

KC 123/11

**AGREEMENT FOR SALE OF A BUSINESS**

**COPY**

THIS AGREEMENT is made the 12<sup>th</sup> day of April, 1999

**BETWEEN** **CITIZENS MERCHANT BANK LIMITED**, a company incorporated under the laws of Jamaica and having its registered office at 17 Dominica Drive, Kingston 5 in the Parish of Saint Andrew (hereinafter called "the Vendor") of the **FIRST PART**

**AND** **CITIZENS BANK LIMITED**, a company incorporated under the laws of Jamaica and having its registered office at 17 Dominica Drive, Kingston 5 in the Parish of Saint Andrew (hereinafter called "the Purchaser") of the **SECOND PART**

**AND** **FINSAC LIMITED**, a company incorporated under the laws of Jamaica and having its registered office at 76 Knutsford Boulevard, Kingston 5 in the Parish of Saint Andrew (hereinafter called "Finsac") of the **THIRD PART**

**WHEREAS:**

- (1) Finsac was established by the Government of Jamaica to provide financial assistance to the financial sector and in pursuance thereof, Finsac or the Minister of Finance has acquired control of the following financial entities:
  - Citizens Bank Limited ("Citizens")
  - Eagle Commercial Bank Limited ("Eagle")
  - Island Victoria Bank Limited ("IVB")
  - Workers Savings & Loan Bank ("Workers")
  - Citizens Merchant Bank Limited ("CMB")
  - Island Life Merchant Bank Limited ("ILMB")
  - Corporate Merchant Bank Limited ("Corporate")
- (2) Finsac intends to rationalize the activities and operations of these financial entities by transferring certain assets and liabilities of Eagle, IVB, Workers, CMB, ILMB and Corporate to Citizens and Citizens has agreed to take the aforesaid assets and assume the liabilities pursuant to a Scheme for Transfer of Business and upon the terms and conditions set out herein.

**NOW THEREFORE IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement including the recitals and the Schedules:

- (a) "**Assets**" means the property, assets and rights of the Business to be purchased by the Purchaser;

- (b) **"Book Debts"** means the trade debts owed to the Vendor at the Effective Date in connection with the Business;
- (c) **"Business"** means the business of banking carried on by the Vendor at the Effective Date;
- (d) **"Contracts"** means the current contracts and engagements of the Vendor in relation to the Business but excluding contracts with employees;
- (e) **"Creditors"** means the aggregate amount owed by the Vendor in connection with the Business to or in respect of trade creditors and accrued charges as recorded in the books of account of the Business at the Effective Date.
- (f) **"Deed of Indemnity"** means a deed of indemnity to be given by Finsac in the form set out in the Third Schedule hereto;
- (g) **"Effective Date"** means the 21<sup>st</sup> day of April, 1999;
- (h) **"Finsac Bond"** means a negotiable promissory note issued by Finsac Limited and guaranteed by the Government of Jamaica substantially in the form set out in the Second Schedule hereto;
- (i) **"Fixed Assets"** means all plant, machinery, tools, equipment, vehicles and other chattels owned by the Vendor on the Effective Date for the purpose of the Business or otherwise;
- (j) **"Minister"** means the Minister of Finance and Planning;
- (k) **"Scheme"** means the Scheme for Transfer of Business involving the transfer of the undertaking, business and assets of Eagle, IVB, Workers, CMB, ILMB and Corporate to Citizens;
- (l) **"Vesting Orders"** means vesting orders issued by the Minister under section 35 of the Banking Act vesting the assets of Eagle, IVB and Workers in Citizens and under section 35 of the Financial Institutions Act vesting the assets of CMB, Corporate and ILMB in Citizens.

In this Agreement, clause headings are for ease of reference only and shall not affect the interpretation of the Agreement.

## 2. SALE AND PURCHASE OF BUSINESS

Subject to the terms and conditions of this Agreement and in accordance with the directions of Finsac and the approval of the Minister pursuant to section 33(2) of the Financial Institutions Act, the Vendor shall sell to the Purchaser and the Purchaser shall purchase as of the Effective Date:

- (a) the Business as a going concern; and

- (b) all the assets and rights owned by, or under the control of, the Vendor and used in the conduct of the Business including, but without limitation:
- the Goodwill of the Vendor in relation to the Business, together with the exclusive right for the Purchaser or its assignee to represent itself as carrying on the Business in succession to the Vendor and all trade names associated with the Business;
  - the freehold and leasehold properties owned by the Vendor;
  - the Fixed Assets;
  - the Book Debts;
  - the benefit of the Contracts;
  - any refund due to the Vendor from its pension fund;
  - any intellectual property rights; and
  - any cash balances

### 3. PURCHASE CONSIDERATION

- 3.1 Finsac shall issue Finsac Bonds to the Purchaser in such aggregate principal amount as shall ensure that the total value of Assets received by the Purchaser from the Vendor is equivalent to the total liabilities assumed pursuant to sub-clause 3.2 below.
- 3.2 The consideration for the sale of the Business and the assets referred to in clause 2 above and the issue of Finsac Bonds referred to in sub-clause 3.1 above shall be the assumption by the Purchaser of all the liabilities and obligations of the Vendor (including contingent liabilities) existing at the Effective Date.
- 3.3 For the purposes of this clause, the value of the Assets shall be the lesser of the book or market value as at the Effective Date as certified in the statement of assets and liabilities prepared pursuant to clause 7 hereof.

### 4. APPLICATION FOR MINISTERIAL APPROVAL

The Vendor shall apply to the Minister pursuant to section 33(2) of the Financial Institutions Act for approval of the Scheme.

### 5. COMPLETION

- 5.1 The sale and purchase shall be completed on the Effective Date or when all the matters set out in this clause 5 are effected.
- 5.2 The Vendor shall deliver to the Purchaser or as it may direct such of its assets as are capable of being transferred by delivery.
- 5.3 The Vendor shall cause to be delivered to the Purchaser such documents as are required by the Purchaser to complete the sale and purchase of the Assets and vest title to the Assets in the Purchaser, including (but without limitation) assignments of the Goodwill, Contracts, intellectual property rights and leases

and all books of account, corporate records, information relating to customers and suppliers and all other documents and records relating to the Business.

5.4 If any or all of the transactions set out in sub-clause 5.2 or 5.3 do not take place as provided, the Purchaser shall be entitled to rescind this Agreement without prejudice to any other remedy it may have.

6. **TRADING IN THE NAME OF THE VENDOR**

The Purchaser shall be entitled to carry on banking business in the name of the Vendor at the business locations previously operated by the Vendor commencing from the Effective Date and ending on 1 October 1999 and any liability arising therefrom shall be the sole responsibility of the Purchaser.

7. **STATEMENT OF ASSETS AND LIABILITIES**

Prior to completion, the Vendor shall prepare and deliver to the Purchaser a statement of the assets and liabilities being transferred to the Purchaser hereunder as at the Effective Date. Such statement shall be duly certified by the Directors of the Vendor.

8. **DEBTORS**

On completion, the Vendor shall supply to the Purchaser full details of the Book Debts.

9. **CREDITORS AND LIABILITIES**

9.1 On completion, the Vendor shall supply to the Purchaser full details of the Creditors.

9.2 The Purchaser shall assume full responsibility for the discharge of Creditors and all debts payable by and claims outstanding against the Vendor at the Effective Date, including all taxes, rent and other expenses which are to be assumed by the Purchaser hereunder.

10. **CONTRACTS**

The Purchaser shall perform and discharge the outstanding obligations and liabilities of the Vendor under the Contracts.

11. **EMPLOYEES**

11.1 The Vendor shall terminate all contracts of employment with its employees prior to the Effective Date and the Purchaser shall at its option offer to re-engage such of the Vendor's employees as it sees fit under a new contract of employment with the Purchaser on the same terms and conditions as the previous contracts of employment to take effect immediately on the ending of the said employees' previous contracts with the Vendor.

- 11.2 Finsac shall indemnify the Purchaser against any order to pay compensation to the employees of the Vendor provided that the order is not made as the result of any act or omission of the Purchaser.
- 11.3 All salaries and other emoluments, including holiday pay, tax and other statutory payments including termination payments (if any) relating to the employees of the Vendor shall be borne by the Vendor up to the Effective Date and all necessary apportionments shall be made.

## 12. INSURANCE

The Vendor undertakes to the Purchaser that it will notify the interest of the Purchaser to the relevant insurers and keep in force its existing policies in respect of the Assets until the Effective Date.

## 13. SHAREHOLDERS APPROVAL

The approval of the shareholders of the Vendor to the terms and conditions hereof was given by special resolution at an Extraordinary General Meeting of the shareholders held on 9 April 1999.

## 14. VESTING OF ASSETS

- 14.1 The Vendor shall take all necessary steps and co-operate fully with the Purchaser to ensure that it obtains the full benefit of the Business and the Assets and shall execute such documents and take such steps (or procure other necessary parties so to do) as are necessary or appropriate for the vesting in the Purchaser all its rights and interest in the Assets.
- 14.2 The Vendor shall apply to the Minister to make Vesting Orders, pursuant to section 35 of the Financial Institutions Act, vesting all the Assets in the Purchaser.
- 14.3 Until legal title to any asset hereby agreed to be transferred (including any asset presently held by any other person in trust for the Vendor) is vested in the Purchaser, the legal owner shall hold such asset in trust for the benefit of the Purchaser.
- 14.4 Insofar as the Assets comprise the benefits of contracts that cannot effectively be assigned to the Purchaser without the consent of a third party or except by an agreement of novation, the Vendor and the Purchaser shall use all reasonable efforts to obtain consent or procure a novation.
- 14.5 Unless and until consent is obtained or the contracts are novated, the Purchaser shall, for its own benefit, at its own expense and to the extent that the contracts permit, perform on behalf of the Vendor all the obligations of the Vendor which fall to be performed after the Effective Date.

**15. APPORTIONMENT OF OUTGOINGS**

All rents, rates, gas, water, electricity and telephone charges and other outgoings relating to or payable in respect of the Business up to the Effective Date shall be borne by the Vendor and as from the Effective Date shall be borne by the Purchaser and all rents, royalties and other periodical payments receivable in respect of the Business up to that time shall belong to and be payable to the Vendor and as from that time belong to and be payable to the Purchaser.

**16. CHANGE OF NAME**

With the approval of the Minister, the Purchaser shall at its Annual General Meeting scheduled to be held on 26 May 1999 (or such later date as may be agreed by the Board of Directors) consider and if thought fit resolve to change the company's name to Union Bank of Jamaica Limited.

**17. SURRENDER OF LICENCE**

The Vendor shall, within six (6) months of the Effective Date, surrender its licence under the Financial Institutions Act to the Minister for cancellation.

**18. CAPITALIZATION OF THE PURCHASER**

The Purchaser, with the consent of its shareholders, shall increase its share capital and Finsac shall subscribe for such number of ordinary shares as shall be required to fully capitalize the Purchaser to the intent that its issued share capital shall meet the capitalization standards set by the Bank of Jamaica.

**19. WINDING UP/DISTRIBUTION**

As soon as possible after the Effective Date, the Vendor shall convene a meeting of its shareholders and creditors (if any) to consider resolutions to be wound up.

**20. WARRANTIES BY THE VENDOR/FINSAC**

20.1 The Vendor represents and warrants to the Purchaser that:

- 20.1.1 it has and will have full power and authority to enter into and perform this Agreement which constitutes, or when executed will constitute, binding obligations on it in accordance with its terms;
- 20.1.2 there is, and at the Effective Date there will be, no pledge, lien or other encumbrance on or over or affecting any of the Assets except as have been already disclosed to the Purchaser in writing;
- 20.1.3 it is entitled to transfer the full legal and beneficial ownership of the Assets to the Purchaser on the terms of this Agreement and all requisite consents to enable it to do so have been or will be duly obtained from the appropriate authorities;

20.2 Finsac represents and warrants to the Purchaser that it has and will have full power and authority to enter into and perform this Agreement and the Deed of

Indemnity which constitutes, or when executed will constitute, binding obligations on it in accordance with their respective terms;

- 20.3 Finsac and the Vendor both acknowledge and accept that the Purchaser has entered into this Agreement on the following assumptions:
- 20.3.1 that the statement of assets and liabilities to be provided to the Purchaser pursuant to clause 7 hereof gives a true and fair view of the assets and liabilities of the Vendor as at the Effective Date, fully discloses all assets and has taken into account all known liabilities and obligations of the Vendor;
- 20.3.2 that the Vendor is not exposed to any liability for any tax arising out of its operations prior to the Effective Date that has not been disclosed to the Purchaser in writing or provision made for as a contingent liability;
- 20.3.3 that the Vendor has duly filed all tax returns required to be filed by law and all such returns have been prepared on a proper basis and are not likely to be reopened or subject to additional assessments;
- 20.3.4 that to the best of its knowledge and belief after due inquiries, there are no:
- (a) pending or threatened lawsuits, arbitrations or claims; or
- (b) potential or contingent liabilities
- arising prior to the Effective Date that have not been disclosed to the Purchaser in writing;
- 20.3.5 that the Vendor has good and marketable title to the Assets and except as has been notified to the Purchaser, such Assets are free from any mortgage, charge, pledge, lien or other encumbrance;
- 20.3.6 that except as has been disclosed to the Purchaser in writing, the Vendor has not issued any guarantee or indemnity or has endorsed any note or other negotiable instrument on which liability might arise against it;
- 20.3.7 that all information provided by the Vendor to the Purchaser is true and accurate in all material respects.
- 20.4 Each of the warranties and assumptions set out in sub-clauses 20.1, 20.2 and 20.3 is without prejudice to any other warranty or assumption and except where expressly stated otherwise, no clause of this Agreement shall govern or limit the extent or application of any other clause.
- 20.5 If there is a breach of any representation or warranty set out herein or if any assumption proves to be false, then Finsac shall indemnify the Purchaser in accordance with the Deed of Indemnity, PROVIDED THAT:
- (a) in respect of a claim based on a false assumption, such claim must have been notified to Finsac within two (2) years of the date of this Agreement; and
- (b) the Purchaser had no knowledge of such claim on the date hereof.
- For this purpose, an assumption shall be false if with respect to any matter the factual situation shall differ from the assumption.
- 20.6 The rights and remedies of the Purchaser in respect of any breach of any of the warranties or in respect of any false assumption, shall not be affected by any investigation or due diligence undertaken by or on behalf of the Purchaser into

the affairs of the Vendor or failure to exercise or delay in exercising any right or remedy or by any other matter or thing, except a specific and duly authorized written waiver or release, and no single or partial exercise of any right or remedy shall preclude any further or other exercise of such right or remedy.

20.7 Where any misrepresentation or breach of warranty or any false assumption is capable of being remedied within a reasonable time, Finsac shall have the right to remedy same in lieu of providing an indemnity, provided that the election to remedy is taken promptly and communicated to the Purchaser and the remedial action is undertaken with due diligence.

## 21. PENSIONS

The Vendor and Purchaser hereby agree to conclude a subsidiary agreement concerning the pension scheme now existing for the benefit of the Vendor's employees PROVIDED THAT the parties agree that the entitlements of the Vendor's employees who may be offered new contracts of employment with the Purchaser shall in no way be less than their present entitlements under the existing scheme.

## 22. STAMP DUTIES AND TRANSFER TAX

22.1 All stamp duties and transfer tax (if any) incurred in connection with the transfer of the undertaking and assets of the Vendor or the Vendor's pension scheme to the Purchaser or the Purchaser's pension scheme shall be borne in full by Finsac.

22.2 Notwithstanding sub-clause 22.1, the parties shall apply to the Minister of Finance and Planning for the remission of the aforesaid stamp duties and transfer taxes (if any).

## 23. MISCELLANEOUS

23.1 This Agreement shall be binding upon and shall enure for the benefit of each party's successors and assigns.

23.2 No announcement shall be made in respect of the subject matter of this Agreement except as specifically agreed between the parties or as required by the Jamaica Stock Exchange or the regulatory authorities.

23.3 All costs incurred in the negotiation, preparation and execution of this Agreement shall be borne solely by the party that incurred them.

23.4 Any notice required to be given under this Agreement shall be in writing and shall be sufficiently and duly given and received if addressed and sent by prepaid registered post or delivered to the recipient at its address hereinbefore stated or to such other address as may from time to time be notified by any party to the others for the purpose. Any such notice sent by prepaid registered post as aforesaid shall be deemed to have been served on the seventh day following the day of its posting.




23.5 This Agreement shall be governed by, and construed in accordance with, the Laws of Jamaica.

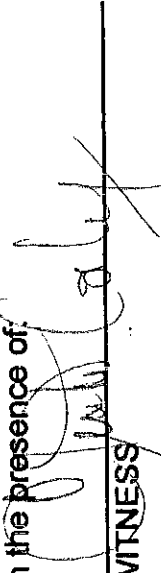
23.6 If any term or provision of this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.


23.7 This Agreement shall constitute the entire Agreement between the contracting parties and no variance or modification thereof shall be valid and enforceable, except by supplemental agreement in writing, executed in the same manner as this Agreement.


IN WITNESS whereof this Agreement was duly executed by the parties on the day and year first hereinbefore written.


Executed under the Common Seal of )  
CITIZENS MERCHANT BANK )  
LIMITED by DCSH AND LEIGHTON )  
and ROBERTA MATHIAS )  
in the presence of:


  
\_\_\_\_\_  
Roberta Mathias

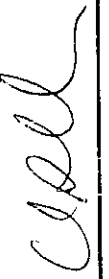
WITNESS   
Executed under the Common Seal of )  
CITIZENS BANK LIMITED )  
by WILBUR D. KENNEDY )  
and CHARLEFACE )  
in the presence of:

  
\_\_\_\_\_  
Wilbur D. Kennedy

  
\_\_\_\_\_  
Charleface

WITNESS   
Executed under the Common Seal of )  
FINSAC LIMITED )  
by PATRICIA MYLTON )  
and CELIA SCARLE )  
in the presence of:

  
\_\_\_\_\_  
Patricia Mylton

  
\_\_\_\_\_  
Celia Scarle

WITNESS \_\_\_\_\_