參考資料

主要國의 預金保護法

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韓國租稅研究院

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Ⅰ. 美國 預金保險公社法

FEDERAL DEPOSIT INSURANCE ACT

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FEDERAL DEPOSIT INSURANCE ACT

SEC. 1. There is hereby created a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to to benefits of insurance under this Act, and which shall have the powers hereinafter granted.

SEC. 2. MANAGEMENT.

(a) BOARD OF DIRECTORS -

(1) IN GENERAL - The management of the Corporation shall be vested in a Board of Directors consisting of 5 members -

(A) 1 of whom shall be the comptroller of the Currency;

(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

(C) 1 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(2) POLITICAL AFFILIATION - After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) CHAIRPERSON AND VICE CHAIRPERSON -

(1) CHAIRPERSON - 1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) VICE CHAIRPERSON - 1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) ACTING CHAIRPERSON - In the event a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) TERMS -

(1) APPOINTED MEMBERS - Each appointed member be appointed for a term of 6 years.

(2) INTERIM APPOINTMENTS - Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) CONTINUATION OF SERVICE - The Chairperson, vice chairperson and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) VACANCY -

(1) IN GENERAL - Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE - In the event of a vacancy in the office of the Comptroller the Currency or the office Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) INELIGIBILITY FOR OTHER OFFICES -

(1) POSTSERVICE RESTRICTION -

(A) IN GENERAL - No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during -

(i) the time such member is in office; and

(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM - The limitation

contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) RESTRICTION DURING SERVICE - No member of the Board of Directors may -

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) CERTIFICATION - Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

SEC. 3. As used in this Act -

(a) DEFINITION OF BANK AND RELATED TERMS -

(1) BANK - The term "bank" -

(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

(B) includes any former savings association that -

(i) has converted from a savings association charter; and

(ii) is a Savings Association Insurance Fund member.

(2) STATE BANK - The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which -

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code

of Law for the District of Columbia (except a national bank),

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) STATE - The term "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(4) DISTRICT BANK - The term "District bank" means any State bank operating under the Code of Law of District of Columbia.

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS -

(1) SAVINGS ASSOCIATION - The term "savings association" means -

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the substantially the same manner as a savings association.

(2) FEDERAL SAVINGS ASSOCIATION - The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.

(3) STATE SAVINGS ASSOCIATION - The term "State savings association" means -

(A) any building and loan association savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (A)(2)),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS -

(1) DEPOSITORY INSTITUTION - The term "depository institution" means any bank or savings association.

(2) INSURED DEPOSITORY INSTITUTION - The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.

(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES - The term "insured depository institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 8 of this Act.

(4) FEDERAL DEPOSITORY INSTITUTION - The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) STATE DEPOSITORY INSTITUTION - The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) DEFINITIONS RELATING TO MEMBER BANKS -

(1) NATIONAL MEMBER BANK - The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) STATE MEMBER BANK - The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(e) DEFINITIONS RELATING TO NONMEMBER BANKS -

(1) NATIONAL NONMEMBER BANK - The term "national nonmember bank" means any national bank which -

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) STATE NONMEMBER BANK - The term "State nonmember bank" means any

State bank which is not a member of the Federal Reserve System.

(f) The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) SAVINGS BANK - The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this Act; and the term "noninsured bank" means any bank the deposits of which are not so insured.

(i) NEW BANK AND BRIDGE BANK DEFINED -

(1) NEW BANK - The term "new bank" means a mew national bank, other than a bridge bank, organized by the Corporation in accordance with section 11(h).

(2) BRIDGE BANK - The term "bridge bank" means a new national organized by the Corporation in accordance with section 11(i).

(j) The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) The term "Board of Directors" means the Board of Directors of the Corporation.

(l) The term "deposit" means -

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a

check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable; *Provided,* That without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection,

(2) trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) money received or held by a bank or savings association, or the credit given for course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited ti, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes; *Provided,* That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) outstanding draft (including advice or authorization to charge bank's or savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose,

including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit;

(A) any obligation of a bank or savings association which is payable only at an office of such bank or savings association located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands; and

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System.

(m)(1) Subject to the provisions of paragraph (2) of this subsection, the term "insured deposit" means the net amount due to any depositor (other than a depositor referred to in the third sentence of this subsection) for deposits in an insured depository institution (after deducting offsets) less any part thereof which is in excess of $ 100,000. Such net amount shall be determined according to such regulations as the Board of Directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the depository institution maintained in the same capacity and the same right for his benefit either in his own name or in the names of others except trust funds which shall be insured as provided in subsection (i) of section 7. Each officer, employee, or agent of the United States, of any State of the United States, of the District

of Columbia, of any Territory of the United States, of Puerto Rico, of Guam, of American Samoa, of the Trust Territory of the Pacific Islands, of the Virgin Islands, Northern Mariana Islands, of any country, of any municipality, or of any political subdivision therof, herein called "public unit", having official custody of public funds and lawfully depositing the same in an insured depository institution shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in the same insured depository institution in custodial capacity. For the purpose of clarifying and defining the insurance coverage under this subsection and subsection (i) of section 7, the Corporation is authorized to define, with such classifications and exceptions as it amy prescribe, terms used in those subsections, in subsection (p) of section 3, and in subsections (a) and (i) of section 11 and the extent of the insurance coverage resulting therefrom.

(2) In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined inparagraph (1) of this subsection which

(A) is payable in the United States to -

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.

(n) The term "transferred deposit" means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured bank.

(o) The term "domestic branch" includes any branch bank, branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent; and the term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which banking operations are conducted.

(p) The term "trust funds" means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) APPROPRIATE FEDERAL BANKING AGENCY - The term "appropriate Federal banking agency" means -

(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of -

(A) any State member insured bank (except a District bank),

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

(C) any foreign bank which does not operate an insured branch,

(D) any agency or commercial lending company other than a Federal agency,

(E) supervisory or regulatory proceedings arising from the authority given to the

Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Depository Institutions Supervisory Act, and

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank);

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch; and

(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

(r) The terms "foreign bank" and "Federal branch" shall be construed consistently with the usage of such terms in the International Banking Act of 1978.

(s) The term "insured branch" means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of this Act.

(t) INCLUDES, INCLUDING -

(1) IN GENERAL - The term "includes" and "including" shall not be construed more restrictively than the ordinary usage of such terms so as to excludes any other thing not referred to or described.

(2) RULE OF CONSTRUCTION - Paragraph (1) shall not be construed as creating any inference that the term "includes" or "including" in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

(u) INSTITUTION-AFFILIATED PARTY - The term "institution-affiliated party" means -

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);

(3) any shareholder (other than a bank holding company), consultant, joint venture

partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in -

(A) any violation any law or regulation;

(B) any breach or fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse affect on, the insured depository institution.

(v) VIOLATION - The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) DEFINITIONS RELATING TO HOLDING COMPANIES -

(1) DEPOSITORY INSTITUTION HOLDING COMPANY - The term "depository institution holding company" means a bank holding company or a savings and loan holding company.

(2) BANK HOLDING COMPANY - The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(3) SAVINGS AND LOAN HOLDING COMPANY - The term "savings and loan holding company" has the meaning given to such term in section 10 of the Home Owner's Loan Act.

(4) SUBSIDIARY - The term "subsidiary" -

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) CONTROL - The term "control" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(6) AFFILIATE - The term "affiliate" has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956.

(x) DEFINITIONS RELATING TO DEFAULT -

(1) DEFAULT - The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) IN DANGER OF DEFAULT - The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that -

(A) in the opinion of such agency or authority -

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal case of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority -

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

SEC. 4(a) CONTINUATION OF INSURANCE -

(1) BANKS - Each bank which is an insured bank on the effective date of this amendment, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this Act.

(2) SAVINGS ASSOCIATIONS - Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before the date 1989, shall be, without application or application or approval, an insured depository institution.

(b) CERTIFICATION BY OTHER BANKING AGENCIES - Every national bank which is authorized to commence or resume the business of banking, and which is engaged in the business of receiving deposits other than trust funds as herein defined, and every such national nonmember bank which becomes a member of the Federal Reserve System, and every State bank which is converted into a national member bank or which becomes a member of the Federal Reserve System, and which becomes a member of the Federal Reserve System, and which is engaged in the business of receiving deposits, other than trust funds as herein defined, shall be an insured depository institution, from the time it is authorized to commence or resume business or becomes a member of the Federal Reserve System. Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period of time to provide comments on such application or notice. Any comments submitted by the Corporation to the appropriate Federal banking agency shall be considered by such agency. The certificate herein prescribed shall be issued to the Corporation by the Comptroller of the Currency in the case of such national member bank, or by the Board of Governors of the Federal Reserve System in the case of such State member bank; *Provided,* That in the case of an insured depository institution which is admitted to membership in the Federal Reserve System or

an insured State bank which is converted into a national member bank, such certificate shall not be required, and the bank shall continue as an insured depository institution. Such certificate shall state that the bank is authorized to transact the business of banking in the case of a national member bank, or is a member of the Federal Reserve System in the case of a State member bank, and that consideration has been given to the factors enumerated in section 6.

(c) CONTINUATION OF INSURANCE AFTER CONVERSION - Subject to section 5(d) -

(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

(2) any Federal depository instruction which results from the conversion of any State depository institution,

shall continue as an insured depository institution.

(d) CONTINUATION OF INSURANCE AFTER MERGER OF CONSOLIDATION - Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.

SEC. 5(a) APPLICATION FOR INSURANCE -

(1) NATIONAL AND STATE NONMEMBER BANKS; STATE SAVING ASSOCIATIONS - Any national nonmember bank which is engaged in the business or receiving deposits, other han trust funds as herein defined, upon application by the bank and certification by the Comptroller of the Currency in the manner prescribed in section (b) of section 4 and any state nonmember bank and state savings association, upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution. Before approving the application of any such State nonmember bank and state savings association, the Board of

Directors shall give consideration to the factors enumerated in section 6 and shall determine, upon the basis of 1 thorough examination of such bank or savings association, that its assets in excesses of its capital requirements are adequate to enable it to meet all of its liabilities to depositors and other creditors as shown by the books of the bank or savings association, and, in the case of an application by a State savings association, the Corporation shall notify the Director of the Officer of Thrift supervision of the Corporation's approval of such application. Before approving the application of any industrial bank or similar financial institution, the Board of Directors shall determine that it is chartered and operating under laws providing for, examination, supervision, and liquidation substantially comparable to those applicable to banks operating in the same state.

(2) FEDERAL SAVINGS ASSOCIATIONS - Any Federal savings association shall become an insured depository institution upon -

(A) application to the Corporation; and

(B) receipt by the Corporation of a certificate issued to the Corporation by the Director which meets the requirements of paragraph (4), unless insurance is denied by the Board of Directors.

(3) INTERIM FEDERAL SAVINGS ASSOCIATION - In the case of any interim Federal; savings association which is chartered by the Director of the Office of Thrift supervision and will not open for business, such association shall be an insured depository institution upon the issuances af such assassination's charter by the Director.

(4) CERTIFICATE REQUIREMENTS - Any certificate issued to the Corporation under paragraph (2) shall state that the Federal savings association is authorized to transact business as a savings association and that consideration has been given to the factors enumerated in section 6.

(5) REVIEW REQUIREMENTS - In reviewing and certificate and application referred to in paragraph (2), the Board of Directors shall consider the factors described in

paragraphs (1), (2), (3), (4), and (5) of section 6 in determining whether to deny insurance.

(6) NOTICE OF DENIAL OF APPLICATION - If the Board of Directors, after giving due deference to the determination of the Director of the Office of Thrift supervision with respect to such factors, does not concur in the determination of the Director, the Board of Directors shall promptly notify the Director that insurance has been denied, giving specific reasons in writing for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4) and (5) of section 6, and no insurance shall be granted.

(7) VOTING REQUIREMENTS - The authority of the Board of Directors to make any determination to deny insurance under this subsection may not be delegated by the Board of Directors and any such determination may be made only upon a vote of 3/4 of all members of the Board of Directors (excluding the Director of the Office of Thrift Supervision)

(b) Subject to the provisions of this Act and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to -

(1) the financial history and condition of the bank

(2) the adequacy of its capital structure,

(3) its future earnings prospects,

(4) the general character and fitness of its management, including but not limited to the management of the branches proposed to be insured,

(5) the risk presented to the Bank Insurance Fund or the savings Association Insurance Fund;

(6) the convenience and needs of the community to be served by the branch,

(7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this Act, and

(8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this Act.

(c)(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in according with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such addition requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed insuring the domestics deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the

implementation ion of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any united states district court, or united states court of any territory' within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5 of the united states code, and may not be made an issue in an action for an injunction under this paragraph.

(d) INSURANCE FEES -

(1) UNINSURED INSTITUTIONS -

(A) IN GENERAL - Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund and the savings Assassination Insurance Fund as required by section 7.

(B) FEE CREDITED TO APPROPRIATE FUND - The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the savings Association Insurance Fund if the depository institution becomes a savings Association Insurance Fund

member.

(C) EXCEPTION FOR CERTAIN DEPOSITORY INSTITUTIONS - Any depository institution that becomes an insured depository institution by operation of section 4(a) shall not pay any fee.

(2) CONVERSIONS -

(A) IN GENERAL -

(i) PRIOR APPROVAL REQUIRED - No insured depository institution may participation in a conversion transaction without the prior approval of the Corporation.

(ii) 5-Year MORATORIUM ON CONVERSIONS - Except as provided in subparagraph (C), the Corporation may not approve any conversion transaction before the end of the 5-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(B) CONVERSION DEFINED - For purposes of this paragraph the term "conversion transaction" means -

(i) the change of status of an insured depository institution from a Bank Insurance Fund member to a savings Association Insurance Fund member or from a savings Association Insurance Fund member to a Bank Insurance Fund member;

(ii) the merger or consolidation of a Bank Insurance Fund member with a savings Association Insurance Fund member;

(iii) the assumption of any liability by -

(I) any Bank Insurance Fund member to pay any deposits of a savings Association Insurance Fund member; or

(II) any savings Association Insurance Fund member to pay any deposits of a Bank Insurance Fund member;

(iv) the transfer of assets of -

(I) any Bank Insurance Fund member to any savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of

the deposits of such Bank Insurance Fund member; or

(II) any savings Association Insurance Fund member to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such savings Association Insurance Fund member.

(C) APPROVAL DURING MORATORIUM - The Corporation may approve a conversion transaction at any time if -

(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution participating in the conversion transaction;

(ii) the conversion occurs in connection with the acquisition or a savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of loss of assessment income to such insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A), and the Resolution Trust Corporation concurs in the Corporation's determination; or

(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of the loss of assessment income to the insurance fund over the remaining balance of the 5-year period referred to in subparagraph (A).

(D) CERTAIN TRANSFERS DEEMED TO AFFECT INSUBSTANTIAL PORTION OF TOTAL DEPOSITS - For purposes of subparagraph (c)(i), any conversion transaction shall be deemed to affect an insubstantial portion of the total deposits of an insured depository institution, to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after the date of the enactment of the Financial Institutions Reform, Recovery, and

Enforcement Act of 1 989 does not exceed 35 percent of the lesser of -

(i) the amount which is equal to the sum of -

(I) the total deposits of such insured depository institution on May 1, 1989; and

(II) the total amount of net interest credited to the depository institution's deposits during the period beginning on May 1, 1989, and ending on the date of the transfer of deposits in connection with such transaction; or

(ii) the amount which is equal to the total deposits of such insured depository institution on the date of the transfer of deposits in connection with such transaction.

(E) EXIT AND ENTRANCE FEES - Each insured depository institution participating in a conversion transaction shall pay -

(i) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a savings Association Insurance Fund member an exit fee (in an amount to be determined and assessed in accordance with subparagraph (F)) which -

(I) shall be deposited in the savings Association Insurance Fund; or

(II) shall be paid to the Financing Corporation if the secretary of the treasury determines that the Financing Corporation has exhausted an other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such fees be paid 10 the Financing Corporation;

(ii) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Bank Insurance Fund member, an exit fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) which shall be deposited in the Bank Insurance Fund; and

(iii) an entrance fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) except that -

(I) in the case of a conversion 1 transaction in which the resulting or

acquiring depository institution is a Bank 1 Insurance Fund member the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

(II) in the case of a conversion transaction in which the resulting or acquiring depository institution is a savings Association Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the savings Association Insurance Fund, and shall be paid to the savings Association Insurance Fund.

(F) ASSESSMENT OF EXIT AND ENTRANCE FEES -

(i) DETERMINATION OF AMOUNT OF EXIT FEES -

(I) CONVERSIONS BEFORE JANUARY 1, 1997. - In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated before January 1, 1997, the amount of such fee shall be determined jointly by the Corporation and the secretary of the Treasury.

(II) ASSESSMENTS AFTER DECEMBER 31, 1996. - In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated after December 31, 1996, the amount of such fee shall be determined by the Corporation.

(ii) PROCEDURES - The Corporation shall prescribe by regulation procedures For assessing any exit or entrance fee under subparagraph (E).

(G) CHARTER CONVERSION OF SAIF MEMBERS - This subsection shall not be construed as prohibiting any savings association which is a savings Association Insurance Fund member from converting to a bank charter during the period described in subparagraph (A)(ii) if the resulting bank remains a savings Association Insurance Fund member.

(3) OPTIONAL CONVERSION THROUGH MEMBER -

(A) IN GENERAL - Notwithstanding paragraph (2)(A), any bank holding company that controls savings association may merge or consolidate the assets and liabilities of such savings association with, or transfer such assets and liabilities to, any subsidiary bank which is a Bank Insurance Fund member with the approval of the appropriate Federal banking agency and the Board of Governors of the Federal Reserve System.

(B) ASSESSMENTS BY SAIF ON DEPOSITS ATTRIBUTABLE TO FORMER SAVINGS ASSOCIATION - That portion of the average assessment base of any subsidiary bank referred to in subparagraph (A) For any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction described in subparagraph (A)) shall -

(i) be subject to assessment at the assessment rate applicable under section 7 for Savings Association Insurance Fund members;

(ii) shall not be taken into account for purpose of any assessment under section 7 for Bank Insurance Fund members; and

(iii) shall be treated as deposits which are insured by the Savings Association Insurance Fund.

(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT - The adjusted attributable deposit amount which shall be taken into account by any bank subsidiary referred to in subparagraph (A) for purposes of determining the amount of the assessment under subparagraph (B)(i) for any semiannual period is the amount which is equal to the sum of -

(i) the amount of any deposits acquired by such bank subsidiary in connection with any transection described in subparagraph (A) (as determined at the time of such transection);

(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transection) if such increase occurred at a rate equal to the greater of -

(I) an annal rate of 7 percent; or

(II) the annual rate of growth of deposits of such subsidiary bank minus the amount of any deposits acquired through the acquisition, in whole or in part, of a Bank Insurance Fund member during such semiannual period.

(D) DEPOSIT OF ASSESSMENT - The amount of the assessment referred to in subparagraph (B)(i) shall be deposited in the savings Association Insurance Fund.

(E) CONDITIONS FOR FEDERAL RESERVE BOARD APPROVAL - The Board of Governors of the Federal Reserve System may not approve any application by any bank holding; company to engage in any transaction described in subparagraph (A) unless such Board determines that -

(i) the amount which is equal to the aggregate amount of the total assets of all depository institution subsidiaries of such bank holding company is not less than the amount which is equal to 200 percent of the total assets of the savings association (at the time of the proposed transaction);

(ii) the bank holding company and all bank subsidiaries of such holding company will meet all applicable capital standards upon consummation of the proposed transection;

(iii) the transaction is not in substance the acquisition of any Bank Insurance Fund member bank by any savings Association Insurance Fund member;

(iv) in the case of any transaction which occur -

(I) during the 1-year period beginning on the date of the enactment of the Financial Institutions Reform Recovery, and Enforcement Act of 1989, the savings association had tangible capital of less than 4 percent during the

preceding quarter; and

(II) during the 1-year period beginning after the end of the 1-year period referred to in subclause (I), the savings association had tangible capital of less than 5 percent during the preceding quarter; and

(v) the transaction would comply with the requirements of section 3(d) of the Bank Holding company Act of 1956 if, at the time of such transaction, the savings association were a state bank which the bank holding company was applying to acquire.

(F) ALLOCATION OF COST IN EVENT OF DEFAULT - If any subsidiary bank referred to in subparagraph (A) is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such bank subsidiary (other than the adjusted attributable deposit amount) which is insured by the Bank Insurance Fund and the adjusted attributable deposit amount which is insured by the savings Association Insurance Fund pursuant to subparagraph (B)(iii).

(G) SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION - This paragraph shall cease to apply if -

(i) after the end of the 5-year period referred to in paragraph (2)(A), the Corporation approves an application by the bank described in subparagraph (A) to treat the transaction described in subparagraph (A) as a conversion transaction; and

(ii) such bank pays the amount of any exit and entrance fee assessed by the Corporation under paragraph (2)(E) with respect to such transaction.

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS -

(1) IN GENERAL -

(A) LIABILITY ESTABLISHED - Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation

reasonably anticipates incurring, after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 in connection with -

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default

(B) PAYMENT UPON NOTICE - An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

(C) NOTICE REQUIRED TO BE PROVIDED WITHIN 2 YEARS OF LOSS - No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

(2) AMOUNT OF COMPENSATION; PROCEDURE -

(A) USE OF ESTIMATES - When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall -

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution there is more than commonly controlled insured depository institution, estimate the amount of each such; commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses

(B) PROCEDURES; IMMEDIATE PAYMENT - The Corporation, after consultation with the appropriate Federal banking agency and the appropriate state chartering agency, shall -

(i) on a case-by-case basis, establish the procedures and schedule under which any

insured depository institution shall reimburse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

(c) PRIORITY - The liability or any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows;

(i) SUPERIORITY - The liability shall be superior to the following obligations and liabilities of the depository institution;

(Ⅰ) Any obligation to shareholders arising as a result of their status as shareholders (including any depositors institution holding company or any shareholder or creditor of such company).

(Ⅱ) Any obligation or liability owed to affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

(ii) SUBORDINATION - The liability shall be subordinate in right and payment to the following obligations and liabilities or the depository institution;

(Ⅰ) Any deposit liability (which is not a liability described in clause (i)(Ⅱ)).

(Ⅱ) Any secured obligation other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(Ⅲ) Any other general or senior liability (which is no a liability described in clause (i)).

(Ⅳ) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

(D) ADJUSTMENT OF ESTIMATED PAYMENT -

(i) OVERPAYMENT - If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depositors Institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institutions pro rata share of any overpayment

(ii) UNDERPAYMENT - If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

(3) REVIEW -

(A) JUDICIAL - Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5, United States Code.

(B) ADMINISTRATIVE - The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of -

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

(4) LIMITATION ON RIGHTS OF PRIVATE PARTIES - To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection -

(i) the obligations of such insured depository institution shall supersede such right

or power; and

(ii) no court may give effect to such right or power with respect to such insured depository institution.

(5) WAIVER AUTHORITY

(A) IN GENERAL - The Corporation, in its discretion may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

(B) CONDITION - During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 23A and 23B of the Federal Reserve Act without regard to section 23A(d)(1).

(C) LIMITED PARTNERSHIPS -

(i) IN GENERAL - The Corporation may in its discretion exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange commission on or before April 10, 1989, indicating that as of the date of such filing such partnership intended to acquire 1 or more insured depository institutions.

(ii) REVIEW AND NOTICE - Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested bs the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

(6) 5-YEAR TRANSITION RULE - During the 5-year period beginning on the date of

the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 -

(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such savings Association Insurance Fund member or any affiliate of such member before the date of the enactment of such Act; and

(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member or any affiliate of such member before the date of the enactment of such act.

(7) EXCLUSION FOR INSTITUTIONS ACQUIRED IN DEBT COLLECTIONS - Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if -

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 23A and 23B of the Federal Reserve Act, without regard to section 23A(d)(1) of such Act, in transactions with the acquired insured depository institution.

(8) EXCEPTION FOR CERTAIN FSLIC ASSISTED INSTITUTIONS - No depository institution shall have any liability to the Corporation under this subsection as the result

of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if -

(A) such affiliate was receiving cash payments from the Federal savings and Loan Insurance Corporation under an assistance agreement or note entered into before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate -

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments

(9) COMMONLY CONTROLLED DEFINED - For purposes of this subsection, depository institutions are commonly controlled if -

(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 4(f)(6) of the Bank Holding company Act of 1956); or

(B) 1 depository institution is controlled by another depository institution.

SEC. 6. FACTORS TO BE CONSIDERED

The factors that are required, under section 4, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 4 and that are required, under section 5, to be considered by the Board of Directors in connection with any determination

by such Board pursuant to section 5 are the following;

(1) The financial history and condition of the depository institution.

(2) The adequacy of the depository institution's capital structure.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Bank Insurance Fund or the savings Association Insurance Fund

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this Act.

SEC. 7(a)(1) Each insured state nonmember bank (except a District bank) and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require, such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. The Board of Directors may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally

late, shall be subject to a penalty or not more than $ 2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late Any such bank which fails to make or publish any report required under this paragraph, which the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $ 20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $ 1,000,000 or 1 percent or total assets of such bank whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(2)(A) The Corporation shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Director of the office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition marc to any or them and they shall promptly advise the Corporation or any revisions

or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution. and may furnish to the Comptroller of the Currency, the Director of the office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, to any Femoral Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to the Corporation.

(B) ADDITIONAL REPORTS - The Board or Directors may from time to time require any insured depository institution to file such additional reports as the corporal ion. after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve system, and the Director of the office of Thrift supervision, as appropriate, may deem advisable for insurance purposes.

(3) Each insured depository institution shall mark to the appropriate Federal banking agency 4 reports or condition annually upon dates which shall be selected by the chairman of the Board of Directors, the Comptroller of the Currency, the Director by the office of Thrift supervision, the Federal Housing Finance Board, any Federal home loan bank, the chairman of the Board of Governors of the Federal Reserve system, and the Director of the office of Thrift supervision. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in july pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4)

and (5) of this subsection and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures or at least two directors or trustees or the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of there knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or sayings associations under its jurisdiction to make additional reports or condition at any time.

(4) In the reports of condition required to bo made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any state of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction in devotedness of depositors or creditors or any deduct ion for cash items in the process of collection drawn on others than the reporting depositors institution; *Provided,* That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same bank (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in

determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign depository institutions shall bo reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any thor office of the depository institution; And provided further. That outstanding drafts (including advices and authorizations to charge depository institution's balance in another bank) drawn in the regular course of business by the reporting depository institution on depositor, institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose and for the computation of assessments provided in subsection (b) of this section, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and demand deposits shall consist of all deposits other than time and saving deposits.

(6) The Board of Directors, after consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, may by regulation define the terms "cash items" and "process of

collection", and shall classify deposits as "time", "savings", and "demand" deposits, for the purposes of this section.

(7) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic bank sand foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness

(8) REPORT TO INDEPENDENT AUDITOR -

(A) IN GENERAL - Each insured depository institution which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such depository institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by such depository institution.

(B) ADDITIONAL INFORMATION - In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured depository institution shall provide such auditor with -

(i) a copy of any supervisory memorandum of understanding with such depository institution and any written agreement between a Federal or state banking agency and the depository institution which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by a Federal banking agency during such period under subsection (a), (b), (c), (e), (g), (i), or (s) of section 8 or of any similar action taken by a state banking agency under state law, or any other civil money penalty assessed under any other provision of law with respect to -

(I) the depository institution; or

(II) any institution-affiliated party.

(b)(1) ASSESSMENT RATES -

(A) ANNUAL ASSESSMENT RATES PRESCRIBED -

(i) AUTHORITY TO SET RATES - Subject to clause (iii), the Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in its sole discretion, determines to be appropriate.

(ii) RATE FOR EACH FUND TO BE SET INDEPENDENTLY - The Corporation shall fix the annual assessment rate of Bank Insurance Fund members independently from the annal assessment rate for savings Association Insurance Fund members.

(iii) DEADLINE FOR ANNOUNCING RATE CHANGES - The Corporation shall announce any change in assessment rates -

(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

(II) for the semiannual period beginning on January 1 and ending on December 31, not later than the preceding May 1.

(B) DESIGNATED RESERVE RATIO DEFINED -

(i) The designated reserve ratio of the Bank Insurance Fund for each year shall be -

(I) 1.25 percent of estimated insured deposits; or

(II) such higher percentage of estimated insured deposits as the Board of Directors determines for that year to be justified by circumstances that raise a significant risk of substantial future losses to the Bank Insurance Fund.

(ii) The designated reserve ratio of the Savings Association Insurance Fund for each year shall be -

(I) 1.25 percent of estimated insured deposits; or

(II) such higher percentage of estimated insured deposits as the Board of Directors determines for that year to be justified by circumstances that raise a

significant risk of substantial future losses to the savings Association Insurance Fund.

(iii) The Board of Directors shall -

(Ⅰ) maintain reserves in the Bank Insurance Fund received pursuant to clause (i)(Ⅱ) as supplemental Reserves in the Bank Insurance Fund;

(Ⅱ) distribute such Supplemental Reserves to Bank Insurance Fund members if and to the extent the Corporation determines that such supplemental Reserves are not needed to satisfy the projected designated reserve ratio for the next succeeding calendar year.

(iv) The Board of Directors shall -

(Ⅰ) maintain reserves in the savings Association Insurance Fund received pursuant to clause (ii)(Ⅱ) as supplemental Reserves in the savings Association Insurance Fund; and

(Ⅱ) distribute such supplemental Reserves to savings Association Insurance Fund members if and to the extent the Corporation determines that such supplemental Reserves are not needed to satisfy the projected designated reserve ratio for the next succeeding calendar year.

(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS -

(i) IN GENERAL - The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate -

(Ⅰ) to maintain the reserve ratio at the designated reserve ratio; or

(Ⅱ) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

(ii) FACTORS TO BE CONSIDERED - In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the

assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

(iii) MINIMUM ASSESSMENT - Notwithstanding clause (i), the assessment shall not be less than $ 1,000 for each member in each year.

(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS -

(i) IN GENERAL - The assessment rate for savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate -

(I) to maintain the reserve ratio at the designated reserve ratio; or

(II) if the reserve ratio is less than the designated reserve ratio, to increase there serve ratio to the designated reserve rate within a reasonable period of time.

(ii) FACTORS TO BE CONSIDERED - In making any determination under clause (i), the Board of Directors shall consider the savings Association Insurance Fund's expected operating expenses case resolution expenditures, and income, the effect of the assessment rate on members earnings and capital, and such other factors as the Board of Directors may deem appropriate.

(iii) MINIMUM ASSESSMENT - Notwithstanding clause (i), the assessment shall not be less than $ 1,000 for each member in each year.

(iv) TRANSITION RULE - Until December 31, 1997, the assessment rate for savings Association Insurance Fund members shall not be less than the following;

(I) From January 1, 1990, through December 31, 1990, 0.208 percent.

(II) From January 1, 1991, through December 3l, 1993, 0.23 percent.

(III) From January 1, 1994, through December 31, 1997, 0.18 percent.

(E) FINANCING CORPORATION AND FUNDING CORPORATION ASSESSMENTS - Notwithstanding any other provision of this paragraph, amounts assessed by the

Financing Corporation and the Funding Corporation under sections 21 and 21B, respectively, of the Federal Home Loan Bank Act against savings Association Insurance Fund members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

(F) SPECIAL RULE TO ALLOW CONTINUING ASSESSMENTS BY THE FINANCING CORPORATION AND THE FUNDING CORPORATION DURING PREMIUM YEAR ADJUSTMENTS - In order to ensure that the Financing Corporation and the Resolution Funding Corporation obtain sufficient funds for interest payments on obligations of such Corporations, the Corporation, in coordination with the Financing Corporation and the secretary of the Treasury, may prescribe such regulations as may be necessary to allow the Financing Corporation and the Resolution Funding Corporation to impose assessments against savings Association Insurance Fund members pursuant to sections 21 and 21B, respectively, of the Federal Home Loan Bank Act during the period required to change such members premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) to a calendar year basis.

(2) ASSESSMENT PROCEDURES -

(A) SEMIANNUAL ASSESSMENTS - Except as provided in subsection (c)(2) or subparagraph (c)(iii) or (D)(iii) of subsection(b)(1) -

(i) the semiannual assessment due from any Bank Insurance Fund member for any semiannual period shall be the greater of $ 500 or an amount equal to the product of -

(Ⅰ) 1/2 the assessment rate applicable to such Bank Insurance Fund member during that semiannual period; and

(Ⅱ) such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period; and

(ii) the semiannual assessment due from any savings Association Insurance Fund member for any semiannual period shall be the greater of $ 500 or an amount equal to the product of -

(I) 1/2 the assessment rate applicable to such savings Association Insurance Fund member during that semiannual period; and

(II) such savings Association Insurance Fund member's average assessment case for the immediately preceding semiannual period.

(B) DEFINITION - For purposes of this section, the term "semiannual period" means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

(3) A depository institution's average assessment base for any semiannual period shall be the average of such depository institution's assessment bases for the two dates, falling within such semiannual period, for which the depository institution is required to submit reports of condition pursuant to paragraph (3) of subsection (a) of this section (referred to hereafter in this section as "reports of condition").

(4) (A) Except as provided in subparagraph (B) of this paragraph, a depository institution's assessment base for any date shall be equal to the depository institution's liability for deposits (including the deposits of any other depository institution for which it has assumed liability) as reported in its report of condition for such date, plus the assessment base additions set forth in paragraph (5), and less the assessment base deductions set forth in paragraph (6).

(B) In determining the assessment base and assessment base additions and deductions of a foreign bank having an insured branch, such adjustments shall be made as the Board of Directors may by regulation prescribe in order to provide equitable treatment for domestic and foreign banks.

(5) The assessment base additions shall be the amounts of -

(A) uninvested trust funds required to be separately stated in the bank's report of condition; and

(B) any deposits received in any office of the depository institution for deposit in any other office of the depository institution located in the United States the District of columbia, puerto Rico, Guam, American Samoa, the Trust Territory of the pacific Islands, or the virgin Islands, except those which have been included in deposits in the report of condition or which have been offset in the report of condition by an equal amount of cash items in its possession drawn on itself (on the same type of deposit as those offset) and not charged against deposit liabilities at the close of business on the date as of which the report of condition is made, either in their actual amount as shown on the books of the depository institution, or, if not so shown, in an amount determined by means of an experience factor pursuant to regulations prescribed by the Board of Directors.

(6) The assessment base deductions shall be the amounts of -

(A) cash items in the depository institution's possession, drawn on itself, which have not been charged against deposit liabilities at the close of business on the date as of which the report of condition is made, either in their actual amount as shown on the books of the depository institution, or, if not so shown, in an amount determined by means of an experience factor pursuant to regulations prescribed by the Board of Directors;

(B) 1 per centum of the bank's adjusted time and savings deposits (as defined in paragraph (7)); and

(C) 16 2/3 per centum of the bank's adjusted demand deposits (as defined in paragraph (8)).

Each insured depository institution, as a condition to the right to make any such deduction in determining its assessment base, shall maintain such records as will readily permit verification of the correctness of its assessment base. No insured depository

institution shall be required to retain such records for such purpose for a period in excess of five years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment the bank shall retain such records until final determination of the issue.

(7) The term "the depository institution's adjusted time and savings deposits" means the amount of the bank's time and savings deposits as reported in its report of condition, as adjusted -

(A) either by adding the amount of all deposits of the type described in subparagraph (5)(B) or, if the depository institution elects to ascertain the respective amounts of such deposits creditable to time and savings deposits and to demand deposits, by adding the amount creditable to time and savings deposits;

(B) by subtracting, if the depository institution elects to ascertain the respective amounts of its items of the type described in subparagraph (6)(A) chargeable against time and savings deposits and against demand deposits, the amount chargeable against time and savings deposits; and

(C) by subtracting the amount of all deposits of the type described in subparagraph (6)(B).

(8) The term "the depository institution's adjusted demand deposits" means the amount of the depository institution's demand deposits as reported in its report of condition, as adjusted -

(A) by adding the amount of all deposits of the type described in subparagraph (5)(A);

(B) by adding, if the depository institution elects to ascertain the respective amounts of its deposits of the type described in subparagraph (5)(B) creditable to time and savings deposits and to demand deposits, the amount creditable to demand deposits; and

(C) either by subtracting the amount of all items of the type described in subparagraph (6)(A), or, if the depository institution elects to ascertain the respective amounts of such items chargeable against time and savings deposits and against demand deposits, by subtracting the amount chargeable against demand deposits.

(9) APPORTIONMENT - Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(c)(1) On or before the last day of the first month following each semiannual period, each insured bank which became insured prior to the beginning of such period shall file with the Corporation a certified statement showing its average assessment base for such period, and the amount of the semiannual assessment due to the Corporation for the semiannual period which begins with such month. Each such depository institution shall pay to the Corporation the amount of the semiannual assessment it is required to certify.

(2) A depository institution shall not be required to pay any assessment for the semiannual period in which it becomes an insured depository institution, on or before the last day of the first month following the semiannual period during which any depository institution becomes an insured depository institution, such depository institution shall -

(A) file with the Corporation a certified statement showing, as its assessment base for such period, its assessment base for the last date, if any, within such period for which it was required to submit a report of condition, or

(B) if such depository institution became an insured depository institution after the last date in such period for which a report of condition was required, such depository institution shall make a special report of condition as of the last day of such semiannual period, and shall file with the Corporation a certified statement showing as

its assessment base for such period, its assessment base for the date of such special report.

The semiannual assessment due from such bank for the semiannual period which begins with such month shall be equal to one-half the annual assessment rate multiplied by the assessment base computed pursuant to subparagraph (A) or (B) of this paragraph, and the amount of such assessment shall be shown on such certified statement Each such depository institution shall pay to the Corporation the amount of the semiannual assessment it is required to certify.

(3) The certified statements required to be filed with the Corporation under paragraphs (1) and (2) of this subsection shall be in such form and set forth such supporting information as the Board of Directors shall prescribe and shall be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his knowledge and belief the statement is true, correct and complete and in accordance with the Federal Deposit Insurance Act and regulations issued thereunder. The assessment payments required from insured depository institutions under paragraphs (1) and (2) of this subsection shall be made in such manner and at such time or times as the Board of Directors shall prescribe, provided the time or times so prescribed shall not be later than sixty days after filing the certified statement setting forth the amount of assessment.

(4) Except as otherwise provided in this section. The Board of Directors shall prescribe all needful rules and regulations for the enforcement of this section. The Board of Directors may limit the retroactive effect, if any, of any of its rules or regulations.

(d) ASSESSMENT CREDITS

(1) IN GENERAL -

(A) The Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions -

(i) in the semiannual period beginning on January 1 and ending on June 30, not

later than the preceding November 1; and

(ii) in the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.

(B) Each insured depository institution shall be notified by the Corporation of the percentage by which the assessment rate should be reduced in computing its net premium.

(C) Any outstanding obligations owed to the Corporation by an individual insured depository institution shall be deducted from any assessment credit to be credited to such depository institution.

(2) ASSESSMENT CREDIT FOR INSURED BANKS -

(A) CREDIT BARRED - The Board of Directors shall not prescribe an assessment credit to Bank Insurance Fund members if the Board of Directors determines that the Bank Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio in the coming year after taking into consideration such Fund's expected expenses and Income.

(B) CREDIT AUTHORIZED - If the Board of Directors determines, after taking into consideration the Bank Insurance Fund's expected operating expenses, case resolution expenditures, investment income, and assessment income that the Bank Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to Bank Insurance Fund members in such succeeding calendar year equal to the lesser of -

(i) the amount necessary to reduce the Bank Insurance Fund reserve ratio to the designated reserve ratio; or

(ii) 100 percent of the net assessment income to be received from Bank Insurance Fund members in such succeeding year.

(3) ASSESSMENT CREDIT FOR INSURED SAVINGS ASSOCIATIONS -

(A) CREDIT BARRED - The Board of Directors shall not prescribe an assessment

credit to savings Association Insurance Fund members if the Board of Directors determines that the savings Association Insurance Fund reserve ratio is expected to be equal to or less than the designated reserve ratio in the coming year after taking into consideration such Fund's expected expenses and income.

(B) CREDIT AUTHORIZED - If the Board of Directors determines, after taking into consideration the savings Association Insurance Fund's expected expenses and income, that the savings Association Insurance Fund reserve ratio is expected to exceed the designated reserve ratio in the succeeding year, the Board of Directors shall prescribe an assessment credit to savings Association Insurance Fund members in such succeeding calendar year equal to the lesser of -

(i) the amount necessary to reduce the savings Association Insurance Fund reserve ratio to the designated reserve ratio; or

(ii) 100 percent of the net assessment income to be received from savings Association Insurance Fund members in such succeeding year.

(4) NET ASSESSMENT INCOME DEFINED - For purposes of this subsection -

(A) IN GENERAL - The term "net assessment income" means -

(i) with respect to the Bank Insurance Fund, the Bank Insurance Fund net assessment income (as defined in subparagraph (B)); and

(ii) with respect to the savings Association Insurance Fund, the savings Association Insurance Fund net assessment income (as defined in subparagraph (C)).

(B) BANK INSURANCE FUND NET ASSESSMENT INCOME -

(i) IN GENERAL - The term "Bank Insurance Fund net assessment income," means -

(Ⅰ) the total assessments which become due during the calendar year with respect to members of such Fund, minus

(Ⅱ) the sum of the amount of the operating costs and expenses described in clause (ii) and the amount by which the Bank Insurance Fund's insurance costs described in clause (iii) exceed its investment income for the calendar year.

(ii) OPERATING COST AND EXPENSES - For the purposes of this subparagraph, the operating costs and expenses to be deducted from assessments include the operating costs and expenses of -

(Ⅰ) the Corporation for the calendar year directly attributable to the Bank Insurance Fund; and

(Ⅱ) the Bank Insurance Fund

(iii) INSURANCE COSTS - For purposes of this subparagraph, the insurance costs include

(Ⅰ) additions to the Bank Insurance Fund's reserve to provide for insurance losses during the calendar year, excluding any adjustments to such reserve which result in are duction of such reserve; and

(Ⅱ) the insurance losses sustained in such calendar year.

(C) SAVINGS ASSOCIATION INSURANCE FUND NET ASSESSMENT INCOME -

(i) IN GENERAL - The term "savings Association Insurance Fund net assessment income" means -

(Ⅰ) the total assessments which become due during the calendar year with respect to members of such Fund, minus

(Ⅱ) the sum of the amount of the operating costs and expenses described in clause (ii) and the amount by which the savings Association Insurance Fund's insurance costs described in clause (iii) exceed its investment income for the calendar year.

(ii) OPERATING COST AND EXPENSES - For purposes of this subparagraph, the operating costs and expenses to be deducted from assessments include the operating costs and expenses of -

(Ⅰ) the Corporation for the calendar year directly attributable to the savings Association Insurance Fund; and

(Ⅱ) the savings Association Insurance Fund.

(iii) INSURANCE COSTS - For the purposes of this subparagraph, the insurance costs include -

(I) additions to the savings Association Insurance Fund's reserve to provide for insurance losses during the calendar year, excluding any adjustments to such reserve which result in a reduction of such reserve; and

(II) the insurance losses sustained in such calendar year.

(5) INVESTMENT INCOME DEFINED - For purposes of this subsection, the term "investment income" means -

(A) for the Bank Insurance Fund, interest, dividends, and net market gains eared on investments of the Bank Insurance Fund; and

(B) for the savings Association Insurance Fund, interest, dividends, and net market gains eared on investments of the savings Association Insurance Fund.

(e) The Corporation (I) may refund to an insured depository institution any payment of assessment in excess of the amount due to the Corporation or (2) may credit such excess toward the payment of the assessment next becoming due from such depository institution and upon succeeding assessments until the credit is exhausted.

(f) Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment law fully payable by such insured depository institution to the

Corporation, whether or not such depository institution shall have made any such report of condition under subsection (a) of this section or filed any such certified statement and whether or not suit shall have been brought to compel the depository institution to make any such report or file any such statement. No action or proceeding shall be brought for the recovery of any assessment due to the Corporation, or for the recovery of any amount paid to the Corporation in excess of the amount due to it, unless such action or proceeding shall have been brought within five sears after the right accrued for which the claim is made, except where the insured depository institution has made or filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of assessment, in which case the claim shall not be deemed to have accrued until the discovery by the Corporation that the certified statement is false or fraudulent; provided, however. That where a cause of action has already accrued, and the period herein prescribed within which an act ion may be brought has expired, or will expire within one year from the date this amendment be comes effective an action may be brought on such cause of action within one year from the effective date of this amendment; And provided further. That no action or proceeding shall be brought for the recovery of any assessment on deposits alleged to have been omitted from the assessment base of any insured depository institution for any year prior to 1945 except thai any claim of the Corporation for the payment of any assessment may be offset by it against any claim of the depository institution for the overpayment of any assessment.

(h) Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this Act. and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this

section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended, the Federal Reserve Act, as amended or this Act, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended. The remedies provided in this subsection and in the two preceding subsections shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) Except with respect to trust funds which are owned by a depositor referred to in paragraph (2) of section 11(a) of this Act, trust funds held by an insured depository institution in a fiduciary capacity whether held in its trust department or held or deposited any other department of the fiduciary depository institution shall be insured in amount not to exceed $ 100,000 for each trust estate, and when deposited by the by the fiduciary institution in another insured depository institution such trust funds shall be similarly insured to the fiduciary depository institution according to the trust States represented. Notwithstanding any other provision of this Act such insurance shall be separate from and additional to that covering other deposits of the owners of such trust funds or the beneficiaries of such trust estates. The Board of Directors shall have power by regulation to prescribe the manner of reporting and of depositing such trust funds.

(j)(I) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days, prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the proceeding

sentence may be extended not to exceed 2 additional times for not more than 45 days each time if -

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY - Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate state depository institution supervisory agency if the bank the voting shares of which are sought to be acquired is a state depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition Notwithstanding the provisions of this section (i)(2), if the appropriate Federal banking agency determines that it must act immediately upon any notice or a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of th is subsection (i)(2) or if a copy of the notice

is forwarded to the state depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such state depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED - Upon receiving any notice under this subsection, the appropriate Federal banking agency shall -

(i) conduct an investigation of the competence. experience integrity and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT - The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain at a minimum, a summary of the results of such investigation. The agency shall retain such h written report as a record of the agency.

(D) PUBLIC COMMENT - Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists within a reasonable period of time -

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by ullolnor for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition. particularly from persons in the geographic area where the depository institution proposed to be acquired is located before final consideration of such notice by the agency.

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness or such bank.

(3) Within three days after its decision io disapprove any proposed acquisition, the

appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 54 of title 5, United States Code. The length the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District or Columbia Circuit, by filing a notice of appeals in such court within ten days from the date do such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and filing in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information;

(A) The identity personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations d)ring the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made as of the end of the fiscal year for each of the

five years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds as of a date not more than ninety days prior to the date of the sling of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity source and amount of the Funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction the names of the parties and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank to sell its assets or merge it wi(h any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection wi(h the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with

any particular notice.

(7) The appropriate Federal banking agency maid is approve any proposed acquisition if -

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be ill the interest of the depositors of the bank, or in the interest of the public to perm it such person to control the bank;

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

(8) For the purposes of this subsection the term -

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 per centum or more of any class of voting securities of an insured bank

(9) Whenever any insured bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year more or where the stock is that of the newly organized bank prior to its opening.

(10) The reports required by paragraph (9) of th is subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or or by specify request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs. each insured bank shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies arc authorized to issue rules and regulations to carry out this subsection

(14) Within two years after the effective date of the change in Bank Control Act on 1978, and each year thereafter in each appropriate Federal banking agency's annual

report to the congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY -

(A) INVESTIGATIONS - The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate incomplete, or misleading information under this subsection or otherwise is violating has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT - Whenever it appears to the appropriate Fedora banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for -

(i) a temporary or permanent induction or restraining order enjoining such person from violating this subsection or ani regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture)

(C) JURISDICTION -

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts or any

territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.

The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depositors institution (whether such date occurs before, on, or after the date of the enactment of this sentence).

(16) CIVIL MONEY PENALTY -

(A) FIRST TIER - Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $ 5,000 for each day during which such violation continues.

(B) SECOND TIER - Notwithstanding subparagraph (A), any person who -

(i) (I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach -

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person shall forfeit and pay a civil penalty of not more than $ 25,000 for each day during which such

violation, practice, or breach continues.

(C) THIRD TIER - Notwithstanding subparagraphs (A) and (B), any person who -

(i) knowingly -

(I) commits any violation described in any clause of subparagraph(A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (c) - The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is -

(i) in the case of any person other than a depository institution, an amount to not exceed $ 1,000,000; and

(ii) in the case of a depository institut ion an amount not io exceed the lesser of -

(I) $ 1,000,000; or

(II) 1 percent of the total assets of such institution

(E) ASSESSMENT; ETC - Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING - The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT - All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(17) EXCEPTIONS - This subsection shall not apply with respect to a transaction which is subject to -

(A) section 3 of the Bank Holding Company Act of 1956;

(B) section 18(c) of this Act; or

(C) section 10 of the Home Owners' Loan Act.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS - For purposes of this subsection, the term "insured depository institution" includes -

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the report ing and public disclosure of information by a bank or any executive officer or principal share holder there or concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

(l) DESIGNATION OF FUND MEMBERSHIP FOR NEWLY INSURED DEPOSITORY INSTITUTIONS; DEFINITIONS - For purposes of this section;

(1) BANK INSURANCE FUND - Any institution which -

(A) becomes an insured depository institution; and

(B) does not become a savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member

(2) SAVINGS ASSOCIATION INSURANCE FUND - Any savings association, other than any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a savings Association Insurance Fund member.

(3) TRANSITION PROVISION -

(A) BANK INSURANCE FUND - Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act on 1989, including -

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of such date of enactment.

(B) SAVINGS ASSOCIATION INSURANCE FUND - Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a savings Association Insurance Fund member as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) BANK INSURANCE FUND M EMBER - The term "Bank Insurance Fund member" means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) SAVINGS ASSOCIATION INSURANCE FUND MEMBER - The term "Savings Association Insurance Fund member" means any depository institution the deposits of which are insured by the savings Association Insurance Fund.

(6) BANK INSURANCE FUND RESERVE RATIO - The term "Bank Insurance Fund

reserve ratio" means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) SAVINGS ASSOCIATION INSURANCE FUND RESERVE RATIO - The term "Savings Association Insurance Fund reserve ratio" means the ratio of the value of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS -

(1) OFFSETS IN CALENDAR YEARS BEGINNING BEFORE 1993 - Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) ANNUAL MAXIMUM AMOUNT LIMITATION - The amount of a any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) OFFSETS IN CALENDAR YEARS BEGINNING AFTER 1992 - Notwithstanding any other provision or law a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) for any calendar year beginning after 1992.

(4) TRANSFERABILITY - No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except io the extent that the Corporation may, provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar

transact ions as defined by the Corporation for purposes of this paragraph.

(5) PRO RATE DISTRIBUTION ON TERMINATION OF INSURED STATUS - If -

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 8 or the insurance of accounts of any savings association institution is otherwise terminated;

(B) a receiver of other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation, the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the except ion in paragraph (4) are applicable.

(6) STATUTORILY PRESCRIBED AMOUNT DEFINED - For purposes of this subsection, the term "statutorily prescribed amount" means, with respect to any calendar year which ends after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 -

(A) $ 823,705,000, minus

(B) the sum of -

(i) the aggregate amount of offsets made before such date of enactment by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment); and

(ii) the aggregate amount of offset made by all savings associations under this

subsection before the beginning of such calendar year.

(7) SAVINGS ASSOCIATION'S PRO RATE AMOUNT - For purposes of this subsection any savings association's pro rata share of the statutorily prescribed amount is the percentage which is equal to such association's share of the secondary reserve as determined under section 404(e) of the National Housing Act of the day before the date on which Federal savings and Loan Insurance Corporation ceased to recognize who secondary reserve (as such Act was in effect on the day before such date).

(8) YEAR OF ENACTMENT RULE - With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted the Corporation shall make such adjustments as may be necessary -

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar sear after taking into account the aggregate amount of offsets by all insured institutions under section 404(o)(2) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) after the beginning of such calendar year and before such date of enactment; and

(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account -

(i) the amount of any offset by such savings association under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment) after the beginning of such calendar year and before such date or enactment; and

(ii) the change of such association's premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before such date of enactment) to a calendar year basis.

(n) COLLECTIONS ON BEHALF OF THE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION - When requested by the Director of the office of Thrift supervision, the Corporation shall collect on behalf of the Director assessments on savings associations

levied by the Director under section 9 of the Home owners, Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amount assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.

SEC. 8(a) TERMINATION OF INSURANCE -

(1) VOLUNTARY TERMINATION - Any insured depository institution which is not -

(A) a national member bank;

(B) a state member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act or 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) INVOLUNTARY TERMINATION -

(A) NOTICE TO PRIMARY REGULATOR - If the Board of Directors determines that -

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository Institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in

writing by the Corporation in connection with the approval of any application or other request by the insured depository institutional, or written agreement entered into between the insured depository institution and the Corporation.

the Board of Directors shall not notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the state banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency of the Board's determination and the facts and circumstances of which such determination is based For the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agrement of such agency.

(B) NOTICE OF INTENTION TO TERMINATE INSURANCE - If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines thai any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution. the Board shall -

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depositors institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institutions insured status.

(3) HEARING; TERMINATION - If, on the basis of the evidence presented at a

hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under subparagraph (B) has been established, the Board of Directors may issue an order terminating the insured status of such depository Institution effective as of a date subsequent to such finding.

(4) APPEARANCE; CONSENT TO TERMINATION - Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) JUDICIAL REVIEW - Any insured depository institution whose insured status has been terminated by order of the Board or Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) PUBLICATION OF NOTICE OF TERMINATION - The Corporation may publish notice of such termination and the depository institut ion shall give not ice of such termination to each of its depositors at his last address of record on the books of the depository institution in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION - After the termination of the insured status of any depository institution under the provisions of, this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors to be insured, and the depository

institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation and the depository 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, such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository 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 depository institution as in case of an insured depository institution.

(8) TEMPORARY SUSPENSION OF INSURANCE -

(A) IN GENERAL - If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS -

(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL - In determining the tangible capital of a savings association for purposes of this paragraph the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A)

but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

(ii) SUSPENSION ORDER - The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that -

(I) the capital of such association as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking, agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift supervision to enforce a contractual provision which authorizes the Corporation or the Director of the office of Thrift supervision, as a successor to the Federal saving sand Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

(C) EFFECTIVE PERIOD OF TEMPORARY ORDER - Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of

service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

(D) JUDICIAL REVIEW - Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District court for the District of columbia, or the United States District Court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order and such court shall have jurisdiction to issue such injunction.

(E) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS - The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured. subject to the administrative proceedings as provided in this Act.

(F) PUBLICATION OF ORDER - The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) NOTICE BY CORPORATION - If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) LACK of NOTICE - Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that -

(i) such deposit consists of additions made by automatic deposit the depositor was

unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) FINAL DECISIONS TO TERMINATE INSURANCE - Any decision by the Board of directors to -

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

(10) LOW-TO MODERATE-INCOME HOUSING LENDER - In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low-to moderate-income housing loans.

(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the depository institution or any written agreement, entered into with the agency, the agency may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices and shall fix a time and place at which a hearing will beheld to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be

fixed for a date not earlier than thirty days nor later than sixty day's after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall became effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding company Act of 1956, and to any organization organized and operated under section 25(a) of the federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a state member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any federal banking agency, other than the Board of Governors of the Federal Reserve system, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary

thereof (other than a bank or subsidiary of that bank).

(4) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1978 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under subparagraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding company Act of 1956.

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the comptroller)f the currency, to any national banking association chartered by the comptroller of the Currency, including an uninsured association.

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES - The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to -

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if -

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) AUTHORITY TO LIMIT ACTIVITIES - The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES - Subsections (a) through (s) and subsection (u) shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, to any service Corporation of a savings association and to any subsidiary of such service Corporation, whether wholly or partly owned, in the same manner as such subsections apply to a savings association.

(c)(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earings of the depository institutions, or likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent, or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. such order may include any requirement authorized under subsection (b)(6), such order shall become effective upon service upon the depository institution or such institution-affiliated party and, unless set aside, limited, or suspended by a court in

proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States District Court for the judicial district in which the home office of the depository institution is located, or the United States District court for the District of columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS -

(A) TEMPORARY ORDER - If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring -

(i) the cessation of any activity or practice which gave rise, whether in whole orin part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subparagraph (b)(1).

(B) EFFECTIVE PERIOD - Any temporary order issued under subsection (A) -

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a complete in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of -

(Ⅰ) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(Ⅱ) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply to the United States District Court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(e) REMOVAL AND PROHIBITION AUTHORITY -

(1) AUTHORITY TO ISSUE ORDER - Whenever the appropriate Federal banking agency determines that -

(A) any institution-affiliated party has, directly or indirectly -

(i) violated -

(Ⅰ) any law or regulation;

(Ⅱ) any cease-and-desist order which has become final;

(Ⅲ) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

(Ⅳ) any written agreement between such depository institution and such

agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A) -

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach -

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the agency may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

(3) SUSPENSION ORDER -

(A) SUSPENSION OR PROHIBITION AUTHORIZED - If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any

institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency -

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order

(B) EFFECTIVE PERIOD - Any suspension order issued under subparagraph (A) -

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until -

(Ⅰ) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party, or

(Ⅱ) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER - If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the

Attorney General of the United States. unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. In any action brought under this section by the comptroller of the currency in respect to any such party with respect to a national banking association or a District depository institution, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve system for the determination of whether any order shall issue. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein), such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" within the term "institution-affiliated party" as used in this subsection means an employee or officer with management functions, and the term "director" within the term "institution-affiliated party" as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES - Any person subject to an order issued under this subsection shall not -

(A) participate in any manner in the conduct of the affairs of any institution or

agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION -

(A) IN GENERAL - Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such orders in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of -

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(8);

(iii) any insured credit union under the Federal credit union Act;

(iv) any institution chartered under the farm credit Act of 1971;

(v) any appropriate Federal depository institution regulatory agency;

(vi) the Federal Housing Finance Board and any Federal home loan bank; and

(vii) the Resolution Trust Corporation

(B) EXCEPTION If AGENCY PROVIDES WRITTEN CONSENT - If on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution. such party receives the written consent of -

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to tlne Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER - Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTION REGULATORY - For purposes of this paragraph and subsection (j), the term "appropriate Federal financial institutions regulatory agency" means -

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm credit Administration, in the case of an institution chartered under the Farm credit Act of 1971;

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal credit union Act);

(iv) the secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

(v) the Oversight Board. in the case of the Resolution Trust Corporation.

(E) CONSULTATION BETWEEN AGENCIES - The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY - This paragraph shall only apply to a person who is all

individual, unless the appropriate Federal banking agency specifically finds that it should apply to a Corporation, firm, or other business enterprise.

(f) Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States District Court for the judicial district in which the home office of the depository institution is located, or the United States District court for the District of columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g)(1) whenever any institution-affiliated party is charged in any information indictment, or complaint, with the commission or or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under state or Federal law, the appropriate Federal banking agency may if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in tlne conduct of the affairs of the depository institution. A copy of such notice shall also be served upon the depository institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such party, and at such time as such judgment is not subject to further appellate review the agency may, if continued service or participation by such party may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the depository institution, issue and serve

upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the at fairs of the depository institution except with the consent of the appropriate agency. A copy of such order shall also be served upon such depository institution, whereupon such party (if a director or an officer) shall cease to be a director or officer of such depository institution. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency.

(2) If at any time because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national depository institution less than by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national depository institution are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the depository institution and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the

depository institution upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified, such notification shall contain a statement of the basis for the agency's decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h)(i) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve system has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the

proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any parry to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States court of Appeals for the District of columbia circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the supreme court upon certiorari, as provided in section 1254 of title 28 of the United States code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i)(1) The appropriate Federal banking agency may in its discretion apply to the United States District Court, or the United States court of any territory, within the jurisdiction of

which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY -

(A) FIRST TIER - Any insured depository institution which, and any institution-affiliated party who -

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (C), (e), (g), or (s);

(iii) violates any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

(iv) violates any written agreement between such depository institution and such agency, shall forfeit and pay a civil penalty of not more than $ 5,000 for each day during which such violation continues.

(B) SECOND TIER - Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who -

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach -

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository

institution; or

(III) results in pecuniary gain or other benefit to such party, shall forfeit and pay a civil penalty of not more than $ 25,000 for each day during which such violation, practice, or breach continues

(C) THIRD TIER - Notwithstanding subparagraph (A) and (B), any insured depository institution which, and any institution-affiliated party who -

(i) knowingly -

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C) - The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is -

(i) in the case of any person other than an insured depository institution, an amount to not exceed $ 1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of -

(I) $ 1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT -

(i) WRITTEN NOTICE - Anypenaltyimposedundersubparagraph(A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT - If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and un appealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY - Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS - In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to -

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING - The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION -

(i) REFERRAL - If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in

the appropriate United States District Court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE - In any civil action under cause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT - All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS - Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE - The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this paragraph).

(4) PREJUDGMENT ATTACHMENT -

(A) IN GENERAL - In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 11 (d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue are straining order that -

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD - A permanent or temporary inJunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.

(j) CRIMINAL PENALTY - Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner(including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of -

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3), or (b)(4), or as a savings association under subsection (b)(8);

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act);

(4) any institution chartered under the Farm Credit Act of 1971; or

(5) the Resolution Trust Corporation,

shall be fined not more than $ 1,000,000, imprisoned for not more than 5 years, or both.

(k) [Reserved]

(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail. or in such other manner reasonably calculated to give actual not ice as the agency may by regulation or otherwise provide. copies of any notice or order served by the agency upon any state depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate state supervisory authority.

(m) In connection with any proceeding under subsection (b), (C)(1), or (e) of this section involving an insured state bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate state supervisory authority with not

ice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the not ice prescribed in the preceding sentence) satisfactory corrective action is effectuate by action of the state supervisory authority, the agency may proceed as provided in this section. No bank or other parts who is the subject of any notice or order issued by the agency under th is sect ion shall have stand ing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) In the course of or in connection with any proceedings under this section, or in connection with any claim for insured deposits or any examination or investigation under section 10(c), the agency conducting the proceeding, examination, or Investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States District Court for the judicial district or the United States court in any territory in which such proceed ing is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in

the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $ 1,000 or to imprisonment for a term of not more than one year or both.

(o) Whenever the insured status of a state member bank shall be terminated by action of the Board of Directors the Board of Governors of the Federal Reserve system shall terminate its membership in the Federal Reserve system in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the comptroller of the currency shall appoint a receiver for the bank which shall be the Corporation. Except as provided in subsection (b) of section 4 whenever a member bank shall cease to be a member of the Federal Reserve system, its status as an insured depository institution shall, without notice or other action by the board of directors, terminate on the date the bank shall cease to be a member of the Federal Reserve system, with like effect as if its insured status had been terminated on said date by the board of directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured federal savings bank shall be terminated by action of the Board of Directors, the Director of the office of Thrift supervision shall appoint a receiver for the bank which shall be the Corporation.

(p) Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured banking institut ion is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the banking

institution that its insured status will terminate at the expiration of the first full semiannual assessment period following such notice. A finding by the Board of Directors that a banking institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the not ice to be given by the banking institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such banking institution its deposits shall there upon cease to be insured and the banking institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. where the deposits of an insured depository institution are assumed by a newly insured depository institution the depository institution whose deposits are assumed shall not be required to pay any assessment upon the deposits which have been so assumed after the semiannual period in which the assumption takes effect.

(r)(1) Except as otherwise specifically provided in this section the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent therof may not constitute the basis for any action by any officer or agency of the United States under this section unless -

(A) such officer or agency alleges a belief that such act or practice has been is. or

is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which. in and of itself would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven would in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office be holds in such bank and from any further participation in its affairs shall in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

{4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be In the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the preceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any state, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any state, service shall be made on at least one branch or agency so involved.

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND

REPORT REQUIREMENTS -

(1) COMPLIANCE PROCEDURES REQUIRED - Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter 11 of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF DEPOSITORY INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES -

(A) IN GENERAL -Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT - The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) ORDER TO COMPLY WITH REQUIREMENT - If the appropriate Federal banking agency determines that an insured depository institution -

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) AUTHORITY OF BOARD TO TAKE ENFORCEMENT ACTION AGAINST SAVINGS ASSOCIATIONS -

(1) AUTHORITY TO RECOMMEND THAT DIRECTOR OF OFFICE OF THRIFT SUPERVISION TAKE ENFORCEMENT ACTION - The Corporation based on an examination of a savings association by the Corporation or by the Director of the office

of Thrift supervision or another information. may recommend that the Director take any enforcement action authorized under section 7(i), this section, or section 18(i) with respect to any savings association.

(2) AUTHORITY OF THE BOARD TO ORDER CORPORATION TO TAKE ENFORCEMENT ACTION IF DIRECTOR OF OFFICE OF THRIFT SUPERVISION FAILS TO FOLLOW RECOMMENDATION - If the Director fails to take the recommended action or to provide an acceptable plan for addressing the concerns of the Corporation as set forth in its recommendation before the close of the 60-day period beginning on the date of the receipt of the formal recommendation from the Corporation, the Board of Directors may order the Corporation to take such action if the Board determines that -

(A) the association is in an unsafe or unsound condition; or

(B) failure to take the recommended action will result in continuance of unsafe or unsound practices in conducting the business or the savings association.

(3) EFFECT OF EXIGENT CIRCUMSTANCES -

(A) AUTHORITY TO ACT - Notwithstanding paragraphs (1) and (2), the Board of Directors may order the Corporation to exercise its authority, without regard to the time period set forth, in exigent circumstances after notifying the Director

(B) AGREEMENT ON EXIGENT CIRCUMSTANCES - The Corporation shall, by agreement with the Director, set forth those exigent circumstances in which the Corporation may act without regard to the time period set forth above.

(4) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS -

(A) SUBMISSION OF REQUESTS - The regional offices of the office of Thrift Supervision shall concurrently submit all requests for formal investigations or enforcement actions to both the Director and the Corporation.

(B) DIRECTOR REQUIRED TO REPORT ON REQUESTS - The Director shall report semiannually to the Corporation the status or disposition of all such requests,

including the reasons for the Director's decision to either approve or deny all such requests.

(5) NONDELEGATION - Any decisions by the Board of Directors to order actions described in this subsection shall not be delegated.

(u) PUBLIC DISCLOSURE OF FINAL ORDERS -

(1) IN GENERAL - The appropriate Federal banking agency shall publish and make available to the public on a monthly basis -

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) HEARINGS - All hearing on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) REPORTS TO CONGRESS - A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.

(4) TRANSCRIPT OF HEARING - A transcript that includes all testimony and other documentary evidence shall be prepared for all hearing commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant section 552 of title 5, United States Code.

(5) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES - If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(6) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS - The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(7) RETENTION OF DOCUMENTS - Each federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(8) DISCLOSURES TO CONGRESS - No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) FOREIGN INVESTIGATIONS -

(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES - In conducting any investigation, examination, or enforcement action under this Act, the appropriate Federal banking agency may -

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES -

(A) IN GENERAL - Any appropriate Federal banking agency may, at the request or any foreign banking authority, assist such authority if such authority States that there questing authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) INVESTIGATION BY FEDERAL BANKING AGENCY - Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) FACTORS TO CONSIDER - In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider -

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) TREATMENT OF FOREIGN BANKING AUTHORITY - For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) RULE OF CONSTRUCTION - Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any other foreign authority with respect to any matter.

SEC. 9(a) IN GENERAL - Upon the date of enactment of the Banking Act of 1933, the

Corporation shall become a body corporate and as such shall have power -

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of congress.

Third. To make contracts.

Fourth. To sue and be sued, and complain and defend, in any court of law or equity, state or Federal.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this Act, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from banks, as provided in this Act

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(b) AGENCY AUTHORITY .

(1) STATUS - The Corporation in any capacity shall be an agency of the United States for purposes of section 1345 of title 28, United States Code, without regard to whether the Corporation commenced the action.

(2) FEDERAL COURT JURISDICTION -

(A) IN GENERAL - Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United

(B) REMOVAL - Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a state court to the appropriate United States district court.

(C) APPEAL OF REMAND - The Corporation may appeal any order of remand entered by any United States district court.

(D) STATE ACTIONS - Except as provided in subparagraph (E), any action -

(i) to which the Corporation, in the Corporation's capacity as receiver of a state insured depository institution by the exclusive appointment by state authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the state insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the state insured depository institution; and

(iii) in which only the interpretation of the law of such state is necessary, shall not be deemed to arise under the laws of the United States.

(E) RULE OF CONSTRUCTION - Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

(3) SERVICE OF PROCESS - The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

(4) BONDS OR FEES - The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.

SEC. 10(a) The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be insured and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities there or in carrying out the provisions of this Act.

(b) EXAMINATIONS -

(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS - The Board of Directors shall appoint examiners and claim agents.

(2) REGULAR EXAMINATIONS - Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine -

(A) any insured state nonmember bank (except a District bank) or insured state branch of any foreign bank;

(B) any savings association, state nonmember bank, or state branch of a foreign bank, or other depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default, whenever the Board of Directors

determines an examination of any such depository institution is necessary.

(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION - In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes.

(4) EXAMINATION OF AFFILIATES -

(A) IN GENERAL - In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any insured depository institution as may be necessary to disclose fully -

(i) the relationship between such insured depository institution and any such affiliate; and

(ii) the effect of such relationship on the insured depository institution.

(B) COMMITMENT BY FOREIGN BANKS TO ALLOW EXAMINATIONS OF AFFILIATES - No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

(5) POWER AND DUTY OF EXAMINERS - Each examiner appointed under paragraph (1) shall -

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), or (4); and

(B) shall make a full and detailed report of condition of any insured depository

institution or affiliate examined to the Corporation.

(6) POWER OF CLAIM AGENTS - Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) In connection with examinations of insured depository institutions and any state nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

(e) The Corporation may cause any and all records, papers, or documents kept by it or in its possession or custody to be photographed or microphotographed or otherwise reproduced upon film, which photographic film shall comply of quality approved for permanent photographic records by the National Bureau of standards, such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction inevidence in all state and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded. such photographs, microphotographs, or reproduction shall be preserved in such manner as the Board of Directors of the Corporation shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct.

SEC. 11(a)(1) The Corporation shall insure the deposits of all insured depository institutions as provided in this Act. The maximum amount of the insured deposit of any depositor shall be $ 1,00,000.

(2)(A) Notwithstanding any limitation in this Act or in any other provision of law

relating to the amount of deposit insurance available for the account of any one depositor, in the case of a depositor who is -

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any state of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such state;

(iii) an officer, employee, or agent of the District of columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of columbia;

(iv) an officer, employee, or agent of the Commonwealth of puerto Rico of the virgin Islands, of American samoa, of the Trust Territory of the pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or deposit ing the same in time and savings deposits in an insured depository institution in the Commonwealth of puerto Rico the virgin Islands, American samoa, the Trust Territory of the pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

his deposit shall be insured in an amount not to exceed $ 1,00,000 per account

(B) The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any depositor referred to in subparagraph (A) of this paragraph on the basis of the size of any such bank

in terms of its assets; provided, however, such limitate ion may be exceeded by the pledging of acceptable securities to the depositor referred to in subparagraph (A) of this paragraph when and where required

(3) Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor time and savings deposits in an insured depository institution made pursuant to a pension or profit-sharing plan described in section 401(d) of the Internal Revenue code of 1954, as amended, or made in the form of individual retirement accounts as described in section 408(a) of the Internal Revenue code of 1954, as amended, shall be insured in the amount of $ 100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of the Internal Revenue code of 1954, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan. excluding any remainder interest created by, or as a result of. the plan

(4) GENERAL PROVISION RELATING TO FUNDS - The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be -

(A) maintained and administered by the Corporation;

(B) maintained separately and not commingled; and

(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.

(5) BANK INSURANCE FUND -

(A) ESTABLISHMENT - There is established a fund to be known as the Bank Insurance Fund.

(B) TRANSFER TO FUND - On the date of the enactment of the financial institutions Reform, Recovery, and Enforcement Act or 1989, the Permanent Insurance Fund shall be dissolved and all assets and liabilities of the Permanent Insurance Fund shall be transferred to the Bank Insurance Fund.

(C) USES - The Bank Insurance Fund shall be available to the Corporation for use with respect to Bank Insurance Fund members.

(D) DEPOSITS - All amounts assessed against Bank Insurance fund members by the Corporation shall be deposited into the Bank Insurance Fund.

(6) SAVINGS ASSOCIATION INSURANCE FUND -

(A) ESTABLISHMENT - There is established a fund to be known as the savings association Insurance Fund.

(B) USES - The savings Association Insurance Fund shall be available to the Corporation for use with respect to Savings Association Insurance Fund members.

(C) DEPOSITS - All amounts assessed against savings Association Insurance Fund members which are not required for the financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund shall be deposited in the savings Association insurance Fund.

(D) AVAILABILITY OF FUNDS FOR ADMINISTRATIVE EXPENSES -

(i) IN GENERAL - The FSLIC Resolution Fund shall deposit in the savings association Insurance fund such amounts as the Corporation determines are needed during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on september 30, 1991, to pay the administrative and supervisory expenses of such Fund.

(ii) PRIORITY - The savings Association Insurance fund shall have priority over other obligations of the FSLIC Resolution fund with respect to such amounts.

(E) TREASURY PAYMENTS TO FUND - To provide sufficient funding for the Savings Association Insurance Fund to carry out the purposes of this Act the secretary of the Treasury shall pay to such Fund for each of the fiscal years 1992 through 1999, the amount, if any, by which $ 2,000,000,000 exceeds the amount deposited in such Fund (during such fiscal year) pursuant to subparagraph (C).

(F) TREASURY PAYMENTS TO MAINTAIN NET WORTH OF FUND - The secretary of the Treasury shall pay to the savings Association Insurance Fund, for each fiscal year described in the following table, any additional amount which may be necessary, as determined by the Corporation and the secretary of the Treasury to ensure that such Fund has the minimum net worth referred to in such table throughout each such fiscal year;

For the fiscal year beginning October 1 of;	The amount of minimum net worth (in billions);
1991	0.0
1992	1.0
1993	2.1
1994	3.2
1995	4.3
1996	5.4
1997	6.5
1998	7.6
1999	8.8

(G) EXCEPTION TO SUBPARAGRAPHS (E) AND (F) - Notwithstanding subparagraphs (E) and (F), no payment may be made pursuant to such subparagraphs after the Savings Association Insurance Fund achieves a reserve ratio of 1.25 percent.
(H) DISCRETIONARY RTC PAYMENTS - If amounts available to the Savings Association Insurance Fund for purpose other than the payment of administrative expenses are insufficient for Savings Association Insurance Fund to carry out the purpose of this Act, the Corporation may request the Resolution Trust Corporation to

provide and the oversight Board of the Resolution Trust Corporation (in the discretion of the oversight Board) may pay, such amount as may be needed for such purposes.

(I) BORROWING AUTHORITY -

(i) IN GENERAL - The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board such funds as the Corporation considers necessary for the use of the savings Association Insurance Fund.

(ii) TERMS AND CONDITIONS - Any loan from any Federal home loan bank under clause (i) to the savings Association Insurance Fund shall -

(I) bear a rate of interest of not less than such bank's current marginal cost of funds, taking into account the maturities involved;

(II) be adequately secured, as determined by the Federal Housing Finance Board;

(III) be a direct liability of such Fund; and

(IV) be subject to the limitations of section 15(c).

(J) AUTHORIZATION OF APPROPRIATIONS - There are authorized to be appropriated to the secretary of the Treasury, such sums as may be necessary to carry out the provisions of this paragraph, except that -

(i) the annual amount appropriated under subparagraph (F) shall not exceed $ 2,000,000,000 in either fiscal year 1991 or fiscal year 1992; and

(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1991 through 1999 shall not exceed $ 16,000,000,000.

(7) PROVISIONS APPLICABLE TO MAINTENANCE OF ACCOUNTS -

(A) CORPORATION'S AUTHORITY - Any provision of this Act forbidding the commingling of the Bank Insurance Fund with the savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the savings association Insurance Fund, is not intended -

(i) to limit or impair the authority of the Corporation to use the same facilities and resources in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

(ii) to limit or impair the Corporation's power to combine assets or liabilities belonging to banks and savings associations in conservatorship or receivership for managerial purposes, or to limit or impair the Corporation's power to dispose of such assets or liabilities on an aggregate basis

(B) ACCOUNTING REQUIREMENTS -

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES - The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use any facility or resource used in the course of any function specified in subparagraph(A)(i) and shall allocate in the manner provided in subparagraph (C), any such costs and expenses incurred by the Corporation -

(I) with respect to Bank Insurance fund members to the Bank Insurance Fund; and

(II) with respect to savings Association Insurance Fund members to the Savings Association Insurance Fund.

(ii) ACCOUNTING FOR HOLDING AND MANAGING ASSETS AND LIABILITIES - The Corporation shall keep a full and complete accounting of all costs and expenses associated with the holding and management of any asset or liability specified in subparagraph (A)(ii).

(iii) ACCOUNTING FOR DISPOSITION OF ASSETS AND LIABILITIES - The Corporation shall keep a full and complete accounting of all expenses and receipts associated with the disposition of any asset or liability specified in subparagraph (A)(ii).

(iv) ALLOCATION OF COST, EXPENSES AND RECEIPTS - The Corporation shall allocate any cost, expense, and receipt described in clause (ii) or clause (iii)

which is associated with any asset or liability belonging to -

(I) any Bank Insurance Fund member to the Bank Insurance Fund; and

(II) any savings Association Insurance Fund member to the savings Association Insurance Fund.

(C) ALLOCATION OF ADMINISTRATIVE EXPENSES - Any personnel, administrative, or other overhead expense of the Corporation shall be allocated -

(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Bank Insurance Fund members;

(ii) fully to the savings Association Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Savings Association Insurance Fund members;

(iii) between the Bank Insurance Fund and the savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as result of the activities of Bank Insurance Fund and savings Association Insurance Fund members; or

(iv) between the Bank Insurance Fund and the savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of Bank Insurance Fund members and savings Association Insurance Fund members to the extent that the Board of Directors is unable to make a determination under clause (i), (ii), or (iii).

(b) For the purposes of this Act an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER -

(1) IN GENERAL - Notwithstanding any other provision of Federal law the law of

any state, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) FEDERAL DEPOSITORY INSTITUTIONS -

(A) APPOINTMENT -

(i) CONSERVATOR - The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution or District bank and the Corporation may accept such appointment.

(ii) RECEIVER - The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution or District bank by the appropriate Federal banking agency, notwithstanding any other provision of Federal law (other than section 21A of the Federal Home Loan Bank Act) or the code of law for the District of Columbia.

(B) ADDITIONAL POWERS - In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY - When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any state in the exercise of the Corporation's rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION - Notwithstanding subparagraph (C), any

Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) INSURED STATE DEPOSITORY INSTITUTIONS -

(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR - Whenever the authority having supervision of any insured state depository institution (other than a District depository institution) appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment

(B) ADDITIONAL POWERS - In addition to the powers conferred and the duties related to the exercise of such powers imposed by state law on any conservator or receiver appointed under the law of such state for an insured state depository institution. the=Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section)n the Corporation as conservator or receiver

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY - When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any state in the exercise of its rights powers and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION - Notwithstanding subparagraph (C), any insured state depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate state bank or savings association supervisor.

(4) APPOINTMENT OF CORPORATION BY THE CORPORATION - Except as otherwise provided in section 21A of the Federal Home Loan Bank Act and

notwithstanding any other provision of Federal law, the law of any state, or the constitution of any state, the Corporation may appoint itself as sole conservator or receiver of any insured state depository institution if -

(A) the Corporation determines -

(i) that -

(Ⅰ) a conservator, receiver, or other legal custodian has been appointed for such institution;

(Ⅱ) such institution has been subject to the appointment of any such conservator, receiver or custodian for a period of at least 15 consecutive days; and

(Ⅲ) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any state; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5) -

(i) existed with respect to such institution at the time -

(Ⅰ) the conservator, receiver, or other legal custodian was appointed; or

(Ⅱ) such institution las closed; or

(ii) exist at any time -

(Ⅰ) during the appointment of the conservator, receiver, or other legal custodian; or

(Ⅱ) while such institution is closed.

(5) GROUNDS FOR PARAGRAPH (4) APPOINTMENT - The grounds referred to in paragraph (4)(B) for the appointment of the Corporation as conservator or receiver for any insured state depository institution are as follows;

(A) Insolvency in that the assets of the institution are less than the institution's obligations to its creditors and others, including members of the institution.

(B) substantial dissipation of assets or earings due to -

(i) any violation of any law or regulation; or

(ii) any unsafe or unsound practice.

(C) An unsafe or unsound condition to transact business, including substantially insufficient capital or otherwise.

(D) Any willful violation of a cease-and-desist order which has become final.

(E) Any concealment of books, papers, records, or assets of the institution or any refusal to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or state bank or savings association supervisor.

(F) The likelihood that the institution will not be able to meet the demands of its depositors or pay its obligations in the normal course of business.

(G) The incurrence or likely incurrence of losses by the institution that will deplete all or substantially all of its capital with no reasonable prospect for the replenishment of the capital of the institution without Federal assistance.

(H) Any violation o$ any law or regulation, or an unsafe or unsound practice or condition which is likely to cause insolvency or substantial dissipation of assets or earings, or is likely to weaken the condition of the institution or otherwise seriously prejudice the interests of its depositors.

(6) APPOINTMENT BY OFFICE OF THRIFT SUPERVISION -

(A) CONSERVATOR - The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the office of Thrift supervision, be appointed conservator and the Corporation may accept any such appointments

(B) RECEIVER - Whenever the Director of the office of Thrift supervision appoints a receiver under the provisions of section 5(d)(2)(c) of the Home Owner's Loan Act for the purpose of liquidation or winding up any savings association's affairs -

(i) during the 3-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Resolution rust Corporation shall be appointed; and

(ii) after the end of the 3-year period referred to in clause (i), the Corporation shall be appointed.

(7) JUDICIAL REVIEW - If the Corporation appoints itself as conservator or receiver, under paragraph (4), the insured state depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of columbia for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.

(8) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION -

(A) IN GENERAL - In the case of any insured state depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4) the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT - The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED - The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured state depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) ADDITIONAL POWERS - In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6) -

(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured state depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of any insured state depository institution may -

(i) liquidate such institution in an orderly manner; and

(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER -

(1) RULEMAKING AUTHORITY OF CORPORATION - The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS -

(A) SUCCESSOR TO INSTITUTION - The Corporation shall, as conservator or receiver, and by operation of law, succeed to -

(i) all rights, titles, polers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution

(B) OPERATE THE INSTITUTION - The Corporation may, as conservator or receiver -

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which is consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) FUNCTIONS OF INSTITUTION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS - The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) POWERS AS CONSERVATOR - The Corporation may, as conservator, take such action as may be -

(i) necessary to put the insured depository institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) ADDITIONAL POWERS AS RECEIVER - The Corporation may, as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) ORGANIZATION OF NEW INSTITUTIONS - The Corporation may, as receiver -

(i) with respect to savings associations and by application to the Director of the Office of Thrift supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

(ii) with respect to any insured bank, organize a new national bank under subsection (m) or a bridge bank under subsection (n).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES -

(i) IN GENERAL - The Corporation may, as conservator or receiver -

(Ⅰ) merge the insured depository institution with another insured depository institution; or

(Ⅱ) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business)

without any approval, assignment, or consent with respect to such transfer.

(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY - No transfer described in clause (i)(II) may be made to another depository institution (other than a new bank or a bridge bank established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

(H) PAYMENT OF VALID OBLIGATIONS - The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act.

(I) SUBPOENA AUTHORITY -

(i) IN GENERAL - The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any poler established under section 8(n), and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) AUTHORITY OF BOARD OF DIRECTORS - A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) RULE OF CONSTRUCTION - This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act.

(J) INCIDENTAL POWERS - The Corporation may, as conservator or receiver -

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act, which the Corporation determines is in the best interests of the depository institution its depositors, or the Corporation.

(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS -

(A) IN GENERAL - The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4)(A)..

(B) NOTICE REQUIREMENTS - The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall -

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) MAILING REQUIRED - The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books -

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS - The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) PROCEDURES FOR DETERMINATION OF CLAIMS -

(A) DETERMINATION PERIOD -

(i) IN GENERAL - Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shan notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME - The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation

(iii) MAILING OF NOTICE SUFFICIENT - The requirements of clause (i) 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.

(I) on the depository institution's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTSOFNOTICEOFDISALLOWANCE - If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain -

(I) a statement of each reason for the disallowance; and

(II) theproceduresavailableforobtainingagency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIM - The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD -

(i) IN GENERAL - Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS - Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if -

(Ⅰ) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(Ⅱ) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS -The receiver 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.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D) - No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING -

(i) STATUTE OF LIMITATION TOLLED - For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS - Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claim with to continue any action which was filed before the appointment of the receiver.

(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS -

(A) IN GENERAL - Before the end of the 60-day period beginning on the earlier of -

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District court for the District of columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS - If any claimant fails to -

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver);

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) REVIEW OF CLAIMS..

(A) ADMINISTRATIVE HEARING - If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

(B) OTHER REVIEW PROCEDURES -

(i) IN GENERAL - The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) CRITERIA - In establishing alternative dispute resolution processes, the

Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES - The Corporation may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) CONSIDERATION OF INCENTIVES - The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) EXPEDITED DETERMINATION OF CLAIMS -

(A) ESTABLISHMENT REQUIRED - The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who -

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD - Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall -

(i) determine -

(Ⅰ) whether to allow or disallow such claim; or

(Ⅱ) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT - Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of -

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim

(D) STATUTE OF LIMITATIONS - If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver)such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING -

(i) STATUTE OF LIMITATION TOLLED - For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS - Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) AGREEMENT AS BASIS OF CLAIM -

(A) REQUIREMENTS - Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT - Notwithstanding section 13(e)(2), any agreement relating to an extension of credit

between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) PAYMENT OF CLAIMS -

(A) IN GENERAL - The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act

(B) PAYMENT OF DIVIDENDS ON CLAIMS - 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 (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(11) DISTRIBUTION OF ASSETS -

(A) SUBROGATED CLAIMS; CLAIMS OF UNINSURED DEPOSITORS AND OTHER CREDITORS - The receiver shall -

(i) retain for the account of the Corporation such portion of the amounts realized from any liquidation as the Corporation may be entitled to receive in connection with the subrogation of the claims of depositors; and

(ii) pay to depositors and other creditors the net amounts available for distribution to them.

(B) DISTRIBUTION TO SHAREHOLDERS OF AMOUNTS REMAINING AFTER PAYMENT OF ALL OTHER CLAIMS AND EXPENSES - In any case in which funds remain after all depositors, creditors, other claimants, and administrative expenses are paid, the receiver shall distribute such funds to the depository

institution's shareholders or members together with the accounting report required under paragraph (14)(c).

(12) SUSPENSION OF LEGAL ACTIONS -

(A) IN GENERAL - After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed -

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver, in any judicial action or proceeding to which such institution is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED - Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) ADDITIONAL RIGHTS AND DUTIES -

(A) PRIOR FINAL ADJUDICATION - The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER - In the event of any appealable judgment, the Corporation as conservator or receiver shall -

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION - No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW - Except as otherwise provided in this subsection, no court shall have jurisdiction over -

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER -

(A) IN GENERAL - Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be -

(i) in the case of any contract claim, the longer of -

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under state law; and

(ii) in the case of any tort claim, the longer of -

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under state law

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES - For purposes of subparagraph (A), the date on which the statute of limitation begins to run on any claim described in such subparagraph shall be the later of -

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS -

(A) IN GENERAL - The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) ANNUAL ACCOUNTING OR REPORT - With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the secretary of the Treasury, the comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) AVAILABILITY OF REPORTS - Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation las appointed conservator or receiver or any other member of the public.

(D) RECORDKEEPING REQUIREMENT - After the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution,[he Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by court of competent jurisdiction or governmental agency, or prohibited by law.

(l6) CONTRACTS WITH STATE HOUSING FINANCE AUTHORITIES -

(A) IN GENERAL - The Corporation may enter into contracts with any state housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) FACTORS TO CONSIDER - In evaluating the disposition of mortgage-related assets to any state housing finance authority the Corporation shall consider -

(i) the state housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage-related assets;

(ii) the state housing finance authority's ability to further national housing policies;

(iii) the state housing finance authority's sensitivity to the impact of the sale of mortgage-related assets upon the state and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or dispositions of the mortgage-related assets;

(v) the minimization or future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage-related asset values; and

(vii) the utilization of institutions currently established in mortgage-related asset market activities

(17) FRAUDULENT TRANSFERS -

(A) IN GENERAL - The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the comptroller of the currency or the Director of the office of Thrift supervision may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the ensured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) RIGHT OF RECOVERY - To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from -

(i) the initial transferee of such transfer or the institution-affiliated party or person

for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE - The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from -

(i) any transferee that takes for value, including satisfaction or securing of a resent or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS PARAGRAPH - The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States code.

(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF - Subject to paragraph (19), any court of competent jurisdiction may, at the request of -

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

(B) any conservator appointed by the comptroller of the currency or the Director of the office of Thrift supervision,

issue an order in accordance with Rule 65 of the Federal Rules of civil procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) STANDARDS -

(A) SHOWING - Rule 65 of the Federal Rules of civil procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and

immediate.

(B) STATE PROCEEDING - If, in the case of any proceeding in a state court, the court determines that rules of civil procedure available under the laws of such state provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such state.

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER -

(1) AUTHORITY TO REPUDIATE CONTRACTS - In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease -

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) TIMING OF REPUDIATION - The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION -

(A) IN GENERAL - Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be -

(i) limited to actual direct compensatory damages; and

(ii) determined as of -

(I) the date of the appointment or the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES - For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include -

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering

(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCE CONTRACTS - In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be -

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (k) except as otherwise specifically provided in this section.

(4) LEASES UNDER WHICH THE INSTITUTION IS THE LESSEE -

(A) IN GENERAL - If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT - Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall -

(i) be entitled to the contractual rent accruing before the later of the date -

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (k).

(5) LEASES UNDER WHICH THE INSTITUTION IS THE LESSOR -

(A) IN GENERAL - If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either -

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION - If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph -

(i) the lessee -

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the non performance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any

offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY -

(A) IN GENERAL - If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either -

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION - If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph -

(i) the purchaser -

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall -

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED -

(i) IN GENERAL - No provision of this paragraph shall be construed as limiting

the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE - If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS -

(A) SERVICES PERFORMED BEFORE APPOINTMENT - In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be -

(i) a claim to be paid in accordance with subsections (d) and (i); and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION - If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section -

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION - The acceptance by any conservator or receiver of services referred

to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS -

(A) RIGHTS OF PARTIES TO CONTRACTS - Subject to paragraph (10) of this subsection and notwithstanding any other provision of this Act (other than subsections(d)(9) and (i)(4)(I) of this section and section 13(e)), any other Federal law, or the law of any state, no person shall be stayed or prohibited from exercising

(i) any right to cause the termination or liquidation of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS - Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) CERTAIN TRANSFERS NOT AVOIDABLE -

(i) IN GENERAL - Notwithstanding paragraph (11), the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any

qualified financial contract with an insured depository institution.

(ii) EXCEPTION FOR CERTAIN TRANSFERS - Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or and conservator or receiver appointed for such institution.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED - For purposes of this subsection -

(i) QUALIFIED FINANCIAL CONTRACT - The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT - The term "securities contract" -

(Ⅰ) has the meaning given to such term in section 741(7) of title 11, United States Code, except that the term "security" (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

(Ⅱ) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

(iii) COMMODITY CONTRACT - The term "commodity contract" has the meaning given to such term in section 761(4) of title 11, United States code.

(iv) FORWARD CONTRACT - The term "forward contract" has the meaning given to such term in section 101(24) of title 11, United States code.

(v) REPURCHASE AGREEMENT - The term "repurchase agreement" -

(I) has the meaning given to such term in section 101(41) of title 11, the United States code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41)) of the securities Exchange Act of 1934, any mortgage loan, and any interest in any mortgage loan; and

(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term

(vi) SWAP AGREEMENT - The term "swap agreement" -

(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate slap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

(II) includes any combination of such agreements and any option to enter into any such agreement.

(vii) TREATMENT OF MASTER AGREEMENT AS 1 SWAP AGREMENT - Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

(viii) TRANSFER - The term "transfer" has the meaning given to such term in section 101(50) of title 11, United States code.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR

- Notwithstanding any other provision of this Act (other than paragraph (12) of this subsection, subsections (d)(9) and (i)(4)(I) of this section, and section 13(e) of this Act), any other Federal law, or the law of any state, no person shall be stayed or prohibited from exercising -

(i) any right such person has to cause the termination, liquidation, or acceleration or any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security arrangement relating to such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS - In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either -

(A) transfer to 1 depository institution (other than a depository institution in default)

(i) all qualified financial contracts between -

(I) any person or any affiliate of such person; and

(II) the depository institution in default;

(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).

(10) NOTIFICATION OF TRANSFER -

(A) IN GENERAL - If -

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.

(B) BUSINESS DAY DEFINED - For purposes of this paragraph, the term "business day" means any day other than any saturday, sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New york is closed.

(11) CERTAIN SECURITY INTERESTS NOT AVOIDABLE - No provision of this subsection shall be construed as permitting the avoidance of any legal enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(12) AUTHORITY TO ENFORCE CONTRACTS -

(A) IN GENERAL - The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver.

(B) CERTAIN RIGHTS NOT AFFECTED - No provision of this paragraph may be

construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(13) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS - No provision of this subsection shall apply with respect to -

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(f) PAYMENT OF INSURED DEPOSITS -

(1) IN GENERAL - In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor, except that -

(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

(B) all payments made pursuant to this section on account of a closed savings Association Insurance Fund member shall be made only from the saving Association Insurance Fund.

(2) PROOF OF CLAIMS - The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

(3) RESOLUTION OF DISPUTES -

(A) RESOLUTIONS IN ACCORDANCE TO CORPORATION REGULATIONS - In the case of any disputed claim relating to any insured deposit or any determination of

insurance coverage with respect to any deposit, the Corporation may resolve such disputed claim in accordance with regulations prescribed by the Corporation establishing procedures for resolving such claims.

(B) ADJUDICATION OF CLAIMS - If the Corporation has not prescribed regulations establishing procedures for resolving disputed claims, the final determination of a court of competent jurisdiction before paying any such claim.

(4) REVIEW OF CORPORATION'S DETERMINATION - Final determination made by the Corporation shall be reviewable in accordance with chapter 7 of title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the principal place of business of the depository institution is located.

(5) STATUTE OF LIMITATIONS - Any request for review of a final determination by the Corporation shall be filed with the appropriate circuit court of appeals not later than 60days after such determination is ordered.

(g) SUBROGATION OF CORPORATION -

(1) IN GENERAL - Notwithstanding any other provision of Federal law, the law or any state, or the constitution of any state, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 13, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) DIVIDENDS ON SUBROGATED AMOUNTS - The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such

depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) WAIVER OF CERTAIN CLAIMS - With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) APPLICABILITY OF STATE LAW - If the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any state depository institution shall be determined in accordance with the applicable provisions of state law.

(h) CONDITIONS APPLICABLE TO LIQUIDATION PROCEEDINGS -

(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED - The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED - The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decision making process for the acceptance of offers of settlement contingent upon third party financing.

(3) GUIDELINES REQUIRED - The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(i) VALUATION OF CLAIMS IN DEFAULT -

(1) IN GENERAL - Notwithstanding any other provision of Federal law or the law of

any state and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c), this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) MAXIMUM LIABILITY - The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13.

(3) ADDITIONAL PAYMENTS AUTHORIZED -

(A) IN GENERAL - The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. The Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimants or category or claimants.

(B) SOURCE OF FUNDS - If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the savings Association Insurance Fund.

(C) MANNER OF PAYMENT - The Corporation may make the payments or credit the amounts specified in subparagraphs (A) and (B) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) LIMITATION ON COURT ACTION - Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) LIABILITY OF DIRECTORS AND OFFICERS - A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation -

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable state law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(l) DAMAGES - In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) NEW BANKS -

(1) ORGANIZATION AUTHORIZED - As soon as possible after the default of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the

depositors of the insured bank in default or the public shall organize a new national bank in the same community as the bank in default to assume the insured deposits of such bank in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) ARTICLES OF ASSOCIATION - The articles of association and the organization certificate of the new bank shall be executed by representatives designated by the Corporation.

(3) CAPITAL STOCK -No capital stock need be paid in by the Corporation.

(4) EXECUTIVE OFFICER - The new bank shall not have a board of directors, but shall be managed by an executive officer appointed by the Board or Directors of the Corporation who shall be subject to its directions.

(5) SUBJECT TO LAWS RELATING TO NATIONAL BANKS - In all other respects the new bank shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) NEW DEPOSITS - The new bank may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new bank is the only bank in the community, shall not exceed $ 100,000 from any, depositor.

(7) INSURED STATUS - The new bank, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) INVESTMENTS - Funds of the new bank shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository

institution.

(9) CONDUCT OF BUSINESS - The new bank, unless otherwise authorized by the comptroller of the currency, shall transact business only as authorized by this Act and as may be incidental to its organization.

(10) EXEMPT STATUS - Notwithstanding any other provision of Federal or state law, the new bank, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority.

(11) TRANSFER OF DEPOSITS - (A) upon the organization of a new bank, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such bank in default plus the estimated amount of the expenses of operating the new bank, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the bank in default, and the total expenses of operation of the new bank.

(B) upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

(12) EARNINGS - Earnings of the new bank shall be paid over or credited to the Corporation in such adjustment.

(13) LOSSES - If any new bank, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured bank, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) PAYMENT OF INSURED DEPOSITS - (A) The new bank shall assume as transferred deposits the payment of the insured deposits of such bank in default to each of its depositors.

(B) of the amounts so made available, the Corporation shall transfer to the new bank, in cash, such sums as may be necessary to enable it to meet its expenses of

operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new bank on demand.

(15) ISSUANCE OF STOCK - (A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new bank to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new bank on a sound basis, but in no event less than that required by section 5138 of the Revised Statutes for the organization of a national bank in the place where such new bank is located.

(B) The stockholder of the insured bank in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) ISSUANCE OF CERTIFICATE - Upon proof that an adequate amount of capital stock in the new bank has been subscribed and paid for in cash, the comptroller of the currency shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank, and thereafter, when the requirements of law with respect to the organization of a national bank have been complied with, the comptroller of the currency shall issue to the bank a certificate of authority to commence business, and thereupon the bank shall cease to have the status of a new bank, shall be managed by directors elected by its own shareholders, may exercise all the polers granted by law, and shall be subject to all provisions of law relating to national banks. such bank shall thereafter be an insured national bank, without certification to or approval by the Corporation.

(17) TRANSFER TO OTHER INSTITUTION - If the capital stock of the new bank is not offered for sale, or if an adequate amount of capital for such new bank is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets,

assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new bank to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) WINDING UP - Unless the capital stock of the new bank is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such bank, after giving such notice, if any, as the comptroller of the currency may require, and shall certify to the comptroller of the currency the termination of the new bank. Thereafter the Corporation shall be liable for the obligations of such bank and shall be the owner of its assets.

(19) APPLICABILITY OF CERTAIN LAWS - The provisions of sections 5220 and 5221 of the Revised statutes shall not apply to a new bank under this subsection.

(n) BRIDGE BANKS -

(1) ORGANIZATION -

(A) PURPOSE - When 1 or more insured banks are in default, or when the Corporation anticipates that 1 or more insured banks may become in default, the Corporation may, in its discretion, organize, and the office of the comptroller of the currency shall charter, 1 or more national banks with respect thereto with the powers and attributes of national banking associations, subject to the provisions of this subsection, to be referred to as bridge banks.

(B) AUTHORITIES - Upon the granting of a charter to a bridge bank, the bridge bank may -

(i) assume such deposits of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate, except that if any insured deposits of a bank are assumed, all insured deposits of that bank shall be assumed by the bridge bank or another insured

depository institution;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

(C) ARTICLES OF ASSOCIATION - The articles of association and organization certificate of a bridge bank as approved by the Corporation shall be executed by representatives designated by the Corporation.

(D) INTERIM DIRECTORS - A bridge bank shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) NATIONAL BANK - A bridge bank shall be organized as a national bank.

(2) CHARTERING -

(A) CONDITIONS - A national bank may be chartered by the comptroller of the currency as a bridge bank only if the Board of Directors determines that -

(i) 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 accounts of, 1 or more insured banks in default or in danger of default with respect to which the bridge bank is chartered;

(ii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is essential to provide adequate banking services in the community where each such bank in default or in danger of default is located; or

(iii) the continued operation of such insured bank or banks in default or in danger

of default with respect to which the bridge bank is chartered is in the best interest of the depositors of such bank or banks in default of in danger of default or the public.

(B) INSURED NATIONAL BANK - A bridge bank shall be an insured bank from the time it is chartered as a national bank.

(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES - A bridge bank shall be treated as an insured bank in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) MANAGEMENT - A bridge bank, upon the granting of its charter, shall be under the management of a board of directors consisting of not feler than 5 nor more than 10 members appointed by the Corporation.

(E) BYLAWS - The board of directors of a bridge bank shall adopt such bylaws as may be approved by the Corporation.

(3) TRANSFER OF ASSETS AND LIABILITIES -

(A) IN GENERAL -

(i) TRANSFER UPON GRANT OF CHARTER - Upon the granting of a charter to a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured bank in default with respect to which the bridge bank is chartered may transfer any assets and liabilities of such bank in default to the bridge bank in accordance with paragraph (1).

(ii) SUBSEQUENT TRANSFERS - At any time after a charter is granted to a bridge bank, the Corporation, as receiver, or any other receiver appointed with respect to an insured bank in default may transfer any assets and liabilities of such insured bank in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) TREATMENT OF TRUST BUSINESS - For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured bank in default is

included among its assets and liabilities.

(iv) EFFECTIVE WITHOUT APPROVAL - The transfer of any assets or liabilities, including those associated with any trust business, of an insured bank in default transferred to a bridge bank shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) INTENT OF CONGRESS REGARDING CONTINUING OPERATIONS - It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured bank in default with respect to which a bridge bank is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should -

(i) continue to honor commitments made by the bank in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) POWERS OF BRIDGE BANKS - Each bridge bank chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that -

(A) the Corporation may -

(i) remove the interim directors and directors of a bridge bank;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge bank; and

(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge bank on such terms as the Corporation determines to be appropriate;

(C) no requirement under section 5138 of the Revised Statutes or any other provision of law relating to the capital of a national bank shall apply with respect to a bridge bank;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge bank without regard to the amount of the bridge bank's capital or surplus;

(E)(i) the board of directors of a bridge bank shall elect a chairperson who may also serve in the position of chief executive officer without the prior approval of the Corporation;

(ii) the board of directors of a bridge bank may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge bank shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge bank at the request of the Corporation;

(H) any judicial action to which a bridge bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a bank in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank;

(I) no agreement which tends to diminish or defeat the right, title or interest of abridge bank in any asset of an insured bank in default acquired by it shall be valid against the bridge bank unless such agreement -

(i) is in writing,

(ii) was executed by such insured bank in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured bank in default,

(iii) was approved by the board of directors of such insured bank in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured bank in default;

(J) notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) 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 a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) CAPITAL -

(A) NO CAPITAL REQUIRED - The Corporation shall not be required to -

(i) issue any capital stock on behalf of a bridge bank chartered under this subsection; or

(ii) purchase any capital stock of a bridge bank, except that notwithstanding any other provision of Federal or state law, the Corporation may purchase and retain capital stock of a bridge bank in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) OPERATING FUNDS IN LIEU OF CAPITAL - Upon the organization of a bridge bank, and thereafter, as the Board of Directors 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 in lieu of capital.

(C) AUTHORITY TO ISSUE CAPITAL STOCK - Whenever the Board of Directors 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.

(6) NO FEDERAL STATUS -

(A) AGENCY STATUS - A bridge bank is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS - Representatives for purposes of paragraph (1)(B), interim directors, directors; officers, employees, or agents of a bridge bank are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge bank shall not -

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States code, or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank in addition to such salary of benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) ASSISTANCE AUTHORIZED - The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge bank in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured bank in default, or to facilitate a bridge bank's acquisition of any assets or

the assumption of any liabilities of an insured bank in default.

(8) ACQUISITION -

(A) IN GENERAL - The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge bank requiring approval under section 8(c) and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the banks involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) BY OUT-OF-STATE HOLDING COMPANY - Any depository institution, including an out-of-state depository institution, or any out-of-state depository institution holding company may acquire and retain the capital stock or assets of or otherwise acquire and retain a bridge bank if the bridge bank at any time had assets aggregating $ 500,000,000 or more, as determined by, the Corporation on the basis of the bridge bank's reports of condition or on the basis of the last available reports of condition of any insured bank in default, which institution has been acquired, or whose assets have been acquired, by the bridge bank. The acquiring entity may acquire the bridge bank only in the same manner and to the same extent as such entity may acquire an insured bank in default under section 3(f)(2).

(9) DURATION OF BRIDGE BANK - Subject to paragraphs (11) and (13), the status of a bridge bank as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge bank as such for 3 additional 1-year periods.

(10) TERMINATION OF BRIDGE BANK STATUS - The status of any bridge bank as such shall terminate upon the earliest of -

(A) the merger or consolidation of the bridge bank with a depository institution that

is not a bridge bank;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

(C) the sale of 80 percent, or more, of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge bank by a depository institution holding company or a depository institution that is not a bridge bank, or the acquisition of all or substantially all of the assets of the bridge bank by a depository institution holding company, a depository institution that is not a bridge bank, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge bank as provided in paragraph (12).

(11) EFFECT OF TERMINATION EVENTS -

(A) MERGER OR CONSOLIDATION - A bridge bank that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank 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 applicable law.

(B) CHARTER CONVERSION - Following the sale of a majority of the capital stock of the bridge bank as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge bank to reflect the termination of the status of the bridge bank as such, whereupon the bank shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) SALE OF STOCK - Following the sale of 80 percent or more of the capital stock of a bridge bank as provided in paragraph (10)(C), the bank shall remain a

national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS - Following the assumption of all or substantially all of the liabilities of the bridge bank, or the sale of all or substantially all of the assets of the bridge bank, as provided in paragraph (10)(D), at the election of the Corporation the bridge bank may retain its status as such for the period provided in paragraph (8).

(E) EFFECT ON HOLDING COMPANIES - A depository institution holding company acquiring a bridge bank under section 13(f), paragraph (8)(B)(or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge bank as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f).

(F) AMENDMENTS TO CHARTER - Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge bank status, if appropriate.

(12) DISSOLUTION OF BRIDGE BANK -

(A) IN GENERAL - Notwithstanding any other provision of state or Federal law, if the bridge bank's status as such has not previously been terminated by the occurrence of an event specified in subparagraphs (A), (B), (C), or (D) of paragraph (10) -

(i) the Board of Directors may, in its discretion, dissolve a bridge bank in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceeding in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge bank was chartered, or any extension thereof, as provided in paragraph (9).

(B) PROCEDURES - The comptroller of the currency shall appoint the Corporation receiver for a bridge bank upon certification by the Board of Directors to the comptroller of the currency of its determination to dissolve the bridge bank. The Corporation as such receiver shall wind up the affairs of the bridge bank in conformity with the provisions of law relating to the liquidation of closed national banks. With respect to any such bridge bank, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any state agency or other Federal agency.

(13) MULTIPLE BRIDGE BANKS - Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge banks under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single bank in default.

(o) SUPERVISORY RECORDS - In addition to the requirements of section 7(a)(2) to

provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) CERTAIN CONVICTED DEBTORS PROHIBITED FROM PURCHASING ASSETS -

(i) CONVICTED DEBTORS - Except as provided in paragraph (2), any individual who -

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007,

1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States code, or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, any deposit insurance fund, the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,

may not purchase any asset of such institution from the conservator or receiver.

(2) SETTLEMENT OF CLAIMS - Paragraph (1) shall not apply to the sale or transfer by the Corporation of any asset, of any insured depository institution to any individual if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of -

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the individual; or

(B) obligations owed by the individual to any insured depository institution, the FSLIC Resolution Fund, the Resolution Trust Corporation, or the Corporation.

(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS -

(1) TIME FOR FILING NOTICE OF APPEAL - The notice of appeal of any order, whether interlocutory or final, entered, in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be decided not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING - Consistent with section 1657 of title 18, United States Code, a Court of the United States shall expedite the consideration of any case brought by the

Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) JUDICAL DISCRETION - The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would out leigh the best interest of the public in having the case resolved expeditiously.

(r) FOREIGN INVESTIGATIONS - The Corporation and the Resolution Trust Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution -

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

SEC. 11A. FSLIC RESOLUTION FUND.

(a) ESTABLISHED -

(1) IN GENERAL - There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

(2) TRANSFER OF FSLIC ASSETS AND LIABILITIES -

(A) IN GENERAL - Except as provided in section 21A of the Federal Home Loan Bank Act, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment or the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall be transferred to the FSLIC

Resolution Fund.

(B) ADDITIONAL CLAIMS ON ASSETS - The FSLIC Resolution Fund shall pay to the Savings Association insurance Fund such amounts as are needed for administrative and supervisory expenses from the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 through september 30, 1991.

(3) SEPARATE HOLDING - Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Bank Insurance Fund, the Savings Association Insurance Fund, or the Corporation for accounting, reporting, or any other purpose.

(b) SOURCE OF FUNDS - The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

(1) Income earned on assets of the FSLIC Resolution Fund

(2) Liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act or the Financing Corporation pursuant to section 21 of such Act.

(3) Amounts borrowed by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act.

(4) During the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending on December 31, 1991, amounts assessed against Savings Association Insurance Fund members by the Corporation pursuant to section 7 which are not required by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act or by the Resolution Funding Corporation pursuant to section 21B of the Federal Home Loan Bank Act.

(c) TREASURY BACKUP -

(1) IN GENERAL - If the funds described in subsections (a) and (b) are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the secretary of the Treasury shall pay to the Fund such amounts as may be necessary, as determined by the Corporation and the secretary, for FSLIC Resolution Fund purposes.

(2) AUTHORIZATION OF APPROPRIATIONS - There are authorized to be appropriated to the secretary of the Treasury, without fiscal year limitation, such sums as may be necessary to carry out this section.

(d) LEGAL PROCEEDINGS - Any judgment resulting from a proceeding to which the federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

(e) TRANSFER OF NET PROCEEDS FROM SALE OF RTC ASSETS - The FSLIC Resolution fund shall transfer to the Resolution Funding Corporation any net proceeds from the sale of assets acquired from the Resolution Trust Corporation upon the termination of such Corporation pursuant to section 21A of the Federal Home Loan Bank Act.

(f) DISSOLUTION - The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets, upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Savings Association Insurance Fund.

SEC. 12(a) BOND NOT REQUIRED; AGENTS; FEE. - The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by

the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

(b) payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new bank or by an insured depository institution in which a transferred deposit has been made available shall discharge the Corporation and such new bank or other insured depository institution, to the same extent that payment to such person by the depository institution in default would have discharged it from liability for the insured deposit.

(c) Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new bank or other insured depository institution shall be required to recognize as the owner of any portion of a deposit appearing on the records of the depository institution in default under a name other than that of the claimant any person whose flame or interests such owner is not disclosed on the records of such depository institution as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such depository institution in default.

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

(e) If, after the Corporation shall have given at least three months notice to the depositor by mailing a copy thereof to his last-known address appearing on the records of the depository institution in default, any depositor in the depository institution in default shall fail to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the depository institution in default, or shall fail within such period to claim or arrange to continue the transferred deposit with the new bank or

with the other insured depository institution which assumes liability therefor, all rights of the depositor against the Corporation with respect to the insured deposit, and against the new bank and such other insured depository institution with respect to the transferred deposit, shall be barred, and all rights of the depositor against the depository institution in default and its shareholders, or the receivership estate to which the Corporation amy have become subrogated, shall thereupon revert to the depositor. The amount of any transferred deposits not claimed within such eighteen months period, shall be refunded to the Corporation.

SEC. 13(a) INVESTMENT OF CORPORATION'S FUNDS -

(1) AUTHORITY - Funds held in the Bank Insurance fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) LIMITATION - The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $ 100,000, without the approval of the secretary of the Treasury. The secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the secretary may determine.

(b) The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depositary or fiscal agent of the United States: *Provided*, That the secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further*, That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of $ 50,000 in any one bank, or to the establishment and maintenance in any depository institution of any

depository accounts to facilitate the payment of insured deposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the secretary of the Treasury, the Corporation shall be a depositary of public moneys, except receipts from customs, under such regulations as may be prescribed by the said secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depositary of public moneys and financial agent of the Government as may be required of it.

(c)(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors 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 insured depository institution -

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to a insured bank in default, such action is taken to restore such insured bank in default to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another insured depository institution described in subparagraph (B) with an insured Institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by an insured institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe -

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in. or purchase the securities of, such other insured depository institution or the company which controls or will acquire control of such other insured depository institution;

(iii) to guarantee such other insured depository institution or the company which controls or will acquire control of such other insured depository institution against loss by reason of such other insured depository institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution -

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under section subsection (f) or (k) of this section with such financial assistance as it could provide an insured Institution under this subsection.

(4)(A) No assistance shall be provided under this subsection in an amount in excess of that amount which the Corporation determines to be reasonably necessary to save the cost of liquidating, including paying the insured accounts of, such insured depository institution, except that such restriction shall not apply in any case in which the Corporation determines that the continued operation of such insured depository institution is essential to provide adequate depository services in its community. In calculating the cost of assistance, the Corporation shall include (i) the immediate and long-term obligations of the Corporation with respect to such assistance, including contingent liabilities, and (ii) the Federal tax revenues foregone by the Government to the extent reasonably ascertainable.

(B) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(5)(A) During any period in which an insured depository institution has received assistance under this subsection and such assistance is still outstanding, such insured depository institution may defer the payment of any state or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable state and local taxing authorities.

(6) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective

without any state or Federal approval, assignment, or consent with respect thereto.

(7) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

(8) In its annual report to the congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(9) payments made under this subsection shall be made -

(A) from the Bank Insurance Fund in the case of payments to or on behalf of a member of such Fund; or

(B) from the Savings Association Insurance Fund or from funds made available by the Resolution Trust Corporation in the case of payments to or on behalf of any Savings Association Insurance Fund member.

(d) SALE OF ASSETS TO CORPORATION -

(1) IN GENERAL - Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall been titled to of for the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) PROCEEDS - The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) RIGHTS AND POWERS of CORPORATION -

(A) IN GENERAL - With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 11 and 15(b).

(B) RULE OF CONSTRUCTION - Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) FIDUCIARY RESPONSIBILITY - In exercising any right, power, privilege, or authority described in subparagraph (A) the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(4) LOANS - The Corporation in its discretion may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION - No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver or any insured depository institution, shall be valid against the Corporation unless such agreement -

(1) is in writing,

(2) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obliger, contemporaneously with the acquisition of the asset by the depository institution,

(3) was approved by the board of directors of the depository institution or its loan committee. which approval shall be reflected in the minutes of said board or committee, and

(4) has been, continuously, from the time of its execution, an official record of the depository institution.

(f) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS -

(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-state bank [or] Savings association or out-of-state holding company for which the Corporation provides assistance under subsection (c).

(2)(A) whenever an insured bank with total assets of $ 500,000,000 or more (as determined from its most recent report of condition) is in default the Corporation. as

receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the bank in default and the assumption of the liabilities of the bank in default, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the state where the bank in default was chartered but established by an out-of-state bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or state supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the state bank supervisor of the state in which the insured bank in default was chartered.

(ii) The state bank supervisor shall be given reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions or this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the state supervisor objects during such period the Corporation may use he authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the state supervisor, as soon as practicable, a Written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS DEFAULT -

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT - One or more out-of-State banks or out-of-state holding companies may acquire and retain all or part of the shares or assets of. or otherwise acquire and retain -

(i) an insured bank in danger of default which has total assets of $ 500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of $ 500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated

insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE - If one or more out-of-state bank or out-of-state holding company acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or grater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-state bank or out-of-state holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain -

(i) the holding company which controls the affiliated insured banks so so acquired; or

(ii) any other affiliated insured bank

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS - The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being, acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED - Notwithstanding paragraph (f), if -

(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible be acquired by an out-of-state bank or out-of-state holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-state bank or

out-of-state holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL - The Corporation may take no final action in connection with any acquisition under this paragraph unless the state bank supervisor of the state in which the bank in danger of default is located approves the aquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED - This paragraph does not affect any other requirement under Federal or State Law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE - Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS - Section 3(d) of the Bank Holding Company Act of 1956, any provision or state law, and section 408(e)(3) of the National Housing Act shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-state bank may make such an acquisition only if such ownership otherwise is specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the Institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the state in which such insured Institution is located.

(C) No insured Institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the Institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT

TO STATE LAW -

(i) IN GENERAL - Any out-of-state bank holding company which acquires :control of an insured bank in any state under paragraph (2) or (3) may acquire any other insured bank and establish branches in such state to the same extent as a bank holding company whose insured bank subsidiaries, operations are principally conducted in such state may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY - Clause (i) shall not apply with respect to any out-of-state bank holding company referred to in such clause before the earlier of -

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under state law during which such out-of-state bank holding company may not be treated as a bank holding company whose insured bank subsidiaries, operations are principally conducted in such state for purposes of acquiring other insured banks or establishing bank branches.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED - For purposes of this subparagraph, the state in which the operations of a holding company's insured bank subsidiaries are principally conducted is the state determined under section 3(d) of the Bank Holding company Act of 1956 with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE - Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any state to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumpt ion of liabilities or

an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers of proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the "lowest acceptable offer"), is from an offeror that is not an existing in-state bank of the same type as the bank that has in default, or is in danger of default (or, where the bank is an insured bank other than a mutual Savings bank, the lowest acceptable offer is not from an in-state hold ing company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each of offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $ 15,000,000 whichever is less, of the initial lowest acceptable of fer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository Institutions. The Corporation shall authorize transactions under this subsection considering the following priorities;

(i) First, between depository institut ions of the same type within the same state;

(ii) Second, between depository institutions of the same type -

(I) in different States which by statute specifically authorize such acquisitions: or

(II) in the absence of such statutes. in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth between depositors Institutions of different types in the same state.

(v) Fifth, between depository institutions of different types -

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes in different States which are contiguous.

(vi) sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) MINORITY BANK PRIORITY - In the case of a minority-controlled bank, the Corporation shall seek an offer from other m minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3) -

(A) which would result in a monopoly, or which would be in futherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; or

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect one transaction in meeting the convenience and needs of the community to be served.

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository Institution.

(8) As used in this subsection -

(A) the term "in-state depository institution or in-state holding company" means an existing insured depository institution currently operating in the state in which the bank in default or the bank in danger of default is chartered or a company that is

operating an insured depository institution subsidiary in the state in which the bank in default or the bank in danger of default is chartered:

(B) the term "acquire" means to acquire, directly or indirectly, ownership or control through -

(i) an acquisition of shares;

(ii) an acquisition of assets or assumption of liabilities;

(iii) a merger or consolidation: or

(iv) any similar transaction:

(C) the term "affiliated insured bank" means -

(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company: and

(ii) when used in connection with a reference to 2 or more insured banks insured banks which are subsidiaries of the same holding company: and

(D) the term "subsidiary" has the meaning given to such term in section 2(d) of he Bank Holding company Act of 1956.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES -

(A) IN GENERAL - The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution of a holding, Company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED - This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT -

(A) REQUIRED - In its annual report to congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS - The report required under subparagraph (A) shall contain the

follow information:

(i) The number of acquisitions under this subsection.

(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS - For purposes of this subsection. the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE -

(A) IN GENERAL - For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-state minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank is less than $ 500,000,000.

(B) DEFINITIONS - For purposes of this paragraph:

(i) MINORITY BANK - The term "minority bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act -

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY - The term "minority" means any Black American, Native American, Hispanic American, or Asian American.

(g) Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the secretary of the Treasury and the Federal Reserve banks from the time of such advances until the

amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the default of such branch substantially outweighs any additional risk of loss to the Bank Insurance Fund which the exercise of such powers would entail.

(i)(1)(A) Notwithstanding any other provision of state or Federal law, and without limitation on any authority provided elsewhere in this Act, the Corporation in its sole discretion and on such terms and conditions as it may prescribe, is authorized to increase or maintain the capital of a qualified depository institution by making periodic purchases of capital instruments to be known as net worth certificates, as defined by the Corporation, for such form of consideration as the Corporation may determine, from such depository institution and may authorize such depository institution to issue net worth certificates, pursuant to this subsection

(B) Dividends on any certificate so purchased shall be at a rate equivalent to the rate of interest paid on any promissory note used to purchase the certificate.

(C) In making a determination under this subsection, the Corporation shall consult the state supervisor of the state in which a state chartered depository institution which is the subject of the eligibility determination is located, and in the case of a state member bank, a Savings association or a national bank, the Corporation shall consult the Board of Governors of the Federal Reserve system or the Director of the office of Thrift supervision or the comptroller of the currency, respectively.

(D) with respect to certificates held by it, the claim of the Corporation shall have a priority over any claim arising out of an equity interest in the depository institution in the event of a liquidation or reorganization, subject to the prior payment of all

accounts, certificates of deposit, and debt obligations other than debt obligations subordinated to the claims of general creditors which were outstanding when any certificates were purchased and over any right of equity holders to participate in future earnings. Issuance of net worth certificates in accordance with this subsection shall not constitute a default under the terms of any debt obligations subordinated to the claims of general creditors which were outstanding when such net worth certificates were issued.

(2) For the purposes of this subsection, the term "qualified depository institution means an depository institution" the deposits of which are insured under this title which, as determined by the Corporation -

(A) has net worth equal to or less than 3 per centum of its assets:

(B) has incurred losses during the two previous quarters:

(C) has not incurred such losses as a result of transactions involving speculation in futures or forward contracts of management action designed solely for the purpose of qualifying for assistance, or of excessive operating expenses;

(D) agrees to comply with all the terms and conditions established by the Corporation for receiving assistance pursuant to this paragraph, including those relating to reporting, compliance with laws, rules and regulations execution and implementation of resolutions and agreements to merge or reorganize, submission and adopt ion of plans of operation, restrictions on operations repayment of assistance received and consent to supervisory action;

(E) will have a net worth of not less than one-half of one per cent um of assets after any purchase of its net worth certificates by the Corporation, as determined by the Corporation in accordance with the methods for calculating net worth pursuant to this paragraph; and

(F) has investments in residential mortgages or securities backed by such mortgages aggregating at least 20 per centum of its loans.

(3)(A) The Corporation may not condition the purchase of certificates under this paragraph on the agreement of the depository institution's board to allow such depository institution to be merged with or acquired by another company if the Corporation finds that such depository Institution will have positive net worth for a period of at least six months after such certificates are purchased.

(B) The Corporation may not condition the purchase of certificates under this paragraph on the agreement of the depository institution's board to make specified management personnel changes if the Corporation finds that such depository institution will have positive net worth for a period of at least nine months after such certificates are purchased.

(4) In any case where the staff of the Corporation finds for the purpose of paragraph (3) that the length of time during which the depository institution will have positive net worth after a purchase of certificates is less than six months or nine months, as the case may be, the depository institution may submit to the starr its plans and projections. If the staff does not change its position after considering such plans and projections, the depository Institution may submit such plans and projections to the Board and the depository Institution shall be entitled to an appeal to, and a review of the staff's findings by, the Board.

(5) The Corporation may initially purchase net worth certificates as follows;

(A) with respect to a qualified depository institution having net worth greater than 2 per centum and less than or equal to 3 per centum. the Corporation may purchase net worth certificates in any period from such depository institution in an amount equal too per centum of its operating losses (not occasioned by mismanagement of speculation in futures or forward contracts), as determined by the Corporation.

(B) With respect to a qualified depository institution having net worth greater than 1 percent centum and less than or equal to 2 per centum, the Corporation may purchase net worth certificates in any period from such depository institution in an amount

equal to 60 per centum of its operating losses (not occasioned by mismanagement or speculation in futures or forward contracts), as determined by the Corporation.

(C) with respect to a qualified depository institution having net worth greater than zero and less than of equal to 1 per centum, the Corporation may purchase net worth certificates in any period from such depository institution in an amount equal to 70 per centum of its operating losses (not occasioned by mismanagement or speculation in futures or forward contracts), as determined by the Corporation.

(6) In the exercise of its authority under this subsection, the Corporation may at any time, in its sole discretion, establish criteria which, with respect to ranges of net worth, calculation of losses, and percentage of losses to be met by purchases of net worth certificates, differ from those set forth in paragraph (5), except that the Corporation shall into period purchase net worth certificates from a qualified depository institution in an amount equal to more than 100 per centum of such depository institution's operating losses incurred for the immediately preceding period.

(7) No assistance may be provided to a qualified depository institution pursuant to this subsection if the Corporation determines that providing such assistance would be costlier than liquidating (including paying the insured accounts of) such depository institution or dealing with it in accordance with subsection (c) or (d) of this subsection.

(8) The provisions of the constitution or the laws, civil or criminal, of any state, express or implied, limiting the authority of a qualified depository institution (A) to take part in programs under this subsection, (B) to issue and otherwise deal in net worth certificates issued pursuant to this paragraph, or (C) to continue operations, including the receipt of deposits and the payment or crediting of interest or dividends to depositors, because of the level of such depository institution's net worth, surplus fund. or guaranty fund, shall not apply to any qualified depository institution which the Corporation has approved for the purpose of taking part in programs under this subsection, continuing operations, or paying interest or dividends.

(9) During any period when a qualified depository institution has outstanding net worth certificates issued in accordance with this subsection, such depository institution all not be liable for any state or local tax which is determined on the basis of the deposits held by such depository institution or the interest or dividends paid on such deposits.

(10) Repealed.

(11) The Corporation may not use its authority under this subsection to purchase the voting or common stock of a qualified depository institution. Northing in this paragraph shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interests.

(12) Repealed.

(13) During any period in which a qualified depository institution which has a stock form of ownership has outstanding certificates under this subsection, such qualified insured depository institution may not pay dividends to its shareholders.

(j) LOAN LOSS AMORTIZATION FOR CERTAIN BANKS -

(1) ELIGIBLITY - The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that -

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital. not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) SEVEN-YEAR LOSS AMORTIZATION - (A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) REGULATIONS - Not later than 90 days after the date or enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) DEFINITIONS - As used in this subsection -

(A) the term "agricultural bank" means a bank -

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of $ 100,000,000 or less; and

(iv) which has -

(I) at least 25 percent of its total loans in qualified agricultural loans; or

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or state bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the terms "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) MAINTENANCE OF PORTFOLIO - As a condition of eligibility under this

subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio January 1, 1986.

(k) EMERGENCY ACQUISITIONS -

(1) IN GENERAL -

(A) ACQUISITIONS AUTHORIZED -

(i) TRANSACTIONS DESCRIBED - Notwithstanding any provision of state law, ,upon determining that severe financial conditions threaten the stability of a significant number of Savings associations, or of Savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize -

(I) a Savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other Savings association or any insured bank,

(II) any other Savings association to acquire control of such Savings association, or

(III) any company to acquire control of such Savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the Savings association to be acquired or any acquiring entity.

(ii) TERMS OF TRANSACTIONS - Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) APPROVAL BY APPROPRIATE AGENCY - Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS - Any Federal Savings association that acquires another Savings association pursuant to clause (i) may with the concurrence of the Director of the office of Thrift supervision. hold that Savings association as subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.

(v) DUAL SERVICE - Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS - Nothing in this subsection overrides or supersedes state laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) CONSULTATION WITH STATE OFFICIAL -

(i) CONSULTATION REQUIRED - Before making a determination to take any action under subparagraph (A), the Corporation shall consult the state official having jurisdiction of the acquired Institution.

(ii) PERIOD FOR STATE RESPONSE - The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph, such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL - If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) SOLICITATION OF OFFERS -

(A) IN GENERAL - In considering authorizations under this subsection, the Corporation may solicit such officer or proposals as are practicable from any

prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the Savings association.

(B) MINORITY-CONTROLLED INSTITUTIONS - In the case of a minority-controlled depository Institution, the Corporation shall seek an offer from other minority-controlled depository Institutions before seeking an officer from other persons or entities

(3) DETERMINATION OF COSTS - In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) BRANCHING PROVISIONS -

(A) In GENERAL - If a merger, consolidation, transfer, or acquisition under this subsection involves a Savings association eligible for assistance and a bank or bank holding company, a Savings association may retain and operate any existing branch or branches or any other existing facilities. If the Savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any Savings association that is not affiliated with a bank holding company and the home office of which is located the same state.

(B) RESTRICTIONS -

(i) IN GENERAL - Notwithstanding subparagraph (A) if -

(Ⅰ) a Savings association described in such subparagraph does not have its home office in the state of the bank holding company bank subsidiary, and

(Ⅱ) such association does not qualify a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on Institutions seeking so to qualify.

such Savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the state in which the Savings

Association Insurance fund member is located.

(ii) TRANSITION PERIOD - The Corporation for good cause shown. may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER -

(A) ASSISTANCE PROPOSALS - The Corporation shall consider proposals by Savings Association Insurance Fund members for assistance pursuant to subsection (C) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) TROUBLED CONDITION CRITERIA - The Corporation determines -

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member S tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) OTHER CRITERIA - The member meets the following criteria:

(I) Before enactment of the Financial Institutions Reform, Recovery, and enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation or supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonconforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board

or the Federal Savings and loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws rules and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member S safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL - If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) ECONOMICALLY DEPRESSED REGION DEFINED - For purposes of th is paragraph the term "economically depressed region" means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

SEC. 14. BORROWING AUTHORITY.

(a) BORROWING FROM TREASURY - The Corporation is authorized to borrow from the treasury, and the secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate $ 5,000,000,000 outstanding at any one time, subject to the approval of the secretary of the Treasury: *Provided,* That the rate of interest to be charged in connection with any loan made pursuant this subsection shall not be less than an amount determined by the secretary of

the Treasury, taking into consideration current market yields on outstanding marketable ablegation of the United States or comparable maturities. for such purpose the secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the second Liberty Bond Act, as mended, are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans, and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this subsection.

(b) BORROWING FROM FEDERAL FINANCING BANK - The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the=federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

SEC. 15(a) GENERAL RULE - All notes, debentures. bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the unite States, by any Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority: *provided,* That interest upon or any income from

any such obligations and gain from the sale or other disposition of such obligations shall have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to state, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) OTHER EXEMPTIONS - When acting as a receiver, the following provisions shall apply with respect to the Corporation:

(1) The Corporation including its franchise, its capital, reserves, and surplus and its income, shall be exempt from all taxation imposed by any state, county municipality, or)cal taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under state law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(c) LIMITATION ON BORROWING -

(1) COST ESTIMATE FOR OUTSTANDING OBLIGATIONS LIABILITIES - As soon as practicable after the date of enactment of the Financial Institutions Reform. Recovery, and Enforcement Act of 1989, the Corporation shall estimate the aggregate cost to the Corporation for all outstanding obligations and guarantees or the Corporation which were issued, and all outstanding liabilities which were incurred, by the Corporation before such date.

(2) ESTIMATE OF NOTES AND OTHER OBLIGATIONS REQUIRED - Before issuing an obligation or making a guarantee the Corporation shall estimate the cost of such obligations or guarantees

(3) INCLUSION OF ESTIMATES IN FINANCIAL STATEMENTS - The Corporation shall -

(A) reflect in its financial statements the estimates made by the Corporation under paragraphs (1) and (2) of the aggregate amount of the costs to the Corporation for outstanding obligations and other liabilities, and

(B) make such adjustments as are appropriate in the estimate of such aggregate amount not less frequently than quarterly.

(4) ESTIMATE OF OTHER ASSETS REQUIRED - The Corporation shall -

(A) estimate the market value of assets held by it as a result of case resolution activities, with a reduction for expenses expected to be incurred by the Corporation in connection with the management and sale of such assets;

(B) reflect the amounts so estimated in its financial statements; and

(C) make such adjustments as are appropriate of such market value not less than quarterly.

(5) MINIMUM NET WORTH REQUIRED - The Corporation may not issue any note or similar obligation, and may not incur any liability under a guarantee or similar obligation, with respect to either the Bank Insurance Fund or the Savings Association Insurance fund if, after reduction for the estimated cost of the obligation or guarantee,

the net worth of the affected insurance fund would be less than 10 percent of assets.

(6) EXCEPTION - With the prior approval of the secretary of the Treasury, the Corporation may issue or incur up to $ 5,000,000,000 in the aggregate of additional liabilities in excess of the limitations of paragraph (5). The amount which the Corporation may borrow from the Treasury under section 14 of this Act shall be reduced by the amount of additional liabilities issued or incurred under this paragraph.

(7) NET WORTH AND ASSET VALUATION - For the purpose of paragraph (5) -

(A) the assets of the Bank Insurance Fund or the Savings Association Insurance Fund shall be calculated based on the most recent audit of such Fund by the comptroller General of the United States, subject to any adjustments described in paragraph (3) or (4) and taking into account any subsequent transactions: and

(B) the net worth of the Bank Insurance Fund or the Savings Association Insurance Fund shall be calculated based on the most recent audit of such Fund by the comptroller General of the United States, subject to any adjustments described in paragraphs (3) and (4) and taking into account any subsequent transactions.

(d) FULL FAITH AND CREDIT - The full faith and credit of the United States is pledged to the payment of any obligation issued after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Corporation, with respect to both principal and interest, if -

(1) the principal amount of such obligation is stated in the obligation: and

(2) the term to maturity or the date of maturity of such obligation is stated in the obligation.

SEC. 16. In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of

the Corporation. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other such obligations.

SEC. 17(a) ANNUAL REPORTS ON BIF, SAIF, AND THE FSLIC RESOLUTION FUND - (1) IN GENERAL - The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, an analysis by the Corporation of -

(A) the current financial condition of each such fund;

(B) the purpose, effect, and estimated cost of each resolution action taken for an insured depository institution during the preceding year;

(C) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured depository institution during the preceding year exceeded the estimated costs of such assistance reported in a previous year under paragraph (A);

(D) the exposure of each insurance fund to changes in those economic factors most likely to affect the condition of that fund;

(E) a current estimate of the resources needed for the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund to achieve the purposes of this Act; and

(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

(2) MANNER OF SUBMISSION - Such report shall be submitted to the president of the senate and the speaker of the House of Representatives, who shall cause the same

to be printed for the information of congress, and the president as soon as practicable after the first day of January each year.

(b) QUARTERLY REPORTS TO TREASURY -

(1) FINANCIAL OPERATING PLANS AND FORECASTS - Before the beginning of each fiscal quarter, the Corporation shall provide to the secretary of the Treasury a copy of the Corporation's financial operating plans and forecasts.

(2) FINANCIAL CONDITION AND REPORTS OF OPERATIONS - As soon as practicable after the end of each fiscal quarter, the Corporation shall submit to the secretary of the Treasury a copy of the report or the Corporation's financial condition as of the end of such fiscal quarter and the results of the Corporation's operations during such fiscal quarter.

(3) ITEMS TO BE INCLUDED - The plans, forecasts and reports required under this subsection shall reflect the estimates required to be made under section 15(b) or the liabilities and obligations of the Corporation described in such section.

(4) RULE OF CONSTRUCTION - The requirement to provide plans forecasts, and reports to the secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Corporation to obtain the consent or approval of such secretary with respect to such plans, forecasts, and reports.

(c) REPORTS TO OMB -

(1) FINANCIAL INFORMATION - The Corporation shall continue to provide to the Director of the office of Management and Budget financial information consistent with that contained in the reports that were being provided to the Director immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) FINANCIAL OPERATING PLANS AND FORECASTS - The Corporation shall also provide to the Director copies of the Corporation's financial operating plans and forecasts as prepared by the Corporation in the ordinary course of its operations, and copies of

the quarterly reports of the Corporation's financial condition and results of operations as prepared by the Corporation in the ordinary course of its operations.

(3) RULE OF CONSTRUCTION - This subsection may not be construed as implying any obligation on the part of the Corporation to consult with or obtain the consent or approval of the Director with respect to any reports, plans, forecasts, or other information referred to in paragraph (1) or (2) or any jurisdiction or oversight over the affairs or operations of the Corporation.

(d) AUDIT -

(1) AUDIT REQUIRED -The comptroller General shall audit annually the financial transactions of the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

(2) ACCESS TO BOOKS AND RECORDS - All books, records, accounts, reports, files, and property belonging to or used by the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the comptroller General.

(e) The financial transactions of the Corporation shall be audited by the General Accounting office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances, or securities held by depositaries, fiscal agents, and custodians. All such books, accounts,

records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation. The audit shall begin with financial transactions occurring on and after August 31, 1948. The Corporation shall be audited at least once in every three years.

(f) A report of each audit conducted under subsection (b) of this section shall be made by the comptroller General to the congress not later than six and one-half months following the close of the last year covered by such audit. The report to the congress shall set forth the scope of the audit and shall include a statement of assets and liabilities and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds and such comments and information as may be deemed necessary to inform congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as the comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the president to the secretary of the Treasury, and to the Corporation at the time submitted to the congress.

(g) For the purpose of conducting such audit the comptroller General is authorized in his discretion to employ by contract, without regard to section 3709 of the Revised statutes, professional services of firms and organizations of certified public accountants, with the concurrence of the Corporation, for temporary periods or for special purposes. The Corporation shall reimburse the General Accounting office for the cost of any such audit as billed therefor by the comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts.

SEC. 18(a) INSURANCE LOGO -

(1) INSURED SAVINGS ASSOCIATIONS - Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items;

(A) A statement that insured deposits are backed by the full faith and credit of the United States Government.

(B) a statement that deposits are federally insured to $ 100,000.

(C) The symbol of an eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

(2) INSURED BANKS - Not later than 30 days after the date of enactment or the Financial institutions Reform, Recovery, and Enforcement Act of 1989, each insured bank shall display at each place of business maintained by such bank one of the following:

(A) The sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989.

(B) The sign prescribed under paragraph (1)

(3) REGULATIONS - The Corporation shall prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). Initial regulations under this subsection shall be prescribed on the date of enactment of the Financial Institutions Recovery Reform, and enforcement Act of 1989. For each day an insured depository institution continues to violate any provisions of this subsection or any lawful provisions of said regulations, it shall be subject to a penalty of not more than $ 100, which the Corporation may recover for its use.

(b) No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the

payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend interest or in any such distribution shall, upon conviction, be fined not more than 1,000 or imprisoned not more than one year, or both; *provided,* That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply, if such bank shall deposit security satisfactory to the Corporation for payment upon final determination of the issue.

(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall -

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be "deposits" except for the proviso in section 3(l)(5) or this Act) made in, or similar liabilities of, any noninsured bank or institution;

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be -

(A) the comptroller of the currency if the acquiring, assuming, or resulting bank is be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve system if the acquiring, assuming, or resulting bank is to be a state member bank (except a District bank);

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a state nonmember insured bank (except a District bank or a savings bank supervised by the

director of the office of Thrift supervision); and

(D) the Director of the office of Thrift supervision if the acquiring assuming, or resulting institution is to be a savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published -

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other tlo banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days or the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action.

(5) The responsible agency shall not approve -

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt

to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection or a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks savings associations involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other two banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of, approval by the agency.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness or the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of The sherman Antitrust Act, 15 U. S. C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman antitrust Act, 15 U. S. C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection. such agency, and any state banking supervisory agency having jurisdiction within the state involved, may appear as a party of its own motion and as of right and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the sherman Antitrust Act, 15 U. S. C. 1~7), the Act of october 15, 1914 (the Clayton Act, 15 U. S. C. 12~27), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the congress a description of each merger transaction approved by it during the period covered by the report, along with the following information:

(A) the name and total resources of each bank or savings association involved;

(B) whether a report las submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance or such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety soundness and stability of an insured bank. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) The provisions of this subsection do not apply to any merger transaction involving foreign bank if no party to the transaction is principally engaged in business in the United States.

(d)(1) No state nonmember insured bank (except a District bank) shall establish and operate any new domestic branch unless it shall have the prior written consent, of the Corporation, and ho state nonmember insured bank (except a District bank) shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section k of this Act.

(2) No state nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(e) The Corporation may require any insured depository institution to provide protection

and indemnity against burglary, defalcation, and other similar insurable losses whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) whenever any insured depository institution (except a national bank or a District bank), after written notice of the recommendations of the Corporation based on a report of examination of such bank by an examiner or the Corporation, shall fail to comply with such commendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any recommendation not complied with; *provided,* That notice of intention to make such publication shall be given to the bank at least ninety days before such publication is made.

(g)(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term "demand deposits"; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve system. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve system and the Director of the office of Thrift Supervision, prescribe rules governing the advertisement of interest or dividends on deposits by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms "time deposits" and "savings deposits", to determine what shall be deemed a payment of interest, and to prescribe such regulation's as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this subsection and of regulations issued thereunder shall also apply, in

the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term affiliate, has the same meaning as when used in section 2(b) of the Banking Act of 1933, as amended (12 U. S. C. 221a(b)), except that the term "member bank", as used in such section 2(b), shall be deemed to refer to an insured nonmember bank. During the period commencing on october 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which be United States is a member. The authority conferred by this subsection shall also apply to noninsured banks in any state if the total amount of time and savings deposits held in all such banks in the state, plus the total amount of deposits, shares and withdrawable accounts held in all building and loan, savings and loan, and homestead associations including cooperative banks) in the state which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares and withdrawable accounts held in all banks and building and loan, savings and loan, and homestead associations (including cooperative banks) in the state. such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5 1/2 per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office or the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations

thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(2) Notwithstanding the provisions of paragraph (1), an insured nonmember bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board of Directors.

(h) Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this Act shall be subject to a penalty of not more than $ 100 for each day that such violations continue, which penalty the Corporation may recover for its use; provided. That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.

(i)(1) No insured state nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured state depository institution if its capital stock or its surplus, will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of -

(A) the comptroller of the currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve system if the resulting bank is to be a state member bank (except a District bank);

(C) the Corporation if the resulting hank is to be a state nonmember insured bank (except a District bank); and

(D) the Director of the office or Thrift supervision if the resulting institution is to be an insured state savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider -

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this Act.

(j)(1) The provisions of section 23A and section 23B of the Federal Reserve Act, as amended, relating to loans and other dealings between member banks and their affiliates, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a member bank, and for this purpose any company which would be an affiliate of a nonmember insured bank for the purposes of section 23A and section 23B of the Federal Reserve Act, if such bank were a member bank shall be deemed to be an affiliate of such nonmember insured bank. The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and any affiliate thereof.

(2) The provisions of section 22(h) of the Federal Reserve Act, as amended, relating to limits on loans and extensions of credit by a member bank to its executive officers or directors or to any person who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, exception the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to

companies controlled by such an executive officer, director, or person, or to political or campaign committees the funds or services of which will benefit such an officer, director, or person or which are controlled by such an officer, director, or person and relating to board of directors approval of and terms of such loan, shall be applicable to every nonmember insured bank in the same manner and to the same extent as if such nonmember insured bank were a state member bank. The provisions of this subsection shall not apply to any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U. S. C. 3101(7)), having an insured branch in the United States, but shall apply to the insured branch.

(3) SECURITIES AFFILIATIONS OF INSURED NONMEMBER BANKS -

(A) IN GENERAL - The provisions of section 20 of the Banking Act of 1933 (relating to affiliations between member banks and organizations engaged principally incertain securities activities), and the provisions of section 32 of the Banking Act of 1933 (relating to certain officer, director, or employee relationships involving a member bank and a person or organization primarily engaged in certain securities activities) shall apply to every insured nonmember bank in the same manner and to the same extent as if such insured nonmember bank were a member bank.

(B) CONTINUATION OF CERTAIN AFFILIATIONS - This paragraph shall not prohibit the continuation of such an affiliation or relationship which commenced before March 5, 1987, or the establishment of such an officer, director, or employee relationship in connection with any affiliation established before March 5, 1987.

(C) 2-YEAR PERIOD - An affiliation or officer, director, or employee relationship that becomes unlawful as a result of the enactment of this paragraph may continue for a period of 2 years after the date of enactment of this paragraph.

(D) FOREIGN BANKS - The provisions of this paragraph shall not apply, to any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978, solely because it has an insured branch in the United States, except that the

provisions of section 32 of the Banking Act of 1933 shall apply to an insured branch as if it were an insured depository institution.

(E) EXCEPTION - The provisions of this paragraph shall not apply to any institution described in subparagraph (D), (F), or (I) of section 2(c)(2) of the Bank Holding Company Act of 1956.

(F) APPLICABILITY - This paragraph shall apply during the period beginning on March 6, 1987, and ending on March 1, 1988.

(4) CIVIL MONEY PENALTY -

(A) FIRST TIER - Any nonmember insured bank or savings association which, and any institution-affiliated party who. violates any provision of sections 22(h), 23A, or 23B of the Federal Reserve Act or any lawful regulation issued pursuant thereto, and any nonmember insured bank which, and any institution-affiliated party who, violates any provision of section 20 of the Banking Act of 1933, shall forfeit and pay a civil penalty of not more than $ 5,000 for each day during which such violation continues.

(B) SECOND TIER - Notwithstanding subparagraph (A), any nonmember insured bank or savings association which, and any institution-affiliated party who -

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank or association, as the case may be; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach -

(I) is part of a pattern of misconduct;

(II) results in more than a minimal loss to such bank or association. as the case may be; or

(III) causes or is likely to cause pecuniary gain or other benefit to such party, shall forfeit and pay a civil penalty of not more than $ 25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER - Notwithstanding subparagraphs (A) and (B), any nonmember insured bank or savings association which, and any institution-affiliated party who -

(i) knowingly -

(Ⅰ) commits any violation described in any clause of subparagraph (A);

(Ⅱ) engages in any unsafe or unsound practice in conducting the affairs of such bank or association; or

(Ⅲ) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such bank or association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C) - The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is -

(i) in the case of any person other than a nonmember insured bank or savings association, an amount to not exceed $ 1,000,000; and

(ii) in the case of any nonmember insured bank or savings association, an amount not to exceed the lesser of -

(Ⅰ) $ 1,000,000; or

(Ⅱ) 1 percent of the total assets of such bank or association.

(E) ASSESSMENT; ETC -Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (O) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to

the provisions or such section.

(F) HEARING - The nonmember insured bank savings association, or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such nonmember insured bank, savings association, or other person submits a request for such hearing within 20 days after the issuance or the notice of assessment, section 8(h) shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT - All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(5) REGULATIONS - The appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out paragraph (4).

(6) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE - The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of a nonmember bank or a savings association) shall not affect the jurisdiction and authority of the Corporation or the Director of the office of Thrift supervision, as appropriate, to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such nonmember bank or such savings association (whether such date occurs before, on, or after the date of the enactment of this paragraph).

(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES -

(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENT - The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) FACTORS TO BE TAKEN INTO ACCOUNT - The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant

to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).

(C) Whether there is reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or state banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate -

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States code; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or depository institution holding company and the degree to which -

(i) the payment reasonably reflects compensation eared over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) CERTAIN PAYMENTS PROHIBITED - No insured depository institution or

depository institution holding company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made -

(A) in contemplation of the insolvency of such institution or holding company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of -

(i) preventing the proper application of the assets of the institution to creditors; or

(ii) preferring one creditor over another.

(4) GOLDEN PARACHUTE PAYMENT DEFINED - For purposes of this subsection -

(A) IN GENERAL - The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or depository institution holding company for the benefit of an3institution-affiliated party pursuant to an obligation of such institution or holding company that -

(i) is contingent on the termination of such party's affiliation with the institution or holding company; and

(ii) is received on or after the date on which -

(I) the insured depository institution or depository institution holding company, or any insured depository institution subsidiary of such holding company, is insolvent;

(II) any conservator or receiver is appointed for such institution; or

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the uniform Financial Institutions Rating system; or

(V) the insured depository institution is subject to a proceeding initiated by the

Corporation to terminate or suspend deposit insurance for such institution.

(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT - Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) CERTAIN PAYMENTS NOT INCLUDED - The term "golden parachute payment" shall not include -

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue code of 1986 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) OTHER DEFINITIONS - For purposes of this subsection -

(A) INDEMNIFICATION PAYMENT - Subject to paragraph (6), the term "indemnification payment" means any payment (or any agreement to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person -

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 8(b)(6) with

respect to such institution.

(B) LIABILITY OR LEGAL EXPENSE - The term "liability or legal expense" means -

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgement or penalty imposed with respect to any claim, proceeding, or action.

(C) PAYMENT - The term "payment" includes -

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on -

(Ⅰ) the determination, after such date, of the liability for the payment of such amount; or

(Ⅱ) the liquidation, after such date, of the amount of such payment.

(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT - No provision of this subsection shall be construed as prohibiting any insured depository institution or depository institution holding company from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or holding company which is described in paragraph (5)(A).

(l) when authorized by state law, a state nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly

or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors shall be incidental to the inter national or foreign business of such foreign bank or entity; and notwithstanding the provisions of subsection (j) of this section, such state nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES -

(1) PROCEDURES - When an insured savings association establishes or acquirers a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association -

(A) shall notify the Corporation and the Director of the office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the office of Thrift supervision.

(2) ENFORCEMENT POWERS - With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Director of the office of Thrift supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

(B) the Director of the office of Thrift supervision may determine, after notice and

opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary -

(i) constitutes a serious risk to the safety, soundness, or stability of the insured saving association, or

(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Director of the office of Thrift supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the office of Thrift supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate

(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE -

(A) IN GENERAL - The Corporation may determine by regulation or order that any specific activity poses a serious threat to the savings Association Insurance Fund. prior to adopting any such regulation, the Corporation shall consult with the Director of the office of Thrift supervision and shall provide appropriate state supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5,United States code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings Association Insurance Fund member may engage in the activity directly.

(B) AUTHORITY OF DIRECTOR - This section does not limit the authority of the office of Thrift supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws

(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND - Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such relations and issue such orders as the Corporation

determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

(4) "SUBSIDIARY" DEFINED - As used in this subsection, the term "subsidiary" does not include an insured depository institution.

(5) APPLICABILITY TO CERTAIN SAVINGS BANKS - Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to -

(A) any Federal savings bank that was chartered prior to october 15, 1982, as a savings bank under state law, or

SEC. 19. PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION -

(1) IN GENERAL - Except with the prior written consent of the Corporation -

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not -

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES -

(A) IN GENERAL - If the offense referred to in paragraph (1)(A) in connection with

any person referred to in such paragraph is -

(i) an offense under -

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, or 1956 of title 18, United States code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense, the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT -

(i) IN GENERAL - On motion of the Corporation; the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice

(ii) PERIOD FOR FILING - A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) PENALTY - whoever knowingly violates subsection (a) shall be fined not more than $ 1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 year, or both.

SEC. 20(a) A state nonmember insured bank may not -

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery;

(4) announce, advertise, or publicize the existence or identity of any participant or

winner, as such, in a lottery.

(b) A state nonmember insured bank may not permit -

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).

(c) As used in this section -

(1) The term "deal in" includes making, taking, buying, selling, redeeming, or collecting.

(2) The term "lottery" includes any arrangement whereby three or more persons (the "participants") advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the "winners") will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes -

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term "lottery ticket" includes any right privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(d) Nothing contained in this section prohibits a state nonmember insured bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a state operating a lottery, or for an officer or employee of that state who is charged with the administration of the lottery.

(e) The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

SEC. 21(a)(1) The congress finds that adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The congress further finds that microfilm or other, reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

(2) It is the purpose of this section to require the maintenance of appropriate types of, records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(b) where the secretary of the Treasury (referred to in this section as the "secretary") determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(c) Each insured depository institution shall maintain such records and other evidence, in such form as the secretary shall require, of the identity of each person having an account in the United States with the hank and of each ind individual authorized to sign checks make withdrawals, or otherwise act with respect to any such account. The secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) Each insured depository institution shall make, to the extent that the regulations of the secretary so require -

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be

deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).

(e) whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under the currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the secretary may describe as appropriate under the circumstances.

(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) Any type of record or evidence required under this section shall be retained for such period as the secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) The secretary shall include in his annual report to the congress information on his implementation of the authority conferred by this section and any similar authority with respect to record keeping or reporting requirements conferred by other provisions of law.

(i) The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records or any insured branch of such a bank.

(i) CIVIL PENALTIES -

(1) PENALTY IMPOSED - Any insured depository institution and any director officer, or employee of an insured depository institution who willfully or through gross negligence violates any regulation prescribed under subsection (b) shall be liable to the United States for a civil penalty or not more than $ 10,000.

(2) TREATMENT OF CONTINUING VIOLATION - A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the

violation continues and at each office, branch, or place of business at which such violation occurs.

(3) ASSESSMENT - Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.

SEC. 22. NONDISCRIMINATION

It is not the purpose of this Act to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively. It is the purpose of this Act to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this Act.

SEC. 23. The provisions of this Act limiting the insurance of the deposits of any depositor to a maximum less than the full amount shall be independent and separable from each and all of the provisions of this Act.

SEC. 24. [Repealed]

SEC. 25(a) No insured depository institution, insured branch of a foreign bank, or mutual savings or cooperative bank which is not an insured depository institution, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the bank. At the request of the Corporation, the bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

(b) In addition to other available remedies, this section may be enforced with respect to

mutual savings and cooperative banks which are not insured depository institutions in accordance with section 8 of this Act, and for such purpose such mutual savings and cooperative banks shall be held and considered to be state nonmember insured banks and the appropriate federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit insurance Corporation.

SEC. 26(a) with respect to any state-chartered insured mutual savings bank which converts into a Federal savings bank or merges or consolidates into a Federal savings bank or a savings bank which is (or within sixty days after the merger or consolidation becomes) an insured institution within the meaning of section 401 of the National Housing Act, the Corporation shall indemnify the Federal savings and Loan Insurance Corporation against any losses incurred by it which arise out of losses incurred by the converting bank prior to conversion as follows: One hundred per centum of such losses incurred by the Federal Savings and Loan Insurance Corporation during the first two year after conversion, 75 per centum during the third year, 50 per centum during the fourth year, and 25 per centum during the fifth year. The Corporation and the Federal savings and Loan Insurance Corporation shall, within six months after enactment hereof, mutually agree on what shall be treated as "losses incurred by it which arise out of losses incurred by the converting bank prior to conversion" for purposes hereof and, failing such agreement, the General accounting office shall prescribe the meaning of those terms. Any conversion, merger, or consolidation covered by this section shall not be deemed a termination of insured status under section 8(a) of this Act. The provisions of this subsection shall apply only to mergers, consolidations, or conversions consummated and effective prior to the effective date of the Garn-St Germain Depository Institutions Act of 1982 or mergers, consolidations, or conversions for which applications have been received at a regional Federal Home Loan Bank prior to such effective date.

(b) No transaction involving a change of deposit insurance agencies from the

Corporation to the Federal savings and Loan Insurance Corporation shall be deemed a termination of insured status under section 8(a) of this Act.

SEC. 27(a) In order to prevent discrimination against state-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such state bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such state bank or such insured branch of a foreign bank may, notwithstanding any state constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate or not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such state bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the state, territory, or district where the bank is located, whichever may be greater.

(b) If the rate prescribed in subsection (a) exceeds the rate such state bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such state fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid. the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment an amount equal to twice the amount of the interest paid from such state bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

SEC. 28. ACTIVITIES OF SAVINGS ASSOCIATIONS.

(a) IN GENERAL - On and after January 1, 1990, a savings association chartered under State lay may not engage as principal in ally type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless -

(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home owners, Loan Act.

(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS - Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home owners, Loan Act) is permissible for a Federal savings association, a savings association chartered under state law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if -

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the affected deposit insurance fund; and

(2) the savings association chartered under state law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act

(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS -

(1) IN GENERAL - Notwithstanding subsections (a) and (b), a savings association chartered under state law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) EXCEPTION FOR SERVICE CORPORATIONS - Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service Corporations if -

(A) the Corporation has determined that no significant risk to the affected deposit

insurance fund is posed by -

(i) the amount that the association proposes to acquire or retain, or

(ii) the activities in which the service Corporation engages; and

(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

(3) TRANSITION RULE -

(A) IN GENERAL - The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT - With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

(d) CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE -

(1) IN GENERAL - No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE - Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is, acquired and retained by any qualified affiliate of a savings association

(3) TRANSITION RULE -

(A) IN GENERAL - The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT - With respect

to any corporate debt security not of investment grade held by any savings association or subsidiary on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

(4) DEFINITIONS - For purposes of this section -

(A) INVESTMENT GRADE - Any corporate debt security is not of "investment grade" unless that security, when acquired by the savings association or subsidiary was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

(B) QUALIFIED AFFILIATE - The term "qualified affiliate" means -

(i) in the case of a stock savings association, an affiliate other than a subsidiary an insured depository institution, and

(ii) in the case of a mutual savings association a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

(C) CERTAIN SECURITIES NOT INCLUDE - The term "corporate debt security not of investment grade" does not include any obligation issued or guaranteed by a Corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act.

(e) TRANSFER OF CORPORATE DEBT SECURITY NOT OF INVESTMENT GRADE IN EXCHANGE FOR A QUALIFIED NOTE -

(1) ACQUISITION OF NOTE - Notwithstanding subsections (a), (b), and (c) of section

of the Home Owners' Loan Act and any other provision of federal or state law governing extensions of credit by savings associations any insured savings association. and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds arty corporate debt security not of investment grade may acquire a qualified note in exchange or the transfer of such security to -

(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE - The conditions of this paragraph are met if -

(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date -

(i) remains in compliance with applicable capital requirements; or

(ii) adopts and complies with a capital plan acceptable to the Director of the office of Thrift supervision;

(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Director of the office of Thrift supervision or such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security not of investment grade is completed -

(i) before the end of the 2-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

(F) the Director of the office of Thrift supervision has -

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements. by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) QUALIFIED NOTE DEFINED - The term "qualified note" means any note that -

(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the office of Thrift supervision;

(B) contains provisions acceptable to the Director of the of office of Thrift supervision that would -

(i) prevent any act ion to encumber or impair the value of the collateral referred in subparagraph (A); and

(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

(C) is on market terms. including interest react, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year or repayment were fixed throughout the amortization period;

(F) is fully guaranteed by each holding company or the insured savings association that acquired such note; and

(G) is repaid in full in cash in accordance with its terms and this subsection.

(4) FAILURE TO REPAY ON SCHEDULE - The exemption provided by this subsection from subsections (a), (b), and (c) of section 11 of the Home Owners' Loan Act any other applicable provision of Federal or state law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

(f) DETERMINATIONS - The Corporation shall make determinations under this section by regulation or order.

(g) ACTIVITY DEFINED - For purposes of subsections (a) and (b) -

(1) IN GENERAL - The term "activity" includes acquiring or retaining any investment.

(2) DIVESTITURE OF CERTAIN ASSETS - Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before the date of enactment of the Financial Institutions

Reform, Recovery, and Enforcement Act of 1989.

(h) DISCLOSURES BY UNINSURED SAVINGS ASSOCIATIONS -

(1) IN GENERAL - Any savings association the deposits of which are not insured by the Corporation under this Act shall disclose clearly and conspicuously in periodic statements of account and in all advertising that the savings association's deposits are "not federally insured".

(2) MANNER AND CONTENT - The Corporation may, by regulation or order, prescribe the manner and content of the disclosure.

(3) ENFORCEMENT - Compliance with the requirements of this subsection, and any regulation prescribed or order issued under this subsection, shall be enforced under section 8 in the same manner and to the same extent as if the savings association were an insured state nonmember bank.

(i) OTHER AUTHORITY NOT AFFECTED - This section may not be construed as limiting -

(1) any other authority of the Corporation; or

(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.

SEC. 29 BROKERED DEPOSITS.

(a) IN GENERAL - A troubled institution may not accept funds obtained directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

(b) RENEWALS AND ROLLOVERS TREATED AS ACCEPTANCE OF FUNDS - Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a).

(c) WAIVER AUTHORITY - The Corporation may, on a case-by-case basis and upon application by an insured depository institution, waive the applicability of subsection (a)

upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

(d) LIMITED EXCEPTION FOR CERTAIN CONSERVATORSHIPS - In the case of any insured depository institution for which the Corporation has been appointed as conservator subsection (a) shall not apply to the acceptance of deposits (described in such subsection) by such institution if the Corporation determines that the acceptance of such deposits -

(1) is not an unsafe or unsound practice; and

(2) either -

(A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or

(B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution.

(e) ADDITIONAL RESTRICTIONS - The Corporation may impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any troubled institution as the Corporation may determine to be appropriate.

(f) DEFINITIONS RELATING TO DEPOSIT BROKER -

(1) DEPOSIT BROKER - The term "deposit broker" means -

(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests those deposits to third parties; and

(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds or the account fund a prearranged loan.

(2) EXCLUSIONS - The term "deposit broker" does not include -

(A) an insured depository institution, with respect to funds placed with that

depository institution;

(B) an employee of an insured depository institution, with respect to funds placed, with the employing depository institution;

(C) a trust department of an insured depository institution, if the trust in questions not been established for the primary purpose of placing funds with insured depository institutions;

(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) a person acting as a plan administrator or an investment adviser in connection, with a pension plan of other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) the trustee of a testamentary account;

(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary, purpose or placing funds with insured depository institutions;

(H) a trustee or custodian of a person or profitsharing plan qualified under section 401(d) or 430(a) of the Internal Revenue Code of 1986; or

(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) INCLUSION OF DEPOSITORY INSTITUTIONS ENGAGING IN CERTAIN ACTIVITIES - Notwithstanding paragraph (2), the term "deposit broker" includes any insured depository institution, and any employee or any insured depository institution, which engages, directly or indirectly in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area.

(4) EMPLOYEE - For purposes of this subsection, the term "employee" means any

employee -

(A) Who is employed exclusively the insured depository institution;

(B) Whose compensation is primarily, in the from of a salary;

(C) Who does not share such employee's compensation with a deposit broker; and

(D) Whose office space or place of business is used excursively for the benefit of the insured depository institution which employs such individual.

(g) TROUBLED INSTITUTION DEFINED - The term "troubled institution" means any insured depository institution which does not meet the minimum capital requirements.

SEC. 30 CONTRACTS BETWEEN DEPOSITORY INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES.

(a) IN GENERAL - An insured depository institution may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution if the performance or such contract would adversely affect the safety or soundness of the institution.

(b) RULEMAKING - The Corporation shall prescribe such regulations and issue such orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of, and prevent evasions of, this section.

(c) ENFORCEMENT - Any action taken by any appropriate Federal banking agency under section 8 to enforce compliance on the part of any insured depository institution with the requirements of this section may include a requirement that such institution properly reflect the transaction on its books and records.

(d) NO PRIVATE RIGHT OF ACTION - This section may not be construed as creating any private right of action.

(e) STUDY -

(1) IN GENERAL - The Attorney General and the Comptroller General of the United States shall jointly conduct a study on the extent to which -

(A) insured depository institutions are entering into contracts with vendors under which vendors agree to purchase stock or assets from insured depository institution or to invest capital in or make deposits in such institutions; and

(B) if such practices occur, the extent to which such practices arc having an anticompetitive effect and should be prohibited.

(2) REPORT TO CONGRESS - Before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act or 1989, the Attorney General and the comptroller General shall submit a report to the Congress on the results or the study conducted pursuant to paragraph (1).

SEC. 31. SAVINGS ASSOCIATION INSURANCE FUND INDUSTRY ADVISORY COMMITTEE.

(a) ESTABLISHMENT - There is hereby established the savings Association Insurance Fund Industry Advisory committee (hereinafter referred to in this section as the "Committee").

(b) MEMBERSHIP - The committee shall consist of 18 members, appointed as follows;

(1) 1 member elected from each Federal home loan bank district (by the members of the Board of Directors or each such bank who were elected by the members of such bank)from among individuals residing therein who are officers of insured depository institutions that are savings Association Insurance Fund members.

(2) 6 members appointed by the Corporation from among individuals who shall represent the public interest.

(c) VACANCIES - Any vacancy on the committee shall be filled in the same manner in which the original appointment was made.

(d) PAY AND EXPENSES - Members of the committee shall serve without, but each member shall be reimbursed, in such manner as the Corporation shall prescribe by regulation, for expenses incurred in connection with attendance of such members at meetings of the committee.

(e) TERMS - Members shall be appointed or elected 1 or terms of 1 year.

(d) AUTHORITY OF THE COMMITTEE - The committee may select its chairperson; Vice Chairperson, and secretary, and adopt methods of procedure, and shall have power -

(1) to confer with the Board of Directors on general and spacial business conditions and regulatory and other matters affecting insured financial institutions that are members of the savings Association Insurance Fund; and

(2) to request information, and to make recommendations, with respect to matters within the jurisdiction of the Corporation.

(g) MEETINGS - The committee shall meet 4 times each year and more frequently if requested by the Corporation.

(h) REPORTS - The committee shall submit a semiannual written report to the Committee on Banking, Finance and urban Affairs of the House and to the committee on Banking, Housing, and Urban Affairs of the senate. such report shall describe the activities of the committee for such semiannual period and contain such recommendations as the committee considers appropriate.

(i) PROVISION OF STAFF AND OTHER RESOURCES - The Corporation shall provide the committee with the use of such resources, including staff, as the committee reasonably shall require to carry out its duties, including the preparation and submission of reports to congress, under this section.

(j) PROVISION OF STAFF AND OTHER RESOURCES - The Federal Advisory Committee Act shall not apply to the committee.

(k) SUNSET - The committee shall cease to exist 10 years after the enactment or this section.

SEC. 32. AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF INSURED DEPOSITORY INSTITUTIONS OR DEPOSITORY INSTITUTION HOLDING COMPANIES.

(a) PRIOR NOTICE REQUIRED - An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30days before such addition or employment becomes effective, if the insured depository institution or depository institution holding company -

(1) has been chartered less than 2 years in the case of an insured depository institution;

(2) has undergone a change in control within the preceding 2 years; or

(3) is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report or examination or inspection.

(b) DISAPPROVAL BY AGENCY - An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate federal banking agency issues a notice of disapproval of such addition or employment before the end of the 30-day period beginning on the date the agency receives notice of the proposed action pursuant to subsection (a).

(c) EXCEPTION IN EXTRAORDINARY CIRCUMSTANCES -

(1) IN GENERAL - Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior not ice requirement of subsection (a) may be waived in the event of extraordinary circumstances.

(2) NO EFFECT ON DISAPPROVAL AUTHORITY OF AGENCY - Such waivers shall not affect the authority of each agency to issue notices or disapproval of such additions or employment of such individuals within 30 days after each such waiver.

(d) ADDITIONAL INFORMATION - Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or

depository institution holding company pursuant to subsection (a) shall include -

(1) the information described in section 7(j)(6)(A) about the individual; and

(2) such other information as the agency may prescribe by regulation.

(e) STANDARD FOR DISAPPROVAL - The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company.

(f) DEFINITION REGULATIONS - Each appropriate Federal banking agency shall prescribe by regulation a definition for the terms "troubled condition" and "senior executive officer" for purposes of subsection (a).

SEC. 33. DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

(a) PROHIBITION AGAINST DISCRIMINATION AGAINST WHISTLEBLOWERS - No federally insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding possible violation of any law or regulation by the depository institution or any of its officers, directors, or employees.

(b) ENFORCEMENT - Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning in the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

(c) REMEDIES - If the district court determines that a violation of subsection (a) has excursed, it may order the depository institution which committed the violation -

(1) to reinstate the employee to his former position;

(2) to pay compensatory damages; or

{3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION - The protections of this section shall not apply to any employee who -

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

SEC. 34. REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES.

{a) In General - An appropriate Federal banking agency, with the concurrence of the Attorney General, may pay a reward to a person who provides original information which leads to -

(1) recovery of a criminal fine, restitution, or civil penalty -

(A) under -

(i) the Federal Deposit Insurance Act;

(ii) the Federal credit union Act;

(iii) sections 5213, 5239(b), and 5240 of the Revised statutes;

(iv) the Federal Reserve Act;

(v) the Bank Holding company Act Amendments of 1970;

(vi) the Bank Holding company Act of 1956;

(vii) the Home owners, wan Act; or

(viii) section 3663 of title 18, United States Code, pursuant to a conviction for an offense referred to in subparagraph (B) of this paragraph;

(B) pursuant to a conviction for an offense under section 215, 656, 657, 1005, 1006,

1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, affecting a depository institution insured by the Federal Deposit Insurance Corporation, or for a conspiracy to commit such an offense; or

(C) under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(2) a forfeiture under section 981 or 982 of title 18, United States Code, that -

(A) arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation.

(b) PERCENTAGE LIMITATION - An appropriate Federal banking agency may not pay reward under subsection (a) of more than 25 percent of the amount of the fine, penalty, restitution, or forfeiture or $ 100,000, whichever is less.

(c) OFFICIALS AND PERSONS INELIGIBLE - An appropriate Federal banking agency may not pay a reward under subsection (a) to -

(1) an officer or employee of the United States or of a state or local government who provides information described in subsection (a), obtained in the performance of official duties; or

(2) a person who -

(A) deliberately causes or participates in the alleged violation of law or regulation, or

(B) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(d) NONREVIEWABILITY - Any agency decision under this section is final and not reviewable by any court.

SEC. 35. COORDINATION OF RISK ANALYSIS BETWEEN SEC AND FEDERAL BANKING AGENCIES.

Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational

risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 3 of the Securities Exchange Act of 1934), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate.

Ⅱ. 캐나다 預金保險公社法

An Act to establish the Canada Deposit Insurance Corporation

SHORT TITLE

Short title

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

INTERPRETATION

Definitions

2. In this Act,

"appropriate provincial minister"

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

"bank"

"bank" means a bank to which the Bank Act or the Quebec Savings Banks Act, chapter B-4 of the Revised Statutes of Canada, 1970, applies;

"Board"

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

"by-laws"

"by-laws" means the by-laws for the Corporation;

"Chairman"

"Chairman" means the Chairman of the Board;

"Corporation"

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

"deposit" or "depositor"

"deposit" and "depositor" mean respectively a deposit and a depositor as defined in the schedule;

"deposit insurance"

"deposit insurance" means the insurance referred to in paragraph(7)(a);

"federal institution"

"federal institution" means a bank or company referred to in section 8;

"federal member institution"

"federal member institution" means a federal institution that is a member institution;

"member institution"

"member institution" means a corporation any of whose deposit are insured by the Corporation pursuant to this Act;

"Minister"

"Minister" means the Minister of Finance;

"policy of deposit insurance" or "policy"

"policy of deposit insurance" of "policy" means the instrument evidencing the deposit insurance of a member institution;

"premium year" "premium year" means, in relation to the calculation and payment of premiums pursuant to this Act. the period beginning on May 1 in one year and ending on April 30 in the next year;

"provincial institution" "provincial institution" means a company referred to in section 9;

"provincial member institution" "provincial member institution" means a company referred to in section 9;

"provincial supervisor" "provincial supervisor", in relation to a provincial institution, means the official of the province of incorporation of the provincial institution who supervises the affairs of provincial institution;

"receiver" "receiver" includes a receiver-manager;

"Superintendent" "Superintendent" means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the Office of the Superintendent of Financial Institutions Act.

R.S., 1985. c. C-3, s.2; R.S., 1985. c.18(3rd Supp.), s.47.

CONSTITUTION OF THE CORPORATION

Corporation established

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

Agent of Her Majesty

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

Head Office

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

Offices and agents

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

Board of Directors

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

(a) the person appointed as the Chairman;

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

(b.1) a Deputy Superintendent of Financial Institutions appointed by the Minister; and

(c) not more than four other members appointed by the Minister with the approval of the Governor in Council.

Disqualifications

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

(a) employed in any capacity in the public service of Canada or holds any office or position for which any salary or other remuneration is payable out of public moneys;

(b) a member of the Senate or House of Commons of Canada or a member of a provincial legislature; or

(c) a director, officer or employee of a federal institution or provincial institution.

Alternate director

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

Vacancy

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

Acting Chairman

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

Expense of directors

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

Remuneration of certain directors

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

Chairman

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

Term of office

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

Disqualification

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

(a) is not a Canadian citizen ordinarily resident in Canada;

(b) is a member of the Senate or House of Commons or a member of a provincial legislature;

(c) is a director, officer or employee of a federal institution or provincial institution; or

(d) has reached the age of seventy-five years.

Presiding at meetings

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

Remuneration of Chairman

(5) The Chairman shall be paid by the Corporation such remuneration as may be fixed by the Governor in Council. R.S., c. C-3, s.6; 1984, c.31, s.14.

OBJECTS, POWERS AND DUTIES

Objects

7. The objects of the corporation are

(a) to provide insurance against the loss of part or all of deposits;

(b) to be instrumental in the promotion of standards of sound business and financial practices for member institutions and to promote and otherwise contribute to the stability and competitiveness of the financial system in Canada; and

(c) to pursue the objects set out in paragraphs (a) and (b) for the benefit of persons having deposits with member institutions and in such manner as will minimize the exposure of the Corporation to loss.

RS., 1985, c. C-3, s.7; R.S., 1985, c.18(3rd Supp.), s.49.

Federal institutions

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

(a) a bank;

(b) a company incorporated by or pursuant to an Act of Parliament that accepts deposits from the public and to which the Trust Companies Act or the Loan Companies Act applies; and

(c) a company the incorporation of which is continued by or pursuant to an Act of Parliament that accepts deposits from the public and to which the Trust Companies Act or the Loan Companies Act applies. R.S., c. C-3, s.9.

Provincial institutions

9. For the purposes of this Act, an incorporated company that carries on, under a provincial Act or a constating instrument under provincial jurisdiction, the business of a trust company within the meaning of the Trust Companies Act or the business of a loan company within the meaning of the Loan Companies Act, or both those businesses, and that is authorized by or under a provincial Act to accept deposits from the public is a provincial institution. R.S., c. C-3, s.10; 1976~77, c.27, s.4.

Powers of Corporation

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

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

(i) acquire assets from a member institution,

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

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

(a.1) manage and invest any funds accumulated as a result lof its operations;

(a.2) enter into an agreement with the government of a province, or an agent of the government of a province, respecting any matter relating to the insurance of deposits with provincial institutions in that province;
(b) borrow moneys from the Government of Canada and issue bonds and debentures therefor;
(c) act as liquidator, receiver or inspector of a member institution ar a subsidiary thereof, when duly appointed as such and appoint qualified and competent persons, whether employees of the Corporation or not, to carry out any or all of the functions of the Corporation under the appointment of the Corporation;
(d) assume the costs of a winding-up of a member institution when the Corporation is appointed to act as a liquidator in the winding-up, or assume the costs of the receiver when the Corporation is appointed to act as such and charge those costs to the Accumulated Net Earnings of the Corporation;
(e) guarantee the payment of the fees of, and the costs incurred by any person as, the liquidator or receiver of a member institution when that person is appointed as such and charge any amounts paid under the terms of the guarantee to the Accumulated Net Earnings of The Corporation;
(f) acquire assets of a member institution from a liquidator or receiver thereof;
(g) make an advance for the purpose of paying a claim, against a member institution for which the Corporation is acting as receiver or liquidator, in respect of any insured deposit and of becoming subrogated as an unsecured creditor for the amount of the advance;
(h) make or cause to be made such inspections of a member institution as may be authorized under this Act or a policy of deposit insurance;
(i) acquire, hold and alienate real and personal property; and
(j) do all such other things as may be necessary for the exercising of any power of the Corporation.

Subsidiary corporations

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

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

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

R.S., 1985, c. C-3, s.10; R.S., 1985, c.18(3rd Supp), s.50.

Powers of directors

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

By-laws

(2) The Board may make by-laws.

(a) for the administration, management and control of the property and affairs of the Corporation;

(b) governing the functions, duties and remuneration of all officers, agents and employees of the Corporation;

(b.1) concerning conflicts of interest and post-employment matters relating to conflicts of interest in respect of directors, officers and employees of the Corporation;

(c) governing the appointment and activities of any special committees created for the purposes of the Corporation;

(d) governing the time and place for the holding of meetings of the directors, and the quorum and procedure in all things at those meetings;

(e) prescribing standards of sound business and financial practices for member institutions;

(f) respecting the use by member institutions of marks, signs, advertisements or other devices indicating that deposits with those institutions are insured or that any institution is a member institution of the Corporation;

(g) prescribing anything that, by virtue of any provision of this Act, is to be prescribed by the by-laws;

(h) prescribing the form and manner in which payments under this Act are to be made by the Corporation; and

(i) governing the conduct in all other particulars of the affairs of the Corporation.

Inspection powers

(3) In carrying out any inspection authorized by this Act or by a policy of deposit insurance, the directors of the Corporation have all the powers conferred on commissioners appointed under Part II of the Inquiries Act for the purpose of obtaining evidence under oath, and the directors may delegate those powers as occasion requires.

R.S., 1985, c. C-3, s.11; R.S., 1985, c.18(2nd Supp.), s.2, c.18(3rd Supp.), s.51.

DEPOSIT INSURANCE

Duty to insure

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

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

(b) a deposit in respect of which Her Majesty in right of Canada would be a preferred claimant; and

(c) so much of any one deposit as exceeds sixty thousand dollars. R.S., c. C-3, s.13; 1980~81~82~83, c.148, s.3.

Deposits with amalgamating institutions

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

(2) A deposit made by a person referred to in subsection (1) with an amalgamated institution after the day on which the

amalgamated institution is formed shall be insured by the Corporation only to the extent that the aggregate of that person's deposits with the amalgamated institution, exclusive of the deposit in respect of which the calculation is made, is less than sixty thousand dollars.

Where undertaking acquired

(3) For the purpose of deposit insurance with the Corporation, where a member institution pursuant to a plan or arrangement acquired the undertaking and assets of another member institution, those member institutions shall be deemed to be amalgamating institutions and subsections (1) and (2) apply where a person has deposits with both institutions. R.S., c. C-3, s.13; 1980~81~82~83, c.148, s.3.

How payment to be made

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

(a) by making available to that person a transferred deposit with another member institution for so much of the person's deposit as is insured by the Corporation; or

(b) by paying that person an amount of money equal to so much of the person's deposit as is insured by the Corporation.

Obligatory payment

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

Discretionary payment

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

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

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

Approval of Minister necessary

(2.2) No payment may be made by the Corporation pursuant to subsection (2.1) in respect of a federal member institution without the prior approval of the Minister.

How interest on deposit to be calculated

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

Corporation may pay interest

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

How interest and deposit to be calculated

(2.5) For the purpose of calculating the payment of the Corporation in respect of any deposit insured by deposit insurance where the Corporation makes a payment pursuant to subsection (2.1), the interest accruing and payable in relation to the deposit shall be included only to the date of the payment by the Corporation.

Exception

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

Preparatory examination

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

(a) with the approval of the Superintendent, in the case of a federal institution, or

(b) after consultation with the appropriate provincial supervisor, in the case of a provincial institution,

make or cause to be made by any person designated by the Corporation, an examination of the books, records and accounts of the member institution relating to its deposit liabilities and, for the purposes of the examination, the Corporation and the person designated by it have a right of access to those books, records and accounts and are entitled to require the directors, officers and auditors of and any receiver or liquidator thereof to furnish such information and explanations regarding the deposits held by the member institution as the Corporation or person may require.

Discharge of liability

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

Subrogation

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

Priority

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

(a) to the extent that the payment was made pursuant to subsection (2) or (2.1), equally with the depositor in respect of his deposit; and

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

Premiums recoverable

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

the rights and interests of the depositor as against that member institution.
R.S., 1985, c. C-3, s.14; R.S., 1985, c.18(3rd Supp.), s.52.

Premiums recoverable

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

16. [Repealed, R.S., 1985, c.18(3rd Supp.), s.53]

Insurance of federal and provincial institutions

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

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

(b) where the applicant is a provincial institution.

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

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

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

Deemed application

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

Where conversion to federal institution

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

Form of application for deposit insurance

18. (1) An application for deposit insurance shall be in such form as may be prescribed by the by-laws.

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

Form of policy

(3) A policy of deposit insurance shall be in such form and contain such provisions as may be prescribed by the by-laws.
R.S., 1985, c. C-3, s.18; R.S., 1985, c.18(3rd Supp.), s.55.

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

Deposit Insurance Fund

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

Assessment and collection

21. (1) The Corporation shall, for each premium year, commencing on or after May 1, 1987, assess and collect from each member institution an annual premium equal to the greater of

(a) five thousand dollars, and

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

Calculation of deposit

(2) For the purpose of making the calculation referred to in paragraph (1)(b), a member institution may use any method approved by the Corporation to determine the aggregate amount of its deposits that are insured by the Corporation.
R.S., 1985, c. C-3, s.21; R.S., 1985, c.18(3rd Supp.), s.57

Returns

22. (1) the premium payable by a member institution shall be

based on returns to be certified by the institution and submitted in such form and at such time as the Corporation may require.

Payable in instalments

(2) One-half of the premium payable by a member institution shall be paid to the Corporation on or before June 30 in the premium year for which the premium is payable and the remainder shall be paid to the Corporation, without interest, on or before December 31 in that premium year. R.S., c. C-3, s.19.

Calculation of first premium

23. (1) Notwithstanding subsection 21(1), the premium payable by a member institution in respect of the premium year in which it becomes a member institution shall be the same proportion of the greater of

(a) five thousand dollars, and

(b) one-sixth of one per cent, or such smaller proportion of one per cent as may be fixed in respect of the premium year by the Governor in Council, of an amount equal to the sum of so much of each deposit as is insured by the Corporation and deposited with the member institution as of the end of the month in which it becomes a member institution,

as the number of days in which any of the deposits with that member institution are insured by the Corporation in that premium year is of 365.

Payment of first premium

(2) Notwithstanding subsection 22(2).

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

(b) the remainder of the premium shall be paid to the Corporation, without interest, on or before December 31 immediately following the month in which the member institution becomes a member institution.

R.S., 1985, c. C-3, s.23; R.S., 1985, c.18(3rd Supp.), s.58

Where premiums payable

24. All premiums payable under sections 21 and 23 shall be paid to the Corporation at its head office.

R.S., 1985, c. C-3, s.24; R.S., 1985, c.18(3rd Supp.), s.58.

Overdue charges

25. Notwithstanding anything in sections 21 to 23, the Corporation may charge interest at a rate equal to the rate prescribed pursuant to subsection 161(1) of the Income Tax Act plus two per cent on the unpaid amount of any premium instalment not paid on or before the due date of that instalment.

R.S., 1985, c. C-3, s.25 R.S., 1985, c.18(3rd Supp.), s.58

Premium surcharge

25.1 (1) Notwithstanding sections 21 to 25, where, in the opinion of the Corporation, after

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

(b) giving the member institution an opportunity to be heard,

may assess and collect from the member institution a premium surcharge in respect of the premium year or any part thereof.

Amount of premium surcharge

(2) The amount of the premium surcharge that may be assessed against and collected in respect of any premium year shall be such amount as the Corporation may determine to be fair in the circumstances and in no case shall exceed an amount equal to the difference between

(a) one-third of one per cent of so much of each deposit as is insured by the Corporation and deposited with the member institution as of April 30 in the immediately preceding premium year, and

(b) the premium for the year

Application of sections 21 to 25

(3) The provisions of sections 21 to 25 that are not inconsistent with subsections (1) and (2) apply, with such modifications as the circumstances require, in respect of any premium surcharge assessed under subsection (1).

R.S., 1985, c. 18(2nd Supp.), s.4, c.18(3rd Supp.), s.59.

Accumulated Net Earnings

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

Separate items in report

(2) The Accumulated Net Earnings shall be reported as a separate item in any statement of assets and liabilities of the Corporation and shown as an addition to or a deduction from the Deposit Insurance Fund, as the case may be.
R.S., c. C-3, s.20.

INSPECTION OF MEMBER INSTITUTIONS

Annual inspections

27. (1) The Superintendent shall, notwithstanding any other Act of the Parliament of Canada, examine on behalf of the Corporation the affairs of

(a) each bank,

(b) each trust company to which the Trust Companies Act applies

once in each year and at such times as the Corporation may require for a specified purpose.

Costs

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

Provincial member institutions

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

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

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

(c) the member institution will cause its officers and auditors to furnish such information and explanations pertaining to its affairs as the Corporation or the person designated by the Corporation may require.

R.S., 1985, c. C-3, s.28; R.S., 1985, c.18(3rd Supp.), s.61.

Contents of examiner's report

29. After an examination of the affairs of a member institution, the person who made the examination on behalf of the Corporation shall report to the Corporation whether or not, in his opinion, there has been any change in the circumstances of the institution that might materially affect the position of the Corporation as an insurer and particularly, without limiting the generality of the foregoing, whether or not, in his opinion,

(a) the returns made by the institution and on which its premiums were based are correct;

(b) the operations of the member institution are being conducted in accordance with the standards of sound business and financial practices prescribed by the by-laws; and

(c) the institution is in a satisfactory financial condition.

R.S., 1985, c. C-3, s.29; R.S., 1985, c.18(3rd Supp.), s.61.

Reporting defects or breaches

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

(a) is not following a standard of sound business and financial practices prescribed by the by-laws,

(b) is in breach of any by-laws of the Corporation applicable thereto, or

(c) is in breach of any of the conditions of its policy of deposit insurance,

the Corporation may send by registered mail or deliver by hand, a report of the facts to the chief executive officer or chairman of the board of directors of the member institution.

Presentation of report to directors

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

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

(b) a certified copy of that portion of the minutes of the meeting that relates to the presentation of the report to be sent by registered mail to the chief executive officer of the

Corporation at its head office.
R.S., 1985, c. C-3, s.28; R.S., 1985, c.18(3rd Supp.), s.61.

TERMINATION AND CANCELLATION OF INSURANCE

Notice of termination

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

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

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

Copy to provincial Minister

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

Termination of policy

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

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

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

Where report on federal member institution

(4) Where a report has been sent or delivered under subsection 30(1) in respect of a federal member institution and the member institution and the Minister have been informed in accordance with subsection (1) by the Corporation that the

Corporations not satisfied with the member institution's progress in following the standard or in remedying the breach to which the report relates, the Corporation may, with the approval of the Minister, give the member institution not less than thirty days notice of the termination of its policy of deposit insurance.

Termination of policy

(5) The policy of deposit insurance of a federal member institution shall terminate on the expiration of the period specified in the notice given under subsection (4) unless, before the expiration of that period, the Corporation satisfied that the member institution is taking the necessary action to follow the standard or to remedy the breach to which the notice relates.

Revoking notice

(6) Where, at any time after a notice of termination has been given to a member institution under subsection 31(1) or (4), the Corporation is satisfied that as the result of any action by the member institution, or any other person, the risk to depositors or to the Corporation has been averted or substantially reduced, the Corporation may revoke its notice of termination.

R.S., 1985, c. C-3, s.31; R.S., 1985, c.18(3rd Supp.), s.62.

Acceleration of termination of deposit insurance

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

(a) the financial condition of the provincial member institution has deteriorated further since the giving of the notice, and

(b) the interests of depositors will be adversely affected by any further delay in termination the provincial member institution's policy of deposit insurance

the Corporation shall forthwith send a notice by registered mail, or deliver a notice by hand , to the provincial member institution and to the appropriate provincial Minister, to the effect that the deposit insurance of the institution will be terminated on the expiration of a period of five days after the receipt of the notice by the institution.

Hearing

(2) A provincial member institution to which a notice is sent or delivered under subsection (1) may, by notice in writing sent to and received at the head office of the Corporation before the

expiration of the period specified in the notice, request an opportunity to be heard.

Confirmation or revocation

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

Revocation

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

Termination of policy

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

Effect of revocation

(6) The revocation of a notice under subsection (3) or (4) does not revoke a notice given under subsection 31(1).

R.S., 1985, c.18(3rd Supp.), s.62.

Termination of policy by provincial member institution

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

Effect of termination

(2) Unless the policy of deposit insurance of a provincial member institution otherwise provides, section 34 applies in respect of deposits with the institution on the termination of the policy by the institution.

R.S., 1985, c. C-3, s.32; R.S., 1985, c.18(3rd Supp.), s.62.

Cancellation

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

(a) when in the opinion of the Corporation the member institution is or is about to become insolvent; or

(b) when the member institution ceases to accept deposits.

Approval of Minister necessary

(2) No deposit insurance of a federal member institution may be cancelled under subsection (1) without the prior approval of the Minister.

R.S., 1985, c. C-3, s.33; R.S., 1985, c.18(3rd Supp.), s.62.

Effect of termination or cancellation

34. Where the deposit insurance of a member institution is terminated or cancelled by the Corporation, the deposits with the institution on the day the termination or cancellation takes effect, less any withdrawals from those deposits, continue to be insured under the terminated or cancelled deposit insurance for a period of two years or, in the case of a term deposit with a remaining term exceeding two years, to the maturity therof.

R.S., c. C-3, s.28.

Creditor remedies available

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

Approval of Minister necessary

(1.1) No measures or proceedings shall be initiated or taken under subsection (1) in respect of a federal member institution without the prior approval of the Minister.

Presumption

(2) For the purposes of this section, the Corporation shall be deemed to be a creditor of a member institution notwithstanding that the deposit insurance of the institution has been cancelled.

R.S., 1985, c. C-3, s.35; R.S., 1985, c.18(3rd Supp.), s.63.

Removal of references to deposit insurance

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

Public notice

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

PROVINCIAL INSURING ARRANGEMENTS

Provincial deposit insurance

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

(a) insure some or all of the deposits with the institution; or

(b) amend an existing policy of deposit insurance issued by the Corporation to the institution, to exclude from the policy any of the deposits with the institution.

Conditions

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

Agreement with province

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

Regulations

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

Refund of premiums

(5) Where the Corporation during any premium year ceases to insure any of the deposits held by a member institution that is a provincial institution, by reason of the fact that such deposits are guaranteed or insured pursuant to the law of a province, the Corporation may refund to that provincial

institution the proportion of the premium paid by the provincial institution to the Corporation for that premium year in respect of those deposits that bears the same relation to the premium for the full premium year in respect of those deposits that the unexpired part of the premium year bears to the full premium year, but in no case shall a refund be made that will reduce the premium paid by the provincial institution to the Corporation for the premium year to less than five thousand dollars.

Saving

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

Definition of "deposits"

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

Agreements for examination of provincial institutions

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

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

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

In lieu of examination

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

Short term loans to insuring agents

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

R.S., c. C-3, s.33.

FINANCIAL

Financial year

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

Deposit accounts

41. The Corporation may maintain in its own name one or more accounts
(a) with the Bank of Canada;
(b) with any member institution; and
(c) with the approval of the Minister, with any financial institution outside Canada.
R.S., 1985, c. C-3, s.41; R.S., 1985, c.18(3rd Supp.), s.65.

Loans from C.R.F.

42. The Governor in Council may from time to time authorize the Minister to advance, out of any unappropriated moneys in the Consolidated Revenue Fund, amounts to the Corporation by way of loan on such terms and conditions as the Governor in Council may determine, but the aggregate of such loans outstanding at any time shall not exceed three billion dollars.
R.S., 1985, c. C-3, s.42; R.S., 1985, c.18(3rd Supp.), s.66.

auditor

43. The Auditor General of Canada is the auditor of the Corporation. R.S., c. C-3, s.38;1994, c.31, s.14.

STAFF

Employment of staff

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

Oath of fidelity and secrecy

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

Use of Departmental facilities

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

Public Service Superannuation Act

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

Application of other Acts

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

Superannuation

(3) The Public Service Superannuation Act does not apply to the Chairman, unless the Governor in Council otherwise directs, or to the director of the Corporation who holds the office of Governor of the Bank of Canada. R.S., c. C-3, s.40.

NO LIABILITY

No liability for acts in good faith

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

Obligation remains

(2) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act.

R.S., 1985, c.18(3rd Supp.), s.68.

CONFIDENTIALITY

Confidentiality

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

WINDING-UP

Insolvency and winding-up

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

OFFENCES AND PUNISHMENT

False statements

47. Every director, officer or employee of a bank or company and every auditor therof who prepares, signs, approves or concurs in any account, statement, return, report or document respecting the affairs of the bank or company required by the Corporation for the purposes of this Act and containing any false or deceptive information, or any return that does not present fairly information required by the Corporation for the purposes of this Act, is guilty of an indictable offence and liable to imprisonment for a term not exceeding

(a) five years, if he does so knowingly; or

(b) three years, if he does so negligently.

R.S., c. C-3, s.42.

Failure to make report known

48. A person who, being a chief executive officer or chairman of the board of directors of a member institution, fails or neglects to present, as required by section 30, a report of the Corporation made under that section is guilty of an offence punishable on summary conviction and, if the directors fail or neglect to incorporate that report in the minutes of a meeting

of the directors as required by that section, each director present at that meeting who directed, authorized, assented to, acquiesced in or participated in the failure or neglect is guilty of an offence punishable on summary conviction.

Contravention of advertising provision

49. Every member institution that contravenes section 36 is guilty of an guilty and liable on summary conviction to a fine not exceeding one thousand dollars. R.S., c. C-3, s.44.

Holding out as being insured

50. (1) No person other than a member institution or an association of member institution shall, by any written or oral representations of any kind, advertise or hold out any group of corporation as being corporation or insured or approved for insurances by the corporation.

Use of marks and signs in advertisements

(2) No member institution, and no person acting on behalf of a member institution, shall make any oral or written representation that the member institution, or any deposit held by the member institution, is insured by the Corporation otherwise than by such marks, signs, advertisements or other devices as are authorized by the by-laws and used in the manner and on the occasions prescribed by the by-laws

(3) [Repealed, R.S., 1985, c.18(3rd Supp.), s.70]

R.S., 1985, c. C-3, s.50; R.S., 1985, c.18(3rd Supp.), s.70.

Non-deposit indication

51. (1) No member institution shall issue to any person any instrument evidencing that the institution has received or is holding money from or on behalf of a person pursuant to a transaction that does not constitute a deposit or part of a deposit insured under this Act unless the instrument bears the following words on its face:

"The deposit to which this instrument relates is not insured under the Canada Deposit Insurance corporation Act."

Exception

(2) subsection (1) does not apply in respects of any instrument that is of a type or class that is exempted by the by-laws.

Notice to be displayed

(3) No member institution shall, on behalf of person who is not a member institution, solicit or accept funds for investment unless the member institution displays, in the form and manner

prescribed by the by-laws, a notice indicating that the person on whose behalf the funds are solicited or accepted is not a member institution.
R.S., 1985, c. C-3, s.51; R.S., 1985, c.18(3rd Supp.), s.71.

Offence and punishment

52. (1) Every person who contravenes subsection 50(1) is guilty of an offences and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Idem

(2) Every member institution that contravenes subsection 50(2) or section 5 1 is guilty of an offences and liable on summary conviction to a fine not exceeding five thousand dollars.

Idem

(3) Every person who, being a director, officer, employee or agent of a member institution, knowingly authorizes or permits a contravention of subsection 50(2) or section 51 is guilty of an offences and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exclseeding six to lrnprlsonme months, or to both.
R.S., 1985, c. C-3, s.52; RS., 1985, c.18 (3rd Supp.), s.71.

General offence and punishment

53. Every person who, without reasonable cause, contravenes a provision of this Act or the by-laws for the contravention of which no punishment is otherwise provided by this Act is guilty of an offences and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months, or to both.
R.S., 1985, c.18(3rd Supp.), s.71.

SCHEDULE
(Section 2)

Definitions

1. In this schedule,

"Date of deposit"

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

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

"loan company" "loan company" means a member institution that carries on the business of a loan company within the meaning of the Loan Companies Act;

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

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

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

"trust company" "trust company" means a member institution carries on the business of a trust company within the meaning of the Trust companies Act.

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

(a) has given or is obligated to give credit to that person's account or has issued or is bligated to Issue a receipt,

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

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

including any interest accrued or payable to that person.

Excluding moneys

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

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

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

Obligation deemed

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

No deposit

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

Idem

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

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

repayment of the moneys evidenced thereby;

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

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

Idem

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

Joint or trust deposit

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

Joint owners

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

Trust deposit separate

(2) where a member institution is obligated or repay moneys to a depositor who is acting as trustee for a beneficiary, if the trusteeship is disclosed on the records of the institution, the interest of the beneficiary in the deposit shall be deemed for the purposes of deposit insurance with the Corporation to be a deposit separate from any deposit of the beneficiary made with

the institution in his own right for his own use and separate from any interest of the beneficiary in respect of any other trust deposit of which he is a beneficiary.

Deposit of beneficiary

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

By-laws

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

Not part of deposit

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

Registered retirement savings plan deposits

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

Registered retirement income fund

(6) Notwithstanding subsection (2), for the purposes of deposit insurance with the Corporation, where moneys received by a member institution from a depositor pursuant to a

registered retirement income fund, within the meaning given that expression under the Income Tax Act, constitute a deposit or part of a deposit by or for the benefit of an individual, the aggregate of those moneys and any other moneys received from the same depositor pursuant to any other registered retirement savings plan and that constitutes a deposit or part of a deposit by or for the benefit of the same individual, shall be deemed to be a single deposit separate from any other deposit of or for the benefit of that individual.

(7) [Repealed, R.S., 1985. c.18(3rd Supp.), s.73]

R.S., 1985. c. C-3, Sch.; R.S., 1985. c.18(3rd Supp.), ss.72,73.

Ⅲ. 日本 預金保險關聯法

○ 預金保險法

최종개정 平四(1992년). 6월 26일 법87

第1章 總則

(目的)

제1조 예금보험은 예금자 등의 보호를 도모하기 위해 금융기관이 예금 등의 지불을 정지한 경우에 필요한 보험금 등의 지불을 행하는 외에, 破綻金融機關에 관계된 합병 등에 대해 적절한 자금원조를 행함으로써 신용질서의 유지에 이바지하는 것을 목적으로 한다.

(金融機關의 自主性의 尊重)

제1조의2 이 법률의 운용에 있어서는 금융기관의 자주성을 존중하려는 배려를 하지 않으면 안된다.

(定意)

제2조 이 법률에서 「금융기관」이라는 것은 다음에서 언급하는 자(이 법률의 시행지 외에 본점을 가지는 것은 제외)를 말한다.

① 은행법(昭和56년 법률 제 59호) 제2조 제1항에서 규정한 은행

② 장기신용은행법(昭和27년 법률 제187호) 제2조에서 규정한 장기신용은행

③ 외국환은행법(昭和29년 법률 제67호) 제2조 제1항에서 규정한 외국환은행

④ 신용금고

⑤ 신용협동조합

⑥ 노동금고

2. 이 법률에서 「예금 등」이라는 것은 다음에서 언급하는 것을 말한다.

① 예금

② 정기예금

③ 은행법 제2조 제4항에 규정한 부금

④ 신탁업법(大正11년 법률 제65호) 제9조의 규정에 의해 원본의 보전계약을 한 금전신탁(대부신탁을 포함)에 관계된 신탁계약에 의해 받아들인 금전

3. 이 법률에서 「예금자 등」이라는 것은, 예금자 기타의 예금 등에 관계된 채권자를 말한다.

4. 이 법률에서 「破綻金融機關」이라는 것은 업무 혹은 재산의 상황에 비추어 예금 등의 지불을 정지할 우려가 있는 금융기관 또는 예금 등의 지불을 정지한 금융기관을 말한다.

第2章 預金保險機構

第1節 總則

(法人格)

제3조 예금보험기구(이하 「기구」라 함)는 법인으로 한다.

(數)

제4조 기구는 하나만 설립되는 것으로 한다.

(資本金)

제5조 기구의 자본금은 그 설립에 즈음하여 정부 및 정부 이외의 자가 출자한 금액의 합계액으로 한다.

2. 기구는, 필요할 때는 대장대신의 인가를 받아서 그 자본금을 증가할 수 있다.

(名稱)

제6조 기구는, 그 명칭 중에 예금보험기구라는 문자를 사용하지 않으면 안된다.

2. 기구가 아닌 자는, 그 명칭 중에 예금보험기구라는 문자를 사용해서는 안된다.

(登記)

제7조 기구는, 政令에서 정한 바에 따라 등기하지 않으면 안된다.

2. 前項의 규정에 의해 등기하지 않으면 안되는 사항은, 등기 後가 아니면 그것으로써 제3자에게 대항할 수 없다.

(民法의 準用)

제8조 기구에 대하여 민법(明治29년 법률 제89호) 제44조 및 제50조의 규정을 준용한다.

第2節 設立

(發起人)

제9조 기구의 설립을 위해서는, 금융에 관한 전문적인 지식과 경험을 가진 자 7인 이상이 발기인이 되는 것을 필요로 한다.

(定款의 作成 등)

제10조 발기인은 신속히 기구의 정관을 작성하여 정부 이외의 자에 대하여 기구에 대한 출자를 모집하지 않으면 안된다.

2. 前項의 정관에는 다음의 사항을 기재하지 않으면 안된다.

① 목적

② 명칭

③ 사무소의 소재지

④ 자본금 및 출자에 관한 사항

⑤ 운영위원회에 관한 사항

⑥ 역원(임원)에 관한 사항

⑦ 업무 및 그 집행에 관한 사항

⑧ 재무 및 회계에 관한 사항

⑨ 정관의 변경에 관한 사항

⑩ 공고의 방법

(設立의 認可)

제11조 발기인은, 前條 제1항의 모집이 종결되면 조속히 정관을 대장대신에게 제출하고 설립의 인가를 신청하지 않으면 안된다.

(사무의 인계)

제12조 발기인은 前條의 인가를 받으면, 지체없이 그 사무를 기구의 이사장이 될 자에게 인계하지 않으면 안된다.

2. 기구의 이사장이 될 자는 前項의 규정에 의한 사무의 인계를 받으면, 지체없이 정부 및 출자의 모집에 응한 정부 이외의 자에 대하여 출자금의 불입을 요구하지 않으면 안된다.

(설립의 등기)

제13조 기구의 이사장이 될 자는 前條 제2항의 규정에 의한 출자금의 불입이 완료되면, 지체없이 政令에서 정한 바에 따라 설립 등기를 하지 않으면 안된다.

2. 기구는 설립 등기를 함으로써 성립한다.

第3節 運營委員會

(設置)

제14조 기구에 운용위원회(이하 「위원회」라 함)를 둔다.

(權限)

제15조 다음 장에서 규정하는 것 외에, 다음에서 언급한 사항은 위원회의 의결을 거치지 않으면 안된다.

① 정관의 변경

② 업무방법서의 작성 및 변경

③ 예산 및 자금계획

④ 결산

⑤ 기타 위원회가 특히 필요하다고 인정하는 사항

(組織)

제16조 위원회는 위원 8인 이내 및 기구의 이사장 및 이사로써 구성된다.

2. 위원회에 위원장 1인을 두고, 기구의 이사장으로써 충당한다.

3. 위원장은 위원회의 會務를 總理한다.

4. 위원회는, 사전에 위원 및 기구의 이사 중에서 위원장에게 사고가 있을 경우에 위원장의 직무를 대리할 자를 정해 놓지 않으면 안된다.

(委員의 任命)

제17조 위원은 금융에 관한 전문적 지식과 경험을 가진 자 중에서 기구의 이사장이 대장대신의 인가를 받아 임명한다.

(委員의 任期)

제18조 위원의 임기는 1년으로 한다. 단, 위원이 빠진 경우에 있어서 보결위원의 임기는 전임자의 殘任期間으로 한다.

2. 위원은 재임될 수 있다.

(委員의 解任)

제19조 기구의 이사장은 위원이 다음 각호의 1에 해당될 때, 대장대신의 인가를 받아

서 그 위원을 해임할 수 있다.

① 파산선고를 받았을 때

② 금고 이상의 형에 처해졌을 때

③ 心身의 故障으로 직무를 집행할 수 없다고 인정된 때

④ 직무상의 의무위반이 있을 때

(委員의 報酬)

제20조 위원은, 보수를 받지 않는다. 단 여비, 기타직무의 수행에 따르는 實費를 받는 것으로 한다.

(議決의 方法)

제21조 위원회는 위원장 또는 제16조 제4항에서 규정한 위원장의 직무를 대리하는 자 외에 위원 및 기구의 이사 중 5인 이상이 출석하지 않으면 회의를 열어 의결을 할 수 없다.

2. 위원회의 議事는 출석한 위원장, 위원 및 기구의 이사 과반수로써 결정된다. 가부동수의 경우는 위원장이 결정한다.

3. 대장대신이 지명한 직원은, 제1항의 회의에 출석하여 의견을 말할 수 있다.

(委員의 秘密保障義務)

제22조 위원은, 그 직무상 알고 있는 것에 대하여 비밀을 누설해서는 안된다. 위원이 그 직을 물러난 후에도 마찬가지이다.

(委員의 公務員 性質)

제23조 위원은, 형법(明治40년 법률 제45호), 기타의 벌칙의 적용에 대해서는 법령에 의해 공무에 종사한 직원으로 본다.

第4節　役員(任員)　등

(役員)

제24조　기구에 역원으로 이사장 1인, 이사 1인 및 감사 1인을 둔다.

(役員의 職務 및 權限)

제25조　이사장은 기구를 대표하여 그 업무를 總理한다.

2. 이사는 기구를 대표하여 이사장이 정한 바에 따라 이사장을 보좌하는 기구의 업무를 담당하고, 이사장에게 사고가 있는 때는 그 직무를 대리하고, 이사장이 결원된 때는 그 직무를 행한다.

3. 감사는 기구의 업무를 감사한다.

(役員의 任命　등)

제26조　이사장은 일본은행 부총재로써 충당한다.

2. 이사는 이사장이 대장대신의 인가를 받아 임명한다.

3. 감사는 대장대신이 임명한다.

(理事 등의 任期)

제27조　이사 및 감사의 임기는 2년으로 한다.

2. 이사 및 감사는 재임될 수 있다.

(이사 등의 결격조항)

제28조　정부 또는 지방공공단체의 직원(비상근의 자는 제외)은 이사 또는 감사가 될 수 없다.

(理事 등의 解任)

제29조　대장대신 또는 이사장은 각자의 임명에 관계된 역원이 前條의 규정에 해당된

때는 그 역원을 해임하지 않으면 안된다.

2. 대장대신 또는 이사장은 각자의 임명에 관계된 역원이 제19조 각호의 1에 해당될 때, 기타 역원다움에 해당되지 않는다고 인정되는 때는 제26조의 例에 의해 그 역원을 해임할 수 있다.

(理事의 兼職禁止)

제30조 이사는 영리를 목적으로 한 단체의 역원이 되거나 또는 몸소 영리사업에 종사해서는 안된다. 단, 대장대신의 승인을 받은 때는 이 제한이 없다.

(代表權의 制限)

제31조 기구와 이사장 또는 이사와의 이익이 상반되는 사항에 대해서는, 이들은 대표권을 가지지 않는다. 이 경우에는 감사가 기구를 대표한다.

(職員의 任命)

제32조 기구의 직원은 이사장이 임명한다.

(役員 등의 秘密保障義務 등)

제33조 제22조 및 제23조의 규정은 역원 및 직원에 대하여 준용된다.

第5節 業務

(業務의 範圍)

제34조 기구는 제1조의 목적을 달성하기 위하여 다음의 업무를 수행한다.

① 다음 章 제2절의 규정에 따른 보험료의 수납

② 다음 章 제3절의 규정에 따른 보험금 및 가불금의 지불

③ 다음 章 제4절의 규정에 따른 자금원조 및 손실의 보전

④ 前3號에서 언급한 업무에 附帶된 업무

(業務의 委託)

제35조 기구는 대장대신의 인가를 받아서 일본은행 또는 금융기관 등(금융기관 및 신용금고연합회, 중소기업 등 협동조합법(昭和24년 법률 제181호) 제9조의 9 제1항 제1호의 사업을 수행하는 협동조합연합회 및 노동금고연합회를 말함. 이하 同)에 대하여 그 업무의 일부를 위탁할 수 있다.

2. 일본은행 및 금융기관 등은 기타 법률의 규정에 관계없이 前項의 규정에 따른 위탁을 받아서 해당업무를 행할 수 있다.

3. 제23조의 규정은 제1항의 규정에 의해 위탁을 받은 금융기관 등의 역원 또는 직원으로 해당업무에 종사하는 자에 대하여 준용한다.

(業務方法書)

제36조 기구는 업무개시 때, 업무방법서를 작성하여 대장대신의 인가를 받지 않으면 안된다. 이것을 변경하려고 할 때도 마찬가지이다.

2. 前項의 업무방법서에는 보험료에 관한 사항, 기타 大藏省令에서 정한 사항을 기재하지 않으면 안된다.

(資料의 提出請求 등)

제37조 기구는 그 업무를 행하기 위하여 필요할 때는 금융기관에 대한 자료의 제출을 요구할 수 있다.

2. 前項의 규정에 의한 자료의 제출을 요구받은 금융기관은 지체없이 그것을 제출하지 않으면 안된다.

3. 國, 都道府縣 또는 일본은행은 기구가 그 업무를 행하는 데 필요하다고 인정되는 요청을 한 때는 기구에 대해 자료를 교부하거나 이것을 열람시킬 수 있다.

第6節 財務 및 會計

(事業年度)

제38조 기구의 사업연도는 매년 4월 1일에 개시되고 익년 3월 31일에 종결된다.

(豫算 등의 認可)

제39조 기구는 매사업연도, 예산 및 자금계획을 작성하고 당해 사업연도의 개시전에 대장대신의 인가를 받지 않으면 안된다. 이것을 변경하려고 할 때도 마찬가지이다.

(재무제표)

제40조 기구는 매사업연도 재산목록, 대차대조표 및 손익계산서(다음 항에서 「재무제표」라 함)를 작성하고 당해 사업연도의 종료후 2월 이내에 대장대신에게 제출하지 않으면 안된다.

2. 기구는 前項의 규정에 의해 재무제표를 대장대신에게 제출할 때는, 이것에 예산의 구분에 따라 작성한 당해 사업연도의 결산보고서 및 재무제표 및 결산보고서에 관한 감사 의견서를 첨부하지 않으면 안된다.

(責任準備金의 積立)

제41조 기구는 大藏省令에서 정한 바에 따라 매사업연도말에 책임준비금을 계산하여 이것을 적립하지 않으면 안된다.

(借入金)

제42조 기구는 제34조 제2호 또는 제3호에 게재된 업무를 행하기 위하여 필요하다고 인정될 때는 政令에서 정한 금액의 범위내에서 대장대신의 인가를 받아 일본은행으로부터 자금의 차입을 할 수 있다.

2. 일본은행은 일본은행법(昭和 17년 법률 제67호) 제27조의 규정에 관계없이 기구에

대해 前項의 자금대부를 할 수 있다.

3. 기구는, 제1항의 자금차입을 한 때는 그 차입금을 반제하기 위해 대장대신의 인가를 받아서 금융기관등 으로부터 자금의 차입을 할 수 있다.

(余裕金의 運用)

제43조 기구는 다음의 방법 이외의 방법으로 업무상의 여유금을 운용해서는 안된다.

① 국채, 기타 대장대신이 지정한 유가증권의 보유

② 대장대신이 지정한 금융기관 등에의 예금

③ 기타 大藏省令에서 정한 방법

(大藏省令에의 委任)

제44조 이 법률에서 규정한 것 이외, 기구의 재무 및 회계에 관하여 필요한 사항은 大藏省令에서 정한다.

第7節 監督

(監督)

제45조 기구는 대장대신이 감독한다.

2. 대장대신은 이 법률을 시행하기 위해 필요하다고 인정된 때는 기구에 대해 그 업무에 관한 감독상 필요한 명령을 할 수 있다.

(報告 및 檢査)

제46조 대장대신은 이 법률을 시행하기 위하여 필요하다고 인정된 때는 기구의 업무에 관한 보고를 시키거나 또는 직원으로 하여금 기구의 사무소에 들어가서 장부, 서류, 기타 물건을 검사하도록 할 수 있다.

2. 제1항의 규정에 의한 立入檢査의 권한은 범죄수사를 위해 인정된 것으로 해석해서는 안된다.

第8節 補則

(定款의 變更)

제47조 정관의 변경은 대장대신의 인가를 받지 않으면 그 효력이 없다.

(解散)

제48조 기구는 해산한 경우에 있어서, 그 채무를 변제하고 난 후 잔여재산이 있을 때는 이것을 각 출자자에 대해 그 출자액을 한도로 하여 분배하는 것으로 한다.

2. 前項에서 규정한 것 이외, 기구의 해산에 대해서는 별도의 법률에서 정한다.

第3章 預金保險

第1節 保險關係

(保險關係)

제49조 금융기관이 그 업무를 영위하거나 사업을 행할 때는 당해 금융기관이 예금 등에 관한 채무를 부담함으로써 각 예금자마다 일정금액의 범위내에서 해당 예금 등의 지불에 관하여 기구와 해당 금융기관 및 예금자 등의 사이에 보험관계가 성립하는 것으로 한다.

2. 前項의 보험관계에 있어서는, 예금 등의 금액을 보험금액으로 하고, 다음에 게재하는 것을 보험사고로 한다.

① 금융기관의 예금 등의 지불정지(이하 「제1종 보험사고」라 함)

② 금융기관의 영업면허의 취소(신용금고 또는 노동금고에 있어서는 사업면허 취소, 신용협동조합에 있어서는 해산명령으로 함. 제55조 제2항 제1호에 있어서도 같다), 파산의 선고 또는 해산의 결의(이하 「제2종 보험사고」라 함)

第2節　保險料의 納付

(保險料의 納付)

제50조　금융기관은 영업연도(신용금고, 신용협동조합 또는 노동금고(이하 「신용금고 등」이라 함)에 있어서는 사업연도. 이하 동)마다, 해당 영업연도 개시후 3월 이내에 기구에 대하여 大藏省令에서 정한 서류를 제출하고 보험료를 납부하지 않으면 안된다.

2　기구는, 다음의 각호에서 게재하고 있는 경우에는 前項의 규정에 관계없이, 정관에서 정한 바에 따라 해당 각호에서 정한 금융기관의 보험료를 면제할 수 있다.

① 보험사고가 발생했을 때. 당해 보험사고에 관계된 금융기관

② 제65조에서 규정한 적격성의 인정 등이 행해졌을 때. 당해 적격성의 인정 등에 관계된 破綻金融機關

(保險料의 金額)

제51조　보험료의 액수는 각 금융기관에 대하여 당해 보험료를 납부해야 할 日을 포함하는 영업연도 직전 영업연도의 末日에 있어서의 예금 등(외화예금, 기타의 政令에서 정한 예금 등은 제외) 금액의 합계액을 12로 나누어서 이것에 해당보험료를 납부해야 할 日을 포함하는 영업연도의 月數를 곱하여 계산한 금액에, 기구가 위원회의 결의를 거쳐 정한 率(이하 「보험료율」이라 함)을 곱해서 계산한 금액

2. 보험료율은 보험금의 지불, 자금지원, 기타 기구의 업무에 필요한 비용의 예상액에 비추어서, 장기적으로 기구의 재정이 균형을 이루도록, 또한 특정의 금융기관에 대한 차별적 취급을 하지 않도록 정해지지 않으면 안된다.

3. 기구는 제42조 제1항 또는 제3항의 자금의 차입을 한 경우에 있어서, 그 차입금을 조속히 반제하기가 곤란하다고 인정된 경우에는 위원회의 의결을 거쳐 보험료율을 변경하는 것으로 한다.

4. 기구는 보험료율을 정하거나 또는 이것을 변경하려고 하는 경우에는 대장대신의

인가를 받지 않으면 안된다.

5. 기구는 前項의 인가를 받았을 때는 지체없이 그 인가에 관계된 보험료율을 공고하지 않으면 안된다.

(延滯金)

제52조 금융기관은, 보험료를 그 납기한도까지 납부하지 않은 경우에는 기구에 대하여 연체금을 납부하지 않으면 안된다.

2. 연체금의 금액은, 未納保險料의 금액에 납기한도의 익일부터 그 납부일까지의 일수에 맞는 年 14.5%의 비율을 곱하여 계산한 금액으로 한다.

第3節 保險金等의 支拂

(保險金 등의 支拂)

제53조 기구는, 보험사고가 발생했을 때는 당해 보험사고에 관계된 예금자 등에 대해, 그 청구에 의하여 보험금의 지불을 하는 것으로 한다. 단, 제1종 보험사고에 대해서는 기구가 제56조 제1항의 규정에 따라 보험금을 지불한다는 취지의 결정을 하는 것을 요건으로 한다.

2. 前項에서 규정한 보험사고에는, 당해 보험사고가 발생한 금융기관에 대하여 그 발생 후(同項 단서의 규정이 적용된 경우에는 기구가 동항 단서의 결정을 한후)에 당해 보험사고와 관련하여 타 보험사고가 발생한 경우에 있어서 당해 타 보험사고(제57조 제1항 제2호에 있어서 「관련보험사고」라 함)는 포함되지 않는 것으로 한다.

3. 기구는 보험사고가 발생했을 때는 당해 보험사고에 관계된 예금자 등에 대해 그 청구에 의하여 政令에서 정한 금액의 범위내에서 政令에서 정한 바에 따라 가불금의 지불을 할 수 있다.

4. 제1항 또는 前項의 청구는 제57조 제1항, 제2항 또는 제4항의 규정에 의해 공고한 지불기한내에 하지 않으면 할 수 없다. 단, 그 지불기간내에 청구하지 않았던 것에 대하여 화재나 기타 부득이한 사정이 있다고 기구가 인정할 때는 그렇지 않다.

(保險金의 金額 등)

제54조 보험금의 금액은, 1의 보험사고가 발생한 금융기관의 각 예금자 등에 대하여 그 발생日 현재 그 자가 당해 금융기관에 대하여 가지고 있는 예금 등(외화예금 기타의 政令에서 정한 예금 등은 제외)에 관계된 채권 중 원본의 금액(그 금액이 동일인에 대하여 2 이상 있는 경우에는 그 합계액)으로, 前條 제1항의 청구가 있었던 것에 상당한 금액으로 한다.

2. 보험사고에 관계된 예금자 등이 다음 각호에 해당한 경우에 있어서 그 자의 보험금의 금액은 前項의 규정에 관계없이 同項의 규정에 의한 금액으로부터 당해 각호에 게제된 금액을 공제한 금액에 상당한 금액으로 한다.

① 당해 금융기관에 대해 채무를 지고 있을 때. 그 채무 금액

② 당해 금융기관에 대해 제3자를 위해 그 예금 등의 전부 또는 일부를 담보로 제공하고 있을 때. 그 담보에 제공된 예금 등의 금액

3. 前2項의 규정에 의한 보험금의 금액이 政令에서 정한 금액을 초과할 때는 그 금액을 당해 보험금의 금액으로 한다.

4. 보험사고에 관계된 예금자 등이 당해 보험사고에 대하여 前條 제3항의 가불금의 지불을 받고 있는 경우, 그 자의 보험금의 금액은 前3項의 규정에 관계없이 이들의 규정에 의한 금액에서 해당 가불금의 금액을 공제한 금액에 상당한 금액으로 한다.

5. 보험사고에 대하여 보험금의 지불이 행해지는 경우에, 제3항의 가불금의 금액이 제1항에서 제3항까지의 규정에 의해 지불되어야 할 보험금의 금액을 초과하는 경우, 그 자는 그 초과된 금액을 기구에 지불하지 않으면 안된다.

(保險事故의 通知)

제55조 금융기관은 해당 금융기관에 관계되어 보험사고가 발생한 경우, 즉각 그 취지를 기구에 통지하지 않으면 안된다.

2. 대장대신, 노동대신 또는 都道府縣 지사는 다음에서 언급하는 경우에는 즉각 그 취지를 기구에 통지하지 않으면 안된다.

① 그 감독에 관계된 금융기관의 영업면허의 취소 또는 해산의 결의에 관계된 인가를 했을 때

② 그 감독에 관계된 금융기관의 제1종 보험사고의 발생을 알았을 때

③ 재판소로부터 파산법(大正11년 법률 제71호) 제125조 제1항의 규정에 의한 통지를 받았을 때

(支拂의 決定)

제56조 기구는 다음 각호에서 언급하는 경우에는 당해 각호에서 언급하는 日로부터 1월이내에 위원회의 의결을 거쳐 당해 각호의 보험사고에 대하여 보험금의 지불여부를 결정하지 않으면 안된다.

① 제1종 보험사고에 관하여 前條의 규정에 의한 통지가 있었을 때. 그 통지가 있었던 日

② 前號에서 언급한 경우 외에, 제1종 보험사고가 발생한 것을 기구가 알았을 때. 그 안 日

③ 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 한 합병 또는 영업(신용금고 등에 있어서는 사업. 이하 同)의 전부의 양도 또는 영업의 전부 또는 일부의 양수(이하 「영업양도 등」이라 함)에 관계된 제66조 제1항의 결의가 얻어지지 않았다는 취지의 同項 또는 제74조 제11항의 규정에 의한 통지가 있었던 때. 그 통지가 있었던 日

④ 前號에서 언급된 경우 외에, 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 한 합병 또는 영업양도 등에 관계된 제66조 제1항의 결의가 얻어지지 않았던 것을 기구가 알았을 때. 그 알았던 日

2. 대장대신은, 기구가 위원회의 결의를 거쳐 前項의 기한연장을 신청한 경우에는 1월을 초과하지 않는 기간을 한도로 同項의 기한을 연장할 수 있다.

3. 기구는 다음 각호에서 언급하고 있는 경우에는 당해 각호에서 언급하고 있는 日로부터 일주일 이내에 위원회의 의결을 거쳐 당해 각호의 보험사고에 관계된 제53조 제3항의 가불금의 지불 여부를 결정하지 않으면 안된다.

① 보험사고에 관한 前條의 규정에 의한 통지가 있었을 때. 그 통지가 있었던 날

② 前號에서 언급한 경우외에, 보험사고가 발생한 것을 기구가 알았을 때. 그 안 날

③ 제1종 보험사고가 발생한 금융기관을 일부의 당사자로한 합병 또는 영업양도 등에 관계된 제66조 제1항의 결의가 얻어지지 않았다는 취지의 同項 또는 제74조 제11항의 규정에 의한 통지가 있었던 때. 그 통지가 있었던 날

④ 前號에서 언급한 경우외에, 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 한 합병 또는 영업양도 등에 관계된 제66조 제1항의 결의가 얻어지지 않았던 것을 기구가 알았을 때. 그 안 날

4. 기구는 제1항 또는 前項의 규정에 의한 결정을 했을 때는, 즉시 그 결정에 관계된 사항을 대장대신(당해결정이 신용협동조합(1의 都道府縣의 지역을 넘지 않는 구역을 지역으로 한 신용협동조합에 한함. 제59조 제2항, 제60조 제2항, 제61조 제4항, 제63조, 제64조 제3항, 제66조 제1항 및 제68조 제3항에서와 同)에 관한 것인 경우에는 대장대신 및 都道府縣 지사로 하고, 당해결정이 노동금고에 관한 것인 경우에는 대장대신 및 노동대신으로 함)에게 보고하지 않으면 안된다.

(支拂의 公告 등)

제57조 기구는 다음에서 언급하고 있는 경우에는, 조속히 위원회의 결정을 거쳐 보험금의 지불기간, 지불장소, 기타 政令에서 정한 사항을 결정하여 이것을 공고하지 않으면 안된다.

① 前條 제1항의 규정에 의해 제1종 보험사고에 관계된 보험금을 지불한다는 취지의 결정을 했을 때.

② 제2종 보험사고(관련보험사고는 제외. 다음호에서와 同)에 관한 제55조의 규정에 의한 통지가 있었을 때.

③ 前號에서 언급한 경우외에, 제2종 보험사고가 발생한 것을 기구가 알았을 때

2. 기구는 前條 제3항의 규정에 의해 제53조 제3항의 가불금을 지불한다는 취지의 결정을 했을 때는 조속히 위원회의 결정을 거쳐 당해 가불금의 지불기간, 지불장소,

기타 政令에서 정한 사항을 결정하여 이것을 공고하지 않으면 안된다.

3. 기구는 前2항의 공고를 한 후에 당해 금융기관이 파산선고를 받거나 또는 당해 금융기관에 대하여 和議開始의 결정이 있었을 때는 정령에서 정한 바에 따라 그 공고한 지불기간을 변경할 수 있다.
4. 기구는 前項의 규정에 의해 지불기간을 변경했을 때는 지체없이 그 변경에 관계된 사항을 공고하지 않으면 안된다.
5. 前條 제4항의 규정은 제1항 또는 제2항에서 규정한 사항을 결정한 경우 및 제3항의 규정에 의해 지불기간을 변경한 경우에 있어서 준용한다.

(債權의 取得)

제58조 기구는 보험금을 지불했을 때는, 그 지불금액에 상응하여, 예금자 등이 금융기관에 대하여 가지고 있는 당해예금 등에 관계된 채권(이자, 수익의 분배, 기타 이것들에 준하는 것으로 정령에서 정한 것은 제외. 다음 항에서와 同)을 취득한다.

2. 기구는 제53조 제3항의 가불금의 지불을 했을 때는 그 지불금액(제54조 제5항의 규정에 의해 기구에서 지불되어야 하는 금액은 제외)에 상응하여, 예금자 등이 금융기관에 대해 가지고 있는 당해예금 등에 관계된 채권을 취득한다.

第4節 資金援助

第1款 資金援助

(資金援助의 신청)

제59조 합병 등을 행하는 금융기관으로 破綻金融機關이 아닌 자(이하 「구제금융기관」이라 함)는 기구가 합병 등을 원조하기 위해 금전의 증여, 자금의 대부 또는 預入, 자산의 매수 또는 채권의 보증 및 인수(이하 「자금원조」라 함)를 행하는 것을 기구에 신청할 수 있다.

2. 前項의 규정에 의한 신청을 한 금융기관은 조속히 그 취지를 대장대신(신용협동조

합에 있어서는 대장대신 및 都道府縣 지사로 하고, 노동금고에 있어서는 대장대신 및 노동대신으로 함)에게 보고하지 않으면 안된다.

3. 제1항의 「합병 등」이라는 것은 다음에서 언급하고 있는 것을 말한다.

① 破綻金融機關과 합병을 하는 금융기관이 존속하는 합병

② 영업양도 등으로 破綻金融機關이 그 영업의 전부를 타 금융기관에게 양도하는 것

③ 破綻金融機關 주식의 타금융기관에 의한 취득으로 당해 破綻金融機關 업무의 건전하고 적절한 운영을 확보하기 위해 필요한 사항으로, 대장대신이 결정한 것을 실시하기 위하여 행하는 것

제60조 대장대신이 지정한 금융기관 등으로 前條 제3항에서 규정한 합병 등(이하 「합병 등」이라 함)을 원조하기 위해 구제금융기관에 대해 자금의 대부, 기타 政令에서 정한 행위를 행하는 자는, 기구가 자금원조(금전의 증여, 자산의 매수 및 채권의 인수는 제외)를 하도록 기구에 신청할 수 있다.

2. 前項의 규정에 의한 신청을 행한 금융기관 등은, 조속히 그 취지를 대장대신(신용협동조합에 있어서는 대장대신 및 都道府縣 지사로 하고, 노동금고에 있어서는 대장대신 및 노동대신으로 함)에게 보고하지 않으면 안된다.

(適格性의 認定)

제61조 제59조 제1항 또는 前條 제1항의 규정에 의한 신청에 관계된 합병 등에 대해서는, 당해 합병 등에 관계된 금융기관은 이들 규정에 의한 신청이 행해질 때까지, 당해 합병 등에 대해서 대장대신의 인정을 받지 않으면 안된다.

2. 前項의 인정에 대한 신청은 同項의 금융기관의 連名으로 행해지지 않으면 안된다.

3. 대장대신은 다음에서 언급하는 요건 모두에 해당하는 경우에 한하여, 제1항의 인정을 할 수 있다.

① 당해 합병 등이 행해지는 것이 예금자 등의 보호에 도움이 될 것

② 기구에 의한 자금원조가 행해지는 것이 당해 합병 등을 행하기 위해 불가결할 것

③ 당해 합병 등에 관계된 破綻金融機關에 대해서, 합병 등이 행해지지 않고 그 업무의 전부 폐지 또는 해산이 행해지는 경우에는, 당해 破綻金融機關이 업무를 행하고 있는 지역 또는 분야에 있어서 자금의 원활한 수급 및 이용자의 편의에 크게 지장이 발생할 우려가 있을 것

④ 대장대신은, 신용협동조합에 대해 제1항의 인정을 행할 때는, 都道府縣 지사와 협의하고, 노동금고에 대해 동항의 인정을 행할 때는 노동대신의 동의를 얻지 않으면 안된다.

⑤ 대장대신은 제1항의 인정을 행할 때는, 당해 인정에 관계된 금융기관 중 어느것이 破綻金融機關인지를 명확히 하지 않으면 안된다.

⑥ 대장대신은 제1항의 인정을 행할 때는 그 취지를 기구에 통지하지 않으면 안된다.

(合併 등의 주선)

제62조 대장대신은 前條 제2항의 신청이 행해지지 않는 경우에 있어서도, 금융기관이 破綻金融機關에 해당하고 또한 해당 破綻金融機關이 同條 제3항 제3호에서 언급하고 있는 요건에 해당한다고 인정될 때는 해당 破綻金融機關 및 타 금융기관에 대해 서면으로 합병 등(해당 합병 등이 행해지는 것이 예금자 등의 보호에 도움이 되는 것이고 또한 기구에 의한 자금원조가 행해지는 것이 해당 합병 등을 행하기 위해 불가결한 것에 한함)의 주선을 행할 수 있다.

2. 前項의 주선을 받은 同項의 타 금융기관은 前條 제1항의 규정에 관계없이 제59조 제1항의 규정에 의한 신청을 행할 수 있다.

3. 제60조 제1항에서 규정한 대장대신이 지정한 금융기관 등으로, 제1항의 주선을 받은 同項의 타 금융기관에 대해 합병 등을 원조하기 위해 同條 제1항에서 규정한 자금의 대부, 기타의 정령에서 정한 행위를 행하는 자는, 前條 제1항의 규정에 관계없이 제60조 제1항의 규정에 의한 신청을 행할 수 있다.

4. 前條 제4항으로부터 제6항까지의 규정은, 제1항의 주선을 행하는 경우에 대하여 준용한다.

(破綻金融機關이 신용협동조합인 경우의 특례)

제63조 破綻金融機關이 신용협동조합인 경우에는, 제61조 제2항의 신청은 都道府縣 지사를 경유하여 행해지지 않으면 안된다.

2. 都道府縣 지사는 前項의 경우에 있어서, 신용협동조합이 同項의 신청에 관계된 합병 또는 사업의 전부 양도를 행하는 것 및 당해 합병 또는 사업의 전부 양도에 대하여 기구에 의한 자금원조가 행해지는 것이 적당하다고 인정될 때는 대장대신에 대해 제61조 제1항의 인정을 행하도록 요청할 수 있다.

3. 都道府縣 지사는 신용협동조합이 破綻金融機關에 해당하고 또한 당해 신용협동조합이 제59조 제3항 제1호에서 언급한 합병 또는 타 금융기관에 대한 사업의 전부 양도를 행하는 것 및 당해 합병 또는 당해사업의 전부의 양도에 대해서 기구에 의한 자금원조가 행해지는 것이 적당하다고 인정되는 때는 대장대신에 대해 前條 제1항의 주선을 행하도록 요청할 수 있다.

4. 대장대신은 前2項의 규정에 의한 요청을 받은 경우에 한하여, 신용협동조합이 破綻金融機關인 합병 또는 사업의 전부 양도에 관계된 제61조 제1항의 인정 또는 前條 제1항의 주선을 행할 수 있다.

5. 제2항 또는 제3항의 규정에 의한 요청이 있는 때는, 협동조합에 의한 금융사업에 관한 법률(昭和 24년 법률 제183호) 제7조 제1항에서 규정한 都道府縣 지사의 요청이 있었던 것으로 간주한다.

6. 대장대신은 제2항의 규정에 의한 요청이 있는 때는, 당해 요청을 행한 都道府縣 지사에 관계된 제61조 제4항의 규정에 의한 都道府縣 지사와의 협의를 필요로 하지 않는다.

(資金援助)

제64조 기구는 제59조 제1항 또는 제60조 제1항의 규정에 의한 신청이 있었을 때는 지체없이 위원회의 결의를 거쳐 당해 신청을 행한 금융기관 등에 대한 자금원조 여부를 결정하지 않으면 안된다.

2. 위원회는 前項의 결정을 행한 경우에는, 기구의 재무상황 및 당해 의결에 관계된 자금원조에 필요하다고 예상되는 비용 및 당해 자금원조에 관계된 破綻金融機關의 보험사고에 관한 보험금의 지불을 행할 때에 필요할 것으로 예상되는 비용을 고려하고, 기구 자산의 효율적인 이용에 신경을 쓰지 않으면 안된다.
3. 기구는 제1항의 규정에 의한 결정을 한 때는, 즉시, 그 결정에 관계된 사항을 대장대신(당해 결정이 신용협동조합을 당사자로 하는 합병 등에 관계되는 것인 경우에는 대장대신 및 都道府縣 지사로 하고, 당해 결정이 노동금고를 당사자로 하는 합병 등에 관계된 것인 경우에는 대장대신 및 노동대신으로 함)에게 보고하지 않으면 안된다.
4. 기구는, 제1항의 규정에 의한 자금원조를 행한다는 취지의 결정을 하였을 때는, 同項에서 규정한 금융기관 등에 대한 자금원조에 관한 계약을 체결한 것으로 한다.

(合併 등의 契約의 報告 등)

제65조 제61조 제1항의 인정 또는 제62조 제1항의 주선(이하 「적격성의 인정 등」이라 함)을 받은 금융기관은 당해 적격성의 인정 등에 관계된 합병 등의 계약을 체결하였을 때는 즉시 대장대신(노동금고에 있어서는, 대장대신 및 노동대신. 제68조, 제69조 제1항 및 제6항, 제70조 제1항, 제73조 제6항, 제74조 제4항 및 제79조 제1항 및 제3항에 있어서도 同)에게 그 취지를 보고하고, 또한 당해 합병 등의 계약서(구제금융기관에 대해서는 당해 합병 등의 계약서 및 당해 합병 등에 관한 자금원조에 관한 계약의 내용을 기재한 서면)를 제출하지 않으면 안된다.

(株主總會 등의 決議의 報告 등)

제66조 적격성의 인정 등을 받은 금융기관은, 이 법률 또는 상법(明治22년 법률 제48호), 기타의 법률의 규정 또는 정관의 규정에 의거하여 합병 또는 영업양도 등에 대하여 주주총회 등의 결의를 필요로 하는 경우에 있어서, 당해 적격성의 인정 등에 관계된 합병 또는 영업양도 등에 대한 결의를 얻었을 때 또는 얻지 못했을 때는, 즉시 대장대신(신용협동조합에 있어서는 대장대신 및 都道府縣 지사로 하고,

노동금고에 있어서는 대장대신 및 노동대신으로 한다. 제74조 제11항에 있어서도 同)에게 그 취지를 보고하고, 또한 당해 주주총회 등의 의사록을 제출하고 아울러 기구에 그 취지를 통지하지 않으면 안된다.

2. 前項의 「주주총회 등」이라는 것은 제22조 제1항 제1호부터 제3호까지에 기재된 금융기관(이하 「은행 등」이라 함)에 있어서는 주주총회(금융기관의 합병 및 전환에 관한 법률(昭和 43년 법률 제86호) 제7조 제3항에서 규정한 경우에 있어서는 주주총회 및 同項의 특정주주총회)를 신용금고 등에 있어서는 총회 또는 총대회를 말한다.

(業務의 繼續의 特例)

제67조 적격성의 인정 등을 받은 구제금융기관은, 그 영업에 관한 법령에 의하여 행할 수 없는 업무에 속하는 계약 또는 제한되고 있는 계약에 관계된 권리의무를 당해 적격성의 인정 등에 관계된 영업의 전부 또는 일부의 양수에 의해 승계한 경우에는 이들의 계약 중 기한이 정해져 있는 것에 대해서는 기한 만료까지, 기한이 정해져 있지 않은 것에 대해서는 承繼日로부터 1년이내의 기한에 한하여 이들의 계약에 관한 업무를 계속할 수 있다.

第2款 緊急手續

(緊急性의 認定)

제68조 대장대신은 제65조의 규정에 의한 보고를 받은 경우에 있어서, 당해 보고에 관계된 합병(금융기관의 합병 및 전환에 관한 법률 제3조 제1항 제4호부터 제9호까지의 규정에 의한 것은 제외) 또는 영업양도 등을 긴급하게 행하지 않으면 기구의 자금원조에 의한 예금자 등의 보호에 중대한 악영향을 미치고 국민경제의 건전한 발전에 지장을 초래할 우려가 있다고 인정되는 때는, 당해 합병 또는 영업양도 등을 긴급히 행할 필요가 있다는 취지의 인정(이하 「긴급성의 인정」이라 함)을 행하는 동시에 당해 합병 또는 영업양도 등을 행할 기한을 정하는 것으로 한다.

2. 대장대신은 긴급성의 인정을 행한 경우에는, 그 취지 및 당해 긴급성의 인정에 관

계된 합병 또는 영업양도 등을 행해야 할 기한을 당해 합병 또는 영업양도 등의 당사자가 되는 모든 금융기관에 대해 통지하는 것으로 한다.

3. 대장대신은, 신용협동조합을 당사자로 하는 합병 또는 영업양도 등에 대해 긴급성의 인정을 행할 때는 都道府縣 지사와 협의하지 않으면 안된다.

(株主 등의 異議 신청 등)

제69조 대장대신은 긴급성의 인정을 행하려고 하는 때는, 사전에 당해 긴급성의 인정에 관계되는 합병 또는 영업양도 등의 당사자가 되는 금융기관(영업의 일부를 양수하는 은행 등으로 정관에 당해영업의 일부 양수에 관한 주주총회의 결의를 요한다는 취지의 결정이 없는 것은 제외)의 주주(신용금고에 있어서는 회원으로 하고, 신용협동조합에 있어서는 조합원으로 하며, 노동금고에 있어서는 노동금고법(昭和28년 법률 제227호) 제13조 제1항에서 규정한 개인회원(제6항에 있어서 「개인회원」이라 함)을 제외한 회원으로 함)는 일정 기간내에 당해 합병 또는 영업양도 등에 대하여 이견을 신청할 수 있다는 취지를 공고하고 당해공고를 한 취지를 당해 금융기관에 통지하지 않으면 안된다.

2. 前項의 기간은, 1주일을 지나서는 안된다.

3. 대장대신은, 은행 등의 주주에 대해 제1항의 규정에 의한 공고를 할 때는 법무대신의 동의를 얻지 않으면 안된다.

4. 제1항의 규정에 의한 통지를 받은 금융기관의 취체역 또는 이사는 당해 통지에 관계되는 합병 또는 영업양도 등의 당사자가 되는 각 금융기관의 대차대조표(구제금융기관에 있어서는 당해 각 금융기관의 대차대조표 및 당해 합병 또는 영업양도 등에 관계되는 자금원조에 관한 계약의 내용을 기재한 서면) 및 당해 합병 또는 영업양도 등의 계약서를 본점 또는 主사무소에 준비하여 두지 않으면 안된다.

5. 상법 제408조의 2 제2항의 규정은, 前項의 경우에 있어서 준용한다.

6. 대장대신은 제1항의 규정에 의한 공고에 관계되는 금융기관의 발행주식 총수의 100분의 20 이상에 해당하는 주식의 수를 보유하는 주주 또는 총회원(신용협동조합에 있어서는 총조합원으로 하고, 노동금고에 있어서는 개인회원을 제외)의 100분의

20 이상의 회원(신용협동조합에 있어서는 조합원으로 하고, 노동금고에 있어서는 개인회원을 제외)이 이의신청을 한 때는, 긴급성의 인정을 할 수 없다.

(合併 또는 營業讓渡 등의 實施)

제70조 긴급성의 인정에 관계되는 합병 또는 영업양도 등의 당사자인 금융기관(이하 「긴급성의 인정에 관계되는 금융기관」이라 함)은 제68조 제1항의 규정에 의해 대장대신이 정한 기한까지, 당해 합병 또는 영업양도 등을 행하지 않으면 안된다.

2. 긴급성의 인정에 관계되는 금융기관이 합병을 행할 때는, 합병후 존속하는 금융기관(이하 「존속금융기관」이라 함)에 대해서는 변경의 등기를, 합병에 의해 소멸하는 금융기관(이하 「소멸금융기관」이라 함)에 대해서는 해산의 등기를 하지 않으면 안된다.

3. 상법 제414조 제2항의 규정은, 前項의 경우에 대하여 준용한다.

4. 제2항의 등기신청서에 첨부하여야 할 서류에 대해서는 政令으로 정한다.

(合併의 效力發生 및 效果)

제71조 긴급성의 인정에 관계되는 금융기관의 합병은 존속금융기관이 그 본점 또는 主事務所의 소재지에서 합병에 의한 변경의 등기를 함으로써 그 효력을 발휘한다. 단, 제74조 및 제76조의 규정에 관계되는 수속을 행하기 위해 필요한 범위내에서 존속금융기관은 아직 합병을 행하지 않은 것으로 간주하고, 소멸금융기관은 여전히 존속하고 있는 것으로 간주한다. 이 경우에 있어서, 당해 수속에 필요한 비용은 존속금융기관이 부담하지 않으면 안된다.

2. 존속금융기관은 소멸금융기관의 권리의무를 승계한다.

(信用金庫 등의 特例)

제72조 긴급성의 인정에 관계되는 신용금고 등의 합병이 행해진 경우에는, 소멸금융기관의 지구, 회원 또는 조합원 또는 사무소는 당해 신용금고 등의 정관의 규정에 관계없이 政令에서 정한 기간에 한하여 당해 신용금고 등의 지구, 회원 또는 조합

원 또는 사무소로 간주한다.

2. 신용금고 등은 당해 신용금고 등의 정관의 규정에 의해 행해질 수 없는 업무를 긴급성의 인정에 관계되는 사업의 전부 또는 일부의 양수에 의해 승계한 경우에는 당해정관의 규정에 관계없이 政令으로 정한 기간에 한하여 당해 업무를 계속할 수 있다.
3. 긴급성의 인정에 관계되는 신용금고 등의 합병이 행해진 경우에는, 당해 합병후 존속하는 신용금고 등의 회원 또는 조합원은 政令으로 정한 기간에 한하여 그 지분을 양도할 수 없다.

(債權者의 異議)

제73조 존속금융기관 또는 긴급성의 인정에 관계되는 영업의 전부 혹은 일부의 양수를 행한 금융기관은, 합병 또는 영업의 전부 혹은 일부의 양수를 행했을 때는, 즉시 합병 또는 영업양도 등에 이의가 있는 채권자는 일정의 기간내에 이의를 말해야만 하는 취지를 공고하고, 또한 예금자 등 기타 정령에서 정한 채권자 이외의 알려져 있는 채권자에게는 각별히 이것을 催告하지 않으면 안된다.

2. 前項의 기간은, 1월이상 45일 이내로 하지 않으면 안된다.
3. 채권자가 제1항의 기간내에 이의를 말하지 않은 경우는, 당해 채권자는 당해 합병 또는 영업양도 등을 승인한 것으로 간주한다.
4. 채권자가 제1항의 기간내에 이의를 말한 경우는, 당해 금융기관은 변제하거나 또는 상당의 담보를 제공하거나, 혹은 채권자에게 변제를 받게 할 목적으로 신탁업무를 영위하는 타 금융기관 혹은 신탁회사에게 상당의 재산을 신탁하지 않으면 안된다.
5. 제1항의 규정에 의해 행하는 공고는 관보 및 시사에 관한 사항을 기재하는 일간신문지에 기재하여야 한다.
6. 제1항의 금융기관은, 同項 및 제4항의 수속을 완료한 때는, 政令에서 정한 바에 의해, 조속히 그 취지를 대장대신에게 보고하지 않으면 안된다.

(株主總會 등의 承認)

제74조 긴급성의 인정에 관계되는 금융기관(영업의 일부를 양수한 은행 등 및 사업의 전부 또는 일부를 양수한 신용협동조합에서 정관에 당해 영업의 양수에 대해 제66조 제2항에 규정한 주주총회 등(이하 이 항에 있어서 「주주총회 등」이라 함)의 결의를 요한다는 취지의 규정이 없는 것은 제외. 이하 이 條에 있어서는 同)은 합병 또는 영업양도 등을 행한 日로부터 45일 이내에 합병 또는 영업양도 등에 대해 주주총회 등의 승인의 결의를 얻지 않으면 안된다.

2. 은행 등에 있어서의 前項의 승인의 결의에 대해서는, 다음 각호에서 언급한 구분에 따라 당해 각호에서 정한 결의의 경우에 대한 例에 의한다.

① 합병 또는 영업의 전부의 양도 혹은 양수에 대한 승인(다음 호에서 언급한 경우는 제외) 상법 제343조의 결의

② 존속금융기관의 정관에 주식의 양도에 관한 取締役會(이사회)의 승인을 요한다는 취지의 규정이 있고, 소멸금융기관의 정관에 그 규정이 없는 경우에 있어서 당해 소멸금융기관의 합병에 대한 승인 상업 제348조 제1항의 결의

③ 영업의 일부 양수에 대한 승인 정관의 규정에 의한 결의

3. 신용금고 등에서의 제1항의 승인 결의에 대해서는, 다음 각호에 게재된 구분에 따라 당해 각호에서 정한 결의에 대한 경우의 例에 의한다.

① 합병 또는 사업의 전부의 양도에 대한 승인 신용금고법(昭和26년 법률 제238호) 제48조, 중소기업 등 협동조합법 제53조 또는 노동금고법 제53조의 결의

② 신용금고 또는 노동금고 사업의 전부 또는 일부의 양수에 대한 승인(다음 호에 게재된 경우는 제외) 신용금고법 제47조 제1항 또는 노동금고법 제52조 제1항의 결의

③ 신용금고 또는 노동금고의 정관에 사업의 전부 또는 일부의 양수에 대한 결의에 관한 특별규정이 있는 경우 또는 신용협동조합의 정관에 사업의 전부 또는 일부의 양수에 대한 총회 또는 총대회의 결의를 요한다는 취지의 규정이 있는 경우에 있어서 당해 신용금고 등의 사업의 전부 또는 일부의 양수에 대한 승인 당해 정관의 규정에 의한 결의

4. 대장대신은 재해 및 기타 어쩔 수 없는 이유에 의해 금융기관이 제1항에서 규정한 기한까지 同項의 승인에 대한 결의를 얻을 수 없다고 인정된 때는, 政令에서 정한 바에 따라 그 이유가 끝난 日로부터 45일 이내에 한하여 당해 기한을 연장할 수 있다.
5. 은행 등은 제1항의 승인 결의를 행하는 경우에는, 상법 제232조의 규정에 의한 통지에 있어서, 합병 또는 영업양도 등의 계약서(존속금융기관 또는 영업의 전부 또는 일부를 양수한 은행 등에 있어서는 합병 또는 영업양도 등의 계약서 및 자금원조에 관한 계약서)의 요령을 보여주지 않으면 안된다.
6. 상법 제350조 및 제408조 제5항의 규정은 제2항 제2호에 게재된 경우에 대하여 준용한다.
7. 신용금고 등이 제1항의 승인 결의를 행하는 경우에는, 同項의 총회 또는 총대회의 소집은 합병 또는 영업양도 등의 계약서(존속금융기관 또는 사업의 전부 또는 일부를 양수한 신용금고 등에 있어서는, 합병 또는 영업양도 등의 계약서 및 자금원조에 관한 계약서)의 요령을 보여주지 않으면 안된다.
8. 합병 후 존속하는 신용금고 등은, 당해 합병에 대하여 제1항의 승인 결의를 얻었을 때는, 아울러, 총회 또는 총대회에서 당해 합병에 필요한 사항에 관한 정관을 변경할 수 있다.
9. 긴급성의 인정에 관계된 금융기관의 取締役 또는 이사는 제1항의 주주총회 등의 會日의 2주일 전까지 합병 또는 영업양도 등을 행한 각 금융기관의 대차대조표(존속금융기관 또는 영업의 전부 또는 일부를 양수한 금융기관에 있어서는, 당해 각 금융기관의 대차대조표 및 자금원조에 관한 계약의 내용을 기재한 서면)를 본점 또는 주 사무소에 비치하지 않으면 안된다.
10. 상법 제408조의2 제2항의 규정은 前項의 경우에 있어서 준용한다.
11. 긴급성의 인정에 관계된 금융기관은, 제1항에서 규정한 기한(당해 기한이 제4항의 규정에 의해 연장된 경우에는, 그 연장후의 기한)까지, 제1항의 승인 결의를 얻지 못했을 때는 즉시, 그 취지를 대장대신에게 보고하고 또한 기구에 통지하지 않으면 안된다.

(사업의 전부 양도를 행한 신용금고 또는 노동금고의 해산)

제75조 긴급성의 인정에 관계된 사업의 전부 양도를 행한 신용금고 또는 노동금고는 제73조의 수속이 종료되고 또한 당해 사업의 전부 양도에 관계된 당사자인 금융기관 전부의 前條 제1항의 승인 결의가 얻어짐으로써 해산한다.

(株券의 제출 등)

제76조 긴급성의 인정에 관계된 합병으로, 당해 합병에 의해 주식의 합병이 있었던 은행 등은, 당해합병의 당사자인 은행 등 모두의 제74조 제1항의 승인 결의가 얻어진 때는 즉시 주식의 합병이 있었던 취지, 일정 기간 내에 株券 및 端株券을 당해 은행 등에 제출해야하는 취지 및 제3항에 있어서 준용하는 상법 제214조 제2항의 규정에 의한 규정이 있을 때는 그 내용을 공고하고 또한 주주 및 주주명부에 기재되어 있는 질권자에게는 각별히 이것을 통지하지 않으면 안된다.

2. 前項의 기간은 1월을 초과해서는 안된다.

3. 상법 제214조 제2항의 규정은 제1항의 절차에 있어서 준용한다.

(합병에 반대하는 주주의 주식매입 청구권)

제77조 긴급성의 인정에 관계된 합병으로 당해 합병의 당사자인 은행 등 전부의 제74조 제1항의 승인 결의를 얻은 은행 등의 주주로서, 同項의 주주총회에 앞서 당해 은행 등에 대해 서면으로 합병에 반대하는 의사를 통지하고 또한 당해 주주총회에서 합병의 승인에 반대한 자는, 존속금융기관에 대해 그 자의 소유주식을 합병이 없었다고 가정하면 그 주식 또는 그 자가 소유하고 있던 소멸금융기관의 주식이 지니고 있었을 공정가격으로 매입해야 한다는 취지의 청구를 할 수 있다.

2. 상법 제245조의 3 및 제245조의 4 後段 및 非訟事件 手續法(明治 31년 법률 제14호) 제126조 제1항 및 제132조의 6의 규정은 前項의 청구에 있어서 준용한다.

3. 제1항의 규정에 의한 주식의 매입은 상법 제210조 제4호의 매입이라고 간주한다.

(영업양도 등에 반대하는 주주의 주식매입 청구권)

제78조 긴급성의 인정에 관계된 영업양도 등으로 당해 영업양도 등의 당사자인 은행 등 전부의 제74조 제1항의 승인 결의를 얻은 은행 등(영업의 일부를 양수한 것은 제외)의 주주로, 同項의 주주총회에 앞서 당해 은행 등에 대해 서면으로 영업양도 등에 대한 반대의사를 통지하고 또한 당해 주주총회에서 영업양도 등의 승인에 반대한 자는, 당해 은행 등에 대해 그 자의 소유 주식을, 영업양도 등이 없었다면 그 주식이 지니고 있을 공정가격으로 매입해야 한다는 취지의 청구를 할 수 있다.

2. 前條 제2항 및 제3항의 규정은 前項의 경우에 있어서 준용한다.

(승인의 결의를 얻지 못한 경우의 합병 또는 영업양도 등의 효력 등)

제79조 대장대신은, 긴급성의 인정에 관계되는 금융기관으로부터 제66조 제1항의 결의를 얻지못한 취지의 同項 또는 제74조 제11항의 규정에 의한 보고가 있었을 때 또는 同項에서 규정한 기한까지 同條 제1항의 승인 결의를 얻지 못한 것을 알았을 때는, 당해 결의가 얻어지지 못한 취지를 공고하지 않으면 안된다.

2. 합병에 대한 前項의 규정에 의한 공고가 되었을 때는, 당해 합병은 합병 時로 소급하여 효력을 상실한다. 단, 존속금융기관, 그 주주(신용금고 또는 노동금고에 있어서는 회원으로 하고, 신용협동조합에 있어서는 조합원으로 한다.) 및 제3자간에 발행한 권리의무에는 영향을 미치지 않는다.

3. 대장대신은 합병에 대한 제1항의 규정에 의한 공고를 했을 때는, 존속금융기관에 있어서는 변경의 등기를, 소멸금융기관에 있어서는 회복의 등기를 각 금융기관의 본점 또는 주 사무소 및 지점 또는 從 사무소 소재지의 등기소에 촉탁하는 것으로 한다.

4. 영업양도 등에 대한 제1항의 규정에 의한 공고가 되었을 때는, 당해 영업양도 등은 영업양도 등의 당시로 소급하여 효력을 상실한다. 단, 영업의 전부 또는 일부를 양수한 금융기관 및 제3자 간에 발행한 권리의무에는 영향을 미치지 않는다.

5. 제2항 또는 前項의 규정에 의해 합병 또는 영업양도 등이 효력을 상실한 때는, 破綻金融機關의 債務 및 財産에 대해서는, 당해 합병 또는 영업양도 등이 행해진 시

기에 있어서 당해 破綻金融機關의 債務 및 財産의 상황에 回復하는 것으로 한다. 단, 합병 또는 영업양도 등의 때에 있어서 破綻金融機關이 부담하고 있던 채무의 금액이 제1항의 규정에 의한 공고가 있을 때까지의 기간에 감소되었을 때는 그 감소된 금액에 대하여 구제금융기관은 破綻金融機關에 대해 채권을 취득한다.

6. 기구는, 제2항 또는 제4항의 규정에 의해 합병 또는 영업양도 등이 효력을 상실한 때는, 그로 인하여 구제금융기관이 입은 손실을 보전하는 것으로 한다.

(商法 등의 準用)

제80조 긴급성의 인정에 관계된 합병에 대해서는, 상법 제104조(은행 등에 있어서는, 동조 제1항 및 제3항에 한함), 제105조, 제106조 및 제108조부터 제111조 까지 및 非訟事件手續法 제126조 제1항, 제135조의7, 제135조의 8 및 제140조의 규정을 준용한다. 이 경우에 있어서, 상법 제105조 제1항 중 「合併의 日」이라는 것은, 「예금보험법 제74조 제1항에서 규정한 기한(당해 기한이 同條 제4항의 규정에 의해 연장된 경우에는 그 연장 후의 기한)」을 그대로 적용하는 것으로 한다.

2. 긴급성의 인정에 관계된 합병으로, 존속금융기관이 은행 등일 경우에는, 상법 제215조 제3항 및 제4항, 제216조, 제217조 및 제412조 제1항 및 非訟事件수속법 제132조의 3의 규정을 준용한다. 이 경우에 있어서, 同項 중 「제100조」라는 것은 「예금보험법 제73조」, 「제217조」라는 것은 「同法 제80조 제2항에서 준용하는 상법 제217조」, 「제350조 제1항」이라는 것은 「예금보험법 제74조 제6항에서 준용하는 상법 제350조 제1항」을 그대로 적용하는 것으로 한다.

3. 긴급성의 인정에 관계된 합병 또는 영업양도 등으로 신용금고 또는 노동금고를 당사자로 하는 것에 대해서는, 신용금고법 제58조 제3항 또는 노동금고법 제62조 제3항의 규정을 준용한다.

(商法 등의 適用除外)

제81조 긴급성의 인정에 관계된 합병 또는 영업양도 등에 대해서는, 긴급성의 인정을 받은 후에는 상법 제245조부터 제245조의 3까지, 제245조의 4後段, 제408조로부

터 제408조의 3까지, 제412조, 제414조 및 제416조 제1항부터 제3항까지 및 제5항, 상업 등기법(昭和 38년 법률 제125호) 제90조, 은행법 제33조, 제34조(장기신용은행법 제17조 및 외국환은행법 제11조에 있어서 준용하는 경우를 포함) 및 제35조(장기신용은행법 제17조, 외국환은행법 제11조, 신용금고법 제89조 및 노동금고법 제94조에 있어서 준용하는 경우를 포함), 장기신용은행법 제14조, 외국환은행법 제9조의9, 신용금고법 제50조 제6항, 제50조의 2, 제58조 제1항부터 제3항까지 및 제5항, 제60조, 제61조, 제63조(제5호에 관계된 부분에 한함), 제71조, 제77조 제2항 및 제3항 및 제83조, 중소기업 등 협동조합법 제55조의 2 제2항부터 제4항까지, 제57조의 3 제1항 및 제4항, 제63조 제1항 및 제2항, 제65조, 제66조, 제89조, 제95조 제2항 및 제3항 및 제101조 및 노동금고법 제62조 제1항부터 제3항까지 및 제5항, 제64조, 제65조, 제67조(제5호에 관계된 부분에 한함), 제75조, 제81조 제2항 및 제3항 및 제87조의 규정은 적용되지 않는다.

第5節 補則

(政令의 委任)

제82조 이 법률에 규정한 것 외에, 이 章의 규정에 의한 예금보험에 관하여 필요한 사항은 政令에서 정한다.

(權限의 委任)

제83조 대장대신은 政令에서 정한 바에 의해, 이 章의 규정에 의한 권한의 일부를 재무국장 또는 재무지국장에게 하도록 할 수 있다.

第4章 罰則

제84조 제22조(제33조에 있어서 준용하는 경우를 포함)의 규정에 위반되는 그 직무

상 알고 있는 것에 대해 비밀을 누설한 자는 1년 이하의 징역 도는 50만엔 이하의 벌금에 처한다.

제85조 다음에서 언급한 사항에 관하여 不正의 청탁을 받아 재산상의 이익을 수취하거나 또는 그 요구 또는 약속을 한 자는 1년 이하의 징역 또는 50만엔 이하의 벌금에 처한다.

① 제69조 제6항에서 규정한 이의의 신청

② 은행 등의 합병에 관계된 제80조 제1항에 있어서 준용하는 상법 제104조 제1항에서 규정한 소송의 제기

2. 前項의 이익을 공여하거나 또는 그 신청 또는 약속을 한 자도 同項과 마찬가지로 한다.

제86조 前條 제1항의 경우에 있어서, 수취한 재산상의 이익은 몰수한다. 그 전부 또는 일부를 몰수할 수 없을 때는, 그 價額을 추징한다.

제87조 다음 각호의 1에 해당하는 경우에는, 그 위반행위를 한 기구의 역원(임원) 또는 직원은 50만엔이하의 벌금에 처한다.

① 제46조 제1항의 규정에 의한 보고를 하지 않았거나, 또는 허위의 보고를 하거나, 또는 同項의 규정에 의한 검사를 거부, 방해, 또는 기피하였을 때

② 제56조 제4항(제 57조 제5항에 있어서 준용하는 경우를 포함) 또는 제64조 제3항의 규정에 의한 보고를 하지 않거나 허위의 보고를 한 때

제88조 제37조 제1항의 규정에 의한 자료를 제출하지 않거나, 또는 허위의 자료를 제출한 자는 30만엔이하의 벌금에 처한다.

제89조 법인의 대표자, 대리인, 사용인, 기타의 종업원이 그 법인의 업무에 관하여 前條의 위반행위를 하였을 때는 행위자를 벌하는 외에, 그 법인에 대한 同條의 형을 부과한다.

제90조 다음 각호의 1에 해당하는 경우에는 그 위반행위를 한 금융기관 등의 取締役 또는 理事(제71조 제1항 단서의 규정에 의해 아직 합병을 행하지 않은 것으로 간주된 존속금융기관의 取締役 또는 理事 및 아직 존속하고 있는 것으로 간주되는 소멸금융기관의 取締役 또는 理事를 포함)는 백만엔 이하의 過料에 처한다.

① 제70조 제1항의 규정에 위반되고, 긴급성의 인정에 관계된 합병 또는 영업양도 등을 행하는 것을 거부 또는 방해했을 때

② 제70조 제2항의 규정 또는 同條 제3항에 있어서 준용하는 상법 제414조 제2항의 규정에 의한 등기를 태만히 했을 때

③ 이 법률에서 정한 공고, 보고, 통지 또는 최고를 하는 것을 태만히 하고, 또는 不正의 공고, 보고 또는 통지를 하였을 때

④ 제73조 제4항의 규정에 의한 변제 또는 담보의 제공 또는 재산의 신탁을 태만히 하였을 때

⑤ 제74조 제9항의 규정 또는 同條 제10항에 있어서 준용하는 상법 제408조의 2 제2항의 규정에 위반되고, 제74조 제9항에서 규정한 서류를 비치하지 않고, 당연한 이유가 아님에도 불구하고 열람을 거부, 또는 그 등본 또는 초본의 교부를 거부하였을 때

제91조 다음 각호의 1에 해당하는 경우에는, 그 위반행위를 한 기구의 역원(임원)은 10만엔이하의 過料에 처한다.

① 이 법률에 의해 대장대신의 인가를 받지 않으면 안되는 경우에 있어서 그 인가를 받지 않았을 때

② 제7조 제1항의 규정에 의한 政令을 위반하여 등기하는 것을 태만히 하였을 때

③ 제34조에서 규정한 업무이외의 업무를 행했을 때

④ 제40조에서 규정한 서류를 제출하지 않았거나, 허위의 서류를 제출했을 때

⑤ 제41조의 규정을 위반하여 책임준비금을 계산하지 않았거나 또는 이것을 적립하지 않았을 때

⑥ 제43조의 규정을 위반하여 업무상의 여유금을 운용했을 때

⑦ 제45조 제2항의 규정에 의한 대장대신의 명령를 위반하였을 때

제92조 제6조 제2항의 규정을 위반한 자는 10만엔 이하의 過料에 처한다.

附則(抄)

(施行期日)

제1조 이 법률은, 공표일부터 시행한다.

(經過規定)

제2조 기구의 성립시 현재 보험사고가 발생하고 있는 금융기관, 기타 이것에 준하는 것으로서 政令에서 정하는 금융기관에 대해서는 이 법률의 규정은 적용하지 않는다.

2. 前項에서 규정한 금융기관 중, 기구의 성립 후에 그 업무 또는 사무 및 재산의 상황이 다시 정상으로 되었다고 인정된 것으로 대장대신이 지정한 것에 대해서는, 그 지정日로부터 이 법률의 규정을 적용한다.

附則(平4. 6. 26 法 87)

(施行期日)

제1조 이 법률은 공표일로부터 起算하여 1년을 초과하지 않는 범위 내에서 政令에서 정한 일(平5. 4. 1)로부터 시행한다.

(罰則의 適用에 관한 經過措置)

제32조 이 법률의 시행전에 한 행위 및 이 부칙의 규정에 의해 아직 종전의 例에 의한 것으로 되어 있는 사항에 관계되는 이 법률 시행 후에 한 행위에 대한 벌칙의 적용에 대해서는 아직 종전의 例에 의한다.

(기타의 經過措置의 政令에의 委任)

제33조 부칙 제2조로부터 前條까지에서 규정한 것 외에, 이 법률의 시행에 관하여 필요한 경과조치는, 政令으로 정한다.

○ 預金保險施行令

최종개정 平5(1993년). 3. 3 政令29

(定義)

제1조 이 政令에 있어서 「금융기관」, 「예금 등」 또는 「예금자 등」이라는 것은, 예금보험법(이하 「法」이라 함) 제2조 제1항 제2항 또는 제3항에서 규정한 금융기관, 예금 등 또는 예금자 등을 말한다.

(日本銀行으로부터의 借入金의 限度額)

제2조 법 제42조 제1항에서 규정한 政令에서 정한 금액은 5천억엔으로 한다.

(保險料 金額의 計算上 除外되는 預金 등)

제3조 법 제51조 제1항에서 규정한 政令으로 정한 예금 등은, 다음에서 언급하는 예금 등으로, 법 제50조 제1항의 규정에 의해 금융기관이 제출한 同項의 서류에 기재된 것으로 한다.

① 외화예금(제3호, 제4호 또는 제5호에 게재된 예금 등에 해당하는 것을 제외)

② 양도성예금(준비예금제도에 관한 법률시행령(昭和 32년 政令 제135호) 제4조 제2호에서 규정한 양도성예금을 말함)

③ 외국환 및 외국무역관리법(昭和 24년 법률 제228호) 제22조 제2항에서 규정한 특별국제금융거래감정에 있어서 經理된 예금(제5호에서 언급한 예금 등에 해당하는 것은 제외)

④ 국가 또는 지방공공단체 또는 특별법률에 의해 특별 설립행위에 따라 설립된 법인으로부터 받은 예금 등

⑤ 일본은행 또는 법 제35조 제1항에서 규정한 금융기관 등으로부터 받은 예금 등

⑥ 예금보험기구(이하 「기구」라 함)로부터 받은 예금 등

⑦ 예금 등에 관계된 증서(대부신탁법(昭和 27년 법률 제195호) 제2조 제2항에서 규정한 수익증권을 포함)가 무기명식인 예금 등

(假拂金의 最高限度額)

제4조 법 제53조 제3항에서 규정한 政令에서 정한 금액은 20만엔으로 한다.

(假拂金의 支拂對象이 되는 預金 등)

제5조 법 제53조 제3항의 규정에 의한 가불금의 지불은 보통예금에 대해 행하는 것으로 한다.

(보험금 금액의 계산상 제외되는 예금 등)

제6조 법 제54조 제1항에서 규정한 政令으로 정한 예금 등은 다음에서 언급하는 예금 등으로 한다.

① 제3조 각호에서 언급한 예금 등

② 타인(假設人을 포함)의 명의로 가지고 있는 예금 등

③ 예금 등에 관계된 부당계약의 체결에 관한 법률(昭和 32년 법률 제136호) 제2조 제1항 또는 제2항의 규정을 위반한 계약에 의한 예금 등

(保險金의 最高限度額)

제7조 법 제54조 제3항에서 규정한 政令으로 정한 금액은 천만엔으로 한다.

(保險金의 支拂에 관계된 公告事項)

제8조 법 제57조 제1항에서 규정한 政令으로 정한 사항은 다음에서 언급하는 사항으로 한다.

① 보험금의 지불시간

② 예금자 등이 보험금의 지불을 청구할 때에 기구에 대해 제출 또는 제시를 해야 하는 서류, 기타의 것

③ 기타 기구가 필요하다고 인정하는 사항

(假拂金의 支拂에 관계되는 公告事項)

제9조 법 제57조 제2항에서 규정한 政令으로 정하는 사항은 다음에서 언급하는 사항으로 한다.

① 가불금의 지불시간

② 예금자 등이 가불금의 지불을 청구할 때에 기구에 대해 제출 또는 제시를 해야 하는 서류, 기타의 것

③ 기타기 구가 필요하다고 인정하는 사항

(保險金 등의 支拂期間의 變更)

제10조 기구는, 법 제57조 제3항의 규정에 의해 보험금 또는 가불금의 지불기간을 변경할 경우에는, 변경후의 지불기간의 말일을 파산법(大正 11년 법률 제71호) 제142조 제1항 또는 和議法(大正 11년 법률 제72호) 제27조 제1항의 규정에 의해 재판소가 정한 채권계출(신고) 기간의 말일前 3일 이후에 하지 않으면 안된다.

(機構가 取得한 債權으로부터 除外되는 것)

제11조 법 제58조 제1항에서 규정한 이자, 수익의 분배, 기타 이들에 준하는 것으로 政令에서 정하는 것은, 이자, 수익의 분배 및 다음에서 언급하는 것으로 同項의 규정에 의한 채권의 取得時 현재 권리가 발행하고 있는 것으로 한다.

① 정기적금계약에 관계된 급부금의 금액에서 불입금의 금액의 합계액을 공제한 금액에 상당한 것

② 부금계약에 관계된 급부금의 금액에서 부금금액의 합계액을 공제한 금액에 상당한 것

(金融機關 등에 의한 合併 등을 援助하기 위한 行爲)

제12조 법 제60조 제1항에서 규정한 政令으로 정한 행위는, 자금의 대부 또는 예입으로 한다.

(合併의 登記申請書의 添附書類)

제13조 법 제70조 제2항에서 규정한 합병에 의한 변경의 등기 신청서에는, 다음에서 언급하는 서류를 첨부하지 않으면 안된다.

① 합병계약서

② 법 제68조 제2항의 규정에 의한 同條 제1항에서 규정한 긴급성의 인정에 관계된 통지가 있었던 것을 증명하는 서면

③ 합병을 하는 금융기관의 取締役會(법 제50조 제1항에서 규정한 신용금고 등에 있어서는 이사회)의 당해 합병에 관계된 의사록

④ 법 제70조 제2항에서 규정한 소멸금융기관의 등기부 등본(당해 등기소의 관할 구역내에 당해 소멸금융기관의 본점 또는 主事務所 및 지점 또는 從 사무소가 없는 경우에 한함)

(信用金庫 등의 特例期間)

제14조 법 제72조 제1항에서 규정한 政令으로 정한 기간은, 합병을 행한 日로부터 법 제74조 제1항에서 규정한 기한(당해기한이 同條 제4항의 규정에 의해 연장된 경우에는, 그 연장 후의 기한)까지의 기간과 同日로부터 법 제79조 제1항의 규정에 의한 공고가 된 日까지의 기간 중 짧은 기간으로 한다.

2. 법 제72조 제2항에서 규정한 政令으로 정한 기간은, 사업의 전부 또는 일부의 양수가 있었던 日로부터 법 제74조 제1항에서 규정한 기한(당해기한이 同條 제4항의 규정에 의해 연장된 경우에는, 그 연장 후의 기한)까지의 기간과 同日로부터 법 제79조 제1항의 규정에 의한 공고가 있었던 日까지의 기간 중 짧은 기간으로 한다.

3. 법 제72조 제3항에서 규정한 政令으로 정한 기간은, 합병을 행한 日로부터 당해 합병의 당사자인 법 제50조 제1항에서 규정한 신용금고 등의 법 제74조 제1항의 승인 결의가 있었던 日까지의 기간과 同日로부터 법 제79조 제1항의 규정에 의한 공고가 있었던 日까지의 기간 중 짧은 기간으로 한다.

(合併 또는 營業讓渡 등의 경우에 각별히 異議의 催告를 요하지 않는 債權者)

제15조 법 제73조 제1항에서 규정한 政令으로 정한 채권자는, 보호예금 계약에 관계된 채권자, 기타 금융기관의 업무에 관계된 다수인을 상대방으로 하는 정형적 계약의 채권자로 大藏省令으로 정한 자 및 채권의 권리자로 한다.

(債權者 異議手續의 完了報告의 添附書類)

제16조 법 제73조 제6항의 규정에 의한 보고는, 同條 제1항의 규정에 의한 공고 및 催告를 하거나 이의를 기술한 채권자가 있을 때는, 그 자에 대해 변제 또는 담보를 제공하거나 또는 신탁한 것을 증명하는 서면을 첨부하지 않으면 안된다.

(災害 등에 의한 承認決議의 期限 延長)

제17조 대장대신은 재해, 기타 어쩔 수 없는 이유에 의해 법 제74조 제1항에서 규정한 기한까지 同項의 승인결의를 얻을 수 없을 것으로 인정되는 경우에는, 금융기관 및 期日을 지정하고 당해 기한을 연장하는 것으로 한다.

2. 대장대신은, 재해 및 기타 어쩔 수 없는 이유에 의해, 법 제74조 제1항에서 규정한 기한까지 同項의 승인결의를 얻을 수 없을 것으로 인정되는 경우에는, 前項의 규정의 적용되는 경우를 제외하고, 당해승인의 결의를 얻지 않으면 안되는 금융기관의 신청에 의해 期日을 지정하여 당해기한을 연장하는 것으로 한다.
3. 前項의 신청은, 그 이유를 기재한 서면으로 하지 않으면 안된다.

(保險料의 金額의 端數計算 등)

제18조 법 제51조 제1항의 月數는, 曆에 따라 계산하고, 一個月 미만의 端數가 나왔을 때는, 이것을 一個月로 한다.

2. 법 제51조 제1항 또는 제52조 제2항의 규정에 의해 보험료 또는 연체금의 금액을 계산하는 경우에 있어서, 그 금액에 10엔 미만의 端數가 있을 때는, 그 端數를 잘라버리는 것으로 한다.
3. 법 제52조 제2항에서 규정한 연체금 금액의 계산에 대해 同項에서 규정한 年當 비

율은, 閏年의 日을 포함하는 기간에 대해서도 365일 當의 비율로 한다.

(金融機關의 解散의 경우 등에 있어서 保險料의 取扱)

제19조 금융기관이 보험료를 납부한 후에 해산 또는 금융기관의 합병 및 전환에 관한 법률(昭和 43년 법률 제86호) 제2조 제4항에서 규정한 전환을 행한 경우에 있어서, 당해보험료의 금액에 관한 過納을 한 때에는, 당해 금융기관은 그 해산 또는 전환 日이후 一個月 이내에 기구에 대하여 기구가 정한 서류를 제출하고, 당해 過納에 관계된 보험료의 금액에 상당한 금전의 還付를 청구하는 것으로 한다.

2. 기구는 前項의 청구가 있었을 때는, 지체없이, 同項의 금전을 환부하는 것으로 한다. 이 경우에 있어서, 당해 청구가 합병에 의해 소멸하는 금융기관 또는 同項의 전환을 행한 금융기관에 관계된 것으로, 당해 합병 후 존속하는 금융기관(다음항에 있어서 「존속금융기관」이라 함) 또는 당해 합병에 의해 설립된 금융기관(다음항에 있어서 「신설금융기관」이라 함) 또는 당해 전환 후의 금융기관에 대하여 다음항 또는 법 제50조 제1항의 규정에 의해 납부해야할 보험료가 있을 때는, 당해 還付 대신에 그 환부에 관계된 금전을 보험료로 충당할 수 있다.

3. 금융기관이 다른 금융기관과 합병을 행한 경우에는, 존속금융기관 또는 신설금융기관은, 당해 합병 후 三個月 이내에 당해 합병에 의해 소멸한 금융기관이 당해 합병日을 포함하는 영업연도(신용금고, 신용협동조합 및 노동금고에 있어서는 사업연도, 이하 이 항에 있어서 同)에 납부해야 할 보험료의 금액 산정에 기초가 되는 법 제51조 제1항에서 규정한 예금 등의 금액의 합계액을 12로 나누어서, 이것에 당해 합병의 日로부터 존속금융기관 또는 신설금융기관의 당해 합병日을 포함하는 영업연도의 末日까지의 기간 내의 月數를 곱하여 계산한 금액에, 同項의 보험료율을 곱하여 계산한 금액의 보험료를 기구에 납부하지 않으면 안된다.

4 前項의 月數는, 曆에 따라 계산하고, 一月 미만의 단수가 나왔을 때는, 이것을 잘라버리는 것으로 한다.

(都道府縣지사에의 通知)

제20조 대장대신 또는 대장대신 및 노동대신은, 하나의 都道府縣 구역을 벗어나지 않는 구역을 地區로 하는 신용협동조합 또는 노동금고에 대하여, 법 제59조 제2항, 제60조 제2항, 제65조, 제66조 제1항, 제73조 제6항 및 제74조 제11항의 규정에 의한 보고 및 법 제80조 제3항에 있어서 준용하는 노동금고법(昭和 28년 법률 제227호) 제62조 제3항의 규정에 의한 인가의 신청을 받은 때는, 당해 신용협동조합 또는 노동금고의 主事務所의 소재지를 관할하는 都道府縣 지사에게 그 취지를 통지하지 않으면 안된다.

2. 대장대신은, 前項에서 규정한 신용협동조합 또는 노동금고에 대하여, 법 제65조에서 규정한 적격성의 인정 등을 행한 때는, 당해 신용협동조합 또는 노동금고의 主事務所의 소재지를 관할 하는 都道府縣 지사에게 그 취지를 통지하지 않으면 안된다.

(權限의 委任)

제21조 법 제80조 제3항에 있어서 준용하는 신용금고법(昭和 26년 법률 제238호) 제58조 제3항의 규정에 의한 대장대신의 인가의 권한은, 그 主事務所의 소재지를 관할하는 재무당국(당해소재지가 福岡財務支局의 관할구역내에 있는 경우에 있어서는 福岡財務支局長)에 위임한다.

附則(抄)

(施行期日)

제1조 이 政令은, 공포일부터 시행한다.

(法을 適用하지 않는 金融機關)

제2조 법 부칙 제2조 제1항에서 규정한 政令으로 정한 금융기관은 다음에서 언급한 금융기관으로 한다.

① 기구의 성립시 현재 해산결의가 있었거나, 또는 행정청의 인가를 받고 있지 않은 금융기관

② 기구의 성립시 현재 업무의 정지명령을 받고 있는 금융기관

③ 前2號에서 언급한 것 외에, 기구의 성립일 전 1년간에 있어서 업무 또는 사업의 상황이 정상이 아니었던 것으로 인정되는 금융기관으로 대장대신이 지정한 것

附則(平5, 3, 3 政令29) (抄)

(施行期日)

제1조 이 政令은, 금융제도 및 증권거래제도의 개혁을 위한 관계법률의 정비 등에 관한 법률(평성 4년(1992년) 법률 제87호. 이하 「제도개혁법」이라 함)의 시행일(평성 5년(1993년) 4월 1일)부터 시행한다.

○ 預金保險法施行規則

최종개정 平5(1993년). 3. 3 대장令13

(業務方法書의 記載事項)

제1조 예금보험법(昭和 46년 법률 제34호. 이하 「法」이라 함) 제36조 제2항에서 규정한 大藏省令으로 정한 사항은, 다음에서 기술하는 사항으로 한다.

① 보험관계에 관한 사항

② 보험금 및 가불금에 관한 사항

③ 법 제58조의 규정에 의해 취득한 채권의 행사에 관한 사항

④ 자금원조 및 손실의 보전에 관한 사항

⑤ 업무의 위탁에 관한 사항

⑥ 기타 법 제34조에 규정한 업무의 방법

(經理原則)

제2조 예금보험기구(이하 「기구」라 함)는 기구의 재정상태 및 경영성적을 명확히 하기 위해, 재산의 증감 및 이동과 수익 및 비용을 그 발생사실에 기초하여 經理하지 않으면 안된다.

(勘定의 設定)

제3조 기구의 회계에 있어서는, 대차대조표감정 및 손익감정을 설정하고, 또한 필요에 상응하여, 계산의 과정을 명확히 하기 위해 감정을 설정하여 經理하는 것으로 한다.

(豫算의 內容)

제4조 기구의 예산은, 예산총칙 및 수입지출예산으로 한다.

(豫算總則)

제5조 예산총칙에서는, 수입지출예산에 관한 총괄적 규정을 설정하는 외에, 다음에서

언급하는 사항에 관한 규정을 설정하는 것으로 한다.

① 제9조의 규정에 의한 채무를 담보하는 행위에 대하여, 사항마다에 그 부담할 채무의 한도액, 그 행위에 기초하여 지출해야 할 年限 및 그 필요한 이유

② 제10조 제2항의 규정에 의한 경비의 지정

③ 前2號에서 언급하는 사항외에, 예산의 실시에 관해 필요한 사항

(收入支出豫算)

제6조 수입지출예산은, 수입에 있어서는 그 성질, 지출에 있어서는 그 목적에 따라 구분한다.

(豫算의 添附書類)

제7조 기구는 법 제39조의 규정에 의해 예산에 대해서 인가를 받으려고 할 때는, 다음에서 언급하는 서류를 첨부하여 대장대신에게 제출하지 않으면 안된다. 단, 同條후단의 규정에 의해 예산의 변경인가를 받으려고 할 때는, 제1호의 서류는 첨부할 필요가 없다.

① 前 사업연도의 예정대차대조표 및 예정손익계산서

② 당해 사업연도의 예정대차대조표 및 예정손익계산서

③ 前2號에서 언급한 것 외에, 당해 예산의 참고가 되는 서류

(豫備費)

제8조 예견할 수 없는 이유에 의한 지출예산의 부족을 보충하기 위해 수입지출예산에 예비비를 설정할 수 있다.

(債務를 부당하는 行爲)

제9조 기구는, 지출예산 금액의 범위내에 있는 것외에, 그 업무를 행하기 위해 필요할 때는 매사업연도, 예산으로 대장대신의 인가를 받은 금액의 범위 내에서 채무를 부담하는 행위를 할 수 있다.

(豫算의 流用 등)

제10조 기구는, 지출예산에 대해서는, 당해 예산에서 정한 목적외에 사용해서는 안된다. 단, 예산의 실시상 적당하고 또 필요할 때에는, 제6조의 규정에 의한 구분에 관계없이 相互流用할 수 있다.

2. 기구는 예산총칙에서 지정한 경비의 금액에 대해서는, 대장대신의 승인을 받지 않으면 그들의 경비간 또는 타경비와의 사이에 상호유용하거나 또는 이들에게 예비비를 사용할 수 없다.

3. 기구는 前項의 규정에 의한 승인을 받으려고 할 때는, 그 이유, 금액 및 積算의 기초를 명확하게 한 서류를 대장대신에게 제출하지 않으면 안된다.

(資金計劃)

제11조 법 제39조의 자금계획에는 다음 사항에 관계된 계획을 게재하지 않으면 안된다.

① 자금의 조달방법

② 자금의 使途(사용용도)

③ 기타 필요한 사항

2. 기구는 법 제39조 후단의 규정에 의해 자금계획의 변경인가를 받으려 할 때는, 변경하려고 하는 사항 및 그 이유를 기재한 신청서를 대장대신에게 제출하지 않으면 안된다.

(收入支出 등의 報告)

제12조 기구는 4반기마다 수입 및 지출에 대해서는 합계잔고시산표에 의해, 제9조의 규정에 의해 부담한 채무에 대해서는 사항마다 금액을 명확히 한 보고서에 의해, 당해 4반기 경과 후 一月 이내에 대장대신에게 보고하지 않으면 안된다.

(決算報告書)

제13조 법 제40조 제2항의 결산보고서는, 수입지출결산서 및 채무에 관한 계산서로

한다.

2. 前項의 결산보고서에는, 제5조의 규정에 의해 예산총칙에서 규정한 사항에 관계된 예산의 실시결과를 보여주지 않으면 안된다.

(收入支出決算書 등)

제14조 前條 제1항의 수입지출결산서는, 수입지출예산과 동일의 구분에 의해 작성하고 또한 이것에 다음의 사항을 기재하지 않으면 안된다.

① 수입

㉮ 수입예산액

㉯ 수입결정액

㉰ 수입예산액과 수입결정액과의 차이

② 지출

㉮ 지출예산액

㉯ 예산비의 사용금액 및 그 이유

㉰ 유용금액 및 그 이유

㉱ 지출예산 現額

㉲ 지출결정액

㉳ 不用額

2. 前條 제1항의 채무에 관한 계산서에는, 제9조의 규정에 의해 부담한 채무의 금액을 사항마다 보여주지 않으면 안된다.

(責任準備金의 金額 등)

제15조 기구가 매사업연도 누적하여 적립하지 않으면 안되는 책임준비금의 금액은, 당해 사업연도에 있어서 보험료, 수취이자, 잡수입 및 잡수익의 합계액(다음 항에 있어서 「보험료 등」이라 함)에서 법 제58조의 규정에 의해 취득한 채권의 상각비, 법 제59조 제1항 또는 법 제60조 제1항에서 규정한 자금원조에 의해 발생된 손실액, 법 제79조 제6항에서 규정한 금융기관이 입은 손실의 보전에 의해 발생한 손

실액, 사무취급비, 지불이자, 잡손실 및 제4항의 규정에 의한 이월결손금의 합계액(다음 항에 있어서 「채권상각비 등」이라 함)을 공제한 금액에 상당한 금액으로 한다.

2. 기구는, 매사업연도의 보험료 등이 당해 사업연도의 채권상각비 등을 下回한 경우는, 그 下回한 금액(이하 本條에 있어서 「손실액」이라 함)을 한도로 책임준비금 중에서 당해 손실액을 보전하는 것으로 한다.
3. 제1항의 책임준비금은, 前項의 규정에 의해 손실액을 보전하는 경우를 제외하고는 사용해서는 안된다.
4. 기구는, 제2항의 규정에 의해 보전할 수 없는 손실액이 있을 때는 그 금액을 이월결손금으로 정리하는 것으로 한다.

(借入金의 認可申請)

제16조 기구는 법 제42조 제1항의 규정에 의해 일본은행으로부터의 자금차입 인가를 받으려고 할 때는, 다음의 사항을 기재한 신청서를 대장대신에게 제출하지 않으면 안된다.

① 차입을 필요로 하는 이유
② 차입금의 금액
③ 차입금의 이율
④ 차입금의 상환방법 및 기한
⑤ 이자의 지불방법 및 기한
⑥ 기타 필요한 사항

2. 기구는, 법 제42조 제3항의 규정에 의해 법 제35조 제1항에서 규정한 금융기관 등으로부터의 자금차입의 인가를 받으려고 하는 때는 前項 각호에 기재된 사항 외에, 당해 금융기관 등의 명칭을 기재한 신청서를 대장대신에게 제출하지 않으면 안된다.

(余裕金의 運用方法)

제17조 법 제43조 제3호에서 규정한 大藏省令으로 정한 방법은 금전신탁으로 한다.

(會計規定)

제18조 기구는 그 재무 및 회계에 관하여, 회계규정을 정하지 않으면 안된다.

2. 前項의 회계규정을 정하려고 할 때는 대장대신의 승인을 받지 않으면 안된다. 이것을 변경하려고 할 때에도 마찬가지이다.

(保險料 납부시의 添附書類)

제19조 법 제50조 제1항에서 규정한 大藏省令으로 정한 서류는 별지양식에 의한 보험료 계산서로 한다.

(適格性의 認定申請)

제20조 법 제2조 제1항에서 규정한 금융기관(이하 「금융기관」이라 함)은, 법 제61조 제1항의 규정에 의해 법 제59조 제3항에서 규정한 합병 등의 인정을 받으려고 할 때는, 인정신청서에 다음에서 언급하는 서류를 첨부해서 대장대신에게 제출하지 않으면 안된다.

① 이유서

② 최종 대차대조표, 손익계산서 및 이익처분계산서(신용금고 및 노동금고에 있어서는 잉여금처분계산서, 신용협동조합에 있어서는 잉여금의 처분방법을 기재한 서면) 또는 손실금처리계산서(신용협동조합에 있어서는 손실의 처리방법을 기재한 서면) 및 최근의 日計表

③ 기타 법 제61조 제1항에서 규정한, 인정을 하기 위해 참고가 되는 사항을 기재한 서류

(合併 또는 營業讓渡 등의 경우에 催告를 요하지 않는 債權者)

제21조 예금보험법 시행령(昭和 46년 政令 제12호) 제15조에서 규정한 채권자로, 大

藏省令으로 정하는 것은, 보호예금 계약에 관계된 채권자로 한다.

(緊急性의 認定에 관계된 合併 또는 營業讓渡 등의 認可申請)

제22조 금융기관(신용금고 및 노동금고를 제외)은 제68조 제1항에서 규정한 긴급성의 인정(이하 「긴급성의 인정」이라 함)에 관계된 합병 또는 영업양도 등(법 제56조 제1항 제3호에서 규정한 영업양도 등이라 함. 다음 항에 있어서도 마찬가지 임)의 인가를 받으려고 할 때는, 은행법 시행규칙(昭和 57년 大藏省令 제10호) 제22조 및 제23조, 장기신용은행법 시행규칙(昭和 57년 大藏省令 제13호) 제21조 및 제22조, 외국환은행법 시행규칙(昭和 57년 大藏省令 제14호) 제23조 및 제24조 및 중소기업 등협동조합법 시행규칙(昭和 30년 대장, 후생, 농림, 통상산업, 온수, 건설성령 제1호) 제7조 제1항의 규정에 관계없이 다음에서 언급하는 서류는 대장대신(하나의 都道府縣의 구역을 벗어나지 않는 구역을 地區로 하는 신용협동조합에 있어서는 도도보현지사. 다음 항에 있어서도 마찬가지 임)에게 제출할 필요가 없다.

① 은행법 시행규칙 제22조 제2호, 제6호, 제7호 및 제23조 제2호 및 제5호에서 언급하는 서류

② 장기신용은행법 시행규칙 제21조 제2호, 제6호, 제7호 및 제22조 제2호 및 제5호에서 언급하는 서류

③ 외국환은행법 시행규칙 제23조 제2호, 제6호, 제7호 및 제24조 제2호 및 제5호에서 언급하는 서류

④ 중소기업 등 협동조합법 시행규칙 제7조 제1항 제2호 및 제6호부터 제8호까지에서 언급하는 서류

2. 前項의 경우에 있어서는, 다음의 각호에서 정하는 서류를 첨부해서 대장대신에게 제출하지 않으면 안된다.

① 긴급성의 인정에 관계되는 통지가 있었던 것을 증명하는 서면

② 당해 합병 또는 영업양도 등에 관계된 取締役會(신용협동조합에 있어서는 이사회)의 의사록

③ 기타 대장대신이 필요하다고 인정하는 사항을 기재한 서류

제23조 신용금고 또는 노동금고는, 법 제80조 제3항에 있어서 준용하는 신용금고법(昭和 26년 법률 제238호) 제58조 제3항 또는 노동금고법(昭和28년 법률 제227호) 제62조 제3항의 규정에 의한 합병 또는 사업의 양도 또는 양수의 인가를 받으려고 할 때는, 인가신청서에 다음에서 언급하는 서류를 첨부하여 대장대신(노동금고에 있어서는 대장대신 및 노동대신. 이하 이 條에 있어서 同)에게 제출하지 않으면 안 된다.

① 이유서

② 합병계약서 또는 사업의 양도 또는 양수의 계약서

③ 최종 대차대조표, 손익계산서 및 잉여금처리계산서 또는 손실금처분계산서 및 최근의 日計表

④ 긴급성의 인정에 관계되는 통지가 있었던 것을 증명하는 서면

⑤ 당해 합병 또는 사업의 양도 또는 양수에 관계된 이사회의 의사록

⑥ 기타 대장대신이 필요하다고 인정하는 사항을 기재한 서류

(經由官廳)

제24조 법 제2조 제1항 제1호에서 규정한 은행, 신용금고, 신용협동조합 및 노동금고(대장대신이 별도로 지정한 것을 제외)는, 제20조에서 규정한 인정신청서, 법 제59조 제2항, 제60조 제2항, 제65조, 제66조 제1항, 제73조 제6항 및 제74조 제11항에서 규정한 보고 및 제80조 제3항에 있어서 준용하는 신용금고법 제58조 제3항 또는 노동금고법 제62조 제3항에서 규정한 인가신청서를 대장대신에게 제출할 때는, 금융기관의 본점 또는 主사무소의 소재지를 관할하는 재무국장(당해 소재지가 福岡재무지국의 관할구역(재무사무소의 관할구역을 제외)내에 있는 경우에 있어서는 福岡재무지국장으로 하고, 당해소재지가 재무사무소의 관할구역내에 있는 경우에 있어서는 당해 제무사무소장으로 한다)을 경유하여 제출하지 않으면 안된다.

附則

이 省令은 공포일로부터 시행한다.

附則

이 省令은, 금융제도 및 증권거래제도의 개혁을 위한 관계법률의 정비 등에 관한 법률(平成 4년 법률제87호)의 시행일(平成 5년 4월1일)부터 시행한다.

○ 預金保險機構가 保有할 수 있는 指定有價證券 및 預金을 할 수 있는 指定金融機關 등을 指定하는 件

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1. 지정유가증권

① 지방채

② 公社, 公庫 및 公團이 발행하는 채권, 기타 정부가 그 원리금의 지불을 보증하고 있는 채권

③ 농림중앙금고, 상공조합중앙금고, 장기신용은행, 외국환은행 및 전국을 地區로 하는 신용금고연합회의 발행채권

④ 대부신탁법에 기초한 수익증권

⑤ 담보부사채(상환 및 이자의 지불에 지연이 없는 것에 한함)

⑥ 前 각호에서 언급하는 것 외에, 확실한 유가증권이고, 그 보유에 대하여 대장대신의 승인을 받은 것

2. 지정금융기관 등

① 은행

② 장기신용은행

③ 외국환은행

④ 전국신용금고연합회

⑤ 전국신용협동조합연합회

⑥ 노동금고연합회

○ 預金保險機構 業務方法書

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第1章 總則

(目的)

제1조 이 업무방법서는, 예금보험법(昭和 46년 법률 제34호. 이하 「법」이라 함) 제36조 제1항의 규정에 기초하여 예금보험기구(이하 「기구」라 함)의 업무방법을 정하고, 그것에 의하여 그 업무의 적정하고 원활한 운영에 도움이 되는 것을 목적으로 한다.

(用語)

제2조 이 업무방법서에 있어서 사용하는 용어는 法에서 사용한 용어의 例에 의한다.

第2章 保險關係

(保險關係의 成立)

제3조 금융기관이 그 업무를 운영 또는 사업을 행할 때는, 당해 금융기관이 예금 등에 관계된 채무를 짐으로써, 각 예금자 등마다 일정 금액의 범위내에서 당해 예금 등의 지불에 관하여 기구와 당해금융기관 및 예금자 등과의 사이에 보험관계가 성립한다.

(保險金額 및 保險事故)

제4조 前條의 보험관계에 있어서는 예금 등의 금액을 보험금액으로 하고, 다음에서 언급한 것을 보험사고로 한다.

① 금융기관의 예금 등의 지불정지(이하 「제1종보험사고」라 함)

② 금융기관의 영업면허의 취소(신용금고 또는 노동금고에 있어서는 사업면허의 취소로 하고, 신용협동조합에 있어서는 해산의 명령으로 한다.), 파산선고 또는 해산의 결의(이하 「제2종보험사고」라 함)

第3章 保險料

(保險料의 納付)

제5조 기구는 금융기관으로부터 영업연도(신용금고, 신용협동조합 또는 노동금고(이하 「신용금고 등」이라 함)에 있어서는 사업연도. 이하 同)마다, 당해 영업연도의 개시후 三月 이내에 보험료를 수납하는 것으로 한다. 이 경우에 있어서 기구는 예금보험법 시행규칙(昭和 46년 大藏省令 제28호. 이하 「시행규칙」이라 함) 제19조에서 정한 보험료 계산서 외에, 기구가 보험료 산정상 필요하다고 인정하는 서류를 제출케 하는 것으로 한다.

2. 보험료의 납부는 기구가 일본은행 또는 금융기관 등(금융기관 및 신용금고연합회, 중소기업 등협동조합법(昭和 24년 법률 제181호) 제9조의 9 제1항 제1호의 사업을 행하는 협동조합연합회 및 노동금고연합회를 말한다. 이하 同)에 설정한 기구의 예금구좌에 현금, 수표(당해 보험료의 拂入先인 일본은행 또는 금융기관 등 지정한 것에 한함) 또는 환어음으로 불입하는 것으로 한다.

(保險料 納付의 유예 및 보험료의 면제)

제6조 기구는 제1종보험사고가 발생한 때는, 당해 보험사고에 관계된 금융기관의 당해보험사고가 발생한 영업연도의 보험료 납부를 제18조 제1항의 규정에 의한 결정時까지 유예하는 것으로 한다.

2. 기구는 제18조 제1항의 규정에 의해 보험금을 지불한다는 취지의 결정이 있었던 경우, 제1종보험사고 발생日을 포함하는 月의 翌月부터 당해영업연도 末日까지의 月數에 대응하는 보험료 및 당해 영업연도 후의 영업연도의 보험료를 면제하는 것

으로 한다. 면제되는 보험료에 대해서, 旣납부 금액이 있을 때는, 당해금융기관의 청구에 기초하여 이것을 환부하는 것으로 한다.

3. 前項의 경우에 있어서, 당해 영업연도 개시일로부터 제1종보험사고 발생일까지의 月數에 대응하는 보험료에 대하여 미납부 금액이 있을 경우에는, 이것을 면제할 수 있다.
4. 本條 제1항 및 제2항의 규정은 당해 금융기관이 제1종보험사고의 발생 후에, 업무를 재개한 이후에는 적용되지 않는다.
5. 기구는 제2종보험사고가 발생했을 때, 당해보험사고에 관계된 금융기관의 당해 보험사고가 발생한 영업연도의 보험료 중 미납부 금액을 면제할 수 있다.
6. 기구는 적격성의 인정 등(법 제65조에서 규정한 적격성의 인정 등을 말함. 이하 同)이 행해진 경우에 있어서, 당해 적격성의 인정 등이 행해진 날을 포함하는 영업연도로부터 당해 적격성의 인정 등에 관계된 합병 등(법 제59조 제3항에 언급된 합병 등을 말함. 이하 同)이 행해진 날을 포함하는 영업연도까지의 당해 적격성의 인정 등에 관계된 破綻金融機關의 보험료가 납부되고 있지 않을 때는 당해 보험료의 납부를 다음의 각호에서 언급하는 때까지 유예하는 것으로 한다.
   ① 합병 또는 영업양도 등(법 제56조 제1항 제3호에서 규정한 영업양도 등을 말함. 이하 同)에 있어서는, 당해 적격성의 인정 등에 관계된 합병 또는 영업양도 등이 행해지는 날
   ② 법 제59조 제3항 제3호에서 규정한 破綻金融機關의 주식의 다른 금융기관에 의한 취득에 있어서는, 당해취득이 행해지는 날
7. 기구는 前項에서 규정한 합병 등이 행해진 때는, 당해 적격성의 인정 등이 행해진 날을 포함하는 영업연도의 개시일로부터 당해합병 등이 행해진 날까지의 月數에 대응하는 破綻金融機關의 보험료 중 미납부 금액을 면제할 수 있다.

(保險料의 金額)

제7조 보험료의 금액은, 각 금융기관에 대하여, 당해보험료를 납부해야 할 日을 포함하는 영업연도의 직전 영업연도 末日에 있어서의 예금 등 금액의 합계액을 12로

나누어서, 이것에 당해 보험료를 납부해야할 日을 포함하는 영업연도의 月數를 곱하여 계산한 금액에 기구가 운영위원회(이하 「위원회」라 함)의 의결을 거쳐 정한 率(이하 「보험료율」이라 함)을 곱하여 계산한 금액으로 한다.

2. 前項의 예금 등에는, 다음에서 언급하는 예금 등으로 제5조 제1항의 보험료 계산서에 기재된 것은 포함되지 않는 것으로 한다.

① 외화예금(제3호, 제4호 또는 제5호에 기재된 예금 등에 해당하는 것을 제외)

② 양도성예금(준비예금제도에 관한 법률시행령(昭和 32년 정령 제135호) 제4조 제2항에서 규정한 양도성예금을 말한다. 제17조 제2항 제3호에 있어서도 마찬가지임.)

③ 특별 국제금융거래감정(외국환 및 외국무역관리법(昭和 24년 법률 제228호) 제22조 제2항에서 규정한 특별 국제금융거래감정을 말함. 제17조 제2항 제3호에 있어서도 마찬가지임)에 있어서 經理된 예금(제5호에서 언급한 예금 등에 해당하는 것을 제외)

④ 국가 또는 지방공공단체 또는 특별법률에 의해 특별 설립행위에 따라 설립된 법인으로부터 수납한 예금 등

⑤ 일본은행 또는 금융기관 등으로부터 수납한 예금 등

⑥ 기구로부터 수납한 예금 등

⑦ 예금 등에 관계된 증서(대부신탁법(昭和 27년 법률 제195호) 제2조 제2항에서 규정한 수익증권을 포함)가 無記名式인 예금 등

3. 기구는 금융기관에서 제5조 제1항의 규정에 의해 제출한 보험료 계산서에 대하여, 계산의 오류 등 때문에 납부한 보험료에 과부족이 있다는 취지의 신청을 받은 때는, 다시 정당한 보험료 계산서의 제출을 받고, 보험료에 過納額이 있는 경우에는 이것을 환부하고 부족액이 있는 경우에는 그 추가납부를 받는 것으로 한다.

4. 本條 제1항의 月數는 曆에 따라 계산하고 一月 미만의 단수가 나왔을 때는 이것을 一月로 한다.

5. 本條 제1항, 제9조 제2항 또는 제10조 제1항 또는 제3항의 규정에 의해 보험료 또는 연체금의 금액을 계산하는 경우에 있어서, 그 금액에 10엔 미만의 단수가 있을

때는 그 단수를 잘라버리는 것으로 한다.

(保險料率)

제8조 보험료율은 보험금의 지불, 자금원조, 기타 기구의 업무에서 요하는 비용의 예상액에 비추어 장기적으로 기구의 재정이 균형을 이루도록, 또한 특정의 금융기관에 대해 차별적 취급을 하지 않도록 정하는 것으로 한다.

2. 기구는 법 제42조 제1항 또는 제3항의 자금차입을 한 경우에 있어서 그 차입금을 조속히 반제하는 것이 곤란하다고 인식되는 경우에는, 위원회의 의결을 거쳐 보험료율을 변경하는 것으로 한다.

3. 기구는 보험료율을 정하거나 또는 이것을 변경하려고 할 때는, 대장대신의 인가를 받는 것으로 한다.

4. 기구는 前項의 인가를 받은 때는, 지체없이 그 인가에 관계된 보험료율을 공고하는 것으로 한다.

(연체금)

제9조 기구는 금융기관이 보험료를 그 납기한도까지 납부하지 않은 경우에는, 당해 금융기관으로부터 제5조 제2항의 규정에 준하여 연체금을 수납하는 것으로 한다.

2. 연체금의 금액은 미납 보험료의 금액에 납기한도의 翌日로부터 그 납부일까지의 日數에 상응하는 연14.5%의 비율을 곱하여 계산한 금액으로 한다.

3. 前項에서 정한 年當의 비율은, 윤년의 日을 포함하는 기간에 있어서도 365日當의 비율로 한다.

(金融機關 解散의 경우 등에 있어서의 保險料 取扱)

제10조 기구는 금융기관이 보험료를 납부한 후에, 해산 또는 금융기관의 합병 및 전환에 관한 법률(昭和 43년 법률 제86호) 제2조 제4항에서 규정한 전환을 행한 경우에 있어서는, 당해 보험료의 금액에 대해 과납을 한 경우에는 당해 금융기관으로부터 그 해산 또는 전환의 日後 一月 이내에 기구가 정한 과납금액의 환부청구

서에 당해 금융기관의 해산 또는 전환을 증명하는 서류를 첨부하고 당해 과납에 관계된 보험료 금액에 상당한 금전의 환부청구를 받는 것으로 한다.

2. 기구는 前項의 청구가 있을 때에는 지체없이 同項의 금전을 환부하는 것으로 한다. 이 경우에 있어서 당해 청구가 합병에 의해 소멸한 금융기관 또는 同項의 전환을 행한 금융기관에 관계되는 것이고 또한 당해 합병 후 존속하는 금융기관(이하 「존속금융기관」이라 함) 또는 당해 합병에 의해 설립된 금융기관(이하 「신설금융기관」이라 함) 또는 당해 전환후의 금융기관에 다음 項 또는 제5조 제1항의 규정에 의해 수납해야 할 보험료가 있을 때는 당해 환부에 대신하여 그 환부에 관계된 금전을 그 보험료로 충당할 수 있다.

3. 기구는 금융기관이 다른 금융기관과 합병을 행한 경우에는 존속금융기관 또는 신설금융기관으로부터 당해 합병 후 三月 이내에 당해 합병에 의해 소멸한 금융기관이 당해 합병의 日을 포함하는 영업연도에 있어서 납부해야 할 보험료의 금액 산정의 기초가 되는 제7조 제1항에서 규정한 예금 등의 금액의 합계액을 12로 나누어, 이것에 당해 합병의 日로부터 존속금융기관 또는 신설금융기관의 당해 합병의 日을 포함하는 영업연도 말일까지의 기간내의 月數를 곱하여 계산한 금액에, 보험료율을 곱하여 계산한 금액의 보험료를 제5조의 규정에 준하여 수납하는 것으로 한다.

4. 前項의 月數는 曆에 따라 계산하고, 一月 미만의 단수가 나왔을 때는 이것을 잘라 버리는 것으로 한다.

第4章 保險金 및 假拂金

(假拂金의 支拂)

제11조 기구는 보험사고가 발생했을 때는 당해 보험사고에 관계된 예금자에 대하여, 그 청구에 기초하여 가불금의 지불을 하는 것으로 한다. 단, 제12조 제1항의 규정에 의해 가불금의 지불을 한다는 취지의 결정을 하는 것을 요건으로 한다.

2. 가불금의 금액은, 한 보험사고가 발생한 금융기관의 각 예금자에 대하여, 그 발생

일 현재 그 자가 당해 금융기관에 대하여 가지고 있는 보통예금에 관계된 채권 중 원본의 금액으로, 前項의 청구가 있었던 것에 상당한 금액(당해 금액이 20만엔을 초과할 때는 20만엔을 한도로 한다)으로 한다.

(支拂의 決定)

제12조 기구는 다음 각호에서 언급한 경우에는, 당해 각호에서 언급한 日로부터 1주일 이내에 위원회의 의결을 거쳐 당해 각호의 보험사고에 대한 가불금의 지불 여부를 결정하는 것으로 한다.

① 보험사고에 관하여 법 제55조의 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

② 前號에 게재된 경우 외에, 보험사고가 발행한 것을 기구가 인지했을 때, 그 인지한 날

③ 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 하는 합병 또는 영업양도 등에 관계된 법 제66조 제1항의 결의를 얻을 수 없었다는 뜻의 同項 또는 법 제74조 제11항의 규정에 의한 통지가 있었을 때, 그 통지가 있던 날

④ 前號에서 언급한 경우외에, 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 하는 합병 또는 영업양도 등에 관한 법 제66조 제1항의 결의를 얻을 수 없었던 것을 기구가 인지하였을 때, 그 인지한 날

2. 기구는 前項의 규정에 의한 결정을 한 때는, 즉시 그 결정에 관계된 사항을 대장대신(당해 결정이 신용협동조합(하나의 都道府縣의 구역을 벗어나지 않은 구역을 地區로 하는 신용협동조합에 한함)에 관한 것일 경우에는 대장대신 및 都道府縣 지사로 하고, 당해 결정이 노동금고에 관한 것일 경우에는 대장대신 및 노동대신으로 한다. 제27조 제3항에 있어서도 同)에게 보고하는 것으로 한다.

(支拂의 公告 등)

제13조 기구는 가불금의 지불을 한다는 취지의 결정을 한 경우에는, 조속히 위원회의 의결을 거쳐 당해 가불금의 지불기간, 지불장소 및 지불시간, 예금자가 가불금

의 지불을 청구한 때에 기구에 대해 제출 또는 제시해야 할 서류, 기타의 것 및 기타 기구가 필요하다고 인정하는 사항을 정하여 이것을 공고하는 것으로 한다.

2. 기구는 前項의 공고를 한 후에 당해 금융기관이 파산선고를 받거나 또는 당해 금융기관에 대하여 和議개시의 결정이 있었을 때는 그 공고한 지불기간을 변경할 수 있다.

3. 前項의 규정에 의해 가불금의 지불기간을 변경할 경우에는, 기구는 변경후의 지불기간의 末日을 파산법(大正 11년 법률 제71호) 제142조 제1항 또는 和議法(大正 11년 법률 제72호) 제27조 제1항의 규정에 의해 재판소가 정한 채권계출(신고) 기간 末日前 3일이후에 하는 것으로 한다.

4. 기구는 제2항의 규정에 의해 지불기간을 변경한 때는, 지체없이 그 변경에 관계된 사항을 공고하는 것으로 한다.

5. 前條 제2항의 규정은 제1항에서 규정한 사항을 정한 경우 및 제2항의 규정에 의해 지불기간을 변경한 경우에 대하여 준용한다.

(支拂의 公告方法)

제14조 기구는 前條 제1항 또는 제4항에 의한 공고를 행한 경우에는, 관보 및 일간신문지에의 기재 및 당해 보험사항에 관계된 금융기관의 店頭에의 게시, 기타 적당하다고 인정되는 방법에 의해 공고하는 것으로 한다.

(支拂의 手續)

제15조 기구는 보험사고에 관계된 보통예금에 대해 예금자로부터 가불금의 지불청구가 있었을 경우에는, 다음에서 언급하는 서류 등을 제출 또는 제시하게 하는 것으로 한다. 단, 다음에서 언급한 통장이 발행되고 있지 않은 경우 또는 인감의 계출이 되어 있지 않은 경우는 이 제한을 받지 않는다.

① 가불금 지불청구서

② 보통예금의 통장

③ 보통예금에 대해 계출이 있었던 인감

2. 기구는, 제13조 제1항 또는 제4항의 규정에 의해 공고한 지불기간 내에 한하여, 前項의 지불청구를 받은 것으로 한다. 단, 예금자가 그 지불기간내에 청구하지 않았던 것에 대해 재해, 기타 어쩔수 없는 사정이 있었다고 기구가 인정할 때는 이 제한을 받지 않는다.
3. 제2항 제1호에서 언급한 가불금 지불청구서의 양식에 대해서는 기구가 이것을 정하는 것으로 한다.

(保險金의 支拂)

제16조 기구는 보험사고가 발생했을 때는, 당해보험사고에 관계된 예금자 등에 대해 그 청구에 기초하여 보험금을 지불하는 것으로 한다. 단, 제1종 보험사고에 대해서는 기구가 제18조 제1항의 규정에 의해 보험금을 지불한다는 취지의 결정을 하는 것을 요건으로 한다.

2. 前項에서 규정한 보험사고에는, 당해 보험사고가 발생한 금융기관에 대해, 그 발생한 후(同項 단서의 규정이 적용된 경우에는 기구가 同項 단서의 결정을 한 후)에 당해 보험사고에 관련된 다른 보험사고가 발생한 경우에 있어서 당해 다른 보험사고(제19조 제1항 제2호에 있어서 「관련보험사고」라 함)를 포함하지 않는 것으로 한다.

(保險金의 金額)

제17조 보험금의 금액은, 하나의 보험사고가 발생한 금융기관의 각 예금자 등에 대해, 그 발생日 현재 그 자가 당해 금융기관에 대해 가지고 있는 예금 등에 관계된 채권 중 원본의 금액(그 금액이 동일인에 대해 2이상인 경우에는 그 합계액)으로, 前條 제1항의 청구가 있었던 것에 상당한 금액으로 한다.

2. 前項에서 규정한 예금 등에는, 다음에서 언급하는 예금 등은 포함되지 않는 것으로 한다.

① 외화예금(제3호, 제4호 또는 제5호에서 언급한 예금 등에 해당하는 것은 제외)

② 양도성예금

③ 특별 국제금융거래감정에 있어서 經理된 예금(제5호에서 언급한 예금 등에 해당하는 것은 제외)

④ 국가 또는 지방공공단체 또는 특별법률에 의해 특별 설립행위에 따라 설립된 법인으로부터 수납한 예금 등

⑤ 일본은행 또는 금융기관으로부터 수납한 예금 등

⑥ 기구로부터 수납한 예금 등

⑦ 예금 등에 관계된 증서(대부신탁법(昭和 27년 법률 제195호) 제2조 제2항에서 규정한 수익증권을 포함)가 無記名式인 예금 등

⑧ 타인(假設人을 포함)의 명의를 가지고 있는 예금 등

⑨ 예금 등에 관계된 부당계약의 체결에 관한 법률(昭和 32년 법률 제136호) 제2조 제1항 또는 제2항의 규정을 위반한 계약에 의한 예금 등

3. 보험사고에 관계된 예금자 등이 다음 각호에 해당하는 경우에 있어서 그 자의 보험금의 금액은, 前2項의 규정에 관계없이, 前2項의 규정에 의한 금액에서 당해 각호에서 언급한 금액을 공제한 금액에 상당항 금액으로 한다.

① 당해 금융기관에 대해 채무를 지고 있을 때, 그 채무의 금액

② 당해 금융기관에 대해, 제3자를 위하여 그 예금 등의 전부 또는 일부를 담보로 제공하고 있을 때, 그 담보로 제공하고 있는 예금 등의 금액

4. 前3項의 규정에 의한 보험금의 금액이 1천만엔을 넘는 경우는 1천만엔을 당해 보험금의 금액으로 한다.

5. 보험사고에 관계된 예금자 등이 당해보험사고에 대해서 제11조 제1항의 가불금의 지불을 받은 경우, 그 자의 보험금의 금액은 前4項의 규정에 상관없이, 前4項의 규정에 의해 계산한 금액에서 당해지불을 받은 가불금의 금액을 공제한 금액에 상당한 금액으로 한다.

6. 기구는, 제1항에서 제4항까지의 규정에 의해 계산한 금액을 초과하는 금액의 가불금을 수령한 예금자가 있을 때는, 당해 예금자에 대해 그 초과금액에 대해 기한을 지정하여 지불을 청구하는 것으로 한다.

7. 기구는 前項의 규정에 의해 기한을 지정하고 지불을 청구한 가불금의 전부 또는

일부를 당해 기한 내에 예금자가 반제하지 않을 때는 당해예금자에 대해 그 지불을 독촉하는 것으로 한다.

8. 기구는, 제6항의 규정에 의해 지정한 기한 후 상당 기간 내에 가불금의 지불이 되지 않을 경우에 있어서, 다음 각호 중 하나에 해당하고 또한 가불금의 지불이 곤란하거나 부적당하다고 인정될 때는 保全 및 징수에 관한 사무를 필요로 하지 않는 것으로 한다.

① 가불금을 수령한 예금자의 소재가 不明인 때

② 지불을 청구해야 할 가불금의 금액이 소액이고, 징수에 필요한 비용에도 미치지 못한다고 인정될 때

(支拂의 決定)

제18조 기구는 다음 각호에서 언급하는 경우에는, 당해 각호에서 언급하는 日로부터 一月 이내에, 위원회의 의결을 거쳐 당해 각호의 보험사고에 대해 보험금의 지불 여부를 결정하는 것으로 한다.

① 제1종 보험사고에 관하여 당해 보험사고에 관계된 금융기관 또는 대장대신, 노동대신 또는 都道府縣 지사로부터 보험사고가 발생했다는 취지의 통지가 있었을 때, 그 통지가 있던 날

② 前號에서 언급한 경우외에, 제1종 보험사고가 발생한 것을 기구가 인지하였을 때, 그 인지한 날

③ 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 하는 합병 또는 영업양도 등에 관계되는 법 제66조 제1항의 결의를 얻을 수 없었다는 취지의 同項 또는 법 제74조 제11항의 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

④ 前號에서 언급한 경우외에, 제1종 보험사고가 발생한 금융기관을 일부의 당사자로 하는 합병 또는 영업양도 등에 관계된 법 제66조 제1항의 결의를 얻을 수 없었던 것을 기구가 인지하였을 때, 그 인지한 날

2. 기구는 위원회의 의결을 거쳐 前項의 기한 연장을 대장대신에게 신청할 수 있다.

3. 제12조 제2항의 규정은 제1항의 규정에 의한 결정을 한 경우에 있어서 준용한다.

(支拂의 公告 등)

제19조 기구는, 다음에서 언급하는 경우에는 조속히 위원회의 의결을 거쳐 보험금의 지불기간·지불장소 및 지불시간·기구가 보험금의 지불업무를 금융기관 등에 위탁한 경우에는 당해 금융기관 등·예금자 등이 보험금의 지불을 청구할 때에 기구에 대해 제출 또는 제시해야 할 서류·기타의 것 및 기타 기구가 필요하다고 인정하는 사항을 정하여 이것을 공고하는 것으로 한다.

① 前條 제1항의 규정에 의해 제1종 보험사고에 관계된 보험금의 지불을 한다는 취지의 결정을 한 때

② 제2종 보험사고(관련보험사고를 제외. 다음 호에 있어서도 마찬가지임)에 관하여 법 제55조의 규정에 의한 통지가 있었을 때

③ 前號에서 언급한 경우외에, 제2종 보험사고가 발생한 것을 기구가 인지했을 때

2. 제13조 제2항, 제3항 및 제4항의 규정은, 前項의 규정에 의해 공고한 지불기간을 변경하는 경우에 있어서 준용한다.

3. 제12조 제2항의 규정은, 제1항에서 규정한 사항을 정한 경우 및 제2항의 규정에 의해 지불기간을 변경한 경우에 있어서 준용한다.

(支拂의 公告 方法)

제20조 기구는 前條 제1항 또는 제2항에 의한 공고를 행하는 경우에는 관보 및 일간신문지에의 게재, 당해 보험사고에 관계된 금융기관 및 보험금의 지불업무를 위탁한 금융기관 등의 店頭에의 게시, 기타 적당하다고 인정되는 방법에 의해 공고하는 것으로 한다.

(支拂의 手續)

제21조 기구는 예금자 등으로부터 보험사고에 관계된 예금 등에 대해서 보험금의 지불청구를 받은 때는, 원칙적으로 다음에서 언급하는 서류를 제출 또는 제시하게 하는 것으로 한다.

① 보험금 지불청구서

② 보험금 지불통지서

③ 예금자 등에 대한 건강보험의 피보험자증, 국민연금수첩 또는 운전면허증, 기타 본인이라는 것을 증명할 만한 서류(외국인에게 있어서는 외국인 등록증명서, 외국인 등록필증명서 또는 여권, 기타 본인이라는 것을 증명할 만한 서류)

④ 기타 필요한 서류

2. 기구는 예금자 등이 질병, 기타 어쩔수 없는 사정에 의해 前項에서 규정한 청구를 할 수 없다고 인정되는 때에 한하여, 예금자 등이 그 배우자, 동거의 친족, 기타 적당하다고 인정되는 자를 대리인으로 정하여 그 대리인이 제1항에서 규정한 청구를 하는 것을 인정하는 것으로 한다. 이 경우에 있어서, 기구는 예금자 등이 작성한 위임장, 그 대리인 자신이라는 것을 증명할 만한 前項 제3호에서 규정한 서류, 기타 기구가 필요하다고 인정하는 사항을 기재한 서류를 제출 또는 제시케 하는 것으로 한다.

3. 기구는 제19조 제1항 또는 제2항의 규정에 의해 공고한 지불기간내에 한하여, 제1항의 지불청구를 받는 것으로 한다. 단, 예금자 등이 그 지불기간내에 청구하지 않았던 것에 대해, 재해 및 기타 어쩔수 없는 사정이 있는 것으로 기구가 인정한 때는 이 제한은 없다.

4. 제1항 제1호에서 언급한 보험금지불청구서 및 同項 제2호에서 언급한 보험금지불통지서 그리고 제2항에서 규정한 위임장의 양식에 있어서는, 기구가 이것을 정하는 것으로 한다.

第5章 債權의 取得과 行使

(債權의 取得)

제22조 기구는, 보험금의 지불을 한 때는 그 지불금액에 상응하여 예금자 등이 금융기관에 대해 가지고 있는 당해 예금 등에 관계된 채권을 취득한다.

2. 기구는, 가불금의 지불을 한 때는 그 지불금액(법 제54조 제5항의 규정에 의해 기구에 지불되어야 할 금액을 제외)에 상응하여 예금자가 금융기관에 대해 가지고 있는 당해지불의 대상이 된 보통예금에 관계되는 채권을 취득한다.

3. 前2項에서 규정한 채권에는, 다음 각호의 1에 해당하는 것으로 당해채권 취득時 현재 권리가 발생하고 있는 것은 포함되지 않는 것으로 한다.

① 이자

② 수익의 분배

③ 정기적금계약에 관계된 급부금의 금액에서 불입금 금액의 합계액을 공제한 금액에 상당한 것

④ 부금계약에 관계된 급부금의 금액에서 부금금액의 합계액을 공제한 금액에 상당한 것

4. 기구는 前3項에서 규정한 채권을 취득했을 때는 그 취지를 당해 금융기관에 통지하는 것으로 한다.

(債權의 행사방법)

제23조 기구는, 前條의 채권을 취득했을 때는 당해 금융기관에 대한 채권자로서 그 채권의 保全 및 행사를 위해 필요하다고 인정되는 조치를 강구하고, 또한 그 채권의 전부 또는 일부에 대하여 회수의 가능성이 있을 때는 회수에 힘쓰는 것으로 한다.

第6章 資金援助 및 損失의 補塡

(구제금융기관에 대한 資金援助)

제24조 기구는 법 제59조 제1항에서 규정한 구제금융기관(이하 「구제금융기관」이라 함)으로부터 자금원조의 신청을 받은 때는 위원회의 의결을 거쳐 당해 구제금융기관에 대해 다음의 각호에 응하여, 원칙적으로 다음 각호에서 언급하는 자금원조를

행하는 것으로 한다.

① 법 제59조 제3항 제1호에서 규정한 합병 또는 법 제59조 제3항 제3호에서 규정한 破綻金融機關 주식의 다른 금융기관에 의한 취득, 금전의 증여, 자금의 대부 또는 예입 또는 자산의 매입

② 법 제59조 제3항 제2호에서 규정한 영업양도 등 금전의 증여, 자금의 대부 또는 예입, 자산의 매입 또는 채무의 보증 또는 인수

2. 기구는 前項의 규정에 의해 구제금융기관에 대해 자금의 대부 또는 예금을 하려고 할 때는, 금융기관의 대부금리, 예금금리, 기타 조건의 동향을 감안한 당해 대부 또는 예입에 관계된 이율, 기타 조건을 정하는 것으로 하고, 필요에 따라 담보를 징구하는 것으로 한다.

3. 제1항의 규정에 의해 행하는 자산의 매입은, 원칙적으로 破綻金融機關의 자산 중 회수가 불가능하거나 곤란하다고 인정되거나 또는 가치가 현저하게 저하되고 있다고 인정되는 자산으로, 자산원조의 대상으로 하는 것이 적당하다고 인정되는 것에 대하여 행하는 것으로 한다.

4. 채무의 보증 또는 인수는 원칙적으로 영업양도 등에 따라 구제금융기관이 破綻金融機關으로부터 승계한 자산의 금액과 부채의 금액과의 차액의 지불에 있어서 破綻金融機關이 구제금융기관에 대하여 채무를 지는 경우에 당해채무에 대하여 행한다.

5. 기구가 제1항의 규정에 의해 구제금융기관에 대해 자금원조를 이행하는 시기는, 합병 또는 영업양도 등에 있어서는 합병 또는 영업양도 등을 행하는 日이후의 日로 하고, 破綻金融機關 주식의 당해 구제금융기관에 의한 취득에 있어서는 破綻金融機關의 주식을 당해 구제금융기관이 취득한 날 이후의 날로 한다.

(지정금융기관 등에 대한 資金援助)

제25조 기구는, 법 제60조에서 규정한 대장대신이 지정한 금융기관 등(이하, 「지정금융기관 등」이라 함)으로부터 법 제60조 제1항에서 규정한 자금원조의 신청을 받았을 때는 위원회의 의결을 거쳐 자금원조(금전의 증여, 자산의 매입 및 채무의 인수를 제외)를 행하는 것으로 한다.

2. 前條 제2항 및 제5항의 규정은, 지정금융기관 등에 대해 행하는 자금의 대부 또는 예입에 있어서 준용한다.
3. 지정금융기관 등에 대하여 행하는 채무의 보증은, 당해 지정금융기관 등이 구제금융기관에 대해 자금의 대부 또는 예입을 행하기 위해 다른 금융기관 등으로부터 자금 차입을 하는 경우의 채무에 대해서 행하는 것으로 한다.
4. 前條 제5항의 규정은, 지정금융기관 등에 대해 행하는 채무의 보증에 있어서 준용한다.

(資金援助의 金額)

제26조 기구의 자금원조 금액은 원칙적으로 다음 각호에서 언급한 것에 충당 또는 보전하기 위해 요하는 금액의 범위 내에서, 합병 등을 원조하기 위해 최소한 필요하다고 인정되는 금액으로 한다.

① 破綻金融機關의 자산 중 회수가 불가능 또는 현저히 곤란하다고 인정되거나 또는 가치가 현저히 저하되고 있다고 인정되는 자산으로, 자금원조의 대상으로 하는 것이 적당하다고 인정되는 것의 금액

② 구제금융기관이 파탄금융기관의 자산을 취득하고 보증하는 것 등에 의해, 각 영업연도에 있어서 손실이 있을 것으로 예상되는 수익액에 대한 자금원조를 행할 시점에 있어서의 평가액의 합계액

③ 파탄금융기관의 부채금액이 자산액을 초과하고 있는 경우에 있어서 그 초과 금액(파탄금융기관의 자산액이 부채액을 초과하고 있는 경우는 그 초과금액을 前2號에 의해 계산된 금액의 합계액에서 공제한 금액)

(資金援助의 決定)

제27조 기구는 제24조 제1항 및 제25조 제1항에서 규정한 자금원조의 신청을 받았을 때는, 지체없이 위원회의 의결을 거쳐 당해 신청을 행한 금융기관 등에 대해 자금원조의 可否 및 자금원조의 금액, 기타 자금원조를 행하는 데 필요하다고 인정되는 사항을 결정하는 것으로 한다.

2. 기구는 필요하다고 인정될 때는, 구제금융기관 또는 지정금융기관 등에 대해 당해 자금원조의 可否를 결정하기 위해 참고가 되어야 할 사항에 대해 설명을 요구하는 것으로 한다.
3. 기구는 제1항의 규정에 의해 결정을 한 때는 즉시 그 결정에 관한 사항을 대장대신에게 보고하는 것으로 한다.

(資金援助에 관한 契約의 締結)

제28조 기구는 前條 제1항의 규정에 의해 자금원조를 한다는 취지의 결정을 한 때는, 당해 신청을 행한 금융기관 등과 자금원조에 관한 계약을 체결하는 것으로 한다.

(긴급성의 인정에 관계된 合併 또는 營業讓渡 등이 효력을 상실함으로써 발생된 손실의 보전)

제29조 기구는 법 제79조 제2항 또는 제4항의 규정에 의해 긴급성의 인정에 관계된 합병 또는 영업양도 등이 효력을 상실한 때는 이것에 의해 구제금융기관이 입은 다음 각호에서 언급한 손실, 기타의 손실을 그 청구에 기초하여 보전하는 것으로 한다.

① 합병 또는 영업양도 등의 時에 있어서 破綻金融機關이 부담하고 있던 채무의 금액이 법 제79조 제1항의 규정에 의해 공고가 될 때까지의 기간에 감소한 때는, 그 감소한 금액(법 제79조 제5항에서 규정한 채권 중 회수된 채권의 금액은 공제)

② 등기, 공고, 주식총회 등의 소집, 기타 합병 또는 영업양도 등에 관계된 법정수속에서 요하는 비용

第7章　業務委託

(業務의 委託)

제30조　기구는 대장대신의 인가를 받아서, 일본은행 또는 금융기관 등에 대해 그 업무 중 다음 각호에서 언급하는 것을 위탁할 수 있다.

① 보험료 납부의 취급 및 이에 부수하는 업무

② 보험금의 금액 산정, 보험금의 지불 및 이에 부수하는 업무

③ 기구가 매입한 자산의 처분(채권의 회수를 포함) 및 이에 부수하는 업무

④ 기타 기구가 위탁할 필요가 있다고 인정하는 업무

2. 기구는 前項 각호에서 언급한 업무의 위탁을 행할 때는, 위탁할 업무의 종류 및 내용, 위탁기간, 기타 필요하다고 인정되는 사항을 정하여 업무위탁계약을 체결하는 것으로 한다.

3. 기구는 기구가 업무를 위탁한 일본은행 또는 금융기관 등에 대하여, 필요에 따라 위탁수수료(實費를 포함)를 지불한다.

第8章　雜則(기타규칙)

(資料徵求)

제31조　기구는 그 업무를 행하는 데 필요할 때는, 금융기관에 대해 자료의 제출을 요구할 수 있다.

2. 기구는 그 업무를 행하기 위하여 특히 필요하다고 인정될 때는 국가, 都道府縣 또는 일본은행에 자료의 교부 또는 열람을 요청한다.

(세칙)

제32조　기구는, 이 업무방법서에서 정한 것 외에, 그 업무의 운영에 있어서 필요할 때는 세칙을 정한다.

○ 預金保險法에 기초하여 대장대신이 지정할 金融機關 등을 정하는 件

최종개정 平5(1993년). 5. 20 대장告 111

주식회사 京葉은행

전국신용금고연합회

전국신용협동조합연합회

노동금고연합회

○ 預金保險法施行規則에 기초하여, 대장대신이 특별히 지정할 銀行을 정하는 件

최종개정 平5(1993년). 9. 3 대장告 181

주식회사 북해도拓殖銀行

주식회사 아사히은행

주식회사 사쿠라은행

주식회사 第1勸業은행

주식회사 富士은행

주식회사 三菱은행

주식회사 동해은행

주식회사 삼화은행

주식회사 住友은행

주식회사 대화은행

중앙신탁은행주식회사

동양신탁은행주식회사

일본신탁은행주식회사

三井신탁은행주식회사

三菱신탁은행주식회사

安田신탁은행주식회사

住友신탁은행주식회사

クレデイ(크레디) スイス(스위스)신탁은행주식회사

ケミカル(케미컬) 신탁은행주식회사

シティ(시티) トラスト(트러스트) 신탁은행 주식회사

スイス(스위스) ユニオン(유니온) 신탁은행주식회사

ステート(스테이트) ストリート(스트리트) 신탁은행주식회사

チェース(체스) マンハッタン(맨하탄) 신탁은행주식회사

일본バンカース(뱅커스) トラスト(트러스트) 신탁은행주식회사

バークレイズ(백레이즈)신탁은행주식회사

モルガン(모르강)신탁은행주식회사

대화インターナショナル(인터내셔날)신탁은행주식회사

동경신탁은행주식회사

日興신탁은행주식회사

野村신탁은행주식회사

山一신탁은행주식회사

주식회사 横浜은행

주식회사 靜岡은행

주식회사 北陸은행

○ 破綻金融機關 株式의 다른 金融機關에 의한 取得으로 당해 破綻金融機關 業務의 健全하고 適切한 運營을 確保하기 위해 必要한 事項으로 대장대신이 정하는 件

① 破綻金融機關의 경영체제의 정비

② 破綻金融機關의 재건계획의 책정

○ 農水産業協同組合貯金保險法

최종개정 平4(1992년). 6. 26 법87

第1章 總則

(目的)

제1조 농수산업협동조합저금보험은 농수산업협동조합의 저금자 등의 보호를 도모하기 위해, 농수산업협동조합이 저금 등의 지불을 정지한 경우에 필요한 보험금 등의 지불을 행하는 외에, 경영곤란 농수산업협동조합에 관계된 합병 등에 대해 적절한 자금원조를 행하여 신용질서의 유지에 기여하는 것을 목적으로 한다.

(定義)

제2조 이 법률에 있어서 「농수산업협동조합」이라는 것은 다음에서 언급하는 자를 말한다.

① 농업협동조합법(昭和 22년 법률 제132호) 제10조 제1항 제2호의 사업을 행하는 농업협동조합

② 수산업협동조합법(昭和 23년 법률 제242호) 제11조 제1항 제2호의 사업을 행하는 어업협동조합

③ 수산업협동조합법 제93조 제1항 제2호의 사업을 행하는 수산가공업협동조합

2. 이 법률에 있어서 「저금 등」이라는 것은 저금 및 정기적금을 말한다.

3. 이 법률에 있어서 「저금자 등」이라는 것은 저금 등에 관계된 채권자를 말한다.

4. 이 법률에 있어서 「신용사업」이라는 것은 농수산업협동조합이 행하는 다음에서 언급하는 사업을 말한다.

① 농업협동조합법 제10조 제1항 제1호 및 제2호의 사업(이들 사업에 附帶하는 사업을 포함) 및 同條 제6항에서부터 제9항까지의 사업

② 수산업협동조합법 제11조 제1항 제1호 및 제2호의 사업(이들 사업에 附帶하는 사업을 포함) 및 同條 제3항 및 제4항의 사업

③ 수산업협동조합법 제93조 제1항 제1호 및 제2호의 사업(이들 사업에 附帶하는 사업을 포함) 및 同條 제2항 및 제3항의 사업

5. 이 법률에 있어서 「경영곤란 농수산업협동조합」이라는 것은 업무 또는 재산의 상황에 비추어 저금 등의 지불을 정지할 염려가 있거나 또는 저금 등의 지불을 정지한 농수산업협동조합(주로 신용사업에 관계된 업무 때문에 경영이 곤란하게 됨으로써 이들 사태에 이르게 된 것에 한함)을 말한다.

6. 이 법률에 있어서 「농수산업협동조합연합회」라는 것은 다음에서 언급하는 자를 말한다.

① 농업협동조합법 제10조 제1항 제1호 및 제2호의 사업을 겸하여 행하는 농업협동조합연합회

② 수산업협동조합법 제87조 제1항 제1호 및 제2호의 사업을 겸하여 행하는 어업협동조합연합회

③ 수산업협동조합법 제97조 제1항 제1호 및 제2호의 사업을 겸하여 행하는 수산가공업협동조합연합회

第2章 農水産業協同組合貯金保險機構

第1節 總則

(法人格)

제3조 농수산업협동조합저금보험기구(이하 「기구」라 함)는 법인으로 한다.

(數)

제4조 기구는 하나만 설립되는 것으로 한다.

(資本金)

제5조 기구의 자본금은 그 설립시, 정부 및 농림중앙금고, 기타 정부이외의 者가 출자한 금액의 합계액으로 한다.

2. 기구는 필요할 때는, 主務大臣의 인가를 받아서 그 자본금을 증가시킬 수 있다.

3. 농림중앙금고는 농림중앙금고법(大正 12년 법률 제42호) 제16조의 규정에 상관없이 기구에 출자할 수 있다.

(名稱)

제6조 기구는 그 명칭 중에 농수산업협동조합저금보험기구라는 문자를 사용하지 않으면 안된다.

2. 기구가 아닌 자는 그 명칭 중에 농수산업협동조합저금보험기구라는 문자를 사용해서는 안된다.

(登記)

제7조 기구는 政令에서 정한 바에 의하여 등기하지 않으면 안된다.

2. 前項의 규정에 의해 등기하지 않으면 안되는 사항은 등기 후가 아니면 이것으로 제3자에게 대항할 수 없다.

(民法의 準用)

제8조 민법(明治 29년 법률 제89호) 제44조 및 제50조의 규정은, 기구에 있어서 준용한다.

第2節 設立

(發起人)

제9조 기구를 설립하는 데는 농업 또는 수산업 및 금융에 관하여 전문적인 지식과 경험을 가진 자 7인 이상이 발기인이 되는 것을 필요로 한다

(定款의 作成 등)

제10조 발기인은 조속히 기구의 정관을 작성하여 정부이외의 자에 대해 기구에 대한 출자를 모집하지 않으면 안된다.

2. 前項의 정관에는, 다음 사항을 기재하지 않으면 안된다.

① 목적

② 명칭

③ 사무소의 소재지

④ 자본금 및 출자에 관한 사항

⑤ 운영위원회에 관한 사항

⑥ 역원에 관한 사항

⑦ 업무 및 그 집행에 관한 사항

⑧ 재무 및 회계에 관한 사항

⑨ 정관의 변경에 관한 사항

⑩ 공고의 방법

(設立의 認可)

제11조 발기인은 前條 제1항의 모집이 종결된 때는, 조속히 정관을 주무대신에게 제출하고, 설립의 인가를 신청하지 않으면 안된다.

(事務의 引受)

제12조 발기인은 前條의 인가를 받은 때는 지체없이 그 사무를 기구의 이사장이 될 者에게 인수하지 않으면 안된다

2. 기구의 이사장이 될 者는 前項의 규정에 의한 사무의 인수를 받은 때는, 지체없이 정부 및 출자의 모집에 응한 정부이외의 자에 대해 출자금의 불입을 요구하지 않으면 안된다.

(設立의 登記)

제13조 기구의 이사장이 될 者는, 前條 제2항의 규정에 의한 출자금의 불입이 있었던 때는 지체없이 政令에서 정하는 바에 의해 설립의 등기를 하지 않으면 안된다.

2. 기구는 설립의 등기를 함으로써 성립한다.

第3節 運營委員會

(設置)

제14조 기구에 운영위원회(기타 「위원회」라 함)를 둔다

(權限)

제15조 다음 장에서 규정하는 것 외에 다음에서 언급하는 사항은 위원회의 의결을 거쳐야 한다.

① 정관의 변경

② 업무방법서의 작성 및 변경

③ 예산 및 자금계획

④ 결산

⑤ 기타 위원회가 특히 필요하다고 인정하는 사항

(組織)

제16조 위원회는 위원 7인 이내 및 기구의 이사장 및 이사로 조직된다.

2. 위원회에 위원장 1인을 두고, 기구의 이사장으로 충당한다.

3. 위원장은, 위원회의 會務를 總理한다.

4. 위원회는 사전에 위원 및 기구의 이사 중에서 위원장에 사고가 있을 경우에 위원장의 직무를 대리할 者를 정하여 두지 않으면 안된다.

(委員의 任命)

제17조 위원은 농업 또는 산업 및 금융에 관한 전문적인 지식과 경험을 가진 자 중에서 기구의 이사장이 주무대신의 인가를 받아서 임명한다.

(委員의 任期)

제18조 위원의 임기는 1년으로 한다. 단, 위원이 빠진 경우에 있어서 보결위원의 임기는 전임자의 잔여기간으로 한다.

2. 위원은 재임될 수 있다.

(委員의 解任)

제19조 기구의 이사장은, 위원이 다음 각호 중 1에 해당할 때는 주무대신의 인가를 받아서 그 위원을 해임할 수 있다.

① 파산의 선고를 받았을 때

② 금고 이상의 형에 처해졌을 때

③ 심신의 故障으로 직무를 집행할 수 없다고 인정될 때

④ 직무상의 의무위반이 있을 때

(委員의 報酬)

제20조 위원은 보수를 받지 않는다. 단, 여비, 기타 직무의 수행에 따르는 實費를 받는 것으로 한다.

(議決의 方法)

제21조 위원회는 위원장 또는 제16조 제4항에서 규정한 위원장의 직무를 대리하는 者외에, 위원 및 기구의 이사 중 4인 이상이 출석하지 않으면 회의를 개최하여 의결을 할 수 없다.

2. 위원회의 議事는 출석한 위원장, 위원 및 기구의 이사 중 과반수로서 결정된다. 가부동수의 경우는 위원장이 결정한다.

3. 주무대신이 지명한 직원은 제1항의 회의에 출석하여 의견을 말할 수 있다.

(委員의 秘密保障義務)

제22조 위원은 그 직무상 알고 있는 비밀을 누설해서는 안된다. 위원이 그 職을 물러난 후에도 마찬가지이다.

(委員의 公務員 性質)

제23조 위원은, 형법(明治40년 법률 제45호), 기타 벌칙의 적용에 대해서는 법령에 의해 공무에 따라 일하는 직원으로 간주한다.

第4節 役員(임원) 等

(役員(임원))

제24조 기구에 역원으로서 이사장 1인, 이사 1인, 및 감사 1인을 둔다.

(役員(임원)의 職務 및 權限)

제25조 이사장은 기구를 대표하여 그 업무를 總理한다.

2. 이사는 기구를 대표하여 이사장이 정한 바에 따라 이사장을 보좌하고 기구의 업무를 맡아서 처리하고, 이사장에게 사고가 있을 때는 그 직무를 대리하며 이사장이 결원될 때는 그 직무를 행한다.

3. 감사는 기구의 업무를 감사한다.

(役員(임원)의 任命)

제26조 이사장 및 감사는 주무대신이 임명한다.

2. 이사는 이사장이 주무대신의 인가를 받아서 임명한다.

(役員(임원)의 任期)

제27조 이사장의 임기는 3년으로 하고, 이사 및 감사의 임기는 2년으로 한다.

2. 역원은 재임될 수 있다.

(役員(임원)의 缺格條項)

제28조 정부 또는 지방공공단체의 직원(비상근의 자는 제외)은 역원이 될 수 없다.

(役員(임원)의 解任)

재29조 주무대신 또는 이사장은 각각의 임명에 관계된 역원이 前條의 규정에 해당할 때는 그 역원을 해임하지 않으면 안된다.

2. 주무대신 또는 이사장은 각각의 임명에 관계된 역원이 제19조 각호의 1에 해당할 때, 기타 역원다움에 적절하지 않다고 인정될 때는 제26조 규정의 例에 의해 그 역원을 해임할 수 있다.

(役員(임원)의 兼職禁止)

제30조 역원은 영리를 목적으로 하는 단체의 역원이 되거나 또는 자신의 영리사업에 종사해서는 안된다. 단, 주무대신의 승인을 받은 때는 이 제한을 받지 않는다.

(代表權의 制限)

제31조 기구와 이사장 또는 이사 사이에 이익이 상반되는 사항에 대해서는, 이들은 대표권을 가지지 않는다. 이 경우에는 감사가 기구를 대표한다.

(職員의 任命)

제32조 기구의 직원은 이사장이 임명한다.

(役員(임원) 등의 秘密保障義務 등)

제33조 제22조 및 제23조의 규정은 역원 및 직원에 있어서 준용한다.

第5節 業務

(業務의 範圍)

제34조 기구는 제1조의 목적을 달성하기 위해 다음 업무를 행한다.

① 다음장 제2절의 규정에 의한 보험료의 수납

② 다음장 제3절의 규정에 의한 보험금 및 가불금의 지불

③ 다음장 제4절의 규정에 의한 자금원조

④ 前3號에서 언급한 업무에 부수하는 업무

(業務의 委託)

제35조 기구는 주무대신의 인가를 받아서 농수산업협동조합 및 기타의 금융기관에 대해 그 업무 중 일부를 위탁할 수 있다.

2. 농수산업협동조합 기타의 금융기관은 기타 법률의 규정에 상관없이 前項의 규정에 의한 위탁을 받아서 당해 업무를 행할 수 있다.

3. 제23조의 규정은 제1항의 규정에 의한 위탁을 받은 농수산업협동조합, 기타의 금융기관의 역원 또는 직원으로 당해업무에 종사하는 자에 대하여 준용한다.

(業務方法書)

제36조 기구는 업무개시에 즈음하여, 업무방법서를 작성하여 주무대신의 인가를 받지 않으면 안된다. 이를 변경하고자 할 때도 마찬가지이다.

2. 前項의 업무방법서에는 보험료에 관한 사항, 기타 주무성令으로 정한 사항을 기재하지 않으면 안된다.

(資料의 提出의 請求 등)

제37조 기구는 그 업무를 행하기 위해 필요할 때는 농수산업협동조합에 대해 자료의 제출을 요구할 수 있다.

2. 前項의 규정에 의해 자료의 제출을 요구받은 농수산업협동조합은 지체없이 이를 제출하지 않으면 안된다.

3. 국가 또는 都道府縣은 기구가 그 업무를 행하기 위해 특히 필요하다고 인정되는 요청을 할 때는 기구에 대해 자료를 교부하거나 또는 이를 열람하게 할 수 있다.

第6節 財務 및 會計

(事業年度)

제38조 기구의 사업연도는 매년 4월 1일에 시작하고 翌年 3월 31일에 종료된다.

(豫算 등의 認可)

제39조 기구는 매사업연도, 예산 및 자금계획을 작성하고 당해사업연도의 개시전에 주무대신의 인가를 받지 않으면 안된다. 이를 변경하고자 할 때도 마찬가지이다.

(財務諸表)

제40조 기구는 매사업연도, 재산목록, 대차대조표 및 손익계산서(이하 「재무제표」라 함)를 작성하여 당해사업연도의 종료 후 二月 이내에 주무대신에게 제출하지 않으면 안된다.

2. 기구는 前項의 규정에 의해 재무제표를 주무대신에게 제출할 때는, 이것에 예산의 구분에 따라 작성한 당해 사업연도의 결산보고서 및 재무제표 및 결산보고서에 관한 감사의 의견서를 첨부하지 않으면 안된다.

(責任準備金의 積立)

제41조 기구는 주무성令으로 정한 바에 의해 매사업연도말에 책임준비금을 계산하여 이를 적립하지 않으면 안된다.

(借入金)

제42조 기구는 제34조 제2호 또는 제3호에서 언급한 업무를 행하는 데 필요하다고 인정될 때는 政令으로 정한 금액의 범위 내에서 주무대신의 인가를 받아 농림중앙금고 또는 일본은행으로부터 자금의 차입을 할 수 있다.

2. 농림중앙금고 및 일본은행은, 농림중앙금고에 있어서는 농림중앙금고법 제16조의, 일본은행에 있어서는 일본은행법(昭和 17년 법률 제67호) 제27조의 규정에 관계없이 기구에 대해 前項의 자금의 대부를 할 수 있다.

(余裕金의 運用)

제43조 기구는 다음의 방법 이외의 방법으로 업무상의 여유금을 운용해서는 안된다.

① 국채, 기타 주무대신이 지정한 유가증권의 보유

② 주무대신이 지정한 금융기관에의 예금

③ 기타 주무성령으로 정한 방법

(主務省令에의 위임)

제44조 이 법률에서 규정한 것 외에, 기구의 재무 및 회계에 관하여 필요한 사항은 주무성령으로 정한다.

第7節 監督

(監督)

제45조 기구는 주무대신이 감독한다.

2. 주무대신은 이 법률을 시행하기 위해 필요하다고 인정될 때는 기구에 대해 그 업무에 관하여 감독상 필요한 명령을 할 수 있다.

(報告 및 檢査)

제46조 주무대신은 이 법률을 시행하는 데 필요하다고 인정될 때는, 기구 또는 제35

조 제1항의 규정에 의한 위탁을 받은 자(이하 「수탁자」라 함)에 대해 그 업무에 관하여 보고를 시키거나 또는 그 직원에게 기구 또는 수탁자의 사무소에 출입하여 장부, 서류, 기타 물건을 검사시킬 수 있다. 단, 수탁자에 대해서는 당해수탁업무의 범위 내에 한한다.

2. 前項의 규정에 의해 직원이 출입검사를 하는 경우에는 그 신분을 알려주는 증명서를 휴대하여 관계인에게 이것을 제시하지 않으면 안된다.

3. 제1항의 규정에 의한 출입검사의 권한은, 범죄수사를 위해 인정된 것으로 해석해서는 안된다.

第8節 補則

(定款의 變更)

제47조 정관의 변경은 주무대신의 인가를 받지 않으면 그 효력이 없다.

(解散)

제48조 기구는 해산한 경우에 있어서, 그 채무를 변제하고 남은 잔여재산이 있을 때는 이것을 각 출자자에 대해 그 출자액을 한도로 분배하는 것으로 한다.

2. 前項에서 규정한 것 외에 기구의 해산에 대해서는 별도로 법률로 정한다.

第3章 農水産業協同組合貯金保險

第1節 保險關係

(保險關係)

제49조 농수산업협동조합이 농업협동조합법 제10조 제1항 제2호 또는 수산업협동조

합법 제11조 제1항 제2호 또는 제93조 제1항 제2호의 사업을 행할 때는, 당해 농수산업협동조합이 저금 등에 관계된 채무를 부담함으로써 각 저금자 등마다 일정 금액의 범위 내에서 당해 저금 등의 지불에 대해, 기구와 당해 농수산업협동조합 및 저금자 등과의 사이에 보험관계가 성립하는 것으로 한다.

2. 前項의 보험관계에 있어서는, 저금 등의 금액을 보험금액으로 하고 다음에서 언급하는 것을 보험사고로 한다.

① 농수산업협동조합의 저금 등의 지불 정지(이하 「제1종보험사고」라 함)

② 농수산업협동조합의 해산 의결에 관한 인가(농업협동조합에 있어서는 농업협동조합법 제64조 제4항에서 규정한 해산의 사유에 관계된 인가를 포함. 이하 同), 파산의 선고, 해산의 명령 또는 同條 제5항 또는 수산업협동조합법 제68조 제4항(同法 제96조 제5항에 있어서 준용하는 경우를 포함)에서 규정하는 해산의 사유의 발생(이하 「제2종 보험사고」라 함)

第2節 保險料의 納付

(保險料의 納付)

제50조 농수산업협동조합은 매년 그 해의 6월 30일까지 기구에 대해 주무성令으로 정한 서류를 제출하고, 보험료를 납부하지 않으면 안된다.

2. 기구는 다음 각호에서 언급하는 경우에는 前項의 규정에 상관없이, 정관으로 정한 바에 의해 당해 각호에서 정한 농수산업협동조합의 보험료를 면제할 수 있다.

① 보험사고가 발생한 때, 당해 보험사고에 관계된 농수산업협동조합

② 제66조 제1항에서 규정한 적격성의 인정 등이 행해진 때, 당해 적격성의 인정 등에 관계된 경영곤란 농수산업협동조합

(保險料의 金額)

제51조 보험료의 금액은, 각 농수산업협동조합에 대해, 당해 보험료를 납부해야 할 日이 속하는 연도의 3월 31일에 있어서 저금 등(지방공공단체로부터 수납한 저금,

기타의 政令으로 정한 저금 등을 제외)의 금액의 합계액에 기구가 위원회의 의결을 거쳐 정한 율(이하 「보험료율」이라 함)을 곱하여 계산한 금액으로 한다.

2. 보험료율은 보험금의 지불, 자금원조, 기타 기구의 업무에서 요하는 비용의 예상액에 비추어 장기적으로 기구의 재정이 균형을 이루도록, 또한 특정 농수산업협동조합에 대해 차별적 취급을 하지 않도록 정해지지 않으면 안된다.
3. 기구는 제42조 제1항의 규정에 의한 자금의 차입을 한 경우에 있어서, 그 차입금을 조속히 반제하는 것이 곤란하다고 인정될 때는 위원회의 의결을 거쳐 보험료율을 변경하는 것으로 한다.
4. 기구는 보험료율을 정하거나 도는 이것을 변경하려고 할 때는 주무대신의 인가를 받지 않으면 안된다.
5. 기구는 前項의 인가를 받은 때는 지체없이 그 인가에 관계된 보험료율을 공고하지 않으면 안된다.

(督促 및 滯納處分)

제52조 기구는 보험료를 체납한 농수산업협동조합이 있는 경우에는 독촉장에 의해, 기한을 지정하고, 이것을 독촉할 수 있다.

2. 前項의 독촉장에 의해 지정한 기한은 독촉장을 발행한 日로부터 起算하여 10일 이상을 경과한 日로 하지 않으면 안된다.
3. 기구는 제1항의 규정에 의한 독촉을 한 경우에 있어서, 그 독촉을 받은 농수산업협동조합이 독촉장에서 지정한 기한까지 체납에 관계된 보험료 및 이것에 관계된 다음 조 제1항의 연체금을 완납하지 않을 때는 당해 농수산업협동조합의 주소 또는 재산이 있는 市町村(특별구를 제외. 이하 同)에 대하여 그 징수를 청구할 수 있다.
4. 市町村은 前項의 규정에 의한 청구를 받은 때는 市町村稅의 체납처분의 예에 따라 이것을 처분할 수 있다. 이 경우에 있어서는, 기구는 징수금액의 100분의 4에 상당하는 금액을 당해 市町村에 교부하지 않으면 안된다.
5. 市町村이 제3항의 규정에 의한 청구를 받은 날로부터 30일 이내에 그 처분에 착수하지 않거나 또는 90일 이내에 이것을 완료하지 않을 때는, 기구는 주무대신의 인

가를 받아서 국세체납처분의 예에 따라 이것을 처분할 수 있다.

(延滯金)

제53조 기구는 前條 제1항의 규정에 의한 독촉을 한 때는, 보험료의 금액에 대해 연 14.5%의 비율로, 납부기한의 翌日부터 보험료 완납 또는 재산차압일 前日까지의 日數에 의해 계산한 연체금을 징수한다.

2. 前項의 경우에 있어서, 보험료의 금액의 일부에 대해 납부가 있었을 때는, 그 납부일 이후의 기간에 관계된 연체금 계산의 기초가 되는 보험료의 금액은 그 납부가 있었던 보험료 금액을 공제한 금액이 된다.

(先取特權)

제54조 제52조 제4항 및 제5항의 규정에 의한 징수금의 선취특권의 순위는 국세 및 지방세의 다음 순위로 한다.

第3節 保險金等의 支拂

(保險金 등의 支拂)

제55조 기구는 보험사고가 발생한 때는, 당해 보험사고에 관계된 저금자 등에 대해 그 청구에 기초하여 보험금의 지불을 하는 것으로 한다. 단, 제1종보험사고에 대해서는 기구가 제58조 제1항의 규정에 의해 보험금을 지불한다는 취지의 결정을 하는 것을 요건으로 한다.

2. 前項에서 규정한 보험사고에는, 당해 보험사고가 발생한 농수산업협동조합에 대해, 그 발생한 후 (同項 단서의 규정이 적용되는 경우에는, 기구가 同項 단서의 결정을 한 후)에 당해보험사고에 관련한 다른 보험사고가 발생한 경우에 있어서 당해 다른 보험사고(「이하 「관련보험사고」라 함)를 포함하지 않는 것으로 한다.

3. 기구는 보험사고가 발생한 때는, 당해보험사고에 관계된 저금자 등에 대해, 그 청구에 기초하여 政令으로 정한 금액의 범위내에서 政令으로 정한 바에 의해 가불금

의 지불을 할 수 있다.

4. 제1항 또는 前項의 청구는 제59조 제1항, 제2항 또는 제4항의 규정에 의해 공고한 지불기간 내에서 하지 않으면 할 수 없다. 단, 그 지불기간내에 청구하지 않았던 것에 대해 재해, 기타 어쩔 수 없는 사정이 있었다고 기구가 인정할 때는 이 제한은 없다.

(保險金의 金額 등)

제56조 보험금의 금액은, 하나의 보험사고가 발생한 수산업협동조합의 각 저금자 등에 대해 그 발생 日 현재 그 자가 당해 농수산업협동조합에 대해 가지고 있는 저금 등(지방공공단체로부터 수납한 저금, 기타 政令으로 정한 저금 등은 제외)에 관계된 채권 중 원본의 금액(그 금액이 동일인에 대하여 2이상인 경우에는 그 합계액)으로, 前條 제1항의 청구가 있었던 것에 상당한 금액으로 한다.

2. 보험사고에 관계된 저금자 등이 다음 각호에 해당하는 경우에 있어서 그 자의 보험금 금액은 前項의 규정에 상관없이 同項의 규정에 의한 금액에서 당해 각호에서 언급한 금액을 공제한 금액에 상당한 금액으로 한다.

① 당해 농수산업협동조합에 대해 채무를 지고 있을 때, 그 채무의 금액

② 당해 농수산업협동조합에 대해 제3자를 위하여 그 저금 등의 전부 또는 일부를 담보로 제공하고 있을 때, 그 담보로 제공하고 있는 저금 등의 금액

3. 前2항의 규정에 의한 보험금의 금액이 政令으로 정한 금액을 초과한 때는 그 금액을 당해 보험금의 금액으로 한다.

4. 보험사고에 관계된 저금자 등이 당해 보험사고에 대해 前條 제3항의 가불금의 지불을 받은 경우에 있어서 그 자의 보험금의 금액은 前3항의 규정에 상관없이 이들의 규정에 의한 금액에서 당해 가불금의 지불을 받은 금액을 공제한 금액에 상당한 금액으로 한다.

5. 보험사고에 있어서 보험금의 지불이 행해진 경우에, 당해보험사고에 관계된 저금자 등에 대하여 지불된 前條 제3항의 가불금의 금액이 제1항에서 제3항까지의 규정에 의해 지불되어야 할 보험금의 금액을 초과한 때는 그 자는 그 초과 금액을 기구에

되돌려 주지 않으면 안된다.

(保險事故의 通知)

제57조 농수산업협동조합은, 당해 농수산업협동조합에 관계된 보험사고가 발생한 때는 즉시 그 취지를 기구에 통지하지 않으면 안된다.

2. 기구는 前項의 규정에 의한 통지를 받은 경우에 있어서, 당해 통지에 관계된 보험사고가 제1종보험사고인 때는 즉시 그 취지를 주무대신(당해통지가 都道府縣 지사의 감독에 관계된 농수산업협동조합에 관한 것인 때는 주무대신 및 당해 都道府縣 지사)에게 통지하지 않으면 안된다.

3. 주무대신 또는 都道府縣 지사는 다음에서 언급한 경우에는 즉시 그 취지를 기구에 통지하지 않으면 안된다.

① 그 감독에 관계된 농수산업협동조합에 대해, 해산의 의결에 관계된 인가를 하거나 또는 해산의 명령을 한 때.

② 그 감독에 관계된 농수산업협동조합으로부터 농업협동조합법 제64조 제5항 후단 또는 수산업협동조합법 제68조 제5항(同法 제96조 제5항에 있어서 준용하는 경우를 포함)의 규정에 의한 계출을 받은 때.

③ 재판소로부터 파산법(大正 11년 법률 제71호) 제125조 제1항의 규정에 의한 통지를 받은 때.

(支拂의 決定)

제58조 기구는 다음 각호에서 언급하는 경우에는, 당해 각호에서 언급하는 日로부터 一月 이내에 위원회의 의결을 거쳐 당해 각호의 보험사고에 대해 보험금의 지불여부를 결정하지 않으면 안된다.

① 제1종보험사고에 관하여 前條 제1항의 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

② 前號에서 언급한 경우외에, 제1종보험사고가 발생한 것을 기구가 인지했을 때, 그 인지한 날

③ 제1종보험사고가 발생한 농수산업협동조합을 일부의 당사자로 하는 합병에 관계된 제67조 제1항의 결의 또는 찬성이 있었다는 취지의 同項 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

④ 前號에서 언급한 경우 외에, 제1종보험사고가 발생한 농수산업협동조합을 일부의 당사자로 하는 합병에 관계된 제67조 제1항의 결의 또는 찬성이 있었던 것을 기구가 알았을 때, 그 안 날

2. 주무대신은, 기구가 위원회의 의결을 거쳐 前項의 기한연장을 신청한 경우에는 一月을 초과하지 않는 기간에 한하여 同項의 기한을 연장할 수 있다.

3. 기구는 다음 각호에서 언급하는 경우에는, 당해 각호에서 언급한 日로부터 일주일 이내에 위원회의 의결을 거쳐 당해 각호의 보험사고에 대해 제55조 제3항의 가불금의 지불여부를 결정하지 않으면 안된다.

① 보험사고에 관하여 前條 제1항 또는 제3항의 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

② 前號에서 언급한 경우외에, 보험사고가 발생한 것을 기구가 알았을 때, 그 안 날

③ 제1종 보험사고가 발생한 농수산업협동조합을 일부의 당사자로 하는 합병에 관계되는 제67조 제1항의 결의 또는 찬성이 있었다는 취지의 同項의 규정에 의한 통지가 있었을 때, 그 통지가 있었던 날

④ 前號에서 언급한 경우외에, 제1종보험사고가 발생한 농수산업협동조합을 일부의 당사자로 하는 합병에 관계된 제67조 제1항의 결의 또는 찬성이 얻어졌던 것을 기구가 알았을 때, 그 안 날.

4. 기구는 제1항 또는 前項의 규정에 의한 결정을 한 때는, 즉시 그 결정에 관계된 사항을 주무대신(당해결정이 都道府縣 지사의 감독에 관계된 농수산업협동조합에 관한 것일 때는, 주무대신 및 당해 都道府縣 지사)에게 보고하지 않으면 안된다.

(支拂의 公告 등)

제59조 기구는 다음에서 언급하는 경우에는 조속히, 위원회의 의결을 거쳐 보험금의 지불기간, 지불장소, 기타 政令으로 정한 사항을 정하여 이것을 공고하지 않으면

안된다.

① 前條 제1항의 규정에 의해 제1종보험사고에 관계된 보험금의 지불을 한다는 취지의 결정을 한 때.

② 제2종보험사고(관련보험사고를 제외. 이하 同)에 관하여 제57조 제1항 또는 제3항의 규정에 의한 통지가 있었을 때

③ 前號에서 언급한 경우외에, 제2종보험사고가 발생한 것을 기구가 알았을 때

2. 기구는 前條 제3항의 규정에 의해 제55조 제3항의 가불금의 지불을 한다는 취지의 결정을 한 때는 조속히 위원회의 의결을 거쳐 당해 가불금의 지불기간, 지불장소, 기타 政令으로 정한 사항을 정하여 이것을 공고하지 않으면 안된다.

3. 기구는 前2항의 규정에 의한 공고를 한 후에 당해 농수산업협동조합이 파산선고를 받거나 또는 당해 농수산업협동조합에 대해 和議開始의 결정이 있었을 때는 政令으로 정한 바에 의해 그 공고한 지불기간을 변경할 수 있다.

4. 기구는, 前項의 규정에 의해 지불기간을 변경한 때는 지체없이 그 변경에 관계된 사항을 공고하지 않으면 안된다.

5. 前條 제4항의 규정은, 제1항 또는 제2항에서 규정한 사항을 정한 경우 및 제3항의 규정에 의해 지불기간을 변경한 경우에 있어서 준용한다.

(債權의 取得)

제60조 기구는, 보험금의 지불을 한 경우 그 지불금액에 상응하는, 저금자 등이 농수산업협동조합에 대해 가지고 있는 당해 저금 등에 관계된 채권(이자, 기타 이에 준하는 것으로 政令으로 정한 것을 제외. 다음항에 있어서도 마찬가지임)을 취득한다.

2. 기구는 제55조 제3항의 가불금의 지불을 한 때는 그 지불금액(제56조 제5항의 규정에 의해 기구에 지불되어야 할 금액을 제외)에 상응하는, 저금자 등이 농수산업협동조합에 대해 가지고 있는 당해 저금 등에 관계된 채권을 취득한다.

第4節　資金援助

(資金援助의 신청)

제61조　합병(경영곤란농수산업협동조합과 합병하는 농수산업협동조합이 존속하는 것에 한한다. 이하 同)을 행하는 농수산업협동조합으로 경영곤란농수산업협동조합이 아닌 者(이하 「구제농수산업협동조합」이라 함)는 기구가 합병을 원조하기 위해 금전의 증여, 자금 대부 또는 예입, 자산의 매입 또는 채무의 보증 또는 인수(이하 「자금원조」라 함)를 행하는 것을 기구에 신청할 수 있다.

2. 前項의 규정에 의해 신청을 한 농수산업협동조합은 조속히 그 취지를 都道府縣 지사(주무대신의 감독에 관계된 농수산업협동조합에 있어서는 주무대신)에게 보고하지 않으면 안된다

제62조　농수산업협동조합연합회 또는 농림중앙금고(이하 「농수산업협동조합연합회 등」이라 함)가 농수산업협동조합에 관계된 상호원조 주선에 의해 합병 또는 신용사업재건조치(경영곤란 농수산업협동조합이 신용사업에 관계된 업무의 건전하고 적절한 운영을 회복하기 위해 행하는 주무성令으로 정한 조치를 말함. 이하 同)에 관하여 자금의 대부, 기타 원조를 행하는 경우에 있어서 당해 농수산업협동조합연합회 등은 기구가 당해 원조에 대해 자금원조(자산의 매입 및 채무의 인수를 제외)를 행할 것을 기구에 신청할 수 있다.

2. 前項의 농수산업협동조합에 관계된 상호원조결정이라는 것은 다음 각호의 一에서 언급하는 것을 말한다.

① 농수산업협동조합의 상호부조에 기여하는 것을 목적으로, 전국의 구역을 대상으로 농수산업협동조합, 농수산업협동조합연합회 및 농림중앙금고가 행하는 결정에 있어서, 농수산업협동조합이 당해 목적을 위해 농수산업협동조합연합회 등에 예입된 저금, 기타의 자금을 원자금으로 하여 농수산업협동조합연합회 등이 구제농수산업협동조합 또는 경영곤란농수산업협동조합에 대해 자금의 대부, 기타의 원조를 행하는 것을 정하는 것

② 前號에서 언급한 결정에 준하는 결정에 있어서 주무성令으로 정한 요건에 적합

한 것

3. 제1항의 규정에 의한 신청을 행한 농수산업협동조합연합회 등은 조속히 그 취지를 주무대신에게 보고해야 한다.

(適格性의 認定)

제63조 제61조 제1항 또는 前條 제1항의 규정에 의한 신청에 관계된 합병에 대해서는, 당해 합병에 관계된 농수산업협동조합은 이들의 규정에 의한 신청이 행해질 때까지, 당해 합병에 대해서 都道府縣 지사(당해 합병 후 존속하는 농수산업협동조합이 주무대신의 감독에 관계되는 것일 때는, 주무대신. 제7항 및 다음 조 제1항에 있어서도 마찬가지임)의 인정을 받지 않으면 안된다.

2. 前條 제1항의 규정에 의한 신청에 관계된 신용사업재건조치에 대해서는, 당해 조치에 관계된 경영곤란 농수산업협동조합 및 同項의 규정에 의해 당해 조치에 대해 원조를 행할 농수산업협동조합연합회는 同項의 규정에 의한 신청이 행해질 때까지 당해조치에 대하여 都道府縣 지사(당해 경영곤란농수산업협동조합이 주무대신의 감독에 관계된 것일 때는 주무대신)의 인정을 받지 않으면 안된다.

3. 前2항의 인정 신청은, 제1항의 경우에 있어서는 同項의 합병에 관계된 농수산업협동조합의 連名으로, 前項의 경우에 있어서는 同項의 경영곤란 농수산업협동조합과 농수산업협동조합연합회 등과의 連名으로 행하지 않으면 안된다.

4. 제1항 및 제2항의 인정은, 다음에서 언급한 요건의 모두에 해당하는 경우에 한하여 행할 수 있다.

① 당해 합병 또는 신용사업재건조치(이하 「합병 등」)가 행해지는 것이 저금자 등의 보호에 도움이 될 것

② 기구에 의한 자금원조가 행해지는 것이 당해 합병 등을 행하기 위해 불가결할 것

③ 당해 합병 등에 관계된 경영곤란농수산업협동조합에 대해서, 합병 등이 행해지는 것이 아니라, 그 신용사업에 관계된 업무의 전부의 폐지 또는 해산이 행해지는 경우에는 당해 경영곤란농수산업협동조합이 신용사업에 관계되는 업무를 행

하고 있는 지역 또는 분야에 있어서 자금의 원활한 수급 및 이용자의 편리에 큰 지장이 발생될 우려가 있을 것.

④ 기구에 의한 자금원조(前條 제1항의 자금원조에 있어서는, 당해 자금원조에 관계된 同項에서 규정한 원조. 다음 조 제1항에 있어서와 同)가 합병후 존속하는 농수산업협동조합 또는 신용사업재건조치에 관계되는 경영곤란 농수산업협동조합의 신용사업에 관계된 업무의 건전하고 적절한 운영을 위해 활용되는 것이 확실하다고 인정될 것

5. 都道府縣 지사는 제1항 또는 제2항의 인정을 행할 때는 주무대신의 승인을 얻지 않으면 안된다.

6. 주무대신은, 都道府縣 지사의 감독에 관계된 농수산업협동조합에 대하여 제1항의 인정을 행할 때는 당해 都道府縣 지사에게 협의하지 않으면 안된다.

7. 都道府縣 지사는 제1항의 인정을 행할 때는 당해 인정에 관계된 농수산업협동조합 중 어느 것이 경영곤란 농수산업협동인지를 분명하게 하지 않으면 안된다.

8. 都道府縣 지사 또는 주무대신은, 제1항 또는 제2항의 인정을 행한 때는 그 취지를 기구에 통지하지 않으면 안된다.

(合併의 주선)

제64조 都道府縣 지사는 前條 제1항의 인정에 관계된 同條 제3항의 신청이 행해지지 않는 경우에 있어서도 농수산업협동조합이 경영곤란농수산업협동조합에 해당하고 또한 당해 경영곤란 농수산업협동조합이 同條 제4항 제3호에서 언급한 요건에 해당한다고 인정될 때는 당해 경영곤란 농수산업협동조합 및 다른 농수산업협동조합에 대해, 서면으로 합병(당해 합병이 同項 제1호에서 언급한 요건에 해당하는 것이고 기구에 의한 자금원조가 同項 제2호 및 제4호에서 언급하는 요건에 해당하는 것에 한 한다.)의 주선을 행할 수 있다.

2. 前項의 주선을 받은 同項의 다른 농수산업협동조합은, 前條 제1항의 규정에 상관없이 제61조 제1항의 규정에 의한 신청을 행할 수 있다.

3. 농수산업협동조합연합회 등으로, 제1항의 주선을 받은 同項의 다른 농수산업협동조

합에 대한 합병에 대해서 자금의 대부, 기타의 원조를 행하는 자는, 前條 제1항의 규정에 상관없이 제62조 제1항의 규정에 의한 신청을 행할 수 있다.

4. 前條 제5항으로부터 제8항까지의 규정은, 제1항의 주선을 행하는 경우에 있어서 준용한다.

(資金援助)

제65조 기구는 제61조 제1항 또는 제62조 제1항의 규정에 의한 신청이 있었을 때는 지체없이 위원회의 의결을 거쳐, 당해신청을 행한 농수산업협동조합 또는 농수산업협동조합연합회 등에 대한 자금원조 여부를 결정하지 않으면 안된다.

2. 위원회는 前項의 의결을 행하는 경우에는, 기구의 재무상황 및 당해 의결에 관계되는 자금원조에 필요하다고 예견되는 비용 및 당해 자금원조에 관계되는 경영곤란 농수산업협동조합의 보험사고에 대한 보험금의 지불을 행할 때에 요구될 것으로 예상되는 비용을 고려하여 기구 자산의 효율적인 이용에 신경을 쓰지 않으면 안된다.

3. 기구는 제1항의 규정에 의한 결정을 하려고 할 때는 주무대신의 인가를 받지 않으면 안된다.

4. 기구는 都道府縣 지사의 감독에 관계되는 농수산업협동조합을 당사자로 하는 합병 등에 관계되는 제1항의 규정에 의한 결정을 했을 때는 즉시 그 결정에 관계되는 사항을 당해 都道府縣 지사에게 보고하지 않으면 안된다.

5. 기구는 제1항의 규정에 의한 자금원조를 행한다는 취지의 결정을 했을 때는 同項에서 규정하는 농수산업협동조합 또는 농수산업협동조합연합회 등과 이들에 대한 자금원조에 관한 계약을 체결하는 것으로 한다.

(合併 등의 契約의 報告 등)

제66조 제63조 제1항 또는 제2항의 인정 또는 제64조 제1항의 주선(이하 「적격성의 인정 등」이라 함)을 받은 농수산업협동조합 또는 농수산업협동조합연합회 등은, 당해 적격성의 인정 등에 관계되는 합병의 계약 또는 당해 적격성의 인정 등에 관계되는 신용사업재건조치에 관계되는 원조(이하 이 항에 있어서 「특정원조」라 함)의

계약을 체결했을 때는 즉시 그 적격성의 인정을 행한 都道府縣 지사 또는 주무대신에게 그 취지를 보고하고 당해 합병 또는 특정원조의 계약서(구제농수산업협동조합에 있어서는 당해 합병의 계약서 및 당해 합병에 관계되는 자금원조에 관한 계약의 내용을 기재한 서면, 농수산업협동조합연합회 등에 있어서는 당해 특정원조의 계약서 및 당해 특정원조에 관계되는 자금원조에 관한 계약의 내용을 기재한 서면)을 제출하지 않으면 안된다.

2. 都道府縣 지사는 前項의 규정에 의한 보고를 받았을 때는, 주무대신에게 그 취지를 보고하고 同項의 계약서 또는 서면의 사본을 송부하지 않으면 안된다.

(總會의 決議 등의 報告 등)

제67조 적격성의 인정 등을 받은 농수산업협동조합은, 농업협동조합법 또는 수산업협동조합법의 규정에 기초하여 당해 적격성의 인정 등에 관계되는 합병에 대해 필요로 되는 총회 또는 총대회의 결의 또는 조합원의 투표에 있어서 필요한 수의 찬성을 얻은 때 또는 얻지 못한 때는 즉시 都道府縣 지사(주무대신의 감독에 관계되는 농수산업협동조합에 있어서는 주무대신)에게 그 취지를 보고하고 해당총회 또는 총대회의 의사록 또는 당해 투표의 결과를 증명하는 서면을 제출하고, 모두 기구에게 그 취지를 통지하지 않으면 안된다.

2. 都道府縣 지사는 前項의 규정에 의한 보고를 받았을 때는 주무대신에게 그 취지를 보고하지 않으면 안된다.

第5節 補則

(政令에의 委任)

제68조 이 법률에서 규정하는 것 외에, 이 장의 규정에 의한 농수산업협동조합저금보험에 관해 필요한 사항은 政令으로 정한다.

第4章　雜則(기타규칙)

(農水産業協同組合에 대한 命令)

제69조　주무대신 또는 都道府縣 지사는 농수산업협동조합이 저금 등의 지불정지를 하거나 또는 정지를 할 우려가 있다고 인정되는 경우에 있어서 기구 업무의 적정하고 원활한 실시를 도모하기 위해 특히 필요하다고 인정될 때는 당해 농수산업협동조합에 대해 그 사태에 대처하여 취해야 할 조치에 관한 필요한 명령을 할 수 있다.

(主務大臣)

제70조　이 법률에 있어서 주무대신은 농림수산대신 및 대장대신으로 한다.

第5章　罰則

제71조　제22조(제33조에 있어서 준용하는 경우를 포함)의 규정을 위반한 者는 1년이하의 징역 또는 50만엔 이하의 벌금에 처한다.

제72조　다음 각호의 1에 해당하는 경우, 그 위반행위를 한 기구 또는 수탁자의 역원 또는 직원은 50만엔 이하의 벌금에 처한다.

① 제46조 제1항의 규정에 의한 보고를 하지 않거나 허위의 보고를 한 경우, 또는 同項의 규정에 의한 검사를 거부, 방해, 또는 기피한 때

② 제58조 제4항(제59조 제5항에 있어서 준용하는 경우를 포함) 또는 제65조 제4항의 규정에 의한 보고를 하지 않거나 또는 허위의 보고를 한 때

2. 제65조 제3항의 규정에 의한 주무대신의 인가를 받지 않고 同條 제1항의 규정에 의한 결정을 한 기구의 역원은 50만엔 이하의 벌금에 처한다.

제73조　제37조 제1항의 규정에 의한 자료를 제출하지 않거나 또는 허위자료를 제출한 자는 30만엔 이하의 벌금에 처한다.

제74조 법인의 대표자, 대리인, 사용인, 기타 종업원이 그 법인의 업무에 관하여 前條의 위반행위를 하였을 때는 행위자를 벌하는 외에, 그 법인에 대하여 同條의 刑을 부과한다.

제75조 다음 각호의 1에 해당하는 경우에는 그 위반행위를 한 농수산업협동조합 또는 농수산업협동조합연합회의 이사 또는 농림중앙금고의 이사장은 30만엔 이하의 過料에 처한다.

① 제57조 제1항 또는 제67조 제1항의 규정에 의한 통지를 하지 않거나 또는 부정의 통지를 한 때

② 제66조 제1항 또는 제67조 제1항의 규정에 의한 보고를 하지 않거나 또는 부정의 보고를 한 때

제76조 다음 각호의 一에 해당하는 경우에는 그 위반행위를 한 기구의 역원은 10만엔이하의 過料에 처한다.

① 이 법률에 의해 주무대신의 인가(제65조 제3항의 규정에 의한 것을 제외)를 받지 않으면 안되는 경우에 있어서 그 인가를 받지 않았을 때

② 제7조 제1항의 규정에 의한 政令을 위반하여 등기하는 것을 태만히 하였을 때

③ 제34조에서 규정한 업무이외의 업무를 행하였을 때

④ 제40조에서 규정한 서류를 제출하지 않거나 또는 허위의 서류를 제출했을 때

⑤ 제41조의 규정을 위반하여 책임준비금을 계산하지 않거나 또는 이를 적립하지 않았을 때

⑥ 제43조의 규정을 위반하여 업무상의 여유금을 운용하였을 때

⑦ 제45조 제2항의 규정에 의한 주무대신의 명령을 위반한 때

제77조 제6조 제2항의 규정을 위반한 자 및 제67조의 규정에 의한 명령에 따르지 않은 농수산업협동조합의 역원은 10만엔 이하의 過料에 처한다.

附則(抄)

(施行期日)

제1조 이 법률은 공포일로부터 시행한다.

附則(平4(1992년). 6. 26 법87) (抄)

(施行期日)

제1조 이 법률은 공포일로부터 起算하여 1년을 초과하지 않는 범위 내에서 政令으로 정한 일(平5(1993년). 4. 1)로 부터 시행한다.

(벌칙의 적용에 관한 경과조치)

제32조 이 법률의 시행전에 있었던 행위 및 이 부칙의 규정에 의해 아직 종전의 例에 의하여 시행되는 사항에 관계되는 이 법률의 시행 후에 행한 행위에 대한 벌칙의 적용에 대해서는 아직 종전의 例에 의한다.

(기타의 經過措置의 政令에의 委任)

제33조 부칙 제2조부터 前條까지에서 정한 것외에, 이 법률의 시행에 관하여 필요한 경과조치는 政令으로 정한다.

○ 農水産業協同組合貯金保險法 施行令

최종개정 昭62(1987년). 3. 20 政令54

(借入金의 限度額)

제1조 농수산업협동조합저금보험법(이하 「법」이라 함) 제42조 제1항에서 규정한 政令으로 정한 금액은 천억엔으로 한다.

(保險料의 金額 計算上 除外되는 貯金 등)

제2조 법 제51조 제1항에서 규정한 政令으로 정한 저금 등은 다음에서 언급하는 저금 등으로 한다.

① 양도성저금(지불에 있어서 기한의 규정이 있는 저금으로 양도금지의 특약이 없는 것을 말함)

② 국가 또는 지방공공단체 또는 특별 법률에 의한 특별 설립행위에 의해 설립된 법인으로 부터 수납한 저금 등

③ 농수산업협동조합, 기타 금융기관으로부터 수납한 저금 등(前號에서 언급한 저금 등에 해당하는 것을 제외)

④ 농수산업협동조합저금보험기구(이하 「기구」라 함)로부터 수납한 저금 등

⑤ 저금 등에 관계되는 증서가 무기명식인 저금 등

(假拂金의 最高限度額)

제3조 법 제55조 제3항에서 규정한 政令으로 정한 금액은 20만엔으로 한다.

(假拂金의 支拂對象이 되는 貯金 등)

제4조 법 제55조 제3항의 규정에 의한 가불금의 지불은 보통저금에 대하여 행하는 것으로 한다.

(保險金額의 計算上 除外되는 貯金 등)

제5조 법 제56조 제1항에서 규정한 政令으로 정한 저금 등은 다음에서 언급한 저금 등으로 한다.

① 제2조 각호에서 언급한 저금 등으로 한다.

② 타인(假設人을 포함)의 명의를 가지고 있는 저금 등

③ 예금 등에 관계된 부당계약의 단속에 관한 법률(昭和32년 법률 제136호) 제2조 제1항 또는 제2항의 규정에 위반된 계약에 기초한 저금 등

(保險金의 最高限度額)

제6조 법 제56조 제3항에서 규정한 政令으로 정한 금액은 천만엔으로 한다.

(保險金의 支拂에 관계된 公告事項)

제7조 법 제59조 제1항에서 규정한 政令으로 정한 사항은 다음에서 언급하는 사항으로 한다.

① 보험금의 지불시간

② 저금자 등이 보험금의 지불을 청구할 때에 기구에 대해 제출 또는 제시해야할 서류 및 기타의 것

③ 기타 기구가 필요하다고 인정하는 사항

(假拂金의 支拂에 관계된 公告事項)

제8조 법 제59조 제2항에서 규정한 政令으로 정한 사항은 다음에서 언급하는 사항으로 한다.

① 가불금의 지불시간

② 저금자 등이 가불금의 지불을 청구할 때에 기구에 대해 제출 또는 제시해야 할 서류 및 기타의 것

③ 기타 기구가 필요하다고 인정하는 사항

(保險金 등의 支拂期間의 變更)

제9조 기구는 법 제59조 제3항의 규정에 의해 보험금 또는 가불금의 지불기간을 변경하는 경우에는 변경 후의 지불기간의 末日을 파산법(大正 11년 법률 제71호) 제142조 제1항 또는 和議法(大正 11년 법률 제72호) 제27조 제1항의 규정에 의해 재판소가 정한 채권계출의 기간 末日 前3日 이후에 하지 않으면 안된다.

(機構가 取得하는 債權으로부터 除外되는 것)

제10조 법 제60조 제1항에서 규정한 이자, 기타 이에 준하는 것으로 政令으로 정한 것은, 다음에서 언급하는 것으로 同項(가불금의 지불의 경우에 있어서는 同條 제2항)의 규정에 의한 채권의 취득時 현재 권리가 발생하는 것으로 한다.

① 이자

② 정기적금계약에 관계된 급부금 금액에서 지불금 금액의 합계액을 공제한 금액에 상당하는 것

(保險料의 金額의 端數計算 등)

제11조 법 제51조 제1항 또는 제53조 제1항의 규정에 의해 보험료 또는 연체금의 금액을 계산한 경우에 있어서 그 금액에 10엔 미만의 단수가 있을 때는 그 단수를 잘라 버리는 것으로 한다.

2. 법 제53조 제1항에서 규정한 연체금의 금액 계산에 있어서, 同項에서 규정한 年當의 비율은 윤년의 日을 포함하는 기간에 대해서도 365일당의 비율로 한다.

附則(抄)

(시행기일)

제1조 이 政令은 공포일로부터 시행한다.

附則(昭62(1987년). 3. 20 政令54) (抄)

(시행기일)

제1조 이 政令은 昭和62년(1987년) 4월 1일부터 시행한다.

○ 農水産業協同組合貯金保險法 施行規則

최종개정 昭63(1988년). 12. 23 대장, 농수슴 1

(業務方法書의 記載事項)

제1조 농수산업협동조합 저금보험법(昭和48년 법률 제53호. 이하 「법」이라 함) 제36조 제2항에서 규정한 주무성령으로 정한 사항은 다음에서 언급하는 사항으로 한다.

① 보험관계에 관한 사항

② 보험금 및 가불금에 관한 사항

③ 법 제60조의 규정에 의해 취득한 채권의 행사에 관한 사항

④ 자금원조에 관한 사항

⑤ 업무의 위탁에 관한 사항

⑥ 기타 법 제34조에서 규정한 업무의 방법

(經理原則)

제2조 농수산업협동조합저금보험기구(이하 「기구」라 함)는 기구의 재정상태 및 경영성적을 분명하게 하기 위해 재산의 증감 및 이동, 수익 및 비용을 그 발생의 사실에 기초하여 經理하지 않으면 안된다.

(勘定(計定)의 설정)

제3조 기구의 회계에 있어서는 대차대조표계정 및 손익계정 또한 필요에 응하여 계산의 과정을 명확하게 하기 위한 계정을 설정하여 경리하는 것으로 한다.

(豫算의 內容)

제4조 기구의 예산은 예산총칙 및 수입지출예산으로 한다.

(豫算總則)

제5조 예산총칙에는 수입지출예산에 관한 총괄적 규정을 설정하는 외에, 다음에서 언급하는 사항에 관한 규정을 설정하는 것으로 한다.

① 제9조의 규정에 의한 채무를 부담하는 행위에 대하여, 사항마다 그 부담하는 채무의 한도액, 그 행위에 기초하여 지출해야 할 年限 및 그 필요한 이유

② 제10조 제2항의 규정에 의한 경비의 지정

③ 前2號에서 언급하는 사항 외에, 예산의 실시에 관해 필요한 사항

(收入支出豫算)

제6조 수입지출예산의 경우, 수입은 그 성질에 따라, 지출은 그 목적에 따라 구분한다.

(豫算의 添附書類)

제7조 기구는 법 제39조의 규정에 의해 예산에 대하여 인가를 받으려고 할 때는 다음에서 언급하는 서류를 첨부하여 주무대신에게 제출하지 않으면 안된다. 단, 同條 後段의 규정에 의해 예산변경의 인가를 받으려고 할 때는 제1호의 서류는 첨부할 필요가 없다.

① 前사업연도의 예정대차대조표 및 예정손익계산서

② 당해 사업연도의 예정대차대조표 및 예정손익계산서

③ 前2호에서 언급하는 것 외에, 당해예산의 참고가 되는 서류

(豫備費)

제8조 예측할 수 없는 이유에 의한 지출예산의 부족을 보충하기 위해 수입지출예산에 예비비를 설정할 수 있다.

(債務를 負擔하는 行爲)

제9조 기구는 지출예산의 금액범위내에 있는 것 외에, 그 업무를 행하기 위해 필요

할 때는, 매사업연도 예산으로 주무대신의 인가를 받은 금액의 범위 내에서 채무를 부담하는 행위를 할 수 있다.

(豫算의 流用 등)

제10조 기구는 지출예산에 대해서는 당해예산에서 정한 목적 외에 사용해서는 안된다. 단, 예산의 실시상 적당하고 또한 필요할 때는, 제6조의 규정에 의한 구분에 상관없이 상호 流用할 수 있다.

2. 기구는 예산총칙으로 지정한 경비의 금액에 대해서는, 주무대신의 승인을 받지 않으면 그들 經費間 또는 다른 경비와 상호유용하거나 또는 이것을 예비비로 사용할 수 없다.

3. 기구는 前項의 규정에 의한 승인을 받으려고 할 때는 그 이유, 금액 및 積算의 기초를 분명하게 한 서류를 주무대신에게 제출하지 않으면 안된다.

(資金計劃)

제11조 법 제39조의 자금계획에는, 다음의 사항에 관계되는 계획을 언급하지 않으면 안된다.

① 자금의 조달방법

② 자금의 사용용도

③ 기타 필요한 사항

2. 기구는 법 제39조 후단의 규정에 의해 자금계획의 변경의 인가를 받으려고 할 때는 변경하고자 하는 사항 및 그 이유를 기재한 신청서를 주무대신에게 제출하지 않으면 안된다.

(收入支出 등의 報告)

제12조 기구는 4반기마다, 수입 및 지출에 대해서는 합계잔고시산표에 의해, 제9조의 규정에 의해 부담한 채무에 대해서는 사항마다 금액을 분명하게 한 보고서에 의해 당해 4반기 경과 후 一月 이내에 주무대신에게 보고하지 않으면 안된다.

(決算報告書)

제13조 법 제40조 제2항의 결산보고서는 수입지출결산서 및 채무에 관한 계산서로 한다.

2. 前項의 결산보고서에는 제5조의 규정에 의해 예산총칙에서 규정한 사항에 관계된 예산의 실시결과를 보여주지 않으면 안된다.

(收入支出決算書 등)

제14조 前條 제1항의 수입지출결산서는 수입지출예산과 동일한 구분에 의해 작성하고 또한 이것에 다음의 사항을 기재하지 않으면 안된다.

① 수입

㉮ 수입예산액

㉯ 수입결정액

㉰ 수입예산액과 수입결정액과의 차액

② 지출

㉮ 지출예산액

㉯ 예비비의 사용금액 및 그 이유

㉰ 流用金額 및 그 이유

㉱ 支出豫算現額

㉲ 支出決定額

㉳ 不用額

2. 前條 제1항의 채무에 관한 계산서에는 제9조의 규정에 의해 부담한 채무의 금액을 사항마다 보여주지 않으면 안된다.

(責任準備金의 金額 등)

제15조 기구가 매사업연도 누적하여 적립하지 않으면 안되는 책임준비금의 금액은 당해 사업연도에 있어서 보험료, 수입이자, 잡수입 및 잡이익의 합계액(다음 항에

있어서 「보험료 등」이라 함)으로부터 법 제60조의 규정에 의해 취득한 채권의 상각비, 법 제61조 제1항 또는 법 제62조 제1항에서 규정한 자금원조에 의해 발생한 손실의 금액, 사무취급비, 지불이자, 잡손 및 제4항의 규정에 의한 이월결손금의 합계액(다음 항에 있어서 「채권상각비 등」이라 함)을 공제한 금액에 상당한 금액으로 한다.

2. 기구는 매사업연도의 보험료 등이 당해 사업연도의 채권상각비 등을 하회한 경우는, 그 하회한 금액(이하 本條에 있어서 「손실액」이라 함)을 한도로 하여 책임준비금을 사용하고 당해 손실액을 보전하는 것으로 한다.
3. 제1항의 책임준비금은 前項의 규정에 의해 손실액을 보전하는 경우를 제외하고는 사용해서는 안된다.
4. 기구는 제2항의 규정에 의해 보전할 수 없는 손실액이 있을 때는 그 금액을 이월결손금으로 정리하는 것으로 한다.

(借入金의 認可)

제16조 기구는, 법 제42조 제1항의 규정에 의해 농림중앙금고 또는 일본은행으로부터의 자금차입 인가를 받으려고 할 때는 다음의 사항을 기재한 신청서를 주무대신에게 제출하지 않으면 안된다.

① 차입을 필요로 하는 이유
② 차입금의 금액
③ 차입금의 이율
④ 차입금의 상환방법 및 기한
⑤ 이자의 지불방법 및 기한
⑥ 기타 필요한 사항

(余裕金의 運用方法)

제17조 법 제43조 제3호에서 규정한 주무성령으로 정한 방법은 금전신탁으로 한다.

(會計規程)

제18조 기구는 그 재무 및 회계에 관하여 회계규정을 정하지 않으면 안된다.

2. 前項의 회계규정을 정하려고 할 때는 주무대신의 승인을 받지 않으면 안된다. 이것을 변경하려고 할 때도 마찬가지이다.

(保險料納付時의 添附書類)

제19조 법 제50조 제1항에서 규정한 주무성령으로 정한 서류는 별지양식에 의한 보험료계산서로 한다.

(信用事業再建措置)

제20조 법 제62조 제1항의 주무성령으로 정한 조치는 사업집행의 체제를 개선하기 위한 조치 및 고정채권의 자금화 및 결손금의 보전을 주 내용으로 하는 재건계획의 실시로 한다.

(適格性의 認定의 申請)

제21조 농수산업협동조합은 법 제63조 제1항의 규정에 의해 합병의 인정을 받으려고 할 때는 인정신청서에 다음에서 언급하는 서류를 첨부하여 都道府縣 지사(당해 합병후 존속하는 농수산업협동조합이 주무대신의 감독에 관계되는 것일 때는 주무대신)에게 제출하지 않으면 안된다.

① 이유서

② 최종 대차대조표, 손익계산서 및 잉여금의 처분방법을 기재한 서면 또는 손실의 처리방법을 기재한 서면 및 최근의 日計表

③ 기타 법 제63조 제1항에서 규정한 인정을 하기 위해 참고가 되어야 할 사항을 기재한 서류

2. 경영곤란 농수산업협동조합 및 농수산업협동조합연합회 등은 법 제63조 제2항의 규정에 의해, 법 제62조 제1항에서 규정한 신용사업재건조치의 인정을 받으려고 할 때는 인정신청서에 다음에서 언급하는 서류를 첨부하여 都道府縣 지사(당해 경영곤

란 농수산업협동조합이 주무대신의 감독에 관계되는 것일 때는 주무대신)에게 제출하지 않으면 안된다.

① 이유서

② 당해 경영곤란 농수산업협동조합에 관계되는 최종의 대차대조표, 손익계산서 및 잉여금처분방법을 기재한 서면 또는 손실의 처리방법을 기재한 서면 및 최근의 日計表

③ 기타 법 제63조 제2항에서 규정한 인정을 하기 위해 참고가 되어야 할 사항을 기재한 서류

附則

이 省令은 공포일부터 시행한다.

附則(昭63. 12. 23 대장, 농수令1)

이 省令은 공포일부터 시행한다.

Ⅳ. EU 預金保護指針

DIRECTIVE 94/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of May 30, 1994

relating to the deposit guarantee systems

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

in view of the treaty instituting the European Community, and notably its article 57 paragraph 2, first and third sentences,

in view of the proposal of the Commission,

in view of the opinion of the Economic and Social Board,

ruling in accordance with the procedure provided in article 189 B of the treaty,

considering that, in accordance with the objectives of the treaty, it is advisable to promote a harmonious development of activities of the credit establishments in the whole of the Community by abolishing all restrictions to the liberty of establishment and to the free benefits of services, and at the same time reinforcing the stability of the banking system and the protection of the savers;

considering that, parallel to the abolishment of restrictions to its activities, it is advisable to be concerned with the situation likely to occur in case of deposit unavailability of a credit establishment which has branches in other member nations; it is necessary that a harmonized minimum level of deposit guarantees be ensured regardless of the localization of deposits inside the Community; this deposit protection is as essential as the prudential rules for the completion of the

unique banking market:

considering that, at the time of the closing of an insolvent credit establishment, the depositors of branches situated in a member nation other than that of the main office of the credit establishment must be protected by the same guarantee system as the other depositors of the establishment:

considering that, for the credit establishments, the price of participating in a guarantee system is uncomparable with the price that a massive withdrawal of banking deposits would induce, not only from an establishment in difficulty but equally from sound establishments following the depositors' loss of confidence in the solidity of the banking system;

considering that the response given by the member nations to the recommendation 87/63/CEE of the Commission, of December 22, 1986, relating to the institution of the deposit guarantee systems in the Community, has not permitted to completely achieve the desired results; this situation can be revealed as detrimental to the efficient functioning of the interior market;

considering that the second directive 89/646/CEE of the Council, of December 15, 1989, aimed at the coordination of legislative, regulatory, and administrative clauses concerning the access to the activity of credit establishments and the exercise of this activity, and modifying the directive 77/780/CEE, which makes provisions for a unique system of approval of credit establishments and their supervision by the authorities of the member nation of origin, is in application since January 1, 1993;

considering that the withdrawal of the approval of branches in the member nations of reception--owing to the grant of a unique approval valid in the Community as a whole--as well as the control of their solvency by the authorities concerned of the member nation of origin justify that all branches of the same credit establishment created in the Community, be covered by a unique system of guarantee; for this category of establishments, this system cannot be but that which exists in the nation of the main office, notably because of the existing ties between the supervision of the solvency of a branch and its membership to the deposit guarantee system;

considering that the harmonization must limit itself to the principal elements of the deposit guarantee systems and that it must ensure, within a short amount of time, a payment by way of the guarantee calculated according to a harmonized minimum level;

considering that the deposit guarantee systems must intervene as soon as there is unavailability of deposits;

considering that it is advisable to exclude from coverage, namely the deposits which the credit establishments make in their own names and for their own account; this should not at all affect the rights which the guarantee system has in taking necessary measures for rescuing a credit establishment which finds itself in difficulty;

considering that, by itself, the harmonization of the deposit guarantee systems in the Community does not call into question the existence of the systems in place which center around the protection of credit establishments, by guarantying

notably their solvency and their liquidity, in order to avoid that the deposits made out near these establishments--including branches that they have established in another member nation--become unavailable; that these alternative systems which pursue a different objective of protection can, in certain conditions, be considered by the authorities concerned as satisfying the objectives of the present directive; it will be left up to the said authorities to verify the respect of these conditions;

considering that several member nations have systems of deposit protection pertaining to the responsibility of professional organizations; other member nations have systems instituted and regulated on a legislative basis and certain systems, even though instituted in a conventional manner, are partially regulated by the law; this diversity of statute shall not pose a problem with respect to the obligatory adherence to the system and exclusion from the system; it is advisable, consequently, to make provisions for the clauses limiting the powers of the systems in this matter;

considering that the maintenance of systems, in the Community, offering a coverage of deposits higher than the harmonized minimum can entail differences of indemnity and conditions of inequal competition between the national establishments and branches of establishments of other member nations on a same territory; to resolve these inconveniences, it is advisable to authorize the adherence of branches to the system of the receiving country in order to permit offering to their depositors the same guarantees as those which are offered by the system of the country where they are introduced; it is advisable that the Commission, after several years, establish a report indicating the extent to which the branches have had recourse to this right, as well as the eventual difficulties met by these latter or by the guarantee systems in the implementation of these clauses; it shall not be excluded that the system of the member nation of origin offers itself such a

complementary coverage, subject to the conditions that this system will have set;

considering that the market could be disturbed by the fact that the branches of certain credit establishments offer coverage rates superior to those offered by credit establishments approved in the member nation of reception; it is not advisable that the rate and the extent of the coverage offered by the guarantee systems become an instrument of competition; at the very least during an initial period, it is therefore necessary to anticipate that the level and extent of the coverage offered by the member nation of origin to the depositors of branches situated in another member nation must not go beyond the level and maximum extent offered by the system corresponding to the member nation of reception; after several years, it is necessary to examine the possible disturbances on the market, on the basis of the experience acquired and in light of the evolution of the banking sector;

considering that in principle the present directive imposes on all credit establishments to adhere to a deposit guarantee system; the directives governing the admission of credit establishments which have their main office in a third country, and notably the first directive 77/780/CEE of the Council, of December 12, 1977, aimed at the coordination of legislative, regulatory, and administrative clauses, concerning the access to the activity of credit establishments and to the latter's exercise, permit member nations to decide whether or not they authorize the branches of these credit establishments to exercise their activities on their territory, and to decide on what conditions; these branches do not benefit from the free benefits of services, in accordance with article 59, second paragraph of the treaty, nor of the freedom of establishing in the member nations other than where they are established; the member nation admitting such branches must therefore

decide how to apply the principles contained in the present directive to these branches in a manner that is compatible with article 9 paragraph 1 of the present directive 77/780/CEE and with the necessity to protect the depositors and to insure the integrity of the financial system; it is essential that the depositors of these branches be fully informed of these clauses which are applicable to them concerning the guarantee;

considering, on the one hand, that the minimum level of guarantee provided by the present directive should not leave an important proportion of the deposits without protection, in the interest of consumer protection as well as the stability of the financial system; on the other hand, it would not be advisable to impose on the Community as a whole, a protection level which, in certain cases, could result in inciting an inefficient management of the credit establishments; it is advisable to take into account the price of financing the systems of guarantee; it appears reasonable to set the harmonized minimum level of guarantee at 20,000 crowns; limited transitional clauses might be necessary for permitting the guarantee systems to respect this numerical figure;

considering that certain member nations offer, to depositors, a coverage of deposits which is higher than the harmonized minimum guarantee level provided by the directive; it does not seem appropriate to demand that these systems--some of which have been instituted only recently in application of the recommendation 87/63/CEE--be modified on this point;

considering that, when the member nation considers that certain categories of deposits or depositors enumerated in a restrictive manner, do not need any particular protection, the member nation must be able to exclude them from the

guarantee offered by the deposit guarantee systems;

considering that, in certain member nations, the unavailable deposits are not fully reimbursed in order to incite the depositors to carefully verify the quality of the credit establishments; it would be advisable to limit these practices when it concerns deposits lower than the harmonized minimum sum total;

considering that the principle of a harmonized minimum limit per depositor and not per deposit has been retained; it is advisable, in this respect, to take into consideration the deposits made out by depositors who are either not mentioned as account holders, nor as the sole holders of the account; the limit must therefore be applied to each identifiable depositor; this latter must not, however, apply to bodies of collective investment subject to the particular protection rules which do not exist for the previously cited deposits;

considering that the information of the depositors is an essential element for their protection and must therefore be equally subject to a minimum of restrictive clauses; the non regulated use of mentions of the sum total and extent of the deposit guarantee system, for advertising purposes, risk, however, undermining the stability of the banking system or the confidence of the depositors; the member nations should therefore stop the rules to limit such mentions;

considering that, in very specific cases, in certain member nations where there is no deposit guarantee system for certain categories of credit establishments which only receive a very weak share of the deposit, the introduction of such a system can, in certain cases, take longer than the period provided for the transposition of the directive; in such a case, a provisional dispensation obligated to belong to a

deposit guarantee system can be justified; if these credit establishments operate abroad, the member nations would have, however, the right to demand that these establishments participate in a deposit guarantee system created by them;

considering that, in the framework of the present directive, it is not essential to harmonize the modes of financing systems which guarantee the deposits or the credit establishments themselves, having agreed, on the one hand that the charge of financing these systems must, in principle, be incumbent upon credit establishments themselves, and on the other hand, that the capacity of financing these systems must be proportional to their commitments; however, this must not put at risk the stability of the banking system of the member nation involved;

considering that the present directive cannot result in committing the responsibility of the member nations or their authorities concerned with regard to the depositors, since they have attended to the institution or to the official recognition of one or several systems guarantying deposits of the credit establishments themselves and by insuring the indemnity or the protection of the depositors in the conditions defined by the present directive;

considering that the guarantee of deposits is an essential element to the completion of the interior market and a necessary complement to the system of supervision of the credit establishments because of the solidarity which it creates between all establishments of a same financial place in case of failure of one among them,

HAS ADOPTED THE PRESENT DIRECTIVE:

Article One

For the purposes of the present directive, it is understood by:

1) "deposit": all credit balance resulting from the funds left in the account or from transitional situations stemming from normal banking operations, that the credit establishment must return in accordance with the applicable legal and contractual conditions, as well as all financial claims represented by a letter of credit issued by the credit establishment.

The shares of "building societies" in the United Kingdom and Ireland, except those constituting an element of capital which are covered by article 2, are considered as deposits.

Obligations which answer to the criterion stated in article 22, paragraph 4 of the directive 85/611/CEE of the Council, of December 20, 1985, containing the coordination of legislative, regulatory and administrative clauses, concerning certain bodies of collective investment in transferable securities (OPCVM), are not considered as deposits.

For the calculation of the credit balance, the member nations apply the regulation relating to the compensation and financial claims to compensate in accordance with the legal and contractual conditions applicable to the deposit;

2) "joint account": an account opened in the name of at least two persons or to

which at least two persons have rights which can be exercised by the signature of at least one of these persons;

3) "unavailable deposit": a deposit which has expired and payable and which has not been payed by a credit establishment in the legal and contractual conditions which apply to it and when:

i) the authorities involved have noted that from their point of view, for the moment and for reasons tied directly to its financial situation, this credit establishment does not seem to be in a position to return the deposits and that there is no near prospects of doing so.

The authorities concerned make this certified report as soon as possible and at the latest twenty one days after having established for the first time that a credit establishment has not returned the expired and payable deposits

or

ii) a legal authority has rendered, for reasons directly related to the financial situation of the credit establishment, a decision which results in the suspension of the exercise of the depositor's right to assert the financial claims with regard to the establishment, if this decision intervenes before the certified report mentioned above;

4) "credit establishment": an enterprise in which the activity consists of receiving deposits from the public or other reimbursable funds and to grant credits for its own account;

5) "branch": seat of operation which constitutes a part lacking legal personality of a credit establishment and which carries out directly, in full or in part, the operations inherent to the activity of the credit establishment; several seats of operation created in the same member nation by a credit establishment having its main office in another member nation are considered as an only branch.

Article 2

Those excluded from all reimbursement by the guarantee systems are:

- subject to article 8 paragraph 3, deposits made out by other credit establishments in their own names and for their own account,

- all instruments which would fall under the definition of "proper funds" such as it appears in article 2 of the directive 89/299/CEE of the Council, of April 17, 1989, concerning the proper funds of the credit establishments,

- deposits resulting from operations for which a penal sentencing has been pronounced for an offence of laundering as meant in article 1 of the directive 91/308/CEE of the Council, of June 10, 1991, relating to the prevention of using the financial system for the laundering of capital.

Article 3

1. Each member nation attends to the institution and to the official recognition of one or of several deposit guarantee systems on its territory. With exception to

the cases envisioned in the second paragraph and in paragraph 4, no credit establishment approved in this member nation by article 3 of the directive 77/780/CEE can accept deposits if it is not a member of one of these systems.

However, a member nation can exempt a credit establishment from adhering to a deposit guarantee system when this establishment belongs to a system which protects the credit establishment itself and notably guarantees its liquidity and solvency, and thus ensuring the depositors with a protection at least equivalent to that which is offered by a deposit guarantee system and which of the opinion of the authorities concerned, fulfills the following conditions:

- the system exists and is officially recognized at the time of adopting the present directive,

- the system has for its objective to avoid that the deposits made out near the credit establishments belonging to this system become unavailable and have the means necessary to this effect,

- the system does not consist in a guarantee accorded to credit establishments by the member nation itself or by its local or regional authorities,

- the system ensures information of the depositors according to the modes and conditions defined in article 9.

The member nation which makes use of this right informs this to the Commission; it communicates notably, the characteristics of these protection systems and the credit establishments which they cover as well as the

modifications subsequent to the transmitted information. The Commission informs this to the banking advisory committee.

2. If a credit establishment does not fulfill the obligations which are incumbent upon itself as a member of the deposit guarantee system, the authorities concerned having released the approval are informed of this, and in collaboration with the guarantee system, take all the appropriate measures, including sanctions, to guarantee that the credit establishment will fulfill its obligations.

3. If these measures do not permit insuring the respect of its obligations by the credit establishment, the system can, when the national law permits the exclusion of a member and with the formal consent of the authorities concerned, notify, with a warning notice of cancellation which cannot be less than twelve months, its intention to exclude the credit establishment from the system. The deposits made out before the expiration of the notice of cancellation will continue to be fully covered by the system. If at the end of the warning notice of cancellation, the credit establishment has not fulfilled its obligations, the guarantee system can, always with the formal consent of the authorities concerned, proceed to the exclusion.

4. When the national law permits it and with the formal consent of the authorities concerned which have released the approval, a credit establishment excluded from a deposit guarantee system can continue to accept deposits if, before its exclusion, it has made provisions for other guarantee mechanisms ensuring the depositors with protection of which the level and extent are at least equivalent to those that the officially recognized system offers.

5. If a credit establishment whose exclusion is proposed in accordance with paragraph 3 is not in a position to provide other mechanisms fulfilling the conditions mentioned in paragraph 4, the authorities concerned which have released the approval revokes it immediately.

Article 4

1. The deposit guarantee systems instituted and officially recognized in the member nation in accordance with article 3 paragraph 1 cover the depositors of branches created by the credit establishments in other member nations.

Until December 31, 1999, neither the level nor the extent, including the percentage, of the coverage provided can exceed the level and maximum extent of the coverage proposed by the guarantee system corresponding of the receiving member nation on the territory of this latter.

Before this date, the Commission establishes a report on the basis of the experience acquired in the application of the second paragraph and examines the necessity to maintain these clauses. If such is the case, the Commission presents a directive proposal to the European parliament and to the Council aiming to prolong their validity.

2. When the level or the extent, including the percentage, of the coverage proposed by the guarantee system of the receiving member nation exceeds the level or the extent of the coverage provided in the member nation where the credit establishment is approved, the receiving member nation attends to what is on its territory, an officially recognized deposit guarantee system to which a

branch can voluntarily adhere in order to complete the guarantee from which its depositor already benefits owing to its membership to the guarantee system of its member nation of origin.

The system to which the branch will adhere must cover the category of establishments to which it (the branch) belongs or to which it is the closest in the receiving member nation.

3. The member nations takes care to establish the objective conditions and general application for the adherence of branches to the system of the receiving member nation in accordance with paragraph 2. Admission is subject to the respect of the appropriate obligations of adhering to the system, and notably to the payment of all the contributions and other taxes. In the implementation of the clauses of the present paragraph, the member nations follow the guiding principles appearing in the annexe II.

4. If a branch which has made use of the right of optional adherence provided in paragraph 2 does not fulfill the obligations which are incumbent upon the branch as a member of the deposit guarantee system, the authorities concerned which had released the approval are informed of this and, in collaboration with the guarantee system, take all the appropriate measures for ensuring the respect of the said obligations.

If these measures do not permit ensuring the respect, by the branch, of the obligations mentioned above and at the end of an appropriate cancellation notice which cannot be less than twelve months, the guarantee system can exclude the branch with the consent of the authorities concerned who have released the

approval. The deposits made out before the date of exclusion remain covered by the system to which the branch has voluntarily adhered until the date of their expiry. The depositors are informed of the withdrawal of the complementary coverage.

5. For December 31, 1999 at the latest, the Commission makes a report on the application of paragraphs 2, 3 and 4, and proposes, if such is the case, modifications to introduce to it.

Article 5

The deposits withheld at the time of withdrawal of the approval given to a credit establishment by way of article 3 of the directive 77/780/CEE remain covered by the guarantee system.

Article 6

1. The member nations verify if the branches created by the credit establishments, which have their main office outside of the Community, have a coverage equivalent to the one provided by the present directive.

If not, the member nations can expect, subject to article 9 paragraph 1 of the directive 77/780/CEE, that the branches created by the credit establishments having their main office outside of the Community adhere to a deposit guarantee system existing on their territory.

2. Actual and potential depositors of branches, created by credit establishments which have their main office outside of the Community, receive all informations,

pertaining to the clauses concerning the guarantee which applies to their deposits, from the credit establishment.

3. The information targeted in paragraph 2 is available in the official language(s) of the member nation where the branch is established, in the manner prescribed by national law, and written in a clear and comprehensible manner.

Article 7

1. The deposit guarantee systems make provisions for all the deposits of one depositor to be covered up to a limit of 20,000 crowns, in case of the unavailability of the deposits.

Until December 31, 1999, the member nations, in which the deposits are not covered up to 20,000 crowns at the moment of adopting the present directive, can maintain the maximum sum total provided for in their guarantee systems without this total being lower than 15,000 crowns.

2. The member nations can make provisions for certain depositors or certain deposits being excluded from the guarantee or being much weakly guaranteed by the guarantee. The list of these exclusions appear in annexe I.

3. The present article is not an obstacle to the maintenance or adoption of clauses offering a much higher or more complete protection of the deposits. The deposit guarantee systems can notably fully guarantee certain types of deposits for social reasons.

4. The member nations can limit the guarantee provided for in paragraph 1 or the one mentioned in paragraph 3 at a percentage of the sum total of deposits. However, the percentage guaranteed must be equal to or higher than 90% of the entire deposits as long as the sum
total to be payed by the guarantee does not reach the sum total cited in paragraph 1.

5. The sum total aimed in paragraph 1 is subject to a periodical reexamination, at least every five years, by the Commission. This latter presents, if such is the case, a directive proposal to the European Parliament and to the Council to adapt the sum total cited in paragraph 1, by taking into account, namely the evolution of the banking sector and the economic and monetary situation in the Community. The first reexamination will only take place five years after the end of the period aimed at in paragraph 1 second paragraph.
6. The member nations takes care so that the depositor's right to indemnity can become subject the subject of the depositor's recourse against the deposit guarantee system.

Article 8

1. The limits mentioned in article 7 paragraphs 1, 3 and 4 apply to the all of the deposits near the same credit establishment, regardless of the number of deposits, the currency or localization in the Community.

2. It is taken into account, in the calculation of the limits provided for in article 7 paragraphs 1, 3 and 4, the share returning to each depositor in the joint account.

For lack of specific clauses, the account is distributed in an equal manner among the depositors.

The member nations can provide for the deposits on an account in which at least two persons have rights as an associate of a company, a member of an association or of groups of a similar nature, not equiped with a legal personality, being regrouped and treated as if they were made out by a single depositor for the calculation of the limits provided for in article 7 paragraphs 1, 3 and 4.

3. When the depositor is not the one who has the right to the sums deposited in the account, it is the person having this right who benefits from the guarantee, provided that this person has been identified or is identifiable before the date in which the authorities concerned make the official report provided for in article 1 point 3 i) or in which the legal authority renders the decision aimed at in the said point 3 ii). If there exist several having this right, it is taken into account the share returning to each one of them, in accordance with the clauses governing the management of sums, for the calculation of the limits provided for in article 7 paragraph 1, 3 and 4.

The present clause is not applicable to the bodies of collective investment.

Article 9

1. The member nations takes care to ensure that the credit establishment furnish to the actual and potential depositors the informations of which they have need to identify the deposit guarantee system to which the establishment and its branches

adhere inside the Community of all other mechanism provided in accordance with article 3 paragraph 1 second paragraph or article 3 paragraph 4. The depositors are informed of the clauses of the guarantee system or of all other applicable mechanism, and notably of the sum total and the extent of the coverage offered by the guarantee system. These informations are presented in an easily comprehensible form.

Furthermore, the informations are given on a simple request with regard to the conditions of indemnity and the formalities to complete in order to become indemnified.

2. The informations provided for in paragraph 1 are available in the official language(s) of the member state where the branch is established, in the manner prescribed by national law.

3. The member nations establish rules limiting the use, for advertising purposes, of informations aimed at in paragraph 1 in order to avoid that such a use does not undermine the stability of the banking system or the confidence of the depositors. The member nations can notably limit this advertisement to a simple mention of the system to which the credit establishment adheres.

Article 10

1. The deposit guarantee systems must be in a position to pay the duly verified financial claims of the depositors relating to the unavailable deposits, within three months from the date to which the authorities concerned makes the official report aimed at in article 1 point 3 i) or to which the legal authorities renders the

decision provided for in the said point.

2. In these quite exceptional circumstances and for particular cases, the guarantee system can request the authorities concerned for a prolonging of the limit. This extension cannot exceed three months. The authorities concerned can, at the request of the guarantee system, accord, at the maximum, two new extensions, none of which can exceed three months.

3. The time limit provided for in paragraphs 1 and 2 cannot be invoked by the guarantee system to refuse the benefit of the guarantee to a depositor who has not been in a position to assert in time his/her right to a payment through the guarantee.

4. The documents relating to the conditions and formalities to fulfill in order to benefit from a payment by the guarantee aimed at in paragraph 1 are written in a detailed manner in the official language(s) of the member nation where the guaranteed deposit situates itself, in the manner prescribed by national law.

5. Despite the time limit fixed in paragraphs 1 and 2, when a depositor or all other persons having rights or an interest on the sums held in an account has been charged with an offence tied to the laundering of capital such as it is defined in article 1 of the directive 91/308/CEE, the guarantee system can suspend all payment while waiting for the judgement of the tribunal.

Article 11

Separately from other rights which the national legislation could confer to them,

the systems which carry out the payments by the guarantee have a right of proxy in the rights of the depositors in the liquidation procedures up to a sum total equal to their payment.

Article 12

By violation of article 3, the credit establishments approved in Spain or in Greece and appearing in annex III are exempted of the obligation to adhere to a deposit guarantee system until December 31, 1999.

These credit establishments formally inform their actual and potential depositors of the fact that they are not members of a deposit guarantee system.

During this period, in the case where these establishments would establish or would have established a branch in another member nation, this latter can demand that this branch adhere to a deposit guarantee system instituted on its territory in the conditions set in article 4 paragraphs 2, 3, and 4.

Article 13

In the list of the approved credit establishments which is held to establish in the terms of article 3 paragraph 7 of the directive 77/780/CEE, the Commission indicates the situation of each credit establishment with regard to the present directive.

Article 14

1. The member nations put into effect the legislative, regulatory and administrative clauses necessary for conforming to the present directive at the latest by July 1, 1995. The member nations immediately inform this to the Commission.

When the member nations adopt these clauses, these latter contain a reference to the present directive or are accompanied by such a reference at the time of their official publication. The modes of this reference are stopped by the member nations.

2. The member nations communicate to the Commission the text of the essential clauses of the internal law which they adopt in the domain governed by the present directive.

Article 15

The present directive is effective the day of its publication in the Journal Officiel des Communautées européennes.

Compiled in Brussels, May 30, 1994.

By the European Parliament
President
E. Klepsch

By the Council
President
G. Romeos

ANNEX I

List of Exclusions Mentioned in Article 7 Paragraph 2

1. Deposits of financial establishments as meant in article 1 point 6 of the directive 89/646/CEE.

2. Deposits of insurance companies.

3. Deposits of the government and central administrations.

4. Deposits of provincial, regional, local or municipal groups.

5. Deposits of bodies of collective investment.

6. Deposits of pension or retirement funds.

7. Deposits of administrators, managers, associates personally responsible, holders of at least 5% of the capital of the credit establishment, persons in charge of the legal control of the account documents which verify the accounts of the credit establishment and of the depositors having the same qualities in other companies of the same group.

8. Deposits of near relatives and third parties acting for the account of the depositor cited in point 7.

9. Deposits of other companies of the same group.

10. Non registered deposits.

11. Deposits for which the depositor has obtained from the credit establishment, in an individual capacity, rates and financial advantages which have contributed to aggravate the financial situation of this establishment.

12. Letters of credit issued by the credit establishment and agreements resulting from the proper acceptance and from promissory notes.

13. Deposits in currencies other than:
    - those of the member nations,
    - the crown,

14. Deposits of companies of a size such that they are not authorized to establish an abridged balance sheet in accordance with article 34 paragraph 3 point g) of the treaty and concerning the annual accounts of certain forms of companies.

ANNEX II

Guiding Principles

When a branch requests to adhere to a system of the receiving member nation to benefit from a complementary coverage, the system of the receiving member nation defines at a bilateral level with the system of the member nation of origin, the appropriate rules and procedures on the payment of the indemnity to the depositors of this branch. For the definition of these procedures and the settlement of the conditions of adherence of this branch (aimed at in article 4 paragraph 2), the following principles are to be applied:

a) the system of the receiving member nation shall fully conserve the right to impose its objective rules and general application to the participating credit establishments; it can demand that the informations pertaining to itself be furnished and it will have the right to verify these informations near the authorities concerned of the member nation of origin;

b) the system of the receiving member nation will carry out the requests of complementary indemnity on the basis of a declaration of the authorities concerned of the member nation of origin, indicating that the deposits are unavailable. The system of the receiving member nation will fully conserve the right to verify the depositor's rights according to its own norms and procedures before paying the complementary indemnity;

c) the systems of the receiving member nation and of the member nation of origin will cooperate without restrictions so that the depositors rapidly receive the

correct sum total of an indemnity. In particular, they will agree on the question of knowing how the existence of a financial claim, likely to give way to a compensation by one of the two systems, affects the indemnity payed to the depositor by each system;

d) the system of the receiving member nation will be able to claim a tax to the branches for the complementary coverage on an appropriate basis taking into account the financial guarantee by the system of the member nation of origin. To facilitate the collection of the tax, the system of the receiving member nation can rely on the hypothesis that its agreement will be, in all cases, limited to the difference between the guarantee which it offers and that which is offered by the member nation of origin, independently of the question of knowing if the member nation of origin effectively pays an indemnity for the deposits held on the territory of the receiving member nation.

ANNEX III

List of Credit Establishments as Meant in Article 12

a) Specialized categories of Spanish credit establishments, of which the legal status is presently the subject of a reform, approved as:

- Entidades de Financiacion o Factoring,
- Sociedades de Arrendamiento Financiero,
- Sociedades de Credito Hipotecario;

b) The following public Spanish credit establishments:

- Banco de Credito Agricola, SA,
- Banco Hipotecario de Espana, SA,
- Banco de Credito Local, SA;

c) The following Greek credit cooperatives:

- Credit Cooperative of Lamia,
- Credit Cooperative of Ioannina,
- Credit Cooperative of Xylocastron,

as well as credit cooperatives mentioned below, of a similar type, which are approved or of which the approval procedure is currently in progress at the date of adoption of the present directive:

- Credit Cooperative of La Canée,
- Credit Cooperative of Heraklion,
- Credit Cooperative of Magnissia,
- Credit Cooperative of Larissa,
- Credit Cooperative of Patras,
- Credit Cooperative of Thessalonique.

LAW no. 94-679 of August 8, 1994 carrying diverse clauses of an economic and financial nature

The National Assembly and the Senate have adopted, in view of the Constitutional Council's decision no. 94-347 DC dated August 3, 1994,
The President of the Republic promulgates the law in which the content follows:

TITLE II

CLAUSES RELATING TO THE CREDIT ESTABLISHMENTS, TO THE DEPOSIT BANK AND TO THE FINANCIAL MARKET

Art. 10. - A. - Law no. 84-46 of January 24, 1984 previously cited is thus modified:

I. - After no. 8 of article 33, is inserted a no. 9 thus written:

"9. The rules relating to the protection of the depositors mentioned in article 52-1."

II. - In chapter I of title IV, is inserted an article 52-1 thus written:

"Art. 52-1. - All credit establishments approved in France adhere to a

guarantee system intended to indemnify the depositors in case of unavailability of their deposits or other reimbursable funds. However, establishments affiliated to one of the central bodies mentioned in article 20 are reputed to satisfy the obligation of guarantee in the conditions provided for in the third paragraph of the present article."

"Separately from the clauses relating to the recovery and to the legal liquidation of the enterprises, the unavailability of funds is noted by the banking commission, when an establishment no longer appears to be in a position to return, immediately or close to term, the funds which it has received of the public in the legislative, regulatory and contractual conditions applicable to their return."

"The committee of the banking regulation sets the conditions of application of the present article. It specifies notably the nature of the funds concerned, the minimum sum total of the indemnity ceiling per depositor, the modes and the time limit of indemnity as well as the rules relating to the obligatory information of the clientele. It equally specifies the conditions of adherence to a guarantee system as well as the conditions of exclusion of establishments, exclusion which can lead to the withdrawal of their approval and not affect the coverage of deposits made out before the date in which the said exclusion takes effect. It determines the conditions to which the recognition of the equivalence of the systems put in place by the central bodies are subordinated."

"The committee of the banking regulation stops, by decisions subject to the ratification of the minister in charge of the economy and published in the Journal Officiel of the French Republic, the list of guarantee systems meeting the conditions which result from the present article and from recognized equivalent

systems."

III. - In chapter III of title VII, is inserted an article 100-1 thus written:

"Art. 100-1. - As long as they are not covered by a guarantee system of their own nation, the branches of credit establishments having their head office in a member nation of the European Community other than France are held to adhere to a guarantee system in France in the conditions set by the committee of banking regulation."

"Until December 31, 1999, neither the level nor the extent of the coverage proposed by the branches of credit establishments in France having their main office outside of France and which are subject to a guarantee system of their own country can exceed the level or the maximum extent of the coverage proposed by the corresponding guarantee system in effect in France."

IV. - Article 31-1 is completed by a paragraph thus written:

"The committee of credit establishments can equally transmit informations necessary to the fulfillment of their mission to the deposit guarantee systems mentioned in article 52-1. The informations thus transmitted are covered by the rule of professional secrecy decreed in the first paragraph."

V. - Article 49 is completed by a paragraph thus written:

"The banking commission can equally transmit informations necessary to the fulfillment of their mission to the deposit guarantee systems mentioned in article

52-1. The informations thus transmitted are covered by the rule of professional secrecy decreed in the first paragraph."

B. - The clauses of the present article are effective, at the latest, July 1, 1995.

V. 독일 預金保護法

By-laws of the Deposit Protection Fund of the Association of German Banks (Version: August 1995)

§ 1
Deposit Protection Fund

(1) A deposit protection fund of German banks (hereinafter called "the Fund") has been established within the Association of German Banks (hereinafter called "Association").

(2) All communications concerning the Fund shall be directed to the Bundesverband deutscher Banken e. v. - Einlagensicherungs - Funds.

(3) Any banking institution within the meaning of § 3 (1) and (2) (hereinafter called "bank") shall participate in the Fund.

§ 2
Purpose of the Fund

(1) The purpose of the Fund is to give assistance, in the interest of depositors, in the event of imminent or actual financial difficulties of banks particularly when the suspension of payments is imminent, and to prevent the impairment of public confidence in private banks.

(2) All measures apt to be of assistance may be taken in the implementation of the purpose described in subsection (1), in particular payments to individual

creditors, primarily in accordance with § 6 hereof, payments and the giving of undertakings to banks the assumption of guarantees, or the assumption of obligations in connection with action taken under § 46a German Banking Act (kreditwesengesetz).

§ 3

Participation in the Fund

(1) All banks which are members of the member associations of the Association shall participate in the Fund

(a) provided that they have liable capital which meets the requirements on the basis of which the Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen) grants licences to carry on the business of banking under § 32 and § 33 German Banking Act;

(b) provided that they have at least two suitably personally qualified and reliable managers, thereby the necessary personal qualification shall in particular require that the individuals in question have extensive banking experience and offer assurance for business policies which exclude the jeopardizing of deposits and comply with the principles laid down in subclause (d);

(c) if there exist no facts which indicate that in the case of a significant participation in a bank, the owner, legal representative or general partner of the participating enterprise does not fulfil the requirements to be met in the interest of a sound and prudent management of the bank and, in particular, is not reliable.

(d) provided that they assure an overall even result from current business and the maintenance of the necessary liquidity, and fulfil the requirements to be met for the orderly conduct of banking business in accordance with the provisions of the German Banking Act;

(e) provided that they are members of the Auditing Association of German banks (Prüfungsverband deutscher Banken).

Branches of foreign banks domiciled in the European Union may on application be exempted from participation in the Fund if the home-country guarantee scheme protects deposits held in Germany and complies with the requirements of Directive 94/19/EC of 30th May, 1994 on deposit-guarantee schemes.

The member associations shall consult the Association before admitting new members.

(2) Private commercial banks[1], private mortgage banks, ship mortgage banks, and private banks with special functions which are not members of a member association of the Association may on application likewise participate in the Fund if they meet the conditions set forth in subsection (1), sentence 1, subclauses (d) to (e). The Board of Management of the Association shall decide on applications to participate submitted by such banks. If the Board of Management shall reject an application the applicant may request a review of the decision by the General Assembly of the Association; such request to the General Assembly shall be made

1) Private commercial banks include the big branch banks, regional banks, private bankers, branches of foreign banks and instalment finance banks which have been granted an unlimited banking licence by the Federal Banking Supervisory Office.

by registered letter, return receipt requested, which letter shall have been received by the Association not later than one month after notice of the decision of the Board of Management has been served.

(3) The participation of banks which did not heretofore participate in the Fund shall commence when they have paid the contributions under § 5 (2) and have submitted declarations in accordance with § 5 (5), (7) and (10), and the Association has thereupon confirmed to them their participation.

(4) The requirement that a bank have liable capital in accordance with subsection (1), sentence 1, subclause (a) or have more than one manager within the meaning of subsection (1), sentence 1, subclause (b) may, on application, in individual cases be waived, provided that no jeopardy of the interests of the Fund need be expected.

§ 4

Termination of participation in the Fund

(1) Participation in the Fund shall terminate:

(a) in the case of banks which are members of a member association of the Association, upon termination of their membership; in the case of other banks upon the giving of a corresponding notice to the Association;

(b) upon termination of the membership of a bank in the Auditing Association of German Banks;

(c) upon exclusion from participation in the Fund.

(2) Notices of termination pursuant to subsection (1), subclause (a), second part shall be made by registered letter return receipt requested; they shall become effective one month after receipt of such letter by the Association.

(3) The Board of Management of the Association after having consulted the bank, shall decide on the exclusion from participation pursuant to subsection (1), subclause (c), if the bank does not meet, or no longer meets the conditions for participation in the Fund set out in §3, does not submit upon request declarations in accordance with §5 (5), (7), (8) and (10), or has materially breached its obligations towards the Fund. It shall constitute a material breach of obligations in particular if a bank:

1. gives incomplete or incorrect information to the Association in connection with Fund,
2. is in default with the payment of contributions for more than two months after written reminder,
3. does not immediately make available to the Association the information in accordance with §5 (5a),
4. does not support the Auditing Association in its auditing activity or does not promptly fulfil any condition (§5 (6)) set by the Auditing Association,
5. does not immediately advise the Association if it intends to open a branch abroad,
6. does not immediately advise the Association in accordance with §5 (5b) of a reduction of the liable capital,
7. does not include in its General Business conditions the clause prescribed by §5 (4), or does not make such clause the basis of its business relations with its

customers,

8. makes incorrect statements to customers or potential customers concerning the protection ceiling and the kind of deposits protected,
9. advertises the security of deposits contrary to §5 (13),
10. does not promptly comply with any condition set, by the Association in accordance with §5 (11), or
11. does not indemnify the Association against losses in accordance with 5 (10), sentence 1.

The decision of the Board of Management concerning the exclusion of a bank shall be served on such bank by registered letter, return receipt requested; the decision shall become effective one month after receipt thereof by the bank. The bank may request review of the decision by the General Assembly of the Association; such request to the General Assembly shall be made by registered letter, return receipt requested, which letter shall have been received by the Association within the period stated in the preceding sentence. The request to the General Assembly shall have suspensive effect. Exclusion shall not take place if the General Assembly of the Association objects to the exclusion by a majority of two-thirds of the votes cast. The decision of the General Assembly shall become effective one month after receipt by the bank.

(4) If the participation in the Fund by a bank which is a member of a member association of the Association shall terminate, the respective member association shall exclude such bank from membership unless the participation of the hared in the Fund terminates only because the bank does not have liable capital meeting the retirements of §3 (1), sentence 1, subclause (a) or has only one manager meeting the requirements of §3 (1), sentence 1, subclause (b).

(5) banks whose participation in the Fund terminates shall continue to be liable to pay the contribution for the business year during which the termination becomes effective. The addition the provisions of these By-laws, including the obligations arising therefrom, shall apply for as long as any liabilities of the bank are protected.

§ 5

Right and obligations of Banks

Participation in the Fund

(1) The banks shall pay to the Association as of June 30 of each year a contribution of 0.3 0/00 of the balance sheet item "Liabilities to customers" shown in the last annual financial statements prepared prior to June 30 ("annual contribution"). Not taken into account in the assessment of the contribution are liabilities to foreign affiliates of the bank with in the meaning of § 18 German Companies Act which conduct banking business as defined in § 1 (1), sentence 2, no. 2 German Banking Act, as well as redeliver obligations arising from securities lending business. In the case of mortgage banks and ship mortgage banks, the liabilities to non-banks included in the balance sheet item "Savings deposits" and "Other liabilities" shall apply in lieu of the balance sheet item referred to in the preceding sentence, unless registered mortgage bonds or public registered mortgage bonds have been issued in order to secure the creditors. In the case of banks with special functions liabilities which have a term of four years or more and in respect of which the creditors have received bonds issued by the bank shall not be taken into account. In special cases 1 the Board of Management of the Association may determine for individual banks a different basis for

assessment of the contribution.

(2) Newly admitted banks in a position to submit annual financial statements for three full business years shall be requited to make apart from the contribution for the current year - a non-recurrent payment of 0.9 0/00 of the relevant basis for assessment of the contribution referred to in subsection 1 as of the last balance sheet date prior to admission. For banks not yet in a position to submit annual financial statements for three full business years, the contribution in the year of admission and the non-recurrent payment of 0.9 0/00 shall be subject to application of the relevant assessment basis referred to in subsection 1 as shown in the annual financial statements for the third full business year. The non-recurrent payment shall amount to not less than DM 25,000. If sentence 2 applies, an advance payment of 1.2 0/00 of the liable capital, but not less than DM 25,000 shall be levied in the year of admission; final computation shall be made after submission of the annual financial statements for the third full business year.

(3) The Board of Management of the Association may resolve a suspension of the payment of the annual contribution if the assets of the Fund have reached a reasonable level. If the assets of the Fund are not sufficient for measures of assistance pursuant to § 2 (2) or if otherwise required for the implementation of the purpose of the Fund, the Board of Management of the Association may resolve to double the annual contribution or to levy a special contribution per fiscal year of an amount up to the amount of one annual contribution.

(4) Each bank shall include in its General Business Conditions the following clause and shall base its business relations with its customers thereon:

" clause . . .

The Bank is a member of the Deposit Protection Fund of the Association of German banks e. v. (hereinafter called the "Fund"). Insofar as the Fund or its nominee shall make payments to a customer, the corresponding amount of the claims of such customer against the bank shall be transferred simultaneously to the Fund. The same shall apply if in the absence of instructions from the customer the Fund makes payments to an account opened in his favour with another bank. The bank shall be entitled to furnish to the Fund or its nominee all information and documents required in this connection."

(5) The banks shall submit to the Association a declaration, in the form as appended hereto by which they authorize the Federal Banking Supervisory Office, The Deutsche Bundesbank and the Auditing Association of German Banks, respectively, to inform the Association of any matter which might make deposits held with the respective bank seem possibly to be in jeopardy. In additions the Association shall be authorized to obtain all information necessary for such purpose from such banks and to inform them of all matters of which it may become aware in the course of its activities.

(5a) The banks shall immediately inform the Association of the creation modification and termination of a significant participation and make available all information to allow an assessment of whether the partners concerned fulfil the requirements to be met in the interest of a sound and prudent management of the bank.

(5b) The banks shall immediately inform the Association if the Federal Banking Supervisory Office has reduced the liable capital within the meaning of

§ 10 German Banking Act.

(6) The banks shall be obliged to support the Auditing Association of German Banks in its auditing activity and to comply promptly with any condition which such Association may impose. The Auditing Association may impose conditions

- if within the framework of an audit objections were raised in relation to the German Banking Act, other laws administrative regulations as well as the principles of internal bank organization;
- if such conditions are apt to avert the otherwise imminent danger of recourse to the Fund.

Furthermore, the Auditing Association may impose conditions designed to ensure compliance with the essential facts and business objectives reported upon application for admission and which served as the basis for the admission of a bank. If the bank wishes to modify these substantially, it may only do so after an audit has been conducted by the Auditing Association.

(7) All banks shall assign to the Association, by declaration the form as appended hereto, all claims for damages which they may have against their auditors and the employees of such auditors for negligent auditing. The Association agrees to make use of such assignment only to the extent that is clams for reimbursement or other claims against the bank as a result of measures taken pursuant to § 2 (2).

(8) The banks shall deliver to the Association promptly upon request a confirmation of their auditor that they have correctly computed the annual contribution.

(9) Without prejudice to any further-reaching statutory provisions, the banks shall publish their annual financial statements within six months after the respective balance sheet date applying analogously the provisions of the German Disclosure Act (Publizitätsgesetz). If the liable capital as defined in § 10 German banking Act shall exceed the liable capital shown in the annual balance sheet (including reserves, but excluding profit carried forward), it may be published together with the balances sheet.

(9a) Each bank shall be obliged to advise the Association immediately if it intends to open a branch abroad.

(10) Each bank shall be obliged to indemnify the Association against losses which the Association may have suffered by reason of a measure of assistance in favour of another bank in which the bank holds the majority of the shares or can otherwise exercise, directly or indirectly, a dominating influence. The obligation of a bank resulting from the preceding sentence notwithstanding, the banks concerned must submit an express declaration to this effect. Furthermore banks must furnish a declaration applying the foregoing sentences analogously

- from a natural or legal person or other enterprise who or which does not participate in the Fund, but holds a majority of the shares in the shares in the bank and can directly or indirectly exercise a dominating influence over the bank or
- from several banks or natural or legal persons or enterprises not participating in the Fund, which together can directly or indirectly exercise a dominating influence over the bank.

§ 16et seq. German companies Act (Aktiengesetz) shall apply analogously, irrespective of the legal form of the bank or the share holding banks, banking

institutions, persons or enterprises, in determining wether in such cases a majority holding or a dominating influence exists. For the implementation of the obligations provided for by the preceding sentences the banks shall promptly notify the Association from time to time of the banks in which they hold a majority of the shares or in which they can otherwise directly or indirectly exercise a dominating influence; similarly, the banks shall inform the Association if the situations described in the first and third sentences apply in their case.

(11) Each bank shall be obliged to comply with any condition imposed by the Association in connection with any measure pursuant to § 2 (2) taken in respect of such bank. such conditions may relate to assets and personnel. To the extent necessary in view of measures pursuant to § 2 (2), the Association may require information from the respective bank and its bodies on all business affairs and the submission of books and records. The Association and its nominee shall be liable to the banks in the performance of activities based on § 2 (2) only for willful misconduct and gross negligence .

(11a) If, in connection with a measure pursuant to § 2 (2), the Association conducts securities business concluded by the bank which the latter is prevented from performing as a result of an order prohibiting payments and disposals in accordance with § 46 German Banking Act, the consent of the bank to any action necessary on the part of the Association to ensure the proper performance of such business is to be regarded as furnished.

(11b) Each bank shall be obliged to report promptly to the Association the commencement of a liquidation of its banking operations. The Association may impose conditions under subsection (11), unless it can be excluded that measures

pursuant to § 2 (2) may become necessary.

(12) Any expenditure incurred by the Fund in the implementation of measures pursuant to § 2 (2) shall be reimbursed by the bank to the Association, unless prohibited by mandatory provisions of law. The right to assert other claims shall remain unimpaired.

(13) It shall be permissible to give information regarding participation in the Fund; the banks may give information, by means of display in their offices, by individual letter and in reply to questions, of the fact that they participate in the Fund, of the kind of liabilities protected in accordance with § 6 and of the amount up to which liabilities to each customer are protected by the Fund. It shall not be permitted to advertise the Protection of deposits or the participation in the Fund in the press, by radio or television, or by general mail distributions and similar publicity. The banks shall be obliged to take steps against third parties which improperly advertise the security of their deposits.

(14) A uniform logo has been created for all banks which belong to the member associations of the Association. All banks participating in the Fund may display such logo in their offices, windows, display cases and doors of all branches and use such logo in their correspondence. The General Assembly of the Association shall determine the details of the permitted forms of use in particular with respect to size and presentation of the logo. In addition, subsection (13) shall apply to the use of the logo.

§ 6

Scope of Deposit Protection

(1) Protected are all liabilities of banks:

- to non-banks (in particular private persons, business enterprises and public agencies) which are required to be shown in the balance sheet item "Liabilities to customers"[2]); in the case of mortgage banks and ship mortgage banks, the liabilities towards non-banks included in the balance sheet items "Savings Deposit" and "Other liabilities" shall apply in lieu of the aforesaid liabilities except for those cases where registered mortgage bonds or public registered mortgage bonds have been issued in order to secure the creditors; the liabilities mentioned in § 5 (1), sentence 3 shall not be taken into account in the case of banks with special functions; liabilities shall also not be taken into account if and insofar as they are not taken into account when determining the basis for contribution in accordance with a decision of the Board of Management pursuant to § 5 (1), sentence 4,
- to investment companies and their custodian banks inasmuch as investment fund assets are concerned and in fact in the same manner as liabilities to non-banks,

for each creditor up to a Protection ceiling of 30% of the sum of

- the core capital as defined in § 10 (4a) sentence 2 German Banking Act and
- the other liable capital as defined in § 10 German banking Act (supplementary capital) up to an count of 25% of the core capital as of the date of the last published annual financial statements of the bank[3]); in addition. increases in capital which are recognised by the Federal Banking supervisory office after

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2) This balance sheet item comprises for the main part demand, term and savings deposits including registered savings certificates.

3) In respect of branches of foreign banks within the meaning of § 53 (1) German Banking Act the liabilities are protected under the prerequisites of § 6 (1) up to a ceiling of 30% of the liable capital as of the date of the last published annual financial statements of the branch. § 53 (2), No. 4 German banking Act shall not apply.

such date may be taken into account on application by the bank. If the Federal Banking Supervisory office reduces the liable capital within the meaning of § 10 German Banking Act, the Association shall be authorized to lower the Protection ceiling accordingly. Liabilities in excess thereof shall be protected up to the ceiling. In the case of liabilities to investment companies and their custodian banks, each investment fund shall be deemed to be a separate creditor for the computation of the Protection ceiling.

(1a) Liabilities in respect of which a bank has issued bonds payable to bearder liabilities to foreign affiliates of the bank within the meaning of § 18 German Companies Act which conduct banking business as defined in § 1 (1), sentence 2, no. 2 German Banking Act, as well as redelivery obligations arising from securities lending business shall not be protected even if the scare required to be shown in the balance sheet item "Liabilities to customers".

(2) Whenever claims arising from liabilities which are not protected in accordance with subsection (1) are transferred to a non-bank by way of special or general succession in title such liabilities shall not be protected if the execution of measures pursuant to § 2 (2) is resolved upon within six month from the date of such transfer.

(3) Not protected are also liabilities to:

(a) managers of the hared;
(b) general partners of the bank, even if they are not managers;
(c) limited partners, shareholders of a limited liability company, shareholders of a stock corporation and silent partners if the share in the capital of the bank

held by any such person amounts to 50% or more; § 19 (2) German Banking Act shall apply analogously;

(d) members of a board of the bank designated to supervise the conduct of management, where the supervisory powers of such board are provided by statute (supervisory board);

(e) spouses and minor children of the persons referred to in subclauses (a) to (d), except where the monies originate from. the own assets of the spouse or minor child;

(f) third persons acting for the account of any person referred to in subclauses (a) to (e).

Whenever claims under liabilities which have arisen in favour of persons referred to in the preceding sentence are transferred to a third person by way of special or general succession in titles such liabilities shall not be protected if the execution of measures pursuant to § 2 (2) is resolved upon within six months from the date of said transfer.

Furthermore, liabilities arising from acts which would be voidable under § § 29et seq. German Bankruptcy Act in bankruptcy proceedings or in bankruptcy proceedings following judicial composition proceedings shall not be protected if a motion for the institution of bankruptcy or judicial composition proceedings had been filed at the date at which the Federal Baking supervisory officer in accordance with § 46a German Banking Act issues an order prohibiting payments and disposals in order to prevent bankruptcy.

(4) In computing protected liabilities within the meaning of subsection (1), all liabilities to one creditor shall be added together: counterclaims of the bank. if

any, shall be deducted whereby §54 (1) and (2) German Bankruptcy Act shall apply analogously. Further more. the provision of §§768, 770 and 776 German civil code {Bürgerliches Gesetzbuch) applicable in respect of guarantors shall apply analogously for the benefit of the Association.

(5) Within the frame set by the Protection ceiling, payments shall also cover interest claims, such claims shall accrue in principle until the earlier of the date of repayment of principal or the institution of bankruptcy or judicial composition proceedings. However, the Fund shall make payments only for interest at market rates. Market rates of interest shall be based on the average interest rates as shown in the statistics of the Deutsche Bundesbank. In this respect - irrespective of the time of establishment of the deposit - the average interest rates as shown in the last published statistics prior to the Fund declaring its willingness to make payments may be taken as a basis. In determining the market rates of interest the interest rates of several deposits of the same type may be aggregated. The Fund may subject the making of all payments to an individual creditor to the condition that such creditor waives the assertion of interest claims against the bank which are not protected pursuant to sentences 3 to 6.

(6) In the case of client accounts, the individual beneficiary shall be the basis for the computation of the Protection ceiling pursuant to subsection (1). The same shall apply to trust accounts, provided that the trust relationship and the beneficiary are unambiguously designated in the name of the account and the existence of the trust relationship is demonstrated to the Fund. In all other cases trust accounts shall be treated as accounts of the trustee.

(7) In the case of joint accounts, credit balances and account holders' claims

shall for the purpose of computing the Protection ceiling and the protected liability be attributed to the account holders in equal shares. irrespective of the kind of account and of the legal relationship between the account holders. Thereafter, liabilities towards the individual joint account holders arising from their personal relationship with the bank shall be protected first. If such liabilities do not exhaust the Protection ceiling, the portion of the joint balance pertaining to the individual account holder shall be used. The foregoing provisions shall not apply to accounts of condominium owners' associations subject to the provisions of the German Condominium property Act(Wohnungseigentumsgesetz); such accounts shall be treated as individual accounts in accordance with subsections (1) and (4).

(8) If the participation of a bank in the Fund shall terminate such bank shall promptly give notice thereof to creditors to whom liabilities within the meaning of subsection (1) are owed and shall bring the consequences of such termination to their attention. The Association shall publish the termination at the expense of the bank in the Federal Gazette (Bundesanzeiger) and in a daily newspaper at the registered office of the bank. Liabilities which are created or renewed later than one month after publication in the Federal Gazette or which the creditor does not terminate or claim at the earliest possible date there-after are not protected.

(9) The Protection ceiling which results from the last published annual balance sheet, shall apply for payment to creditors; in addition, changes in capital pursuant to subsection (1), sentence 1, second clause and sentence 2 shall be taken into account. Any reduction of the liable capital relevant for the Protection ceiling shall, however, not become effective until one month after publication of the annual financial statements which show the new, reduced liable capital or until one month after the new Protection ceiling has been published in the Federal Gazette from

such point onwards, subsection (8), sentence 3 shall apply analogously to amounts in excess of the new Protection ceiling. The Association may publish the new Protection ceiling at the expense of the bank in the Federal Gazette and in a daily newspaper at the registered office of the bank. The bank shall be obliged to notify promptly all creditors affected by a reduction of the Protection ceiling.

(10) A right in law to enforce intervention or payments by the Fund shall not exist.

§ 7

Deposit Protection Committee

(1) A Deposit Protection committee shall be formed within the Association. It shall consist of nine persons as follows:

(a) three representatives of the big branch banks;

(b) three representatives of the regional banks and other institutions, and

(c) three representatives of the private banker.

Every member of the committee shall have a deputy belonging to the same group of banks. Members and deputies must be active owners or managers of banks participating in the Fund.

(2) The committee shall be elected for a term of three years by the General Assembly of the Association; its members and their deputies shall hold office until a new Committee has been elected, but not longer than the duration of active service in their bank or of the participation of their bank in the Fund. Whenever member of the committee or a deputy resigns prior to the expiration of his term of office the General Assembly of the Association shall elect a new member or a

new deputy for the remaining term of office.

(3) The committee shall elect from among its members its chairman and its deputy chairman.

(4) Meetings of the committee shall be convened by its chairman or, if he is prevented from attending by the deputy chairman. A meeting of the committee must he called upon the request of all delegates of one group of banks. In urgent cases, the chairman or, if he is prevented from attending, the deputy chairman may order that votes he taken in writing or by telephone.

(5) The committee shall constitute a quorum if at least six of its members are present at the meeting or express their views in the case of voting in writing or by telephone. Members of the committee who are prevented from attending mal either send their deputies or authorize another member to exercise their voting rights; the member prevented from attending shall be deemed present in such cases. A majority of not less than six votes shall be required for the passing of a resolution.

(6) The committee shall have the following functions:

(a) decisions regarding measures of assistance (§2 (2));

(b) the establishment of guidelines regarding the investment of the assets of the Fund;

(c) submission of the annual accounts of the Fund; and

(d) the execution of all duties assigned to the committee by the Board of Management of the Association; the making of decisions pursuant to §3 (2) and §4(3) and (4) may not be assigned.

The Board of Management of the Association may at any time take over the functions of the committee.

§ 8

Retention of the Auditing Association

The Auditing Association of German Banks shall be retained in connection with examining whether the conditions for participation in the Fund are met and considering the obligations result-ing from participation.

§ 9

Publication of Participation in the Fund

The Association may publish the names of the banks participating in the Fund and any changes in this regard.

§ 10

No Claims of the Bank

The banks shall have no right in law that the Fund renders assistance or with respect to the assets of the Fund. The latter shall apply in particular to banks which cease to participate in the Fund.

§ 11

Obligation of Confidentiality and Secrecy

(1) The members of the bodies and committees of the Association and its member associations shall be obliged to keep strictly confidential and to make no unauthorised disclosure or use of anything of which the become aware in such capacity regarding the activities and results achieved by the Fund and the circumstances of the participating banks and their customers, even after termination of their membership in such bodies and committees. Such obligation shall also be imposed upon employees of, and other persons engaged by the Association.

(2) Subsection (1) shall not apply to communications made to the Federal Banking Supervisory Office, the Deutsche Bundesbank or the Auditing Association of German Banks by bodies of the Association in connection with the purposes of the Fund and in proper exercise of their discretion. Furthermore, subsection (1) shall not apply to communications in connection with the admission or the exclusion of an institution.

APPENDICES

Appendix to §5 (5) of the By-Laws of the Fund

Text of the Declaration of Authorization

I(we) hereby authorize the Federal Banking Supervisory Office[4] to inform the Association of German Banks - Deposit Protection Fund - of anything which shows that deposits held with me(us) might possibly be in jeopardy. In addition, I(we) authorize the Association of German Banks - Deposit Protection Fund - to obtain all information necessary for such purpose from the Federal banking supervisory office.

This declaration shall be irrevocable for as long as I(we) participate in the Deposit Protection Fund within the Association of German Banks.

.....

I(We) hereby authorize the Deutsche Bundesbank to inform the Association of German Banks - Deposit Protection Fund - of anything which shows that deposits held with me(us) might possibly be in jeopardy. In addition, I(we) authorize the Association of German Banks - Deposit Protection Fund - to obtain all information necessary for such purpose from the Deutsche Bundesbank.

This declaration shall be irrevocable for as long as I(we) participate in the Deposit Protection Fund within the Association of German Banks.

.....

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4) In the case of branches of foreign banks domiciled in another EU member state, the words "Federal Banking Supervisory Office" shall be replaced by "banking supervisory authority of our home country,···" (official designation).

I(we) hereby authorize the Auditing Association of German Banks to inform the Association of German Banks - Deposit Protection Fund - of anything which shows that deposits held with me(us) might possibly be in jeopardy or of anything which concerns the obligations for me(us) ensuing from the By-laws of the Deposit Protection Fund. In addition, I(we) authorize the Association of German Banks - Deposit Protection Fund - to obtain all information necessary for such purpose from the Auditing Association of German Banks.

This declaration shall be irrevocable for as long as I(we) participate in the Deposit Protection Fund within the Association of German Banks.

.....

Appendix to §5 (7) of the By-Laws of the Fund

Text of the Declaration of Assignment

I(We) hereby assign to the Association of German Banks all claims for compensation of damages of whatever nature which I(we) may have at present or acquire in the future against my(our) auditor from time to time and his employees for negligent auditing.

.....

Appendix to §5 (10) of the By-Lows of the Fund

Test of the Declaration Undertaking

I(We) have a relationship with .....

..... (hereinafter called "Bank") as described in §5 (10) of the By-laws of the

Deposit Protection Fund within the Association of German Banks. I(us) undertake to indemnify the Association of German Banks against any losses which the Association may suffer from measures taken in favour of the Bank pursuant to § 2 (2) of the By-laws of the Deposit Protection Fund.

This declaration shall remain in effect until revocation, irrespective of whether or not my(our) relationship with the Bank within the meaning of §5 (10) of the By-laws of the Deposit Protection Fund persists in any manner. This declaration shall be irrevocable for as long as such relationship persists. If this declaration shall be revoked at a time when facts have already arisen which lead to the taking of measures pursuant to §2 (2) of the By-laws of the Deposit Protection Fund. my(our) obligation under the first paragraph hereof shall also apply with respect to the taking of such measures.

Any disputes arising in connection with this agreement shall fall within the exclusive jurisdiction of the Landgericht Köln.

All legal relationships resulting from this declaration shall be subject to the law of the Federal Republic of Germany.

Mrs. /Mr. /Messrs.

.....

.....

is(are) irrevocably authorized to accept declarations of intention and documents only (our) behalf[5].

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5) This sentence should be deleted if the signatory to this declaration is resident in the Federal Republic of Germany.

.....

Supplementary arrangements for participation by branches of foreign banks from EU member states in the Deposit Protection Fund

For branches of banks domiciled in other member states of the European Union which participate in the Deposit Protection Fund, the following special arrangements shall apply. Where branches of banks from non-EU member states are, by virtue of regulations issued by the responsible German government offices treated under bank supervisory rules completely or partly on a par with branches from EU member states, the following arrangements may at the decision of the Deposit Protection Committee be applied completely or partly also to such branches.

1. Contribution

In lieu of §5 (1) of the By-laws of the Deposit Protection Fund the following arrangement shall apply:

Branches of foreign banks domiciled in the European Union shall be obliged to pay as of 30th June of each year a contribution of 0.3 0/00 of those deposits held on 31st December of the previous year which in the case of banks required to submit a balance sheet in Germany would have to be shown in the balance sheet item "Liabilities to customers". To be deducted therefrom are deposits or portions of deposits which are protected by the home-country guarantee scheme. The branches shall be obliged to record the volume of such deposits for accounting purposes and to furnish proof thereof to the Association.

2. Protection ceiling

In lieu of §6 (1) of the By-laws of the Deposit Protection Fund the following arrangement shall apply:

For branches of foreign has domiciled in the European Union, the protection ceiling shall on application by the bank be fixed as follows:

Option 1:

If the branch maintains in Germany endowment capital as defined in §53 (2) no. 4 German Banking Act, this capital may, pursuant to the provisions of §6 (1) of the By-laws of the Deposit Protection Fund be taken as the basis for determining the Protection ceiling, provided such endowment capital is available permanently, but at least until the next balance sheet date of the Head Office.

Option 2 :

The branch shall be apportioned as the basis for determining the Protection ceiling that share of the liable capital of the bank as a whole recognised under bank supervisory rules which reflects the size of the balance sheet total of the branch, adjusted so as exclude all dealings with own offices and affiliates, in relation to the similarly adjusted combined balance sheet total of the bank as at the balance sheet date.

The branch shall he obliged to provide the following figures certified by the

auditor of the bank as a whole :

- the balance sheet total of the bank as a whole, adjusted so as to exclude all dealings with own offices and affiliates,
- the balance sheet total of the branch, adjusted so an to exclude all dealings with own offices and affiliates,
- the amount of the liable capital of the bank as a whole recognised under bank supervisory rules, subdivided into core and supplementary capital,
- the amount of the customer deposits of the branch which are protected in accordance with no. 4.

For these figures, the last balance sheet date of the Head Office shall in principle apply; the figures may, however, also be requested for a date to be specified has the Auditing Association or also for several dates if in the opinion of the Auditing Association the figures on the balance sheet date do not reflect the average business situation of the branch.

Option 3 :

The protection ceiling shall be fixed without the need for any further documentation at a flat amount of DM 3 million

3. Auditing of branches

Supplementary to §5 (6) of the By-laws of the Deposit Protection Fund the following arrangement shall apply;

Branches of foreign banks domiciled in the European Union shall be obliged to place at the disposal of the Auditing Association the information deemed necessary by the latter, even where such information is available only at the Head Office, to consent to the obtaining of information from the home-country supervisory authority, and to allow their auditing by the Auditing Association. The Auditing Association shall be authorized to carry out at the bank, without geographical or material restrictions, all auditing measures which it deems necessary in order to reliably assess the circumstances of the branch.

4. Relationship to the home-country deposit guarantee scheme

The Deposit Protection Fund shall provide indemnification in accordance with the By-laws only if and to the extent that deposits are not protected by the home-country deposit guarantee scheme.

Ⅵ. 영국 預金保護法

PART II

THE DEPOSIT PROTECTION SCHEME

The Board and the Fund

50. - (1) The body corporate known as the Deposit Protection Board and the Fund known as the Deposit Protection Fund established by section 21 of the Banking Act 1979 shall continue to exist.

(2) The Deposit Protection Board (in this Part of this Act referred to as "the Board") shall -

(a) hold, manage and apply the Fund in accordance with the provisions of this Part of this Act;

(b) levy contributions for the Fund, in accordance with those provisions, from contributory institutions, and

(c) have such other functions as are conferred on the Board by those provisions

(3) schedule 4 to this Act shall have effect with respect to the Board.

51. - (1) The Fund shall consist of -

(a) any money which forms part of the Fund when this section comes into force;

(b) initial, further and special contributions levied by the Board under this Part of this Act;

(c) money borrowed by the Board under this Part of this Act; and

(d) any other money required by any provision of this Part of this Act to be credited to the Fund or received by the Board and directed by it to be so

credited.

(2) The money constituting the Fund shall be placed by the Board in an account with the Bank

(3) As far as possible, the Bank shall invest money placed with it under subsection (2) above in treasury bills; and any income from money so invested shall be credited to the Fund.

"(3A) In subsection (3) above, the reference to Treasury bills includes a reference to bills and other short-term instruments issued by the government of another EEA State and appearing to the Bank to correspond as nearly as may be to Treasury bills"

(4) There shall be chargeable to the Fund -

(a) repayments of special contributions under section 55(2) below;

(b) payments under section 58 below;

(c) money required for the repayment of, and the payment of interest on, money borrowed by the Board; and

(d) the administrative and other necessary or incidental expenses incurred by the Board.

52. - "(1) All UK institutions and participating institutions shall be liable to contribute the Fund and are in this Part of this Act referred to as 'contributory institutions'."

(2) Contributions to the Fund shall be levied on a contributory institution by the Board by the service on the institution of a notice specifying the amount due,

which shall be paid by the institution not later than twenty-one days after the date on which the notice is served.

"(2A) Where -

(a) a notice under subsection (2) above is served on a contributory institution; and

(b) the amount specified in the notice remains unpaid after the period of twenty-one days mentioned in that subsection,

the Board shall as soon as practicable give written notice of that fact to the Bank."

(3) Subject to section 56 below, on each occasion on which contributions are to be levied from contributory institutions (other than the occasion of the levy of an initial contribution from a particular institution under section 53 below) -

(a) a contribution shall be levied from each of the contributory institutions; and

(b) the amount of the contribution of each institution shall be ascertained by applying to the institution's deposit base the percentage determined by the Board for the purpose of the contribution levied on that occasion.

"(4) subject to subsection (4B) and section 57 below, the deposit base of an institution in relation to any contribution is the amount which the Board determines as representing the average, over such period preceding the levying of the contribution as appears to the Board to be appropriate, of deposits in EEA currencies with the United Kingdom offices of that institution other than -

(a) secured deposits;

(b) deposits which are own funds within the meaning given by Article 2 of Directive 89/299/EEC(a);

(c) deposits which fall within item 1 or 2 of Annex I to Directive 94/19/EC(b); and

(d) deposits in respect of which the institution has in the United Kingdom issued a certificate of deposit in an EEA currency.

(4A) In its application to UK institutions subsection (4) above shall have effect as if the reference to United Kingdom offices included a reference to offices in other EEA States.

(4B) In the case of a participating EEA institution, the amount determined under subsection (4) above shall be reduced by the amount given by the formula -

$$PA \times \frac{HS}{UK}$$

where -

PA = so much of the amount so determined as is attributable to deposits which are protected by the institution's home State scheme;

HS = the level of protection (expressed in ecus) afforded by that scheme at the time when the determination is made, or the level of protection mentioned below, whichever is the less;

UK = the level of protection (so expressed) afforded by this Part of this Act at that time."

(5) In its application to this section, section 5(3) above shall have effect with the omission of paragraphs (b) and (c).

"(6) In this part of this Act -

'the 1995 Regulations' means the Credit Institutions (Protection of Depositors) Regulations 1995;

'administrator', in relation to an institution, means an administrator of the institution under Part II of the Insolvency Act 1986(c) or Part III of the

Insolvency (Northen Ireland) order 1989(d);

'building society' means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986;

'the deposit protection scheme' means the scheme for the protection of depositors continued in force by this Part of this Act;

'ecu' means -

(a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(e); or

(b) except in section 60(1) below, any other unit of account which is defined by reference to the European currency unit as so defined;

'EEA currency' means the Currency of an EEA State or ecus;

'EEA State' means a State which is a contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(a) as adjusted by the Protocol signed at Brussels on 17th March 1993(b);

'former authorized institution' does not include any institution which is a former UK institution or a former participating institution;

'former participating institution' means an institution which was formerly a participating institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a participating institution, and 'former participating EEA institution' and 'former participating non-EEA institution' shall be construed accordingly;

'former UK institution' means an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution;

'home State scheme' has the same meaning as in the 1995 Regulations;

'participating EEA institution' means a European authorized institution which, in accordance with Chapter 1 of Part II of the 1995 Regulations, is participating

in the deposit protection scheme;

'participating institution' means a participating EEA institution or a participating non-EEA institution;

'participating non-EEA institution' means an authorized institution which is incorporated in or formed under the law of a country or territory outside the European Economic Area, not being one -

(a) which has, in accordance with Chapter Ⅲ of Part Ⅱ of the 1995 Regulations, elected not to participate in the deposit protection scheme; and

(b) whose election under that Chapter is still in force;

'UK institution' means an authorized institution which is incorporated in or formed under the law of any part of the United Kingdom.

(7) In its application to this part, section 5(3) above shall have effect as if -

(a) the references in paragraph (a) to an authorized institution included reference to a building society and to any credit institution which is incorporated in or formed under the law of a country or territory outside the United Kingdom; and

(b) in schedule 2 to this Act. paragraph 5 (building societies) were omitted.

53. - (1) Subject to subsection (4) below, where an institution becomes a contributory institution after the coming into force of this Part of this Act the Board shall levy from it, on or as soon as possible after the day on which it becomes a contributory institution, an initial contribution of an amount determined in accordance with subsection (2) or (3) below.

(2) Where the institution concerned has a deposit base, then, subject to section 56(1) below, the amount of an initial contribution levied under this section shall be

such percentage of the deposit base as the Board considers appropriate to put the institution on a basis of equality with the other contributory institutions, having regard to -

(a) the initial contributions previously levied under this section or under section 24(1) of the Banking Act 1979; and

(b) so far as they are attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 54 below or subsection (2) of section 25 of that Act, further contributions levied under either of those sections.

"(2A) In its application to participating EEA institutions, subsection (2) above shall have effect as if the reference to a basis of equality were a reference to a basis of parity."

(3) Where the institution concerned has no deposit base the amount of an initial contribution levied under this section shall be the minimum amount for the time being provided for in section 56(1) below.

(4) The Board may waive an initial contribution under this section if it appears to it that the institution concerned is to carry on substantially the same business as that previously carried on by one or more institutions which are or were contributory institutions.

54. - (1) If at the end of any financial year of the Board the amount standing to the credit of the Fund is less than £3 million the Board may, with the approval of the Treasury, levy further contributions from contributory institutions so as to restore the amount standing to the credit of the Fund to a minimum of £5 million and a maximum of £6 million

(2) If at any time it appears to the Treasury to be desirable in the interests of depositors to increase the size of the Fund, the Treasury may, after consultation with the Board, by order amend subsection (1) above so as to substitute for the sums for the time being specified in that subsection such larger sums as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of parliament.

(3) An order under subsection (2) above may authorize the Board forthwith to levy further contributions from contributory institutions so as to raise the amount standing to the credit of the Fund to a figure between the new minimum and maximum amounts provided for by the order.

55. - (1) If it appears to the Board that payments under section 58 below are likely to exhaust the Fund, the Board may, with the approval of the Treasury, levy special contributions from contributory institutions to meet the Fund's commitments under that section.

(2) where at the end of any financial year of the Board there is money in the Fund which represents special contributions and will not in the opinion of the Board be required for making payments under section 58 below in consequence of institutions having become insolvent or subject to administration orders before repayments are made under this subsection the Board -

(a) shall repay to the institutions from which it was levied so much (if any) of that money as can be repaid without reducing the amount standing to the credit of the Fund below the maximum amount for the time being specified in subsection (1) of section 54 above; and

(b) may repay to those institutions so much (if any) of that money as can be

repaid without reducing the amount standing to the credit of the Fund below the minimum amount for the time being specified in that subsection.

(3) Repayments to institutions under this section shall be made pro rata according to the amount of the special contribution made by each of them but the Board may withhold the whole or part of any repayment due to an institution that has become insolvent and, in the case of an institution that has ceased to be a contributory institution, may either withhold its repayment or make it to any other contributory institution which, in the opinion of the Board, is its successor

56. - (1) The amount of the intial contribution levied from a contributory institution shall be not less than £10,000.

(2) The amount of the initial contribution or any further contribution levied from a contributory institution shall not exceed £300,000.

(3) No contributory institution shall be required to pay a further or special contribution if, or to the extent that, the amount of that contribution, together with previous initial, further and special contributions made by the institution, after allowing for any repayments made to it under section 55(2) above or section 63 below, amounts to more than 0.3 per cent. of the institution's deposit base as ascertained for the purpose of the contribution in question.

(4) Nothing in subsection (3) above -

(a) shall entitle an institution to repayment of any contribution previously made; or

(b) shall prevent the Board from proceeding to levy contributions from other

contributory institutions in those case the limit in that subsection has not been reached.

(5) The Treasury may from time to time after consultation with the Board by order -

(a) amend subsection (1) or (2) above so as to substitute for the sum for the time being specified in that subsection such other sum as may be specified in the order; or

(b) amend subsection (3) above so as to substitute for the percentage for the time being specified in that subsection such other percentage as may be specified in the order.

(6) No order shall be made under subsection (5) above unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

57. - (1) This section applies where the liabilities in respect or deposits of a person specified in schedule 2 to this Act (an "exempted person") are transferred to an institution which is not such a person (a "transferee institution").

(2) If the transferee institution becomes a contributory institution on the occasion of the transfer or immediately thereafter it shall be treated for the purpose of section 53 above as having such deposit base as it would have if -

(a) "deposits in EEA currencies" with the United Kingdom offices or the exempted person at any time had at that time been "deposits in EEA currencies" with the United Kingdom offices of the transferee institution; and

(b) "certificates of deposit in EEA currencies" issued by the exempted person had been issued by the transferee institution.

(3) If the transferee institution is already a contributory institution at the time of the transfer, the Board shall levy from it, as soon as possible after the transfer, a further initial contribution of an amount equal to the initial contribution which it would have been liable to make if -

(a) it had become a contributory institution on the date of the transfer;

(b) its deposit base were calculated by reference (and by reference only) to the "deposit in EEA currencies" with the United-Kingdom offices of the exempted person, taking "certificates of deposit in EEA currencies" issued by the exempted person as having been issued by the transferee institution; and

(c) the amount specified in section 56(2) above were reduced by the amount of any initial contribution which the transferee institution has already made.

(4) Whether or not the transferee institution is already a contributory institution at the time of the transfer it shall be treated for the purposes of the levying from it of any further or special contribution as having such deposit base as it would have if the "deposits in EEA currencies" with its United Kingdom offices and the "certificates of deposit in EEA currencies" issued by it included respectively "deposits in EEA currencies" with the United Kingdom offices of the exempted person and "certificates of deposit in EEA currencies" issued by that person.

"(4A) In their application to UK institutions. subsections (2) to (4) above shall have effect as if references to United Kingdom offices included references to offices in other EEA States."

(5) In its application to this section, section 5(3) above shall have effect with the omission of paragraphs (b) and (c).

Payments out of the Fund

58. - (1) For subsections (1) and (2) of section 58 of the 1987 Act(a) (compensation payments to depositors) there shall be substituted the following subsections -

"(1) subject to the provisions of this section, if at any time an institution to which this subsection applies becomes insolvent, the Board -

(a) shall as soon as practicable pay out of the Fund to depositors who have protected deposits with that institution which are due and payable accounts equal to nine-tenths of their protected deposits; and

(b) shall in any event secure that, before the end of the relevant period, it is in a position to make those payments as soon as they fall to be made.

(2) subsection (1) above applies to an institution which -

(a) is a UK institution or participating institution;

(b) is a former UK institution or a former participating institution; or

(c) is a former authorized institution (not being a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979); and if at any time such an institution ceases to be insolvent, subsection (1) above shall cease to apply in relation to that institution.

(2A) In subsection (1) above 'the relevant period' means -

(a) the period of three months beginning with the time when the institution becomes in solvent; or

(b) that period and such additional period or periods, being not more than three and of not more than three months each, as the Bank may in exceptional circumstances allow.

(2B) A person claiming to be entitled to a payment under subsection (1)above in

respect of a protected deposit with a participating institution shall make his claim in such form, with such evidence proving it, and within such period, as the Board directs.

(2C) The amount of any payment which falls to be made under subsection(1) above in respect of a protected deposit made with an office of a UK institution in another EEA State shall not exceed such amount as the Board may determine is or would be payable, in respect of an equivalent deposit made with an institution authorized in that State, under any corresponding scheme for the protection of depositors or investors which is in force in that State.

(2D) Where, in the case of a participating EEA institution. the Board is satisfied that a depositor has received or is entitled to receive a payment in respect of his protected deposit under any home State scheme, the Board shall deduct an amount equal to that payment from the payment that would otherwise be made to the depositor under subsection (1) above."

(3) "Where, in the case of a UK institution or participating non-EEA institution, the Board is satisfied that a deposit has received or will receive a payment" in respect of his protected depositor under any scheme for protecting depositors or investors which is comparable to that for which provision is made by this Part of this Act or under a guarantee given by a government or other authority the Board may -

(a) deduct an amount equal to the whole or part of that payment from the payment that would otherwise be made to him under subsection (1) above; or

(b) in pursuance of an agreement made by the Board with the authority responsible for the scheme or by which the guarantee was given, make in full the payment required by that subsection and recoup from that authority such contribution to it as maybe specified in or determined under the agreement.

(4) Where the Board makes such a deduction as is mentioned in paragraph (a) of subsection (3) above it may agree with the authority responsible for the scheme or by which the guarantee was given to reimburse that authority to the extent or the deduction or any lesser amount

(5) The Board may decline to make any payment under subsection (1) above to a person who, in the opinion of the Board, has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties.

"(6) There shall be deducted from any payment to be made by the Board under subsection (1) above in respect of a deposit any payment already made in respect of any that deposit by a liquidator or administrator of the institution; and in this subsection, in relation to an institution formed under the law of a country or territory outside the United Kingdom, the reference to a liquidator or administrator includes a reference to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator or administrator."

(7) The Treasury may, after consultation with the Board, by order amend subsection (1) above so as to substitute for the fraction for the time being specified in that subsection such other fraction as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(8) Notwithstanding that the Board may not yet have made or become liable to make a payment under subsection (1) above in relation to an institution falling

within that subsection -

(a) the Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution under Part II of the Insolvency Act 1986 or under Part III of the Insolvency (Northern Ireland) Order 1989, or"; required to be sent to a creditor of the institution whose debt has been proved; and

(b) a duly authorized representative of the Board shall been titled -

(i) to attend any meeting of creditors of the institution and to make representations as to any matter for decision at that meeting;

(ii) to be a member of any committee established under section 26 or 3 of the Insolvency Act 1986;

(iii) to be a commissioner under section 30 of the Bankruptcy(Scotland) Act 1985; and

(iv) to be a member of a committee established for the purposes of Part IV or V of the Insolvency Act 1986 under section 101 of that Act or under section 141 or 142 of that Act or of a committee of inspection appointed for the purposes of Part XX or XXI of the Companies (Northern Ireland) Order 1986.

(v) to be a member of any committee established under Article 38 of 274 of the Insolvency (Northern Ireland) Order 1989; and

(vi) to be a member of a committee established for the purpose of Part V or VI of the Insolvency (Northern Ireland) Order 1989 under Article 87 of that Order or under Article 120 of that Order.

(9) Where a representative of the Board exercises his right to be a member of such a committee as is mentioned in paragraph (b)(ii) or (iv) of subsection (8) above or to be a commissioner by virtue of paragraph (b)(iii) of that subsection

he may not be removed except with the consent of the Board and his appointment under that subsection shall be disregarded for the purposes of any provision made by or under any enactment which specifies a minimum or maximum number of members of such a committee or commission.

"(10) References in this section and sections 59 and 60 below to a former authorized institution include references to an institution which -

(a) was formerly a European authorized institution which accepted deposits in the United Kingdom; and

(b) continues to have a liability in respect of any deposit for which it had a liability when it was such an institution;

and references in section 60 below to ceasing to be an authorized institution include references to ceasing to be a European authorized institution which accepted deposits in the United Kingdom."

59. - (1) For the purposes of this part of this Act, a UK institution or participating non-EEA institution becomes insolvent -

(a) on the making by the Bank of a determination that, for reasons which directly relate to the institution's financial circumstances, the institution -

(i) is unable to repay deposits which are due and payable; and

(ii) has no current prospect of being able to do so;

(b) on the making by a court in any part of the United Kingdom, or in another EEA State, of a judicial ruling which -

(i) directly relates to the institution's financial circumstances ; and

(ii) has the effect of suspending the ability of depositors to make claims against the institution; or

(c) in the case of a participating non-EEA institution, on the making by a

court in any country or territory outside the European Economic Area of a judicial ruling which appears to the Board to correspond as nearly as may be to such a judicial ruling as is mentioned in paragraph (b) above,

but only if deposits made with the institution have become due and payable and have not been repaid.

(2) For those purposes, a participating EEA institution becomes insolvent -

(a) on the making by the supervisory authority in the institution's home State of a declaration that deposits held by the institution are no longer available; or

(b) on the making by a court in any part of the United Kingdom, or in an EEA State other than the institution's home State, of a judicial ruling which -

(i) directly relates to the institution's financial circumstances; and

(ii) has the effect of suspending the ability of depositors to make claims against the institution,

but only if, in a case falling within paragraph (b) above, deposits made with the institution have become due and payable and have not been repaid.

(3) For those purposes -

(a) an institution which has become insolvent by virtue of such a determination or declaration as is mentioned in subsection (1)(a) or (2)(a) above ceases to be insolvent on any withdrawal of the determination or declaration; and

(b) an institution which has become insolvent by virtue of such a judicial ruling as is mentioned in subsection (1)(b) or (c) or (2)(b) above ceases to be insolvent on any reversal of the ruling (whether on appeal or otherwise).

(4) In relation to a UK institution or participating non-EEA institution, institution, it shall be the duty of the Bank -

(a) to make such a determination as is mentioned in subsection (1)(a) above within 21 days of its being satisfied as there mentioned; and

(b) to withdraw such a determination within 21 days of its ceasing to be so satisfied.

(5) In this section -

(a) any reference to a UK institution includes references to a former UK institution, and to a former authorized institution which is incorporated in or formed under the law of any part of the United Kingdom;

(b) any reference to a participating EEA institution includes references to a former participating EEA institution. and to a former authorized institution which is incorporated in or formed under the law of an EEA State other than the United Kingdom; and

(c) any reference to a participating non-EEA institution includes references to a former participating non-EEA institution, and to a former authorized institution which is incorporated in or formed under the law of a country or territory which is outside the European Economic Area."

60. - (1) Subject to the provisions of this section. in relation to an institution in respect of which a payment falls to be made under section 58(1) above, any reference in this Act to a depositor's protected deposit is a reference to the liability of the institution to him in respect of -

(a) the principal amount of each deposit in an EEA currency which was made by him with a United Kingdom office of the institution before the time when the institution because insolvent and has become due and payable; and

(b) accrued interest on any such deposit up to the time when it became due and payable,

but so that the total liability of the institution to him in respect of such deposits does not exceed £20,000, or the sterling equivalent of 22,222 ecus immediately before the time when the institution became insolvent, whichever is the greater.

(2) In calculating a depositor's protected deposit for the purposes of subsection (1) above, the amount to be taken into account as regards any deposit made in another EEA currency shall be its sterling equivalent immediately before the time when the institution became insolvent, or the time when the deposit became due and payable, whichever is the later.

(2A) In its application to UK institutions, subsection (1) above shall have effect as if any reference to United Kingdom offices included a reference to offices in other EEA States.

(3) For the purposes of subsection (1) above no account shall be taken of any liability unless -

(a) proof of the debt, or a claim for repayment of the deposit, which gives rise to the liability has been lodged with a liquidator or administrator of the institution; or

(b) the depositor has provided the Board with all such written authorities, information and documents as, in the event of a liquidator or administrator being appointed, the Board will need for the purpose of lodging and pursuing, on the depositor's behalf, a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability.

(4) In subsection (3) above, in relation to an institution incorporated in or

formed under the law of a country or territory outside the United Kingdom -

(a) references to a liquidator or administrator include references to a person those functions appear to the Board to correspond as nearly as man be to those of a liquidator or administrator; and

(b) references to the lodging, or the lodging and pursuing, of a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability include references to the doing of an act or acts which appear to the Board to correspond as nearly as may be to the lodging, or the lodging and pursuing, of such a proof or claim."

(5) The Treasury may, after consultation with the Board, by order amend subsections (1) and (2) above so as to substitute for the sum for the time being specified in those subsections such larger sum as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of parliament.

"(6) In determining the liability or total liability of an institution to a depositor for the purposes of subsection (1) above, no account shall be taken of any liability in respect of a deposit if -

(a) it is a secured deposit; or

(b) it is a deposit which is own funds within the meaning given by Article 2 of Directive 89/299/EEC(a); or

(c) it is a deposit which the Board is satisfied was made in the course of a money-laundering transaction; or

(d) it is a deposit by a person mentioned in item 1 or 2 of Annex I to Directive 94/19/EC(b) which was made otherwise than as trustee for a person not so mentioned; or

(e) the institution is a former UK institution or former authorized institution and the deposit was made after it ceased to be a UK institution or authorized institution unless, at the time the deposit was made, the depositor did not know, and could not reasonably be expected to have known, that it had ceased to be a UK institution or authorized institution; or

(f) the institution is a former participating EEA institution and the deposit was made after it ceased to be a participating EEA institution; or

(g) the institution is a former participating non-EEA institution and the deposit was made after it ceased to be a participating non-EEA institution unless the Board is satisfied -

(i) that the depositor is entitled under the institution's home State scheme to a payment in respect of the deposit; and

(ii) that he has not received, and has no prospect of receiving, that payment;

and references in paragraph (e) above to an institution ceasing to be an authorized institution include references an institution ceasing to be recognised a bank or licensed institution under the Banking Act 1979.

(6A) A transaction in connection with which an offence has been committed under -

(a) any enactment specified in regulation 2(3) of the Money Laundering Regulations 1993(a); or

(b) any enactment in force in another EEA State, or in a country or territory outside the European Economic Area, which has effect for the purpose of prohibiting money laundering within the meaning Article 1 of Directive 91/308/EEC(b),

is a money-laundering transaction for the purposes of subsection (6)(c) above of any time if, at that time, a person stands convicted of the offence or has been

changed with the offence and has not been tried."

(7) Unless the Board otherwise directs in any particular case, in determining the total liability of an institution to a depositor for the purposes of subsection (1) above there shall be deducted the amount of any liability of the depositor to the institution -

(a) in respect of which a right of set-off existed immediately before the institution became insolvent or, 'against any such deposit in an EEA currency' as is referred to in subsection (1) above; or

(b) in respect of which such right would then have existed if the deposit in question had been repayable on demand and the liability in question had fallen due.

Subsection (8) of that section shall be omitted.

(9) For the purposes of this section and sections 61 and 62 below the definition of the deposit in section 5 above -

(a) shall be treated as including -

(i) any sum that would otherwise be excluded by paragraph (a), (d) or (e) of subsection (3) of that section if the sum is paid as trustee for a person not falling within any of those paragraphs;

(ii) any sum that would otherwise be excluded by paragraph (b) or (c) of that subsection;

(b) subject to subsections (10) and (11) below, shall be treated as excluding any sum paid by a trustee for a person falling within paragraph (e) of subsection (3) of that section; and

(c) shall be treated as including any sum the right to repayment of which is

evidenced by a transferable certificate of deposit or other transferable instrument and which would be a deposit within the meaning of section 5 as extended by paragraph (a) and restricted by paragraph (b) above if it had been paid by the person who is entitled to it at the time when the institution in question becomes insolvent.

(10) Where the trustee referred to in paragraph (b) of subsection (9) above is not a bare trustee and there are two or more beneficiaries that paragraph applies only if all the beneficiaries fall within section 5(3)(e)above.

(11) subsection (10) above does not extend to Scotland and, in Scotland, where there are two or more beneficiaries of a trust the trustee of which is referred to in paragraph (b) of subsection (9) above that paragraph applies only if all the beneficiaries fall within section 5(3)(e)above.

61. - (1) In the cases to which this section applies sections 58 and 60 above shall have effect with the following modifications.

(2) subject to the provisions of this section, where any persons are entitled to a deposit as trustees they shall be treated as a single and continuing body of persons distinct from the persons who may from time to time be the trustees, and if the same persons are entitled as trustees to different deposits under different trusts they shall be treated as a separate and distinct body with respect to each of those trusts.

(3) where a deposit is held for any person or for two or more persons jointly by a bare trustee, that person or, as the case may be, those persons jointly shall

be treated as entitled to the deposit without the intervention of any trust.

(4) subsection (3) above does not extend to Scotland and, in Scotland, where a deposit is held by a person as nominee for another person or for two or more other persons jointly, that other person or, as the case maybe, those other persons jointly shall be treated as entitled to the deposit.

(5) A deposit to which two or more persons are entitled as members of a partnership (whether or not in equal shares) shall be treated as a single deposit.

(6) subject to subsection (5) above, where two or more persons are jointly entitled to a deposit and subsection (2) above does not apply each of them shall be treated as having a separate deposit of an amount produced by dividing the amount of the deposit to which they are jointly entitled by the number of persons who are so entitled.

(7) where a person is entitled (whether as trustee or otherwise) to a deposit made out of a clients' or other similar account containing money to which one or more other persons are entitled, that other person or, as the case may be, each of those other persons shall be treated (to the exclusion of the first-mentioned person) as entitled to so much of the deposit as corresponds to the proportion of the money in the account to which he is entitled

(8) Where an authorized institution is entitled as trustee to a sum which would be a deposit apart from section 5(3)(a) above and represents deposits made with the institution, each of the persons who made those deposits shall be treated as having made a deposit equal to so much of that sum as represents the deposit

made by him.

(9) The Board may decline to make any payment under section 58 above in respect of a deposit until the person claiming to be entitled to it informs the Board of the capacity in which he is entitled to the deposit and provides sufficient information to enable the Board to determine what payment (if any) should be made under that section and to whom.

(10) In this section "jointly entitled" means -

(a) in England and Wales and in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;

(b) in Scotland, beneficially entitled as joint owners or owners in common.

"(11) In the application of this section in relation to deposits made with an office of a UK institution in another EEA State references to persons entitled in any of the following capacities, namely -

(a) as trustees;

(b) as bare trustees;

(c) as members of a partnership; or

(d) as persons jointly entitled

shall be construed as references to persons entitled under the law of that State in a capacity appearing to the Board to correspond as nearly as may be to that capacity."

62. - (1) This section applies where -

(a) an institution becomes insolvent; and

(b) the Board has made, or is under a liability to make a payment under

section 58 above by virtue of the institution becoming insolvent;

and in the following provisions of this section a payment falling within paragraph (b) above, less any amount which the Board is entitled to recoup by virtue of any such agreement as is mentioned in subsection (3)(b) of that section, is referred to as "a compensation payment" and the person to whom such a payment has been or is to be made is referred to as "the depositor".

(2) Where this section applies in respect of an institution that is being wound up

(a) the institution shall become liable to the Board, as in respect of a contractual debt incurred immediately before the institution began to be wound up, for an amount equal to the compensation payment;

(b) the liability of the institution to the depositor in respect of any deposit or deposits of his ("the liability to the depositor") shall to reduced by an amount equal to the compensation payment made or to be made to him by the Board; and

(c) the duty of the liquidator of the insolvent institution to make payments to the Board on account of the liability referred to in paragraph (a) above ("the liability to the Board" and to the depositor on account of the liability to him (after taking account of paragraph (b) above) shall be varied in accordance with subsection (3) below.

(3) The variation referred to in subsection (2)(c) above is as follows -

(a) in the first instance the liquidator shall pay to the Board instead of to the depositor any amount which, apart from this section, would be payable on account of the liability to the depositor except in so far as that liability relates to any such deposit as is mentioned in section 60(6) above; and

(b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the compensation payment made to the depositor, the liquidator shall thereafter pay to the depositor instead of to the Board any amount which, apart from this paragraph, would be payable to the Board in respect of the liability to the Board.

(4) where this section applies in respect of an institution that is not being wound up

(a) the institution shall, at the time when the compensation payment in respect of a deposit falls to be made by the Board, become liable to the Board for an amount equal to that payment; and

(b) the liability of the institution to the depositor in respect of that deposit shall be reduced by an amount equal to that payment.

(5) where an institution is wound up after it has become insolvent subsections (2) and (3) above shall not apply to any compensation payment to the extent to which the Board has received a payment in respect of it by virtue of subsection (4)(a) above.

(6) where by virtue of section 61 above the compensation payment is or is to be made by the Board to a person other than the person to whom the institution is liable in respect of the deposit any reference in the foregoing provisions of this section to the liability to the depositor shall be construed as a reference to the liability of the institution to the person to whom that payment would fall to be made by the Board apart from that section

(7) where the Board makes a payment under section 58(4) above in respect of an amount deducted from a payment due to a depositor this section shall have effect as if the amount had been paid to the depositor.

(8) Rules may be made -

(a) for England and wales, under sections 411 and 412 of the Insolvency Act 1986;

(b) for Scotland -

(i) under the said section 411; and

(ii) in relation to an institution whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985, by the secretary of State under this subsection; and.

(c) for Northern Ireland, under Article 613 of the companies (Northern Ireland) order 1986 and section 65 of the Judicature (Northern Ireland) Act 1978,

for the purpose of integrating the procedure provided for in this section into the general procedure on a winding-up, bankruptcy or sequestration or under Part II of the Insolvency Act 1986.

Repayments in respect of contributions

63 - (1) Any money received by the Board under section 62 above ("recovered money") shall not form part of the Fund but, for the remainder of the financial year of the Board in which it is received, shall be placed by the Board in an account with the Bank which shall as far as possible invest the money in Treasury bills; and any income arising from the money so invested during the remainder of the year shall be credited to the Fund

(2) The Board shall prepare a scheme for the making out of recovered money of repayments to institutions in respect of -

(a) special contributions; and

(b) so far as they are not attributable to an increase in the size of the Fund resulting from an order under subsection (2) of section 54 above, further contributions levied under that section,

which have been made in the financial year of the Board in which the money was received or in any previous such financial year.

(3) A scheme under subsection (2) above -

(a) shall provide for the making of repayments first in respect of special contributions and then, if those contributions can be repaid in full (taking into account any previous repayments under this section and under section 55(2) above) in respect of further contributions;

(b) may make provision for repayments in respect of contributions made by an institution which has ceased to be a contributory institution to be made to a contributory institution which, in the opinion of the Board, is its successor; and

(c) subject to paragraph (b) above, may exclude from the scheme further contributions levied from institutions which have ceased to be contributory institutions.

(4) Except where special or further contributions can be repaid in full, repayments to institutions under this section shall be made pro rata according to the amount of the special or further contribution made by each of them.

(5) If at the end of a financial year of the Board in which recovered money is

received by it -

(a) that money; and

(b) the amount standing to the credit of the Fund, after any repayments made under section 55 above,

exceeds the maximum amount for the time being specified in section 54(1) above the Board shall as soon as practicable make out of the recovered money, up to an amount not greater than the excess, the repayments required by the scheme under subsection (2) above and may out of the recovered money make such further repayments required by the schemes will not reduce the amounts mentioned in paragraphs (a) and (b) above below the minimum amount for the time being specified in section 54(1) above.

(6) If in any financial year of the Board -

(a) any of the recovered money is not applied in making payments in accordance with subsection (5) above; or

(b) the payments made in accordance with that subsection are sufficient to provide for the repayment in full of all the contributions to which the scheme relates,

any balance of that money shall be credited to the Fund.

Supplementary provisions

64. - (1) If in the course of operating the Fund it appears to the Board desirable to do so, the Board may borrow up to a total outstanding at anytime of £10 million or such larger sum as, after consultation with the Board, the Treasury may from time to time by order prescribe.

(2) An order under subsection (1) above shall be subject to annulment pursuance of a resolution or either House of Parliament.

(3) Any amount borrowed by virtue of this section shall be disregarded in ascertaining the amount standing to the credit of the Fund for the purposes of sections 54 (1), 55 (2) and 63 (5) above.

65. - (1) If required to do so by a request in writing made by the Board, the Bank may by notice in writing served on a contributory institution require the institution require the institution, within such time and at such place as may be specified in the notice, to provide the Board with such information and to produce to it such documents, or documents of such a description, as the Board may reasonably require for the purpose of determining the contributions of the institution under this part of this Act.

"(2) subsections (4), (5), (11) and (13) of section 39 above shall have effect in relation to any requirement imposed under subsection (1) above on a UK institution or participating non-EEA institution as they have effect in relation to a requirement imposed under that section."

(3) The Board may by notice in writing served on 'an insolvent institution or, where a person has been appointed as institution, on that person, require the institution or person at such time or times and at such place as may be specified in the notice -

(a) to provide the Board with such information; and

(b) to produce to the Board such documents specified in then notice, as the Board may reasonably require to enable it to carry out its functions under

this Part of this Act.

(4) where, as a result of an institution 'being wound up', any documents have come into the possession of the Official Receiver or, in Northern Ireland, "the Official Receiver for Northern Ireland", he shall permit any person duly authorized by the Board to inspect the documents for the purpose of establishing -

(a) the identity of those of the institution's depositors to whom the Board are liable to make a payment under section 58 above; and

(b) the amount of the protected deposit held by each of the depositors.

66. In computing for the purposes of the Tax Acts the profits or gains arising from the trade carried on by a contributory institution -

(a) to the extent that it would not be deductible apart from this section, any sum expended by the institution in paying a contribution to the Fund may be deducted as an allowable expense;

(b) any payment which is made to the institution by the Board under section 55(2) above or pursuant to scheme under section 63(2) above shall be treated as a trading receipt.

Ⅶ. 프랑스 預金保護法

SYSTEM OF DEPOSIT GUARANTEE
REGULATION OF THE JOINT LIABILITY MECHANISM
(Text adopted by the AFB Council, February 8, 1994)

PREAMBLE

The mechanism of joint liability constituted by the French Association of Banks aims to intervene, within certain limits, in favor of the depositors of banks adhering to this mechanism when the first paragraph of article 52 of the banking law is revealed not to be operating and when the funds are declared unavailable.

The present regulation is written in the community clauses as a whole relating to the guarantee deposit systems.

(Reference will be made subsequently to the community directive and to the regulatory texts which might be taken in France for its application)

ARTICLE 1

Instituted within the AFB is a system of deposit guarantee, named mechanism of joint liability, which has for its objective to cover the cash deposits of the clientele of a failing bank adhering to this mechanism under the conditions described below.

ARTICLE 2 Board of Management of the Mechanism

a) The mechanism of joint liability is implemented by the Board of Management,

composed of the president of the AFB, the delegate general of the AFB and three qualified personalities designated, for a period of three renewable years, by the AFB Council.

b) The members of the Board of Management are subject to professional secrecy.

c) The Board of Management ensures relations with the guiding authorities, notably with the Banking Commission as well as with other systems of deposit guarantee in other countries as well as in France.

d) It uses as of need, the services of the AFB. It proposes to the approval of the Council all established convention with the purpose of ensuring the smooth functioning of the mechanism of joint liability.

e) The Board of Management gives an account of its activities to the AFB Council.

ARTICLE 3 Conditions of Adherence

Banks adhering to the mechanism of joint liability must:

1) respect the banking regulations in general and notably the prudential rules:

2) answer to at least one of the following two conditions:

a) have at the minimum note T2 from the Standard and Poor's Adef agency, or note A2 from the Standard and Poor's International agency, or note P2

from the Moody's agency or note A3 from IBCA Notation, for their short term issuing.

For the application of this rule:

- to banks benefitting from the clauses of article 22, it is the notation of the establishment called in contribution for the account of the consolidated whole which is withheld;

- to foreign bank branches, the note of the foreign bank is taken into account if it has been attributed by a sister firm of one of the offices mentioned. Concerning subsidiary companies of foreign banks, controled at 67% at least, the note of the foreign bank, head company, is taken into account under the same condition.

The list of notation agencies will be completed following the approval given by the authorities.

The notes attributed by the agencies mentioned, and communicated by the banks to the Board of Management, are taken into account even if they are not rendered public.

b) If a) is not the case, present an agreement of solvent shareholders covering the deposits in case of a disaster, at least within the limits of intervention of the mechanism.

The solvency of the shareholders is assessed by the Board of Management and, in the case of an objection, by the Office of the AFB.

3) respond to all demand of information of the Board of Management, and furnish them, if they wish, all accounting or audit documents, or the reports of the controling authorities.

4) honor, without delay, the calls for fund in case of disaster.

ARTICLE 4 Adherence by Right (French banks and French subsidiary companies of foreign banks)

Banks adherent by right to the mechanism of joint liability, are members of the AFB:

a) who have not been eliminated from the mechanism of joint liability or placed outside of its field;

b) for whom a request for approval has not been the subject of an unfavorable opinion expressed by the AFB at the time of the presentation of their file, after March 8, 1994 to the Board of credit establishments.

ARTICLE 5 Voluntary Adherence (branches of banks of which the registered office is located in another country of the CEE)

The branches of banks belonging to a member nation of the CEE, other than that of France, can request, for the share of the deposits not guaranteed by

the system of the country of origin, to adhere to the mechanism of joint liability, in the conditions provided by the agreement between the AFB and the managing bodies of the deposit guarantee systems of the country in question. The total of deposits thus covered by the system of the country of origin and by the joint liability mechanism cannot exceed the limits provided in article 13 below.

On the proposal of the Board of Management, the Council can decide that the adherence can be carried out without the need for such an agreement; likewise, it sets the conditions of this adherence.

ARTICLE 6 Conditional Adherence (bank branches of countries outside of the CEE)

The branches of banks belonging to other countries can request to adhere to the mechanism of joint liability, in the conditions provided by the agreement between the AFB and the managing bodies of the deposit guarantees systems of the country in question.

On the proposal of the Board of Management, the Council can decide that the adherence can be carried out without the need for such an agreement; likewise, it sets the conditions of this adherence.

ARTICLE 7 Formalities of Adherence

The banks pertaining to articles 5 and 6 supra address a written request of adherence to the president of the AFB in the form of a letter of intent (recommended letter with A.R.) going back to the clauses of article 3 supra.

The AFB Council takes position in the three months following the receipt of the request for adherence.

ARTICLE 8 Administrative Elimination

After consulting the directors of the establishment, and on the proposal of the Board of Management, the Office of the AFB conducts the elimination:

- of branches of banks targeted in articles 5 and 6, adhering to the mechanism of joint liability before putting into effect the present regulation which will not have formulated a request in accordance with article 7 and which will not have obtained a positive response from the AFB Council in the limit set in the same article before the end of 1994.

- of banks adhering to the mechanism of joint liability which would not have settled their contributions to the AFB or to the mechanism of joint liability in the thirty days following the sending of the present regulation to the heads of the firm.

ARTICLE 9 Exclusion

a) The reasons for the exclusion are the following:

· unfavorable opinion of the AFB at the time of the presentation of a request for modification of the shareholder's status to the Board of Management of the Establishments of Credit;

· not respecting one of the clauses of article 3;

· in the event of difficulties faced by the establishment, refusal by its managers to implement measures imposed or proposed by the controling authorities;

· In addition:

- for the branches pertaining to article 6, modification to the diminished rules of prudential control in the country of the bank's main office;

- for the branches pertaining to articles 5 and 6, called into question by the managing body of the guarantee system of the country in which situates the head company's main office, of the agreements with the AFB targeted in articles 5 and 6.

b) Exclusion Procedure

When the establishment pertains to a case provided in paragraph of the present article, the Board of Management informs the Banking Commission, the bank concerned (recommended letter with A.R) and the authorities which have released the approval, as well as the foreign body of deposit guarantee on which it depends if there is occasion.

The office of the AFB, ruling unanimously, can then pronounce the exclusion of the establishment. In a similar case, the guarantee furnished by the mechanism continues to apply to deposits constituted before the press release provided in article 11 below. The excluded banks are no longer to pay the contributions

provided for in article 21 below.

ARTICLE 10 Effective Date of the Exclusion

The exclusion is effective one month after its notification by the AFB (recommended letter with A.R.) to the bank involved, specifying the conditions of application of this measure.

ARTICLE 11 Information of the Public

a) Each new adherence, elimination or exclusion, is subject to a press release published the day in which the measure takes effect.

b) The AFB establishes the unique document intended for public information and placed at the public's disposal by the managers of all banks adhering to the mechanism of joint liability.

ARTICLE 12 Term (Time limit) of Intervention

The Board of Management activates the mechanism of joint liability in favor of the depositors of a bank at the very moment of receiving the notification from the Banking Commission indicating that the deposits have become unavailable following the judgement or decision of the controling authorities (Banking Commission or the controling authorities of other nations of the CEE for the branches).

The activation is subject to a press release.

The agreements of the banks adhering to the mechanism of joint liability becomes effective at the date of this notification with regard to the call for funds provided in article 21.

ARTICLE 13 Covered Deposits

a) Deposits entered in the account book and corresponding to all of the following characteristics below are covered within the limit of a global ceiling of 400,000 F per depositor, individual or artificial person, title holder of one or several accounts opened regularly in the bank books:

- registered deposits not affected in guarantee to the date of the last accounting day preceding the date of unavailability of the deposits such as provided for in article 12.
- non negotiable deposits
- deposits regularly made out and duly verified
- deposits made out in French Francs, in crowns or in currencies of the member nations of the European Union. These deposits in foreign currencies are reimbursed in French Francs; the exchange rate adopted is that of the date of unavailability of the deposits as defined in article 12.

b) Deposits on joint accounts are reimbursed in the same conditions; the ceiling is then multiplied by the number of holders.

c) The deposits of notaries, for the account of their clients, are fully reimbursed.

ARTICLE 14 Non Covered Deposits

Those not covered are:

- The deposits of credit establishments and financial establishments, regardless of their nationality.

- The deposits which enter into the definition of the establishment's own funds as meant in the community directive.

- The deposits of insurance companies, regardless of their nationality.

- The deposits of governments and of the central administrations and their establishments.

- The deposits of provincial, regional, local or municipal groups.

- The deposits of the bodies of collective investment, regardless of their nationality.

- The deposits of international organizations.

- The deposits of administrators, managers, associates personally responsible, holders of at least 5% of the capital of the credit establishment, persons in charge of the legal control of account documents of the credit establishment and the depositors having the same qualities in other companies of the same group.

- The deposits of near relatives and third parties acting for the account of the depositors cited in the preceding paragraph.

- The deposits of other companies of the same group.

- The deposits for which the depositor, in an individual capacity, has obtained--from the credit establishment--rates and financial advantages which have aggravated the financial situation of this establishment: It concerns deposits subject to an illegal remuneration at the date of their constitution, or superior to

the TIOP for periods less than one year or higher than the rates of the Treasury bonds plus 0.5% for the other durations. Concerning the deposits in foreign currencies, the reference indicator is habitually employed in the country of the currency.

- The bonds issued by the credit establishment and agreements stemming from the proper acceptance and from the promissory notes.

- The deposits appearing on the accounts opened since less than 2 months before the date of unavailability of deposits targeted in article 13 above, or constituted in bad faith.

- Non registered deposits.

- The deposits affected in guarantee to the date of intervention of the mechanism except if this guarantee is lifted within 3 months provided in article 18.

- The deposits stemming from illegal activities or with a figure head.

ARTICLE 15 Global Total of the Interventions

The mechanism of joint liability ensures the coverage of one or several banking disasters up to 200 million francs per civil year.

In the course of the same civil year, if such is the case, contributions not called for the past two years and those not called for the two years to come can be put to use.

If the preliminary evaluation of the sum total of the disaster goes beyond the possibilities thus defined, the mechanism of joint liability does not intervene. The Council of the AFB informs this to the Governor of the Bank of France.

ARTICLE 16 Organization of the Intervention

From the moment of announcing the activation, provided in article 12, the AFB commissions:

a) an individual-in contact with the services of the AFB-in charge of establishing an attestation of credit balance opening the right to reimbursement for each client whose deposits are eligible in the procedure;
b) an operating bank in charge of carrying out, for the account of the AFB, an advance of funds necessary to the reimbursement of the clientele's deposits.

ARTICLE 17 Determining the Reimbursable Sum Total

The representative mentioned in of article 16 proceeds to examine the situation of each depositor. He determines the sum total of the credit balance by the difference between the assets and debts payable at the day of the release of the payment attestation.

He only takes into consideration the deposits embodying the two conditions:

- to have existed at the last accounting day preceding the date of unavailability mentioned in article 12.

- to have been subject, in case of the opening of a collective procedure, to a declaration of financial claims near the representative of the creditors (law of

1985), accepted by him within 2 months starting from the date mentioned in article 12.

The attestation is sent to each depositor to the address appearing on the bank books. Its validity comes to an end the last day of the time limit provided in article 18. The representative refers to the Board of Management in case of difficulty.

ARTICLE 18 Modes of Payment

The operating bank targeted in article 16 b) proceeds to the reimbursement of deposits against postponing the attestation and signature of a procuration bill (article 1250 of the Civil Code) in favor of the AFB, within 3 months following the announcement provided in article 11, excluding the exceptional postponement authorized by the Banking Commission at the request of the Board of Management

ARTICLE 19 Treatment of Lawsuits

The Board of Management rules on the disputes which could occur at the time of the attestations or on the requests of reimbursement formulated past the time limits.

ARTICLE 20 Determining the Sum Total Owed to the Operating Bank

At the close of the time limit provided for in article 18, the Board of Management, in contact with the intervening operating bank, stops the sum total

taken under the charge of the mechanism of joint liability.

This sum total comprises, beyond the total of reimbursements made out in favor of the clientele of the failing bank, the interests owed--calculated at the average monthly rate of the monetary market--to the operating bank for its advance of funds according to the date of payment provided for in article 21.

ARTICLE 21 Contributions of the Adhering Banks

It is proceeded, following the calculation of the contributions then to the call for funds close to each one of the banks adhering to the mechanism of joint liability, that are held to pay their share, at the date and in the conditions indicated by the AFB. The banks which do not respect the date of payment are found to apply the late interests calculated at the average monthly rate of the monetary market raised by 1% separately from the exclusion provided for in article 9 above.

ARTICLE 22 Consolidation

To the only objectives of the present regulation, a bank, head company, can guarantee one or several banks which it controls; likewise, an adherent to the mechanism of joint liability can guarantee other banks, since there exists between the two, capital ties sufficient for justifying a consolidation. The establishments involved inform this to the Board of Management by specifying the establishment which will be called in contribution for the account of this whole.

ARTICLE 23 Tax System of Contributions

From the fiscal point of view, the payed contributions are treated following the conditions set by the Minister of Finance

ARTICLE 24 Repayment of Dividends Collected by the AFB

When there is total or partial recovery of the financial claim of the AFB, notably in case of resumption or liquidation of the failing bank, the diminished dividends, if such is the case of the expenses exposed by the AFB (namely, procedure costs), are payed back to the banks proportionally to their contribution. This repayment is immediate. If such is not the case, interests, calculated at the average monthly rate of the money market, are added to the repayment.