

## **CHAPTER 252**

### **THE LOANS (CARIBBEAN DEVELOPMENT BANK) ACT**

#### Arrangement of Sections

##### Section

1. Short title.
  2. Interpretation.
  3. Power of Government to borrow from the Bank.
  4. Loans etc., to be charged on Consolidated Fund.
  5. Power to issue instruments including bonds.
  6. Borrowing by statutory authority from the Bank.
  7. Application of loan moneys by statutory authority.
  8. Power of Government to guarantee loans by Bank to statutory authorities.
  9. Power of Government to guarantee loans by Bank to companies.
  10. Restriction on borrowing powers of statutory authority so far as guarantee outstanding.
  11. Powers exercisable by Minister in event or prospect of default by statutory authority.
  12. Statutory authority to repay to Government sums paid under guarantee.
  13. Arbitration.
  14. Implementation of obligations under the agreement.
  15. Application of certain loans to statutory authorities and companies.
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## LOANS (CARIBBEAN DEVELOPMENT BANK)

(5th September, 1973.)

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**1.** This Act may be cited as the Loans (Caribbean Development Bank) Act. **Short title.**

**2.** In this Act— **Interpretation.**

"Bank" means the Caribbean Development Bank;

"company" means a company incorporated and registered under the provisions of the Companies Act; **Cap. 94.**

"Government" means the Government of Antigua and Barbuda;

"International Bank" means the International Bank for Reconstruction and Development;

"Minister" means the Minister responsible for finance;

"statutory authority" means any body established directly by statute and exercising powers vested in such body by law for a public purpose.

**3.** (1) Subject to the provisions of this Act, the Government may in such manner and on such terms and subject to such conditions as may be agreed between the Government and the Bank borrow from the Bank from time to time such sums as may be required by the Government. **Power of the Government to borrow from the Bank.**

(2) Any sums borrowed by the Government under the powers conferred by subsection (1) for the requirements of the Government shall be applied and are hereby appropriated to the purposes for which they were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied

LAWS OF ANTIGUA AND BARBUDA

4

CAP. 252) *Loans (Caribbean Development Bank)*

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to such other purposes as may be approved by the Minister and the Bank and, where such sum consists wholly or partly of monies lent by the International Bank which have been onlent to the Government, also approved by the Government of the United Kingdom.

(3) Any agreement between the Government and the Bank in respect of sums borrowed under the powers conferred by subsection (1) shall be made in the name of the Government and may be signed on behalf of the Government by the Minister or by any person authorised thereto in writing by the Minister.

(4) As soon as possible after any agreement has been concluded with the Bank in respect of any sum borrowed under the powers conferred by subsection (1) the Minister shall cause a copy thereof to be laid before the House of Representatives.

(5) Nothing in the provisions of this section shall affect or derogate from any other power to borrow money possessed by the Government.

Loans etc., to be  
charged on  
Consolidated  
Fund.

**4.** There are hereby charged on and shall be payable out of the Consolidated Fund—

(a) All amounts required for the repayment to the bank of any sums borrowed by the Government under the powers conferred by section 3 and all interest and charges on such sums;

(b) All amounts required for the repayment to the Bank of any sums borrowed by any statutory authority or by any company on account of any guarantee which the Government has issued under section 8 or 9;

(c) All amounts required for the repayment to the International Bank of the part of any loan from the International Bank to the Bank which has been onlent to the Government by the Bank and all interest and other charges on such sum;

(d) All amounts required for the repayment to the Treasury of the United Kingdom with interest at such rate as the said Treasury may ~~fix~~, of any sum issued

in pursuance of the Colonial Loans Acts 1949 to 1962 of the United Kingdom on account of any guarantee under those Acts to the International Bank or to the Bank as has been onlent by the Bank to the Government;

(e) All amounts required for the repayment to the International Bank of any part of any loan from the International Bank to the Bank which has been onlent to any statutory authority or to any company on account of any guarantee which the Government has issued under section 8 or 9; and

(f) All amounts required for the repayment to the Treasury of the United Kingdom with interest at such rate as the said Treasury may fix, of any amount issued in pursuance of the Colonial Loans Acts of the United Kingdom 1949 to 1962 on account of any guarantee under those Acts to the International Bank on such part of any loan from the International Bank as has been onlent to any statutory authority or any company and in respect of which the Government has issued a guarantee under section 8 or 9.

5. (1) The Government may issue such bonds, promissory notes or other instruments on such terms and conditions as may be necessary for the purpose of giving effect to the terms of any agreement which may be entered into by it with the Bank in respect of borrowing authorised by subsection (1) of section 3.

Power to issue instruments including bonds.

(2) Any such bond, promissory note or other instrument may be signed on behalf of the Government by the Minister or by any other person authorised thereto in writing by the Minister.

6. (1) Subject to the provisions of this Act, a statutory authority may in such manner and on such terms and subject to such conditions as may be agreed between the statutory authority and the Bank and with the approval in writing first obtained of the Minister borrow from the Bank from time to time such sums as may be required by the statutory authority.

Borrowing by statutory authority from the Bank.

(2) Notwithstanding anything to the contrary any agreement between the statutory authority and the Bank shall be valid and binding on the authority if signed on behalf of the authority by a person authorised thereto in writing under the seal of the statutory authority.

(3) The power to borrow conferred by this section on a statutory authority shall be in addition to any power to borrow conferred on such authority by or under any other statute.

(4) Notwithstanding anything to the contrary, a statutory authority may charge or mortgage all or any of its property (movable or immovable), undertaking or revenue to secure any sum owing to the Bank in respect of sums borrowed by it under the powers conferred by subsection (1).

(5) Notwithstanding anything to the contrary, a statutory authority may issue such bonds, promissory notes and other instruments on such terms and conditions as may be necessary for the purpose of giving effect to any agreement which may be entered into by it with the Bank in respect of any borrowing authorised by subsection (1).

**Application of  
loan moneys by  
statutory  
authority.**

**7.** Any sums borrowed by a statutory authority under the powers conferred by subsection (1) of section 6 shall be applied by the statutory authority to the purposes for which the sums were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied by the statutory authority to such other purposes as may be approved by the Minister and the Bank.

**Power of  
Government to  
guarantee loans  
by Bank to  
statutory  
authorities.**

**8.** (1) The Government may in such manner and on such terms and subject to such conditions as may be agreed between it and the Bank—

(a) guarantee the discharge by a statutory authority of its obligations under any agreement which may be entered into by the statutory authority with the Bank in respect of any borrowing authorised by subsection (1) of section 6 or under any bond, promissory note or other instrument issued pursuant to any such agreement; and

(b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) Any guarantee or undertaking given under this section shall be given in writing in the name of the Government and it and any indorsement of any bond, promissory note or other instrument of any guarantee given under this section may be signed on behalf of the Government by the Minister or by any other person authorised thereto in writing by the Minister.

(3) As soon as possible after a guarantee or undertaking is given under this section, the Minister shall cause to be laid before the House of Representatives a statement of the guarantee or undertaking.

**9.** (1) Subject to subsection (4), the Government may in such manner and on such terms and subject to such conditions as may be agreed by it and the Bank—

**Power of Government to guarantee loans by Bank to companies.**

(a) guarantee the discharge by a company of a company's obligations under any agreement for borrowing from the Bank which may be entered into by the company with the Bank or under any bond, promissory note or other instrument issued pursuant to any such agreement; and

(b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) In connection with a guarantee or undertaking given under subsection (1) in respect of any borrowing by a company, the company shall pay to the Government as a commission such sum not exceeding one *per centum* of the amount borrowed as the Minister may determine and the Government may in addition either—

(a) require and take from the company such securities as the Minister thinks fit for securing the repayment to the Government of any sums which the

Government may at any time be called upon to pay pursuant to subsection (1); or

(b) enter into such other arrangement with the company as the Minister thinks fit for securing the repayment aforesaid.

(3) Any guarantee or undertaking given by the Government under subsection (1) shall be given in writing in the name of the Government and it and any endorsement on any bond, promissory note or other instrument issued pursuant to the agreement to which the guarantee or undertaking relates may be signed on behalf of the Government by the Minister or by any person authorised thereto in writing by the Minister.

(4) A guarantee or undertaking shall not be given at any time under subsection (1) where—

(a) the principal amount outstanding is at that time not less than the prescribed sum; or

(b) if the guarantee or undertaking were given, the principal amount outstanding would at that time exceed the prescribed sum.

(5) Where any agreement referred to in subsection (1) relates to a borrowing in a currency other than dollars then for the purposes of subsection (4)—

(a) the amount of such borrowing shall be converted into dollars at a rate of exchange determined by the Minister to be, as near as is conveniently possible, equivalent to the average rate of exchange in respect of that currency for the month prior to the month in which the guarantee or undertaking in respect of that borrowing is given; and

(b) the principal amount outstanding in respect thereof at any time shall be converted into dollars at the rate of exchange obtaining at that time in respect of that currency.

(6) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by subsection (1), that

sum shall be charged on the general revenues of Antigua and Barbuda and the Minister shall direct payment to issue **out** of the general revenues accordingly.

(7) If any sum is paid out of the general revenues pursuant to subsection (6), the Minister shall, as soon as possible after the end of each financial year beginning with **that** in which the sum was paid and ending with that in which **all** liability in respect thereof and any interest payable thereon **is** finally discharged by the company concerned, lay before the House of Representatives a statement relating thereto.

(8) In this section unless the context otherwise requires—

"prescribed sum" means one million dollars or such greater amount as the House of Representatives may from time to time, by resolution, approve;

"principal amount outstanding" means so much of the total of the principal amounts of borrowings guaranteed by the Government pursuant to subsection (1) as has not been repaid.

**10.** So long as the Government shall continue liable **under** any guarantee or other undertaking given in exercise **of** the powers conferred by subsection (1) of section 8 in **respect** of borrowing by a statutory authority the statutory authority shall not, except with the consent of the Minister, **exercise** any other power to borrow possessed by it.

Restriction on borrowing powers of statutory authority so far as guarantee outstanding.

**11.** (1) Where it is made to appear to the Minister **that** there is reasonable cause to believe—

Powers exercisable by Minister in event or prospect of default by statutory authority.

(a) that a statutory authority is likely to fail or be unable to discharge any of its obligations under any agreement concluded by it with the Bank or under any bond, promissory note or other instrument issued pursuant to any such agreement; and

(b) that the Government is or may become liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 8 in respect of such obligation,



the Minister may by order give or authorise any other person to give such directions to the statutory authority as he or such other person may from time to time think necessary or desirable to ensure that satisfactory arrangements are made by the statutory authority to enable it duly to discharge its obligations under such agreement, bond, promissory note or instrument or under this Act.

(2) The statutory authority shall notwithstanding any provision contained in any other statute comply with any directions given by or under any such order.

(3) Nothing in the provisions of this section shall affect or derogate from any other power conferred by law on the Minister or any public officer in respect of the statutory authority.

(4) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by section 8, that sum shall be charged on the Consolidated Fund and the Minister shall direct payment to issue out of the Consolidated Fund accordingly.

Statutory  
authority to  
repay to  
Government  
sums paid under  
guarantee.

**12.** (1) If any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 8 in respect of any borrowing by a statutory authority the statutory authority shall repay such sum (together with interest thereon at the same rate as that payable on the loan under the agreement by the statutory authority with the Bank) to the Consolidated Fund in such manner and at such time or by such instalments as the Minister may direct.

(2) If any sum is so paid out of the Consolidated Fund the Minister shall as soon as possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the statutory authority concerned, cause to be laid before the House of Representatives, a statement relating thereto.

**13.** If any dispute between the Bank on the one part and the Government or a statutory authority or both on the other part arises under any agreement concluded or guarantee or undertaking given in exercise of the powers conferred by this Act or under any bond, promissory note or other instrument issued pursuant to any such agreement it shall be determined by arbitration in the manner agreed between the parties. **Arbitration.**

**14.** (1) Notwithstanding anything to the contrary, any agreement concluded with the Bank in respect of any borrowing authorised by subsection (1) of section 3 or subsection (1) of section 6 and any bond, promissory note or other instrument issued pursuant to any such agreement and any guarantee or undertaking given in respect of any such agreement, bond, promissory note or instrument by the Government or a statutory authority shall be valid and enforceable and have full force and effect in Antigua and Barbuda in accordance with their respective terms. **Implementation of obligations under the agreement.**

(2) Neither the Government nor any agency thereof nor any statutory authority shall, except as shall be otherwise agreed between the Minister and the Bank, create any lien on any of its assets as security for any external debt unless it is expressly provided that the lien will *ipso facto* equally and rateably secure the payment of the principal of and interest and other charges on any loan made by or any bonds, promissory notes or instruments issued pursuant to any loan made by the Bank to the Government or to a statutory authority.

(3) In subsection (2) of this section—

"lien" includes mortgages, pledges, charges, privileges and priorities of any kind;

"external debt" means any debt payable in any medium other than currency which at the time in question is legal tender in Antigua and Barbuda whether such debt is payable absolutely or at the option of the creditor in such other medium.

(4) Without prejudice to the generality of the provisions of subsection (1)—

Cap. 212. (a) the Minister may by order published in the  
 Cap. 410. Gazette, provide that any Tax, duty or fee payable under  
 Cap. 429. the Income Tax Act,  
 Cap. 374. the Stamp Act,  
 Cap. 175. the Title by Registration Act,  
 the Registered Land Act, or  
 the Foreign Currency Levy Act,

or any other enactment shall be remitted where such remission is, in the opinion of the Minister, necessary to give full effect to any agreement, bond, promissory note instrument, guarantee or undertaking under this Act;

Cap. 157. (b) nothing in the provisions of the Exchange Control Act or of any regulations or Orders made thereunder shall apply to any transaction required to effect payment in any currency of any sum in accordance with the terms of any such agreement, bond, promissory note, instrument, guarantee or undertaking.

Application of  
 certain loans to  
 statutory  
 authorities and  
 companies.

**15.** (1) Any loan made by the Bank to a statutory authority or a company in terms of an agreement made between the Bank and such statutory authority or company which has been approved by the Minister under section 6 shall in any case where the loan from the Bank consists wholly or partly of sums loaned to it by the International Bank be applied by the statutory authority or company solely for the purposes specified in such agreement:

Provided however, that any part of any loan to a statutory authority or company which cannot be applied for the purposes specified in the agreement may be applied to such other purposes as may be approved in writing by the Government of the United Kingdom, the Government of Antigua and Barbuda, the Bank and the International Bank.

(2) Any statutory authority or company which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of one hundred thousand dollars.

(3) Where any offence under this section committed by a statutory authority or a company is proved to have been committed with the consent or connivance of, or to be attributable to any, neglect on the part of any director,

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manager, secretary, or other officer of the said statutory authority or company, or any person purporting to act in any such capacity, he as well as the statutory authority or company shall be guilty of that offence and shall be liable to be proceeded against accordingly.

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