

## THE BANK OF JAMAICA ACT

REGULATIONS  
(under section 34F)

## THE BANK OF JAMAICA (BUILDING SOCIETIES) REGULATIONS, 1995

*(Made by the Minister on the 27th day of March, 1995)*L.N. 44/95  
131F/2004  
30A/2003

## PART I—Preliminary

1.—(1) These Regulations may be cited as the Bank of Jamaica (Building Societies) Regulations, 1995.

(2) Where expressions defined in the Companies Act are used in these Regulations, such expressions shall have the respective meanings assigned to them by that Act, unless there is anything in the context repugnant to or inconsistent with such meanings, or unless such expressions are otherwise defined in the Bank of Jamaica Act.

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Building Societies Act;

“bank” shall bear the meaning set out in the Banking Act;

“Bank” means the Bank of Jamaica;

“capital base” in relation to a society means a total of—

(a) the amount paid up on its capital shares;

(b) its deferred shares;

(c) the reserve fund;

(d) the retained earnings reserve,

less any amount by which that total has become impaired;

“capital share” means a permanent non-withdrawal share issued on terms that it may be interest-bearing, but does not include a redeemable preference share;

“company” means a body corporate whether incorporated under the law of Jamaica or of any other country;

“connected person” shall be construed in accordance with regulation 3;

“control” in relation to a society or any other company means the power of a person to secure by means of the holding or the possession of voting power in or in relation to that society or other company or by any agreement or by virtue of any other powers conferred by the rules or articles of association or other document relating to the society or other company, that the affairs of the society or other company are conducted in accordance with the wishes of that person;

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

“deferred share” shall mean a share issued on terms that it shall not be withdrawable for not less than three years, and that it may be interest-bearing;

“deposit” means a sum of money paid on terms—

- (a) under which the sum will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provisions of property or services or to the giving of security, and for the purposes of this paragraph, money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—
  - (i) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
  - (ii) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
  - (iii) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

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

“functions” includes powers and duties;

“immediate relative” as respects any person, means his spouse, or his children (including step-children) and their spouses, his parents, his brother or sister;

“land” includes any interest in land;

“licence” means a licence granted under the Building Societies Act;

“manager” includes any person or persons by whatever name called for the time being in charge of the principal office or any branch of a society or any member of a management committee of a society;

“money at call or at short notice” in relation to a society, means money invested by such society (otherwise than with a connected person) by way of loans to or deposits with—

- (a) the Bank of Jamaica, other than the cash reserves or cash balances referred to in Parts VI and VII;
- (b) any society or company licensed under the Financial Institutions Act or any bank;
- (c) any other institution in Jamaica approved for the purpose by the Minister,

repayable on demand or on not more than fourteen days' notice;

“paid-up capital” means the total amount paid up on shares other than withdrawable shares, and shall be construed in accordance with regulation 5;

“prescribed liabilities” means such liabilities as may, by notice to all societies, from time to time be specified by the Bank;

“retained earnings reserve” means a reserve which has been notified as such to the Bank and into which is paid such portion of a society's profits as defined in Part III (including realized capital gains) as the society may determine;

“society” means a building society;

“unsecured” in relation to credit facilities means—

- (a) credit facilities granted without security; or

- (b) in the case of credit facilities granted against security, any part thereof which at any given time exceeds the market value of the assets comprising the security or which exceeds the valuation approved by the Bank whenever it deems that no market value exists for such assets,

and for the purpose of this definition security shall be construed as including a confirmed irrevocable letter of credit and such other instrument as the Bank of Jamaica may from time to time determine.

3. For the purposes of these Regulations, the following persons shall be treated as being connected with a given society ("S") and the society with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company or subsidiary of S;
- (b) a subsidiary of a holding company of S;
- (c) a holding company of a subsidiary of S;
- (d) any company of which S has control;
- (e) any company of which S and the persons connected with S together have control;
- (f) any company which together with S constitute a group;
- (g) an individual who is a director, manager or a person who has control of S or any partner or any immediate relative of such director, manager or person aforesaid;
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

4. For the purpose of these Regulations, "group" in relation to a company, means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);

- (d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

5. In determining the paid-up capital of a society—

- (a) unless the Bank otherwise determines and, subject to paragraph (b), there shall be disregarded any portion of capital subscribed to and paid up by a connected person who had within the three years immediately preceding the payment, received from that society a loan, a deposit or advance of an amount equal to or greater than the amount of that portion of capital; and
- (b) the amount disregarded pursuant to paragraph (a) consequent on any loan, deposit or advance shall be limited to the amount remaining unpaid on the loan, deposit or advance.

6. Nothing in these regulations shall be construed as permitting a society to reduce the amount held in the retained earnings reserve without the prior approval in writing of the Bank.

PART II—*Capital*

7. Every society shall—

- (a) maintain subscribed capital of not less than twenty-five million dollars;
- (b) ensure that not less than four-fifths of the subscribed capital has been paid up in cash.

8. The Minister may from time to time vary the amount specified in regulation 7(a), so, however, that where the amount is increased, a society shall be allowed a reasonable period of time, being not less than twelve months within which to comply.

9. For the purpose of this Part, “subscribed capital” shall mean the aggregate of—

- (a) the amount of capital shares; and
- (b) the amount of deferred shares,

subscribed by members of the society, provided, however, that capital shares shall not total less than such percentage of the subscribed capital as may be specified by the Bank.

10. A society shall maintain at all times a capital adequacy ratio between its capital base on the one hand and its risk-base assets and other risk exposures on the other hand, of not less than such percentage as may be specified by the Bank, and the Bank shall determine the respective weights to be applied to such risk assets and exposures.

11. An existing society which on the 27th day of March, 1995 fails to comply with regulation 7 or 10 shall within one month submit to the Bank for approval a scheme for achieving compliance, and shall comply in any case not later than twelve months from the 27th day of March, 1995.

12. Until a society has complied with regulations 7 and 10 it shall be subject to such conditions to ensure prudent management as the Bank may determine, with the approval of the Minister.

#### PART III—Reserve Fund

13. Every society shall maintain a reserve fund to which at the end of each financial year of the society there shall be transferred ten *per centum* of the net profits of the society in that year until the amount at the credit of the reserve fund is equal to the total of the amount paid up on its capital shares and the amount of its deferred shares.

14. Nothing in regulation 13 shall prevent a society—

- (a) from transferring more than the prescribed percentage of the net profits in any year to its reserve fund; or
- (b) from maintaining a reserve fund in an amount in excess of the amount required to be achieved under regulation 13.

15. For the purposes of this Part, “net profits” means profits after deductions of income tax but does not include any surplus arising from—

- (a) a revaluation of the society’s assets; other than foreign currency; or
- (b) unless the Bank in writing otherwise permits—
  - (i) a sale of the society’s assets to a connected person, where such sale is not for cash or is funded by a loan from the society;

- (ii) any resale, other than for cash, by the society of assets purchased from a connected person.

16. A society shall not reduce its reserve fund without the approval of the Bank.

17. Where the amount at the credit of the reserve fund of a society exceeds its unimpaired capital and the society intends to reduce the reserve funds, the society shall—

- (a) so notify the Bank in writing; and
- (b) apply in writing to the Bank for permission to reduce the reserve fund,

and the Bank may permit the society, in accordance with regulation 18, to reduce the reserve fund by an amount not exceeding the amount of the excess.

18. The reduction referred to in regulation 17 may be effected by the issue by the society of bonus capital or deferred shares, or by the redemption of preference shares if so authorized in each case by the Rules of the society.

#### PART IV—Fixed Assets

19. The fixed assets of a society shall not, without the approval in writing of the Minister, and subject to such conditions as the Minister may specify, exceed an amount equivalent to its capital base.

20. For the purposes of this Part—

- (a) “fixed assets” means the following assets (whether freehold or leasehold) owned by a society and used by the society in the conduct of its business, that is to say—
  - (i) furniture or fixtures;
  - (ii) premises and other real estate;
  - (iii) machinery and equipment, including motor vehicles, but does not include any such machinery, equipment or vehicles from which the society derives income in its capacity as lessor;

- (b) the historical cost method shall be applied in the valuation of fixed assets.

PART V—*Prohibited Business*

21. A society shall not—

- (a) engage in any trade save in so far as may be necessary in the ordinary course of its operations and services, including the satisfaction of debts due to it;
- (b) acquire land save in so far as may be necessary—
- (i) so to do for the purpose of conducting its business or housing its officers or employees; or
  - (ii) in the ordinary course of its operations and services including the satisfaction of debts due to it;
- (c) acquire or deal in its own shares or the shares of a holding company or subsidiary of the society;
- (d) grant credit facilities on the security of its own shares except as is permitted by section 17 of the Act;
- (e) grant credit facilities on the security of the shares of a holding company or subsidiary of the society.

22. A society shall not—

- (a) grant unsecured credit facilities to—
- (i) any of its directors or managers or an immediate relative of such manager or director in excess of 1% of its capital base;
  - (ii) any of its officers or employees or any immediate relative of such officer or employee in excess of an amount equivalent to two years' emoluments of such officer or employee;
- (b) grant unsecured credit facilities in excess of 5% of its capital base or grant credit facilities on terms and conditions more favourable than the general terms and conditions applicable to borrowers generally to—

- (i) any person who, or any firm or corporation which, holds 20% or more of the society's capital or in which such person, the society, its manager, director or any immediate relative of such manager or director, has an interest as a partner, or, as the case may be, a shareholder holding or controlling 20% or more of the voting shares; or
- (ii) any person who holds or controls 20% or more of the society's capital; or
- (iii) any person if the credit facilities are guaranteed by a manager or director of the society or a manager's or director's immediate relative who owns or controls 20% or more of the society's capital; or
- (iv) any firm or corporation if the credit facilities are guaranteed by a manager or director of the society or a manager's or director's immediate relative who, in relation to that firm or corporation, has an interest as a partner, or, as the case may be, owns or controls 20% or more of the voting shares.

**23. A society shall not grant credit facilities—**

- (a) to any person if the credit facilities granted exceed in the aggregate 20% of the society's capital base but where any portion of such credit facilities is unsecured that portion shall not exceed 10% of the society's capital base;
- (b) to any group if the credit facilities exceed in the aggregate 40% of the society's capital base but where any portion of such credit facilities is unsecured that portion shall not exceed 20% of the society's capital base.

**24. A society shall not pay any dividend on its capital shares—**

- (a) until all its capitalized expenditure not represented by tangible assets and all prior losses have been completely written off, so, however, that the Minister may by order, provide that, subject to such terms, conditions, exceptions and restrictions (if any) as he may specify therein, such expenditure shall be deemed not to include expenditure for the purchase of goodwill;

- (b) if the paid-up capital or cumulative balance in the reserve fund has been impaired, until such impairment has been corrected;
- (c) if, having regard to the society's liabilities, it would be imprudent to do so;
- (d) until the requirements of Parts III and VI relating to reserves have been met;
- (e) until all sums due and payable to the Bank by the society have been paid.

**25.** A society shall not directly or indirectly acquire or hold in the aggregate any part of the share capital of undertakings in excess of 100% of its capital base, so, however, that—

- (a) such shareholding shall not, in respect of any one such undertaking as aforesaid, exceed 20% of the society's capital base; and
- (b) the restrictions imposed by this regulation shall not apply where such shareholding is acquired in the course of the satisfaction of debts due to the society but such shareholding shall be disposed of at the earliest suitable time.

**26.—(1)** A society shall not beneficially hold in fee simple for any period exceeding three years from the date of acquisition, land acquired in the course of the satisfaction of debts due to it, but shall forthwith after the expiry of that period sell or otherwise dispose of the land absolutely so that it no longer has, directly or indirectly, any interest or control in respect thereof except by way of security.

(2) The Minister may in writing direct that the time specified in paragraph (1) for sale or disposal of land be extended for a further period or periods.

**27.** For the purposes of this Part—

- (a) any reference to "capitalized expenditure not represented by tangible assets" shall be construed as including a reference to preliminary expenses, organization expenses, share selling commission and brokerage;

- (b) "control" in relation to capital or voting shares, means the power of a person to secure that the voting rights in respect of those shares are exercised in accordance with that person's wishes.

28. Notwithstanding anything to the contrary, where a transaction is entered into by a society, whether before or after the 27th day of March, 1995, in contravention of any provision of this Part, nothing in this Part shall prevent the society from enforcing the transaction against any person or party thereto.

29. Any society which contravenes any regulation in this Part shall be guilty of an offence.

30. Any society which, before the 27th day of March, 1995, has entered into any transaction incompatible with the provisions of this Part, shall within one month of the 27th day of March, 1995, submit to the Bank a statement giving particulars of all such transactions as are still in operation at that date, shall within another month submit a programme for the rectification of each such transaction for consideration by the Bank, and shall comply with such programme as is finally determined by the Bank after due discussion with the society.

#### PART VI—Cash Reserve

31. Every society shall maintain in the form of a deposit with the Bank a cash reserve not less on the average than such percentage of its liabilities in respect of deposits and withdrawable shares as the Bank may from time to time determine and notify to each society.

32. Where any such percentage is to be increased—

- (a) the increase shall not exceed two percentage points in any one period of thirty days; and
- (b) the Bank shall give any society affected at least fifteen days' notice of the date on which the increase is to take place.

33. Subject to regulation 34, for the purpose of determining the amount of the cash reserve required to be maintained by a society during any week—

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[The inclusion of this page is authorized by L.N. 33/1998]

- (a) the amount of its deposit with the Bank shall be the average amount of such deposits as at the close of business on each business day of the month;
- (b) the amount of its liabilities in respect of deposits and withdrawable shares shall be the amount notified to the Bank within the first fifteen days of a month as being the amount of such liabilities on the last day of the previous month.

34. The Bank may from time to time notify a society of a change in the method of calculating the average of the cash reserve to be maintained under this Part.

35. Where a society on any business day of the week fails to maintain with the Bank the required deposit, that society shall pay to the Bank in respect of that day interest calculated on the amount of the deficiency at such rate as the Bank may from time to time determine.

36. The power conferred on the Bank by regulation 31 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.

#### PART VII—*Liquid Assets*

37. Every society shall so conduct its business as to ensure that its liquid assets are on the average not less than such percentage of its

liabilities in respect of deposits and withdrawable shares as the Bank may from time to time determine and notify to each society.

38. For the purposes of this Part, "liquid assets" means—

- (a) cash reserves on deposit with the Bank in accordance with Part VI;
- (b) cash balances with the Bank in excess of such required amount;
- (c) notes and coins which are legal tender in Jamaica;
- (d) money at call or short notice not being money taken into account in determining the liquid assets of the bank or other financial institution with which it is deposited;
- (e) Treasury Bills of the Government of Jamaica;
- (f) local registered stocks the maturity date of which will occur within a period not exceeding nine months;
- (g) amounts deposited with the Bank for such period as the Bank may from time to time determine;
- (h) such other assets as the Minister may determine after consultation with the Governor of the Bank.

39. Where any such percentage is to be increased—

- (a) the increase shall not exceed five percentage points in any one period of thirty days; and
- (b) the Bank shall give any society affected at least fifteen days' notice of the date on which the increase is to take place.

40. Subject to regulation 41, for the purpose of determining the amount of the liquid assets required to be maintained by a society during any week—

- (a) the amount of its liquid assets shall be the average amount of such assets at the close of business on Wednesdays of the month; and
- (b) the amount of its liabilities in respect of deposits and withdrawable shares 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.

41. The Bank may from time to time notify a society of a change in the method of calculating the average of the liquid assets required to be maintained under this Part.

42. Where a society on any business day of the week fails to maintain as liquid assets the amount which it is required to maintain under this Part, that society shall pay to the Bank in respect of that day interest calculated on the amount of the deficiency at such rate as the Bank may from time to time determine.

43. The power conferred on the Bank by regulation 37 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.

#### PART VIII—Returns

44. Subject to regulation 45, every society shall in relation to its operations in Jamaica or elsewhere deliver to the Bank in such form as the Minister may from time to time approve—

- (a) not later than fourteen working days after the last day of each month a monthly statement of assets and liabilities;
- (b) not later than fourteen working days after the last day of each month a monthly return providing an analysis of customers' liabilities to the society in respect of credit facilities;

- (c) not later than sixty days after the end of each year, an annual return made up at the end of that year, of—
- (i) the society's current operating earnings and expenses during the year;
  - (ii) all debts payable by the society in Jamaica or elsewhere in respect of which during a period of seven or more years no transaction has taken place and no statement of account has been requested or acknowledged by the creditor;
  - (iii) drafts or bills of exchange drawn, certified or accepted by the society and payable in Jamaica or elsewhere, and outstanding for seven or more years from the date of such drawing, certification or acceptance, as the case may be;
  - (iv) all dividends and bonuses remaining unpaid for a period exceeding five years;
  - (v) land acquired in the course of the satisfaction of debts due to the society and beneficially held in fee simple by the society;
- (d) not later than fourteen working days after the month to which it relates a monthly return showing particulars of credit facilities in respect of which no interest which is due and payable has been paid for a period of three months or more;
- (e) not later than fourteen working days after the month to which it relates a monthly return showing particulars of the society's contingent and prospective liabilities;
- (f) such other returns, statements or information as the Minister may require.

45. No statement or return shall be required under paragraph (a), (b), (c)(i), (d), (e) or (f) of regulation 44 in respect of the affairs of any particular customer of a society.

46. The Minister may, if he thinks necessary in any particular case, extend the time prescribed for the sending of a statement or return under regulation 44.

47. Every society which fails to make any return or furnish any information in accordance with the requirements of this Part or the Bank of Jamaica Act, shall be guilty of an offence.

48. If any return required to be made, or any information required to be furnished, under or pursuant to this Part or the Bank of Jamaica Act, is transmitted by post, the date appearing by the stamp or mark of the post office in Jamaica upon the envelope or wrapper enclosing the return or information received by the Minister or the Bank, as the case may be, as the date of deposit in the post office shall be taken *prima facie* for the purposes of this Part to be the day upon which the return was made or the information was furnished.

49. The Bank may publish in a daily newspaper printed and circulating in Jamaica information in such form as may be approved by the Minister on the liabilities and assets of each society furnished under paragraph (a) of regulation 44:

Provided that no information in respect of the affairs of a particular customer of a society shall be so published.

50. In this Part "working day" means any day on which a society is normally open for business.

#### PART IX—Accounts

51.—(1) Every society shall—

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

(2) For the purposes of this Part "relevant documents" means an audited balance sheet and profit and loss account in respect of all business transacted by the society in its last financial year and signed by not less than two of the society's directors.

(3) Any society which contravenes this regulation shall be guilty of an offence.

52. Where a society has a subsidiary or subsidiaries, the relevant documents required for the purposes of regulation 51 shall include a Consolidated Balance Sheet and Consolidated Profit and Loss Account relating to the society and its subsidiaries.

53. Where a society—

- (a) is a subsidiary or parent of; or
- (b) shares a common parent with a company which is the immediate holding company of; or
- (c) directly or indirectly controls or is controlled by,

any other company, the society shall ensure that each of the aforesaid companies submits to the Bank an audited balance sheet and profit and loss account in respect of all business transacted by it in its last financial year and signed by not less than two of its directors.

54. If in the opinion of the Bank the information contained in the consolidated accounts furnished by a society or in individual accounts furnished by a society's subsidiary, parent or holding company, as the case may be, indicates the likelihood of insolvency, on the part of the society, its parent or holding company or any of its subsidiaries, the Bank may, after consultation with the society, issue to the society such directions as the Bank thinks fit and, without prejudice to the generality of the foregoing, the directions may require—

- (a) the increase of the paid-up capital of the society;
- (b) the sale, transfer or other disposition of the subsidiary or of part of its business;
- (c) the winding up of the subsidiary.

55. Where a subsidiary of a society is registered under the Industrial and Provident Societies Act or where a person who has effective control of a society also has effective control of a society registered under that Act—

- (a) the accounts of the subsidiary shall be consolidated with those of the society to the intent that—
  - (i) deposits taken by the subsidiary shall be deemed to be liabilities of the society for the purposes of Parts VI and VII;
  - (ii) loans or credit facilities granted by the subsidiary shall be deemed to be loans of the society in the computation of risk-based assets of the society pursuant to regulation 10 and for the purposes of Part V;
- (b) any transfer of funds to the subsidiary by the society shall be deemed to be a loan or the granting of credit facilities for the purposes of Part V;
- (c) the society shall make returns under Part VIII in relation to the operations in Jamaica of the subsidiary as if the subsidiary were a society;
- (d) the society shall make a return of all loans transferred to the subsidiary whether transferred for consideration or for purposes of collection.

55A.—(1) Without prejudice to the provisions of regulation 51, the Supervisor may, by instrument in writing, require the manager of any society to supply, within such time as may be specified in the instrument, such information relating to the financial position of the society including that of its branches and subsidiaries wherever located as may be so specified.

(2) Any person who fails to comply with the requirements of such an instrument or who in response to such instrument knowingly or wilfully supplies false information to the Supervisor shall be guilty of an offence.

(3) The manager of a society which is or is likely to become unable to meet its obligations shall, without prejudice to any obligation imposed under paragraph 1, forthwith inform the Supervisor in writing of the financial position of the society.

#### PART X—*Credit Facility Reserve*

56. Where, in respect of any credit facilities granted by a society, no payment of principal or interest which is due and payable has been made for a period of three months—

- (a) the society shall establish an appropriate reserve (hereinafter referred to as a credit facility reserve) in respect of all such facilities; and
- (b) interest in respect of such facilities shall not continue to be taken to the profit and loss account after the expiration of that period;
- (c) in respect of any transaction prior to the 27th day of March, 1995, pursuant to which interest has been carried to the profit and loss account after the expiration of the three-month period, the society shall take steps either—
  - (i) to reverse such interest carried after the three-month period; or
  - (ii) to establish a credit facility reserve for any such unpaid interest as aforesaid.

57. There shall be shown on the audited balance sheet of each society the aggregate amount of the credit facility reserve and the portion thereof which has been written off against the profit and loss account.

58. Where the terms of any credit facilities referred to in regulation 56 have been altered pursuant to a renegotiation, the society shall within seven days after the date of such negotiation notify the Bank in writing giving full particulars thereof.

#### PART XI—*Auditors*

59.—(1) Subject to such conditions as may be specified by the Minister the Bank shall be entitled to summon the auditor or any former auditor of a society for the purpose of making enquires into the operations and financial position of that society.

(2) Where an auditor is summoned under this regulation the Bank shall in writing notify the society concerned which shall have the right to attend any meeting held by the Bank with that auditor.

60. An auditor or former auditor of a society shall not be regarded as being in breach of his duty to the society in consequence of any disclosure to an authorized officer pursuant to this Part.

61. Where an auditor appointed by a society—

- (a) intends to resign at any time during the currency of his appointment; or
- (b) has given notice in writing to the society of his unwillingness to be considered for reappointment at the expiration of the period for which he is appointed,

that auditor shall give written notice to the Bank accordingly, and shall in such notice state the reasons for his intention to resign or his unwillingness to be considered for reappointment.

62. Where—

- (a) a society intends to terminate the appointment of its auditor, or
- (b) a resolution has been passed at any general meeting of the society, providing that the auditor shall not be reappointed,

the society concerned shall notify the Bank accordingly, and shall in such notification state the reason for such intention to terminate or for the passage of such resolution.

*PART XII—Actual and Apprehended Insolvency*

63. The Minister after consultation with the Supervisor may in relation to a society which is or appears likely to become unable to meet its obligations take such steps as he considers best calculated to serve the public interest, that is to say, he may—

- (a) suspend or revoke the society's licence in accordance with Part C of the First Schedule;
- (b) present to the court a petition for the winding up of the society or an application regarding reconstruction of the society.

First  
Schedule.  
Part C.

64.—(1) Where the Supervisor believes that any of the conditions specified in paragraph 1, 2, 3 or 4 of Part D of the First Schedule exists in relation to any society, the Supervisor may—

- (a) require the society to give an undertaking signed by the majority of the members of the society's Board to take such corrective action as may be agreed between the society and the Supervisor; or
- (b) give to the society such directions as appear to the Supervisor to be desirable in the interest of the society's depositors and holders of withdrawable shares, whether for the purpose of safeguarding its assets or otherwise, and may, in particular—
  - (i) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
  - (ii) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;

Part A.

- (iii) prohibit the society from soliciting deposits either generally or from persons who are not already depositors;
  - (iv) prohibit the society from entering into any other transaction or class of transactions;
  - (v) require the removal of any director or manager, or
- (c) issue a cease and desist order in accordance with Part A of the First Schedule; or
- (2) Where a society ceases to be liable for deposits which were or could have been the subject matter of the Supervisor's powers under this regulation—
- (a) no direction shall be given by the Supervisor to that society pursuant to this regulation; and
  - (b) any direction of the Supervisor which was given to that society shall cease to have effect.
- (3) Where the Supervisor believes that a society is or appears likely to become unable to meet its obligations or that any of the conditions specified in paragraph 5, 6, 7, 8, 9, 10, 11 or 12 of Part D of the First Schedule exists, the Supervisor may—
- (a) require the society to give an undertaking signed by the majority of the members of the society's board or committee of management to take such corrective action as may be agreed between the society and the Supervisor; or
  - (b) give to the society such directions as appear to the Supervisor to be desirable in the interest of the society's depositors and holders of withdrawable shares whether for the purpose of safeguarding its assets or otherwise, and may, in particular—
    - (i) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
    - (ii) impose limitations on the acceptance of deposits, the issue of withdrawable shares, the granting of credit or the making of investments;
    - (iii) prohibit the society from soliciting deposits and shares;
    - (iv) prohibit the society from entering into any other transaction or class of transactions;
    - (v) require the removal of any director or manager; or
  - (c) issue a cease and desist order in accordance with Part A of the First Schedule; or
  - (d) assume the temporary management of the society in accordance with Part B of the First Schedule.
- (4) The Minister may, after consultation with the Supervisor, give to the Supervisor directions of a general character as to the policy to be followed by the Supervisor in the performance of his functions under para-

First  
Schedule.  
Part D.

graph (1), in relation to matters appearing to the Minister to concern the public interest.

(5) The Supervisor shall inform the Minister in writing of any action that he intends to take under paragraph 1.

65. A society which fails to comply with any requirement or contravenes any prohibition imposed by any direction or cease and desist order under this part shall be guilty of an offence.

66. A contravention of a prohibition imposed under this Part shall not invalidate any transaction.

PART XIIA—*Miscellaneous*

66A.—(1) A person to whom this regulation applies shall not, without the express authorization in writing of the Minister, act or continue to act as a director of, or be directly or indirectly concerned in the management of any society.

(2) Paragraph 1 applies to any person who—

- (a) is not a fit and proper person as referred to in section 8B(3) of the Act;
- (b) whether in Jamaica or elsewhere has been a director of or directly concerned in the management of a society, bank, licensee under the Financial Institutions Act or other financial institution referred to in the Second Schedule.

Second  
Schedule.

(3) Any person who contravenes the provisions of paragraph 1 shall be guilty of an offence.

(4) It shall be the duty of every society to ensure that, in relation to the society, persons do not act or continue to act in contravention of paragraph 1 and, subject to paragraph 5, any society which contravenes this paragraph shall be guilty of an offence.

(5) It shall be a defence to a society charged pursuant to paragraph 4 for a society to prove that it took all reasonable steps in the circumstances to prevent a contravention of paragraph 1.

66B.—(1) This regulation shall apply to an offence specified in the Third Schedule.

Third  
Schedule.

(2) The supervisor may give to any person which he has reason to believe has committed an offence to which this regulation 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 regulation.

(3) No person shall be liable to be convicted of the offence if the fixed penalty is paid in accordance with this regulation 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 paragraph 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 regulation in respect of an offence, proceedings shall not be taken against the person for that offence until the end of the fifteen days following the date of the notice or such longer period (if any) as may have been specified therein.

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

(6) Payment of a fixed penalty under this regulation shall be made to the Collector of Taxes specified pursuant to paragraph 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 paragraph 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 paragraph 4, proceedings will not be taken for the offence; and
  - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid.

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

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

(10) The Minister may, by order, make provision as to any matter incidental to the operation of this regulation, and in particular, any such order may—

- (a) prescribe the form of notice under paragraph 2, and the Collector of Taxes to whom a fixed penalty is payable;
- (b) specify the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (c) contain provisions as to the arrangements for the Collector of Taxes to furnish to the Supervisor, information with regard to any payment pursuant to a notice under this regulation;
- (d) amend the Third Schedule.

Third  
Schedule.

(11) An order made under paragraph 10 shall be subject to affirmative resolution.

PART XIII—*Offences and Penalties*

67. The offences specified in the first column of the Fourth Schedule shall incur the penalties specified in relation thereto in the second column thereof. Fourth  
Schedule.

68. Every offence under and every contravention of these Regulations may be tried summarily before a Resident Magistrate.

69. Where any person commits an offence against these Regulations for which no penalty is expressly provided he shall be liable to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months.

70. A person upon whom a fine is imposed under this Act may be sentenced in default of payment thereof to imprisonment with or without hard labour in the case of a fine—

- (a) not exceeding two hundred thousand dollars, for a period not exceeding three months;
- (b) exceeding two hundred thousand dollars but not exceeding one million dollars, for a period not exceeding six months;
- (c) exceeding one million dollars, for a period not exceeding twelve months.

71. Where an offence under this Act committed by a society is proved—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officers of the society or any person who was purporting to act in that capacity; or
- (b) to be attributable to the failure of any such director, manager, secretary or other officer or person to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other officer or person as aforesaid, as well as the society shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

72. For the purposes of this Part, a person shall be deemed to be a director of a society if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the society or any of them act.

## FIRST SCHEDULE

(Regulations 63 and 64)

## PART A

*Cease and Desist Order*

1. Before issuing a cease and desist order the Supervisor shall cause to be served on the society concerned a notice—

- (a) containing a statement of the facts constituting the alleged unsafe or unsound practice or the alleged contravention and, where appropriate, the name of the person against whom the allegation is made; and
- (b) specifying a date (not being earlier than thirty nor later than sixty days after the date of service of the notice) and a place at which a hearing will be held to determine whether a cease and desist order should be made.

2. If, at any time prior to the date of the hearing specified in the notice under paragraph 1, the society concerned consents to the making of a cease and desist order and the terms of the order, the hearing shall be waived and the order shall be made accordingly.

3. If at the hearing—

- (a) the society concerned is not represented, the society 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 society; or
- (b) the allegations specified in such notice are established in relation to the society, the Supervisor shall make a cease and desist order in respect of that society,

and a copy of the order shall be served on the society, and where appropriate, on the person named in the notice pursuant to paragraph 1 (a).

4. A cease and desist order shall—

- (a) require the society concerned or the person concerned, as the case may be, to cease and desist from the actions giving rise to the order;
- (b) if made under paragraph 2, take effect from the due date as may be specified therein;
- (c) if made under paragraph 3, take effect from the date of the service of the order or from such later date as may be specified therein.

5. Where in relation to any society—

- (a) a notice has been served pursuant to paragraph 1; and
- (b) at any time prior to the holding of a hearing in accordance with that paragraph, the Supervisor is satisfied that the situation giving rise to the notice is likely to endanger the financial position of the society or the interests of its customers,

the Supervisor may forthwith serve on that society and on any person named in such notice, a temporary cease and desist order which shall take effect as from the date of such notice.

FIRST SCHEDULE, *contd.*

6. Where a temporary cease and desist order is served under paragraph 5, the society or, as the case may be, the person on whom it is served may, within ten days after the date of such service, apply to a Judge of the Supreme Court in accordance with rules of court to set aside, limit, or suspend the operation or enforcement of such order.

## PART B

*Temporary Management of a Society*

1.—(1) For the purposes of regulation 64(d) the Supervisor shall serve on the society concerned a notice, announcing his intention of temporarily managing the society from such date and time as may be specified in the notice.

(2) The Supervisor may appoint any person to manage on his behalf any society specified in the notice under sub-paragraph (1).

(3) A copy of the notice referred to in sub-paragraph (1) shall be sent to the Registrar of the Supreme Court and shall be posted in a conspicuous position at each place of business of the society and shall be published in a newspaper printed and circulating in Jamaica.

(4) Upon the date and time specified in the notice referred to in sub-paragraph (1), there shall vest in the Supervisor full and exclusive powers of management and control of the society, 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 society; and
- (e) initiate, defend and conduct in the name of the society, any action or proceedings to which the society may be a party.

(5) Subject to sub-paragraph (6), not later than sixty days after the Supervisor has assumed temporary management of the society he shall apply to the Court (furnishing full particulars of the assets and liabilities of the society) for an order confirming the vesting in the Supervisor full exclusive powers of management of the society as described in sub-paragraph (4).

(6) An application under sub-paragraph (5) shall be made by the Attorney-General.

(7) All expenses of and incidental to the temporary management of a society shall be paid by such society in such manner as the Supervisor may determine.

2.—(1) A society which is served with a notice under paragraph 1(1) may, within ten days after the date of such service, appeal to the Court of Appeal and that Court may make such order as it thinks fit.

(2) The Court of Appeal may, on sufficient cause being shown, extend the period referred to in sub-paragraph (1).

(3) The Supervisor may, if he considers it to be in the best interests of members and depositors of a society which is being temporarily managed by him, apply to the Court for an order staying—

- (a) the commencement or continuance of any proceedings by or against the society, for such period as the Court thinks fit; or
- (b) any execution against the property of the society.

(4) Where the Supervisor has served notice on a society under paragraph 1(1), the Supervisor shall within sixty days from the date specified in such notice or within such longer period as a Judge of the Supreme Court may allow—

FIRST SCHEDULE, *contd.*

- (a) restore the society to its board of directors, owners or members, as the case may be; or
- (b) present a petition to the Court for the winding up of the society; or
- (c) propose a compromise or arrangement between the society and its creditors or a reconstruction.

## PART C

*Suspension or Revocation of Licence*

1. Before suspending or revoking a licence the Minister shall consult with the Bank of Jamaica and give to the society concerned notice in writing of his intention so to do, specifying the reasons therefor and indicating a period (not less than thirty days) within which the society may submit to him a written statement of objections or may make representations by oral submissions (with or without the assistance of counsel).

2. As soon as convenient after the receipt by the Minister of the written statement or oral submissions aforesaid or after the expiration of the period specified in the notice, whichever first occurs, the Minister shall advise the society of his decision by instrument in writing.

3. Where a society has been notified of the suspension or revocation of its licence it may, within ten days after the date of such notification, appeal to the Court of Appeal and that Court may make such order as it thinks fit.

## PART D

*Conditions Subject to Remedial Action under Regulation 64*

1. The society has breached the provisions of its rules of incorporation.
2. The society, a director or any person employed (either as agent or otherwise) in the conduct of the business of the society—
  - (a) is engaging or is about to engage in an unsafe or unsound practice in conducting the business of the society; or
  - (b) is contravening a Standard of Best Practice or has contravened—
    - (i) any provisions of these Regulations or regulations made under the Bank of Jamaica Act;
    - (ii) any condition of the licence granted under section 8B (1) of the Act.
3. The society's capital base is less than the amount required by the Act or these Regulations.
4. A director or manager has ceased to be a fit and proper person in accordance with section 8B(3) of the Act and the society has refused or neglected to take appropriate action.
5. A final judgment has been obtained against the society and has remained unsatisfied for at least one month.
6. The society—
  - (a) has given false or misleading information in its application for a licence; or
  - (b) has continued to take deposits in violation of a direction; or
  - (c) has given false statements concerning the affairs of the society; or
  - (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 society by an authorized officer.

FIRST SCHEDULE, *contd.*

7. The society has failed to commence business of a building society within six months of the date of the granting of a licence.
8. The society is contravening or has contravened any cease and desist order or any directions issued by the Supervisor pursuant to the Act or these Regulations.
9. The value of the society's assets is substantially less than the amount of its liabilities.
10. The society has notified the Supervisor that it proposes to surrender its licence.
11. The society has ceased to carry on the business of being a building society.
12. A receiver has been appointed in respect of the society.

SECOND SCHEDULE (Regulation 66A(2))

*Societies, Banks, Licensees under the Financial Institutions Act or other Financial Institutions to which Regulation 66A (2) applies*

Any society, bank, licensee under the Financial Institutions Act or other financial institution, whether in Jamaica or elsewhere—

- (a) which has been wound up by a court; or
- (b) the licence of which has been revoked, unless such revocation was consequent upon—
  - (i) the amalgamation of that society, bank, licensee or other financial institution with any other society, bank, licensee or other financial institution; or,
  - (ii) a voluntary winding-up of a society, bank, licensee or other financial institution in compliance with the relevant provisions relating thereto respectively, in the Act, the Banking Act and the Financial Institutions Act;
- (c) which has been placed in receivership;
- (d) which has entered into a composition with its creditors;
- (e) whose business has been conducted imprudently or fraudulently;
- (f) which has failed to meet the solvency requirements prescribed by law.

THIRD SCHEDULE (Regulation 66B)

*Offences in respect of which liability to conviction may be discharged by payment of a fixed penalty under Regulation 66B*

Nature of offence	Regulation	Penalty
Failure to submit, publish or exhibit last audited balance sheet and profit and loss account (including consolidated accounts for society and subsidiaries)	51(3)	\$150,000.00
Failure to make return or furnish information	47	\$150,000.00 for each day of default
Acting or continuing to act as director or concerned in management without express authorization	66A(3)	\$300,000.00.

[The inclusion of this page is authorized by L.N. 1/2006]

Brief Description of Offences	FOURTH SCHEDULE	(Regulation 67)
	Relevant Regulation	Penalty
Engaging in prohibited business.	29	On conviction, a fine not exceeding \$1,000,000.00.
Failure to make returns or furnish information.	47	On conviction, a fine not exceeding \$250,000.00 for each day during which the failure continues after the expiry of the time prescribed for making the return or furnishing the information.
Failure to submit, exhibit or publish last audited balance sheet and profit and loss account (including consolidated balance sheets and profit and loss accounts).	51(3)	On conviction, a fine not exceeding \$250,000.00.
Failure of manager to supply information regarding financial position of society.	55A(2)	On conviction to a fine not exceeding \$1,000,000.00.
Failure to comply with a direction or cease and desist order.	65	On conviction, a fine not exceeding \$2,000,000.00.
Acting or continuing to act as a director of or to be directly or indirectly concerned in the management of any society.	66A(3)	On conviction, a fine not exceeding \$500,000.00.
Permitting persons who are not fit and proper persons or who are concerned in societies, banks or financial institutions to which the Second Schedule applies to be concerned in the management of a society.	66A(4)	On conviction, a fine of \$1,000,000.00.