

SCHEME OF ARRANGEMENT UNDER SECTIONS 192, 193, 194,  
195 AND 195A OF THE COMPANIES ACT WITH THE  
CREDITORS/DEPOSITORS OF BLAISE TRUST COMPANY AND  
MERCHANT BANK LIMITED

SUIT NO. E 1995

EC 116 II

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

IN THE MATTER OF THE FINANCIAL  
INSTITUTIONS ACT AND PART D OF  
THE SECOND SCHEDULE THEREOF

A N D

IN THE MATTER OF SECTIONS 192,  
193, 194 195 and 195A OF THE  
COMPANIES ACT

A N D

IN THE MATTER OF BLAISE  
TRUST COMPANY AND MERCHANT BANK  
LIMITED

SCHEME OF ARRANGEMENT BETWEEN BLAISE TRUST COMPANY AND  
MERCHANT BANK LIMITED AND ITS GENERAL CREDITORS

PRELIMINARY

A. In this scheme the following expressions shall unless the  
context otherwise require have the meanings set opposite the same  
respectively.

"the BFI's"	means	Blaise Trust Company and Merchant Bank Ltd., Blaise Building Society and Consolidated Holdings Limited.
"BOJ"	means	Bank of Jamaica
"the Company"	means	Blaise Trust Company and Merchant Bank Limited.
"Deposit"	means	all sums due and outstanding to the General Creditors in the Company as of December 31, 1994.
" <u>Deposit Liabilities</u> "	means	<u>all sums due and outstanding to the depositors in the Company as at December 31, 1994.</u>
"the effective date"	means	the day on which this scheme becomes effective.
"this scheme"	means	this scheme in its present form or with any modification thereof or addition thereto or condition imposed by the Court.
"FIS"	means	Financial Institutions Services Ltd.
"the fixed date"	means	the 18th day of December, 1994 being the date of appointment of the Temporary Manager.
"GoJ"	means	The Government of Jamaica.
"Preferential Creditors"	means	Creditors of the Company whose claims as at the Fixed Date would have been preferential under Section 294 of the Companies Act had an order for winding up of the Company been made on the Fixed Date to the extent to which such debts would have been so

preferential or whose claims are for amounts accrued or accruing due by the Company in respect of rent supply of water, electrical energy or telephone service.

"the General Creditors" means

all Depositors and other trade Creditors of the Company as at the Fixed Date other than Preferential Creditors with the trade Creditors being persons who supply goods and services to the Company in the normal course of business.

B. The Company was indebted to the General Creditors at the Fixed Date in the sum of \$288,955,646.52.

C. Under the provisions of the Financial Institutions Act it appears likely to the Minister that the Company will be unable to meet its obligations pursuant to Section 25 of the Act.

D. The Minister having assumed Temporary Management of the Company pursuant to Section 25 (3) (c) Part D of the Schedule of the Financial Institutions Act has proposed a scheme of Arrangement.

E. The Preferential and General Creditors recognize that the BFI's have been operated as a single entity in that the assets of the Society are so intermingled with the assets of the remaining BFI's that it is just and equitable that the BFI's should be treated as a single undertaking and it is in their overall interests to pool the assets of the BFI's in order to accommodate a Scheme of Arrangement and provide an expeditious and equitable conclusion to the existing state of affairs surrounding the three BFI's.

#### THE SCHEME

1. Upon this scheme becoming operative the assets of the Company shall be pooled with the assets of the remaining BFI's in order to form one common fund.
2. The GOJ shall upon this scheme becoming operative establish a limited liability Company to be known as FIS. The GOJ shall

initially make a loan to this Company of a sum not exceeding \$401m to cover the projected deficiency in assets. If the deficiency is greater than \$401m the GOJ will lend to the Company an additional sum to cover the deficiency provided that the GOJ's total lending shall not exceed \$1078m. The projected deficiency in assets is based on a payout to the General Creditors of 90 cents in the dollar. The Private Sector may be allowed to participate under the Scheme through equity allocation and by way of loan capital on the same terms and conditions as GOJ. Private Sector participation would reduce the amount of GOJ's lending.

3. The General Creditors shall transfer and assign to FIS and/or its nominees their deposits upon the effective date and the Company in consideration of the assumption by FIS of its deposit liabilities transfers to FIS all its assets real and personal. Upon this scheme being approved by the Court this transfer and assignment shall be deemed to have taken place.

A transfer of all the assets and liabilities of any subsidiary of the company shall upon this Scheme being approved be deemed to have taken place. FIS shall have the power to appoint and revoke the appointment of any director or other officer of such subsidiary.

4. The Preferential Creditors of the Company in so far as not already paid shall be paid by FIS in full.
5. Subject to paragraph 7 hereunder each General Creditor of the Company shall accept from FIS in full discharge and satisfaction of his deposit as admitted or established or to be established a payout equal to 90 cents in the dollar of such deposit as the same would have been provable had the Company been placed in an insolvent winding-up commencing on the Fixed Date.
6. Such payment shall be payable over a period of eighteen months. As of the effective date the General Creditors will be entitled to a first instalment of the payout sum equivalent to

50% of each deposit balance in any of the three BFI's as at December 31, 1994 up to a maximum initial payment of \$50,000.00 per deposit.

7. FIS will give to each General Creditor in the BFI's Deposit Receipt Notes evidencing the Balance of their deposits. These Deposit Receipt Notes will be negotiable instruments and will carry a rate of interest of 6% per annum on balances outstanding during the period of eighteen (18) months and be payable at six monthly intervals. The General Creditors will not be paid interest on their deposits for the period January 1, 1995, to the effective date.
8. As a further condition for the payout aforesaid the General Creditors agree to assign and transfer any residual right, claim and interest contingent, inchoate or otherwise against or in the Company or against any person or entity for any liability to the General Creditors whether arising from breach of duty, breach of trust or otherwise to FIS. Upon this Scheme being approved by the Court the said transfer shall be deemed to have taken place.
9. FIS shall as condition for the loan being advanced by the GOJ grant to the GOJ a first fixed and floating charge on the assets so transferred.  
Upon the transfer of the assets aforesaid FIS shall in its absolute discretion vote (any shares) work with develop or otherwise dispose of the assets so as to satisfy its loan obligations to the GOJ. The repayment for the loan to the GOJ by FIS shall be satisfied by the development and or realisation of the assets aforesaid as well as amounts recovered as a result of the legal claims for breaches of fiduciary duties and other responsibilities. Such repayment shall be subject to the payment of all other charges and expenses incurred by the BOJ in the period of temporary management and of all other charges and expenses relating to this scheme and its administration.

10. After the satisfaction of the loan and charges mentioned in paragraph 9 the General Creditors will be allowed to participate in any surplus arising in the following manner:
  - (i) the General Creditors, if the surplus is sufficient will be refunded the remaining ten percent (10%) of the balances of their deposits as at December 31, 1994. If the surplus is insufficient the General Creditors shall be repaid on a pro rata basis the balances of their deposit as at December 31, 1994.
11. Should any surplus remain after the above distribution the distribution of such surplus shall be determined by the Minister of Finance and Planning in such manner as he deems fit.
12. The Company shall transfer to FIS all rights to recover damages or other compensation from persons in breach of fiduciary duties or other responsibilities owed to the Company pursuant to proceedings which have been instituted as of the effective date. In connection therewith the Company shall (i) give FIS the full right to institute or continue actions in the name of the Company; (ii) deliver to FIS custody of all documents in its possession, custody or control which FIS or its Attorneys-at-Law consider necessary or desirable to institute or continue the aforesaid actions; (iii) make all reasonable effort to cause such witnesses as FIS' Attorneys-at-Law shall require to be available for the purposes of such actions. The said transfer shall be subject to FIS indemnifying the Company against all claims, proceedings, expenses and costs arising from or in connection with the said actions or proceedings.
13. Subject to this Scheme of Arrangement being sanctioned by the Court the Company shall execute all such agreements, assurances, instruments, deeds and documents as the Attorneys-at-Law for FIS shall deem necessary or desirable in order to give effect to or implement any term of this Scheme.