

THE FINANCIAL INSTITUTIONS ACT

ARRANGEMENT OF SECTIONS

PART I. Preliminary

1. Short title.
2. Interpretation.

PART II. Licensing

3. Restriction on carrying on the business of accepting deposits.
4. Licences.
5. Alteration of memorandum and articles of association.

PART III. Capital and Reserves

6. Minimum capital requirements.
7. Restriction on foreign government holdings in licensees.
8. Reserve fund.

PART IV. Restrictions on Deposit Taking Business

9. Maximum deposit liabilities.
10. Limit on fixed assets of licensees.
11. Persons debarred from management of licensees.
12. Restriction on period of deposits.
13. Prohibited business.

PART V. Cash Reserves and Liquid Assets

14. Cash reserve.
15. Liquid assets.

PART VI. Returns and Accounts

16. Returns
17. Loss reserves on credit facilities.

FINANCIAL INSTITUTIONS

- 18. Presentation and publication of balance sheet and profit and loss account.
- 19. Consolidated accounts of licensees and affiliated companies.
- 19A. Duty of auditors to report to Supervisor on transactions, etc., affecting licensee's financial viability.
- 19B. Expanded audit.

PART VII. Regulation and Control of Licensees

- 20. Regulation of shareholding in licensees.
- 21. Regulation of controlling interest in licensees.
- 22. Power to obtain information re shareholding.
- 23. Power to restrict dealing in specified shares.
- 24. Appeal against restriction notice.

PART VIII. Regulation against Unsafe Practices

- 25. Actual or apprehended insolvency.
- 25A. Licensee ceasing to be viable.
- 25B. Vesting of licensee's shares, etc., in Minister.
- 25C. Effect of vesting order.
- 25D. Restructuring transactions.
- 25E. Winding up of Scheme of Arrangement.
- 25F. Notice re compensation.
- 25G. Application of sections 25A to 25F.
- 25H. Determination of compensation.
- 25I. Application to court.
- 25J. Revesting of shares and subordinated debt.
- 26. Winding up of foreign licensee.
- 27. Obligation of manager to supply information.
- 28. Resignation, etc., of auditor.

PART IX. Supervision and Examination of Licensees

- 29. Functions of Supervisory Department under this Act.
- 29A. Special audit or examination of licensee.
- 29B. Supervisory Department to have access to books, etc., of holding company.

- 29C. Supervisor may require information.
- 29D. Restructuring of ownership of licensee.
- 29E. Ownership of subsidiaries by licensee.
- 29F. Supervisor may issue directions re risk.
- 29G. Management or investment of client's funds.
- 30. Powers of inspection.
- 31. Protection of auditor.

PART X. *Winding up of Licensees*

- 32. Restriction on voluntary winding up.

PART XI. *Amalgamation and Transfers*

- 33. Amalgamation and transfer.
- 34. Statements relating to amalgamation or transfer to be deposited with Minister.

PART XII. *General*

- 35. Vesting of assets on sale of licensee.
- 36. Transfer of trust business.
- 37. Effect of transfer and vesting order.
- 38. Regulations.
- 39. Restrictions on loans on the security of land.
- 40. Unclaimed moneys.
- 41. Fraudulent inducement to invest.
- 42. Offences and penalties.
- 42A. Penalties.
- 43. Publication of orders.
- 44. Secrecy of licensee officials.
- 45. Transitional.

SCHEDULES.

THE FINANCIAL INSTITUTIONS ACT

Acts
16 of 1992,
27 of 1997,
10 of 2002,
38 of 2004.

[31st December, 1992.]

PART I. *Preliminary*

1.—(1) This Act may be cited as the Financial Institutions Act. Short title.

(2) This Act shall not apply to—

- (a) the Bank of Jamaica
- (b) any commercial bank;
- (c) the Jamaica Mortgage Bank;
- (d) any statutory body;
- (e) any society registered under the Building Societies Act, the Co-operative Societies Act, the Friendly Societies Act or the Agricultural Credit Board Act or any co-operative arrangement for savings among individuals; or
- (f) any insurance company registered under the Insurance Act.

2.—(1) In this Act—

“advertisement” includes every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films, or by way of sound broadcasting, television or telephone communication, and every other form of communication but does not include a prospectus (as defined in the Companies Act) issued by a company and references to the issue of an advertisement shall be construed accordingly; and for the purposes of this Act an advertisement issued by any person by way of display or exhibition in a public place shall be treated as issued by him on every day on which he causes or permits it to be so displayed or exhibited;

Interpreta-
tion.

“advertisement for deposits” means, in relation to any person, an advertisement inviting the public or any part thereof to deposit money with that person;

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

“bank” means a commercial bank as defined in the Bank of Jamaica Act;

27/1997
S. 2 (a)(i).

“capital base” in relation to a licensee means—

(a) the amount of shareholder's equity and eligible reserves of the licensee, 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 subordinated debentures which for the time being may be taken into account in the calculation of the licensee's capital base pursuant to section 45 (6);

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

38/2004
S. 2 (a).

“competent authority” means a supervisory authority in a foreign country which has supervisory duties and responsibilities—

(a) with respect to a company which is incorporated in and provides financial services in that country; and

(b) which are similar to the duties and responsibilities of the Bank of Jamaica and the Financial Services Commission.

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

“control” in relation to a licensee or any other company means the power of a person to secure by means of the holding or the possession of voting power in or in relation to that licensee or other company or by any agreement or by virtue of any other powers conferred by the articles of association or other document regulating the licensee or other company, that the affairs of the licensee 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 arrangements whereby a customer of a licensee has access to funds or financial guarantees of the licensee or the licensee undertakes on behalf of a customer, financial liability to another person;

“deposit” means a sum of money paid on terms—

- (a) under which the sum 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; and
- (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 the deposit liabilities of the licensee whether payment in Jamaica or elsewhere;

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

27/1997
S. 2 (a)(ii).

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

“functions” includes powers and duties;

“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;

“licensee” means a company duly licensed under this Act;

“manager” includes any person or persons by whatever name called for the time being in charge of the principal office or any branch of a licensee;

“money at call or at short notice” in relation to a licensee, means money invested by such licensee

(otherwise than with a connected person) 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 licensee or any bank;
- (c) any other institution in Jamaica approved for the purpose by the Minister,

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

“paid-up 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;

“regulated or supervised financial institution” means—

38/2004
S. 2 (b).

- (a) an institution in Jamaica which is supervised or regulated by the Bank of Jamaica or the Financial Services Commission;
- (b) a financial institution which is established in a country outside Jamaica in accordance with the relevant laws of that country and is regulated in that country by a competent authority;

“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 licensee's net profits as defined in section 8 (including realized capital gains) as the licensee may determine;

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

27/1997
S. 2 (a)(iii).

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

27/1997
S. 2(a)(iii).

“trust business” includes property devolving upon a licensee 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 instrument 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 licensee (“L”) and the licensee 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 L;
- (b) a subsidiary of a holding company of L;
- (c) a holding company of a subsidiary of L;
- (d) any company of which L has control;
- (e) any company of which L and the persons connected with L together have control;
- (f) any company which together with L constitute a group;
- (g) an individual who is a director, manager or a person who has control of L 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 whether the holding company holds that other company’s shares on trust or is the beneficial owner of such shares.

27/1997
S. 2 (b).

10/2002
S. 2 (b).

(4) In determining the paid-up capital of a licensee—

- (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 that licensee of 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;
- (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 licensee where those shares are not used as security for that loan.

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

PART II. *Licensing*

Restriction on carrying on the business of accepting deposits.

3.—(1) A person other than a company duly licensed under this Act shall not in Jamaica—

(a) carry on the business of accepting deposits; or

(b) issue or cause to be issued advertisements for deposits,

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 in accordance with subsection (3).

(3) The warrant referred to in subsection (2) shall permit the authorized officer—

(a) to enter (with or without a constable) the premises named in the warrant 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;

(b) to seize and detain the relevant documents for a period not exceeding thirty days.

(4) 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 (3) is guilty of an offence.

4.—(1) An application for a licence under this Act 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. Licences.

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

(3) A licence shall not be granted to any company 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 the 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 has not been convicted of an offence involving dishonesty;
- (b) who is not an undischarged bankrupt;
- (c) 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;

27/1997
S. 3 (b).

- (d) 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 licensee and whose relationship with the licensee 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 provisions of banking, insurance, investment or other financial services, or in the management of companies or due to bankruptcy.

(4) It shall be a condition of every such 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.

(5) If, upon receipt of a notice referred to in paragraph (c) of subsection (4), 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 licensee concerned to take such steps as the Minister may consider necessary to ensure compliance with subsection (3).

(6) 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.—(1) A licensee shall not make any alteration in its memorandum or articles of association unless it has notified the Minister in writing that it proposes to make that alteration and the Minister either—

Alteration of memorandum and articles of association.

- (a) has in writing approved the proposed alteration; or
- (b) has not, within thirty days of receipt of the notification, indicated in writing to the licensee any disapproval of the proposed alteration.

(2) The Minister shall not disapprove of a proposed alteration in the memorandum or articles of a licensee

unless such proposed alteration is, or is likely to result in, a breach of—

- (a) the terms and conditions of the licensee'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 licensee in contravention of subsection (1) shall be null and void.

(4) Every licensee 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*

Minimum
capital
requirements.

6.—(1) A licence shall not be granted to a company unless capital to an amount not less than twenty-five million dollars has been subscribed.

(2) A licensee shall not commence business unless not less than twenty million dollars of the subscribed capital has been paid up in cash.

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

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 licensee—

Restriction on foreign government holdings in licensees.

- (a) hold more than 5% of the issued share capital of that licensee;
- (b) exercise any voting power in excess of that percentage of such shares as aforesaid.

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

Reserve fund.

- (a) 15% of the net profits of the licensee in that year until the amount at the credit of the reserve fund is equal to 50% of the paid-up capital of the licensee; and
- (b) thereafter 10% of the net profits of the licensee in that year until the amount at the credit of the reserve fund is equal to the paid-up capital of the licensee.

(2) Nothing in subsection (1) shall prevent a licensee—

- (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 paid-up capital.

(3) 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 licensee's assets other than foreign currency; or
- (b) unless the Bank of Jamaica in writing otherwise permits—
 - (i) a sale of the licensee's assets to a connected person, where such sale is not for cash or is funded by a loan from the licensee;
 - (ii) any resale, other than for cash, by the licensee of assets purchased from a connected person.

(4) Where—

- (a) the amount of the credit of the reserve fund of a licensee exceeds its unimpaired capital; and
- (b) the licensee intends to reduce its reserve fund,

the licensee 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 licensee to reduce its reserve fund in accordance with subsection (5) by an amount not exceeding the amount of the excess as aforesaid.

(5) The reduction referred to in subsection (4) may be effected by the issue by the licensee of bonus shares or by the redemption of preference shares or both.

PART IV. *Restrictions on Deposit Taking Business*

9.—(1) Subject to subsection (2), a licensee shall not incur deposit liabilities and other indebtedness for borrowed money which, together with all interest accrued thereon, exceed in the aggregate, twenty times the amount of its capital base. Maximum deposit liabilities. 27/1997 S. 4 (a).

(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 licensee affected thereby shall be permitted a reasonable period of time specified in the order, being not less than twelve months, within which to comply.

(2A) A licensee 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. 27/1997 S. 4 (b).

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

10.—(1) The fixed assets of a licensee 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. Limit on fixed assets of licensees.

(2) For the purposes of this section—

(a) “fixed assets” means the following assets (whether freehold or leasehold) owned by a licensee and used by the licensee in the conduct of its business, that is to say—

[The inclusion of this page is authorized by L.N. 146; 1999]

- (i) furniture or 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 licensee derives income in its capacity as lessor;

(b) the historical cost method shall be applied in the valuation of fixed assets.

Persons
debarred
from man-
agement of
licensees.

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 licensee.

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

- (a) is not a fit and proper person as described in subsection (3) of section 4;
- (b) whether in Jamaica or elsewhere has been a director of or directly concerned in the management of a bank, licensee or other financial institution referred to in the First Schedule.

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 licensee to ensure that, in relation to the licensee, persons do not act or continue to act in contravention of subsection (1); and, subject to subsection (5), any licensee which contravenes this subsection shall be guilty of an offence.

(5) It shall be a defence to a licensee charged pursuant to subsection (4) for the licensee to prove that it took all reasonable steps in the circumstances to prevent a contravention of subsection (1).

12.—(1) A licensee shall not—

Restriction
on period of
deposits.

- (a) accept a deposit upon terms that it is repayable on demand or in less than fourteen days by cheque, draft or order drawn on the licensee, or in any other manner and shall so inform the depositor at the time when the deposit is made;
- (b) without the written permission of the Bank of Jamaica, repay any deposit within less than fourteen days from the date on which the deposit was received by the licensee:

Provided that this subsection shall not apply to—

- (a) deposits taken from banks or other licensees; or
- (b) deposits taken prior to the 31st December, 1992.

(2) A licensee which contravenes subsection (1) shall be guilty of an offence.

13.—(1) A licensee shall not—

Prohibited
business.

- (a) engage in any trade save in so far as may be necessary in the ordinary course of its operations and services, including the satisfaction of debts due to it, 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 its operations and services including the satisfaction of debts due to it 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 licensee;

(d) grant unsecured credit facilities to—

(i) any connected person;

(ii) any of its officers or employees 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 licensee's capital or in which the licensee 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 licensee's shares;

(iii) any person if the credit facilities are guaranteed by a connected person who holds or controls 20% or more of the licensee'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;

27/1997
S. 5 (a)(i).

27/1997
S. 5 (a)(ii).

27/1997
S. 5 (b).

- (f) except in relation to specified credit facilities and subject to subsection (5) grant credit facilities—
- (i) to any one person (not being another licensee) if the credit facilities granted exceed in the aggregate 20% of the licensee's capital base but where any portion of such credit facilities is unsecured, that portion shall not exceed 5% of the licensee's capital base; 27/1997
S. 5(c)(i).
 - (ii) to any group if the credit facilities exceed in the aggregate 40% of the licensee's capital base but where any portion of such credit facilities is unsecured that portion shall not exceed 10% of the licensee's capital base; 27/1997
S. 5(c)(ii).
- (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 paid-up capital or cumulative balance in the reserve fund has been impaired, until such impairment has been corrected;
 - (iii) if, having regard to the licensee'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 licensee 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—

27/1997
S. 5 (d)(i).

27/1997
S. 5 (d)(i)
(m).

(i) such shareholding shall not, in respect of any one such company or undertaking as aforesaid, exceed 10% of the licensee's capital base; and

(ii) the restrictions imposed by the 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 licensee but such shareholding shall be disposed of at the earliest suitable time;

27/1997
S. 5 (e).

(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 licensee's capital base; or

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

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

(3) A licensee 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 it, but shall forthwith after the expiry of that period sell or otherwise dispose of the land absolutely so that it 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 licensee on such basis (being less restrictive than that imposed by paragraph (f) of subsection (1), as may be prescribed in the order if he is satisfied, on application of the licensee and after consultation with the Bank of Jamaica, that the licensee 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 persons in such circumstances and subject to such terms and conditions as will adequately protect the interests of shareholders and depositors in the licensee.

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

- (a) credit facilities made to or guaranteed by the Government of Jamaica; or
- (b) credit facilities made to a local government authority; or
- (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 licensee for the purposes of the granting of credit facilities by that licensee; or

27/1997
S. 5 (f).

(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 licensee, whether before or after the 31st December, 1992, in contravention of any provision of this section, nothing in this section shall prevent the licensee from enforcing the transaction against any person or party thereto.

(9) Any licensee which contravenes subsection (1) or (3) shall be guilty of an offence.

PART V. *Cash Reserves and Liquid Assets*

Cash
reserve.

14.—(1) Subject to section 28 of the Bank of Jamaica Act, every licensee 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 licensee during any week—

(a) the amount of its deposit with the Bank of Jamaica shall be the average amount of such deposits 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 licensee during any week fails to maintain with the Bank of Jamaica the authorized deposit, that licensee shall pay to the Bank of Jamaica in respect of the business days of that week aforesaid 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 licensee means the amount required to be deposited by that licensee 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 licensee falls short of the authorized deposit.

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

Liquid
assets.

(2) For the purposes of this section “liquid assets” means—

- (a) cash reserves on deposit 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 licensee or other institution with which it is deposited;
- (e) Treasury Bills of the Government of Jamaica;
- (f) local registered stocks 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 banks and other licensees less amounts held for those banks or licensees:

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 licensee during any month fails to maintain as liquid assets the amount which it is required to maintain under this section, that licensee 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 licensee falls short of the amount of the liquid assets which it is required to maintain.

*L.N. 33B/96

[The inclusion of this page is authorized by L.N. 96/1998]

(4) Subject to subsection (5), for the purpose of determining the amount of the liquid assets required to be maintained by a licensee 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.—(1) Subject to subsection (2), every licensee 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—

Returns.

- (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 licensee 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 licensee's current operating earnings and expenses during the year;

- (ii) all debts payable by the licensee 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) drafts or bills of exchange drawn, certified or accepted by the licensee and payable in Jamaica or elsewhere, and outstanding for seven or more years from the date of such drawing, 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 licensee and beneficially held in fee simple by the licensee;
- (d) not later than seven working days after the month to which it relates a monthly return showing particulars 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 particulars of the licensee's contingent and prospective liabilities;
- (f) such other returns, statements or information as the Minister may require.

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

(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 licensee which fails to make any return or furnish any 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 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 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 licensee furnished under paragraph (a) of subsection (1):

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

(7) In this section “working day” means any day on which a licensee is normally opened for business.

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

Loss reserve
on credit
facilities.
10/2002
S. 3 (a)(b).
27/1997
S. 6 (a).

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

10/2002
S. 3 (b).
27/1997
S. 6 (b).
10/2002
S. 3 (b).

10/2002
S 3 (b)

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

10/2002
S. 3 (b).

(2) There shall be shown on the audited balance sheet of each licensee the aggregate amount of the loss reserves on credit facilities 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 renegotiation—

10/2002
S 3 (b)

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

10/2002
S. 3 (b).

- (b) if the credit facility is not one referred to in paragraph (a) but is of an amount in excess of 1% of the licensee's capital base, the licensee 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 credit facilities so altered during that month.

10/2002
S. 3 (b).

Presentation
and public-
cation of
balance sheet
and profit and
loss account.

18.—(1) Every licensee 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 document in a conspicuous position in each place of business of the licensee in Jamaica.

(2) For the purposes of this section “prescribed documents” means—

- (a) an audited balance sheet and profit and loss account in respect of all business transacted by the licensee in its last financial year and signed by not less than two of the licensee’s directors; and
- (b) the auditor’s report.

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

27/1997
S. 7.

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

19.—(1) Where a licensee 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 licensee and its subsidiaries.

Consolidated accounts of licensees and affiliated companies.

(2) Where a licensee—

- (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 licensee or individual accounts furnished by a licensee's subsidiary, parent or holding company, as the case may be, indicate the likelihood of insolvency, on the part of the licensee, its parent or holding company or any of its subsidiaries, the Bank of Jamaica may, after consultation with the licensee, issue to the licensee 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 paid-up capital of the licensee or, as the case may be, the paid-up 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 licensee is registered under the Industrial and Provident Societies Act—

- (a) the accounts of the subsidiary shall be consolidated with those of the licensee to the intent that—
 - (i) deposits taken by the subsidiary shall be deemed to be deposits of the licensee 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 licensee for the purposes of section 13 (prohibited business);

- (b) any transfer of funds to the subsidiary by the licensee shall be deemed to be a loan or the granting of credit facilities for the purposes of section 13(1)(e);
- (c) the licensee shall make returns under section 16 in relation to the operations in Jamaica of the subsidiary as if the subsidiary were a licensee;
- (d) the licensee shall make a return of all loans transferred to the subsidiary whether for consideration or for purposes of collection.

(5) Any licensee or company which—

- (a) contravenes subsection (2); or
- (b) fails to comply with directions issued under subsection (3),

38/2004
S. 3.

shall be guilty of an offence.

19A.—(1) It is the duty of the auditors of a licensee to report in writing to the chief executive officer of the licensee, each director of the licensee 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—

Duty of auditors to report to Supervisor on transactions, etc., affecting licensee's financial viability.
27/1997
S. 12.

- (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 licensee;
- (b) transactions or conditions giving rise to significant risks or exposures that have the potential to jeopardize the licensee's financial viability;
- (c) transactions or conditions indicating that the licensee has significant weaknesses in internal control which render it vulnerable to significant risks

FINANCIAL INSTITUTIONS

or exposures that have the potential to jeopardize the licensee's financial viability;

- (d) transactions of an irregular nature that have a significant or material impact on the licensee'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 licensee's directors following the date of its receipt by the licensee's chief executive officer and shall be incorporated in the minutes of the meeting.

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

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

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

Expanded
audit.
27/1997
S. 12.

- (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 licensee 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 licensee concerned.

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

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

PART VII. Regulation and Control of Licensees

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

Regulation
of share-
holding in
licensees.

27/1997
S. 10.

(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 licensee;
- (b) the soundness and feasibility of the applicant's plans for the future conduct and development of the licensee's business;
- (c) the business record and experience of the applicant;
- (d) whether the licence 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 licensee;
 - (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. ^{27/1997}
S. 10.

(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 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 licensee 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 licensee or would hold interests in 20% or more of the issued shares of the licensee;
- (b) a reference to an agreement by which a person would obtain effective control of a licensee includes a reference to an agreement by which the person would acquire any interest in shares in the licensee where, upon the acquisition of that interest and of any other interest in other shares of the licensee that he has offered to acquire, he would have effective control of the licensee;
- (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 interests 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 licensee is a reference to the total number of votes that may be cast in the general meeting of the licensee.

Regulation
of con-
trolling in-
terest in
licensees.

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

27/1997
S. 10.

(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 licensee;

- (b) the soundness and feasibility of the applicant's plans for the future conduct and development of the licensee's business;
- (c) the business record and experience of the applicant;
- (d) whether the licence 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 licensee;
 - (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 a written representation. ^{27/1997} S. 10.

(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 licensee if he alone or acting together with a connected person would be in a position to determine the policy of the licensee;

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

Power to obtain information re shareholding.

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

- (a) as to whether that shareholder holds any voting shares in the licensee as beneficial owner or as trustee; and
- (b) if he holds them as trustee, the person 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.—(1) Where the Minister is satisfied that any person has acquired shares in a licensee 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 be subject to one or more of the following restrictions that is to say—

Power to restrict dealing in specified shares.

- (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 licensee 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 licensee 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.

Appeal against
restriction
notice.
27/1997
S.12.

24. Any person who is aggrieved by a notice of refusal pursuant to section 20 (2A) or any notice served pursuant to section 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*

Actual or
apprehended
insolvency.
Second
Schedule.
27/1997
S. 12.
38/2004
S. 4(a)(i).

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 licensee, the Supervisor may—

- (a) require the licensee to give an undertaking signed by the majority of the members of the licensee's Board to take such corrective action as may be agreed between the licensee and the Supervisor;
- (b) give directions to the licensee under this section; or
- (c) issue a cease and desist order in accordance with Part C of the Second Schedule.

38/2004
S. 4(a)(ii).

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

- (a) require the licensee 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 licensee from soliciting deposits either generally or from persons who are not already depositors;
- (d) prohibit the licensee from entering into any other transaction or class of transactions;
- (e) require the removal of any director or manager.

(3) Where a licensee 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 licensee pursuant to this section; and
- (b) any direction of the Supervisor which was given to that licensee shall cease to have effect.

(4) A licensee 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 licensee 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—

38/2004
S. 4 (b).
Second
Schedule.

- (a) *[Deleted by Act 10 of 2002.]*
- (b) suspend or revoke the licensee's licence in accordance with Part E of that Schedule;
- (c) present to the Court a petition for the winding up of the licensee or an application regarding reconstruction of the licensee.

10/2002
S. 5 (b)(ii).

10/2002
S. 5 (c).

Second
Schedule.

(6A) Where the Supervisor believes that a licensee 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 management of the licensee in accordance with Part D of that Schedule.

10/2002
S. 5 (c).

(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.

10/2002
S. 5 (c).

(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) Where action is taken under paragraph (b) or (c) of subsection (6) the licensee concerned shall not, without the consent of the Court—

- (a) accept deposits from any person; 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 licensee 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 licensee, 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.—(1) Where the Minister, after consultation with the Supervisor, is of the opinion that—

Licensee
ceasing to
be viable.
27/1997
S 13.

- (a) a licensee has ceased to be viable;
- (b) the viability of the licensee cannot be restored by the exercise of powers under section 25; and
- (c) it is in the best interests of the licensee's depositors that there be a reconstruction of the licensee or a disposition of its assets in accordance with section 25D on an expeditious basis,

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

(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 licensee is dependent on loans, advances, guarantees or other financial assistance from government agencies or undertakings;
- (b) the licensee's capital base is less than the amount required by this Act or any regulations made thereunder;
- (c) the licensee 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 any licensee in respect of which the Supervisor has assumed temporary management pursuant to subsection (6A) of section 25.

10/2002
S. 6 (a) (b).

Vesting of
licensee's
shares, etc., in
Minister.
27/1997
S. 13.

25B.—(1) Where, after due consideration of any representations made by the licensee 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 licensee, the Minister may, by order (hereinafter referred to as a vesting order) vest the shares and subordinated debt of the licensee 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 licensee in the Minister as from the date of the order, free from any encumbrance attaching thereto, notwithstanding that the Minister knows of the encumbrance;
- (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.

Effect of
vesting order.
27/1997
S. 13.

25C.—(1) Where a vesting order is made in respect of a licensee—

- (a) the powers, duties, functions, rights and privileges of the directors of the licensee 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 licensee and may assign to such person or persons any of the powers, duties, functions, rights or privileges of the directors and officers of the licensee;
- (c) the Minister may, if he considers it to be in the best interests of the licensee'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 licensee for such period as the Judge thinks fit;
 - (ii) any execution against the property of the licensee;
- (d) no creditor of the licensee shall enforce any remedy against the licensee or its property without the leave of a Judge of the Supreme Court;
- (e) no person may terminate or amend any agreement with the licensee or claim an accelerated payment under any agreement by reason only of—
 - (i) the insolvency of the licensee;
 - (ii) a default, before the vesting order was made, by the licensee 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 is contrary to that paragraph; or
- (b) provides in substance that on—
 - (i) the licensee's insolvency;
 - (ii) default by the licensee in the performance of an obligation; or
 - (iii) the making of the vesting order,

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

(3) Subject to subsection (4), paragraph (e) of subsection (1) shall not apply in respect of an agreement with the licensee which was made no 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.

Restructuring transactions.
27/1997
S. 13.

25D.—(1) Where a vesting order has been made in respect of a licensee the Minister may, in addition to his other rights and powers, carry out, or cause the licensee 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 licensee to one or more buyers;
- (b) a transaction that involves the amalgamation of the licensee;

- (c) a transaction or a series of transactions that involves the sale or other disposition of all or part of the assets of the licensee or the assumption of all or part of its liabilities; or
- (d) any other transaction or series of transactions the purpose of which is to restructure all or a substantial part of the business of the licensee.

(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 that effect to be published in the *Gazette*, specifying the date of such completion.

(3) No restriction on the right of a licensee 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 licensee or any other person, from carrying out a transaction referred to in subsection (1).

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 a licensee if, in the opinion 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—

Winding up
or Scheme
of Arrange-
ment.
27/1997
S. 13.

- (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 licensee in respect of which a vesting order

has been made, shall, in a winding up of such licensee, be a creditor of that licensee and all such costs, expenses and liabilities shall be deemed to be impositions by the Government under section 311 (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.

Notice re
compensa-
tion.
27/1997
S. 13.

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 licensee 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 of compensation so determined is nil.

Application of
sections 25A
to 25F.
27/1997
S. 13.

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

Determination
of compen-
sation.
27/1997
S. 13.

25H.—(1) The amount of compensation payable to a person affected by the making of a vesting order in respect of a licensee 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 licensee and all other costs incurred in relation to such transactions.

(2) Where the amount of the licensee'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. A licensee 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—

Application
to court.
27/1997
S. 13.

- (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.—(1) Where—

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

Revesting of
shares and
subordi-
nated debt.
27/1997
S. 13.

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 licensee 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.

Winding up
of foreign
licensee.

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 licensee to which section 362 of that Act applies whether that licensee 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 licensee referred to in subsection (1) which relate to the licensee's Jamaican operations shall be deemed to be the assets of the branch of that licensee 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 311 (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 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 311 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) In this section “foreign licensee” means a licensee which is not incorporated in Jamaica.

Obligation of
manager to
supply
information.
10/2002
S. 7.

27.—(1) Without prejudice to the provisions of section 16, the Supervisor may, by instrument in writing, require the manager of any licensee to supply, within such time as may be specified in the instrument, such information relating to the financial position of the licensee including that of its branches and subsidiaries 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 Supervisor shall be guilty of an offence.

10/2002
S. 7.

(2) The Manager of a licensee 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 Supervisor in writing of the financial position of the licensee.

10/2002
S. 7.

Resignation,
etc., of
auditor.

28.—(1) Where an auditor appointed by a licensee—

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

- (b) has given notice in writing to the licensee 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 licensee intends to terminate the appointment of its auditor; or
- (b) a resolution has been passed at any general meeting of the licensee, providing that the auditor shall not be reappointed,

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

PART IX. *Supervision and Examination of Licensees*

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

Functions of
Supervisory
Department
under this
Act.

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

- (a) compile such statistics relating to the practice of licensees in Jamaica as the Minister may require; and maintain a general review of such 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 licensee carrying on business in Jamaica for the purpose of being satisfied that the provisions of this Act are being complied with and that the licensee 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 licensee for the purpose of making enquiries into the operations and financial position of that licensee;
- (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 licensee 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 licensee concerned which shall have the right to attend any meeting held by the bank with that auditor.

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

Special
audit or
examination
of licensee.
27/1997
S. 14.

(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 licensee's procedures as the Supervisor may specify in order to determine whether or not those procedures are adequate for the protection of the licensee's depositors and shareholders;
- (ii) such other examination of the licensee 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 licensee concerned; and
- (b) may be recovered by or on behalf of the Supervisor summarily in a Resident Magistrate's Court without limit of amount, as a civil debt.

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

Supervisory
Department to
have access to
books, etc., of
holding com-
pany.
27/1997
S. 14

29B.—(1) Where a licensee is a subsidiary of a holding company, the Supervisory Department shall be entitled at all reasonable times to examine the 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.

Supervisor
may require
information
10/2002
S 8

29C.—(1) The Supervisor may require any company which is a member of a group of which a licensee 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 licensee concerned.

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

- (a) the effect of that company's operations on the licensee;
- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from the licensee;
- (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 purpose 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 licensee is a member of a group and at least one member of that group is not a licensee or other regulated or supervised financial institution, the Supervisor may, in writing, direct the licensee to undertake—

Restructuring of ownership of licensee 10/2002 S. 8.

- (a) a restructuring such that ownership of the licensee 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 licensee.

(3) A licensee 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 licensee referred to in that subsection.

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

- (a) examine and inspect the books of the licensee'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 licensee;
- (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 licensee is a member of a group and the licensee 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 licensee and other members of the group, the Supervisor may—

- (a) treat the non-member as a member of the group; or
- (b) require the licensee 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 the 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.

29E.—(1) Subject to subsection (2), a licensee 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 licensee or its financial holding company, if the

Ownership
of
subsidiaries
by licensee.
10/2002
S. 8.

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 re
risk.
10/2002
S.8.

29F.—(1) The Supervisor may issue directions to a licensee, 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 licensee or financial holding company which fails to comply with directions under this section shall be guilty of an offence.

Management
or investment
of client's
funds.
10/2002
S. 8.

29G.—(1) A licensee shall not manage or invest funds on behalf of its clients 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 licensee that engages in proprietary trading in securities for its own account shall conform with the Standards of Best Practice referred to in subsection (1).

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 licensee;
- (b) to require any director, manager, officer, auditor, former auditor or employee of any licensee 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 licensee and may be reasonably required for the performance of those duties.

(2) Any person who—

- (a) fails to attend in response to a summons pursuant to section 29 (2) (e); or
- (b) fails to comply with a requirement made pursuant to subsection (1) (b) of this 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. An auditor or former auditor of a licensee shall not be regarded as being in breach of his duty of confidentiality to a licensee in consequence of any disclosure to an authorized officer pursuant to section 29 or 30.

Protection
of auditor.
27/1997
S. 15.

PART X. *Winding Up of Licensees*

32.—(1) Where a licensee passes a resolution for voluntary winding-up, it shall forthwith notify the Bank of Jamaica in writing and shall furnish to the Bank of Jamaica—

Restriction
on volun-
tary wind-
ing up.

- (a) a statement of its financial position;
- (b) an up-to-date profit and loss account;
- (c) the 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 licensee 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 licensee 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 licensee shall, within thirty days after the date of publication of a copy of the resolution pursuant to paragraph (a), cease to carry on the business of taking deposits in Jamaica.

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

PART XI. *Amalgamation and Transfers*

Amalgama-
tion and
transfer.

33.—(1) A licensee 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 licensee or, as the case may be, a bank;
- (b) to transfer its business (in whole or in part) to another licensee or, as the case may be, a bank.

(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.—(1) Where an amalgamation or transfer referred to in section 33 takes place, the licensee or bank, 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—

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

- (a) certified copies of statements of the assets and liabilities of the licensees or, as the case may be, the licensee and bank 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 licensee, or bank, 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. Where a licensee sells the whole or any part of its assets to any other licensee or, as the case may be, a bank, if the purchasing licensee or the purchasing bank 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

Vesting of assets on sale of licensee.

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 licensee or purchasing bank, 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 licensee shall, if requested by the purchasing licensee or purchasing bank, as the case may be, execute such formal and separate conveyances, assignments and assurances as are reasonably required by the purchasing licensee or purchasing bank, as the case may be, in conformity with the agreement for sale and purchase.

Transfer
of trust
business.

36.—(1) Where an agreement has been entered into for the acquisition by a licensee or a bank, as the case may be, (hereinafter referred to as the “transferee licensee” or the “transferee bank”) of the trust business of another licensee (hereinafter referred to as “the transferor licensee”) the transferee licensee or the transferee bank may, for the purpose of effecting the transfer to, and the vesting in, the transferee licensee or the transferee bank 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 licensee or the transferee bank, 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 licensee shall, if requested by the transferee licensee or the transferee bank, execute such formal and

separate conveyances, assignments and assurances as are reasonably required by the transferee licensee or the transferee bank 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 licensee or transferee bank 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.—(1) Any trust business transferred to and vested in a transferee licensee or transferee bank 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 licensee, whether alone or jointly with any other person—

Effect of transfer and vesting order.

- (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 licensee,

or the transferee bank whether alone or jointly with such 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 licensee 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 licensee 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 licensee there were substituted a reference to the transferee licensee or the transferee bank.

(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 licensee (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 licensee or the transferee bank as fully and effectively as if, instead of the transferor licensee the transferee licensee or the transferee bank 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 licensee to be executor or trustee thereof shall be construed and have effect as if for any reference therein to the transferor licensee as such executor or trustee or otherwise in connection with such appointment there were substituted a refer-

ence to the transferee licensee or the transferee bank and, in a case where the transferee licensee or the transferee bank did not exist at the date of the will, as if it had then existed.

(5) No testamentary gift shall be adeemed by reason only of 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.—(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— Regulations.

- (a) [*Deleted vide Act 10 of 2004.*]
- (b) the establishment of branches and representative offices—
 - (i) in Jamaica by licensees; or
 - (ii) otherwise than in Jamaica by a licensee incorporated in Jamaica;
- (c) the qualification required by auditors of licensees and the frequency and scope of audits;
- (d) the minimum security precautions and standard security devices to be adopted by licensees;
- (e) the obligation of licensees to provide for doubtful loans and other asset-based risks;
- (f) the criteria to be taken into account in determining assets and liabilities of licensees and the

formulae to be applied for the purpose of determining the value of such assets and liabilities;

- (g) the criteria as regards the minimum solvency standards to be maintained by licensees and as regards the measurement of the capital bases of licensees;
- (h) the furnishing of information by an auditor of a licensee as respects the operations and other particulars relating to a licensee audited by him;
- (i) the form and contents of advertisements to be issued by licensees;
- (j) the form of any notice required or authorized to be delivered or given under this Act;
- (k) the criteria as regards the payment of dividends by licensees and the transfer of profits by licensees to their capital bases;
- (l) any other matter required by this Act to be prescribed.

27/1997
S. 16(a).

27/1997
S. 16(a)(ii).

27/1997
S. 16(b).

(2) The power conferred on the Minister by paragraphs (e), (f) and (h) of subsection (1) shall be exercised after consultation with organizations recognized by the Minister as representing licensees.

Restrictions
on loans on
the security of
land.

39. The Minister may, after consultation with the Supervisor and the organization referred to in section 38 (2), by order require every licensee 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 licensee prior to the making of the order.

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 licensee for a period of fifteen or more years 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 licensee 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 Accountant-General 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 Accountant-General 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 licensee 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 Accountant-General shall pay that sum to any person who establishes a claim thereto to the satisfaction of the Accountant-General.

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 with any other person;
- (b) to enter into or offer to enter into any agreement for that purpose,

shall be guilty of an offence.

Offences and
penalties.
Third
Schedule

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 five hundred 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 two hundred thousand dollars, for a period not exceeding three months; 10/2002
S 9 (b)
- (b) exceeding two hundred thousand dollars but not exceeding one million dollars, for a period not exceeding six months; 10/2002
S 9 (b)
- (c) exceeding one million dollars, for a period not exceeding twelve months. 10/2002
S. 9 (b)

(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 officers 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.

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

Penalties.
10/2002
S. 10.
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;

(b) amend the Fifth Schedule.

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

Publication of
orders

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

Secrecy of
licensee
officials

44.—(1) Subject to subsection (2), no official of any licensee and no person who by reason of his capacity or office has by any means access to the records of the licensee, or any registers, correspondence or material with regard to the account of any customer of that licensee shall, while his employment in or, as the case may be, his professional relationship with the licensee 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.

Fourth
Schedule.

(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.

Transitional.

45.—(1) In this section “the repealed Act” means the Protection of Depositors 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 licensee under the repealed Act (hereinafter referred to as an existing licensee) 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 licensee which, before the 31st December, 1992, has entered into any transaction incompatible with the provisions of section 13 (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 the date or, as the case may be, for the liquidation of each such transaction within such period as may be agreed between the licensee 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 licensee subject to the modification that the licensee 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) Where prior to the 31st December, 1992, a licensee had issued subordinated debentures with the approval of the Minister and was permitted to treat such debentures as capital in the calculation of its permissible total of deposit liabilities such licensee shall not be precluded from continuing to so treat the said debentures until the date of maturity of such debentures.

(6) For the purposes of paragraph (b) of the definition of "capital base" in section 2 (1), the subordinated debentures which may be included in the calculation of a licensee's capital, are those outstanding as at the 29th October, 1997. 27/1997
S. 17.

FINANCIAL INSTITUTIONS

FIRST SCHEDULE

(Section 11 (2))

Banks, Licensees or other Financial Institutions to which section 11 of the Act applies

Any bank, licensee or other financial institution whether in Jamaica or elsewhere—

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

PART A

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

1. The licensee has breached the provisions of its memorandum or articles of association.

2. The licensee, a director or any person employed (either as agent or otherwise) in the conduct of the business of the licensee—

- (a) is engaging or is about to engage in an unsafe or unsound practice in conducting the business of the licensee; or
- (b) is contravening a Standard of Best Practice 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 licensee;
 - (iii) any provision of the Bank of Jamaica Act or any regulations made under that Act; or
 - (iv) any provision of the Money Laundering Act or regulations made thereunder or any other Act which imposes obligations on a licensee.

27/1997
S. 18 (a).

10/2002
S. 11 (a) (i).

38/2004
S. 5 (a) (iii).

3. The licensee'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 licensee has refused or neglected to take appropriate action.

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

6. The licensee—

- (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 licensee; 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 licensee by an authorized officer.

7. The licensee has failed to commence the business of accepting deposits within six months of the date of the granting of a licence or the coming into effect of the Financial Institutions (Amendment) Act, 1997.

8. The licensee 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 licensee's assets is substantially less than the amount of its liabilities.

10. The licensee has notified the Supervisor that it proposes to surrender its licence.

11. The licensee has ceased to carry on the business of taking deposits.

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

PART B [*Deleted by Act 27 of 1997*]

PART C

Cease and Desist Orders

1. Before issuing a cease and desist order the Minister shall cause to be served on the licensee 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 licensee 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 licensee concerned is not represented, the licensee 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 Minister shall make a cease and desist order in respect of that licensee; or
- (b) the allegations specified in such notice are established in relation to the licensee, the Minister shall make a cease and desist order in respect of that licensee,

and a copy of the order shall be served on the licensee 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 licensee 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 licensee—

- (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 Minister is satisfied that the situation giving rise to the notice is likely to endanger the financial position of the licensee or the interests of its customers,

the Minister may forthwith serve on that licensee 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 licensee 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 D

Temporary Management of a Licensee

1.—(1) For the purposes of section 25 (6A), the Supervisor shall serve on the licensee concerned a notice, announcing his intention of temporarily managing the licensee from such date and time as may be specified in the notice. 10/2002
S. 11 (b)(i).
38/2004
S. 5 (b).

(2) The Supervisor may appoint any person to manage on his behalf any licensee specified in the notice under sub-paragraph (1); 10/2002
S. 11(b).

(3) A copy of the notice referred to in sub-paragraph (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 licensee 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 sub-paragraph (1), there shall vest in the Supervisor full and exclusive powers of management and control of the licensee, including, without prejudice to the generality of the foregoing, power to— 10/2002
S. 11 (b)(i).

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

(5) Subject to sub-paragraph (5A), not later than sixty days after the Supervisor has assumed temporary management of the licensee he shall apply to the Court (furnishing full particulars of the assets and liabilities of the licensee) for an order confirming the vesting in the Supervisor of full exclusive powers of management of the licensee as described in sub-paragraph (4). 10/2002
S. 11 (b)(i)(ii).

(5A) An application under sub-paragraph (5) shall be made by the Attorney General. 10/2002
S.11 (b)(iii).

(6) All expenses of and incidental to the temporary management of a licensee shall be paid by such licensee in such manner as the Supervisor may determine. 10/2002
S. 11 (b)(i).

2.—(1) A licensee 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 sub-paragraph (1).

10/2002
S. 11 (b)(i).

(3) The Supervisor may, if he considers it to be in the best interests of the depositors of a licensee 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 licensee, for such period as the Court thinks fit; or
- (b) any execution against the property of the licensee.

10/2002
S. 11 (b)(i).

3. Where the Supervisor has served notice on a licensee 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 licensee to its board of directors or owners as the case may be; or
- (b) present a petition to the Court under the Companies Act for the winding up of the licensee; or
- (c) propose a compromise or arrangement between the licensee and its creditors under section 206 of the Companies Act or a reconstruction under section 208 of that Act.

PART E

Suspension or Revocation of Licence

1. Before suspending or revoking a licence the Minister shall consult with the Bank of Jamaica and give the licensee 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 licensee may submit to him a written statement of objections or may make representations by oral submissions (with or without the assistance of counsel).

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 licensee of his decision by instrument in writing.

3. Where a licensee 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
Brief Description of Offences	Relevant Section	Penalty
Carrying on deposit taking 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. 27/1997 S. 19 (b)(i). 27/1997 S. 19 (b)(i).
Obstructing or hindering an authorized officer in the performance of his duties.	3 (4)	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. 27/1997 S. 19 (b)(ii). 27/1997 S. 19 (b)(ii).
Incurring deposit liabilities in excess of prescribed amount.	9 (3)	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. 27/1997 S. 19(b)(iii). 27/1997 S. 19(b)(iii).
Acting in a managerial capacity in a licensee while debarred.	11 (3)	On conviction, a fine not exceeding \$500,000.00. 27/1997 S. 19(b)(iv).
Permitting persons debarred from management of licensee to be involved with the management of licensee.	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. 27/1997 S. 19 (b)(v).
Accepting or repaying demand or short term deposit.	12 (2)	On conviction, a fine not exceeding \$200,000.00 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.

FINANCIAL INSTITUTIONS

THIRD SCHEDULE, *contd.*

First Column		Second Column	
Brief Description of Offences	Relevant Section	Penalty	
27/1997 S. 19 (b)(vi). 27/1997 S. 19 (b)(vi).	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.
38/2004 S. 6(a).	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.
27/1997 S. 19 (b)(viii).	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.
10/2002 S. 12.	Failure to provide consolidated balance sheet and profit and loss account.	19 (5)	On conviction, a fine not exceeding \$250,000.00.
27/1997 S. 19 (a).	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.
27/1997 S. 19 (a).	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.
27/1997 S. 19 (b)(ix).	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.

THIRD SCHEDULE, *contd.*

<u>First Column</u>		<u>Second Column</u>	
<u>Brief Description of Offences</u>	<u>Relevant Section</u>	<u>Penalty</u>	
Failure to comply with a direction or cease and desist order.	25 (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.	38/2004 S. 6 (c).
Being manager of a licensee failing to provide information on the financial position of the licensee or its branches or subsidiaries.	27 (1)	On conviction, a fine not exceeding \$1,000,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.	27/1997 S. 19 (b)(x).
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.	27/1997 S. 19 (a).
Refusal to furnish information or obey summons.	29C (4)	On conviction, to a fine not exceeding \$250,000.00.	10/2002 S. 12.
Failure to comply with direction.	29D (3) 29F (3)	On conviction, to a fine not exceeding \$2,000,000.00.	10/2002 S. 12.
Failure to comply with summons of Bank of Jamaica or with requirements of authorized officers or obstructing or misleading them.	30 (2)	On conviction, a fine not exceeding \$1,000,000.00 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.	27/1997 S. 19(b)(xi).
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.	27/1997 S. 19(b)(xii).

[The inclusion of this page is authorized by L.N. 111/2005]

FINANCIAL INSTITUTIONS

THIRD SCHEDULE, *contd.*

<u>First Column</u>		<u>Second Column</u>
<u>Brief Description of Offences</u>	<u>Relevant Section</u>	<u>Penalty</u>
<p>Furnishing false information in any statement, agreement, deed or declaration in relation to amalgamation or transfer of licensee.</p> <p>27/1997 S. 19 (b)(xiii).</p>	<p>34 (2)</p>	<p>On conviction—</p> <p>(a) on indictment in a Circuit Court, to a fine or imprisonment of a term not exceeding two years or to both such fine and imprisonment;</p> <p>(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.</p>
<p>Fraudulently inducing persons to invest.</p>	<p>41</p>	<p>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.</p>
<p>Being an official of a licensee, making unauthorized disclosure.</p> <p>27/1997 S. 19 (b)(xiv).</p>	<p>44 (3)</p>	<p>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.</p>

FOURTH SCHEDULE

(Section 44 (2))

Circumstances in which information on customers' accounts may be disclosed

Section 44 (1) shall not apply in any case where—

- (a) the information is disclosed by an official or a person referred to in that subsection to another official or person so referred to;

[The inclusion of this page is authorized by L.N. 111/2005]

FOURTH SCHEDULE, *contd.*

- (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 licensee and the customer relating to the customer's transaction with the licensee; or
 - (ii) brought by the licensee 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;
- (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 licensee 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 overseas of a licensee and pertains only to credit granted by the Jamaican operations of that licensee;
- (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;
- (j) on the recommendation of the Supervisor, the Minister in writing directs such disclosure in the public interest; 10/2002 S. 13 (b).
- (k) the circumstances are such that it is in the interests of the licensee that the information be disclosed; 10/2002 S. 13 (b).
- (l) disclosure is required under another enactment; 10/2002 S. 13 (b).
- (m) disclosure is required by virtue of an order of the court, other than an order under paragraph (g). 10/2002 S. 13 (b).

FIFTH SCHEDULE

(Section 42A)

10/2002
S. 14.*Offences in respect of which liability to conviction may be discharged by
payment of a fixed penalty*

	<u>Nature of Offence</u>	<u>Section</u>	<u>Penalty</u>
	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
38/2004 S. 7 (a).	Failure to make returns.	16 (4)	\$150,000.00 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 licensee and subsidiaries.	19 (5)	\$150,000.00
38/2004 S. 7 (b).	Breach of duty of auditor to carry out expanded audit as directed by Supervisor.	19B (3)	\$1,200,000.00
	Failure of shareholder to comply with notice issued by Minister.	22 (2)	\$600,000.00