

A BILL

ENTITLED

AN ACT to License and regulate microcredit institutions that provide financing to individuals and micro, small and medium sized enterprises; to discourage microcredit institutions from lending money at excessive interest rates and from engaging in predatory lending practices; and for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Microcredit Act, 2019, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Interpreta-
tion.

2.—(1) In this Act—

“advertise” means to publish, display, present, disseminate or convey any invitation or solicitation by any medium including—

- (a) a sky sign, notice, handbill, brochure, pamphlet, placard, board, poster or other publication;
- (b) a circular;
- (c) an exhibition of photographs or cinematograph films;
- (d) a word, message on paper, message transmitted by way of electronic means, a social network or the Internet, or mobile message;
- (e) sound broadcasting;
- (f) programme, television or telephone communication or other form of communication,

but does not include a prospectus, as defined in the *Companies Act*, issued by a company;

“auditor” means a person who—

- (a) is a registered public accountant as defined in section 2 of the *Public Accountancy Act*; and
- (b) satisfies such requirements as may be prescribed,

and includes a firm of such persons;

“authorized officer” means the Supervisor, Deputy Supervisor or any other person authorized to perform functions on behalf of the Supervisor or the Deputy Supervisor under the *Bank of Jamaica Act* or this Act;

“Bank” means the Bank of Jamaica established by section 3 of the *Bank of Jamaica Act*;

“branch” means an office or place of business (other than a principal office) where a microcredit institution carries on any microcredit service;

“commencement date” means the date on which this Act comes into operation;

“Commission” means the Consumer Affairs Commission established under section 5 of the *Consumer Protection Act*;

“consumer” has the meaning assigned to it in section 2 of the *Consumer Protection Act*;

“credit information” has the meaning assigned to it in section 2 of the *Credit Reporting Act*;

“document” means, in addition to a document in writing, any thing in which information of any description is recorded or stored;

“financial group” has the meaning assigned to it in section 2 of the *Banking Services Act*;

“foreign regulator” means an authority in a country other than Jamaica which has supervisory duties or responsibilities—

- (a) with respect to any individual who provides financial services in that country;
- (b) with respect to a body that is incorporated or otherwise established in, and provides financial services in that country; and
- (c) which are similar to the duties or responsibilities of the Bank or the Financial Services Commission;

“functions” includes powers and duties;

“investigation” means an investigation by the Commission or the Regulatory Authority, as the case may be, into a complaint, an occurrence or a matter carried out for the purposes of this Act;

“licence” means a licence granted under section 10;

“licensee” means a person licensed under this Act;

“local regulator” means the Bank, the Financial Services Commission, the Registrar of Friendly and Co-operative

Societies or any authority in Jamaica which has supervisory duties or responsibilities—

- (a) with respect to an individual who provides financial services in Jamaica;
- (b) with respect to a body that is incorporated in, and provides financial services in Jamaica; and
- (c) which are similar to the duties or responsibilities of the Bank or the Financial Services Commission;

“microcredit” means the Loan facilities offered to individuals and to MSMEs by a microcredit institution;

“microcredit institution” means a company that is licensed under this Act to provide a microcredit service;

“microcredit service” means—

- (a) any one or more of the following services provided by a microcredit institution—
 - (i) the granting of loans to individuals and to MSMEs; and
 - (ii) the provision of business and personal finance advisory services primarily to individuals and micro and small sized enterprises; or
- (b) any other activity designated by the Supervisor as a microcredit service by notice published in the *Gazette* subject to affirmative resolution,

but does not include receiving deposits from the public or banking business within the meaning of the *Banking Services Act*;

“money laundering” shall be construed in accordance with Part V of the *Proceeds of Crime Act*;

“MSME” means a micro sized enterprise, a small sized enterprise and a medium sized enterprise as described in the First Schedule;

“officer” in relation to a microcredit institution, means a person who, in that institution—

- (a) is a director, president or vice-president (however designated), manager, company secretary, financial controller or treasurer; or
- (b) performs functions similar to those normally performed by the holder of any position referred to in paragraph (a);

“personal information” means any information about a consumer, other than credit information, including—

- (a) the consumer's name, present and past addresses, tax payer registration number or other numerical reference, cataloguing or reference scheme, used for identification purposes; and
- (b) any other relevant information about the consumer which is reasonably required in order to enable the credit information to be utilized for the purposes of this Act;

“Regulatory Authority” means the Bank or any other entity or person as may be designated by the Minister by notice published in the *Gazette*;

“regulatory counterparts” has the meaning assigned to it in section 2 of the *Bank of Jamaica Act*;

“substantial shareholder” means a person who holds twenty *per cent* or more of the shares of a licensee;

“Supervisor” has the meaning assigned to it in section 2 of the *Banking Services Act*;

“Supervisory Appeals Board” means the appeal tribunal established under section 27 of the *Banking Services Act*;

“Supervisory Department” means the department in the Bank established under Part VA of the *Bank of Jamaica Act*;

“terrorist activity” shall be construed in accordance with the *Terrorism Prevention Act*.

(2) For the purposes of sections 4(1)(b)(ii), 10(6)(b), 19(4)(c), 21(1)(b), 27(1)(d), 30(1) and 41(2)(a), a person is a fit and proper person if—

- (a) he possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person;
- (b) he has not been convicted of an offence involving fraud or dishonesty, or an offence specified under the *Proceeds of Crime Act*, the *Banking Services Act*, the *Securities Act*, the *Insurance Act*, the *Pensions (Superannuation Funds and Retirement Schemes) Act* or the *United Nations Security Council Resolutions Implementation Act* or an offence that is similar to any such offence in another jurisdiction;
- (c) he is not bankrupt within the meaning of the *Insolvency Act*;
- (d) his employment record does not give the Supervisor reasonable cause to believe that the person has carried out an act involving dishonesty or an act involving impropriety in the handling of financial business;
- (e) in the opinion of the Supervisor—
 - (i) he is a person of probity;
 - (ii) he is able to exhibit competence and exercise diligence and sound judgment in fulfilling his responsibilities in relation to a microcredit institution; and
 - (iii) the interests of consumers will not be threatened if the person assumes the office that he is likely to hold, or continues to hold the office that he currently holds.

(3) For the purposes of subsection (2), the Supervisor shall have regard to any evidence that the person has—

- (a) engaged in any business practices that appear to the Supervisor to be deceitful or oppressive or otherwise improper, and which reflect discredit to the person's method of conducting business;
- (b) contravened any provision of any enactment designed to protect the public against financial loss, due to—
 - (i) dishonesty, incompetence or malpractice, by persons concerned in the provision of banking, insurance, investment or other financial services, credit information or in the management of companies; or
 - (ii) bankruptcy or insolvency; and
- (c) contravened any provision of any enactment relating to financial services as defined in section 2 of the *Banking Services Act*.

3. This Act shall not apply to the transactions, persons and entities specified in the Second Schedule.

Non-application of Act. Second Schedule.

PART II—*Functions of the Regulatory Authority, Etc.*

4.—(1) The Regulatory Authority shall be responsible for the general administration of this Act and for the supervision of microcredit institutions, and through the Supervisor and the Supervisory Department shall—

Functions of Regulatory Authority.

- (a) formulate procedures for the licensing and regulation of microcredit institutions;
- (b) develop standards of practice and codes of conduct and guidance for the general operation of licensees including—
 - (i) credit administration;
 - (ii) addressing the fit and proper requirements specified in section 2(2);

- (iii) transparent lending practices;
 - (iv) requirements to be met by external auditors;
 - (v) reporting requirements; and
 - (vi) such other matters as the Regulatory Authority considers necessary for the administration of this Act;
- (c) monitor licensees on an ongoing basis, by off-site and on-site examination, in such manner and with such frequency as the Regulatory Authority thinks necessary, according to the risk profile of the licensees, to determine whether the licensees are operating in compliance with this Act or any other enactment;
 - (d) impose sanctions for the identified breaches of the provisions of this Act, and any regulations made under this Act;
 - (e) provide, at least on an annual basis, a comprehensive report to the board and management of a licensee on the results and findings, from ongoing monitoring of the licensee, including, where applicable, requirements for remedial action to be taken within given timelines;
 - (f) prescribe the type of returns and other information that licensees are required to file with the Supervisor and the intervals for the filing of such returns and other information;
 - (g) advise the Minister on matters of general policy relating to microcredit institutions; and
 - (h) perform such other functions as may be assigned to the Regulatory Authority in relation to licensees, from time to time, by the Minister or by or under this Act or any other enactment.
- (2) The Supervisor shall submit to Parliament, through the Minister, an annual report relating generally to the execution of the functions of the Supervisor under this Act.

(3) At least every three years, there shall be a review undertaken by qualified, independent experts of—

- (a) the effectiveness of the supervisory framework as set out under this Act;
- (b) the processes and procedures carried out in furtherance of the supervision mandate pursuant to this Act; and
- (c) the performance of the Supervisor in relation to his mandate under this Act,

and the report of this review shall be provided to the Minister and the Supervisor.

5.—(1) Where—

- (a) an authorized officer; or
- (b) a person being considered for appointment pursuant to section 34B of the *Bank of Jamaica Act*,

is a shareholder (whether directly or indirectly) in any microcredit institution, he shall notify the Supervisor thereof in writing, and the Supervisor shall notify the Board.

(2) The Board may, if it thinks fit, upon receipt of a notice referred to in subsection (1), in writing, require the authorized officer or a person being considered for appointment pursuant to section 34B of the *Bank of Jamaica Act*, to dispose any of the *Bank of Jamaica Act* shares held by him in any licensee or of any interest in such shares within such time as the Board may specify.

6.—(1) An authorized officer and any other person authorized to assist an authorized officer shall not—

- (a) disclose information regarding the operations of a licensee to any person other than—
 - (i) the Minister or his nominee;
 - (ii) the Governor, Senior Deputy Governor or Deputy Governors;
 - (iii) the Supervisor or Deputy Supervisor;

Disclosure of interest of authorized officer or other person being considered for appointment.

Secrecy of authorized officer.

- (iv) any officer of the Supervisory Department; or
 - (v) the head of a regulatory counterpart, his deputy or a person formally nominated to receive information on behalf of such head;
- (b) subject to paragraph (c), disclose other than for the purposes of this Act, any information regarding the affairs of a customer of a licensee obtained in relation to the performance of their duties under this Act; or
- (c) disclose other than for the purposes of the investigation of a financial crime, or in relation to the contravention of a licensee's obligation under any other enactment, any information obtained in relation to the performance of their duties under this Act.

Third
Schedule.

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

(3) No civil or criminal action, suit or other proceedings may be brought against an authorized officer and any other person authorized to assist an authorized officer under this section, who, in good faith, makes a disclosure pursuant to subsection (1).

Cooperation
of Regula-
tory
Authority
with other
regulators,
etc., and the
Commission.

7.—(1) The Regulatory Authority may cooperate and collaborate with other local regulators, foreign regulators, local and foreign law enforcement authorities and other regulatory counterparts to facilitate information sharing and other forms of cooperation and collaboration to enable—

- (a) the ongoing supervision of microcredit institutions;
- (b) the investigation of regulatory breaches;
- (c) the investigation of financial and other crimes and related enforcement action involving a microcredit institution; and
- (d) the resolution of a microcredit institution.

(2) The Regulatory Authority and the Commission shall cooperate and collaborate with each other in relation to the investigation of

any apparent contravention of this Act and either body, aforementioned, may refer a complaint to the other body where the subject matter of the complaint indicates that it would be more appropriately dealt with by that other body.

(3) The Regulatory Authority shall determine the parameters of any cooperation and collaboration pursued under subsections (1) and (2), the duration of such cooperation and collaboration and any cost sharing and other matters related to the cooperation and collaboration.

8. The Minister may, after consultation with the Supervisor, give to the Regulatory Authority, directions of a general character, as to the policy to be followed by the Regulatory Authority in the performance of its functions under this Act, as appear to the Minister to be necessary in the public interest, and the Regulatory Authority shall give effect to the directions.

Ministerial directions.

PART III—*Licensing and Regulation of Microcredit Institutions*

9.—(1) A person who desires to provide a microcredit service shall be licensed as a microcredit institution under this Act.

Prohibition against operating a microcredit institution. Third Schedule.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

(3) A contract for the provision of a microcredit service shall be unenforceable if the contract is entered into by a person who is offering a microcredit service, but has not obtained a licence.

10.—(1) An application to obtain a licence to operate a microcredit institution shall be made to the Supervisor, in the prescribed form and accompanied by the following—

Application for and grant of licence.

- (a) proof that the institution is registered as a company pursuant to the Companies Act, including a certified copy of the articles of incorporation of the company; and
- (b) such other information, as may be prescribed.

(2) The Supervisor may, upon receipt of an application under subsection (1), request the applicant to furnish such additional information and documents as the Supervisor may consider relevant.

(3) Subject to subsection (5), and upon consideration of an application made under this section, the Supervisor may—

- (a) subject to such terms and conditions as he deems appropriate, and upon payment of the prescribed fee, grant a licence to the applicant and enter the particulars, in relation to the licence, in a register established by the Supervisor for this purpose; or
- (b) refuse to grant a licence to the applicant.

(4) Where the Supervisor refuses to grant a licence, the Supervisor shall—

- (a) notify the applicant in writing of the intention of the Supervisor to refuse to grant the licence and the reason for the intended refusal; and
- (b) afford the applicant an opportunity to be heard, within fourteen days of the date of the notice of refusal.

(5) The Supervisor shall not grant a licence under this section, unless he is satisfied that—

- (a) the systems and arrangements required by this Act have been put in place by the applicant so as to ensure compliance with the provisions of this Act; and
- (b) the substantial shareholders and officers of the company for whom an application is being made, are fit and proper persons.

Conditions
of licence.

11. It shall be a condition of every licence that the licensee shall—

- (a) forthwith upon the grant of the licence and annually, on or before each anniversary of the grant of the licence, while the licence remains in effect, pay the prescribed licence fee to the Accountant-General; and
- (b) commence operation pursuant to the licence within one year of the grant of the licence or such longer period as the Supervisor may allow.

12.—(1) A licensee shall ensure that the licence or a certified copy thereof, is prominently displayed in a part of the principal office of the microcredit institution to which the public has access, and at each branch of the microcredit institution.

Licence to be prominently displayed.

(2) The Supervisor may suspend or revoke a licence where a licensee fails to display the licence in accordance with subsection (1), and the licensee shall be liable to pay a prescribed fee on the reinstatement of the licence.

13.—(1) A licence granted under section 10 shall not be transferable or assignable.

Non-transferability, etc., and publication of licence.

(2) A licensee shall not cause or permit another person to use its licence.

(3) A licensee who contravenes subsection (2) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(4) The Supervisor shall publish or cause to be published by notice in the *Gazette*—

- (a) the name of each person to whom a licence is granted;
- (b) the name of each person whose licence is revoked;
- (c) any change of name of a licensee; and
- (d) such other matters relating to the licensing of microcredit institutions as the Supervisor considers appropriate.

14.—(1) Where a licence is lost, defaced or destroyed, the licensee shall, promptly, after becoming aware that the licence is lost, defaced or destroyed, apply to the Supervisor to have the licence replaced.

Lost, defaced or destroyed licence.

(2) An application under subsection (1) shall—

- (a) be in writing;
- (b) outline the circumstances resulting in the licence being lost, defaced or destroyed; and
- (c) be accompanied by the prescribed fee associated with the replacement of the licence, made payable to the Accountant-General.

(3) Where the Supervisor is satisfied as to the loss, defacement or destruction of the licence, the Supervisor shall grant to the licensee a substitute licence.

(4) A licence that is substituted pursuant to subsection (1) shall—

- (a) reflect the information that was specified on the original licence; and
- (b) be subject to publication in accordance with section 13(4) at the expense of the licensee.

Obtaining a licence by false representation. Third Schedule.

15.—(1) A person shall not obtain a licence by false representation.

(2) A person who obtains a licence by false representation commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

False or misleading advertising.

16.—(1) A person shall not knowingly or recklessly advertise any information, which falsely implies or explicitly states that the person is licensed under this Act as a microcredit institution.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Prohibition on use of certain names, titles, words, etc.

17.—(1) Except with the approval, in writing, of the Supervisor, a person who is not licensed under this Act to provide a microcredit service shall not use any name, title, word, term or grammatical presentation that represents or implies that the person is licensed to provide the services of a microcredit institution.

(2) Subsection (1) shall not apply to an association formed by microcredit institutions for the purpose of representing the common interest of the members of the association or in any case where the name, title, word, term or grammatical presentation forms part of the name of an individual or place.

(3) Subject to subsection (4), the Supervisor may, in the public interest, by notice, in writing, revoke any approval given to any person under subsection (1) and that person shall comply with such notice within the period specified.

(4) Before an approval is revoked, the Supervisor shall give the person concerned, notice, in writing, of the intended revocation and shall afford that person an opportunity to submit to the Supervisor, within fourteen days, a written statement of objection to the proposed revocation of approval.

(5) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

18.—(1) If a licensee intends to—

- (a) merge or amalgamate its business with that of another licensee;
- (b) acquire the business of another licensee; or
- (c) transfer its business to another licensee,

Regulation of
mergers,
amalgam-
ations
acquisitions
and transfers.

the licensee shall apply to and obtain the approval of the Supervisor.

(2) An application to the Supervisor for approval under subsection (1) shall be in the form of a scheme and shall be regulated in accordance with such provisions as may be prescribed.

(3) Where a licensee engages in a merger, amalgamation, acquisition or transfer, as referred to in subsection (1), the licensee shall, within thirty days after such merger, amalgamation, acquisition or conversion, deposit with the Supervisor—

- (a) certified copies of the statements of the assets and liabilities of any new entity that is formed;
- (b) a certified copy of the agreement or deed under which the merger, amalgamation, acquisition or transfer was done;
- (c) a declaration signed by at least two officers of the licensee that to the best of their belief, all information in the possession of the licensee relating to the merger, amalgamation, acquisition or transfer has at all times been kept in accordance with this Act.

(4) A person who, in any statement, agreement, deed or declaration referred to in subsection (3), causes or permits the inclusion

of any information which he knows to be false in a material particular or recklessly includes any information which is false in a material particular, commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

Regulation of
shareholding
in
microcredit
institutions.

19.—(1) Where a person proposes to enter into an agreement or an arrangement to acquire the shares of a licensee by virtue of which the person would, if the agreement or the arrangement is carried out, be a substantial shareholder of the licensee, that person shall in writing, apply to and obtain the prior approval of the Supervisor in respect of the agreement or arrangement.

(2) An agreement or arrangement referred to in subsection (1) shall contain or be deemed to contain a clause which indicates that the agreement or arrangement is subject to the prior approval of the Supervisor.

(3) Where an application for approval is made under subsection (1), the Supervisor may—

- (a) give his approval, subject to such conditions as he considers necessary; or
- (b) refuse to give his approval.

(4) For the purpose of approving an application made under subsection (1), the Supervisor may require the applicant to furnish the Supervisor with such additional particulars or other information concerning the agreement or arrangement as the Supervisor may specify.

(5) In determining whether or not to approve an application made under subsection (1), the Supervisor shall take into account such matters as he considers relevant to the application, including—

- (a) the nature, source and sufficiency of the applicant's financial resources;
- (b) the business record and experience of the applicant;
- (c) whether the applicant meets the fit and proper criteria specified in section 2(2);

- (d) whether there is any impediment to the Supervisor's receipt of information from or about the applicant;
- (e) where the applicant or any of the affiliates of the applicant is a licensee, the impact of the proposed acquisition on the market for microcredit services; and
- (f) the best interest of financial system stability in Jamaica.

(6) If the Supervisor refuses to approve an application made under subsection (1), the applicant shall be notified within ninety days of the date refusal, and shall be given an opportunity to make written representations.

(7) The Supervisor shall, in respect of an application under subsection (1), give his decision within ninety days from the date on which the application and all relevant information and particulars required to be furnished under this section, from the applicant and external sources, are delivered to the Supervisor.

(8) For the purposes of this section a person holds an interest in a share if the person has any legal or equitable interest in that share.

(9) An acquisition of shares effected in contravention of this section is void.

(10) Where the Supervisor is satisfied that a person has acquired shares in a licensee (hereinafter referred to as the "acquirer") in contravention of this section, the Supervisor shall serve on that person, a written notice, indicating that there is a breach, and that subsection (11) shall apply with respect to those shares.

(11) Where the circumstances in subsection (10) exist, the following shall apply—

- (a) the shares so acquired (hereinafter referred to as "specified shares") shall be disposed of within such period as the notice may specify;
- (b) the Supervisor may direct the acquirer to transfer the specified shares to an escrow agent acceptable to the Supervisor to be held in escrow until disposed of, and the cost of such transfer and the escrow agent's reasonable fees shall be borne by the acquirer;

- (c) otherwise than as provided in paragraph (b), any transfer of, or agreement to transfer, the specified shares, or any other transfer of or agreement to transfer the right to be issued the specified shares, without the prior approval of the Supervisor, shall be void;
- (d) the voting rights on the specified shares shall be suspended and no voting rights shall be exercisable in respect of the specified shares; or
- (e) no further shares shall be issued in right of the specified shares or in pursuance of any offer made to their holder.

(12) A copy of the notice served on the person under subsection (10) shall also be served on the licensee, the Registrar of Companies, and where applicable, the person who is in charge of the relevant stock exchange on which the shares are traded.

(13) A Judge of the Supreme Court may—

- (a) on the application of a licensee or the Supervisor, order the sale of any specified shares;
- (b) if the specified shares are, for the time being, subject to any restrictions under subsection (11), order that they shall cease to be subject to those restrictions; and
- (c) make such further order relating to the sale or transfer of the specified shares as he thinks fit.

(14) Where specified shares are disposed of by sale under subsection (11), the proceeds of sale, less the cost of making the application under subsection (13)(a) and the cost of the sale, shall be paid in the manner specified by the Court for the benefit of the persons beneficially interested in the specified shares.

(15) Any person who is aggrieved by a notice served under subsection (10) may within twenty-one days after receipt of the notice, appeal to the Supreme Court against the Supervisor's decision and the Court may make such order as it thinks fit.

20.—(1) A licensee shall not change the location of its principal office unless the licensee, in writing, notifies the Supervisor of its intent and of the proposed new location, and furnishes to the Supervisor such information as may be specified, in writing, and may proceed with such relocation if—

Change in location of licensee; establishment or closure of branch of licensee.

- (a) the Supervisor indicates, in writing, that he does not object; or
- (b) the Supervisor does not object, within thirty days of the date on which the notification was made.

(2) The Supervisor may suspend a licence under subsection (1) if—

- (a) the licensee fails to, in writing, notify the Supervisor of its intent to change the location of its principal office and of the proposed new location of its principal office;
- (b) the licensee fails to, in writing, furnish the Supervisor with prescribed or specified information, in relation to its intent to change the location of its principal office, and of the proposed new location of its principal office;
- (c) the licensee proceeds with the relocation of its principal office, knowing that the Supervisor has objected to the relocation; or
- (d) the licensee proceeds with the relocation of its principal office, before the expiration of thirty days of the date on which the licensee notified the Supervisor of the proposed relocation,

and the licensee shall be liable to pay a prescribed fee on the reinstatement of the licence.

(3) A licensee shall not—

- (a) establish a new branch of its microcredit business; or
- (b) change the location of an existing branch of its microcredit business (whether in Jamaica or outside of Jamaica), unless the licensee has applied for and obtained the prior written approval of the Supervisor.

(4) An application under subsection (3) shall be in writing and shall contain the following information—

- (a) the name of the licensee;
- (b) where applicable, the proposed location of the new branch or the proposed new location of the existing branch, as the case may be;
- (c) the number of persons projected to be employed at the branch;
- (d) an approximation of the population to be served by the branch;
- (e) the financial projections for the proposed branch;
- (f) details on how and from what source the establishment and operations of the branch will be funded; and
- (g) any other relevant information required by the Supervisor.

(5) Where a new branch of the licensee is being established outside of Jamaica, or an existing branch of a licensee is being relocated outside of Jamaica, the application under subsection (3) shall contain the following information—

- (a) how the licensee intends to address any regulatory requirements that may be applicable in the overseas jurisdiction;
- (b) any regulatory requirements in the overseas jurisdiction that may prevent or hinder the exchange of information between the proposed branch and the Supervisor, and how the licensee proposes to address the matter;
- (c) how the licensee proposes to monitor and supervise the activities of the proposed branch; and
- (d) any other relevant information required by the Supervisor.

(6) The Supervisor shall, in respect of an application under subsection (3), and subject to subsections (4) and (5), give his decision within ninety days from the date on which the application and all information and particulars required to be furnished, are delivered to the Supervisor.

(7) Upon consideration of an application made under subsection (3), the Supervisor may, subject to subsection (9)—

- (a) approve the application for the establishment of a new branch of a licensee or for the change of location of an existing branch of a licensee, as the case may be; or
- (b) refuse to approve the application.

(8) Where the Supervisor refuses to approve an application for the establishment of a new branch of a licensee or for changing the location of an existing branch of a licensee, the Supervisor shall, in writing, inform the licensee, stating the reasons therefor.

(9) The Supervisor shall not approve an application under subsection (3) unless he is satisfied—

- (a) as to the capacity of the operations of the licensee to adequately support the establishment of the proposed branch of the licensee;
- (b) as to the needs of the community to be served by the proposed branch of the licensee;
- (c) where an existing branch of a licensee is proposed to be relocated outside of Jamaica—
 - (i) that the regulatory regime in the jurisdiction to which the branch of the licensee is to be relocated, complies with generally recognized international standards;
 - (ii) that where applicable, the regulatory authority in the jurisdiction to which the branch of the licensee is to be relocated, has given its consent, or has not objected to the establishment of the branch in that jurisdiction;
 - (iii) that the regulatory authority in the jurisdiction to which the branch of the licensee is to be relocated, and the Supervisor, are able to conclude the required arrangements to ensure that effective

supervision is achieved in accordance with this Act.

Third
Schedule.

(10) A licensee who contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(11) A licensee who intends to close the operations of the licensee or the operations of a branch of the licensee, or surrender its license or cease business operations for any reason other than that specified in section 26 or 27, shall not do so unless the licensee has given the Supervisor six months written notice (or such shorter period of notice as the Supervisor may, in writing, permit) of its intention to do so.

(12) A licensee who contravenes subsection (11) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(13) The Regulatory Authority shall cause notice of such closure or cessation under subsection (11) to be published on two occasions in a daily newspaper printed and circulated in Jamaica, the first of those publications being within thirty days of such closure or cessation.

Duty of
licensee to
notify
Supervisor of
fraud,
dismissal, *etc.*

21.—(1) A licensee shall, in writing, forthwith, notify the Supervisor—

- (a) of any fraud or other criminal activity committed by or against the licensee or any other matter that could reasonably be viewed as adversely impacting the licensee's reputation or status as a licensee;
- (b) of any circumstance which renders a substantial shareholder or officer of the licensee unfit to hold office or incapable of satisfying the requirements of a fit and proper person under section 2(2), and the action that is being taken with regard to such matter;
- (c) of any dismissal or resignation of an officer and the reasons for the dismissal or resignation;

- (d) if the licensee may not be able to properly conduct its business as a going concern including a circumstance where the licensee has suspended any payment to a creditor;
- (e) of any acquisition of ten per cent or more of the issued voting share capital of a licensee and any subsequent incremental acquisition of five per cent or more, whether alone or jointly with another; or
- (f) if proceedings for compulsory winding up of the licensee have commenced or the licensee has been served with a notice or otherwise becomes aware that an application has been made for the commencement of the compulsory winding up of its business.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

22.—(1) A licensee shall not make an alteration to any of its incorporating documents unless the licensee, in writing, informs the Supervisor of the proposed alteration and the Supervisor, in writing—

Restriction
on alteration
of incorpo-
rating
documents of
licensee.

- (a) approves the alteration; or
- (b) does not, within thirty days of receipt of the notification, indicate to the licensee his objection to the alteration.

(2) The Supervisor shall not object to an alteration to the incorporating documents of a licensee unless the alteration is, or is likely to—

- (a) result in a breach of a condition of the licence;
- (b) result in a breach of the provisions of this Act or any regulations made under this Act; or
- (c) be inconsistent with, or prejudicial to the good governance or prudent management or operation of the licensee.

(3) Any alteration made to the incorporating documents of the licensee that is incorporated in Jamaica in contravention of subsection (1) shall be void.

(4) Every licensee shall, within fourteen days of the date on which an alteration is made to its incorporating documents, notify the Supervisor of such alteration.

(5) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

Restriction
on change of
name of
licensee.

23.—(1) A licensee shall not change its registered name unless the licensee, in writing, notifies the Supervisor, furnishing reasons for the proposed change and requesting the approval of the Supervisor of the proposed change.

(2) Upon consideration of a request made under subsection (1), the Supervisor may—

- (a) approve the request for the change of the registered name of the licensee; or
- (b) refuse to approve the request.

(3) Where the Supervisor refuses to grant approval of a request under subsection (1) the Supervisor shall, in writing, inform the licensee, stating the reasons therefor.

(4) Where the Supervisor approves the proposed name change—

- (a) the licensee shall—
 - (i) surrender the existing licence to the Supervisor; and
 - (ii) pay to the Accountant-General the prescribed fee for the change of name;
- (b) the Supervisor shall grant the new licence and publish the new name of the licensee in accordance with section 13(4).

(5) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

24.—(1) In performing the functions set out in section 4(1), (c), (d), (e) and (f) an authorized officer is entitled to—

Duty to supply information and documents.

- (a) at all reasonable times and as may reasonably be required for the performance of his functions, to have access to all documents in the possession or control of the licensee, or of any officer or employee of the licensee, and where applicable, take copies of such documents; and
- (b) to require any officer, employee or external auditor of the licensee to furnish such information or to produce such documents as are in his possession or control that relate to the operations of the licensee.

(2) A person who—

- (a) fails to produce such documents required under subsection (1) within the period specified;
- (b) wilfully misleads or makes any false statement with intent to mislead an authorized officer in the execution of his functions under this Act; or
- (c) without lawful excuse or justification, obstructs or hinders an authorized officer in the execution of his functions under this Act,

commits an offence and is liable, upon summary conviction, to the penalty specified in the Third Schedule.

Third Schedule.

25. Where the Supervisor is of the opinion that a licensee has contravened or is contravening a provision of this Act or any other enactment under which it has an obligation, a direction, rule, order, requirement or standard made or imposed thereunder, the Supervisor may do any one or more of the following—

Supervisory measures.

- (a) issue a warning to the licensee of the likelihood of the sanctions which may be imposed, unless the breach by the licensee is rectified as directed by the Supervisor;
- (b) direct the licensee to cease any such practice;
- (c) direct the licensee to, forthwith or within such other period as may be specified by the Supervisor, comply with the

provisions of this Act, or the direction, rule, order, requirement or standard made or imposed thereunder, with which the licensee has failed to comply;

- (d) direct the licensee to take necessary action to correct the negative conditions resulting from such contravention; or
- (e) direct the licensee to remove from duty and from the board of the licensee, any officer of the licensee, within a specified period;
- (f) suspend the licence; or
- (g) revoke the licence.

Suspension
of licence.

26.—(1) The Supervisor may suspend a licence granted under this Act, if any one or more of the following circumstances applies—

- (a) the licensee notifies the Supervisor, in writing, that it intends to suspend microcredit services for the period stated in the notice;
- (b) a substantial shareholder or an officer has been charged with an offence involving fraud or dishonesty; or
- (c) the licensee is contravening this Act or regulations made under this Act by—
 - (i) engaging in an activity which does not constitute a microcredit service;
 - (ii) failing to keep accurate records in respect of the microcredit business;
 - (iii) failing or refusing to file the requisite returns with and furnish other information, required under this Act or any regulations made under this Act, to the Supervisor; or
 - (iv) failing to retain the records of the microcredit institution for at least seven years;
 - (v) failing to prominently display the licence or a certified copy thereof, in accordance with section 12;

- (vi) causing or permitting another person to use its licence in contravention of section 13(2); or
- (vii) failing to notify the Supervisor of its intent to change the location of its principal office in accordance with section 20.

(2) Where the Supervisor intends to suspend a licence, the Supervisor may take such action as is necessary to safeguard the security and confidentiality of the credit and other personal information in the documents in the possession and under the control of the licensee.

(3) Before suspending a licence under subsection (1), the Supervisor shall give written notice of his intention to suspend the licence concerned—

- (a) specifying the grounds on which the Supervisor intends to rely in relation to the suspension;
- (b) indicating a period (being not less than thirty days after the date of service of the notice) within which the licensee shall have an opportunity to be heard and in relation to which, the licensee may submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor.

(4) Notwithstanding subsection (3), where the Supervisor considers it necessary in light of the circumstances, the Supervisor may suspend a licence without notice and with immediate effect.

(5) After a hearing is conducted by the Supervisor under subsection (3)(b), the Supervisor shall, within a reasonable time, advise the licensee of his decision by instrument in writing.

(6) A person whose licence is suspended shall promptly surrender the licence and every copy thereof to the Supervisor, failing which the Supervisor may revoke the licence.

(7) Where the licensee provides evidence, in writing, to the Supervisor that the circumstances which led to the suspension of its licence no longer exist or have been remedied, the Supervisor shall

cancel the suspension and return the licence and any copy thereof to the licensee.

Revocation
of licence.

27.—(1) The Supervisor may revoke a licence if—

- (a) the licensee has operated or is operating or is causing the microcredit institution to be operated in breach of its incorporating documents;
- (b) the licensee has breached or is breaching a term or condition of its licence;
- (c) the licensee has failed to commence operations within the period specified in its licence;
- (d) a substantial shareholder or an officer is no longer a fit and proper person, and the licensee has refused or neglected to take the appropriate action;
- (e) a final judgement is obtained against the licensee in any court in Jamaica and remains unsatisfied for a period exceeding six months;
- (f) proceedings have commenced for the voluntary or compulsory winding up of the licensee;
- (g) the licence has not been surrendered following the winding up of a licensee;
- (h) proceedings have commenced for the involuntary winding up of the licensee;
- (i) the licensee has ceased to be viable; or
- (j) the licensee is contravening or has contravened this Act or any regulations made under this Act by—
 - (i) giving false or misleading information in its application for a licence;
 - (ii) breaching a direction issued under section 25;
 - (iii) giving false statements concerning its affairs to an authorized officer; or

- (iv) refusing to permit an inspection of the licensee by an authorized officer;
- (v) failing to prominently display the licence or a certified copy thereof in accordance with section 12;
- (vi) causing or permitting another person to use its licence, in contravention of section 13(2).

(2) Where the Supervisor intends to revoke a licence, the Supervisor may take such action as is necessary to safeguard the security and confidentiality of the credit and other personal information in the documents in the possession and under the control of the licensee.

(3) Before revoking a licence under subsection (1), the Supervisor shall give written notice of his intention to revoke the licence to the licensee concerned—

- (a) specifying the grounds on which the Supervisor intends to rely in relation to the revocation;
- (b) indicating a period (being not less than thirty days after the date of service of the notice) within which the licensee shall have an opportunity to be heard and in relation to which, the licensee may submit to the Supervisor a written statement of objections or make oral submissions to the Supervisor.

(4) Notwithstanding subsection (3), where the Supervisor considers it necessary in light of the circumstances, the Supervisor may revoke a licence with immediate effect.

(5) After a hearing conducted by the Supervisor under subsection (3)(b), the Supervisor shall, within a reasonable time, advise the licensee of his decision in writing.

(6) A person whose licence is revoked shall immediately surrender the licence and every copy thereof to the Supervisor.

(7) A person who, without lawful excuse, contravenes subsection (6) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(8) A person whose licence is revoked under this section—

(a) shall not, in relation to the provision of any microcredit service—

- (i) engage in any new arrangement or contract;
- (ii) vary any existing arrangement or contract; or
- (iii) engage in any activity which advertises or promotes the services of the microcredit institution; and

(b) shall facilitate the orderly closure of the microcredit institution.

(9) Subsection (8)(a)(ii) shall not apply to a loan sale, to facilitate the orderly winding up of the business of a microcredit institution.

(10) A person who contravenes subsection 8(a)(i) or 8(a)(iii) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(11) A person who, without lawful excuse, contravenes subsection 8(a)(ii) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(12) The revocation of a licence under this Act shall not relieve a person whose licence has been revoked of any obligation incurred or assumed by that person during the period of validity of the licence.

PART IV—*Governance of Licensees*

28. Every licensee shall have a board of directors consisting of suitably qualified and competent persons who, collectively, possess the knowledge, skills and expertise that are required to provide—

- (a) oversight of the management and affairs of the operations of the licensee; and
- (b) effective leadership to ensure that the licensee operates in a prudent manner.

29. Without limiting the provisions of section 28, the board of directors of a licensee shall be responsible for—

- (a) the good corporate governance and business performance of the licensee;

Third
Schedule.

Board of
directors.

Responsibilities of board
of directors.

- (b) ensuring that the board is in full control of the affairs and business operations of the licensee; and
- (c) ensuring and reporting to the shareholders at the annual general meeting of the licensee that the internal controls and systems, and management information systems of the licensee—
 - (i) provide reasonable assurance as to the integrity and reliability of the financial statements of the licensee;
 - (ii) adequately verify, safeguard and maintain accountability of the assets of the licensee;
 - (iii) are based on established and written policies and procedures and are implemented by trained and skilled officers with an appropriate segregation of duties; and
 - (iv) are continuously monitored, reviewed and updated by the board of directors to guard against any material breakdown in the functioning of such controls, procedures and systems.

30.—(1) Every licensee shall ensure that each substantial shareholder and officer remains a fit and proper person.

Duty of licensee to undertake fit and proper assessments.

(2) Subject to subsection (3), a licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third Schedule.

(3) It shall be a defence to a licensee charged under subsection (2) to prove that the licensee took all reasonable steps in the circumstances to prevent a contravention of subsection (1).

*PART V—Limitation on Business Activities of Licensees
and Obligations of Licensees*

31.—(1) A licensee shall only be engaged in the provision of a microcredit service.

Limitations on business activities of licensees.

(2) Without prejudice to section 26(1)(c)(i), where the Supervisor is satisfied that the licensee is operating in contravention of subsection (1), the Supervisor may, as he sees appropriate—

- (a) issue a warning of the imposition of sanctions on the licensee;
- (b) issue such directions or orders to the licensee, including—
 - (i) a direction prohibiting the licensee from entering into any other lending transaction until the contravention of subsection (1) is addressed; or
 - (ii) an order to cease and desist from engaging in any activity which does not constitute the provision of a microcredit service.

(3) A licensee who fails to comply with a direction or an order issued under subsection (2)(b) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

Foreign
currency
transactions.

32.—(1) Nothing in this Act shall be interpreted as permitting a licensee to extend facilities in a foreign currency.

(2) Any dealings by a licensee in a foreign currency remain prohibited, unless the requisite exemption or authorization is obtained in accordance with the *Bank of Jamaica Act*.

Obligation of
confidential-
ity.

33.—(1) Every officer, employee, auditor or agent of a licensee shall regard and deal with as secret and confidential, all information and documents pertaining to the customers of the licensee, obtained or accessed by him in the course of the performance of his duties, while his office, employment or as the case may be, his professional relationship with the licensee continues, or after the termination thereof.

(2) A person to whom information is communicated by a person in subsection (1) shall regard and deal with the information as secret and confidential.

(3) A person who knowingly or recklessly contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

(4) Notwithstanding subsection (1), a person may disclose information in any one of the following circumstances—

- (a) with the written consent of the person to whom the licensee provides a microcredit service;
- (b) pursuant to a court order; or
- (c) where such disclosure is permitted or required under any enactment.

(5) An officer, employee, auditor or agent of a licensee who is required to make any disclosure to the Regulatory Authority, the Supervisor or to a person appointed by the Regulatory Authority or the Supervisor, shall not, by the sole reason of making the disclosure, be regarded as being in breach of his duty of confidentiality.

Records and Accounts

34.—(1) A licensee shall keep or cause to be kept, accurate records in respect of the microcredit business, including business correspondence, accounting records and other records—

Records to be kept by licensee.

- (a) relating to borrowers that sufficiently explain the loan transactions and the nature of the loan agreements entered into by the licensee with the borrower or pertaining to the borrower;
- (b) which enable true and fair profit and loss accounts and balance sheets to be prepared, from time to time; and
- (c) which facilitate the convenient and proper auditing of the accounts and records of the licensee.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(3) A licensee shall ensure that the records made pursuant to subsection (1) are retained for at least seven years from the date of the making of the record, or from the date of the repayment of the loan, whichever event occurs later.

Third
Schedule.

(4) A licensee who, without lawful excuse, contravenes subsection (3) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(5) A licensee shall—

- (a) ensure that such records are furnished in such form and manner as may be prescribed, or as may be notified by the Supervisor, in writing; and
- (b) ensure that such information relating to the business of the licensee as the Supervisor may require, is furnished to the Supervisor.

(6) A licensee who, without lawful excuse, contravenes subsection (5), commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Accounts and
audits;
appointment
of external
auditor.

35.—(1) The accounts of every licensee shall be audited annually in accordance with established international accounting standards by an external auditor, appointed by the licensee, who shall not be an officer or an employee of the licensee and who is a registered public accountant as defined in section 2 of the *Public Accountancy Act*.

(2) Where the size of the operations of the licensee meets the description of a small company in accordance with the Companies Act, the accounts shall be prepared pursuant to the Seventh Schedule of the *Companies Act* by an external auditor, appointed by the licensee, who shall not be an employee or an officer of the licensee and who is a registered public accountant as defined in section 2 of the *Public Accountancy Act*.

(3) A licensee shall not knowingly appoint an auditor or firm of auditors as its external auditor and an auditor or a firm of auditors shall not consent to be appointed as the external auditor of the licensee, if the auditor or any of the partners or employees of the firm of auditors, who is involved in the audit of the licensee—

- (a) has any direct or indirect interest in that licensee, including an interest in its shares or is not independent of the licensee and parties connected with the licensee;

- (b) is connected with the licensee or any person who is connected with the licensee;
- (c) is a director or employee of that licensee; or
- (d) is in any business relationship with the licensee that in the opinion of the Supervisor, is not at arm's length or is likely to result in a conflict of interest.

(4) A person who, with intent to prevent, delay or obstruct the carrying out of an audit under this section, destroys or conceals or alters any document relating to the operations of a licensee, commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

36.—(1) Where, before or after the appointment of a person as an external auditor, the Supervisor becomes aware that the person does not meet the criteria specified in subsection (1) or (2) of section 35, as the case may be, the Supervisor may—

Power of
Supervisor to
object to
appointment
of external
auditor.

- (a) object to the appointment of the person and give the licensee or person concerned, notice, in writing, of his objection to the appointment or continued appointment, specifying the reasons therefor and indicating a period (being not less than thirty days) within which the licensee or person concerned may submit to him a written response or make representations by oral submissions (with or without the assistance of an attorney-at-law); and
 - (b) if the licensee or person concerned has submitted a response or made representations within the period specified in paragraph (a), having considered the response or representations, either direct that the person so appointed be removed, or may withdraw the objection.
- (2) Where the Supervisor—
- (a) objects to the appointment of a person as an external auditor; or
 - (b) directs that a person appointed as an external auditor be removed, the licensee or the person may appeal against the objection or direction to the Supervisory Appeals Board.

(3) Where the Supervisor objects to the appointment of, or directs the removal of a person as an external auditor under subsection (2), the Supervisor shall give to the licensee or the person concerned, the reason for his decision.

Duty of external auditor to report to Supervisor on financial viability of licensee, etc.

37.—(1) An external auditor shall, on the conduct of an audit or the preparation of the accounts of a licensee, make disclosure to the Supervisor regarding the financial viability of the licensee and provide other information on the financial condition and performance of the licensee as the Supervisor may request.

(2) An external auditor or firm of auditors, under this section shall not be regarded as being in breach of a duty of confidentiality to the licensee in consequence of any disclosure or provision of information to the Supervisor in compliance with subsection (1).

Presentation of financial statements.

38.—(1) A licensee shall ensure that the accounts of the licensee prepared pursuant to subsection (1) or (2) of section 35, as the case may be, are submitted to the Supervisor, within ninety days of the end of each financial year.

(2) A licensee who fails to submit to the Supervisor—

(a) audited accounts prepared pursuant to subsection (1) of section 35; or

(b) accounts prepared pursuant to subsection (2) of section 35,

within the specified time, commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third Schedule.

Special audit or examination of microcredit institutions.

39.—(1) Where in any particular case, the Supervisor has reasonable cause for believing that a special audit of a microcredit institution other than that required under section 35 should be conducted, the Supervisor may appoint an external auditor or a firm of auditors for that purpose.

(2) The officers and employees of a microcredit institution under subsection (1) shall ensure that an external auditor or a firm of auditors appointed under that subsection, has unimpeded access to the documents of the microcredit institution.

(3) Where an external auditor or a firm of auditors is appointed pursuant to subsection (1), the Supervisor shall require that the external

auditor or firm of auditors carry out and report in writing to the Supervisor on—

- (a) such examination of the licensee's operations and procedures as the Supervisor may specify;
- (b) such other examination of the operations of the licensee as, in the opinion of the Supervisor, is necessary in the public interest.

(4) The expenses, as approved by the Supervisor, of any audit or examination carried out pursuant to subsection (1) shall be paid by the licensee and if in any case, the expenses are advanced by the Regulatory Authority, the amount so advanced—

- (a) shall be repaid to the Regulatory Authority by the licensee concerned; and
- (b) may be recovered by or on behalf of the Regulatory Authority summarily in a Parish Court, without limit of amount, as a civil debt.

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

40.—(1) Where an external auditor appointed by the licensee—

- (a) intends to resign at any time during the period of appointment;
- (b) has given notice in writing to the licensee of his unwillingness to be considered for reappointment at the expiration of the period for which he was appointed; or
- (c) has had his appointment terminated by the licensee, the external auditor shall, forthwith, give notice, in writing, to the Supervisor accordingly and shall state the reasons for the resignation or unwillingness to be considered for reappointment, or termination of the appointment, as the case may be.

Resignation,
etc., of
external
auditor.

(2) An external auditor who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

(3) Where—

- (a) a licensee intends to terminate the appointment of the external auditor of the licensee; or
- (b) a resolution has been passed at a general meeting of the licensee providing that the external auditor shall not be appointed, the licensee shall notify the Supervisor accordingly and shall state the reasons for the intention to terminate or for the passage of the resolution in the notification.

(4) A licensee who contravenes subsection (3) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

PART VI.—*Appeals*

Appeals to
the
Supervisory
Appeals
Board.

41.—(1) A person aggrieved by a decision of the Supervisor in relation to the matters specified in subsection (2) may, appeal to the Supervisory Appeals Board, by way of a notice of appeal within thirty days of being advised of that decision.

(2) The matters referred to in subsection (1) are—

- (a) any decision as to whether a person is a fit and proper person; and
- (b) any objection as to whether an external auditor appointed under section 35 does not meet the criteria specified in subsection (1) or (2) of that section or any decision for the removal of such an auditor; or
- (c) any decision of the Supervisor to revoke a licence.

(3) A person referred to in subsection (1) shall ensure that the notice of appeal—

- (a) sets out clearly the grounds of appeal and is accompanied by copies of any document relevant to the appeal; and
- (b) is served on the Supervisory Appeals Board together with any correspondence, statement or other document relevant to the appeal.

(4) The Supervisory Appeals Board shall, within seven days of the receipt of a notice of appeal under subsection (1), request that the Supervisor furnish the Supervisory Appeals Board and the aggrieved person, within twenty-one days, with a copy of the decision of the Supervisor and the reasons for the decision.

(5) The Supervisory Appeals Board shall hear each matter brought before it and give its decision in writing regarding such matter, within ninety days, or within such longer period as may be determined by some unforeseen or special circumstance, of the filing of the appeal and may confirm, vary, cancel or reverse the decision of the Supervisor.

(6) The Supervisory Appeals Board shall forward a copy of its decision to the Supervisor and a copy to the appellant, together with a statement of the reasons for its decision.

(7) A decision of the Supervisor that is under appeal shall remain in effect until a decision has been rendered on appeal.

PART VII.—*Protection of Consumers*

42.—(1) The Commission shall, in accordance with this Part and the Consumer Protection Act, be responsible for the investigation of any complaint brought to it by a consumer of a microcredit service. Power of Commission.

(2) The Commission may, in investigating a complaint under subsection (1), consider the loan agreement between the parties and any action, conduct or decision which the consumer alleges has adversely affected him.

43.—(1) Where a licensee grants a loan to a consumer, the loan agreement between the parties shall— Loan agreement.

- (a) contain, by way of a note or memorandum, the particulars relating to—
 - (i) the name, occupation and place of residence and business of the parties;
 - (ii) the date on which the loan is made or disbursed;

- (iii) the amount of the loan and the terms of its repayment, including—
 - (A) the rate of annual interest chargeable, expressed in terms of a rate per centum per annum;
 - (B) the period of time given for repayment;
 - (C) the date on which the repayment of the loan is due;
 - (D) the installments payable and, where the installments are weekly or monthly, they shall be expressed in both percentage rate of interest and dollar values;
 - (E) the full cost of the loan expressed in both percentage rate of interest and dollar values;
 - (F) the amount of interest and the penalty (if any) on default of payment;
 - (G) the terms and conditions for repayment of the loan ahead of the stipulated loan period; and
 - (H) how the interest on default payments is calculated;
 - (iv) the property, if any, to be given as security for the performance by the borrower of his obligation;
 - (v) the fees or charges, if any, associated with the granting of the loan and with enforcing repayment obligations or the realization of collateral;
- (b) be made in accordance with any guidelines relating to sound business practices for microcredit institutions, that may be issued by the Supervisor;
 - (c) clearly distinguish the terms and conditions of the services offered by the licensee from any promotional material;

- (d) include a factsheet containing key terms of the loan agreement; and
- (e) be disclosed to the borrower prior to the signing of the loan agreement.

(2) Where pursuant to subsection (1)(a)(iv), property in the form of money is given as security for the performance by a borrower of his obligation, the money shall remain the property of the borrower and shall be held in escrow by a deposit taking institution within the meaning of the *Banking Services Act*.

(3) A licensee shall ensure that the language in which the terms and conditions of a loan agreement is expressed, is clear and unambiguous and where technical language is unavoidably used, such language is accompanied by an explanation in simple language that is not false or misleading.

(4) A loan agreement between a licensee and its client shall become enforceable twenty-four hours after the loan agreement is executed, or within such shorter period as agreed, in writing, by the parties.

(5) Notwithstanding anything in subsection (1) or (3), a court may, upon application being made, and, if it considers it equitable to do so, declare the contract to be enforceable in the same manner and to the same extent as if the requirements of subsections (1) and (3) had been complied with.

44.—(1) Where a licensee grants a loan to a person, it shall, at any time during the term of the loan agreement, at the request of the borrower or the guarantor, if any, make available to the borrower and to the guarantor, if any, a printed copy of a statement of accounts, or, at the option of either or both the borrower and the guarantor, the statement of accounts in electronic form, outlining—

Licensee to provide statement of account and confirmation of repayment of loan.

- (a) the payments received, in principal and interest; and
- (b) the amount outstanding, in principal and interest.

(2) On the repayment of a loan, the licensee shall furnish the borrower with a receipt or other form of written confirmation of the repayment of the loan and the receipt or other form of confirmation, may, at the option of the borrower, be presented in electronic form.

Obligation of borrower. **45.** A person who applies for a loan shall provide evidence of his ability to repay the loan.

Interest rate. **46.—**(1) For the purposes of this Act, after taking into consideration the cost of funds, profit margins, borrower's credit risk, administrative costs and other loan related costs of the microcredit institution, the interest rate of a loan, whether secured or unsecured, shall be linked to the treasury bill rate at which the Government borrows on short term instruments.

(2) A licensee may impose interest on a loan calculated consequent on the assessment by the licensee of the risks involved in providing the loan to the borrower.

(3) A licensee shall expressly state in writing to prospective clients, the method of calculation of the rate of interest to be imposed on a loan.

(4) The interest and any penalty to be paid on default of payment of a loan shall be calculated on the outstanding balance of the loan and not on the original principal sum.

Cost, charge or expense of loan. **47.** Notwithstanding any tax, duty or fee payable under the *Stamp Duty Act*, the *Registration of Titles Act* or the *Conveyancing Act* that may be payable as part of the cost of obtaining a loan, a licensee may impose such other reasonable and justifiable cost associated with the extension of the loan and with enforcing repayment obligations or realization of collateral.

Complaints. **48.—**(1) Notwithstanding section 7(3) and (5) of the *Consumer Protection Act*, a complaint to the Commission under this Part shall be made in writing.

(2) In exercising its powers under this Part, the Commission—

- (a) shall ensure that its decision in resolution of any complaint made under this Part is communicated by notice in writing to the person who made the complaint and the licensee concerned;
- (b) may issue such directions as it thinks necessary to implement that decision.

(3) A person who fails to comply with a direction issued by the Commission under subsection (2) commits an offence, and is liable on summary conviction, to the penalty specified in the Third Schedule. Third
Schedule.

(4) For the purposes of investigating a complaint made under this Part the Commission may—

- (a) in writing, advise the licensee concerned of the general nature of the complaint and direct the licensee to furnish the Commission with such information as it may require;
- (b) appoint a person to carry out the investigation; and
- (c) after giving the licensee reasonable notice, require a person appointed by the Commission for the purposes of this Part, to enter upon any premises where the licensee carries on the business of providing microcredit services in order to conduct the investigation.

(5) Where a Judge of a Parish Court is satisfied upon information given by a person appointed under subsection (4)(b), that there are reasonable grounds for believing that there is at any premises, any item relevant to the investigation, the Judge of the Parish Court may issue a warrant authorizing the person, together with a constable, to enter and search such premises, if necessary by force, and to examine the item or remove the item for the purpose of making copies.

(6) Where a person appointed under subsection (4)(b) or a constable removes an item from any premises for the purpose of making copies under this section, the person or constable, as the case may be, shall give a receipt for the item to the occupant of the premises and shall

ensure that the copies are made and the item returned to the premises as soon as is reasonably practicable, and in any event not later than thirty days after the removal.

(7) A copy of any item removed from premises under subsection (5) and certified to be a true copy by the person appointed under subsection (4)(b) or the constable who removed it, shall be admissible in evidence as if it were the original of such item.

(8) A search and seizure warrant does not confer the right to seize any information or material that a person would be liable to refuse to produce on the grounds of legal professional privilege.

(9) For the purposes of this section “item” means any document or object.

(10) A person commits an offence, and is liable, on summary conviction, to the penalty specified in the Third Schedule, if that person, without lawful justification or excuse, obstructs, hinders, resists or fails to comply with the lawful direction of a person appointed under subsection (4)(b), or a constable, in the exercise of any functions under this section.

Third
Schedule.

Code of
conduct.

49.—(1) Subject to subsection (2), the Commission shall, with the approval of the Minister, make and issue a code of conduct for licensees on consumer related matters, and without prejudice to the generality of the foregoing, the code may provide for the following—

- (a) the obligation of licensees to keep the language in loan agreements with borrowers simple and clear, and to ensure that key terms, including but not limited to, rates, fees and payment dates, are clearly identified and defined for the borrower’s attention;
- (b) the obligation of the licensees to take all reasonable steps to verify that the borrowers have, or are likely to have, the means to repay a loan;
- (c) the obligation of licensees to provide a copy of the proposed loan agreement to each borrower and the guarantor, if any;

- (d) the establishment by licensees of effective mechanisms to address consumer complaints;
- (e) the communication of consumer complaint mechanisms and procedures to borrowers by licensees;
- (f) the reporting and record keeping obligations of licensees in relation to consumer complaints and resolutions within the times and in the formats specified by the Commission;
- (g) the lawful methods of enforcement available where a borrower has breached the repayment terms of a loan agreement;
- (h) the role of the bailiff as a part of the enforcement process and his duties and responsibilities to customers in accordance with this Act;
- (i) measures that will be taken to facilitate access to microcredit services for senior citizens and consumers with disabilities; and
- (j) any other matter the Commission thinks necessary.

(2) The code of conduct referred to in subsection (1), and any amendment thereto, shall be formulated after consultation with the Supervisor or such other person or entity as may, from time to time, be charged to carry out similar functions, and any other person, who in the opinion of the Commission, are relevant stakeholders.

(3) Where a licensee contravenes the code of conduct, the Commission may issue directions to that licensee.

(4) A licensee who fails to comply with a direction issued by the Commission commits an offence, and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

(5) A contravention of the code of conduct may not invalidate a transaction.

(6) Subject to subsection (5), no proceedings or determination made under the code of conduct shall affect the rights of any party to enforce any claim under the contractual agreement between the parties.

False or misleading advertising by licensee.

50.—(1) A licensee shall not knowingly or recklessly advertise any information relating to the terms and conditions for the grant of a loan, which contains any information which is false or misleading in a material particular.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third Schedule.

Using misleading, false or deceptive information to induce a person to take a loan from micro-credit institution.

51.—(1) A licensee shall not—

- (a) by any statement, promise, forecast or projection which the licensee knows to be misleading, false or deceptive; or
- (b) by the reckless making of any statement, promise, forecast or projection which is misleading, false or deceptive,

wilfully induce or attempt to induce a person to accept or take a loan (by whatever name called) with the licensee.

(2) A licensee who contravenes subsection (1) commits an offence and is liable, on conviction, to the penalty specified in the Third Schedule.

Threatening, harassing or intimidating borrower.

52. A person commits an offence if the person, in an attempt to recover a debt owed to a licensee, displays, or causes to be displayed, or uses any threatening, abusive, harassing or intimidating words, behaviour, writing, sign or visible representation to a person who borrows money from the licensee or to the guarantor for that person and is liable, on conviction, to the penalty specified in the Third Schedule.

Third Schedule.

PART VIII.—*Winding up of Licensee*

Winding up of licensee.

53.—(1) Subject to subsection (2), the winding up of a licensee shall be subject to the provisions of the *Insolvency Act*.

(2) Where a licensee is a part of a financial group under the *Banking Services Act*, the *Insolvency Act* shall not apply to the winding up of that licensee except with the written consent of the Supervisor.

(3) Where a licensee passes a resolution for voluntary winding up,

the licensee shall forthwith, notify the Supervisor in writing, and shall, within fourteen days after the passing of the resolution, furnish to the Supervisor the following in relation to the licensee—

- (a) a declaration of solvency referred to in section 277 of the *Companies Act*;
- (b) a profit and loss account made up as to a date that is no more than ninety days prior to being furnished to the Supervisor;
- (c) a balance sheet as at the date to which the profit and loss account is made up; and
- (d) a report from the external auditor under section 35, in relation to such declaration of solvency and profit and loss account.

(4) For the purposes of this Act, a resolution for voluntary winding up of a licensee shall not be effective unless the Supervisor certifies that its realizable assets are such as to enable it to satisfy the claims of its creditors.

(5) Where a licensee passes a resolution for voluntary winding up, it shall, within fourteen days after the passing of the resolution, give notice of the resolution—

- (a) by causing a copy of the resolution to be published in the *Gazette* and in a daily newspaper circulated in Jamaica;
- (b) in writing to the Registrar of Companies; and
- (c) to its customers, in such form and containing such information as the Supervisor may approve,

and that licensee shall, from the commencement of the winding up, cease to carry on the business of a microcredit institution, in accordance with section 275 of the *Companies Act*.

(6) The corporate state and corporate powers of the licensee shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

(7) Where proceedings for compulsory winding up of the licensee have commenced or the licensee has been served with a notice

or otherwise becomes aware that an application has been made for the commencement of the compulsory winding up of its business, the licensee shall forthwith, notify the Supervisor, in writing.

(8) A licensee who contravenes subsection (3) or (7) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

Third
Schedule.

PART IX.—*General*

Offences and
penalties.

54. The offence described in the first column of the Third Schedule shall, in respect of the section specified in the second column, incur the penalty set out in relation thereto in the third column.

Fixed
penalties.
Fourth
Schedule.

55.—(1) This section shall apply to an offence specified in the Fourth Schedule.

(2) The Regulatory Authority may give to any person which 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) A person shall not 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 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 the 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 the person for that offence until the end of 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) The 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 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 *prima facie* 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 initiated 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 under this section 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 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 section, and in particular, any such order may prescribe—

- (a) the form of notice under subsection (2);
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment; and
- (c) the arrangements for the Collector of Taxes to furnish to the Regulatory Authority, information with regard to any payment pursuant to a notice under this section.

Offence for which no penalty is provided. Third Schedule.

56. Any person who commits an offence for which no penalty is provided for under this Act shall be liable, on conviction, to the penalty specified in the Third Schedule.

Search warrant for contravention of this Act.

57.—(1) Where an authorized officer has reasonable grounds for suspecting that a person is committing or has committed an offence under this Act and that evidence of the commission of the offence is to be found on any premises specified in the information, the authorized officer may, for the purpose of carrying out an investigation in relation to the offence, apply, by information, under subsection (2), to a Justice of the Peace, for a warrant to search the premises.

(2) A warrant issued under subsection (1) shall empower the authorized officer named in the warrant, with such assistance as may be necessary and reasonable—

- (a) to enter the premises named in the warrant;
- (b) to search the premises for such documents, whether stored physically or electronically (in this section referred to as “relevant documents”); and
- (c) to seize and detain any relevant documents found in the course of the search that, in the opinion of the authorized officer, is relevant to the investigation in respect of which the application is made.

(3) A search warrant shall not be issued under subsection (2) unless—

- (a) the applicant or some other person has given the Justice of the Peace, either orally or by affidavit, any further information that the Justice of the Peace requires concerning the grounds on which the warrant is sought; and
- (b) the Justice of the Peace is satisfied that there are reasonable grounds for issuing the warrant.

(4) A search warrant issued under subsection (2) shall state—

- (a) the purpose for which it is issued, including a reference to the offence that is being committed or has been committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of relevant documents authorized to be seized;
- (d) that the warrant remains in force until—
 - (i) it ceases to be in force under subsection (9); or
 - (ii) it is varied or discharged by a Judge in Chambers pursuant to an application made under subsection (8).

(5) An authorized officer shall not seize any document which is subject to legal professional privilege.

(6) An authorized officer may, upon request, make copies of any relevant documents or take extracts therefrom at the expense of the person who is suspected of committing or having committed the offence.

(7) A person who is aggrieved by the issue of a warrant under this section, may apply to a Judge in Chambers to vary or discharge the order and shall, within twenty-four hours after making the application, serve notice on the Supervisor to join in the proceedings.

(8) A warrant remains in force—

(a) until the earlier of—

- (i) the end of the period for which it is to remain in force as stated in the warrant; or
- (ii) fourteen days after the date on which the warrant is issued; or

(b) until it is varied or discharged by a Judge in a Parish Court pursuant to an application made under subsection (7).

(9) A Judge of a Parish Court may, on an *inter partes* application by an authorized officer make such other order as the Court considers appropriate in relation to the operation of the order.

(10) A person who hinders or obstructs an authorized officer or any person acting in aid of such officer in the performance of his functions under subsection (2) commits an offence and is liable, on summary conviction, to the penalty specified in the Third Schedule.

(11) In this section “premises” includes any place, building, receptacle or vehicle.

Third
Schedule.

PART X.—*Miscellaneous*

58.—(1) The Regulatory Authority may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, the regulations may make provision in relation to all or any of the following—

Regulatory
Authority
may make
Regulations.

- (a) the requirements for the grant of a licence under this Act;
- (b) licence fees and other matters in respect of which fees are to be payable and the amount of such fees;
- (c) mergers, amalgamations, acquisitions and transfers involving licensees and the sale of a licensee;
- (d) the establishment of a branch of a licensee; and
- (e) any other matter required to be prescribed under this Act.

(2) Notwithstanding section 29 of the *Interpretation Act*, regulations made under this Act may prescribe greater penalties than those specified in the Act, and the maximum penalty that may be so prescribed shall be a fine not exceeding two million dollars, and in default of payment of the fine, to imprisonment for a term not exceeding twelve months or such form of alternative sentence as specified in section 10 of the *Criminal Justice (Reform) Act*.

(3) Regulations made under this section shall be subject to affirmative resolution.

59.—(1) The Regulatory Authority may, with the approval of the Minister, make rules for the operation of microcredit institutions, to be known as “the Microcredit Supervisory Rules”, in relation to—

Power of
Regulatory
Authority to
make
Supervisory
Rules.

- (a) the governance of licensees;
- (b) the form of applications and notices and other such matters as may be specified under this Act;
- (c) anti-money laundering, counter financing of terrorism and the prevention of the proliferation of weapons of mass destruction;
- (d) the preparation and presentation of returns and other reporting requirements and the manner of filing such returns and other information;
- (e) the outsourcing of key aspects of the operations of a licensee; and
- (f) such other matters as the Regulatory Authority considers necessary for the administration of this Act.

(2) The powers conferred upon the Regulatory Authority by subsection (1) shall be exercised after consultation with licensees and persons who, in the opinion of the Regulatory Authority, are relevant stakeholders.

(3) The Microcredit Supervisory Rules shall be subject to affirmative resolution.

(4) Where a licensee contravenes the Microcredit Supervisory Rules, the Regulatory Authority may, pursuant to section 25, issue directions to that licensee.

Power of Minister to amend monetary penalties and Schedules. First, Second, Third and Fourth Schedules.

60. The Minister may by order, subject to affirmative resolution, amend—

- (a) any monetary penalty imposed by this Act or the regulations;
- (b) the First, Second, Third and Fourth Schedules to this Act (other than the custodial sentences specified in the Third Schedule).

Immunity.

61.—(1) No action, suit or other proceedings may be brought or instituted personally against an authorized officer or any other person acting on behalf of the authorized officer where that person, in exercising a function conferred or imposed under this Act, or omitting to exercise such function, acted lawfully or in good faith.

(2) No action, suit or other proceedings may be brought or instituted personally against a member of the Commission or any person acting on behalf of the Commission, where that person, in exercising a function conferred or imposed under this Act, or omitting to exercise such function, acted lawfully or in good faith.

Review of Act.

62. A review of this Act shall be conducted no later than five years after the commencement date by a committee of both Houses of Parliament appointed for the purpose.

Amendment of enactments. Fifth Schedule.

63. The enactments specified in column 1 of the Fifth Schedule are amended in the manner specified in relation thereto in column 2 thereof.

Transitional.

64.—(1) A person who, at the commencement date is operating a business which falls within the criteria set out in this Act for a microcredit institution or for the offering of a microcredit service, shall, within twelve months from the commencement date, or within such longer period as the Minister may by notice in the *Gazette* prescribe—

- (a) comply with the provisions of this Act and apply to the Supervisor for a licence to continue his business as a microcredit institution; or

(b) cease to carry out such business.

(2) A person who, at the commencement date is operating a business (which falls within the criteria set out in this Act for a microcredit institution or for the offering of a microcredit service) together with another type of business, shall within twelve months from the commencement date, or within such longer period as the Minister may by notice in the *Gazette* prescribe—

- (a) separate the microcredit business from any other type of business being conducted; and
- (b) comply with the provisions of this Act and apply to the Supervisor for a licence to continue the business as a licensed microcredit institution; or
- (c) cease to carry out such business.

65. This Act shall not, before the commencement date, affect the enforceability of moneylending transactions between a borrower and a lender, where the lender operates a business which falls within the criteria set out in this Act for a microcredit institution or for the offering of a microcredit service. Savings.

FIRST SCHEDULE (Sections 2 and 60)

MSME

For the purposes of the definition of “MSME”—

- (a) “micro sized enterprise” means an enterprise that employs five or fewer persons with total annual sales not exceeding fifteen million dollars;
- (b) “small sized enterprise” means an enterprise that employs between six and twenty persons with total annual sales ranging between fifteen and less than seventy-five million dollars; and
- (c) “medium sized enterprise” means an enterprise that employs between twenty-one and fifty persons with total annual sales ranging between seventy-five and four hundred and twenty-five million dollars.

SECOND SCHEDULE

(Section 3)

*Transactions, Persons and Entities Not Regulated
by this Act*

This Act shall not apply to the following—

1. money lending transactions between persons who do not offer microcredit services on a day-to-day basis to the public or segments thereof, which transactions are regulated by the *Moneylending Act*;
2. any Friendly Society registered under the *Friendly Societies Act*, or any enactment amending or substituting for the same, or to any loans made by any Friendly Society;
3. any Building Society licensed under the *Banking Services Act*;
4. any Society registered under the *Industrial and Provident Societies Act* or any enactment amending or substituted for the same, or to any loans made by any such Society;
5. any Society registered under the *Co-operative Societies Act* or any enactment amending or substituted for the same, or to any loans made by any such Society;
6. any specified financial institution as defined in section 2 of the *Bank of Jamaica Act* declared so to be by the Minister, by notice in the *Gazette* for the purposes of the *Bank of Jamaica Act*, or any other enactment amending or substituting for the same, or any loans made by any such institution;
7. any body corporate, incorporated or empowered by an enactment of Parliament to lend money in accordance with the enactment;
8. any company licensed under the *Banking Services Act* as a merchant bank;
9. any company licensed under the *Banking Services Act* as a bank;
10. any loan to or contract or security for the payment of money lent to a body corporate incorporated in Jamaica by or under any enactment or by royal charter;
11. any insurance company registered under the *Insurance Act*, in the course of whose business and for the purposes whereof it lends money;

12. any entity that extends credit to its customers for the supply of goods and services;
13. a licensee as defined under section 2 of the Securities Act;
14. an entity—
 - (a) which is established by a statutory body or authority; and
 - (b) the primary purpose of which is to lend money;
15. any superannuation fund or retirement scheme approved and registered under the Pensions (Superannuation Funds and Retirement Schemes) Act; and
16. any other transaction, person or entity specified by the Minister by order in the *Gazette*.

THIRD SCHEDULE (Sections 6(2), 9(2), 13(3), 15(2), 16(2), 17(5), 18(4), 20(10), 20(12), 21(2), 22(5), 23(5), 24(2)(c), 27(7), 27(10), 27(11), 30(2), 31(3), 33(3), 34(2), 34(4), 34(6), 35(4), 38(2)(a), 38(2)(b), 40(2), 40(4), 48(3), 48(10), 49(4), 50(2), 51(2), 52, 53(8), 56, 57(10) and 60)

Offences and Penalties

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Offence of—		
(a) disclosing information regarding the operations of a licensee to a person who is not specified in section 6(1);	6(2)	On summary conviction in a Parish Court, to a fine not exceeding two million dollars, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.
(b) disclosing information regarding the affairs of a customer of a licensee obtained in consequence of the performance of duties under this Act; or		On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding two years.
(c) disclosing information other than for the purposes of the investigation of a financial crime or the contravention of a licensee's obligation under another enactment		

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Offence of providing a micro-credit service without being licensed as a microcredit institution	9(2)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.</p>
Offence by licensee of causing or permitting another person to use its licence	13(3)	<p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding one year.</p> <p>On summary conviction in a Parish Court—</p> <p>(a) in the case of the institution, to a fine not exceeding one million dollars; and</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Obtaining a licence by false representation	15(2)	<p>imprisonment for a term not exceeding three months or to both such fine and imprisonment.</p> <p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding three million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding two million dollars, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding five years.</p>
Person not licensed under this Act as a microcredit institution, who knowingly or recklessly advertises information, which falsely implies or explicitly states that the person is licensed under this Act as a microcredit institution	16(2)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Use of name, title, word, term or grammatical presentation that falsely represents or implies that the person is licensed as a microcredit institution	17(5)	<p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding one year.</p> <p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one hundred thousand dollars; or</p> <p>(b) in the case of an individual, to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Offence of knowingly or recklessly depositing with the Supervisor, a statement, agreement, deed or declaration with information which is false in a material particular	18(4)	On summary conviction in a Parish Court— (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
Failure to obtain the approval of the Supervisor in respect of the establishment of a new branch of a licensee or the change in location of an existing branch of a licensee	20(10)	On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars.
Failure of licensee to notify Supervisor of intention to close business of licensee or the business of a branch of the licensee, surrender licence or cease business operations	20(12)	On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars.

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure to notify the Supervisor in respect of fraud, dismissal, <i>etc.</i>	21(2)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Failure to notify Supervisor of— (a) proposed alteration to incorporating documents of licensee; (b) the alteration to the incorporating documents within fourteen days of the date of such alteration	22(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars.
Offence of altering incorporating documents in contravention of an objection of the Supervisor to such alteration, within thirty days of receipt of the notification of such alteration	22(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars.
Offence of changing the registered name of a licensee, without, in writing, notifying the Supervisor and furnishing reasons for the proposed change and requesting approval for the proposed change	23(5)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars.

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure to produce documents required within the period specified	24(2)(a)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of the institution, to a fine not exceeding two hundred and fifty thousand dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding one hundred and fifty thousand dollars, or to imprisonment for a term not exceeding two months, or both such fine and imprisonment.</p>
Wilfully misleads or makes a false statement with intent to mislead an authorized officer in the execution of his functions under this Act	24(2)(b)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of the institution, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Without lawful excuse or justification, obstructs or hinders an authorized officer in the execution of his functions under his Act	24(2)(c)	On summary conviction in a Parish Court, to a fine not exceeding two hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
Failure by a person whose licence has been revoked to surrender the licence and copies thereof	27(7)	On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.
Failure by a person whose licence has been revoked to comply with the prohibition against—	27(10) or 27(11)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p>
(a) engaging in any new arrangement or contract;		
(b) varying any existing arrangement or contract; or		
(c) engaging in any activity which advertises or promotes the services of the licensee		

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure by licensee to ensure that each substantial shareholder and officer of the licensee remains a fit and proper person	30(2)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; and</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars.</p>
Failure of licensee to comply with direction or order of Supervisor	31(3)	<p>On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
Breach of obligation to keep secret and confidential, information and documents pertaining to customers of a licensee	33(3)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure by licensee to keep or cause to be kept accurate records in respect of a microcredit business	34(2)	<p>dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.</p> <p>On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding six months.</p> <p>On summary conviction in a Parish Court—</p> <p>(a) in the case of the institution, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment</p>
Failure by licensee to retain records of the business for at least seven years	34(4)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure by licensee to—	34(6)	(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.
(a) furnish records required by the Supervisor; or (b) furnish information relating to its business to the Supervisor		(a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars.
With intent to prevent, delay or obstruct the carrying out of an audit, destroys or conceals or alters any document relating to the operations of a licensee	35(4)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment. On conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure by licensee to submit to Supervisor audited accounts prepared pursuant to section 35(1)	38(2)(a)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.
Failure by licensee to submit to Supervisor accounts prepared pursuant to section 35(2)	38(2)(b)	On summary conviction in a Parish Court, to fine not exceeding five hundred thousand dollars.
Failure by external auditor appointed by the licensee to forthwith give written notice, with reasons, to the Supervisor regarding—	40(2)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding one month, or to both such fine and imprisonment.
<ul style="list-style-type: none"> (a) his intention to resign during the period of his appointment; (b) his unwillingness to be considered for reappointment at the expiration of the period for which he was appointed; or (c) the termination of his appointment by the licensee 		
Failure by a licensee to, with reasons, notify the Supervisor regarding—	40(4)	On summary conviction in a Parish Court, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding one month, or to
<ul style="list-style-type: none"> (a) its intention to terminate the 		

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
<p>appointment of the external auditor of the licensee; or</p> <p>(b) the passing of a resolution at a general meeting of the licensee, providing that the external auditor shall not be appointed</p>	48(3)	both such fine and imprisonment.
<p>Failure to comply with a direction of the Commission under section 48(2)(b)</p>	48(3)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
<p>Without lawful justification or excuse, obstructs, hinders, resists or fails to comply with the lawful direction of a person appointed under section</p>	48(10)	<p>On summary conviction in a Parish Court, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months,</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
48(4)(b) or a constable, in the exercise of any functions related to an investigation by the Commission		or to both such fine and imprisonment.
Failure to comply with a direction of the Commission under section 49(3)	49(4)	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of an institution, to a fine not exceeding one million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.</p>
Licensee who knowingly or recklessly advertises information relating to the terms and conditions for the grant of a loan, which contains information which is false or misleading in a material particular	50(2)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars.

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Use by a licensee of misleading, false or deceptive information to willfully induce a person to take a loan from a microcredit institution	51(2)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars. On conviction in a Circuit Court to a fine.
Offence of displaying or causing to be displayed or using any threatening, abusive, harassing or intimidating words, behavior, writing, sign or visible representation to a person who has borrowed money from a licensee, in an attempt to recover the debt	52	On summary conviction in a Parish Court— (a) in the case of a person other than an individual, to a fine not exceeding one million dollars; or (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.
Failure of a licensee to notify the Supervisor of— (a) a resolution to voluntarily wind up the licensee; or	53(8)	On summary conviction in a Parish Court, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
<p>(b) proceedings for the compulsory winding up of the licensee, a notice of an application for the commencement of the compulsory winding up of the business of the licensee, or an application for the commencement of the compulsory winding up of the business of the licensee</p>	56	<p>On summary conviction in a Parish Court—</p> <p>(a) in the case of a person other than an individual, to a fine not exceeding two million dollars;</p> <p>(b) in the case of an individual, to a fine not exceeding one million dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.</p>
<p>Offence for which no penalty is provided</p>		

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Offence of hindering or obstructing an authorized officer or any person acting in aid of such officer in the performance of his functions under section 57(2)	57(10)	<p>On conviction in the Supreme Court to a fine or imprisonment for a term not exceeding two years.</p> <p>On summary conviction in a Parish Court—</p> <ul style="list-style-type: none"> (a) in the case of an institution, to a fine not exceeding one million dollars; (b) in the case of an individual, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two months or to both such fine and imprisonment.

FOURTH SCHEDULE

(Section 55)

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

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
Failure to obtain the approval of the Supervisor in respect of the establishment of a new branch of a licensee or the change in location of an existing branch of a licensee	20(10)	Two hundred and fifty thousand dollars (\$250,000.00).
Offence of changing the registered name of a licensee, without, in writing, notifying the Supervisor and furnishing reasons for the proposed change and requesting approval for the proposed change	23(5)	One hundred and fifty thousand dollars (\$150,000.00).
Failure by a person whose licence has been revoked to surrender the licence and copies thereof	27(7)	Two hundred and fifty thousand dollars (\$250,000.00).
Failure by the licensee to keep or cause to be kept accurate records in respect of the micro-credit business	34(2)	(a) in the case of an institution, five hundred thousand dollars (\$500,000.00);

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
<p>Failure by licensee to—</p> <p>(a) furnish records required by the Supervisor; or</p> <p>(b) furnish information relating to its business to the Supervisor</p>	34(6)	<p>(b) in the case of an individual, two hundred and fifty thousand dollars (\$250,000.00).</p> <p>(a) in the case of a person other than an individual, five hundred thousand dollars (\$500,000.00);</p> <p>(b) in the case of an individual, five hundred thousand dollars (\$500,000.00);</p>
<p>Failure by licensee to submit to the Supervisor audited accounts prepared pursuant to section 35(1)</p>	38(2)(a)	<p>Five hundred thousand dollars (\$500,000.00).</p>
<p>Failure by licensee to submit accounts to the Supervisor prepared pursuant to section 35(2)</p>	38(2)(b)	<p>Two hundred and fifty thousand dollars (\$250,000.00).</p>
<p>Failure by external auditor appointed by the licensee to forthwith give written</p>	40(2)	<p>One hundred and fifty thousand dollars (\$150,000.00).</p>

First Column	Second Column	Third Column
Brief Description of Offence	Relevant Section	Penalty
notice, with reasons, to the Supervisor regarding—		
(a) his intention to resign during the period of his appointment;		
(b) his unwillingness to be considered for reappointment at the expiration of the period for which he was appointed; or		
(c) the termination of his appointment by the licensee		
Failure by a licensee to, with reasons, notify the Supervisor regarding—	40(4)	One hundred and fifty thousand dollars (\$150,000.00).
(a) its intention to terminate the appointment of the external auditor of the licensee; or		
(b) the passing of a resolution at a general meeting of the licensee, providing that the external auditor shall not be appointed		

FIFTH SCHEDULE

(Section 63)

Amendment of Enactments

Act	Amendment
—	—
Credit Reporting Act	<p>In section 8(2), re-letter paragraphs (m) and (n) as paragraphs (n) and (o) and insert next after paragraph (l) the following as paragraph (m)—</p> <p style="padding-left: 40px;">“(m) a microcredit institution licensed under the Microcredit Act ;”.</p>
Moneylending Act	<p>1. In section 13—</p> <p style="padding-left: 40px;">(a) delete paragraph (h);</p> <p style="padding-left: 40px;">(b) delete paragraph (i); and</p> <p style="padding-left: 40px;">(c) insert next after paragraph (k) the following as paragraph (l)—</p> <p style="padding-left: 80px;">“(l) a micro-credit institution licensed under the Microcredit Act or any enactment amending or substituting for the same, or to any loans made by any such institution.”.</p> <p>2. Delete section 14.</p>
Proceeds of Crime Act	<p>In section 2, in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and</p>

Act	Amendment
—	—
	insert next after paragraph (h) the following as paragraph (i)—
	“(i) a microcredit institution licensed under the Microcredit Act;”.
Terrorism Prevention Act	In section 2(1), in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and insert next after paragraph (h) the following as paragraph (i)—
	“(i) a microcredit institution licensed under the Microcredit Act;”.
United Nations Security Council Resolutions Implementation Act	In section 2, in the definition of “financial institution”, re-letter paragraph (i) as paragraph (j) and insert next after paragraph (h) the following as paragraph (i)—
	“(i) a microcredit institution licensed under the Microcredit Act;”.

MEMORANDUM OF OBJECTS AND REASONS

Since 2003, there has been a proliferation of privately-owned money lending institutions which have sought to satisfy the demand for funding of micro, small and medium sized enterprises.

The Government appreciates the importance of these institutions, as having access to financing is critical to alleviating poverty and facilitating growth in the economy.

However, the significant increase in these institutions has presented new challenges to conventional regulation especially due to their lending modalities which do not easily fit into existing legal and company structures. Many of these institutions charge excessive interest rates and engage in predatory lending practices.

Also, there has been a steady increase in requests from these institutions for exemption from the provisions of the *Moneylending Act* which provides some protection and recourse for borrowers.

Therefore, over time, issues have emerged which have led to the recognition that there is a need for the introduction of a regime to regulate privately-owned money lending institutions (“microcredit institutions”) which provide funding for micro, small and medium sized enterprises.

The Government not only recognizes the need to protect consumers by bringing order to the operations of microcredit institutions, but also recognizes the need to ensure that these institutions are not used to facilitate money laundering and terrorist financing.

Therefore, this Bill seeks to regulate the persons who provide microcredit services, ensuring that such persons are licensed by the Regulatory Authority and required to keep proper accounting and other records and make reports to the Regulatory Authority on a timely basis.

The Bill seeks to regulate the provision of microcredit services offered by microcredit institutions, in order to ensure that—

- (a) microcredit services may be utilized by micro, small and medium sized enterprises and individuals to facilitate their financial or economic advancement;
- (b) the interest of borrowers may be protected, by discouraging—
 - (i) excessive interest rates; and
 - (ii) predatory lending practices, by microcredit institutions;
- (c) the sustainable growth of micro, small and medium sized enterprises may be facilitated;

- (d) a transparent, fair and competitive landscape is created for microcredit institutions which will minimize asymmetric information and promote best practices; and
- (e) microcredit institutions are not used to facilitate money laundering activities and the financing of terrorist activity.

Additionally, the Bill—

- (a) prohibits false and misleading advertising by microcredit institutions; and
- (b) makes it an offence for microcredit institutions to use threats and violence in the process of collecting a debt.

The Bill identifies the Consumer Affairs Commission as the body responsible for accepting complaints against microcredit institutions, investigating complaints against microcredit institutions and formulating a code of conduct for microcredit institutions on consumer related matters. The Bill seeks further to amend—

- (a) the *Credit Reporting Act*, to designate companies licensed under the Microcredit Act to be credit information providers;
- (b) the *Moneylending Act*, to exempt any company licensed under the Microcredit Act from the provisions of the *Moneylending Act*;
- (c) the *Proceeds of Crime Act*, to designate a company licensed under the Microcredit Act as a financial institution;
- (d) the *Terrorism Prevention Act*, to designate a company licensed under the Microcredit Act as a financial institution; and
- (e) the *United Nations Security Council Resolutions Implementation Act*, to designate a company licensed under the Microcredit Act as a financial institution.

NIGEL CLARKE
Minister of Finance and the Public Service.

A BILL

ENTITLED

AN ACT to License and regulate microcredit institutions that provide financing to individuals and micro, small and medium sized enterprises; to discourage microcredit institutions from lending money at excessive interest rates and from engaging in predatory lending practices; and for connected matters.

As introduced by the Honourable Minister of Finance
and the Public Service.

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