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Acts 17 of 1992 | 26 of 1997

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PART I. Preliminary

1. Short title.

- 1. This Act may be cited as the Banking Act.

2. Interpretation.

- 2. (1) In this Act-

"assigned capital" means such portion of the capital of a foreign bank, consisting of unencumbered assets, as is specifically assigned by the bank to the financing of its Jamaican operations;

"authorized officer" has the same meaning as in the Bank of Jamaica Act;

"bank" means any company licensed under this Act to carry on banking business;

"banking business" means the business of receiving from the public, on current account or deposit account, money which is repayable on demand by cheque or order and which may be invested by way of advances to customers or otherwise; and such other business of a like nature as the Minister may, by order, prescribe;

"capital base" in relation to a bank means -

- (a) the amount of shareholder's equity and eligible reserves of the bank, calculated in such manner and by such methods as may be prescribed from time to time by regulations made under section 38; and
- (b) the amount of special debentures which for the time being may be taken into account in the calculation of the bank's capital base pursuant to section 46 (7);
- (c) the retained earnings reserve;
- (d) the share premium account;

(e) any other fund established by the bank and approved by the Bank of Jamaica as being part of the bank's capital base; and

(f) the amount of special debentures which for the time being may be taken into account in the calculation of the bank's deposit liabilities pursuant to section 46(5),

less any amount by which that total has become impaired;

"company" means a body corporate whether incorporated under the law of Jamaica or of any other country;

"connected person" shall be construed in accordance with subsection (2);

"control" in relation to a bank or any other company, means the power of a person to secure by means of the holding of shares or the possession of voting power in or in relation to that bank or any other company, or by any agreement or by virtue of any other powers conferred by the articles of association or other document regulating the bank or any other company, that the affairs of the bank or other company are conducted in accordance with the wishes of that person;

"credit facilities" includes loans, advances, comfort letters, standby and commercial letters of credit and any other arrangement whereby a customer of a bank has access to funds or financial guarantees of the bank or the bank undertakes on behalf of a customer financial liability to another person;

"deposit" means a sum of money paid on terms-

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

(b) which are not referable to the provision of property or services or to the giving of security, and for the purposes of this paragraph, money is paid on terms which are referable to the provision of property or services or to the giving of security if, and only if-

(i) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or

(ii) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or

(iii) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

"deposit liabilities" means-

(a) in relation to a local bank, the deposit liabilities of such bank whether payable in Jamaica or elsewhere;

(b) in relation to a foreign bank, the deposit liabilities of such bank payable pursuant to the operations in Jamaica of such bank;

"eligible reserves" means the reserve fund, the retained earnings reserve and any other fund established by the bank and approved by the Bank of Jamaica as being part of the bank's capital base;

"foreign bank" means a bank which is not a local bank;

"functions" includes duties and powers;

"immediate relative" as respects any person, means his spouse, or his children (including step-children) and their spouses, his parents, his brother or sister;

"land" includes any interest in land;

"licence" means a licence granted under this Act;

"local bank" means a bank incorporated in Jamaica;

"manager" includes any person or persons by whatever name called for the time being in charge of the principal office in Jamaica of any bank;

"money at call or at short notice" in relation to any bank means money invested by such bank by way of loans to, or deposits with-

(a) the Bank of Jamaica, other than the cash reserves or cash balances referred to in paragraphs (a) and (b) of subsection (2) of section 15;

(b) any other bank in Jamaica or any institution licensed under the Financial Institutions Act:

(c) any other institution in Jamaica approved for the purpose by the Minister,

repayable on demand or on not more than fourteen days' notice;

"paidup capital" shall be construed in accordance with subsection (4);

"prescribed liabilities" means such liabilities as may, by notice, from time to time be specified by the Bank of Jamaica;

"retained earnings reserve" means a reserve which has been notified as such to the Bank of Jamaica and into which is paid such portion of a bank's net profits as defined in section 8

(including realized capital gains) as the bank may determine;

"Supervisor" means the Supervisor of Banks and Financial Institutions appointed under the Bank of Jamaica Act;

"Supervisory Department" means the Department of Supervision of Banks and Financial Institutions established under Part VA of the Bank of Jamaica Act;

"trust business" includes property devolving upon a bank whether in the capacity of trustee, executor, administrator or any other fiduciary capacity;

"unsecured" in relation to credit facilities, means-

(a) credit facilities granted without security; or

(b) in the case of credit facilities granted against security, any part thereof which at any given time exceeds the market value of the assets comprising the security or which exceeds the valuation approved by the Bank of Jamaica whenever it deems that no market value exists for such assets,

and for the purpose of this definition security shall be construed as including a confirmed irrevocable letter of credit and such other instruments as the Bank of Jamaica may from time to time determine.

(2) For the purposes of this Act the following persons shall be treated as being connected with a given bank ("B") and the bank with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist-

(a) a holding company or subsidiary of B;

(b) a subsidiary or a holding company of B;

(c) a holding company of a subsidiary of B;

(d) any company of which B has control;

(e) any company of which B and persons connected with B together have control;

(f) any company which together with B constitute a group;

(g) an individual who is a director, manager or a person who has control of B or any partner or any immediate relative of such director, manager or person as aforesaid;

(h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(3) For the purposes of this Act "group" in relation to a company, means that company and-

(a) any other company which is its holding company or subsidiary;

(b) any other company which is a subsidiary of the holding company;

(c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);

(d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

(3A) For the purposes of this Act a company is the holding company of any company that is its immediate, intermediate or ultimate subsidiary.

(4) For the purposes of this Act, in determining the paidup capital of a bank-

(a) unless the Bank of Jamaica otherwise determines and subject to paragraph (b), there shall be disregarded any portion of capital subscribed to and paid up by a connected person who had within the three years immediately preceding the payment, received from the bank a loan (other than a loan referred to in subsection (5)), deposit or advance of an amount equal to or greater than the amount of that portion of capital; and

(b) the amount disregarded pursuant to paragraph (b) consequent on any loan, deposit or advance shall be limited to the amount remaining unpaid on the loan, deposit or advance.

(5) Subsection (4) shall not apply to any secured loan used to purchase shares in a bank where those shares are not used as security for that loan.

(6) Nothing in this Act shall be construed as permitting a bank to reduce the amount held in the retained earnings reserve without the prior approval in writing of the Bank of Jamaica.

PART II. Licensing of Banks

3. Restriction on carrying on of banking business.

3. (1) A person other than a company duly licensed under this Act shall not carry on banking business in Jamaica; and any person who contravenes this subsection shall be guilty of an offence.

(2) Where a Justice of the Peace is satisfied by information given by an authorized officer that there are reasonable grounds for suspecting that an offence under subsection (1) has been or is being committed by any person and that evidence of the commission of the offence is to be found on any premises specified in the information, he may grant a search warrant to the authorized officer to enter (with or without a constable) such premises for the purpose of inspecting and making copies of such books, accounts, records and other documents, cheques and securities, (in this subsection referred to as relevant documents) and such cash as may be

found on those premises; and any such warrant may authorize the seizure and detention of the relevant documents for a period not exceeding thirty days.

(3) Any person who hinders or obstructs an authorized officer or any person acting in aid of such officer in the performance of his duties under subsection (2) shall be guilty of an offence.

4. Licensing of banks.

4. (1) Every application for a licence to carry on banking business shall be made to the Minister in such form and manner and shall contain such particulars as may be prescribed, and the Minister may, in his discretion, grant or refuse such application.

(2) Where the Minister thinks necessary he may require an applicant for a licence to furnish additional information and where an application is refused the Minister shall notify the applicant in writing of such refusal stating the reason therefor and shall afford to that applicant an opportunity to be heard.

(3) A licence shall not be granted to any company to carry on banking business in Jamaica unless the Bank of Jamaica makes a recommendation to the Minister stating that every person who is a director of the company or who is to perform corporate management functions in the company or who is a shareholder holding (whether in his own right or when counted with any holding of a connected person) 20% or more of the voting shares of the company, is a fit and proper person for that purpose, that is to say, he is a person-

(a) who, whether in Jamaica or elsewhere-

(i) has not been convicted of an offence involving dishonesty; or

(ii) is not an undischarged bankrupt; or

(b) whose employment record does not give the Bank of Jamaica reasonable cause to believe that the person carried out any act involving dishonesty or any act involving impropriety in the handling of banking business;

(c) who, in the opinion of the Bank of Jamaica, is a person of sound probity, is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to the bank and whose relationship with the bank will not threaten the interests of depositors; and for the purposes of this paragraph, the Bank shall have regard to any evidence that he has -

(i) engaged in any business practices appearing to the Bank to be deceitful or oppressive or otherwise improper which reflect discredit to his method of conducting business;

(ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services, or in the management of companies or due to bankruptcy.

(4) A licence shall not be granted to any company having its head office outside Jamaica unless such company designates and notifies to the Minister-

(a) a principal office in Jamaica;

(b) by name one of its officers who is to be the company's authorized agent in Jamaica; and

(c) by name another of its officers who, in the absence or inability to act of the officer named under paragraph (b), is to be the company's authorized agent in Jamaica.

(5) It shall be a condition of every licence that the company to which it is granted shall-

(a) forthwith upon the grant of the licence and thereafter, while the licence continues in force, annually on or before each anniversary of such grant, pay the prescribed licence fee to the Accountant-General;

(b) comply with such terms and conditions as may be specified in the licence;

(c) forthwith upon any change in the persons referred to in subsection (3), notify the Minister in writing of that change;

(d) if such company has its head office outside Jamaica, notify the Minister in writing forthwith of any change of its principal office in Jamaica or of either or both of the officers named pursuant to paragraph (b) or (c) of subsection (4).

(6) If, upon receipt of a notice referred to in paragraph (c) or (d) of subsection (5), the Minister is not satisfied that the persons named therein are fit and proper persons as described in subsection (3), the Minister may require the bank concerned to take such steps as may be necessary to ensure compliance with subsection (3).

(7) The Minister shall by notice in the *Gazette* publish -

(a) the name of each company to which a licence is granted under this section; and

(b) any terms and conditions applicable to such licence.

5. Alteration of memorandum and articles of association.

5. (1) A local bank shall not make any alteration in its memorandum or articles of association unless it has notified the Minister in writing through the Bank of Jamaica that it proposes to make that alteration and the Minister either-

(a) has in writing approved the proposed alteration; or

(b) has not, within thirty days of receipt of the notification by the Bank of Jamaica, indicated in

writing to the bank any disapproval of the proposed alteration.

(2) The Minister shall not disapprove of a proposed alteration in the memorandum or articles of a bank unless such proposed alteration is, or is likely to result in, a breach of-

(a) the terms and conditions of the bank's licence; or

(b) the provisions of this Act or any regulations made hereunder.

(3) Any alteration made to the memorandum or articles of association of a bank in contravention of subsection (1) shall be null and void.

(4) Every local bank shall within fourteen days of the date on which any alteration is made to its memorandum or articles of association, notify the Minister of such alteration.

PART III. Capital and Reserves

6. Minimum capital requirements.

6. (1) A licence shall not be granted to a bank unless-

(a) in the case of a local bank, capital to an amount not less than eighty million dollars has been subscribed; and

(b) in the case of a foreign bank, not less than two hundred and fifty million dollars of the subscribed capital has been paid up in cash at the time of the application for the licence.

(2) A bank to which a licence is granted shall not commence business unless-

(a) in the case of a local bank, not less than sixty million dollars of the subscribed capital has been paid up in cash; or

(b) in the case of a foreign bank, not less than sixty million dollars of assigned capital is held in Jamaica by the bank.

(3) The Minister may, by order subject to affirmative resolution, vary the minimum amounts prescribed in subsection (1), so, however, that where those amounts are increased any bank affected thereby shall be permitted a reasonable period of time specified in the order, not being less than twelve months, within which to comply.

7. Restriction on foreign government holdings in banks.

7. Except with the written approval of the Minister, a foreign government or agency of such government shall not, directly or indirectly, in relation to a local bank-

(a) hold more than 5% of the issued share capital of that bank; or

(b) exercise any voting power in excess of that percentage of such shares as aforesaid.

8. Reserve fund.

8. (1) Every local bank shall maintain a reserve fund to which at the end of each financial year of the bank there shall be transferred -

(a) 15% of the net profits of the bank in that year until the amount at the credit of the reserve fund is equal to 50% of the paidup capital of the bank; and

(b) thereafter 10% of the net profits of the bank in that year until the amount at the credit of the reserve fund is equal to the paidup capital of the bank.

(2) Every foreign bank shall maintain a reserve fund in Jamaica to which at the end of each financial year of the bank there shall be transferred-

(a) 15% of the net profits of the bank earned in that year from the bank's Jamaican operations until the amount at the credit of the reserve fund is equal to 50% of the assigned capital of the bank; and

(b) thereafter 10% of the net profits of the bank earned in that year from the bank's Jamaican operations until the amount at the credit of the reserve fund is equal to the assigned capital of the bank.

(3) Nothing in subsection (1) or (2) shall prevent a bank-

(a) from transferring more than the prescribed percentage of the net profits in any year to its reserve fund; or

(b) from maintaining a reserve fund in an amount in excess of its paidup capital or its assigned capital, as the case may be.

(4) For the purposes of this section, "net profits" means profits after deduction of income tax but does not include any surplus arising from-

(a) a revaluation of the bank's assets other than foreign currency; or

(b) unless the Bank of Jamaica in writing otherwise permits-

(i) a sale of the bank's assets to a connected person, where such sale is not for cash or is funded by a loan from the bank;

(ii) any resale, other than for cash, by the bank of assets purchased from a connected person.

(5) Where -

(a) the amount at the credit of the reserve fund of a bank exceeds its unimpaired capital or assigned capital, as the case may be; and

(b) the bank intends to reduce its reserve fund,

the bank shall in writing notify the Bank of Jamaica accordingly and apply in writing to the Bank of Jamaica for permission to reduce its reserve fund and thereupon the Bank of Jamaica may permit the bank to reduce its reserve fund in accordance with subsection (6) by an amount not exceeding the amount of the excess as aforesaid.

(6) The reduction referred to in subsection (5) may be effected by the issue by the bank of bonus shares or by the redemption of preference shares or both.

9. Maximum deposit liabilities.

9. (1) Subject to subsection (2), a bank shall not incur deposit liabilities and other indebtedness for borrowed money which, together with all interest accrued thereon, exceed in the aggregate, twenty-five times the amount of its capital base.

(2) The Minister may by order subject to affirmative resolution, vary the multiple prescribed in subsection (1) in such manner as he thinks fit, so, however, that, where by virtue of such order the multiple for the time being applicable under this subsection is decreased, any bank affected thereby shall be permitted a reasonable period of time specified in that order, not being less than twelve months, within which to comply.

(2A) A bank shall maintain at all times an adequate capital base determined in such manner and by such methods as may be prescribed from time to time.

(3) Any bank which contravenes subsection (1) shall be guilty of an offence.

PART IV. *Restrictions on Banking Business*

10. Limit on fixed assets of banks.

10. (1) The fixed assets of a local bank or as the case may be, such assets of a foreign bank as are located in Jamaica, shall not, without the approval in writing of the Minister, and subject to such conditions as the Minister may specify, exceed an amount equivalent to its capital base.

(2) For the purposes of this section-

(a) "fixed assets" means the following assets (whether freehold or leasehold) owned by a bank and used by the bank in the conduct of its business, that is to say-

(i) furniture and fixtures;

- (ii) premises and other real estate;
- (iii) machinery and equipment, including motor vehicles, but does not include any such machinery, equipment or vehicles from which the bank derives income in its capacity as lessor;
- (b) the historical cost method shall be applied in the valuation of fixed assets.

11. Persons debarred from bank management.

11. (1) A person to whom this subsection applies shall not, without the express authorization in writing of the Minister, act or continue to act, as a director of, or be directly or indirectly concerned in the management of any bank.

(2) Subsection (1) applies to any person who-

- (a) is not a fit and proper person as described in subsection (3) of section 4; or
 - (b) whether in Jamaica or elsewhere has been a director of, or directly concerned in management of a bank referred to in the First Schedule.
- (3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.
- (4) It shall be the duty of every bank to ensure that in relation to the bank, persons do not act or continue to act in contravention of subsection (1); and, subject to subsection (5), any bank which contravenes this subsection shall be guilty of an offence.
- (5) It shall be a defence to a bank charged pursuant to subsection (4) for the bank to prove that it took all reasonable steps in the circumstances to prevent a contravention of subsection (1).

12. Restriction on use of title "bank".

12. (1) Except with the approval in writing of the Minister or except in accordance with the provisions of any Act, no person other than a company duly licensed under this Act shall, in connection with a trade or business carried on by him, use the word bank or any grammatical variation thereof; and any person who contravenes this subsection shall be guilty of an offence.

(2) Subsection (1) shall not apply to any association formed by banks for the purpose of representing the common interests of the members of such association or in any case where the word "bank" or any grammatical variation thereof forms part of the name of a person or place.

(3) Subject to subsection (5), the Minister may, if after consultation with the Bank of Jamaica he considers it to be in the public interest so to do by order, revoke any approval given to any person under subsection (1), and such person shall-

(a) within twenty-eight days from the date of the order, delete from the name under which the business is carried on the word "bank" or any grammatical variation thereof;

(b) upon receipt of the order, forthwith refrain from receiving from the public, money withdrawable by cheque or order.

(4) Any person who contravenes subsection (3) shall be guilty of an offence.

(5) Before making an order under subsection (3), the Minister shall give the person concerned notice in writing of his intention so to do and shall afford that person an opportunity to be heard and to submit to him a written statement of objections to the making of the order.

13. Prohibited business.

13. (1) A bank shall not-

(a) engage in any trade save in so far as may be necessary in the ordinary course of banking operations and services, including the satisfaction of debts due to the bank, and the due performance of its functions as a trustee, executor or administrator or as attorney for any person;

(b) acquire land save in so far as may be necessary-

(i) so to do for the purpose of conducting its business or housing its officers or employees; or

(ii) in the ordinary course of banking operations and services including the satisfaction of debts due to the bank and the due performance of its functions as a trustee, executor or administrator or as attorney for any person;

(c) acquire, deal in or grant credit facilities on the security of its own shares or the shares of a holding company or subsidiary of the bank so, however, that this provision shall not operate to prohibit any share financing scheme permitted by paragraph (b) or (c) of the proviso to section 54 (1) of the Companies Act;

(d) grant unsecured credit facilities to -

(i) any connected person;

(ii) any officer or employee of the bank or any immediate relative of such officer or employee in excess of an amount equivalent to one year's salary of such officer or employee;

(e) except in relation to specified credit facilities, grant unsecured credit facilities to -

(i) any firm or corporation which holds 20% or more of the bank's capital or in which the bank or a connected person has an interest as a partner, or, as the case may be, a shareholder holding or controlling 20% or more of the voting shares;

- (ii) any person who holds or controls 20% or more of the bank's shares;
- (iii) any person if the credit facilities are guaranteed by a connected person who holds or controls 20 % or more of the bank's capital; or
- (iv) any firm or corporation if the credit facilities are guaranteed by a connected person who, in relation to that firm or corporation, has an interest as a partner, or, as the case may be, holds or controls 20% or more of the voting shares;
- (f) except in relation to specified credit facilities and subject to subsection (5), grant credit facilities-

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- (i) to any one person (not being another bank) if the credit facilities granted exceed in the aggregate 20% of the bank's capital base but where any portion of such credit facilities is unsecured, that portion shall not exceed 5% of the bank's capital base;**
- (ii) to any group if the credit facilities exceed in the aggregate 40% of the bank's capital base but where any portion of such credit facilities is unsecured that portion shall not exceed 10% of the bank's capital base;**
- (g) pay any dividend on its shares-**
 - (i) until all its capitalized expenditure not represented by tangible assets and all prior losses have been completely written off, so, however, that the Minister may by order provide that, subject to such terms, conditions, exceptions, and restrictions (if any) as he may specify therein, such expenditure shall be deemed not to include expenditure for the purchase of goodwill;**
 - (ii) if the paidup capital or cumulative balance in the reserve fund has been impaired, until such impairment has been corrected;**
 - (iii) if having regard to the bank's liabilities, it would be imprudent to do so;**
 - (iv) until the requirements of this Act relating to reserves have been met;**
 - (v) until all sums due and payable to the Bank of Jamaica by the bank have been paid;**
- (h) directly or indirectly acquire or hold in the aggregate any part of the share capital of any company or undertaking in excess of 50% of its capital base, so, however, that-**
 - (i) such shareholding shall not, in respect of any one such company or undertaking as**

aforesaid, exceed 10% of the bank's capital base; and

(ii) the restrictions imposed by this paragraph shall not apply where such shareholding is acquired in the administration of the estate of a deceased person or pursuant to an underwriting arrangement or in the course of the satisfaction of debts due to the bank but such shareholding shall be disposed of at the earliest suitable time;

(i) except where the Bank of Jamaica otherwise determines, grant credit facilities to and acquire or hold investments -

(i) in any one connected person exceeding in the aggregate 10% of the bank's capital base; or

(ii) in all connected persons, exceeding in the aggregate 20% of the bank's capital base.

(2) The Minister may from time to time, by order, subject to affirmative resolution, vary any percentage specified in paragraph (f) of subsection (1).

(3) A bank shall not beneficially hold in fee simple for any period exceeding three years from the date of acquisition, land acquired in the course of the satisfaction of debts due to the bank, but shall forthwith after the expiry of that period sell or otherwise dispose of the land absolutely so that the bank no longer has, directly or indirectly, any interest or control in respect thereof except by way of security.

(4) The Minister may in writing direct that the time specified in subsection (3) for sale or disposal of land be extended for a further period or periods.

(5) The Minister may, by order, make provision whereby credit facilities may be granted by a bank on such basis (being less restrictive than that imposed at paragraph (f) of subsection (1) as may be prescribed in the order if he is satisfied, on the application of the bank and after consultation with the Bank of Jamaica, that the bank has made arrangements whereby the repayment of amounts made available as credit facilities will be assured by such cash resources of the borrower or such other resources of the borrower approved by the Bank of Jamaica or guaranteed by such person in such circumstances and subject to such terms and conditions as will adequately protect the interests of shareholders and depositors in the bank.

(6) For the purposes of this section "specified credit facilities" means-

(a) credit facilities made to or guaranteed by the Government of Jamaica;

- (b) credit facilities made to a local government authority;**
 - (c) credit facilities made to -**
 - (i) a statutory body; or**
 - (ii) a company owned or controlled by the Government or an agency of the Government, which is designated by the Minister for the purposes of this provision;**
 - (d) credit facilities derived solely from funds provided by an institution, under a scheme approved by the Minister, to a bank for the purposes of the granting of credit facilities by that bank; or**
 - (e) credit facilities in respect of which cash is given as full collateral.**
- (7) For the purposes of subsection (1)-**
- (a) any reference to "capitalized expenditure not represented by tangible assets" shall be construed as including a reference to preliminary expenses, organization expenses, share selling commission and brokerage;**
 - (b) "control" in relation to shares, means the power of a person to secure that the voting rights in respect of those shares are exercised in accordance with that person's wishes.**
- (8) Notwithstanding anything to the contrary, where a transaction is entered into by a bank, whether before or after the 31st December, 1992, in contravention of any provision of this section, nothing in this section shall prevent the bank from enforcing the transaction against any person or party thereto.**
- (9) Any bank which contravenes subsection (1) or (3) shall be guilty of an offence.**

PART V. *Cash Reserves and Liquid Assets*

14. Cash reserve.

14. (1) Subject to section 28 of the Bank of Jamaica Act, every bank shall maintain in the form of a deposit with the Bank of Jamaica a cash reserve not less on the average than 5 % of its prescribed liabilities.

(2) Subject to subsection (3), for the purpose of determining the amount of the cash reserve required to be maintained by a bank during any week-

(a) the amount of its deposit with the Bank of Jamaica shall be the average amount of such deposit as at the close of business on each business day in the week;

(b) the amount of its prescribed liabilities shall be the average amount of such liabilities at the close of business on Wednesdays in each of the four consecutive weeks ending with the last Wednesday but one of the preceding month.

(3) The Bank of Jamaica may by notice from time to time vary the method to be used in calculating the average of the cash reserve required to be maintained under this section.

(4) Where a bank during any week fails to maintain with the Bank of Jamaica the authorized deposit, that bank shall pay to the Bank of Jamaica in respect of the business days of that week interest calculated on the amount of the deficiency at such rate as the Bank of Jamaica may from time to time, by notice approve.

(5) In subsection (4)-

"authorized deposit" in relation to any bank, means the amount required to be deposited by that bank with the Bank of Jamaica pursuant to subsection (1) or pursuant to any notice published in the *Gazette* in accordance with section 28 of the Bank of Jamaica Act;

"deficiency" means the amount by which the sum (if any) actually deposited by a bank falls short of the authorized deposit.

15. Liquid assets.

15. (1) Subject to section 29 of the Bank of Jamaica Act, every bank shall so conduct its business as to ensure that its liquid assets are on the average not less than 15% of its prescribed liabilities.

(2) For the purposes of this section "liquid assets" means-

(a) cash reserves on deposits with the Bank of Jamaica in accordance with section 14;

(b) cash balances with the Bank of Jamaica in excess of such required amount;

(c) notes and coins which are legal tender in Jamaica;

(d) money at call or short notice not being money taken into account in determining the liquid assets of the bank or other institution with which it is deposited;

(e) Treasury Bills of the Government of Jamaica;

(f) local registered stock the maturity date of which will occur within a period not exceeding nine

months;

(g) amounts deposited with the Bank of Jamaica for such period as the Bank of Jamaica may from time to time determine;

*(h) such other assets as the Minister may determine after consultation with the Governor of the Bank of Jamaica;

(i) balances held with other banks and institutions licensed under the Financial Institutions Act, less amounts held for those banks or institutions:

Provided that so much only of the items mentioned at paragraph (d) shall be taken into account as do not exceed such percentage of prescribed liabilities as the Minister may from time to time, by order, prescribe.

(3) Where a bank during any month fails to maintain as liquid assets the amount which it is required to maintain under this section, that bank shall pay to the Bank of Jamaica in respect of the entire month aforesaid interest calculated at such rate as the Bank of Jamaica may from time to time, by notice, approve on the sum by which the amount of the liquid assets (if any) maintained by that bank falls short of the amount of the liquid assets which it is required to maintain.

(4) Subject to subsection (5), for the purpose of determining the amount of the liquid assets required to be maintained by a bank during any month-

(a) the amount of its liquid assets shall be the average amount of such assets at the close of business on each business day of the month; and

(b) the amount of its prescribed liabilities shall be the average amount of such liabilities at the close of business on Wednesdays in each of the four consecutive weeks ending with the last Wednesday but one of the preceding month.

(5) The Bank of Jamaica may by notice from time to time vary the method to be used in calculating the average of the liquid assets required to be maintained under this section.

PART VI. Returns and Accounts

16. Returns.

16. (1) Subject to subsection (2), every bank shall in relation to its operations in Jamaica or elsewhere deliver to the Bank of Jamaica in such form as the Minister may from time to time approve-

(a) not later than seven working days after the last day of each month a monthly statement of assets and liabilities;

(b) not later than seven working days after the last day of each month a monthly return providing an analysis of customers' liabilities to the bank in respect of bills discounted, loans and advances;

(c) not later than sixty days after the end of each year an annual return made up as at the end of that year, of-

(i) the bank's current operating earnings and expenses during the year;

(ii) all debts payable by the bank in Jamaica or elsewhere in respect of which during a period of seven or more years no transaction has taken place and no statement of account has been requested or acknowledged by the creditor;

(iii) unpaid cheques, drafts or bills of exchange issued, certified or accepted by the bank and payable in Jamaica or elsewhere, and outstanding for seven or more years from the date of such issue, certification or acceptance as the case may be;

(iv) all dividends remaining unpaid for a period exceeding five years;

(v) land acquired in the course of the satisfaction of debts due to the bank and beneficially held in fee simple by the bank;

(d) not later than seven working days after the month to which it relates a monthly return showing the total of loans in respect of which no interest which is due and payable has been paid for a period of three months or more;

(e) not later than seven working days after the month to which it relates a monthly return showing the bank's contingent and prospective liabilities;

(f) such other returns, statements or information as the Minister may require.

(2) No statement, return or information shall be required under paragraph (a), (b), (d), (e), or (f) or subparagraph (i) of paragraph (c) of subsection (1) in respect of the affairs of any particular customer of a bank.

(3) The Minister may, if he thinks necessary in any particular case, extend the time prescribed for the sending of a statement or return under subsection (1).

(4) Every bank which fails to make any return or furnish any statement or information in accordance with the requirements of this Act or the Bank of Jamaica Act, shall be guilty of an offence.

(5) If any return required to be made, or any statement or information required to be furnished, under or pursuant to this Act or the Bank of Jamaica Act, is transmitted by post, the date appearing by the stamp or mark of the post office in Jamaica upon the envelope or wrapper enclosing the return, statement or information received by the Minister or the Bank of Jamaica, as the case may be, as the date of deposit in the post office shall be taken *prima facie* for the purposes of this section to be the day upon which the return was made or the information was furnished.

(6) The Bank of Jamaica may publish in a daily newspaper printed and circulated in Jamaica information in such form as may be approved by the Minister on the liabilities and assets of each bank furnished under paragraph (a) of subsection (1):

Provided that no information in respect of the affairs of a particular customer of a bank shall be so published.

(7) In this section "working day" means any day on which a bank is normally opened for business.

17. Loan loss reserve.

17. (1) Where, in respect of any loan granted by a bank no payment of principal or interest which is due and payable has been made for a period of three months-

(a) the bank shall establish an appropriate reserve (hereinafter referred to as a loan loss reserve) in respect of all such loans in such amount and on such basis as the Minister may prescribe in regulations made under section 38; and

(b) interest in respect of such loans shall not continue to be taken to the profit and loss account after the expiration of that period.

(2) There shall be shown on the audited balance sheet of each bank the aggregate amount of the loan loss reserve and the portion thereof which has been written off against the profit and loss account.

(3) Where the terms of any loan referred to in subsection (1) have been altered pursuant to a re-

negotiation-

(a) if the loan is of an amount equivalent to 10% or more of the bank's capital base, the bank shall within seven days after the date of such re-negotiation notify the Bank of Jamaica in writing giving full particulars thereof;

(b) if the loan is not one referred to in paragraph (a) but is of an amount in excess of 1% of the bank's capital base, the bank shall within seven days after the expiration of the month in which the alteration occurred, make a return to the Bank of Jamaica setting out the total amount of the loan so altered during, that month.

18. Presentation and publication of balance sheet and profit and loss account.

18. (1) Every bank shall-

(a) not later than ninety days after the end of each financial year, submit the prescribed documents to the Bank of Jamaica;

(b) not later than fourteen days after the date on which the prescribed documents are submitted pursuant to paragraph (a), cause a copy thereof to be published in a daily newspaper printed and circulated in Jamaica;

(c) exhibit throughout each year a copy of the latest prescribed documents in a conspicuous position in each place of business of the bank in Jamaica.

(2) For the purposes of this section "prescribed documents" means-

(a) in the case of a local bank-

(i) an audited balance sheet and profit and loss account in respect of all business transacted by the bank in its last financial year and signed by not less than two of the bank's directors; and

(ii) the auditor's report;

(b) in the case of a foreign bank

(i) its latest audited balance sheet and profit and loss account in respect of the bank's operations; and

(ii) an audited balance sheet and profit and loss account in respect of its Jamaican operations made up to the last working day of the bank's financial year,

and signed by the principal officer and the next most senior officer in Jamaica of the bank or such other officer as may be designated by the bank.

(2A) Except as otherwise directed in writing by the Supervisor, the audited balance sheet and profit and loss account referred to in subsection (2) (a) (i) and (b) (ii) shall be prepared in accordance with generally accepted accounting principles as set out in the Handbook of the Institute of Chartered Accountants of Jamaica.

(3) Any bank which contravenes this section shall be guilty of an offence.

19. Consolidated accounts of banks and affiliated companies.Cases

19. (1) Where a bank has a subsidiary or subsidiaries, the prescribed documents required for the purposes of section 18 shall include a consolidated balance sheet and consolidated profit and loss account relating to the bank and its subsidiaries.

(2) Where a bank-

(a) is a subsidiary or parent of; or

(b) shares a common parent with a company which is the holding company of,

any other company, each of the aforesaid companies shall submit to the Bank of Jamaica an audited balance sheet and profit and loss account in respect of all business transacted by it in its last financial year and signed by not less than two of its directors.

(3) If in the opinion of the Bank of Jamaica the information contained in the consolidated accounts furnished by a bank or individual accounts furnished by a bank's subsidiary, parent or holding company, as the case may be, indicates the likelihood of insolvency on the part of the bank, its parent or holding company or any of its subsidiaries, the Bank of Jamaica may, after consultation with the bank, issue to the bank such directions as the Bank of Jamaica thinks fit, and without prejudice to the generality of the foregoing, the directions may require-

(a) the increase of the paidup capital of the bank or, as the case may be, the paidup capital of the subsidiary;

(b) the sale, transfer or other disposition of the subsidiary or of part of its business;

(c) the winding up of the subsidiary.

(4) Where a subsidiary of a bank is registered under the Industrial and Provident Societies Act-

(a) the accounts of the subsidiary shall be consolidated with those of the bank to the intent that-

(i) deposits taken by the subsidiary shall be deemed to be deposits of the bank for the purposes of section 9 (maximum deposit liabilities) sections 14 and 15 (cash reserve and liquid assets); and

(ii) loans or credit facilities granted by the subsidiary shall be deemed to be loans of the bank for the purposes of section 13 (prohibited business);

(b) any transfer of funds to the subsidiary by the bank shall be deemed to be a loan or the granting of credit facilities for the purposes of section 13 (1) (e);

(c) the bank shall make returns under section 16 in relation to the operations in Jamaica of the subsidiary as if the subsidiary were a bank;

(d) the bank shall make a return of all loans transferred to the subsidiary whether for consideration or for purposes of collection.

19A. Duty of Auditors to report to Supervisor on transactions, etc. affecting bank's financial viability.

19A. (1) It is the duty of the auditors of a bank to report in writing to the chief executive officer of the bank, each director of the bank and the Supervisor, any material transactions or conditions that have come to the auditors' attention in the ordinary course of the audit, which, in the auditors' opinion meet one or more of the following criteria -

(a) any change in accounting policy or any presentation of or any failure to present, facts or figures which, in the opinion of the auditors, has the effect of misrepresenting the financial position of the bank;

(b) transactions or conditions giving rise to significant risks or exposures that have the potential to jeopardize the bank's financial viability;

(c) transactions or conditions indicating that the bank has significant weaknesses in internal control which render it vulnerable to significant risks or exposures that have the potential to

jeopardize the bank's financial viability,

(d) transactions of an irregular nature that have a significant or material impact on the bank's financial position;

(e) transactions or conditions that contravene the provisions of this Act or any regulations made thereunder relating to capital adequacy or liquidity requirements, or any other provisions of this Act;

(f) any other transactions or conditions which in the opinion of the auditors, should be included in a report under this section.

(2) An auditor who refuses to comply with the provisions of this section shall be guilty of an offence.

(3) Where a report is made under subsection (1), it shall be presented at the first meeting of the bank's directors following the date of its receipt by the bank's chief executive officer and shall be incorporated in the minutes of that meeting.

(4) The report required under subsection (1) shall be made within thirty days after the date on which the relevant transactions or conditions came to the attention of the auditors.

(5) The auditors of a bank shall not be regarded as being in breach of their duty of confidentiality to the bank in consequence of any report made to the Supervisor in compliance with subsection (1).

19B. Expanded audit.

19B. (1) The Supervisor may, in writing, require the auditor of a bank to -

(a) report in writing to the Supervisor on the extent of the auditor's procedures in auditing the balance sheet and profit and loss account of the bank and, as the case may require, its subsidiaries; or

(b) enlarge the scope of that audit or perform such other audit procedures as the Supervisor may specify in any particular case and report thereon in writing to the Supervisor,

(2) The expenses, as approved by the Supervisor, of any audit or examination carried out pursuant to subsection (1) shall be paid by the bank concerned.

(3) An auditor who refuses to comply with a requirement by the Supervisor under section (1) shall be guilty of an offence.

(4) An auditor of a bank shall not be regarded as being in breach of his duty of confidentiality to the bank in consequence of any report made to the Supervisor in compliance with subsection (1).

PART VII. *Regulation and Control of Banks*

20. Regulation of shareholding in banks.

20. (1) Where any person enters into an agreement to acquire shares in a local bank by virtue of which he would, if the agreement is carried out, obtain effective control of that bank, the agreement shall be subject to the approval of the Minister and shall contain or be deemed to contain a clause to that effect.

(2) Where an application for approval required under subsection (1) is made, the Minister may give his approval subject to such terms and conditions as he considers necessary and the Minister shall, subject to subsection (3), give his decision within sixty days of the receipt of the application and in determining whether or not to approve the transaction, the Minister shall take into account such matters as he considers relevant to the application, including, without limiting the generality of the foregoing, the following matters -

(a) the nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the bank,

(b) the soundness and feasibility of the applicant's plans for the future conduct and development of the bank's business;

(c) the business record and experience of the applicant;

(d) whether the bank will be operated by persons who are fit and proper persons as described in subsection (3) of section 4;

(e) where the applicant or any of the applicant's affiliates is a deposit-taking financial institution, the size of -

(i) the bank;

(ii) any deposit-taking financial institution affiliated with the applicant,

calculated on such basis as the Minister considers appropriate;

(f) the best interests of the financial system in Jamaica.

(2A) If the Minister refuses to give approval of an application made under subsection (2), he shall notify the applicant forthwith and shall give him an opportunity to make written representations.

(3) For the purpose of making a decision under subsection (2), the Ministry may require the applicant to furnish him with such additional information concerning the agreement as the Minister may specify.

(4) For the purposes of this section-

(a) a person shall be regarded as entering into an agreement by virtue of which he would obtain effective control of a local bank if the person alone or acting together with any connected person would be in a position to control 20% or more of the voting power in the bank or would hold interests in 20% or more of the issued shares of the bank;

(b) a reference to an agreement by which a person would obtain effective control of a local bank includes a reference to an agreement by which the person would acquire any interest in shares in the bank where, upon the acquisition of that interest and of any other interest in other shares of the bank that he has offered to acquire, he would have effective control of the bank;

(c) a reference to a person offering to acquire interests in shares includes-

(i) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of interest in shares to offer to dispose of those interests; and

(ii) a reference to a person taking part or proposing to take part in negotiations with a view to the acquisition of shares by that person;

(d) a person holds an interest in a share if he has any legal or equitable interest in that share;

(e) a reference to the voting power of a bank is a reference to the total number of votes that may be cast in the general meeting of the bank.

21. Regulation of controlling interest in banks.

21. (1) Where any person enters into any arrangement in relation to any local bank by virtue of which he would, if the arrangement is carried out, obtain control of the bank, the arrangement shall be subject to the approval of the Minister.

(2) Where an application for approval required under subsection (1) is made, the Minister may give his approval subject to such terms and conditions as he considers necessary and the Minister shall, subject to subsection (3), give his decision within sixty days of the receipt of the application and in determining whether or not to approve the transaction, the Minister shall take into account such matters as he considers relevant to the application, including, without limiting the generality of the foregoing, the following matters -

(a) the nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the bank,

(b) the soundness and feasibility of the applicant's plans for the future conduct and development of the bank's business;

(c) the business record and experience of the applicant;

(d) whether the bank will be operated by persons who are fit and proper persons as described in subsection (3) of section 4;

(e) where the applicant or any of the applicant's affiliates is a deposit-taking financial institution, the size of -

(i) the bank;

(ii) any deposit-taking financial institution affiliated with the applicant,

calculated on such basis as the Minister considers appropriate;

(f) the best interests of the financial system in Jamaica.

(2A) If the Minister refuses to give approval of an application made under subsection (2), he

shall notify the applicant forthwith and shall give him an opportunity to make written representations.

(3) For the purpose of making a decision under subsection (2), the Minister may require the applicant to furnish him with such additional information concerning the arrangement as the Minister may specify.

(4) For the purposes of this section-

(a) a person shall be regarded as entering into an arrangement by virtue of which he would obtain control of a bank if he alone or acting together with a connected person would be in a position to determine the policy of the bank;

(b) the reference to entering into any arrangement is a reference to any formal or informal scheme, arrangement or understanding, whether expressly or impliedly and, without limiting the generality of the foregoing, includes a reference to-

(i) creating a trust whether express or implied; and

(ii) entering into a transaction or agreement, and references to an arrangement shall be construed accordingly.

22. Power to obtain information re shareholding.

22. (1) The Minister may by notice in writing require any shareholder of a local bank to transmit to the Minister information-

(a) as to whether that shareholder holds any voting shares in the bank as beneficial owner or as trustee; and

(b) if he holds them as trustee, the persons for whom he holds them (either by name or by other particulars sufficient to enable those persons to be identified) and the nature of their interest,

and the shareholder shall comply with that direction within such time as may be specified in the notice.

(2) Any person who-

- (a) fails to comply with a requirement under subsection (1); or
- (b) in response to such requirement, knowingly or wilfully supplies false information to the Minister,

shall be guilty of an offence.

23. Power to restrict dealing in specified shares.

23. (1) Where the Minister is satisfied that any person has acquired shares in a local bank in contravention of section 20 or 21, he may by notice in writing served on that person, direct that the shares so acquired (hereinafter referred to as "specified shares") shall be disposed of within such period as the Minister may specify or that the specified shares shall be subject to one or more of the following restrictions, that is to say-

(a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or agreement to transfer the right to be issued with them shall be void;

(b) no voting rights shall be exercisable in respect of the shares;

(c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder.

(2) A copy of the notice served on the person concerned under subsection (1) shall be served on the bank to which the specified shares relate and, if the notice relates to such shares held by a connected person, on that connected person.

(3) A Judge of the Supreme Court may, on the application of a bank or the Minister, order the sale of any specified shares and, if they are for the time being subject to any restrictions under subsection (1), order that they shall cease to be subject to those restrictions, and the Judge may make such further order relating to the sale or transfer of the shares as he thinks fit.

(4) Where specified shares are sold in pursuance of an order under this section the proceeds of sale, less the costs of the sale, shall be paid into such fund as the Court may specify for the benefit of the persons beneficially interested in them, and any such person may apply to the Court for the whole or part of the proceeds to be paid to him.

24. Appeal against restriction notice.

24. Any person who is aggrieved by a notice of refusal pursuant to section 20 (2A) or 21 (2A) or any terms and conditions stipulated by the Minister in granting approval pursuant to those sections or any notice served pursuant to section 23 (1) or (2), may within twenty-one days after receipt of such notice appeal to the Court of Appeal against the Minister's decision and that Court may make such order as it thinks fit.

PART VIII. *Regulation against Unsafe Practices*

25. Actual or apprehended insolvency.Cases

25. (1) Where the Supervisor believes that any of the conditions specified in paragraph 1, 2, 3 or 4 of Part A of the Second Schedule exists in relation to a bank, the Supervisor may, unless directed otherwise by the Minister -

(a) require the bank to give an undertaking signed by the majority of the members of the bank's Board to take such corrective action as may be agreed between the bank and the Supervisor;

(b) give directions to the bank under this section; or

(c) issue a cease and desist order in accordance with Part B of the Second Schedule.

(2) Directions under this section shall be such as appear to the Supervisor to be desirable in the interest of the bank's depositors and potential depositors, whether for the purposes of safeguarding its assets or otherwise, and may, in particular -

(a) require the bank to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

(b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;

(c) prohibit the bank from soliciting deposits either generally or from persons who are not already depositors,

- (d) prohibit the bank from entering into any other transaction or class of transactions;
- (e) require the removal of any director or manager.

(3) Where a bank ceases to be liable for deposits which were or could have been the subject matter of the Supervisor's powers under this section -

- (a) no direction shall be given by the Supervisor to that bank pursuant to this section; and
- (b) any direction of the Supervisor which was given to that bank shall cease to have effect.

(4) A bank which fails to comply with any requirement or contravenes any prohibition imposed by any direction or cease and desist order under this section shall be guilty of an offence.

(5) A contravention of any direction or prohibition imposed under this section shall not invalidate any transaction.

(6) Where the Minister, after consultation with the Supervisor, believes that a bank is or appears likely to become unable to meet its obligations or that any of the conditions specified in paragraph 5, 6, 7, 8, 9, 11 or 12 of Part A of the Second Schedule exists, the Minister may -

- (a) assume the temporary management of the bank in accordance with Part C of that Schedule;
- (b) suspend or revoke the bank's licence in accordance with Part D of that Schedule;
- (c) present to the court a petition for the winding up of the bank or an application regarding reconstruction of the bank."

(7) Where action is taken under paragraph (b) or (c) of subsection (6) the bank concerned shall not, without the consent of the court -

- (a) carry on any banking business; or
- (b) make any payment directly or indirectly to or for the benefit of any person who -

(i) is or was an officer of the bank at the date on which the petition was presented, or, as the case may be, the licence was suspended or revoked;

(ii) is the immediate relative of such officer; or

(iii) in relation to the bank, is a connected person.

(8) The provisions of the Companies Act relating to the mode of winding up by the court and to arrangements for reconstructions shall, with such modifications and adaptations as may be necessary, apply to a petition or application made by virtue of paragraph (c) of subsection (6).

25A. Bank ceasing to be viable.

25A. (1) Where the Minister, after consultation with the Supervisor, is of the opinion that-

(a) a bank has ceased to be viable;

(b) the viability of the bank cannot be restored by the exercise of powers under section 25; and

(c) it is in the best interests of the bank's depositors that there be a reconstruction of the bank or a disposition of its assets in accordance with section 25D on an expeditious basis,

the Minister shall notify the bank in writing accordingly and provide the bank with an opportunity to make representations within ten days of the receipt of the notice by the bank.

(2) For the "purposes of subsection (1) the Minister may take into account all matters the Minister considers relevant and in all cases, whether -

(a) to sustain its operations, the bank is dependent on loans, advances, guarantees or other financial assistance from government agencies or undertakings;

(b) the bank's capital base is less than the amount required by this Act or any regulations made thereunder;

(c) the bank has failed to pay any liability that has become due and payable or will not be able to pay its liabilities as they become due and payable.

(3) The powers conferred by this section and by sections 25B to 25F may be exercised by the Minister in relation to a bank in respect of which the Minister has assumed temporary management pursuant to subsection (6) of section 25.

25B. Vesting of bank's shares, etc. in Minister.

25B. (1) Where, after due consideration of any representations made by a bank under section 25A (1), the Minister is of the opinion that the matters specified in paragraphs (a) and (b) of section 25A (1) are applicable to that bank, the Minister may, by order (hereinafter referred to as a vesting order) vest the shares and subordinated debt of the bank in the Minister, subject to the approval of the Cabinet on the recommendation of a committee of advisors comprising the Supervisor, the Deputy Supervisor, the Financial Secretary and such other person as the Minister may appoint.

(2) An order made under subsection (1) -

(a) vests the shares and subordinated debt of the bank in the Minister as from the date of the order, free from any incumbrance attaching thereto notwithstanding that the Minister knows of the incumbrance;

(b) does not extinguish any adverse claim in relation to such shares and subordinated debt to the extent that it is a personal claim against a person other than the Minister or a person claiming under him; and

(c) does not prevent a secured creditor or assignee or successor in title of the person who was the holder of the shares or subordinated debt immediately before the making of the order, from being entitled to receive compensation under section 25F.

25C. Effect of vesting order.

25C. (1) Where a vesting order is made in respect of a bank -

(a) the powers, duties, functions, rights and privileges of the directors of the bank and those of its officers responsible for its management are suspended from the date of the order and the Minister may exercise or perform those powers, duties, functions, rights or privileges;

(b) the Minister may appoint one or more persons to assist in the management of the bank and may assign to such person or persons any of the powers, duties, functions, rights or privileges of the directors and officers of the bank;

(c) the Minister may if he considers it to be in the best interests of the bank's depositors, apply to a Judge of the Supreme Court for an order staying -

(i) the commencement or continuance of any proceedings by or against the bank, for such period as the Judge thinks fit;

(ii) any execution against the property of the bank;

(d) no creditor of the bank shall enforce any remedy against the bank or its property without the leave of a Judge of the Supreme Court;

(e) no person may terminate or amend any agreement with the bank or claim an accelerated payment under any agreement by reason only of -

(i) the insolvency of the bank;

(ii) a default, before the vesting order was made, by the bank in the performance of its obligations under the agreement; or

(iii) the making of the vesting order.

(2) Any stipulation in an agreement referred to in paragraph (e) of subsection (1) shall be of no force or effect if it -

(a) has the effect of providing for or permitting, anything that, in substance, is contrary to that paragraph; or

(b) provides that on -

- (i) the bank's insolvency;
- (ii) default by the bank in the performance of an obligation; or
- (iii) the making of the vesting order,

the bank ceases to have the rights to use or deal with property that the bank would otherwise have.

(3) Subject to subsection (4), paragraph (e) of subsection (1) shall not apply in respect of an agreement with the bank which was made not later than six months prior to the date of the vesting order.

(4) Subsection (3) shall not apply in respect of an agreement between the licensee and a connected person.

(5) Where an order is granted pursuant to paragraph (c) (i) of subsection (1) in respect of any proceedings time shall not continue to run against the person bringing those proceedings during the period determined by the Judge under that paragraph.

25D. Restructuring transactions.

25D. (1) Where a vesting order has been made in respect of a bank, the Minister may, in addition to his other rights and powers, carry out, or cause the bank to carry out -

- (a) a transaction or a series of transactions that involves the sale of all or part of the shares or subordinated debt of the bank to one or more buyers;
- (b) a transaction that involves the an amalgamation of the bank;
- (c) a transaction or a series of transactions that involves the sale or other disposition of all or part of the assets of the bank or the assumption of all or part of its liabilities; or
- (d) any other transaction or a series of transactions the purpose of which is to restructure all or a

substantial part of the business of the bank.

(2) Where the Minister considers that a transaction or a series of transactions referred to in subsection (1) has been substantially completed, he shall cause a notice to be published in the *Gazette* to that effect, specifying the date of such completion.

(3) No restriction on the right of a bank in respect of which a vesting order has been made, to sell any of its assets or to provide for the assumption of any of its liabilities, other than a restriction provided for in an Act, shall apply so as to prevent the Minister, the bank or any other person, from carrying out a transaction referred to in subsection (1).

25E. Winding up or Scheme of Arrangement.

25E. (1) The Minister shall apply to the Court for a winding up order or propose an arrangement for reconstruction under the provisions of this Act in respect of the Minister, a transaction or a series of transactions referred to in section 25D (1) is not substantially completed on or before a date that is -

(a) one hundred and eighty days after the making of the vesting order; or

(b) the expiration of any extension of that period.

(2) The Minister, in relation to all costs, expenses and liabilities incurred on account of actions taken by him in relation to a bank in respect of which a vesting order has made, shall, in a winding up of such bank, be a creditor of that bank and all such costs, expenses and liabilities shall be deemed to be impositions by the Government under section 294(1) of the Companies Act and accordingly shall be paid in priority to all other debts.

(3) Where it is found necessary to extend the period specified in subsection (1) (a) -

(a) the Minister shall apply to the court for such extension;

(b) the court may grant the extension for such period as the court thinks fit having regard to all

the circumstances.

25F. Notice *re* compensation.

25F. The Minister shall, within forty-five days after the date specified in the notice referred to in subsection (2) of section 25D, give to each person who, immediately before the making of the vesting order, was the holder of shares or subordinated debt in the bank to which the vesting order relates or the assignee or successor in title of that person -

(a) a notice containing an offer of compensation in an amount to which that person would be entitled, determined in accordance with section 25H; or

(b) a notice stating that no offer of compensation is being made because the amount so determined is nil.

25G. Application of sections 25A to 25F.

25G. The provisions of sections 25A to 25F inclusive shall apply without prejudice to any other provision of this Act.

25H. Determination of compensation.

25H. (1) The amount of compensation payable to a person affected by the making of a vesting order in respect of a bank shall be calculated on the net amount accruing upon completion of any of the transactions referred to in subsection (1) of section 25D, after payment of all outstanding liabilities of the bank and all other costs incurred in relation to such transactions.

(2) Where the amount of the bank's assets does not exceed its liabilities and any financial assistance and costs referred to in subsection (1), the amount of compensation shall be nil.

(3) The Minister shall make regulations prescribing the principles and procedures applicable to the calculation and payment of compensation payable under this section and matters incidental thereto and regulations so made shall be subject to affirmative resolution of the House of Representatives.

25I. Application to Court.

25I. A bank in respect of which a vesting order has been made or any person claiming an interest or right over any property to which that order relates may make an application to the court for the purpose of -

- (a) establishing such right or interest (if any);
- (b) determining the amount of compensation (if any) to which he is entitled;
- (c) enforcing his right to any such compensation.

25J. Revesting of shares and subordinated debt.

25J. (1) Where -

- (a) a vesting order has been made under section 25B (1) in respect of a bank; and
- (b) before any action is taken by the Minister pursuant to section 25D (1),

the Minister is satisfied that the matters specified in section 25A (1) and (2) are no longer applicable in respect of that licensee, the Minister may act in accordance with subsection (2).

(2) The Minister may, with the approval of the Cabinet on the recommendation of the committee of advisors referred to in section 25B (1), by order, revest the shares and subordinated debt of the bank in -

- (a) the persons who, immediately before the making of the vesting order, were the holders of those shares and subordinated debt; or
- (b) the assignors and successors in title of those persons.

(3) An order made under this section shall be subject to such terms and conditions as may be specified therein.

26. Winding up of foreign bank.

26. (1) The provisions of this section shall apply in the case of the winding up under Part IX of the Companies Act of a foreign bank to which section 345 of that Act applies whether that foreign bank is registered under Part X of the Companies Act or not.

(2) Notwithstanding anything to the contrary in any other law, the realizable assets of a bank referred to in sub section (1) which relate to the bank's Jamaican operations shall be deemed to be the assets of the branch of that bank operating in Jamaica (hereinafter referred to as the Jamaican branch) as if that branch were a company as defined in this Act and shall be available for distribution in accordance with the priorities set out in subsections (3), (4) and (5).

(3) In lieu of the provisions of section 294 (1) of the Companies Act, the following claims shall have priority-

(a) firstly, all rates, charges, taxes, assessments or impositions whether imposed or made by the Government or by any public authority under the provisions of any law and having become due and payable within twelve months next before the date of the winding up order (in this section referred to as "the relevant date");

(b) secondly, the wages and salaries of the officers and employees of the Jamaican branch that accrued during the six months immediately preceding the relevant date;

(c) thirdly, money received by the Jamaican branch from the public on current account, deposit account or other similar account;

(d) fourthly, all amounts due in respect of any compensation or liability for compensation under the Workmen's Compensation Act accrued before the relevant date;

(e) fifthly, all amounts by way of contributions for which the Jamaican branch is liable pursuant to sections 4, 5 and 6 of the National Insurance Act and which have become due and payable before the relevant date;

(f) sixthly, redundancy payments payable under the Employment (Termination and Redundancy Payments) Act;

(g) seventhly, all amounts by way of contributions for which the Jamaican branch is liable pursuant to the National Housing Trust Act or the Human Employment and Resource Training Act and which have become due and payable before the relevant date;

(h) eighthly, all amounts owed to general creditors of the Jamaican branch.

(4) The provisions of subsections (2), (3), (4) and (5) of section 294 of the Companies Act shall *mutatis mutandis* apply for the purposes of subsection (3) of this section.

(5) After payment of the priority claims against the Jamaican branch, all remaining claims against that branch may then be paid.

(6) The provisions of this section shall be deemed to have come into operation on the 1st day of July, 1991.

27. Obligation of manager to supply information.

27. (1) Without prejudice to the provisions of section 16, the Minister may, by instrument in writing, require the manager of any bank to supply, within such time as may be specified in the instrument, such information relating to the financial position of the bank including that of its branches and subsidiaries wherever located as may be so specified; and any person who fails to comply with the requirements of such an instrument or who in response to such instrument knowingly or wilfully supplies false information to the Minister shall be guilty of an offence.

(2) The manager of a bank which is or is likely to become unable to meet its obligations shall, without prejudice to any obligation imposed under subsection (1), forthwith inform the Minister in writing of the financial position of the bank.

28. Resignation, etc. of auditor.

28. (1) Where an auditor appointed by a bank-

(a) intends to resign at any time during the currency of such appointment; or

(b) has given notice in writing to the bank of his unwillingness to be considered for reappointment at the expiration of the period for which he is appointed,

that auditor shall give written notice to the Bank of Jamaica accordingly, and shall in such notice state the reasons for his intention to resign or his unwillingness to be considered for reappointment.

(2) Where-

(a) a bank intends to terminate the appointment of its auditor; or

(b) a resolution has been passed at any general meeting of the bank providing that the auditor shall not be reappointed,

the bank concerned shall notify the Bank of Jamaica accordingly, and shall in such notification state the reasons for such intention to terminate or for the passage of such resolution.

PART IX. *Supervision and Examination of Banks*

29. Functions of Supervisory Department under this Act.

29. (1) The Bank of Jamaica is responsible for the supervision of banks.

(2) For the purposes of subsection (1), the Bank of Jamaica shall-

(a) compile such statistics relating to banking practice in Jamaica as the Minister may require;

and maintain a general review of banking practice in Jamaica;

(b) examine and report to the Minister on the several returns delivered to him pursuant to section 16;

(c) at least once in each year examine in such manner as it thinks necessary the affairs or business of every bank carrying on business in Jamaica or elsewhere for the purpose of being satisfied that the provisions of this Act are being complied with and that the bank is in a sound financial position, and report to the Minister the results of every such examination;

(d) examine and make recommendations to the Minister with respect to applications for licences;

(e) subject to such provisions as may be prescribed be entitled to summon the auditor or any former auditor of a bank for the purpose of making enquiries into the operations and financial position of that bank;

(f) submit to the Minister-

(i) an annual report relating generally to the execution of its duties; and

(ii) at any time, a report relating to the condition of any bank examined by it,

and any such report may contain such recommendations as the Bank of Jamaica considers necessary or desirable to correct any malpractices or deficiencies discovered in the execution of its duties.

(3) Where an auditor is summoned under paragraph (e) of subsection (2), the Bank of Jamaica shall in writing notify the bank concerned which shall have the right to attend any meeting held by the Bank of Jamaica with that auditor.

29A. Special audit or examination of bank.

29A. (1) Where in any particular case, the Supervisor has reasonable cause for believing that a special audit of a bank should be conducted by an auditor other than the bank's auditor, the Supervisor may appoint an auditor or a firm of auditors for that purpose.

(2) Where an auditor or a firm of auditors is appointed pursuant to subsection (1), the Supervisor shall require that auditor or firm of auditors to carry out and report in writing to the Supervisor on -

(i) such examination of the bank's procedures as the Supervisor may specify in order to determine whether or not those procedures are adequate for the protection of the bank's depositors and shareholders;

(ii) such other examination of the bank as, in the opinion of the Supervisor, is necessary in the public interest.

(3) The expenses, as approved by the Supervisor, of any audit or examination carried out pursuant to subsection (1) shall be paid by the Supervisor and the amount so paid -

(a) shall be repaid to the Supervisor by the bank concerned; and

(b) may be recovered by or on behalf of the Supervisor summarily in a Resident Magistrates Court without limit of amount, as a civil debt.

(4) An auditor or firm of auditors appointed under subsection (1) of a bank shall not be regarded as being in breach of a duty of confidentiality to the bank in consequence of any report made to the Supervisor in compliance with subsection (1).

29B. Supervisory Department to have access to books, etc. of holding company.

29B. (1) Where a bank is a subsidiary of a holding company, the Supervisory Department shall be entitled at all reasonable times to examine books, records, statements and other relevant documents of that holding company.

(2) The Supervisory Department may in writing require the manager of the holding company to furnish the Department with such information concerning the operations of the holding company as the Department shall specify.

(3) A person who fails to comply with a request of the Supervisory Department under subsection (2) shall be guilty of an offence.

30. Powers of inspection.

30. (1) In the performance of his duties under this Part an authorized officer shall be entitled at all reasonable times-

(a) to have access to all books, records and documents in the possession or control of any director, manager, officer or employee of any bank;

(b) to require any director, manager, officer, auditor, former auditor or employee of any bank to furnish such information or to produce such books, records or documents as are in his possession or control,

that relate to the operations of the bank and may be reasonably required for the performance of those duties.

(2) Any person who-

- (a) fails to attend in response to a summons issued pursuant to section 29 (2) (e); or
 - (b) fails to comply with a requirement made pursuant to subsection (1) (b) of the section; or
 - (c) wilfully attempts to mislead or makes any false statement with intent to mislead or attempts to mislead any person in the execution of his duties under this Part; or
 - (d) without lawful justification or excuse, obstructs or hinders any person in the execution of such duties,
- shall be guilty of an offence.

31. Protection of auditor.

31. An auditor or former auditor of a bank shall not be regarded as being in breach of his duty of confidentiality to a bank in consequence of any disclosure to an authorized officer pursuant to section 29 or 30.

PART X. *Winding Up of Local Banks*

32. Restriction on voluntary winding up.

32. (1) Where a local bank passes a resolution for voluntary winding up, it shall forthwith notify the Bank of Jamaica in writing and shall, within twenty-one days after the date of the passing of such resolution, furnish to the Bank of Jamaica-

- (a) a statement of the financial position of the bank;
- (b) an up-to-date profit and loss account in relation to the bank;

(c) a balance sheet as at the date to which the profit and loss account is made up;

(d) the auditor's report in relation to such account and balance sheet.

(2) A resolution for voluntary winding up of a bank shall not be effective unless the Bank of Jamaica certifies that its realizable assets are such as to enable it to satisfy the claims of its creditors.

(3) Where a bank passes a resolution for voluntary winding up, it shall-

(a) cause a copy of the resolution to be published in the *Gazette* and in a daily newspaper printed and circulated in Jamaica;

(b) give notice of the resolution to its customers, in such form and containing such information as the Minister may approve,

and such bank shall, within thirty days after the date of publication of a copy of the resolution pursuant to paragraph (a) cease to carry on banking business in Jamaica

(4) A bank which contravenes the provisions of subsection (1) shall be guilty of an offence.

PART XI. *Amalgamation and Transfers*

33. Amalgamation and transfer.

33. (1) A bank may, with the approval of the Minister, enter into an agreement or arrangement-

(a) to amalgamate its property and business (whether in whole or in part) with the property and business of any other bank or, as the case may be, a company which is a licensee under the

Financial Institutions Act;

(b) to transfer its business (in whole or in part) to another bank or, as the case may be, a company which is a licensee under the Financial Institutions Act.

(2) Application to the Minister for approval pursuant to subsection (1) shall be presented in the form of a scheme and shall be regulated in accordance with such provisions as may be prescribed.

34. Statements relating to amalgamation or transfer to be deposited with Minister.

34. (1) Where an amalgamation or transfer referred to in section 33 takes place, the bank or company as the case may be as amalgamated or to which business is transferred shall, within thirty days from the date of completion of the amalgamation or transfer or such longer period as the Minister may allow, deposit with the Minister-

(a) certified copies of statements of the assets and liabilities of the banks or, as the case may be, the bank and company concerned in the amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer;

(b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected;

(c) a declaration signed by the secretary or manager, if any, and by at least two directors of the bank or company as the case may be, that to the best of their belief every payment made or to be made to any person on account of the amalgamation or transfer is therein fully set out, and that no payments other than those set out have been made or are to be made by or with the knowledge of any parties to the amalgamation or transfer.

(2) A person who in any statement, agreement, deed or declaration referred to in subsection (1) causes or permits the inclusion of any information which he knows to be false in a material particular or recklessly includes any information which is false in a material particular, shall be guilty of an offence.

35. Vesting of assets on sale of bank.

35. Where a bank sells the whole or any part of its assets to any other bank or, as the case may be, a company which is a licensee under the Financial Institutions Act, if the purchasing bank or purchasing company as the case may be requires that assets included in the agreement for sale and purchase be vested in it pursuant to this section, it may make written application to the Minister accordingly specifying which of the assets included as aforesaid it requires to be so vested and thereupon the Minister may, if he thinks fit, make an order vesting, subject to the agreement for sale and purchase, the assets so specified in the purchasing bank or purchasing company, as the case may be, and thereupon-

(a) the assets shall so vest without further conveyance, assignment and assurance; and

(b) without prejudice to paragraph (a), the selling bank shall, if requested by the purchasing bank or purchasing company, as the case may be, execute such formal and separate conveyances, assignments and assurances as are reasonably required by the purchasing bank or purchasing company, as the case may be, in conformity with the agreement for sale and purchase.

36. Transfer of trust business.

36. (1) Where an agreement has been entered into for the acquisition by a bank or, as the case may be, a company licensed under the Financial Institutions Act (herein after referred to as the "transferee bank" or the "transferee company") of the trust business of another bank (hereinafter

referred to as the "transferor bank") the transferee bank or the transferee company may, for the purpose of effecting the transfer to, and the vesting in, the transferee bank or the transferee company of that trust business, make a written application to the Minister accordingly, and thereupon the Minister may, if he thinks fit, make an order transferring to and vesting in the transferee bank or the transferee company, subject to the relevant agreement, the trust business specified in the order, and thereupon-

(a) the trust business so specified shall be transferred and shall vest without further conveyance, assignment and assurance; and

(b) without prejudice to paragraph (a), the transferor bank shall, if requested by the transferee bank or the transferee company execute such formal and separate conveyances, assignments and assurances as are reasonably required by the transferee bank or the transferee company in conformity with the relevant agreement.

(2) No transfer or vesting effected by an order under subsection (1) shall-

(a) operate as a breach of covenant or condition against alienation;

(b) give rise to any forfeiture; or

(c) invalidate or discharge any contract or security.

(3) The transfer to and vesting in the transferee bank or the transferee company of any trust business pursuant to this section shall not be subject to the provisions of the Stamp Duty Act or the Transfer Tax Act.

37. Effect of transfer and vesting order.

37. (1) Any trust business transferred to and vested in a transferee bank or the transferee company by virtue of an order made pursuant to section 36, which immediately before the coming into force of that order was held by the transferor bank, whether alone or jointly with any other person-

(a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court;

(b) as executor of the will of a deceased person;

(c) as administrator of the estate of a deceased person;

(d) as judicial trustee appointed by order of any court; or

(e) in any other fiduciary capacity whatsoever,

shall, from the coming into force of the relevant order made pursuant to section 36, be held by the transferee bank or the transferee company whether alone or jointly with such other person, in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations, applicable thereto respectively.

(2) Any existing instrument or order of any court under or by virtue of which any trust business became vested in the transferor bank in any such fiduciary capacity (including in the case of a will any grant of probate thereof), and any provision therein or any existing contract or arrangement for the payment to, or retention by the transferor bank, of remuneration for its

services in any such fiduciary capacity shall, on and from the coming into operation of the relevant order be construed and have effect, so far as the context permits, as if for reference therein to the transferor bank there were substituted a reference to the transferee bank or the transferee company.

(3) All existing contracts agreements, conveyances, deeds leases, licences, undertakings and other instruments, whether analogous to the foregoing or not, entered into by, made with or addressed to a transferor bank (whether alone or with any other person) shall be binding and of full force and effect in every respect against or in favour of a transferee bank or the transferee company as fully and effectively as if instead of the transferor bank the transferee bank or the transferee company had been a party thereto, bound thereby or entitled to the benefit thereof.

(4) Any will, whether made before, on or after the coming into force of an order made pursuant to section 36, by a person dying before, on or after such coming into force, which appoints or purports to appoint the transferor bank to be executor or trustee thereof shall be construed and have effect as if for any reference therein to the transferor bank as such executor or trustee or otherwise in connection with such appointment there were substituted a reference to the transferee bank or the transferee company and, in a case where the transferee bank or the transferee company did not exist at the date of the will, as if it had then existed.

(5) No testamentary gift shall be deemed by reason only for the operation of the provisions of section 36 and this section.

(6) In this section-

"existing" means, in relation to an order made pursuant to subsection (1) of section 36, existing

at the date of the coming into operation of that order;

"will" includes a codicil or any other testamentary writing.

PART XII. *General*

38. Regulations.

38. (1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, regulations may make provision in relation to-

(a) the days on which and the hours during which banks in any area of the Island specified in the regulations shall be opened or closed;

(b) the exemption of banks from the necessity to comply with the requirements of section 152 of the Companies Act;

(c) the establishment of branches and representative offices -

(i) in Jamaica by banks; or

(ii) otherwise than in Jamaica by local banks;

(d) the qualification required by auditors of banks and the frequency and scope of audits;

(e) the minimum precautions, standards and devices to be adopted by banks for the protection of its holdings, staff and customers;

(f) the obligation of banks to provide for doubtful loans and other assetbased risks;

(g) the criteria to be taken into account in determining assets and liabilities of banks and the formulae to be applied for the purpose of determining the value of such assets and liabilities;

(h) the criteria as regards the minimum solvency standards to be maintained by banks and as regards the measurement of the capital bases of banks;

(i) the furnishing of information by an auditor of a bank as respects the operations and other particulars relating to a bank audited by him;

(j) the form and contents of advertisements to be issued by banks;

(k) the criteria as regards the payment of dividends by banks and the transfer of profits by banks to their capital bases;

(l) any other matter required by this Act to be prescribed.

(2) The power conferred on the Minister by paragraph (f), (g) or (i) of subsection (1) shall be exercised after consultation with organizations recognized by the Minister as representing banks.

39. Restrictions on loans on the security of land.

39. The Minister may, after consultation with the Bank of Jamaica and the organizations referred

to in section 38 (2), by order require every bank in lending money on the security of land to comply with such conditions as may be specified in the order:

Provided that no such order shall apply to or affect any transaction entered into by the bank prior to the making of the order.

40. Unclaimed moneys.

40. (1) Where by any such annual return as is required by section 16 it appears that any moneys have remained unclaimed in the possession or under the control of a bank for a period of fifteen or more years (beginning either before or after the 31st December, 1992) the Minister shall cause a notice to be published in the *Gazette* and in one or more than one newspaper published in Jamaica-

(a) giving full particulars of the moneys so remaining as aforesaid;

(b) stating the period during which they have so remained; and

(c) stating that unless within one year from the date of the first publication of the notice in the *Gazette* a claim to those moneys is established to the satisfaction of the bank concerned or, failing that, to the satisfaction of a court of competent jurisdiction, the moneys will be dealt with in accordance with subsection (2),

which notice shall during the said year be published four times or more often if the Minister thinks fit.

(2) Subject to subsection (3), upon the expiration of the said year any of such moneys to which no claim has been established as aforesaid shall lapse to and become part of the revenues of Jamaica and the AccountantGeneral shall keep a record of all such moneys.

(3) Where -

(a) a claim has been duly made but not determined during the said year; or

(b) before the expiration of that year the claimant lodges with the AccountantGeneral a certificate to that effect signed by the Judge or Resident Magistrate, as the case may be,

subsection (2) shall not have effect in relation to the moneys in question until the claim is settled.

(4) Any sum as respects which subsection (2) takes effect shall be recoverable from the bank as a debt due to the Government.

(5) Where subsection (2) takes effect as respects any sum, then not later than fifteen years after the year referred to in that subsection, the AccountantGeneral shall pay that sum to any person who establishes a claim thereto to the satisfaction of the AccountantGeneral.

41. Fraudulent inducement to invest.

41. Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise, forecast or projection which is misleading, false or deceptive induces or attempts to induce another person-

- (a) to invest money on deposit with him or any other person; or
 - (b) to enter into or offer to enter into any agreement for that purpose,
- shall be guilty of an offence.

42. Offences and penalties.

42. (1) The offences specified in the first column of the Third Schedule shall incur the penalties specified in relation thereto in the second column of that Schedule.

(2) Every offence under and every contravention of this Act may be tried summarily before a Resident Magistrate.

(3) Where any person commits an offence against this Act or any regulations hereunder for which no penalty is expressly provided he shall be liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months.

(4) A person upon whom a fine is imposed under this Act may be sentenced in default of payment thereof to imprisonment with or without hard labour in the case of a fine-

- (a) not exceeding twenty thousand dollars, for a period not exceeding three months;
- (b) exceeding twenty thousand dollars but not exceeding one hundred thousand dollars, for a period not exceeding six months;

(c) exceeding one hundred thousand dollars, for a period not exceeding twelve months.

(5) Where an offence under this Act committed by a body corporate is proved-

(a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in that capacity; or

(b) to be attributable to the failure of any such director, manager, secretary or other officer or person to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other officer or person as aforesaid, as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) For the purposes of this section, a person shall be deemed to be a director of a body corporate, if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them act.

43. Publication of orders.

43. Every order made by the Minister under this Act shall be published in the *Gazette*.

44. Saving.

44. Nothing in this Act shall apply to the Bank of Jamaica or to any society registered under the Cooperative Societies Act, the Agricultural Credit Board Act or the Industrial and Provident Societies Act.

45. Secrecy of bank officials.Cases

45. (1) Subject to subsection (2), no official of any bank and no person who, by reason of his capacity or office has by any means access to the records of the bank, or any registers, correspondence or material with regard to the account of any customer of that bank shall, while his employment in or, as the case may be, his professional relationship with the bank continues or after the termination thereof, give, divulge or reveal any information regarding the money or other relevant particulars of the account of that customer.

(2) Subsection (1) shall not apply in any of the circumstances specified in the Fourth Schedule.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

46. Transitional.

46. (1) In this section "the repealed Act" means the Banking Act in force immediately prior to the 31st December, 1992.

(2) Any company which, immediately prior to the 31st December, 1992, was licensed as a bank under the repealed Act (hereinafter referred to as an existing bank) shall, subject to the

provisions of this Act, be deemed to be licensed under section 4 of this Act as if that section were in force at the date on which any such licence was granted.

(3) Any existing bank which, before the 31st December, 1992 has entered into any transaction in accordance with section 10 of the repealed Act but which is incompatible with the provisions of section 13 of this Act (prohibited business) shall, within four weeks after the date of commencement, submit to the Bank of Jamaica, a statement giving particulars of all such transactions as are still in operation at that date and shall submit a programme to the Bank of Jamaica for the operation of each such transaction after that date or, as the case may be, for the liquidation of each such transaction within such period as may be agreed between the bank and the Bank of Jamaica, or, in default of agreement, as may be determined by the Bank of Jamaica.

(4) The provisions of section 6 (minimum capital requirements) shall apply to an existing bank subject to the modification that the bank shall increase its capital requirements to the amount specified on the basis of a scheme approved by the Bank of Jamaica, the period of which shall expire not later than three years after the 31st December, 1992.

(5) Notwithstanding the repeal of section 7 of the repealed Act, existing banks shall not be precluded from including special debentures, as defined in the repealed Act and issued prior to 30th October, 1990, in the calculation of their deposit liabilities until the date of maturity of such debentures.

(6) For the purposes of section 40 (unclaimed moneys) where the period of fifteen years referred to in subsection (1) of that section expired at any time prior to the 31st December, 1992 then,

unless it was part of a period of thirty years in relation to which action was taken pursuant to section 24 of the repealed Act, it shall be deemed to have expired on that date.

(7) For the purposes of paragraph (b) of the definition of "capital base", in section 2 (1) the special debentures which may be included in the calculation of a bank's capital, are those outstanding at the 29th October, 1997.

FIRST SCHEDULE (Section 11)

Banks to which section 11 applies

Any bank whether in Jamaica or elsewhere-

- (a) which has been wound up by a court;
- (b) the licence of which has been revoked, unless such revocation was consequent upon-
 - (i) the amalgamation of that bank with any other bank or other prescribed financial institution; or
 - (ii) a voluntary winding up of the bank in compliance with section 32;
- (c) which has been in receivership;

- (d) which has entered into a composition with its creditors;
- (e) whose business has been conducted imprudently or fraudulently;
- (f) which has failed to meet the solvency requirements prescribed by law.

SECOND SCHEDULE (Section 25) Cases

PART A

Conditions Subject to Remedial Action under section 25 (1) and (6)

1. The bank has breached the provisions of its memorandum or articles of association.
2. The bank, a director or any person employed (either as agent or otherwise) in the conduct of the business of the bank -
 - (a) is engaging or is about to engage in an unsafe or unsound practice in conducting the business of the bank; or
 - (b) is contravening or has contravened -

(i) any provisions of this Act or any regulations made hereunder;

(ii) any condition of the licence granted under section 4 in respect of that bank; or

(iii) any provision of the Bank of Jamaica Act or any regulations made under that Act.

3. The bank's capital base is less than the amount required by this Act or any regulations made hereunder.

4. A director or manager has ceased to be a fit and proper person in accordance with section 4 (3) and the bank has refused or neglected to take appropriate action.

5. A final judgment has been obtained against the bank and has remained unsatisfied for at least one month.

6. The bank -

(a) has given false or misleading information in its application for a licence; or

(b) has continued to take deposits in violation of a direction; or

(c) has given false statements concerning the affairs of the bank; or

(d) refuses or neglects to make returns or to produce books, records or documents to an

authorized officer; or

(e) refuses to permit inspection of the bank by an authorized officer

7. The bank has failed to commence banking business within six months of the date of the granting of a licence or the coming into effect of the Banking (Amendment) Act, 1997.

8. The bank is contravening or has contravened any cease and desist order or any directions issued by the Supervisor pursuant to this Act.

9. The value of the bank's assets is substantially less than the amount of its liabilities.

10. The bank has notified the Minister or the Supervisor that it proposes to surrender its licence.

11. The bank has ceased to carry on banking business.

12. A receiver has been appointed in respect of the bank.

PART B Cases

Cease and Desist Orders

1. Before issuing a cease and desist order the Supervisor shall cause to be served on the bank concerned a notice-

(a) containing a statement of the facts constituting the alleged unsafe or unsound practice or the alleged contravention and, where appropriate, the name of the person against whom the allegation is made; and

(b) specifying a date (not being earlier than thirty nor later than sixty days after the date of service of the notice) and a place at which a hearing will be held to determine whether a cease and desist order should be made.

2. If, at any time prior to the date of the hearing specified in the notice under paragraph 1, the bank concerned consents to the making of a cease and desist order and the terms of the order, the hearing shall be waived and the order shall be made accordingly.

3. If at the hearing-

(a) the bank concerned is not represented, that bank shall be deemed to have accepted the allegations stated in the notice referred to in paragraph 1 and to have consented to the making of a cease and desist order and the Supervisor shall make a cease and desist order in respect of that bank; or

(b) the allegations specified in such notice are established in relation to the bank, the Supervisor shall make a cease and desist order in respect of that bank,

and a copy of the order shall be served on the bank and, where appropriate, on the person named in the notice pursuant to paragraph 1 (a).

4. A cease and desist order shall-

(a) require the bank concerned or the person concerned, as the case may be, to cease and desist from the actions giving rise to the order;

(b) if made under paragraph 2, take effect as from such date as may be specified therein;

(c) if made under paragraph 3, take effect from the date of service of the order or from such later date as may be specified therein.

5. Where in relation to any bank-

(a) a notice has been served pursuant to paragraph 1; and

(b) at any time prior to the holding of a hearing in accordance with that paragraph, the Supervisor is satisfied that the situation giving rise to the notice is likely to endanger the

financial position of the bank or the interests of its customers,

the Supervisor may forthwith serve on that bank and on any person named in such notice, a temporary cease and desist order which shall take effect as from the date of such service.

6. Where a temporary cease and desist order is served under paragraph 5, the bank or, as the case may be, the person on whom it is served may, within ten days after the date of such service, apply to a Judge of the Supreme Court in accordance with rules of court to set aside limit, or suspend the operation, or enforcement of such order.

PART C

Temporary Management of a Bank

1. (1) For the purposes of section 25 (6) (a), the Minister shall serve on the bank concerned a notice, announcing his intention of temporarily managing the bank from such date and time as may be specified in the notice.

(2) The Minister may appoint any person to manage on his behalf the bank specified in a notice under subparagraph (1).

(3) A copy of the notice referred to in subparagraph (1) shall be sent to the Registrar of the

Supreme Court and shall be posted in a conspicuous position at each place of business of the bank and shall be published in a newspaper printed and circulated in Jamaica.

(4) Upon the date and time specified in the notice referred to in subparagraph (1), there shall vest in the Minister full and exclusive powers of management and control) of the bank, including, without prejudice to the generality of the foregoing, power to-

(a) continue or discontinue its operations;

(b) stop or limit the payment of its obligations;

(c) employ any necessary officers or employees;

(d) execute any instrument in the name of the bank; and

(e) initiate, defend and conduct in the name of the bank, any action or proceedings to which the bank may be a party.

(5) Not later than sixty days after the Minister has assumed temporary management of a bank he shall apply to the Court (furnishing full particulars of the assets and liabilities of the bank) for an order confirming the vesting in the Minister of full and exclusive powers of management of the

Bank as described in subparagraph (4).

(6) All expenses of and incidental to the temporary management of a bank shall be paid by such bank in such manner as the Minister may determine.

2. (1) A bank which is served with a notice under paragraph 1 may, within ten days after the date of such service, appeal to the Court of Appeal and that Court may make such order as it thinks fit.

(2) The Court of Appeal may, on sufficient cause being shown, extend the period referred to in subparagraph (1).

(3) The Minister may, if he considers it to be in the best interests of the depositors of a bank which is being temporarily managed by him, apply to the court for an order staying-

(a) the commencement or continuance of any proceedings by or against the bank, for such period as the court thinks fit; or

(b) any execution against the property of the bank.

3. Where the Minister has served notice on a bank under paragraph 1, he shall, within sixty

days from the date specified in such notice or within such longer period as a Judge of the Supreme Court may allow-

- (a) restore the bank to its board of directors or owners as the case may be;
- (b) present a petition to the Court under the Companies Act for the winding up of the bank; or
- (c) propose a compromise or arrangement between the bank and its creditors under section 192 of the Companies Act or a reconstruction under section 194 of that Act.

PART D Cases

Suspension or Revocation of Licence

Cases

1. Before suspending or revoking a licence the Minister shall consult with the Bank of Jamaica and give to the bank concerned notice in writing of his intention so to do, specifying the reasons therefor and indicating a period (not less than thirty days) within which the bank may submit to him a written statement of objections or may make

representations by oral submissions (with or without the assistance of counsel).

Cases

2. As soon as convenient after the receipt by the Minister of the written statement or oral submissions aforesaid or after the expiration of the period specified in the notice, whichever first occurs, the Minister shall advise the bank of his decision by instrument in writing.

Cases

3. Where a bank has been notified of the suspension or revocation of its licence it may, within ten days after the date of such notification, appeal) to the Court of Appeal and that Court may make such order as it thinks fit.

THIRD SCHEDULE (Section 42)

Offences and Penalties

First Column Second Column

| <u>Brief Description of Offences</u> | <u>Relevant Section</u> | <u>Penalty</u> |
|--------------------------------------|-------------------------|----------------|
|--------------------------------------|-------------------------|----------------|

| | | |
|---|-------|---|
| Carrying on banking business without licence. | 3 (1) | On conviction, a fine not exceeding \$2,000,000.00 and, in the case of a continuing offence, a further penalty not exceeding \$200,000.00 for each day during which the offence continues after conviction. |
|---|-------|---|

| | | |
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| Obstructing or hindering an authorized officer in the performance of his duties. | 3 (3) | On conviction, a fine not exceeding \$500,000.00 and, in the case of a continuing offence, a further penalty not exceeding \$50,000.00 for each day during which the offence continues after conviction. |
|--|-------|--|

| | | |
|---|-------|---|
| Incurring deposit liabilities in excess of prescribed amount. | 9 (5) | On conviction, a fine not exceeding \$1,000,000.00 and, in the case of a continuing offence, a further penalty not exceeding \$100,000.00 for each day during which the offence continues after conviction. |
|---|-------|---|

| | | |
|---|--------|---|
| Acting in a managerial capacity in a bank while debarred. | 11 (3) | On conviction, a fine not exceeding \$500,000.00. |
|---|--------|---|

Permitting persons debarred from bank management to be involved with the bank's management.

11 (4) On conviction, a fine not exceeding 1,000,000.00 and in the case of a continuing offence, a further penalty not exceeding \$100,000.00 for each day during which the offence continues after conviction.

Using the word "bank" contrary to section 12. 12 (1) On conviction, a fine not exceeding \$500,000.00 and, in the case of a continuing offence, a further penalty of \$100,000.00 for each day during which the offence continues after conviction.

Refusing to delete the word "bank" within 28 days when instructed so to do or continuing to receive deposits when not so authorized. 12 (4) On conviction, a fine not exceeding 200,000.00 and in the case of a continuing offence, a further penalty not exceeding \$20,000.00 for each day during which the offence continues after conviction.

Engaging in prohibited business. 13 (9) On conviction, a fine not exceeding \$1,000,000.00 and, in the case of a continuing offence, a further penalty not exceeding \$250,000.00 for each day during which the offence continues after conviction.

Failure to make returns or furnish information. 16 (4) On conviction, a fine not exceeding

\$250,000.00 for each day during which the failure continues after the expiry of the time prescribed for making the return or furnishing the information.

Failure to submit or exhibit or publish last audited balance sheet and profit and loss account.
18 (3) On conviction, a fine not exceeding \$250,000.00.

Failure to make report to supervisor. 19A (2) On conviction, a fine not exceeding \$2,000,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Failure to comply with requirement of Supervisor for audit or examination. 19B (3)
On conviction, a fine not exceeding \$2,000,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Failure of shareholder to provide information to Minister. 22 (2) On conviction, a fine not exceeding \$1,000,000.00 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Being a bank manager failing to provide information on the financial position of the bank or of

its branches or subsidiaries. 27 (1) On conviction, a fine not exceeding \$1,000,000.00.

Failure to comply with request of Supervisory Department for information 29B(3) On conviction, a fine not exceeding \$2,000,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Failure to comply with summons of Bank of Jamaica or with the requirements of authorized officers or obstructing or misleading them 30 (2) On conviction, a fine not exceeding \$1,000,000.00 or imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Failure to notify the Bank of Jamaica of a resolution for voluntary winding up 32 (4) On conviction, a fine not exceeding \$1,000,000.00.

Furnishing false information in any statement, agreement, deed or declaration in relation to amalgamation transfer of bank. 34 (2) On conviction – (a) on indictment in a Circuit Court to imprisonment for a term not exceeding two years or to a fine or to both such fine and Imprisonment;(b) on summary conviction before a Resident Magistrate, to imprisonment for a term not exceeding twelve months or to a fine not exceeding \$1,000,000.00 or to both such fine

and imprisonment.

Fraudulently inducing persons to invest. 41 On conviction on indictment in a Circuit Court, to imprisonment for a term not exceeding two years or to a fine or to both such fine and imprisonment.

Being a bank official, making unauthorized disclosures. 45 (3) On conviction, a fine not exceeding \$2,000,000.00 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

FOURTH SCHEDULE (Section 45 (2))Cases

Circumstances in which information on customer's accounts may be disclosed

Section 45 (1) shall not apply in any case where-

(a) the information is disclosed by an officer of a bank to another officer of that bank;

(b) the customer or his personal representative gives written permission for disclosure of the information:

(c) the customer is an undischarged bankrupt or, if the customer is a company, it is being wound up;

(d) the information is disclosed in connection with civil proceedings-

(i) arising between the bank and the customer relating to the customer's banking transaction; or

(ii) brought by the bank by way of interpleader in connection with competing claims by two or more parties to money in the customer's account;

(e) the information is disclosed to an authorized officer;

Cases

(f) the disclosure is made on the written direction of the Minister to, the police or to a public officer who is duly authorized under the provisions of any law for the time being in

force which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;

(g) the bank has been served with a court order attaching money in the account of the customer;

(h) the information disclosed is required by the head office of a foreign bank and pertains only to credit granted by the Jamaican operations of that bank;

(i) the Minister in writing directs such disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign government an agreement for the mutual exchange of information of such kind and the Minister considers it in the public interest that such disclosure be made.

JAMAICA

No. 11 – 2002

I assent,

[L.S.]

HOWARD F. COOKE,
Governor-General.
28th day of March, 2002.

AN ACT to Amend the Banking Act.

[28th March, 2002]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Banking (Amendment) Act, 2002, and shall be read and construed as one with the Banking Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and
construction.

2. Section 2 of the principal Act is amended—

(a) in subsection (1) by inserting next after the definition of “prescribed liabilities” the following definition—

Amendment
of section 2 of
principal Act.

““regulated or supervised financial institution”
means an institution supervised or regulated
by the Bank of Jamaica or the Financial
Services Commission;”;

- (b) in subsection (3A) by inserting immediately after the word "subsidiary" the words "whether the holding company holds that other company's shares on trust or is the beneficial owner of such shares".

Amendment
of section 11
of principal
Act.

3. Section 11 of the principal Act is amended in subsection 2(b) by inserting immediately after the word "bank", the words "or other financial institution".

Amendment
of section 17
of principal
Act.

4. Section 17 of the principal Act is amended—

- (a) by deleting the marginal note thereto and substituting therefor the following—

"Loss reserves on credit facilities.";

- (b) in subsections (1), (2) and (3) by deleting the word "loan" and "loans" and the words "a loan loss reserve" and substituting therefor the words "credit facility", "credit facilities" and "loss reserves on credit facilities", respectively.

Amendment
of section 19
of principal
Act.

5. Section 19 of the principal Act is amended by inserting next after subsection (4) the following as subsection (5)—

“(5) Any bank or company which contravenes subsection (2) shall be guilty of an offence.”.

Amendment
of section 25
of principal
Act.

6. Section 25 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “, unless directed otherwise by the Minister”;
- (b) in subsection (6) by deleting paragraph (a);
- (c) by inserting next after subsection (6) the following as subsections (6A), (6B) and (6C) —

“(6A) Where the Supervisor believes that a bank is or appears likely to become unable to meet its obligations or that any of the conditions specified in paragraph 5, 6, 7, 8, 9, 10, 11 or 12 of Part A of the Second Schedule exists, the Supervisor may assume temporary

Second
Schedule.

management of the bank in accordance with Part C of that Schedule.

(6B) The Minister may, after consultation with the Supervisor, give to the Supervisor directions of a general character as to the policy to be followed by the Supervisor in the performance of his functions under subsection(6A), in relation to matters appearing to the Minister to concern the public interest.

(6C) The Supervisor shall inform the Minister in writing of any action that he intends to take under subsections (1)(b) and (c) and (6A).”.

7. Subsection (3) of section 25A of the principal Act is amended—

Amendment
of section
25A of
principal Act.

(a) by deleting the words "Minister has" and substituting therefor the words "Supervisor has";

(b) by deleting the numeral "(6)" and substituting therefor the numeral "(6A)".

8. Section 27 of the principal Act is amended in subsections (1) and (2) by deleting the word "Minister" wherever it appears and substituting therefor in each case the word "Supervisor".

Amendment
of section 27
of principal
Act.

9. The principal Act is amended by inserting next after section 29B the following as sections 29C, 29D, 29E, 29F and 29G—

Insertion of
new sections
29C, 29D,
29E, 29F and
29G in
principal Act.

"Supervisor
may require
information.

29C.—(1) The Supervisor may require any company which is a member of a group of which a bank is a member, or as the case may require, all companies within that group, to submit to the Supervisor such information relating to the operations of that company or those companies, as the Supervisor considers necessary for the effective supervision of the bank concerned.

(2) The information referred to in subsection (1) may be required for the purpose of determining—

- (a) the effect of the company's operations on the bank;
- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from the bank;
- (c) the general risks relating to the operations of the members of the group;
- (d) the risk management capabilities of the group as a whole;
- (e) whether the internal audit facilities within the group have the capability to scrutinize transactions undertaken or proposed to be undertaken by the management of the group or a company within the group so as to determine whether there are associated risks.

(3) For the purposes of this section the Supervisor may—

- (a) require the information in the form of documents (including audited and consolidated accounts); or
- (b) summon any officers, directors or substantial shareholders of the company or companies concerned for the purposes of obtaining the information.

(4) A company which refuses to furnish information required under subsection (1) or any

person who refuses to obey a summons issued to that person under subsection (3) (b), shall be guilty of an offence.

29D.—(1) Where a bank is a member of a group and at least one member of that group is not a bank or other regulated or supervised financial institution, the Supervisor may, in writing, direct the bank to undertake—

Restructuring
of ownership
of bank.

- (a) a restructuring such that ownership of the bank is directly held by a financial holding company which does not own the other companies within the group unless those other companies are regulated or supervised financial institutions; or
- (b) such other measures as may be necessary to properly identify, assess and manage—
 - (i) the relationship between the companies in the group;
 - (ii) the risks among members of the group; and
 - (iii) any other risks posed by external factors.

(2) The restructuring under subsection (1) shall be carried out within twelve months of the date of the direction, so, however, that the Supervisor may extend the period by notice in writing to the bank.

(3) A bank which wilfully refuses to comply with a direction under subsection (1) shall be guilty of an offence.

(4) Without prejudice to the operation of subsection (3), the Minister may revoke the licence of the bank referred to in that subsection.

(5) Where a group is restructured, the Supervisor may—

- (a) examine and inspect the books of the bank's financial holding company and any other company which is a subsidiary of the financial holding company and any subsidiary of that other company;
- (b) require the manager of any member of the group to provide information concerning its operations, so as to ascertain the likely effects of such operations on the bank;
- (c) review changes in the ownership, directors and managerial personnel of the financial holding company and make recommendations to the Minister as regards those persons who do not meet the fit and proper criteria.

(6) Where a bank is a member of a group and the bank or any other member within the group has a relationship with a company that is not a member of the group, which poses a risk to the bank and other members of the group, the Supervisor may—

- (a) treat the non-member as a member of the group; or
- (b) require the bank or other member of the group to terminate the relationship.

(7) A financial holding company referred to in subsection (1) may be the ultimate holding company of the group or the immediate subsidiary of the ultimate holding company.

(8) The provisions of section 4 (3) shall apply with necessary modifications to every director and manager of an ultimate holding company or a financial holding company and its subsidiaries.

(9) The Supervisor may exempt from any provision of this section and section 29C any foreign financial holding company or foreign ultimate holding company where he is satisfied as to the matters specified in subsection (10).

(10) The Supervisor may take action under subsection (9) where he is satisfied—

(a) as to the stringency of the fit and proper criteria applied by the competent authority in the country of incorporation of the foreign financial holding company or foreign ultimate holding company;

(b) by the competent authority in the country of incorporation of the foreign financial holding company that—

(i) the foreign financial holding company is supervised on a consolidated basis; and

(ii) there are no impediments to the Supervisor's receipt of information as regards that foreign financial holding company from the head office thereof or the competent authority.

Ownership of
subsidiaries
etc. by banks,
etc.

29E. —(1) Subject to subsection (2), a bank may only own a subsidiary which is a regulated or supervised financial institution.

(2) The Supervisor may approve the ownership of a company by a bank or its financial holding company, if the business of that company is the provision of necessary support services to companies held by the financial holding company and its subsidiaries.

Supervisor
may issue
directions to
banks, etc. re
risk.

29F.—(1) The Supervisor may issue directions to a bank or its financial holding company, regarding the control of risks throughout the group.

(2) The directions referred to in subsection (1) may include—

(a) capital requirements, including market risks on a group-wide basis;

(b) limits on—

(i) large exposures;

(ii) intra group transactions;

(iii) holdings in any regulated or supervised financial institution.

(3) A bank or financial holding company which fails to comply with directions under this section shall be guilty of an offence.

Management
or investment
of customers'
funds.

29G. - (1) A bank shall not manage or invest funds on behalf of its customers unless such investment is carried out under a trust subject to regulations made under the Bank of Jamaica Act or the Standards of Best Practice issued from time to time by the Bank of Jamaica.

(2) A bank that engages in proprietary trading in securities for its own account shall conform with the Standards of Best Practice referred to in subsection (1).”.

10. Section 42 of the principal Act is amended—

Amendment
of section 42
of principal
Act.

- (a) in subsection (3) by deleting the word “fifty” and substituting therefor the words “five hundred”;
- (b) in subsection (4) by deleting paragraphs (a), (b) and (c) and substituting therefor the following—

- “(a) not exceeding two hundred thousand dollars, for a period not exceeding three months;
- (b) exceeding two hundred thousand dollars but not exceeding one million dollars, for a period not exceeding six months;
- (c) exceeding one million dollars, for a period not exceeding twelve months.”.

11. The principal Act is amended by inserting next after section 42 the following as 42A—

Insertion of
new section
42A in
principal Act.

“Penalties.
Fifth
Schedule.

42A.—(1) This section shall apply to an offence specified in the Fifth Schedule.

(2) The Supervisor may give to any person which he has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

(3) No person shall be liable to be convicted of the offence if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of the fifteen days following the date of the notice referred to in subsection (2) or such longer period (if any) as may be specified in that notice or before the date on which proceedings are begun, whichever event last occurs.

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the fifteen days following the date of the notice or such longer period (if any) as may have been specified therein.

(5) In subsections (3) and (4) “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (2) and “convicted” shall be construed in like manner.

(6) Payment of a fixed penalty under this section shall be made to the Collector of Taxes specified pursuant to subsection (7); and in any proceedings a certificate that payment of a fixed penalty was or was not made to the Collector of Taxes by a date specified in the certificate shall, if the certificate purports to be signed by the Collector of Taxes, be admissible as evidence of the facts stated therein.

(7) A notice under subsection (2) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state—
 - (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (4), proceedings will not be taken for the offence; and

- (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid.

(8) The fixed penalty for the offences specified in the Fifth Schedule shall be the penalty specified therein in relation to such offences.

Fifth
Schedule.

(9) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty thereunder unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(10) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, any such order may—

(a) prescribe—

- (i) the form of notice under subsection (2), and the Collector of Taxes to whom a fixed penalty is payable;
- (ii) the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (iii) the arrangements for the Collector of Taxes to furnish to the Supervisor, information

with regard to any payment pursuant to a notice under this section;

Fifth
Schedule.

(b) amend the Fifth Schedule.

(11) An order made under subsection (10) (b) shall be subject to affirmative resolution."

Amendment
of First
Schedule to
principal Act.

12. The First Schedule to the principal Act is amended—

- (a) by inserting immediately after the word "*Banks*" the words "*or other financial institutions*";
- (b) by inserting immediately after the words "Any bank" the words "or other financial institution";
- (c) by deleting paragraph (b)(i) and substituting therefor the following—

"(i) the amalgamation of that bank or other financial institution with another bank or financial institution;"

Amendment
of Second
Schedule to
principal Act.

13. The Second Schedule to the principal Act is amended—

(a) in Part A—

- (i) by inserting in paragraph (2) (b) (iv) next after the word "contravening" the words "a Standard of Best Practice";
- (ii) by deleting from paragraph 10 the words "the Minister or";

(b) in Part C—

- (i) by deleting from paragraphs 1 (1), (2), (4), (5) and (6), 2 (3) and 3 the word "Minister" wherever it appears and substituting therefor in each case the word "Supervisor";
- (ii) by deleting from subparagraph (5) the word "Not" and substituting therefor the words "Subject to subparagraph (5A), not";
- (iii) by inserting next after subparagraph (5) the following as subparagraph (5A)—

" (5A) An application under subparagraph (5) shall be made by the Attorney General."

14. The Third Schedule to the principal Act is amended by inserting in the appropriate sequence the following—

Amendment
of Third
Schedule to
principal Act.

| | | |
|---|-------|---|
| “Failure to provide consolidated balance sheet and profit and loss account. | 19(5) | On conviction, to a fine not exceeding \$250,000.00 |
|---|-------|---|

| | | |
|---|-------|--|
| Failure to comply with a direction or a cease and desist order. | 25(4) | On conviction, to a fine not exceeding \$2,000,000.00. |
|---|-------|--|

| | | |
|---|--------|---|
| Refusal to furnish information or obey summons. | 29C(4) | On conviction, to a fine not exceeding \$250,000.00 |
|---|--------|---|

| | | |
|------------------------------------|------------------|--|
| Failure to comply with directions. | 29D(3) 29F(3) | On conviction, to a fine not exceeding \$2,000,000.00.”. |
|------------------------------------|------------------|--|

15. The Fourth Schedule to the principal Act is amended—

Amendment
of Fourth
Schedule to
principal Act.

(a) by deleting the full stop at the end of paragraph (i) and substituting therefor a semicolon;

(b) by inserting next after paragraph (i) the following as paragraphs (j), (k), (l) and (m)—

“(j) on the recommendation of the Supervisor, the Minister in writing directs such disclosure;

(k) the circumstances are such that it is in the interests of the bank that the information be disclosed;

(l) disclosure is required under another enactment;

(m) disclosure is required by virtue of an order of the court, other than an order under paragraph (g).”.

Insertion of
new fifth
Schedule in
principal Act.

16. The principal Act is amended by inserting next after the Fourth Schedule, the following as the Fifth Schedule—

“ FIFTH SCHEDULE (Section 42A)

Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty

| Nature of Offence | Section | Penalty |
|--|---------|---|
| Incurring deposit in excess of statutory limit. | 9(3) | \$600,000.00 |
| Acting or continuing to act as director or concerned in management without express authorization. | 11(3) | \$300,000.00 |
| Failure to make returns. | 16 (4) | \$15,000.00 for each day of default |
| Failure to submit, exhibit, publish last audited balance sheet and profit and loss account | 18(3) | \$150,000.00 |
| Failure to provide consolidated balance sheet and profit and loss account for bank and subsidiaries. | 19(5) | \$150,000.00 |
| Breach of duty of auditor to carry out expanded audit as directed by Supervisor. | 19B(3) | \$1,200,000.00 |

| Nature of Offence | Section | Penalty |
|--|---------|--------------|
| Failure of shareholder to comply with notice issued by Minister. | 22(2) | \$600,000.00 |

17. —(1) Every bank which manages or invests funds on behalf of its customers shall within four weeks after the appointed day provide to the Supervisor a plan for effecting compliance with section 29G, and in particular for the removal or transfer to a separate legal entity, of funds invested on behalf of customers, which are subject to arrangements other than such trust arrangements as may be specified by the Standards of Best Practice issued by the Bank of Jamaica or regulations issued pursuant to the Bank of Jamaica Act. Transitional.

(2) Any plan provided to the Supervisor pursuant to subsection (1) shall be carried out within a period not exceeding one year, unless otherwise authorized in writing by the Supervisor.

(3) In subsection (1) “appointed day” means the date of commencement of the Banking (Amendment) Act, 2002.