

A BILL

ENTITLED

AN ACT to Amend the Bank of Jamaica Act.

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

1.—(1) This Act may be cited as the Bank of Jamaica (Amendment) Act, 1995, and shall be read and construed as one with the Bank of Jamaica Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title,
construction
and com-
mencement.

(2) The provisions of this Act, other than section 4 and paragraph (c) of section 5 shall be deemed to have come into operation on the 1st day of December, 1994.

(3) Section 4 shall be deemed to have come into operation on the 25th day of April, 1994.

(4) Paragraph (c) of section 5 shall come into operation on the date of enactment of this Act.

Amendment
of section 2
of principal
Act.

2. Section 2 of the principal Act is amended by inserting next after the definition of "perform" the following definition—

"prudential criteria" means criteria and standards established under this Act for the purpose of setting outside limits and constraints on commercial banks and specified institutions for the protection of depositors, shareholders and potential shareholders and for ensuring the safety and soundness of the financial system;"

Amendment
of Part IVA
of principal
Act.

3. Part IVA of the principal Act is amended—

- (a) by renumbering sections 25A, 25B, 25C and 25D as sections 22A, 22B, 22C and 22D, respectively;
- (b) by deleting from subsection (1) of section 22B as renumbered the words "shall comply with" and substituting therefor the words "shall not acquire foreign assets except in accordance with";
- (c) by inserting next after section 22D as renumbered the following as section 22E—

"Punishment
without
prosecution
of offences
in connec-
tion with
directions.

22E.—(1) This section shall apply to any offence under section 22D (1), being an offence—

- (a) committed by a person who with the approval of the Minister, operates an exchange bureau; and
- (b) specified in the Appendix.

Appendix.

(2) The Governor may, with the approval of the Director of Public Prosecutions, give to any person referred to in subsection (1) (a) who, in the opinion of the Director of Public Prosecutions, has committed an offence to which this section applies, a notice in writing in the prescribed form offering that person the opportunity

to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

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

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

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

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

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

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state—

- (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (4), proceedings will not be taken for the offence; and

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

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

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

(10) The Minister may, by order, make provision as to any matter incidental

to the operation of this section, and in particular, any such order may—

(a) prescribe—

(i) the form of notice under subsection (2), and the Collector of Taxes to whom a fixed penalty is payable;

(ii) the nature of the information to be furnished to the Collector of Taxes along with any payment;

(iii) the arrangements for the Collector of Taxes to furnish to the Bank, information with regard to any payment pursuant to a notice under this section;

(b) amend the Appendix.”.

4. The principal Act is amended by inserting next after section 22E as renumbered the following section as section 22F—

Insertion of
new section
22F in prin-
cipal Act.

“Fees.

22F. A person who, with the approval of the Minister, operates an exchange bureau shall pay, in respect of such operation, such annual fee as the Bank, with the approval of the Minister, may by notice determine.”.

5. Section 30 of the principal Act is amended—

Amendment
of section 30
of principal
Act.

(a) by deleting the fullstop at the end of paragraph (b) and substituting therefor a semi-colon, and by in-

inserting next after paragraph (b) the following as paragraph (c)—

“(c) require any person mentioned in section 22B (1) to furnish, within such time and in such form as the Bank thinks necessary, such information as the Bank thinks requisite for the purpose of ascertaining whether that person is complying with the provisions of section 22B.”;

(b) by renumbering the section as subsection (1) of section 30;

(c) by inserting next after subsection (1) as renumbered the following as subsection (2)—

“(2) Any person who fails to furnish information in accordance with a requirement made under paragraph (a), (b) or (c) of subsection (1) shall—

(a) be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one hundred and fifty thousand dollars; and

(b) if the offence is continued after conviction, be guilty of a further offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five thousand dollars for every day during which the offence is so continued.”.

6. The principal Act is amended by inserting next after section 34D the following as sections 34E and 34F—

(d) **Indemnity.** 34E. No liability is incurred by the Bank or any person specified in paragraphs (a) to

Insertion of
new sections
34E and 34F
in principal
Act.

(d) of this subsection as a result of anything done by him *bona fide* in the 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 (4);
- (d) any person appointed by the Minister pursuant to regulations made under this Act or pursuant to paragraph 1 (4) of Part D of the Second Schedule to the Banking Act or the Financial Institutions Act, as the case may be, to perform functions and duties in connection with the temporary management of a commercial bank or specified financial institution.

Regulations.

34F.—(1) The Minister may, in accordance with the recommendations of the Bank, make regulations prescribing prudential criteria and minimum solvency standards to be complied with by commercial banks and specified financial institutions.

(2) Without prejudice to the generality of subsection (1), regulations made under that subsection may include provisions in relation to—

- (a) minimum capital requirements;
- (b) requirements for ensuring capital adequacy and the required capital ratios;

- (c) the building of reserves from profits;
- (d) limitations on the acquisition of fixed assets;
- (e) the maintenance of cash reserves and liquid assets;
- (f) the submission of returns to the Supervisor at prescribed intervals and publication of accounts on a regular basis;
- (g) restrictions on—
 - (i) loans to directors, officers and connected persons;
 - (ii) large exposures to single persons and groups;
 - (iii) the volume of equity investments which may be held in the investment portfolio of a commercial bank or specified financial institution;
- (h) requirements for loan loss reserves;
- (i) the transfer of control of specified financial institutions;
- (j) matters regarding the making of contact with auditors by the Bank;
- (k) the establishment of branches abroad by specified financial institutions;
- (l) the treatment of—
 - (i) credit facilities;
 - (ii) assets and investments;
 - (iii) interest;
 - (iv) new financial instruments;

- (m) reporting requirements for large exposures and large deposits;
- (n) the measurement of capital consequent on investment of specified financial institutions in a subsidiary or affiliate;
- (o) the imposition of penalties for breaches of the regulations;
- (p) the taking of such steps as the Minister considers necessary where the Minister has reasonable cause to believe that a specified financial institution is or appears likely to become unable to meet its obligations.

(3) Regulations made under this section shall be subject to affirmative resolution.

(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.”

insertion of
Appendix in
principal
Act.

7. The principal Act is amended by inserting next after the Schedule the following Appedix—

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APPENDIX

(Section 22E)

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

<u>Offence</u>	<u>Fixed Penalty</u>
1. Purchase of foreign currency in breach of directions given under section 22B, by an exchange bureau operated in a hotel ...	\$ 5,000.00
2. Failure to observe limits as to amount of foreign currency to be purchased or sold in any one transaction ...	\$10,000.00
3. Failure to display rates at which foreign currency is being purchased or sold ...	\$ 5,000.00
4. Failure to remit foreign currency to the Bank in accordance with directions ...	\$ 5,000.00

APPENDIX, *contd.*

<u>Offence</u>	<u>Fixed Penalty</u>
5. Selling less than the prescribed amount of gross purchases of foreign currency to the Bank ...	\$10,000.00
6. Holding more than three days' gross purchases of foreign currency	\$ 5,000.00
7. Failure to keep accounts and records in respect of the business of the exchange bureau separate and apart from any other business in foreign currency carried on by the operator thereof ...	\$ 5,000.00
8. Failure to issue or take receipts ...	\$ 5,000.00
9. Buying or selling foreign currency at a location other than that approved in the authorization ...	\$10,000.00
10. Failure to display certificate of authorization ...	\$ 5,000.00
11. Failure to keep proper accounts or to make returns ...	\$ 5,000.00
12. Failure to allow examination of accounts, etc. ...	\$10,000.00
13. Failure to afford to an authorized officer unimpeded access for the purpose of carrying out any inspection authorized by or under the Act ...	\$10,000.00

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Bank of Jamaica Act in order to—

- (a) provide the necessary regulatory framework for the supervision and inspection of building societies by the Bank of Jamaica;
- (b) make provisions designed to assist in the development and regulation of the cambio system which was recently introduced including the imposition of an annual fee in respect of the authorization to operate an exchange bureau;
- (c) provide for more effective monitoring of the acquisition of foreign assets by financial institutions;
- (d) make provisions indemnifying the supervisory authorities against any liability for *bona fide* acts of supervision carried out under the Act.

OMAR DAVIES,
Minister of Finance.

A BILL

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AN ACT to Amend the Bank of Jamaica Act.

As introduced by the Honourable Minister of Finance.