

Isle of Man Depositors' Compensation Scheme
(in relation to the Banking Business (Compensation of Depositors) Regulations 1991)

**Proposals to terminate the fund established in relation to the default of
Bank of Credit and Commerce International S.A.**

1. Background

- 1.1 In accordance with Section 5 of the Banking Business (Compensation of Depositors) Regulations 1991 ("1991 Regulations"), made under Section 21 of the Financial Supervision Act 1988, the Financial Supervision Commission ("the Scheme Manager") was charged with the administration of the Depositors' Compensation Scheme.
- 1.2 On 5 July 1991 international regulatory action co-ordinated by the Bank of England led to the closure of the Bank of Credit and Commerce International S.A. (in liquidation) ("BCCI S.A."), a Luxembourg banking company, the Bank of Credit and Commerce Overseas Limited, a Caymanian bank, and various other companies in the BCCI Group.
- 1.3 On 16 January 1992 the Financial Supervision Commission, as Scheme Manager, determined that BCCI S.A. was in default in terms of Regulation 4(1) of the 1991 Regulations. This followed the making of a winding-up order by the High Court in the Isle of Man in respect of the affairs of BCCI S.A. in the Island and winding-up orders in Luxembourg, the Cayman Islands and the UK. The statutory cut-off date for submission of claim forms passed on 16 July 1993.
- 1.4 On 9 October 2008 the 1991 Regulations were revoked and replaced by the Compensation of Depositors Regulations 2008 ("2008 Regulations"), except that they shall continue to apply for the purposes of the fund established following the default of the BCCI S.A.
- 1.5 On 23 October 2010 the 2008 Regulations were revoked and replaced by the Depositors' Compensation Scheme Regulations 2010 ("2010 Regulations"). Despite this the 1991 Regulations continue to apply for the purposes of the fund established following the default of BCCI S.A.
- 1.6 The liquidators of BCCI S.A. declared a final dividend of 3.69% in August 2012 and therefore in the year ended 31 March 2014 no further dividends were due or received. As a result, no new surplus payments were due to depositors in that year and no further new surplus payments will arise. The total dividends declared by the liquidators amounted to 90.19 per cent.
- 1.7 As a result of the completion of the liquidation of BCCI S.A. the Scheme Manager decided to review how the Scheme (fund) created could be closed. It was recognised that no provisions for terminating the Scheme (fund) were included in the 1991 Regulations, and therefore the Scheme Manager sought advice on how to achieve a closure.
- 1.8 On 14 May 2014 Treasury agreed to a request of the Scheme Manager to proceed with proposals for the closure of the Scheme, to include the

production of amendment regulations for approval. These proposals are explained further in **section 2**.

2. Proposals for the termination of the Scheme (fund)

2.1 In order to be able to terminate the Scheme, a new set of draft regulations titled "Depositors' Compensation Schemes (Miscellaneous Provisions) Regulations 2014" ("**Draft 2014 Regulations**") has been prepared. The Draft 2014 Regulations can be found [here](#) and encompass:-

2.1.1 Amendments to the 1991 Regulations insofar as the 1991 Regulations to continue to have effect¹, to come into force on 1 November 2014; and

2.1.2 Revocation in full of the 1991 Regulations (which includes revoking Regulation 17 of the 2008 Regulations, and making minor amendments to Regulation 21 of the 2010 Regulations), to come into effect on 1 April 2015.

2.2 The Draft 2014 Regulations provide for the following:-

2.2.1 Unclaimed compensation sums due to former depositors of BCCI S.A., which are unclaimed for 10 years from the date of determination of such payment, will become forfeit and shall cease to remain payable to the depositor. These funds will be paid to the Treasury for the general revenue of the Island.

2.2.2 The Scheme Manager may determine to terminate the fund, at any time after which all payments of compensation to depositors and other compensation costs have been made out of the fund. This determination may be made even if there is compensation that remains unclaimed but has not been forfeit.

2.2.3 Upon termination the Scheme Manager will apply the balance held in the fund as follows:-

- Compensation sums not claimed (but which have not been forfeit) will be paid to Treasury for the general revenue of the Island (the depositors are still entitled to claim the funds from Treasury upon proof of entitlement being provided as long as the funds have not been forfeit); and
- The balance will be paid to original contributing banks in proportion to their contributions, as required by the 1991 Regulations (taking into account final costs to close the fund).

3. Timing

3.1 It is anticipated that a final set of 2014 Regulations will go to Treasury (for making) in early September 2014 in order to be considered at the October sitting of Tynwald. The main provisions are due to come into effect on 1 November 2014.

¹ The 1991 Regulations were revoked by the 2008 Regulations except in respect of the fund established following the default of BCCI S.A.

3.2 Once the 2014 Regulations come into effect, monies that are forfeit will be paid over to Treasury (for the general revenue of the Island). The Scheme Manager will also need to meet to formally consider the termination of the fund.

3.3 The fund will be closed down in full before 1 April 2015.

4. Comments

Any comments on the proposals should be submitted in writing for the attention of the secretary of the Scheme re BCCI S.A. before 31 August 2014. The contact details are as follows:-

Mr Andrew Kermode
Financial Supervision Commission
PO Box 58
Finch Hill House
Bucks Road
DOUGLAS
Isle of Man
IM99 1DT

Email: andrew.kermode@fsc.gov.im