

THE MORTGAGE INSURANCE ACT

ARRANGEMENT OF SECTIONS

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THE MORTGAGE INSURANCE ACT

[15th June, 1960.]

Law
26 of 1960.
Acts
21 of 1967,
42 of 1969
3rd Sch.,
20 of 1971,
48 of 1973,
1 of 1994,
9 of 2008.

1. This Act may be cited as the Mortgage Insurance Act.

Short title.

2. In this Act—

Interpreta-
tion.

“administer”, in relation to an insured loan, means to have the right to collect interest and other payments in respect of the loan and the power to enforce any security for the loan;

“agricultural land” means any land which is used or may be used for any activities relating to horticulture, afforestation, apiculture, fishculture, fishing, the development and maintenance of pastures, the cultivation of crops and the keeping or breeding of livestock or poultry;

20/1971
S. 3 (a).

“appraised value” means the value for lending purposes of a house, commercial property, residential lot, or agricultural land as determined by the Bank;

20/1971
S. 3 (b).
1/1994
S. 2 (a).
1/1994

“approved lender” means a lender for the time being approved by the Minister for the purpose of making loans which may be insured under this Act;

S. 3.

“approved loan” means a loan in respect of which the Bank has given an undertaking pursuant to paragraph (b) of subsection (1) of section 3;

1/1994
S. 3.

“Bank” means the Jamaica Mortgage Bank established by the Jamaica Mortgage Bank Act;

1/1994
S. 2 (b).

“borrower’s charges” means prescribed charges advanced

1/1994
S. 3.

by an approved lender to safeguard the interests of the mortgagee or the Bank or both;

1/1994
S. 2 (c).

“commercial property” means property, not being a residential lot of agricultural land, which has on it hotels, offices, factories or other industrial or commercial buildings;

“Government guaranteed loan” means a loan in respect of which, pursuant to paragraph (b) of subsection (2) of section 49 of the Housing Act, the Government has guaranteed the repayment of any portion of the sum of money lent to any person for the purpose of purchasing a house constructed by a housing association as defined for the purposes of Part VIII of that Act;

48/1973
S. 2.

“house” means a building, together with the cartilage thereof, intended for human habitation and includes that portion of a building which constitutes a strata lot under the Registration (Strata Titles) Act;

“insured loan” means a loan in respect of which an insurance policy issued under this Act is in force;

“lender” means—

(a) any of the following—

(i) a loan company, insurance company, trust or other company or corporation;

(ii) a trustee of trust funds;

(iii) a building society, co-operative credit society, co-operative housing society, or other society,

authorized to lend money on the security of real or immovable property;

(b) a bank licensed under the Banking Act; or

(c) a financial institution licensed under the Financial Institutions Act.

2/2008
S. 2 (a).

2/2008
S. 2 (b).

3.—(1) The Bank may in accordance with the provisions of this Act—

Insurance
of loans.
1/1994
S. 3.

- (a) effect contracts of insurance and issue insurance policies in respect of loans insurable under the provisions of this Act;
- (b) prior to the issue of an insurance policy in respect of a loan give an approved lender an undertaking that the Bank will issue the insurance policy if the loan is made in accordance with this Act;
- (c) charge fees (in this Act called “insurance fees”) in respect of such contracts of insurance as aforesaid;
- (d) administer any fund established by or pursuant to this Act.

1/1994
S. 3.

(2) Subject to the provisions of regulations made under this Act, where an approved loan is made by an approved lender and the insurance fee in respect thereof has been paid, the Bank shall, at the request of the approved lender, issue to the lender an insurance policy in respect of the loan or part thereof.

48/1973
S. 3.

1/1994
S. 3.

(3) Where the Bank has given an approved lender an undertaking that it will issue an insurance policy if the loan is made in accordance with this Act and the borrower subsequently requests that the loan be of an amount less than that stated in the undertaking and the insurance fee in respect of such lesser amount is paid, the Bank shall, at the request of the approved lender, issue to the approved lender an insurance policy in respect of such lesser amount if the loan has, in all other respects, been made in accordance with this Act and with the undertaking to issue an insurance policy aforesaid.

1/1994
S. 3.

1/1994
S. 3.

(4) The Bank shall not make any arrangements with respect to the re-insurance of liabilities arising under contracts of insurance effected under this Act, except with the prior approval of the Minister.

1/1994
S. 4.

Insurable
loans.
20/1971
S. 4.

4.—(1) A loan is insurable under this Act if—

(a) it was made by an approved lender to a person (in this Act called the “borrower”) in order that the borrower may—

(i) purchase or erect a house (conforming to standards of construction approved by or acceptable to the Bank) with such loan (hereinafter referred to as a “housing loan”);

1/1994
S. 3.

(ii) purchase commercial property with such loan (hereinafter referred to as a “commercial loan”); or

1/1994
S. 5 (a) (iii).

(iii) purchase residential lots with such loan (hereinafter referred to as a “residential loan”); or

1/1994
S. 5 (a) (iii).

(iv) purchase agricultural land with such loan (hereinafter referred to as an “agricultural loan”) not exceeding five hundred acres:

Provided that the Minister may by instrument in writing specify an acreage in excess of five hundred acres where the borrower is a co-operative society registered under the Co-operative Societies Act; and

48/1973
S. 4 (a).

(b) it was for the aggregate of—

(i) 90 *per centum* of the appraised value, or any part thereof; and

(ii) the amount of the insurance fee payable in respect of the loan; and

(c) it bears interest at a rate not exceeding the prescribed rate; and

1/1994
S. 5 (b).

(d) it is secured by a first mortgage on the house, commercial property, residential lot or agricultural land, as the case may be, in a form acceptable to or specified by the Bank in favour of the approved

1/1994
S. 3.

lender, and by such further security, assignments, assurances and agreements as may be required by the Bank; and

1/1994
S. 3.

(e) it is, in the case of—

1/1994
S. 5 (c).

(i) a housing loan, for a term not less than fifteen years and not more than thirty-five years;

(ii) an agricultural loan, for a term not exceeding twenty-five years;

(iii) a commercial loan, for a term not exceeding twenty-five years;

(iv) a residential loan, for a term not less than seven years and not more than fifteen years; and

(f) it was made on such terms as to the payment of principal, interest and taxes by monthly instalments or otherwise as may be acceptable to or specified by the Bank; and

1/1994
S. 3.

(g) it was made upon such terms and conditions in addition to those specified in this subsection as may be—

(i) prescribed by regulations; or

(ii) agreed upon between the approved lender and the Bank.

1/1994
S. 3.

(1A) The terms and conditions of an insured loan shall not be changed without the approval in writing of the Bank and the Bank shall have power to alter the terms and conditions of the insurance policy as it thinks necessary consequent on any change so approved.

1/1994
S. 5 (d).

(2) With the approval of the Bank, borrower's charges accruing during the term of an insured loan may be added to the principal thereof.

1/1994
S. 3.

(3) Notwithstanding anything in this section a loan referred to in subsection (1) may be for an amount less than the amount specified therein or for a period shorter than the period specified therein if a loan for such lesser amount or for such shorter period, as the case may be, is requested in writing by the borrower or is made in such other circumstances as may be prescribed.

48/1973
S. 4 (c).

(4) The Minister may from time to time prescribe variations in respect of the percentages or the amount specified in paragraph (b) of subsection (1) or in section 5.

Collection
of
insurance
fee on
loans.
1/1994
S. 3.
1/1994
S. 6 (a).
1/1994
S. 6 (b)
and (c).

5.—(1) An insurance fee of $2\frac{1}{2}$ per centum or such other prescribed percentage of the amount of any loan to be insured under this Act shall be paid by the lender to the Bank but may be charged to the borrower and collected by the lender from the borrower at such times and in such manner as may be agreed between the borrower and the lender; and different rates may be charged for different categories of loans.

(2) For the purposes of this section, the insurance fee shall be calculated on the amount advanced to the borrower without taking into account the insurance fee component of the loan.

Termina-
tion of
policy.

6.—(1) An insurance policy issued under this Act in respect of a loan ceases to be in force if the loan is transferred to a person other than—

- (a) an approved lender;
- (b) the Bank; or
- (c) such other person as the Bank, subject to such conditions as it thinks fit, may approve.

1/1994
S. 3.

1/1994
S. 3.

1/1994
S. 3.

(2) The Bank may by not less than fifteen days' notice to an approved lender terminate an insurance policy issued under this Act if the approved lender fails to comply

with the provisions of this Act or with any directions of the Bank pursuant to section 7 or with any regulations made hereunder and thereupon the Bank shall be discharged from all its obligations in respect of the insurance policy. 1/1994
S. 3.

(3) The Bank may administer an insured loan pursuant to an agreement made with the holder thereof. 1/1994
S. 3.

(4) Nothing in subsection (1) shall be construed as terminating an insurance policy by reason only that the Minister revokes his approval of any lender as an approved lender; and, in relation to any insured loan being administered by that lender at the time of such revocation, the provisions of this Act and of the Regulations made thereunder shall continue to apply as if such lender as aforesaid continued to be an approved lender.

7.—(1) Where—

(a) a borrower defaults in the payment of principal or interest or in the performance or observance of any covenant expressed in any mortgage securing an insured loan; and

(b) because of such default an approved lender has the power to sell the mortgaged property, the approved lender shall give notice to the Bank of such default and if the default continues for the period specified in the insurance policy shall, subject to the provisions of subsection (7), exercise the power of sale aforesaid in accordance with this section. Insurance
settlement.

1/1994
S. 3.

(2) The exercise of the power of sale aforesaid shall be subject to the condition that the sale shall be by public auction with a reserve price not less than the settlement value of the property:

Provided that the approved lender may at any time sell by private treaty prior to giving notice to the Bank under 1/1994
S. 3.

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subsection (4) but no such sale shall be made at a price less than the reserve price except with the consent of the Bank which, if it consents to the sale, shall pay to the approved lender out of the Mortgage Insurance Fund the difference between the price obtained on such sale as aforesaid and the settlement value of the property.

1/1994
S. 3.

(3) If the reserve price is obtained by the approved lender pursuant to subsection (2) or if the approved lender sells at a price less than the reserve price without the consent of the Bank, the Bank shall thereby be discharged from all its obligations in respect of the insured loan.

1/1994
S. 3.

(4) If in any case the approved lender does not obtain the reserve price pursuant to subsection (2) the approved lender shall forthwith notify the Bank and the Bank shall thereupon, at its option subject to subsection (5), either—

1/1994
S. 3.

(a) authorize the approved lender to sell the property at the best price reasonably obtainable (whether by public auction or otherwise) and, if upon sale such price is less than the settlement value of the property, the Bank shall pay to the approved lender the difference between such price as aforesaid and the settlement value of the property; or

1/1994
S. 3.

(b) require the approved lender to transfer to the Bank or its nominee all rights to and in respect of the insured loan and all collateral or other securities therefor on payment of the settlement value of the property by the Bank to the approved lender; or

1/1994
S. 3.

(c) require the approved lender to sell the mortgaged property to the Bank or its nominee at a price equivalent to the settlement value of the property; or

1/1994
S. 3.

(d) direct the approved lender—

1/1994
S. 3.

(i) to acquire title to the mortgaged property

(whether by proceedings for foreclosure or otherwise) clear of all encumbrances except as prescribed by regulations; and

- (ii) to convey such title as aforesaid within the prescribed time to the Bank or to a nominee of the Bank (with or without vacant possession of the property as the Bank may require) on payment of the settlement value of the property by the Bank to the approved lender. 1/1994
S. 3.

(5) The Bank may in any insurance policy undertake to restrict the option referred to in subsection (4) to paragraphs (a), (b) and (c) only of subsection (4). 1/1994
S. 3.

(6) Any amount payable by the Bank pursuant to subsection (4) shall be paid out of the Mortgage Insurance Fund. 1/1994
S. 3.

(7) The Bank may agree with the approved lender to postpone the exercise of the power of sale on such terms and conditions as may be agreed upon. 1/1994
S. 3.

(8) For the purpose of this section—

“relevant date” means—

- (a) in relation to a sale pursuant to subsection (2), the date of such sale; and
 (b) in relation to a sale, transfer or conveyance pursuant to subsection (4), the date of such sale, transfer or conveyance, as the case may be;

“the settlement value of the property” means the aggregate of the following—

- (a) the principal owing on the mortgage at the relevant date;
 (b) borrower’s charges paid before the relevant date;

Fund, upon such terms and conditions as may be agreed upon, such amount as may be agreed upon in lieu of settlement under section 7.

9.—(1) The Bank shall establish a fund to be known as the “Mortgage Insurance Fund” into which shall be paid three-fifths of all insurance fees received by the Bank under this Act other than fees received pursuant to section 11.

Mortgage
Insurance
Fund.
1/1994
S. 3.
9/2008
S. 3.

(2) The Bank may invest any part of the Mortgage Insurance Fund in securities of or guaranteed by the Government of Jamaica or such other classes of securities as may from time to time be approved by the Minister.

1/1994
S. 3.

(3) Property acquired by the Bank under this Act and investments made out of the Mortgage Insurance Fund under subsection (2) shall be assets of that Fund.

1/1994
S. 3.

(4) Save as otherwise provided in section 14, insurance fees paid into the Mortgage Insurance Fund and the return on investments and assets of the Mortgage Insurance Fund shall be deemed not to be income of the Bank.

1/1994
S. 3.

(5) All payments required to be made by the Bank under section 7 or section 8 or in the upkeep of any property or mortgage acquired pursuant to section 7 or section 8 or in respect of any debentures issued under section 10 shall be paid out of the Mortgage Insurance Fund.

1/1994
S. 3.

10.—(1) Where the Bank is required to make any payment out of the Mortgage Insurance Fund pursuant to section 7 or section 8 in settlement of an insured loan, the Bank in its discretion may, in lieu of the portion of such payment representing the principal of the insured loan, issue to the person holding or administering the insured loan debentures (payable out of and charged on the Mortgage Insurance Fund) up to a nominal value equivalent to the principal of the insured loan outstanding at the date on which such payment as aforesaid is required to be made.

Payment in
debentures.
1/1994
S. 3.

(2) No debentures shall be issued pursuant to subsection (1) unless such debentures—

- (a) bear interest at the rate of interest at which the insured loan was made; and
- (b) are redeemable to the Bank not later than the date of expiration of the term of the insured loan; and
- (c) are guaranteed by the Minister.

(3) Where the Minister is satisfied that there has been default in the repayment of principal moneys or interest guaranteed under the provisions of this section, he shall direct the repayment out of the Consolidated Fund of the amount in respect of which there has been such default.

(4) Any sums required by the Minister for the purpose of subsection (3) shall be charged on and issued out of the Consolidated Fund.

Government
guaranteed
loans.
1/1994
S. 3.

11.—(1) The Accountant-General shall transfer and pay to the Bank all assets and moneys held by him for the purposes of any mortgage insurance reserve fund established in accordance with guarantee arrangements made pursuant to paragraph (b) of subsection (2) of section 49 of the Housing Act, and accordingly, all fees or premiums payable to the Government in respect of any such guarantee arrangements shall, after the commencement of this Act, be paid to the Bank.

1/1994
S. 3.

1/1994
S. 3.

(2) The Bank shall, with the assets, moneys, fees or premiums received by it in accordance with subsection (1), establish and administer a Fund to be known as the “Mortgage (Government Guaranteed Loans) Insurance Reserve Fund” for the purposes of the housing schemes in respect of which such amounts and fees were paid.

1/1994
S. 3.

(3) The Bank may invest any part of the Mortgage (Government Guaranteed Loans) Insurance Reserve Fund in

(c) interest at the mortgage interest rate on each amount specified in paragraphs (a) and (b) of this definition—

(i) for the period for which interest thereon was due or accrued and unpaid at the relevant date; or

(ii) for a period of twelve months or such longer period as may from time to time be prescribed,

whichever is the shorter period; and

(d) all costs and expenses reasonably and properly incurred and either agreed between the approved lender and the Bank or, in default of agreement, as may be taxed by the Registrar of the Supreme Court,

1/1994
S. 3.

and in calculating the amount payable, amounts received for the credit of the mortgage account shall be appropriated at the date of the receipt thereof first to interest then owing on the mortgage account, secondly to borrower's charges and thirdly, to the principal owing on the mortgage account.

1/1994
S. 3.

(9) Except where notice is given to the Bank pursuant to subsection (1) nothing in this section shall prevent an approved lender from exercising, without reference to the Bank, a power of sale which has arisen in relation to an insured loan but no claim in respect of the insurance may be made under this Act unless such notice is given.

1/1994
S. 3.

Alternative
insurance
settlement.
1/1994
S. 3.

8. Notwithstanding anything in section 7, where in any particular case the Bank is of opinion that the procedure under that section would unduly increase the loss in respect of any insured loan, the Bank may agree with the holder of the loan to pay to him out of the Mortgage Insurance

securities of or guaranteed by the Government of Jamaica or in such other classes of securities as may from time to time be approved by the Minister.

(4) Save as otherwise provided in section 14, the fees or premiums paid into the Mortgage (Government Guaranteed Loans) Insurance Reserve Fund and the return on investments and assets of the Fund shall be deemed not to be income of the Bank.

1/1994
S. 3.

12. From and after the 15th June, 1960, any loan in respect of any portion of which pursuant to an arrangement under paragraph (b) of subsection (2) of section 49 of the Housing Act, Government had undertaken to issue a guarantee, may, with the consent of the person to whom such undertaking was given, in lieu of such guarantee, be insured by the Bank.

Insurance
in lieu of
Government
guarantee.

1/1994
S. 3.

13. The aggregate amount of all loans in respect of which insurance policies have been issued under this Act shall not exceed the sum of five hundred million dollars or such other sum as the Minister may from time to time, by order, subject to negative resolution of the House of Representatives, prescribe.

Limit on
total amount
of insurance
to be under-
taken by
Bank.
1/1994
S. 3.
1/1994
S. 7.

14.—(1) The following shall be the income of the Bank and may be applied toward defraying the expenses of the Bank in the administration of this Act—

Adminis-
trative
expenses of
the Bank.
1/1994
S.3.
9/2008
S. 4.

(a) one-half of the return on—

(i) investments; and

(ii) assets,

of the Mortgage (Government Guaranteed Loans) Insurance Reserve Fund; and

(b) two-fifths of all insurance fees received by the Bank under this Act, other than fees received pursuant to section 11.

1/1994
S. 3.

1/1994
S. 3.

(2) If the amount received by the Bank pursuant to subsection (1) is not sufficient to defray the expenses of the Bank in the administration of this Act in any year the income of the Bank for that year may be supplemented—

(a) by withdrawals from the Mortgage Insurance Fund not exceeding fifty *per centum* of the return on investments and assets of the Fund for that year; and

(b) if the amount so withdrawn is insufficient for the purpose, by advances from the Consolidated Fund made by the Minister pursuant to section 15.

Government
advances to
the Bank.

1/1994
S. 3.

1/1994
S. 3.

15. At the request of the Bank the Minister may, out of moneys provided by Parliament, from time to time advance to the Bank for the purposes of this Act on such terms and conditions as to repayment or otherwise as the Minister may determine, such amounts as will enable the Bank to discharge its functions under this Act.

Accounts
and
reports.

1/1994
S. 3.

1/1994
S. 8 (a).

16.—(1) Transactions relating to the functions of the Bank under this Act shall be distinguished so far as possible from transactions relating to other activities of the Bank and shall be recorded and dealt with separately in the annual accounts and reports of the Bank.

1/1994
S. 8 (b).

(2) It shall be the duty of the Bank with the assistance of an actuary to review the Fund and insurance fees during the period ending on the first anniversary of the specified day and during every period of three years thereafter, and to make a report to the Minister on the findings of each such review and generally on the financial condition of the Fund.

(3) In this section “specified day” means the 4th day of March, 1994. 1/1994
S. 8 (b).

17. Notwithstanding any restrictions on the power of an approved lender to lend or invest money, an approved lender may— Increased powers of approved lenders.

- (a) in accordance with this Act make approved loans on the security of a first mortgage in favour of the lender;
- (b) sell or purchase insured loans together with the security taken in respect thereof;
- (c) administer an insured loan for or on behalf of the holder thereof.

18.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act. Regulations.

(2) In particular and without prejudice to the generality of the provisions of subsection (1) the Minister may make regulations—

- (a) in respect of any matter required by this Act to be prescribed;
- (b) fixing from time to time the maximum rate of interest payable by a borrower in respect of loans which after the date of commencement of any such regulation may be insured under this Act; 21/1967
S. 2.
- (c) subject to the provisions of this Act, determining the maximum charges that may be made in respect of the making and administration of an insured loan;
- (d) specifying— 48/1973
S. 5 (b).
 - (i) the conditions and circumstances under which an approved lender may request an insurance policy to be issued to him in respect of a part only of a loan; and

(ii) the insurance fee to be paid by the lender in any such case;

(e) prescribing the form and terms of the insurance policy that may be issued in respect of an insured loan and of the mortgage to be taken in respect thereof;

(3) All regulations and rules made under this section shall be subject to affirmative resolution.

(4) Any power conferred hereby to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

(ii) the same provision for all cases in relation to which the power is exercised or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of this Act;

(iii) any such provision either unconditionally or subject to any specified condition.

19. The provisions of the Insurance Act shall not apply to any insurance business carried on by the Bank under the provisions of this Act.

42/1969
3rd Sch.
9/2008
S. 5.

1/1994
S. 9.

Exemption
from
provisions
of Insurance
Act.
9/2008
S. 6.