

CHAPTER 24

THE ANTIGUA AND BARBUDA DEVELOPMENT BANK ACT

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ANTIGUA AND BARBUDA DEVELOPMENT BANK

*(1st February, 1974.)*11/1971.
6/1980.

1. This Act may be cited as the Antigua and Barbuda Development Bank Act. Short title.

2. In this Act— Interpretation.

"agricultural development enterprise" means an agricultural or livestock enterprise operated on a commercial basis;

"the Bank" means the Antigua and Barbuda Development Bank established in accordance with this Act;

"the Board" means the Board of Directors of the Bank constituted in accordance with this Act;

"the chairman" means the chairman of the Board;

"debenture" includes debenture stock;

"development enterprise" means an industrial enterprise, a tourist industry enterprise, a housing enterprise, an agricultural development enterprise or any enterprise that may from time to time be approved as a development enterprise by the Minister by order;

"director" means a director of the Bank;

"financial year" means the period of twelve months beginning on the first day of January in any year:

Provided that the period beginning on the date of the commencement of this Act and ending on the thirty-first day of December next following shall be deemed to be a financial year;

"functions" includes powers and duties;

"housing enterprise" means an enterprise in Antigua and Barbuda in which is carried on the business of constructing or facilitating the construction or purchase of dwelling houses;

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"industrial enterprise" means an enterprise in Antigua and Barbuda in which is carried on the business of—

(a) manufacturing, processing, assembling, installing, overhauling, reconditioning, altering, repairing, cleaning, packaging, transporting or warehousing of goods;

(b) drilling, construction, engineering, technical surveys or scientific research;

(c) operating a mine or quarry;

(d) operating a commercial transport service;

(e) supplying premises, machinery or equipment for any business mentioned in paragraph (a), (b), (c), or (d) hereof under a lease, contract or other arrangement whereby title to the premises, machinery or equipment is retained by the supplier;

"Minister" means the Minister charged from time to time with the responsibility for the affairs of the Bank;

"secretary" means the secretary of the Board;

"share" includes stock;

"shareholder" means a shareholder of the Bank;

"tourist industry enterprise" means an enterprise in Antigua and Barbuda in which is carried on the business of—

(a) supplying hotel accommodation or other facilities principally intended for visitors to Antigua and Barbuda or;

(b) supplying premises or equipment for any business referred to in paragraph (a) hereof under a lease, contract or other arrangement whereby title to the premises or equipment is retained by the supplier.

3. (1) There is hereby established the Antigua and Barbuda Development Bank which shall be a body corporate with perpetual succession and a common seal with power to purchase, take, hold and dispose of land and other property of whatever kind, to enter into contracts, to sue and be sued in the said name and to do all things necessary for the purposes of this Act.

Establishment of the Antigua and Barbuda Development Bank.

(2) The provisions of the Articles set out in the Schedule shall have effect as to the constitution, operation and expenses of the Bank and otherwise in relation thereto.

Schedule.

(3) The seal of the Bank shall be authenticated in the manner prescribed in the Schedule and shall be judicially and officially noticed.

4. (1) Subject to the provisions of this Act, it shall be the duty of the Bank—

Duty of the Bank.

(a) to assist persons in establishing, carrying on or expanding development enterprises by participating in share capital, granting loans and providing other forms of financial assistance to such persons;

(b) to foster the development of money and capital markets in Antigua and Barbuda.

(c) directly or indirectly to lend money on mortgage to individuals for housing purposes;

(d) to assist persons in pursuing courses of education approved by the Board by making loans and providing other forms of financial assistance to such persons; and

(e) directly or indirectly to engage in such construction activity as may be necessary for the better performance of its functions and duties.

(2) The Bank shall in the performance of its duty—

(a) ensure that every application dealt with on behalf of the Bank is considered principally on its financial and economic merits;

(b) take all such measures as may be necessary to ensure that any financial assistance rendered by the Bank to any development enterprise is utilized for the purpose for which it is given.

(3) The Bank shall not make an investment in or otherwise transact business with an enterprise in which a director of the Bank is a partner or shareholder, or is in any other way directly or indirectly interested, unless the transaction is unanimously approved by the other directors of the Bank.

(4) A director who is directly or indirectly interested in a contract made or proposed to be made by the Bank—

(a) shall disclose the nature of his interest; and

(b) shall not take part in any deliberation or decision of the Bank with respect to that contract.

Powers of the Bank.

5. (1) Subject to the provisions of this Act, the Bank may, for the purpose of performing any of its functions under this Act, do anything and enter into any transaction which, in the opinion of the Bank, is necessary to ensure the proper performance of its functions.

(2) In particular and without prejudice to the generality of the provisions of subsection (1) the Bank may—

(a) underwrite new issues of stocks, shares, bonds, debentures and other securities;

(b) guarantee loans made from private investment sources;

(c) sell investments of whatever kind belonging to the Bank as and when appropriate;

(d) carry out transactions involving unit trust schemes and mortgages;

(e) furnish financial advice and provide or assist in obtaining managerial, technical, and administrative services for development enterprises in Antigua and Barbuda.

Divisions of the Bank.

6. Transactions relating to the following divisions of the Bank, namely—

- (a) industrial and tourist development;
- (b) housing;
- (c) agricultural development;
- (d) other development projects,

shall be distinguished so far as possible and shall be recorded and dealt with separately in the annual accounts and reports of the Bank.

7. (1) Subject to the provisions of this section the authorized capital of the Bank shall be five million dollars divided into one million shares of the par value of five dollars each. **Capital of the Bank.**

(2) The Government of Antigua may subscribe for the said five million dollar shares or such other amount as the Minister may from time to time determine at par:

Provided that any person may subject to regulations made pursuant to section 21, subscribe for and hold shares in the Bank.

(3) The Bank may, from time to time, with the approval of the Minister, vary the amount of the authorized capital of the Bank.

8. (1) Subject to the provisions of this section, the Minister may, after consultation with the chairman, give the Board such directions of a general character as to the policy to be followed by the Bank in the exercise and performance of its functions as appear to the Minister to be necessary in the public interest. **Ministerial directions.**

(2) The Bank shall furnish the Minister with such returns, accounts and other information as he may require with respect to the property and activities of the Bank and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

(3) The power of the Minister to give directions to the Board shall include power to give directions whether of a general character or otherwise, as to the exercise by the Bank of its borrowing powers.

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Borrowing powers.

9. (1) Subject to the provisions of this Act, the Bank may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The aggregate of the liabilities of the Bank outstanding at any one time, including direct liabilities such as bonds and debentures issued by the Bank and the contingent liabilities of the Bank in the form of guarantees given or underwriting agreements entered into by it, shall not at any time exceed seven times the aggregate amount of the paid-up capital and the reserve fund for which provision is made in section 13.

Guarantee by Minister of borrowings.

10. (1) With the approval of the House of Representatives the Minister may guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal and the payment of interest on any authorized borrowings of the Bank.

(2) Where the Minister is satisfied that there has been default in the payment of any principal moneys or the payment of interest guaranteed under the provisions of this section he shall direct the payment out of the Consolidated Fund of the amount in respect of which there has been such default and such payment shall be a charge on the Consolidated Fund.

Repayment of and interest on advances and sums issued to meet guarantee.

11. The Bank shall make to the Accountant-General, at such times and in such manner as the Minister or other person designated by the Minister may direct payments of such amounts as may be so directed in or towards repayment of advances made to the Bank by Government and of any sums issued in fulfilment of any guarantee given under section 10, and payments of interest on what is outstanding for the time being in respect of such advances and of any sums so issued at such rate as the Minister may direct and different rates of interest may be directed as respects different advances and sums and as respects interest for different periods.

Securities.

12. The Bank—

(a) may issue debentures or bonds for the purpose of exercising its borrowing powers under section 9; and

(b) shall establish a sinking fund for the redemption of debentures so created; and

(c) may postpone sinking fund contributions for such period or periods of time and subject to such conditions as may be approved by the Minister.

13. The Bank shall set aside in each calendar year out of the net profits (if any) of the Bank a minimum of twenty-five per centum of such profits towards a reserve fund to meet contingencies and for such other purposes as the Bank may think fit until the total amount standing to the credit of such reserve fund shall amount to a sum equal to its paid-up capital. Reserve Fund.

14. (1) The Bank shall keep proper accounts and other records in relation to the business of the Bank and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with the best commercial standards. Accounts and Audit.

(2) The accounts and records shall be kept in such a manner as to secure the provision of separate information as respects each of the main divisions of the Bank, and to show as far as may be, the financial and operating results of each such division.

(3) The accounts of the Bank shall be audited by an auditor or auditors appointed annually by the Bank and approved by the Minister.

(4) So soon as the accounts of the Bank have been audited, the Bank shall send the statement of its accounts referred to in subsection (1) of this section to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Bank.

(5) The auditors' fees and any expenses of the audit shall be paid by the Bank.

(6) The Director of Audit shall be entitled, on the direction of the Minister, at all reasonable times to examine the accounts and other records in relation to the business of the Bank.

Annual report.

15. (1) The Bank shall, not later than two months after the end of each financial year, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Bank during the preceding financial year, and containing such information relating to the proceedings and policy of the Bank as can be made public without detriment to the interests of the Bank.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditors' report thereon to be laid on the Table of the House of Representatives and of the Senate.

(3) Copies of the Bank's report together with the annual statement of accounts and the auditors' report on that statement or on the accounts of the Bank shall be published in such manner as the Minister may direct and shall be made available to the public by the Bank at a reasonable price.

General
Manager,
secretary and
other staff.

16. The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a general manager, a secretary and such officers, agents and servants as it deems necessary for the proper carrying out of its functions under this Act:

Provided that—

(a) no salary exceeding twelve thousand dollars per annum shall be assigned to any post without the prior approval of the Minister; and

(b) subject to any regulation pursuant to paragraph (a) of section 21, no provision shall be made for the payment of any pension, gratuity or other retiring benefits to any employee of the Bank without the prior approval of the Minister.

Power to
delegate.

17. (1) Subject to the provisions of this Act, the Bank may delegate to any director or employee of the Bank the power to carry out on behalf of the Bank such functions as the Bank may determine.

(2) Every delegation under this section shall be revocable by the Bank and no delegation shall prevent the exercise by the Bank of any function delegated.

18. Where any property mortgaged as security for a loan under the provisions of this Act is acquired by the Bank, the Bank may either manage and hold such property or carry on any business with such property or sell or otherwise dispose of it as it may deem fit.

Enforcement of securities.

19. (1) Notwithstanding that a loan granted or guaranteed by the Bank may not have been secured by a mortgage, the Bank may if a borrower defaults in respect of a loan granted or guaranteed by the Bank appoint a receiver in respect of the Business in connection with which the loan was granted or guaranteed, and a receiver so appointed shall have the same powers *mutatis mutandis* as a receiver appointed pursuant to the power conferred on a mortgagee by paragraph (c) of section 10 of the Trustees and Mortgagees Act.

Power to appoint a receiver, etc.

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(2) A person appointed by the Bank to be a receiver pursuant either to the power conferred on it by a mortgagee by paragraph (c) of section 10 of the Trustees and Mortgagees Act or to the power conferred on the Bank by subsection (1) of this section shall, if the Bank so appoints, be also the Manager of the business in respect of which the loan was granted or guaranteed and the effect of such an appointment shall be the same as if the person so appointed had been appointed by the High Court to be the receiver and manager of such business.

(3) No person appointed by the Bank to be a receiver and manager shall be deemed to be an officer of the High Court.

20. The Bank may act generally as agent for the Government where it can do so appropriately and in a manner not inconsistent with its functions under this Act.

Power of Bank to act as agent for the Government.

21. The Minister may make regulations—

Power to make regulations.

(a) in relation to the grant of pensions, gratuities and other benefits to employees of the Bank and their dependants, and to the dependants or estate of deceased employees of the Bank;

(b) regulating the acquisition and holding of shares in the Bank by persons and the rights of such persons including, but without prejudice to the generality of the foregoing, such matters as the keeping of registers of shareholders, the procedure for calls, forfeiture and surrender of shares in the event of default of payment, the transfer of shares, the capitalization of surpluses, the declaration and payment of dividends, the holding of meetings, proceedings at such meetings and voting rights; and

(c) generally for the better carrying out of the objects and purposes of this Act.

SCHEDULE (Section 3(2))

Board of Directors.

1. (1) There shall be a Board of Directors of the Bank which, subject to the provisions of this Act, shall be responsible for the policy and the general administration of the affairs of the Bank.

(2) The Board shall consist of not less than five nor more than eleven directors appointed by instrument in writing by the Minister from persons appearing to the Minister to have ability and experience in matters relating to industry, agriculture, housing, commerce, finance, economics, engineering, accountancy or law:

Provided that no less than four such Directors shall be selected for appointment from among members of the public (other than public officers) having ability and experience in matters relating to industry, agriculture, housing and tourism.

(3) Subject to section 21 of this Act, the Board may, with the approval of the Minister, make rules for the conduct of the Bank's business.

Temporary appointments.

2. The Minister may appoint any person to act temporarily in the place of any director of the Bank in the case of the absence, inability or refusal to act of such director.

Chairman.

3. (1) The Minister shall appoint one of the directors to be the Chairman thereof.

(2) The Minister shall appoint one of the directors to be the deputy chairman thereof.

(3) In the case of the absence or inability to act of the Chairman, the deputy chairman shall exercise the functions of the chairman.

(4) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman the remaining directors shall elect one of their number to act as chairman of that meeting.

4. Subject to the provisions of this schedule, a director of the Bank shall hold office for such a period not being less than three years nor more than five years as shall be specified in the instrument appointing him and shall be eligible for re-appointment upon the expiration of his period of office. **Tenure of office.**

5. (1) Any director of the Bank other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and from the date of the receipt by the Minister of such instrument such director shall cease to be a director of the Bank. **Resignation.**

(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

6. The Minister may at any time revoke the appointment of any director if he considers it expedient so to do and shall revoke the appointment of any director if a unanimous vote to that effect is passed by resolution of the other directors. **Removal of Director.**

7. No person who is a member of the House of Representatives or the Senate shall be appointed a director of the Bank. **Members of House of Representatives and Senate excluded.**

8. The names of all directors of the Bank as first constituted and every change in the composition thereof shall be published in the *Gazette*. **Publication of composition of Bank.**

9. (1) The seal of the Bank shall be authenticated by the signatures of the chairman or one director of the Bank authorized to act in that behalf and the secretary of the Board. **Authentication of seal and document.**

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the chairman or any director authorized to act in that behalf or the secretary of the Board.

Procedure and meetings.

10. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The Chairman may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two directors of the Bank.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman, in accordance with the provisions of subparagraph (4) of paragraph 3 of this Schedule shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected as aforesaid to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be three including the chairman or the deputy chairman or the person elected to act as chairman as aforesaid.

(5) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

(6) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the directors of the Bank or by any defect in the appointment of a director thereof.

Remuneration of directors.

11. There shall be paid to the chairman and other directors of the Bank such remuneration, if any (whether by way of salaries or travelling or other allowances) as the Minister may determine.

Funds of the Bank.

12. The funds of the Bank shall consist of such moneys as may lawfully be paid to the Bank.

Protection of Bank.

13. Notwithstanding anything to the contrary no act done or proceeding taken under this Act by the Bank shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the case.

14. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any director of the Bank in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act. **Protection of directors of Bank.**

(2) Where any director of the Bank is exempt from liability by reason only of the provisions of this paragraph the Bank shall be liable to the extent that it would be if the said director were a servant or agent of the Bank.
