

THE BANKING SERVICES ACT

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SCHEDULES.

THE BANKING SERVICES ACT

[30th September, 2015.]

Act
6 of 2014,
24 of 2015
S. 5.PART I. *Preliminary*

1. This Act may be cited as the Banking Services Act. Short title.
- 2.—(1) In this Act, unless the context otherwise requires— Inter-pretation.
- “advertisement” means the publication, display, presentation, dissemination or conveyance of any—
- (a) invitation or solicitation;
 - (b) sky sign, notice, handbill, brochure, pamphlet, placard, board, poster or other similar publication;
 - (c) circular;
 - (d) exhibition of photographs or cinematograph films;
 - (e) word, message on paper, message transmitted by way of electronic means, a social network or the Internet, or mobile message;
 - (f) sound broadcasting;
 - (g) programme, television or telephone communication; or
 - (h) other form of communication,
- but does not include a prospectus, as defined in the Companies Act, issued by a company and, subject to subsection (8), reference to the issue of an advertisement shall be construed accordingly;
- “advertisement for deposits” means, in relation to any person, an advertisement inviting the public, or members of the public, to make a deposit with that person;

“affiliated” has the meaning assigned to it in section 2 of the Companies Act;

“assigned capital” means any portion of the capital of a foreign bank, consisting of unencumbered assets, as is specifically and exclusively assigned by that foreign bank to the financing of its branch operations in Jamaica and is not available to finance any other operation of the foreign bank;

“authorized officer” has the meaning assigned to it in the Bank of Jamaica Act;

“bank” means any company—

(a) licensed as a bank under the Banking Act prior to the commencement date; or

(b) licensed as a bank under this Act;

“Bank” means the Bank of Jamaica established by the Bank of Jamaica Act;

“banking business” means—

(a) the business of any one or more of the following activities carried out by a deposit taking institution—

(i) receiving deposits from the public which may be invested by way of advances to customers or otherwise;

(ii) in the case of a bank, and without limiting the application of subparagraph (i) in relation thereto, receiving deposits from the public on current or deposit account, which is repayable, on demand, by cheque or order;

(iii) the operation of automated banking machines, automated teller machines or similar devices;

- (iv) the issue of electronic money; or
- (v) any other business specified by the Supervisor as banking business by notice published in the *Gazette*; but

(b) does not include payment products or activities authorized by the Bank under the *Payment, Clearing and Settlement Act* carried out by an entity other than a deposit taking institution;

“branch” means an office or place of business (other than a head office, principal office or representative office) where a deposit taking institution carries on any banking business;

“building society” means a society incorporated under the *Building Societies Act* and—

(a) licensed under that Act as a building society prior to the commencement date; or

(b) licensed under this Act to operate as a building society;

“capital base”, in relation to a licensee, means Tier 1 capital;

“capital share”, in relation to a building society, means a permanent share that is not redeemable;

“commencement date” means the day on which this Act comes into operation;

“company” means a body corporate, whether incorporated under the laws of Jamaica or of any other country, and any entity which, in the opinion of the Supervisor, is analogous to a body corporate;

“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 (whether acting alone or

jointly with another, who holds or is beneficially entitled to fifty *per centum* or more of the votes in the licensee or other company) to secure by means of those voting rights that the affairs of the licensee or other company are conducted in accordance with the wishes of that person;

“counterparty exposure”, in relation to a licensee, includes any transaction or arrangement that creates an exposure to a counterparty, whether or not the exposure is recorded on the licensee’s balance sheet, such as—

- (a) credit facilities;
- (b) commitments made to or on behalf of counterparties, whether used or unused and whether revocable or irrevocable;
- (c) contingent liabilities;
- (d) investments, and other holdings of debt or equity securities;
- (e) reverse repurchase transactions; and
- (f) derivatives;

“counterparty group”, for the purpose of determining compliance with exposure requirements under this Act, includes two or more persons (whether or not a “group”) who are not connected to the licensee and who are linked or related to each other by one or more of the following—

- (a) cross guarantees;
- (b) common collateral, common ownership, management or financial interest, partnerships or joint ventures;
- (c) the ability to exercise control over the same persons, whether direct or indirect;
- (d) financial interdependence in such a manner

that the financial soundness of any of them may affect the financial soundness of the others; or

- (e) any other connection or relationship which, according to the Supervisor's assessment, identifies the counterparties as constituting a single risk to the licensee;

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

"deferred share" means a share (whether or not interest bearing) issued by a mutual society on terms that it shall not be redeemable in any period of less than five years;

"deposit" means—

- (a) a sum of money paid on terms—

- (i) under which it will be repaid—

- (A) with or without interest or a premium; and

- (B) 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

- (ii) subject to subsection (7), which are not referable to the provision of property or services or to the giving of security; or

- (b) any other dealing, transaction or arrangement, involving the receipt of funds, which

according to the Supervisor's assessment should be deemed a deposit and which is so specified by the Supervisor by notice published in the *Gazette*;

“deposit liabilities” means, in relation to—

- (a) a Jamaican-based deposit taking institution, the deposit liabilities of the institution whether payable in Jamaica or elsewhere; and
- (b) a foreign bank, the deposit liabilities of that bank payable under its branch operations in Jamaica whether payable in Jamaica or elsewhere;

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

“deposit taking institution” means—

- (a) a bank;
- (b) a merchant bank; or
- (c) a building society;

“Deputy Supervisor” means the Deputy Supervisor of banks and financial institutions appointed under section 34B of the *Bank of Jamaica Act*;

“designated authority” includes—

- (a) the Chief Technical Director of the Financial Investigations Division or his nominee; and
- (b) the Commissioner of Police or his nominee;

“director”, subject to section 32, means a director, trustee or other person who is a member of the board or other body (by whatever name called) of a company (by whatever name called) that is responsible for the governance and oversight of the company;

“document” means anything in which information of any description is recorded;

“effective control” means the ability of a person (whether acting alone, or jointly with another) to ensure that the affairs of the licensee or other company are conducted in accordance with the wishes of that person, whether or not the person has control of the licensee or other company;

“electronic money” means monetary value represented by a claim on the issuer thereof, which value is—

- (a) stored or recorded by electronic means;
- (b) provided by the issuer in exchange for the present or future receipt of moneys or other valuable consideration from the person entitled to make the claim;
- (c) transferable and accepted as a means of payment by persons other than the issuer, whether via point of sale or similar technology or otherwise;
- (d) redeemable or repayable, whether in full or in part, on demand for cash, by deposit into a bank account or through the use of any automated banking or automated teller machine or any similar device; or
- (e) not referable to credit facilities, whether secured or unsecured, extended by the issuer;

“eligible auditor” means a registered public accountant as defined in section 2 of the *Public Accountancy Act* to whom section 89(1) does not apply;

“eligible reserves” means the statutory reserve fund, the retained earnings reserve and any other fund established by a licensee and approved by the Supervisor as being part of the licensee’s capital base and regulatory capital, whether on a stand alone basis or on a consolidated basis;

“financial group” means a group that—

- (a) includes a deposit taking institution;
- (b) is headed by a financial holding company; and
- (c) is comprised of companies that each undertakes one or more financial services and, where applicable, a company referred to in section 73(2);

“financial holding company” means a company—

- (a) licensed under this Act as a financial holding company; and
- (b) under which all other companies within the financial group are held, including—
 - (i) any of that company’s subsidiaries incorporated outside of Jamaica; and
 - (ii) entities over which it has effective control;

“financial institution” means a person who undertakes or engages in financial services;

“financial services” includes—

- (a) banking business;
- (b) lending;
- (c) consumer credit;
- (d) financing commercial transactions;
- (e) transfer of money or value;
- (f) issuing electronic money;
- (g) financial guarantees and commitments;
- (h) dealing in securities and trading in other financial instruments;

- (i) participation in security issues;
- (j) individual and collective portfolio management;
- (k) insurance business and insurance related financial services;
- (l) investment of moneys and other financial assets on behalf of third parties;
- (m) pension fund management; and
- (n) any other service designated as a financial service by the Supervisor by order published in the *Gazette*, subject to affirmation resolution;

“fit and proper person” has the meaning assigned to it in section 3;

“foreign bank” means a bank which is not incorporated in Jamaica and the head office of which is outside of Jamaica;

“foreign financial institution” means a person formed, or incorporated under the laws of a country other than Jamaica that undertakes or engages in financial services;

“foreign financial regulatory authority” means a supervisory authority in a country other than Jamaica which has supervisory functions—

- (a) with respect to a company that is incorporated in and provides financial services in that country; and
- (b) which are similar to the functions of the Bank or the Financial Services Commission;

“functions” includes powers and duties;

“Government company” means a company registered under the *Companies Act*, being a company wholly owned by the Government or an agency of Government or in which the Government or an agency of Government holds more than fifty *per centum* of the shares;

“group” in relation to a company, means that company and—

- (a) any other company that is its holding company;
- (b) any other company that is a subsidiary of the holding company;
- (c) any company that directly or indirectly controls or is controlled, directly or indirectly, by any company referred to in paragraph (a) or (b);
- (d) any company that effectively controls or is effectively controlled by any company referred to in paragraph (a) or (b); and
- (e) any company that is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c);

“immediate relative” in relation to any person, means the person’s spouse, his children (including step-children) and their spouses, his parents, his brothers or his sisters;

“incorporating documents” means the statute, charter, memorandum of association, articles of association, articles of incorporation, rules and by-laws, partnership agreements, or other instruments, under or by which a licensee or other body is established, its governing and administrative structure and the scope of its functions and business are set out, whether contained in one or more documents;

“independent director” means a director of a licensee or company who is not—

- (a) an employee of the licensee or company;
- (b) a person holding five *per centum* or more of the shares of the licensee or company or a connected person in relation to the licensee or company; or
- (c) a party to a significant economic or other relationship with the licensee or company that, in the opinion of the Supervisor, is inconsistent with that director being considered as independent of the licensee or company;

“key employee” means—

- (a) a person who is employed contracted below the level of the management of a licensee to perform functions that—
 - (i) can substantially affect the financial condition or reputation of the licensee, or both; and
 - (ii) meet the criteria specified in any guidelines prescribed by the Supervisor; or
- (b) a person who is deemed by the Supervisor to be a key employee of the licensee;

“land” includes an interest in land;

“licence” means a licence granted under this Act;

“licensee” means a person or body that is licensed under this Act;

“manager” includes, any person, by whatever name called, for the time being in charge of the management of a licensee or of important aspects of the operations of a licensee;

“merchant bank” means a company that—

- (a) immediately preceding the commencement date was a “licensee” under the *Financial Institutions Act*; or
- (b) is licensed as a merchant bank under this Act;

“mixed conglomerate” means a corporate group—

- (a) which includes a deposit taking institution; and
- (b) at least one member of which undertakes real sector activities;

“mutual society” means a building society in relation to which—

- (a) all assets of the society are held by members in common;
- (b) each member is entitled to one vote without regard to the number of shares, if any, held by the member; and
- (c) any surplus assets remaining after a dissolution of the society are to be distributed among members *pari passu*;

“net profits” shall be construed in accordance with section 41(5);

“officer”, in relation to a body corporate, includes an executive director, a managing director, a chief executive officer, a chief financial officer, a manager and the company secretary;

“paid-up capital” shall be construed in accordance with subsection (4);

“permanent capital fund” with respect to mutual societies means non-withdrawable funds set aside out of realized reserves to meet minimum capital, which the

Supervisor has approved being treated as permanent capital;

“proprietary society” means a building society in relation to which—

- (a) voting rights are confined to a particular class of shares and are determined by the number of shares held; and
- (b) any surplus assets remaining after a dissolution are to be distributed to holders of a particular class of shares or subordinated debt in the rank and proportion appropriate to their share holding;

“real sector activities” means, in relation to a financial group, any commercial activities other than financial services;

“regulator” means the Bank, the Financial Services Commission, the Registrar of Cooperatives, a foreign financial regulatory authority or any authority that has functions with respect to a company which is incorporated in Jamaica or service which is offered in Jamaica that are similar to the supervisory functions of the Bank or the Financial Services Commission;

“regulatory capital”, in relation to a licensee, means Tier 1 capital plus Tier 2 capital less any deductions prescribed under any regulations relating to capital adequacy made under this Act;

“representative office” means any office of a deposit taking institution or financial holding company which is not a head office, principal office or branch;

“retained earnings reserve” means a voluntary reserve established by a licensee that has been notified as such to the Supervisor and into which is paid the portion of a licensee’s net profits, including realized capital gains, as the licensee may determine;

“secured”, in relation to credit facilities, means an interest by way of security that takes effect as a legal interest in the underlying collateral and has been perfected in accordance with the applicable law and; for the purpose of this definition, security shall be construed as including a confirmed irrevocable letter of credit that is issued by a licensed bank or by a foreign bank and is acceptable to the Supervisor and such other instruments as the Supervisor may, from time to time, determine;

“shell bank” means a bank that has no physical presence in the country in which it is licensed and each of the following shall not constitute, on its own, physical presence—

- (a) the appointment of a local agent or the employment of non-managerial level staff;
- (b) the presence of resident staff who do not direct the policy and strategy of the bank;
- (c) the establishment of the bank solely or principally by virtual means; or
- (d) any other type or kind of establishment which is deemed by the Supervisor to be consistent with operating as a shell bank;

“statutory reserve fund” means the fund maintained under section 41;

“subordinated debt” means an instrument evidencing a licensee’s indebtedness, whereby the indebtedness will, in the event of the insolvency or winding up of the licensee, be subordinated in right of payment to all deposit liabilities and all liabilities of the licensee except those that, by terms, rank equally with, or are subordinate to the indebtedness;

“subsidiary” has the meaning assigned to it in section

151(1) of the *Companies Act*;

“substantial shareholder” means a person who holds twenty *per centum* or more of the shares of a licensee;

“Supervisor” means the Governor of the Bank acting in the capacity as the Supervisor of banks financial holding companies and other specified financial institutions under section 34B of the *Bank of Jamaica Act*;

“Supervisory Appeals Board” means the appeal tribunal established by section 27;

“Supervisory Committee” means the committee established by section 6;

“Supervisory Department” means the department established under Part VA of the *Bank of Jamaica Act*;

“Supervisory Rules” means the rules made by the Supervisory Committee under section 132;

“Tier 1 capital” has the meaning assigned to it in the First Schedule or as otherwise prescribed; First Schedule.

“Tier 2 capital” has the meaning assigned to it in the First Schedule or as otherwise prescribed; First Schedule.

“trust business” includes property devolving upon a licensee, whether in the capacity of trustee, executor or administrator;

“ultimate holding company” means the company under which the other companies within a group are held;

“unsecured”, in relation to credit facilities, means—

(a) granted without security;

(b) granted without the lender’s interest in the assets comprising the security taking effect

as a legal interest and being perfected in accordance with the applicable law; or

- (c) 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 Supervisor whenever he deems that no market value exists for such assets;

“voting right”, in relation to a body, means a currently exercisable right to cast a vote at a meeting of shareholders or members of that body.

(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) a company of which L has control or effective control;
- (e) a company that, whether by itself or jointly with another, has control or effective control of L;
- (f) any company of which L and persons connected with L together have control or effective control;
- (g) any company that together with L constitute a group;
- (h) 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;
- (i) the ultimate holding company of L;
- (j) substantial shareholders of L;

(k) the ultimate beneficial owners of any substantial shareholding in L, whether under a trust or other legal arrangement or through any direct or indirect shareholding; and

(l) any other person identified by the Supervisor to be a person who should be treated as connected to L by virtue of that person's relationship with L.

(3) A company is the holding company of a 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 the shares.

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

(a) unless the Supervisor otherwise determines and subject to paragraph (b), there shall be disregarded any portion of capital subscribed to and paid-up by a connected person who had within the three years immediately preceding the payment, received from the licensee 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 the capital; and

(b) the amount disregarded under paragraph (a) 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 where the licensee's 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 Supervisor.

(7) In paragraph (a)(ii) of the definition of "deposit" in subsection (1), money paid on terms which are referable to the provision of property or services or to the giving of security if,

and only if, it is paid by way of—

- (a) 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;
- (b) 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
- (c) security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

(8) 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 the person on every day on which the person causes or permits it to be so displayed or exhibited.

Meaning of
fit and proper
person.

3.—(1) For the purposes of this Act, an individual, whether in Jamaica or elsewhere, is a fit and proper person if—

- (a) the individual—
 - (i) has not been convicted of an offence involving dishonesty or of an offence listed in Part III of this Act or in the Second Schedule to the *Proceeds of Crime Act* or an offence that is similar to any such offence in another jurisdiction;
 - (ii) is not an undischarged bankrupt; and
 - (iii) is in compliance with any tax and other statutory requirements imposed on the individual;
- (b) the individual's employment record or any other information does not give the Supervisory Committee reasonable cause to believe that the individual carried

out any act involving dishonesty or any act involving impropriety in the engagement of banking business or other financial services; and

(c) the individual is, in the opinion of the Supervisory Committee—

- (i) a person of sound probity, and is able to exercise competence, diligence and sound judgment in fulfilling his functions in relation to the licensee and whose relationship with the licensee will not threaten the interests of depositors;
- (ii) a person whose appointment to the board of, employment by, or ownership of, the licensee will not result in a conflict of interest; and
- (iii) a person who possesses the knowledge skills and experience which are necessary for the intended functions to be carried out by that person.

(2) For the purposes of this Act, the Supervisor shall assess whether the directors, officers, key employees and substantial shareholders of licensees and persons mentioned in subsection (3), are fit and proper persons—

- (a) on an on-going basis;
 - (b) on the review of a licensing application or any application involving a change in the ownership of, or control of, a licensee or a person to whom subsection (3) relates.
- (3) The persons to whom subsection (2) relates are—
- (a) an ultimate holding company;
 - (b) where the Supervisory Committee has permitted an ownership structure under section 69(3) and (5) and 73(2), any entity within that ownership structure that the Supervisory Committee so determines;

- (c) a subsidiary of the financial holding company which is not a licensee under this Act but who, in the opinion of the Supervisory Committee, undertakes key functions on behalf of the financial group or for a licensee under this Act; and
- (d) a foreign financial holding company.

(4) The Supervisory Committee shall have regard to any evidence that the individual—

- (a) has engaged in any business practice appearing to the Supervisory Committee to be deceitful or oppressive or otherwise improper or which reflects discredit to his method of conducting business; or
- (b) has contravened any provision of any enactment designed for the protection of the public against financial loss due to—
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or in the management of companies; or
 - (ii) bankruptcy.

(5) Where the Supervisory Committee proposes to exercise functions under this Act in relation to a company that is regulated by another regulator, the Supervisory Committee shall cause the Supervisor to consult with that regulator before exercising those functions.

(6) For the purposes of determining whether a person is a fit and proper person, the Supervisory Committee may consider any assessment undertaken by a regulator.

PART II. *Administration*

4. The Supervisor and the Supervisory Committee shall, without limiting their respective powers under any other enactment, exercise the functions conferred upon them by this Act and the *Bank of Jamaica Act*.

Exercise of
functions
under this
Act.

5. In the performance of their functions under this Act, the Supervisor and Supervisory Committee shall take into account the following principles—

Principles to take into account when performing functions.

- (a) there shall be objective, independent and impartial supervision of licensees on the basis of sound judgement;
- (b) there shall be consistency in the treatment of similar institutions;
- (c) depositors shall have access to adequate information from the deposit taking institutions;
- (d) the need for sound governance by licensees;
- (e) the need for effective risk management by licensees; and
- (f) unnecessary compliance costs shall be avoided.

6.—(1) For the due administration of this Act, there is constituted a committee to be known as the Supervisory Committee.

Constitution of Supervisory Committee.

(2) The provisions of the Second Schedule shall have effect in relation to the constitution and procedures of the Supervisory Committee.

Second Schedule.

7.—(1) The Supervisory Committee shall consider and make determinations on the following matters—

Functions of Supervisory Committee.

- (a) the grant, refusal and revocation of licences;
- (b) whether a person is a fit and proper person;
- (c) matters regarding—
 - (i) the establishment of branch operations and representative offices;
 - (ii) corporate and group restructuring;
 - (iii) changes in ownership of licensees; and
 - (iv) amalgamations, mergers and acquisitions.

- (d) exemptions from the statutory exposure limits;
- (e) the variation of prudential capital adequacy requirements;
- (f) the authorization of arrangements for the sharing of information and other forms of co-operation with any other regulator;
- (g) enforcement measures under this Act;
- (h) the making of regulations under Part XXVI for the operation of licensees;
- (i) monitoring the enforcement of any code of conduct;
- (j) investigatory action related to breaches of this Act and any regulations made under this Act;
- (k) objection to the appointment of external auditors;
- (l) the removal of external auditors; and
- (m) standards of sound practices for licensees.

(2) The Supervisor shall be responsible for implementing the determinations of the Supervisory Committee under subsection (1).

(3) In carrying out its functions under subsection (1), the Supervisory Committee shall take into account the assessments and recommendations of the Supervisor.

(4) The Supervisory Committee may, to such extent and subject to such restrictions and conditions as it may think proper, delegate any of its functions under this Act.

(5) Every delegation under subsection (4) is revocable by the Supervisory Committee and the delegation of a function shall not preclude the performance of that function by the Supervisory Committee.

(6) In making a determination under paragraph (a) or (c) of subsection (1), the Supervisory Committee shall consult with the Minister on matters relating to the national interest.

8.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Supervisory Committee, in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act or the *Bank of Jamaica Act*. Protection of members of Supervisory Committee.

(2) Where any member of the Supervisory Committee is exempt from liability by reason only of the provisions of this paragraph, the Bank shall be liable to the extent that it would be if the said member were an employee or an agent of the Bank.

9.—(1) A member of the Supervisory Committee shall not disclose information regarding the operations of any licensee, or the affairs of a customer of a deposit taking institution, obtained in consequence of the performance of his functions under this Act, other than for the purposes of this Act. Secrecy of Supervisory Committee.

(2) A member of the Supervisory Committee who contravenes subsection (1) commits an offence.

PART III. *Prohibition and Restriction on Deposit Taking*

10.—(1) Except under and in accordance with the provisions of this Act and any regulations made under this Act, a person shall not— Restriction on deposit taking generally.

- (a) issue or cause to be issued advertisements for deposits;
- (b) solicit deposits in any other manner from members of the public;
- (c) engage in activities involving the taking of deposits in any manner; or
- (d) engage in any other banking business.

(2) A person who contravenes subsection (1) commits an offence.

11.—(1) A person shall not undertake business as a shell bank or undertake or facilitate dealings of any kind or nature with a shell bank. Prohibition on shell banks.

(2) A person who contravenes subsection (1) commits an offence.

Offence of fraudulent misrepresentation *re* licence, *etc.*

12.—(1) A person shall not fraudulently misrepresent that a person is—

- (a) licensed under this Act; or
- (b) authorized to engage in business or activities on behalf of a deposit taking institution.

(2) A person who contravenes subsection (1) commits an offence.

Offence *re* inducement to place money on deposit.

13.—(1) A person shall not—

- (a) by any statement, promise, forecast or projection which the person knows to be misleading, false or deceptive; or
- (b) 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,

induce or attempt to induce another person to—

- (i) place money on deposit with the person or any other person; or
- (ii) enter into, or offer to enter into, any agreement for that purpose.

(2) A person who contravenes subsection (1) commits an offence.

Restrictions on dealing with, for, or on behalf of prohibited schemes.

14.—(1) A licensee shall not, in the course of operations, knowingly or without exercising reasonable care, have dealings of any nature with, or facilitate or conduct any transaction with, for, or on behalf of—

- (a) a person who transacts business in contravention of this Part; or
- (b) a prohibited scheme.

(2) A prohibited scheme referred to in subsection (1)(b) is any activity which falls within the definition of “prohibited scheme” set out in the *Securities Act*.

(3) A person who contravenes subsection (1) commits an offence.

(4) The provisions of this section shall apply in respect of any banking business conducted or facilitated by a deposit taking institution involving persons outside of Jamaica with any person situated inside of Jamaica, as if at all material times all the persons were situated inside of Jamaica.

15.—(1) A person who is not licensed to engage in banking business shall not use any name, title, trade mark, style, designation or description that represents or implies that the person is licensed to engage in banking business.

Offence of holding out to be licensee.

(2) A person who contravenes subsection (1) commits an offence.

16.—(1) Where an authorized officer has reasonable grounds for suspecting that a person is committing or has committed an offence under this Part and that evidence of the commission of the offence is to be found on any premises specified in the information, the authorized officer may, for the purpose of carrying out an investigation in relation to the offence, apply, by information, under subsection (2) to a Justice of the Peace, for a warrant to search the premises.

Search warrant for contravention of this Part.

(2) Subject to subsections (3) and (4), where due to exigent circumstances it is not practicable to obtain a court order to do so, a Justice of the Peace, may, on an application made under subsection (1), issue a warrant authorizing the authorized officer named in the warrant with such assistance as may be necessary and reasonable to—

- (a) enter the premises named in the warrant, with or without a constable;
- (b) search the premises for such books, accounts, records, cheques, securities or other documents, whether stored

physically or electronically (in this section referred to as “relevant documents”); and

(c) seize and detain—

- (i) any relevant documents or cash found in the course of the search that, in the opinion of the authorized officer, is likely to be of substantial value (whether by itself or together with other documents) to the investigation in respect of which the application is made; or
- (ii) any relevant documents that the authorized officer believes, on reasonable grounds, will afford evidence as to the commission of an offence.

(3) A Justice of the Peace shall not issue a warrant under subsection (2) unless he is satisfied that—

- (a) it is not practicable to communicate with any person having the power to grant entry to the premises;
- (b) entry to the premises will not be granted unless a warrant is produced; or
- (c) the relevant investigation might be seriously prejudiced unless the authorized officer is granted immediate access to the relevant documents.

(4) A search warrant shall not be issued under subsection (2) unless—

- (a) the applicant or some other person has given the Justice of the Peace, either orally or by affidavit, any further information that the Justice of the Peace requires concerning the grounds on which the warrant is sought; and
- (b) the Justice of the Peace is satisfied that there are reasonable grounds for issuing the warrant.

(5) A search warrant issued under subsection (2) shall state—

- (a) the purpose for which it is issued, including a reference to the offence that is being committed, has been committed or is believed to have been committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of relevant documents authorized to be seized;
- (d) that cash is authorized to be seized; and
- (e) that the warrant remains in force until—
 - (i) it ceases to be in force under subsection (10); or
 - (ii) it is varied or discharged by a Judge in Chambers pursuant to an application made under subsection (9).

(6) An authorized officer shall not seize any document which is subject to legal professional privilege.

(7) An authorized officer may, upon request, make copies of any relevant documents or take extracts therefrom at the expense of the person who is suspected of committing or having committed the offence.

(8) A person who is aggrieved by the issue of a warrant under this section may apply to a Judge in Chambers to vary or discharge the order and shall, within twenty-four hours after making the application, serve notice on the Supervisor to join in the proceedings.

(9) A warrant remains in force—

- (a) until the earlier of—
 - (i) the end of the period for which it is to remain in force as stated in the warrant; or
 - (ii) fourteen days after the date on which the warrant is issued; or

- (b) until it is varied or discharged by a Judge in Chambers pursuant to an application made under subsection (8).

(10) A Judge in Chambers may, on an *inter partes* application by the Supervisor—

- (a) extend the period of operation of the warrant, for a period of sixty days, or such further period, to a maximum period of two years, as the Court may specify; and
- (b) make such other order as the Court considers appropriate in relation to the operation of the order.

(11) A person who hinders or obstructs an authorized officer or any person acting in aid of such officer in the performance of his functions under subsection (2) commits an offence.

(12) In this section “premises” includes any place and in particular any building, receptacle or vehicle.

PART IV. *Restriction on Use of Certain Words in Name or Title*

Restriction
on use of
certain words
in name or
title.

17.—(1) In this Part, “restricted words”—

- (a) means the words “bank”, “banker”, “banking”, “building society”, “deposit taking institution” and “merchant bank”; and
- (b) includes—
 - (i) any of those words as part of any other word;
 - (ii) any grammatical variation or derivative of the words;
 - (iii) a translation of the words into another language (whether or not the translation of those words is part of any other word).

(2) Except with the approval, in writing, of the Supervisor subject to subsection (3), a person shall not—

- (a) form a company or other body using a name or title that includes a restricted word;
- (b) change the name or title of a company or other body to a name or title that includes a restricted words; or
- (c) carry on any activity, directly or indirectly, in Jamaica using a name or title that includes a restricted word.

(3) Subsection (2) shall not apply to any association formed by deposit taking institutions for the purpose of representing the common interest of the members of the association or in any case where a restricted word forms part of the name of an individual or place.

(4) Subject to subsection (5), the Supervisor may, if he considers it to be in the public interest to do so, by notice in writing, revoke any approval given to any person under subsection (2) and that person shall comply with such notice within the period specified.

(5) Before an approval is revoked, the Supervisor shall give the person concerned notice in writing of the intended revocation and shall afford that person an opportunity to submit to the Supervisor, a written statement of objections to the proposed revocation of approval.

(6) Any person who contravenes subsection (2) or fails to comply with a notice under subsection (4) commits an offence.

*PART V. Licensing of Deposit Taking Institutions and
Financial Holding Companies*

18. This Part shall not apply to—

Application
of Part V.

- (a) the Bank;
- (b) the Jamaica Mortgage Bank;
- (c) a ministry, department, Executive Agency or agency

- of government;
- (d) any society registered under the—
 - (i) *Agricultural Credit Board Act*;
 - (ii) *Co-operative Societies Act*;
 - (iii) *Friendly Societies Act*; or
 - (iv) *Industrial and Provident Societies Act*;
- (e) unless the Supervisory Committee determines otherwise, a co-operative arrangement for savings among individuals limited to a maximum number of twenty individuals and in respect of which the contributions per individual are paid in, in equal sums and aggregated, and fully paid out to a participant in the arrangement at agreed intervals;
- (f) an insurance company registered under the *Insurance Act*;
- (g) pension funds and retirement schemes registered under the *Pensions (Superannuation Funds and Retirement Schemes) Act*; and
- (h) a multilateral body or development bank specified by the Supervisor, with the approval of the Supervisory Committee, by notice published in the *Gazette*.

Licence.

19.—(1) Every company intending to engage in banking business in Jamaica shall apply to the Supervisory Committee for a licence in one of the following categories, that is to say, as—

- (a) a bank;
- (b) a merchant bank; or
- (c) a building society.

(2) Every company intending to function as a financial holding company shall apply to the Supervisory Committee for a licence.

(3) An application to the Supervisory Committee for a licence under this section, shall be made in the prescribed form.

20. In making a determination on the application, the Supervisory Committee shall have regard to the following matters—

Matters to be taken into account.

- (a) the licensing requirements and other matters set out in the Third Schedule;
- (b) the required due diligence and assessment to be undertaken in order to ascertain whether the licensing and other requirements under this Act have been met; and
- (c) any additional information that is needed for the assessment of the application to be supplied by the applicant or any other person.

Third Schedule.

21. The Supervisory Committee shall not grant a licence unless the Committee has had regard to the matters set out in section 20 and is satisfied that each person who, in the opinion of the Committee, is or is to be a substantial shareholder, director, officer or key employee—

Restriction on grant of licence.

- (a) is a fit and proper person; and
- (b) is not a person who is otherwise debarred from directorship, management and key employment under this Act.

22.—(1) If the Supervisory Committee determines that the applicant has satisfied the licensing and other requirements under this Act, the Committee may—

Grant, refusal or revocation of licence.

- (a) grant the licence and record the grant of the licence in a register; or
- (b) subject to subsection (3), refuse to grant the licence.

(2) Subject to subsection (3), if the Supervisory Committee determines that the applicant has not satisfied the licensing and other requirements under this Act, the Committee shall refuse to grant the licence.

(3) Where the Supervisory Committee intends to refuse to grant a licence under this section, the Supervisor shall—

- (a) notify the applicant in writing of the Supervisory Committee's intention to refuse to grant the licence and the reason for the intended refusal; and
- (b) afford to that applicant an opportunity to be heard.

(4) The Supervisory Committee may revoke a licence on the grounds specified in section 112 or for failure of the licensee to satisfy the licence condition at section 24(1)(e).

Non-transferability,
etc. of
licence.

23. A licence is not transferable or assignable.

Licence
conditions.

24.—(1) It shall be a condition of every licence that the licensee shall—

- (a) forthwith upon the grant of the licence, and annually, on or before each anniversary of the grant, while the licence remains in effect, pay the prescribed fee to the Accountant-General;
- (b) obtain coverage pertaining to the protection of deposits in accordance with the *Deposit Insurance Act* prior to accepting deposits;
- (c) if the proposed licensee is a foreign bank that wishes to operate a branch in Jamaica, notify the Supervisor, in writing forthwith of—
 - (i) any change of its principal office in Jamaica;
 - (ii) the name of one of its senior managers who is to be the company's authorized agent in Jamaica; and
 - (iii) the name of another of its officers who, in the absence or inability of the officer named under sub-paragraph (ii), is to be the company's authorized agent in Jamaica.
- (d) forthwith upon any change in the persons referred to in paragraph (c), notify the Supervisor of that

change; and

- (e) commence operation pursuant to the licence within twelve months of the grant of the licence or such longer period as the Supervisory Committee may allow.

(2) The Supervisory Committee may impose conditions on the grant of a licence as the Supervisor considers necessary and may, from time to time, add, vary or substitute such conditions as are appropriate.

(3) The Supervisory Committee may, if it considers it appropriate to do so, cause any condition referred to in subsection (2) to be published.

(4) The Supervisory Committee may cause the conditions to be set out in the licence or may otherwise communicate the conditions to the licensee in writing.

25.—(1) A licensee shall display or exhibit a copy of its licence, certified by the Supervisor in a conspicuous place on each of its premises where it conducts banking business.

Display of
licence.

(2) A person who contravenes subsection (1) commits an offence.

26.—(1) The Supervisory Committee shall publish or cause to be published by notice in the *Gazette*—

Publication of
change of
name, etc.

- (a) the name of each company to which a licence is granted;
- (b) the name of each company for which a licence has been revoked;
- (c) any change of name of a licensee; and
- (d) such other matters relating to licensing as the Supervisor Committee considers appropriate.

(2) The Supervisory Committee may publish or cause any condition of a licence granted under section 22 to be published in the *Gazette*.

PART VI. *Appeal*

Establishment
of
Supervisory
Appeals
Board.
Fourth
Schedule.

27.—(1) There is established an appeal tribunal to be known as the Supervisory Appeals Board.

(2) The provisions of the Fourth Schedule shall have effect as to the constitution of the Supervisory Appeals Board and otherwise in relation thereto.

Appeal to
Supervisory
Appeals
Board.

28.—(1) Every person who is aggrieved by a decision of the Supervisory Committee or the Supervisor, as the case may be, referred to in subsection (3) may appeal to the Supervisory Appeals Board by way of a notice of appeal within twenty-eight days of the date of the decision or within such longer period as the Board may, in any special circumstance, allow.

(2) The time for the filing of an appeal by a person under subsection (1) shall be calculated from the date of the communication, in writing, of the decision to the licensee.

(3) Subsection (1) shall apply to—

- (a) any decision as to whether a person is a fit and proper person;
- (b) any objection as to whether an external auditor is an eligible auditor or any decision for removal of an external auditor;
- (c) questions of compliance with a code of conduct.

(4) The notice of appeal shall set out clearly the grounds of the appeal and shall be accompanied by copies of any correspondence, document or statement relevant to the appeal.

(5) A copy of the notice of appeal together with copies of any correspondence, document or statement shall be served on the Supervisory Appeals Board.

(6) The Supervisory Appeals Board shall, within seven days of the receipt of a notice of appeal under subsection (1), request the Supervisor to furnish the Board and the aggrieved person, within twenty-one days, with a copy of the Supervisory Committee's or the Supervisor's decision, as the case may be, and the reasons therefor.

(7) The Supervisory Appeals Board may order that any book, paper, document or statement, relating to the appeal which is in the possession of the Bank or the person aggrieved be produced at the hearing of the appeal.

(8) The Supervisory Appeals Board shall cause all parties to the appeal to be informed—

- (a) of the date of the hearing of the appeal;
- (b) of their right to be represented by an attorney-at-law; and
- (c) that they may summon witnesses in their cause.

(9) On hearing an appeal under this section, the Supervisory Appeals Board may—

- (a) dismiss the appeal and confirm the decision of the Supervisory Committee or the Supervisor, as the case may be;
- (b) allow the appeal and set aside the decision;
- (c) vary the decision; or
- (d) direct that the matter be referred to the Supervisory Committee, or the Supervisor, as the case may be, for further consideration.

(10) Subject to subsection (11), a decision of the Supervisory Committee that is under appeal shall remain in effect until a decision has been rendered on appeal.

(11) Where a direction is made under subsection (9)(d), and pending further consideration of the matter by the Supervisory Committee, or the Supervisor, as the case may be, the Supervisory Appeals Board may stay the decision of the Supervisory Committee or the Supervisor if the Board is satisfied that—

- (a) the stability of the financial system will not be adversely affected;
- (b) the interest of depositors will not be prejudiced; and

- (c) the interest of the appellant will suffer irreparable harm if the stay is not granted.

Confidentiality
requirements
for
Supervisory
Appeals
Board.

29.—(1) A member of the Supervisory Appeals Board shall not disclose information regarding the operations of any licensee, or the affairs of a customer of a deposit taking institution or foreign bank, obtained in consequence of the performance of its functions under this Act, other than for the purposes of this Act.

(2) A member of the Supervisory Appeals Board who contravenes subsection (1) commits an offence.

PART VII. *Governance of Licensees*

Alteration of Incorporating Documents

Restriction
on alteration
of
incorporating
documents.

30.—(1) A licensee shall not make any alteration to any of its incorporating documents unless it informs the Supervisor, in writing, that it proposes to make the alteration and the Supervisor, in writing—

- (a) approves the alteration; or
- (b) does not, within thirty days of receipt of the notification, indicate to the licensee, his objection to the alteration.

(2) The Supervisor shall not object to an alteration to the incorporating documents of a licensee unless the alteration is, or is likely to result in, a breach—

- (a) of a condition of the licence;
- (b) of the provisions of this act or any regulations made under this Act; or
- (c) that would be inconsistent with, or prejudicial to, the good governance or prudent management or operation of the licensee.

(3) Any alteration made to the incorporating documents of a licensee that is registered or incorporated in Jamaica in contravention of subsection (1) shall be void.

(4) Every licensee shall, within fourteen days of the date on which any alteration is made to its incorporating documents, notify the Supervisor of such alterations.

(5) A licensee who contravenes subsection (1) or (4) commits an offence.

Board and Management Committees

31.—(1) Every licensee, other than a licensee that is a foreign bank, shall establish appropriate board and management committees to—

Board and management committees.

- (a) oversee the important aspects of the operation of the licensee;
- (b) establish due diligence processes (including background checks) that shall be undertaken for directors, officers and key employees; and
- (c) maintain the requirement that officers advise the Supervisor on a proactive basis of any fact that indicates potential or actual challenges to the ability of the licensee to meet its obligations.

(2) A licensee that is a foreign bank shall establish a board of management or such other governing body, that is satisfactory to the Supervisor, in relation to its branch operations in Jamaica; and the governing body so established shall be required to comply with the provisions of subsection (1) in like manner as the board and management committees referred to in that subsection are required to comply.

Board of Directors

32.—(1) Every licensee, other than a foreign bank, in relation to its branch operations in Jamaica, shall have a board of directors consisting of not less than five members which shall include such number of independent directors as is specified in section 34.

Board of directors.

(2) In the case of a foreign bank, director includes a member of the board of management or such other governing body in relation to its branch operations in Jamaica; and such

board of management or other governing body shall be subject to the governance provisions set out in this Part.

(3) The board of directors, board of management or such other governing body, shall be comprised of suitably qualified and competent directors who, collectively, possess the knowledge, competence and expertise that are required to provide—

- (a) oversight of the management and affairs of the licensee's or the group's operations; and
- (b) effective leadership to ensure that the licensee operates in a prudent manner.

(4) Subject to subsection (5), the chairman of the board of directors, board of management or such other governing body of a licensee shall not be an employee of the licensee.

(5) Subsection (4) shall not apply to the chairman of the board of directors, board of management or such other governing body established in relation to the branch operations in Jamaica of a foreign bank.

Policies.

33. Every licensee or the board of management or such other governing body established in relation to the branch operations of a foreign bank in Jamaica shall ensure that—

- (a) the policies of the licensee are updated at regular intervals;
- (b) policies and procedures (including rules and procedures governing due diligence procedures and promoting high ethical and professional standards) designed to prevent or minimize the use of their services, whether intentionally or unintentionally, for criminal activities are established and meet the standards required by applicable laws;
- (c) appropriate and adequate record keeping systems, including records of findings and corporate decisions, are maintained;

- (d) a person does not undertake activities or hold dual or multiple positions within the financial group that may create an actual or potential conflict of interest except in such extraordinary circumstances and on such terms, as the Supervisor may approve; and
- (e) any transaction between a licensee and a connected person is at commercial arm's length pricing and terms.

34. The number of independent directors appointed to the board of directors of a licensee shall not be less than one-third of the membership of the Board or such other fraction as may be prescribed by the Supervisory Rules.

Independent:
directors.

35.—(1) An individual shall not hold the positions of chairman of the board and chief executive officer of a licensee contemporaneously.

Separation of
positions of
chairman and
chief
executive
officer.

(2) Subsection (1) shall not apply to the branch operations of a foreign bank in Jamaica.

General Provisions re Governance

36. Every director, officer and key employee of a licensee shall, in the discharge of his functions—

Duty of care.

- (a) act honestly and in good faith in the best interest of the licensee and for the protection of depositors' funds; and
- (b) exercise the care, diligence and skill that a reasonably prudent director, officer or key employee would exercise in similar circumstances.

37.—(1) Every licensee shall ensure that each substantial shareholder, director, officer and key employee is and remains a fit and proper person.

Duty to
undertake fit
and proper
assessments.

(2) A financial holding company shall ensure that all members of any financial group that it heads comply with the obligation set out in subsection (1).

(3) Subject to subsection (4), any licensee which contravenes subsection (1) or (2) commits an offence.

(4) It shall be a defence to a licensee charged under subsection (3) to prove that the licensee took all reasonable steps in the circumstances to prevent a contravention of subsection (1) or (2).

Persons
debarred
from
directorship,
management
and key
employment.

38.—(1) A person to whom this section applies shall not, without the express authorization in writing of the Supervisor or the approval of the Supervisory Committee, act or continue to act, as a director of, or be concerned, directly or indirectly, in the management or key functions of any licensee.

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

- (a) is not a fit and proper person; or
- (b) whether in Jamaica or elsewhere, has been a director of, or directly concerned in the management of, or functioned as a key employee in a licensee, or any other entity offering financial services or functioning as a financial holding company—
 - (i) which has been wound up by a court;
 - (ii) the licence of which has been revoked, unless the revocation was consequent upon—
 - (A) the amalgamation of that licensee with another licensee; or
 - (B) a voluntary winding up of the licensee in compliance with section 107;
 - (iii) which has been in receivership;
 - (iv) which has entered into a composition with its creditors;
 - (v) whose business has been conducted imprudently or fraudulently; or

(vi) which has failed to meet the solvency requirements prescribed by law.

(3) A person who contravenes subsection (1) commits an offence.

39.—(1) Every licensee shall immediately notify the Supervisor, in writing of—

Duty to
notify
dismissals,
etc.

- (a) any matter that could materially affect the financial viability or the reputation of the licensee or the financial group;
- (b) any fraud or criminal activity committed by or against the licensee or any other member of the financial group;
- (c) any dismissal or resignation of a director, officer or key employee and the reasons for the dismissal or resignation;
- (d) any circumstances that render any director, officer, substantial shareholder or key employee unfit to hold office and advise on the action that is being taken with regard to that matter; or
- (e) any emerging factor that affects whether a director, officer, substantial shareholder, or key employee is a fit and proper person.

(2) A licensee who contravenes subsection (1) commits an offence.

(3) Every licensee shall give prior notice in writing to the Supervisor, of—

- (a) any transaction involving the sale or purchase of loans for a price, or of a value, exceeding, individually or in the aggregate, five *per centum* of the capital base of the licensee; or
- (b) its intention to appoint or terminate the appointment of an external auditor.

(4) Subsection (3)(b) shall not apply to the renewal of the appointment of an external auditor.

(5) A licensee shall not implement any major changes in existing operations, strategy or policy without first obtaining the written approval of the Supervisor.

(6) A licensee shall, in relation to the termination of the appointment of an external auditor, comply with section 95(2).

PART VIII. *Capital and Reserves*

Capital base.

40.—(1) Every applicant for a licence to operate as a deposit taking institution shall meet the minimum start-up capital requirement specified in Part B of the Third Schedule.

Third
Schedule.

(2) Every licensee shall, as determined in such manner and by such methods as may be prescribed, at all times, maintain a regulatory capital sufficient to satisfy the prescribed capital requirements and to adequately support its operations.

(3) Every deposit taking institution shall establish and maintain a statutory reserve fund pursuant to section 41.

(4) Without prejudice to the obligation of an entity in the group to hold sufficient capital to meet its respective regulatory requirements, a financial holding company shall maintain at all times on a consolidated basis aggregate regulatory group capital determined in such manner and by such methods as may be prescribed.

Statutory
reserve fund.

41.—(1) Every deposit taking institution, other than a foreign bank, shall maintain a reserve fund in Jamaica into which, at the end of each financial year, there shall be transferred—

- (a) fifteen *per centum* of the net profits of the institution earned in that year until the reserve equals fifty *per centum* of its paid-up capital; and
- (b) thereafter, ten *per centum* of the net profits of the institution earned in that year until the amount at the credit of the reserve fund is equal to the paid-up capital of the institution.

(2) Every foreign bank shall maintain a reserve fund in relation to its branch operations in Jamaica into which, at the end of each financial year, there shall be transferred—

- (a) fifteen *per centum* of the net profits earned in that year from its branch operations in Jamaica until the reserve equals fifty *per centum* of its assigned capital; and
- (b) thereafter ten *per centum* of the net profits earned in that year from its branch operations in Jamaica until the amount at the credit of the reserve fund is equal to the assigned capital of the foreign bank,

and the reserve fund shall consist of unencumbered assets that are specifically and exclusively assigned by the foreign bank to the financing of its branch operations in Jamaica and are not available to finance any other operation of the foreign bank.

(3) Nothing in subsection (1) or (2) shall prevent a deposit taking institution or a foreign bank in relation to its branch operations in Jamaica from—

- (a) transferring more than the prescribed percentage of the net profits in any year to its reserve fund; or
- (b) maintaining a reserve fund in an amount in excess of its paid-up capital or its assigned capital, as the case may be.

(4) For the purposes of this section, references to paid-up capital shall, in relation to building societies, mean the total amount paid-up on their capital share and permanent capital fund, as the case may be.

(5) For the purposes of this section, “net profits” means profits after the deduction of income tax, but shall not include—

- (a) any unrealized surplus arising from a revaluation of the assets of the deposit taking institution, other than foreign currency;
- (b) profits arising from—

- (i) a sale of the assets of the deposit taking institution to a connected person, where the sale is not for cash or is funded in whole or in part by a loan from the institution or another entity within the same financial group; or
- (ii) any resale, other than for cash, by the deposit taking institution of assets purchased from a connected person; or
- (c) any profit or gain, whether resulting from an artificial or fictitious transaction or otherwise, that the Supervisor is satisfied does not in fact result in an increase to the net capital position of the deposit taking institution,

so, however, that the Supervisor may, in writing, permit profits referred to in paragraph (b) to be treated as net profits for the purposes of this section.

(6) The deposit taking institution shall act in accordance with subsection (7), where—

- (a) the amount at the credit of the reserve fund of the deposit taking institution exceeds its paid-up capital or assigned capital; and
- (b) the deposit taking institution intends to reduce its reserve fund.

(7) The deposit taking institution shall, in writing—

- (a) notify the Supervisor; and
- (b) apply, in writing, to the Supervisor for permission to reduce its reserve fund.

(8) The Supervisor may permit the deposit taking institution to reduce its reserve fund by an amount not exceeding the amount of the excess referred to in subsection (6)(a).

(9) The reduction referred to in subsection (8) may be effected by the deposit taking institution issuing bonus shares, redeemable preference shares or both.

42.—(1) A licensee may establish a retained earnings reserve in which portions of its net profits are transferred as the licensee may determine. Retained earnings reserve.

(2) Where a licensee has established a retained earnings reserve, the reserve shall not be reduced except with the prior approval in writing of the Supervisor.

PART IX. *Cash Reserves and Liquidity Requirements*

43. Every deposit taking institution shall maintain in the form of a deposit with the Bank the cash reserve specified under section 28 of the *Bank of Jamaica Act*; and if it fails to do so, it shall pay interest in accordance with that section. Cash reserves.

44. Every deposit taking institution shall comply with the liquid asset requirements specified under section 29 of the *Bank of Jamaica Act*; and if it fails to do so, it shall pay interest in accordance with that section. Liquid asset requirements.

45.—(1) The licensee shall comply with the prudential liquidity requirements specified in the Supervisory Rules. Prudential liquidity requirements.

(2) A licensee that fails to comply with subsection (1) commits an offence and is liable to the penalties specified in the Supervisory Rules.

PART X. *Fixed Assets*

46.—(1) Subject to section 47, the fixed assets of a deposit taking institution shall not, without the approval, in writing, of the Supervisor and subject to such conditions as the Supervisor may specify, exceed an amount equivalent to such percentage of its capital base as may be prescribed. Limit on fixed assets.

(2) In subsection (1), “fixed assets”—

(a) means the following assets, whether freehold or leasehold, owned by a deposit taking institution—

- (i) furniture and fixtures;
- (ii) premises and other real estate;
- (iii) machinery and equipment, including motor vehicles;
- (iv) softwares and other intangible assets as may be prescribed; but

(b) subject to section 50, does not include real property acquired in satisfaction of debt or by way of foreclosure which is to be disposed of within the time required by section 53.

Valuation of fixed assets.

47. For the purposes of determining compliance with section 46(1), the historical cost method shall be applied in the valuation of fixed assets.

PART XI. *Restricted, Prohibited and Permitted Activities of Licensees*

Restricted and Prohibited Activities

Restriction on periods of deposits by merchant bank.

48.—(1) Subject to subsection (2), a merchant bank shall not—

- (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 merchant bank, 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 Supervisor, repay any deposit within less than fourteen days from the date on which the deposit was received by the merchant bank.

(2) Subsection (1) shall not apply to deposits taken from other deposit taking institutions.

(3) A merchant bank that contravenes subsection (1) commits an offence.

49.—(1) A deposit taking institution shall not engage in any trade or other business, except—

Restriction
on engaging
in trade or
business.

- (a) in satisfaction of debts due to the institution;
- (b) the due performance of its functions as a trustee, an executor, an administrator or as the lawful attorney of any person; and
- (c) otherwise as may be necessary in the ordinary course of its banking business, including the satisfaction of debt due to the institution.

(2) Notwithstanding the provisions of subsection (1), the Supervisor may, upon an application in writing by a deposit taking institution, exempt a deposit taking institution from the operation of subsection (1) in order to facilitate joint marketing, co-branding or the offer of location services.

(3) A deposit taking institution that contravenes subsection (1) commits an offence.

50.—(1) A deposit taking institution shall not acquire fixed assets, except—

Restriction
on
acquisition of
fixed assets.

- (a) as may be necessary for the purpose of engaging in banking business, housing its officers or employees or to facilitate any ancillary activities as a corporate citizen;
- (b) for the due performance of its functions as a trustee, an executor, an administrator or as the lawful attorney of any person; or
- (c) otherwise as may be necessary in the ordinary course of its banking business, including the satisfaction of debt due to the institution.

(2) A deposit taking institution that contravenes subsection (1) commits an offence.

51.—(1) A licensee shall not acquire, deal in or grant, credit facilities on the security of its own shares or the shares of any other company within the group—

Restriction
on grant of
credit facility
on security
of own
shares, etc.

- (a) except in the circumstances permitted by section 185 of the *Companies Act*; and
- (b) unless a special reserve is set aside, in the manner specified by the Supervisor by notice published in the *Gazette*, to fund in full any transaction and to cover any potential diminution in capital that may result from any share buyback or redemption in connection therewith.

(2) Subsection (1)—

- (a) shall not apply to the financing of shares purchased in an employee share ownership plan approved under the *Employees Share Ownership Plan Act*; and
- (b) shall apply to share made available to an officer as part of a compensation scheme.

(3) A licensee that contravenes subsection (1) commits an offence.

Restriction
on payment
of dividends
on own
shares.

52.—(1) A licensee shall not pay any dividend on its own shares—

- (a) subject to subsection (2), until all its capitalized expenditure not represented by tangible assets and all prior losses have been written off completely;
- (b) if capital has been statutorily impaired, until the impairment has been corrected;
- (c) if, having regard to the licensee's financial condition and performance, it would be, in the opinion of the licensee, imprudent to do so;
- (d) if the Supervisor has issued a notice to the licensee under subsection (2);
- (e) until the requirements of this Act relating to the statutory reserves set out in section 41 have been met; or
- (f) until the sums due and payable to the Bank by the deposit taking institution have been paid.

(2) The Supervisor may, by notice published in the *Gazette*, subject to such conditions, if any, as may be specified in the notice, direct that the capitalized expenditure to which subsection (1)(a) relates, shall not include expenditure for the purchase of goodwill.

(3) If the Supervisor considers that having regard to the licensee's financial condition and performance it would be imprudent to pay any dividend on its shares, the Supervisor may issued a notice of prohibition to the licensee prohibiting such payment and the licensee shall comply with the notice of prohibition.

(4) A licensee that contravenes subsection (1) or (3) commits an offence.

(5) In this section, a reference to "capitalized expenditure not represented by tangible assets" includes a reference to preliminary expenses, organizational expenses, share selling commission and brokerage.

53.—(1) Subject to subsection (3), a deposit taking institution shall not hold in fee simple, or cause any other person to hold in fee simple for its benefit, any land acquired in the course of satisfaction of debts due to the institution or by way of foreclosure for more than three years from the date of the acquisition.

Restriction
on benefi-
cially holding
land in
fee simple.

(2) A deposit taking institution that holds land in contravention of subsection (1) shall, forthwith, sell or otherwise dispose of the land absolutely so that the deposit taking institution no longer has, either directly or indirectly, any interest or control in respect thereof, except by way of security.

(3) Upon receipt in writing of an application from the deposit taking institution, the Supervisor may, in writing, direct that the time specified in subsection (1) be extended for such further period as the Supervisor may allow.

(4) A deposit taking institution that contravenes subsection (1) commits an offence.

Restriction
on
management
or investment
of customers'
funds.

54.—(1) Except in accordance with regulations made under section 131 or 132, a deposit taking institution shall not—

- (a) manage or invest funds on behalf of its customers, unless the investment is carried out under a trust operated within the parameters specified by the Supervisor; or
- (b) engage in proprietary trading in securities for its own account.

(2) A deposit taking institution that contravenes subsection (1) commits an offence.

Permitted Activities

Permitted
activities.

55.—(1) Subject to subsection 3, a licensee that proposes to engage in any matter described in subsection (2) shall, prior to doing so—

- (a) notify the Supervisor of its intention to do so; and
- (b) furnish to the Supervisor such information as may be prescribed.

(2) The matters referred to in subsection (1) are—

- (a) new businesses or products;
- (b) new delivery channels for existing businesses or products;
- (c) strategic alliances;
- (d) joint ventures;
- (e) co-branding initiatives; and
- (f) any other matter in relation to which the Supervisor determines that prior notification is required.

(3) The licensee may engage in any matter described in subsection (2) if—

- (a) the Supervisor indicates, in writing, that he does not object; or

(b) the Supervisor does not object within thirty days of the date on which the notification was made under subsection (1)(a).

(4) A licensee that contravenes subsection (1) commits an offence.

PART XII. *Counterparty Exposure Limits*

56. The provisions of this Part shall apply to—

Application
of Part XII.

(a) a deposit taking institution on a stand alone basis and on a consolidated basis; and

(b) a financial holding company on a consolidated basis.

57.—(1) Subject to subsection (2), and unless otherwise approve by the Supervisor, a licensee shall not incur counterparty exposures to—

Restriction on
incurring
counterparty
exposures.

(a) any connected person in excess of ten *per centum* of its capital base; or

(b) all connected persons in the aggregate exceeding twenty *per centum* of its capital base.

(2) Subsection (1)(b) shall not apply to a financial holding company in relation to support activities for its subsidiaries.

(3) A licensee shall not incur unsecured counterparty exposures to any connected person, except in relation to—

(a) specified counterparty exposures;

(b) persons referred to in section 58; or

(c) equity exposures referred to in section 60.

(4) A licensee that contravenes subsection (1) or (3) commits an offence.

58.—(1) A deposit taking institution shall not grant or incur unsecured credit facilities to—

Restriction on
grant of
unsecured
credit
facilities.

(a) an individual who is a connected person, other than

an officer and an employee, in excess of an amount equivalent to fifty *per centum* of one year's salary of the chief executive officer; or

- (b) any officer or employee of the licensee or any immediate relative of such officer or employee, in excess of an amount equivalent to one year's salary of the officer or employee.

(2) Facilities extended under subsection (1)(a) shall be subject to the lending limit that a deposit taking institution can extend to all connected persons under section 57(1)(b).

(3) A financial holding company shall not grant unsecured credit facilities to any connected person who is an individual.

(4) Any exposures arising from the activities of non-deposit taking institution subsidiaries shall be subject to the aggregate exposure limits of the financial holding company specified in section 59(1)(b).

(5) A licensee that contravenes subsection (1) commits an offence.

Restriction on
aggregate
counterparty
exposures.

59.—(1) Except in relation to specified counterparty exposures or an exposure of thirty days or less between deposit taking institutions, a licensee shall not, directly or indirectly, incur a counterparty exposure to—

- (a) a person, in an aggregate amount exceeding twenty *per centum* of the licensee's capital base so, however, that any unsecured portion shall not in the aggregate exceed five *per centum* of the licensee's capital base; or
- (b) a counterparty group, in an aggregate amount exceeding forty *per centum* of the licensee's capital base, so, however, that the unsecured portions shall not in the aggregate exceed ten *per centum* of the licensee's capital base.

(2) A licensee that contravenes subsection (1) commits an offence.

(3) In this section, “specified counterparty exposures” means exposures that are—

- (a) credit facilities made to or fully guaranteed by the Government of Jamaica;
- (b) comprised of securities that are issued or fully guaranteed by the Bank;
- (c) credit facilities that are fully collateralized by securities issued or guaranteed by the Government of Jamaica or the Bank;
- (d) reverse repurchase arrangements where the underlying securities are issued by the Government of Jamaica or the Bank;
- (e) comprised of securities that are issued or fully guaranteed by a sovereign state (including any territory which the Supervisory Committee deems to be equivalent for this purpose) with an investment grade rating issued by a credit rating agency approved by the Supervisory Committee and the guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question; or
- (f) credit facilities that are fully secured by cash.

60.—(1) A deposit taking institution’s equity holdings in other companies or undertakings, directly or indirectly, shall not exceed in the aggregate fifty *per centum* of the institution’s capital base so, however, that—

Restriction on
holdings in
companies.

- (a) in respect of a company or undertaking, the holding shall not exceed ten *per centum* of the institution’s capital base; and
- (b) the restrictions imposed by this subsection shall not apply where the holding 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 institution, but the holding shall be disposed of within

three years of the date of acquisition or such longer period as the Supervisor may, in writing, permit.

(2) A licensee that contravenes subsection (1) commits an offence.

Duty to notify Supervisor on counterparty exposures.

61.—(1) Within three months of the commencement date, a licensee shall notify the Supervisor of—

(a) all counterparty exposures which are in excess of the limits specified in this Part; and

(b) the measures that the licensee shall take in order to—

(i) reduce, within a period of two years or such longer period as the Supervisor may determine, in writing, the excess counterparty exposures granted so that they are within the limits specified in this Part; or

(ii) provide within a period of two years, or such longer period as the Supervisor may determine, additional capital adequacy requirements under this Act, so as to eliminate the excess.

(2) A licensee who contravenes subsection (1) commits an offence.

Modification *etc.*, of counterparty exposure limits.

62.—(1) Any modification of, addition to, or renewal or extension of, a counterparty exposure shall be subject to the limits imposed by this Part.

(2) The Supervisory Rules may prescribe the method of valuing counterparty exposures for the purpose of determining compliance with the limits established under this Part.

Counterparty exposures outside of the limit.

63.—(1) The provisions of this section shall apply notwithstanding anything to the contrary in this Part.

(2) The Supervisory Committee may, on a temporary basis, approve an exposure in excess of the counterparty limits specified in this Part by a licensee to its subsidiary which

is in need of support (whether in the form of unsecured lending or capital support or otherwise) in order to address emergencies, if the Supervisory Committee is satisfied as to the likelihood of recovery of the subsidiary and that the licensee can adequately and prudently sustain the exposures.

(3) The Supervisory Committee may permit a licensee to incur exposures that are above the counterparty limits specified in this Part, provided that the excess over the limit is guaranteed or otherwise secured by a company offering financial services that is regulated and subject to capital adequacy requirements under this Act and counterparty exposure limits that the Supervisor Committee considers to be equivalent to those applicable to the licensee if the Supervisor is satisfied that—

- (a) the arrangement will be subject to terms and conditions that will adequately protect the licensee; and
- (b) the financial strength of the company is adequate for this purpose.

PART XIII. *Supervision and Examination of Licensee*

64.—(1) In addition to his functions under this Act or any other enactment, the Supervisor shall—

- (a) monitor licensees on an on-going basis, by means of off-site and on-site examinations, to assess—
 - (i) compliance by individual licensees with the provisions of this Act, any regulations made under this Act or any other enactment;
 - (ii) the safety and soundness of individual licensees and the deposit taking system; and
 - (iii) risks across the group pursuant to the consolidated supervision of the financial group;
- (b) require, or recommend to the Supervisory Committee, timely and appropriate corrective action to be taken

Supervisor's
general
powers of
supervision
and
examination
of licensees.

by licensees when deficiencies or breaches are identified;

- (c) impose or, as the case may require, recommend to the Supervisory Committee the imposition of, sanctions for identified breaches of the provisions of this Act, any regulations made under this Act or any directions issued by the Supervisor under this Act;
- (d) provide, at least on an annual basis, a comprehensive report to the board and management of each licensee on the results and findings from on-going monitoring of that licensee, including requirements for remedial action to be taken within given timelines;
- (e) advise the Supervisory Committee and the Minister on risks across the supervised system and on the supervisory response to emerging risks across the system;
- (f) publish financial information on individual licensees and the supervised system in such format and frequency as he may determine;
- (g) publish on an annual basis—
 - (i) statistics on customer complaints;
 - (ii) information reported by licensees on fees and charges;
 - (iii) complaints referred to the Supervisor in relation to a code conduct,

so, however, that no information in respect of the affairs of a particular customer of a deposit taking institution shall be published.

(2) In undertaking any of the functions under subsection (1)(a), the supervisor may determine the frequency and scope of the examinations according to the risk profile and systemic importance of the licensee and any matters that may be unique to the licensee.

65.—(1) The Supervisor may require any company which is a member of a group of which the licensee is a member to submit to the Supervisor, such information relating to the operations of that company, as the Supervisor considers necessary for the effective supervision of the licensee or the financial group of which the licensee is a member.

Supervisor
may require
information.

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

- (a) the effect of the group's or those entities' 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 posed to the licensee from 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; or
- (f) the adequacy of the corporate governance arrangements for the group.

(3) The Supervisor may summon any director, officer, key employee or substantial shareholder of the licensee or member of the financial group for the purpose of obtaining information; and the director, officer, key employee or substantial shareholder of the licensee or member of the financial group shall comply therewith.

(4) A company who refuses to furnish information required under subsection (1) commits an offence.

(5) A director, officer, key employee or substantial

shareholder of a licensee who refuses to obey a summons under subsection (3) commits an offence.

(6) Where the Supervisor proposes to exercise power under this section in relation to a company that is regulated by another regulator, the Supervisor shall consult with that regulator before exercising those powers.

Obligation of
officer to
supply
information.

66.—(1) Without prejudice to the provisions of section 65, the Supervisor may, by instrument in writing, require an officer of the licensee to supply, within such time as may be specified in the instrument, such information relating to the financial position of the licensee and its subsidiaries and in the case of a deposit taking institution, including that of its branch operations and subsidiaries, wherever located, as may specified.

(2) A person who fails to comply with the requirements set out in an instrument under subsection (1) or who, in response to that instrument, knowingly or wilfully supplies false information to the Supervisor contrary to subsection (1) commits an offence.

(3) The chief executive officer or other officer 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.

Powers of
inspection.

67.—(1) For the purposes of this Act, an authorized officer shall be entitled—

(a) at all reasonable times and as may be reasonably required for the performance of his functions, to have access to, inspect or examine, all the books, accounts, records, cheques, securities or other document or relevant information whether stored physically or electronically (in this section referred to as “relevant documents”)—

(i) of a licensee or of any other entity within the same financial group of which the licensee is a member;

- (ii) that relate to the operations of the licensee or of any other entity within the same financial group of which the licensee is a member; or
 - (iii) in the possession or control of any director, officer or employee of any licensee or any former director, officer, employee or external auditor, of the licensee or of any other entity within the same financial group of which the licensee is a member; or
- (b) to require any director, officer, employee or external auditor, or former director, officer, employee or external auditor of the licensee or of any other entity within the same financial group of which the licensee is a member, to furnish such information or to produce such relevant documents as are in his possession or control.
- (2) A person commits an offence if he—
- (a) fails to comply with a requirement made under subsection (1)(b);
 - (b) wilfully attempts to mislead or makes any false statement with intent to mislead any person in the execution of his duties under this Act; or
 - (c) without lawful justification or excuse, obstructs or hinders any person in the execution of his duties under this Act.

PART XIV. *Supervision of Financial Groups*

68. In this Part, “consolidated supervision”, in relation to a financial group, means—

Definition of
“consolidated
supervision”.

- (a) the supervision of the financial group on a consolidated basis;
- (b) the effective supervision of every licensee within the financial group; and

- (c) where the financial group is a part of a mixed conglomerate, the comprehensive review of the activities within the financial group.

Financial
group
ownership
structure.

69.—(1) A financial holding company shall be established and consolidated supervision shall apply where—

- (a) two or more financial institutions operating in Jamaica are members of the financial group and one of them is a deposit taking institution;
- (b) a deposit taking institution operating in Jamaica is a member of the financial group and has holdings, whether branch or subsidiary, or has control of companies, outside of Jamaica; and
- (c) a deposit taking institution operating in Jamaica has no holding company but has holdings, whether branch or subsidiary, or has control of companies, outside of Jamaica.

(2) The financial holding company shall hold the deposit taking institution and all financial institutions in the group subject to sections 70 and 75.

(3) Subject to sections 73 and 74, where a financial group is a mixed conglomerate, a financial holding company shall be the immediate subsidiary of the ultimate holding company of the group, or if the Supervisor so approves, in writing, a subsidiary of the ultimate parent holding company acceptable to the Supervisor.

(4) Where a deposit taking institution is the sole financial institution within a group, that institution shall be held directly by the ultimate holding company for the group or, if the Supervisor so approves, in writing, a subsidiary of the ultimate holding company that is acceptable to the Supervisor.

(5) Subject to subsection (6), the Supervisor may permit, in writing, an ownership structure that does not fall within subsection (1) or (3) where compliance cannot be facilitated or accommodated immediately.

(6) Permission under subsection (5) shall specify the time (being a period not exceeding twenty-four months from the date of the permission) within which the structure shall comply with the provisions of subsection (1) or (2).

(7) In determining whether an approval or permission should be granted under this section, the Supervisor shall take into consideration whether—

- (a) consolidated supervision will be impeded; and
- (b) the intended structure will have an adverse impact on a licensee's ability to comply with its other obligations under this Act.

(8) Where a financial group does not have a financial holding company that complies with this Act, the Supervisory Committee may allow such time as it considers appropriate for a financial holding company of a financial group to be established and licensed in accordance with this Act.

70.—(1) Ownership structures of and within a financial group which, in the opinion of the Supervisory Committee, may impede consolidated supervision or effective supervision of each of the licensees within the financial group are prohibited.

Prohibited
ownership
structures.

(2) Ownership structures referred to in subsection (1) include—

- (a) structures that are opaque or present an obstacle to consolidated supervision or effective supervision of the group and each company within the financial group;
- (b) structures that include establishments in jurisdictions with laws that hinder consolidated supervision or effective supervision; or
- (c) structures where a mix of financial services are offered within a group where the deposit taking institution operates as a branch of a foreign bank while the other financial services are offered in Jamaica through subsidiaries.

Risk related to
financial
group,
structure.

71.—(1) A licensee shall take such measures as are prescribed to properly identify, assess and manage—

- (a) the relationship among the companies in a financial group;
- (b) the risks among members of a financial group and the wider group in the case of a mixed conglomerate; and
- (c) any other risks posed by external factors affecting the financial group.

(2) Where a licensee, or any other member of the group of which the licensee is a member, has a relationship with a person that is not a member of the group which, in the opinion of the Supervisory Committee, poses a risk to the licensee or the financial group, the Supervisory Committee may—

- (a) treat the person as a member of the group for the purpose of such Parts of this Act as the Supervisory Committee may determine; or
- (b) require the licensee to terminate the relationship or cause the relationship to be terminated.

(3) A licensee that fails to comply with subsection (1) commits an offence.

(4) The Supervisor may—

- (a) examine and inspect the books of the 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 an officer of any member of the group or mixed conglomerate 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 officers of the financial holding company and

determine whether those persons are fit and proper persons.

(5) The Supervisor may issue such directions to a deposit taking institution or its financial holding company as the Supervisor considers appropriate to—

- (a) control and manage risks in and throughout the financial group; and
- (b) preserve the stability of the financial group.

(6) The directions referred to in subsection (5) 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.

(7) A licensee which fails to comply with directions under this section commits an offence.

(8) Where the Supervisor proposes to exercise powers under subsection (4) or (5) in relation to a company that is regulated by another regulator, the Supervisor shall consult with that regulator before exercising those powers.

72.—(1) Where a deposit taking institution is held within a group structure that is not approved in accordance with section 69, the Supervisor may, in writing, require the financial holding company or, if that is not practicable, the deposit taking institution to undertake a restructuring so that the group structure is in compliance with the requirements of section 69.

Restructuring
of a group.

(2) A restructuring under subsection (1) shall be carried out within twelve months of the date of the requirement by the

Supervisor, so, however, that the Supervisor may extend the period by notice, in writing to the licensee.

(3) A financial holding company or a deposit taking institution that wilfully refuses to comply with a requirement by the Supervisor under subsection (1) commits an offence.

Ownership of
subsidiaries,
etc., by
licensees.

73.—(1) Subject to subsection (2), a licensee may only own a subsidiary which is a financial institution.

(2) The Supervisory Committee may approve the ownership of a company by a licensee which is not a financial institution, if the business of that company is the provision of necessary support services to the licensee or to the financial group.

(3) Where a subsidiary of a financial holding company is registered under the *Industrial and Provident Societies Act*, the financial group shall be restructured so that the subsidiary is directly held by a deposit taking institution in the financial group.

PART.XV. *Obligations Specific to Financial Holding Companies*

Restriction on
financial
holding
company.

74.—(1) Subject to subsection (2), a financial holding company shall not carry on any operation or engage in any business other than the responsibilities set out in section 75, and such other business as the Supervisor accepts as being ancillary to its roles as a financial holding company.

(2) Subsection (1) shall not apply to a deposit taking institution that, with the approval of the Supervisory Committee, carries on any operation or engages in any business as a financial holding company if the deposit taking institution is able to satisfy the Supervisory Committee that it can comply with the provisions of this Act, any regulations made under this Act and any other enactment that applies to a financial holding company.

(3) Where a deposit taking institution functions as a financial holding company, the deposit taking institution shall remain fully subject to the statutory and prudential obligations

as a deposit taking institution set out in this Act, any regulations made under this Act, or any other enactment.

75.—(1) A financial holding company shall—

Responsi-
bilities
of financial
holding
company.

- (a) ensure that adequate capital and other financial resources are maintained for the operations of the financial group that it heads;
- (b) manage the risks to the viability of the financial group and comply with reporting and other prudential requirements;
- (c) ensure compliance by the financial group—
 - (i) with the provisions of this Act and any regulations made under this Act;
 - (ii) with the conditions of any licence held by a member of the financial group and issued pursuant to this Act or any enactment which regulates their operation;
 - (iii) with the enactments which regulate their operations;
 - (iv) with any directions issued by the Supervisor to any member of the financial group; and
 - (v) with any decisions issued by any other regulator concerning any member of the financial group;
- (d) ensure that it submits all financial statements and further data on its, and the financial group's, behalf, as the Supervisor may require;
- (e) not hold any assets that are not necessary for the performance of its role as a holding company of the financial group;
- (f) maintain appropriate policies and procedures for intra-group transactions and group risk management to ensure prudent dealings and exposure limits in the financial group;

- (g) ensure compliance with disclosure requirements that are applicable to entities within the financial group;
- (h) provide the Supervisor with all reports and returns required under this Act;
- (i) notify the Supervisor of any events or circumstances that affect or could affect the stability of the financial group; and
- (j) ensure compliance with any requirement under this Act and any regulations made under this Act that the directors, officers, substantial shareholders and key employees of the financial holding company and other institutions in the financial group are fit and proper persons.

(2) A financial holding company shall grant the Supervisor unimpeded access to its books, records, documents and other relevant information.

(3) The directors and officers of financial holding companies shall comply with any summons received from the Supervisor.

(4) A director or an officer of a financial holding company who fails to comply with any summons received from the Supervisor commits an offence.

PART XVI. *Regulation of Shareholding and Controlling Interests in Licensee*

Restriction on holdings in licensee by foreign government.

76. Except with the written approval of the Supervisory Committee, a foreign government or an agency of a foreign government, shall not, directly or indirectly, in relation to a licensee—

- (a) hold more than five *per centum* of the issued share capital of that licensee or such higher percentage as the Supervisory Committee, may approve; or
- (b) exercise any voting power in excess of the percentage specified in paragraph (a).

77.—(1) Where any person enters into an agreement or arrangement to acquire shares by virtue of which the person would, if the agreement or arrangement is carried out, be a substantial shareholder of the licensee, the agreement or arrangement—

Substantial
shareholding
in licensee.

- (a) shall be subject, on application by the person, to the approval of the Supervisory Committee; and
- (b) shall contain or be deemed to contain a clause to that effect.

(2) Where an application for approval is made under subsection (1), the Supervisory Committee may—

- (a) give its approval, subject to such conditions as it considers necessary; or
- (b) refuse to give its approval.

(3) In determining whether or not to approve an application made under subsection (1), the Supervisory Committee shall take into account such matters as it considers relevant to the application, including—

- (a) the nature and sufficiency of the applicant's financial resources as a source of continuing financial support for the licensee or the financial group, as the case may be;
- (b) the soundness and feasibility of the applicant's plans for the future conduct and development of the licensee's business;
- (c) the applicant's business record and experience;
- (d) whether the licensee will be operated by a fit and proper person;
- (e) if the applicant is a foreign financial institution—
 - (i) the stringency of the fit and proper criteria applied by the foreign financial regulatory authority in the jurisdiction where the person was incorporated;

- (ii) whether the person is supervised on a consolidated basis; and
 - (iii) whether there is any impediment to the Supervisory Committee's receipt of information from the entity or from the foreign financial regulatory authority;
- (f) where the applicant or any of the applicant's affiliates is a licensee, the impact of the proposed acquisition on the market for financial services in Jamaica and the stability of the financial system; and
- (g) the best interest of the financial system in Jamaica.

(4) If the Supervisory Committee refuses to approve an application made under subsection (1), the applicant shall be notified forthwith and shall be given an opportunity to make written representations.

(5) For the purpose of approving an application made under subsection (1), the Supervisory Committee may require the applicant to furnish it with such additional particulars or other information concerning the agreement or arrangement as the Committee may specify.

(6) The Supervisory Committee shall, in respect of an application under subsection (1), subject to subsection (4), give its decision within one hundred and twenty days from the date on which the application and all information and particulars required to be furnished under this section, from the applicant and external sources, are delivered to the Supervisor.

(7) For the purposes of this section—

- (a) a person shall be regarded as entering into an agreement or arrangement by virtue of which he would become a substantial shareholder of a licensee, if the person, alone or acting together with any connected person, would be in a position to direct the exercise of twenty *per centum* or more of the voting rights in the licensee;

- (b) a person holds an interest in a share if the person has any legal or equitable interest in that share.

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

Regulation
of effective
control of
licensee.

(2) Where an application for approval is made under subsection (1), the Supervisory Committee may give its approval, subject to such condition as it considers necessary.

(3) In determining whether or not to approve the application made under subsection (1), the Supervisory Committee shall take into account such matters as it considers relevant to the application, including the matters specified in section 77(3).

(4) If the Supervisory Committee refuses to give approval of an application made under subsection (1), the applicant shall be notified forthwith and shall be given an opportunity to make written representations.

(5) For the purpose of making a decision under subsection (1), the Supervisory Committee may require the applicant to furnish the Supervisory Committee with such additional information concerning the agreement or arrangement as the Committee may specify.

(6) The Supervisory Committee shall, in respect of an application under subsection (1) and subject to subsection (4), give its decision within one hundred and twenty days from the date on which the application and all particulars and other information required to be furnished under this section from the applicant or other persons, are delivered to the Supervisor.

(7) For the purposes of this section and section 77—

- (a) a person shall be regarded as entering into an agreement or arrangement by virtue of which he would obtain, control or effective control of a licensee if, in the opinion of the Supervisor, he alone, or acting together with a connected person, would be in a position to significantly influence 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 express or implied.

Power to
obtain
information *re*
shareholding.

79.—(1) The Supervisor may, by notice in writing, require any shareholder of a licensee to submit to the Supervisor, within such time as may be specified in the notice, information—

- (a) as to whether that shareholder holds any voting shares in the licensee as beneficial owner or as trustee; and
- (b) if that shareholder holds any voting shares as trustee, the person for whom they are, directly or indirectly, held (either by name or by other particulars, sufficient to enable all persons beneficially entitled to those shares to be identified) and the particulars of their interest.

(2) A person commits an offence if he—

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

Power to
restrict
dealing in
specified
shares.

80.—(1) Where the Supervisory Committee is satisfied that a licensee, or any other person, has acquired shares in a licensee in contravention of sections 76, 77 or 78 (hereinafter referred to as the “acquirer”), the Supervisor shall serve

on that licensee or person, by way of personal service or such other means as the Supervisor considers appropriate, a written notice directing that subsection (2) shall apply with respect to those shares.

(2) Where the circumstances in subsection (1) exist the following shall apply—

- (a) the shares so acquired, (hereinafter referred to as “specified shares”), shall be disposed of within such period as the notice may specify;
- (b) the Supervisor may direct the acquirer to transfer the specified shares to an escrow agent acceptable to the Supervisor to be held in escrow until disposed of; and the cost of such transfer and the escrow agent’s reasonable fees shall be borne by the acquirer;
- (c) otherwise than as provided in paragraph (b), any transfer of, or agreement to transfer, the specified shares, or any transfer of or agreement to transfer the right to be issued the specified shares, without the prior approval of the Supervisor, shall be void;
- (d) the voting rights on the specified shares shall be suspended and no voting rights shall be exercisable in respect of the specified shares; or
- (e) no further shares shall be issued in right of the specified shares or in pursuance of any offer made to their holder.

(3) A copy of the notice served on the acquirer shall be served on the licensee to whom the specified shares relate and, if the notice relates to such shares held by a connected person, on the connected person.

(4) A Judge of the Supreme Court may—

- (a) on the application of a licensee or the Supervisor, order the sale of any specified shares;
- (b) if the specified shares are, for the time being, subject to any restrictions under subsection (1), order, that

they shall cease to be subject to those restrictions;
and

- (c) make such further order relating to the sale or transfer of the specified shares as he thinks fit.

(5) Where specified shares are disposed of by sale under subsection (2), the proceeds of sale, less the cost of making the application under subsection (4)(a) and the costs of the sale, shall be paid in the manner specified by the Court for the benefit of the persons beneficially interested in the specified shares.

Appeal
against
restriction
notice *re*
shareholding.

81. Any person who is aggrieved by a notice under section 77(4) or 78(4) or any notice served under section 80(1) or any condition stipulated by the Supervisory Committee in granting approval under section 77(2) or 78(2), may, within twenty-one days after the receipt of the notice, appeal to the Court of Appeal against the Supervisory Committee's decision and the Court may make such order as it thinks fit.

PART XVII. *Returns and Accounts*

Returns, *etc.*

82.—(1) Subject to subsection (4), every licensee shall, in relation to its operations in Jamaica or elsewhere, submit to the Supervisor, on a stand alone basis and on a consolidated basis, in such form as the Supervisor may specify by notice published in the *Gazette*, the following—

- (a) information on its operating earnings and expenses;
- (b) statements of assets and liabilities (on and off balance sheet) and shareholders' equity;
- (c) information on customers' liabilities to the licensee in respect of bills discounted, loans and advances, guarantees and any other counterparty exposures;
- (d) loans in respect of which no principal or interest which is due and payable has been paid for a period of ninety calendar days or more;
- (e) liquidity positions;

- (f) connected party exposures;
- (g) large exposures;
- (h) interest rate and market risk exposures;
- (i) the capital adequacy position of the licensee;
- (j) acquisitions of five *per centum* or more of the issued voting share capital of a licensee and any subsequent incremental acquisitions of five *per centum* or more whether alone or jointly with another; and
- (k) such other information on the financial condition and performance of, and the risks associated, with the licensee, as the Supervisor may require.

(2) In complying with subsection (1), a licensee shall provide the information specified in the Sixth Schedule at the frequency specified in that Schedule.

Sixth
Schedule.

(3) Every licensee shall, in relation to its operations in Jamaica or elsewhere, submit to the Supervisor, an annual return setting out—

- (a) the current operating earnings and expenses during the previous year;
- (b) all deposits and other debts payable by the licensee in Jamaica or elsewhere in respect of which, during the period of seven or more years, no transaction has taken place and no statement of account has been requested or acknowledged by the depositor or other creditor;
- (c) unpaid cheques, drafts or bills of exchange drawn, certified or accepted by the licensee and payable 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 holder;
- (d) all dividends remaining unpaid for a period exceeding five years; and

(e) land acquired in the course of the satisfaction of debts due to the licensee and held in fee simple for its benefit by the licensee.

(4) The Supervisor may, if he thinks necessary in any particular case, extend, in writing, the time specified for the submission of information under subsection (1).

(5) A licensee that contravenes subsection (1) or (2) commits an offence.

(6) In this section, “large exposure” means the aggregate of counterparty exposures, including the exposures of persons connected to the counterparty that is five *per centum* or more of the licensee’s capital base or such other percentage prescribed by the Supervisor by notice published in the *Gazette*.

Loss reserves
on credit
facilities.

83.—(1) Where, in relation to any credit facilities granted by a deposit taking institution, no payment of principal or interest which is due and payable has been made for a period of ninety calendar days the deposit taking institution shall—

- (a) establish an appropriate reserve, to be known as the loss reserve, in respect of such credit facilities in such amount and on such basis as the Supervisor may specify in the Supervisory Rules;
- (b) not take any interest in respect of such credit facilities to the profit and loss account after the expiration of that period; and
- (c) reverse any interest that is previously accrued but uncollected from income in the accounting period in which no payment of principal or interest which is due and payable has been made for a period of ninety calendar days.

(2) The amount reversed under subsection (1) shall include all recorded but uncollected interest in the deposit taking institution’s profit and loss account for the financial year to date and prior accounting periods.

(3) The deposit taking institution shall cause to be shown in its audited financial statements the aggregate amount of the loss reserved in credit facilities and the portion thereof that has been written off against the profit and loss account.

(4) The audited consolidated financial statements of the financial holding company shall reflect the aggregate of the loss reserves on credit facilities and the write-offs referred to in subsection (3) for the financial group.

(5) Where the terms of any credit facilities referred to in subsection (1) have been varied, if the credit facility is of an amount—

- (a) equivalent to one *per centum* or more of the deposit taking institution's capital base, the institution shall, within seven days after the expiration of the month in which the alteration occurred, notify the Supervisor, in writing giving such particulars of the credit facility as may be prescribed; and
- (b) less than one *per centum* of the deposit taking institution's capital base, make a return to the Supervisor setting out the aggregate amount of the credit facilities.

(6) A deposit taking institution that contravenes subsection (1) commits an offence.

84.—(1) Every licensee shall—

- (a) not later than ninety days after the end of each financial year, submit the prescribed documents to the Supervisor;
- (b) not later than fourteen days after the date on which the prescribed documents are submitted under paragraph (a), cause a copy thereof to be published in a daily newspaper and circulated in Jamaica;
- (c) exhibit throughout each year, a copy of the latest prescribed documents in a conspicuous position in each place of business of the licensee in Jamaica.

Presentation
and
publication
of financial
statements.

(2) Except as otherwise provided under the Supervisory Rules, the audited financial statements shall be prepared in accordance with generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica or such other body as the Minister may prescribe.

(3) Copies of the prescribed documents—

- (a) shall be published in a daily newspaper circulated in Jamaica; and
- (b) may be published electronically on the website of the licensee,

so, however, that, where the licensee publishes copies of the prescribed documents in electronic form on its website, the publication in the newspaper—

- (i) may contain abbreviated versions thereof, in a form acceptable to the Supervisor; and
- (ii) shall clearly reflect that the full version is available electronically on the website of the licensee and at the head office and branch operations of the licensee (and in the case of the licensee that is a foreign bank at its branch operations in Jamaica).

(4) In this section, “prescribed documents” means—

- (a) in relation to a deposit taking institution other than a foreign bank—
 - (i) audited financial statements 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
 - (ii) the auditor’s report; and
- (b) in relation to a foreign bank—
 - (i) its latest audited financial statements in respect of the bank’s operations; and

- (ii) audited financial statements in respect of its Jamaican branch operations, signed by the principal officer and the next most senior officer in Jamaica of the bank or such other officer as may be designated by the bank, made up to the last working day of the bank's financial year.

(5) A licensee that contravenes this section commits an offence.

85.—(1) Where a licensee has subsidiaries, the prescribed documents required for the purposes of section 84 shall include consolidated audited financial statements relating to the licensee and its subsidiaries.

Consolidated
accounts.

(2) A financial holding company shall, not later than ninety days after the end of the financial year of each company in the group, submit to the Supervisor, in relation to each company within the financial group, an audited financial statement in respect of all business transacted by it in its previous financial year and signed by not less than two of its directors.

(3) Where a subsidiary of a deposit taking institution is registered under the *Industrial and Provident Societies Act*—

- (a) the accounts of the subsidiary shall be consolidated with those of the deposit taking institution to the extent that—
 - (i) deposits taken by the subsidiary shall be deemed to be deposits of the deposit taking institution for the purposes of sections 43 and 44; and
 - (ii) loans or credit facilities granted by the subsidiary shall be deemed to be loans or credit facilities of the deposit taking institution for the purposes of sections 57 to 63;
- (b) any transfer of funds to the subsidiary by the deposit taking institution shall be deemed to be a loan or the

granting of credit facilities for the purposes of sections 57 to 63;

- (c) the deposit taking institution shall make returns under section 82 in relation to the operations of the subsidiary as if the operations were those of the deposit taking institution;
- (d) the deposit taking institution shall make a return of all loans transferred to the subsidiary whether for consideration or for the purposes of collection.

(4) A licensee that contravenes subsection (2) commits an offence.

Insolvency
disclosed by
financial
statements.

86.—(1) If, in the opinion of the Supervisor, the information contained in any of the financial statements referred to in section 85 indicates the likelihood of insolvency with respect to any member of the financial group, the Supervisor may, after consultation with such of the licensees as the Supervisor considers appropriate, act in accordance with subsection (2).

(2) The Supervisor may issue to any of the licensees such directions as he thinks fit, including a direction specified in subsection (3).

(3) Directions issued under subsection (2) may require—

- (a) the increase of the paid-up capital of the licensee or, as the case may be, the paid-up capital of any other member of the financial group;
- (b) the sale, transfer or other disposition of any other member of the financial group or of part of its business; or
- (c) the winding up of the subsidiary.

(4) A licensee that fails to comply with directions issued under subsection (2) commits an offence.

(5) Where the Supervisor proposes to exercise powers

under subsection (2) in relation to a company that is regulated by another regulator, the Supervisor shall consult with that regulator before exercising those powers.

87. The returns and the prescribed documents to be submitted to the Supervisor under this Part may be submitted in electronic form and shall be admissible in evidence in accordance with section 28 of the *Evidence Act*.

Electronic submission and admissibility of returns and prescribed documents.

PART XVIII. *External Auditors*

88.—(1) Every licensee shall appoint an external auditor to audit annually the accounts of the licensee.

Appointment of external auditor.

(2) The external auditor appointed under subsection (1) shall—

- (a) be a firm of registered public accountants who are eligible auditors;
- (b) not be disqualified under section 89(1);
- (c) be covered by liability insurance, the adequacy of which has been declared by the managing or senior partner of the external auditor in a voluntary declaration, taking into account any relevant standards issued by the Institute of Chartered Accountants of Jamaica which shall be submitted to the Supervisor along with evidence that the liability insurance coverage is in effect;
- (d) have at least two members, one of whom shall be responsible for the audit of the licensee—
 - (i) who are in good standing with the Institute of Chartered Accountants of Jamaica;
 - (ii) with at least five years experience at a senior level in conducting audits of financial institutions;
 - (iii) who are the holders of valid practising certificates issued by the Public Accountancy Board; and

(iv) meet such other requirements as may be prescribed.

(3) A licensee that contravenes subsection (1) commits an offence.

(4) For the purposes of this section, “member” in relation to a firm of accountants, means—

- (a) an accountant who is a partner in a firm of accountants or who has responsibility for the issuance of the opinion on the financial statements of a licensee; and
- (b) an accountant who is an employee of a firm of accountants who has been designated by the external auditor to carry out audit activities for a licensee.

Disqualification
of external
auditor.

89.—(1) A licensee shall not knowingly appoint an external auditor and a firm shall not knowingly consent to be appointed as the external auditor of a licensee if any of the firm’s partners or employees who is involved in the audit of the licensee—

- (a) has any direct or indirect interest in that licensee, including an interest in its shares or is not independent of the licensee and parties connected with the licensee;
- (b) is connected with the licensee or any person who is connected with the licensee;
- (c) is a director, controller or employee of that deposit taking institution or financial holding company;
- (d) is in any business relationship with the licensee that in the opinion of the Supervisor, is not at arm’s length or is not likely to result in a conflict of interest, or has credit facilities with the licensee or other group entity that are not performing in accordance with the terms and conditions of the facility;
- (e) does not meet any professional standards relating to conflict of interest independence and objectivity of

auditors;

- (f) has been convicted of any offence under this Act or the *Companies Act*, or of any offence under any other written law involving fraud or dishonesty; or
- (g) is a person whose appointment has been objected to by the Supervisor.

(2) A licensee that contravenes subsection (1) commits an offence.

90.—(1) Where, before or after the appointment of a person as an external auditor, the Supervisor becomes aware that the person is not an eligible auditor, the Supervisor—

Power of Supervisor to object, etc. to appointment of external auditor.

- (a) may object to the appointment of the person and give the licensee or person concerned notice in writing of his objection to the appointment or continued appointment, specifying the reasons therefor and indicating a period (being not less than thirty days) within which the licensee or person concerned may submit to him a written response or may make representations by oral submissions (with or without the assistance of an attorney-at-law); and
- (b) after that period or, if the licensee or person concerned has submitted a response or made representations within the period, after the Supervisor has considered the response or representations, may either direct that the person so appointed be removed pursuant to subsection (1), or may withdraw the objection.

(2) Where the Supervisor—

- (a) objects to the appointment of a person as an external auditor; or
- (b) directs that a person appointed as an external auditor be removed,

the licensee or the person may appeal against the objection or direction to the Supervisory Appeals Board.

(3) Where the Supervisor objects to the appointment of or directs the removal of a person as an external auditor under subsection (2)(a), the Supervisor shall, on the request of the person concerned or the licensee, within twenty-one days of the request, give to the person concerned or the licensee the reason for his decision.

Duty of external auditors to report to Supervisor on transactions, etc. affecting licensee's financial viability.

91.—(1) The external auditors of a licensee shall report, in writing, to the persons referred to in subsection (2), any material transaction or condition that has come to the attention of the external auditors in the ordinary course of the audit that, in the external auditors' opinion meets one or more of the following criteria, that is to say, there is—

- (a) a change in accounting policy or any presentation of or any failure to present facts or figures which, in the opinion of the external auditors, has the effect of or is likely to have the effect of misrepresenting the financial position of the licensee;
- (b) a material misstatement in any financial report or information generated by the licensee and issued to the Supervisor or other third parties;
- (c) a transaction or condition giving rise to significant risks or exposures that have the potential to jeopardize the licensee's financial viability or reputation;
- (d) a transaction or condition indicating that the licensee has significant weaknesses in internal control which render or are likely to render the licensee vulnerable to significant risks or exposure that have the potential of jeopardizing the licensee's financial viability or reputation;
- (e) a transaction of an irregular nature that has, or is likely to have, a significant or material impact on the licensee's financial position or reputation;
- (f) a transaction or condition that contravenes, or is likely to contravene, the provisions of this Act or any regulations made under this Act;

- (g) a transaction or condition that contravenes or is likely to contravene a provision of any enactment which imposes obligations on a licensee;
- (h) any information that is indicative of material deficiencies in a licensee's information technology operating systems; and
- (i) any other transaction or condition which, in the opinion of the external auditors, should be included in a report under this section.

(2) The persons referred to in subsection (1) are—

- (a) the chief executive officer of the licensee;
- (b) each director of the licensee; and
- (c) the Supervisor.

(3) An external auditor who contravenes subsection (1) commits an offence.

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

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

92.—(1) The Supervisor shall be entitled to request and review the working papers of an external auditor or former external auditor of a licensee and to require the external auditor or former external auditor to confirm any capital injection, transfer of assets or other transaction undertaken by the licensee that the Supervisor considers to be of financial significance; and any costs thereof shall be borne by the licensee.

Review of
external
auditor's
working
papers. *etc.*

(2) The Supervisor may summon an external auditor or former external auditor of a licensee to enquire into the

operations and financial position of that licensee and to produce his working papers referred to in subsection (1) and the external auditor or former external auditor shall comply therewith.

(3) An external auditor or former external auditor who contravenes subsection (2) commits an offence.

(4) Where an external auditor or former external auditor is summoned under subsection (2), the Supervisor shall notify the licensee and afford the licensee an opportunity to attend any meeting between the Supervisor and the external auditor or former external auditor.

Special or
expanded
audit.

93.—(1) The Supervisor may, in writing, require the external auditor or former external auditor of a licensee to—

- (a) report in writing to the Supervisor on the extent of the external auditor's or former external auditor's procedures in auditing the financial statements of the licensee and, as the case may require, its subsidiaries; or
- (b) enlarge the scope of an audit or perform such audit procedures as the Supervisor may specify in any particular case and report thereon in writing to the Supervisor.

(2) An external auditor or former external auditor of a licensee who fails to comply with a requirement by the Supervisor under subsection (1) commits an offence.

(3) The expenses of any audit or examination carried out under subsection (1) or (5) shall be paid by the licensee and if, in any case, the expenses are advanced by the Supervisor, they may be recovered by or on behalf of the Supervisor in a Resident Magistrate's Court as a civil debt, irrespective of the amount.

(4) Where the Supervisor proposes to exercise powers under this section in relation to a company that is regulated by another regulator, the Supervisor shall consult with that regulator before exercising those powers.

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

94.—(1) An external auditor or former external 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 or to an authorized officer in compliance with disclosures made under this Act. Exclusion of liability.

(2) No civil or criminal proceedings or professional sanctions for breach of confidentiality to the licensee or its subsidiaries shall be taken against an external auditor or former external auditor in consequence of any report or disclosure made to the Supervisor or to an authorized officer in compliance with disclosures made under this Act.

95.—(1) Where an external auditor appointed by a licensee— Resignation, etc. of external auditor.

(a) intends to resign at any time during the period of appointment;

(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; or

(c) has had his appointment terminated by the licensee.

that external auditor shall, forthwith, give written notice to the Supervisor accordingly and shall state the reasons for the resignation or unwillingness to be considered for reappointment, or termination of the appointment, as the case may be.

(2) Where—

(a) a licensee intends to terminate the appointment of the external auditor of the licensee; or

(b) a resolution has been passed at a general meeting of the licensee providing that the external auditor shall

from the external auditors of the societies concerned, on any aspect of the statement made under subsection (2).

(4) The relevant society shall apply to the Supervisory Committee to approve the union or transfer of engagements.

(5) The Supervisory Committee, after hearing the relevant society and any other persons appearing to it have a justifiable interest in the matter, may approve the union or transfer of engagements.

(6) Notice of the approval of a union or transfer of engagements shall be published in the *Gazette* and in at least one daily newspaper circulated in Jamaica.

(7) Subject to subsection (8), the recording of the notice of the union or transfer of engagements by the Island Record Office shall operate as an effectual conveyance, transfer and assignment, as at the date of the recording of the funds, property and assets of the societies uniting, or of the society transferring its engagements to the society to which engagements may be transferred, as may be set out in the instrument of union or transfer of engagements, without any other conveyance, transfer or assignment.

(8) The rights of any creditor of any society shall not be affected by the union or transfer of engagements of that society.

(9) A failure to comply with the provisions of subsection (1) shall not invalidate the union or transfer of engagements; but if the relevant society fails to comply with those provisions, the society, and every officer of the society who knowingly authorizes the default commits an offence.

Special
resolutions.

99. A resolution of a building society shall be a special resolution for the purposes of this Act when it has been passed by not less than three-fourths of such members of the society as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, on a poll on the resolution, at a meeting of the society of which notice specifying the intention to move the resolution as a special resolution has been duly given.

100.—(1) Where—

- (a) a compromise or arrangement is proposed between a society and its creditors or any class of them or between the society and its members or any class of them; and
- (b) the Supervisory Committee approves the compromise or arrangement,

the Court may, on the application of the society, any creditor or member thereof or the Supervisory Committee, order a meeting of the creditors or class of creditors, or of the members of the society or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) The provisions of section 206(2) to (5) and sections 207 to 211 of the Companies Act shall, *mutatis mutandis*, apply to a compromise or arrangement referred to in subsection (1) as if the society were a company limited by shares.

(3) Without prejudice to the generality of subsection (2), the provisions of subsection (4) shall apply in any case where a compromise or arrangement is proposed in relation to a society which is a member of a group in respect of any or all of the members of which a compromise or arrangement is also being proposed and the Supervisory Committee approves the compromise or arrangement.

(4) A compromise or arrangement in relation to the society may provide that—

- (a) the assets and liabilities of the society and any other member of the group be combined as if the society and that member were a single undertaking; and
- (b) the members and creditors of the society and any other member of the group be treated as if they were members and creditors of that single undertaking.

Conversion of
a society into
a company.

101.—(1) A registered society may, by special resolution and subject to the approval of the Supervisory Committee, on application by the society determine to convert itself into a company under the Companies Act or to amalgamate with, or transfer its engagements to, any company.

(2) If a special resolution for converting a registered society into a company contains the particulars by the Companies Act required to be contained in the articles of incorporation of a company, and a copy thereof has been registered at the office of the Registrar of Companies, a copy of such resolution under the signature of the Registrar of Companies shall have the same effect as articles of incorporation duly signed and attested under that Act.

(3) Subject to subsections (4), (5) and (6), if a registered society is registered as, or amalgamates with, or transfers all its engagements to, a company, the certificate of incorporation of the society under the Building Societies Act shall thereupon become void and shall be cancelled by the Deputy Keeper of the Records.

(4) The registration of a society as a company shall not affect any right or claim for the time being subsisting against the society, or any penalty for the time being incurred by the society.

(5) For the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company.

(6) Every right or claim, or the liability to any penalty, shall become a right or claim against, or liability of, the company.

Amalgamation and Transfers of Banks and Merchant Banks

Amalgamation
and transfer.

102.—(1) Subject to subsection (4), a deposit taking institution other than a building society may, with the prior approval of the Supervisory Committee, on application by the

deposit taking institution enter into an agreement or arrangement to—

- (a) amalgamate its property and business (whether in whole or in part) with the property and business of any deposit taking institution; or
- (b) transfer its business (whether in whole or in part) to another deposit taking institution.

(2) An application to the Supervisory Committee for approval under subsection (1) shall be presented in the form of a scheme, which may include the financial holding company, and shall be regulated in accordance with such provisions as may be prescribed.

(3) The Supervisor may, in relation to a request for approval under subsection (1), require a report from the external auditors of the institutions concerned on any aspect of the proposed scheme.

(4) Where at least one of the parties to an agreement or arrangement under subsection (1) is a building society and the transaction amounts to the conversion of a building society to which the agreement relates to a company, section 101 shall apply.

103.—(1) Where an amalgamation or transfer referred to in section 102 takes place, the deposit taking institution 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 Supervisor may, in writing, allow, deposit with the Supervisor—

Deposit of
statements
with
Supervisor.

- (a) certified copies of statements of the assets and liabilities of the deposit taking institutions 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; and

(c) a declaration signed by the secretary or manager, if any, and by at least two directors of each of the deposit taking institutions concerned in the amalgamation or transfer that to the best of their knowledge and 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, commits an offence.

Vesting of
assets on
sale of
institution.

104.—(1) Subsections (2) and (3) shall apply in any case where a deposit taking institution amalgamates its property and business with, or transfers its business to, whether in whole or in part and whether by sale or otherwise, any other deposit taking institution and the acquiring institution requires that the assets and, where applicable, the liabilities included in the agreement for amalgamation or transfer be vested in that acquiring institution under this section.

(2) The acquiring institution may apply, in writing, to the Supervisor specifying which of the assets and, where applicable, the liabilities included in the agreement for amalgamation or transfer are required to be so vested and the Supervisor may, if he thinks fit, recommend to the Minister that an order be made vesting, subject to the agreement for amalgamation or transfer, the assets and, where applicable, the liabilities so specified in the acquiring deposit taking institution.

(3) Where a recommendation is made to the Minister under subsection (2), the Minister may make the order, and thereupon—

- (a) the assets shall so vest, and where the order so provides, the liabilities, other than any liabilities that are specifically excluded under the terms of the order, shall be assumed and vest, without further conveyance, assignment and assurance; and
- (b) without prejudice to paragraph (a), the transferring deposit taking institution shall, if requested by the acquiring institution execute such formal and separate conveyances, assignments and assurances as are reasonably required by the acquiring institution in conformity with the agreement for amalgamation or transfer.

105.—(1) Where an agreement has been entered into for the acquisition by a deposit taking institution (in this section and section 106 referred to as the “transferee”) of the trust business of another deposit taking institution (referred to in this section and section 106 as the “transferor”) the transferee may, for the purpose of effecting the transfer to, and the vesting in, the transferee of that trust business, make a written application to the Supervisor for an order to be made by the Minister under subsection (2).

Transfer of
trustee
business.

(2) The Minister may, if he thinks fit in relation to an application under subsection (1), and if the Supervisor does not object, make an order transferring to and vesting in the transferee 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 shall, if requested by the transferee, execute such formal and separate conveyances, assignments and assurances as are reasonably required by the transferee in conformity with the relevant agreement.

(3) No transfer or vesting effected by an order under subsection (2) 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.

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

Effect of
transfer.

106.—(1) Any trust business transferred to and vested in a transferee by virtue of an order made under section 105 which, immediately before the coming into force of that order was held by the transferor, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement, or will, and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person; or
- (d) as judicial trustee appointed by order of any court,

shall, from the coming into force of the relevant order made under section 105, be held by the transferee, whether alone or jointly with such other person in the same capacity upon the trusts, and with and subject to the powers, provisions, liabilities and obligations applicable thereto, respectively.

(2) Any existing instrument or order of any court under or by virtue of which any trust business became vested in the transferor in any such fiduciary capacity (including in the case of a will any grant of probate thereof) and any provisions therein or any existing contract or arrangement for the payment to, or retention by the transferor, 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 deposit taking institution there were substituted a reference to the transferee.

(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 (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 as fully and effectively as if, instead of the transferor, the transferee 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 under section 105 by a person dying before, on or after such coming into force, which appoints or purports to appoint the transferor to be executor or trustee thereof shall be construed and have effect as if, for any reference therein to the transferor as such executor or trustee or otherwise in connection with the appointment, there were substituted a reference to the transferee and, in a case where the transferee 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 section 105 or this section.

(6) In this section—

“existing” means in relation to an order made under section 105(2), existing at the date of the coming into operation of that order;

“will” includes a codicil or any other testamentary writing.

PART XX. *Voluntary Winding up of Licensee*

107.—(1) Where a licensee passes a resolution for voluntary winding up, the licensee shall, forthwith, notify the Supervisor and the Chief Executive Officer of the Jamaica Deposit Insurance Corporation in writing and shall, within twenty-one days after the passing of the resolution, furnish to the

Restriction on
voluntary
winding up.

Supervisor the following in relation to the licensee—

- (a) declaration of solvency referred to in section 277 of the *Companies Act*;
- (b) profit and loss account made up as to a date that is no more than ninety days prior to being furnished to the Supervisor;
- (c) a balance sheet as at the date to which the profit and loss account is made up; and
- (d) the external auditor's report in relation to such declaration account and balance sheet.

(2) A resolution for voluntary winding up of a licensee shall not be effective unless the Supervisor 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 circulated in Jamaica; and
- (b) give notice of the resolution to its customers, in such form and containing such information as the Supervisory Committee may approve; and that licensee shall, within thirty days after the date of publication under paragraph (a), cease to carry on banking business or function as a financial holding company in Jamaica.

(4) a licensee who contravenes subsection (1) commits an offence.

PART XXI. *Banking Business Through Agent Arrangements*

Agent
arrangements.

108.—(1) Subject to subsections (2) and (4), a deposit taking institution may, with the prior approval of the Supervisory Committee in writing, appoint a person as an agent to offer one or more of the following banking services—

- (a) deposits and withdrawals;
- (b) payments of bills and loan repayments;
- (c) electronic transfer of funds;
- (d) account balance enquiries;
- (e) the collection of know your customer and customer due diligence documentation from customers for services or facilities, so, however, that, the deposit taking institution shall remain responsible for the analysis or verification of the adequacy and acceptability of that documentation; and
- (f) any other services that the Supervisory Committee may, in writing, approve.

(2) The Supervisory Committee may prescribe financial or operational thresholds, limits or other financial or non-financial restrictions in relation to the services referred to in subsection (1).

(3) The Supervisor shall be entitled at all reasonable times to examine the books, documents, records, statements and other relevant information of an agent, in relation to its operations as an agent of a deposit taking institution, and is accordingly, entitled to exercise the functions set out in Part XIII in relation to the agent, in so far as the Supervisor deems necessary.

(4) A person shall not be eligible for appointment as an agent unless—

- (a) the person has been authorized by the Supervisor to offer such services;
- (b) the person is legally incorporated in Jamaica and is compliant with the tax and other statutory requirements imposed by any enactment that are relevant to the person;
- (c) the directors, officers, substantial shareholders and key employees of the person are fit and proper persons;

- (d) the person has satisfied the Supervisory Committee that the person is able to meet the operating, security and financial requirements to act as an agent as specified in the Supervisory Rules.

(5) A person who is appointed as an agent, shall be subject to the secrecy obligations set out at section 134.

(6) A deposit taking institution that offers or provides any of the services set out in subsection (1) through a third party without the prior approval of the Supervisory Committee commits an offence.

(7) A person who falsely holds himself out as being authorized by a deposit taking institution to provide any of the services referred to in subsection (1) commits an offence.

(8) The Supervisory Committee may revoke an approval under subsection (1) if a person appointed as an agent—

- (a) is revealed or discovered subsequently to be a person who is not eligible for appointment as an agent; or
- (b) by his actions or omissions, is no longer, in the Supervisory Committee's opinion, eligible to continue to operate as an agent under this section.

(9) Where an approval has been revoked under subsection (8) a deposit taking institution shall terminate the agreement or arrangement pertaining to the appointment of the agent or cause the agreement or arrangement to be terminated and the agreement or arrangement shall contain a clause to this effect or shall be deemed to contain a clause to this effect.

PART XXII. *Enforcement*

109.—(1) Where the Supervisor believes that any of the conditions specified in Part A of the Fifth Schedule exists in relation to a licensee, the Supervisor may—

Unsafe
practices.
Fifth
Schedule.

- (a) issue a warning to the licensee of the likelihood of serious sanctions being imposed, unless the condition identified in relation to the licensee is rectified as directed by the Supervisor;
- (b) require the licensee, to give an undertaking signed by the majority of the directors of the board of the licensee to take such corrective action as may be agreed between the licensee and the Supervisor;
- (c) subject to subsection (3), issue directions to the licensee in accordance with subsection (2); or
- (d) issue a cease and desist order in accordance with Part B of the Fifth Schedule.

(2) Directions under subsection (1) shall be such as appear to the Supervisor to be appropriate in the prevailing circumstances, whether for the purposes of safeguarding the assets of the licensee 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 granting of credit or the making of investments;
- (c) in the case of a deposit taking institution, impose limitations on the acceptance of deposits or prohibit the institution 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; or
- (e) require the removal of any director or manager.

(3) In the case of a foreign bank, an undertaking that is required under subsection (2) shall be provided by the members of the body which is responsible for the governance and oversight of the branch operations in Jamaica.

(4) Where a deposit taking institution 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 institution under this section; and

(b) any direction of the Supervisor which was given to that institution shall cease to have effect.

(5) A contravention of any direction or prohibition imposed under this section or section 112 shall not invalidate any transaction.

(6) 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 commits an offence.

(7) Where the Supervisor is exercising his powers under subsection (1) the Supervisor shall, forthwith, give notice to the Jamaica Deposit Insurance Corporation thereof.

(8) A warning issued under subsection (1)(a), or an order issued under subsection (1)(d), in relation to a foreign bank shall be directed to the senior officer in charge of the head office of the foreign bank and the authorized agent for the branch operations in Jamaica.

Prompt
corrective
action.

110.—(1) Subject to subsection (2), where a licensee's minimum capital levels have fallen to one percentage point above any of the prescribed minimum capital levels or above any of the minimum capital levels otherwise set by the Supervisory Committee with respect to that licensee's operations, the Supervisor shall take one or more of the following actions—

(a) issue an early warning notice, within fourteen days after the reporting date, requiring the licensee to restore its capital to the minimum capital level specified by the Supervisory Committee within the time specified in the notice; and

- (b) where capital is not restored to the minimum capital level specified in the notice issued under paragraph (a) within the time fixed in the notice, require the licensee to give an undertaking signed by the majority of the directors of the Board of the licensee to take the corrective action required by the Supervisor.

(2) Nothing in subsection (1) prevents the Supervisor from taking any of the actions outlined in that subsection where capital levels are falling, but remain above the prescribed minimum capital levels or above the minimum capital levels otherwise set by the Supervisory Committee with respect to that licensee.

(3) A licensee's minimum capital levels shall not fall below the prescribed minimum capital levels or the minimum capital levels otherwise set by the Supervisory Committee with respect to that licensee.

(4) Where a licensee's minimum capital levels fall below the prescribed minimum capital levels, the Supervisor shall issue directions, in writing, requiring the licensee to—

- (a) undertake the requisite injection of capital to return its capital to the level specified by the Supervisory Committee; and
- (b) take any other corrective action deemed appropriate by the Supervisor in the circumstances.

(5) The directions that the Supervisor has issued under subsection (4) shall address—

- (a) the timeline within which the capital injection must occur, which timeline shall not exceed a period of ninety calendar days from the date of the direction; and
- (b) the enhanced monitoring process to which a licensee will be subject.

(6) In the case of a foreign bank, directions issued

under subsection (4) shall be directed to the members of the body which is responsible for the governance and oversight of its branch operations in Jamaica.

(7) A licensee that contravenes directions issued under subsection (4) commits an offence.

Temporary
management
where
licensee's
capital falls
below fifty *per*
centum.

111.—(1) Where a licensee's capital falls by fifty *per centum* below any of the prescribed minimum capital levels, the powers of temporary management conferred under this Part shall be invoked.

(2) Where a financial holding company's capital falls by fifty *per centum* below any of the prescribed minimum capital levels, the Supervisor shall require the financial holding company to undertake a resolution strategy that is satisfactory to the Supervisory Committee, which may involve the disposal of any entity within the financial group that is the cause of the capital deficiency.

(3) Before approving a resolution strategy under subsection (2) that may impact an entity in the financial group that is regulated by another regulator, the Supervisor shall consult with that regulator.

Temporary
management,
reconstruction,
winding up
and
revocation.
Fifth
Schedule.
24/2015
S. 5(a).

112.—(1) Where the Supervisory Committee believes that a licensee is, or appears likely to become, unable to meet its obligations or that any of the conditions specified in paragraph 3, 5, 6, 7, 8, 9, 11 or 12 of Part A of the Fifth Schedule exists, the Supervisory Committee may take any one or more of the following actions—

- (a) assume the temporary management of the licensee in accordance with Part C of the Fifth Schedule;
- (b) present an application to the Court regarding the reconstruction or the petition for the winding up of the licensee;
- (c) revoke the licence; or
- (d) in the case of a foreign bank—

- (i) instruct the head office to take corrective action in relation to its branch operations in Jamaica;
- (ii) direct that the branch operations in Jamaica be placed under alternative management, including the appointment of receivers;
- (iii) direct that the branch operations be closed and revoke the licence; or
- (iv) wind up the branch operations in Jamaica in accordance with section 122.

(2) Determinations involving the matters specified in paragraphs (a) and (c) of subsection (1) shall include consultation with the Minister in relation to consideration involving matters of national interest.

(3) The Supervisor shall, on behalf of the Supervisory Committee, consult with the Minister, in writing, on any action that it intends to take under subsection (1).

(4) Where action is taken under subsection (1) the licensee shall not, without the consent of the Supervisor, make any payment, directly or indirectly, to or for the benefit of any person who is or was an officer or a connected person of the licensee.

(5) The provisions of any applicable enactment relating to the mode of winding up by the court and to arrangements or reconstruction shall, with such modifications and adaptations as may be necessary, apply to a petition or an application made under subsection (1)(b).

(6) The revocation of a licence under this Act shall not relieve the licensee of any obligation incurred or assumed by the licensee during the period of validity of the licence.

113.—(1) Where the Supervisory Committee is of the opinion that—

Licensee
ceasing to be
viable.

- (a) a licensee has ceased to be viable;

- (b) the viability of the licensee cannot be restored by the exercise of powers under this Part; and
- (c) it is in the best interests of depositors that there be a reconstruction of the licensee or a disposition of its assets in accordance with section 116 on an expeditious basis,

the Supervisor 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 Supervisory Committee may take into account all matters that it considers relevant and in all cases, whether—

- (a) to sustain its operations, the licensee is dependent on borrowings, advances, guarantees or other financial assistance from a government company;
- (b) the licensee's capital base has fallen below the prescribed minimum capital levels;
- (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) After considering any representation made by the licensee pursuant to a notice under subsection (1) the Supervisory Committee may invoke its powers or recommend to the Minister that he exercises any of his powers under this Part.

Vesting of
shares, etc.
in Minister.

114.—(1) Upon receiving the recommendation of the Supervisory Committee under section 113(3) the Minister shall, as to the exercise of his powers under this Part, seek the advice of a Committee comprising the Supervisor, the Deputy Supervisor, the Financial Secretary and such other person or persons as the Minister may appoint.

(2) On receiving the advice under subsection (1), the Minister shall consider the advice and may, with the approval

of the Cabinet, make an order (hereinafter referred to as a “vesting order”), vesting licensee’s shares and subordinated debt in the Accountant-General.

(3) The powers conferred on the Minister by this Part may be exercised in relation to a licensee in respect of which the Supervisor has assumed temporary management.

(4) A vesting order made under subsection (2)—

- (a) vests the licensee’s shares and subordinated debt in the Accountant-General as from the date of the order, free from any encumbrance attaching thereto, notwithstanding any knowledge 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 the Accountant-General or a person claiming under either of them; and
- (c) does not prevent a secured creditor who holds a security interest in the shares or subordinated debt 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 118.

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

Effect of
vesting order.

- (a) in the case of a financial holding company, the shares of the financial holding company and of any deposit taking institution that it holds, shall be placed in escrow and the Minister may proceed forthwith to restructure the financial holding company in accordance with section 116;
- (b) in the case of a deposit taking institution, the functions, rights and privileges of the directors of the institution 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 functions, rights or privileges;

- (c) in the case of a deposit taking institution, the Minister may appoint one or more persons to assist in the management of the institution and may assign to such person or persons any of the functions, rights or privileges of the directors and officers of the institution;
- (d) the Minister may, if he considers it to be in the best interests of the depositor, apply to a Judge of the Supreme Court for an order stating—
 - (i) the commencement or continuance of any proceedings by or against the licensee for such period as the Judge thinks fit; and
 - (ii) any execution against the property of the licensee;
- (e) no creditor of a licensee shall enforce any remedy against the licensee or its property without the leave of a Judge of the Supreme Court; and
- (f) no person may terminate or amend any agreement or arrangement 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 or arrangement referred to in subsection (1)(f) shall be of no force or effect if it—

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

(b) provides that on—

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

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

(3) Paragraph (f) of subsection (1) shall not apply in respect of an agreement or arrangement with the licensee which was made more than six months prior to the date of the vesting order.

(4) Where an order is granted under paragraph (d)(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.

116.—(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 to be carried out, or cause the licensee to carry out—

Restructuring transactions.

- (a) a transaction or a series of transactions that involves the sale of all or part of the licensee's shares or subordinated debt to one or more buyers;
- (b) a transaction or a series of transactions that involves the amalgamation of the licensee with another company;
- (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 licensee's business.

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

(3) No restriction on the right of a 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 enactment, shall apply so as to prevent the Minister, the Accountant-General, the licensee or any other person, from carrying out a transaction or a series of transactions referred to in subsection (1).

Winding up or
schemes of
arrangements.

117.—(1) The Minister shall apply to the Court for a winding up order or propose an arrangement or 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 116(1) is not substantially completed on or before a date that is—

- (a) one hundred and eighty days after the making of the vesting order; or
- (b) any extension of that period that the Minister may allow.

(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 of that licensee shall be deemed to be preferential debts in accordance with any laws relating to insolvency and accordingly shall be paid in priority to all other debts.

Notice *re*
compensation.

118. The Minister shall, within forty-five days after the date of the vesting order, 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 119; or
- (b) a notice stating that no offer of compensation is being made because the amount so determined is nil.

119.—(1) The amount of compensation payable to a person referred to in section 118 shall be calculated on the net gain if any accruing to the Accountant-General upon completion of any of the transactions referred to in section 116(1), after deduction of all amount invested in or expended on the licensee by the Minister and all other costs incurred in relation to the transaction.

Determination
of compensa-
tion.

(2) Where there is no net gain accruing to the Accountant-General upon completion of any of the transactions referred to in section 115(1), compensation shall not be payable.

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

120. 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.

- (a) establishing such right or interest, if any;
- (b) determining the amount of compensation, if any, to which he is entitled under section 119; and
- (c) enforcing his right to any such compensation.

121.—(1) Where—

- (a) a vesting order has been made under section 114(2) in respect of a licensee; and
- (b) before any action is taken by the Minister under section 115(1), the Minister is satisfied that the

Re-vesting of
shares and
subordinated
debt.

matters specified in section 113(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 114(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 assignees and successors in title of those persons.

(3) An order made under this section shall be subject to the conditions as may be specified in the order.

Winding up of
foreign bank.

122.—(1) Notwithstanding anything to the contrary in any other law, and without prejudice to the rights of any depositor as against the foreign bank, in a winding up or equivalent process relating to any foreign bank the realizable assets of the foreign bank's branch operations in Jamaica shall be deemed to be the assets of the branch of that foreign bank operating in Jamaica (hereinafter referred to as the "Jamaican branch") as if that branch were a company, and shall be available for distribution in accordance with the priorities set out in subsections (2) and (3).

(2) Notwithstanding the provisions of any other law relating to the ranking of debt in a winding up, and without prejudice to the rights of any depositor as against a foreign bank on a winding up or equivalent process, the following claims shall have priority over all other claims on the assets of the Jamaican branch of a foreign bank—

- (a) first, 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 immediately preceding the date of commencement of the winding up (in this

this section referred to as “the commencement date”);

- (b) second, the wages and salaries of the officers and employees of the Jamaican branch that accrued during the six months immediately preceding the commencement date;
- (c) third, money received by the Jamaican branch from the public on current account, deposit account or other similar account;
- (d) fourth, all amounts due in respect of any compensation or liability for compensation under the *Workmen's Compensation Act* accrued before the commencement date;
- (e) fifth, all amounts by way of contributions for which the Jamaican branch is liable under sections 4, 5 and 6 of the *National Insurance Act* and which have become due and payable before the commencement date;
- (f) sixth, redundancy payments payable under the *Employment (Termination and Redundancy Payments) Act*;
- (g) seventh, all amounts by way of contributions for which the Jamaican branch is liable under the *National Housing Trust Act* or the *Human Employment and Resource Training Act* and which have become due and payable before the commencement date;
- (h) eighth, all amounts owed to general creditors of the Jamaican branch.

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

PART XXIII. *Additional Enforcement Measures*

123.—(1) The Supervisor may apply to a Judge of the Supreme Court for an order under subsection (2) where there is reasonable cause to believe that any person—

Coercion
order.

- (a) has contravened any provision of this Act or any regulations made under this Act or that the contravention is likely to continue or be repeated; or
- (b) is about to contravene any provision of this Act or regulations made under this Act.

(2) On an application under subsection (1), the Judge may, if satisfied as to the matters set out in paragraph (a) or (b) of that subsection, make an order—

- (a) restraining the person from doing anything which constitutes or repeats the contravention;
- (b) restraining the person from disposing of any assets of the person (as the case may be) which the Judge is satisfied are likely to be disposed of by the person;
- (c) if there are steps which can be taken for remedying the contravention, requiring the person to take such steps to remedy it as may be specified in the order.

(3) Upon the application of the Supervisor, a Judge of the Supreme Court may make an order compelling any person who is not in compliance with any of the provisions of this Act, or regulations made under this Act, to comply with the provisions.

(4) Nothing in this section shall prevent the Supervisor from transmitting any information in his control or possession, relating to any contravention of this Act, or any regulations made under this Act, to the designated authority for the purpose of any criminal investigation or to the Director of Public Prosecutions for the purpose of any prosecution.

Restitution
Order.

124.—(1) The Supervisor may apply to the Supreme Court for an order under subsection (2) if a person or entity required to be licensed or authorized under this Act is convicted of an offence under this Act or any regulations made under this Act and—

- (a) profits have accrued to the person as a result of the

contravention or commission of the offence; or

- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention or commission of the offence.

(2) On an application under subsection (1), the Court may order the person against whom the application is brought to pay to the Accountant-General such sum as appears to be just, having regard to—

- (a) the profits appearing to have accrued, in any case described in subsection (1)(a);
- (b) the extent of the loss or other adverse effect, in any case described in subsection (1)(b); or
- (c) the profits appearing to the Court to have accrued and the extent of the loss or other adverse effect, in any case described in paragraphs (a) and (b) of subsection (1).

(3) The amount paid to the Accountant-General in respect of an order under subsection (2) shall be paid by the Accountant-General to such persons as the Court may direct the money to be paid, being persons—

- (a) to whom the Court considers it just and equitable that the profits referred to in subsection (1)(a) should be paid; or
- (b) who have suffered the loss or adverse effect referred to in subsection (1)(b).

(4) For the purposes of subsections (2) and (3), the Court may make an order for the production to the Court of such accounting records and other information as the Court may require in order to—

- (a) establish whether any person has accrued profits as described in subsection (1)(a) and if so the extent of those profits;
- (b) establish whether any person has suffered loss or

adverse effect as described in subsection (1)(b), and, if so, the extent of that loss or adverse effect; or

- (c) determine how any amounts are to be paid or distributed under subsection (3).

(5) An order under subsection (4) may—

- (a) be directed at the person against whom the application under subsection (1) is brought or any other person whom there is reasonable grounds to believe is in possession of the accounting records or other information concerned; and
- (b) require any accounting records or other information supplied under subsection (4) to be verified in such manner as the Court may direct.

(6) Nothing in this section affects the right of any person other than the Supervisor to bring proceedings in respect of the matters to which this section applies so, however, that the Court may make such order as it thinks fit for the stay or consolidation of proceedings as the justice of the case requires.

(7) A civil remedy for an act or omission is not affected by reason only that an order for restitution under this section has been made in respect of that act or omission.

125.—(1) For the purposes of this section, “restraint order” means an order—

- (a) prohibiting any person from dealing with, including removing from Jamaica, any property described in subsection (4) and held by a person specified in the order; and
- (b) containing any directions or provisions as the Judge considers appropriate for the preservation of the property with respect to which the order is made.

(2) The Supervisor may apply to a Judge of the Supreme Court for a restraint order where—

- (a) an investigation has been started in Jamaica with regard to criminal or civil proceedings for the contravention of, or an offence under this Act or

Restraint
order,
settlement
agreements
and pecuniary
penalties.

any regulations made under this Act;

- (b) criminal or civil proceedings for the contravention of an offence under this Act, or any regulations made under this Act, have been commenced in Jamaica and have not been concluded; or
- (c) the Supervisor has made an application for an order for restitution under section 124.

(3) The Judge of the Supreme Court may grant the application under subsection (2) if there are reasonable grounds to believe that any person has contravened or committed an offence under this Act, or any regulations made under this Act, and as a result—

- (a) profits have accrued to the person as a result of the contravention or commission; or
- (b) one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention or commission.

(4) A restraint order may provide that it applies to any property—

- (a) obtained by the person against whom the order is sought as a result of or in connection with the contravention or commission of an offence referred to subsection (3); or
- (b) which, in whole or in part, directly or indirectly represents, in the possession or control of the person against whom the order is sought, the value of the property referred to in paragraph (a).

(5) A copy of the restraint order shall be served on the persons affected by the order, in such manner as may be prescribed by rules of court.

(6) An application to vary or discharge a restraint order may be made to a Judge of the Supreme Court by—

- (a) any person who applied for the order; or

(b) any person affected by the order.

(7) Where any application is made under subsection (6), the Judge may vary or discharge the order.

(8) The Supervisor may enter into an agreement or arrangement with any person against whom the Supervisor may take any action—

(a) under this Act, the *Bank of Jamaica Act*, or any regulations made under either Act; and

(b) as concerns compliance with any provision of this Act or the terms or conditions of any licence or approval granted under this Act,

for the settlement of the matter on such terms as are specified in the agreement or arrangement in accordance with subsection (9), instead of any such action.

(9) An agreement or arrangement for the purposes of subsection (8) shall be entered into in such form and manner as the Supervisor may determine from time to time and, without limit to the generality of the foregoing—

(a) may provide for the payment of a monetary penalty by the person;

(b) shall state the breach in respect of which the penalty referred to in paragraph (a) is payable;

(c) in addition to any penalty under paragraph (a), may provide for the payment by the person of additional sums by way of compensation to any person on whose behalf the Supervisor may institute proceedings under this Act; or

(d) shall specify any other terms or conditions to be complied with by the person,

and a copy of the agreement shall be provided to the person concerned.

(10) Upon the failure of the person to comply with

any provision, term or condition of the agreement or arrangement, the Supervisor shall be entitled to do any one or more of the following—

- (a) terminate the agreement or arrangement;
- (b) take any action, or pursue any remedy, available to him as if the agreement or arrangement had never been made; or
- (c) treat as forfeited by the person any sums paid thereunder.

(11) If on an application brought by the Supervisor in the Supreme Court, the Court is satisfied that any person has contravened such provision of this Act, or any regulations made under this Act, the Court may in respect of each contravention exercise any of the powers referred to in subsection (12).

(12) The Court may—

- (a) order the person to pay to the Crown such pecuniary penalty, not exceeding one million dollars in the case of an individual and not exceeding five million dollars in the case of a person other than an individual; or
- (b) grant an injunction restraining the person from engaging in conduct constituting the contravention.

(13) In exercising its powers under subsection (12), the Court shall have regard to—

- (a) the nature and extent of the contravention;
- (b) the nature and extent of any loss suffered by any person as a result of the contravention;
- (c) the circumstances of the contravention; and
- (d) any previous determination against the person against whom the powers are to be exercised.

(14) The standard of proof in proceedings under this

section, shall be the standard of proof applicable in civil proceedings.

PART XXIV. *Unclaimed Moneys*

Unclaimed
moneys.

126.—(1) Where, by any annual return required by section 82, it appears that any moneys have remained unclaimed in the possession or under the control of a deposit taking institution for a period of fifteen or more years, the Minister shall cause a notice to be published in the *Gazette* and in a daily newspaper circulated in Jamaica—

- (a) giving full particulars of the moneys so unclaimed;
- (b) stating the period during which the moneys have remained unclaimed; and
- (c) stating that unless, within one year from the date of the first publication of the notice in the *Gazette* and on the website of the Ministry responsible for finance, a claim to those moneys is established to the satisfaction of the deposit taking institution concerned or, failing that, to the satisfaction of a court of competent jurisdiction, the moneys will be dealt with in accordance with subsection (2),

and the notice shall, during that year, be published twice or more often if the Minister thinks fit.

(2) Subject to subsection (3), upon the expiration of the year referred to in subsection (1)(c), any of the moneys to which the claims is established shall lapse to and become part of the revenues of Jamaica; and the Accountant-General shall keep a record of all moneys that have remained unclaimed in the possession or under the control of a deposit taking institution.

(3) Where—

- (a) a claim has been duly made but not determined during the year; or
- (b) before the expiration of the 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 in respect of which subsection (2) takes effect shall be recoverable from the deposit taking institution 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.

(6) This section shall not apply to a building society.

PART XXV. *Offences and Penalties*

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

Offences and penalties.
Seventh Schedule.

(2) The jurisdiction of the Supreme Court to hear and determine offences under this Act shall be exercised by a Judge sitting without a jury and there shall be no preliminary examination or committal proceedings.

(3) Where there are other charges arising out of the same facts and those other charges are indictable offences triable in the Supreme Court, an offence triable in the Resident Magistrate's Court under this Act may be tried in the Supreme Court by a Judge alone.

128. Every person who commits an offence under this Act or any regulations made under this Act in respect of which no special penalty is provided, shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Offence where no special penalty is provided.

129. Where an offence under this Act or any regulations made under this Act, which has been committed by a company,

Offence by body corporate.

is proved to have been committed with the consent or connivance of, or to be attributable to any failure to exercise all reasonable diligence as ought to have been exercised in the circumstances to prevent the offence having regard to the nature of his functions and all the circumstances of the case, on the part of any director or officer of the company, the director or officer of the company as well as the company shall be liable to be proceeded against and punished accordingly.

Fixed
penalties.
Eighth
Schedule.

130.—(1) This section shall apply to an offence specified in the Eighth 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) A person shall not be liable to be convicted for 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 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 Eighth Schedule shall be the penalty specified therein in relation to such offences.

Eighth
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, subject to affirmative resolution make provision as to any matter incidental to the operation of this section, and in particular, any such order may prescribe—

- (a) the form of notice under subsection (2) and the Collector of Taxes to whom a fixed penalty is payable;
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (c) the arrangements for the Collector of Taxes to furnish to the Supervisor, information with regard to any payment under a notice under this section.

PART XXVI. *General*

Regulations.

131.—(1) The Supervisory Committee may, with the approval of the Minister, make regulations for the purpose of giving effect to the provisions of this Act and, without prejudice to the generality of the foregoing, regulations may make provision in relation to—

- (a) licence fees;
- (b) amalgamations and transfers;
- (c) capital adequacy;
- (d) reducing the limits specified in Part XII;
- (e) banking business through agent arrangements under Part XXI;
- (f) the days on which and the hours during which deposit taking institutions shall be opened or closed;
- (g) the establishment of branches or representative offices—
 - (i) in Jamaica; or
 - (ii) otherwise than in Jamaica by deposit taking institutions;
- (h) requirements to be met by external auditors of licensees;
- (i) risk management measures for financial groups; and

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

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

132.—(1) The Supervisory Committee may make rules for the operation of licensees, to be known as “the Supervisory Rules”, in relation to—

Supervisory
Rules and
codes of
conduct.

- (a) a licensee’s risk management framework to address material risks;
- (b) money laundering, terrorism financing and the proliferation of weapons of mass destruction;
- (c) problem assets and provisioning requirements;
- (d) preparation and presentation of prudential returns and reporting requirements;
- (e) prudential accounting and computation standards and disclosure requirements;
- (f) prudential liquidity requirements;
- (g) corporate governance functions and arrangements;
- (h) prudential obligations for financial holding companies;
- (i) valuation of assets and liabilities of licensees;
- (j) payment of dividends by deposit taking institutions and the transfer of profits to capital base by licensees;
- (k) minimum solvency standards;
- (l) the forms for applications and notices and other such matters as may be specified under this Act;
- (m) outsourcing of key aspects of a licensee’s operation;
- (n) loan sales and other asset securitization; or
- (o) such other matters as the Supervisor considers necessary for the administration of the Act.

(2) The powers conferred upon the Supervisor by

subsection (1) shall be exercised after consultation with licensees and persons who, in the opinion of the Supervisor, are relevant stakeholders.

(3) The Supervisory Rules shall be subject to affirmative resolution.

(4) The Supervisor may—

- (a) issue codes of conduct pertaining to the operations of licensees;
- (b) issue a code of conduct on consumer related matters and, without limiting the generality of the foregoing, the code may provide for the following—
 - (i) the obligation to provide customers with reasonable notice of fees and charges, terms and conditions and changes thereto;
 - (ii) customers access to their information at a reasonable cost;
 - (iii) requiring any interest rate, however described by the licensee, to be also expressed as an effective annual rate, and to be calculated in a standard manner across the banking services industry;
 - (iv) the obligation to keep language in contracts with customers simple and clear, and ensure that key terms, such as rates, terms, fees and payment dates, are clearly identified for the customer's attention;
 - (v) the establishment of effective mechanisms to address customer complaints;
 - (vi) communication of customer complaint mechanisms and procedures to customers;
 - (vii) reporting and record keeping obligations in relation to customer complaints and resolutions within the times and in the

formats specified by the Supervisor;

(viii) the format, frequency, and deadlines in respect of information to be provided to the Supervisor for the administration of the code of conduct; or

(ix) any other matter as the Supervisor thinks necessary.

(5) The power conferred on the Supervisor by subsection (4) shall be exercised after consultation with organizations recognized by the Supervisor as representing deposit taking institutions and with respect to subsection (4)(b) the Consumer Affairs Commission and such other persons who, in the opinion of the Supervisor, are relevant stakeholders.

(6) A breach of the Supervisory Rules or of a code of conduct may constitute grounds for the issue of directions by the Supervisor under this Part.

(7) A licensee that does not comply with a direction given by the Supervisor under this Part commits an offence.

(8) A contravention of any direction imposed under this Part shall not invalidate any transaction.

(9) No proceedings or determination made under a code of conduct shall affect any right of any party to enforce any claim under the contractual arrangements between the parties.

(10) A person aggrieved by the decision of the Supervisor to issue a direction under a code of conduct may appeal to the Supervisory Appeals Board, in writing.

133.—(1) Notwithstanding the provisions of section 29 of the *Interpretation Act*, regulations made under section 131, the Supervisory Rules made under section 132(1) or a code of conduct made under section 132(4) may prescribe greater penalties than those specified in that section, so, however, that the maximum penalty that may be imposed shall be a fine

Regulations may provide for greater penalties.

not exceeding two million dollars or a term of imprisonment not exceeding six months or both such fine and imprisonment.

(2) Regulations made under section 131 or 132 may provide for fixed penalties not exceeding one and one-half times the maximum monetary penalty payable thereunder.

Secrecy of
officials.

134.—(1) Subject to subsection (2)—

- (a) no officer of any licensee, agent or any other person having access to information on customers; and
- (b) no person who, by reason of his capacity, office, employment or other relationship with the licensee, has by any means access to—
 - (i) the records of the licensee; or
 - (ii) any registers, correspondence or material with regard to the account of any customer of a deposit taking institution,

while his office, employment in or, as the case may be, his professional relationship with the licensee continues or after the termination thereof, shall give, divulge or reveal any information regarding the money or other relevant particulars of the account of that customer.

Ninth
Schedule.

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

(3) A person who contravenes subsection (1) commits an offence.

Ninth
Schedule.

(4) Any person to whom information is disclosed pursuant to this Act, other than a person to whom information is disclosed under paragraph (c) or (d) of the Ninth Schedule, shall regard and deal with such information as secret and confidential.

(5) A person referred to in subsection (4) commits an offence if the person at anytime communicates or attempts

to communicate any information disclosed under this Act otherwise than pursuant to—

- (a) the performance of his functions under this Act;
- (b) the performance of his functions under any other enactment; or
- (c) a court order.

135. No civil or criminal action, suit or other proceedings may be brought against any person who, in good faith, provides or transmits any document or other information to the Supervisor or an authorized officer as may be required under this Act or any regulations made under this Act.

Protection of persons providing information under this Act.

136. The Minister may by order, subject to affirmative resolution, amend—

Minister may amend monetary penalties and certain Schedules.

- (a) any monetary penalty imposed in this Act; or
- (b) the Schedules to this Act (other than the non-monetary penalties and the Tenth and Eleventh Schedules).

137. A review of this Act shall be conducted no later than seven years after the commencement date by a committee of both Houses of Parliament appointed for the purpose.

Review of Act.

138.—(1) The *Banking Act* and the *Financial Institutions Act* are repealed.

Repeal.

(2) Sections 8A, 8B, 9A, 9B, 9C, 17, 39A, 39B, 75A, 75B, 75C, 75D, 75E, 75F, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 and the Eighth Schedule to the *Building Societies Act*, are repealed.

(3) The Bank of Jamaica (Building Societies) Regulations, 1995, are revoked.

139. Notwithstanding the repeal of the *Banking Act* and the *Financial Institutions Act* (in this section referred to as “the repealed enactments”) regulations made under the repealed enactments, as in force immediately before the repeal of those Acts—

Saving of regulations made under repealed Acts.

- (a) shall remain in full force and effect, with such changes as may be necessary, as if made under this Act; and may be amended or revoked accordingly; and
- (b) any reference in any other enactment to specific provisions of the repealed enactments shall be construed as a reference to the equivalent provision of this Act.

Duty to notify
regulator and
JDIC in
certain cases.

140. Where in the exercise of the Supervisor's powers under this Act, a company that is regulated by another regulator is likely to be affected, that regulator shall be consulted and, where it is likely to impact a company that takes deposits that are insured with the Jamaica Deposit Insurance Corporation, the Corporation shall also be notified.

Power of
licensee to
enforce
transactions.

141. Notwithstanding anything to the contrary, where a transaction is entered into by a licensee, whether before or after the relevant date, in contravention of any provision of this Act, nothing in this Act shall prevent the licensee from enforcing the transaction against the person to party thereto.

Amendment
of Bank of
Jamaica Act.
Tenth
Schedule..

142. The provision of the Bank of Jamaica Act referred to in the first column of the Tenth Schedule is amended in the manner specified in relation thereto in the second column of that Schedule.

PART XXVII. *Transitional Arrangements*

Transitional
arrangements.

143.—(1) In this section, “the repealed enactments” means the Banking Act, the Financial Institutions Act, the provisions of the Building Societies Act set out in section 136(3) and the Bank of Jamaica (Building Societies Regulations) 1995, in force immediately prior to the appointed day.

(2) Any company that immediately prior to the commencement date was licensed as a bank or merchant bank or building society, as the case may be, under the repealed enactments (hereinafter referred to as an “existing bank or merchant bank or building society”) shall, subject to the

provisions of this Act, be deemed to be licensed under section 22 of this Act as if that section were in force at the date on which any such licence was granted.

(3) Any existing deposit taking institution which, before the commencement date, has entered into any transaction which did not contravene any of the repealed enactments but which is incompatible with sections 57 to 63—

- (a) shall, within three months after the commencement date, submit to the Supervisor, a statement giving particulars of the transaction as is in operation at that date; and
- (b) shall submit a programme to the Supervisor for rectifying the incompatibility of the transaction after that date or, as the case may be, for the termination of the transaction within such period as may be agreed between the “existing bank or merchant bank or building society” and the Supervisor, or, in default of agreement, as may be determined by the Supervisor.

(4) Any licensee whose current ownership or governance structure or other operational arrangements are not in compliance with the requirements of this Act shall provide within three months after the commencement date, a programme for bringing the licensee into compliance within such period as may be agreed with the Supervisor, or as the Supervisor may specify.

144. The enactments specified in column 1 of the Eleventh Schedule are amended in the manner specified in relation thereto in column 2 of that Schedule.

Consequential
amendment of
enactments.
Eleventh
Schedule.

FIRST SCHEDULE

(Section 2)

Meaning of Tier 1 and Tier 2 Capital

1. Subject to paragraphs 2, 3, 4 and 5, in this Act—

“Tier 1 capital” means the amount derived from the application of the following formula:

Tier 1 capital = (A+B+C+D+E) – (F+G+H) where the expression—

- A means paid-up capital in the form of ordinary shares or stock or capital shares;
- B means paid-up capital in the form of non-redeemable, non-cumulative preference shares;
- C means the permanent capital fund, in the case of a mutual building society;
- D means eligible reserves as defined under section 2;
- E means capital raised from an issue of shares referred to in A or B, or having terms acceptable to the Supervisor, to a government company or undertaking in the circumstances specified in paragraph 4;
- F means any net loss arising from the aggregate of—
 - (a) any undistributed profits or accumulated losses for prior financial years;
 - (b) any financial year to date profit or loss; and
 - (c) any loss positions on revaluation reserves arising from fair value accounting for financial assets and liabilities; and—
 - (i) if the aggregate of (a), (b) and (c) is a net loss, the expression F shall be treated as a positive in applying the above formula; and
 - (ii) if the aggregate of (a), (b) and (c) is a net surplus, the expression F shall be treated as zero;
- G means any goodwill, start-up expenses and other intangible assets; and

FIRST SCHEDULE, *cont'd.*

H means any other deduction designated by the Supervisor by notice published in the *Gazette*,

and for the avoidance of any doubt, in relation to the expression F—

- (i) the amount of any net loss referred to therein shall be expressed as a positive number in applying the above formula; and
- (ii) if the aggregate of (a), (b) and (c) is a net surplus, the expression F shall be treated as zero; and

“Tier 2 capital” means the aggregate of—

- (a) paid-up capital in the form of non-redeemable cumulative preference shares;
- (b) paid-up capital in the form of redeemable preference shares or, in the case of a mutual building society, deferred shares, in either case having an original term to maturity of five years or more;
- (c) subordinated debt issued to a Government agency or company wholly owned by the Government in the circumstances specified in paragraph 4;
- (d) general provisions for loss, up to a maximum of one and one-quarter *per centum* of the licensee's risk weighted assets.

2. In relation to paragraph (b) of the definition of “Tier 2 Capital”, where the outstanding term of the preference shares or deferred shares is less than five years, the amount thereof to be treated as Tier 2 Capital shall be reduced in the manner prescribed.

3. Notwithstanding paragraph (b) of the definition of “Tier 2 Capital”, as regards a building society that had deferred shares outstanding as at the commencement date, if those deferred shares were treated as Tier 2 Capital immediately prior to the commencement date, they shall continue to be treated as Tier 2 Capital, and the amount thereof shall be reduced as in the manner prescribed.

4. The circumstances referred to in expression E of the definition of Tier 1 capital and sub-paragraph (c) of the definition of Tier 2 capital in paragraph 1 are that the shares or subordinated debt have been issued under an agreement or arrangement for the provision of financial assistance to the licensee for the purpose of its restructuring.

FIRST SCHEDULE, *cont'd.*

5. The Supervisor, may, after review of all of the terms and conditions applicable to any particular capital component used by a licensee in its calculation of Tier 1 capital or Tier 2 capital, determine that, notwithstanding that component's name or description, the component shall be excluded from the computation of the licensee capital base, or included in a different tier; and the determination of the Supervisor shall be final and binding.

SECOND SCHEDULE

(Section 6(2))

The Supervisory Committee

Constitution
of Supervisory
Committee.

1.—(1) The Supervisory Committee shall consist of five persons three of whom shall be *ex-officio* members and two of whom shall be appointed members.

(2) The following persons shall be *ex-officio* members of the Supervisory Committee—

- (a) the Supervisor, who shall be the chairman;
- (b) the Deputy Supervisor; and
- (c) a member of the senior executive staff of the Bank with responsibility for financial stability oversight.

(3) Subject to paragraph 2, the appointed members shall be two persons—

- (a) who are not employed to the Bank; and
- (b) selected from persons appearing to the Minister to have experience or knowledge in banking business, administration, commercial law, finance or the regulation of financial services.

(4) The appointed members shall be appointed by the Governor-General on the advice of the Minister after consultation with the Supervisor.

Disqualification. 2.—(1) The following persons shall not be eligible for appointment to the Supervisory Committee—

- (a) members of the House of Representatives or the Senate;
- (b) members of the Council of the Kingston and St. Andrew Corporation or any Municipal Council or any Parish Council;
- (c) public officers;
- (d) directors, officers, employees or external auditors of a licensee or the connected persons in relation to the licensee; and

SECOND SCHEDULE, *cont'd.*

- (e) any person who has a direct or indirect proprietary interest in a licensee or the connected person in relation to the licensee.
- (2) A person shall not be appointed to the Supervisory Committee unless—
 - (a) the person has forwarded to the Minister a voluntary declaration declaring that he is not ineligible for appointment under paragraph (2)(1);
 - (b) the proposed appointee is confirmed by the Supervisor to be a fit and proper person and that such person is a person whose appointment will not raise an issue of conflict of interest or undue influence.
- (3) An appointment made in contravention of paragraph (2) shall be void.
- 3. If the chairman of the Supervisory Committee is absent or unable to act, the Deputy Supervisor shall act as chairman for that meeting in accordance with section 34B(4)(c) of the *Bank of Jamaica Act*. Temporary appointment.
- 4. Where a vacancy occurs in the appointed membership of the Supervisory Committee, the vacancy shall be filled by the appointment of another appointed member in accordance with this Schedule. Vacancy.
- 5.—(1) The appointment of an appointed member of the Supervisory Committee shall be evidenced by instrument in writing and the appointment shall be for a period not exceeding three years. Tenure of Office.
- (2) Every appointed member of the Supervisory Committee shall be eligible for reappointment.
- (3) Subject to paragraph (4), the Governor-General, on the advice of the Minister may, at any time, revoke the appointment of an appointed member of the Supervisory Committee.
- (4) The appointment of an appointed member of the Supervisory Committee may be revoked for—
 - (a) physical or mental infirmity;
 - (b) bankruptcy or compounding with or suspending payment to his creditors;
 - (c) being charged with or convicted for an offence involving dishonesty;
 - (d) failing to carry out the functions required of a member of the Supervisory Committee;
 - (e) engaging in activities that can be reasonably considered to be

SECOND SCHEDULE, *cont'd.*

incompatible with continued membership of the Supervisory Committee; or

- (f) ceasing to be eligible for continued membership on the Supervisory Committee in accordance with this Schedule;

Resignation. 6.—An appointed member of the Supervisory Committee may, at any time, resign his office by instrument in writing addressed to the Governor-General and delivered to the chairman for transmission to the Governor-General through the Minister, and from the date of the receipt of such instrument such appointed member shall cease to be a member of the Supervisory Committee.

Publication of membership. 7. The names of the members of the Supervisory Committee as first constituted and every change in the membership of the Committee shall be published in the *Gazette*.

Authentication of documents. 8. All documents made by the Supervisory Committee may be signed under the hand of the chairman or any member of the Supervisory Committee authorized, in writing, to act on behalf of the Chairman.

Procedure. 9.—(1) The Supervisory Committee shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at the Bank and at such times and on such days as the Supervisory Committee may determine.

(2) The chairman or any other person appointed to act temporarily as chairman shall preside at meetings of the Supervisory Committee.

(3) The decisions of the Supervisory Committee shall be by a majority of votes of the members and, in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

(4) Subject to the provisions of this Act, the Supervisory Committee may regulate its own proceedings.

(5) Proper records of all proceedings of the Supervisory Committee shall be kept and the Bank shall provide administrative support to the Supervisory Committee.

Remuneration. 10. There shall be paid to the appointed members of the Supervisory Committee such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Bank may determine.

Disclosure of interest. 11. Any member of the Supervisory Committee who has any interest, directly or indirectly, in any matter brought before the Supervisory Committee—

- (a) shall disclose the nature of the interest to the Supervisory

SECOND SCHEDULE, *cont'd.*

Committee; and

- (b) shall not take part in any deliberations or decisions of the Supervisory Committee with respect to that matter.

12. The office of an appointed member of the Supervisory Committee shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

Office of member not a public office.

THIRD SCHEDULE

(Section 20(a))

Matters in relation to which the Supervisory Committee shall have regard in determining whether to grant a licence to operate as a deposit taking institution or function as a financial holding company

PART A

In considering an application under section 19, the Supervisory Committee shall have regard to the following matters—

1. The validity and sufficiency of documents submitted in support of the application.
2. The incorporation of the applicant.
3. The transparency of the ownership structure or legal arrangements concerning the applicant and the group.
4. The ability of the Supervisor to independently verify the identity of the ultimate natural beneficial owner, who, whether alone or jointly with another, exerts control or effective control and if no individual exerts control or effective control through ownership interests, information to identify the individuals exerting control or effective control through other means or in their absence, the directors or officers or both.
5. The ability of the applicant to carry on its business or proposed business in a prudent manner.
6. The business plan, feasibility study and other financial projections including any special areas of business in which the applicant expects to engage.
7. The applicant's financial resources and the source of those resources, including capacity of the applicant to satisfy the capital requirements to support establishment and operations.
8. The applicant's history and known performance.

THIRD SCHEDULE, *cont'd.*

9. Whether every director, officer, substantial shareholder and key employee of an applicant, is a fit and proper person.

10. The suitability and adequacy of the legal, managerial and operational structure of the group; including the nature of the services offered, the strength of the financial performance of the members of the group which will include the deposit taking institution or financial holding company, and whether the structure will hinder or impede the effective supervision of the deposit taking institution on either a stand-alone or a consolidated basis.

11. If the applicant is a foreign bank or a subsidiary of a company registered or incorporated outside Jamaica, the application shall be subject to—

- (a) the prior approval of or non-objection from the regulator in the respective foreign country in which the foreign bank or company is registered or incorporated; and
- (b) the law and regulatory requirements of the applicant's home jurisdiction that relate to—
 - (i) the recognition of the regime set out in section 122 in the event of the insolvency of the applicant;
 - (ii) the disclosure by the applicant of financial and other information of the kind that a licensed deposit taking institution shall disclose under section 82;
 - (iii) the accounting and auditing standards applicable to the applicant;
 - (iv) the functions of the directors of the applicant; and
 - (v) the licensing, registration, authorization, and supervision of the applicant;
- (c) the adequacy of the supervisory standards applied by the regulator in the home jurisdiction of the foreign bank or parent company, including the powers and willingness of that regulator to share information and cooperate with the Supervisor;
- (d) the capacity and authority of the management of the branch operations proposed to be established in Jamaica to address regulatory concerns regarding the local branch operations.

12. The adequacy of the proposed—

- (a) systems of corporate governance, the policies of which should *inter alia* expressly address the role of the Board, accountability and transparency requirements for the Board and for the management

THIRD SCHEDULE, *cont'd.*

of the applicant, including the remuneration of director and officers;

- (b) internal controls of the applicant and the financial group;
- (c) risk management systems and policies which, at a minimum mandate the routine identification and mitigation of the risks to the safety and soundness of the deposit taking institution, including the risks of services being used to commit or facilitate a financial crime or to avoid or breach a statutory obligation.

13. Such other matters and information as the Supervisor deems appropriate.

NOTE: A reference in this Schedule to Board includes a reference to a board of management or such other governing body established under section 31 of this Act.

PART B

Minimum Start-up Capital

1.—(1) A licence shall not be granted under this Act in the category of bank or merchant bank unless the bank has capital of an amount of not less than two hundred million dollars or such other amount as the Supervisor may prescribe.

(2) A licence shall not be granted to operate a branch of a foreign bank in Jamaica unless the foreign bank has an assigned capital for the proposed branch operation of an amount of not less than two hundred million dollars or such other amount as the Supervisor may prescribe in the Supervisory Rules.

(3) A licence shall not be granted to a building society unless the applicant has capital of an amount of not less than one hundred million dollars or such other amount as the Supervisor may prescribe in the Supervisory Rules.

(4) Further capital requirements may be imposed on applicants where this is considered necessary to ensure that there is sufficient minimum capital to cover the proposed activities of the applicant.

PART C

Head Office

A licence shall not be granted to any company having its head office outside Jamaica unless the company designates and notifies to the Supervisor of—

- (a) a principal office in Jamaica;

THIRD SCHEDULE *cont'd.*

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

FOURTH SCHEDULE

(Section 27(2))

*Constitution and Procedures of
Supervisory Appeals Board*

Constitution
of Supervisory
Appeals
Board.

1.—(1) Subject to sub-paragraph (2), the Supervisory Appeals Board shall consist of not less than three or more than five members appointed by the Governor-General on the advice of the Minister.

(2) The Supervisory Appeals Board shall be selected from persons appearing to the Minister to be knowledgeable and experienced in matters relating to law, banking, finance or the regulation of financial services and otherwise qualified for appointment to the Appeals Board and of which at least one member shall be a retired judge.

Disqualifica-
tion.

2.—(1) The following persons shall not be eligible for appointment to the Supervisory Appeals Board—

- (a) members of the House of Representatives or the Senate;
- (b) members of the Council of the Kingston and St. Andrew Corporation, or of any Municipal Council or of any Parish Council;
- (c) public officers;
- (d) directors, officers, employees or external auditors of a licensee or connected persons in relation to the licensee; and
- (e) any person who has a direct or indirect proprietary interest in a licensee or in a connected person in relation to the licensee.

(2) The appointment of a member of the Supervisory Appeals Board shall not proceed unless the proposed appointee is determined to be a fit and proper person with the appropriate level of independence and a person whose appointment will not raise an issue of conflict of interest or undue influence from within the public or private sector.

(3) The members of the Supervisory Appeals Board shall appoint one of their numbers to be the chairman.

FOURTH SCHEDULE, *cont'd.*

(4) An appointment made in contravention of sub-paragraph (1) shall be void.

3. If the chairman of the Supervisory Appeals Board is absent or unable to act the other sitting members may appoint one of their numbers to act as chairman for that meeting. Temporary appointment.

4. Where a vacancy occurs in the membership of the Supervisory Appeals Board, it shall be filled by the appointment of another member in accordance with this Schedule. Vacancy.

5.—(1) The appointment of every member of the Supervisory Appeals Board shall be evidenced by instrument in writing and shall be for a period not exceeding two years. Tenure of office.

(2) Every member of the Supervisory Appeals Board shall be eligible for reappointment.

(3) Subject to sub-paragraph (4), the Governor-General on the advice of the Minister may, at any time, revoke the appointment of a member of the Supervisory Appeals Board.

(4) The appointment of a member of the Supervisory Appeals Board may be revoked for—

- (a) physical or mental infirmity;
- (b) bankruptcy or compounding with or suspending payment to his creditors;
- (c) being charged with or convicted for an offence involving dishonesty or any one or more of the offences listed in the Second Schedule to the *Proceeds of Crime Act*;
- (d) no longer meeting the requirement of being 'fit and proper';
- (e) engaging in activities that can be reasonably considered prejudicial to the interest of the Supervisory Appeals Board.

(5) If a person ceases to be eligible for appointment to the Supervisory Appeals Board his appointment shall be revoked from the date on which the person ceased to be eligible.

6.—(1) The chairman may, at any time, resign his office by instrument in writing addressed to the Governor-General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General. Resignation.

(2) Any member of the Supervisory Appeals Board, other than the chairman, may, at any time, resign his office by instrument in writing addressed to the Governor-General and transmitted through the chairman

FOURTH SCHEDULE, *cont'd.*

and the Minister; and from the date of the receipt by the Minister of the instrument, the member shall cease to be a member of the Supervisory Appeals Board.

Publication of membership.

7. The names of the members of the Supervisory Appeals Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

Authentication of documents.

8. All documents made by, and all decisions of, the Supervisory Appeals Board may be signed under the hand of the chairman or any member of the Supervisory Appeals Board authorized in writing, to act on behalf of the chairman.

Procedure of Supervisory Appeals Board.

9.—(1) The Supervisory Appeals Board shall meet at such times as may be necessary or expedient for the transaction of business and the meetings shall be held at the places and times and on the days as the Supervisory Appeals Board may determine.

(2) The chairman or any other person appointed to act temporarily as chairman shall preside at meetings of the Supervisory Appeals Board.

(3) Subject to paragraph 1(1), the decisions of the Supervisory Appeals Board shall be by a majority of votes of the members hearing the appeal; and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

(4) The Supervisory Appeals Board, may make rules to regulate its proceedings.

(5) Proper records of all proceedings of the Supervisory Appeals Board shall be kept and the Bank shall provide administrative support to the Appeals Board.

Remuneration of members.

10. There shall be paid to the chairman and other members of the Supervisory Appeals Board such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister responsible for finance may determine.

Protection of members.

11. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Supervisory Appeals Board in respect of an act done by the member *bona fide* in pursuance or execution or intended execution of the provisions of this Act.

Disclosure of interest.

12. Any member of the Supervisory Appeals Board who has any interest, directly or indirectly, in any matter brought before the Supervisory Appeals Board—

(a) shall disclose the nature of the interest to the Supervisory Appeals Board; and

(b) shall not take part in any deliberations or decisions of the

FOURTH SCHEDULE, *cont'd.*

Supervisory Appeals Board with respect to that matter.

13. For the purpose of hearing an appeal, the Supervisory Appeals Board may co-opt any person appearing to it to have the requisite expertise to advise the Board, once the Board is satisfied that the person has no pecuniary or non-pecuniary interest in the matter being considered by the Board.

Board may co-opt persons.

14. The Supervisory Appeals Board shall have power to summon witnesses and compel their attendance and such witnesses, if the Supervisory Appeals Board agrees, may give their evidence by affidavit.

Witnesses.

15. The Supervisory Appeals Board may order one party to any appeal proceedings to pay the costs of the other party as well as those of the Supervisory Appeals Board as determined by the Supervisory Appeals Board and the costs if not paid by the party as ordered, may be recovered by suit brought in a Resident Magistrate's Court as a civil debt due to the party in whose favour the Supervisory Appeals Board has ruled, notwithstanding any limit set on the sums that may be claimed in a Resident Magistrate's Court.

Costs.

16. The office of the chairman or member of the Supervisory Appeals Board shall not be a public office for the purposes of Chapter V of the Constitution.

Office of member not a public office.

FIFTH SCHEDULE

(Sections 109 and 112)

PART A

Conditions Subject to Remedial Action

1. The licensee has breached the provisions of its incorporating documents.
2. The licensee, a director or any person employed (either as agent or otherwise)—
 - (a) is engaging or is about to engage in an unsafe or unsound practice in undertaking the functions of a financial holding company or in conducting banking business; or
 - (b) is contravening or has contravened—
 - (i) a provision of this Act or any regulations made under this Act;
 - (ii) a condition of the licence granted under this Act in respect of that licensee;
 - (iii) a standard of sound practice;
 - (iv) a provision of the Bank of Jamaica Act or any regulations made under that Act; or
 - (v) a provision of the Proceeds of Crime Act, the Terrorism

FIFTH SCHEDULE, *cont'd.*

Prevention Act, the United Nations Security Council Resolutions Implementation Act or regulations made under any of those Acts or any other enactment imposing obligations on the licensee.

3. The licensee's capital levels fall below the prescribed minimum levels.
4. A substantial shareholder, director, officer or key employee has ceased to be a fit and proper person in accordance with this Act 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;
 - (b) in the case of a deposit taking institution, has continued to take deposits in violation of a direction;
 - (c) has given false statements concerning its affairs;
 - (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 is contravening, has contravened or is about to contravene, any cease and desist order or any directions issued by the Supervisor under this Act.
8. The licensee has ceased to be viable within the meaning of section 113.
9. The licensee has notified the Supervisor that it proposes to surrender its licence.
10. The licensee in the case of a deposit taking institution has ceased to carry on banking business.
11. Proceedings have commenced for the voluntary or compulsory winding up of the licensee.
12. The licensee has breached any rule, standard or code issued under section 34P (1) of the Bank of Jamaica Act or there is any contravention by the licensee in meeting the specified time for compliance therewith.

PART B

Cease and Desist Orders

1. Before issuing a cease and desist order, the Supervisor shall serve on the licensee, a notice—

FIFTH SCHEDULE, *cont'd.*

- (a) containing a statement of the matters constituting the alleged unsafe or unsound practice or alleged contravention and, where appropriate, the name of the person against whom the allegation is made;
- (b) specifying a date by which the licensee shall make representation in writing to the Supervisor on the matter, to allow for a determination as to whether a cease and desist order should be made.

2. At any time after the date specified in sub-paragraph (1)(b), the Supervisor, having considered a representation if any, may make the order on such terms as he sees fit or take such action in accordance with his powers under this Act as is necessary.

3. If no representation is made by the date specified in sub-paragraph (1)(b), that 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 Supervisor shall make a cease and desist order in respect of that licensee.

4. Where the allegations specified in such notice are established in relation to the licensee, the Supervisor 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 under paragraph 1(a).

5. 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 making of the order; and
- (b) take effect as from such date as may be specified therein or, if made under paragraph 3, take effect from the date of service of the notice.

6. Where in relation to a licensee—

- (a) a notice has been served under paragraph 1; and
- (b) at any time prior to the date specified in the notice issued at paragraph 1, the Supervisor is satisfied that the situation giving rise to the notice is likely to endanger the financial position of the licensee, the financial group or the interests of its depositors,

the Supervisor may, forthwith, serve on that licensee and on any person named in the notice, a cease and desist order which shall take effect at any time prior to the date specified in the notice, from the date of such service.

FIFTH SCHEDULE, *cont'd.*

PART C

Temporary Management of a Licensee

1.—(1) For the purposes of sections 111 and 112, the Supervisor shall serve on the licensee concerned, a notice announcing his intention to assume the temporary management of the licensee from such date and time as may be specified in the notice.

(2) If the Supervisor considers it necessary, the notice under sub-paragraph (1) may provide that the assumption of temporary management shall take effect immediately.

(3) The Supervisor may appoint any person to manage on his behalf, the licensee specified in a notice under sub-paragraph (1).

(4) A copy of the notice under sub-paragraph (1) shall be—

- (a) sent to the Registrar of the Supreme Court;
- (b) posted in a conspicuous position at each place of business of the licensee; and
- (c) published at least twice in a newspaper circulated in Jamaica.

(5) Upon the date and time specified in the notice under 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—

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

(6) All expenses of an incidental to the temporary management of a licensee shall be paid by such licensee in such manner as the Supervisor may determine.

2. The assumption of temporary management under this Act shall have the effect of 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.

FIFTH SCHEDULE, *cont'd.*

3.—(1) Subject to sub-paragraph (2), a person alleging a particular hardship from the effect of the stay granted under paragraph 2 may apply to the Court, with notice to the Supervisor, for relief, and the Court may make such order in relation to the stay as it thinks fit.

(2) In exercising its powers under sub-paragraph (1), the Court shall treat as paramount the following considerations—

- (a) the interest of the licensee's depositors generally; and
- (b) the preservation of financial system stability.

4.—(1) Where a temporary manager has been appointed by the Supervisor in accordance with this Schedule, the Supervisor may—

- (a) restore the licensee to its board of directors or owners, as the case may be;
- (b) 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.

(2) The Supervisor shall, within sixty days of his appointment and each successive sixty days thereafter, produce a report to the Supervisory Committee on the affairs of the licensee and addressing such issues as the Supervisory Committee requires.

(3) The Supervisory Committee may publish the report redacting such portion of the report as may be appropriate in the public interest.

PART D

Revocation

1. Before the revocation of a licence, the Supervisor shall give to the licensee, a notice in writing of his intention to do so, specifying the reasons for the revocation and indicating a period that is not less than thirty days within which the licensee shall have an opportunity to be heard and, in such cases, the licensee may submit to the Supervisor a written statement of objections.

2. As soon as convenient after the hearing and receipt by the Supervisor of the written statement or after the expiration of the period stated in the notice, whichever first occurs, the Supervisor shall afford the licensee the opportunity to be heard within the period specified in the notice, and after the hearing the Supervisor shall advise the licensee of the decision of the Committee by instrument in writing.

FIFTH SCHEDULE, *cont'd.*

3. Where a licensee has been notified of the revocation of its licence it may, within ten days after the date of the notification, appeal to the Court of Appeal and the Court of Appeal may make such order as it thinks fit.
4. The revocation of a licence shall not relieve the licensee of any obligation incurred or assumed by the licensee prior to the revocation of the licence.

SIXTH SCHEDULE

(Section 82(2))

Information to be Provided by a Licensee under Section 82

A licensee shall provide the information specified in the first column at the frequency specified in the second column in fulfillment of its obligation to file returns to the Supervisor under subsection 82(2).

<u>First Column</u>	<u>Second Column</u>
<u>Information</u>	<u>Frequency</u>
1. Weekly Returns— All banks shall submit—	No later than the Monday following the Wednesday to which the return relates.
(a) a statement of assets and liabilities (on and off balance sheet) and shareholders' equity and other supplementary information as specified; and	
(b) deposits, borrowings and other liabilities for the computation of cash reserves and liquid assets to be held pursuant to sections 28 and 29 of the <i>Bank of Jamaica Act</i> .	
2. Monthly Returns— All deposit taking institutions shall submit—	No later than seven business days after the end of each month to which the return relates.
(a) a statement of assets and liabilities (on and off balance sheet) and shareholders' equity and other supplementary information as specified;	
(b) details of the cash reserve and liquid assets balances held pursuant to sections 28 and 29 of the <i>Bank of Jamaica Act</i> ;	
(c) information on customer liabilities to the licensee in respect of bills discounted, loans and advances, guarantees and any other counterparty exposure;	

SIXTH SCHEDULE, *cont'd.**Information to be Provided by a Licensee under Section 82*

<u>First Column</u>	<u>Second Column</u>
<u>Information</u>	<u>Frequency</u>
<p>(d) information on loans in respect of which no principal or interest which is due and payable has been paid for a period of ninety calendar days; and</p> <p>(e) liquidity positions.</p>	
<p>3. Quarterly Returns—</p> <p>All deposit taking institutions shall submit details regarding—</p> <p>(a) quarterly earnings and expenditure;</p> <p>(b) loans in respect of which no principal or interest which is due and payable has been paid for a period of ninety calendar days;</p> <p>(c) large exposure;</p> <p>(d) connected persons exposure;</p> <p>(e) market risk exposures.</p>	<p>No later than twenty-one calendar days after the end of the quarter to which the return relates.</p>
<p>4. Annual Returns</p>	<p>Sixty calendar days after the end of the calendar year to which the return relates.</p>

SEVENTH SCHEDULE

(Section 127(1))

Offences and Penalties

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
Unlawful disclosure by member of Supervisory Committee member	9(2) On conviction in a Circuit Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Except under and in accordance with the provisions of this Act, soliciting deposits from members of the public, engaging in activities involving the taking of deposits or engaging in any other banking business.	10(2) On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. On conviction in a Circuit Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
Undertaking business as a shell bank or undertaking or facilitating dealings of any kind or nature with a shell bank.	11(2) On conviction in a Circuit Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
Fraudulently misrepresenting that a person is—	12(2) On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
(a) licensed under this Act; or (b) authorized to engage in business or activities on behalf of a deposit taking institution.	On conviction in a Circuit Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
Inducing or attempting to induce another person to—	13(2) On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.
(a) place money on deposit with him or any other person; or	
(b) enter into, or offer to enter into, any agreement for that purpose.	On conviction in a Circuit Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
Knowingly or without exercising reasonable care, having dealings of any nature with, or facilitating or conducting any transaction with, or for, or on behalf of, a prohibited scheme.	14(3) On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. On conviction in a Supreme Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
Not being licensed to engage in banking business using any name, title, trade mark, style, designation, or description that represents or implies that the person is licensed to engage in banking business.	15(2) On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		On conviction in a Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Hindering or obstructing an authorized officer or any person acting in aid of such officer in the performance of his functions.	16(11)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months.
Forming a company or other body using a name or title that includes a restricted word.	17(6)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.
		On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Changing the name or title of a company or other body to a name or title that includes a restricted word.	17(6)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.
		On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
Carrying on any activity, directly or indirectly, in Jamaica using a name or title that includes a restricted word.	17(6) On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to display or exhibit a certified copy of its licence in a conspicuous place on each of its premises where it conducts banking business.	25(2) On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars.
Disclosing information regarding the operations of any licensee, or the affairs of a customer of a deposit taking institution or a foreign bank.	29(2) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Making alteration to incorporating documents without approval of Supervisor.	30(5) On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Failure to notify Supervisor of alteration within fourteen days of the date on which an alteration is made to incorporating documents.	30(5) On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		six months or to both such fine and imprisonment.
Failure to ensure that each substantial shareholder, director, officer and key employee is and remains a fit and proper person.	37(3)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Failure to ensure that all members of any financial group complies with obligation to ensure that each substantial shareholder, director, officer and key employee is and remains a fit and proper person.	37(3)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Without the express authorization in writing of the Supervisor, acting or continuing to act as a director of, or be concerned, directly or indirectly, in the management or key functions of any licensee.	38(3)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Failure to notify Supervisor <i>re</i> dismissal <i>etc.</i>	39(2)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to comply with the prudential liquidity requirements specified in the Supervisory Rules.	45(2)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
Being a merchant bank, accepting or repaying deposit contrary to Act.	<p>imprisonment for a term not exceeding six months or to both such fine and imprisonment.</p> <p>48(3) On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
Engaging in trade or other business contrary to Act.	<p>49(3) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>
Acquiring fixed assets contrary to Act.	<p>50(2) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>
Acquiring, dealing in or grant, credit facilities on the security of its own shares or the shares of any other company within the group contrary to Act.	<p>51(3) On conviction in the Supreme Court to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.</p>
Paying dividend on own shares contrary to Act.	<p>52(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine</p>

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
	and imprisonment.
Failure to comply with notice of prohibition.	52(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Beneficially holding land in fee simple contrary to Act.	53(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Managing or investing funds on behalf of customers contrary to Act or engaging in proprietary trading in securities for its own account.	54(2) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Engaging in permitted activities contrary to Act.	55(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Incurring counterparty exposures contrary to Act.	57(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Granting or incurring unsecured credit facilities contrary to Act.	58(5) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Incurring counterparty exposures in excess of aggregate amount.	59(2) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five

BANKING SERVICES

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		years or to both such fine and imprisonment.
Having holdings in companies contrary to Act.	60(2)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to notify Supervisor on counterparty exposures.	61(2)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars.
Refuses to provide any relevant information or refusing to obey a summons.	65(4)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Failure to comply with a requirement knowingly or wilfully supplying false information to Supervisor with intent to mislead or attempting to mislead any person.	66(2)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to comply with a requirement made under section 67(1)(b) or wilfully attempting to mislead or making any false statement with intent to mislead or attempting to mislead any person in the execution of his	67(2)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
duties under this Part or without lawful justification or excuse, obstructing or hindering any person in the execution of such duties.	71(3) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to take prescribed measures to properly identify, assess and manage relationships and risks.	71(6) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to comply with directions.	72(3) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to comply with directions on restructuring of ownership in a deposit taking institution.	75(4) On summary conviction in a Resident Magistrate's Court to a fine not exceeding four million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
Failure to comply with summons <i>re</i> responsibilities.	79(2) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to comply with a requirement or, in response to a requirement, knowingly or wilfully supplying false information to the Supervisor.	

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i> <i>Penalty</i>
Failure to submit returns or provide information in accordance with Act.	82(5) On summary conviction in a Resident Magistrate's Court to a fine not exceeding four million dollars. On conviction in the Supreme Court to a fine.
Failure to comply with loan loss reserve requirements.	83(6) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to submit, exhibit or publish last audited financial statements.	84(5) On summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars.
Failure to make returns in relation to consolidated audited financial statements.	85(4) On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to make returns in relation to consolidated audited financial statements to operation of subsidiary.	86(4) On conviction in the Supreme Court to a fine or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to appoint external auditor.	88(3) On summary conviction in a Resident Magistrate's Court to a fine not exceeding four million dollars.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		On conviction in a Circuit Court to a fine.
Knowingly appointing an external auditor or knowingly consenting to be appointed as the external auditor of a licensee in contravention of the section.	89(2)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars.
Failure to report to Supervisor on transactions, <i>etc.</i> affecting licensee's financial viability.	91(3)	On conviction in the Supreme Court to a fine not exceeding five million dollars or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to comply when summoned <i>re</i> enquiry into operations and financial position of licensee.	92(3)	On conviction in the Supreme Court to a fine not exceeding four million dollars or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Breach of duty of auditor to comply with requirements of Supervisor in relation to special and expanded audits.	93(2)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars. On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to notify Supervisor on resignation or appointment.	95(3)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars.

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
Failure to comply with requirements <i>re</i> union transfer or undertaking of building society.	98(9)	On conviction in the Supreme Court to a fine.
Causing or permitting 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.	103(2)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding two years. On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to make returns in relation to voluntary winding up.	107(4)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding six months.
Offering or providing services through a third party without the prior approval of the Supervisory Committee.	108(6)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars.
Holding self out as being authorized by a deposit taking institution to provide services through an agent.	108(7)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or imprisonment for a term not exceeding two years or to both such fine

SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>	<i>Second Column</i>	
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		and imprisonment.
		On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.
Failure to comply with summons of bank or with requirements of authorized officers or obstructing or misleading a deposit taking institution.	109(7)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to comply with any requirement or contravenes any prohibition imposed by any direction or cease and desist order.	109(7)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to imprisonment for a term not exceeding one year.
Failure to comply with directions.	110(7)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Failure to comply with directions of Supervisor.	132(2)	On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding three years or to both such fine and imprisonment.
Breach of secrecy requirements.	134(3) and (5)	On summary conviction in a Resident Magistrate's Court to a fine not exceeding five million dollars or to

*BANKING SERVICES*SEVENTH SCHEDULE, *cont'd.**Offences and Penalties*

<i>First Column</i>		<i>Second Column</i>
<i>Brief description of Offences</i>	<i>Relevant Section</i>	<i>Penalty</i>
		imprisonment for a term not exceeding one year.
		On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

EIGHTH SCHEDULE

(Section 130)

*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>
Inducing or attempting to induce another person to—	13(2)	\$7,500,000.00
(a) place money on deposit with him or any other person; or		
(b) enter into, or offer to enter into, any agreement for that purpose.		
Knowingly or without exercising reasonable care, having dealings of any nature with, or facilitating or conducting any transaction with, or for, or on behalf of, a prohibited scheme.	14(3)	\$7,500,000.00
Forming a company or other body using a name or title that includes a restricted word.	17(6)	\$4,500,000.00
Changing the name or title of a company or other body to a name or title that includes a restricted word.	17(6)	\$4,500,000.00
Carrying on any activity, directly or indirectly, in Jamaica using a name or title that includes a restricted word.	17(6)	\$3,000,000.00
Failure to display or exhibit a certified copy of its licence in a	25(2)	\$1,500,000.00

BANKING SERVICES

EIGHTH SCHEDULE, *cont'd.*

*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>
conspicuous place on each premises where it conducts banking business.		
Making alteration to incorporating documents without approval of Supervisor.	30(5)	\$4,500,000.00
Failure to notify Supervisor within fourteen days of the date on which an alteration is made to incorporating documents.	30(5)	\$4,500,000.00
Failure to ensure that each substantial shareholder, director, officer and key employee is and remains a fit and proper person.	37(3)	\$4,500,000.00
Failure to ensure that all members of financial group complies with obligation to ensure that each substantial shareholder, director, officer and key employee is and remains a fit and proper person.	37(3)	\$4,500,000.00
Without the express authorization in writing of the Supervisor, acting or continuing to act as a director of, or being concerned, directly or indirectly, in the management or key functions of any licensee.	38(3)	\$4,500,000.00

EIGHTH SCHEDULE, *cont'd.*

*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>
Failure to notify Supervisor <i>re</i> dismissal <i>etc.</i>	39(2)	\$7,500,000.00
Being a merchant bank, accepting or repaying deposit contrary to Act.	48(3)	\$7,500,000.00
Engaging in trade or other business contrary to Act.	49(3)	\$3,000,000.00
Acquiring fixed assets contrary to Act.	50(2)	\$7,500,000.00
Acquiring dealing in or granting, credit facilities on the security of its own shares or the shares of any other company within the group contrary to Act.	51(3)	\$7,500,000.00
Paying dividend on own shares contrary to Act.	52(4)	\$7,500,000.00
Failure to comply with notice of prohibition.	52(4)	\$7,500,000.00
Beneficially holding land in fee simple contrary to Act.	53(4)	\$7,500,000.00
Managing or investing funds on behalf of customers contrary to Act or engaging in proprietary trading in securities for its own account.	54(2)	\$7,500,000.00
Engaging in permitted activities contrary to Act.	55(4)	\$7,500,000.00

EIGHTH SCHEDULE, *cont'd.*

*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 counterparty exposures contrary to Act.	57(4)	\$7,500,000.00
Granting or incurring unsecured credit facilities contrary to Act.	58(5)	\$7,500,000.00
Incurring counterparty exposures in excess of aggregate amount.	59(2)	\$7,500,000.00
Having holdings in companies contrary to Act.	60(2)	\$7,500,000.00
Failure to notify Supervisor on counterparty exposures.	61(2)	\$3,000,000.00
Refusing to provide any relevant information or refusing to obey a summons.	65(4)	\$4,500,000.00
Failure to comply with a requirement knowingly or wilfully supplying false information to supervisor with intent to mislead or attempting to mislead any person.	66(2)	\$7,500,000.00
Failure to comply with a requirement made under section 67(1)(b) or wilfully attempting to mislead or making any false statement with intent to mislead or attempting to mislead any person in the	67(2)	\$7,500,000.00

EIGHTH SCHEDULE, *cont'd.*

*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>
execution of his duties under this Part or without lawful justification or excuse, obstructing or hindering any person in the execution of such duties.		
Failure to take prescribed measures to properly identify, assess and manage relationship and risks.	71(3)	\$7,500,000.00
Failure to comply with directions on restructuring of ownership in a deposit taking institution.	72(3)	\$3,000,000.00
Failure to comply with summons <i>re</i> responsibilities.	75(4)	\$6,000,000.00
Failure to comply with a requirement or, in response to a requirement, knowingly or wilfully supplying false information to the Supervisor.	79(2)	\$7,500,000.00
Failure to submit returns or provide information in accordance with Act.	82(5)	\$3,000,000.00
Failure to comply with reserve requirements.	83(6)	\$7,500,000.00
Failure to submit, exhibit or publish last audited financial statements.	84(5)	\$1,500,000.00

BANKING SERVICES

EIGHTH SCHEDULE, *cont'd.*

*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>
Failure to make returns in relation to consolidated audited financial statements.	85(4)	\$7,500,000.00
Failure to comply with directions on insolvency.	86(4)	\$3,000,000.00
Failure to appoint external auditor.	88(3)	\$6,000,000.00
Knowingly appointing an external auditor or knowingly consenting to be appointed as the external auditor of a licensee in contravention of the section.	89(2)	\$6,000,000.00
Failure to report to Supervisor on transactions, <i>etc.</i> affecting licensee's financial viability.	91(3)	\$6,000,000.00
Failure to comply when summoned <i>re</i> enquiry into operations and financial position of licensee.	92(3)	\$7,500,000.00
Breach of duty of auditor to comply with requirements of Supervisor in relation to special and expanded audits.	93(2)	\$3,000,000.00
Failure to notify Supervisor on resignation or appointment.	95(3)	\$3,000,000.00
Failure to comply with requirements <i>re</i> union	98(9)	\$7,500,000.00

EIGHTH SCHEDULE, *cont'd.*

*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>
transfer or undertaking of building society.		
Causing of permitting 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.	103(2)	\$7,500,000.00
Failure to make returns in relation to voluntary winding up.	107(4)	\$4,500,000.00
Failure to comply with summons of Bank or with requirements of authorized officers or obstructing or misleading a deposit taking institution.	109(6)	\$7,500,000.00
Failure to comply with directions.	110(7)	\$7,500,000.00
Failure to comply with directions of Supervisor under Part XXVI.	132(7)	\$7,500,000.00
Breach of secrecy requirements.	134(3)	\$7,500,000.00
Failure to comply with directions of Supervisor.	134(5)	\$7,500,000.00

NINTH SCHEDULE

(Section 134(2))

*Circumstances in which Information on Customer's
Accounts in a Deposit Taking Institution may be
Disclosed*

Section 134(1) shall not apply in any case where—

- (a) the information is disclosed by an officer of a licensee to another officer of that licensee or financial group;
- (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 in relation to the customer's banking transactions; 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 licensee has been served with a court order attaching money in the customer's account;
- (g) the information disclosed is required by the head office of a foreign bank and pertains only to credit granted by the Jamaican operations of that bank;
- (h) information disclosed in accordance with the *Credit Reporting Act*;
- (i) after consultation with the Supervisor, the Minister in writing directs such disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign 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 direction in writing of the Supervisor, for purposes relating to his functions under this Act;
- (k) the circumstances are such that it is in the interests of the licensee that the information be disclosed;
- (l) disclosure is permitted or required under another enactment;
- (m) disclosure is required by virtue of an order of the court, other than

NINTH SCHEDULE, *cont'd.*

an order under paragraph (g);

- (n) disclosure for the purposes of the financial group's anti-money laundering and counter-terrorism or financing risk management procedures, so, however, that it is without prejudice to section 97 (tipping off) of *Proceeds of Crime Act*;
- (o) disclosure necessary for the financial groups general risk management procedures or standardization of credit approval mechanisms;
- (p) disclosure for the purposes of outsourcing arrangements in accordance with such requirements as may be prescribed;
- (q) the licensee proposes to effect the sale of loans or securitization arrangements, and has received the approval in writing of the Supervisor to make such disclosures as may be necessary to effect the sale or securitization transaction;
- (r) the Minister directs, in writing, the disclosure in the national interest.