

# **REPORT**

**OF THE**

**JOINT SELECT COMMITTEE  
TO CONSIDER AND REPORT ON THE  
BILL SHORTLY ENTITLED  
*“THE BANKING SERVICES ACT, 2014”***

**May, 2014**

**1. ESTABLISHMENT, COMPOSITION AND TERMS OF REFERENCE OF THE COMMITTEE**

Members of this Honourable House are reminded that on April 17, 2014, the Minister of Finance and Planning, having obtained suspension of the Standing Orders, moved:

**BE IT RESOLVED** that, notwithstanding Standing Order No 76(1), this Honourable House of Representatives appoint a Special Select Committee comprising the following members:

Dr. the Hon. Peter Phillips, MP – **Chairman**

Hon. Peter Bunting, MP

Hon. Julian Robinson, MP

Mr. Fitz Jackson, MP

Mr. Mikael Phillips, MP

Mr. André Hylton, MP

Mr. Audley Shaw, MP

Mr. Karl Samuda, MP

Mr. Gregory Mair, MP

To sit jointly with a similar committee to be appointed by the Senate to consider and report on the operation of a Bill shortly entitled “*The Banking Services Act, 2014*”

On May 2, 2014, the Minister of Foreign Affairs and Foreign Trade, the Hon. Arnold J. Nicholson moved the following motion:

**BE IT RESOLVED** that this Honourable Senate appoint a Special Select Committee comprising the following members:

Senator Hon. Mark Golding

Senator Norman Grant

Senator Grace Imani Duncan-Price

Senator Sophia Frazer-Binns

Senator Alexander Williams

Senator Ruel Reid, CD, JP

To sit jointly with a similar Committee appointed by the House of Representatives, to consider and report on the Bill shortly entitled “*The Banking Services Act, 2014*”.

Your Joint Select Committee commenced its deliberations on May 6, 2014 and held three (3) meetings, to deliberate on the Bill. We also held a three-day non-residential weekend retreat, from Friday afternoon to Sunday afternoon. We completed our deliberations on the Bill on May 21, 2014.

Your Committee at its first sitting took the decision that an opportunity must be given to stakeholders in the banking sector as well as the wider public to make submissions on the Bill. In light of that, we wrote to four (4) critical umbrella groups dealing with the banking sector, namely:- the Jamaica Bankers' Association, the Jamaica Securities Dealers Association, the Institute of Chartered Accountant of Jamaica and the Building Societies Association of Jamaica. A Public Notice was also placed in the Observer dated May 7, 2014 and the Gleaner dated May 8, 2014, inviting written submissions from individuals and organizations. Resulting from the inclusive approach that we took, we got submissions from three (3) of the four (4) groups that we wrote to as we did not receive a submission from the Jamaica Securities Dealers Association. We also received submissions from the National Commercial Bank and from KPMG.

The following groups made presentations to your Committee:

- Jamaica Bankers' Association (JBA)
- Building Societies Association of Jamaica (BSAJ)
- Institute of Chartered Accountants of Jamaica (ICAJ)

On May 14, 2014, the Minister of Finance and Planning sought the approval of the House of Representatives to withdraw the Bill shortly entitled "***The Banking Services Act, 2014***" that was tabled on April 17, 2014 and re-tabled a revised Bill bearing the same title. A motion was also moved by the Minister of Finance and Planning, to appoint a Special Select Committee to sit jointly with a Committee from the Senate to review and report on the said Bill. The composition of the members of the Committee previously named remained unchanged.

On May 16, 2014, the Minister of Foreign Affairs and Foreign Trade, the Hon. Arnold J. Nicholson sought the approval of the Senate to withdraw the Bill shortly entitled "***The Banking Services Act, 2014***" that was tabled on May 2, 2014 and re-tabled a revised Bill bearing the same

title. A motion was also moved by the Minister of Foreign Affairs and Foreign Trade, to appoint a Special Select Committee to sit jointly with a Committee from the House of Representatives to review and report on the said Bill. The composition of the members of the Committee previously named remained unchanged.

## **2. INTRODUCTION**

The legislation purports to repeal the Banking Act and the Financial Institutions Act and the Bank of Jamaica (Building Societies) Regulations; amend the Bank of Jamaica Act and the Building Societies Act. It seeks to consolidate these laws and new provisions with regard to the supervision of banks, merchant banks, building societies and financial holding companies and for connected matters. The legislation will be a significant one with far reaching implications for the overall financial sector, in that it will update and modernize the framework for the operation and supervision of the banking sector. The legislation will essentially harmonize major provisions in the current statutes and remove existing inconsistencies across the various statutes while preserving of the key differences between the three (3) types of deposit taking institutions namely:- bank, merchant bank and building society.

The legislation also incorporates critical new provisions regarding banking supervision in order to achieve compliance with the Basel Core Principles for Effective Banking Supervision which are internationally applicable to banking supervisors. Jamaica's compliance with these standards is assessed under Financial Sector Assessment Programmes done by the International Monetary Fund (IMF) and World Bank from time to time. The Act will implement key policy-changes in the area of bank supervision, critical among these will be issues concerning supervisory autonomy with critical ministerial powers transferred to the Bank of Jamaica (BOJ). The law also proposes changes in the following: arrangements for the appointment and terms of appointments of the Supervisor of Bank and Financial Institutions and the Deputy Supervisor; the processes for supervisory decision making and the overall structures in that regard; the grant of rule-making powers to the BOJ; new and enhanced enforcement powers, the offering of banking services through agency arrangements, the establishment of a bankers' code of conduct, among other things.

### 3. FINDINGS AND RECOMMENDATIONS

Your Committee after reviewing the Bill extensively now has the honour of presenting its findings and recommendations.

#### **PART I - Preliminary**

##### **Clause 1 – Short title**

Clause 1 refers to the short title of the Bill. **Your Committee felt that it was necessary to add the words “and shall come into operation on a date to be appointed by the Minister by notification published in the *Gazette*” to ensure that the Regulations can come into force simultaneously with the Act.**

##### **Clause 2 – Interpretation**

Clause 2 sets out the definitions that should be generally considered in the context of the substantive provisions in which they are used.

Your Committee deliberated on the term “aggregate group capital” and **decided that to make the provision more complete the words “in the manner prescribed” should be added after the words “consolidated basis”.**

Your Committee deliberated on the term “aggregate group capital base” and **decided that to make the provision more complete the words “in the manner prescribed” should be added after the words “consolidated basis”.**

Your Committee deliberated on the term “agent” and **took the decision that the term should be relocated to Part XXI which treats with the specific subject matter and that wherever else the term is used in the Bill, would be subject to the interpretation applied to the general usage of the term “agent”.**

**The Committee recommended that the term “aggregate group capital” and “aggregate group capital base” be removed from the Bill if it was settled by the technical team that they do not appear in the Bill.**

Your Committee discussed extensively the term “banking business” and **decided that for clarity (a) (i) should be broken out into two sections. Therefore, the words “in the case of a bank” should be moved to margin and reference thereto “deposits received on current or deposit...” and would become (a)(ii). The other subparagraphs would be renumbered.**

Your Committee **took the decision that under paragraph (e) of the term “counterparty exposure” the word “reverse” should be added before the word “repurchase.** This is because the reverse repurchase transaction is one in which the deposit taking institution purchases securities from a counterparty with a promise from that counterparty to repurchase the security at a later date and at an agreed price. This transaction amounts to an advance or loan to the counterparty to whom the obligation to repurchase is placed, thus creating a credit exposure to the counterparty.

Your Committee **decided that under the term “eligible auditor” the reference to section 88(1) should be changed to 89(1). Your Committee also recommends that the word “define” should be changed to “defined”**

**Your Committee decided to delete the words “non-operating” from the definition of “financial holding company” as it was agreed that in certain cases deposit taking institutions would be permitted to operate as financial holding companies.**

After extensive deliberations on the term “financial services”, **your Committee decided that paragraph (h) should be revised to read “dealing in securities or trading in other financial instruments”. We also felt that a paragraph should be added to cover “pension funds management” since that is a significant financial service offered in Jamaica. This new paragraph would be lettered “m”.**

Your Committee in reviewing the term “independent director”, felt that in order to make the definition more precise, **the words “an employee of the company” should replace the words “a member of the management of” in paragraph (a). The rationale indicated by the discussion was that a member of the management of a company is also an employee and therefore the terminology ‘employee’ would be a more appropriate term to use in the**

**provision. Your Committee also felt that paragraph “b” should be expanded and therefore the word “substantial” should be replaced with the wording “a person who holds 5% or more of the shares in the company or is a connected person in relation to the company”**

**In reviewing the term “manager” your Committee felt that the words “of a deposit taking institution or financial holding company” should be replaced with the words “of a licensee or key aspects of a licensee’s operations”.**

**In reviewing the term “real sector activities”, your Committee accepts the recommendation to delete the words “that have not been approved by the Supervisor as activities comprising necessary support services to the financial group”.**

**In discussing the term “secured”, your Committee felt that for clarity the words “in relation to credit facilities” should be inserted before the word “means”. It was also felt that the closing words of the term “unsecured” should be deleted from the definition of “unsecured” and included as the closing words to the term “secured”. This would add clarity as to inclusion of irrevocable letters of credit and other instruments into the definition.**

**In deliberating on the listing at subsection (2)” your Committee felt that clause (2)(e) could be strengthened by inserting the words “control or” before the word “effective” in 2(e).**

**Your Committee recommends that in clause 2(7), the words “In subparagraph (i) of the definition of “deposit”, money” and substitute therefor the words “In paragraph (a)(ii) of the definition of “deposit” in subsection (1), money”**

**Your Committee recommends that in subsection 2(8) the words “him” and “he” respectively and substitute therefor in each case the words “the person.”**

**Clause 3 – Meaning of Fit and Proper Person**

Clause 3 refers to the fit and proper criteria. **Your Committee felt that all references to “Supervisor” should be replaced with the word “Supervisory Committee”, except in 3(2).**

**Your Committee recommends that the words “, or is not at the time of an assessment subject to, a charge of committing” should be deleted from 3(1)(a)(i), the words “on a licensee” should be deleted from 3(1)(a)(iii), and 3(1)(b) should be expanded to include “or any other information” after the words “employment records”.**

It was noted that in 3(2) the word “employees” was incorrectly spelt and should be changed to “employeees”.

## **PART II - *Administration***

This Part of the Bill establishes the decision making powers of the Supervisory Committee in relation to key supervisory matters.

### **Clause 4 – Exercise of Functions under this Act**

This Clause indicates that the Bank, the Supervisor and the Supervisory Committee will carry out the functions under the Act, without limiting their powers under any other statute. **Your Committee recommends that no change is necessary for clause 4 of the Bill.**

### **Clause 5 – Principles to take into Account when exercising functions**

Clause 5 seeks to outline certain principles upon which the Bank shall carry out its supervision. **Your Committee recommends the deletion of paragraph 5(c). The paragraphs would now be lettered from (a) to (f).**

### **Clause 6 – Constitution of Supervisory Committee**

Clause 6 establishes the Supervisory Committee and refers to the Second Schedule for details of its operations. **Your Committee recommends that no change is necessary in clause 6 of the Bill.**



### **Clause 7 – Functions of Supervisory Committee**

Clause 7 indicates the proposed remit of the Supervisory Committee. Your Committee felt that clarity should be given to the “regulator” as concerns were raised in respect of the need for sharing of information between cross border organizations. **Your Committee recommends that the words “regulatory counterpart” as they appear in clause 7(1)(f) should be deleted and replaced with the words “any other regulator”. This would include both foreign and local regulators.**

**Your Committee after reviewing the clause took the decision to delete clauses 7(1)(g) and 7(1)(h).**

**Your Committee also recommends that 7(1)(j) should be split into two paragraphs. One part should relate to the objection to the appointment and the other to objection to the removal.**

Your Committee further recommends including four new paragraphs in clause 7(1) to address (i) enforcement measures pursuant to Parts XXII and XXIII; (ii) making regulations and Supervisory Rules under Part XXVI; and (iii) monitoring the enforcement of any code of conduct.

Section 7(1) will be re-lettered.

Your Committee also felt **that a new subsection should be inserted which would read as follows: “In carrying out its functions under subsection (1) the Supervisory Committee shall take into account the assessments and recommendations of the Supervisor.”** This subsection would be numbered 7(2) and the current 7(2) would become 7(3).

Your Committee felt that there was **no need for the additional words in the current 7(2) and took the decision to delete the words “and for this purpose the Supervisor may exercise the functions conferred upon the Supervisory Committee by this Act”.**

Your Committee also felt that in the current 7(4), the provision should include the need for the Supervisory Committee to consult with the Minister of Finance on matters relating to national interest **and that the provision should reflect that “In making a determination of the matters at paragraphs (a) and (c) of subsection (1), the Supervisory Committee shall cause the Supervisor to consult with the Minister on matters relating to the national interest”.**

#### **Clause 8 – Protection of members of Supervisory Committee**

Clause 8 provides for statutory protections for Committee members to absolve the Bank from liability for actions taken or determinations made pursuant to the Banking Services Act, but do not extend these protections for actions taken or determinations made pursuant to the BOJ Act. **Your Committee recommends that the words “or the BOJ Act” should be added at the end of section 8 after the word “Act”.**

#### **Clause 9 – Secrecy of Supervisory Committee**

Clause 9 provides for the confidentiality of the Supervisory Committee members and only allows members to make disclosures of information solely for the performance of their functions under the Act. **Your Committee recommends that no change is necessary in Clause 8 of the Bill.**

### ***PART III – Prohibition and Restriction on Deposit Taking***

Part III deals generally with the various permutations on the standard prohibitions against soliciting deposits.

#### **Clause 10 – Restriction on deposit taking generally**

Clause 10, in particular, deals with the standard prohibitions against soliciting deposits, engaging in the business of taking deposits or engaging in banking business without being so authorized. **Your Committee recommends that a new paragraph relating to the advertisements for deposits should be created.** This new paragraph will be lettered (a) and the other paragraphs would be re-lettered.

Your Committee further recommends inserting the words “in any other manner” after the words “solicit deposits”.

### **Clause 11 – Prohibition on shell banks**

Clause 11 prohibits undertaking business as a shell bank as well as any dealings with a shell bank. Shell banks are seen internationally to be vehicles that are particularly vulnerable to money laundering. **Your Committee recommends that no change is necessary in Clause 11.**

### **Clause 12 - Offence of fraudulent misrepresentation *re* licence, *etc***

Clause 12 deals with prohibiting fraudulent misrepresentations that a person is licensed or authorized to engage in business under the Act. **Your Committee recommends that no change was necessary in Clause 12.**

### **Clause 13 – Offence *re* dealing with or for prohibited schemes**

Clause 13 creates the offence of fraudulently inducing a person to place money or deposit. **Your Committee also felt that the words “or projection” should be added after the word “forecast” and that the word “or” that appears before the word “forecast” should be deleted. Your Committee took the decision that there was no need for the parentheses after the words “not” and “deceptive”.**

**Your Committee took the decision that there was no need for the parentheses at the words “dishonestly or otherwise”.**

**Your Committee also felt that the words “Offence *re* inducement to place money on deposit” should be substituted for the current marginal note.**

### **Clause 14 – Restrictions on dealing with or for prohibited schemes**

Clause 14 establishes an offence for a licensee to have dealings or facilitate a transaction on behalf of a prohibited scheme under the Securities Act (i.e. Ponzi schemes). **Your Committee felt that it was necessary to insert after the words “or on behalf of”, a provision to include “(a) a person who conducts business in contravention of this Part; or”, and the words” a prohibited scheme” would now form paragraph (b) of clause 14(1).**

#### **Clause 15 – Offence of holding out to be licensee**

Clause 15 creates an offence for a person holding out himself as licensed under the Act. **Your Committee recommends that no change is necessary in Clause 15.**

#### **Clause 16 – Search warrant for contravention of this part**

Clause 16 establishes a process for obtaining a search warrant in cases of suspected breaches of the Act. After a lengthy discussion on the section, **your Committee recommends that it was necessary to include in clause 16 the words to indicate that an application can be made for the extension of time up to 60 days upon the approval of the courts for the retention of the relevant documents and cash. There should also be a power of renewal with an end date of no further renewals after 2 years after the initial seizure of the cash.**

**We also felt that a provision to give permission to all persons to apply to the courts for release of cash which has been detained pursuant to clause 16 should be added to clause 16.**

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

#### **Clause 17 – Restriction on use of certain words in name or title**

**Your Committee recommends that the words “and initials” be removed from 17(1)(a), as no initials are referred to in that paragraph.**

Clause 17 expands the range of restricted words to take into account merchant banks and building societies. **Your Committee recommends that the words “Supervisory Committee” should be replaced with the word “Supervisor” in 17(2), 17(4) and 17(5) and that in 17(4) the word “he” should replace the word “it”; and the words “under the hand of the Supervisor” should be deleted.**

### **PART V – Licensing of Deposit Taking Institutions**

This Part transfers the licensing powers from the Minister to the Supervisory Committee.

### **Clause 18 – Application of Part V**

Clause 18 indicates those entities that would not require a licence under this Act, in terms similar to FIA section 1, but seeks to include “*a co-operative arrangement for savings among individuals*”. This is intended to carve out savings “*partner*” arrangements”. **Your Committee felt that in order to expand the provision in 18(e) the words “individuals limited to” should be inserted after the word “among” and after the word “twenty” the word “individuals” should be deleted. We also felt that the words “in equal sums” and the words “either weekly, bi-weekly or monthly” should be deleted.**

**Your Committee felt that in 18(h) the words “Supervisory Committee” should be replaced with the word “Supervisor” and the words “with the approval of the Supervisory Committee” should be added thereafter.**

### **Clause 19 – Licence**

Clause 19 imposes the licensing requirements on banks, merchant banks, building societies and financial holding companies. **Your Committee accepts that a new section which will be numbered (4) should be added and should state “A mutual society shall not be eligible to apply for a licence under this section after the commencement date.”** The existing licensed mutual societies are grandfathered under clause 140, and would not need to be applied under clause 19

### **Clause 20 – Matters to be taken into account**

Clause 20 establishes some of the procedures for licensing and makes reference to the Third Schedule which outlines in more detail the criteria for licensing. This represents a substantial change from the previous law by incorporating detailed licensing criteria into the law, whereas previously licensing criteria (less detailed) were previously contained in regulations.

**Your Committee recommends that for clarity it was necessary to remove the words “Upon receipt of the” and replaced with the words “In making its determination on”.**

**Your Committee decided to change the word “unto” in the marginal note to the word “into”.**

#### **Clause 21 – Restriction on grant of licence**

Clause 21 sets out the requirement that substantial shareholders, the directors, senior managers and key officers must meet the fit and proper criteria and not be debarred persons. **Your Committee felt that the provision should be broadened and took the decision to insert before the words “is satisfied” the words “has had regard to the matters in section 20 and”.**

#### **Clause 22 – Grant, refusal or revocation of licence**

Clause 22 sets out the process for approval and refusal of licensing relating to notifications, reasons and the opportunity to be heard. **Your Committee felt that 22(3) should be reworded to provide a coherent regime whereby a person has a right to be heard before a decision to refuse is made. .**

#### **Clause 23 – Non Transferability, *etc.* of licence**

Clause 23 clarifies that a licence may not be transferred or assigned. **Your Committee recommends that no change is necessary in Clause 23.**

#### **Clause 24 – Licence Conditions**

Clause 24 outlines the key conditions of licences. **Your Committee felt that it was necessary to add the words “,pay the prescribed licence fee to the Accountant General” at the end of 24(1)(b).**

#### **Clause 25 – Display of licence**

Clause 25 deals with the display of a copy of the licence by the licensee at its place of business. **Your Committee recommends that no change is necessary in Clause 25.**

#### **Clause 26 – Publication of change of name**

Clause 26 indicates obligations on the Supervisor to publish particulars relating to each grant/revocation of a licence as well as changes in names. This section evoked a great deal of discussion among your members. In the end, **we decided that it was necessary to add a paragraph which would be lettered “d” which would read “such other matters relating to**

licensing as the Supervisory Committee deems appropriate”. Paragraphs (a) to (d) would become 26(1) and a new section (2) would be inserted which would read “The Supervisory Committee may cause to be published any condition of a licence granted under section 22.”

## **PART VI - *Appeal***

### **Clause 27 – Establishment of Supervisory Appeals Board**

Clause 27 establishes the Supervisory Advisory Board. The constitution and operation of the Supervisory Advisory Board will be governed by the **Fourth Schedule**. Changes to the Fourth Schedule will be reflected in the Schedule section of the Bill. **Your Committee recommends that no change is necessary in Clause 27.**

### **Clause 28 – Appeal to Supervisory Appeals Board**

Clause 28 establishes the right of appeal and the procedures for appeal (including service of the notice of the appeal and the provision of the written decision of the Supervisory Committee being appealed). The areas in which appeals will be allowed would be fit and proper determinations, objections to auditor appointments and questions of compliance with the Code of Conduct.

**Your Committee felt that it was necessary to amend section 28 of the Bill to increase clarity in relation to the granting of a stay of a supervisory decision. We suggested that in 28(10) the words “and pending the further consideration of the matter by the Supervisory Committee” be inserted after “under subsection (9)(d)”.**

### **Clause 29 – Confidentiality requirements for Supervisory Appeals Board**

Clause 29 deals with the statutory confidentiality requirements for the Supervisory Advisory Board. **Your Committee recommends that no change is necessary in Clause 29.**

**PART VII – Governance of Licensees**  
***Alteration of Incorporating Documents***

**Clause 30 – Restriction on alteration of incorporating documents**

Clause 30 deals with amending documents of incorporation with the Supervisor’s approval. This is another transfer of Ministerial power. **Your Committee recommends that no change is necessary in Clause 30.**

**Clause 31 – Boards and Management Committee**

Clause 31 speaks to the establishment of appropriate boards and management committees to carry out various functions. After a lengthy discussion on the section, **we decided that we would amend the *chapeau* by inserting after the word “licensee” the words “other than a foreign bank”. That section would be the new clause 31(1). We also decided that there should be two (2) subsections in section 31. The current section 31 would become 31(1) and the words “other than a licensee referred to in subsection (2)” inserted after the word “licensee”.**

**Subsection (2) would be added and would state “A licensee that is a foreign bank shall establish a board of management or such other governing body in relation to its branch operations in Jamaica that is satisfactory to the Supervisor and which body shall comply with paragraphs (a), (b) and (c) of subsection (1)”.**

**Clause 32 – Board of Directors**

Clause 32 deals with the size and qualifications of the board of directors (minimum 5). It carves out foreign branch operations which typically do not have boards of directors and applies the governance requirements to the governing bodies of such entities. The section requires directors to have the knowledge and skills to provide oversight and leadership to ensure prudent operations. It also prohibits the chair from being an employee. **Your Committee recommends that in clause 32(1) “, shall” should be removed after the words “foreign bank” and inserted after the word “Jamaica”.**



**Your Committee is further recommending the insertion of a reference to a “board of management or other governing body” in relation to a foreign bank with branch operations in Jamaica in clause 32(3).**

**Your Committee is further recommending that subsection 32(4) be amended to make it clear that the prohibition on the chairman of the board of directors of a licensee being an employee of the licensee should not apply to the chairman of the board of directors or other governing body established in relation to a foreign bank’s branch operations in Jamaica.**

### **Clause 33 – Policies**

Clause 33 outlines the key policies and procedures that a board must ensure are implemented within a licensee, which must be updated regularly. Clause 33 outlines the key policies and procedures that a board must ensure are implemented within a licensee, which must be updated regularly. **Your Committee decided to insert reference to a “governing body” in relation to foreign branch. We also decided to include Board of Management of a foreign branch in relation to branch operation in addition to Board of Directors in section 33.**

### **Clause 34 – Independent directors**

Clause 34 speaks to the appropriate proportion of independent directors (no less than one third). **Your Committee took the decision to add the words “or such other fraction as may be prescribed by Supervisory Rules” at the end of clause 34 to strengthen the provision.**

### **Clause 35 – Separation of position of chairman and chief executive director**

Clause 35 states that an individual should not hold the positions of chair and executive officer contemporaneously, save in the case of a branch of a foreign bank. **Your Committee recommends that no change is necessary in Clause 35.**

### **Clause 36 – Duty of care**

Clause 36 establishes the common law standard of care that is imposed on directors. It also partially follows the formulation in the Companies law section 174, but incorporates the

protection of depositors as an element of directors' duties. **Your Committee recommends that no change is necessary in Clause 36.**

#### **Clause 37 – Duty to undertake fit and proper assessments**

Clause 37 outlines the obligation of licensees to ensure that their directors, managers, key employees and substantial shareholders are fit and proper. **Your Committee recommends that no change is necessary in Clause 37.**

#### **Clause 38 – Persons debarred from directorship, management and key employment**

Clause 38 is an automatic debarring provision. It essentially debars persons from holding substantial ownership interests, directorship, senior management or key officer positions in a licensee if that person is not fit and proper, not appropriately qualified or had been involved in a financial institution that has had its licence revoked (not as a result of a voluntary winding up or amalgamation); has been wound up (not voluntarily); has been placed in receivership; has entered into a composition with its creditors; whose business has been operated imprudently or fraudulently; and which has failed to meet the solvency requirements of the law. **Your Committee recommends that the words “on the approval of the Supervisory Committee”, should be inserted after the word “Supervisor”.**

**We also took the decision that in (2)(b)(ii)(A) the words “with another licensee” should be inserted after the word “licensee”.**

#### **Clause 39 – Duty to notify dismissals, *etc***

Clause 39 imposes on the licensee's management a requirement to notify the Supervisor of key developments relating to the licensee.

**Your Committee recommends that a new subsection to be numbered as (4) be inserted to make it clear that clause 39(3)(b) is not to apply to the renewal of an appointment of an external auditor. The current subsection would be renumbered as (5).**

**Your Committee further recommends that clause 39(3)(c) should be deleted and placed as a new subsection in clause 39 and should read as follows: “A licensee shall not implement any major changes in existing operations, strategy or policy without first obtaining the written approval of the Supervisor”.**

## **PART VIII – *Capital Reserves***

### **Clause 40 – Capital base**

Clause 40 establishes the requirement for minimum start-up capital per the Third Schedule. It also establishes the on-going requirements to meet the capital requirements that are prescribed and to adequately support its operations. It also requires the financial holding company to maintain an adequate capital base determined in such manner and by such methods as may be prescribed. **Your Committee took the decision to change the words “capital base” to “regulatory capital” in clause 40(2). We also decided that the words “an aggregate capital base” should be deleted and replaced with the words “aggregate regulatory group capital sufficient to satisfy the prescribed capital requirements”. in clause 40(4).** All financial holding companies will be required to satisfy the prescribed requirements.

### **Clause 41 – Statutory reserve fund**

Clause 41 speaks to the reserve requirements for deposit taking institutions (with specific provisions for branches of foreign banks).

**Your Committee recommends that the words “any realized surplus arising from” be deleted from the chapeau of clause 41(5) and be inserted at the beginning of clause 41(5)(a).**

**Your Committee recommends that it was necessary to add the words “profits arising from” at the end of (5)(b) after the word “permits”. We also decided that for clarity the words “other entities within the same financial group” should be inserted after the words “the institution” at the end of (5)(b)(i).**

Your Committee also **accepts the recommendation that wording should be added to 41(5)(b) in the form of a sub paragraph (iii) to allow the Supervisor latitude to exclude other types of transactions from the calculation of net profit, where is satisfied that they do not, in substance, add to the net capital position of the deposit taking institution. .**

#### **Clause 42 – Retained earning reserve**

Clause 42 speaks to the retained earnings reserve which is a discretionary reserve that a licensee may establish and which may be counted as capital base. It may not be reduced unless the Supervisor so authorizes. **Your Committee recommends that no change is necessary in Clause 42.**

### ***PART IX – Cash Reserves and Liquidity Requirements***

#### **Clause 43 – Cash reserves**

Clause 43 outlines the obligations for the maintenance of a Cash Reserve (Banking Act section 14). It is proposed that the details of the requirement would be incorporated into the relevant section of the Bank of Jamaica Act section 28. This is because the cash reserve and the liquid asset requirements are essentially monetary policy tools to treat with money supply issues, and are not principally supervisory tools. **Your Committee recommends that the words “; and if it fails to do so it shall pay interest in accordance with that section” should be added at the end of the provision.**

#### **Clause 44 – Liquid requirements**

Clause 44 reflects a similar position for Liquid Assets (Banking Act section 15). The section establishes only the obligation to comply with such requirements that may be specified under the Bank of Jamaica Act. **Your Committee recommends that the words “; and if it fails to do so it shall pay interest in accordance with that section” should be added to the section.**

#### **Clause 45 – Prudential liquidity requirements**

Clause 45 proposes enabling provisions to allow for the establishment of prudential liquidity requirements. This is an element of the revised Basel Core Principles (CP 24). It is proposed that

the greater details on these requirements will be developed at a later date possibly with technical assistance. **Your Committee recommends that no change is necessary in Clause 45.**

## **PART X – *Fixed Assets***

### **Clause 46 – Limit on fixed assets**

Clause 46 establishes the limit on fixed assets that may be held by a licensee (i.e., limited by capital base). **Your Committee felt that the provision would be strengthened if the words “its capital base” were replaced with words “such percentage of its capital base as may be prescribed”.**

### **Clause 47 – Valuation of fixed assets**

Clause 47 states that the historical cost method shall be applied in the valuation of fixed assets. **Your Committee recommends that for clarity the words “For the purposes of determining compliance with section 46 (i),” should be inserted before the words “the historical cost”.**

## **PART XI – *Restricted, Prohibited and Permitted***

### ***Activities of Licensees***

#### ***Restricted and Prohibited Activities***

### **Clause 48 – Restriction on periods of deposits by merchant bank**

Clause 48 imposes the limits on deposit taking that apply to merchant banks under the current Financial Institutions Act section 12. These entities may not repay deposits before the expiry of 14 days, unless authorized by the Supervisor. **Your Committee recommends that no change is necessary in Clause 48.**

### **Clause 49 – Restriction on engaging in trade or business**

Clause 49 ensures that deposit taking institutions may only operate their core banking business, save in very limited cases. The new law makes allowances for some limited exceptions for joint marketing purposes or using shared space. These cases require supervisory authorization. **Your Committee recommends that no change is necessary in Clause 49.**

**Clause 50 – Restriction on acquisition of fixed assets**

Clause 50 deals with fixed assets acquisition by licensees. Essentially licensees may not acquire fixed assets save for operating purposes, housing officers and employees and due performance of its duties as trustee/administrator/attorney. The law allows acquisition for ancillary purposes in the entity's capacity as corporate citizen (foundations, etc.). **Your Committee recommends that no change is necessary in Clause 50.**

**Clause 51 – Restriction on grant of credit facility on security of own shares, etc.**

Clause 51 prohibits granting credit on the security of a licensee's shares. **Your Committee recommends that no change is necessary in Clause 51.**

**Clause 52 – Restriction on payment of dividends on own shares**

Clause 52 imposes restrictions on the declaration of dividends. **Your Committee recommends that no change is necessary in Clause 52.**

**Clause 53 – Restriction on beneficially holding land in fee simple**

Clause 53 imposes on deposit taking institutions limits on holding real estate (acquired in the course of satisfying debts) for a period in excess of three years. The power to approve extensions to this period has been transferred to the Minister.

**In this section, the reference to subsection (2) was changed to subsection (3). Your Committee recommends that the words "any period exceeding" in Subsection (1) should be deleted and replaced with the words "more than".**

**Clause 54 – Restriction on management or investment of customers' funds**

Clause 54 imposes an important restriction on deposit taking institutions as regards carrying on the business of managing customers funds. This is an integral part of keeping deposit taking institutions carrying out their core business. **The reference to "section 13" was changed to "section 131" in this clause.**

### **Clause 55 – Permitted Activities**

Clause 55 establishes certain notification requirements related to a licensee's business, including the introduction of new business and services, delivery channels, strategic alliances, and joint ventures. The section also incorporates a process whereby the Supervisor has a 45 day period in which to ensure that the licensees have appropriate risk management measures in place to properly offer the service and to respond to the application, failing which, the licensee may proceed with the matter. The Supervisory Rules will outline information and documentation to accompany such an application. **It was felt that the word “include” should be changed to “are” in (2), and the “forty-five days” period in (3)(b) was too long and therefore your Committee accepts the recommendation of “thirty days” for the industry feedback on the Bill.**

### **PART XII – *Counterparty Exposure Limits***

Part XII deals with the imposition of particular limits on how much exposure a licensee is permitted to undertake whether this arises by lending, investment or other activities. The provisions seek to ensure that licensees to restrict their exposures to prudent levels. It incorporates a number of existing provisions into the new law but importantly introduces the wider concept of exposures (which encompasses lending and investments but extends beyond these activities).

Part XII sets limits on the extent to which a licensee can be committed in relation to its capital base, and therefore seeks to ensure that licensees' obligations or commitments remain within prudent levels. It incorporates a number of existing provisions into the new law but importantly introduces the wider concept of exposures beyond commitments comprising lending activities to encompass investments (including debt and equity transactions).

### **Clause 56 – Application of Part XII**

Clause 56 indicates the applications of the limits in this Part to both individual licensees and to financial holding companies (in the both cases, also on a consolidated basis). The bases for

calculating counterparty exposures will be set out in supervisory rules or guidance. **Your Committee recommends that no change is necessary in Clause 56.**

#### **Clause 57 – Restriction on incurring counterparty exposures**

Clause 57 deals with incurring exposures to connected parties (i.e. being parties connected to the licensee per section 2(2)). Under subsection (1) any exposure to a connected party cannot exceed 10 percent of a licensee's capital base. Exposures to all connected parties cannot exceed 20 percent of the capital base. This would not apply to financial holding companies that may have to grant support to their subsidiaries. Power to grant an exception has been transferred to the Supervisor from the Minister. **Your Committee recommends that no change is necessary in Clause 57.**

#### **Clause 58 – Restriction on grant of unsecured credit facilities**

Clause 58 eases the prohibition on lending to individuals who are connected parties to allow some amount of unsecured lending (e.g. via credit cards) (i.e. up to 50% of the salary of the CEO of a licensee). In the case of officers and employees of licensees, the limit remains at up to one year's salary. The section also makes it clear that the financial holding company should not be lending unsecured amounts to connected individuals. Additionally, any exposures arising from the activities of non-deposit taking institutions will be subject to the aggregate exposure limits of the financial holding company. **Your Committee recommends that no change is necessary in Clause 58.**

#### **Clause 59 – Restriction on aggregate counterparty exposures**

Clause 59 places a restriction on aggregate counterparty exposures (excluding inter-bank lending and specified exposures). **Your Committee recommends that the word “reverse” should be inserted before the word “repurchase” in clause 59(3)(d) and the word “Supervisor” should be replaced with the words “Supervisory Committee” in both places in clause 59(3)(e).**

#### **Clause 60 – Restriction on holdings in companies**

Clause 60 limits licensee's aggregate investments (equity) in other companies to 50 percent of the licensee's capital base. In terms of investments in individual companies this is capped at 10



percent of capital base. **Your Committee recommends that no change is necessary in Clause 60.**

#### **Clause 61 – Duty to notify supervisors on counterparty exposure**

Clause 61 deals with the transitional arrangements under this Part, where licensees are afforded the period of 2 years to regularize their counterparty arrangements, with the power of the Supervisor to extend this period. **Your Committee recommends that the words “to persons or groups” in (1)(A) should be deleted.**

**It was also necessary to fix the punctuation in (1)(b)(i) by removing the comma after “reduce, and inserting a comma after the word “years” and after the word “writing”.**

#### **Clause 62 – Modification *etc.*, of counterparty exposure limits**

Clause 62 clarifies that all modifications to existing counterparty exposures are subject to the limits set by this part. Additionally the method of valuing the exposures will be prescribed by Supervisory Rules. **Your Committee recommends that no change is necessary in Clause 62.**

#### **Clause 63 – Counterparty exposures outside of the limit**

Clause 63 grants permission to the Supervisor to temporarily vary the exposure limits, particularly, if the exposure is required to address emergencies within the group. It also considers whether the licensee is in receipt of a guarantee or other financial resources issued by another financial institution and the Supervisor is satisfied of the strength of that entity and that the arrangements adequately protect the licensee. **Your Committee accepts the decision that the powers under subsections (2) and (3) should be given to the “Supervisory Committee” and not the “Supervisor” as was stated. We also accept the decision to move 63(4) to PART XXVI – *General* to establish this issue as a general principle within the Bill and the decision to change the word “Part” to “Act” in the subsection.**

### **PART XIII – *Supervision and Examination of Licensee***

This Part deals with the general powers of supervision that are required for the bank to carry out its duties, particularly as they relate to obtaining information.

#### **Clause 64 – Functions of Supervisory Department *re* monitoring, etc.**

Clause 64 outlines the functions and responsibilities of the Supervisory Department. Importantly at (2), the section permits the Supervisor to determine on the frequency and scope of examination on a risk based approach. The section also speaks to powers to examine the books, documents and records and powers summon officers, directors, substantial shareholders and key employees of licensees. Your Committee considered that these statutory powers should be ascribed to the Supervisor and that subsection (1) should read “The Supervisor shall”. Your Committee deliberated on this clause extensively and we felt that we did not want to make consultation mandatory but on the basis of needs.

**Your Committee recommends that the marginal note should be changed to read “Supervision and Examination of Licensee”.**

**Your Committee recommends that the words “Supervisory Department shall” should be replaced by the words “The Supervisor” in clause 64(1). Your Committee further recommends that in clause 64(1)(b) the word “require” should be deleted and the words “recommend to the Supervisor” be inserted at the beginning of the provision. Your Committee also recommends that the words “or recommend to the Supervisory Committee” after the word “impose” in clause 64(1)(c). It was also felt that the words “through the supervisor” should be removed from (1)(e). Your Committee further recommends that clause 131(6) of the original Bill tabled in the House should be reinserted in clause 64(1).**

**Your Committee recommends that the words “the function” be deleted and replaced with “any of the functions” in clause 64(2).**

**Your Committee further recommends the deletion of clause 64(3).**

**Your Committee further recommends that subsections (4) and (5) be removed to clause 65.**

**Your Committee recommends that a new subsection (3) should be added which should read “Where the Supervisor proposes to exercise powers under subsection (1) in relation to a company that is regulated by another regulator, the Supervisor shall consult with that regulator before exercising those powers.”**

#### **Clause 65 – Supervisor may require information**

Clause 65 speaks to the power of the Supervisor to require information from any company that is a member of the banking group. These powers are necessary to assess the relationships between the entities in the group and therefore the risks that arise. The powers can also be used to gauge the strength of risk management measures (including internal audit, corporate governance arrangements) employed within the group. The power includes the power to summon directors, substantial shareholders and officers of the companies. **Your Committee in its deliberations felt that it would be more fitting to delete clauses 65(3) and 65(4) and replace with the current 64(4) and (5). Your Committee notes that in the current clause 64(5), which is to become clause 65(4) the words “this section” should be deleted and replaced with “subsection (1)” and the reference to subsection (2) should be deleted and replaced with “subsection (3)”.**

**Your Committee recommends that a new subsection (5) should be added which should read “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.”**

#### **Clause 66 – Obligation of manager to supply information**

Clause 66 speaks to the obligation of managers of any licensee to supply information on the financial condition of the licensee, subsidiaries and/or branches to the Supervisor upon receipt of a notice in writing. The manager also has an obligation to advise where a licensee is unable to or

is about to become unable to meet its obligations. **Your Committee recommends that the reference in 66(1) to “section 64” should be changed to “section 65”, the words “chief executive officer” in 66(1) should be changed to “an officer of the licensee”, and the words “or other officer” should be inserted in 66(3) after the words “chief executive officer”.**

**It is also recommended that the word “manager” in the marginal note to clause 66 should be changed to “officer”.**

#### **Clause 67 – Powers of inspection**

Clause 67 speaks to the critical powers of authorized officers to inspect the operations of the licensee. This entails access to a licensee’s books and records and to require directors, managers, officers and auditors to produce such information that is in the control of these persons. **Your Committee recommends that in the opening line of 67(1) the words “In the performance of his functions under” should be deleted and replaced with “For the purposes of”. It is also recommended that the word “manager” would be deleted from 67(1)(a) (as it is redundant given the reference to any employee.**

**Your Committee further recommends adding the words “or any other entity in the financial group of which the licensee is a member” at the end of clause 67(1)(a).**

**Your Committee also recommends that the word “former” should be inserted before the second references to “officer”, “employee” and “external auditor” in 67(1)(b).**

**Your Committee further recommends inserting the words “or any entity in the same financial group of which the licensee is a member” after the word “licensee” in clause 67(1)(b).**

### **PART XIV – *Supervision of Financial Groups***

#### **Clause 68 – Definition of “consolidated supervision”**

Clause 68 provides a definition of consolidated supervision. **Your Committee recommends that no change is necessary in Clause 68.**

### **Clause 69 – Financial group ownership structure**

Clause 69 deals with the cases where a financial holding company is required to be established.

In such cases, the financial holding company will hold the deposit taking institution and all financial institutions in the group. The supervisor may authorize the FHC to be held by another subsidiary of the ultimate parent company. This is seen to be necessary to enable the Supervisor to the greatest extent possible to have some reach to the ultimate owners of the company (who are ultimately responsible for the financial state of the company). The section also allows the licensee time to restructure its group operations to meet the requirements of this section, within a period of 2 years.

The section provides some flexibility by permitting the Supervisor to permit a structure that does not fit into the requirements of the section immediately. **Your Committee, in its deliberations, felt that it was necessary to make a reference to section 74 in section 69(3). Your Committee recommends that the words “Subject to section 74” should be inserted at the beginning of subsection (3).**

### **Clause 70 – Prohibited ownership structures**

Clause 70 indicates prohibited ownership structures. These are structures that impede consolidated supervision either because of the structure itself, the nature of the entities or the location of entities in the structure. In the case of a branch that operates in Jamaica alongside other financial institutions (such as subsidiaries), it is not possible to consolidate the accounting of these entities. **Your Committee recommends that the words “Supervisory Committee” should replace the word “Supervisor” in clause 70(1).**

### **Clause 71 – Risk related to financial group structure**

Clause 71 requires licensees to take measures to identify and address risks in the group, including those arising from intra group dealings, risks arising from non-financial companies in the group and other external factors. Importantly, the section allows the Supervisor to take cognizance of relationships between group members and a non-group company and in the event that that relationship poses a risk to the licensee or the group, treat the non-group entity as a part

of the group for such parts of this Act as the Supervisor may determine or direct the licensee to terminate the relationship. The section also deals with additional powers to examine and inspect the books of the financial holding company and other companies that are subsidiaries of the financial holding company, requires managers of entities in the group to provide information, review changes in ownership and personnel and determine fit and proper.

**Your Committee recommends that the word “between” in 71(1)(a) should be replaced with the word “among”. In 71(2) we recommend that the word “Supervisor” should be changed in both instances to “Supervisory Committee”.**

**Your Committee recommends that it is necessary to add the provisions that currently exist in section 29F of the Banking Act (regarding the issuing of directions) as subsections (5), (6) and (7) of clause 71 (but remove the similar provision made in section 109(5) of the Bill and use it as the new subsection (5) rather than the equivalent provision in 29F of the Banking Act). The current subsection (5) will be renumbered as subsection (8) and would apply to the subsections (4) and (5).**

#### **Clause 72 –Restructuring of a group**

Clause 72 deals with the powers of the Supervisor to direct the restructuring of a group. This is in cases where the group is not structured in accordance with section 67. In such cases, the Supervisor will issue directions to the financial holding company or to the deposit taking institution to effect the restructuring. However the restructuring is required to take place within a year. **Your Committee recommends that no change is necessary in Clause 72.**

#### **Clause 73 – Ownership of subsidiaries, *etc.* by licensees**

Clause 73 restates the prohibition on owning subsidiaries that are not financial unless the company is providing group-wide support services and the arrangement is approved by the Supervisor. Industrial and Provident Societies should also be held by the licensees in the group so that their activities can be consolidated. **Your Committee recommends that “Supervisor” in clause 73(2) should be changed to “Supervisory Committee”.**

## **PART XV – *Obligations Specific to Financial Holding Companies***

### **Clause 74 – Restriction on financial holding company**

Clause 74 speaks to the non-operating nature of financial holding companies. This determination is based on the fact that by ensuring that FHCs are non-operating, this significantly lessens the possibility of such an entity being dually regulated and also ensures that the duties of the FHC of addressing intra-group risks does not conflict with its day to day operations. Subsection (2) does take into account the position of mutual building societies which by their mutual nature may not be owned by another corporate. In such cases, it is proposed to allow such mutual building societies to operate as holding companies, provided they can demonstrate their ability to do so.

**Your Committee accepts that the reference to “section 31” in clause 74(1) should correctly be to “section 75”. We recommend that the words “for a financial group” should be deleted from clause 74(1) and the word “financial” inserted before “holding”.**

**Your Committee recommends that the word “merely” before the word “ancillary” should also be removed.**

**Your Committee felt that the words “mutual society” should be replaced with the words “deposit taking institution” in clauses 74(2) and (3), as these provisions ought not to be limited to mutual societies.**

### **Clause 75 – Responsibilities of financial holding company**

Clause 75 outlines the obligations of financial holding companies. Financial holding companies must also allow supervisory access to books and records and its directors, officers and owners must comply with any summons received from the Supervisor.

**Your Committee recommends that in clause 75(1)(a), the words “raise and maintain” should be deleted and replaced with the words “ensure that” as that term was clearer.**

**Your Committee further recommends the insertion of the words “are maintained” after the word “resources” in clause 75(1)(a).**

Your Committee was not satisfied with the way in which the provision in 75(1)(f) was articulated and as such **recommends that the provision should read as follows “maintain appropriate policies and procedures for group risk management and intra group transactions, to ensure prudent dealings and exposure limits in the financial group”.**

Your Committee felt that **a new provision should be inserted after 75(1)(f) to strengthen compliance with disclosure requirements and should be lettered (g). We suggest that the provision should state “ensure compliance with disclosure requirements applicable to the entities within a financial group”. The change would require a re-lettering of the provisions in 75(1).**

We also recommend that **75(1)(i), which would subsequently be re-lettered (j) should be revised and should read as follows: “ensure compliance with any requirement under this Act that the directors, officers, substantial shareholders and key employees of the financial holding company and other deposit taking institutions in the financial group are fit and proper persons.”.**

## ***PART XVI – Regulations of Shareholding and Controlling Interests in Licensee***

An important measure required by the standards is ensuring that transfers of ownership and control of licensees is subject to regulatory scrutiny and sign off. This is to ensure that the proposed new owners are fit and proper, have the relevant expertise and resources to continue the operations of the entity. It is also critical that the law provides for procedures where a person has managed to take ownership or control without the necessary scrutiny.

### **Clause 76 – Restriction on holdings in licensee by foreign government**

Clause 76 limits foreign governments from holding or voting shares in licensees exceeding 5 percent. This arises from the potential ramifications of imposing enforcement actions/sanctions



on a sovereign state. **Your Committee recommends that no change is necessary in Clause 76.**

#### **Clause 77 – Substantial shareholding in licensee**

Clause 77 deals with entering into an agreement or arrangement for the acquisition of a substantial shareholding (20 percent or over) in a licensee. The Supervisor has to render his decision on the application within 120 days of the receipt of all required information to support the application. **Your Committee recommends that all references to “Supervisor” in clause 77 should be changed to “Supervisory Committee”. We also recommend that subsection (5) that the words “him with” should be deleted. In addition we recommend that the words “or arrangement” be added after the word “agreement” to strengthen the provision.**

**We further recommend that the word “his” which appears in clause 77(6) be changed to “its”.**

#### **Clause 78 – Regulation of effective control of licensee**

Clause 78 deals with arrangements whereby a person will obtain effective control of a licensee, where effective control means that the person (by himself or together with any other connected person) has the ability to significantly influence the policy of the licensee. This is required to deal with any indirect methods (such as the use of nominees or trusts) by which a person may obtain control of a licensee. The Supervisor has to render his decision on the application within 120 days of the receipt of all required information to support the application.

**In clause 78(1) the word “or” should be inserted between the word “agreement” and “arrangement” in the first line of the clause.**

After reviewing the clause **your Committee recommends that the word “Supervisor” should be replaced with the word “Supervisory Committee” throughout the clause except where the word appears for the second time in clauses 78(5) and 78(6).**

**The word “his” in clauses 78(2) and 78(6) should be changed to “its” and in clause 78(2) the word “he” should be changed to “it”.**

#### **Clause 79 – Power to obtain information *re* shareholding**

Clause 79 deals with the power of the Supervisor to require information from a shareholder on the details relating to that person's voting rights and any trust arrangements in place. **Your Committee recommends that no change is necessary in Clause 79.**

#### **Clause 80 – Power to restrict dealing in specified shares**

Clause 80 deals with the power of the Supervisor to impose restrictions by notice on shares that have been acquired in breach of the statute. **Your Committee recommends that in 80(1) the first reference to “Supervisor” should be to the “Supervisory Committee”.**

In 80(1), the references to “section 76 or 77” should be changed to “section 77 or 78”.

It was recommended that the words “with them” 80(2)(c) should be replaced with the words “the specified shares” to be more specific.

Also, in 80(5) the word “them” should be replaced with the words “the specified shares”.

#### **Clause 81 – Appeal against Restriction Notice *re* shareholding**

Clause 81 provides an appeals process to the Court of Appeal. In reviewing the section, it was brought to the attention of your Committee that the reference to “section 77(5)” should be to “section 77(4)” and the reference to “section 77(3)” should be to “section 77(2)”.

### **PART XVII – *Returns and Accounts***

A key feature of banking supervision is the off-site surveillance which allows Supervisor to monitor the licensees on an ongoing basis as set out in Part XVII. Additionally, the audited accounts are a critical part of the Bank's assessment of the financial condition and internal controls at the licensee.

### **Clause 82 – Returns, etc.**

Clause 82 outlines a listing of key information that must be provided to the Supervisor on such frequency and in such form as may be prescribed in the Supervisory Rules. It also outlines the key data required for the annual return to the Supervisor on earnings, expenses, deposits, unpaid cheques, unpaid dividends and land acquired in the satisfaction of debts. The Supervisor may extend the time for filing these returns. **Your Committee recommends that no change is necessary in Clause 82.**

### **Clause 83 – Loss reserves on credit facilities**

Clause 83 deals with the requirement for establishing loss reserves in respect of credit facilities extended that in arrears for a period of 90 days. The section prohibits interest on such loans from being posted to the profit and loss account. Additionally, where terms of a facility are altered as a result of renegotiation, there is a notification requirement if the loan is over a certain amount (over 1 percent of capital base). Your Committee deliberated on the section extensively especially in light of the fact that the Institute of Chartered Accountants of Jamaica had stated that the provisions in the section was not in line with the International Financial Reporting Standards (IFRS).

Your Committee recommends that the word “on” should be changed to “in” in subsection (3) and the term **“balance sheet” in 83(4) should be changed to “audited financial statements”**.

### **Clause 84 – Presentation and publication of balance sheet and profit and loss account**

Clause 84 deals with the requirements for the submission of audited financial statements to the Supervisor and the publication of such accounts. It gives allowance for the publication of abbreviated accounts where the full accounts are published on the licensee’s website. The section also indicates that the prescribed documents for a branch of a foreign bank includes the publication of audited financial statements and profit and loss accounts for the deposit taking institutions (i.e. its head office operations) and the audited financial statements and profit and loss of the Jamaican operations.

Your Committee recommends that for precision it is necessary to **delete from clause 84(2) the words “the accounting and auditing standards established under the Public Accountancy Act” and replace therefor the words “generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica or such other body as the Minister may prescribe”.**

It was also agreed **that the words “balance sheet and profit and loss account” should be replaced with the words “financial statements” in clauses 84(4)(a)(i) and (4)(b)(i) and (ii).**

#### **Clause 85 – Consolidated accounts**

Clause 85 deals with the obligation for the issue of consolidated accounts. It establishes a treatment for consolidating accounts in cases where an Industrial and Provident Society is a part of the group. In such cases the transfer of funds to an Industrial and Provident Society shall be treated as a loan and the operations of an Industrial and Provident Society (e.g. deposit taking and loan business) shall be treated as subsumed into the operations of the deposit taking institution.

**It is recommended that the words “a consolidated balance sheet and consolidated profit and loss account” should be replaced with the words “consolidated audited financial statements” in clause 85(1).**

It is recommended that **in clause 85(2) the words “, not later than 90 days after the end of the financial year of each company in the financial group,” should be inserted after the word “shall”, and the words “an audited balance sheet and profit and loss account” should be replaced with the words “audited financial statements”.**

We also recommend that **the word “licensee” should be deleted and replaced with “deposit taking institution” throughout 85(3).**

### **Clause 86 –Insolvency disclosed by financial statements**

Clause 86 deals with cases where the consolidated financial statements indicate the potential insolvency of any member of the group. In such cases, the Supervisor may issue directions to deal with the issue including directions to increase capital, sale or disposition of members of the group or winding up of a subsidiary. Where such action may impact a non-BOJ regulated entity, there is an obligation to consult with the other regulator before taking action. **Your Committee recommends that no change was necessary in Clause 86.**

### **Clause 87 – Electronic submission and admissibility of returns and prescribed documents**

Clause 87 provides for the submission of returns electronically and their admissibility in evidence. **Your Committee recommends that no change was necessary in Clause 87.**

## **PART XVIII – *External Auditors***

The role of external auditors has been enhanced in Jamaica's banking laws for several years. The Banking Act already imposes obligations for the auditors to advise the Supervisors of material issues affecting financial viability, as well as allowing the Supervisor to commission enhanced or targeted audits. The main reform in this area is the proposal to allow the Supervisor to object to the appointment of an auditor. This has its origins in the Revised Core Principle 27, which state at essential criteria 6 (page 63):

*The supervisor has the power to reject and rescind the appointment of an external auditor, who is deemed to have inadequate expertise or independence, or is not subject to or does not adhere to established professional standards*

### **Clause 88 – Appointment of External Auditors**

Clause 88 deals the appointment of external auditors and outlines the criteria for appointment including criteria for liability insurance, good standing with the Institute of Chartered Accountants of Jamaica (ICAJ), sufficiency of experience of at least 2 partners in auditing financial institutions and being holders of valid practicing certificates and not being disqualified under section 89.

**Your Committee recommends that in clause 88(2)(c) the words “, taking into account any relevant standards of the Institute of Chartered Accountants of Jamaica,” inserted after the word “declaration”.**

**Clause 89 – Disqualification of external auditor**

Clause 89 sets out grounds for disqualification, which mainly deal with the independence of the auditor from any connectedness with the licensee, business relationships giving rise to conflicts of interest criminal offences or cases where the Supervisor has objected to the appointment.

**Your Committee recommends that in 89(1)(g) the words “is a person” should be inserted before the word “whose” .**

**Clause 90 – Power of Supervisor to object, *etc.* to appointment of external auditor**

Clause 90 deals with the powers of the Supervisor to object to the appointment of an auditor who is not an eligible auditor (i.e. meeting the criteria in section 88) and to direct his or her removal. The section establishes the right to appeal such a decision to the Supervisory Advisory Board.

**Your Committee recommends that in clause 90(1)(a), if there is an objection then a reason should be provided to the auditor or licensee by the Supervisor on request, and this should be so provided within twenty-one days.**

**Clause 91 – Duty of external auditors to report to Supervisor on transactions, *etc.* affecting licensee’s financial viability**

Clause 91 deals with abovementioned duty of auditors to report on transactions that can affect the viability of the licensee.

**It was pointed out that the word “external” should be inserted before the word “auditors” in the chapeau of clause 91(1).**

#### **Clause 92 – Review of external auditor’s working papers, *etc.***

Clause 92 seeks to permit the Supervisor to access the working papers of the auditors. This is an additional criterion under the Revised Core Principle 27. **Your Committee recommends that clause 92(2) should be expanded to address the failure to deliver the working papers of the external auditor or former external auditor.**

#### **Clause 93 – Special or expanded audit**

Clause 93 deals with the power of the Supervisor to require expanded or targeted audits. Your Committee felt that **the words “or former external auditor” should be inserted after the word “auditor” in 93(1) and 93(2).**

Your Committee also felt that **the following wording should be inserted as 93(5) “Where in a particular case, the Supervisor has reasonable cause for believing that a special audit of a bank should be conducted by an auditor other than the bank’s auditor, the Supervisor may appoint an auditor or a firm of auditors for that purpose”.**

#### **Clause 94 – Exclusion of liability**

Clause 94 deals with ensuring that external auditors (past and present) are not liable for carrying out any action required under the statute. Subsection (2) expands the protection to include express protections from civil liability and professional sanctions. **Your Committee recommends that no change is necessary in Clause 94.**

#### **Clause 95 – Resignation, *etc.* of external auditor**

Clause 95 deals with notification obligations to the Supervisor upon the event of an auditor’s resignation or his indication of his or her unwillingness to be appointed. **Your Committee recommends that no change is necessary in Clause 95.**

## **PART XIX – Amalgamation and Transfer**

### **Amalgamation of Building Societies**

This Part deals with the supervisory assessment and authorizations for mergers and amalgamations in accordance with Core Principle 17 (Significant Acquisitions). It also deals with the specific provisions that apply to building societies.

#### **Clause 96 – Societies may unite**

Clause 96 deals with the process for building societies to unite or merge. **Your Committee recommends that the word “Supervisor” be changed to “Supervisory Committee” in clauses 96(1) and (3).**

#### **Clause 97 – Society may transfer its engagement to another society**

Clause 97 deals with the process for building societies to transfer engagements. **It is recommended that the word “Supervisor” be changed to “Supervisory Committee” in 97(1) and (4).**

#### **Clause 98 – Supplementary provisions relating to societies**

Clause 98 provides for supplementary procedures which relate mainly to the obligations to provide information to members relating to the proposed transaction (financial position of the societies concerned, the interest of directors, compensation paid to directors and payments to be made to members) as well as the ability of the parties to make an application to the Supervisor to confirm the amalgamation or transfer. **Your Committee recommends that “Supervisor” should be changed to “Supervisory Committee” in subsections (4) and (5).**

#### **Clause 99 – Special resolutions**

Clause 99 deals with the special resolutions that must be passed by members to approve these transactions. It was recommended that **the words “such members of the society as, being entitled so to do, vote in person or, where proxies are allowed, by proxy,” should be inserted after the words “three-fourths of”, and delete the words “the number of the members of the society having the right to vote, and voting, in person or by proxy”.**



#### **Clause 100 – Schemes of arrangement**

Clause 100 deals with Schemes of Arrangements and the requirements for the Supervisor to approve any such scheme that proposes a composition between a society and its creditors. It was recommended that **“Supervisor” in 100(1)(b) and (3) should be replaced with the words “Supervisory Committee”.**

#### **Clause 101 – Conversion of a society into a company**

Clause 101 deals with the conversion of a building society into a limited company. It was recommended that **“Supervisor” in 101(1) should be replaced with the words “Supervisory Committee”.**

#### **Clause 102 – Amalgamation and transfer**

Clause 102 deals with other types of amalgamation and transfers. It was recommended that **“Supervisor” in 102(1) and (2) should be replaced with the words “Supervisory Committee”.**

#### **Clause 103 – Deposit of statements with Supervisor**

Clause 103 deals with the requirement of deposit taking institutions undergoing a merger/amalgamation to lodge particular documents with the supervisor within 30 days of the completion of the transaction. These include statements of assets and liabilities, a statement of the nature and terms of the merger, copy of the governing agreement or deed and a declaration as to the making of necessary payments relating to the transaction. **Your Committee recommends that no change is necessary in Clause 103.**

#### **Clause 104 – Vesting of assets on sale of institution**

Clause 104 speaks to a statutory procedure whereby the assets (and if desired, the liabilities) invoked in a merger or transfer. **Your Committee recommends that no change is necessary in Clause 104.**

### **Clause 105 – Transfer of trust business**

Clause 105 deals with the case where trust business is being transferred between 2 deposit taking entities. This is also facilitated by a vesting order, issued by the Minister on the Supervisor’s recommendation. **Your Committee recommends that no change is necessary in Clause 105.**

### **Clause 106 – Effect of transfer**

Clause 106 describes the effect of the order, which serves to vest the powers and obligations of the transferor DTI as trustee to the transferee DTI and to maintain the binding nature of all contracts, leases, licences and other instruments but in effect substituting the references to the transferor with references to the transferee. **Your Committee recommends that the word “deemed” should be deleted and replaced with the word “adeemed” in 106(5), and change the reference there to “section 103” to read “section 104”.**

## ***PART XX – Voluntary Winding up of Licensee***

### **Clause 107 – Restriction on voluntary winding up**

Clause 107 treats with the voluntary winding up of a licensee. It serves to incorporate the monitoring role of the Supervisor into the winding up process by requiring the licensee to file certain document with the Supervisor (declaration of solvency, profit and loss accounts, balance sheet and the external auditors report) within 21 days of the passing of the resolution to wind up. Notably the Supervisor is under an obligation to certify that the realizable assets of the entity are sufficient to meet the claims of the creditors.

Your Committee accepts the decision to **insert after the words “notify the Supervisor” the words “and the Jamaica Deposit Insurance Company” in 107(1), and to change the word “Supervisor” in 107(3)(b) to read “Supervisory Committee”.**

## ***PART XXI – Banking Business Through Agent Arrangements***

This Part introduces a new proposal for allowing deposit taking institutions to carry out limited activities by way of using agents. The use of agents is intended to expand the reach of financial services as it would not require the substantial costs required to establish a branch. The agency

banking network is also expected to be able to leverage on the emerging technologies in financial services such as mobile payments and electronic money transactions. However the proposal raises a number of issues such as the qualifications for agents, ensuring their fitness, establishing the range of businesses they may offer, establishing the legal liabilities and regulatory responsibilities for such agents *vis a vis* their banking principals (including meeting anti-money laundering requirements). It is therefore proposed that the Bill will establish enabling provisions for the Bank to build out the framework using supervisory rules.

#### **Clause 108 – Agent arrangements**

Clause 108 establishes the requirement for supervisory approval for agency arrangements and lists a non-exhaustive listing of services that may be offered. It also grants to the Supervisor the power to prescribe the operating and financial requirements for agents (which may include threshold limits). The section also establishes criteria for persons to be appointed as agents.

**It is recommended that the word “Supervisor” be changed to “Supervisory Committee” in the section 108 in the following subsections and paragraphs the chapeau to (1), (1)(f), (2), (4)(d), (6), the chapeau to (8), and (8)(b).**

**It is also recommended that the reference to “Part XIV” in 108(3) should be changed to “Part XIII”.**

**It is further recommended to 108(4)(b) be deleted, and that the subsequent paragraphs be re-lettered (b) and (c) accordingly.**

**The reference in clause 108(3) relating to the Supervision and Financial Group should be changed from Part XIV to Part XIII.**

**Your Committee recommends that clause 108(4)(b) should be deleted. In our discussions we were of the view that** the agents that may be partnering with financial institutions will more than likely be new institutions that have not been operating for three years in that capacity and if

the provision remains it may end up excluding sound agents. We feel that the current (4)(a)(c) and (d) would protect from any potential ills and the legislation would not be weakened.

## **PART XXII - *Enforcement***

The issue of enforcement is fundamental to the process of banking supervision as it is an accepted principle, that problems in financial institutions should be addressed as promptly as possible so as to minimize losses. The enforcement regime in this Part deals with cases where inter alia, a licensee is operating the licensee in an imprudent manner, breaches its licence, regulatory requirements or the governing statutes. These breach situations are set out at the Fifth Schedule. This Part builds on the previously existing framework for sanctions and intervention which have been successfully used and tested in the courts. It does however introduce the concept that in some cases, supervisory sanctions should not be subject to supervisory discretion and application of some measures should be automatic and mandatory.

### **Clause 109 – Unsafe practices**

Clause 109 lays the basic framework for some of the key supervisory actions that may be taken.

Your Committee expressed concern as to the reason reference was made to certain areas of the Part of the Fifth Schedule and not the entire Part. **It is recommended that the references to the specific paragraphs of the Part A of the Fifth Schedule should be deleted and thereby permit the Supervisor to take action under this section for any breach under Part A.**

The Jamaica Deposit Insurance Corporation (JDIC) had expressed concerns about the need to notify that body when carrying out the provision. It was recommended that **a provision be inserted to mandate that where the Supervisor is exercising its powers under subsection (1) it shall give notice to the JDIC thereof.** Your Committee recognizes the fact that this arrangement could be an onerous one and may not be practical for each and every enforcement action.

Your Committee recommends that **subsection (5) should be deleted, having regard to the insertion of section 29F of the Banking Act in clause 71 (and the use of the substance of**

**109(5) in lieu of the equivalent provision in section 29F of the Banking Act).** The section will need to be renumbered.

Your Committee decided that it was necessary to **include a provision in the *Part XXVI* to state that where in the exercise of the Supervisor’s powers under the 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, it shall also be notified.**

#### **Clause 110 – Prompt corrective action**

Clause 110 introduces compulsory requirements for the supervisory authorities insofar that it proposes that the Supervisor must take certain enforcement actions upon the capital level of a licensee falling to a point being 1 percent point above required capital levels set by the law or the Supervisor. These measures relate to warnings, board undertakings or directions. Where the capital levels fall below the required levels, the Supervisor must issue specific time-bound directions to require the licensee to arrange a capital injection or undertake other remedial actions.

**Your Committee recommends that the word “Supervisor” be changed to “Supervisory Committee” in the chapeau to clause 110(1), 110(1)(a), the second such reference in clause 110(2), 110(3) and 110(4)(a).**

#### **Clause 111 – Temporary management where licensee’s capital falls below fifty *per centum***

Clause 111 deals with mandatory Temporary Management. Essentially, the section provides that the Supervisor shall take Temporary Management where the capital of the licensee falls to a level 50 percent below the level prescribed by the law or the Supervisor. In addition, in such cases, the Supervisor shall require the financial holding company to provide a plan for resolving the licensee’s financial difficulties, which may include the disposal of an entity within the group that is a drain on its resources.

Your Committee recommends that the words “Supervisor shall invoke his” should be deleted from clause 111(1) and that the words “conferred under this Part shall be invoked” be inserted after the word “management”.

**Your Committee recommends 111(2) changing the word “Supervisor” to “Supervisory Committee” in the second instance where it occurs.**

In our discussions, we grappled with the idea of whether temporary management should be automatic in cases where the licensee’s required capital fall below a certain level. It was argued that flexibility should be exercised to give time for recapitalization. We also learnt that the existing 50 percent threshold was lower than international standard which assumes that statutory intervention should take place as soon as the capital levels reach below the minimum level. The 50 percent threshold allows the licensee time to raise additional capital and for restructuring.

#### **Clause 112 – Temporary management reconstruction, winding up and revocation**

Clause 112 is the standard intervention per provision. The Supervisor may take action under this section (Temporary Management, the presentation of a petition for reconstruction or winding up and/or the revocation of a licence).

Clause 112 is the standard intervention provision. The Supervisor may take certain action under this section namely, Temporary Management, the presentation of a petition for reconstruction or winding up and/or the revocation of a licence.

Your Committee recommends that **the word “Supervisor” in the first line of clause 112(1) should be changed to “Supervisory Committee”**. It is further recommended that **the references to paragraphs 4 and 10 in clause 112(1) be deleted**.

**In 12(1)(a) the word “to” should be inserted between the word “application” and the word “the”**.

It is recommended that **the reference to “section 117” in clause 112(1)(d)(iv) should be changed to “section 122”.**

Your Committee further recommends **inserting the words “, on behalf of the Supervisory Committee,” after the word “shall” in clause 112(3) and deleting the word “he” and replacing it with the word “it”.**

#### **Clause 113 – Licensee ceasing to be viable**

Clause 113 deals with the making of vesting orders in order to facilitate a reconstruction, sale of the licensee and/or its assets. This is an action that is reserved to the Minister given the fiscal implications of the taking of the shares of the licensee from the owners of the institution. The section also outlines the procedures applicable to the Supervisor prior to the making of a vesting order.

**Your Committee recommends that the first reference to “Supervisor” in 113(1) be changed to “Supervisory Committee”.**

Your Committee further recommends that the **first reference to “Supervisor” in 113(2) should be changed to “Supervisory Committee” and that the second reference to “the Supervisor” be deleted and replaced with “it”.**

Your Committee recommends that **in section 113(3) reference to “Supervisor” be changed to “Supervisory Committee”, the word “his” should be changed to “its” and the word “section” should be replaced with the words “this Part”.**

#### **Clause 114 – Vesting of shares, *etc.* in Minister**

Clause 114 outlines the Minister’s role under the legislation. Your Committee had a lengthy discussion on the section regarding the role of the Temporary Manager. In the deliberations it was stated that the Supervisor is the Temporary Manager who may appoint an agent to act on his behalf. The discussion covered whether there would be the need for Indemnity in cases where

liability is sought. **Your Committee recommends that in clause 114 the first reference to “Supervisor” be changed to “Supervisory Committee”.**

#### **Clause 115 – Effect of vesting order**

Clause 115 outlines the effect of the vesting order. **Your Committee recommends that the words “deposit taking institution” should be replaced with the word “licensee” in 115(1)(e).**

#### **Clause 116 – Restructuring transactions**

Clause 116 deals with the powers of the Minister to effect restructuring transactions. The section also deals with obligations to gazette the transaction and specifies that the Minister is not bound by any limitations in respect to the above transactions save for limitations imposed by statute. The section also specifies that the Minister has 180 days (or any extension thereof granted) from the making of the vesting order to complete the relevant transactions, failing which he must apply to the court for a winding up order or propose an arrangement for reconstruction. The costs incurred that are consequent on the vesting order are also to be paid in priority to all other debts. **Your Committee recommends that no change is necessary in Clause 116.**

#### **Clause 117 – Winding up or schemes of arrangements**

Clause 117 deals with the Minister’s power to commence winding up or schemes of arrangements post attempts at restructuring. These applications will become necessary if the Minister is unable to complete the restructuring transactions within the required timeframes (180 days after the making of the vesting order or any extension thereof). Importantly, the costs of these transactions are recoverable in the event of a winding up in priority to other claims. **Your Committee recommends that no change is necessary in Clause 117.**

#### **Clause 118 – Notice *re* compensation**

Clause 118 deals with the issue of a notice regarding compensation. Given that the Minister by vesting the shares of a licensee is appropriating private property, the Constitution requires that the deprived party is entitled to be compensated. Under this clause, the Minister must either issue a notice making an offer of compensation or issue a notice indicating that no offer is being made



as the amount so determined is nil. **Your Committee recommends that no change is necessary in Clause 118.**

#### **Clause 119 – Determination of compensation**

Clause 119 outlines the method for the determination of compensation, being the net amount accruing after the completion of the transactions under this Part after payment of outstanding liabilities and costs. **Your Committee recommends that no change is necessary in Clause 119.**

#### **Clause 120 – Application to Court**

Clause 120 permits the licensee or any person having a right or interest in the licensee in respect of which a vesting order is made to apply to the court to establish his rights and determine and enforce any compensation payable. **Your Committee recommends that no change is necessary in Clause 120.**

#### **Clause 121 – Re-vesting of shares and subordinated debt**

Clause 121 deals with cases where an order is made but the transactions have not commenced and the Minister is satisfied that the grounds for the taking of the vesting order no longer exists, the Minister may with the approval of Cabinet and on the recommendation of the committee of advisors re-vest the shares in the original owners or their assignors.

**Your Committee notes that the reference in section 121(1)(a) to “section 112(1)” should instead be to “section 114(2)”.**

#### **Clause 122 – Winding up of foreign bank**

Clause 122 deals with the case of a winding up of a foreign bank which has branch operations in Jamaica. The section essentially seeks to “*ring fence*” the assets of the Jamaican branch by stipulating that these assets should be distributed as if the branch were a Jamaican company. The section also sets out the priority in which the assets of the branch would be distributed. Notably the rights of depositors are placed as third after payments due to government and after wages and salaries.

Your Committee felt that **clause 122 (1) was not clear and precise and therefore recommends that the words “, and without prejudice to the rights of any depositor as against the foreign bank,” should be inserted after the words “other law”.**

**It is further recommended that the words “which relate to the foreign bank’s Jamaican operations” should be deleted.**

Your Committee also **recommends that the words “deposit taking institution” should be deleted from section 122(2) and replaced with the words “foreign banks”.**

### **PART XXIII – *Additional Enforcement Measures***

The measures under this Part are somewhat different to the earlier enforcement provisions insofar as the provisions under this Part are intended to apply to any person or entity that breach the provisions of the Act. Previously, the Supervisor could take sanction action only against licensees. In the case of persons not licensed under the different statutes, the only avenue that could be pursued is action in the criminal courts. These provisions have been extracted from the Securities (Amendment) Act, 2013 which granted the equivalent powers to the Financial Services Commission.

#### **Clause 123 – Coercion order**

Clause 123 relates to the ability of the Supervisor to apply to the courts for Coercion Orders which can restrain parties from breaching the Act, disposing of assets, or requiring the person to take steps to remedy the contravention. **Your Committee recommends that no change is necessary in Clause 123.**

#### **Clause 124 – Restitution order**

Clause 124 allows the Supervisor to apply to the courts for Restitution Orders to deal with cases where: a person who is required to be licensed under this Act has been convicted of an offence; Profits have accrued from the as a result of the contravention; and one or person has suffered a loss as a result. The court may direct that the offender make payments to the Accountant

General, who shall in turn make payments to the parties suffering the loss. The section also allows the Court to request records that can establish both the profits made and the losses suffered for the purpose of determining the relevant amounts that should be paid. **Your Committee recommends that no change is necessary in Clause 124.**

#### **Clause 125 – Restraint order**

Clause 125 deals with Restraint Orders, which focus on restraining property that are related to an offence committed under this Act or property representing the value of benefits derived from the commission of the offence. The section deals with the grounds upon which the application may be made, the service of the Order and the process for variation or discharge of the order. The section also allows the Supervisor to apply to the court for a civil monetary penalty order which may be granted in addition to injunctive relief.

**Your Committee recommends that the marginal note did not properly reflect the content of the clause and decided that it should be amended to add the words “, settlement agreements and pecuniary penalties”.**

**We also recommend that the words “or arrangement” should be added after the word “agreement” in clauses 10(a) and (b) for consistency with the chapeau.**

**It was also decided that “subsection (11)” should be deleted from section 125(14) and replaced with the words “this section”.**

#### **Clause 126 – Unclaimed Moneys**

Clause 126 covers unclaimed moneys in banks and merchant banks.

**Your Committee notes that the reference to “section 81” in clause 126(1) should be changed to “section 82”.**

## **PART XXV- *Offences and Penalties***

### **Clause 127 – Offences and penalties**

Clause 127 refers to the Seventh Schedule and indicates that all offences under this act and regulations may be tried summarily in the Resident Magistrates courts.

**Your Committee recommends deleting clause 127(2). Your Committee further recommends the insertion of two new subsections in clause 127 to provide (i) that any trial for any offence under the Act in the Supreme Court shall be by Judge sitting alone and there shall be no preliminary inquiry or committal proceedings; and (ii) that any offence triable in the Resident Magistrate’s Court under the Act may be tried by a Judge alone in the Supreme Court, in a case where there are other charges arising out of the same facts and those other charges are indictable offences triable in the Supreme Court.**

### **Clause 128 – Offence where no special penalty is provided**

Clause 128 indicates that where there are offences where no penalties specified, the offender shall be subject to a fine not exceeding 2 million dollars or 6 months imprisonment or both.

**Your Committee recommends that no change is necessary in Clause 128.**

### **Clause 129 – Offence by body corporate**

Clause 129 ensures that in the cases of offences by bodies corporate, officers, directors managers who consented to the breach or to whom the breach is attributable are also held liable. This section however incorporates negligence into the conduct attracting the criminal liability.

Your Committee recommends that **the words “negligence of” should be deleted from section 129.**

### **Clause 130 – Fixed penalties**

Clause 130 refers to the process by which the Fixed Penalties in the Eighth Schedule may be applied to a person in breach of one of the offences stated in the Eighth Schedule. The processes in that section are the same that exist at 42A of the Banking and Financial Institutions Acts.

Your Committee notes that **the word “prescribed” in subsection (10) should be changed to “prescribe”.**

## **PART XXVI - *General***

### **Clause 131 – Regulations**

Clause 131 specifies that regulations issued under this Act may be made by the Supervisory Committee in relation to a range of issues. The regulations are subject to affirmative resolution.

Your Committee in its deliberations **recommends that a new paragraph should be inserted as (i) in section 131 and should read “risk management measures for financial groups”. The current paragraph (i) would become (j).**

### **Clause 132 - Supervisory Rules and codes of conduct**

Clause 132 establishes Supervisory Rules and Codes of Conduct. These are intended to cover more technical areas relating to banking operations and are also subject to affirmative resolution. The section also outlines the proposal for a new enforceable code of conduct on consumer related matters such as, obligations to provide customers with notices of changes in fees; allowing access to records at a reasonable cost; ensuring citing of interest rates as an effective annual rate and in a standard manner across the industry; obligations to keep the language in the contracts simple; ensuring effective customer complaints procedures; reporting and record-keeping obligations relating to customer complaints; and reporting requirements to the Supervisor for the administration of the code.

Your Committee recommends that **a new paragraph stating “loan sales and other asset securitization” should be inserted and lettered (n). The current (n) would be lettered (o).**

**Your Committee also recommends that the following words “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” be added at the end of subsection (5).**

### **Clause 133 – Regulations may provide for greater penalties**

Clause 133 provides the standard provision that states that regulations as well as the supervisory rules and code may provide for greater penalties than the limits established under section 29 of the Interpretation Act. However importantly, the fixed penalties attaching to the offences under the Act or regulations are significantly higher than the financial penalties attaching to the applicable criminal offence (one and a half times).

Your Committee notes that **the reference to “section 130” in subsections (1) and (2) of clause 133 should be changed to “section 131”**. It is recommended **that in 133(2) the word “imposed” be changed to the word “payable”**.

### **Clause 134 – Secrecy of officials**

Clause 134 establishes the requirements for licensee’s confidentiality as regards the affairs of customer of the institution. It refers to the exceptions to this rule contained in Ninth Schedule. In that Schedule there are new exceptions to the confidentiality rule, including the disclosures necessary for group’s risk management or systems for centralized credit approvals, outsourcing or group Anti-Money Laundering measures. The section also imposes an obligation of confidentiality on parties to whom confidential information is disclosed.

Your Committee notes that **a comma should be placed between the word “office” and “employment” in the closing words of clause 134(1)**.

Your Committee also notes **that the word “Eighth” should be deleted from subsection (4) and the marginal note and replaced with the word “Ninth”**. Your Committee notes that **the comma that appears after “(d)” in clause 134(4) should be deleted**.

### **Clause 135 – Protection of persons exercising functions under this Act**

Clause 135 provides statutory protection for persons who make disclosures to the Supervisor or an authorized officer under the Act.

Your Committee recommends that **the provision in section 135 should be reworded for clarity and therefore should read as follows “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”.**

Your Committee recommends the amendment of **the marginal note to clause 135 to state as follows: “Protection of persons who provide information under the Act”.**

#### **Clause 136 – Minister may amend monetary penalties and certain Schedules**

Clause 136 allows that the Minister may amend the schedules to the Act (save for those relating to criminal penalties) by Order subject to affirmative resolution. **Your Committee recommends that no change is necessary in Clause 136.**

#### **Clause 137 –**

Clause 137 proposes that the Act should be reviewed by a Committee of both Houses of Parliament with the first review being not later than 5 years after the commencement date.

Your Committee notes that the word **“revies” should be changed to “review” and recommends that the word “five” should be changed to “seven” in clause 137(2).**

It is recommended that **the marginal note “Review of the Act” should also be inserted.**

As stated in the discussion on clause 109 above, your Committee also recommends that a provision be added in this Part along the lines – **“Where in the exercise of the Supervisor’s powers under the Act a company that is regulated by another regulator is likely to be affected, that regulator shall be consulted and, where it the proposed action is likely to impact a company that takes deposits that are insured by the Jamaica Deposit Insurance Corporation, it shall also be notified.”**

### **Clause 138 – Repeal**

Clause 138 effects the repeal of the Banking Act, the Financial Institutions Act, selected provisions of the Building Societies Regulations and the Bank of Jamaica (Building Societies) Act. **Your Committee recommends that no change is necessary in Clause 138.**

### **Clause 139 – Amendment to *Bank of Jamaica Act***

Clause 139 specifies that the consequential amendments to the Bank of Jamaica Act are outlined at the Tenth Schedule. **Your Committee recommends that no change is necessary in Clause 139.**

## **PART XXVII – *Transitional Arrangements***

### **Clause 140 – Transitional arrangements**

Clause 140 deals with the Transitional Arrangements and in so doing it deals with preserving the licensed status of DTIs prior to the passage of the Act and specifies an obligation on licensees to advise of transactions that could contravene the Act and to submit a programme for rectifying or alternately terminating the transaction.

**Your Committee accepts the need to insert a subsection (4) which was inadvertently omitted from the Bill. Subsection (4) should read as follows: “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 agreed with the Supervisor, or as the Supervisor specifies.”**

**Your Committee is also recommends that a saving provision be added to state that all regulations, notices etc. made under the repealed enactments will be preserved and remain in full force and effect, with any references therein to specific provisions of the repealed enactments being construed as references to the equivalent provisions in this Act. This should also state that to the extent that any provision in such regulations, notices etc. contradicts a provision in the new Act, the provision in the new Act will take precedence.**



## SCHEDULES

**First Schedule - Your Committee recommends that no change is necessary in this Schedule.**

**Second Schedule -** Your Committee felt that the issue of distinguishing between the powers of the Supervisor and the Supervisory Committee should be reviewed to bring greater clarity to the separate roles.

**Third Schedule – Your Committee recommends the following:**

| <b>Part A</b> | <b>Amendments</b>   |
|---------------|---|
| 4.            | Start the paragraph with a capital “T”  |
|               | Remove the first “identity in”  |
|               | Add the words “or effective control” after the words “exerts control”                         |
|               | Change the second “identity” to “indentify”.  |
| 11(b)(i)      | Change the reference to section 117 to section 122  |
| 11(b)(ii)     | Change the reference to section 81 to section 82  |
| 12(a)         | Insert after the word “Board” the words “or the governing body in relation to a foreign bank” |
| <b>Part B</b> |   |
| (2)           | Add the words “for the proposed bank operations” after the words “assigned capital”           |
| (4)           | Revised the wording after the word “cover” to read “the proposed activities of the applicant” |

**Fourth Schedule – Your Committee recommends the following:**

|         | <b>Amendments</b>  |
|---------|--|
| 2(1)(b) | Should read “ members of any Municipality or Parish Council”   |
| 2(1)(c) | Delete the words “officials or” and capitalize the “e” in “employees”. Add a semicolon at the end of the paragraph.                |
| 2(1)(d) | Delete the words “members of” and replace with the words “persons in relation to”. Place a full stop at the end of the subsection. |
| (4)     | Delete the word “subsection” and replace with the word “subparagraph”.   |
| 5(3)    | Change the word “paragraph” to “subparagraph”.   |
| 2(8)    | Change “bank” to “Minister of Finance”   |

|         |  |
|---------|--|
| 6 – (1) | Delete second sentence.  |
| 15      | Delete   |
|         | Add sub-section 5, “if a person ceases to be eligible, their appointment should thereupon be revoked” after 5(4).  |
| 6 –(1)  | Replace “may” with “shall  |
|         | Renumber from the second 5 (publication of membership)<br><br>In existing 8 change “Bank” to “Minister”<br><br>Delete existing 15 as a repeat of existing 11 |

**Fifth Schedule – Your Committee recommends the following:**

|   |  |
|---|--|
|   | <b>Amendments</b>  |
| <b>PART A</b><br>Conditions<br>subject to<br>Remedial<br>action | <b>Change reference in title from 109(1) to 111</b><br><br><b>At 4. Change reference from section 3 to section 21</b>  |
| <b>PART B</b><br>Cease and<br>Desist<br>Orders                  |  |
| 1   | Reconstruct to read as follows “Before issuing a cease and desist order, the Supervisor shall serve on the licensee, a notice –“   |
|   | All references to the “Supervisory Committee” should be changed to the “Supervisor”.   |
| <b>PART C</b><br>Temporary<br>Management                        |  |
| 1-(1)   | Change references to 111 and 112.  |
|   | Delete the words “the Supervisory Committee may cause” and replace the word “to” with the word “shall”   |
|   | All references to the “Supervisory Committee” should be changed to the “Supervisor”.   |
| 4- (1)  | Should be changed to read “where the Supervisor has assumed temporary management he may”   |
| <b>PART D</b><br>Revocation                                     |  |
| 1.  | Change “Supervisor Committee” to “Supervisor”  |
| 2.  | Revise the paragraph to read “The Supervisory Committee 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.” |
|--|--|

**Sixth Schedule - Your Committee recommends that the words “deposit taking institutions” should be replaced with the word “banks”.**

**Seventh Schedule – Your Committee recommends the following:**

|               | <b>Amendments</b>   |
|---------------|---|
|               | Change all RMs references from three years to five years  |
| 11(2)         | Remove RM Court completely and change to “a term not exceeding 10 years.”   |
| 12(2)         | Change three to five million for RM Court reference.  |
| 13(2)         | Change three to five million for RM Court reference   |
| 14(3)         | Change three to five million for RM Court reference and change term to not exceeding two years. Supreme Court should be 10 years.   |
| 15(2)         | Change two million to three million   |
| 17(6)(a)      | Change two million to three million (in all three provisions) and remove “(a)”.   |
| 25(2)         | Change two million to 1 million, remove imprisonment  |
| 29(2)         | Remove the RM Court provision.  |
| 39(2)         | Change to five million and 2 years. Add Supreme Court provision with fine and up to 5 years.  |
| 48(3)         | Change to five million, and add Supreme Court provision with fine and up to 5 years.  |
| 49(3)         | Remove the RM Court provision, and change Supreme Court to up to five years   |
| 50(2)         | Remove the RM Court provision   |
| 51(3)         | Remove the RM Court provision   |
| 52(4)         | Remove RM Court provision and for Supreme Court change to up to five years  |
| 53(4)         | Remove RM Court provision and for Supreme Court change to up to five years  |
| 54(2)         | Remove RM Court provision   |
| 55(4)         | Remove RM Court provision   |
| 57(4) – 60(2) | Remove RM Court. Add Supreme Court provision with a fine and/or up to five years  |
| 66(2)         | Remove RM Court provision. Add Supreme Court provision with fine and/or up to five years.   |
|               | Insert offence for 67(2), same as 66(2).  |
| 71(3)         | Delete the words “to identify, assess”. Remove RM Court provision. Add Supreme Court provision with a fine and/or up to three years |
|               | Insert 71 – Supreme Court with fine and/or up to three years  |
| 72(3)         | Remove RM Court and replace with Supreme Court with a fine and/or up to five years  |
| 79(2)         | Remove RM Court and replace with Supreme Court with fine and/or up to five years  |

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| 83(6)           | Insert “loan loss” before “reserve requirements”. Remove RM Court provision and replace with Supreme Court provision with fine and/or up to three years. |
| 84(5)           | Replace the words “balance sheet and profit and loss account” with “financial statements”. Change two million to one million.                            |
| 86(4)           | Remove RM Court provision and replace with Supreme Court provision with fine and/or up to three years  |
| 88(3) and 89(2) | Increase fine to 4 million and include a Supreme Court provision with fine, no imprisonment  |
| 91(3)           | Remove RM Court and replace with Supreme Court with fine up to five million  |
| 92(3)           | Should read failure to attend when summoned.   |
| 93(2)           | Add Supreme Court provision with a fine  |
| 94(2)           | Delete offence and penalty   |
| 98(8)           | Change to 98(9) and replace RM Court with Supreme Court with a fine  |
| 103(2)          | Change to fine of five million or up to two years. Add Supreme Court provision with fine and/or up to five years.  |
|                 | Add offence for 108(6) – RM Court with 2 million fine  |
| 107(6)          | Delete offence and penalty   |
| 108(7)          | Change to fine of five million or up to two years. Add Supreme Court provision with fine and/or up to three years.                                       |
| 109(6)          | Should be changed to 109(7). Remove RM Court provision. Add Supreme Court with fine and/or up to three years   |
| 110(6)          | Change to 110(7). Remove RM Court provision. Add Supreme Court provision with fine and/or up to three years  |
|                 | Insert 132(7). Triable in the Supreme Court with fine and/or up to three years   |
| 134             | Add Supreme Court with fine and/or up to 5 years term  |

#### **Eight Schedule – Your Committee recommends the following:-**

|   | <b>Amendments</b>  |
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| Fixed penalty additions:<br><br>13(2) ,<br>14(3), 17(6),<br>17(6), 25(2)<br>, 30(5),<br>30(5), 37(3),<br>38(3), 39(2),<br>48(3) to 134<br>(except 108(7)) | Fixed penalty will be 1½ x RM Court fine in RM or Dual Jurisdiction Matters. For Supreme Court alone it should be \$7.5 million. |

**Ninth Schedule - Your Committee recommends the following:-**

|  | <b>Amendments</b>  |
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|  | <p>Add as a new (q)</p> <p>(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.</p> |

**Tenth Schedule**

**Your Committee accepts the amendments set out below.**

|  | <b>Amendments</b>  |
|--|--|
|  | <p><b>In Section 2</b></p> <p>Delete the definition of “commercial bank”.</p> <p>Delete the definition of “overseas regulatory authority”.</p> <p>Delete the reference to commercial banks in the definition of “prudential criteria”</p> <p>Insert in the appropriate alphabetical sequence the following definitions -</p> <p>“bank” has the meaning assigned to it in the Banking Services Act.</p> <p>“deposit taking institution” has the meaning assigned to it in the Banking Services Act.</p> <p>“financial institution” has the meaning assigned to it in the Banking Services Act</p> <p>“foreign financial regulatory authority” has the meaning assigned to it in the Banking Services Act.</p> <p>“prescribed liabilities” means the liabilities specified by the Bank, from time to time, by notice published in the Gazette;”</p> <p>“regulator” has the meaning assigned to it in the Banking Services Act.</p> <p>“regulatory counterpart”</p> <p>(a) the designated authority as defined in the Banking Services Act;</p> <p>(b) a foreign financial regulatory;</p> <p>(c) a regulator as defined in the Banking Services Act;</p> <p>(d) an authority operating in a country other than Jamaica which undertakes functions similar to the designated authority;</p> |

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|  | <p>(e) the Jamaica Deposit Insurance Company;</p> <p>(f) an authority operating in a country other than Jamaica which undertakes functions similar to the Jamaica Deposit Insurance Company;</p> <p>Supervisory Committee” means the committee constituted by section 6 of the Banking Services Act;”.</p> <p><b>Section 6(1)</b> A new (c) should be inserted:</p> <p>(c) the Senior Deputy Governor appointed pursuant to section 6D .</p> <p>Amendment to section 28A and insertion of <b>section 28 and 29</b> amendments to BOJA re liquid assets and cash reserve as follows:</p> <p>s. 28. (1) Every deposit taking institution under the Banking Services Act or specified financial institution shall maintain in the form of a deposit with the Bank of Jamaica a cash reserve.</p> <p>(2) Subject to subsection (3), the cash reserve to be maintained by a deposit taking institution other than a building society shall be not less than five nor more than twenty-five per centum of prescribed liabilities and;</p> <p>(a) in the case of a bank, the cash reserve shall be such percentage of its prescribed liabilities as prescribed by notice issued by the Bank from time to time and published in the gazette;</p> <p>(b) in the case of a merchant bank, the cash reserve shall be such percentage of its prescribed liabilities as prescribed by notice issued by the Bank from time to time and published in the gazette;</p> <p>(c) in the case of a building society, the cash reserve shall be such percentage of its prescribed liabilities in respect of deposits and withdrawable shares as prescribed by notice issued by the Bank from time to time and published in the gazette;</p> <p>(d) In the case of any other specified financial institution the cash reserve shall be such percentage of its prescribed liabilities including withdrawable shares (where applicable) as prescribed by notice issued by the Bank from time to time and published in the gazette;</p> <p>(3) A notice under subsection (2) may make different provisions as respect different types of prescribed liabilities specified in the Notice, so, however that if any such notice prescribes marginal cash reserve requirements for increases in specified prescribed liabilities such requirements shall not exceed one hundred per centum of the increase in such liabilities.</p> <p>(4) (a) Without prejudice to the generality of subsection (3), a notice under subsection (2) may require that where a portion of the prescribed liabilities is payable in foreign currency then such percentage of the prescribed liabilities so payable as is specified in the</p> |
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|  | <p>notice shall be held in foreign currency;</p> <p>(b) In this section “marginal cash reserve requirements” means in relation to any increase in prescribed liabilities, such percentage of the increase as is required to be maintained with the Bank for the purposes of this section.</p> <p>(5) Where any such percentage is to be increased-</p> <p>(i) the increase shall be so effected as not to exceed two percentage points in any one period of thirty days; and</p> <p>(ii) It shall be the duty of the Bank to give all deposit taking institutions or as the case may be, specified financial institutions at least 15 days’ notice of the date on which the increase is to take effect.</p> <p>(6) Subject to subsection (7), for the purpose of determining the amount of the cash reserve required to be maintained by a deposit taking institution or other specified financial institution during any month -</p> <p>(a) the amount of its deposit with the Bank shall be the amount of such deposit as at the close of business on each business day in the month;</p> <p>(b) the amount of its prescribed liabilities shall be the average amount of such liabilities at the close of business on Wednesdays in each of the four consecutive weeks ending with last Wednesday but one of the preceding in each month.</p> <p>(7) The Bank may, by notice issued from time to time and published in the <i>Gazette</i>, vary the method to be used in calculating the cash reserve required to be maintained under this section.</p> <p>(8) Where a deposit taking institution or specified financial institution fails to maintain the required cash reserve, that institution shall pay to the Bank, interest calculated in respect of each business day that the deficiency persists at such rate as the Bank may specify by notice.</p> <p>(9) For the purpose of this section “deficiency” means the amount by which the sum (if any) actually deposited by the deposit taking institution or specified financial institution with the Bank falls short of the required cash reserve.</p> <p>(10) The coming into effect of this section shall not affect any existing requirements on deposit taking institutions relating to the maintenance of a cash reserve, unless and until those requirements are varied in accordance with this Act.</p> <p>(11) The power conferred by subsection (2) may be exercised</p> <p>(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;</p> <p>(b) so as to make, as respects the cases in relation to which it is exercised-</p> <p>(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);</p> <p>(ii) the same provision for all cases in relation to which the power is exercised or different</p> |
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|  | <p>provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes;</p> <p>(iii) any such provision either unconditionally or subject to any specified condition.</p> <p>Change references in <b>section 28A</b> throughout from “commercial bank” to “deposit taking institution”.</p> <p>Insert “other” before “specified financial institution at subsection (1) (b)</p> <p>Insert in subsection (5) the word “other” before specified financial institution”</p> <p><b>Section 29.</b></p> <p>29 (1) Every deposit-taking institution or other specified financial institution shall so conduct its business as to ensure that its stock of liquid assets is on the average not less than the per centum specified under this section.</p> <p>(2) The liquid assets that shall be maintained pursuant to this subsection shall be :</p> <p>(a) in the case of a bank or merchant bank, such percentage of its average prescribed liabilities or such percentage as prescribed by notice issued by the Bank from time to time and published in the <i>gazette</i>;</p> <p>(b) in the case of a building society, such per centum of its average prescribed liabilities in respect of deposits and withdrawable shares as prescribed by notice issued by the Bank from time to time and published in the <i>gazette</i>;</p> <p>(c) in the case of any other specified financial institution such percentage of its prescribed average liabilities including withdrawable shares (where applicable) as prescribed by notice issued by the Bank from time to time and published in the <i>gazette</i>;</p> <p>So, however, that a percentage prescribed pursuant to this subsection shall not less than fifteen nor more than fifty per centum or, subject to (2A) and (2B) such other percentage as the Minister may specify by order subject to affirmative resolution.</p> <p>(2A) An order made under subsection (2) shall, be subject to revocation or amendment, remain in force for a period of ninety days or such longer period as may be sanctioned under subsection (2B).</p> <p>(2B) The House of Representatives and the Senate may from time to time by resolution sanction the extension of an order made under subsection (2A) for such period not exceeding ninety days as may be specified in the resolution.</p> <p>(3) Where any such percentage is to be increased-</p> <p>(a) the increase shall be so effected as not to exceed five percentage points in any one period of thirty days; and</p> <p>(b) it shall be the duty of the Bank to give all deposit taking institutions or as the case may be, specified financial institutions at least 15 days’ notice of the date on which the increase is to take effect.</p> <p>(4) Without prejudice to the generality of subsection (2) a notice under subsection (2) stating the minimum liquid assets to be maintained may require that where a portion of the prescribed liabilities is payable in foreign currency then such percentage of the liquid assets so payable as is specified in the notice shall be held in foreign currency, so however, that the percentage so specified shall not be less than fifteen nor more than fifty per centum.</p> |
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|  | <p>(5) Subject to subsection (2), for the purpose of determining the amount of the liquid assets required to be maintained by a deposit taking institution or specified financial institution during any month -</p> <p>(a) the amount of its liquid assets shall be the average amount of such assets at the close of business on each business day of the month; and</p> <p>(b) the amount of its prescribed liabilities shall be the average amount of such liabilities at the close of business on Wednesdays in each of the four consecutive weeks ending with the last Wednesday but one of the preceding month.</p> <p>(6) The Bank of Jamaica may by notice from time to time vary the method to be used in calculating the average of the liquid assets required to be maintained under this section;</p> <p>(7) (i) For the purposes of this section “liquid assets” means the following assets which must be unencumbered -</p> <p>(a) notes and coins;</p> <p>(b) cash reserves on deposits with the Bank in accordance with section 28;</p> <p>(c) cash balances with the Bank in excess of such cash reserves at (b);</p> <p>(d) short term instruments issued by the Bank of Jamaica</p> <p>(e) money at call or short notice, held with another deposit taking institution under the Banking Services Act (repayable on demand or on not more than fourteen days’ notice), less any amount held for that deposit taking institution;</p> <p>(f) Treasury Bills issued by the Government of Jamaica;</p> <p>(g) Short term debt securities or instruments issued by the Government of Jamaica, whether denominated in Jamaican dollars or foreign currency;</p> <p>(h) such other assets, whether denominated in Jamaican dollars or a foreign currency, as the Bank specifies by Notice published in the <i>Gazette</i>.</p> <p>(ii) For the purposes of subparagraphs (d) and (g) “short term” in relation to an asset refers to the maturity date which will occur within a period not exceeding nine months.</p> <p>(iii) Provided that so much only of the items mentioned at paragraph (e) shall be taken into account as do not exceed such percentage of prescribed liabilities as the Bank may from time to time, specify by <i>gazetted</i> Notice.</p> <p>(8) Where a deposit taking institution or a specified financial institution, during any month, fails to maintain as liquid assets the amount which it is required to maintain under this section, that institution shall pay to the Bank in respect of the entire month aforesaid interest calculated at such rate as the Bank may from time to time, by notice, approve on the sum by which the amount of the liquid assets (if any) maintained by that bank falls</p> |
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|  | <p>short of the amount of the liquid assets which it is required to maintain.</p> <p>(9) A notice under subsection (2) may make different provisions as respects different types of prescribed liabilities specified in the notice, so, however, that if any such notice prescribes marginal liquid assets requirements for increases in specified prescribed liabilities such requirements shall not exceed one hundred per centum of the increase in such liabilities.</p> <p>“marginal liquid assets requirements” means in relation to any increase in specified prescribed liabilities, such percentage of the increase as is required to be maintained as liquid assets for the purposes of section.</p> <p>(10) The power conferred by subsection (2) may be exercised</p> <p>(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;</p> <p>(b) so as to make, as respects the cases in relation to which it is exercised-</p> <p>(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);</p> <p>(ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes;</p> <p>(iii) any such provision either unconditionally or subject to any specified condition.</p> <p>(11) The coming into effect of this section shall not affect any existing requirements on deposit taking institutions relating to the maintenance of liquid assets, until and unless those requirements are varied in accordance with this Act.</p> <p><b>For section 34A</b></p> <ol style="list-style-type: none"> <li>1. Renumber subsection (1) as the section.</li> <li>2. Delete subsection (2).</li> <li>3. In the section as renumbered, delete the words “Department of Supervision of Banks and Financial Institutions” and substitute the words “Supervisory Department”.</li> </ol> <p><b>In section 34AA:</b></p> <p>34AA (3) add that - the Supervisor shall ensure that cooperation and collaboration with supervisory counterpart pursuant to this section is done in such a manner consistent with international obligations and the laws of Jamaica.</p> <p>Add at the end of ss(6) that there should be a review commissioned by the Bank undertaken by qualified experts</p> <p>Insert new subsection (7) at the end of s. 34AA, with the following wording “The experts referred to subsection(6) shall be persons with the requisite knowledge and expertise of international banking supervision standards and best practices supervisory processes and methodologies and their appointments shall be subject to the approval of the Minister.”</p> |
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|  | <p>(5) The Supervisor shall submit to the Parliament, through the Minister, an annual report relating generally to the execution of the functions of the Supervisor under this Act and the Banking Services Act and of the Supervisory Committee under the Banking Services Act.</p> <p>(6) At least every three years, there shall be a review undertaken by qualified, independent experts of:</p> <ul style="list-style-type: none"> <li>(i) the performance of the Supervisor and Supervisory Committee in relation to their respective mandates under this Act, the Banking Services Act and any other enactment.</li> <li>(ii) the effectiveness of the Supervisory framework as set out under this Act, the Banking Services Act and any other enactment;</li> <li>(iia) the processes and procedures carried out in furtherance of the supervision mandate pursuant to this Act, the Banking Services Act and any other enactment;</li> </ul> <p>And the report of this review shall be provided to the Minister and the Supervisor.</p> <p><b>For section 34B,</b></p> <p>In subsection (1) delete reference to “Minister” and insert Supervisor in the opening. At paragraph (a) delete reference to the Supervisor.</p> <p>Insert the following as (1A) (1B) and (1C)</p> <p>(1A) The Deputy Supervisor shall be appointed under subsection (2) for a term not less than 5 years and not more than seven years, subject to the conditions contained at paragraph 5 of the Schedule to this Act and be eligible for re-appointment, provided that the expiry of the appointment of the Deputy Supervisor shall not be less than twelve months from the date of expiration of the appointment of the Supervisor;</p> <p>(1B) The Board may terminate the appointment of the Deputy Supervisor on the recommendation of the Supervisor for cause or where the Board is satisfied that the Deputy Supervisor has failed to meet the qualifications contained in paragraph 5 of the Schedule to this Act;</p> <p>(1C) An appointment as Deputy Supervisor shall not be made below the rank of Deputy Governor.</p> <p>At ss (3) delete reference to Minister and insert Board.</p> <p>Insert as a new (4)</p> <p>(4) In the absence or incapacity of the Supervisor, the Deputy Supervisor shall undertake the functions and responsibilities of the Supervisor as set out in this Act and the Banking Services Act.</p> <p>In subsection (5) remove the reference to the Minister.</p> <p>Add a new (7) as follows:</p> <p>(7) Nothing contained in this section shall affect or prejudice the terms of any existing</p> |
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|  | <p>appointment or arrangements in place relating to an incumbent Deputy Supervisor at the date of the passage of this Act.</p> <p>Add a new <b>subsection 34BB</b> as follows:</p> <p>34BB. (1) There is hereby established a committee for the purposes of developing greater co-ordination and information sharing between the different regulatory and policy authorities operating in the Jamaican financial sector.</p> <p>(2) The committee shall consist of:</p> <p>(a) The Governor, who shall be the Chairman;</p> <p>(b) The Financial Secretary;</p> <p>(c) The Executive Director of the Financial Services Commission; and</p> <p>(d) The Chief Executive Officer of the Jamaica Deposit Insurance Corporation.</p> <p>(3) The committee shall establish appropriate policies and procedures by way of written agreement subject to the approval in writing by the Minister for the purposes of meeting the objectives set out at subsection (1).</p> <p>(4) Nothing contained in this section shall serve to invalidate any existing agreement in writing executed between the parties named at subsection (2) for the purposes set out at subsection (1) and any such agreement shall continue to remain in effect until otherwise amended or revoked in accordance with its terms.</p> <p>(5) The provisions of subsections (1) and (2) of section 34D shall, as they apply to an authorized officer, apply mutatis mutandis –</p> <p>(a) To members of the Committee; and</p> <p>(b) In respect of institutions regulated by any regulatory authority, to customer information supplied in respect of paragraph (a).</p> <p>(6) The provisions of section 34E shall, as they apply to the Bank or persons mentioned in that section, apply mutatis mutandis to –</p> <p>(a) Members of the Committee and persons working on its behalf; and</p> <p>(b) Bank staff engaged activity to support the functions of the Committee.</p> <p>In <b>section 34C</b> remove the references to commercial bank and replace with reference to licensees under the Banking Services Act. Also change references to the “Minister” in the section to the “Board”.</p> <p>In <b>section 34D</b> extend the parties to whom information may be disclosed to the Supervisory Committee and regulatory counterparts.</p> <p>In <b>section 34E</b> extend the protection afforded by that section to all persons appointed under 34B (ss(1)(c)) and change the reference to in ss. (1)(d) to refer to a temporary manager appointed under Part C of the Fifth Schedule to the Banking Services Act.</p> <p><b>Section 47</b> should make reference to licensees under the Banking Services Act instead of commercial banks under the Banking Act.</p> |
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|  | <p>In the <b>Schedule</b> to the Act:</p> <p>At paragraph 1, the reference should be to “appointed” directors and therefore the references to the ex-officio directors at (a) should be deleted.</p> <p>At paragraph 2(c) incorporate the prohibition against ownership interests in any licensees under the Banking Services Act or in any other regulated financial institution.</p> <p>At paragraph 4(2) the Governor should address his resignation jointly to the Governor General and the Minister.</p> <p>A new paragraph 9 should be added to the Schedule</p> <p>9. In any case where a current director breaches paragraph 2 of this Schedule as a result of the amendment of that paragraph, he shall declare any ownership interest or position to the Board of Directors and shall elect to either:</p> <ul style="list-style-type: none"> <li>(a) resign his position;</li> <li>(b) dispose of such shareholdings within such time as may be directed by the Board or</li> </ul> <p>Provided that in the case of (b), the director shall undertake to the Board not to deal with such interest for the period specified by the Board.</p> |
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**Amendments to the Bill are covered in *Appendix II*.**

## **7. ACKNOWLEDGEMENTS**

Your Committee wishes to express sincere gratitude to all those individuals and organizations that made written submissions and oral presentations or participated in the deliberations. In particular, your Committee wishes to thank the Jamaica Bankers’ Association, the Institute of Chartered Association and the Building Societies Association of Jamaica for participating in the deliberations. A special recognition to the staff of the following entities: the Bank of Jamaica, the Office of the Parliamentary Counsel, the Attorney General’s Chambers and the Ministry of Finance and Planning, the Financial Services Commission and the Jamaica Deposit Insurance Corporation for the technical guidance given to the Committee throughout its deliberations.

Your Committee is also grateful to the media, who covered the meetings and reported the proceedings to the public. Your Committee is also grateful to the Governor and staff of the Bank of Jamaica for hosting some of the meetings of the Committee and for the very kind courtesies

that were extended during those meetings. To the Clerk to the Houses and her staff, a special thank you for the invaluable assistance and kind courtesies extended during the meetings.

**May, 2014**

*Appendix I*

**ATTENDANCE RECORD**

**6 MEETINGS**

|   | <b>Present</b> | <b>Absent</b> | <b>Apology</b> |
|---|----------------|---------------|----------------|
| <b>Dr. the Hon. Peter Phillips, M.P. – Chairman</b> | <b>6</b>       | <b>-</b>      | <b>-</b>       |
| Hon. Peter Bunting, MP                              | 0              | 6             | 4              |
| Hon. Julian Robinson, MP                            | 5              | 1             | 1              |
| Mr. Fitz Jackson                                    | 6              | -             | -              |
| Mr. Mikael Phillips, MP                             | 6              | -             | -              |
| Mr. André Hylton, MP                                | 5              | 1             | 1              |
| Ms. Audley Shaw, MP                                 | 2              | 4             | 2              |
| Mr. Karl Samuda, MP                                 | 4              | 2             | -              |
| Mr. Gregory Mair, MP                                | 2              | 4             | 1              |
| Sen. the Hon. Mark Golding                          | 5              | 1             | 1              |
| Sen. Norman Grant                                   | 4              | 2             | 1              |
| Sen. Imani Duncan-Price                             | 6              | -             | 1              |
| Sen. Sophia Frazer-Binns                            | 6              | -             | -              |
| Sen. Alexander Williams                             | 3              | 3             | 2              |
| Sen. Ruel Reid, CD, JP                              | 5              | 1             | -              |

*Appendix II*

**AMENDMENTS RECOMMENDED BY THE  
JOINT SELECT COMMITTEE OF PARLIAMENT  
TO THE BILL SHORTLY ENTITLED  
THE BANKING SERVICES ACT, 2014**

| <b>PROVISION</b><br><br><hr/> | <b>AMENDMENT</b><br><br><hr/>   |
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| <b>Clause 1</b>               | <p>1. In the marginal note thereto, insert immediately after the word “title” the words “and commencement”.</p> <p>2. Insert immediately after the numeral “2014” the words “, and shall come into operation on a day to be appointed by the Minister by notice published in the <i>Gazette</i>”.</p>   |
| <b>Clause 2</b>               | <p>1. In subsection (1) -</p>   |
|                               | <p>(a) delete the definitions of “aggregate group capital”, “aggregate group capital base” and “aggregate regulatory capital base”;</p>   |
|                               | <p>(b) in the definition of “banking business”, delete paragraph (a) and substitute therefor the following –</p> <p>“</p> <p style="padding-left: 40px;">(a) the business of any one or more of the following activities carried out by a deposit taking institution –</p> <p style="padding-left: 100px;">(i) receiving deposits from the public which may be invested by way of advances to customers or otherwise;</p> <p style="padding-left: 100px;">(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;</p> <p style="padding-left: 100px;">(iii) the operation of automated banking machines, automated teller machines or similar devices;</p> <p style="padding-left: 100px;">(iv) the issue of electronic money; or</p> <p>”</p> |



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|  | <p>(v) any other business specified by the Supervisor as banking business by notice published in the <i>Gazette</i>; but”;</p>   |
|  | <p>(c) in the definition of “counterparty exposure”, delete paragraph (e) and substitute therefor the following –</p> <p>“ (e) reverse repurchase transactions; and ”;</p> <p>(d) delete the definition of “eligible auditor” and substitute therefor the following –</p> <p>“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;</p> <p>(e) in the definition of “financial holding company” delete the word “non-operating”;</p> <p>(f) delete the definition of “financial services” and substitute therefor the following –</p> <p>“ “financial services” includes –</p> <p>(a) banking business;</p> <p>(b) lending;</p> <p>(c) consumer credit;</p> <p>(d) financing commercial transactions;</p> <p>(e) transfer of money or value;</p> <p>(f) issuing electronic money;</p> <p>(g) financial guarantees and commitments;</p> <p>(h) dealing in securities and trading in other financial instruments;</p> <p>(i) participation in security issues;</p> <p>(j) individual and collective portfolio management;</p> <p>(k) insurance business and insurance related financial services;</p> |

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|  | <p>(l) investment of moneys and other financial assets on behalf of third parties;</p> <p>(m) pension fund management; and</p> <p>(n) any other service designated as a financial service, by the Supervisor by order published in the <i>Gazette</i>, subject to affirmative resolution;”;</p>   |
|  | <p>(g) delete the definition of “independent director” and substitute therefor the following –</p> <p>“</p> <p>“independent director” means a director of a licensee or company who is not –</p> <p>(a) an employee of the licensee or company;</p> <p>(b) a person holding five <i>per centum</i> or more of the shares of the licensee or company or a connected person to the licensee or company; or</p> <p>(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;”;</p> |
|  | <p>(h) in the definition of “key employee”, delete paragraph (b) and substitute therefor the following –</p> <p>“(b) a person who is deemed by the Supervisor to be a key employee of the licensee;”;</p>   |
|  | <p>(i) delete the definition of “manager” and substitute therefor the following –</p> <p>“</p> <p>“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;”;</p>  |
|  | <p>(j) delete the definition of “real sector activities” and substitute therefor the following –</p> <p>““real sector activities” means, in relation to a financial group, any commercial activities other than financial services;</p>   |

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|                 | <p>(k) delete the definition of “secured” and substitute therefor the following –</p> <p>“</p> <p>“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;”;</p> |
|                 | <p>(l) delete the definition of “Supervisor” and substitute therefor the following –</p> <p>“</p> <p>“Supervisor” means the Governor of the Bank acting in the capacity as Supervisor of Banks and Specified Financial Institutions under section 34B of the <i>Bank of Jamaica Act</i>”;</p>  |
|                 | <p>(m) in the definitions of “Tier 1 capital”, and “Tier 2 capital”, respectively, insert immediately after the words “First Schedule” wherever they appear the word “or” in each case;</p>  |
|                 | <p>(n) in the definition of “unsecured” delete the words “assets, and, for the purpose of this definition, security shall be construed as including a confirmed irrevocable letter of credit and such other instruments as the Bank Supervisor may, from time to time, determine” and substitute therefor the words “assets”.</p>  |
|                 | <p>2. In subsection (2), insert –</p> <p>(a) in paragraph (e) immediately before the words “effective control” the words “control or”; and</p> <p>(b) in paragraph (f), immediately after the words “control” the words “or effective control”.</p>  |
|                 | <p>3. In subsection (7), delete the words “In subparagraph (i) of the definition of “deposit”, money” and substitute therefor the words “In paragraph (a)(ii) of the definition of “deposit” in subsection (1), money”.</p>  |
|                 | <p>4. In subsection (8), delete the words “him” and “he” respectively and substitute therefor, in each case, the words “the person”.</p>   |
| <b>Clause 3</b> | <p>1. Delete subsection (1) and substitute therefor the following –</p> <p>“(1) For the purposes of this Act, an individual, whether in Jamaica or elsewhere, is a fit and proper person if –</p> <p>(a) the individual–</p>   |

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|                 | <ul style="list-style-type: none"> <li>(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 <i>Proceeds of Crime Act</i> or an offence that is similar to any such offence in another jurisdiction;</li> <li>(ii) is not an undischarged bankrupt; and</li> <li>(iii) is in compliance with any tax and other statutory requirements imposed on the individual;</li> </ul> <p>(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</p> <p>(c) the individual is, in the opinion of the Supervisory Committee -</p> <ul style="list-style-type: none"> <li>(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; and</li> <li>(ii) a person whose appointment to the board of, employment by, or ownership of, the licensee will not result in a conflict of interest.”.</li> </ul> |  |
|                 | 2. In subsection (2), delete the word “employees” and substitute therefor the word “employees”.  |  |
|                 | 3. In subsection (4), delete the word “Supervisor” wherever it appear and substitute therefor, in each case, the words “Supervisory Committee”.  |  |
| <b>Clause 5</b> | Delete the clause and substitute therefor the following –  |  |
|                 | <p><b>“ Principles to take into account when exercising functions.</b></p>   | <p>5. In the performance of their functions under this Act, the Supervisor and the Supervisory Committee shall take into account the following principles –</p> <ul style="list-style-type: none"> <li>(a) there shall be objective, independent and impartial supervision of licensees on the basis of sound judgment;</li> <li>(b) there shall be consistency in the treatment of similar institutions;</li> </ul> |

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|                 |   | (c) depositors shall have access to adequate information from the deposit taking institutions;   |
|                 |   | <p>(d) the need for sound governance by licensees shall be accorded priority;</p> <p>(e) the need for effective risk management by licensees shall be accorded priority; and</p> <p>(f) unnecessary compliance costs shall be avoided.”.</p>   |
| <b>Clause 7</b> | Delete the clause and substitute therefor the following – |  |
|                 | <b>“Functions of Committee.</b>                           | <p>7. – (1) The Supervisory Committee shall consider and make determinations on the following matters –</p> <p>(a) the grant, refusal and revocation of licences;</p> <p>(b) whether a person is a fit and proper person and possesses, knowledge, skills and experience which are necessary for the intended functions to be carried out by that person;</p> <p>(c) matters regarding -</p> <ul style="list-style-type: none"> <li>(i) the establishment of branch operations and representative offices;</li> <li>(ii) corporate and group restructuring;</li> <li>(iii) changes in ownership of licensees;</li> <li>(iv) amalgamations, mergers and acquisitions;</li> </ul> <p>(d) exemptions from the statutory exposure limits;</p> <p>(e) the variation of prudential capital adequacy requirements;</p> <p>(f) the authorization of arrangements for the sharing of information and other forms of cooperating with any other regulator;</p> |

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|                  |  | <p>(g) enforcement measures under this Act;</p> <p>(h) the making of regulations under Part XXVI for the operation of licensees;</p> <p>(i) monitoring the enforcement of any code of conduct;</p> <p>(j) investigatory action related to breaches of this Act and any regulations made under this Act;</p> <p>(k) objection to the appointment of external auditors;</p> <p>(l) the removal of external auditors; and</p> <p>(m) standards of sound practices for licensees.</p> <p>(2) The Supervisor shall be responsible for implementing the determinations of the Supervisory Committee under subsection (1).</p> <p>(3) In carrying out its functions under subsection (1), the Supervisory Committee shall take into account the assessments and recommendations of the Supervisor.</p> <p>(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.</p> <p>(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.</p> <p>(6) In making a determination under paragraphs (a) and (c) of subsection (1), the Supervisory Committee shall consult with the Minister on matters relating to the national interest.”.</p> |
| <b>Clause 8</b>  | In subsection (1), insert immediately after the words “of this Act” the words “or the <i>Bank of Jamaica Act</i> ”.  |   |
| <b>Clause 10</b> | <p>1. Reletter paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d).</p> <p>2. Insert immediately before paragraph (b), as relettered, the following –</p> |   |

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|                          | <p>“(a) issue or cause to be issued advertisements for deposits;”.</p> <p>3. In paragraph (b), as relettered, insert immediately after the “word “deposits” the words “, in any other manner,”.</p> |   |
| <b>Clauses 13 and 14</b> | Delete the clauses and substitute therefor the following –  |   |
|                          | <p><b>“ Offence re inducement to place money on deposit.</b></p>  | <p>13. - (1) A person shall not –</p> <ul style="list-style-type: none"> <li>(a) by any statement, promise, forecast or projection which the person knows to be misleading, false or deceptive; or</li> <li>(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,</li> </ul> <p>induce or attempt to induce another person to –</p> <ul style="list-style-type: none"> <li>(i) place money on deposit with the person or any other person; or</li> <li>(ii) enter into, or offer to enter into, any agreement for that purpose.</li> </ul> <p>(2) A person who contravenes subsection (1) commits an offence.”.</p> |
|                          | <p><b>Restrictions on dealing with, for, or on behalf of prohibited schemes.</b></p>  | <p>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 –</p> <ul style="list-style-type: none"> <li>(a) a person who transacts business in contravention of this Part; or</li> <li>(b) a prohibited scheme.</li> </ul> <p>(2) A prohibited scheme referred to in subsection (1) is any activity which falls within the definition of “prohibited scheme” set out in the <i>Securities Act</i>.</p> <p>(3) A person who contravenes subsection (1) commits an offence.</p>   |

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|                  |   | (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.”.  |
| <b>Clause 16</b> | Delete the clause and substitute therefor the following – |   |
|                  | <b>“Search warrant in contravention of this Part.</b>     | <p>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 suspected offence, apply under subsection (2) to a Justice of the Peace, for a warrant to search the premises.</p> <p>(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 –</p> <ul style="list-style-type: none"> <li>(a) enter the premises named in the warrant, with or without a constable;</li> <li>(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</li> <li>(c) seize and detain – <ul style="list-style-type: none"> <li>(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</li> </ul> </li> </ul> |



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|  |  | <p>(ii) any book, record or other document that the authorized officer believes, on reasonable grounds, will afford evidence as to the commission of a offence.</p> <p>(3) A Justice of the Peace shall not issue a warrant under subsection (2) unless he is satisfied that –</p> <p>(a) it is not practicable to communicate with any person having the power to grant entry to the premises;</p> <p>(b) entry to the premises will not be granted unless a warrant is produced; or</p> <p>(c) the relevant investigation might be seriously prejudiced unless the authorized officer is granted immediate access to the relevant documents.</p> <p>(4) A search warrant shall not be issued under subsection (2) unless –</p> <p>(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</p> <p>(b) the Justice of the Peace is satisfied that there are reasonable grounds for issuing the warrant.</p> <p>(5) A search warrant issued under subsection (2) shall state –</p> <p>(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;</p> <p>(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;</p> |
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|  |  | <p>(c) a description of the kind of relevant documents authorized to be seized;</p> <p>(d) that cash is authorized to be seized; and</p> <p>(e) that the warrant remains in force until –</p> <ul style="list-style-type: none"> <li>(i) it ceases to be in force under subsection (10); or</li> <li>(ii) it is varied or discharged by a Judge in Chambers pursuant to an application made under subsection (9).</li> </ul> <p>(6) An authorized officer shall not seize any document which is subject to legal professional privilege.</p> <p>(7) An authorized officer may, upon request, make copies of any information, book, record or document referred to in subsection (1) or take extracts therefrom at the expense of the person who is suspected of committing or having committed the offence.</p> <p>(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.</p> <p>(9) A warrant remains in force -</p> <p>(a) until the earlier of –</p> <ul style="list-style-type: none"> <li>(i) the end of the period for which it is to remain in force as stated in the warrant; or</li> <li>(ii) fourteen days after the date on which the warrant is issued; or</li> </ul> <p>(b) until it is varied or discharged by a Judge in Chambers pursuant to an application made under subsection (8).</p> <p>(10) A Judge in Chambers may, on an <i>inter partes</i></p> |
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|                  |    | <p>application by the Supervisor –</p> <p>(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</p> <p>(b) make such other order as the Court considers appropriate in relation to the operation of the order.</p> <p>(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.</p> <p>(12) In this section “premises” includes any place and in particular any building, receptacle or vehicle.”.</p> |
| <b>Clause 17</b> | 1. | In subsection (1), delete the words “and initials”.   |
|                  | 2. | In subsections (2), (4) and (5), delete the words “Supervisory Committee” wherever they appear and substitute therefor, in each case, the word “Supervisor”.  |
| <b>Clause 18</b> | 1. | <p>Delete paragraph (e) and substitute therefor the following –</p> <p>“(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;”.</p>  |
|                  | 2. | In paragraph (h), delete the words “Supervisory Committee” and substitute therefor the words “Supervisor, with the approval of the Supervisory Committee,”.   |
| <b>Clause 19</b> |    | <p>Insert next after subsection (3) the following as subsection (4) –</p> <p>“ (4) A mutual society shall not be eligible to apply for a licence under this section after the commencement date.”.</p>  |
| <b>Clause 20</b> | 1. | In the marginal note, delete the word “unto” and substitute therefor the word “into”.   |
|                  | 2. | Delete the words “Upon receipt of” and substitute therefor the words “In making a determination on”.  |
| <b>Clause 21</b> |    | Insert immediately after the words “unless the Committee” the words “has had regard to  |

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|                  | the matters set out in section 20 and”.   |  |
| <b>Clause 22</b> | <p>1. In subsection (1), delete paragraphs (a) and (b) and substitute therefor the following –</p> <p>“(a) grant the licence and record the grant of the licence in a register; or</p> <p>(b) subject to subsection (3), refuse to grant the licence.”.</p>   |  |
|                  | <p>2. In subsection (2), delete the word “If” and substitute therefor the words “Subject to subsection (3), if”.</p>  |  |
|                  | <p>3. Delete subsection (3) and substitute therefor the following –</p> <p>“(3) Where the Supervisory Committee intends to refuse to grant a licence under this section, the Supervisor shall -</p> <p>(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</p> <p>(b) afford to that applicant an opportunity to be heard.”.</p> |  |
|                  | <p>4. In subsection (4), delete the numeral “111” and substitute therefor the numeral “112”.</p>  |  |
| <b>Clause 24</b> | <p>In subsection (1) –</p> <p>(a) in paragraph (a), insert immediately after the words “remains in effect” the words “, pay the prescribed fee to the Accountant-General”; and</p> <p>(b) in paragraph (d), delete the words “ or section 21(2)”.</p>   |  |
| <b>Clause 25</b> | <p>In subsection (1), delete the words “certified copy of its licence” and substitute therefor the words “copy of its licence, certified by the Supervisor,”.</p>   |  |
| <b>Clause 26</b> | Delete the clause and substitute therefor the following –   |  |
|                  | <b>“Publication of change of name, etc.</b>   | <p>26. – (1) The Supervisory Committee shall cause to be published by notice in the <i>Gazette</i> –</p> <p>(a) the name of each company to which a licence is granted;</p> <p>(b) the name of each company for which a licence has b</p> <p>(c) any change of name of a licensee; and</p> |

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|   |   | <p>(d) such other matters relating to licensing as the Supervisory Committee considers appropriate .</p> <p>(2) The Supervisory Committee may cause any condition of a licence granted under section 22 to be published in the <i>Gazette</i>.”.</p>  |
| <b>Clause 28</b>                                | <p>1. In subsection (1), delete the word “Committee” and substitute therefor the words “Supervisory Committee”.</p>   |   |
|   | <p>2. Delete subsections (10) and (11) and substitute therefor the following –</p> <p>“ (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.</p> <p>(11) Where a direction is made under subsection (9) (d), and pending the further consideration of the matter by the Supervisory Committee, the Supervisory Appeals Board may stay the decision of the Supervisory Committee if the Board is satisfied that –</p> <p>(a) the stability of the financial system will not be adversely affected;</p> <p>(b) the interest of depositors will not be prejudiced; and</p> <p>(c) the interest of the appellant will suffer irreparable harm if the stay is not granted.”.</p> |   |
| <b>Amendment to Heading entitled PART VIII.</b> | Delete the words “ <b>PART VIII</b> ” and substitute therefor the words “ <b>PART VII</b> ”.  |   |
| <b>Clause 31</b>                                | Delete the clause and substitute therefor the following -   |   |
|   | <p><b>“Board and management committees.</b></p>   | <p>31. – (1) Every licensee, other than a licensee that is a foreign bank, shall establish appropriate board and management committees to –</p> <p>(a) oversee the important aspects of the operation of the licensee;</p> <p>(b) establish due diligence processes (including background checks) that shall be undertaken for directors, officers and key employees; and</p> |

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|                  |   | <p>(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.</p> <p>(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.”.</p> |
| <b>Clause 32</b> | 1. In subsection (1), delete the words “shall in relation to its branch operations in Jamaica” and substitute therefor the words “in relation to its branch operations in Jamaica, shall”.  |   |
|                  | 2. In subsection (3), insert immediately after the words “The board of directors” the words “, board of management or such other governing body”.   |   |
|                  | 3. Delete subsection (4) and substitute therefor the following –  |   |
|                  | <p>“ (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.</p> <p>(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.”.</p> |   |
| <b>Clause 34</b> | Delete the words “membership of the board” and substitute therefor the words “membership of the Board or such other fraction as may be prescribed by the Supervisory Rules”.  |   |
| <b>Clause 38</b> | 1. In subsection (1), insert immediately after the word “ Supervisor,” the words “on the approval of the Supervisory Committee,”.   |   |
|                  | 2. In subsection (2),(b)(i)(A), insert immediately after the word “licensee” the words “with another licensee”.   |   |
| <b>Clause 39</b> | Delete subsections (3) and (4) and substitute therefor the following –  |   |
|                  | “(3) Every licensee shall give prior notice in writing to the Supervisor, of –  |   |

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|                             | <p>(a) any transaction involving the sale or purchase of loans for a price, or of a value, exceeding individually or in the aggregate five <i>per centum</i> of the capital base of the licensee; or</p> <p>(b) its intention to appoint or terminate the appointment of an external auditor.</p> <p>(4) Subsection (3) (b) shall not apply to the renewal of the appointment of an external auditor.</p> <p>(5) A licensee shall not implement any major changes in existing operations, strategy or policy without first obtaining the written approval of the Supervisor.</p> <p>(6) A licensee shall, in relation to the termination of the appointment of an external auditor, comply with section 94(2).”.</p>  |
| <b>Heading to Part VIII</b> | Delete the words “ <i>Capital Reserves</i> ” and substitute therefor the words “ <i>Capital and Reserves</i> ”.   |
| <b>Clause 40</b>            | 1. In subsection (2), delete the words “capital base” and substitute therefor the words “regulatory capital”.   |
|                             | 2. In subsection (4), delete the words “an adequate capital base” and substitute therefor the words “aggregate regulatory group capital”.   |
| <b>Clause 41</b>            | 1. In subsection (3), delete the words “in relation to its branch operations in Jamaica, or a foreign bank,” and substitute therefor the words “or a foreign bank”.   |
|                             | <p>2. Delete subsection (5) and substitute therefor the following -</p> <p>“ (5) For the purposes of this section, “net profits” means profits after the deduction of income tax, but shall not include –</p> <p>(a) any unrealized surplus arising from a revaluation of the assets of the deposit taking institution, other than foreign currency;</p> <p>(b) profits arising from –</p> <p style="padding-left: 40px;">(i) a sale of 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</p> <p style="padding-left: 40px;">(ii) a resale, other than for cash, by the deposit taking institution of assets purchased from a connected person; or</p> <p>(c) any profit or gain, whether resulting from an artificial or fictitious transaction</p> |

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|                          | <p>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,</p> <p>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.”.</p> |
| <b>Clauses 43 and 44</b> | Insert immediately after the words “ <i>Bank of Jamaica Act</i> ” the words “; and if it fails to do so, it shall pay interest in accordance with that section”.  |
| <b>Clause 46</b>         | <p>1. In subsection (1), delete the words “its capital base” and substitute therefor the words “such percentage of its capital base as may be prescribed”.</p> <p>2. In subsection (2), delete “the words “In subsection (1)- “fixed assets”- ” and substitute therefor the words “In subsection (1), “fixed assets -”.</p>       |
| <b>Clause 47</b>         | Delete “the words “The historical” and substitute therefor the words “For the purposes of determining compliance with section 46(1), the historical”.   |
| <b>Clause 53</b>         | <p>Delete subsection (1) and substitute therefor the following –</p> <p>“(1) Subject to subsection (3), a deposit taking institution shall not beneficially hold in fee simple any land acquired in the course of satisfaction of debts due to the institution for more than three years from the date of the acquisition.”.</p>  |
| <b>Clause 54</b>         | In subsection (1), delete the words “section 13” and substitute therefor the words “section 131”.   |
| <b>Clause 55</b>         | <p>1. In subsection (2), delete the word “include” and substitute therefor the word “are”.</p> <p>2. In subsection (3), delete the word “forty-five” and substitute therefor the word “thirty”.</p>   |
| <b>Clause 57</b>         | In subsection (4), delete the words “subsection (1) or (2)” and substitute therefor the words “subsection (1) or (3)”.  |
| <b>Clause 59</b>         | <p>In subsection (3) -</p> <p>(a) insert in paragraph (d) immediately before the words “repurchase arrangements” the word “reverse”; and</p> <p>(b) delete from paragraph (e) the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.</p>                             |
| <b>Clause 61</b>         | <p>In subsection (1) –</p> <p>(a) delete from paragraph (a), the words “to persons or groups”; and</p>  |



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|                  | <p>(b) delete subparagraph (i) of paragraph (b) and substitute therefor the following –</p> <p style="padding-left: 40px;">“(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 ”.</p>  |   |
| <b>Clause 63</b> | <p>1. In subsection (2), delete –</p> <p style="padding-left: 40px;">(a) the words “The Supervisor may, on a temporary basis, approve an exposure in excess of the limits” and substitute therefor the words “The Supervisory Committee may, on a temporary basis, approve an exposure in excess of the counterparty limits”; and</p> <p style="padding-left: 40px;">(b) the word “Supervisor” and substitute therefor the words “Supervisory Committee”.</p> |   |
|                  | <p>2. In subsection (3), delete the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.</p>   |   |
|                  | <p>3. Delete subsection (4).</p>  |   |
| <b>Clause 64</b> | Delete the clause and substitute therefor the following -   |   |
|                  | <p><b>“Supervisor’s general powers of supervision and examination of licensee.</b></p>  | <p>64. - (1) In addition to his functions under this Act or any other enactment, the Supervisor shall –</p> <p style="padding-left: 40px;">(a) monitor licensees on an on-going basis, by means of off-site and on-site examinations, to assess -</p> <p style="padding-left: 80px;">(i) compliance by individual licensees with the provisions of this Act, any regulations made under this Act or any other enactment;</p> <p style="padding-left: 80px;">(ii) the safety and soundness of individual licensees and the deposit taking system; and</p> <p style="padding-left: 80px;">(iii) risks across the group pursuant to the consolidated supervision of the financial group;</p> |

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|  |  | <p>(b) require, or recommend to the Supervisory Committee, timely and appropriate corrective action by licensees when deficiencies or breaches are identified;</p> <p>(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, the Supervisory Rules or any directions issued by the Supervisor under this Act;</p> <p>(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;</p> <p>(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;</p> <p>(f) publish financial information on individual licensees and the supervised system in such format and frequency as he may determine;</p> <p>(g) publish on an annual basis -</p> <ul style="list-style-type: none"> <li>(i) statistics on customer complaints;</li> <li>(ii) information reported by licensees on fees and charges;</li> <li>(iii) complaints referred to the Supervisor in relation to the Code Conduct,</li> </ul> <p>so, however, that no information in respect of the affairs of a particular customer of a deposit taking institution shall be published.</p> <p>(2) In undertaking an examination under subsection (1) (a), the Supervisor may determine the frequency and scope of the examination, according to the risk profile and systemic importance of the</p> |
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|                  |    | licensee and any matter that may be unique to the licensee.”.   |
|                  | 2. | Delete subsections (3), (4) and (5).  |
| <b>Clause 65</b> |    |   |
|                  | 1. | Delete subsections (3) and (4).   |
|                  | 2. | Insert next after subsection (2) the following –  |
|                  |    | <p>“(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.</p> <p>(4) A director, officer, key employee or substantial shareholder of a licensee commits an offence if he refuses to obey a summons under subsection (3) or provide any information required under subsection (1).</p> <p>(5) 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.”.</p> |
| <b>Clause 66</b> | 1. | In the marginal note, delete the word “manager” and substitute therefor the word “officer”.   |
|                  | 2. | In subsection (1) – <ul style="list-style-type: none"> <li>(a) delete the words “section 64” and substitute therefor the words “section 65”;</li> <li>(b) delete the words “the chief executive officer” and substitute therefor the word “an officer of the licensee”.</li> </ul>  |
|                  | 3. | In subsection (3), insert immediately after the words “chief executive officer” the words “or other officer”.   |
| <b>Clause 67</b> | 1. | Delete subsection (1) and substitute therefor the following –   |
|                  |    | <p>“(1) For the purposes of this Act, an authorized officer shall be entitled –</p> <ul style="list-style-type: none"> <li>(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</li> </ul>   |

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|                  | <p>books, accounts, records, cheques, securities or other document whether stored physically or electronically (in this section referred to as “relevant documents”) –</p> <ul style="list-style-type: none"> <li>(i) of a licensee or of any other entity within the same financial group of which the licensee is a member;</li> <li>(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</li> <li>(iii) in the possession or control of any director, manager, 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</li> </ul> <p>(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.”.</p> |
| <b>Clause 69</b> | In subsection (3), delete the words “Where a financial group” and substitute therefor the words “Subject to section 74, where a financial group”.   |
| <b>Clause 70</b> | 1. In subsection (1), delete the word “Supervisor” and substitute therefor the words “Supervisory Committee”.   |
|                  | 2. In subsection (2), delete from paragraph (a), the words “and all companies” and substitute therefor the words “and each company”.  |
| <b>Clause 71</b> | 1. In subsection (1)(a), delete the word “between” and substitute therefor the word “among”.  |
|                  | 2. In subsection (2), delete the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.  |
|                  | <p>3. In subsection (4), delete from –</p> <ul style="list-style-type: none"> <li>(a) paragraph (b), the words “the manager” and substitute therefor the words “an officer”; and</li> <li>(b) paragraph (c), the words “managerial personnel” and substitute therefor the word “officers”.</li> </ul>   |

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|                  | 4. Renumber subsection (5) as subsection (8).  |
|                  | <p>5. Insert next after subsection (4) the following –</p> <p>“ (5) The Supervisor may issue such directions to a deposit taking institution or its financial holding company as the Supervisor considers appropriate to –</p> <p>(a) control and manage risks in and throughout the financial group; and</p> <p>(b) preserve the stability of the financial group.</p> <p>(6) The directions referred to in subsection (5) may include –</p> <p>(a) capital requirements, including market risks on a group-wide basis;</p> <p>(b) limits on –</p> <p>(i) large exposures;</p> <p>(ii) intra group transactions;</p> <p>(iii) holdings in any regulated or supervised financial institution.</p> <p>(7) A deposit taking institution which fails to comply with directions under this section commits an offence.”.</p> |
|                  | 6. In subsection (8), as renumbered, insert immediately after the words “subsection (4)” the words “or (5)”.   |
| <b>Clause 73</b> | In subsection (2), delete the word “Supervisor” and substitute therefor the words “Supervisory Committee”.   |
| <b>Clause 74</b> | <p>1. In subsection (1), delete –</p> <p>(a) the numeral “31” wherever it appears and substitute therefor the numeral “75”;</p> <p>(b) the word “merely”; and</p> <p>(c) the words “holding company for a financial group” and substitute therefor the words “financial holding company”.</p>  |
|                  | 2. In subsections (2) and (3), delete the words “mutual society” wherever they appear and substitute therefor, in each case, the words “deposit taking institution”.   |
| <b>Clause 75</b> | 1. Delete subsection (1) and substitute therefor the following -   |

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|  | <p>“ (1) A financial holding company shall –</p> <ul style="list-style-type: none"> <li>(a) ensure that adequate capital and other financial resources are maintained for the operations of the financial group that it heads;</li> <li>(b) manage the risks to the viability of the financial group and comply with reporting and other prudential requirements;</li> <li>(c) ensure compliance by the financial group - <ul style="list-style-type: none"> <li>(i) with the provisions of this Act and any regulations made under this Act;</li> <li>(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;</li> <li>(iii) by all members of the financial group with the enactments which regulate their operations;</li> <li>(iv) with directions issued by the Supervisor to any member of the financial group;</li> <li>(v) with the decisions of any other regulator concerning any member of the financial group;</li> </ul> </li> <li>(d) ensure that it submits all financial statements and further data on its, and the financial group's, behalf, as the Supervisor may require;</li> <li>(e) not hold any assets that are not necessary for the performance of its role as a holding company of the financial group;</li> <li>(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;</li> <li>(g) ensure compliance with disclosure requirements that are applicable to entities within the financial group;</li> <li>(h) provide the Supervisor with all reports and returns required under this Act;</li> <li>(i) notify the Supervisor of any events or circumstances that affect or could affect the stability of the financial group; and</li> <li>(j) ensure compliance with any requirement under this Act and any regulations</li> </ul> |

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|                  | made under this Act that the directors, officers, substantial shareholders and key employees of the financial holding company and other deposit taking institutions in the financial group are fit and proper persons”.   |
|                  | 2. In subsection (3), delete the words “managers and directors” and substitute therefor the words “directors and officers”.   |
|                  | 3. In subsection (4), delete the words “manager or director” and substitute therefor the words “director or officer”.   |
| <b>Clause 77</b> | 1. In subsections (1) and (2), delete the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.   |
|                  | 2. In subsection (3) -<br><br>(a) delete the words “the Supervisor shall take into account such matters as are considered relevant” and substitute therefor the words “the Supervisory Committee shall take into account such matters as it considers relevant”; and<br><br>(b) delete from paragraph (e) (iii) the words “Supervisor’s” and substitute therefor the words “Supervisory Committee’s”. |
|                  | 3. In subsection (4), delete the words “Supervisor” and substitute therefor the words “Supervisory Committee”.  |
|                  | 4. Delete subsection (5) and substitute therefor the following –<br><br>“(5) For the purpose of making a decision under subsection (2), 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.”.   |
|                  | 5. In subsection (6), delete –<br><br>(a) the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”; and<br><br>(b) the word “his” and substitute therefor the word “its”.   |
| <b>Clause 78</b> | 1. In subsection (1), delete –<br><br>(a) the words “agreement arrangement” and substitute therefor the words “agreement or arrangement”;<br><br>(b) the word “Supervisor” and substitute therefor the words “Supervisory Committee”.   |

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|                  | 2. In subsection (2), delete the words “Supervisor may give his approval, subject to such condition as he” substitute therefor the words “Supervisory Committee may give its approval, subject to such condition as it”.  |
|                  | 3. In subsection (3), delete the words “the Supervisor shall take into account such matters as he considers relevant” and substitute therefor the words “the Supervisory Committee shall take into account such matters as it considers relevant”.  |
|                  | 4. In subsections (4) and (5), delete the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.   |
|                  | 5. Delete subsection (6) and substitute therefor the following –<br><br>“ (6) The Supervisory Committee shall, in respect of an application under subsection (2) 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 Supervisory Committee.”. |
| <b>Clause 80</b> | 1. In subsection (1), delete –<br><br>(a) the word “Supervisor” where it appears a first time and substitute therefor the words “Supervisory Committee”;<br><br>(b) the words “section 76 or 77” and substitute therefor the words “section 77 or 78”;  |
|                  | 2. In subsection (2) (c), delete the words “issued with them” and substitute therefor the words “issued the specified shares”.  |
|                  | 3. In subsection (5), delete the words “them” and substitute therefor the words “the specified shares”.   |
| <b>Clause 81</b> | Delete the words “section 77(5)” and the words “section 77(3)” and substitute therefor the words “section 77(4)” and “section 77(2)”, respectively.   |
| <b>Clause 83</b> | 1. In subsection (3), delete the word “on” and substitute therefor the word “in”.<br><br>2. In subsection (4), delete the words “audited consolidated balance sheet” and substitute therefor the words “audited consolidated financial statements”.   |
| <b>Clause 84</b> | 1. In subsection (2), delete the words “the accounting and auditing standards established under the <i>Public Accountancy Act</i> ” and substitute therefor the words “generally accepted accounting principles promulgated by the Institute of Chartered Accountants of Jamaica or such other body as the Minister may prescribe”.   |



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|                  | <p>2. Delete subsection (4) and substitute therefor the following –</p> <p>“ (4) In this section, “prescribed documents” means –</p> <p>(a) in relation to a deposit taking institution other than a foreign bank –</p> <p>(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</p> <p>(ii) the auditor’s report; and</p> <p>(b) in relation to a foreign bank -</p> <p>(i) its latest audited financial statements in respect of the bank’s operations; and</p> <p>(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.”.</p> |
| <b>Clause 85</b> | <p>1. In subsection (1), delete the words “a consolidated balance sheet and consolidated profit and loss account” and substitute therefor the words “audited consolidated financial statements”.</p>  |
|                  | <p>2. In subsection (2) -</p> <p>(a) insert immediately after the words “company shall” the words “, not later than ninety day after the end of the financial year of each company in the group,”; and</p> <p>(b) delete the words “an audited balance sheet and profit and loss account” and substitute therefor the words “audited financial statements”.</p>   |
|                  | <p>3. Delete subsection (3) and substitute therefor the following -</p> <p>“ (3) Where a subsidiary of a deposit taking institution is registered under the <i>Industrial and Provident Societies Act</i> –</p> <p>(a) the accounts of the subsidiary shall be consolidated with those of the deposit taking institution to the extent that -</p> <p>(i) deposits taken by the subsidiary shall be deemed to be deposits of</p>   |

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|                  | <p>the deposit taking institution for the purposes of sections 43 and 44; and</p> <p>(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 58 to 65;</p> <p>(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 58 to 65;</p> <p>(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;</p> <p>(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.”.</p>   |
| <b>Clause 88</b> | In subsection (2), insert immediately after the words “voluntary declaration” the words “, taking into account any relevant standards issued by the Institute of Chartered Accountants of Jamaica,”.  |
| <b>Clause 89</b> | In subsection (1)(g), insert immediately before the words “whose appointment” the words “is a person”.  |
| <b>Clause 90</b> | <p>Delete subsection (1) and substitute therefor the following –</p> <p>“ (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 –</p> <p>(a) may object to the appointment of the person and give the 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 may submit to him a written response or may make representations by oral submissions (with or without the assistance of counsel); and</p> <p>(b) after that period or, if the licensee 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, or may withdraw the objection.”.</p> |
| <b>Clause 91</b> | In subsection (1), insert immediately before the words “auditor’s opinion” the word “external”.   |
| <b>Clause 92</b> | In subsection (2), insert immediately after the words “that licensee” the words “and to   |

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|                   | produce his working papers referred to in subsection (1)".  |
| <b>Clause 93</b>  | <p>1. In subsection (1) -</p> <p>(a) insert immediately after the words "external auditor" the words "or former external auditor";</p> <p>(b) in paragraph (a), insert immediately after the words "external auditor's" the words "or former external auditor's".</p>   |
|                   | 2. In subsection (2) insert immediately after the words "external auditor" the words "or former external auditor of a licensee".  |
|                   | <p>1. Insert next after subsection (4) the following –</p> <p>“ (5) Where in a particular case, the Supervisor has reasonable cause for believing that a special audit of a bank should be conducted by an auditor other than the bank's auditor, the Supervisor may appoint an auditor or a firm of auditors for that purpose.”.</p> |
| <b>Clause 96</b>  | Delete the word "Supervisor" wherever it appears and substitute therefor, in each case, the words "Supervisory Committee".  |
| <b>Clause 97</b>  | Delete the word "Supervisor" wherever it appears and substitute therefor, in each case, the words "Supervisory Committee".  |
| <b>Clause 98</b>  | <p>1. In subsection (4), delete the word "Supervisor" and substitute therefor the words "Supervisory Committee".</p> <p>2. In subsection (5), delete the word "Supervisor" and the word "him" and substitute therefor, the words "Supervisory Committee" and the word "it", respectively.</p>   |
| <b>Clause 99</b>  | Delete the words "number of the members of the society having the right to vote, and voting, in person or by proxy," and substitute therefor the words "such members of the society as, being entitled so to do, vote in person or, where proxies are allowed, by proxy,".  |
| <b>Clause 100</b> | In subsection (1)(b), delete the word "Supervisor" and substitute therefor the words "Supervisory Committee".   |
| <b>Clause 101</b> | Delete the word "Supervisor" wherever it appears and substitute therefor, in each case, the words "Supervisory Committee".  |
| <b>Clause 102</b> | In subsections (1) and (2), delete the word "Supervisor" wherever it appears and substitute therefor, in each case, the words "Supervisory Committee".  |

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| <b>Clause 106</b> | <p>Delete subsection 5 and substitute therefor the following –</p> <p>“ (5) No testamentary gift shall be adeemed by reason only of the operation of section 104 or this section.”.</p>  |
| <b>Clause 107</b> | <p>1. In subsection (1) -</p> <p>(a) insert immediately after the word “notify the Supervisor” the words “and the Jamaica Deposit Insurance Corporation”; and</p> <p>(b) in paragraph (a), delete the words “A declaration” and substitute therefor the words “a declaration”.</p>   |
|                   | <p>2. Delete paragraph (b) of subsection (3), and substitute therefor the following -</p> <p>“(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 pursuant to under paragraph (a), cease to carry on banking business or function as a financial holding company in Jamaica.”.</p>  |
| <b>Clause 108</b> | <p>1. In the chapeau to subsection (1), subsections (1)(f), (2), (4)(d), (6) and the chapeau to subsection (8), delete the word “Supervisor” wherever it appears and substitute therefor, in each case, the words “Supervisory Committee”.</p> <p>2. In subsection (8)(b) delete the word “Supervisor’s” and substitute therefor the words “Supervisory Committee’s”.</p> <p>3. In subsection (3), delete the words “Part XIV” and substitute therefor the words “Part XIII”.</p> <p>4. In subsection (4), delete paragraph (b) and reletter paragraphs (c) and (d) as paragraphs (b) and (c).</p> |
| <b>Clause 109</b> | <p>1. In subsection (1), delete the words “paragraph 1, 2 or 4 of”.</p> <p>2. Delete subsection (5) and renumber subsection (6) and subsection (7) as subsection (5) and subsection (6), respectively.</p> <p>3. Insert next after subsection (6), as renumbered, the following –</p> <p>“ (7) Where the Supervisor is exercising his powers under subsection (1) the Supervisor shall, forthwith, give notice to the Jamaica Deposit Insurance Corporation thereof.”.</p>   |
| <b>Clause</b>     | Delete the clause and substitute therefor the following –  |

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| 110 | <p data-bbox="394 235 665 300"><b>“Prompt corrective action.</b></p> <p data-bbox="729 235 1539 485">110. - (1) Subject to subsection (2), where a licensee reports that the licensee’s minimum capital levels has fallen to one percentage point above any of the prescribed minimum capital levels or to one percentage point above any of the minimum capital levels otherwise set by the Supervisory Committee, with respect to that licensee’s operations, the Supervisor shall take the following actions –</p> <ul style="list-style-type: none"> <li data-bbox="794 527 1539 705">(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</li> <li data-bbox="794 747 1539 997">(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.</li> </ul> <p data-bbox="729 1039 1539 1251">(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 more than one percentage point above the minimum capital levels otherwise set by the Supervisory Committee with respect to that licensee.</p> <p data-bbox="729 1293 1539 1434">(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.</p> <p data-bbox="729 1476 1539 1583">(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 -</p> <ul style="list-style-type: none"> <li data-bbox="794 1625 1539 1732">(a) undertake the requisite injection of capital to return its capital to the level specified by the Supervisory Committee; and</li> <li data-bbox="794 1774 1539 1871">(b) take any other corrective action deemed appropriate by the Supervisor in the circumstances.</li> </ul> |
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|                   |  | <p>(5) The directions that the Supervisor has issued under subsection (4) shall address -</p> <p>(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</p> <p>(b) the enhanced monitoring process to which a licensee will be subject.</p> <p>(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.</p> <p>(7) A licensee that contravenes directions issued under subsection (4) commits an offence.”.</p>  |
| <b>Clause 111</b> | 1. Delete subsection (1) and substitute therefor the following –   | <p>“ (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.”.</p>  |
|                   | 2. In subsection (2), delete the words “satisfactory to the Supervisor” and substitute therefor the words “satisfactory to the Supervisory Committee”. |   |
| <b>Clause 112</b> | Delete subsection (1) and substitute therefor the following –  | <p>“ (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 or 11 of Part A of the Fifth Schedule exists, the Supervisory Committee may take any one or more of the following actions –</p> <p>(a) assume the temporary management of the licensee in accordance with Part C of the Fifth Schedule;</p> <p>(b) present an application to the Court regarding the reconstruction or the petition for the winding up of the licensee;</p> <p>(c) revoke the licence; or</p> <p>(d) in the case of a foreign bank –</p> <p>(i) instruct the head office to take corrective action in relation to its branch operations in Jamaica;</p> |

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|                   | <p>(ii) direct that the branch operations in Jamaica be placed under alternative management, including the appointment of receivers;</p> <p>(iii) direct that the branch operations be closed and revoke the licence; or</p> <p>(iv) wind up the branch operations in Jamaica in accordance with section 122.”.</p> |
|                   | <p>2. In subsection (3), delete –</p> <p>(a) the words” Supervisor shall” and substitute therefor the words “Supervisor shall, on behalf of the Supervisory Committee,”; and</p> <p>(b) the word “he” and substitute therefor the word “it”.</p>  |
| <b>Clause 113</b> | <p>1. In subsection (1), delete the words “Where the Supervisor” and substitute therefor the words “Where the Supervisory Committee”.</p>   |
|                   | <p>2. In subsection (2), delete the words “Supervisor may take into account all matters that the Supervisor considers” and substitute therefor the words “Supervisory Committee may take into account all matters that it considers”.</p>   |
|                   | <p>3. In subsection (3), delete the words “the Supervisor may invoke his powers under section” and substitute therefor the words “the Supervisory Committee may invoke its powers under this Part”.</p>   |
| <b>Clause 114</b> | <p>In subsection (1) -</p> <p>(a) delete the words “recommendation of the Supervisor” and substitute therefor the words “recommendation of the Supervisory Committee”; and</p> <p>(b) delete the words “under this section” and substitute therefor the words “under this Part”.</p>                                |
| <b>Clause 115</b> | <p>In subsection (1)(e), delete the words “deposit taking institution” and substitute therefor the word “licensee”.</p>   |
| <b>Clause 117</b> | <p>Delete the marginal note and substitute therefor the following –<br/> <b>“Winding up or schemes of arrangement.”.</b></p>  |
| <b>Clause 121</b> | <p>In subsection (1), delete the words “section 112 (1)” and substitute therefor the words “section 114 (2)”.</p>   |

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| <b>Clause 122</b> | <p>1. In subsection (1) –</p> <p>(a) insert immediately after the words “in any other law,” the words “, and without prejudice to the rights of any depositor as against the foreign bank,”; and</p> <p>(b) delete the words “which relate to the foreign bank’s Jamaican operations”.</p>  |
|                   | <p>2. In subsection (2), delete the words “Notwithstanding the provisions of any other law relating to the ranking of debt in a winding up, the following claims shall have priority over all other claims on the assets of the Jamaican branch of a deposit taking institution -” and substitute therefor the words “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 -”</p> |
| <b>Clause 125</b> | <p>1. In the marginal note, insert immediately after the word “order” the words “, <b>settlement agreements and pecuniary penalties</b>”.</p> <p>2. In subsection (10), insert in paragraphs (a) and (b) immediately after the word “agreement” the words “or arrangement”.</p> <p>3. In subsection (14), delete the words “subsection (11)” and substitute therefor the words “this section”.</p>  |
| <b>Clause 126</b> | <p>In subsection (1), delete the words “section (81)” and substitute therefor the words “section (82)”.</p>   |
| <b>Clause 127</b> | <p>Delete subsection (2) and substitute therefor the following –</p> <p>“ (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.</p> <p>(3) Where there are other charges arising out of the same facts and those other charges are for 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.”.</p>  |
| <b>Clause 129</b> | <p>Delete the words “negligence of”.</p>  |
| <b>Clause 130</b> | <p>In subsection (10), delete the words “may prescribed” and substitute therefor the words “may prescribe”.</p>   |
| <b>Clause 131</b> | <p>Delete paragraph (i) and substitute therefor the following –</p> <p>“(i) risk management measures for financial groups; and</p>  |



|                             |   |  |
|-----------------------------|---|--|
|                             | (j) any other matter required by this Act to be prescribed.”.   |  |
| <b>Clause 132</b>           | <p>1. In subsection (1), delete paragraph (n) and substitute therefor the following –</p> <p>“(n) securitization and loan sales; and</p> <p>(j) such other matters as the Supervisor considers necessary for the administration of the Act.”.</p> <p>2. In subsection (4)(b)(viii), delete the words “Code of Conduct” and substitute therefor the words “code of conduct”.</p> |  |
| <b>Clause 133</b>           | <p>Delete subsection (2) and substitute therefor the following –</p> <p>“(2) Regulations made under section 131 or section 132 may provide for fixed penalties not exceeding one and one-half times the maximum monetary penalty payable thereunder.”.</p>  |  |
| <b>Clause 134</b>           | <p>1. In subsection (1), delete the words “while his office employment” and substitute therefor the words “while his office, employment”.</p> <p>2. In subsection (4), delete the words “(c), (d), or (g) of the Eighth Schedule” and substitute therefor the words “(c) or (d) of the Ninth Schedule”.</p>   |  |
| <b>Clause 135</b>           | Delete the clause and substitute therefor the following -   |  |
|                             | <b>“Protection of persons providing information under this Act.</b>   | 134. 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.”. |
| <b>Clause 136</b>           | Delete from paragraph (b), the words” Ninth Schedule” and substitute therefor the words “Tenth Schedule.”.  |  |
| <b>Clause 137</b>           | Delete the clause and substitute therefor the following -   |  |
|                             | <b>“Review of Act.</b>  | 137. The provisions of this Act shall be reviewed by a Joint Select Committee of the Houses of Parliament not later than seven years after the date of commencement of this Act.”.   |
| <b>New clauses 139, 140</b> | Renumber clause 139 and 140 as clauses 142 and 143 and insert next after clause 138 the following –   |  |

|                                  |  |   |
|----------------------------------|--|---|
| <b>and 141</b>                   |  |   |
|                                  | <b>“Saving of regulations made under repealed Acts.</b>  | <p>139. Notwithstanding the repeal of the <i>Banking Act</i> and the <i>Financial Institutions Act</i> (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 –</p> <p>(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</p> <p>(b) any reference in any other enactment to specific provisions of the repealed enactments shall be construed as a reference to the equivalent provision in this Act.</p> |
|                                  | <b>Duty to notify regulator and JDIC in certain cases.</b>   | <p>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.</p>  |
|                                  | <b>Power of licensee to enforce transactions.</b>  | <p>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 Part, nothing in this Part shall prevent the licensee from enforcing the transaction against the person or party thereto.”.</p>   |
| <b>Clause 142, as renumbered</b> | 1. In subsection (3), delete the words “sections 48 to 53 (restricted and prohibited activities” and substitute therefor the words “sections 48 to 55”.  |   |
|                                  | 2. Insert next after subsection (3) the following –  |   |
|                                  | “ (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.”. |   |
| <b>Third Schedule</b>            |  |   |

|               |   |
|---------------|---|
| <b>PART A</b> | 1. Delete paragraph 4 and substitute therefor the following -   |
|               | “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.”.  |
|               | 2. In paragraph 11 –  |
|               | (a) delete subparagraphs (a) and (b) and substitute therefor the following –  |
|               | <p>“(a) the prior approval of or non-objection from the regulator in the respective foreign country in which the bank is registered or incorporated; and</p> <p>(b) the law and regulatory requirements of the applicant's home jurisdiction that relate to -</p> <p style="padding-left: 40px;">(i) the recognition of the regime set out in section 122 in the event of the insolvency of the applicant;</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 40px;">(iii) the accounting and auditing standards applicable to the applicant;</p> <p style="padding-left: 40px;">(iv) the functions of the directors of the applicant; and</p> <p style="padding-left: 40px;">(v) the licensing, registration, authorization, and supervision of the applicant;”;</p> <p>(b) in paragraph (d), delete the words “Jamaica address” and substitute therefor the words “Jamaica to address”.</p> |
|               | 3. Insert next after paragraph 13 the following –   |
|               | “14. 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.”.   |
| <b>PART B</b> | In paragraph 1 –  |
|               | (a) delete subparagraphs 2 and 3 and substitute therefor the following –  |

|                        |  |
|------------------------|--|
|                        |  |
|                        | <p>“ (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.</p> <p>(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.”;</p> <p>(b) in subparagraph 4, delete the words “activities of proposed head office and branch operations” and substitute therefor the words “ proposed activities of the applicant”.</p> |
| <b>Fourth Schedule</b> | <p>1. In paragraph 2–</p> <p>(a) delete sub-subparagraphs (b), (c) and (d) of subparagraph (1) and substitute therefor the following -</p>   |
|                        | <p>“ (b) members of the Council of the Kingston and St. Andrew Corporation, or of any Municipal Council or of any Parish Council;</p> <p>(c) public officers; and</p> <p>(d) directors, officers, employees or auditors of a deposit taking institution or connected persons in relation to the institution.”.</p>   |
|                        | <p>(b) in subparagraph (4), delete the word “subsection” and substitute therefor the word “subparagraph”.</p>  |
|                        | <p>2. In paragraph 5 –</p> <p>(a) delete from subparagraph (3), the words “paragraph (4) ” and substitute therefor the words “subparagraph (4)”.</p>   |
|                        | <p>(b) insert next after subparagraph (4) the following -</p>  |
|                        | <p>“ (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.”.</p>  |
|                        | <p>3. In paragraph 6, delete all the words appearing after the words “instrument by the Governor-General.”.</p>  |

|                       |   |
|-----------------------|---|
|                       | 4. Renumber paragraph 5, where it appears a second time (Publication of membership) and paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 as paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.  |
|                       | 5. In paragraph 10, as renumbered, delete the word “Bank” and substitute therefor the words “Minister responsible for finance”.   |
|                       | 6. In paragraph 11, as renumbered, delete the words “ <i>bona fide</i> ” and substitute therefor the words “by the member <i>bona fide</i> ”.   |
|                       | 7. Delete paragraph 17, as renumbered.  |
| <b>Fifth Schedule</b> | Delete the Fifth Schedule and substitute therefor the following -   |
|                       | <p style="text-align: right;">(Sections 109 and 112)</p> <p style="text-align: center;">FIFTH SCHEDULE</p> <p style="text-align: center;">PART A</p> <p style="text-align: center;"><i>Conditions Subject to Remedial Action</i></p> <ol style="list-style-type: none"> <li>1. The licensee has breached the provisions of its incorporating documents.</li> <li>2. The licensee, a director or any person employed (either as agent or otherwise) - <ol style="list-style-type: none"> <li>(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</li> <li>(b) is contravening or has contravened - <ol style="list-style-type: none"> <li>(i) a provision of this Act or any regulations made under this Act;</li> <li>(ii) a condition of the licence granted under this Act in respect of that licensee;</li> <li>(iii) a Standard of Sound Practice;</li> <li>(iv) a provision of the <i>Bank of Jamaica Act</i> or any regulations made under that Act</li> </ol> </li> </ol> </li> </ol> |

or

- (v) a provision of the *Proceeds of Crime Act*, the *Terrorism Prevention Act*, the *United Nations Security Council Resolutions Implementation Act* or regulations made under 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 also 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.

## PART B

### *Cease and Desist Orders*

1. Before issuing a cease and desist order, the Supervisor shall serve on the licensee, a notice -

- (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 subparagraph (1)(b), the Supervisor, having considered a representation if any, may make the order on such terms as it sees fit or take such action in accordance with its powers under this Act as is necessary.

3. If no representation is made by the date specified in subparagraph (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; or

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.

## PART C

### *Temporary Management of a Licensee*

1. - (1) For the purposes of sections 110 and 112, the Supervisor shall serve on the licensee concerned, a notice announcing his intention of temporarily managing the licensee from such date and time as may be specified in the notice.

(2) If the Supervisor considers it necessary, the notice under subparagraph (1) may provide that the 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 subparagraph (1).

(4) A copy of the notice under subparagraph (1) shall be –

- (a) sent to the Registrar of the Supreme Court; and
- (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 subparagraph (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 and incidental to the temporary management of a licensee shall be paid by such licensee in such manner as the Supervisor may determine.

2. The appointment of a temporary manager in accordance with this Act shall have the effect of staying -

- (a) the commencement or continuance of any proceedings by or against the licensee for such

|  |  |
|--|--|
|  | <p>period as the court thinks fit; or</p> <p>(b) any execution against the property of the licensee.</p> <p>3. 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 such relief, and the Court may make such order in relation to the ‘stay’ as it thinks fit.</p> <p>4. – (1) Where a temporary manager has been appointed by the Supervisor in accordance with this Schedule, the Supervisor may -</p> <p>(a) restore the licensee to its board of directors or owners, as the case may be;</p> <p>(b) present a petition to the Court under the <i>Companies Act</i> for the winding up of the licensee;</p> <p>(c) propose a compromise or arrangement between the licensee and its creditors under section 206 of the <i>Companies Act</i> or a reconstruction under section 208 of that Act.</p> <p>(2) A person aggrieved by the appointment of a temporary manager may apply, on notice to the Supervisor, to the Court for an order rescinding the appointment of the temporary manager.</p> <p>(3) After hearing the parties, the Court, may make the order if it is satisfied that –</p> <p>(a) the continuation of the appointment of a temporary manager is not in interest of depositors or will be prejudicial to financial stability of the banking system; or</p> <p>(b) circumstances on which the appointment of the temporary manager was based no longer exist.</p> <p>(4) The temporary manager shall, within sixty days of his appointment and each successive sixty days thereafter, produce a report to the Supervisor on the affairs of the licensee and addressing such issues as the</p> |
|--|--|

|                         |  |
|-------------------------|--|
|                         | <p>Supervisor requires.</p> <p>(5) The Supervisor may publish the report redacting such portion of the report as may be appropriate in the public interest.</p> <p style="text-align: center;"><b>PART D</b></p> <p style="text-align: center;"><i>Revocation</i></p> <p>1. Before the revocation of a licence, the Supervisor shall give to the licensee, a notice in writing of its intention to do so, specifying the reasons for the revocation and indicating a period, being 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.</p> <p>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.</p> <p>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.</p> <p>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.”.</p> |
| <b>Sixth Schedule</b>   | In paragraph 1 of the First Column, delete the words “deposit taking institutions” and substitute therefor the word “banks”.   |
| <b>Seventh Schedule</b> | Delete the Seventh Schedule and substitute therefor the following -  |

“

## **SEVENTH SCHEDULE**

(Section 127(1))

## *Offences and Penalties*

| First Column   |                     | Second Column   |
|--|---------------------|---|
| Brief Description<br>of Offences   | Relevant<br>Section | Penalty   |
| Unlawful disclosure by member of Supervisory Committee member  | 9(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   |
| 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.<br><br>On conviction in the Supreme 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 the Supreme Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.  |
| Fraudulently   | 12(2)               | On summary conviction in a  |

misrepresenting  
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.

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.

On conviction in the Supreme  
Court to a fine or  
imprisonment for a term not  
exceeding ten years or to both  
such fine and imprisonment.

Inducing or  
attempting to  
induce another  
person to –

13(2)

- (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 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.

On conviction in the Supreme  
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

14(3)

On summary conviction in a  
Resident Magistrate's Court to  
a fine not exceeding five  
million dollars or to

any nature with, or facilitating or conducting any transaction with, or for, or on behalf of, a prohibited scheme.

imprisonment for a term not exceeding two years or to both such fine and imprisonment.

On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

Not being licensed 15(2)  
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.

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.

Hindering or 16(11)  
obstructing an  
authorized officer  
or any person  
acting in aid of  
such officer in the  
performance of his  
functions.

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 17(6)  
company or other  
body using a name  
or title that  
includes a  
restricted word.

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.

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 two 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

25(2)

On summary conviction in a

or exhibit a certified copy of its licence in a conspicuous place on each premises where it conducts banking business.

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 six months or to both such fine and imprisonment.

Failure to ensure that each

37(3)

On summary conviction in a Resident Magistrate's Court to



substantial shareholder, director, officer and key employee is and remains a fit and proper person.

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 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 being 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 re dismissal etc.

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 Supervisor Rules. | 45(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 six months or to both such fine and imprisonment.   |
| Being a merchant bank, accepting or repaying deposit contrary to Act.                           | 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.<br><br>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 trade or other business contrary to Act.  | 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.   |
| Acquiring fixed assets contrary to Act.   | 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.  |
| Acquiring, dealing  | 51 (3) | On conviction in the Supreme  |

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.

Court to a fine or  
imprisonment for a term not  
exceeding three years or to  
both such fine and  
imprisonment.

Paying dividend  
on own shares  
contrary to Act.

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.

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 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.                                      |

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|--|-------|--|
| Refusing 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 duties under this Part or without lawful justification or excuse, obstructing or hindering any person in the | 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.  |

execution of such duties.

Failure to take prescribed measures to properly identify, assess and manage relationship and risks.

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 comply with directions on restructuring of ownership in a deposit taking institution.

72(3)

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 five years or to both such fine and imprisonment.

Failure to comply with summons responsibilities.

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 a requirement or, in response to a requirement, knowingly or wilfully supplying false information

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.

to the Supervisor.

|  |       |  |
|--|-------|--|
| 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 two million dollars.                                      |
| 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 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.                                     |

|   |       |   |
|---|-------|---|
|   |       | On conviction in the Supreme 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, etc. 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.   |
| Failure to comply when summoned re 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.   |
| 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.<br><br>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.   |
| Failure to comply with requirements re union transfer or undertaking of building society.  | 98(9)  | On conviction in a 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.<br><br>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.  |
| 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 two million dollars.   |

|   |                 |   |
|---|-----------------|---|
| 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 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 Delete the Eight Schedule and substitute therefor the following -

**“EIGHTH SCHEDULE** (Section 130)

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

| Nature of Offence<br>_____   | Section<br>_____ | Penalty<br>_____ |
|--|------------------|------------------|
| Inducing or attempting to induce another person to –   | 13(2) ... ..     | \$7,500,000.00   |
| <ul style="list-style-type: none"> <li>(a) place money on deposit with him or any other person; or</li> <li>(b) enter into, or offer to enter into, any agreement for that purpose.</li> </ul> |                  |                  |
| 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  | 17(6)... ..      | \$3,000,000.00   |

or title that includes a restricted word.

|   |             |                |
|---|-------------|----------------|
| Failure to display or exhibit a certified copy of its licence in a conspicuous place on each premises where it conducts banking business.   | 25(2)... .. | \$1,000,000.00 |
| 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 |
| Failure to notify Supervisor re dismissal etc.  | 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 |
| 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  | 66(2)... .. | \$7,500,000.00 |

knowingly or wilfully supplying false information to supervisor with intent to mislead or attempting to mislead any person.

|  |              |                 |
|--|--------------|-----------------|
| 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 duties under this Part or without lawful justification or excuse, obstructing or hindering any person in the execution of such duties. | 67(2)... ..  | \$7,500,000.00  |
| 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 re 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)... ..  | \$7,000,000.00  |
| Failure to submit, exhibit or publish last audited financial statements.   | 84(5)... ..  | \$1,500,000.00  |
| Failure to make returns in relation to consolidated audited financial statements.  | 85(4)... ..  | \$7,500,000.00  |

|  |               |                 |
|--|---------------|-----------------|
| Failure to make returns in relation to consolidated audited financial statements to operation of subsidiary.   | 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, etc. affecting licensee's financial viability.  | 91(3)... ..   | \$6,000,000.00  |
| Failure to comply when summoned re 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 re union transfer or undertaking of building society.  | 98(9)... ..   | \$7,500,000.00  |
| 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) ... .. | \$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(7) ... .. | \$7,500,000.00  |

**Ninth  
Schedule**

Delete the full stop appearing at the end of sub- paragraph (p) and substitute therefor a semi-colon and insert next after sub- paragraph (p) the following as sub- paragraph (q) -

“

- (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.”.

|   |                |                |
|---|----------------|----------------|
| Failure to comply with any requirement or contravenes any prohibition imposed by any direction or cease and desist order. | 109(7) ... ..  | \$7,500,000.00 |
| Failure to comply with directions.  | 110(6) ... ..  | \$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 |



**Tenth  
Schedule**

Delete the Tenth Schedule and substitute therefor the following-

“ TENTH SCHEDULE (Section 139)

*Amendment of Bank of Jamaica Act*

*Provision*

*Amendment*

Section 2

1. Delete the definition of “commercial bank”.
2. Delete the definitions of “overseas regulatory authority” and “specified financial institution”.
3. In the definition of “prudential criteria” delete the word “commercial”.
4. Insert in the appropriate alphabetical sequence the following definitions -

“bank” has the meaning assigned to it in the *Banking Services Act*;

“building society” has the meaning assigned to it in the *Banking Services Act*;

“deposit taking institution” has the meaning assigned to it in the *Banking Services Act*;

“financial institution” has the meaning assigned to it in the *Banking Services Act*;

“foreign financial regulatory authority” has the meaning assigned to it in the *Banking Services Act*;

“merchant bank” has the meaning assigned to it in the *Banking Services Act*;

“prescribed liabilities” means the liabilities specified by the Bank. by notice published in the *Gazette*;

“regulator” has the meaning assigned to it in the *Banking Services Act*;

“regulatory counterpart” means -

- (a) the designated authority as defined in the *Banking Services Act*;
- (b) a foreign financial regulatory authority;
- (c) a regulator;
- (d) an authority operating in a country other than Jamaica which undertakes functions similar to the designated authority;
- (e) the Jamaica Deposit Insurance Corporation;
- (f) an authority operating in a country other than Jamaica which undertakes functions similar to the Jamaica Deposit Insurance Corporation;
- (g) the International Monetary Fund, the World Bank or any other such multilateral agency;
- (h) the Caribbean Financial Action Task Force or any other similar international organization that recommends or sets international standards;
- (i) an independent observer or assessor;

"specified financial institution" means a person or undertaking (not being a bank, merchant bank or building society) whose business includes the granting of loans or other credit facilities or the accepting of deposits and who is declared by the Minister by notice in the *Gazette* to be a specified financial institution for the purposes of this Act;

“Supervisory Committee” means the committee constituted by section 6 of the *Banking Services Act*;

## Section 6

Delete the section and substitute therefor the following -

### **“Board of Directors.**

6. - (1) There shall be a Board of Directors of the Bank which, subject to the provisions of this Act, shall be responsible for the policy and the general administration of the affairs of the Bank.

(2) The Board shall consist of the following directors –

- (a) the Governor, appointed under section 6A;
- (b) the Senior Deputy Governor, appointed under section 6D;
- (c) the Financial Secretary; and
- (d) six other directors appointed by the Minister by instrument in writing.

(3) Notwithstanding subsection (2) (d), the Minister may, by instrument in writing (whether in the same instrument of appointment as Deputy Governor, or by subsequent instrument), appoint to be directors, one or more Deputy Governors appointed under section 6D so, however, that any such appointment shall not be taken into account in determining the number of directors that may be appointed under subsection (2).

(4) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any director in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

**Schedule.**

(5) Where any director is exempt from liability by reason only of the provisions of subsection (3) the Bank shall be liable to the extent that it would be if that director were a servant or agent of the Bank.

(6) The provisions of the Schedule shall have effect as to the tenure of office of the directors and the operations of the Board and otherwise in relation thereto.

**Appoint-  
ment of  
Governor.**

6A. - (1) The Governor shall be appointed by the Governor -General in Council by instrument under the Broad Seal.

(2) The appointment of the Governor shall not constitute the appointment of a public officer for the purpose of section 123 of the *Constitution of Jamaica*.

(3) A person appointed as Governor shall hold office for a period of not less than seven years and may be

reappointed.

**Function of Governor.**

6B. The Governor, or, in his absence, the Senior Deputy Governor, or, in the absence of the Governor and the Senior Deputy Governor, a Deputy Governor designated by the Minister, shall be in charge of the day-to-day management and operations of the Bank and shall be answerable to the Board for his acts and decisions.

**Removal of Governor.**

6C. - (1) The Governor-General in Council, may remove the Governor from office.

(2) The Cabinet may tender advice under subsection (1) if the Cabinet is satisfied that the Governor should be removed for cause or that any of the conditions set out in paragraph 5 of this Schedule, exists.

(3) The Cabinet may tender advice under this section whether or not the Board has made a recommendation that the Governor be removed from office.

**Senior Deputy Governor and Deputy Governors.**

6D. - (1) The Senior Deputy Governor and Deputy Governors shall be appointed by the Minister on the recommendation of the Board, by instrument in writing for a period not exceeding five years, on such terms and conditions as may be specified.

(2) Where a Senior Deputy Governor or Deputy Governor is also recommended to be the Deputy Supervisor, the appointment of that officer as Deputy Supervisor shall be made in accordance with section 34B.

(3) In any case where a Deputy Governor, who was not previously carrying out the functions of Deputy Supervisor, is appointed as Deputy Supervisor during the term of the Deputy Governor's appointment, the appointment as Deputy Governor shall be deemed to have expired and automatically renewed to coincide with the date of the appointment as Deputy Supervisor.

(4) Nothing contained in this section, or section 6A, shall affect or prejudice the terms of any existing appointment in place as at the date this section comes into effect in relation to the Governor, a Senior Deputy

Governor, a Deputy Governor or a director.

(5) The Governor, Senior Deputy Governor and Deputy Governors shall devote the whole of their professional services to the Bank and while holding office shall not, without the approval of the Board -

- (a) receive any salary or supplementation thereto from any source other than the Bank; or
- (b) occupy any other office or employment, whether remunerated or not. ”.

Section 22B Delete the section and substitute therefor the following –

**“Ministerial  
directions  
to certain  
classes of  
persons.**

22B. - (1) Any person of a category specified in subsection (2) shall not acquire foreign assets except in accordance with such directions as may from time to time be given to the person by the Minister in relation to the acquisition of foreign assets.

(2) The categories of person referred to in subsection (1) are -

- (a) authorized dealers;
- (b) persons to whom any powers of the Minister under this Act are delegated;
- (c) merchant banks;
- (d) insurance companies;
- (e) credit unions;
- (f) building societies;
- (g) persons who, with the approval of the Minister, operate exchange bureaux;
- (h) managers and trustees of unit trust schemes registered under the *Unit Trusts Act*;
- (i) persons who operate or manage superannuation or pension funds;

- (j) approved money transfer and remittance agents and agencies.”.

**Sections 28,  
28A and 29**

Delete sections 28, 28A and 29 and substitute therefor the following –

**“Reserve  
require-  
ments.**

28. - (1) Every deposit taking institution or specified financial institution shall maintain, in the form of a deposit with the Bank, a cash reserve.

(2) Subject to subsection (3), the cash reserve to be maintained by a deposit taking institution shall be not less than five nor more than twenty-five *per centum* of prescribed liabilities and, subject to those limits -

- (a) in the case of a bank, the cash reserve shall be such percentage of its prescribed liabilities as prescribed by notice issued by the Bank and published in the *Gazette*;
- (b) in the case of a merchant bank, the cash reserve shall be such percentage of its prescribed liabilities as prescribed by notice issued by the Bank and published in the *Gazette*;
- (c) in the case of a building society, the cash reserve shall be such percentage of its prescribed liabilities in respect of deposits and withdrawable shares as prescribed by notice issued by the Bank and published in the *Gazette*;
- (d) in the case of a specified financial institution the cash reserve shall be such percentage of its prescribed liabilities including withdrawable shares (where applicable) as prescribed by notice issued by the Bank and published in the *Gazette*.

(3) A notice under subsection (2) may make different provisions as respect different types of prescribed liabilities specified in the notice, so, however that if any such notice prescribes marginal cash reserve requirements for increases in specified prescribed liabilities such requirements shall not exceed one hundred *per centum* of the increase in such liabilities.

(4) Without prejudice to the generality of subsection (3), a notice under subsection (2) may require that where a portion of the prescribed liabilities is payable in foreign currency then such percentage of the prescribed liabilities so payable as is specified in the notice shall be held in foreign currency.

(5) Where any such percentage is to be increased -

- (a) the increase shall be so effected as not to exceed two percentage points in any one period of thirty days; and
- (b) it shall be the duty of the Bank to give all deposit taking institutions or as the case may be, specified financial institutions at least 15 days' notice of the date on which the increase is to take effect.

(6) Subject to subsection (7), for the purpose of determining the amount of the cash reserve required to be maintained by a deposit taking institution or specified financial institution during any month -

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

(7) The Bank may, by notice published in the *Gazette*, vary the method to be used in calculating the cash reserve required to be maintained under this section.

(8) Where a deposit taking institution or specified financial institution fails to maintain the required cash reserve, that institution shall pay to the Bank, interest calculated in respect of each business day

that the deficiency persists at such rate as the Bank may specify by notice.

(9) For the purpose of this section –

“deficiency” means the amount by which the sum (if any) actually deposited by the deposit taking institution or specified financial institution with the Bank falls short of the required cash reserve;

“marginal cash reserve requirements” means in relation to any increase in prescribed liabilities, such percentage of the increase as is required to be maintained with the Bank for the purposes of this section.

(10) The coming into effect of this section shall not affect any requirements on deposit taking institutions relating to the maintenance of a cash reserve that were in existence prior to the coming into effect of this section, unless and until those requirements are varied in accordance with this Act.

(11) The power conferred by subsection (2) may be exercised –

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

(ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the



same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any specified condition.

**Special deposits.**

28A. - (1) Without prejudice to the provisions of section 28, and subject to subsection (2), the Bank may, with the approval in writing of the Minister, require -

- (a) a deposit taking institution; and
- (b) any specified financial institution,

to maintain with the Bank in the form of a deposit (in this section referred to as a "special deposit") an amount not exceeding twenty *per centum* of the amount of the prescribed liabilities of such deposit taking institution or such specified financial institution.

(2) A deposit taking institution or specified financial institution may comply, in whole or in part, with a requirement made under subsection (1) by investments in the form of –

- (a) Treasury bills issued by the Government of Jamaica;
- (b) certificates of deposit issued by the Bank; or
- (c) such other form of securities as the Bank may approve.

(3) Interest at such rate as the Minister may, by order, determine, shall be paid by the Bank on the amount of any special deposit referred to in subsection (1).

(4) The power conferred by subsection (1) may be exercised -

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes;
  - (iii) any such provision either unconditionally or subject to any specified condition.

(5) Where a deposit taking institution or specified financial institution on any day fails to comply with a requirement made pursuant to subsection (1), that deposit taking institution or specified financial institution shall pay to the Bank in respect of that day interest calculated at a daily rate of one sixth of one per cent (or such other rate as the Minister may, by order, approve) on the sum by which the amount of the special deposit in respect of that deposit taking institution or specified financial institution falls short of the amount stated in the requirement as aforesaid.

**Power to vary liquid asset requirements.**

29. - (1) Every deposit taking institution or specified financial institution shall so conduct its business as to ensure that its stock of liquid assets is on the average not less than the *per centum* specified under this section.

(2) The liquid assets that shall be maintained pursuant to this subsection shall be –

- (a) in the case of a bank or merchant bank, such percentage of its average prescribed liabilities as prescribed by notice issued by the Bank and published in the *Gazette*;
- (b) in the case of a building society, such percentage of its average prescribed

liabilities in respect of deposits and withdrawable shares as may be prescribed by notice issued by the Bank and published in the *Gazette*;

- (c) in the case of any specified financial institution such percentage of its prescribed average liabilities, including withdrawable shares (where applicable) as may be prescribed by notice issued by the Bank and published in the *Gazette*,

so, however, that a percentage prescribed pursuant to this subsection shall not be less than five nor more than fifty *per centum* or, subject to subsections (2A) and (2B) such other percentage as the Minister may specify by order, subject to affirmative resolution.

(2A) An order made under subsection (2) shall, be subject to revocation or amendment, remain in force for a period of ninety days or such longer period as may be authorized under subsection (2B).

(2B) The House of Representatives and the Senate may, from time to time, by resolution, extend an order made under subsection (2A) for such period not exceeding ninety days as may be specified in the resolution.

(3) Where any such percentage under subsection (2) is to be increased -

- (a) the increase shall be so effected as not to exceed five percentage points in any one period of thirty days; and
- (b) it shall be the duty of the Bank to give all deposit taking institutions or as the case may be, specified financial institutions at least fifteen days' notice of the date on which the increase is to take effect.

(4) Without prejudice to the generality of subsection (2) a notice under subsection (2) stating the minimum liquid assets to be maintained may require that where a portion of the prescribed liabilities is payable in

foreign currency then such percentage of the liquid assets so payable as is specified in the notice shall be held in foreign currency, so however, that the percentage so specified shall not be less than fifteen nor more than fifty *per centum*.

(5) Subject to subsection (2), for the purpose of determining the amount of the liquid assets required to be maintained by a deposit taking institution or specified financial institution during any month –

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

(6) The Bank may, by notice published in the *Gazette*, vary the method to be used in calculating the average of the liquid assets required to be maintained under this section.

(7) For the purposes of this section –

“liquid assets” means the following assets which shall be unencumbered -

- (a) notes and coins;
- (b) cash reserves on deposits with the Bank in accordance with section 28;
- (c) cash balances with the Bank in excess of such cash reserves mentioned in paragraph (b);
- (d) short term instruments issued by the Bank;
- (e) money at call or short notice, held with another deposit taking institution (repayable on demand or on not more than fourteen days’

- notice), less any amount held for that deposit taking institution;
- (f) Treasury Bills issued by the Government of Jamaica;
- (g) short term debt securities or instruments issued by the Government of Jamaica, whether denominated in Jamaican dollars or foreign currency;
- (h) such other assets, whether denominated in Jamaican dollars or a foreign currency, as the Bank specifies by notice published in the *Gazette*,

and for the purposes of paragraphs (d) and (g) “short term” in relation to an instrument or security refers to the maturity date which will occur within a period not exceeding nine months; and for the purposes of paragraph (e) so much only of the items mentioned at paragraph (e) shall be taken into account as do not exceed such percentage of prescribed liabilities as the Bank may specify by notice published in the *Gazette*.

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

(9) A notice under subsection (2) may make different provisions as respects different types of prescribed liabilities specified in the notice, so, however, that if any such notice prescribes marginal liquid assets requirements for increases in specified prescribed liabilities such requirements shall not exceed one hundred *per centum* of the increase in such liabilities.

(10) The power conferred by subsection (2) may be exercised –

- (a) either in relation to all cases to which the

power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes;
  - (iii) any such provision either unconditionally or subject to any specified condition.

(11) The coming into operation of this section shall not affect any requirements on deposit taking institutions relating to the maintenance of liquid assets that were in existence prior to the coming into operation of this section, until and unless those requirements are varied in accordance with this Act.

(12) In subsection (9), “marginal liquid assets requirements” means in relation to any increase in specified prescribed liabilities, such percentage of the increase as is required to be maintained as liquid assets for the purposes of section.”.

**Section 26** Delete the word “commercial”.

**Section 30(1)(a)** Delete the words “section 14 or 15 of the Banking Act, or section 14 or 15 of the Financial Institutions Act, or”.

**Section 34A**

1. Renumber subsection (1) as the section.
2. Delete subsection (2).
3. In the section as renumbered, delete the words “Department of Supervision of Banks and Financial Institutions” and substitute therefor

the words “Supervisory Department”.

**New section  
34AA**

Insert next after section 34 the following as section 34AA –

**“Super-  
visory  
Depart-  
ment.**

34AA. – (1) The Supervisory Department shall be responsible for the promotion of the safety and soundness of deposit taking institutions and the deposit taking system and, for this purpose, the Supervisory Department shall be charged with —

- (a) the supervision and examination of licensees under the *Banking Services Act* and any other enactment;
- (b) supervision of —
  - (i) specified financial institutions; and
  - (ii) credit bureaux licensed under section 4 of the *Credit Reporting Act*;
- (c) provide such analyses, advice and recommendations to the Supervisor and to the Supervisory Committee for the effective carrying out of their functions under this Act, and the *Banking Services Act*;
- (d) carry out such functions as assigned by the Supervisor, including furtherance of implementation of decisions of the Supervisor and of the Supervisory Committee under the *Banking Services Act*.

(2) Unless directed otherwise, by the Supervisory Committee, the Supervisor shall settle the parameters of any regulatory collaboration, the duration of the collaboration, any cost sharing and other comparable matters related to the collaboration.

(3) The Supervisor shall—

- (a) cooperate with relevant agencies in the

orderly resolution of failed deposit taking institutions, financial holding companies and financial groups to minimize impact on the financial system;

- (b) collaborate with regulatory counterparts and competent authorities, locally and overseas, in order to ensure that the appropriate level of collaboration and sharing of information can be undertaken with them;
- (c) facilitate regulatory cooperation with one or more regulatory counterpart referred to in paragraph (b) for the purpose of implementing the directives issued under the financial stability mandate of the Bank,

and in cooperating or collaborating with regulatory counterparts pursuant to this Act, the Supervisor shall, ensure that this is done in with compliance Jamaica's international obligations and in accordance with the laws of Jamaica.

(4) In this section, "collaboration" includes facilitating cooperation pursuant to information sharing to facilitate on-going supervision of licensees and financial groups, the investigation of regulatory breaches, financial and other crimes and related enforcement action and for development and implementation of strategy for the resolution of a financial institution in accordance with the parameters of any arrangement to strengthen financial sector oversight and formally implement coordinated monitoring and information sharing amongst the responsible financial regulatory agencies in Jamaica.

(5) The Supervisor shall submit to the Parliament, through the Minister, an annual report relating generally to the execution of the functions of the Supervisor under this Act and the *Banking Services Act* and of the Supervisory Committee under the *Banking Services Act*.

(6) At least every three years, there shall be a review undertaken by qualified, independent experts of -

- (a) the effectiveness of the Supervisory framework as set out under this Act, *the Banking Services*



- Act* and any other enactment;
- (b) the processes and procedures carried out in furtherance of the supervision mandate pursuant to this Act, the *Banking Services Act* and any other enactment; and
- (c) the performance of the Supervisor and Supervisory Committee in relation to their respective mandates under this Act, the *Banking Services Act* and any other enactment,

and the report of this review shall be provided to the Minister and the Supervisor.

(7) The experts referred to subsection(6) shall be persons with the requisite knowledge and expertise of international banking supervision standards and best practices supervisory processes and methodologies and their appointments shall be subject to the approval of the Minister.”.

Section 34B Delete section 34B and substitute therefor the following –

**“Officers  
of Bank.**

34B. - (1) For the purposes of section 34A, the functions of the Supervisor under this Act, the *Banking Services Act* and any other enactment shall be carried out by the Governor.

(2) The Board shall appoint -

- (a) the Deputy Supervisor, on the recommendation of the Supervisor, who shall be a fit and proper person; and
- (b) such other officers and employees as may be necessary for the efficient operation of the Supervisory Department.

(2A) The Deputy Supervisor shall be appointed under subsection (2) for a term of not less than five years and not more than seven years, subject to the conditions set out in paragraph 5 of the Schedule and be eligible for re-appointment so, however, that date of expiration of the appointment of the Deputy Supervisor shall not be less than twelve months from the date of expiration of the appointment of the Supervisor.

(2B) The Board may terminate the appointment of

the Deputy Supervisor on the recommendation of the Supervisor for cause or where the Board is satisfied that the Deputy Supervisor has failed to meet the qualifications contained in paragraph 5 of the Schedule.

(2C) A person below the rank of Deputy Governor shall not be eligible for appointment as the Deputy Supervisor.

(3) The Deputy Supervisor shall, subject to any directions of the Supervisor -

(a) be responsible for –

- (i) the general administration of the Supervisory Department; and
- (ii) the technical supervision and examination operations of the Supervisory Department; and

(b) perform such duties as may be assigned to him by the Supervisor.

(4) In the absence or incapacity of the Supervisor, the Deputy Supervisor shall undertake the functions and responsibilities of the Supervisor as set out in this Act and the *Banking Services Act*.

(5) The Supervisor, Deputy Supervisor and any officer appointed pursuant to subsection (2)(b) shall be fully employed in the service of the Bank and, while holding office, shall not, without the permission of the Board, occupy another office of employment, whether remunerated or not.

(6) The Supervisor with the approval of the Board may, where the circumstances so warrant, in writing, authorize any other person to assist the Supervisor and the Deputy Supervisor in the performance of their functions under this Act.

(7) Nothing contained in this section shall affect or prejudice the terms of any existing appointment or agreement, arrangements or memorandum of understanding in place relating to an incumbent Deputy

Supervisor at the date of commencement of this Act.”.

New section  
34BB

Insert next after section 34B the following -

**“Financial  
Regulatory  
Committee.**

34BB. - (1) For the purposes of this Act, there is established a committee to be known as the Financial Regulatory Committee.

(2) The objective of the Financial Regulatory Committee shall be to facilitate information sharing, coordination and cooperation among regulatory authorities.

(3) The Financial Regulatory Committee shall establish appropriate policies and procedures by way of written agreement, arrangement or memorandum of understanding, subject to the approval in writing of the Minister, for the purposes of meeting the of understanding objectives set out in subsection (2).

(4) The Financial Regulatory Committee shall consist of -

- (a) the Governor, who shall be the chairman;
- (b) the Financial Secretary;
- (c) the Executive Director of the Financial Services Commission; and
- (d) the chief executive officer of the Jamaica Deposit Insurance Corporation.

(5) Nothing contained in this section shall invalidate any agreement, arrangement or memorandum of understanding that has been executed, in writing, between or among the parties named in subsection (4) for the objective set out in subsection (2) that was in existence at the time of the coming into operation of this section.

(6) Subsections (1) and (2) of section 34D and section 34E shall apply *mutatis mutandis* to members of the Financial Regulatory Committee and any person acting in support of the Financial Regulatory Committee as they apply in relation to the authorized officer and other authorized person referred to in section 34D or the persons specified in section 34E.

(7) The Financial Regulatory Committee shall meet at such times as may be necessary for the transaction of business, being not less than seven times in each year, and such meeting shall be held at and such places and times and on such days as the Committee may determine.

(8) Proper records of all proceedings of the Financial Regulatory Committee shall be kept.

(9) Subject to the provisions of this section, the Financial Regulatory Committee may make rules to regulate its proceedings.”.

Section 34C Delete section 34C and insert the following -

**“Interest in licensee.** 34. – (1) Where –

(a) any authorized officer; or

(b) any person being considered for appointment pursuant to section 34B,

is a shareholder (whether directly or indirectly) in any licensee under the *Banking Services Act*, specified financial institution or credit bureau, he shall notify the Supervisor, in writing, of his interest and the Supervisor shall so notify the Board, in writing.

(2) The Board may, if it thinks fit upon receipt of a notice referred to in subsection (1), in writing require the officer or person concerned to dispose of any shares held by him in any licensee under the *Banking Services Act*, specified financial institution or credit bureau or of any interest in such shares within such time as the Board may specify.”.

Section 34D Delete section 34D and substitute therefor the following –

**“Secrecy of authorized officer.** 34D. - (1) An authorized officer and any other person authorized pursuant to section 34B to give assistance shall not -

(a) disclose information regarding the operations of any licensee under the *Banking Services Act* or specified financial institution to any person other than-

- (i) the Minister or his nominee;
  - (ii) the Governor, Senior Deputy Governor or Deputy Governors;
  - (iii) any member of the Supervisory Committee through the Supervisor or Deputy Supervisor;
  - (iv) any officer of the Supervisory Department;
  - (v) the Chief Executive Officer of the Jamaica Deposit Insurance Corporation, the Executive Director of the Financial Services Commission, the Financial Secretary or his nominee, to facilitate coordination among financial regulatory agencies;
  - (vi) the head of a regulatory counterpart, his deputy or a person formally nominated to receive information on behalf of such head;
- (b) subject to paragraph (c), disclose other than for the purposes of this Act, or the *Banking Services Act*, any information regarding the affairs of a customer of a licensee under the *Banking Services Act* or specified financial institution, obtained in consequence of the performance of duties under this Act;
- (c) disclose for the purposes of the investigation of a financial crime, or the contravention of a licensee's obligation under any other enactment any information,

obtained in consequence of the performance of duties under this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable

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 on conviction in the Supreme Court to a fine or imprisonment.

(3) No civil or criminal action, suit or other proceedings may be brought against any authorized officer or other person authorized under section 34B who in good faith makes a disclosure made pursuant to section 34D(1).”.

Section 34E Delete section 34E and substitute therefor the following -

**“Protection for authorized officers, etc.** 34E. - (1) No liability is incurred by the Bank or any person specified in paragraphs (a) to (d) as a result of anything done by him *bona fide* in exercise of any power, or the performance of any function or duty, conferred or imposed by or under this Act, that is to say -

- (a) an authorized officer;
- (b) the Minister;
- (c) any person appointed pursuant to section 34B;
- (d) any person appointed by the Minister pursuant to regulations made under this Act or appointed by the Supervisor pursuant to paragraph 1 (3) of Part C of the Fifth Schedule to the *Banking Services Act* or any other enactment to perform functions in connection with the temporary management of a licensee under the *Banking Services Act* or of a specified financial institution.

(2) No action suit or other proceedings may be brought or instituted personally against an authorized person, or any other person authorized under section 34B, in respect of any lawful act done or omission made in good faith, in the course of carrying out the provisions of this Act or the *Banking Services Act*.”.

Section 34F 1. Delete subsection (1) and substitute therefor the following –

“ (1) The Minister may, in accordance with the recommendations of the Bank, make regulations prescribing prudential criteria and minimum solvency standards for specified financial institutions that are not licensees under the *Banking Services Act*.”.

2. Delete subsection (6) and substitute therefor the following –

“ (6) The Bank may, subject to affirmative resolution, make rules to be known as “the Supervisory Rules”, in relation to money laundering, terrorism financing and the proliferation of weapons of mass destruction.”.

Section 47

Delete section 47 and substitute therefor the following –

**“Secrecy.** 47. - (1) Except in so far as may be necessary for the due performance of his functions under this Act, every officer and servant of the Bank shall preserve, and aid in preserving, secrecy with regard to all matters relating to the affairs of any licensee under the *Banking Services Act* or any other financial institution, or of any customer of any such licensee under the *Banking Services Act* or other any financial institution, that may come to his knowledge in the course of his duties; and any such officer or servant who communicates any such matter to any person other than the Board or an officer of the Bank authorized in that behalf by the Governor or suffers or permits any unauthorized person to have access to any books, papers or other records relating to any licensee under the *Banking Services Act* or any other financial institution, or to any customer of any such licensee under the *Banking Services Act* or other any financial institution, commits an offence and shall be liable on conviction thereof to a fine of two million dollars or to imprisonment for a term not exceeding two years.

(2) No officer or servant of the Bank shall be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act, except on the direction of the court or in so far as may be necessary for the purpose of carrying into effect the provisions of this Act.

(3) Every officer and servant of the Bank and every auditor of the Bank -

(a) shall preserve and aid in preserving secrecy

with regard to all matters relating to the affairs of the Bank that may come to his knowledge in the course of his duties; and

- (b) shall not communicate any such matter to any person other than a person authorized in that behalf by the Minister or the Governor.

(4) Any officer, servant or auditor of the Bank who contravenes subsection (3) commits an offence and shall be liable on conviction in a Resident Magistrate's Court to a fine not exceeding two million thousand dollars or to imprisonment for a term not exceeding two years."

Schedule 1. Delete paragraphs 1 and 2 and substitute therefor the following -

**"Tenure  
of office.**

1. The term of office of every director other than the Governor, the Senior Deputy Governor and the Financial Secretary shall be specified in the instrument appointing each director and-

- (a) subject to the section 34B(2A) in relation to the Deputy Supervisor, or the Deputy Governors, the term shall not exceed five years;
- (b) for every other director, the term shall not exceed three years, but such director retiring on the expiration of his term of office shall, subject to paragraph 2, be eligible for reappointment.

**Disqualifi-  
cation of  
directors.**

2. A person may not be appointed or remain a director who -

- (a) is a member of either House of Parliament;
- (b) is a director, officer or employee of or has any ownership interest in any licensee under the *Banking Services Act*, any other regulated financial institution or any specified financial institution or credit bureau;
- (c) is a member of the Council of the Kingston and St. Andrew Corporation or of any Municipal Council or Parish Council."



2. Delete paragraphs 8 and 9 and substitute therefor the following –

**“Remu-  
neration of  
directors.**

8. There shall be paid to the Governor and the other directors such remuneration, if any (whether by way of salaries, travelling or other allowances) as the Minister may determine.

**Share-  
holdings  
by  
directors.**

9. Where a director contravenes paragraph 2 of this Schedule, the director shall declare any ownership interest or position to the Board and shall elect to –

(a) resign his position; or

(b) dispose of the ownership interest or vacate his position within such times as may be directed by the Board.”.

**Dr. the Hon. Peter Phillips, M.P.  
Minister of Finance and Planning**