

# THE DEPOSIT INSURANCE ACT

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## The Deposit Insurance (Joint, Trust and Nominee Accounts) Regulations, 2014

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In exercise of the power conferred upon the Minister by section 25 of the Deposit Insurance Act and of every other power hereunto enabling, the following Regulations are hereby made on the recommendation of the Jamaica Deposit Insurance Corporation:-

### *Preliminary*

- Citation.** 1. These Regulations may be cited as the Deposit Insurance (Joint, Trust and Nominee Accounts) Regulations, 2014.
- Interpretation.** 2. In these Regulations, unless the context otherwise requires –
- “banking information system” means the system, whether electronic or otherwise that is used by a policyholder to compile information on its customers;
- “beneficiary”, in relation to a trust account or nominee account, means a person for whose benefit monies are held on account by a trustee or nominee, as the case may be;
- “customer information” includes –
- (a) the business applicant’s full name, current address, taxpayer registration number or other reference number, date and place of birth (in the case of an individual) and any other information, relating to the identification of the applicant for business, as may be required by the Corporation from time to time; and
  - (b) where applicable, in the case of transactions involving –
    - (i) a settlement, trust or other type of legal arrangement, information establishing the identity of the settlor, legal owner or other person who exercises effective

control of the legal arrangement, and the beneficial owner; and

(ii) a person other than an individual, information establishing –

(A) the identification of the individual who exercises ultimate effective control over that person; and

(B) in the case of a body corporate, information including evidence of incorporation and establishing the identification of each director and shareholder (if any);

“customer records” means documents or data capable of evidencing transactions and any other information relating to a depositor or customer of a policyholder;

“depositor” means a person entitled, or prospectively entitled, to a repayment of a deposit, whether made by the person or not;

“joint account” means monies held on account in the names of two or more persons;

“prescribed coverage limit” means the maximum amount in Jamaican currency that the Corporation shall make as payment from the Fund in respect of an insured deposit, to every depositor of a policyholder in the circumstances set out in section 18(1) of the Act;

“specified event” means any event specified under section 18(1) (a), (b), (c) or (d) (as the case may require) of the Act;

“the required disclosure” means information provided in accordance with regulation 9, from time to time to a policyholder as to the matters specified in regulation 7.

*Payment out of the Fund***Payment out of the Fund for joint accounts.**

3. Subject to section 19 of the Act, a payment out of the Fund in respect of a deposit held as a joint account shall be made in the names of all joint owners unless there is on the date of the specified event an express provision to the contrary, in the records of the policyholder.

**Payment out of the Fund for trust and nominee accounts.**

4. – (1) The Corporation in any payment out of the Fund in respect of a deposit held as a trust account or nominee account, shall make payments in the name of the trustees or nominees, as the case may be, for the benefit of the respective beneficiaries.

(2) Where the customer records do not indicate the relevant customer information, the Corporation –

- (a) shall not separately insure deposits held as a trust account or nominee account for any beneficiary; and
- (b) shall pay to the trustees or nominees an amount not exceeding the maximum prescribed coverage limit.

(3) For the purposes of paragraphs (1) and (2), the Corporation shall, in determining the insured amount, aggregate the accounts held as trust or nominee accounts (as the case may be) with respect to the same settlors, grantors, trustees, nominees and beneficiaries.

*Disclosure Requirements***Trustee or nominee shall make disclosure.**

5. – (1) A policyholder shall by notice given no later than October 31<sup>st</sup> of each year, direct that a trustee or nominee, as the case may be, make the required disclosure to the policyholder in relation to the trust or nominee account concerned.

(2) The notice referred to in paragraph (1) shall –

- (a) include –
  - (i) the time within which the disclosure shall be made; and
  - (ii) where the disclosure shall be sent; and

- (b) be sent by the policyholder, by post or electronic mail to the mailing or e-mail address (as the case may require) of the depositor, or by such other agreed means of delivery, as reflected in the customer records of the policyholder.

**Depositor's disclosure requirements.**

6. – (1) For the purposes of –

- (a) payment out of the Fund; and
- (b) having a deposit separately insured,

the joint owners, trustees and nominees shall on opening the joint account, trust account or nominee account, make the required disclosure to the policyholder.

(2) The policyholder shall inform each depositor of the disclosure requirements relevant to the type of deposit.

**Required disclosure and access.**

7. – (1) For the purposes of regulations 5 and 6, the required disclosure shall include –

- (a) a statement indicating in whose names the deposit is held;
- (b) all relevant customer information in relation to the type of deposit; and
- (c) in the case of a deposit held in a trust account or nominee account, the particulars of the amount or percentage of the beneficial entitlement or beneficial interest of each beneficiary, as the case may be.

(2) The Corporation may, where a depositor has disclosed that the depositor is acting as trustee or nominee, require the depositor no later than fourteen days after the date of the specified event, or within such shorter period as the Corporation may reasonably specify in the request, to –

- (a) provide the Corporation or its agent, with such additional information as the Corporation shall specify; or
- (b) allow the Corporation access to records relating to –

- (i) the trust or nominee agreement, as the case may be; and
- (ii) any interest of any beneficiary.

**Policyholder shall disclose to the Corporation.**

8. A policyholder shall disclose to the Corporation within the time, and in the format specified by the Corporation, the number of trust accounts and nominee accounts and the dollar value of these accounts as at December 31<sup>st</sup>, of any year preceding the policy of the deposit insurance due date or any other date of the request.

**Disclosure to be in writing, etc.**

9. A depositor who discloses information, pursuant to these Regulations for inclusion in a policyholder's records, shall disclose such information by a statement in a written form or in electronic form that can be stored and be reproduced in writing.

**Exemptions from disclosure for trust and nominee accounts.**

10. – (1) If the conditions set out in paragraph (2) are met, a policyholder shall not require the depositor of a trust or nominee account to disclose the information under regulation 5, where the trust or nominee account is held by –

- (a) the Trustee in Bankruptcy or such similar public official whose duties involve holding monies in trusts for others;
- (b) the Government of Jamaica or a Government department or agency;
- (c) a statutory body or authority, Government company, Ministry, parish council, the Kingston and St. Andrew Corporation or municipal council;
- (d) an attorney-at-law or partnership of attorneys-at-law, when acting in the capacity as a trustee or nominee of monies for others;
- (e) a person acting as a trustee or nominee of monies for others in the course of business and is required under a statute to hold monies in trust or as a nominee;
- (f) a person –
  - (i) acting as a trustee or nominee of monies for others in the

course of business; and

(ii) who is subject to –

(A) the rules of the Financial Services Commission;

(B) the Jamaica Stock Exchange; or

(C) other regulatory or self-regulating organization that audits compliance with those rules;

(g) a regulated policyholder acting in the capacity of a depositor and as a trustee or nominee of monies for others in the course of business;

(h) any other policyholder when they act in that capacity as a trustee or nominee of monies for others or hold such funds in escrow.

(2) The conditions referred to in paragraph (1) are –

(a) the trustee or nominee engages in sound due diligence processes and is subject to the customer identification and transaction verification procedure provisions of the –

(i) Proceeds of Crime Act; or

(ii) Terrorism Prevention Act;

(b) the policyholder is able to verify the reliability and effectiveness of the trustee or nominee customer's due diligence as being consistent with the terms and conditions agreed by the policyholder and the trustee or nominee under the laws mentioned in paragraph (a) and any other regulatory guidelines, in relation thereto;

(c) the trustee or nominee has the necessary systems and controls to allocate the monies in the accounts to the relevant beneficiaries, and such systems shall not include the use of payable through accounts;

(d) the trustee or nominee has the necessary systems and controls to maintain the information in the format prescribed by the Corporation; and

(e) the trustee or nominee is operationally and legally able to provide

the required information on each of the beneficiaries to the policyholder upon request.

(3) Notwithstanding paragraph (1) –

- (a) the policyholder may in accordance with regulation 6, require the depositor to make the required disclosure within the time stated in the request; or
- (b) the Corporation or its agent may request the depositor to make available to the Corporation or its agents within fourteen days after the specified event, a disclosure under regulation 7(1), or such other additional information as the Corporation shall specify.

#### *Record Keeping*

**Records on joint, trust or nominee account.**

11. – (1) A policyholder shall prepare and maintain accurate records that fully incorporate, in their banking information system, the information with respect to all joint accounts, trust accounts or nominee accounts required under these Regulations.

(2) The policyholder shall incorporate the information contained in the required disclosures made by depositors and take steps to ensure that –

- (a) customer information submitted under regulations 5 and 6 is verified;
- (b) its banking information system clearly identifies the type of deposit;
- (c) its records are clear and unambiguous as to the ownership of accounts and the identity of –
  - (i) all joint owners of the joint account;
  - (ii) all trustees or nominees, settlors, legal owners or other persons who exercise effective control of the trust account or nominee account, as the case may be, and all beneficiaries of the trust account or nominee account, as the case may be;
- (d) any other information reasonably required with regard to the joint account, trust account or nominee account is made available to the

Corporation upon request.

(3) The records kept pursuant to this regulation shall be recorded in the policyholder's banking information system in a manner capable of being reproduced in written format.

Dated this 28<sup>th</sup> day of July, 2014.

  
**Minister of Finance and Planning**