

ANTIGUA AND BARBUDA



**EASTERN CARIBBEAN PARTIAL CREDIT GUARANTEE CORPORATION
AGREEMENT ACT, 2017**

No. 16 of 2017

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ANTIGUA AND BARBUDA

**EASTERN CARIBBEAN PARTIAL CREDIT GUARANTEE CORPORATION
AGREEMENT ACT, 2017**

Section

1. Short title
2. Interpretation
3. Agreement to have force of law
4. Financial Provisions for giving effect to the Agreement
5. Fees
6. Credit guarantee threshold
7. Audited annual accounts to be laid in Parliament
8. Failure to comply with remedial actions
9. Exemptions
10. Amendment of Schedule
11. Regulations
12. Savings on cessation
13. Articles of Agreement to have the force of law

SCHEDULE

[L.S.]



I Assent,

Clare Roberts,
Deputy Governor-General.

15th June, 2017.

ANTIGUA AND BARBUDA

EASTERN CARIBBEAN PARTIAL CREDIT GUARANTEE CORPORATION AGREEMENT ACT, 2017

No. 16 of 2017

AN ACT to provide for the implementation of the Agreement establishing the Eastern Caribbean Partial Credit Guarantee Corporation and for related matters.

BE IT ENACTED by the Parliament of Antigua and Barbuda as follows—

1. Short title

This Act may be cited as the Eastern Caribbean Partial Credit Guarantee Corporation Agreement Act, 2017.

2. Interpretation

In this Act unless the context otherwise requires—

“Agreement” means the Agreement establishing the Eastern Caribbean Partial Credit Guarantee Corporation, made the 2nd day of March 2017, the text of which is set out in the Schedule;

“Articles” means Articles of the Agreement;

“Board” means the Board of Directors of the Credit Guarantee Corporation established under Article 11;

“Central Bank” means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement, done at Port-of-Spain on the 5th day of July, 1983;

“Credit Guarantee Corporation” means the Eastern Caribbean Partial Credit Guarantee Corporation established under Article 3;

“Director” means a Director of the Board;

“Minister” means the Minister responsible for Finance;

“Participating Lender” means a financial institution that meets the criteria set out in Article 41 of the Agreement for providing loans in the ordinary course of business to Qualifying Enterprises;

“Qualifying Enterprise” means an enterprise that meets the criteria for participation in the Credit Guarantee Scheme under Article 42.

3. Agreement to have force of law

The Agreement shall have the force of law in Antigua and Barbuda.

4. Financial provisions for giving effect to the Agreement

All monies required to be paid by the Government of Antigua and Barbuda for the purpose of meeting the obligations of Antigua and Barbuda under the Agreement shall be a charge on the Consolidated Fund.

5. Fees

(1) The Credit Guarantee Corporation may impose and collect fees in relation to the exercise of its functions.

(2) The Credit Guarantee Corporation may impose different fees according to the type of services that it offers and having regard to relevant circumstances involved in providing the services.

(3) The fees payable under Articles 41(2)(d) and 41(4) (a) (ii) shall not exceed the actual cost associated with the staff time and overhead used to process the application.

6. Credit guarantee threshold

The credit guarantee threshold under Article 43(3) shall not exceed 80 percent of the amount being loaned by the Participating Lender to the Qualifying Enterprise.

7. Audited annual accounts to be laid in Parliament Legislature

The Minister shall, where audited annual accounts of the Credit Guarantee Corporation are provided pursuant to Article 36(3), lay them before Parliament as soon as practicable after receiving them

8. Failure to comply with remedial actions

(1) The Credit Guarantee Corporation or any Director, Officer, or employee of the Credit Guarantee Corporation who fails to comply with any requirement or contravenes any prohibition imposed under Part VIII of the Agreement is liable —

- (a) in the case of the Credit Guarantee Corporation, to a penalty of thirty thousand dollars, and in the case of a continuing contravention, to a further penalty of two thousand dollars for each day of default;
- (b) in the case of a Director, officer or employee, to a penalty of ten thousand dollars and in the case of a continuing contravention, to a further penalty of five hundred dollars for each day of default.

(2) The penalty imposed under subsection (1) is an administrative penalty that shall be paid to the Central Bank and may be recovered as a civil debt.

9. Exemptions

The following Acts do not apply to the Credit Guarantee Corporation:

- (a) Stamp Duty Act, Cap. 410
- (b) Income Tax Act, Cap. 212.

10. Amendment of Schedule

(1) Where an amendment to the Agreement becomes effective in accordance with Article 69, the Minister may, by Order, amend the Schedule accordingly.

(2) Where the Schedule is amended pursuant to this section, any reference to the Agreement in this Act or any other instrument shall, unless the context otherwise requires, be construed as a reference to the Agreement so amended.

11. Regulations

(1) The Minister may, upon the recommendation of the Central Bank, make Regulations to give effect to the Agreement.

(2) Regulations made pursuant to subsection (1) shall be subject to negative resolution of the Parliament Legislature and shall be published in the *Gazette*.

12. Savings on cessation

Where this Act ceases to have the force of law:

- (a) any rights of any person acting upon or accruing under the authority granted by the Agreement prior to termination shall subsist;
- (b) any transaction or agreement which is expressly or by implication intended to come into force or continue in force, or be consummated on or after the date on which this Act ceases to have the force of law, shall not be affected by the Act ceasing to have the force of law.

13. Commencement

(1) With effect from such date as the Minister appoints by notice published in the *Gazette*, the Articles of the Agreement shall have the force of law Antigua and Barbuda.

(2) The Minister may appoint different days for the coming into force of such Articles.

SCHEDULE

EASTERN CARIBBEAN PARTIAL CREDIT GUARANTEE CORPORATION AGREEMENT

ARRANGEMENT OF ARTICLES

PREAMBLE

PART I

PRELIMINARY

1. Title
2. Interpretation

PART II

ESTABLISHMENT, POWERS AND OBJECTIVES OF THE CREDIT GUARANTEE CORPORATION

3. Establishment and Legal Personality
4. Objectives
5. Powers
6. Immunities
7. Place of office and establishment of branches or agencies
8. Address, service of documents, electronic records
9. Custody and use of common seal
10. Official seal

PART III

ORGANISATION AND MANAGEMENT

11. Establishment and composition of the Board of Directors
12. Chairperson and Deputy Chairperson
13. Appointment of Directors to be gazetted
14. Functions of the Board
15. Term of office of Directors
16. Alternate for Board
17. Vacancy in the Board
18. Remuneration of the Board
19. Directors to declare interest
20. Meetings of the Board
21. Committees of the Board

- 22. Policy Committee
- 23. Finance Committee
- 24. Audit and Risk Committee
- 25. Records

PART IV

CAPITAL, FINANCES, ACCOUNTS AND AUDIT

- 26. Authorised capital contributions
- 27. Authorised capital structure
- 28. Increase of authorised capital
- 29. Allotment of shares
- 30. General Fund
- 31. Credit Guarantee Fund
- 32. Investment
- 33. Dividends
- 34. Annual Budget
- 35. Accounts
- 36. Annual accounts, audit and report
- 37. Fiscal year

PART V

THE CREDIT GUARANTEE SCHEME

- 38. Establishment of the Credit Guarantee Scheme
- 39. Operation of the Credit Guarantee Scheme
- 40. General framework of the Credit Guarantee Scheme
- 41. Participating Lender
- 42. Qualifying Enterprise
- 43. Credit Guarantee Agreement
- 44. Withdrawal of credit guarantee

PART VI

OFFICERS AND EMPLOYEES

- 45. Officers
- 46. Employees

PART VII

CORPORATE GOVERNANCE

- 47. Minimum criteria for determining whether a person is fit and proper

- 48. Notification to Central Bank of appointment of Directors and Officers
- 49. Disqualification and removal from office of Director
- 50. Right to make representation
- 51. Removal of Director from office

PART VIII

GENERAL, SUPERVISORY AND REGULATORY CONTROL

- 52. Role of Monetary Council
- 53. Regulation by Central Bank
- 54. Reports and inspections
- 55. Central Bank's powers of remedial action
- 56. Additional Central Bank remedial actions
- 57. Remedial actions against Directors, Officers or employees
- 58. Additional remedial action against Directors, Officers or employees
- 59. Failure to comply with remedial actions
- 60. Suspension of persons charged with criminal offence etc.

PART IX

PROGRESS, REVIEWS AND TERMINATION OF CREDIT GUARANTEE CORPORATION

- 61. Assessment of progress
- 62. Decision to terminate on assessment
- 63. Effect of termination

PART X

MISCELLANEOUS

- 64. Application of the Companies Act
- 65. Obligation of confidentiality
- 66. Protection of persons dealing with Directors and agents
- 67. Disputes

PART XI

FINAL PROVISIONS

- 68. Effective Implementation
- 69. Amendments
- 70. Signatories
- 71. Ratification
- 72. Entry into force
- 73. Accession
- 74. Reservations

**EASTERN CARIBBEAN PARTIAL CREDIT GUARANTEE CORPORATION
AGREEMENT OF 2017**

PREAMBLE

The Participating Governments:

Realising the prevalence of micro, small and medium enterprises in the Currency Union and their importance in driving economic and social change, given their innovative capacities, productivity and growth potential;

Desirous of increasing the availability of financing to promote the creation, expansion, modernization and improvement of micro, small and medium enterprises which, though vulnerable to market and other conditions, possess potential for sustainability, growth and employment creation;

Considering the importance of contributing to the balanced development of the national economy by promoting and developing micro, small and medium enterprises;

Recognising the necessity of strengthening the financial system in the Currency Union by providing credit risk mitigation to participating lenders to increase the ability of micro, small and medium enterprises to access loans and absorbing a portion of losses incurred by participating lenders in cases of defaulting on payments;

Acknowledging that the establishment of the Eastern Caribbean Partial Credit Guarantee Corporation within the Currency Union would serve these ends,

HAVE AGREED as follows:

PART I

PRELIMINARY

ARTICLE 1

Title

This Agreement shall be cited as the Eastern Caribbean Partial Credit Guarantee Corporation Agreement of 2017.

ARTICLE 2

Interpretation

In this Agreement, unless the context suggests otherwise—

"Audit and Risk Committee" means the Committee appointed under Article 24 for the purpose of advising the Board on matters relating to the audit of accounts and risk management of the Credit Guarantee Corporation;

"Board" means the Board of Directors of the Credit Guarantee Corporation established under Article 11;

"Central Bank" means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement, done at Port-of-Spain on the 5th day of July, 1983;

"Credit Guarantee Corporation" means the Eastern Caribbean Partial Credit Guarantee Corporation established under Article 3;

"Credit Guarantee Scheme" means a scheme established under Article 38 for the purpose of providing credit guarantees to participating lenders that enter into loan agreements with participating borrowers;

"Credit Guarantee Fund" means the Credit Guarantee Fund established and maintained under Article 31 for purposes that include holding all amounts transferred to it by the Credit Guarantee Corporation, and for making payments in respect of credit guarantees issued by the Credit Guarantee Corporation;

"Currency Union", or "ECCU" refers collectively to the territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

"Director" means a Director of the Board;

"Finance Committee" means the Committee appointed under Article 23 for the purpose of advising the Board on matters relating to compensation of Directors, Officers and employees and the budget of the Credit Guarantee Corporation;

"Financial Institution" means a juridical person licensed to conduct banking business in the Currency Union under the Banking Act; or other regulated lending institutions including credit unions and development banks;

"General Fund" means the General Fund of the Credit Guarantee Corporation maintained under Article 30 for the purpose of meeting all functions of the Credit Guarantee Corporation other than those required to be met by the Credit Guarantee Fund;

"he" and its grammatical variations and cognate expressions, shall include male and female persons;

"Investor" includes a financial institution, Participating Government, or any other institution that is approved by the Board of Directors to contribute to the capital of the Credit Guarantee Corporation under Article 26;

"Loan Agreement" means an agreement under which a Participating Lender agrees to advance to a Qualifying Enterprise a sum of money upon -

- (a) such date or dates as may be specified in the agreement; or
- (b) the happening of such event as may be so specified;

in consideration of the Qualifying Enterprise agreeing to repay to the Participating Lender the principal of any sum so advanced, and interest (if any) thereon, on such date as may be so specified, but does not include an agreement to provide an overdraft facility to a Qualifying Enterprise; and "loan" shall be construed accordingly;

"Member Territory" means a Territory or State, as the case may be, of a Participating Government;

"Monetary Council" means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement done at Port-of-Spain on the 5th day of July, 1983;

"Officer" means -

- (a) the Chief Executive Officer, Chief Financial Officer, or corporate secretary;
- (b) any other individual appointed as an Officer by the Credit Guarantee Corporation under Article 45;
- (c) any other individual who performs functions similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an Officer;

"Operations Manual" means the document created under paragraph (3) of Article 39 for the purpose of providing guidance on the operation of the Credit Guarantee Scheme under this Agreement;

"OECS" means the Organisation of Eastern Caribbean States established under the Treaty of Basseterre done at Basseterre, St Kitts on the 18th June 1981, and continued under the Revised Treaty of Basseterre establishing the OECS Economic Union done at Gross Islet Saint Lucia on the 18th June 2010;

"Participating Borrower" means a qualifying enterprise—

- (a) belonging to a category to which the Credit Guarantee Scheme applies, and
- (b) that has entered into a Qualifying Loan Agreement with a Participating Lender;

"Participating Government" means an OECS Member State that is a party to this Agreement;

"Participating Lender" means a financial institution that meets the criteria set out in Article 41 for providing loans in the ordinary course of business to Qualifying Enterprises;

"Policy Committee" means the Committee appointed under Article 22 for the purpose of establishing policies for the entire operations of the Credit Guarantee Corporation;

"Qualifying Enterprise" means an enterprise that meets the criteria for participation in the Credit Guarantee Scheme under Article 42;

"Qualifying Loan Agreement" means a loan agreement—

- (a) in respect of which there has been compliance with the conditions specified in the Credit Guarantee Scheme under paragraph (3) of Article 40;
- (b) belonging to a category of loan agreements entered into by Qualifying Enterprises to which the Credit Guarantee Scheme applies;
- (c) that is made for a purpose that does not contravene a provision of the Credit Guarantee Scheme in furtherance of paragraph (3) (d) of Article 40 applies; and
- (d) that restricts a lender from exercising its powers under the loan agreement in a manner that will result in—
 - (i) the amount being loaned under the agreement exceeding the maximum amount so specified; or

- (ii) the aggregate of amounts being loaned under all such agreements with the Qualifying Enterprise concerned exceeding the maximum amount so specified;
- (e) that has been approved for a credit guarantee;

"Regulator" means a body established by law in the Currency Union to provide regulation and prudential supervision of financial institutions.

PART II

ESTABLISHMENT, POWERS AND OBJECTIVES OF THE CREDIT GUARANTEE CORPORATION

ARTICLE 3

Establishment and Legal Personality

- (1) There is established the Eastern Caribbean Partial Credit Guarantee Corporation.
- (2) The Credit Guarantee Corporation is a body corporate with full legal personality.
- (3) The establishment of the Credit Guarantee Corporation shall take effect upon entry into force of this agreement in accordance with Article 73 of this Agreement.

ARTICLE 4

Objectives

The objectives of the Credit Guarantee Corporation are to—

- (a) assist in promoting economic growth and development in Member Territories by administering the Credit Guarantee Scheme to increase access to finance;
- (b) offer credit guarantees to Participating Lenders in respect of Qualifying Enterprises;
- (c) enable Qualifying Enterprises to access loans from Participating Lenders with the intention of—
 - (i) strengthening the confidence of Participating Lenders in providing loans to Qualifying Enterprises; and

- (ii) increasing the ease with which loans can be accessed by Qualifying Enterprises from Participating Lenders.

ARTICLE 5

Powers

(1) The Credit Guarantee Corporation shall have the following powers—

- (a) to initiate, conduct, defend, settle, compound or abandon legal proceedings against any person in its corporate name;
- (b) to enter into contracts and incur obligations, in relation to any of its activities and property in its corporate name;
- (c) to have a common seal and to alter or change that seal;
- (d) to acquire and hold any moveable or immoveable property for purposes for which the Credit Guarantee Corporation is constituted, and to dispose of or charge such property at pleasure;
- (e) to invest or otherwise manage its funds in accordance with its investment policy;
- (f) to enter into a credit guarantee agreement with a Participating Lender guaranteeing repayment to that Participating Lender of such part of the principal and interest of moneys borrowed from the Participating Lender pursuant to a qualifying loan agreement;
- (g) to participate in any restructuring or to ensure the enforcement of a credit guarantee agreement given by it where a Participating Lender fails or refuses to comply with the terms of a Credit Guarantee Scheme;
- (h) to borrow or raise funds as may be approved by the Board;
- (i) to perform functions under the Credit Guarantee Scheme as may be specified in a credit guarantee agreement;
- (j) to withdraw any credit guarantee given by it in respect of a Qualifying Loan Agreement where a Participating Lender fails or refuses to comply with the terms of the Credit Guarantee Scheme;
- (k) to discharge any debt, obligation or liability.

(2) The powers conferred on the Credit Guarantee Corporation under paragraph (1) shall be in addition to and not in derogation of any of the rights, powers, privileges conferred on the Credit Guarantee Corporation by this Agreement or any other law.

(3) The Credit Guarantee Corporation may exercise other powers as may be expedient for, ancillary to or incidental to attaining its objectives.

ARTICLE 6

Immunities

(1) The Credit Guarantee Corporation shall be accorded in each Member Territory the status, immunities and privileges set forth in this Article to enable it to carry out its objectives.

(2) The Credit Guarantee Corporation, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract if, in its judgment, justice so requires and the waiver will not defeat the objectives of the Credit Guarantee Corporation.

(3) Property and assets of the Credit Guarantee Corporation shall be immune from search, requisition, acquisition or any other form of seizure.

(4) The appointed Directors, Officers and employees of the Credit Guarantee Corporation —

- (a) shall be immune from legal process, and be held harmless and indemnified by the Credit Guarantee Corporation for legal costs, with respect to acts performed or omissions made by them in their official capacity in good faith except when the Credit Guarantee Corporation waives this immunity, or where such acts or omissions are as a consequence of fraud, gross negligence or wilful recklessness on the part of such Director, Officer or employee;
- (b) not being nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations as are granted to nationals;
- (c) shall be granted the same treatment in respect of travelling facilities as is accorded by Participating Governments to representatives, officials and employees of comparable rank of other Participating Governments.

(5) The Credit Guarantee Corporation, its assets, property, income and its business shall be immune from all taxation, levies, and from all customs duties in respect of goods acquired by, or

services rendered to it for its own use, and the Credit Guarantee Corporation shall also be immune from liability for the collection or payment of any tax.

(6) Tax shall not be imposed on or in respect of salaries and emoluments, including pensions and gratuities, paid by the Credit Guarantee Corporation to the appointed Directors, Officers and employees of the Credit Guarantee Corporation.

(7) Tax of any kind shall not be imposed on—

- (a) any obligation or security issued by the Credit Guarantee Corporation, including any dividend or interest thereon, by whomsoever held;
- (b) any securities, rights or liabilities transferred to the Credit Guarantee Corporation by a Participating Lender pursuant to any requirements of Article 40 (1) (j) in relation to the transfer of any rights and liabilities under a Qualifying Loan Agreement;
- (c) any credit guarantees issued by the Credit Guarantee Corporation.

(8) Action may be brought against the Credit Guarantee Corporation only in a court of competent jurisdiction in a Member Territory in which it has an office or branch, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

ARTICLE 7

Place of office and establishment of branches or agencies

(1) The Credit Guarantee Corporation shall have its principal office in one of the Member Territories as the Board of Directors may determine.

(2) The Credit Guarantee Corporation may, if it considers it necessary to do so, establish branches or agencies or appoint agents and correspondents in any Member Territory.

ARTICLE 8

Address, service of documents, electronic records

(1) The Credit Guarantee Corporation shall at all times have a fixed address in one of the Member Territories.

(2) Documents may be served on the Credit Guarantee Corporation by leaving them at or sending them by registered post to the principal office of the Credit Guarantee Corporation or any branches or agencies that may be established under Article 7.

(3) If the Credit Guarantee Corporation, pursuant to any written law-

- (a) accepts the filing of documents, or obtains information in any form;
- (b) requires that documents be created or retained;
- (c) requires documents, records or information to be provided or retained in their original form; or
- (d) issues any permit, licence or approval,

then, the Credit Guarantee Corporation may, notwithstanding anything to the contrary in such written law, carry out those functions by electronic means.

(4) If the Credit Guarantee Corporation carries out any of the functions under paragraph (3) by electronic means, the written law may specify-

- (a) the manner and format in which the documents, records or information in electronic form shall be filed, obtained, created, provided, retained, or issued;
- (b) the manner and format in which —
 - (i) a signature shall be affixed to the documents, record or information in electronic form, and
 - (ii) the identity of the person filing the document may be ascertained or it may be ascertained whether mandatory criteria for any electronic authentication service provider is used by the person filing the document;
- (c) control processes and procedures as may be appropriate to ensure adequate integrity, security and confidentiality of documents, records or information in electronic form; or
- (d) any other required attributes for documents, records or information in electronic form that are specified for corresponding paper documents.

ARTICLE 9

Custody and use of common seal

(1) The Credit Guarantee Corporation shall have a common seal.

(2) The Board shall provide for the safe custody of the common seal of the Credit Guarantee Corporation.

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

- (a) the Chairperson or, in his absence the Deputy Chairperson; and
- (b) one other Director or the corporate secretary.

(4) All documents made by the Credit Guarantee Corporation other than those required by law to be under seal, and all decisions of the Credit Guarantee Corporation may be signified under the hand of the Chairperson, the Deputy Chairperson or the corporate secretary.

ARTICLE 10

Official seal

(1) The Credit Guarantee Corporation shall have an official seal, which shall be a facsimile of its common seal, for use in any Member Territory other than the location at which the principal office of the Credit Guarantee Corporation 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 Credit Guarantee Corporation.

(3) The Credit Guarantee Corporation 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 Credit Guarantee Corporation 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.

PART III

ORGANISATION AND MANAGEMENT

ARTICLE 11

Establishment and composition of the Board of Directors

(1) There shall be established a Board of Directors which shall initially be appointed by majority vote of the Monetary Council.

(2) The Board of Directors shall be comprised of the following persons who shall be nominated as follows:

- (a) one member from each of the Participating Governments;
- (b) one member representing the banking industry from the ECCU Bankers' Association; and
- (c) two members representing the micro, small and medium-sized business community, from the Chambers of Commerce of two Member Territories chosen by alphabetical rotation from the Chambers of Commerce of the Member Territories; and
- (d) in accordance with a nomination procedure that the Participating Governments, the ECCU Bankers' Association and the Chambers of Commerce of two Participating Governments chosen by alphabetical rotation, as the case may be, shall determine.

(3) Individuals nominated to replace members of the initial Board of Directors shall be nominated using the provisions of this Article and vetted by the Board of Directors using the fit and proper policy established in paragraph 1 of Article 47 and appointed by a majority vote of the Board of Directors.

(4) The persons appointed to the Board under paragraph (1) shall, in addition to the requirements of Article 47, be persons of recognised standing with specific knowledge of and experience in one or more of the following areas—

- (a) finance;
- (b) accounting;
- (c) credit management;
- (d) banking;
- (e) investment;
- (f) economics;
- (g) auditing;
- (h) corporate law; or
- (i) business.

ARTICLE 12

Chairperson and Deputy Chairperson

- (1) The Board shall elect from among its members a Chairperson and Deputy Chairperson.
- (2) Subject to paragraphs (3) and (4), the Chairperson shall preside at all meetings of the Board and shall have an original and a casting vote.
- (3) In the absence of the Chairperson, the Deputy Chairperson shall perform the functions of Chairperson of the meeting, subject to the quorum for the meeting being met.
- (4) In the absence of both the Chairperson and the Deputy Chairperson, the Directors present shall elect one of their members to preside and perform the functions of Chairperson of the meeting, subject to the quorum for the meeting being met.

ARTICLE 13

Appointment of Directors to be gazetted

The appointment of any person as Chairperson, Deputy Chairperson, Director or alternate Director and the termination of any such appointment shall be published in the official *Gazette* of each Member Territory.

ARTICLE 14

Functions of the Board

- (1) The general administration, direction and the management of the affairs and business of the Credit Guarantee Corporation shall vest in the Board which may exercise all powers and do all acts as may be exercised or done by the Credit Guarantee Corporation.
- (2) In carrying out its functions, the Board shall—
 - (a) ensure that the objectives of the Credit Guarantee Corporation are carried out;
 - (b) set the strategic objectives and targets of the Credit Guarantee Corporation through the preparation of at least a two-year strategy plan that fully describes the activities of the Credit Guarantee Corporation and which shall be reviewed semi-annually, or as the Board directs;

- (c) ensure the implementation of appropriate systems and procedures to achieve the Credit Guarantee Corporation's strategic objectives and targets;
- (d) review and adopt business plans of the Credit Guarantee Corporation;
- (e) establish eligibility criteria on an annual basis for the financial soundness of Participating Lenders;
- (f) establish and review the system and procedures of control and risk management that are adequate for the nature and scale of the business of the Credit Guarantee Corporation, including risk in relation to the management of the Credit Guarantee Fund;
- (g) adopt policies for clear organizational arrangements for delegating authority and responsibility;
- (h) adopt adequate internal practices and procedures that promote ethical and professional standards in the Credit Guarantee Corporation; and
- (i) adopt and review the system of internal controls to ensure that the business of the Credit Guarantee Corporation is conducted in a prudent manner in accordance with policies and strategies established by it.

(3) The Board shall ensure that the strategic objectives and targets of the Credit Guarantee Corporation address the following—

- (a) performance and long-term service, financial and sustainability objectives;
- (b) credit guarantee planning based on demand forecasts and targeted service levels; and
- (c) the maintenance of reliable integrated credit guarantee records.

(4) The Board shall ensure that, pursuant to paragraph (3), a Credit Guarantee Fund investment strategy is developed which shall address mechanisms for ensuring the payment of credit guarantees by the Credit Guarantee Corporation to Participating Lenders, including—

- (a) the establishment and maintenance of liquidity ratios; and
- (b) the maximum leverage of the Credit Guarantee Fund.

ARTICLE 15**Term of office of Directors**

(1) Subject to paragraph (2), a Director may hold office for a term not exceeding three years and is eligible for re-appointment up to a maximum of two consecutive terms.

(2) A Director nominated by the Chambers of Commerce of two Participating Governments under paragraph (2) (c) of Article 11 may hold office for a term not exceeding two years and is not eligible for re-appointment until such time as the alphabetical rotation of the Chambers of Commerce of each Participating Government allows.

(3) A person appointed to fill a vacancy in the Board shall hold office for the unexpired term of his predecessor and, except for a Director representing the micro, small and medium sized business community as selected according to paragraph (2) (d) of Article 11, is eligible for re- appointment up to a maximum of two consecutive terms.

ARTICLE 16**Alternates for Board**

(1) Alternate members of the Board may be appointed, and the appointment shall be performed in the same manner as the appointment of Directors as provided in Article 11.

(2) A person appointed as an alternate Director shall function as a Director in the absence of the Director for whom he is alternate.

(3) The provisions of this Agreement that apply to Directors apply also to alternate Directors.

ARTICLE 17**Vacancy in the Board**

(1) A vacancy in the membership of the Board exists where a Director –

- (a) dies;
- (b) by writing under his hand addressed to the Chairperson resigns;
- (c) becomes disqualified under Article 49 from being a Director;
- (d) is absent for three consecutive Board meetings without special leave of absence from the Directors, and the Directors resolve that the office be vacated; or

- (e) is found by two-thirds of all of the members of the Board to—
- (i) be unable to discharge his functions;
 - (ii) have misbehaved in office; or
 - (iii) have neglected his duties.

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

(3) A vacancy in the Board shall be filled by the Participating Government or other entity which nominated the Director whose position has become vacant.

ARTICLE 18

Remuneration of the Board

(1) The Board shall be paid such remuneration as may be agreed by the Board of Directors when the Board is established and subsequently adjusted by the Board as necessary.

(2) Remuneration paid to the Board shall be disclosed in accordance with the auditor's report and annual reports prepared by the Board.

ARTICLE 19

Directors to declare interest

(1) A Director who has an interest, whether directly or indirectly in a contract or proposed contract with the Credit Guarantee Corporation or whose material interest in a corporation or undertaking is likely to be affected by a decision of the Board shall disclose to the Board the nature of his interest as soon as the relevant facts come to his knowledge.

(2) A disclosure under paragraph (1) —

- (a) shall be recorded in the minutes of the meeting; and
- (b) disqualifies a Director from—
 - (i) voting on the matter; and

- (ii) being present or taking 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 Credit Guarantee Corporation in any matter with which the Credit Guarantee Corporation is concerned if —

- (a) he is a Director, shareholder, agent or employee of a corporation or undertaking that is —
 - (i) a party to a contract or proposed contract with the Credit Guarantee Corporation; or
 - (ii) a qualifying enterprise for which a participating lender requests or has received a credit guarantee from the Credit Guarantee Corporation; or
- (b) his relative holds an interest in that corporation or undertaking.

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

(5) A Director shall report in writing his financial interest on an annual basis to the Board.

(6) For the purpose of paragraph (3)(b), "relative" means spouse, parent, child, brother or sister or the parent, child, brother or sister of his spouse.

ARTICLE 20

Meetings of the Board

(1) The Board shall hold meetings at least once every three months.

(2) The Chairperson shall call a special meeting of the Board within seven days of receiving a request for a meeting that is addressed to him and is signed by any three Directors.

(3) The Chairperson shall cause to be prepared and delivered to all members of the Board an agenda and supporting documentation for each agenda item, at least seven days prior to meetings and two days prior to special meetings.

(4) Five Directors shall constitute a quorum. If the size of the Board increases, the size of the quorum shall be at least 60 per cent of the total Board membership.

(5) Decisions of the Board shall be made by a majority of the votes of the members present.

(6) Directors –

- (a) may, notwithstanding the provisions of paragraphs (2) and (5), make decisions otherwise than in a meeting convened, by circulating the supporting information among the Directors;
- (b) may signify their opinion on the matter or question in writing, by electronic mail, facsimile or by telephone;
- (c) shall place a matter or question arising otherwise than in a meeting for discussion at a meeting of the Board if a difference of opinion arises among them.

(7) Decisions made under paragraph (6) shall be brought up for consideration at the next meeting of the Board.

(8) The Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time, and members who participate in such a meeting are taken for all purposes to have been present at the meeting.

(9) The Board may regulate its own procedure at meetings.

ARTICLE 21

Committees of the Board

(1) The Board may appoint Committees of the Board and delegate any of its functions to them.

(2) Committees appointed by the Board shall examine and report to the Board on the matters for which they are responsible arising out of or connected with any of their functions.

(3) A Committee shall consist of —

- (a) at least three members of the Board, one of whom shall be the Chairperson of the Committee; and
- (b) not more than three other persons who may or may not be members of the Board.

(4) The Board shall determine the quorum and procedure to be followed by any Committee constituted pursuant to this Article.

ARTICLE 22
Policy Committee

(1) The Board shall appoint a Policy Committee of the Board which shall, for the purpose of paragraph (3) of Article 21, include the Chief Executive Officer of the Credit Guarantee Corporation, *ex officio*.

(2) The purpose of the Policy Committee is to recommend policies for the entire operation of the Credit Guarantee Corporation, which may include -

- (a) formulating, developing, monitoring and reviewing policies that reflect the major functions of the Credit Guarantee Corporation;
- (b) documenting policies and procedures of the Credit Guarantee Corporation when necessary to reflect new structures or functions that may arise;
- (c) reviewing, analysing, and revising policies and procedures to ensure conformity with changes in the Credit Guarantee Corporation's internal procedures.

(3) Policies developed pursuant to paragraph (2) shall include a dividend policy established for the purpose of regulating the distribution, if necessary, of net income of the Credit Guarantee Corporation.

(4) The Policy Committee shall assemble and document the existing policies and procedures of the Credit Guarantee Corporation in a format that provides historical perspective, ensures continuity of purpose, and facilitates training for the Board, Officers, and employees of the Credit Guarantee Corporation.

(5) The Policy Committee shall elect one of its members, other than an *ex officio* member, as Chairperson.

(6) The Policy Committee shall meet at least once per year.

ARTICLE 23
Finance Committee

(1) The Board shall appoint a Finance Committee of the Board which shall, for the purpose of paragraph (3) of Article 21, include the Chief Financial Officer of the Credit Guarantee Corporation, *ex officio*.

(2) The Chief Financial Officer shall not participate in meetings of or make decisions on behalf of the Finance Committee for compensation issues falling under paragraph (3).

(3) The Finance Committee shall, in relation to compensation of Directors, Officers and employees—

- (a) make recommendations to the Board and collaborate with the Policy Committee with respect to the Credit Guarantee Corporation's compensation policies, plans, benefit programmes and overall compensation policy including -
 - (i) annual base salaries;
 - (ii) incentive bonuses;
 - (iii) employment agreements and severance arrangements; and
 - (iv) any other benefits, compensation, or arrangements;
- (b) review and make recommendations to the Board with respect to general compensation goals and guidelines for the Chief Executive Officer and other Officers of the Credit Guarantee Corporation and the criteria by which bonuses and other awards are determined; and
- (c) collaborate with the Policy Committee to ensure that the Credit Guarantee Corporation structures its compensation plans, policies and programmes in a manner designed to attract and retain the best available personnel for positions of substantial responsibility.

(4) The Finance Committee shall, in relation to the budget of the Credit Guarantee Corporation, be responsible for overall policy matters relating to the budget programme and for coordinating the preparation of the budget, which may include —

- (a) receiving and reviewing the proposed annual budget;
- (b) evaluating expenditure proposals and revenue measures to ensure that planned expenditure and revenue decisions set out in the budget documents are adequately prepared;
- (c) suggesting changes or modifications in accordance with the Credit Guarantee Corporation's policy objectives;
- (d) recommending the approval of the final budget to the Board;
- (e) receiving and analysing performance reports regarding the implementation of budgets; and

- (f) suggesting corrective measures to improve efficiency and achieve budgetary goals.
- (5) The Finance Committee shall elect one of its members, other than an ex officio member, as Chairperson.
- (6) The Finance Committee shall meet at least four times per year.
- (7) The Finance Committee shall report to the Board four times per year within one month of the end of each quarter in the fiscal year.
- (8) The Finance Committee shall review the financial sustainability of the Credit Guarantee Corporation on an annual basis.
- (9) The Finance Committee shall prepare an annual report which shall be presented to the Board.

ARTICLE 24

Audit and Risk Committee

- (1) The Board shall appoint an Audit and Risk Committee of the Board which shall, for the purpose of paragraph (3) of Article 21, include the Chief Financial Officer of the Credit Guarantee Corporation, ex officio, who shall not have the power to cast a vote.
- (2) The Audit and Risk Committee shall, in relation to the audit of the accounts of the Credit Guarantee Corporation, provide oversight of the financial reporting process, the audit process, the system of internal controls and compliance with laws and regulations, which may include -
 - (a) reviewing the budgets and performance standards and benchmarks set by the Board;
 - (b) considering internal controls and reviewing their effectiveness;
 - (c) reviewing significant accounting and reporting issues and professional and regulatory developments to understand the potential impact on financial statements;
 - (d) recommending to the Board, the appointment and subsequent rotations of qualified independent auditors;
 - (e) ensuring the conduct of an independent annual external audit; and
 - (f) obtaining and reviewing the results of the audit with management and external auditors.

(3) The Audit and Risk Committee shall elect one of its members, other than an ex officio member, as Chairperson and the person so elected shall have an original and a casting vote.

(4) The Audit and Risk Committee shall meet at least twice per year.

(5) The Audit and Risk Committee shall prepare an annual report which shall be presented to the Board.

ARTICLE 25

Records

The Board shall cause records to be kept for the purpose of recording-

- (a) all persons appointed to the Board and Committees of the Board;
- (b) the names of Directors present at each meeting of the Board and of persons present at Committee meetings; and
- (c) all resolutions, decisions and proceedings at all meetings of the Board.

PART IV

CAPITAL, FINANCES, ACCOUNTS AND AUDIT

ARTICLE 26

Authorised capital contributions

The authorised capital of the Credit Guarantee Corporation shall consist of contributions from -

- (a) Participating Governments;
- (b) any other investors as approved by the Board of Directors; and
- (c) donors in accordance with terms and conditions that are acceptable to the Board of Directors.

ARTICLE 27

Authorised capital structure

(1) The initial authorised capital of the Credit Guarantee Corporation shall be approximately EC\$30 million dollars.

(2) Subject to Article 28, the authorised capital of the Credit Guarantee Corporation —

- (a) shall be EC\$30 million dollars which shall be divided into 30 million shares of a par value of EC\$1 per share;
- (b) may be increased pursuant to Article 28(1);
- (c) may be issued, whether original or increased, with or without preference priority or special privilege or subject to any postponement of rights to any conditions or restrictions, unless the conditions of issue otherwise expressly declare, and further issue of shares, whether declared to be preference or otherwise, shall be subject to the power herein contained.

(3) The Credit Guarantee Corporation may issue authorised capital as approved by the Board in such amount as is necessary to support the demand for credit guarantees.

ARTICLE 28

Increase of authorised capital

(1) The Credit Guarantee Corporation may increase its authorised capital by creating new shares as may be considered expedient by the Participating Governments and other existing investors.

(2) An increase of authorised capital may be effected by Participating Governments and other existing investors upon the passing of a resolution of the Board.

ARTICLE 29

Allotment of shares

Shares of the Credit Guarantee Corporation shall be allotted to the Participating Governments and other investors, as the case may be, in proportion to their respective contribution to the share capital.

ARTICLE 30

General Fund

(1) The Credit Guarantee Corporation shall establish and maintain a fund to be called the General Fund.

(2) The Credit Guarantee Corporation shall use the General Fund to meet all obligations of the Credit Guarantee Corporation other than those required to be met by the Credit Guarantee Fund.

(3) All payments shall be credited to the General Fund.

(4) The following payments shall be debited from the General Fund —

- (a) all obligations of the Credit Guarantee Corporation, with the exception of payments on credit guarantees; and
- (b) payments to the Credit Guarantee Fund for the purpose of paying on a credit guarantee obligation.

ARTICLE 31 **Credit Guarantee Fund**

(1) The Credit Guarantee Corporation shall establish and maintain a fund to be called the Credit Guarantee Fund.

(2) The Credit Guarantee Corporation shall use the Credit Guarantee Fund to make payments in respect of credit guarantees issued by the Credit Guarantee Corporation.

ARTICLE 32

Investment

The Credit Guarantee Corporation may invest all its capital and retained earnings which are not immediately required by the Credit Guarantee Corporation to meet its financial obligations.

ARTICLE 33

Dividends

The Credit Guarantee Corporation may pay dividends in accordance with a policy as established by the Board.

ARTICLE 34

Annual Budget

(1) The Credit Guarantee Corporation shall prepare an annual budget indicating its total anticipated income and expenditures for each fiscal year.

(2) The Board shall approve the annual budget of the Credit Guarantee Corporation no later than one month prior to the commencement of the relevant fiscal year.

ARTICLE 35**Accounts**

The Credit Guarantee Corporation shall, in respect of its business, maintain books and records that accurately reflect its business, including the General Fund and the Credit Guarantee Fund established under this Agreement.

ARTICLE 36**Annual accounts, audit and report**

(1) The Credit Guarantee Corporation shall, no later than two months after the end of each fiscal year

- (a) prepare annual accounts in accordance with internationally accepted accounting standards; and
- (b) cause a statement to be prepared on the conduct of business of the Credit Guarantee Corporation to determine if it is operating in full compliance with this Agreement, and policies and procedures approved by the Board including the goals laid out in its strategic and business plans.

(2) The Credit Guarantee Corporation shall, no later than four months after the end of each fiscal year—

- (a) cause a duly qualified independent auditor to audit the annual accounts in accordance with internationally accepted auditing standards;
- (b) be provided with the audited annual accounts prepared under paragraph (a).

(3) The Board shall simultaneously present to all investors -

- (a) the audited annual accounts received under paragraph (2);
- (b) written confirmation from the independent auditor that the audited annual accounts have been prepared as required under paragraph (2);
- (c) a statement on whether the auditor's certificate for the audited annual accounts is unqualified, and if it is qualified, the nature of the qualification; and
- (d) a statement on the conduct of business of the Credit Guarantee Corporation required under paragraph (1) (b).

(4) An auditor who performs functions under this Article may be re-appointed, but shall not serve for more than three consecutive years.

ARTICLE 37

Fiscal year

The fiscal year of the Credit Guarantee Corporation shall begin on the first day of April and end on the thirty-first day of March in the following year and the first fiscal year of the Credit Guarantee Corporation may begin on a day after the first day of April and end on the thirty-first day of March next following.

PART V

THE CREDIT GUARANTEE SCHEME

ARTICLE 38

Establishment of the Credit Guarantee Scheme

(1) There is established and maintained a Credit Guarantee Scheme, the purposes of which are set out in this Part.

(2) The Credit Guarantee Scheme shall be administered by the Credit Guarantee Corporation.

ARTICLE 39

Operation of the Credit Guarantee Scheme

(1) The Credit Guarantee Scheme shall be operated in the manner authorised by this Agreement.

(2) For the purposes of paragraph (1), details of the measures and procedures provided in this Part shall be prescribed to support the implementation of this Agreement.

(3) The Credit Guarantee Corporation shall prepare or cause to be prepared an Operations Manual to provide guidance on the operation of the Credit Guarantee Scheme under this Agreement.

(4) The Operations Manual shall —

(a) receive the approval of the Board prior to its first publication;

(b) be modified only after the amendments have been approved by the Board;

- (c) be published on the website of the Credit Guarantee Corporation.

ARTICLE 40

General framework of the Credit Guarantee Scheme

- (1) The Credit Guarantee Scheme shall address all or any of the following matters —
- (a) thresholds that lenders that wish to become Participating Lenders shall meet to participate in the Credit Guarantee Scheme;
 - (b) the approval methods and procedures for assessing the suitability of lenders who wish to become Participating Lenders;
 - (c) the type of information required to be provided to the Credit Guarantee Corporation for purposes related to making a credit guarantee agreement;
 - (d) the extent of the Credit Guarantee Corporation's liability to a Participating Lender in accordance with a credit guarantee agreement in the circumstances where the Participating Lender fails or refuses to comply with the conditions applicable to the Credit Guarantee Scheme;
 - (e) variation of the terms of a credit guarantee agreement in circumstances where a Participating Lender fails or refuses to comply with the Credit Guarantee Scheme;
 - (f) the imposition of terms and conditions for the payment of fees and charges, if any, by the Participating Borrower or Participating Lender to the Credit Guarantee Corporation, as a contribution towards the provision of the Credit Guarantee Scheme;
 - (g) the preparation and maintenance of records, books of account and such other documentation as may be specified in the Credit Guarantee Scheme by Participating Lenders;
 - (h) the giving of documents, information and reports by lenders to the Credit Guarantee Corporation;
 - (i) the information required to be provided by Participating Lenders to the Credit Guarantee Corporation on their activities with regard to qualifying loans;
 - (j) requirements in relation to the transfer of any rights and liabilities under a Qualifying Loan Agreement;

- (k) any other matters that the Credit Guarantee Corporation considers necessary or expedient.

(2) The Credit Guarantee Scheme shall contain applicable conditions with which a lender shall, for the purposes of the granting of approval to be a Participating Lender, comply, relating to

- (a) the policies and practices of the lender applicable to —
 - (i) lending money;
 - (ii) giving loans to Qualifying Enterprises;
 - (iii) recovering moneys borrowed from the lender;
 - (iv) providing security for moneys borrowed from the lender;
- (b) the administration and management practices of the lender;
- (c) the procedures in relation to the supervision of transactions entered into on the lender's behalf by members of staff of the lender; and
- (d) the proportion that moneys borrowed from the lender bears to the capital reserves of the lender.

(3) The Credit Guarantee Scheme shall include –

- (a) the categories of Qualifying Enterprises to which the Credit Guarantee Scheme shall apply;
- (b) the conditions that shall be complied with for lenders and Qualifying Enterprises that enter into a Loan Agreement;
- (c) loan agreements to which the Credit Guarantee Scheme shall apply;
- (d) the purposes for which moneys borrowed pursuant to a Loan Agreement may be applied; and
- (e) the maximum on the aggregate of money to be guaranteed by the Credit Guarantee Corporation.

ARTICLE 41**Participating Lender**

- (1) For the purposes of this Agreement, a lender is a Participating Lender if—
 - (a) it is an institution that is regulated by a Regulator and operates in the Currency Union;
 - (b) it provides or intends to provide loans in the ordinary course of business to Qualifying Enterprises;
 - (c) it is approved by the Credit Guarantee Corporation in accordance with terms and conditions required in this Agreement; and
 - (d) it agrees to comply with the Credit Guarantee Scheme requirements.

- (2) For the purposes of this Agreement, the following shall be prescribed in providing for the assessment of an application by a lender that wishes to become a Participating Lender —
 - (a) the contents of the application form for approval as a Participating Lender;
 - (b) the method for assessing the financial status, operations, management and lending policies of the lender by providing information to assess the following aspects of the conduct of its business -
 - (i) its strategic positioning, by reviewing its financial products, its role in providing financing to micro enterprises, small enterprises and medium enterprises, and the extent to which it targets or intends to target specific micro, small and medium enterprise markets;
 - (ii) its lending policies and procedures, by reviewing the extent to which its credit, security and recoveries policies and procedures, and its standard documentation and ancillary business services support access to loans by micro enterprises, small enterprises and medium enterprises; and
 - (iii) its additionality, by reviewing the manner in which it will use the Credit Guarantee Scheme to support lending over and above that currently being provided to micro enterprises, small enterprises and medium enterprises;
 - (c) the manner of notifying the decision relating to an application;

- (d) the fees payable, if any, in relation to an application, which shall not exceed the amount prescribed by law.

(3) The Credit Guarantee Corporation may approve a lender as a Participating Lender under this Article if —

- (a) the lender agrees in writing to comply with and be bound by the terms of the Credit Guarantee Scheme; and
- (b) in the case of a Participating Lender who applies to continue to be a Participating Lender, the Credit Guarantee Corporation is satisfied that the Participating Lender has complied with the terms of the Credit Guarantee Scheme.

(4) The Credit Guarantee Corporation -

- (a) may, as a term of the Credit Guarantee Scheme —
 - (i) vary the fee that may be imposed on Participating Lenders based on criteria such as the legal structure of Participating Lenders and the types of loans they offer;
 - (ii) provide for an initial fee to be paid when applying for approval as a Participating Lender, which shall not exceed the amount prescribed by law;
 - (iii) provide for an annual fee, which shall not exceed the amount approved by the Board, to be paid by a single payment or by instalments at intervals and at a rate as may be specified, whether based upon a loan granted or the average annual loans granted by the Participating Lender under a Qualifying Loan Agreement;
- (b) may have regard to the following factors in establishing the fees to be imposed -
 - (i) the size and quality of the Participating Borrowers;
 - (ii) the risks associated with the Participating Borrowers;
 - (iii) the risks associated with the business sector of the use of funds;
 - (iv) the duration of credit guarantees given under the Credit Guarantee Scheme;
 - (v) the expenses incurred or likely to be incurred, or both, in relation to administering the Credit Guarantee Scheme and ensuring its viability.

(5) The Credit Guarantee Corporation may withdraw an approval under this Article if a Participating Lender ceases to comply with the applicable conditions or contravenes any other provisions of the Credit Guarantee Scheme.

ARTICLE 42

Qualifying Enterprise

- (1) For the purposes of this Agreement, an enterprise is a Qualifying Enterprise —
- (a) if it is a micro enterprise, being an enterprise that —
 - (i) has an annual revenue or projected revenue of less than seventy-five thousand dollars; and
 - (ii) employs or intends to employ less than five permanent employees; or
 - (b) if it is a small enterprise, being an enterprise that —
 - (i) is not a micro enterprise; and
 - (ii) has an annual revenue or projected revenue of less than four hundred thousand dollars; and
 - (iii) employs or intends to employ less than twenty-five permanent employees; or
 - (c) if it is a medium enterprise, being an enterprise that -
 - (i) is not a micro enterprise; and
 - (ii) is not a small enterprise; and
 - (iii) has an annual revenue or projected revenue of less than two million dollars; and
 - (iv) employs or intends to employ less than fifty permanent employees; whether or not it —
- (A) is a juristic person or is an individual;
- (B) has commenced operation at the time of applying for a loan from the Participating Lender; or

- (C) intends to commence operation within eight months of applying for a loan from a Participating Lender.
- (2) A Start-up is eligible to be a Qualifying Enterprise.
- (3) For the purposes of this Part, a "Start-up" means an entity —
 - (i) incorporated or registered in a Member Territory; and
 - (ii) not older than two years.
- (4) The Board may develop a list of sectors or activities in which Qualified Enterprises are prohibited from conducting business for the purposes of this Agreement.
- (5) A micro enterprise, a small enterprise or a medium enterprise shall not conduct business in contravention of the list of prohibited sectors or activities developed under paragraph (4).

ARTICLE 43

Credit Guarantee Agreement

- (1) The Credit Guarantee Corporation shall enter into a credit guarantee agreement with a Participating Lender to guarantee repayment to that Participating Lender of such part of the loan principal and interest specified under a Qualifying Loan Agreement.
- (2) The credit guarantee agreement shall —
 - (a) set out the rights and obligations of each person under the Credit Guarantee Scheme, including the amount guaranteed, currency, term, and coverage; and
 - (b) be in accordance with the terms and conditions and in the manner required by this Agreement.
- (3) Subject to paragraph (4), the Credit Guarantee Corporation shall not, pursuant to a credit guarantee under this Article, be liable, in relation to any particular Qualifying Loan Agreement, to pay an amount exceeding the credit guarantee threshold prescribed by law, in addition to up to 90 days of accrued interest at the agreed interest rate.
- (4) For the purposes of this Article—
 - (a) the maximum aggregate liability of the principal and interest of all annual qualifying loan agreements shall be determined by the Board;

- (b) a loan is deemed to have been made on the date of the making of the Qualifying Loan Agreement concerned whether or not, pursuant to that agreement, the loan is payable on a later date or the happening of a subsequent event.

(5) The Credit Guarantee Corporation may notify a Participating Lender in writing that the Participating Lender may no longer submit applications for a credit guarantee to the Credit Guarantee Corporation. This action shall not affect the validity of previous credit guarantee agreements.

ARTICLE 44

Withdrawal of credit guarantee

(1) If a Participating Lender fails or refuses to comply with the terms of the Credit Guarantee Scheme, the Credit Guarantee Corporation may withdraw any credit guarantee given by it to the Participating Lender.

(2) A term of a Qualifying Loan Agreement that permits a Participating Lender to—

- (a) alter any of its terms or conditions upon the withdrawal of a credit guarantee as a consequence of paragraph (1); or
- (b) impose less favourable terms and conditions on the Participating Borrower upon the withdrawal of a credit guarantee in accordance with paragraph (1);

shall be null and void.

PART VI

OFFICERS AND EMPLOYEES

ARTICLE 45

Officers

(1) The Board may appoint a Chief Executive Officer of the Credit Guarantee Corporation at such remuneration and on such terms and conditions as the Board may determine.

(2) The Chief Executive Officer shall be responsible to the Board for —

- (a) the day to day administration of the affairs of the Credit Guarantee Corporation;
- (b) assisting the relevant Committees of the Board in developing policy and procedures including strategic and business plans;

- (c) providing technical advice and guidance on matters of policy;
- (d) performing such functions as the Board may delegate;
- (e) submitting an annual and other reports to the Board.

(3) The Chief Executive Officer shall be an ex-officio Director of the Board.

(4) The Board may appoint other Officers, including a Chief Financial Officer, as it considers necessary for the efficient performance of the functions of the Credit Guarantee Corporation, and shall determine their terms and conditions of employment.

ARTICLE 46

Employees

The Credit Guarantee Corporation may appoint employees as it considers necessary for the efficient performance of its functions and shall determine their terms and conditions.

PART VII

CORPORATE GOVERNANCE

ARTICLE 47

Minimum criteria for determining whether a person is fit and proper

(1) The Credit Guarantee Corporation shall be required to have a policy that is consistent with this Agreement regarding what constitutes a fit and proper person and shall use that policy to determine if a person who is, or is likely to be a Director or an Officer of the Credit Guarantee Corporation is a fit and proper person to hold the particular position which he holds or is likely to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to —

- (a) that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that position;
- (b) the academic or professional qualifications or effective experience in the relevant discipline of the person concerned;

- (c) the diligence with which that person is fulfilling or likely to fulfil the responsibilities of that position;
- (d) whether the person has failed to satisfy any judgment or order of a court locally or abroad including the repayment of a debt;
- (e) whether the person is an un-discharged bankrupt or has been declared a bankrupt locally or abroad; and
- (f) whether the person has been removed or suspended by a regulatory authority from serving as a Director or Officer in a corporation locally or abroad.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has -

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or un-discharged bankrupt;
- (c) engaged in any business practices appearing to the Board to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit that person's method of conducting business;
- (d) an employment record which leads the Board to believe that the person carried out an act of impropriety in the handling of his employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

ARTICLE 48

Notification to Central Bank of appointment of Directors and Officers

The Credit Guarantee Corporation shall give written notice to the Central Bank of the appointment of a Director or Officer within thirty days of the appointment of the Director or Officer.

ARTICLE 49

Disqualification and removal from office of Director

(1) A person is disqualified from being appointed to or from holding office as a Director if he -

- (a) has been adjudged insolvent or has suspended payment to or compounded with his creditors;
- (b) has been or is a director or manager of a corporation, financial institution or financial service provider which has been wound up by a court, or was placed in receivership or official administration;
- (c) is of unsound mind and has been so found by a court in one of the Member Territories or elsewhere;
- (d) is debarred from practising his profession on account of any act involving dishonesty;
- (e) has been convicted of an offence and sentenced to a term of imprisonment in excess of six months;
- (f) has been convicted of any offence involving dishonesty;
- (g) is prohibited from being a Director by reason of any order made under any law.

(2) The Monetary Council and the Board which have the responsibility for appointing Directors under paragraphs (1) and (3) of Article 11 shall have regard to paragraph (1) in carrying out their powers.

(3) The Credit Guarantee Corporation shall —

- (a) within fifteen days of becoming aware that any of its Directors is disqualified from holding office, bring this information to the attention of the Board of Directors in order to cause the removal of the disqualified Director; and
- (b) notify the Central Bank of the circumstances under paragraph (a).

(4) Where the Central Bank is satisfied that any of the Directors who is disqualified under paragraph (1), continues to hold office, the Central Bank shall, in writing, notify the Board of Directors of the effective date from which the disqualified Director ceases to be a Director pursuant to paragraph (1).

ARTICLE 50**Right to make representation**

Where the Central Bank issues a notification under paragraph (4) of Article 49, the Board of Directors may, within the period of fourteen days commencing from the day after which the notification is given, make written representations to the Central Bank, and the Central Bank shall take any such representations into account in determining the existence of any condition specified in paragraph (1) of Article 49.

ARTICLE 51**Removal of Director from office**

The Board of Directors shall within the period specified in the notification, remove the Director from the office; and notify the Director and the Participating Government, the ECCU Bankers Association or the appropriate Chamber of Commerce, as the case may be, in writing of the removal from office.

PART VIII**GENERAL, SUPERVISORY AND REGULATORY CONTROL****ARTICLE 52****Role of Monetary Council**

(1) The Monetary Council shall —

- (a) vet the nominees for the initial Board of Directors and appoint the nominees by majority vote, and
- (b) provide initial policy guidance, as needed, during the first year of operation of the Credit Guarantee Corporation.

(2) The Credit Guarantee Corporation shall promptly comply with directives and requirements under paragraph (1).

ARTICLE 53**Regulation by Central Bank**

- (1) The Central Bank shall act as the Regulator of the Credit Guarantee Corporation.
- (2) The Central Bank has the power to ensure compliance with this Agreement and may
 - (a) conduct onsite and offsite examinations of the business of the Credit Guarantee Corporation;
 - (b) take measures that are necessary to enforce this Agreement.
- (3) The functions of the Central Bank shall include -
 - (a) reviewing notifications of the appointment of Directors and Officers;
 - (b) recommending the removal from Office of Directors and Officers who are disqualified from holding office;
 - (c) taking remedial action to ensure compliance with this Agreement;
 - (d) examining policies and procedures used by the Credit Guarantee Corporation for credit analysis, including loan guarantee application processing, monitoring of the guarantee portfolio, monitoring liquidation activities, guarantee payment procedures and Participating Lender oversight;
 - (e) ensuring that the Credit Guarantee Corporation is appropriately managing risk including credit risk from the guarantee program, reputational risk, etc.;
 - (f) examining policies and procedures for human resource activities;
 - (g) examining policies and procedures for procurement activities;
 - (h) examining policies and procedures for accounting;
 - (i) examining policies and procedures for investment of capital, fee revenue and any other funds;
 - (j) ensuring that the Board's Audit and Risk Committee has hired an outside auditor and that the auditor has provided audited financial statements on an annual basis;
 - (k) ensuring that the Credit Guarantee Corporation has established a Continuity of Operations Plan and that the employees understand the plan and know how to implement it;

- (l) ensuring that the Credit Guarantee Corporation has taken steps to protect sensitive data that it may acquire including employee data and credit data, and
- (m) any such other actions as the Central Bank determines are appropriate for the responsible oversight of the Credit Guarantee Corporation.

(4) The Central Bank may direct the Credit Guarantee Corporation to take action to remedy any deficiency.

(5) The Central Bank may charge the Credit Guarantee Corporation for its services.

ARTICLE 54

Reports and inspections

(1) The Central Bank may, for the purposes of this Agreement, request that the Credit Guarantee Corporation and Participating Lenders to submit reports or other information, or cause to be inspected the status of operations, books and documents or other necessary matters.

(2) Requests for information from Participating Lenders under paragraph (1) shall be limited to information relating to providing loans to qualifying borrowers.

ARTICLE 55

Central Bank's powers of remedial action

(1) The Central Bank shall take such remedial actions as it determines are consistent with the level of risk inherent in the activities of the Credit Guarantee Corporation and which it believes will best promote the operation of the Credit Guarantee Corporation in a safe and sound manner

(2) If, in the opinion of the Central Bank, the Credit Guarantee Corporation, a Director, or an Officer or employee of the Credit Guarantee Corporation -

- (a) engages in unsafe or unsound practices in conducting the business of the Credit Guarantee Corporation;
- (b) violates any provision of this Agreement; or
- (c) violates any prudential standard issued by the Central Bank to which the Credit Guarantee Corporation or person is subject;

the Credit Guarantee Corporation may be subject to the remedial actions specified in paragraph (3).

(3) Where the Central Bank has reasonable cause to believe that the circumstances referred to in paragraph (2) have occurred or are likely to occur, it may take one or more of the following measures -

- (a) issue a written warning as it considers necessary or appropriate;
- (b) conclude a written agreement with the Credit Guarantee Corporation for a programme of remedial action;
- (c) issue an order to the Credit Guarantee Corporation;
- (d) issue directions as it considers necessary in relation to the persons comprising the management of the Credit Guarantee Corporation.

(4) An agreement, order, or direction under paragraph (3) may require any or all of the following

- (a) to cease and desist from the specified practice or violation;
- (b) affirmative action to correct the condition resulting from the specified practice or violation; or
- (c) any specified remedial action.

ARTICLE 56

Additional Central Bank remedial actions

The Central Bank may make a recommendation to the Board of Directors to approve one or more of the following remedial actions to ensure the sustainability of the Credit Guarantee Corporation —

- (a) restrict the Credit Guarantee Corporation from providing further credit guarantees;
- (b) require the Credit Guarantee Corporation to suspend for a specified period of time, alter, reduce, or terminate any activity that in the opinion of the Central Bank has caused material losses to the Credit Guarantee Corporation, or presents excessive risk to the Credit Guarantee Corporation;
- (c) require the Credit Guarantee Corporation to sell, liquidate, or otherwise dispose of part of its business;
- (d) prohibit payment of bonuses or incentive compensation to any Director or Officer;

- (e) prohibit the Credit Guarantee Corporation from paying a dividend or making a distribution on its share capital or issue rights, shares or bonus shares to Participating Governments;
- (f) suspend or remove any Officer of the Credit Guarantee Corporation or restrict the Officer's powers;
- (g) remove any or all of the Directors or restrict their powers;
- (h) any other action necessary or appropriate to eliminate the basis for requiring remedial action.

ARTICLE 57

Remedial actions against Directors, Officers or employees

(1) For the purposes of this Article, "relevant person" means a Director, or an Officer, or employee of the Credit Guarantee Corporation.

(2) The Central Bank, with respect to a relevant person, may take any or all of the following remedial actions —

- (a) require the relevant person to reimburse the Credit Guarantee Corporation for losses caused by a violation;
- (b) suspend the relevant person from his position with the Credit Guarantee Corporation or the Board or declare him to no longer be fit and proper.

(3) If the Central Bank has reasonable cause to believe that the Credit Guarantee Corporation, a Director, an Officer, an employee, an attorney, an accountant or other professional has engaged or is engaging in criminal or fraudulent activities, it shall immediately refer the matter to the authorities responsible for investigating and prosecuting the activities.

ARTICLE 58

Additional remedial action against Directors, Officers or employees

(1) For the purposes of this Article, "relevant person" means a Director, or an Officer, or employee of the Credit Guarantee Corporation.

(2) If in the opinion of the Central Bank any relevant person —

- (a) wilfully or repeatedly has violated this Agreement or prudential standard issued by the Central Bank to which the Credit Guarantee Corporation or relevant person is

subject following a written warning or an order from the Central Bank under Article 55;

- (b) has been engaging in an unsafe or unsound practice that has resulted in a material loss to the Credit Guarantee Corporation or financial gain to a person; or
- (c) has been conducting his or its affairs in a manner detrimental to the interests of the participating borrowers;

the relevant person shall be subject to the remedial actions specified in paragraph (3).

(3) In addition to the actions in Article 57, the Central Bank may take one or more of the following actions:

- (a) direct the dismissal of the relevant person from his position with the Credit Guarantee Corporation or the Board;
- (b) prohibit the relevant person from serving in or engaging in the credit guarantee business for a stated period.

ARTICLE 59

Failure to comply with remedial actions

The Credit Guarantee Corporation or any Director, Officer, or employee who fails to comply with any requirement or contravenes any prohibition imposed under this Part is liable to a penalty as may be prescribed by law.

ARTICLE 60

Suspension of persons charged with criminal offence etc.

If any person referred to in Articles 57 and 58 is charged with a criminal offence involving dishonesty or breach of trust and his continued service or participation in the Credit Guarantee Corporation —

- (a) poses, or may pose a threat to the interests of the Participating Borrowers; or
- (b) threatens, or may threaten to impair public confidence in the Credit Guarantee Corporation;

the Central Bank may issue an order directing the temporary suspension of the person from his position with the Credit Guarantee Corporation or the Board and the removal of the person from the position, in the event of conviction of a criminal offence.

PART IX**PROGRESS, REVIEWS AND TERMINATION OF CREDIT GUARANTEE CORPORATION****ARTICLE 61****Assessment of progress**

The Board shall, every five years, conduct an independent review to —

- (a) assess the extent to which the Credit Guarantee Corporation has made progress towards achieving its overall objectives; and
- (b) decide whether the continuation of the Credit Guarantee Corporation's operations is appropriate given the objectives of the Credit Guarantee Corporation.

ARTICLE 62**Decision to terminate on assessment**

(1) If pursuant to Article 61, the review concludes that the Credit Guarantee Corporation's operations are not appropriate given its objectives, the Board —

- (a) may, by a special resolution of 75 per cent of the Directors, determine that the operations of the Credit Guarantee Corporation be terminated;
- (b) shall immediately notify the Central Bank of the passage of the special resolution.

(2) Upon the effective date of the special resolution passed under paragraph (1) the Credit Guarantee Corporation shall cease all activities, except those that are incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(3) The Credit Guarantee Corporation shall be wound up and liquidated in accordance with the provision of the Companies Act in so far as it does not conflict with the provisions of this Agreement.

ARTICLE 63**Effect of termination**

(1) Distribution of the assets of the Credit Guarantee Corporation shall not be made to Participating Governments and other investors, as the case may be, until all liabilities to creditors

have been discharged or provided for and until the Board of Directors has decided to make such a distribution.

(2) Any net assets of the Credit Guarantee Corporation remaining, after the settlement under paragraph (1), shall be distributed to Participating Governments and other investors, as the case may be, in accordance with their equity interest in the Credit Guarantee Corporation.

(3) The Participating Governments and any other investors shall take the necessary steps to terminate this Agreement by the date mentioned in the special resolution under paragraph (1).

(a) of Article 62 or any other date that the Board of Directors may determine.

PART X

MISCELLANEOUS

ARTICLE 64

Application of the Companies Act

The Companies Act applies to the Credit Guarantee Corporation as if it were a public company registered under the Companies Act with such modifications as are necessary and expedient, but always subject to this Agreement.

ARTICLE 65

Obligation of confidentiality

A member of the Board, Committees of the Board, Officer, employee or agent of the Credit Guarantee Corporation or person attending any meeting of the Board or Committee of the Board shall not disclose any information which has been obtained by him in the course of his duties or in the course of such meeting and which is not published in pursuance of this Agreement except—

- (a) for any of the purposes of this Agreement;
- (b) for the purpose of any civil or criminal proceedings under any written law;
- (c) in respect of any information available to the public; or
- (d) where otherwise authorized by the Board.

ARTICLE 66**Protection of persons dealing with Directors and agents**

(1) A person who deals with the Directors or the Chief Executive Officer of the Credit Guarantee Corporation shall not be affected by any irregularity of procedure in connection with the authorization of the transaction by a general meeting or other meeting of the Credit Guarantee Corporation, or by the Directors or any Committee of the Board, or by the non-fulfilment 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 Credit Guarantee Corporation's behalf in connection with any transaction may treat the Credit Guarantee Corporation as bound by the acts of that other person done within his apparent authority even though he has not been authorised by the Credit Guarantee Corporation to do those acts on its behalf so long as that person has no knowledge whether actual or constructive, that another person has not been so authorized by the Credit Guarantee Corporation.

(3) This Article does not entitle any person to recover a debt from the Credit Guarantee Corporation 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 Credit Guarantee Corporation or has participated or acquiesced in a fraud committed on the Credit Guarantee Corporation.

ARTICLE 67**Disputes**

(1) Any dispute between the Participating Governments and other investors or between the Credit Guarantee Corporation and a Participating Government or any other investor, as the case may be, concerning this Agreement shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2) of this Article.

(2) If the dispute is between —

- (a) only two parties, each party shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator, who shall be the Chairperson of the tribunal;
- (b) three or more parties, each party shall be entitled to appoint one arbitrator and all the parties shall together appoint an additional arbitrator, who shall be the Chairperson of the tribunal.

(3) If, within thirty days of receipt of the request for arbitration, any party has not appointed an arbitrator or if within thirty days of the appointment of the arbitrators the parties have not appointed the third arbitrator or, as the case may be, the additional arbitrator, any party to the dispute may request the Chief Justice of the Eastern Caribbean Supreme Court to make the required appointment.

(4) The procedure of the tribunal shall be fixed by the arbitrators, but the Chairperson of the tribunal shall have full power to settle all questions of procedure in the event of disagreement.

(5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

(6) The Chairperson of the tribunal shall be entitled to vote, and in the event of a tie, shall have a casting vote.

PART XI

FINAL PROVISIONS

ARTICLE 68

Effective Implementation

A Participating Government shall enact legislation to ensure effective implementation of, and compliance with, this Agreement, including —

- (a) the method of providing a credit guarantee;
- (b) the categories of Qualifying Enterprises;
- (c) any restrictions placed on participating in the Credit Guarantee Scheme;
- (d) the time during which the credit guarantee is effective;
- (e) credit guarantee fees;
- (f) the manner of discharging guaranteed liabilities;
- (g) procedures for credit guarantee default events;
- (h) a list of prohibited activities and sectors applicable to Qualifying Enterprises;
- (i) the procedures for withdrawing credit guarantees; and

- (j) effective enforcement provisions to address non-compliance.

ARTICLE 69

Amendments

Amendments to the Agreement may be proposed to the Monetary Council by the Board and shall be effective when it is agreed to by all the members of the Participating Governments.

ARTICLE 70

Signatories

This Agreement shall be open for signature by any member of the Currency Union.

ARTICLE 71

Ratification

(1) This Agreement shall be subject to ratification by the signatory Participating Governments in accordance with their respective constitutional procedures.

(2) Instruments of ratification shall be deposited with the Director General of the Organisation of the Eastern Caribbean States who shall transmit certified copies to each Participating Government.

ARTICLE 72

Entry into force

This Agreement shall enter into force upon the deposit of [five] instruments of ratification and the undertaking of the Participating Governments to take all steps necessary for the implementation of this Agreement.

ARTICLE 73

Accession

(1) After its entry into force, any territory of the Currency Union that is not a signatory may accede to this Agreement.

(2) Instruments of accession shall be deposited with the Director General of the Organisation of the Eastern Caribbean States who shall transmit certified copies to each Participating Government notifying them of the dates of the deposit of the instruments of accession.


ARTICLE 74
Reservations


No reservations may be entered in respect of any provision of this Agreement.

IN WITNESS WHEREOF the representatives of the Participating Governments being duly authorised in their behalf, have agreed to and signed this Agreement.

DONE AT BASSETERRE, ST KITTS this 02nd day of March, 2017.

Signed by: 
For-the-Government of Anguilla

Signed by: 
For the Government of Antigua and Barbuda

Signed by: 
For the Government of the Commonwealth of Dominica

Signed by: 
For the Government of Grenada

Signed by:
For the Government of Montserrat

Signed by: 
For the Government of St. Kitts and Nevis

Signed by: 
For the Government of Saint Lucia

Signed by: 
For the Government of Saint Vincent and the Grenadines

Passed the House of Representatives on
the 11th day of May, 2017.

Passed the Senate on the 19th day of
May, 2017.

Gerald Watt Q. C,
Speaker.

Alicia Williams Grant,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.