ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

1994, No. 35

The Eastern Caribbean Central Bank Act (Amendment of Schedule) Order, 1994, made by the Minister under Section 6(1) of the Eastern Caribbean Central Bank Act 1983 (No. 10 of 1983).

Short title.

1. This Order may be cited as the Eastern Caribbean Central Bank Act (Amendment of Schedule) Order 1994.

Interpretation.

2. In this Order—

"Act" means the Eastern Caribbean Central Bank Act 1983 (No. 10 of 1983).

"Agreement" means the Agreement establishing the Eastern Caribbean Central Bank, done at Port of Spain, Trinidad and Tobago on the 5th day of July 1983, the text of which is set out in the Schedule to the Act.

Insertion of Part IIA

3. The Schedule to the Eastern Caribbean Central Bank Act is amended by inserting after Part II and article 5 the following Part and Articles—

PART IIA

Special Emergency Powers of Bank

5A (1) In this Part, the expression—

"agent" in relation to a financial institution, includes its bankers and any persons, whether officers of the financial institution or not, who are employed as its auditors, but does not include its legal advisers;

"affiliated institution", in relation to a financial institution means a company which is or has at any relevant time been—

(a) a holding company or a subsidiary of the financial institution,

(b) a subsidiary of a holding company of the financial institution,

(c) a holding company of a subsidiary of the financial institution, or

(d) a holding company of a holding company or a subsidiary of a subsidiary of the financial institution.

"holding company" and "subsidiary" have the meanings assigned to them in the Companies Act Cap. 358;

"directors" includes any category of persons performing the functions of directors or analogous functions;

"financial institutions" means a financial institution within the meaning of the Banking Act, 1991 (No. 17 of 1991);

"officer" in relation to a financial institution, includes any category of manager as well as any person in the employment of the financial institution.

(2) In this Part a reference to a director, officer or agent of a financial institution includes a reference to a person who has been but is no longer a director, officer or agent thereof.

5B (1) Where the Bank is of the opinion that—

(a) the interests of depositors or creditors of a financial institution are threatened;

(b) a financial institution is likely to become unable to meet its obligations or is about to suspend or has suspended payment to its creditors or depositors; or

(c) a financial institution is not maintaining high standards of financial probity or sound business practices;

the Bank shall, in addition to any other powers conferred on it by any other law and notwithstanding the provisions of any other law to the contrary, have power—

(i) to investigate the affairs of the financial institution concerned and any of its affiliated institutions and to appoint a person or persons for that purpose;

(ii) to such extent as it thinks fit, to assume control of and carry on the affairs of the financial institution and, if necessary, to take over the property and undertaking of the financial institution;

(iii) to take all steps it considers necessary to protect the interests, and to preserve the rights of depositors and creditors of the financial institution;

(iv) to restructure the business or undertaking of the financial institution or to reconstruct its capital base;

(v) to acquire or sell or otherwise deal with the property, assets and undertaking of or any shareholding in the financial institution, at a price to be determined by an independent valuer;

(vi) to appoint such persons and to establish such companies or corporations as it considers necessary to assist in the performance of the functions conferred by sub-paragraphs (i) to (vi); and the provisions of article 50 shall apply to such persons, companies or corporations;

(vii) to ensure that the financial institution maintains high standards of financial probity and sound business practices and for that purpose to examine and supervise the operations of the financial institution, issue cease and desist orders and stipulate prudential criteria to be followed by the financial institution as it may deem necessary.

(2) The powers of the Bank under paragraph (1) shall not be exercised unless the Bank is also of the opinion that the financial system of any of the territories of Participating Governments is in danger of disruption, substantial damage, injury or impairment as a result of the circumstances giving rise to the exercise of such powers.

(3) Without prejudice to its powers under paragraph (1), and notwithstanding the provisions of any other law, the Bank may appoint any person or persons to act as Receiver or Manager and such appointment shall take effect as though made by the depositors and other creditors of the Company pursuant to a charge over all the fixed and floating assets of the financial institution and without prejudice to any other powers vested in such Receiver or Manager the Receiver or Manager shall have power—

(a) to take possession of, collect and get in any property of the institution and for that purpose to take any proceedings in the name of the institution or otherwise as may seem expedient;

(b) to carry on, manage or concur in carrying on and managing the business of the institution or any part thereof and for any of those purposes to raise or borrow any money that may be required on the security of the whole or any part of the property of the institution;

(c) forthwith to sell or concur in selling (but where necessary with the leave of the Court) and to let or concur in letting and to accept surrenders of leases or tenancies of all or any of the property of the institution and to carry any such sale, letting or surrender into effect by conveying, leasing, letting or accepting surrenders in the name and on behalf of the institution; and any such sale may be for cash, debentures, other obligations, shares, stock or other valuable consideration and may be payable in a lump sum or by installments spread over such period as the Bank shall think fit and plant machinery and other fixtures may be severed and sold separately from the premises containing them without the consent of the institution being obtained thereto;

(d) to make any arrangement or compromise which he shall think expedient;

(e) to make and effect or repair renewals and any improvements of the institution's equipment and effects and to maintain or renew all insurances;

(f) to appoint managers, agents, officers, servants and workmen for any of the aforesaid purposes at such salaries and for such periods as he may determine;

(g) to do all such other acts and things as may be considered to be incidental or conducive to any of the matters or powers aforesaid and which he or they lawfully may or can do as agent for the financial institution.

5C. (1) Where the Bank proposes to exercise powers under article 5B(1)(i) and (ii) it shall publish in the *Gazette* and in such newspapers as it thinks appropriate, in the territory where it proposes to exercise such powers, a notification to that effect.

(2) The notification must state—

(a) the property and undertaking the Bank proposes to take over,

(b) the powers of control the Banks proposes to exercise,

and shall give such particulars as the Bank considers necessary for the information of persons having business dealings with the financial institution.

(3) Upon the publication of the notification the property and the powers of control stated therein shall vest in the Bank.

(4) A notification under this article may be amended or supplemented from time to time by subsequent notification in the *Gazette* and the notification shall have effect as so amended or supplemented.

5D. (1) Where the Bank has under article 5B assumed control of a financial institution, it may terminate or retain the services of any or all of the directors, officers and employees of the financial institution and the directors so retained shall manage the affairs of the institution subject however to any directions of the Bank.

(2) No acts done or resolutions, rules bye-law or decisions made or conveyances, transfers, assignments or instruments executed during such period relating to the business affairs, property, undertaking or management of the financial institution shall have effect unless they are approved by or are in conformity with the directions of the Bank.

(3) Where the Bank is exercising powers under article 5B in relation to any financial institution, that financial institution, its affiliated institutions and their directors, officers and agents other than its auditors shall give every assistance to the bank for the purpose of facilitating the performance of functions under article 5B including the supply of information or explanation in such form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function under article 5B save that in the case of its auditors they shall only be required to supply any auditors they shall only be required to supply any information which is in their possession or knowledge other than their internally generated working papers.

(4) Any person appointed under article 5B shall have all the powers of a commissioner under the Commissions of Enquiry Act to summon and examine persons required under sub-article (3) to assist the Bank in the performance of its functions, and the provisions of section 12 of the Commissions of Enquiry Act, including the provisions imposing penalties, shall apply in all respects to persons summoned under this sub-article.

(5) In the performance of its functions and in the exercise of its powers under article 5B the Bank shall comply with any general or special directions of the Council and shall act only after due consultation with the Council.

5E. (1) Where the Bank has under article 5B assumed control of a financial institution, the Bank shall, subject to sub-article (2), remain in control of, and may continue to carry on the business of that financial institution until such time as the Bank publishes in the *Gazette* and in such newspapers as it thinks appropriate in the territory where it has assumed such control a notification that it has ceased to be in control of the financial institution.

(2) The Bank shall relinquish control and shall not continue to carry on the business of a financial institution where—

(a) the circumstances on the basis of which the Bank assumed control of the financial institution under article 5B have ceased to exist;

(b) the Bank is of opinion that it is no longer necessary for it to remain in control of the business of the financial institution; or

(c) the bank has sold or otherwise disposed of the property, assets and undertakings of the financial institution.

(3) Upon publication of a notification under sub-article (1) and subject to such conditions as may be specified therein, all property not sold or otherwise disposed of by the Bank and all powers of control over the affairs of the financial institution vested in the Bank by or in consequence of the previous notification published under article 5B shall vest in the financial institution if it still subsists as a corporate entity and be deemed to have been transferred from the Bank to the financial institution.

(4) Where the Bank has, in pursuance of article 5B, assumed control of a financial institution, the High Court may, upon the application of the directors of the financial institution acting independently of the Bank, if it is satisfied that it is no longer necessary for the protection of the depositors or creditors of the financial institution that the Bank should remain in control of the business of that financial institution, order that the Bank cease to control the business of that financial institution from the date specified in the Order.

5F. The Council or, the Minister or the Bank, its directors and officers and any persons appointed by the Bank under article 5B are not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in the performance, or in connection with the performance of functions conferred on the Bank under this Part.

4. Article 6 of the Agreement is as follows— Article 6 amended.

(i) in paragraph 3—

(a) by substituting the word "five" for the word "ten" occurring in the first and fourth lines; and

(b) by inserting between the words "beyond" and "ten" occurring in the penultimate line, the following—

"five percent but not more than"

(ii) in paragraph (4), by substituting "24 (5)" for "24 (6)" occurring in the third line.

5. Article 7 of the Agreement is amended by deleting the comma and words "which action" occurring in the second and third lines of paragraph (7). Article 7 amended.

6. Article 8 of the Agreement is amended by deleting the words "nine Directors comprising" occurring in the first line of paragraph (3). Article 8 amended.

7. Article 12 of the Agreement is amended— Article 12 amended.

(i) by substituting the words "an appointed Director" for the words "a Director other than the Governor" occurring in the third line of paragraph (2); and

(ii) by inserting the words "Governor or" before the words "Deputy Governor" occurring in the fifth line of paragraph (2).

8. Article 28 of the Agreement is amended— Article 28 amended.

(i) by renumbering paragraph (2) as paragraph (3) and

(ii) by inserting as paragraph (2) the following—

"(2) The Bank may determine and make public the rates at which gold and foreign currencies may be bought, sold or dealt in by banks and other person authorised to do so in the territories of the Participating Governments."

9. Article 31 (2) of the Agreement is amended— Article 31(2) amended

(i) by substituting a colon for the fullstop occurring at the end of paragraph (d); and

(ii) by inserting the following proviso at the end of paragraph (d) the following—

"Provided that in the case of advances granted under paragraph (2) for the specific purposes of promotion of those sectors which are deemed by the Bank to be priority sectors in the economies of the territories of the Participating Governments, the Board may authorise the extension of such advances to a period up to 12 months".

Article 42 amended.

10. Article 42 of the Agreement is amended—

(i) by deleting paragraph (1) and substituting the following—

"42(1) The Bank may, with the approval of the Council administer or participate in schemes or corporations established for the purpose of—

(a) insuring bank deposits;

(b) providing export credit insurance and guarantee;

(c) providing guarantees for credit extended by financial institutions;

(d) promoting the development of money, capital or securities market in the territories of participating governments; or

(e) financing the economic development of the territories of Participating Governments.

(f) exercising its emergency powers under this Agreement; and

(ii) by inserting the words "or corporations" after the word "schemes" wherever the latter occurs in paragraphs (4) and (6)".

Article 43 amended.

11. Article 43 of the Agreement is amended—

(i) by inserting the word "paragraph" before "(4)" occurring in the third line of paragraph (1); and

(ii) by deleting paragraph (6).

12. Article 50 of the Agreement is amended by inserting the word "or" between the words "tax" and "duty" occurring in the fourth line of paragraph (8) (a). Article 50 amended.

13. These Amendments shall be deemed to have come into effect from May 21, 1993.

Made this 31st day of August, 1994.

Molwyn Joseph,
Minister of Finance.

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