



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

No. 12c

THE BANKING ACT

THE BANKING (AMALGAMATION AND TRANSFERS) REGULATIONS, 1996

In exercise of the power conferred on the Minister by subsection (2) of section 33 of the Banking Act, the following Regulations are hereby made:—

Citation. 1. These Regulations may be cited as the Banking (Amalgamation and Transfers) Regulations, 1996.

Interpretation. 2. In these Regulations—
“bank” has the same meaning as in the Banking Act;
“holding company” has the same meaning as in the Companies Act;
“licence” means a licence granted under the Banking Act or the Financial Institutions Act, as the case may require;
“licensee” means a company duly licensed under the Financial Institutions Act;
“subsidiary” has the same meaning as in the Companies Act.

Amalgamation

Application for amalgamation. 3. Where two or more banks or, as the case may be, one or more banks and one or more licensees propose to amalgamate as a bank, a joint application shall be submitted to the Minister setting out the scheme of the proposed amalgamation and accompanied by the proposed amalgamation agreement setting out the terms and mode of effecting the amalgamation, and in particular—

- (a) the proposed name of the amalgamated bank and its proposed registered office;
- (b) the names of the proposed directors of the amalgamated bank;
- (c) the manner in which the shares of each applicant are to be converted into shares or stock of the amalgamated bank;

- (d) the manner in which any payments are to be made to any dissenting shareholders of an applicant;
 - (e) the proposed memorandum and articles of association of the amalgamated bank;
 - (f) details of any other matter necessary to perfect the amalgamation and relevant to the proposed operation of the amalgamated bank;
 - (g) the proposed effective date of the amalgamation.
- No repayment of capital. 4. With respect to such conversion of shares or stock, and such payments to dissenting shareholders as are contemplated by paragraphs (c) and (d) of regulation 3, respectively, there shall be no repayment of capital.
- Cancellation of licences. 5. On the approval by the Minister of an application for amalgamation, the existing licence of each applicant shall be deemed to be cancelled.
- Section 4 of Act to apply to application. 6. The application for amalgamation shall be deemed to be a first application for a licence for the amalgamated bank, and accordingly, the provisions of section 4 of the Banking Act shall apply to such application.
- Cross-ownership of shares. 7. If the shares of one of the applicants are held by or on behalf of another of the applicants, other than shares held in the capacity of a personal representative or by way of security, the proposed amalgamation agreement must—
 - (a) provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect thereof; and
 - (b) not contain any provision for the conversion of those shares into shares of the amalgamated bank.
- Shareholders' approval. 8. The directors of each applicant shall submit the proposed amalgamation agreement to a general meeting of shareholders, for approval by special resolution, and notice of that meeting must—
 - (a) set out the terms and conditions of the agreement;
 - (b) be published on at least two occasions in a newspaper in general circulation in Jamaica, the first of such publications being not less than twenty-eight days prior to the meeting, and the second, not less than fourteen days prior to the meeting;
 - (c) be transmitted to each shareholder in accordance with the provisions of the Companies Act.
- Termination of agreement. 9. An amalgamation agreement may provide that, at any time prior to the issue of a licence to the amalgamated bank, the agreement may be terminated by the directors of an applicant notwithstanding

that the agreement has been approved by the shareholders of all or any of the applicants.

Amalgama-
tion of
bank with
subsidiaries.

10. A bank may amalgamate with one or more wholly owned subsidiaries which are licensed under the Financial Institutions Act by submitting an application in the form of a scheme in accordance with regulation 3, but shall not be subject to the requirements of paragraphs (c) and (e) of regulation 3 and regulation 8, where—

- (a) the proposed scheme is approved by a resolution of the directors of the bank and of each amalgamating subsidiary;
- (b) the resolutions provide that—
 - (i) the shares of each amalgamating subsidiary will be cancelled without any repayment of capital in respect thereof; and
 - (ii) the memorandum and articles of association of the bank are to become those of the amalgamated bank; and
 - (iii) no shares will be issued by the amalgamated bank in respect of the amalgamation.

Cancellation
of licences
of sub-
sidiaries.

11. On the approval by the Minister of an application under regulation 10, the existing licences of the subsidiaries will be deemed to be cancelled, and the licence of the applicant bank will continue as that of the amalgamated bank.

Amalgama-
tion of sub-
sidiaries.

12. Where a bank and one or more licensees are wholly-owned subsidiaries of the same holding company, they may amalgamate and continue as a bank by submitting a joint application in the form of a scheme in accordance with regulation 3, but shall not be subject to the requirements of paragraphs (c) and (e) of regulation 3, and regulation 8 if—

- (a) the proposed scheme is approved by a resolution of the directors of each applicant and the directors of the holding company; and
- (b) the resolutions provide that—
 - (i) the shares of all applicants, except those of the bank, will be cancelled without any repayment of capital in respect thereof;
 - (ii) the amalgamated bank will adopt the memorandum and articles of association of the bank; and
 - (iii) the capital of the applicants whose shares are cancelled will be added to the capital of the bank.

Cancellation
of licences
of sub-
sidiaries.

13. On the approval by the Minister of an application under regulation 12, the existing licences of the subsidiaries which are licensees will be deemed to be cancelled and the licence of the bank will continue as that of the amalgamated bank.

Cancellation of special permission or concession. 14. On approval by the Minister of an application under these Regulations for an amalgamation, any existing special permission or concession previously granted by order or otherwise under the Banking Act or the Financial Institutions Act to any applicant or subsidiary, as the case may be, will be deemed to be cancelled without prejudice to any transaction already effected in pursuance of the said permission or concession.

Transfer of Business

Application for approval of scheme to transfer business. 15. Where a bank makes application to the Minister for approval of a scheme to transfer its business (in whole or in part) to another bank, or as the case may be, to a licensee, such application shall be accompanied by a proposed agreement of purchase and sale ("sale agreement") setting out the proposed terms and means of effecting the transfer.

Nature of consideration. 16. The consideration for the transfer may be cash or fully paid shares in the transferee, or in part cash and in part fully paid shares in the transferee, or such other consideration as is provided for in the sale of agreement.

Approval of proposed sale agreement by special resolution. 17. The directors of the selling bank shall submit to a meeting of the holders of shares of the bank, the proposed sale agreement for approval by special resolution, and notice of that meeting must—
(a) set out the terms and conditions of the agreement;
(b) be published on at least two occasions, in a newspaper in general circulation in Jamaica, the first of such publications being not less than twenty-eight days prior to the meeting, and the second, being not less than fourteen days prior to the meeting;
(c) be transmitted to each shareholder in accordance with the provisions of the Companies Act.

Abandonment of sale. 18. Where the special resolution so states, the directors of the selling bank may, subject to the rights of third parties, abandon the sale notwithstanding approval by the shareholders.

Proposal for new issue or variation of special permission or concession. 19. Where either the selling bank or purchasing bank or licensee or both had previously received, by order or otherwise, a special permission or concession under a provision of the Banking Act or the Financial Institutions Act, the Minister in considering the application, may—
(a) take that permission or concession into account and may require such bank or licensee to make a proposal for continuation or variation of that permission or concession and to provide relevant particulars; and
(b) require such bank or licensee to furnish additional particulars.

Minister to be satisfied of certain matters for approval of transfer: 20. Where the consideration for the transfer involves the acquisition of effective control of the transferee within the meaning of section 20 of the Banking Act, or, as the case may be, section 20 of the Financial Institutions Act, the Minister shall not approve the transfer unless properly satisfied as required by the appropriate section.

Dated this 28th day of January, 1997.

OMAR DAVIES,
Minister of Finance and Planning.

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