

Sierra Leone

Deposit Protection Fund Act, 2023

Act 1 of 2023

Legislation as at 19 January 2023

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Act 1 of 2023

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Commenced on 19 January 2023

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Being an Act to establish a deposit protection fund and to provide for other related matters.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

Part I – Preliminary

1. Interpretation

In this Act, unless the context otherwise requires—

"**Bank**" means a body corporate licensed by the Central Bank to carry on banking business;

"**Central Bank**" means the Bank of Sierra Leone;

"**deposit**" means a sum of money paid on terms under which it will be repaid, with or without interest or premium, and either on demand or at an agreed time under the legal or contractual conditions applicable and not referable to the provisions of property, service or the giving of security;

"**depositor**" means a person that holds a deposit in a member bank or a specialized deposit-taking institution;

"**differential premium**" means an addition to the amount to the regular premiums based on the risk of the member institutions;

"**extraordinary premiums**" means an addition to the regular premiums where the Fund has made or is likely to make payments to depositors which have been exhausted or are likely to exhaust the Fund;

"**failed insured institution**" means an insured institution whose operating licence has been revoked by the Central Bank;

"**Fund**" means the Sierra Leone Deposit Protection Fund established under this Act;

"**Governor**" means the Governor of the Central Bank;

"**Initial premium**" means a fixed amount payable by a member bank or specialized deposit-taking institutions for the establishment of the Fund as an initial capital provided for in this Act;

"**insured institution**" means a deposit taking financial institution licensed by the Central Bank;

"**insurance event**" means an event that requires the Fund to undertake payment of insured deposits;

"**joint deposit**" means the deposit held by two or more persons jointly, the payment of which may be demanded by all or any of the joint beneficiaries in accordance with the mandate of the holders of that account;

"**least cost test**" means the calculation of the least costly resolution alternative for the Fund for payment of depositors of a failed bank or specialized deposit-taking institutions;

"**member institution**" means an institution, licensed by the Central Bank that accepts deposits from the general public;

"**Minister**" means the minister responsible for finance;

"**Ministry**" means the ministry responsible for finance;

"**ongoing premium**" means the sum payable by the member banks or specialized deposit-taking institutions;

"**person**" means any natural or legal person;

"**premium**" means the sum payable by the member banks or specialized deposit-taking Institutions;

"**purchase and assumption**" means a merger or acquisition by another insured institution or contract to have the deposit liabilities assumed by another insured institution;

"**reserve Fund**" means the fund that is derived from a member institution's premium contributions, investment income and any other income or resources provided to the Fund.

"**significant shareholder**" means a person who holds directly or indirectly five percent or more of the total subscribed capital of a member bank or specialized deposit-taking institutions;

"**subrogation**" means the claims of insured depositors and creditors paid by the Deposit Protection Fund who will be entitled to the amount realized from liquidation of the failed bank's assets;

"**systemic**" means the risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy.

Part II – Establishment of the Deposit Protection Fund

2. Deposit Protection Fund

- (1) There is hereby established a fund to be known as Deposit Protection Fund.
- (2) The Fund shall be a corporate body with perpetual succession and power to acquire, hold and dispose of property, whether movable or immovable, enter into contracts, sue and be sued in its corporate name and subject to this Act do all things which a body corporate may lawfully do.

3. Public policy objectives

The Fund shall have the following public policy objectives—

- (a) protecting small, less financially sophisticated depositors by providing an orderly and timely means of compensation in the event of failure of their insured financial institutions;
- (b) contributing to the financial system stability in its role as a participant in the financial system safety-net; and
- (c) enhancing public confidence and systemic stability by providing a framework for the resolution and orderly exit mechanism for failing and failed insured institutions.

4. Functions of the Fund

- (1) The object for which the Fund is established is to promptly pay insured depositors of all member institutions
- (2) Without prejudice to the generality of subsection (1) the Fund shall perform the following functions—
 - (a) insure covered deposit liabilities of licensed banks and such other deposit taking member institutions operating in Sierra Leone;

- (b) reimburse insured depositors in the event of revocation of operating licence of member institutions or in the case of actual suspension of payments by member institutions up to the maximum amount as provided for in Part VII;
- (c) calculate and collect initial premium, ongoing premiums and extraordinary premiums;
- (d) manage the assets of the fund;
- (e) monitor member institutions' compliance with the law, regulation and reporting to the Fund;
- (f) pursue any other measures necessary to achieve the functions of the Fund provided that such measures and actions are not in conflict with the objectives of the fund.

5. Head office

The Fund shall have its head office in Freetown and may have branches in the district headquarter towns subject to the approval of the Governor.

Part III – Exclusivity of the Deposit Protection Fund

6. Prohibition on establishment and management of scheme

- (1) No person or organisation shall establish and manage a scheme for the prompt reimbursement of insured depositors of member banks and specialised deposit taking institutions on the occurrence of an insurance event.
- (2) A person or organisation who contravenes this section commits an offence and is liable on conviction to
 - (a) 7 years imprisonment in the case of an individual;
 - (b) a fine of Nle500,000 in the case of an organization

Part IV – Administration

7. Appointment of officer to manage the Fund

- (1) The Governor shall appoint a senior officer not below the level of an Assistant Director who shall be responsible for managing the operations of the Fund
- (2) The terms and conditions of the officer's appointment shall be stipulated in his letter of appointment.

8. Other staff

The Governor shall transfer certain employees of the Central Bank to the office of the Fund

Part V – Capital, funding premiums and use of funds

9. Capital

- (1) Authorised capital of the Fund shall be established by the payment of the initial premiums paid by member institutions.
- (2) Capital may be increased through new member institutions payment of their initial capital.

10. Funding

- (1) All licensed member banks or specialized deposit-taking institutions shall be members of the Fund.
- (2) Payment of the initial premium shall be determined by the Fund and shall be deducted from the member institution's account at the Central Bank and credited to the Fund's account.
- (3) A member financial institution licensed after the commencement of this Act shall pay into the Fund's account—
 - (a) an initial contribution calculated at a percentage of the average amount of insured deposits held at the start and at the end of the first year of its operations;
 - (b) the initial premium payment within 30 days before the end of its first year of operation.
- (4) The initial premium contributed shall be considered as initial capital of the Fund.
- (5) All licensed member banks or specialized deposit-taking institutions under subsection (1) shall pay quarterly premiums as determined by the Fund.
- (6) The premium payment referred to under subsection (5) shall be deducted from the member institution's account at the Central Bank.

11. Fund to manage funds

The Fund shall manage the Reserve Fund and the Abandoned Deposit Fund.

12. Reserve fund Deposit Fund

- (1) The Reserve Fund shall be derived from member institution's initial and quarterly premium contributions, investment income and any other income or resources paid into the fund
- (2) The Fund may choose to have multiple reserve funds for banks, microfinance institutions and other deposit taking institutions who may become member institutions.

13. Abandoned Deposit Fund

- (1) Income from the Abandoned Deposit Fund shall be used to support the operational cost and the development of the Reserve Fund.
- (2) The owners of abandoned deposits shall maintain their rights to recover their deposits, with no interest paid, subject to verification of ownership.
- (3) In order to maintain financial integrity, the Fund shall establish guidelines or procedures for owners' claims and shall maintain the abandoned deposits in the abandoned deposit fund.
- (4) The Fund shall receive recoveries from assets of failed banks or failed specialized deposit-taking institutions in case of sale or liquidation, to reimburse the subrogated claims of depositors.

14. Resources of the Fund

- (1) The Fund's resources shall be maintained in an independent account to be opened within the Central Bank
- (2) The Fund shall develop an investment policy that prioritizes safety and liquidity.
- (3) The investment policy shall be submitted to the Central Bank for its approval.
- (4) The Central Bank shall serve as the Fund's asset manager.

15. Reserve target fund

- (1) The Fund shall establish a reserve target fund that is adequate to cover potential losses.
- (2) The size of the reserve target fund shall be three to 5% of total deposits, to be reached within 10 years of the establishment of the reserve target fund.
- (3) The Central Bank shall review the size of the reserve target fund at least once per year with regards to its actual and potential liabilities.
- (4) Based on the review under subsection (3), the Central Bank may set a higher minimum reserve target size for the reserve target fund commensurate with the objectives of protecting the interests of depositors and contributing to the resolution of member institutions.
- (5) When the reserve target fund range is achieved, the Fund may reduce or suspend the flat rate contributions of institutions provided, however, during this moratorium, institutions shall continue to pay the minimum contribution and the risk-adjusted contribution set by the Fund.
- (6) When the reserve target fund balance drops below the minimum range limit, the payment of flat rate contributions shall be restored.

16. Emergency funding

- (1) Funding shall be required where the reserve fund does not have sufficient liquidity to pay insured depositors
- (2) The Fund shall have a standing line of credit with the Ministry to provide liquidity for the resolution of non-systemic banks.
- (3) The Fund shall repay the Ministry without interest for all amount advanced over a time frame to be approved by the Bank and the Ministry.

17. Premiums

- (1) A member institution shall pay regular premiums into the Fund on a quarterly basis.
- (2) The assessment periods shall start on the first day of January, April, July and September of each year.
- (3) Flat baseline premiums shall be calculated at a percentage of the average total insured deposits held by each member institution over the preceding assessment period.
- (4) A differential premium assessment system based on the risk of the member institutions shall be calculated at a percentage of the average total deposits held by each member institution over the preceding assessment period.
- (5) The differential premium shall be added to the flat baseline rate based on the composite supervisory rating of the member institutions by the Bank.
- (6) The Central Bank shall determine and announce the rate at which regular and differential premiums shall be set before the commencement of each assessment period.
- (7) The Central Bank may increase at any time the rate at which the regular premiums are assessed, but it may only decrease such rate provided the Fund has reached the minimum target level and all outstanding funding provided by the Bank have been fully repaid.
- (8) The baseline and differential premiums shall be paid to the Fund by drawing from the accounts of the member institutions
- (9) The Fund shall issue regulations on the method which shall be used for calculating the regular premiums and the procedure for collecting such premiums.

- (10) Where the Fund has made or is likely to make payments to depositors which have been exhausted or are likely to be exhausted the Fund may in addition to the regular premiums impose extraordinary premiums on the member institutions.
- (11) The Central Bank in order to enable the Fund to return to its minimum target size within a reasonable period, shall determine the rate of the extraordinary premiums which shall not exceed twice the amount of the regular annual premiums paid by each member institution over the preceding assessment period.
- (12) The extraordinary premiums shall be paid to the Fund by drawing from the accounts of the member institutions at the Bank.

18. Use of Fund

- (1) The Fund's resources may be used for the following—
 - (a) capital expenditure and recurrent expenses of the Fund;
 - (b) payment of insured deposits to depositors of failed member institution;
 - (c) facilitate payment of depositors through a purchase and assumption agreement based on the least costly resolution alternative;
 - (d) investment in government securities issued, or securities guaranteed by the government;
 - (e) servicing of loans used by the Fund for paying insured deposits; and
 - (f) reimbursement to the Bank for its contribution to the Fund's operating expenses, when the Fund reaches the maximum target range fund.
- (2) The reserve fund shall not be used to make investments in member banks, deposits or placement in member banks or in specialized deposit-taking institutions.

19. Establishment and maintenance of bank account

- (1) The Deposit Protection Fund shall start off as a Unit and later transform into a Department within the Central Bank.
- (2) An account in the name of the Deposit Protection Fund shall be created in the accounting system of the Central Bank.

20. Operating expenditure

- (1) As a Unit within the Central Bank its initial expenses for planning, development and implementation of the Fund shall be borne by the Central Bank.
- (2) The Central Bank shall cover the Fund's operating expenses for a period not exceeding 5 years or when the Fund reaches the minimum target fund range.
- (3) Where the Fund reaches its minimum target fund range in less than 5 years, the Central Bank shall terminate the coverage of operating expenses.
- (4) The Central Bank shall advance funds to the Fund to cover operating expenses or pay the expenses on an ongoing basis.
- (5) Where the reserve target fund reaches the minimum percentage, the Central Bank shall request the Fund to repay its operating cost advanced by the Bank, with no interest.

Part VI – Notice of administrative sanctions, cessation of membership and merger of member institutions

21. Administrative sanctions

- (1) After consultation with the Central Bank, the Fund shall impose administrative sanctions on a member institution or a person for violation of this Act or statutory instruments made under the Act.
- (2) The administrative sanctions shall take the form of the following—
 - (a) written warnings;
 - (b) orders to comply with specific instructions; or
 - (c) pecuniary penalties.

22. Cessation of membership

- (1) A bank or specialised deposit-taking institution shall automatically cease to be a member of the Fund upon the—
 - (a) surrender, cancellation or revocation of a member bank's licence by the Central Bank;
 - (b) issuance of a winding-up order against the member bank or specialized deposit-taking institutions;
 - (c) transfer of all deposit liabilities of a member bank to any other bank or specialized deposit-taking institutions and other specialized deposit-taking institutions.
- (2) After the termination of membership of a member bank or specialized deposit-taking institution, the Fund shall as soon as reasonably practicable cause the name of the member bank or specialized deposit-taking institution to be published in at least 2 daily newspapers of nationwide circulation.
- (3) Where a member bank or specialized deposit-taking institution ceases to be a member of the Fund, the bank or specialized deposit-taking institutions shall not be relieved from its obligations or liabilities to the Fund that have accrued before the cessation of its membership.

23. Merger or amalgamation

Upon merger or amalgamation of a member bank with any other bank or specialized deposit-taking institutions—

- (a) the insured depositors shall have the same deposit protection at both or several banks or specialized deposit-taking institutions for a period of 6 months;
- (b) the merged banks or specialized deposit-taking institutions shall notify depositors that the double coverage shall end within 6 months and shall provide the Fund with proof of notification.

Part VII – Deposit protection scheme

24. Membership of the Fund

- (1) Deposit-taking institutions licensed by the Central Bank shall become members of the Fund.
- (2) The membership of a deposit-taking institution established after the commencement of this Act shall take effect on the date the banking or operational business licence is issued by the Central Bank.

- (3) The deposit-taking institution referred to under subsection (2) shall pay a fixed initial premium determined by the Fund.

25. Insurable event and payment of insured deposit

An insurance event shall occur on the date where the Central Bank announces the revocation of a business licence of a failed bank or specialized deposit taking institution and the Fund undertakes to pay the insured deposits.

26. Coverage

- (1) The coverage limit of the Fund shall be set by the Central Bank and the coverage limit shall not be less than Nle20, 000
- (2) The Central Bank may revise the coverage limit based on relevant economic data.
- (3) The Governor shall order a review of the coverage limit every 3 to 5 years to determine if the coverage is appropriate.
- (4) The Fund shall pay insured deposits per depositor or per member institution.
- (5) The insurable coverage of a depositor shall be determined by aggregating all the deposits of the depositor maintained in the different accounts, including the accrued interest on those deposits up to the date of the occurrence of the insurance event.
- (6) In the case of a joint deposit, the contributions of each depositor in the common account shall be considered equal, unless the bank records or documents a different proportion or the depositors submit evidence to the contrary.
- (7) In the case of a deposit contract for the benefit of a third party (trust account), the person on whose behalf the deposit was placed shall be the insured depositor unless otherwise stipulated in the contract.
- (8) The beneficiary of the trust referred to under subsection (7) shall have all accounts under his name aggregated and shall not be insured over the coverage limit.
- (9) Where a deposit serves as collateral for the member institution or a third party, the insured deposit payable for such a deposit shall be withheld until the deposit is freed from collateral.
- (10) The following shall be insured accounts—
 - (a) Current account;
 - (b) Savings account;
 - (c) Time and Term account;
 - (d) Non-interest account; and
 - (e) Other deposit accounts listed in the Banking Act.
- (11) The following deposits shall be excluded from insurance coverage—
 - (a) foreign currency deposits;
 - (b) secured deposits;
 - (c) deposits of banks or another specialized deposit-taking Institutions;
 - (d) deposits of Government or an agency of the Government;
 - (e) deposits of branches of financial institutions which operate outside of Sierra Leone;

- (f) deposits of the following—
 - i. an influential shareholder,
 - ii. a director,
 - iii. a president,
 - iv. a vice president of that bank or a specialized deposit-taking institution
 - v. spouse or relation in the first degree of consanguinity or affinity of such shareholder, director, president, or vice president; and
 - vi. legal entity in which the influential shareholder, director, president, or vice president of that bank or specialized Deposit-Taking Institution and/or spouse or relation in the first degree of consanguinity or affinity of such influential shareholder, director, president, or vice president holding in excess of 10% of the voting rights,
- (g) depositor, who the Bank believes profited from the failed institution and not entitled to the payment of the insured deposits;
- (h) deposits of an external auditor of the member banks or specialized deposit-taking institutions and his partner;
- (i) counterclaims from a person who maintains both deposit and loan account, the former serving as a collateral for the loan;
- (j) deposits frozen by a court;
- (k) deposits of persons under criminal investigation or who are suspected of being involved in money laundering or terrorist financing; and
- (l) such other deposits as may be specified from time to time by the Fund.

27. Right of offset

Where a depositor has obligations with the bank or specialized deposit-taking institutions the following shall apply—

- (a) performing loans shall not offset against insured deposits;
- (b) non-performing loans shall automatically offset against insured deposits;
- (c) uninsured depositor claims may be an offset against performing and non-performing loans.

Part VIII – Monitoring of insured institutions

28. Power to collect information

- (1) All members of the scheme shall submit to the Fund periodic reports as prescribed by the Fund.
- (2) The Fund may, at any time request the Bank to carry out a special examination of a member bank or specialized deposit-taking institution and to avail to the Fund the information obtained from such examination.
- (3) In preparation for the insurance event, the Fund shall work with its supervisory departments, member banks and member specialized deposit-taking institutions to ensure that there are adequate systems and software for the aggregation of depositor accounts to determine insured deposits and transfer of data.

Part IX – Rights and obligations of insured institutions

29. Rights and obligations

- (1) Rights and obligations of the member institution shall be laid down in a membership contract to be signed between the Fund and the member institutions.
- (2) The Fund shall issue a certificate of membership to a bank or specialized deposit-taking institution that is a member of the Scheme.
- (3) A bank or specialized deposit-taking Institution shall display a copy of the certificate of membership at a conspicuous place at the main office of the bank or specialized deposit-taking institution and at each branch office, agency or outlet.

Part X – Payment of insured deposits

30. Payment of insured

- (1) The following shall prevail in the case of deposits payment of insured deposits—
 - (a) the deposit account records of a member institution shall be *prima facie* evidence of the existence, validity, nature and ownership of the insured deposits;
 - (b) the Fund shall pay the member institution's depositors up to the amount of the insured deposits in the case of the insurance event;
 - (c) upon reimbursement of an insured depositor, the Fund shall be discharged from any liabilities to such insured depositor to the extent of the reimbursement;
 - (d) the Fund shall pay the insured deposits through a paying agent bank determined by the Bank or through an assuming bank in a purchase and assumption agreement;
 - (e) the appointed receiver of the member institution, working for the Central Bank and the Fund, shall prepare written records and supporting documentation on the insurable deposits of that member institution within 3 days from the date of such appointment;
 - (f) within 2 working days from receipt of the records and documents referred to under paragraph (e) the Fund shall publish in at least 2 widely circulating newspapers the date when repayment to depositors shall start, the place where payments shall be effected, and the documents required for effecting payment of insured deposits;
 - (g) repayment of depositors shall begin no later than 7 working days and shall end no later than 180 working days from the day of occurrence of the insurance event;
 - (h) subject to paragraph (j) depositors who for justifiable reasons do not meet the deadline referred to under paragraph (g) shall be eligible to claim for their insured deposits;
 - (i) 5 years after the insurance event, the Fund shall be relieved of all respective liabilities and the unclaimed funds shall revert to the Fund;
 - (j) the Fund shall not pay interest on insured deposits after the date of the insured event;
 - (k) by paying the insured deposits, the Fund shall assume the place of the depositor up to the amount paid;
 - (l) the Fund shall regularly inform the receiver and the Central Bank on the payments made by the Fund to the depositors;
 - (m) the reimbursement process shall be subject to an independent audit, the results of which shall be reported to the Central Bank.

Part XI – Financial statements, audits and annual report

31. Financial year

- (1) The financial year of the Fund shall be the same as the financial year of the Government of Sierra Leone.
- (2) The Fund shall keep accurate and complete books of accounts.

32. Financial accounts and audit

- (1) The financial statements and related documents shall be prepared by the Fund in accordance with international financial reporting standards.
- (2) The Fund shall, within 3 months from the end of each financial year, prepare and submit to the Central Bank unaudited financial statements.
- (3) The Central Bank shall appoint an external auditor annually.
- (4) The audit report shall be submitted to the Central Bank for review and approval, within 3 months from the end of each financial year.
- (5) The financial statements duly audited and signed by an auditor shall be submitted to the Central Bank and published in the annual report to be issued by the Fund.

33. Annual report

- (1) The Fund shall prepare and make available to the public an annual report that shall at least include statistical data of the main operation of the Fund at least once a year.
- (2) The Fund shall conduct a meeting relating to the annual report with member institutions within 6 months of the end of the fiscal year.

Part XII – Miscellaneous provisions

34. Advertisement

An insured institution shall not advertise its insured status unless it obtains approval from the Fund.

35. Public awareness

A member institution shall inform the public about its membership in the Fund.

36. Tax exemption

The Fund shall be exempted from paying income tax and dividend.

37. Immunity

- (1) No action or other proceeding shall lie or be instituted against any officer or agent of the Fund in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.
- (2) No officer or agent of the Fund shall be personally liable for any debt or obligation of the Fund emanating from transactions expressly done in good faith in the exercise of his functions under this Act.

38. Disclosure and transparency

- (1) The Fund may collect any information from its supervisory departments and member institutions
- (2) The information collected shall not be disclosed or caused to be disclosed to any person unless the disclosure is—
 - (a) made for the purpose of fulfilling the requirements of this Act;
 - (b) made to recipients who are legally authorized to obtain such information;
 - (c) made to any authority to which the Fund is accountable;
 - (d) ordered by a court of competent jurisdiction;
 - (e) required for the purpose of meeting Sierra Leone's obligations under any international agreement that it is a party to.

39. Cooperation

The Fund and its supervisory department shall work together in relation to the following—

- (a) undertaking of examinations by the departments on behalf of the Fund;
- (b) exchange of information or data with respect to distressed financial institutions;
- (c) sharing of information and data; and
- (d) any other matters considered necessary by the Fund

40. Regulations

The Minister in consultation with its supervisory departments may by statutory instruments make regulations for giving effect to the provisions of this Act.

41. Commencement of Act

The Act shall come into effect not later than 18 months of its enactment.