



JAMAICA

No. 12—2002

I assent,

[L.S.]

H. F. COOKE,  
*Governor-General.*

28th day of March, 2002.

AN ACT to Amend the Building Societies 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 Building Societies (Amendment) Act, 2002, and shall be read and construed as one with the Building Societies Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title  
and con-  
struction.

2. Section 75 of the principal Act is amended by—

(a) inserting in the heading immediately after the word "*Minister*" the words "*and Supervisor*";

Amendment  
of section  
75 of prin-  
cipal Act.

- (b) insertion next after the definition of “proprietary society” the following—

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

Insertion of new sections 75A, 75B, 75C, 75D and 75E in principal Act.

3. The principal Act is amended by inserting next after section 75 the following as sections 75A, 75B, 75C, 75D and 75E—

“Supervisor may require information.

75A.—(1) The Supervisor may require any company which is a member of a group of which a society 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 society 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 society;
- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from the society;
- (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 officer, 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.

Restructuring of ownership of building society.

75B.—(1) Where a society is a member of a group and at least one member of that group is not a society or other regulated or supervised financial institution, the Supervisor may, in writing, direct the society to undertake—

- (a) a restructuring such that ownership of the society 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;
- (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 society.

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

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

- (a) examine and inspect the books of the society'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 or any member of the group to provide information concerning its operations, so as to ascertain the likely effects of such operations on the society;

- (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 society is a member of a group and the society 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 society and other members of the group, the Supervisor may—

- (a) treat the non-member as a member of the group; or
- (b) require the society 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 8B (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 75A 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 sub-  
sidiaries  
by building  
society.

75C.—(1) Subject to subsection (2), a society 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 society 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  
re risk.

75D.—(1) The Supervisor may issue directions to a society, 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 society or financial holding company which fails to comply with directions under this section shall be guilty of an offence.

Manage-  
ment or in-  
vestment of  
customer's  
funds.

75E.—(1) A society 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 society that engages in proprietary trading in securities for its own account shall conform with the Standards of Best Practice referred to in subsection (1).”.



Insertion  
of new  
section 85  
in princi-  
pal Act.

4. The principal Act is amended by inserting next after section 84 the following as section 85—

“Secrecy of  
society  
officials.

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

Eighth  
Schedule.

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

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”.

Insertion of  
new Eighth  
Schedule in  
principal  
Act.

5. The principal Act is amended by inserting next after the Seventh Schedule the following as the Eighth Schedule—

“

EIGHTH SCHEDULE (Section 85(2))

*Circumstances in which information on customer’s  
accounts may be disclosed*

Section 86(1) shall not apply in any case where—

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

- (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 society and the customer relating to transactions carried out by the customer; or
  - (ii) brought by the society 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 society has been served with a court order attaching money in the account of the customer;
- (h) 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 con-

siders it in the public interest that such disclosure be made;

- (i) the Minister in writing directs such disclosure in the public interest;
- (j) the circumstances are such that it is in the interests of the society that the information be disclosed;
- (k) disclosure is required under another enactment;
- (l) disclosure is required by virtue of an order of the court, other than an order under paragraph (g).”

**Transitional.** 6.—(1) Every society 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 75E, 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 arrangement as may be specified by Standards of Best Practice issued by the Bank of Jamaica or regulations issued pursuant to the Bank of Jamaica Act.

(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 Building Societies (Amendment) Act, 2002.

