



[ L.S. ]

I Assent,

James B. Carlisle,  
*Governor-General.*

16th June, 1995.

ANTIGUA AND BARBUDA

No. 6 of 1995

**AN ACT** to give legal effect and to provide for the implementation of the provisions of the Eastern Caribbean Home Mortgage Bank Agreement and to provide for matters connected therewith.

[ 22nd June, 1995 ]

**ENACTED** by the Parliament of Antigua and Barbuda as follows—

1. This Act may be cited as the Eastern Caribbean Home Mortgage Bank Agreement Act, 1995. Short Title.

2. In this Act —

Interpretation.

"Agreement" means the Agreement establishing the Eastern Caribbean Home Mortgage Bank made on the 27th day of May, 1994, the text of which is set out in the Schedule to this Act;

ANTIGUA  
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2 *The Eastern Caribbean Home Mortgage Bank Agreement Act, 1995.* No. 6 of 1995.

"Bank" means the Eastern Caribbean Home Mortgage Bank established under article 3 of the Agreement;

"Minister" means the Minister responsible for Finance;

"participating Government" means a Government which is a party to the Agreement.

**Agreement to have the force of law.**

3. This Agreement shall be deemed to have the force of law in Antigua and Barbuda from the first day of October, 1994.

**Amendments to the Agreement.**

4. Where an amendment to the Agreement becomes effective in accordance with article 35 of the Agreement the Minister shall by Order amend the Schedule to this Act for the purpose of including the Amendment.

**Exemption from stamp duty and corporate tax.**

5. (1) Instruments of transfer relating to the purchase or sale of the legal or beneficial interest in mortgages and instruments relating to the issue of securities by the Bank in the normal course of its business are exempt from stamp duty.

(2) The Bank shall not be liable for the payment of corporate tax.

**Non-application of certain written laws.**

6. (1) The following Acts do not apply to the Bank:

**Act No. 17 of 1991.**

(a) the Banking Act 1991;

**Act No. 17 of 1968.**

(b) the Non-Citizens Landholding Regulation Act 1968.

(2) Notwithstanding subsection (1), the Bank shall not engage in banking business.

## **SCHEDULE**

### **EASTERN CARIBBEAN HOME MORTGAGE BANK AGREEMENT ACT 1994**

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**AGREEMENT ESTABLISHING  
THE EASTERN CARIBBEAN HOME MORTGAGE BANK**

**PREAMBLE**

An Agreement made on the 27th day of May, 1994 between the Governments of **Anguilla**, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint **Lucia** and Saint Vincent and the Grenadines (hereinafter referred to as "the participating Government").

WHEREAS it is desirous:

- (a) to promote and maintain the availability of affordable home financing and to assist primary lenders to promote and maintain the availability of affordable home financing in the territories of the participating Governments;
- (b) to establish and maintain an **organised** regional secondary market for mortgages in the form of a Common Home Mortgage Bank to increase the availability of mortgage **credit** and provide liquidity and flexibility to primary lenders in the territories of the participating Governments;
- (c) to promote and increase the efficient mobilisation and allocation of long-term savings for investment in housing and to further the economic development of the territories of the participating Governments;
- (d) to develop the housing and home finance industry and to promote services and benefits to industry by improving the efficiency and effectiveness of the mortgage underwriting process; and
- (e) to promote the growth and development of the money and capital markets and to enhance the monetary integration of the territories of the participating Governments.

IT IS HEREBY AGREED as follows:-

**PART I**  
**PRELIMINARY**  
**Article 1**  
**Title**

This Agreement may be cited as the Eastern Caribbean **Home Mortgage Bank Agreement**.



"Class C shareholder" means a financial institution licensed as a bank to carry on **banking** business other **than** a **financial** institution referred to in the definition of Class B shareholder;

"Class D shareholder" means —

- (a) an insurance company duly registered to carry on insurance business in the territory of at least one participating Government,
- (b) a financial institution duly licensed to carry on banking business as a credit or other financial institution in the territory of at least one participating Government; or
- (c) a **credit** institution not mentioned in paragraphs (a) and (b) which has been approved by the Board on the advice of Council;

"Class E shareholder" means the International Finance Corporation;

"Class F shareholder" means the Home Mortgage Bank of Trinidad and Tobago established under the Home Mortgage Bank Act, **1985** of the Laws of Trinidad and Tobago;

"Council" means the Monetary Council established under article 7 of the Eastern Caribbean Central Bank Agreement;

"director" means a director of the bank appointed under this Agreement;

"financial institution" means any person doing **banking** business in the territory of one of the participating Governments and all offices and branches of a financial institution in any one **or more** of the territories of the participating Governments shall be deemed to be one financial institution;

"International Finance Corporation" means the specialised agency of the United Nations established by that name in 1956;

"member territory" means a territory of a participating Government;

"participating Government" means a government which is a party to this Agreement;

"residential property" means property used as the principal residence of and which is occupied by the owner;

"Registrar" means the Registrar of Companies in the member territory where the principal office of the Bank is situated;

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"Secretary" means a person appointed as such under article 28(1) of this Agreement or any person designated by the Board to perform the duties of Secretary;

"Social Security Board" means the Board of Management of the Social Security or National Insurance scheme established in any member territory.

## **PART II**

### **ESTABLISHMENT, PURPOSES AND MANAGEMENT OF THE BANK**

#### **Article 3**

##### **Establishment of Bank**

(1) There is hereby established a bank to be known as the Eastern Caribbean Home Mortgage Bank which shall be a body corporate having perpetual succession. The Bank may sue and be sued in its corporate name.

(2) The establishment of the Bank shall take effect in accordance with the provision of article 40 of this Agreement.

#### **Article 4**

##### **Purposes of the Bank**

The purposes of the **Bank** are -

- (a) to develop and maintain a secondary market for residential mortgages in the member territories;
- (b) to contribute to the mobilisation and allocation of long-term savings for investment in housing;
- (c) to support the development of a system of housing finance and provide leadership in the housing and home finance industry;
- (d) to promote the growth and development of the money and capital market;
- (e) to improve underwriting practices and efficiency in processing mortgages and to promote services and benefits related to such mortgages.



## Article 5

### Powers of the Bank

For the attainment of its purposes the Bank may —

- (a) borrow money and mortgage or charge its undertaking, property or unpaid capital or any part thereof and issue bonds, debentures, debenture stock and other securities, mortgage participation certificates or other pass through securities or any derivatives thereof, whether as security for any debt, liability or obligation of the Bank or of any third party or otherwise;
- (b) buy and sell mortgage loans on residential properties;
- (c) appoint other institutions as its trustees on such terms and conditions as it may deem fit;
- (d) secure the fulfillment of any contracts or engagements entered into by it, by mortgage or charge of all or any of its property or its unpaid capital for the time being in such a manner as it may deem fit;
- (e) approve on the part of any shareholder on such terms and conditions as are agreed a transfer of all or any part of its shares but always subject to the provisions of this Agreement;
- (f) institute, conduct, defend, compound or abandon any legal proceedings by or against it or its officers or otherwise concerning its affairs and also compound or allow time for payment or satisfaction of any debts due and of any claims or demands by or against it;
- (g) make and give receipts, releases and other discharges for moneys payable to it and for claims made against it;
- (h) invest any part of its moneys in securities (other than shares of the Bank), negotiate contracts and do such acts in the name and on behalf of the Bank as it may consider expedient for or in relation to any of its purposes;
- (i) appoint persons to be its attorneys or agents with such powers, including power to delegate and to appear before all proper authorities and make all necessary declarations, to enable its operations and business to be validly carried on;

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(j) do all such other things as are incidental to the attainment of its purposes.

## Article 6

### Place of office and establishment of branches

(1) The Bank shall have its principal office in one of the member territories as the Council may by majority vote determine.

(2) The Bank may establish branches or agencies and may appoint agents and correspondents in any member territory and elsewhere.

## Article 7

### Address and service of documents

(1) The Bank shall at all times have a **fixed** address for the service of documents on the Bank in one of the member territories and that address and the address of branches or agencies of the Bank shall be registered with the Registrar of Companies in that member territory.

(2) All documents to be served on the Bank may be served by leaving the same at or by sending the same by registered post to the address of the Bank registered under paragraph (1).

## Article 8

### Protection of persons dealing with directors and agents

(1) A person who deals with the directors or the General Manager of the Bank shall not be affected by any irregularity of procedure in connection with the authorisation of the **transaction** by a general meeting or other meeting of shareholders of the Bank, or by the directors or any committee of directors, or by the non-fulfillment of any condition imposed by this Agreement in connection with the transaction.

(2) A person who deals with another person who is held out by the directors as having authority to act on the Bank's behalf in connection with any transaction may treat the Bank as bound by the acts of that other person done **within** his apparent authority even though he has not been authorized by the Bank to do those acts on its behalf so long as that person has no knowledge whether actual or constructive, that that other person has not been so authorized by the Bank.

(3) This article does not entitle any person to recover a debt from the Bank or to enforce an obligation or liability against it or to treat any obligation as binding on it, if in connection with the same matter that person is guilty of a fraud upon the Bank or has participated or acquiesce in a fraud committed on the Bank.

### **Article 9**

#### **Custody and use of common Seal**

(1) Subject to article 10 the **Bank** shall have a common Seal.

(2) The directors shall provide for the safe custody of the common seal of the Bank.

(3) The common seal of the Bank shall be affixed to instruments pursuant to a resolution of the Board and by and in the presence of —

- (a) the Chairman or, in his absence the Deputy **Chairman**; and
- (b) one other director or the Secretary.

(4) Subject to article 10, all documents made by the Bank other than those required by law to be under Seal and all decisions of the **Bank** may be signified under the hand of the Chairman, the Deputy Chairman or the Secretary.

### **Article 10**

#### **Official Seal**

(1) The Bank shall have an official seal, which shall be a facsimile of its common seal, for use in any member territory other than where the principal office of the Bank is situated, with the addition on its face of the name of every member territory where it is to be used.

(2) The official seal when duly affixed to a document has the same effect as the common seal of the Bank.

(3) The Bank may by writing under its common seal, **authorise** any person appointed for the purpose in a member territory to affix the official seal to any deed or other document to which the Bank is a party in that member territory.

(4) The person affixing the official seal shall certify in writing the date on which and the place at which it is affixed.

## Article 11

### Management of the Bank

The business of the Bank shall be managed and the functions of the Bank shall be performed by the Board.

## Article 12

### Appointment of General Manager

(1) The Board may from time to time appoint a General Manager of the Bank at such remuneration and on such terms and conditions as the Board may determine.

(2) The General Manager shall be the Chief Executive Officer of the Bank and shall be responsible to the Board for —

- (a) the day to day administration of the affairs of the Bank; and
- (b) the provision of technical advice and guidance in matters of policy.

## Article 13

### Composition of Board of Directors

(1) Subject to paragraph (2) of this article and paragraph (1) of article 14 the Board shall consist of seven directors as follows —

- (a) one director appointed by the Class A shareholder;
- (b) one director appointed by the Class B shareholder;
- (c) two directors appointed by the Class C shareholder;
- (d) one director appointed by the Class D shareholder;
- (e) one director appointed by the Class E shareholder; and
- (f) one director appointed by the Class F shareholder.

(2) Where the International Finance Corporation ceases to be a shareholder the Board shall consist of six directors as set out at subparagraphs (a) to (d) and (f) of paragraph (1) of this article.

#### **Article 14**

##### **Appointment and terms of office of the first Board of Directors**

(1) Save for the directors appointed by the Class E and F shareholders respectively, the members of the First Board shall be appointed by the Governor of the Central Bank after consultation with the Council and the Class A, Class B, Class C and Class D shareholders respectively.

(2) The directors of the first Board other than the directors appointed by the Class E and F shareholders shall hold office until the first annual general meeting.

(3) Directors appointed by the Class E and F shareholders whether as members of the first Board or otherwise hold office for the term specified in their instrument of appointment or until there is no longer a Class E or F shareholder, whichever first occurs.

#### **Article 15**

##### **Term of office of Directors**

(1) A director holds office for two years and shall be eligible for re-appointment.

(2) A vacancy in the Board shall be filled by the Class of shareholders which appointed the shareholders to be replaced.

(3) A director appointed to fill a vacancy holds office for the unexpired term of his predecessor.

#### **Article 16**

##### **,Alternatedirectors**

(1) The shareholders of the Bank may appoint alternate directors in the same manner as the appointment of directors.

(2) A person appointed alternate director shall perform as a director in the absence of the director to whom he is alternate.

(3) The provisions of this Agreement as they apply to directors apply also to alternate directors.

### Article 17

#### Disqualification

A person is disqualified from being appointed or from holding office as a director where he —

- (a) has been adjudged insolvent or has suspended payment to or compounded with his creditors;
- (b) is of unsound mind and has been so found by a **tribunal** in one of the member **territories** or elsewhere;
- (c) is **debarred** from practicing his profession on account of any act involving dishonesty;
- (d) has been convicted of an offence and sentenced to a term of imprisonment in excess of six months;
- (e) has been convicted of any offence involving dishonesty;
- (f) ceases to be a director by virtue of any provision of this Agreement; or
- (g) is prohibited from being a director by reason of any order made under any law.

### Article 18

#### Vacation of office of Directors

(1) Where a director —

- (a) dies;
- (b) by writing under his hand addressed to the Chairman resigns;
- (c) becomes disqualified under article 17 from being a director; or
- (d) is found by two-thirds of all of the members of the Board to be unable to discharge the functions thereof (whether arising from **infirmary** of mind or body or any other cause) or for misbehaviour, serious neglect, or misconduct in office;

his place on the Board thereupon becomes vacant.

(2) The Chairman may resign from the Board by writing under his hand addressed to the Secretary of the Board.

#### **Article 19**

##### **Chairman and Deputy Chairman**

(1) The directors of the first Board shall at their **first meeting** elect from among their number a Chairman and a Deputy Chairman.

(2) The directors shall elect annually immediately after the annual general meeting from among their number a Chairman and a Deputy Chairman.

(3) Subject to paragraphs (4) and (5) of this article the Chairman shall preside at all meetings of the Board and shall have an original and a casting vote.

(4) In the absence of the **Chairman**, the Deputy Chairman shall preside and perform the functions of chairman of the meeting.

(5) In the absence of both the Chairman and the Deputy Chairman, the directors present shall elect one of their number to preside and perform the functions of chairman of the meeting.

#### **Article 20**

##### **.Appointment of Directors to be notified in the Gazette**

The appointment of any person as Chairman, Deputy Chairman, director or alternate director and the termination of any such appointment shall be published in the official Gazette in the member territory where the principal office of the Bank is located or notified to the public in the member territories in such other manner as the Board may **determine**.

#### **Article 21**

##### **Meetings of the Board**

(1) The Board shall meet not less than **once** every three months and meetings shall be held at such time and place and on such days as the Board may determine.

(2) The Chairman may at any time summon a special meeting of the Board and shall summon such a meeting **within** seven days of the receipt of a requisition for that purpose addressed to him by any three directors.





### **Article 23**

#### **Accounts**

(1) The shareholders shall at each annual general meeting appoint an auditor to hold office from the conclusion of the meeting until the conclusion of **the next** annual general meeting.

(2) The accounts of all transactions of the Bank shall be audited by the auditor.

### **PART IV**

#### **PROCEDURE**

### **Article 24**

#### **Annual General Meeting**

(1) A general **meeting** of shareholders (herein called an "annual general meeting") shall be summoned by the Board each year.

(2) Not less than fourteen days' notice in writing of the annual general meeting shall be given to the shareholders, directors and auditor of the Bank; in addition notice of the meeting shall specify the time, date and place of the meeting and shall be published in at least one newspaper which is in circulation in each of the member territories.

(3) Subject to paragraph (4) of this article the Chairman of the Board shall preside at the annual general meeting and in his absence the Deputy **Chairman** shall preside.

(4) In the absence of both the Chairman and the Deputy Chairman of the Board, the directors present shall appoint a Chairman from one of their number present to preside at the annual general meeting.

(5) The **quorum** for an annual general meeting is one shareholder of each class or proxy of each class.

(6) If the quorum is present at the opening of a meeting of shareholders, the shareholders may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(7) If a quorum is not present within thirty minutes of the time appointed for a meeting of shareholders, the meeting stands adjourned to the same day one week

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thereafter, at the same time and place; and if at the adjourned meeting a quorum is not present within thirty minutes of the **appointed time**, the shareholders present shall constitute a quorum.

(8) The Board shall present to the annual general meeting —

- (a) a recommendation relating to the payment or non-payment of dividends, appointment and remuneration of directors and auditors and any other matters which the Board considers necessary;
- (b) a comprehensive statement of its affairs including profit and loss accounts and balance sheets duly audited,
- (c) particulars relating to the activities of the Bank during the previous year.

#### **Article 25**

##### **Financial year**

(1) The financial year of the Bank shall begin on the **first** day of April and end on the thirty-first day of March in the following year. Provided that the first financial year of the Bank may begin on **a day** after the first day of April and end on the thirty-first day of March next following.

(2) The report of the auditor shall be presented to the Board within four months of the end of the financial year.

#### **Article 26**

##### **Special General Meeting**

(1) **The Board may at** any time summon a special general meeting of shareholders after giving not less than fourteen clear days notice of the meeting.

(2) Shareholders holding at least fifty percent equity in the **Bank may** requisition a special general meeting of shareholders by forwarding a written request to the Secretary indicating the business to be conducted at the meeting, whereupon the Secretary shall give notice of the meeting in accordance with paragraph (3) of this article.

(3) The notice of the meeting shall state the business **to** be conducted at the meeting and no other **business** other than that stated in the notice may be dealt with at that meeting.

## **Article 27**

### **Directors to declare interest**

(1) A director who is in any way interested, whether directly or indirectly, in a contractor proposed contract with the Bank or whose material interest in a company, partnership, undertaking or other business is likely to be affected by a decision of the Board shall disclose the nature of his interest at the **first** meeting of the Board at which he is present after the relevant facts come to his knowledge.

(2) A disclosure under paragraph (1) of this **article shall be recorded in the minutes** of the **meeting** and after the disclosure the director making it shall not vote on the matter and, unless the Board otherwise directs, shall not be present or take part in the proceedings of any meeting at which the matter is being discussed or decided by the Board.

(3) A Director shall be treated as having an indirect interest in a contract or proposed contract with the Bank in any matter with which the Bank is concerned if he is a director, shareholder, agent or employee of the company or under **standing** that is a party to the contract or proposed contract with the Bank or where his spouse, parent, child, brother or sister or the parent, child, brother or sister of his spouse holds an interest in that company or undertaking.

(4) For the purpose of this article, a general notice given to the Board by a director to the effect that he is a member of or otherwise associated with a **specified** company or undertaking and is to be regarded as interested in any contract which may after the date of the notice, be made with that company or undertaking shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

## **Article 28**

### **Staff of the Bank**

(1) The Board may appoint on such terms and conditions as it thinks fit such officers and employees as may be required for the due and efficient performance by the Bank of its functions under this Agreement.

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(2) There may be established by the Bank a pension scheme for the benefit of its **officers** and employees.



- (ii) fifteen thousand Class B shares or one and a half million dollars by Class B shareholder;
  - (iii) twenty thousand Class C share or two million dollars by Class C shareholder;
  - (iv) ten thousand Class D shares or one million dollars by Class D shareholder;
  - (v) ten thousand Class E shares or one million dollars by Class E shareholder; and
  - (vi) twenty thousand Class F shares or two million dollars by Class F shareholder.
- (b) The second and third tranches or the remaining fifty percent of the initial capital referred to in this article shall be offered for subscription and paid up after the third year of operation of the Bank in such proportions as may be determined by the Board except that the same shall be issued in the same relative proportions as the first tranche.

(3) The shares of the Bank for the time being unissued shall be at the disposal of the directors, who, for a period of five years from the date of the adoption of this article, may allot them to such class of shareholders in the member territories, at such time and on such terms as they may think fit, subject nevertheless to any provision as to the issue of such shares under this Agreement or to any decision taken by an ordinary resolution of the Board.

(4) Any share issued or purchased in accordance with paragraph (2) of this article, shall be issued or purchased at a fair market price at the date of such issue or purchase.

(5) Any share issued or purchased under this Agreement, except shares transferred under paragraph 7 of article 31 shall, in addition to any other rights attached to the respective shares under this Agreement, also be deemed to have the rights of ordinary shares.

### Article 30

#### Increase of authorized capital

(1) The Bank may increase its authorized share capital by the creation of new shares as may be considered expedient.

(2) An increase of authorized capital may be effected only in general meeting of shareholders upon the passing of an appropriate resolution.

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(3) Within twenty-eight days of passing of the resolution referred to in paragraph (2) of this article, the Bank shall give notice of the increase to the Registrar and shall forward to the Registrar a printed copy of the resolution authorising the increase.

(4) Notice of the increase shall contain particulars of classes of shares to be affected and the conditions, if any, subject to which new shares are to be issued.

### **Article 31**

#### **Transfer of shares**

(1) Subject to this article, all shares in the Bank are transferable.

(2) Class A shares are **transferable** to Class B, Class C or Class D shareholder or to a company or institution qualified to be a Class B, Class C or Class D shareholder.

(3) Class B shares are transferable to a Class **A**, Class B, Class C or Class D shareholder or to a company or **institution** qualified to be a Class A, Class B, Class C or Class D shareholder.

(4) Class C shares are transferable only to Class C or Class D shareholder or to a company or institution qualified to be a Class C or Class D shareholder.

(5) Class D shares are transferable only to Class C or Class D shareholder or to a company or institution qualified to be a Class C or Class D shareholder.

(6) Class E and F shares are transferable to Class C or Class D shareholder or to a company or institution qualified to be a Class C or D shareholder.

(7) Class E and F shares and such other shares as **may** be determined by the Council are transferable to non-government related companies or institutions or to other private sector investors and where these shares are transferred to other private sector investors, these investors shall become ordinary shareholders.

### **Article 32**

#### **Details of transfer to be entered in register**

Where shares are transferred the transferee shall forward the share certificate to the Board together with information relating to the transfer and the Board shall amend the certificate accordingly or issue a new certificate and cause particulars of the transfer to be recorded in the register.

**PART VI**

**MISCELLANEOUS**

**Article 33**

**Interest on bonds tax exempt**

(1) Subject to paragraph (2), the **Bank** may issue bonds up to a maximum aggregate capital value of two hundred and fifty million dollars and the interest payable on the bonds is exempt from income **tax** and any other tax including unemployment levy.

(2) The Board, on the advice of the Council, may vary the maximum aggregate capital value of the bonds.

**Article 34**

**Regulations**

The Board may after approval of the Council, make Regulations generally to give effect to the Agreement.

**Article 35**

**Amendments**

An Amendment to the Agreement may be proposed to the Council by the Board or by a shareholder of any class and shall be effective when it is agreed to by the members of the Council.

**Article 36**

**Disputes**

(1) Any dispute between the participating Governments concerning this Agreement or between the Bank and a participating Government, shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2) of this article.

(2) (a) If the dispute is between only two parties, each shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator, who shall be the Chairman of the tribunal,





### **Article 39**

#### **Ratification**

This Agreement shall be subject to ratification by the signatory participating Governments in accordance with their respective constitutional procedures. Instruments of Ratification shall be deposited with the Director General of the Organization of the Eastern Caribbean States who shall transmit certified copies to each participating Government.

### **Article 40**

#### **Entry into force**

This Agreement shall enter into force upon the deposit of five instruments of Ratification and participating Governments undertake to take all steps necessary for the implementation of this Agreement.

**IN WITNESS WHEREOF** the representatives of the participating Governments being duly authorized in their behalf, have signed this Agreement.

**DONE AT** Castries, St. Lucia this 27th day of May, 1994.

*Sgd.* **Victor F. Banks,**  
For the Government of Anguilla.

*Sgd.* **Lester Bird,**  
For the Government of Antigua and Barbuda.

*Sgd.* **M. Eugenia Charles,**  
For the Government of the Commonwealth of Dominica.

*Sgd.* **George I. Brizan,**  
For the Government of Grenada.

*Sgd.* **Reuben T. Meade,**  
For the Government of Montserrat.

*Sgd.* **Kennedy A. Simmonds,**  
For the Government of St. Christopher and Nevis.

*Sgd.* **John G. M. Compton,**  
For the Government of Saint Lucia.

