

ABILL

ENTITLED

AN ACT to Amend the Bank of Jamaica Act.

[]

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, 2015, 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
and
construction.

(2) This Act shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

2. Section 2 of the principal Act is amended by inserting in the correct alphabetical sequence the following definitions—

Amendment
of section 2
of principal
Act.

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

“relevant regulatory authority” means—

- (a) the Bank of Jamaica;
- (b) the Financial Services Commission; or
- (c) such other regulatory authority for financial services operating in Jamaica and which authority is specified, for the purposes of Part VB, by the Governor, as a relevant regulatory authority, by notice published in the *Gazette*;

Amendment
of section 5
of principal
Act.

3. Section 5 of the principal Act is amended by inserting immediately after the word “currency,” the words “to ensure the stability of the financial system,”.

Insertion of
new Part VB
in principal
Act.

4. The principal Act is amended by inserting next after section 34F the following as PART VB—

PART VB—*Financial System Stability*

Interpretation of Part VB

Interpretation
of Part VB.

34G. In this Part, unless the context otherwise requires—

“Committee” means the Financial System Stability Committee established by section 34H;

“connected person” has the meaning ascribed thereto in the *Banking Services Act*;

“financial institution” means any one or more of the entities specified or persons referred to in section 34L(3);

“financial system stability”, in relation to Jamaica, means the orderly operation of financial institutions, financial markets and the payment and settlement infrastructure, and the capability of these components that make up the financial system to absorb internal and external shocks without substantial

impairment to the financial system and the real economy;

“macro-prudential oversight” includes—

- (a) the detection of risks to financial system stability and the taking of effective measures to mitigate and control the risks;
- (b) assessments of vulnerabilities in the financial system, including those arising as a result of the links between the financial system and developments in the other parts of the Jamaican economy and in the global economy; and
- (c) the exchange of information among relevant regulatory authorities and overseas regulatory authorities pertinent to the matters referred to in paragraph (a) or (b);

“relevant Government agency” means any Ministry, department of Government or agency of Government that collects data on any economic activity taking place in Jamaica or affecting Jamaica;

“risks” includes potential shocks that could disrupt the orderly functioning of—

- (a) financial institutions in Jamaica;
- (b) financial markets in Jamaica; or
- (c) Jamaica’s payment and settlement infrastructure.

Financial System Stability Committee

Constitution,
functions and
procedure of
Financial
System
Stability
Committee.

34H.—(1) For the purposes of this Act, there is constituted a committee to be known as the Financial System Stability Committee, which shall perform the functions set out in section 34I.

(2) The Committee shall consist of six *ex-officio* members and two members appointed pursuant to subsection (4).

(3) The *ex-officio* members of the Committee shall be—

- (a) the Governor, who shall be the chairman;
- (b) the Senior Deputy Governor or the Deputy Governor or other senior officer of the Bank, with assigned responsibility for the Bank's financial system stability mandate;
- (c) the Financial Secretary;
- (d) the Deputy Supervisor;
- (e) the Executive Director of the Financial Services Commission; and
- (f) the Chief Executive Officer of the Jamaica Deposit Insurance Corporation.

(4) Subject to subsection (10), the Minister may appoint, on the recommendation of the Governor, two persons to be members of the Committee (hereinafter referred to as the "appointed members").

(5) The appointed members shall be persons who—

- (a) are knowledgeable or experienced in financial regulation, public expenditure or the formulation of macro-economic and fiscal policies;
- (b) have the relevant expertise, qualifications or experience to make a valuable contribution towards the macro-prudential oversight of the Jamaican economy;
- (c) do not have any financial or other interests which could cause or result in a conflict of interest in respect of the activities of the Committee; and
- (d) do not fall within any of the grounds for revocation referred to in subsection (9).

(6) The following persons shall not be eligible for appointment to the Committee—

- (a) members of the House of Representatives or the Senate;
- (b) members of the Council of the Kingston and St. Andrew Corporation or any municipal council or any parish council;
- (c) public officers; and
- (d) directors, officers, employees or external auditors of a financial institution or the connected persons in relation to the financial institution.

(7) The appointment of the appointed members of the Committee shall be evidenced by instrument in writing signed by the Minister, which shall specify the period of office of the member, which shall not exceed three years.

(8) Every appointed member shall be eligible for reappointment.

(9) Notwithstanding any provision in this Part to the contrary, the Minister may, at any time, revoke the appointment of any appointed member for—

- (a) physical or mental infirmity, which would prevent that member from continuing to perform the functions of a member;
- (b) bankruptcy or compounding with or suspending payment to his creditors;
- (c) being convicted of an offence involving dishonesty;
- (d) failing to carry out the functions required of a member of the Financial System Stability Committee; or
- (e) engaging in activities that can be reasonably considered to be incompatible with his continued membership of the Financial System Stability Committee.

(10) The names of all members of the Committee as first constituted and any change in the membership of the Committee shall be published in the *Gazette*.

(11) The Bank shall, from time to time, assign such staff, including a secretary, as

may be necessary to assist the Committee in the performance of its functions.

(12) The Committee shall be responsible for ensuring the keeping of minutes of each of its meetings and all other relevant records.

(13) Subject to the provisions of this Part, the Committee may regulate its own proceedings.

Functions of
Committee.

34I. The Committee shall—

- (a) make financial system stability assessments in relation to developments in the financial system and international markets;
- (b) promote the regular exchange of information among members of the Committee regarding the monitoring of risks to Jamaica's financial system stability;
- (c) assess the links between the financial sector and developments in other sectors of the Jamaican economy and the global economy;
- (d) give oversight to the design and conduct of periodic stress tests regarding plausible systemic threats to Jamaica's financial system stability;
- (e) engage in periodic consultation with financial sector representatives, when necessary, in order to seek their views and obtain their input in assisting the Committee's understanding of developments that may impact Jamaica's financial system stability;

- (f) consider the circumstances which trigger action in respect of any financial institution or a class thereof, as may be required under this Part;
- (g) contribute to the development and implementation of mechanisms and procedures for financial sector crisis planning, management and resolution;
- (h) recommend measures to secure international cooperation in support of Jamaica's financial system ability;
- (i) make arrangements to obtain information from overseas regulatory authorities and other reputable sources on conditions in the global financial markets that may impact financial system stability in Jamaica;
- (j) prepare and provide periodic and special reports to the Minister, which assess Jamaica's financial system stability;
- (k) make recommendations to the Bank in relation to carrying out the Bank's mandate of financial system stability;
- (l) make recommendations to the Bank in relation to potential conflicts between financial system stability policy decisions and other policy areas; and
- (m) carry out any other activity which may be determined by the Committee to be in support of the objective of financial system stability.

Secrecy of
Committee
members.

34J.—(1) The provisions of section 34D(1) (a) (i) to (v) shall, as they apply to an authorized officer, apply *mutatis mutandis* to—

- (a) members of the Committee and persons working on behalf of the Committee; and
- (b) members of staff of the Bank who are engaged in macro-prudential supervision.

(2) Nothing in this section empowers the Committee to share any information—

- (a) that is specific to any customer; or
- (b) in a manner which may impede or interfere with any regulatory cooperation which either the Bank, the Financial Services Commission or any other relevant regulatory authority undertakes as part of its functions.

Indemnity of
Committee
members.

34K. The provisions of section 34E shall, as they apply to the Bank or persons mentioned in that section, apply *mutatis mutandis* to—

- (a) members of the Committee and persons working on behalf of the Committee; and
- (b) members of staff of the Bank who are engaged in macro-prudential supervision.

*Functions of the Bank in Relation to
Financial System Stability*

Bank
responsible
for macro
prudential
oversight.

34L.—(1) The Bank shall be responsible for conducting macro-prudential oversight of the financial institutions specified in subsection (3),

for the purpose of maintaining the stability of the financial system.

(2) Where a financial institution specified in subsection (3) is the subject of a concern affecting financial system stability and that financial institution is regulated by—

- (a) the Bank through its Supervisory Department, the Financial System Stability Committee shall consult with respect to that financial institution with the Supervisory Committee; or
- (b) a relevant regulatory authority other than the Bank, the Bank shall act in consultation with that regulatory authority with respect to that financial institution.

(3) The financial institutions referred to in subsection (1) are—

- (a) a body corporate which is supervised or regulated by the Bank, the Financial Services Commission or any other relevant regulatory authority; or
- (b) a person who undertakes any one or more of the financial services referred to in subsection (4) and which person has been designated as a financial institution by the Bank for the purposes of this Part.

(4) The financial services referred to in subsection (3)(b) are—

- (a) banking business;
- (b) lending;

- (c) consumer credit;
- (d) financing commercial transactions;
- (e) transfer of money or value;
- (f) issuing electronic money;
- (g) financial guarantees and commitments;
- (h) dealing in securities and trading in other financial instruments;
- (i) participation in security issues;
- (j) individual and collective portfolio management;
- (k) insurance business and insurance related financial services;
- (l) investment of moneys and other financial assets on behalf of third parties;
- (m) pension fund management; and
- (n) any other service designated as a financial service by the Governor acting in consultation with the relevant regulatory authority, may designate by notice published in the *Gazette*.

(5) Where it is satisfied that a person who carries on the business of providing any one or more of the financial services referred to in subsection (3) (not being a person referred to in subsection (3)(a)) is undertaking any one or more financial services referred to in subsection (4), the Bank may, by instrument in writing by the Governor designate, by notice published in the *Gazette*, the person as a financial institution for the purposes of this Part.

Provision of
emergency
liquidity
assistance to
financial
institutions.

34M. The Bank may, in the event of, or in anticipation of, threats to financial system stability—

- (a) buy and sell securities and other obligations, to the extent and under conditions determined necessary by the Bank, for the purpose of promoting financial system stability;
- (b) make loans, provide guarantees or other credit facilities to financial institutions, in such currency and upon such terms and conditions as the Bank may determine, and to the extent determined necessary by the Bank for the purpose of promoting stability in the financial system;
- (c) enter into international arrangements to ensure coordination of actions that may be taken with regard to financial institutions based outside of Jamaica that are or may be the parent, subsidiary or branch affiliate of a financial institution based in Jamaica;
- (d) with regard to the provision of emergency liquidity assistance to financial institutions, require and accept collateral in such form and upon such terms and conditions as the Bank may determine, whether or not denominated in Jamaican currency or located in Jamaica; or
- (e) enter into any other type of financial transaction or arrangement deemed by

the Bank to be necessary to promote or preserve financial system stability.

Power to
request
inspection.

34N.—(1) Where the circumstances set out in subsection (2) occur in respect of a financial institution, the Bank shall consult with another relevant regulatory authority and request that the regulatory authority perform an inspection of the financial institution under the jurisdiction of the other regulatory authority.

(2) An inspection under subsection (1) shall be undertaken in any case where the Bank determines that the financial institution's condition or conduct poses or could pose a threat to the stability of the financial system.

(3) In making its determination under subsection (2), the Bank shall consult with the relevant regulatory authority as to the focus, scope and methodology of the inspection to be undertaken.

(4) Nothing in this section, precludes the Bank from obtaining information, directly from any financial institution, for the purpose of carrying out its functions under this Part.

(5) For the purposes of subsections (1) and (3), where the financial institution referred to in subsection (2) is regulated by the Bank—

- (a) the consultation required by subsections (1) and (3) shall be between the Financial System Stability Committee and the Supervisory Committee of the Bank; and

- (b) the request shall be made by the Financial System Stability Committee to the Supervisory Committee of the Bank.

Power of
Bank to
require
information.

34O.—(1) The Bank may—

- (a) after consultation with another relevant regulatory authority or relevant Government agency, require that regulatory authority or Government agency to provide any information in the possession of or accessible to that regulatory authority or Government agency, where the information will assist the execution of the functions of the Financial System Stability Committee under this Part; or
- (b) enter into special arrangements with the Statistical Institute of Jamaica for the Bank to receive information to assist the Bank under this Part.

(2) Every financial institution shall provide to the Bank (through the relevant regulatory authority or relevant Government agency) financial, statistical or other information which is—

- (a) pertinent to the Bank's function of promoting and maintaining financial system stability; and
- (b) specified by the Bank, in consultation with the Committee.

(3) Every person who—

- (a) resides or has a permanent establishment in Jamaica;
- (b) carries out an international transaction by acquiring external financial assets and liabilities from persons,

shall be subject to the provisions of this section; and the Bank shall preserve the confidentiality of the identify of the person providing information to the Bank under this section and any specific information so provided.

Power of
Bank to issue
prescriptive
rules,
standards and
codes.

34P.—(1) The Bank may, in consultation with the Committee and relevant regulatory authority, and having regard to the purposes specified in subsection (2), issue rules, standards and codes, which shall be applicable to any financial institution or a category thereof, and which rules, standards and codes shall relate to macro-prudential oversight under this Part.

(2) The rules, standards and codes referred to in subsection (1) shall be for the purpose of—

- (a) establishing and enforcing standards of conduct by financial institutions;
- (b) preserving and maintaining stability in the financial system; and
- (c) specifying the time required for compliance by financial institutions to which such rules, standards and codes apply.

(3) Where there is—

- (a) a breach by a financial institution, or a class thereof, of any rules, standards and codes under subsection (1); or
- (b) a delay in contravention of subsection (2)(c) by a financial institution, or class thereof, in complying with the rules, standards and codes set by the Bank,

the relevant regulatory authority which has oversight for the financial institution, or class thereof, shall take such action as it is empowered to do, under any enactment which governs that regulatory authority.

Bank to
establish and
maintain
central
database.

34Q. The Bank shall establish and maintain a central database which shall—

- (a) contain data collected by the Bank in pursuance of its functions under this Part; and
- (b) be available to the Committee.

Publication
of financial
stability
report.

34R. The Bank shall, within three months after the end of each financial year, publish a report on matters relating to the stability of the financial system, having due regard to any relevant obligations of secrecy and confidentiality relating to individual financial institutions and persons.”.

Amendment
of *Banking
Services Act*.

5. The *Banking Services Act*, 2014, is amended—

- (a) in section 112(1), by deleting the word and numerals “9 or 11” and substituting therefor the word and numerals “9, 11 or 12”;

- (b) in Part A of the Fifth Schedule, by inserting next after paragraph 11 the following as paragraph 12—

“12. The licensee has breached any rule, standard or code issued under section 34P (1) of the Bank of Jamaica Act or there is any contravention by the licensee in meeting the specified time for compliance therewith.”.

6. The *Financial Services Commission Act* is amended—

Amendment
of *Financial
Services
Commission
Act*.

- (a) in section 8(1), by inserting immediately after the numeral “2” the numeral “, 2A”; and
- (b) in Part A of the Third Schedule, by inserting next after paragraph 2 the following as paragraph 2A—

“2A. The institution has breached any rule, standard or code issued under section 34P (1) of the Bank of Jamaica Act or there is any contravention by the institution in meeting the specified time for compliance therewith.”.

Passed in the House of Representatives this 13th day of October, 2015 with two (2) amendments.

MICHAEL A. PEART
Speaker.

MEMORANDUM OF OBJECTS AND REASONS

An important lesson learned from the recent global financial crisis is that institutional responsibility for the stability of the Jamaican financial system as a whole needs to be clearly defined, codified and assigned. Full responsibility for the nation's financial system stability is unclear where there are multiple supervisory agencies with none having the authority or mandate to oversee the links among different kinds of activities and to recognize and address systemic risks.

To address this deficiency, the Bank of Jamaica is being given the institutional responsibility for the stability of Jamaica's financial system, in accordance with the international trend to locate that function within the central bank.

Consequently, this Bill seeks to amend the Bank of Jamaica Act by—

- (a) expanding the objects of the Bank to include the mandate of ensuring the stability of the Jamaican financial system;
- (b) establishing a Financial System Stability Committee to oversee the financial system and advise the Bank in best practices to promote and maintain financial system stability;
- (c) allowing for the provision of emergency liquidity assistance to financial institutions;
- (d) in furtherance of its role in preserving financial system stability, giving the Bank additional powers to—
 - (i) initiate inspections;
 - (ii) request information pertinent to macro-prudential oversight;
 - (iii) issue rules, standards and codes pertinent to macro-prudential oversight; and
 - (iv) establish and update a central financial system database; and
- (e) requiring the Bank to publish a financial system stability report. Consequent on the amendments made to the Bank of Jamaica Act, the *Banking Services Act* of 2014 and the *Financial Services Commission Act* have also been consequentially amended.

PETER D. PHILLIPS
Minister of Finance and Planning.

A BILL

ENTITLED

AN ACT to Amend the Bank of Jamaica Act.

As passed in the Honourable House of Representatives.

PRINTED BY JAMAICA PRINTING SERVICES (1992) LTD.
(GOVERNMENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA

SECTION 5 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

5. The principal objects of the Bank shall be to issue and redeem notes and coins, to keep and administer the external reserves of Jamaica, to influence the volume and conditions of supply of credit so as to promote the fullest expansion in production, trade and employment, consistent with the maintenance of monetary stability in Jamaica and the external value of the currency, to foster the development of money and capital markets in Jamaica and to act as banker to the Government.

SECTION 112 OF THE BANKING SERVICES ACT WHICH IT IS
PROPOSED TO AMEND

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

- (a) assume the temporary management of the licensee in accordance with Part C of the Fifth Schedule;
- (b) present an application to the Court regarding the reconstruction or the petition for the winding up of the licensee;
- (c) revoke the licence; or
- (d) in the case of a foreign bank—
 - (i) instruct the head office to take corrective action in relation to its branch operations in Jamaica;
 - (ii) direct that the branch operations in Jamaica be placed under alternative management, including the appointment of receivers;
 - (iii) direct that the branch operations be closed and revoke the licence; or
 - (iv) wind up the branch operations in Jamaica in accordance with section 122.

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

SECTION 8 OF THE FINANCIAL SERVICES COMMISSION
ACT WHICH IT IS PROPOSED TO AMEND

8.—(1) Where the Commission believes that any of the conditions specified in paragraph 1, 2 or 3 of Part A of the Third Schedule exists in relation to a prescribed financial institution, the Commission may—

(a) ...

THIRD SCHEDULE TO THE FINANCIAL SERVICES COMMISSION
ACT WHICH IT IS PROPOSED TO AMEND

THIRD SCHEDULE (Section 8)

Part A

Conditions subject to remedial action under section 8(1)

1. The prescribed financial institution has breached the provisions of its memorandum and articles of association.

2. The institution, a director or any employee or agent in the conduct of the institution's business—

(a) is engaging or about to engage in an unsafe or unsound practice in conducting the institution's business;

(b) is contravening or has contravened—

(i) any provisions of the relevant Act or regulations made thereunder, or

(ii) any condition of the licence or registration granted under the relevant Act in respect of that institution.
