

THE BANKING SERVICES ACT

The Banking Services (Amalgamations and Transfers) (Banks and Merchant Banks) Regulations, 2015

In exercise of the power conferred on the Supervisory Committee by subsection (1) of section 131 of the *Banking Services Act*, the following Regulations are hereby made, with the approval of the Minister:-

Citation. 1. These Regulations may be cited as the Banking Services (Amalgamations and Transfers) (Banks and Merchant Banks) Regulations, 2015.

Interpretation. 2. In these Regulations –

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

"holding company" has the meaning assigned to it in the *Companies Act*;

"licence" has the meaning assigned to it in the *Banking Services Act*;

"subsidiary" has the meaning assigned to it in the *Banking Services Act*.

Application of Regulations. 3. These Regulations shall apply to deposit taking institutions other than building societies.

Amalgamation

Application for amalgamation. 4. Where two or more deposit taking institutions propose to amalgamate as a deposit taking institution, a joint application

shall be submitted to the Supervisory Committee, 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 deposit taking institution and its proposed registered office;
- (b) the names of the proposed directors of the amalgamated deposit taking institution;
- (c) the manner in which the shares of each applicant are to be converted into shares or stocks of the amalgamated deposit taking institution;
- (d) the manner in which any payments are to be made to any dissenting shareholders of an applicant;
- (e) the proposed articles of incorporation of the amalgamated deposit taking institution;
- (f) details of any other matters necessary to perfect the amalgamation and relevant to the proposed operation of the amalgamated deposit taking institution;
- (g) the proposed effective date of the amalgamation.

No repayment of capital.

5. With respect to such conversion of shares or stock, and such payment to dissenting shareholders as are contemplated by paragraphs (c) and (d) of regulation 4, respectively, there shall be no repayment of capital.

Cancellation of licences.

6. On the approval by the Supervisory Committee of an application for amalgamation, the existing licence of each applicant shall be deemed to be cancelled.

Section 19 of Act to apply to application.

7. The application for amalgamation shall be deemed to be a first application for a licence for the amalgamated deposit taking institution, other than a building society, and accordingly, the provisions of section 19 of the *Banking Services Act* shall apply to such application.

Cross ownership of shares.

8. If the shares of one of the applicant 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 shall -

- (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 deposit taking institution.

Shareholders' approval.

9. 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 shall -

- (a) set out the terms and conditions of the agreement;
- (b) unless the Supervisor otherwise directs in writing, 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*.

Termination of agreement.

10. An amalgamation agreement may provide that, at any time prior to the issue of a licence to the amalgamated deposit taking institution, 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.

Amalgamation of deposit taking institution with subsidiaries.

11. A deposit taking institution may amalgamate with one or more wholly-owned subsidiaries licensed under the *Banking Services Act* by submitting an application in the form of a scheme in accordance with regulation 4 but shall not be subject to the requirements of paragraphs (c) and (e) of regulation 4, and regulation 8, where -

- (a) the proposed scheme is approved by a resolution of the directors of the deposit taking institution 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 articles of incorporation of the deposit taking institution are to become those of the amalgamated deposit taking institution; and
 - (iii) no shares will be issued by the

amalgamated deposit taking
institution in respect of the
amalgamation.

**Amalgamation
of
subsidiaries.**

12. Where a deposit taking institution (the principal deposit taking institution) and one or more deposit taking institutions are wholly-owned subsidiaries of the same holding company, they may amalgamate and continue as the principal deposit taking institution by submitting a joint application in the form of a scheme in accordance with regulation 4, but shall not be subject to the requirements of the paragraphs (c) and (e) of regulation 4 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 principal deposit taking institution, will be cancelled without any repayment of capital in respect thereof; and
 - (ii) the capital of the applicants whose shares are cancelled will be added to the capital of the principal deposit taking institution.

**Cancellation
of licences of
subsidiaries.**

13. On the approval by the Supervisory Committee of an application under regulation 6, the existing licences of the amalgamated subsidiaries will be deemed to be cancelled and the licence of the principal deposit taking institution will continue as

that of the amalgamated deposit taking institution.

Cancellation of special permissible or concession.

14. On approval by the Supervisory Committee of an application under these Regulations for an amalgamation, any existing special permission or concession previously granted by order or otherwise under the *Banking Services Act* or any repealed enactment that has been replaced by the *Banking Services Act* to any applicant or subsidiary, as the case may be, shall 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 the business.

15. Where a deposit taking institution makes an application to the Supervisory Committee for approval of a scheme to transfer its business (in whole or in part) to another deposit taking institution, the application shall be accompanied by a proposed agreement of purchase and sale ("sale agreement") setting out 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 sales agreement.

Approval of proposed sale agreement by special resolution.

17. The directors of the selling deposit taking institution shall submit to a meeting of the holders of shares of that deposit taking institution, the proposed sale agreement for approval by special resolution, and notice of that meeting shall -

- (a) set out the terms and conditions of the agreement;
- (b) unless the Supervisory Committee otherwise directs in

writing, 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; and

- (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 deposit taking institution may, subject to the rights of third parties, abandon the sale notwithstanding approval by the shareholders under section 9.

Proposal for new issue or variation of special permission or concession. 19. Where either the selling deposit taking institution or purchasing deposit taking institution or both had previously received, by order or otherwise, a special permission or concession under a provision of the *Banking Services Act* or repealed enactment that has been replaced by the *Banking Services Act*, the Supervisory Committee in considering the application may -

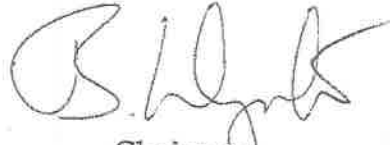
- (a) take that permission or concession into account and may require such deposit taking institution to make a proposal for continuation or variation of that permission or concession and to provide relevant particulars; and
- (b) require such deposit taking institution to furnish additional information.

Supervisory Committee to be satisfied of 20. Where the consideration for the transfer involves the

**certain
matters for
approval of
transfer.**

acquisition of effective control of the transferee within the
meaning of section 77 of the *Banking Services Act*, the
Supervisory Committee shall not approve the transfer unless
properly satisfied as required by the appropriate section.

Dated this 21 day of July, 2015.



Chairman
Supervisory Committee

Approved:



Minister of Finance and Planning