

JAMAICA

No. 11 – 2002

I assent,

[L.S.]

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

AN ACT to Amend the Banking Act.

[28th March, 2002]

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

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

Short title
and
construction.

2. Section 2 of the principal Act is amended—

Amendment
of section 2 of
principal Act.

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

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

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

Amendment
of section 11
of principal
Act.

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

Amendment
of section 17
of principal
Act.

4. Section 17 of the principal Act is amended—

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

"Loss reserves on credit facilities.";

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

Amendment
of section 19
of principal
Act.

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

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

Amendment
of section 25
of principal
Act.

6. Section 25 of the principal Act is amended—

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

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

Second
Schedule.

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

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

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

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

Amendment of section 25A of principal Act.

- (a) by deleting the words "Minister has" and substituting therefor the words "Supervisor has";
- (b) by deleting the numeral "(6)" and substituting therefor the numeral "(6A)".

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

Amendment of section 27 of principal Act.

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

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

"Supervisor may require information.

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

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

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

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

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

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

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

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

Restructuring
of ownership
of bank.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) as to the stringency of the fit and proper criteria applied by the competent authority in the country of incorporation of the foreign financial holding company or foreign ultimate holding company;
- (b) by the competent authority in the country of incorporation of the foreign financial holding company that—
 - (i) the foreign financial holding company is supervised on a consolidated basis; and
 - (ii) there are no impediments to the Supervisor's receipt of information as regards that foreign financial holding company from the head office thereof or the competent authority.

Ownership of
subsidiaries
etc. by banks,
etc.

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

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

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

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

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

- (a) capital requirements, including market risks on a group-wide basis;
- (b) limits on—
 - (i) large exposures;
 - (ii) intra group transactions;
 - (iii) holdings in any regulated or supervised financial institution.

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

Management or investment of customers' funds.

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

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

10. Section 42 of the principal Act is amended—

Amendment of section 42 of principal Act.

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

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

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

Insertion of new section 42A in principal Act.

“Penalties.
Fifth
Schedule.

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

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

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

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

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

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

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

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

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

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

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

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

(a) prescribe—

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

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

Fifth
Schedule.

(b) amend the Fifth Schedule.

(11) An order made under subsection (10)

(b) shall be subject to affirmative resolution."

Amendment
of First
Schedule to
principal Act.

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

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

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

Amendment
of Second
Schedule to
principal Act.

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

(a) in Part A—

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

(b) in Part C—

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

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

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

Amendment
of Third
Schedule to
principal Act.

“Failure to provide consolidated balance sheet and profit and loss account.	19(5)	On conviction, to a fine not exceeding \$250,000.00
Failure to comply with a direction or a cease and desist order.	25(4)	On conviction, to a fine not exceeding \$2,000,000.00.
Refusal to furnish information or obey summons.	29C(4)	On conviction, to a fine not exceeding \$250,000.00
Failure to comply with directions.	29D(3) 29F(3)	On conviction, to a fine not exceeding \$2,000,000.00.”.

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

Amendment
of Fourth
Schedule to
principal Act.

- (a) by deleting the full stop at the end of paragraph (i) and substituting therefor a semicolon;
- (b) by inserting next after paragraph (i) the following as paragraphs (j), (k), (l) and (m)—
 - “(j) on the recommendation of the Supervisor, the Minister in writing directs such disclosure;
 - (k) the circumstances are such that it is in the interests of the bank that the information be disclosed;
 - (l) disclosure is required under another enactment;
 - (m) disclosure is required by virtue of an order of the court, other than an order under paragraph (g).”.

Insertion of
new fifth
Schedule in
principal Act.

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

“ FIFTH SCHEDULE (Section 42A)
Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty

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

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

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

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

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