status as such, sustains any losses, the Corporation may furnish to it additional funds in the amount of such losses.

Transfer and winding up of a new corporation

97. (1) Whenever the Board determines that it is desirable to do so, the Corporation shall cause capital stock of the new corporation to be offered for sale on such terms and conditions as the Board shall deem advisable in an amount sufficient, in the opinion of the Board, to make possible the conduct of the business of the new corporation on a sound basis.

(2) The stockholders of the relevant person in resolution shall be given the first opportunity to purchase any shares of common stock so offered.

(3) Upon proof that an adequate amount of capital stock in the new corporation has been subscribed and paid for in cash, the Corporation shall require the memorandum and articles to be amended to conform to the requirements for the organisation of the relevant person, and thereafter, when the requirements of law with respect to the organisation of the financial institution or otherwise have been

complied with to commence business, and thereupon the new corporation shall cease to have the status of a new corporation, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to the operation of financial institutions or otherwise.

(4) If the capital stock of the new corporation is not offered for sale, or if an adequate amount of capital for such new corporation is not subscribed and paid for, the Board may offer to transfer its business to any financial institution or otherwise which will take over its assets, assume its liabilities and pay to the Corporation for such business such amount as the Board may deem adequate; or the Board in its discretion may at any time wind up its affairs as provided for in these Regulations.

(5) Unless the capital stock of the new corporation is sold or its assets are taken over its liabilities are assumed by a financial institution or otherwise as provided above within 5 years after the date of the Cabinet Order to organise it, the Corporation shall wind up the affairs of the new corporation, after giving notice to the Cabinet and the Commission, and certify the termination of the new corporation.

(6) From the date of termination of the new corporation, the Corporation shall be liable for the obligations of such new corporation and shall be the owner of its assets.

Organisation and management of a bridge bank

98. (1) The Board shall consider creating and incorporating a bridge bank only if the Board determines that

- (a) the amount which is reasonably necessary to operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating including paying the insured deposits of the member institution in financial distress or in danger of financial distress with respect to which the bridge bank is being created;
- (b) the continued operation of such member institution in financial distress or in danger of financial distress with respect to which the bridge bank is being created is essential to provide adequate banking services in the Virgin Islands; or
- (c) the continued operation of such member institution or institutions in financial distress or in danger of financial distress with respect to which the bridge bank is being created is in the best interest of the depositors of such member institution or institutions in financial distress or in danger of financial distress or the public.

(2) When one or more member institutions are in financial distress, or when the Corporation anticipates that one or more member institutions are in financial distress or in danger of financial distress, the Corporation, in consultation with the Commission, may incorporate and organise a bridge bank.

(3) The Commission shall authorise the license for the bridge bank, as appropriate, upon the request for incorporation by the Corporation.

(4) Upon the granting of the license to operate, a bridge bank may

- (a) assume the deposits of the member institutions in financial distress or in danger of financial distress as the Corporation may determine to be appropriate;
 - (b) assume other liabilities, including liabilities associated with any trust business, of the member institutions in financial distress or in danger of financial distress as the Corporation may determine to be appropriate;
 - (c) purchase such assets, including assets associated with any trust business, of the member institutions in financial distress or in danger of financial distress that the Corporation may determine to be appropriate; and
 - (d) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Part.
- (5) The board of directors of the bridge bank shall adopt such policies as may be approved by the Corporation.
- (6) Upon the incorporation of the bridge bank, the Corporation, as receiver of the member institution in resolution with respect to which the bridge bank is created may transfer any assets and liabilities of such member institution in resolution to the bridge bank in accordance with subregulations (1) and (4).
- (7) At any time after the incorporation of the bridge bank, the Corporation, as receiver of a member institution in resolution may transfer any assets and liabilities of such member institution in resolution as the Corporation may, in its discretion, determine to be appropriate in accordance with subregulations (1) and (4).
- (8) The transfer of any assets or liabilities, including those associated with any trust business, of a member institution in resolution to a bridge bank shall be effective without any further approval under any other enactment, assignment, or consent with respect thereto.
- (9) A bridge bank incorporated under this Part shall have all corporate powers of, and be subject to, the same provision of law as, a licensed financial institution, as appropriate, except for those provided for in section 19 of the Act.
- (10) Any judicial action to which the bridge bank becomes party by virtue of its acquisition of any assets or assumption of any liabilities of a member institution in financial distress shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank.
- (11) No agreement which tends to diminish or defeat the right, title or interest of a bridge bank in any asset of a member institution in financial distress acquired by the bridge bank shall be valid against the bridge bank unless such agreement
- (a) is in writing;
 - (b) was executed by such member institution in financial distress and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such member institution in financial distress;

(c) was approved by the board of directors of such member institution in financial distress, which approval shall be reflected in the minutes of said board of directors; and

(d) has been, continuously from the time of its execution, an official record of such member institution in financial distress.

(12) Except with the prior approval of the Corporation, a bridge bank may not, in any transaction or series of transactions, issue capital stock or be party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction

(13) Upon the organisation of a bridge bank, and thereafter, the Board may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge bank.

(14) Whenever the Board determines it is advisable to do so, the Corporation shall cause capital stock of a bridge bank to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(15) A bridge bank is deemed not to be an agent of the Corporation.

Merger and termination of a bridge bank

99. (1) A bridge bank that participates in a merger or consolidation as provided for in section 19(6)(a) of the Act shall be for all purposes a licensed financial institution with all the rights, powers and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of the Act and these regulations.

(2) Following the merger or consolidation or sale of a majority of the equity of the bridge bank as provided in section 19(6) of the Act, the Corporation may amend the memorandum and articles of the bridge bank to reflect the termination of the status of the bridge bank as such, whereupon the Corporation shall appoint itself liquidator of the residual estate.

(3) The Corporation, as liquidator of the bridge bank, shall wind up the affairs of the bridge bank in accordance with the provision in Part VI of these Regulations.

PART VI
RESOLUTION OF RELEVANT PERSONS

DIVISION 1
GENERAL PROVISIONS

Purpose of this Part

- 100.** The purpose of this Part is to
- (a) ensure the continued preparation of the Corporation to attain the policy objectives of resolution proceedings; and
 - (b) to lay down the procedures relating to the resolution proceedings of relevant persons.

Interpretation

- 101.** In these Part the following definitions apply:

- “allowed claim” means a claim against the member institution or receiver that is allowed by the Corporation as receiver or upon which a final non-appealable judgement has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim;
- “business transfer scheme” means a scheme of transfer for banking business, their holding companies and subsidiaries;
- “contagion” refers to the systemic risk of contagion in banking where financial difficulties at one or more banks, may spill over to a large number of other banks or to the financial system as a whole;
- “financial contracts” are those designated as such by the Commission, included those detailed in rule 324 of the Insolvency Rules, Revised Edition 2020;
- “institution under resolution” means an institution in respect of which a resolution action is taken;
- “payment instruction” or “settlement instruction”, in relation to a payment system, includes an instruction to transfer, clear or settle transactions in funds or securities, as the case may be;
- “payment instrument” means any instrument, whether tangible or intangible, that enables a person to obtain money, goods or services or to make any payment;
- “payment system” means any system or arrangement for the transfer, clearing or settlement of funds or securities;
- “premises” includes any land, building, structure or place;
- “resolution proceedings” is the set of activities and procedures whereby the relevant authorities prepare and implement the orderly winding up of a failed relevant person;

“set-off arrangement” means an arrangement under which two or more claims or obligations owed between the institution under resolution and a counterparty can be set off against each other; and

“systemic risk” refers to a risk of disruption to financial services that is caused by an impairment of all or parts of the financial system and has the potential to have serious negative consequences for the real economy.

DIVISION 2

PROCEDURE AND PRACTICE

Removal of Impediments to orderly resolution

103. (1) In pursuing its principal objectives as conferred in section 4 of the Act, the Corporation may issue directions in writing to a relevant person requiring that person to take measures which, in the opinion of the VIDIC, are required to address impediments to

- (a) the effective exercise of the Corporation’s power to provide financial assistance to a financial institution in a state of financial distress; or
- (b) the winding up of that relevant person whether by use of the provisions in the Act and its Regulations.

(2) The directions that the Corporation may require of a relevant person may include

- (a) to amend a group financial support agreement;
- (b) where there is no such agreement, to review the need to enter into one;
- (c) to enter into an agreement for the provision of services relating to the provision of critical functions;
- (d) to limit that person’s maximum individual and aggregate exposures;
- (e) to produce information which is relevant to the exercise of the power to provide financial assistance, and to provide that information to the Corporation;
- (f) to dispose of specified assets;
- (g) to cease carrying out specified activities, or observe restrictions in relation to the carrying out of specified activities;
- (h) to cease the development of new or existing business operations, or observe restrictions in relation to the development of such operations;
- (i) in order to ensure that it is possible for the performance of critical functions to be legally or operationally separated from the performance of other functions
 - (i) to change its legal or operational structure; or

- (ii) so far as it is able to do so, to change the legal or operational structure of a subsidiary;
 - (j) to establish a financial holding company which is not a subsidiary of a member institution or of another holding company.
- (3) The Corporation may give directions to a relevant person requiring that person to maintain or issue particular kinds of liabilities that may be eligible for conversion into capital instruments.
- (4) The Corporation may give directions to a relevant person requiring that person
 - (a) to maintain a minimum requirement for own funds and eligible liabilities; and
 - (b) for the purpose of subsection (a), with the approval of the Commission, to change the maturity profile of own funds instruments and eligible liabilities or take other specified steps.
- (5) Directions under this Rule may be given with general effect or with respect to a particular relevant person or class of relevant persons.

Safeguards relating to Directions given by the Corporation

- 103.** (1) A direction given to a relevant person under rule 5 (rule on Standard for Safety and Soundness) must be accompanied by notice which
- (a) states when the direction takes effect;
 - (b) gives the Corporation's reasons for giving the direction; and
 - (c) specifies a reasonable period within which the relevant person may make representation to the Corporation about the direction.
- (2) The direction may, if the Corporation reasonably considers it necessary, take effect
- (a) immediately it is given to the relevant person; or
 - (b) on a later date specified in the direction.
- (3) Where representations are made by the relevant person within the period specified under subsection (1)(c), the Corporation must, within a reasonable period, consider those representations and decide
- (a) Whether to confirm or revoke the direction, and
 - (b) If the direction is revoked, whether to give a different direction.
- (4) The Corporation must
- (a) If no representations are made within that specified period, give the relevant person written notice that the direction is confirmed, and
 - (b) If representations are made, give the relevant person written notice of its decision under subsection (3).

Standards for Safety and Soundness

- 104.** (1) Relevant persons shall maintain compliance with operational and managerial standards required by the Commission as prescribed relating to –

- (a) internal controls, information systems, and internal audit systems;
- (b) loan documentation;
- (c) credit underwriting;
- (d) interest rate exposure;
- (e) asset growth; and
- (f) compensation, fees, and benefits; and
- (g) such other operational and managerial standards as the Commission determines to be appropriate.

(2) Relevant persons shall maintain the necessary conditions to comply with the standards prescribed for relevant persons by the FSC or the corresponding government agency, by rule, regulation or guideline, relating to asset quality, earnings, and stock valuation that the Commission or agency determines to be appropriate.

Failure to meet Standards

105. (1) Whenever a plan is required by the Commission, or the corresponding government agency, to a relevant person based on the relevant person's failure to meet any standard prescribed as laid out in rule 7 (rule on Standards for Safety and Soundness), a copy of such plan shall be submitted to the VIDIC at the same time the required plan is submitted to the Commission or the corresponding government agency.

(2) Any plan required under subsection (1) shall specify the steps that the relevant person will take to correct the deficiency.

(3) If a relevant person fails to submit an acceptable plan within the time allowed by the Commission or the corresponding government agency or fails in any material respect to implement a plan accepted by the Commission or the corresponding government agency, the Corporation may make recommendations to the Commission or to the Ministry of Finance, as it may be pertinent, for action to be taken in respect of the relevant person.

Determination of Failing or Likely to Fail

106. (1) The Corporation forms the opinion that a relevant person is failing or likely to fail when the relevant person

- (a) no longer fulfills the requirements for authorisation by the Commission;
- (b) it has more liabilities than assets;
- (c) it is unable to pay its debts as they fall due; or
- (d) it requires financial assistance from the Corporation.

(2) At the time of declaring a relevant person as failing or likely to fail, one of the above conditions must be met or be likely to be met.

(3) Whenever the Corporation has determined that a relevant person is failing or likely to fail, the Corporation may make a recommendation for action to the Commission.

(4) The Corporation and the Commission shall cooperate closely before, during and after the resolution proceedings.

Grounds for appointing the Corporation Receiver

107. (1) The Corporation shall act as receiver or liquidator and exercise its powers whenever the Corporation forms the opinion in relation to the relevant person that the relevant person is in the following circumstances:

- (a) the relevant person's license to carry on its business operations has been revoked by the Commission;
- (b) the relevant person is deemed by the Commission to have failed to meet the standards established by the Commission;
- (c) the relevant person is failing or likely to fail and there is no reasonable prospect for a private sector solution to its failing or likely to fail condition;
- (d) the relevant person is in violation of any law or regulation, or is carrying any unsafe or unsound practice or is under a condition that is likely to
 - (i) cause insolvency or substantial dissipation of assets or earnings;
 - (ii) weaken the relevant person's condition; or
 - (iii) otherwise seriously prejudice the interests of the relevant person's depositors or the Deposit Insurance Fund.
- (e) the policy of deposit insurance issued to the member institution has been cancelled;
- (f) the relevant person's assets are less than the relevant person's obligations to its creditors and others, including members of the relevant person;
- (g) there is a substantial dissipation of assets or earnings due to
 - (i) any violation of any statute or regulation; or
 - (ii) any unsafe or unsound practice;
- (h) there exists a state of affairs in respect of the relevant person that may be materially prejudicial to the interests of the depositors, policy owners, participants, users or creditors of the relevant person, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in the Virgin Islands or elsewhere in respect of the relevant person or the financial group of the relevant person
- (i) there has been concealment of the relevant person's books, papers, records, or assets, or any refusal to submit the relevant person's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate agency of the Government of the Virgin Islands

- (j) the relevant person, by resolution of its board of directors or stockholders or members, consents to the appointment of the Corporation as receiver
- (k) the Attorney General notifies the Ministry of Finance or the Corporation in writing that the relevant person has been found guilty of a criminal offence relating to money laundering or financing of terrorist activities.

(2) The appointment of the Corporation as Receiver implies the initiation of resolution proceedings.

The Corporation may Appoint Itself as Receiver

108. (1) The Board may appoint the Corporation as sole receiver of a relevant person if the Board determines that

- (a) one or more of the grounds specified in regulation 127 (grounds for appointment) exist with respect to the relevant person; and
- (b) the appointment is necessary to reduce
 - (i) the risk that the Deposit Insurance Fund would incur a loss with respect to the relevant person; or
 - (ii) any loss that the Corporation is expected to incur with respect to that relevant person.

(2) Where the Corporation has formed the opinion that a member institution is failing or likely to fail, in accordance to section 26(9) of the Act, the Corporation may appoint itself Receiver.

(3) When acting as Receiver pursuant to an appointment under subregulation (1), the Corporation shall not be subject to the direction or supervision of any other agency or department of Government in the exercise of the Corporation's rights, powers, and privileges.

Judicial Review

109. Whenever the Corporation is appointed receiver of a relevant person under regulation 107, the relevant person may not later than 30 days thereafter, bring an action in the High Court for an order requiring the Corporation to be removed as the receiver, and the High Court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the receiver. In directing to remove the Corporation as receiver, all expenses incurred by the Corporation as receiver of the relevant person shall be satisfied by the relevant person.

DIVISION 3

APPOINTING THE CORPORATION RECEIVER

General provisions for the Corporation as receiver

110. (1) Notwithstanding any provision of the Insolvency Act, Revised Edition 2020, or the BVI Business Companies Act, Revised Edition 2020, the Corporation may accept appointment and act as receiver of any relevant person upon appointment in the manner provided in these Regulations.

(2) Where the Court is to appoint a receiver for a relevant person, the Corporation shall be appointed as receiver .

(3) Where the Corporation is appointed as receiver, the provisions of the Insolvency Act, Revised Edition 2020, BVI Business Companies Act, Revised Edition 2020, and Financial Services Commission Act, Revised Edition 2020, that apply to such persons do not apply to the Corporation.

(4) The Board, based on the recommendation of the CEO, shall approve the delegation of authority and distribution of responsibilities for the persons in the receivership or liquidation team established by the CEO.

(5) The expenses properly incurred by the Corporation in performing its functions in the role of receiver shall be charged against the assets of the relevant person in resolution.

General Powers of the Receiver

111. (1) The Corporation as receiver, and by operation of law, succeeds to

- (a) all rights, titles, powers, and privileges of the relevant person and its assets, and of any stockholder, member, officer, or director of such relevant person; and
- (b) title to the books, records, and assets of any previous administrator, rehabilitator or other legal custodian of such relevant person.

(2) The Corporation as receiver, may

- (a) take over the assets of and operate the relevant person's affairs with all the powers of the stockholders, members, directors, and officers of the relevant person and conduct all business of the relevant person;
- (b) collect all obligations and money due the relevant person;
- (c) sell or otherwise dispose of any property of the relevant person that is subject to an agreement creating a security interest to any person who agrees to assume the obligation secured by the security interest;
- (d) perform all functions of the relevant person in the name of the relevant person which are consistent with the Corporation's appointment as receiver; and
- (e) manage the assets and property of the relevant person in a manner that aims at maximising the value of the assets in the context of resolution proceedings.

(3) Additionally, the Corporation, as receiver may

- (a) do anything and enter into any transaction which, in the opinion of the Corporation, is necessary or incidental to its functions;
- (b) execute all documents necessary or incidental to the exercise of its powers in the name, and on behalf, of the relevant person in resolution proceedings; and
- (c) use the relevant person's seal.

(4) The Corporation may, as receiver, place the relevant person in liquidation and proceed to realise upon the assets of the relevant person, having due regard to the established order of priority of claims contained in this Part.

(5) For greater certainty, without prejudice to the powers conferred on the Corporation under the Act, when acting as receiver, the Corporation's powers include the powers specified in Schedule 3.

(6) A person dealing with the Corporation as receiver of a relevant person in good faith and for value is not concerned to enquire whether the Corporation is acting within its powers.

DIVISION 4

RESOLUTION ACTION

Objectives of Resolution

112. (1) The relevant authorities shall have regard to the resolution objectives when coordinating with the VIDIC when the Corporation uses or is considering the use of its functions and powers.

(2) For the purpose of this Part, the relevant authorities are

- (a) the Cabinet;
- (b) the Ministry of Finance;
- (c) the Financial Services Commission; and
- (d) the VIDIC.

(3) Objective 1 is to ensure the continuity of banking services in the Virgin Islands and of critical functions.

(4) Objective 2 is to protect and enhance the stability of the financial system of the Virgin Islands by

- (a) preventing contagion; and
- (b) maintaining market discipline.

(5) Objective 3 is to protect and enhance public confidence in the stability of the financial system of the Virgin Islands.

(6) Objective 4 is to protect public funds, including by minimising reliance on extraordinary public financial support.

(7) Objective 5 is to protect depositors to the extent that they have deposits covered by a deposit insurance policy with the Corporation.

(8) Objective 6, which applies in any case in which client assets may be affected, is to protect those assets.

(9) Objective 7 is to avoid interfering with property rights in contravention (verify if there is a reference, maybe a convention or a Humans Rights Act.)

(10) The order in which the objectives are listed in this regulation is not significant, they are to be balanced as appropriate in each case.

(11) The VIDIC shall choose the tools and powers that best achieve the objectives that are relevant in the circumstances of the case.

(12) When pursuing the above objectives, the Corporation shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

Assumption of Control

113. (1) Upon its appointment as receiver, the Corporation shall assume control of the business, affairs or property of the relevant person and manage its business or affairs or appoint any person to do so on behalf of the Corporation.

(2) Where an order has been made under subsection (1), the Corporation shall

- (a) notify that fact in the *Gazette*; and
- (b) give notice of the commencement of the assumption of control under subregulation (1) by publication of the order within 48 hours after its appointment as receiver in two daily newspapers in the Virgin Islands.

(3) All costs and expenses of the receiver, including the remuneration of appointed persons, shall be payable out of the funds and property of the relevant person, as a first charge against the funds and properties of the relevant person, and accounted for as Administrative Expenses of the Receiver.

(4) In the case there are insufficient funds available at the assumption of control to pay costs and expenses in the manner laid out in subregulation (3), the Corporation may apply funds from the DIF and allocate them as Administrative Expenses of the Receiver.

Administrative expenses of the Receiver

114. (1) The term “administrative expenses of the receiver” includes those actual and necessary pre- and post-failure costs and expenses incurred by the Corporation in connection with its role as receiver in liquidating the relevant person; together with any obligations that the receiver for the relevant person determines to be necessary and appropriate to facilitate the smooth and orderly liquidation of the relevant person. Administrative expenses of the Corporation as receiver of a relevant person include

- (a) contractual rent pursuant to an existing lease or rental agreement accruing from the date of the appointment of the Corporation as receiver until the later of
 - (i) the date a notice of the disaffirmance or repudiation of such lease or rental agreement is mailed; or
 - (ii) the date such disaffirmance or repudiation becomes effective, provided that the lesser of such lease is not in default or breach of the terms of the lease;
- (b) amounts owed pursuant to the terms of a contract for services performed and accepted by the receiver after the date of appointment of the receiver up to the date the receiver repudiates, terminates, cancels or otherwise discontinues such contract or

notifies the counterparty that it no longer accepts performance of such services;

- (c) amounts owed under the terms of a contract executed in writing and entered into by the Corporation as receiver for the relevant person after the date of appointment, or any contract or agreement entered into by the relevant person before the date of appointment of the receiver that has been expressly approved in writing by the receiver after the date of appointment; and
- (d) Expenses of the Inspector General carrying out its responsibilities under (cite legislation).

(2) Obligations to repay any extension of credit obtained by the Corporation as receiver through enforcement of any contract to extend credit to the relevant person that was in existence prior to appointment of the receiver (either financial assistance or other back up funding) shall be treated as administrative expenses of the receiver. Other unsecured credit extended to the receivership shall be treated as administrative expenses except with respect to debt incurred by, or credit obtained by, the Corporation as receiver of the related person.

(3) The receiver shall retain the accounting records of the costs and expenses described in subregulation (1) for a period not less than five years after the termination of the resolution proceedings.

Effects of Initiation of Resolution Proceedings

115. (1) In the same act where the Commission determines that a relevant person is to be placed under resolution, the Commission must notify the Corporation and request the Board's appointment of the Corporation as receiver for the affected relevant person.

(2) The appointment of the Corporation as receiver shall be notified in writing to the Court for its recognition.

(3) Upon its appointment as receiver, the Corporation shall take custody and control of the business, affairs and property of the relevant person and shall manage the business and affairs of the relevant person in the name and on behalf of that relevant person until the resolution proceedings have concluded.

(4) Unless otherwise instructed by the Corporation in writing, the functions, rights and privileges of the directors, chief executive officer and senior officers of the relevant person shall be suspended.

(5) The Corporation, in effecting any action as Receiver, shall not be required to notify or obtain the approval of the members or creditors of the relevant persons in a general meeting or otherwise notwithstanding any contract, law or regulation to the contrary.

(6) The Corporation may sell or otherwise dispose of the whole or part of the business or property of the relevant person, on any terms and conditions determined by the Corporation.

Subpoena powers

118. (1) The relevant person, its directors, Chief Executive Officer and officers shall collaborate with the receiver by submitting to the receiver such facilities,

documents or information as may be required to facilitate the exercise of powers or performance of functions of the receiver.

(2) The receiver may require a person who has, at any time, been a director, Chief Executive Officer or an officer of the relevant person to give the receiver any information relating to the business, affairs or property of the relevant person that the receiver requires.

(3) Any person who contravenes subregulation (1) or fails to comply with the requirement in subregulation (2) commits an offence under this Regulation and is liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years or to both.

Changes to be made in management

117. (1) In accordance with section 18(a) of the Act, the Corporation may, by an order in writing, remove a director, Chief Executive Officer or senior officer from office or employment in a relevant person if the Corporation is of the opinion that the director, Chief Executive Officer or senior officer of the relevant person

- (a) no longer fulfils the fit and proper requirements specified under the Financial Services Commission Act, Revised Edition 2020; or
- (b) has breached, contravened, or failed to comply with or, by action or negligence, has contributed to the breach or contravention of, or non-compliance with any provision contained in the Act or the Financial Services Commission Act, Revised Edition 2020.

(2) A director, Chief Executive Officer or senior officer removed from office or employment in a relevant person under subregulation (1) shall cease to hold the office from which he is removed with effect from the date set out in the order and shall cease to be concerned with the business or affairs of the relevant person.

(3) The removal of a director, Chief Executive Officer or senior officer under subregulation (1) shall be lawful and valid notwithstanding anything contained in a contract of service or any other agreement relating to his appointment and whether or not made or provided for under any written law, and a person so removed from office or employment shall not be entitled to claim compensation for the loss of office.

Exception from appropriation requirements

118. The Corporation, when acting as receiver, is exempted from all requirements contained in any enactment for a government agency when entering into contracts with local or international providers of goods and services.

Disposition of assets

119. (1) In exercising any right, power, privilege, or authority as receiver in connection with any sale or disposition of assets of any relevant person for which the Corporation has been appointed receiver, the Corporation shall conduct its operation in a manner which

- (a) maximises the net present value return from the sale or disposition of such assets;

- (b) minimises the amount of any loss realised in the resolution process; and
- (c) ensures adequate competition and fair and consistent treatment of offerors.

DIVISION 5

DETERMINATION OF CLAIMS

Authority of receiver to determine claims

120. (1) The Corporation shall, as receiver, determine claims in accordance with the requirements and criteria provided for in the Act and these Regulations.

(2) The Corporation, as receiver of a relevant person, shall

- (a) promptly publish a notice to the relevant person's creditors to present their claims, together with proof, to the receiver or liquidator by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and
- (b) republish such notice 30 days after the publication in paragraph (a).

(3) The Corporation, as receiver, shall mail a notice similar to the notice published under subregulation (2)(a) at the time of such publication to any creditor shown in a relevant person's records

- (a) at the creditor's last address appearing in the relevant person's records; or
- (b) upon discovery of the name and address of a claimant not appearing on the relevant person's records, within 30 days after the discovery of such name and address.

(4) Within 180 days from the date any claim against a relevant person is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect of such claim.

(5) The period described in subregulation (4) may be extended by a written agreement between the claimant and the Corporation.

Notice to claimants

121. (1) The requirement in regulation 120(4) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears

- (a) in the relevant person's records;
- (b) in the claim filed by the claimant; or in documents submitted in proof of the claim.

(2) If any claim filed under regulation 120 is disallowed, the notice to the claimant shall contain

- (a) a statement with the reasons for the disallowance; and

- (b) the procedures available for obtaining administrative review of the determination to disallow the claim or judicial determination of the claim.

Authority to disallow claims

121. (1) Except as provided in regulation 120(5), claims filed after the date specified in the notice published under regulation 120(2)(a) shall be disallowed and such disallowance shall be final.

(2) The Corporation may determine an exception to the provision in subregulation (1) with respect to any claim filed by any claimant after the date specified in the notice published in accordance with regulation 120(2)(a) if the Corporation determines that

- (a) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and
- (b) such claim is filed in time to permit payment of such claim.

(3) The Corporation may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

Payment to less than fully secured creditors

123. In the case of a claim of a creditor against a relevant person which is secured by any property or other asset of such relevant person, the Corporation as receiver

- (a) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the relevant person; and
- (b) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the relevant person.

Payment of Claims

124. (1) The Corporation, as receiver, to the extent funds are available, shall pay all valid obligations of the relevant person under resolution proceedings, in accordance with the provisions and limitations in these Regulations.

(2) The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation, by reason of such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

DIVISION 6

PRIORITY OF CLAIMS

Priority of Expenses and Unsecured Claims

125. (1) Subject to regulation 40 (Recovery of Losses), amounts realised from the resolution proceedings of any relevant person by the appointed receiver or

liquidator that are proved to the satisfaction of the Corporation shall have priority in the following order:

- (a) administrative expenses of the receiver;
- (b) super-preferred creditors
 - (i) eligible depositors for the amount up to protected balances in accordance to the Act;
 - (ii) employees with labour-related claims, except for those included in subsection (f);
- (c) preferred creditors depositors with balances above the maximum protected amount;
- (d) any other general or senior liability of the relevant person not included under subsection (e), (f) or (g);
- (e) any obligation subordinated to general creditors not included in subsection (f) or (g);
- (f) any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to directors, executives and officers of the relevant person;
- (g) any obligation to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the relevant person arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the relevant person.

Post-receivership Financing Priority

126. In the event that the Corporation, as receiver of a relevant person, is unable to obtain unsecured credit for the relevant person from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the relevant person, which shall have priority over any or all administrative expenses of the receiver under regulation 125.

Creditors similarly situated

127. All claimants of a relevant person that are similarly situated under regulation 125 shall be treated in a similar manner, except that the Corporation may take any action, if

- (a) The Corporation determines that such action is necessary
 - (i) to maximise the value of the assets of the relevant person;
 - (ii) to initiate and continue operations essential to implementation of the resolution proceedings or of a bridge bank;
 - (iii) to maximise the present value return from the sale or other disposition of the assets of the relevant person; or
 - (iv) to minimise the amount of any loss realised upon the sale or other disposition of the assets of the relevant person; and

- (b) all claimants that are similarly situated under regulation 125 receive not less than the amount they would have received in insolvency proceedings.

DIVISION 7

LIQUIDATION AND STRIKE-OFF

Liquidation of residual estate

128. As liquidator, the Corporation shall proceed to realise upon the assets of the relevant person, having due regard for the established claims priorities and procedures laid out in this Part.

Termination of resolution proceedings

129. (1) On the basis of the recommendation of the CEO, the Board shall terminate the resolution proceeding of a relevant person no later than ten years after the specified date.

(2) The Board may determine to extend the time limitation of a resolution proceeding referred to in subregulation (1) for one 12-month period.

(3) The CEO recommendation to the Board to terminate the resolution proceedings of a relevant person shall be on the basis on the receiver's assessment that the costs incurred in continuing the proceedings are greater than the recoveries expected from its continuation.

Final meeting

130. (1) Upon the Corporation's determination, as receiver, that the resolution proceedings must be terminated on the basis that liquidation costs surpass recoveries, the receiver shall prepare a final report on the state of affairs of the resolution proceedings.

(2) The receiver shall call a meeting by sending a notice, together with its final report, to all creditors not less than 28 days before the date fixed for the meeting.

(3) If there is no quorum at the final meeting, the receiver shall report to the Court that a final meeting was summoned in accordance to these regulations, but there was no quorum present and the final meeting is then deemed to have been held.

Application for strike-off

131. The Corporation shall apply to the Registrar for the striking-off of the relevant person from the Register of Companies upon the approval by the Board to terminate the resolution proceedings.

DIVISION 8

ACCOUNTING AND RECORD KEEPING REQUIREMENTS

Records of receiverships

132. The Corporation, as receiver of a relevant person shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain full accounting of each resolution proceeding.

Reporting requirements

133. With respect to each receivership to which the Corporation was appointed, the Corporation shall make an annual report, as appropriate, available to the Minister, Registry of Corporate Affairs, and to the Commission.

SCHEDULE 1

FORM 1

[Regulation 6(1) & (2)]

OATH OF FIDELITY AND SECRECY

I, _____, do solemnly swear that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a director (officer or employee as the case may be) of the Virgin Islands Deposit Insurance Corporation and which properly relate to any office or position in the Corporation held by me.

I further solemnly swear that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Corporation, nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to the business of the Corporation.

Signature

Date (MM/DD/YYYY)

FORM 2

[Regulation 10(3)(b)]

APPLICATION FOR DEPOSIT INSURANCE

DEPOSIT INSURANCE APPLICATION FORM

Where additional space in which to answer is required, the applicant shall complete the answer on a separate page that shall be marked as an attachment and cross-referenced to the item to which it pertains. Each such separate page shall have the initials of the signing officers.

Section A: General Applicant Information		
1	Corporate name of applicant	
2	a) Date of incorporation or registration of applicant	
	b) Date on which applicant commenced business	
3	Country of incorporation of applicant	
4	If incorporated in the Virgin Islands, provide address, telephone and facsimile number(s) of the registered office of the applicant	
5	Address, telephone and facsimile numbers of the principal place of business if different from paragraph 4 above	
6	Information of officer representing applicant with respect to this application:	
	a) Full name	
	b) Job title	
	c) Telephone number(s)	
	d) Facsimile number(s)	
7	If the applicant is incorporated outside the Virgin Islands:	
	a) Address of the head office	
	b) Address of the principal office in the VI	
	c) Name of authorised agent in the VI	
	d) Name of alternate authorised agent in the VI	
8	If locally incorporated, attach certified copies of applicant's—	Check when attached

	a) Memorandum of Association	
	b) Articles of Association	
	d) Certificate of Incorporation	
	e) Other constituting documents	
9	If incorporated outside the VI, attach –	
	a) Certified copies of applicant's constituting documents	
	b) Powers of attorney of the authorised agents	
10	Attach list with full name, occupation and home and business address for each director of the applicant.	Check to indicate attached list
11	Attach list of officers of the applicant, including Chief Executive Officer and other senior officers.	Check to indicate attached list
12	Attach list with name and addresses of each branch of the applicant in the VI	Check to indicate attached list
13	Information of the external auditor(s) of the applicant:	
	a) Name	
	b) Address	
	c) Telephone number(s)	
	d) Facsimile number(s)	
	e) Website	
	c) Contact person	
	d) Email address of contact person	
14	Name and address of banker(s) of the applicant	
15	Attach a copy of applicant's latest audited balance sheet and profit and loss accounts in respect of all business transacted by it in the previous financial year and prepared in the manner prescribed in its governing statute or any	

	Regulations made under the Financial Services Commission Act.	
Section B: Information and Corporate Structure		
16	Attach list of persons with at least 20% voting shares of the applicant providing full name, occupation, home and business address, and number and type of shares held in USD	
17	If applicant is a subsidiary of another company, provide name, address and nature of business of that company.	
18	Attach list of all subsidiaries of the applicant providing name, address and nature of business of that other company.	
19	Where applicable, attach a corporate organisational chart, showing clearly, the relationship of the applicant to other companies with which it forms part of a group.	
Section C: Other Information		
20	Has the applicant, its holding company, subsidiaries or any of their officers ever under the laws of any jurisdiction:	(Tick the appropriate box. Submit details separately, where 'yes' is indicated.).
	a) been refused membership to a deposit insurance system?	Yes () No ()
	b) held deposit insurance that has been suspended, terminated, or the subject of an investigation?	Yes () No ()
	c) been refused a license to accept deposits?	Yes () No ()
	d) had its license as a deposit-taking financial institution suspended, revoked, or the subject of an investigation?	Yes () No ()
	e) been found guilty of fraud, misappropriation of funds, or violation of laws	Yes () No ()

	regulating the provision of financial services or securities trading?	
21	Provide details of any pending litigation to which the applicant is a party that might materially affect the capital base of the applicant	

This application is signed by the following signatory:

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED ON THIS APPLICATION FORM AND ATTACHED DOCUMENTATION IS CORRECT AND ACCURATE.	
Signed by Authorised Signatory	
Full name	
Date	

SCHEDULE 2

[Regulation 89]

DRAWING UP AND MAINTAINING RESOLUTION PLANS

INFORMATION TO BE REQUIRED FOR THE PURPOSES OF DRAWING UP AND MAINTAINING RESOLUTION PLANS

The Corporation may request member institutions to provide for the purposes of drawing up and maintaining resolution plans at least the following information:

1. a detailed description of the institution's organisational structure including a list of all legal persons;
2. identification of the direct holders and the percentage of voting and non-voting rights of each legal person;
3. the location, jurisdiction of incorporation, licensing and key management associated with each legal person;
4. a mapping of the institution's critical operations and core business lines including material asset holdings and liabilities relating to such operations and business lines, by reference to legal persons;
5. a detailed description of the components of the institution's and all its legal entities' liabilities, separating, at a minimum by types and amounts of short term and long-term debt, secured, unsecured and subordinated liabilities;
6. details of those liabilities of the institution that are eligible liabilities;
7. an identification of the processes needed to determine to whom the institution has pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;
8. a description of the off-balance sheet exposures of the institution and its legal entities, including a mapping to its critical operations and core business lines;
9. the material hedges of the institution including a mapping to legal persons;
10. identification of the major or most critical counterparties of the institution as well as an analysis of the impact of the failure of major counterparties in the institution's financial situation;
11. each system on which the institution conducts a material number or value amount of trades, including a mapping to the institution's legal persons, critical operations and core business lines;
12. each payment, clearing or settlement system of which the institution is directly or indirectly a member, including a mapping to the institution's legal persons, critical operations and core business lines;
13. a detailed inventory and description of the key management information systems, including those for risk management, accounting and financial

- and regulatory reporting used by the institution including a mapping to the institution's legal persons, critical operations and core business lines;
14. an identification of the owners of the systems identified in point (13), service level agreements related thereto, and any software and systems or licenses, including a mapping to their legal entities, critical operations and core business lines;
 15. an identification and mapping of the legal persons and the interconnections and interdependencies among the different legal persons such as:
 - common or shared personnel, facilities and systems;
 - capital, funding or liquidity arrangements;
 - existing or contingent credit exposures;
 - cross guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;
 - risks transfers and back-to-back trading arrangements; service level agreements;
 16. the regulatory and resolution authority for each legal person;
 17. the officer responsible for providing the information necessary to prepare the resolution plan of the institution as well as those responsible, if different, for the different legal persons, critical operations and core business lines;
 18. a description of the arrangements that the institution has in place to ensure that, in the event of resolution, the Corporation will have all the necessary information, as determined by the Corporation, for applying the resolution tools and powers;
 19. all the agreements entered into by the institutions and their legal entities with third parties the termination of which may be triggered by a decision of the authorities to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;
 20. a description of possible liquidity sources for supporting resolution;
 21. information on asset encumbrance, liquid assets, off-balance sheet activities, hedging strategies and booking practices.

MATTERS TO CONSIDER WHEN ASSESSING THE RESOLVABILITY OF AN INSTITUTION OR GROUP

When assessing the resolvability of an institution or group, the Corporation shall consider the following:

1. the extent to which the institution is able to map core business lines and critical operations to legal persons;
2. the extent to which legal and corporate structures are aligned with core business lines and critical operations;

3. the extent to which there are arrangements in place to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical operations;
4. the extent to which the service agreements that the institution maintains are fully enforceable in the event of resolution of the institution;
5. the extent to which the governance structure of the institution is adequate for managing and ensuring compliance with the institution's internal policies with respect to its service level agreements;
6. the extent to which the institution has a process for transitioning the services provided under service level agreements to third parties in the event of the separation of critical functions or of core business lines;
7. the extent to which there are contingency plans and measures in place to ensure continuity in access to payment and settlement systems;
8. the adequacy of the management information systems in ensuring that the Corporation is able to gather accurate and complete information regarding the core business lines and critical operations so as to facilitate rapid decision making;
9. the capacity of the management information systems to provide the information essential for the effective resolution of the institution at all times even under rapidly changing conditions;
10. the extent to which the institution has tested its management information systems under stress scenarios as defined by the Corporation;
11. the extent to which the institution can ensure the continuity of its management information systems both for the affected institution and the new institution in the case that the critical operations and core business lines are separated from the rest of the operations and business lines;
12. the extent to which the institution has established adequate processes to ensure that it provides the resolution authorities with the information necessary to identify depositors and the amounts covered by the Deposit Insurance System;
13. where the group uses intra-group guarantees, the extent to which those guarantees are provided at market conditions and the risk management systems concerning those guarantees are robust;
14. where the group engages in back-to-back transactions, the extent to which those transactions are performed at market conditions and the risk management systems concerning those transactions practices are robust;
15. the extent to which the use of intra-group guarantees or back-to-back booking transactions increases contagion across the group;
16. the extent to which the legal structure of the group inhibits the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or the difficulty in aligning business lines to group entities;
17. the amount and type of conversion eligible liabilities of the institution;

18. where the assessment involves a mixed activity holding company, the extent to which the resolution of group entities that are institutions or financial institutions could have a negative impact on the non-financial part of the group;
19. the existence and robustness of service level agreements;
20. whether cross-border authorities have the resolution tools necessary to support resolution actions by the Corporation, when applicable, and the scope for coordinated action between the Corporation and cross-border authorities;
21. the feasibility of using resolution tools in such a way which meets the resolution objectives, given the tools available and the institution's structure;
22. the extent to which the group structure allows the Corporation to resolve the whole group or one or more of its group entities without causing a significant direct or indirect adverse effect on the financial system, market confidence or the economy and with a view to maximising the value of the group as a whole;
23. the arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;
24. the credibility of using resolution tools in such a way which meets the resolution objectives, given possible impacts on creditors, counterparties, customers and employees and possible actions that cross-border authorities may take;
25. the extent to which the impact of the institution's resolution on the financial system and on financial market's confidence can be adequately evaluated;
26. the extent to which the resolution of the institution could have a significant direct or indirect adverse effect on the financial system, market confidence or the economy;
27. the extent to which contagion to other institutions or to the financial markets could be contained through the application of the resolution tools and powers;
28. the extent to which the resolution of the institution could have a significant effect on the operation of payment and settlement systems.

SCHEDULE 3

[Regulation 111(5)]

POWERS OF THE CORPORATION AS RECEIVER OR LIQUIDATOR

Powers of the Corporation as Receiver or Liquidator are as follows:

1. Succeed to all rights, titles, powers and privileges of the relevant person and its assets, and of any stockholder, member, officer or director of such company.
2. Power to take possession of, take over the assets and carry out the operations of the relevant person with all the powers of the shareholders, members, directors and officers, and conduct all business of the relevant person.
3. Liquidate the relevant person through the sale of assets and liabilities or the transfer of assets and liabilities to a bridge financial company, as provided under section 19(1) of the Act.
4. Power to sell, charge, or otherwise dispose of any property of the relevant person.
5. Merge the relevant person with another company or transfer assets or liabilities.
6. Pay valid obligations that come due, to the extent that funds are available;
7. Exercise subpoena powers.
8. Use private sector services to manage and dispose of assets.
9. Terminate rights and claims of stockholders and creditors (except for the right to payment of claims consistent with the priority of claims provision).
10. Determine and pay claims.
11. Power to borrow money, whether on the security of the assets of the relevant person, or otherwise.
12. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
13. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the relevant person.
14. Power to refer to arbitration any question affecting the relevant person.
15. Power to effect and maintain insurances in respect of the business and assets of the relevant person.
16. Power to draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the relevant person with the same effect with respect to the relevant person's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.
17. Power to appoint any agent to do any business which he is unable to do himself or which can be more conveniently done by an agent and power to employ and dismiss employees.

18. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the assets of the relevant person.
19. Power to make any payment which is necessary or incidental to the performance of his functions.
20. Power to establish subsidiaries of the relevant person (in coordination with the Commission).
21. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.
22. Power to compromise, on such terms as may be agreed
 - (a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the relevant person and any person; and
 - (b) questions in any way relating to or affecting the assets or the liquidation of the relevant person;and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
23. Power to do all acts and execute, in the name and on behalf of the relevant person, any deeds, receipts or other document.
24. Power to use the relevant person's seal.
25. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
26. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the relevant person.
27. Power to call meetings of creditors or members for
 - (a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;
 - (b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or
 - (c) such other purpose connected with the liquidation as the Corporation considers fit.
28. Power to appoint an agent to do any business that the Corporation is unable to do itself, or which can be more conveniently done by an agent.

Made by the Cabinet this day of , 2023.

Cabinet Secretary.