

Deposit Protection Fund

The National Council may establish and maintain a fund to be known as "The Deposit Protection Fund" (hereinafter called "the Fund") and they may make Grants out of the Fund to relieve or mitigate losses sustained in consequence of the dishonesty of Fund Member Firms in relation to deposits paid to Fund Member Firms in earnest of the purchase price in relation to property transactions pertaining solely to real property situate within the jurisdiction of the State. A reference to the dishonesty of a Fund Member Firm shall be construed as a reference to the dishonesty of the Fund Member Firm, its principal, any of its partners or directors, its clerks or servants in connection with the Fund Member Firm's business as Auctioneers and in the course of the Fund Member Firm's practice as Auctioneers and House Agents.

They may make rules and regulations on the requisite criteria for a Fund Member Firm. These criteria inter-alia may require a minimum amount of Members or a minimum proportion of Members as partners/directors/ staff in the Fund Member Firm.

They may invest monies of the Fund in any Freehold or Leasehold property and in securities in which trustees are authorized by law to invest Trust Funds. They may borrow for the Fund and for the purpose of giving security with regard to such borrowings may charge investments of the Fund. They may insure against any risk relating to the Fund.

The following shall be paid into the Fund:

- (a) All Annual Contributions and additional Contributions paid by the Fund Members under these Articles to the Fund.
- (b) All interest, dividends and other income arising from the investments of the Fund or any part thereof.
- (c) The proceeds of any realization of any investments of the Fund.
- (d) All monies borrowed for the purposes of the Fund.
- (e) All monies received by the Institute under any insurance effected by the Institute as hereinbefore provided.
- (f) Any other monies which may belong to or accrue to the Fund or be received by the Institute in respect thereof.

The following shall be paid out of the Fund:

- (a) Costs, charges and expenses incurred in maintaining, protecting, administering and applying funds.
- (b) Premiums on any insurance effected by the Institute as hereinbefore provided.
- (c) Repayment of monies borrowed by the Institute for the Fund and payment of interest on such monies.
- (d) Payment of any Grants which the Institute may make as hereinbefore provided.
- (e) Further sums properly payable out of the fund.

Where it is proved to the satisfaction of the Council that any person has sustained loss in consequence of the dishonesty on the part of any Fund Member in relation to the taking of deposits in earnest of the purchase price in respect of Real Property excluding Goods Livestock Art Objects and Chattels then the Institute may make a

Grant to that person out of the Fund. The Institute in considering the amount of the Grant payable shall take into account any sum that may be payable to the Claimant on account of any bond which the Fund Member Firm (or a member of the Fund Member Firm) may have with an insurance company pursuant to the Auctioneers and House Agents Acts or with the National House Building Deposit Scheme or any other Bond or Scheme. The amount of the Grant shall be such as represents, in the opinion of the Council, full indemnity for such loss excluding costs and interests provided that:

- (i) The Claimant establishes to the satisfaction of the Council the making of the payment of the amount of the deposit to the Fund Member Firm;
- (ii) That the Claimant establishes to the satisfaction of the Council that the Claimant is lawfully entitled to recover the amount of the deposit from the Fund Member Firm but has been unable (having used his reasonable endeavours) to obtain reimbursement of the amount of the deposit (or part thereof) by reason of the insolvency or fraud or dishonesty of the Fund Member Firm;
- (iii) That the maximum amount authorised for payment by the Council shall be €15,000.00 for any one claim or 2% of the purchase price (whichever is the lesser), less the sum equivalent to any value, credits or allowances which may have been received or be receivable by the Claimant (howsoever arising).

The Institute shall have discretion to make or refuse to make a Grant:

- (a) In cases where the cause of a claim occurs prior to the 24th day of September 1994, even though the claim may be otherwise justified.
- (b) In cases which the Fund Member Firm has ceased to be a member of the Institute or has been suspended as a member of the Institute by the Disciplinary Committee pursuant to Clause 34(b) hereof at the time which, in the opinion of the Institute, the loss arose.
- (c) In a case in which the Council are of the opinion that there has been negligence on the part of the Claimant, the Claimant's legal representative, servants or agents or of any person for whom he is responsible which has contributed to the loss in question.
- (d) In a case in which the Council are of the opinion that the Claimant has, by his conduct, actively assisted in the commission of misconduct by the Fund Member Firm, its principal, any of its directors or partners, clerks or servants or legal representatives and where the Council decides to make a Grant in such case they shall have a discretion to make it only to a limited extent.
- (e) In cases where the claimant fails to notify the Institute within 12 months of the cause of action arising.

A Grant may be made notwithstanding that the member of a Fund Member Firm has after the act of dishonesty died, had his name removed from the Register of Members, ceased to practice, been suspended from practice, or had his practising Auctioneers and House Licence revoked or not renewed.

No Grant may be made in respect of a loss made good otherwise:

- (a) On the making of any Grant to any person (in this sub-section referred to as the Grantee) in respect of any loss:

The Institute shall, to the amount of the Grant, be subrogated:

- (i) To any rights or remedies to which the Grantee was entitled on account

of the loss against the Fund Member Firm or any other person or against the Estate of any member of such Fund Member Firm or any other person.

- (ii) To any rights or remedies to which the Fund Member Firm, its principal, any of its partners or directors, its clerks or servants was entitled on account of the loss against any other person or against the Estate of such other person.
 - (iii) To all other rights and remedies (if any) of the Grantee or such Fund Member Firms, its principal, any of its partners or directors, its clerks or servants in respect of the loss until the Institute has been reimbursed the full amount of the Grant.
 - (iv) The Grantee or its representatives shall not have the right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the Fund Member Firm, its principal, any of its partners or directors, its clerks or servants in respect of the loss until the Institute has been reimbursed the full amount of the Grant.
- (b) In paragraph (a) of this sub-section references to the Grantee or the principal, directors or partners, clerk or servant include, in the event of his death, insolvency or other disability, references to his personal representatives or any other person having authority to administrate his Estate.

No Grant shall be made unless notice of the loss is received by the Institute:

- (a) In the prescribed form; and
- (b) As soon as the loss is occurred but in any event no longer than three months after the loss comes to the reasonable knowledge of the loser.

The Institute, for the purpose of inquiry into any matter which may affect the making or refusal of a Grant may take evidence on oath and the administration of such oath is hereby authorised.

- (a) A Grant may at the discretion of the Institute be paid either in one sum or in such instalments as the Institute may determine.
- (b) The Institute, if they are of the opinion that the financial stability of the Fund so requires, may postpone payment of any Grant payable in one sum or payment of any instalments of a Grant:
 - (i) As and from the 24th day of September 1994 all Fund Member Firms shall pay to the Institute such annual contributions to the Fund as may be appropriate in accordance with the Articles and the Registrar may withhold the issuing of the Institute Membership Certificate to the Members of the Fund Member Firm until payment is made.
 - (ii) The Annual Contribution to the Fund payable by a Member Firm shall be such sum as shall be payable at such times and in such manner as the Council may determine from time to time.

The Council may make rules and regulations on the appropriate amount of Annual Contribution payable by Fund Member Firms and which may take into account the number of Members, Auctioneers, and/or staff in the Fund Member Firm.