

THE FINANCIAL SERVICES COMMISSION ACT

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SCHEDULES.

THE FINANCIAL SERVICES COMMISSION ACT

Acts
9 of 2001,
30 of 2004.

[2nd August, 2001.]

1. This Act may be cited as the Financial Services Commission Act. Short title.

*Preliminary*Interpreta-
tion.

2. In this Act, unless the context otherwise requires—

“authorized officer” means a person authorized by the Commission for the purposes of this Act;

“Executive Director” means the Executive Director appointed under section 4;

“Commission” means the Financial Services Commission established under section 3;

“financial services” means services provided or offered in connection with—

* (a) insurance;

(b) the acquisition or disposal of—

(i) securities within the meaning of the Securities Act;

(ii) units under a registered unit trust scheme within the meaning of the Unit Trusts Act;

(c) such other services as the Minister may by order declare to be financial services for the purposes of this Act;

“functions” includes duties and powers;

“licence” means a licence issued pursuant to any relevant Act;

“prescribed financial institution” means an institution or person offering or providing financial services to the public;

* Provision came into operation on 4/3/2005.

"relevant Act" means the Act which governs the financial service provided by a prescribed financial institution.

Establishment

Establishment
of the
Financial
Services
Commission.

3.—(1) There shall be established for the purposes of this Act, a body to be called the Financial Services Commission which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

First
Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution and procedure of the Commission and otherwise in relation thereto.

Appointment
of Executive
Director and
other officers
and
employees.

4.—(1) The Commission shall appoint and employ an Executive Director who shall hold office for a period not exceeding five years and may be re-appointed for periods not exceeding five years at a time.

(2) The Executive Director shall be responsible for the day to day management of the Commission.

(3) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such other officers and employees as it thinks necessary for the proper carrying out of the provisions of this Act:

Provided that, except with the prior approval of the Minister—

(a) no salary in excess of the prescribed rate shall be assigned to any post; and

(b) no appointment shall be made to any post to which a salary in excess of the prescribed rate is assigned,

and for the purposes of this subsection the "prescribed rate" shall be such rate as the Minister may prescribe by order subject to affirmative resolution.

(4) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Commission and any officer so appointed shall, while so employed, in relation to other rights as a public officer be treated as continuing in the service of the Government.

(5) It shall be lawful for the Commission, with the approval of the Minister—

(a) to enter into arrangements respecting schemes whether by way of insurance policies or not; or

(b) to make regulations,

for pensions, gratuities and other retiring or disability or death benefits relating to members and employees of the Commission and such arrangements or regulations may include provisions for the grant of benefits to the dependents and legal personal representatives of such members or employees.

Delegation of
power by
Executive
Director.

5.—(1) The Executive Director may in writing, with the approval of the Commission, delegate any of his powers or the performance of any duties conferred on him by or under this Act to a person specified in the instrument of delegation.

(2) A delegation under subsection (1) shall not prevent the exercise of the powers or the performance of the duties by the Executive Director.

General Duties and Powers

Functions of
Commission.

6.—(1) For the purpose of protecting customers of financial services, the Commission shall—

(a) supervise and regulate prescribed financial institutions;

(b) promote the adoption of procedures designed to control and manage risk, for use by the management, boards of directors and trustees of such institutions;

- (c) promote stability and public confidence in the operations of such institutions;
- (d) promote public understanding of the operation of prescribed financial institutions;
- (e) promote the modernization of financial services with a view to the adoption and maintenance of international standards of competence, efficiency and competitiveness.

(2) For the purpose of the discharge of its duty under subsection (1), the Commission shall—

- (a) take such steps as are necessary to ensure that appropriate standards of conduct and performance are maintained in prescribed financial institutions in accordance with this Act, any rules or regulations made hereunder or any relevant Act;
- (b) at such times as it may determine but at least once in each year—
 - (i) examine, in such manner as it thinks fit, the affairs or business of every prescribed financial institution carrying on business in Jamaica or elsewhere for the purpose of being satisfied that the provisions of this and any relevant Act are being complied with and that the institution is in a sound financial condition; and
 - (ii) within ninety days after the completion of the examination, report to the Minister the results of every such examination and any such report may contain such recommendations as the Commission considers necessary or desirable to correct any malpractices or deficiencies discovered in the examination;
- (c) in accordance with the provisions of any relevant Act—

- (i) consider applications for licences or registration and grant or refuse to grant any such licence or registration; or
 - (ii) suspend, cancel or revoke any such licence or registration;
- (d) appoint authorized officers for the purposes of paragraph (b);
- (e) subject to such provisions as may be prescribed, summon the auditor or actuary, or any former auditor or actuary of a prescribed financial institution for the purpose of making enquiries into the operations and financial position of that institution;
- (f) implement measures designed to reduce the possibility of a prescribed financial institution being used for any purpose connected with an offence involving fraud, theft or money laundering;
- (g) collect at such times as may be prescribed such statistics in relation to financial services as may be prescribed;
- (h) perform such other duties as may be prescribed by or pursuant to this Act.

(3) In the performance of his duties under this section an authorized officer shall be entitled at all reasonable times—

- (a) to have access to all books, records and documents in the possession or control of any director, manager, officer or employee of any prescribed financial institution;
- (b) to require any director, manager, officer, auditor, former auditor or employee of any prescribed financial institution to furnish such information or to produce such books, records or documents as are in his possession or control, that relate to the operations of the prescribed financial institution and may be reasonably required for the performance of those duties.

(4) Any person who—

- (a) fails to comply with a requirement made pursuant to subsection (3)(b); or
- (b) wilfully attempts to mislead or makes any false statement with intent to mislead or attempts to mislead any person in the execution of his duties under this section; or
- (c) without lawful justification or excuse, obstructs or hinders any person in the execution of such duties,

shall be guilty of an offence.

Ministerial
directions.

7. The Minister may, after consultation with the Chairman of the Commission, give to the Commission directions of a general character as to the policy to be followed by the Commission in the performance of its functions in relation to matters appearing to the Minister to concern the public interest.

Actual or
apprehended
insolvency.
Third
Schedule.

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) require the institution to give an undertaking signed by the majority of its board members to take such corrective action as may be agreed between the institution and the Commission;
- (b) give directions to the institution under this section;
- (c) issue a cease and desist order in accordance with Part B of the Third Schedule; or
- (d) exercise any other functions conferred on it by or pursuant to any relevant Act.

(2) Directions under this section shall be such as appear to the Commission to be desirable in the interest of the institution's customers, potential customers and creditors, whether for the purpose of safeguarding its assets or otherwise, and may, in particular—

- (a) require the institutions 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;
- (b) impose limitations on—
 - (i) the acceptance of new business;
 - (ii) the granting of credit;
 - (iii) the making of investments;
 - (iv) dealing in securities; or
 - (v) any other activity that may be carried out by a prescribed financial institution;
- (c) prohibit the institution from—
 - (i) soliciting business generally or from persons who are not already investors or policy holders; or
 - (ii) entering into any other transaction or class of transactions;
- (d) require the removal of any director or manager.

(3) A prescribed financial institution which fails to comply with any requirement or contravenes any prohibition imposed by any direction or cease and desist order under this section shall be guilty of an offence.

(4) A contravention of any direction or prohibition imposed under this section shall not invalidate any transaction.

(5) Where the Commission believes that any of the conditions specified in paragraph 4, 5, 6, 7, 8, 9 or 10 of Part A of the Third Schedule exists in relation to a prescribed financial institution, the Commission may—

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S. 2.
Third
Schedule.

- (a) take such action as it considers appropriate under subsection (1) (a), (b), (c) or (d);

- (b) assume the temporary management of the institution in accordance with Part C of that Schedule;
- (c) suspend, cancel or revoke the licence or registration of that institution in accordance with the procedure specified in the relevant Act; or
- (d) present to the court a petition for the winding up of the institution or an application regarding reconstruction thereof.

(6) The provisions to the Companies Act relating to the mode of winding up by the court and to arrangements for reconstruction shall, with such modifications and adaptations as may be necessary, apply to a petition or application made by virtue of subsection (5) (d).

Compensation
funds.

9. The Commission may, after consultation with such providers of financial services and such other persons as it thinks fit, make regulations regarding the establishment, maintenance and use of compensation funds for the benefit of customers of the financial services provided by such institutions, who have suffered pecuniary loss as a result of the operations of any such institutions.

Financial Provisions

Funds and
resources of
the Commis-
sion.

10. The funds and resources of the Commission shall consist of—

- (a) such sums as may be provided by Parliament for the Commission in the Estimates of Revenue and Expenditure;
- (b) revenues from charges imposed by the Commission for use of any facility or services provided by it;
- (c) revenue from fees charged in respect of licences or registration under any relevant Act;
- (d) such sums as may be allocated from time to time to the Commission from loan funds;

- (e) all other sums or property which may in any manner become payable to or vested in the Commission in respect of any matter incidental to its powers and duties.

11. Moneys standing to the credit of the Commission may be invested in government securities and the Commission may, from time to time, sell all or any of such securities and the Commission shall, as soon as practicable, notify the Minister, in writing, of any action taken under this section.

Power to
invest
moneys.

12.—(1) The Commission shall keep proper accounts and other records in relation to its business, and shall prepare annually a statement of account in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

Accounts and
audit.

(2) The accounts of the Commission shall be audited annually by an auditor or auditors appointed by the Commission and approved by the Minister.

(3) The members, officers and employees of the Commission shall—

- (a) grant to the auditor appointed under subsection (1), access to all books, documents, cash and securities of the Commission; and
- (b) give to him on request, all such information as may be within their knowledge in relation to the Commission's operations.

(4) The auditors' fees and any expenses of the audit shall be paid by the Commission.

(5) The Auditor-General shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Commission.

Annual report
and estimates.

13.—(1) The Commission shall, within six months after the end of each year, or within such longer period as the Minister may in special circumstances allow, cause to be made, and transmit to the Minister, a report dealing generally with the activities of the Commission during the preceding year, including a statement of its accounts audited in accordance with section 12.

(2) The Minister shall cause copies of the report together with the auditor's report to be laid on the Table of the House of Representatives and the Senate.

(3) The Commission shall, before a date specified by the Minister, submit to the Minister for his approval, estimates of revenue and expenditure for the ensuing year.

Exemption
from income
tax.

14. The income of the Commission shall be exempt from income tax.

Miscellaneous

Obligation to
secrecy.

15.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential all documents, information and records obtained in the course of their duties under this Act, relating to the operations of a prescribed financial institution; and
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, commits an offence if, at any time he communicates or attempts to communicate such information or anything contained in such documents or records to any person—

- (a) other than a member, officer or employee of the Commission or other person to whom he is authorized in writing by the Commission to communicate it pursuant to any other law; or
- (b) otherwise than for the purposes of this Act.

(3) A person who is convicted of an offence under subsection (2) is liable to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(4) A person to whom information is communicated pursuant to an authority of the Commission in that behalf shall regard and deal with such information as secret and confidential and shall make and subscribe a declaration to that effect before a Justice of the Peace.

(5) A person referred to in subsection (4) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Act, shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

16.—(1) Notwithstanding section 15, the Commission may disclose information—

Disclosure of
information
in certain
circum-
stances.

- (a) to a competent authority;
- (b) to the Director of Public Prosecutions, for the institution of criminal proceedings under, or arising out of any relevant Act or to any court conducting such proceedings;
- (c) if ordered by a court for the purposes of any civil proceedings;
- (d) on the prior written request of the Minister—

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S. 3(a)(ii).

- (i) to the designated authority under the Money Laundering Act to facilitate the investigation of an offence under that Act.
- (ii) to such other authorities as the Minister may, after consultation with the chairman of the Commission prescribe by order, subject to affirmative resolution, to facilitate the investigation of offences against other laws;
- (e) to an overseas regulatory authority in accordance with regulations made under section 18; 30/2004
S. 3(a)(ii).
- (f) to the Solicitor General, in his capacity as a member of a committee convened to facilitate co-ordination among financial regulatory agencies. 30/2004
S. 3(a)(ii).

(2) In subsection (1)—

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S. 3 (b).

“competent authority” means the Minister, the Supervisor of Banks and Financial Institutions, the Chief Executive Officer of the Jamaica Deposit Insurance Corporation or the Financial Secretary;

“overseas regulatory authority” means an authority in a foreign country which in relation to any of the financial services regulated under this Act exercises functions similar to the functions of the Commission.

17.—(1) Where in any particular case, the Commission has reasonable cause for believing that a special audit of an

Special audit
or examina-
tion.

institution should be conducted by an auditor other than the auditor of that institution, the Commission may appoint an auditor or a firm of auditors for that purpose.

(2) The Commission shall require an auditor or firm of auditors appointed pursuant to subsection (1), to carry out and report in writing to the Commission on—

(a) such examination of the institution's procedures as the Commission may specify in order to determine whether or not those procedures are adequate for the protection of the institution's customers; and

(b) such other examination of the institution as, in the opinion of the Commission, is necessary in the public interest.

(3) The expenses, as approved by the Commission, of any audit or examination carried out pursuant to subsection (1) shall be paid by the Commission and the amount so paid—

(a) shall be repaid to the Commission by the institution concerned; and

(b) may be recovered in a Resident Magistrate's Court by or on behalf of the Commission as a civil debt due to the Crown notwithstanding any limitation as to amounts recoverable under the Judicature (Resident Magistrates) Act.

(4) An auditor or firm of auditors appointed under subsection (1) shall not be regarded as being in breach of a duty of confidentiality to the institution in consequence of any report made to the Commission in compliance with subsection (2).

Power to
make
regulations.

18.—(1) The Commission may, with the approval of the Minister, and after consultation with such providers of financial services as it thinks fit make regulations generally for the better carrying out of the purposes or provisions of this Act and in particular but without prejudice to the generality of the foregoing may make regulations providing for the imposition of fees or charges in such cases as may be determined by the Commission for—

(a) services rendered by the Commission, its officers, employees or agents in carrying out the provisions of this Act; and

(b) licensing and registration under the relevant Acts.

(2) Regulations made under subsection (1) shall be subject to negative resolution.

Establishment
of Tribunal.

Second
Schedule.

19. For the purposes of appeals under any relevant Act, there shall be established an Appeal Tribunal and the provisions of the Second Schedule shall have effect as to the constitution thereof and otherwise in relation thereto.

20.—(1) With effect from the 2nd day of August, 2001, there shall be transferred to and vested in the Commission, all assets, rights and liabilities of the Securities Commission in existence at that date.

Vesting of
assets.

(2) The Commission shall, in relation to the assets, rights and liabilities so transferred and vested, have every right, power, privilege, immunity or duty which immediately before that date was capable of being enjoyed or performed by the Securities Commission.

21.—(1) This section shall apply to an offence under any relevant Act, being an offence specified in the Fourth Schedule.

Penalties.
Fourth
Schedule.

(2) The Commission may give to any person who it has reason to believe has committed an offence to which this section applies, a notice in writing in the prescribed form offering that person the opportunity to discharge any liability to conviction of that offence by payment of a fixed penalty under this section.

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

(4) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence until the end of the fifteen days following

the date of the notice or such longer period (if any) as may have been specified therein.

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

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

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

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state—
 - (i) the period (whether fifteen days or a longer period) during which, by virtue of subsection (4), proceedings will not be taken for the offence; and
 - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it may be paid.

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

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

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

(a) prescribe—

- (i) the form of notice under subsection (2), and the Collector of Taxes to whom a fixed penalty is payable;
- (ii) the nature of the information to be furnished to the Collector of Taxes along with any payment;
- (iii) the arrangements for the Collector of Taxes to furnish to the Commission, information with regard to any payment pursuant to a notice under this section;

(b) amend the Fourth Schedule.

Fourth
Schedule.

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

22. No liability is incurred by the Commission or any person specified in section 15 (1) as a result of anything done by him *bona fide* in the exercise of any power, or the performance of any function or duty, conferred or imposed by or under this Act.

Immunity.

23.—(1) Where, pursuant to a relevant Act—

(a) a person appeals—

- (i) to the Appeal Tribunal against a decision of the Commission to suspend, cancel or revoke a licence or registration; or

Reinstatement of
licence or
registration.

- (ii) to the Court of Appeal against the decision or, as the case may be, a decision of the Tribunal confirming that decision; and
- (b) the Tribunal or Court of Appeal, as the case may be, orders the reinstatement of the licence or registration, the Commission shall reinstate the licence or registration as from the date specified by the Appeal Tribunal or the Court of Appeal.

FIRST SCHEDULE

(Section 3)

The Financial Services Commission

1. The Commission shall consist of— Appointment of members.
- (a) the Executive Director who shall be a member *ex officio*; and
 - (b) not less than seven nor more than nine other members (hereinafter referred to as appointed members) as the Minister may appoint, being persons who appear to the Minister to be qualified as having had experience of and shown capacity in, matters relating to industry, finance, economics, accountancy, commerce, law or such other matters as the Minister considers appropriate for appointment under this paragraph.
2. No person shall be qualified for appointment as a member of the Commission who— Disqualification from appointment to Commission.
- (a) is a member of the Senate or the House of Representatives;
 - (b) is a director, officer, employee or auditor of a prescribed financial institution;
 - (c) has a direct or indirect proprietary interest in more than five per cent of any class of the shares of any such institution; or
 - (d) has been convicted of an offence involving fraud, dishonesty or moral turpitude.
3. The Minister may appoint any person to act temporarily in the place of any member of the Commission in the case of the absence or inability to act of such member. Temporary appointments.
- 4.—(1) The Minister shall appoint one of the members of the Commission to be the Chairman thereof. Chairman.
- (2) In the case of the absence or inability of the Chairman to act at any meeting, members of the Commission present at such meeting shall elect one of their number to act as chairman at that meeting.
5. The appointment of every member of the Commission shall be evidenced by an instrument in writing, which shall state the period of office of the member not exceeding five years, as the Minister may specify in the instrument and each member shall be eligible for reappointment. Tenure of office.
- 6.—(1) The Chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of receipt by the Minister of the instrument. Resignation.

(2) Any member other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman who shall forthwith cause it to be forwarded to the Minister and that member shall cease to hold office as from the date of receipt of the instrument by the Minister.

Revocation
of appoint-
ment.

7. The Minister may terminate the appointment of any member if such member—

- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
- (b) becomes bankrupt or compounds with, or suspends payment to, his creditors;
- (c) is convicted and sentenced to a term of imprisonment or to death;
- (d) is convicted of an offence involving fraud, dishonesty or moral turpitude;
- (e) becomes disqualified for appointment by virtue of paragraph 2;
- (f) fails to carry out any of the functions conferred or imposed on him under this Act.

Publication of
names of
membership.

8. The names of all members of the Commission as first constituted and of every change in the membership thereof shall be published in *Gazette*.

Seal and
execution of
documents.

9.—(1) The seal of the Commission shall be authenticated by the signatures of the Chairman or any member of the Commission authorized to act in that behalf and the Secretary of the Commission.

(2) All documents other than those required by law to be under seal and all decisions of the Commission may be signified under the hand of the Chairman or any member authorized to act in that behalf or the Secretary of the Commission.

Procedure and
meeting.

10.—(1) The Commission shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Commission shall determine.

(2) The Chairman may at any time call a special meeting of the Commission and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Commission.

(3) The Chairman or in the case of the absence or inability to act of the Chairman the person appointed in accordance with paragraph 4 (2) shall preside at the meetings of the Commission and when so presiding the Chairman or the person appointed as aforesaid, as the case may be, shall have an original and a casting vote in any case in which the voting is equal.

(4) The quorum of the Commission shall be four or such higher number as the Commission shall determine.

(5) Subject to the provisions of this Schedule, the Commission may regulate its own proceedings.

(6) The validity of any proceeding of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

11.—(1) The Commission may, either generally or as otherwise specified in the instrument of delegation, delegate to any of its officers so specified, any of its functions under this Act or any relevant Act, other than the power of delegation.

Delegation.

(2) A delegation under subsection (1) shall be revocable by the Commission and no delegation shall prevent the exercise of a power by the Commission.

12. There shall be paid to the Chairman and other members of the Commission such remuneration, if any (whether by way of salaries or travelling or other allowances), as the Minister may determine.

Remuneration of members.

13.—(1) A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Commission, or in any other matter whatsoever which falls to be considered by the Commission, shall disclose the nature of his interest at a meeting of the Commission and the disclosure shall be recorded in the minutes of the meeting; and the member shall not—

Disclosure of interest.

- (a) in the case of a contract, take part in any deliberation or decision of the Commission with respect to the contract; and
- (b) in the case of any other matter, take part in any deliberation or decision of the Commission with respect to the matter if the Commission decides that the interest in question might affect prejudicially the member's consideration of the matter.

(2) A notice given by a member at a meeting of the Commission to the effect that he is a member of a specific company or firm and is to be regarded as interested in any contract which is made after the date of the notice with the company or firm shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any contract so made.

(3) A member need not attend in person at a meeting of the Commission in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by notice which is taken into consideration and read at such a meeting.

14. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Commission in respect of any act done *bona fide* in pursuance or execution of or intended execution of this Act.

Indemnity.

SECOND SCHEDULE

(Section 19)

*Constitution and Procedure of Appeal Tribunal*Constitution
procedure.

1.—(1) The Appeal Tribunal shall consist of at least three members appointed by the Minister as follows—

- (a) at least one member shall be an Attorney-at-law who has practised for at least ten years; and
- (b) the other members shall be selected from among persons who appear to the Minister to be qualified as having had experience of and shown capacity in, matters relating to industry, finance, economics, accountancy, commerce or law.

(2) If there are fewer than three members, but at least two members in office, the Tribunal shall be deemed to be properly constituted for a period not exceeding ninety days after the deficiency in the number of members first occurs.

(3) During any period in which there is a deficiency in number, the Minister may appoint additional members to the Tribunal for a limited period and purpose and the order appointing the member shall provide that the member's participation is limited to specified matters or classes of matters within the jurisdiction of the Tribunal.

(4) The Tribunal shall meet at such times as may be necessary for hearing of appeals under this Act.

Disqualifi-
cation from
appointment to
Tribunal.

2. No person shall be qualified for appointment as a member of the Tribunal who—

- (a) is a member of the Senate or the House of Representatives;
- (b) is a director, officer, employee or auditor of a prescribed financial institution; and
- (c) has a direct or indirect proprietary interest in more than five per cent of any class of the shares of any such institution.

Chairman.

3.—(1) The Minister shall appoint one of the members of the Tribunal to be the Chairman thereof.

(2) In the case of the absence or inability of the Chairman to act at any sitting, members of the Tribunal present at such meeting shall elect one of their number to act as Chairman at that sitting.

Hearing
panel.

4.—(1) A matter referred to the Tribunal shall be heard and determined by a panel consisting of three members of the Tribunal, one of whom shall be an Attorney-at-law, as assigned by the Chairman of the Tribunal.

(2) In assigning members of the Tribunal to a panel, the Chairman shall take into consideration the requirements, if any, for experience and expertise to enable the panel to decide the issues raised in any matter before the Tribunal.

(3) The Tribunal may co-opt to a panel such persons as, in its opinion, have the requisite expertise in any matter before that panel for the purpose of advising the panel on that matter.

5.—(1) A member of the Tribunal who has any interest, directly or indirectly, in any matter brought before the Tribunal— Disclosure of interest.

(a) shall disclose the nature of the interest at a sitting of the Tribunal; and

(b) shall not take part in any deliberation or decision of the Tribunal with respect to that matter.

(2) A notice given by a member at a sitting of the Tribunal to the effect that he is interested in any appeal before the Tribunal shall, for the purposes of sub-paragraph (1), be a sufficient disclosure of his interest in relation to any appeal.

(3) A member need not attend in person at a sitting of the Tribunal in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by notice which is taken into consideration and read at such a sitting.

6. The members of the Tribunal shall, subject to the provisions of the Schedule, hold office for such period not exceeding two years as the Minister may determine and shall be eligible for reappointment. Tenure of office.

7. The Minister may at any time revoke the appointment of any member of the Tribunal if such member— Revocation of appointment.

(a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;

(b) becomes bankrupt or compounds with, or suspends payment to, his creditors;

(c) is convicted and sentenced to a term of imprisonment or to death;

(d) is convicted of an offence involving fraud, dishonesty or moral turpitude;

(e) becomes disqualified for appointment by virtue of paragraph 2;

(f) fails to carry out any of the functions conferred or imposed on him under this Act; or

(g) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal.

- Filling of vacancy. 8. If any vacancy occurs in the membership of the Tribunal, such vacancy shall be filled by the appointment of another member thereof.
- Publication of membership. 9. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Remuneration of members. 10. There shall be paid to the Chairman and other members of the Tribunal in respect of each appeal, such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.
- Expenses. 11. Expenses, accommodations and other facilities of the Tribunal shall be included in the budget of the Financial Services Commission and shall be reimbursable or offset to the extent that certain expenses are itemized in the Tribunal's award of costs on particular matters.
- Voting. 12. The decisions of the Tribunal shall be by majority of votes of the members.
- Order. 13.—(1) The Tribunal shall determine matters before it by order.
(2) The Tribunal may make an order subject to the conditions that are set out in the order.
- Power over witnesses and evidence. 14.—(1) The Tribunal shall have the power to summon and enforce the attendance of witnesses and to compel them to give evidence on oath or otherwise and to produce documents, records and things.
(2) The Tribunal may require or permit persons to give evidence before it by affidavit.
- Costs. 15.—(1) The Tribunal may order that a party to a proceeding before it pay the costs of another party and the Tribunal's costs of the proceeding.
(2) The Tribunal's costs of a proceeding consist of the expenses, including the costs of investigations that the Tribunal and the Commission have incurred in connection with the proceeding.
(3) The Tribunal shall determine the amount of an order for costs in accordance with the rules of the Tribunal.
(4) Any costs ordered by the Tribunal to be paid pursuant to subparagraph (1) may be recovered in a Resident Magistrate's Court by or on behalf of the Commission as a civil debt due to the Crown notwithstanding any limitation as to amounts recoverable under the Judicature (Resident Magistrate's) Act.
- Regulation of proceedings. 16. Subject to the provisions of this Act, the Tribunal may regulate its own proceedings.

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.
3. A director or manager has ceased to be a fit and proper person in accordance with the relevant Act and the institution has refused or neglected to take appropriate action.
4. A final judgment has been obtained against the institution and has remained unsatisfied for at least one month.
5. The institution has given false or misleading information in its application for a licence or registration or false statements concerning its affairs.
6. The institution is contravening or has contravened any cease and desist order or any directions issued by the Commission pursuant to this Act.
7. The value of the institution's assets is substantially less than the amount of its liabilities.
8. The institution has notified the Commission that it proposes to surrender its licence or registration.
9. A receiver has been appointed in respect of the institution.
10. The institution, a director, any employee or agent of the institution has, in the conduct of the institution's business, contravened a provision of the Money Laundering Act or any regulations made thereunder.

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PART B

Cease and Desist Orders

1. Before issuing a cease and desist order, the Commission shall cause to be served on the institution 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

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- (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 institution concerned consents to the making of a cease and desist order and the terms thereof, the hearing shall be waived and the order shall be made accordingly.

3. If at the hearing—

- (a) the institution is not represented, it shall be deemed to have accepted the allegations stated in the notice and to have consented to the making of a cease and desist order and the Commission shall make a cease and desist order in respect of that institution;
- (b) the allegations specified in the notice are established, the Commission shall make a cease and desist order in respect of the institution,

and a copy of the order shall be served on the institution 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 institution or the person so named, as the case may be, to cease and desist from the actions giving rise to the order;
- (b) if made under—
 - (i) paragraph 2, take effect from such date as may be specified therein;
 - (ii) paragraph 3, take effect from the date of service of the order or such later date as may be specified therein.

5. Where in relation to any prescribed financial institution—

- (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 Commission is satisfied that the situation giving rise to the notice is likely to endanger the financial position of the institution or the interests of its customers,

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

6. Where a temporary cease and desist order is served under paragraph 5, the institution or 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 C

Temporary Management of a Prescribed Financial Institution

1.—(1) For the purposes of section 8 (5) (b) the Commission shall serve on the prescribed financial institution a notice announcing its intention of temporarily managing the institution from such date and time as may be specified in the notice.

(2) The Commission may appoint any person to manage the institution on its behalf.

(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 institution and shall be published in a newspaper circulated in Jamaica.

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

(5) Not later than sixty days after the Commission has assumed temporary management of a prescribed financial institution, it shall apply to the Court (furnishing full particulars of the institution's assets and liabilities) for an order confirming the vesting in the Commission of full and exclusive powers of management of the institution as described in sub-paragraph (4).

(6) All expenses of and incidental to the temporary management of an institution shall be paid by that institution in such manner as the Commission may determine.

2.—(1) An institution which is served with a notice under paragraph 1 may, within ten days after the date of such service, appeal to the Court of Appeal which 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 Commission may, if it considers it to be in the best interests of the customers of an institution which is being temporarily managed by it, apply to the Court for an order staying—

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

3. Where the Commission has served a notice on an institution under paragraph 1, it shall, within sixty days from the date specified in such notice or such longer period as a Judge of the Supreme Court may allow—

- (a) restore the institution to its board of directors or owners, as the case may be;
- (b) present a petition to the Court under the Companies Act for the winding-up of the institution; or
- (c) propose a compromise or arrangement between the institution and its creditors under section 192 of the Companies Act or a reconstruction under section 194 of that Act.

FOURTH SCHEDULE

(Section 21)

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

Act	Nature of Offence	Penalty
THE SECURITIES ACT		
Section 9 (5)	Failure to pay prescribed fee when it becomes due	... \$25,000.00
(6) (b)	Failure to meet or maintain liquidity requirements	... \$25,000.00
Section 10 (6)	Failure to pay prescribed fee when it becomes due	... \$25,000.00
(7)	Failure to return Certificate of Registration	... \$25,000.00
Section 14 (4)	Failure to maintain a record of securities	... \$50,000.00

<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
Section 15 (4)	Failure to give notice of ceasing to be a dealer, etc. ...	\$25,000.00
Section 23 (5)	Failure of Stock Exchange to comply with Commission's directions ...	\$50,000.00
Section 25	Failure to comply with or enforce the business rules or listing rules of a recognized stock exchange ...	\$25,000.00
Section 39 (1)	Failure to disclose interest in securities ...	\$25,000.00
Section 63	Failure of dealer to keep proper accounting records ...	\$25,000.00
Section 64	Failure to appoint auditor within one month ...	\$25,000.00
Section 65	Failure of stock exchange to report on a specified matter to Commission ...	\$25,000.00
*THE INSURANCE ACT		
Section 7(1)(b)	Failure to make deposit ...	\$25,000.00
	Failure to file names of persons authorized to accept service of process ...	\$25,000.00
Section 13	Failure to notify Commission within 30 days of changes in particulars ...	\$25,000.00
Section 18	Issuing of policy, etc., after notification of cancellation of registration ...	\$100,000.00

* Provisions came into operation on 4/3/2005.

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<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
Section 19(1)	Failure to display certificate of registration	... \$25,000.00
19(2)	Failure to surrender certificate of registration and copies thereof	... \$25,000.00
19(3)	Display of certificate of registration that is no longer valid	... \$25,000.00
Section 20	Placement of insurance with unregistered insurer	... \$100,000.00
Section 22(1)	Failure to make investments in accordance with regulations	... \$100,000.00
22(4)	Failure to comply with directions with respect to certificate or other related document	... \$100,000.00
22(6)	Increase in holding in securities or assets prescribed to amounts more than that prescribed without the approval of the Commission	... \$100,000.00
Section 23(1)	Contravention of prohibitions relating to loans	... \$100,000.00
Section 24	Failure to notify Commission of situation or change in situation of principal office or name of the principal representative	... \$25,000.00
Section 25	Failure to maintain and separate accounts as prescribed	... \$25,000.00
Section 26(1)	Failure to submit annual financial statement to Commission	... \$25,000.00

<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
Section 26(3)	Failure to amend or furnish annual financial statement rejected by Commission	... \$25,000.00
26(7)	Failure to permit policy-holder to inspect annual financial statement and to provide free copy on request	... \$25,000.00
Section 27	Failure to submit group accounts	... \$25,000.00
Section 29	Failure to keep records	... \$25,000.00
Section 30(1)(a)	Failure to cause investigation by actuary into financial position	... \$100,000.00
30(1)(b)	Failure to furnish Commission with an abstract of actuary's report	... \$25,000.00
Section 31(1)	Failure to obtain approval of Commission in writing prior to transfer, acquisition or amalgamation	... \$100,000.00
Section 37(1)	Failure to appoint auditor Failure to notify Commission of appointment, resignation, removal and reasons therefor and any other occurrence causing vacancy in office of auditor	... \$100,000.00 ... \$50,000.00
Section 39	Failure to furnish auditor with information and explanations Failure to give auditor access to information	... \$50,000.00 ... \$50,000.00

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<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
Section 44	Failure to appoint actuary ...	\$100,000.00
Section 61	Association of underwriters carrying on insurance business without registration ...	\$100,000.00
Section 70	Intermediaries carrying on or purporting to carry on insurance business without registration ...	\$100,000.00
Section 79(2)(a)	Failure to give the Commission notice in writing in the prescribed form of termination of employment of sales representatives ...	\$25,000.00
Section 79(2)(b)	Failure to give the Commission notice in writing in the prescribed form of new employment of registered sales representatives ...	\$25,000.00
Section 80(1)	Failure to produce certificate of registration for inspection ...	\$25,000.00
Section 83(2)	Causing insured person to discontinue policy without reasonable grounds that discontinuance is for insured person's benefit ...	\$25,000.00
Section 85	Compensation to unauthorized person for placing or negotiating insurance ...	\$25,000.00

<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
Section 88	Failure to make return to Commission	... \$25,000.00
Section 89	Failure of registered brokers to keep records	... \$50,000.00
Section 90(2)	Failure to obtain actuary's report as to suitability of rate of premiums	... \$50,000.00
Section 91	Failure to give notice of proof of age requirement	... \$25,000.00
Sections 110(3) 147	Violation of disclosure and fair trade practice provisions, generally	... \$50,000.00
Section 115	Failure to comply with unclaimed moneys provisions	... \$50,000.00
Section 146	Misleading advertising	... \$25,000.00
Section 147(1)(a)	Contravening conditions of registration	... \$100,000.00