

PC 109/11

HEADS OF AGREEMENT

THIS AGREEMENT is made the ^{at} 30 day of March, 1998

BETWEEN: FINSAC LIMITED a company incorporated under the Companies Act and having its registered office at 76 Knutsford Boulevard and Kingston 10 in the parish of St. Andrew ("Finsac");

N.C.B. GROUP LIMITED, a company incorporated under the Companies Act and having its registered office at "The Atrium", 32 Trafalgar Road, Kingston 10 in the Parish of St. Andrew ("NCB Group");

AND

NATIONAL COMMERCIAL BANK JAMAICA LIMITED, a company incorporated under the Companies Act and having its registered office at "The Atrium", 32 Trafalgar Road, Kingston 10 in the Parish of Saint Andrew ("NCBJ");

WHEREAS Finsac has agreed to provide certain financial assistance to the NCBJ and NCB Group amounting in the aggregate to J\$19,500,000.00 comprising purchase price for loans amounting to not less than J\$13,150,000.00 and the balance by way of subscription for ordinary and preference shares in NCBJ and NCB Group:

AND WHEREAS NCB Group and NCBJ have represented to Finsac that they require said financial assistance in order to meet capital adequacy requirements and to ensure the protection of depositors;

AND WHEREAS NCBJ AND NCB Group have, with the approval of their respective Board of Directors, agreed to accept the said financial assistance on the terms proposed by Finsac.

1. 1.1 These Heads of Agreement shall be replaced by a suitable Definitive Agreement which shall, inter alia, include appropriate representations and warranties.

1.2 In the event that any consent or approval required for the execution of the Definitive Agreement is not obtained within a reasonable period following the date of the signature hereof, the parties shall assess the situation and determine jointly a suitable course of action.

2. 2.1 Under the financial assistance package, Finsac shall:


- (a) cause its wholly owned subsidiary (Recon Trust Limited) to purchase, without recourse, from NCBJ a portfolio of non-performing loans having a nominal principal value of not less than J\$12,700,000.00 for a price equivalent to the nominal principal value of such loans.


- (b) cause its wholly-owned subsidiary (Recon Trust Limited) to purchase, without recourse, from NCB Trust and Merchant Bank Limited (“NCB Trust”) a portfolio of non-performing loans having a nominal principal value of not less than J\$450,000,000.00 for a price equivalent to the nominal principal value of such loans.
- 2.2 The purchase price for the loan portfolios referred to above shall be paid by the issue of Finsac Bonds.
- 2.3 Finsac shall, initially, appoint NCBJ and NCB Trust as its collections and enforcement agent in connection with the management and administration of the loan portfolios purchased from NCBJ and NCB Trust.
- 3. 3.1 Finsac shall:
 - (a) subscribe J\$3,670,000,000.00 for a series of 12 1/2% redeemable cumulative preference shares in NCBJ subject to the coupon rate being increased in accordance with the letter from Finsac dated March 19, 1998;
 - (b) subscribe J\$1,000,000,000.00 for a series of 12 1/2 % redeemable cumulative preference shares in NCB Group subject to the coupon rate being increased in accordance with the letter from Finsac dated March 19, 1998; and
 - (c) subscribe J\$1,330,000,000.00 for ordinary shares in NCBJ which ordinary shares shall constitute forty percent (40%) of the issued ordinary share capital of NCBJ.
- 3.2 The preference shares issued by NCBJ shall qualify as Tier 1 Capital under regulations prescribed by the Bank of Jamaica.
- 3.3 The parties recognise that the aggregate of the amount referred to in sub clauses 2.1 and 3.1 is less than the total approved financial package of J\$19,500,000,000.00. The shortfall shall be available to NCB Group and NCBJ for further financial assistance by way of loan purchase, equity investment or otherwise to the extent that such further assistance is necessary, to achieve the objectives set out in the second recital hereto.
- 4. Finsac Bonds shall:
 - (a) bear interest at the rate of the weighted average 6-month Treasury bill rate plus one percent (1%) per annum, which interest shall be payable semi-annually;
 - (b) be guaranteed by the Government of Jamaica; and
 - (c) be freely transferable and negotiable.

5. Additional terms and conditions relating to Finsac's financial assistance will include terms set out in the attached letters from Finsac dated March 4 and March 19, 1998 and the terms set out in those letters shall be reflected in the Definitive Agreement. In the event of any conflict between these Heads of Agreement and the aforesaid letters, the latter shall prevail and, in the event of any conflict between the two letters, then the letter of March 19, 1998 shall prevail.
6. Finsac recognises that NCBJ has, at the request of Finsac, received by way of negotiation from Jamaica Mutual Life Assurance Society (Mutual") a series of Finsac Bonds. Finsac further recognises that by virtue of taking such Finsac bonds, NCBJ is suffering a loss based on the difference between the interest on the Finsac bonds and the interest costs of commercial paper which NCBJ has issued to fund the advances to Mutual having regard to the fact that, because of liquidity problems, NCBJ has had to continue to roll over such commercial paper. Since December 16, 1997, the aforesaid loss has been approximately J\$23,000,000.00. Finsac agrees to review the situation and make necessary adjustments to the financial assistance package to ensure the viability of NCBJ. NCBJ, for its part, agrees to use reasonable endeavours to roll the commercial paper at the lowest rate possible.
7. NCB Group and NCBJ jointly and severally warrants to Finsac that to the best of their knowledge and belief:
 - (a) financial information provided to Finsac during the course of negotiating the financial package do not contain any material inaccuracy; and
 - (b) the incorporation of the financial package into the audited financial statement for NCB Group for year end September 30, 1997 will not result in NCB Group recording net profits in excess of J\$80,000,000.00
8. During the currency of the Heads of Agreement or the Definitive Agreement neither NCB Group nor NCBJ shall, without the prior written consent of Finsac undertake any investment outside the core financial business of the NCB Group of Companies.
9. These Heads of Agreement and the understandings herein set forth shall come into effect immediately upon signature by the parties and unless otherwise mutually agreed shall terminate on the execution of a Definitive Agreement which pursuant to clause 1 shall supersede these Heads of Agreement.
10. Finsac, NCBJ and NCB Group will, as soon as possible hereafter, and in any event before April 15 1998 enter into the Definitive Agreement pertaining to the financial assistance package, which Definitive Agreement and any other subsidiary documentation will be signed by all parties.


SIGNED ON BEHALF OF
FINSAC LIMITED IN THE
PRESENCE OF



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WITNESS

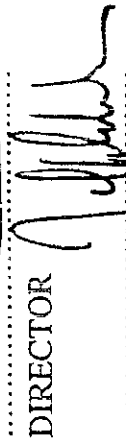

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DIRECTOR


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DIRECTOR/SECRETARY


SIGNED ON BEHALF OF
NCB GROUP LIMITED
IN THE PRESENCE OF

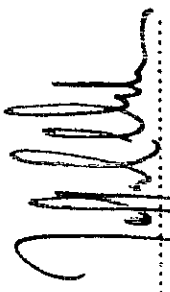

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WITNESS



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DIRECTOR


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DIRECTOR/SECRETARY

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NATIONAL COMMERCIAL BANK
JAMAICA LIMITED
IN THE PRESENCE OF


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WITNESS


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DIRECTOR


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DIRECTOR/SECRETARY