

## THE BANKING SERVICES ACT

### The Banking Services (Deposit Taking Institutions) (Customer Related Matters) Code of Conduct, 2016

In exercise of the power conferred on the Supervisor by subsection (4) of section 132 of the Banking Services Act, the following Code is hereby made:-

#### Part I. *Preliminary*

- Citation. 1. This Code of Conduct may be cited as the Banking Services (Deposit Taking Institutions) (Customer Related Matters) Code of Conduct, 2016 issued pursuant to section 132(4)(b) of the Banking Services Act, 2014 regarding conduct with which deposit taking institutions must adhere when addressing the customer related matters reflected herein.
- Interpretation. 2. (1) In this Code-
- “account” means a continuing relationship between a deposit taking institution and a customer who is an account holder, in which deposits or debts are held and processed within a framework of established rules and procedures;
  - “advertisement” has the meaning assigned to it under section 2 of the Banking Services Act;
  - “agent” means any person who has been appointed pursuant to section 108(1) of the Banking Services Act and in accordance with any applicable Regulations;
  - “banking business” has the meaning assigned in the Banking Services Act;
  - “complainant” means a customer specified below at Article 3;
  - “complaint” for the purposes of this Code means an expression of protest, grievance, objection, discontent or dissatisfaction made by a complainant against a deposit taking institution or any agent thereof regarding a product or service of a deposit taking institution, or regarding the conduct of a deposit taking institution or agent thereof in contravention of this Code before, at the time of, or after the acquisition of the product or service by the complainant, and which complaint is made in accordance with the procedures for handling customer complaints that are established by the deposit taking institution;
  - “connected person” has the meaning assigned to it in the Banking Services Act;
  - “customer” means any person to whom a deposit taking institution or any agent thereof provides or offers to provide a product or service, and any person who requests such a product or service;

“deposit taking institution” has the meaning assigned to it in the Banking Services Act;

“disclosure” means the provision of information in writing by a deposit taking institution to a customer, directly or through an agent. A disclosure in writing can be made electronically or otherwise in accordance with the instructions of the customer. A disclosure that is made electronically must be done in accordance with Article 4 below;

“dispute” for the purposes of this Code means any disagreement, other than a complaint, between a customer and the deposit taking institution or any agent thereof;

“document” has the meaning assigned to it in the Banking Services Act;

“dormant” means a savings account showing no deposit or withdrawal activity (other than posting interest) for a period specified by a deposit taking institution not being less than six calendar months;

“effective annual interest rate” means the rate used to determine the actual annual rate that is to be paid on a loan or a financial product if the stated annual rate takes into account the effects of compounding and which is calculated in accordance with the methodology specified in the Third Schedule to this Code;

“information” has the meaning assigned in the Electronic Transactions Act;

“key terms” refers to the matters indicated in the First Schedule to this Code;

“product or service” means a product or service offered to a customer in the course of banking business by a deposit taking institution directly or through its agent;

“Supervisory Committee” has the meaning assigned to it in the Banking Services Act;

“variation” in relation to a term, condition, interest rate, fee or charge, is any change that revises a customer’s benefit, entitlement, or obligation, from the original benefit entitlement or obligation that was applicable to, or in respect of, that customer and includes a designation of an account as dormant.

(2) This Code of Conduct shall not affect any right of a party to enforce any claim under the contractual arrangements between the parties and shall not affect any presumptions or rights, implied or otherwise, concerning the banker-customer relationship.

3. For the purposes of this Code of Conduct, a complainant is a customer who is-
- (a) an individual; or
  - (b) a person meeting the description of a ‘small company’ under the Companies Act who or which makes a complaint to a deposit taking institution or agent thereof.

4. A disclosure that is made electronically refers to the giving of information in accordance with subsections (1)(a) and (c), and (4) of section 7 of the Electronic Transactions Act.

5. Where a disclosure to a customer is made-
- (a) by post, the date appearing by the stamp or mark of the post office in Jamaica upon the envelope or wrapper enclosing the information received by the customer as the date of deposit in the post office shall be taken as the day upon which the disclosure of information by post was made;
  - (b) electronically, the dispatch and receipt of that disclosure shall (as far as is applicable) be interpreted in accordance with section 20 of the Electronic Transactions Act.

## Part II. *General Requirements*

Matters for Disclosure.

6. In accordance with Article 8 below, a deposit taking institution shall make disclosures of-

- (a) its-
  - (i) terms and conditions,
  - (ii) fees and charges, and
  - (iii) interest rates

that are applicable to a product or service that is offered by the deposit taking institution directly or through its agent and which use, access or acquisition is either being actively considered by a customer of the deposit taking institution, or in respect of which, the customer is currently using, accessing or acquiring or has used, accessed or acquired;

- (b) its procedures for handling customer complaints.

Mechanisms for compliance.

7. (1) A deposit taking institution shall establish and implement such structures, policies, procedures, controls, resources and training, as may be necessary to ensure its own compliance with this Code of Conduct.

(2) Without prejudice to the generality of the foregoing in paragraph (1) of Article 7, the establishment and implementation required of a deposit taking institution referred to in that paragraph shall include-

- (a) the establishment of a department, unit or other mechanism for facilitating the deposit taking institution’s interaction and communication with its customers;
- (b) the establishment of programmes for training of its officers and employees on an ongoing basis on the matter of customer relations and

for instructing its employees as to their responsibilities in respect of this Code;

- (c) the establishment and implementation of procedures in accordance with Article 12 for handling its customer complaints;
- (d) establishment of appropriate internal controls to ensure the requirements at (a), (b) and (c) above are fully and effectively implemented.

Disclosures.

8. (1) Pursuant to Article 6(a), a deposit taking institution shall disclose to its customers, certain information regarding its products and services as outlined in subparagraphs (2)-(6) of this Article, and where applicable, such disclosures shall be done in accordance with Article 9.

- (2) In relation to terms and conditions, the deposit taking institution shall-
  - (a) provide the customer with the terms and conditions relating to the opening of an account, or the use, access or acquisition of a product or service, prior to the opening of an account, or the use, access to or acquisition of a product or service by a customer;
  - (b) offer to the customer the option of receiving or accessing the terms and conditions in writing by physical or electronic means;
  - (c) subject to (d) below, ensure the terms and conditions pertaining to the matters at (a), are disclosed-
    - (i) in clear language;
    - (ii) where the use of technical jargon is unavoidable, be accompanied by an explanation in simple language, and in a manner that is not false or misleading;
  - (d) in accordance with the First Schedule to this Code of Conduct, ensure that key terms for deposit and loan products are clearly identified or highlighted for the customer's attention;
  - (e) ensure that a copy of the standard terms and conditions for its products and services is made available to any customer on request;
  - (f) ensure that where a product or service is preconditioned on the delivery of a product or service by, from or through a third party, this precondition is disclosed to the customer prior to the customer's selection of the mode of delivery and that such disclosure also includes-
    - (i) the list or panel of third parties by, from, or through which, the product or service can be delivered;
    - (ii) whether the third party is a connected person;
    - (iii) any other information deemed by the deposit taking institution to be pertinent to the delivery of the product or service on this basis;
  - (g) indicate the circumstances in which and the basis on which a term or condition can be varied; and
  - (h) steps to be taken by the customer to discontinue or cease that customer's access to, use or acquisition of the product or service and the costs attached with such steps, as the case may be.

- (3) In addition to paragraph (2) of this Article, the disclosure of fees and charges, shall also -
- (a) provide the customer with, or make provision for the customer to, access the fees and charges pertaining to the product or service being used, accessed or acquired, prior to the start of the customer's use of, access to, or acquisition of, the product or service. Where however a fee or charge is associated with the discontinuation of the use or access of the product or service, or, with early withdrawal, encashment or repayment, the disclosure of this fee or charge to the customer must be made, before the customer completes the process associated with the discontinuation of the use, access or acquisition of the product or service or with the early withdrawal, encashment or repayment;
  - (b) as far as applicable, conform with the minimum disclosures in the Second Schedule to this Code of Conduct and include disclosures of-
    - (i) the costs applicable to each option of conducting transactions involving the product or service being, or to be used, accessed or acquired;
    - (ii) any other information in relation to the fees and charges that are deemed by the deposit taking institution to be pertinent to the product or service being, or to be used, accessed or acquired.
- (4) The provision of, or access allowed to, information on fees and charges at sub-paragraph (3)(a) can be addressed by schedule or otherwise presented by the deposit taking institution in a manner that reflects the fees and charges applicable to the product or service, being or to be accessed, used or acquired by the customer.
- (5) In addition to paragraph (2) of this Article, disclosures of interest rates shall also-
- (a) prominently reflect the interest rate that is applicable to the respective product or service that is being or that is to be used, accessed or acquired by the customer;
  - (b) reflect the interest rate as an effective annual interest rate (EAIR) regardless of however else the interest rate at sub-paragraph (5)(a) is expressed to the customer, and ensure that where interest rates are being displayed or published, whether by advertisement or otherwise, the EAIR shall be the most prominent rate displayed, published or advertised;
  - (c) reflect in advance, the cycle and timing for the interest to be debited or credited to a customer's account or applied to a product or service that is to be or that is being used, accessed or acquired by a customer, and in the case of loans, whether such interest calculation is made on a flat or declining balance basis; and
  - (d) reflect the period of notice that will be provided to the customer prior to any variation of interest rate taking effect or being applied.

- (6) In addressing the disclosure of the procedures for customer complaints, the deposit taking institution shall-
  - (a) ensure accurate and up-to-date information on the procedures for customer complaints is made available to customers prior to a product or service being used, accessed or acquired by a customer;
  - (b) ensure the disclosure pursuant to paragraph (a) of this Article includes information-
    - (i) to facilitate the filing of customer complaints;
    - (ii) on the customer's right to have the customer complaint referred to the person or unit in accordance with Article 12; and
    - (iii) on how to submit a complaint to, or file a complaint with, the deposit taking institution and the process that will be followed by the deposit taking institution when it handles a customer complaint.

Notification.

9. A deposit taking institution shall provide a customer with reasonable notice in writing of any variation to the terms and conditions including fees and charges, and interest rate applicable to any of its products or services that is to be, is being, or has been used, acquired or accessed by the customer. For the purpose of this Article and subject to the provisos herein, reasonable notice means-

- (a) in relation to the period between the notice and the implementation or application of a proposed variation (to a term or condition other than the interest rate), notice provided by a deposit taking institution, either directly or through its agent, to a customer not less than forty-five calendar days in advance of such variation being implemented or applied (inclusive of the date of the notice);
- (b) in relation to the period between a general advisory by a deposit taking institution to its customer base and the implementation or application of a proposed variation, the advisory communicated in accordance with Article 10 and in a period of not less than forty-five calendar days in advance of such variation being implemented or applied (inclusive of the date of the advisory).

Provided such variation is not caused by circumstances within the deposit taking institution's or agent's control, the notification of matters pursuant to (a) or advisory of matters pursuant to (b) by a deposit taking institution to a customer, shall be reasonable where the communication is done at the earliest possible time and prior notification of such variation would not be required. The circumstances referred to are where-

- (i) the cause for the variation is the application of a third party charge; or
- (ii) interest rates or cost of a product or service are pegged to a published variable measure such as the London Interbank Offered Rate (LIBOR) or the Treasury Bill rate unless the peg or variable measure changes.

Provided also that where a variation is one taking effect to the customer's advantage, prior notification of such a variation is not required.

Advisories.

10. In relation to the method of communication of a general advisory at paragraph (b) of Article 9, the communication of advisories shall be by prominent display of such advisory in a conspicuous position in each place of business and all locations operated by the deposit taking institution (i.e. head office (except in the case of a foreign bank) and all branch and sub-branch locations) as well as agent locations, as the case may be.

Access to  
information.

11. (1) A deposit taking institution shall, in relation to a customer, and in accordance with paragraphs (2) and (3) of this Article, provide access to that customer of that customer's account information and to information on the transactions conducted by that customer with the deposit taking institution or agent to the extent that such records continue to be held by the deposit taking institution in accordance with its respective statutory obligations regarding the retention of records and the release of such information would not cause the deposit taking institution to breach a statutory obligation.

- (2) A deposit taking institution shall-
  - (a) upon the written request of a customer, provide to the customer either an accurate and complete disclosure of the account information or transaction detail requested by the customer, within fourteen calendar days of the receipt of the request. Where the requested information cannot be provided within this timeline, the customer shall be advised of the date by which the information will be provided, so however, that the timeline within which the information is provided to the customer does not exceed twenty-eight calendar days of the receipt of the request;
  - (b) ensure, in accordance with Article 8, that where a charge is applicable for the disclosure of any information to the customer, it notifies the customer of this charge prior to the customer exercising an option according to a mode of disclosure; and that such charge is reasonably proportionate to the cost attached with the mode of disclosure of the information to the customer.
- (3) for disclosures pertaining to account information, a deposit taking institution shall-
  - (a) subject to paragraph (4) of this Article, provide each customer with a monthly written statement of every account the deposit taking institution operates for that customer, unless agreed otherwise in writing by the customer;
  - (b) ensure that each account statement is self-explanatory and, at a minimum, contains:
    - (i) the opening and closing balances;
    - (ii) all transactions undertaken in respect of the account during the period covered by the statement;
    - (iii) details of interest and other charges, including amounts that have been applied to the account during the same statement period; and
    - (iv) the basis on which an account status may be classified and treated as 'dormant', and any other variations that become applicable when a classification of 'dormant' occurs.

(4) the requirement at sub-paragraph (3)(a) of this Article for the provision of monthly statements applies in relation to current accounts, deposit accounts which are repayable on demand, and credit card facilities and the requirement can otherwise be met where an alternative option to access the account information is granted to the customer and the customer has indicated in writing that this is the method by which access to the account information will be pursued.

Complaints.

12. A deposit taking institution shall establish internal mechanisms and procedures for handling customer complaints involving a complainant. Accordingly, a deposit taking institution shall-

- (a) establish and implement procedures for handling customer complaints in accordance with Article 7;
- (b) designate one or more officers of the business as responsible officers specifically charged with the responsibility for handling customers' complaints. These officers shall also be the designated points of contact for customer complaints;
- (c) have a written customer complaints policy and procedures manual that is approved by the deposit taking institution's board of directors. Without limiting the generality of the foregoing, the manual shall, at a minimum, address-
  - (i) mechanisms for the submission of complaints (inclusive of details on supporting documents) by customers to the deposit taking institution;
  - (ii) procedures for the recording and maintenance of complaints received by the deposit taking institution either directly or through its agent;
  - (iii) training requirements for employees and officers on their obligations regarding compliance with the deposit taking institution's procedures for handling customer complaints;
  - (iv) mechanisms to address non-compliance with the deposit taking institution's policy and procedures;
  - (v) mechanisms for the on-going analyses of complaints data and the documentation of such analyses and findings; and
  - (vi) periodic review of policies and procedures to allow for assessment of effectiveness and continued relevance; and
- (d) ensure its customer complaints policy and procedures are disclosed to the customer, and readily available in each place of business and in all locations operated by the deposit taking institution (i.e. head office (except in the case of a foreign bank) and all branch and sub-branch locations) as well as agent locations, as the case may be, and also published on the deposit taking institution's website.

Complaints  
Resolution.

13. (1) The deposit taking institution shall investigate complaints involving a complainant, whether arising directly or through their agent operations, and respond in writing to the complainant in the manner and within the time period specified below-



- (a) acknowledgement of receipt of the complaint within a period not exceeding five business days from the date of the deposit taking institution's receipt of the complaint. The acknowledgment must state an indicative period within which an initial response to the complainant on the progress of the investigation will be provided; and
- (b) response outlining the final decision within a period not exceeding forty-five business days of the deposit taking institution's receipt of the complaint, and further ensure that where-
  - (i) the complaint is upheld, in whole or in part, this response includes a description of the action taken or to be taken by the deposit taking institution to remedy the situation;
  - (ii) the complaint is rejected, in whole or in part, a reason for the rejection of the complaint is also provided in the response, and the Supervisor is duly notified in writing of this decision and the reason therefor;

(2) The deposit taking institution shall ensure that in relation to a complaint for which a final decision cannot be reached within the period specified in subparagraph (1)(b) of this Article, the customer is so informed in writing and the Supervisor is duly notified in writing prior to the expiration of this period. The notification to the Supervisor shall further-

- (a) outline the nature of the complaint, the reasons for the delay in resolving the complaint, and the expected completion date; and
- (b) reflect that the customer has been informed that a final decision was not reached within the period specified.

(3) Where a final decision is reached within five business days of the deposit taking institution's receipt of the complaint, it is sufficient for the deposit taking institution to issue a response within this timeline to the customer confirming the final decision and the reason therefor.

Confidentiality.

14. (1) In handling customer complaints and customer related disputes, a deposit taking institution shall ensure that its officers, agents and any other person having access to information on customers, comply with the secrecy provisions at section 134 of the Banking Services Act.

(2) A person who contravenes the secrecy provisions at section 134 of the Banking Services Act commits an offence under the Banking Services Act and is liable for prosecution accordingly.

Record Keeping.

15. (1) A deposit taking institution shall maintain up-to-date, accurate and complete books, documents and records in respect of its customers, including details of all products and services provided to each customer, as well as all correspondence between the deposit taking institution and each of its customers.

(2) A deposit taking institution shall maintain up-to-date, accurate and complete records and documents in relation to customer complaints received, customer related disputes, and the outcome of such complaints, and of such disputes involving the

deposit taking institution, or agent thereof, as the case may be, and without limiting the generality of the foregoing, such records and documents shall include-

- (a) the name of the complainant;
- (b) the date of the deposit taking institution's receipt of the complaint whether directly or through its agent, as the case may be;
- (c) the nature and description of the complaint or of the dispute;
- (d) the method by which the complaint was submitted or came to the attention of the deposit taking institution;
- (e) the name and position of the deposit taking institution's officer or employee responsible for handling the complaint or the dispute;
- (f) a copy of the response(s) of the deposit taking institution to the complainant;
- (g) a copy of the complainant's response(s);
- (h) a copy of all other relevant correspondence and documentation;
- (i) the action taken by the deposit taking institution to resolve the complaint or the dispute and the final decision taken by the deposit taking institution; and
- (j) whether all matters raised in the complaints were settled and, if not, the matter(s) that remain in issue.

(3) A record or document maintained at paragraph (1) or (2) of this Article shall be-

- (a) maintained in a manner which allows for its disclosure in writing, whether electronically or otherwise;
- (b) retained for a period of not less than fifteen years from the date of the closure of the account, or of the termination of the relationship, or from the date a transaction with a non-account holder is conducted; and
- (c) disclosed to by the deposit taking institution to the Supervisor at the Supervisor's request on the date and in the time and manner specified in the request.

### Part III. *Enforcement of Code*

Enforcement.

16. (1) Where the Supervisor believes that any Article contained in this Code of Conduct, other than Article 14, has been or is being contravened by a deposit taking institution, the Supervisor may-

- (a) issue a warning to the deposit taking institution of the likelihood of directions being issued pursuant to subsection (6) of section 132 of the Banking Services Act, unless the contravention identified in relation to the deposit taking institution is rectified; or
- (b) subject to paragraph (2), issue directions to the deposit taking institution.

(2) Directions made under paragraph (1) of this Article shall be such as appear to the Supervisor to be appropriate in requiring the deposit taking institution to comply with the particular Article in this Code of Conduct that has been or is being contravened and shall be issued-

- (a) to the attention of the person with responsibility for the governance and daily oversight of the deposit taking institution, as well as the directors of the board of the deposit taking institution; or
- (b) in the case of a foreign bank, to the attention of the person with responsibility for the governance and daily oversight of the branch operations in Jamaica, as well as the members of that body which is responsible for the governance and oversight of the branch operations in Jamaica.

17. A deposit taking institution that does not comply with a direction given by the Supervisor pursuant to paragraph (2) of Article 16 commits an offence at section 132(7) of the Banking Services Act and is liable for prosecution accordingly.

#### *Part IV. Transitional Arrangement*

Transitional.

18. Within three months of the effective date for this Code, a deposit taking institution shall notify the Supervisor of the measures it will take in order to bring its operations, policies and procedures into compliance with this Code within a period not exceeding twelve months from the effective date for this Code, or such longer period as the Supervisor may determine, in writing.

## FIRST SCHEDULE

### Minimum Information for Disclosure of Key Terms for Deposit and Loan Products (Article 8(1))

#### 1. Deposit Products

- (a) Type of product
- (b) Effective annual interest rate
- (c) Tenure, where applicable
- (d) Currency of the deposit
- (e) Minimum balance requirements, if any
- (f) All associated maintenance and other costs, e.g. monthly service charges
- (g) Penalties for early encashment and withdrawal, if any

#### 2. Loan Products

- (a) Type of loan
- (b) Currency of the loan
- (c) Loan amount
- (d) Loan purpose
- (e) Effective annual interest rate
- (f) Total cost of loan
- (g) Total amount to be repaid
- (h) Loan tenure
- (i) Repayment method
- (j) Periodic payment amount and frequency
- (k) Date first payment is due
- (l) All associated fees and charges
- (m) Penalties for early repayment or late payment, if applicable

## SECOND SCHEDULE

### Minimum Disclosures on Fees, Charges, and Rates Applicable to a Deposit Taking Institution's Products and Services (Article 8(3))

1. Deposit Accounts
  - (a) Certification of account balance
  - (b) Dormant account fees
  - (c) Duplicate, interim, statement
  - (d) In-branch deposit and withdrawal fees
  - (e) Minimum balance fees and related thresholds
  - (f) Replacement debit and credit cards
  - (g) Returned cheques fees
  - (h) Telegraphic and wire transfer fees (inward and outward)
  - (i) Transfer between accounts within the deposit taking institution
  - (j) Transfer between accounts from one deposit taking institution to another
  - (k) Deposit insurance coverage
  
2.
  - (1) Loans
    - (a) Annual renewal fees
    - (b) Commitment and acceptance fees
    - (c) Late payment charges
  
  - (2) Credit Cards
    - (a) Annual membership fees
    - (b) Cash advance interest charge
    - (c) Late payment charges
    - (d) Over limit fees
    - (e) Replacement card
  
3. Electronic Banking
  - (a) ABM transaction fees:
    - Balance enquiry
    - Funds transfer
    - Deposit and withdrawal fees
    - Declined transaction fee
    - Statement fees
  - (b) Points of sale transactions
  - (c) Internet Banking
    - Balance enquiry
    - Funds transfer

4. The cycle and timing applicable to the fees, charges and rates at paragraphs 1-3, as the case may be
  
5. Miscellaneous Fees and Charges:
  - (a) Banker's reference letter
  - (b) Cheque encashment fee (own bank and other bank)
  - (c) Domestic and foreign currency managers cheques (account holders and non-account holders)
  - (d) Standing Order
  - (e) Stop payment and cancellation order
  
6. Such other matters and information as the Supervisor specifies as a minimum disclosure by Notice published in the Gazette

## THIRD SCHEDULE

### Methodology for Determining the Effective Annual Interest Rate (Articles 2(1) and 8(5)(b))

The effective annual interest rate (EAIR) rate is to be used to determine the actual annual rate that is to be paid on a loan or a financial product if the stated annual rate takes into account the effects of compounding. The formula represents the standard method of converting an annual percentage rate (APR) to EAIR.

$$\text{EAIR} = ((1 + \text{APR}/n)^n) - 1$$

Where: EAIR represents the annual rate of interest when compounding occurs more often than once a year  
APR represents the number of accounting periods  
n represents the number of compounding periods.

### Examples of Computation of the Effective Annual Interest Rate

#### Example 1

A loan has an interest rate of 12 percent per annum that is compounded monthly. Applying the formula:

$$\begin{aligned}\text{EAIR} &= (1 + .12/12)^{12} - 1 \\ \text{EAIR} &= .12683 \text{ or } 12.683\%\end{aligned}$$

#### Example 2

A deposit account pays 5 percent per annum compounded quarterly. Applying the formula:

$$\begin{aligned}\text{EAIR} &= (1 + .05/4)^4 - 1 \\ \text{EAIR} &= 0.050945 \text{ or } 5.0945\%\end{aligned}$$

Issued this 30<sup>th</sup> day of August 2016.