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DEVELOPMENT BANK LAW

(2004 Revision)

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DEVELOPMENT BANK LAW

(2004 Revision)

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DEVELOPMENT BANK LAW
(2004 Revision)

Introductory

1. This Law may be cited as the Development Bank Law (2004 Revision). Short title
2. In this Law - Definitions
- “Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2004 Revision) and includes any employee of the Cayman Islands Monetary Authority acting under the Authority’s authorisation; 2004 Revision
- “Bank” means the Cayman Islands Development Bank established under section 3;
- “Board” means the Board of directors of the Bank as constituted under this Law;
- “Court” means the Grand Court;
- “director” means a director of the Board;
- “enterprise” means an agricultural enterprise, an industrial enterprise, a tourism enterprise, an educational enterprise, a housing enterprise, a fishing enterprise, a services enterprise or any other enterprise that may be approved from time to time by the Minister;
- “industry” includes any commercial activity, and “industrial” has a corresponding meaning; and
- “Minister” means the Minister for the time being responsible for the Bank.

Establishment of Cayman Islands Development Bank

3. (1) There is established in accordance with this Law a body corporate called the Cayman Islands Development Bank having perpetual succession and a common seal and which shall in its corporate name be capable of entering into contracts, of suing and of being sued, or acquiring, holding, mortgaging, leasing and otherwise disposing of all kinds of property movable or immovable. Cayman Islands
Development Bank
- (2) The principal office of the Bank shall be situated in Grand Cayman and the Bank may establish branch offices elsewhere in the Islands.

(3) Service upon the Bank of any document shall be executed by delivering or sending the document by registered post addressed to the general manager at the principal office.

(4) It shall be within the capacity of the Bank as a statutory corporation to do such things and to enter into such transactions as are incidental or conducive to the performance of any of its functions under this Law.

Management of Bank

Board of directors

4. (1) There shall be a Board of directors of the Bank who, subject to this Law, shall be responsible for the policy of the Bank and the general administration of its affairs and business.

(2) The Board shall consist of seven directors appointed by the Governor in Cabinet in accordance with the First Schedule.

(3) The First Schedule shall have effect with respect to the Board.

Appointment of senior officers

5. (1) The Board shall appoint a general manager who shall be the chief executive officer of the Bank.

(2) The general manager shall be appointed for such period and on such terms and conditions as the Board determines.

(3) The Board shall appoint officers to be responsible for -

- (a) managing the loan portfolio and the loan administration process of the Bank;
- (b) managing and recording the funds of the Bank and managing all financial transactions of the Bank; and
- (c) establishing, maintaining and reviewing the internal controls established by the Bank in order to assess compliance with the established policies of the Bank.

(4) The Board may also-

- (a) appoint such other officers and servants as it may determine are necessary to enable it to carry out its functions on such terms and conditions as it considers necessary;
- (b) pay to its officers and servants such remuneration and allowances as it thinks fit; and
- (c) pay to all officers in respect of them such pensions, or provide and maintain for them such pension schemes, as it so determines subject to the Public Service Pensions Law (2003 Revision).

2003 Revision

(5) The Governor may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Bank, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of the Government.

6. The Board may appoint a legal adviser or such other adviser whom the Board considers necessary for the fulfilment of its functions under this Law. Appointment of legal and other advisers

7. (1) The general manager shall- Functions of general manager

- (a) be responsible for the proper management of the affairs of the Bank and shall be accountable to the Board for the daily administration of the Bank;
- (b) be responsible for carrying out the functions of the Bank in accordance with the decisions of the Board;
- (c) provide technical advice and guidance on matters of policy and strategic planning; and
- (d) assign to any other officers and servants of the Bank such duties as he may think fit for the performance of the Bank's functions.

(2) In the absence of the general manager, the Board may appoint any person to act as general manager upon such terms and conditions as it may determine, and any person so appointed may exercise all the powers and duties pertaining to the office of the general manager under this Law.

8. (1) Subject to this Law, the Bank may delegate to any director of the Board, to any committee appointed by the Board or to the general manager of the Bank such one or more of the Bank's functions, together with any powers which the Bank determines is necessary or expedient to enable that director, committee or the general manager to carry out a delegated function as the Bank thinks fit. Power to delegate

(2) The Bank may not delegate-

- (a) its powers to borrow or raise capital;
- (b) its powers to make charges;
- (c) its powers to enter into agreements for the occupation or management of premises by the Bank; or
- (d) its powers under section 29 or 32.

(3) Every delegation under this section shall be in writing and shall be revocable by the Bank, but no such delegation shall prevent the exercise by the Bank of any delegated authority.

Functions and powers of
Bank

9. (1) It shall be the function of the Bank to mobilise and provide finance for and promote and facilitate the expansion and strengthening of the economic development of the Islands.

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

- (a) accept on deposit any funds or any kind of securities from the Government, a public or statutory authority, a co-operative or friendly society or any person or body whether within or outside the Islands;
- (b) make all payments duly authorised by a depositor with the Bank;
- (c) make loans or advances or provide any form of credit to the Government, a public or statutory authority, a co-operative or friendly society or any person or body within the Islands for the financing of any enterprise or project;
- (d) make loans or advances or provide any form of credit to any enterprise;
- (e) provide any form of assistance to any enterprise whether in the form of expertise or technical or managerial advice or participation in the share capital or management thereof;
- (f) provide finance in order to promote and facilitate development in the Islands and the establishment, management, acquisition or disposal of any enterprise or business in agriculture, industry, electronic commerce, tourism, housing and human resource development;
- (g) provide finance to persons for courses of education (including academic, technical and vocational training at local and overseas institutions) which are considered by the Bank to be beneficial or needed in the Islands;
- (h) promote agricultural, tourism and industrial development and investment in the Islands;
- (i) provide finance for the purpose of building and the acquisition of houses, for the improvement of dwellings and for the provision of dwellings for letting or for sale by construction, conversion, improvement or otherwise upon such terms and conditions as the Bank may decide;
- (j) undertake, in the Islands, such other projects and programmes as the Governor in Cabinet may approve;
- (k) undertake and formulate any studies which the Bank considers necessary for the performance of its functions or conducive to any of its functions;

- (l) enter into any contract with or act as agent or trustee for or representative of the Government or any person, agent or body within or outside the Islands; and
- (m) give advice, financial counselling, management consulting and technical assistance in relation to any function specified in this subsection.

(3) In addition to any function or power possessed by the Bank under this or any other law, the Bank shall have power, subject to this Law and any regulations made hereunder, to do any thing and to enter into any arrangement or transaction which, in the opinion of the Bank, is necessary to ensure the proper discharge of its functions or powers.

(4) The powers and functions of the Agricultural and Industrial Development Board and the Housing Development Corporation as set out in the Second Schedule are transferred to the Bank.

(5) In carrying out its functions the Bank shall have regard to-

- (a) the principles of normal accepted development banking practice; and
- (b) the economic and commercial merits of any undertaking or activity it plans to initiate, assist or develop.

10. The Governor or the Governor in Cabinet may vest in the Bank any land owned by the Government in accordance with the Governor (Vesting of Lands) Law (1998 Revision).

Vesting of land in Bank
1998 Revision

11. (1) The Agricultural and Industrial Development Board and the Housing Development Corporation are dissolved.

Agricultural and
Industrial Development
Board and Housing
Development
Corporation

(2) The Second Schedule shall have effect with respect to the dissolution of the Agricultural and Industrial Development Board and the Housing Development Corporation and the transfer of powers and functions under section 9(4).

(3) The powers and functions of the Agricultural and Industrial Development Board and the Housing Development Corporation shall be deemed always to have included the functions of preparing for the enactment of this Law.

12. (1) In the exercise of its powers and discharge of its functions, the Bank shall conform with any general directions on matters of policy given to it by the Minister in the public interest.

Directions by Minister

(2) The Bank shall give to the Minister such information or advice as he may require as to the performance of its functions under this Law.

(3) When the Bank determines that compliance with such a direction would be commercially or otherwise unsound the Bank shall not be under any duty to comply with it until the Governor in Cabinet has given the Bank a written undertaking that the Government will reimburse the Bank for any losses incurred in relation to that compliance.

Powers of Bank

13. (1) For the purposes of carrying out its functions, the Bank may-
- (a) enter into contracts and other agreements, including agreements for the occupation or management of premises by the Bank;
 - (b) provide an advisory service to give advice and disseminate information about matters relating to-
 - (i) housing, mortgage finance and the maintenance of dwellings;
 - (ii) courses of education; and
 - (iii) agricultural, industrial and tourism development and investment;
 - (c) make such charges, as the Bank may determine, for the provision of any service provided under paragraph (b); and
 - (d) borrow money and otherwise raise capital in accordance with section 16.
- (2) To the extent necessary for the undertaking of any functions approved by the Governor in Cabinet under section 9(2)(j), the Bank may-
- (a) acquire, hold, manage and dispose of land and other property;
 - (b) lay out, construct, repair and maintain buildings, and provide, repair and maintain amenities and facilities the Bank determines are necessary or desirable for the occupation of dwellings; and
 - (c) acquire the property, rights and liabilities of a person, company or other body which is engaged in an agricultural or industrial business, and carry on that business.
- (3) The Bank shall not grant a loan-
- (a) to a director of the Board or a member of the Legislative Assembly;
 - (b) to a body corporate or an unincorporated body controlled by any director of the Board or any member of the Legislative Assembly; or
 - (c) to the immediate family of any director of the Board or any member of the Legislative Assembly.
- (4) In this section -

“immediate family” means spouse, son and daughter.

Finances of Bank

14. (1) The authorised capital of the Bank shall be fifty million dollars and may be increased, from time to time, by regulations made by the Governor in Cabinet. Authorised capital

(2) On the establishment of the Bank, such portion of the authorised capital as the Governor in Cabinet may decide shall be subscribed and paid up by Government, and shall be held on behalf of the Government by the person nominated by order by the Governor in Cabinet for the time being.

(3) The paid up portion of the authorised capital shall not be less than three per cent of the authorised capital and may be increased from time to time by such amount as the Governor in Cabinet may approve.

15. (1) The funds available for the purpose of enabling the Bank to perform its functions under this Law shall consist of- Funds of Bank

- (a) equity capital;
- (b) such sums as may be provided for those purposes in the estimates of revenue and expenditure of the Islands;
- (c) money borrowed and capital obtained by the Bank under section 16;
- (d) funds received by the Bank in relation to arrangements for all lending programmes, including the repayment of loans and interest, charges and fees;
- (e) such sums as may be received by the Bank in relation to any functions carried on under section 9; and
- (f) any other funds received by or made available to the Bank under and in accordance with this Law.

(2) The Bank may invest such of its funds as are not required for the exercise of its functions under this Law.

16. (1) For the purposes of financing any of its functions under this Law, and with the approval of the Governor in Cabinet, the Bank may- Power to borrow

- (a) borrow money or otherwise raise capital;
- (b) obtain and provide credit;
- (c) give, take or arrange security; and
- (d) issue bonds and debentures.

(2) An approval given by the Governor in Cabinet under subsection (1) may be limited by such conditions in respect of any borrowing, credit or security as the Governor in Cabinet thinks fit.

Government guarantee

17. (1) Subject to subsections (2) to (5), the Governor in Cabinet may guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with, any sums which the Bank may borrow in exercise of its powers under section 16.

(2) A guarantee under this section shall not be given unless a statement of the proposed guarantee has been laid before the Legislative Assembly and a resolution approving that statement has been passed by the Legislative Assembly.

(3) After a guarantee is given under this section, a statement of the guarantee shall be laid before the Legislative Assembly; and, where any sum is issued for fulfilling a guarantee so given, the Minister shall, as soon as possible after the end of each financial year (beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on the sum is finally discharged), lay before the Legislative Assembly a statement relating to that sum.

(4) Any sums required by the Governor in Cabinet for fulfilling a guarantee under this section shall be charged on and issued out of the revenues of the Islands.

(5) If any sums are issued in fulfilling a guarantee given under this section, the Bank shall make to the revenues of the Islands, at such times and in such manner as the Governor in Cabinet may from time to time direct, payments of such amounts as the Governor in Cabinet may so direct in or towards repayment of the sums so issued and payments of interest, at such rate as the Governor in Cabinet may so direct, on what is outstanding for the time being in respect of sums so issued.

Delegation of power to give guarantee.

18. (1) The Governor in Cabinet may delegate to the Financial Secretary, either generally or as otherwise provided by the instrument of delegation, the power to give a guarantee under section 17, but such delegation shall not include this power of delegation.

(2) The Financial Secretary shall exercise any power delegated under subsection (1) in accordance with section 17.

(3) A delegation under subsection (1) may be made subject to such conditions and exceptions as may be prescribed in the instrument of delegation and may be revoked or varied by a subsequent instrument.

(4) The Governor in Cabinet may exercise the power to give a guarantee notwithstanding that it has delegated its exercise under this section.

19. The aggregate of the liabilities of the Bank outstanding at any one time including bonds and debentures issued by the Bank shall not, without the written approval of the Governor in Cabinet, exceed the amount of the authorised capital or such sum as may be provided for in regulations made under section 31. Limitation on borrowing activities

20. The Bank shall establish and maintain a reserve fund to which shall be allocated at the end of its financial year not less than twenty per cent of the net income for that financial year whenever the total amount standing to the credit of such reserve is less than the paid-up portion of the authorised capital of the Bank. Reserve fund

21. (1) The Bank shall- Accounts

- (a) keep proper accounting records in accordance with generally accepted accounting principles; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall give a true and fair view of the state of the Bank's affairs at the end of the financial year and of its income and expenditure in the financial year.

(3) The statement of accounts shall be audited annually by an auditor who shall be a chartered accountant, a certified public accountant, a firm of professional qualified accountants or other professionally qualified accountant appointed by the Board, after consultation with the Authority.

(4) The Bank shall give to the auditor on request-

- (a) access to all books, documents, and records (including any held by means of computer), and copies of any such items;
- (b) all such information as the auditor may request and which is within the Bank's knowledge and capabilities; and
- (c) copies of the statement of accounts for any previous financial year.

(5) The auditor shall complete his audit and send to the Board copies of his report on the statement of accounts and the Board shall submit the auditor's report annually to the Minister, the Authority and the Financial Secretary within three months of the end of the financial year together with an audited balance sheet and income and expenditure accounts as at the close of the previous financial year.

(6) Every period of twelve months beginning on the 1st July in one year and ending with the 30th June in the next year shall be a financial year of the Bank.

Annual report

22. (1) As soon as possible after the end of any financial year, and in any event not later than seven months after the end of that year, the Bank shall prepare and submit to the Minister a report, in a form which he has approved, of what has been done in the discharge of the Bank's functions in that year.

(2) The Minister shall, as soon as is practicable, lay before the Legislative Assembly copies of the report for any financial year made under subsection (1) together with copies of the statement of accounts and of the auditor's certificate for that year.

Regulation by Monetary Authority

Regulation by Monetary Authority

23. (1) The Bank shall be regulated by the Monetary Authority as provided in this Law.

(2) The Bank shall at all times, as may be specified by the Authority, furnish to the Authority such returns in respect of such of its business as the Authority may specify in writing and in such form as the Authority may reasonably require.

2003 Revision
2004 Revision

(3) Within three months of the end of the financial year of the Bank, the Bank shall forward to the Authority an auditor's certificate of the existence of adequate procedures to ensure compliance with the Money Laundering Regulations (2003 Revision) and any Code of Practice which may be issued under section 22 of the Proceeds of Criminal Conduct Law (2004 Revision).

(4) The Authority may summon the auditor or any former auditor of the Bank for the purpose of making enquiries into the operations and financial position of the Bank.

(5) Where an auditor is summoned under subsection (4), the Authority shall, in writing, notify the Bank, which shall have the right to attend any meeting held by the Authority with the auditor.

(6) Whenever the Authority thinks fit, it shall examine the affairs or business of the Bank for the purpose of satisfying itself that this Law has been or is being complied with, and that the Bank is in a sound financial position and is carrying on its business in a satisfactory manner.

(7) The Authority shall assist in the investigation of any offence against the laws of the Islands which the Authority has reasonable grounds to believe has or may have been committed by the Bank or by any of its directors or officers in their capacity as such.

(8) In the performance of its functions under this Law and subject to the Monetary Authority Law (2004 Revision), the Authority is entitled at all reasonable times - 2004 Revision

- (a) to have access to such books, records, vouchers, documents, cash and securities of the Bank; and
- (b) to request such information, matter or thing from any director or officer of the Bank or any similar person, for such information or explanation as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law,

and such information shall be provided in such form as the Authority may reasonably require.

(9) If it appears to the Authority that there is reasonable ground for suspecting that an offence against this Law has been or is being committed by the Bank or any director or officer of the Bank, the Authority may, with the approval of the court, take such action as it considers necessary, in the interest of the customers of the Bank to preserve any assets held by the Bank.

(10) Whoever fails to comply with any requirement under subsection (8) by the Authority is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

24. (1) Whenever the Authority is of the opinion that -

Power of Authority in
relation to Bank

- (a) the Bank is or appears likely to become unable to meet its obligations as they fall due;
- (b) the Bank is carrying on business in a manner detrimental to the public interest or the interest of its customers or creditors;
- (c) the Bank has contravened this Law; or
- (d) there has been or is, on the part of the Bank, its directors or officers, a failure to satisfy any one or more of the criteria of the management requirements set out under this Law,

the Authority may forthwith -

- (i) impose conditions upon the Bank and may amend or revoke any such condition;
- (ii) recommend to the Governor in Cabinet that a director or officer of the Bank be substituted;

- (iii) at the expense of the Bank, appoint a person to advise the Bank on the proper conduct of its affairs, and to report to the Authority thereon within three months of the date of his appointment; and
- (iv) require such action to be taken by the Bank as the Authority considers necessary.

(2) A person appointed under subsection (1)(iii) or whose appointment has been extended under subsection (3)(b) shall from time to time at his discretion and, in any case, within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Authority of the affairs of the Bank and of his recommendations thereon.

- (3) On receipt of a report under subsection (2), the Authority may -
 - (a) advise the Governor in Cabinet to revoke the appointment of the person appointed under subsection (1)(iii);
 - (b) extend the period of his appointment;
 - (c) subject to such conditions as the Authority may impose, allow the Bank to reorganise its affairs in a manner approved by the Authority; or
 - (d) request that the Bank be wound up, and the Bank shall comply with such request.

Power of search

25. (1) If a Magistrate or Justice of the Peace is satisfied by information on oath given by the Authority that -
- (a) there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
 - (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 23 and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Authority or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter

those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 23.

(3) No female shall, in pursuance of any warrant issued under this section, be searched except by a female.

(4) Where, under this section, a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

(5) Whoever obstructs the Authority or any other person in the exercise of any powers conferred under this section is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

General and Supplementary

26. (1) No personal liability shall attach to a director, a member of any committee of the Board or an officer of the Bank in respect of anything done, or omitted to be done in good faith, under this Law.

Liabilities of members
and insurance

(2) The Bank may purchase and maintain for a director, a member of any committee of the Board or an officer of the Bank, insurance against a liability which by virtue of this Law would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Bank.

27. (1) No information with respect to any particular individual or particular undertaking (other than the undertaking of the Bank) shall, without the consent of the individual or undertaking, be included in any report laid before the Legislative Assembly under this Law.

Restrictions on
disclosure of
information

(2) No information obtained by any person in the exercise of any power conferred by or under this Law on the Bank or the Board shall be disclosed by him:

Provided that nothing in this subsection shall restrict the disclosure of information-

- (a) made for the purpose of legal proceedings (including arbitration), or for the purpose of any report of such proceedings;

- 2004 Revision
- (b) if, and in so far as, the disclosure is required or authorised by this Law or by the Monetary Authority Law (2004 Revision);
 - (c) with the consent of the person by whom the information was furnished; and
 - (d) in the form of a summary of similar returns or information by or obtained from a number of persons, being a summary so framed as not to enable particulars relating to any one person or undertaking to be ascertained from it.
- (3) Whoever discloses any information in contravention of subsection (2) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for three years.
- Exemptions
2003 Revision
28. (1) The Stamp Duty Law (2003 Revision) shall not apply to the Bank in the exercise of its functions under this Law, or to any certificate, receipt, instrument, or other document issued by the Bank.
- 2003 Revisions
- (2) The Trade and Business Licensing Law (2003 Revision) and the Banks and Trust Companies Law (2003 Revision) shall not apply to the Bank in the exercise of its functions under this Law.
- (3) A reference to a Law in this section shall be construed as a reference to that Law as from time to time amended, consolidated, reissued or re-enacted.
- Application of loans
29. (1) Where the Bank has made a loan under this Law it shall-
- (a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purpose for which it was made, and for this purpose may authorise in writing any of its officers or any other person to make the examination, and an officer or person so authorised shall be entitled to demand the production of all such books, documents and other matters and things as he may consider necessary for the purpose of making the examination; and
 - (b) require financial statements in such detail as it may be determined to be submitted by the person in receipt of the loan biannually or at shorter intervals at the discretion of the Bank.
- (2) Whoever fails to submit any financial statement or to produce any book, document or other matter or thing demanded in accordance with subsection (1) is guilty of an offence.
- (3) Where, upon an examination made under paragraph (a) of subsection (1) it appears to the Bank that-

- (a) any sum, being the whole or any part of the loan, has not been applied to the purpose for which the loan was made; or
- (b) any condition imposed in respect of the loan is not being complied with,

it may (without prejudice to any other power or remedy) order that the whole or any part of the loan be applied to the purpose specified in the order, within the time so specified, or that such sum together with any interest due be repaid to the Bank at the expiration of the time specified in the order.

(4) If any such loan has been secured by mortgage or otherwise, and the borrower defaults in complying with the order made in accordance with subsection (3), the Bank may, by notice in writing addressed to the borrower, demand repayment of the loan or any part of the loan on such date as is specified in the notice together with the payment of all interest, fees and charges due on the sum demanded at the date of the notice; and, in default of payment on the specified date, the Bank may sell all or part of the land or other assets mortgaged for the purpose of the loan and take steps to enforce any other security provided by the borrower for the purpose of the loan.

(5) Where any security for a loan under this Law is sold for the purpose of the enforcement of the security the Bank may acquire the whole or part of the property concerned and may hold and manage that property.

30. (1) Whoever-

Offences and time limit
for prosecutions

- (a) for the purpose of obtaining a loan or other payment from the Bank for himself or for another, knowingly or recklessly makes a statement which is false or misleading in a material respect;
- (b) applies any loan or other payment made to him by the Bank for a purpose other than that for which the loan or payment was made; or
- (c) knowingly or recklessly jeopardises the security given in relation to a loan or payment made to him by the Bank,

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for two years.

(2) Notwithstanding anything in any other enactment, proceedings for an offence under this Law may, subject to subsection (3), be commenced within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

(3) No such proceedings shall be commenced by virtue of this section more than three years after the commission of the offence.

(4) For the purposes of this section, a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

Regulations

31. The Governor in Cabinet may make regulations prescribing anything which may be or is required to be prescribed under this Law.

Policy guidelines

32. (1) The Bank may formulate policy guidelines and procedures that it considers necessary or expedient for the purpose of enabling it to carry out its functions under this Law.

(2) Without prejudice to the generality of subsection (1), the policy guidelines made by the Bank may make provision-

- (a) governing the proceedings of the Bank and the manner and transaction of its business;
- (b) prescribing the limits of net worth of borrowers in respect of certain categories of loans, the limits within which loans may be made, the methods of disbursement, and of securing loans made under this Law;
- (c) prescribing the periods within which loans made under this Law shall be repayable;
- (d) prescribing the manner in which documents, cheques and instruments of any description shall be signed or executed on behalf of the Bank or by other parties in transactions in connection with the Bank's exercise of its functions;
- (e) prescribing the circumstances in which officers may receive travelling and subsistence allowances and fixing the rates of such allowances; and
- (f) imposing fees in such cases as may be determined by the Bank.

Power of Bank to appoint a receiver

33. (1) Notwithstanding that a loan granted or guaranteed by the Bank may not have been secured, the Bank may, if a borrower defaults in respect of a loan granted or guaranteed by the Bank, appoint a receiver in respect of the business in connection with which the loan was granted or guaranteed, and a receiver so appointed shall have the powers of a receiver prescribed by or under this Law.

(2) A person appointed by the Bank to be a receiver shall also be the manager of the business in respect of which the loan was granted or guaranteed, and the effect of such an appointment shall be the same as if the person had been appointed by the court to be a receiver and manager of the business.

(3) No person appointed by the Bank to be a receiver or a receiver and a manager shall be considered to be an officer of the court.

34. The transitional provisions set out in the Third Schedule shall have effect. Transitional provisions

FIRST SCHEDULE

section 4

CAYMAN ISLANDS DEVELOPMENT BANK

Board of Directors

Appointment and tenure of directors

1. Prior to appointing any person to be a director of the Board, the Governor in Cabinet shall satisfy himself that the person will have no financial or other interest likely to affect prejudicially the exercise of his functions as a director, and the Governor in Cabinet may require a person whom he proposes to appoint to give him such information as he considers necessary for that purpose.
2. (1) The Governor in Cabinet shall appoint-
 - (a) two directors of the Board who, in his opinion, are persons qualified for appointment as having had experience and shown capacity in financial management and administration or law or who, in his opinion, are persons qualified for appointment as having had experience and shown capacity in matters relating to the Bank's functions; and
 - (b) five directors of the Board who, in his opinion, are persons qualified for appointment as having had experience and shown capacity respectively in-
 - (i) agriculture;
 - (ii) industry;
 - (iii) education;
 - (iv) housing; and
 - (v) tourism.
- (2) The Governor in Cabinet shall appoint one of the two directors appointed under subparagraph (1) (a) as chairman of the Board and the other such director as deputy chairman.
- (3) A member of the Legislative Assembly shall not be eligible for appointment as a director.
3. The general manager shall be present at each meeting of the Board unless-
 - (a) he has obtained leave of absence from the chairman; or
 - (b) he is incapacitated by illness.

4. (1) The directors of the Board shall hold and vacate office in accordance with the terms of their appointment, subject to the following provisions.

(2) A director may be appointed to hold office for a term not exceeding two years.

(3) A director shall be eligible for reappointment but shall not hold office for more than four consecutive years.

(4) A director may at any time, by notice in writing addressed to the Minister, resign his office.

(5) The Governor in Cabinet may terminate a person's appointment as a director of the Board if he is satisfied that-

- (a) he has been adjudged bankrupt;
- (b) he is incapacitated by reason of physical or mental illness;
- (c) he has been absent from meetings of the Board for a period longer than three consecutive months without the consent of the chairman of the Board; or
- (d) he is otherwise unable or unfit to discharge the functions of a member of the Board or is unsuitable to continue as director.

(6) Where any director ceases to be a director before the normal expiration of his office, the Governor in Cabinet, in accordance with this Law, may appoint another person to hold that office until the time that the director's office would have expired.

Disclosure of interests

5. (1) Where a director or a member of any committee of the Board is in any way directly or indirectly interested in-

- (a) a proposal made or proposed to be made to the Bank or that committee in connection with the making of any grant or loan under this Law; or
- (b) a contract made or proposed to be made by the Bank,

he shall disclose the nature of his interest at a meeting of the Board or the committee as soon as possible after the relevant circumstances have come to his knowledge.

(2) Any disclosure so made by such a director shall be recorded in the minutes of the meeting at which it is made, and the director making it shall not vote on the matter and, unless the Board otherwise directs, such director shall not

be present at, or take part in the proceedings of, any meeting at which the contract or proposal is being discussed or decided by the Board.

Proceedings

6. (1) The Board shall meet at least once every three months and at such other times as may be necessary or expedient for the transaction of the business of the Bank, and such meetings shall be held at such place and time and on such days as the Board may, from time to time, determine.

(2) The chairman shall call a meeting of the Board if so directed by the Minister or if requested to do so in writing by three directors; and such a direction or request must include a statement of the agenda proposed for the meeting.

(3) If the chairman refuses to convene a special meeting of the Board upon request or neglects to convene the meeting as requested, a meeting of the Board may be convened by the directors making the request.

(4) Subject to subparagraphs (5) and (6), chairman shall preside at all meetings of the Board.

(5) In the absence of the chairman, the deputy chairman shall preside and perform the functions of the chairman.

(6) In the absence of both the chairman and the deputy chairman, the directors present shall elect one of their number to preside and perform the functions of chairman of the meeting provided there is a quorum.

(7) In the case of an equality of votes at any meeting, the person who is chairman at that meeting shall have a second or casting vote.

7. Subject to paragraph 6, the quorum of the Board and of any committee of the Board shall be a simple majority of the directors appointed for the time being to the Board or committee.

8. The validity of any proceedings of the Board shall not be affected by any vacancy among the directors of the Board or by any defect in the appointment or any disqualification of any of the directors of the Board.

Committees of Board

9. (1) For the purpose of advising or assisting the Board in the performance of any of its functions, the Board may appoint such committee as the Board determines is appropriate.

(2) Each committee appointed by the Board shall consist of at least two directors of the Board together with such other persons as the Board determines is appropriate for the purpose in respect of which the committee is appointed.

(3) On receipt of advice from any of its committees the Board shall decide whether or not to adopt that advice, in whole or in part or with such modifications (including additions) as the Board thinks fit.

Remuneration, etc., of directors

10. (1) The Bank may pay to its directors and the members of any of its committees such remuneration (whether by salary or fees) and such reasonable allowances in respect of expenses properly incurred by them in the performance of their duties, as the Bank may, with the prior consent of the Governor, determine.

(2) In this paragraph -

“members”, in respect of members of any committee of the Board, includes members of a committee who are not also directors of the Board.

Authentication and authenticity of documents

11. (1) The application of the seal of the Bank shall be authenticated by the signature of the Chairman, or some other director authorised by the Board to do so on its behalf, together with the signature of some other member, officer or servant of the Bank so authorised.

(2) All instruments, contracts and other documents issued by the Bank, other than those required by law to be under seal, and all decisions of the Bank, shall be signed by the chairman or some other member, officer or servant of the Bank authorised to do so on its behalf.

(3) Minutes of the proceedings of each meeting of the Board and each meeting of a committee of the Board shall be kept in such form as the Board determines, and shall be confirmed as soon as practicable at the next following

meeting of the Board or that committee by the chairman of the Board or other person who presided at the meeting at which the minutes were taken.

(4) Any document purporting to be an instrument issued by the Bank, and to be sealed or signed on behalf of the Bank in accordance with this paragraph, shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

Use of Government facilities

12. In carrying out its functions under this Law, the Bank may, with the approval of the Governor in Cabinet, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of that department to any extent not incompatible with that department's operation.

SECOND SCHEDULE

section 9

POWERS AND FUNCTIONS OF AGRICULTURAL AND INDUSTRIAL DEVELOPMENT BOARD AND HOUSING DEVELOPMENT CORPORATION HEREBY TRANSFERRED TO AND VESTED IN BANK

1. Former powers and functions of Agricultural and Industrial Development Board-

- (a) promoting the carrying on of agricultural and industrial activities by bodies or individuals, and for that purpose to establish, expand or promote the establishment of such activities either under the control, partial or otherwise, of the Agricultural and Industrial Development Board or independently and giving assistance to such bodies or individuals appearing to such Board to have facilities for the carrying on of any such activities, including financial assistance by the taking up of share or loan capital, direct loan or the issuing of a guarantee or otherwise;
- (b) entering into such arrangements as it thinks fit to assist suitable persons to pursue such courses of education as may be approved by the Education Council established by section 3 of the Education Law (1999 Revision);
- (c) carrying on any such activities in association with other bodies or persons (including Government authorities) or as managing agents or otherwise on their behalf;
- (d) entering into any transaction (whether or not involving expenditure, borrowing, granting of loans or guarantees or

1999 Revision

- investment of money) and acquiring or disposing of property or rights calculated to facilitate the proper discharge of its functions;
 - (e) appointing such agents as the Agricultural and Industrial Development Board may consider necessary;
 - (f) paying any fees, expenses, costs, or other expenditure properly incurred or accepted by it in the discharge of its functions;
 - (g) exercising such other like powers as the Governor may, from time to time, confer upon it by notice published in the Gazette; and
 - (h) exercising such supplementary powers as may be necessary or expedient in achieving the above.
2. Former powers and functions of the Housing Development Corporation-
- (a) acquiring, managing and disposing of land;
 - (b) directly, or through other persons or the Government, laying out, constructing and maintaining buildings and carrying out such other building and engineering operations as may appear to it to be necessary or desirable in, over or under land;
 - (c) carrying on any business or undertaking for housing development;
 - (d) making arrangements with other persons for the purpose of enabling them to provide housing or finance therefor;
 - (e) engaging in any other activity designed to promote housing development;
 - (f) providing, and making available for purchase, leasing or renting, houses of all kinds;
 - (g) making available moneys for the purpose of financing the building and acquisition of houses upon such terms and conditions as the Housing Development Corporation may decide;
 - (h) carrying on any business incidental or conducive to the achievement of any of the functions of the Housing Development Corporation, including but not limited to the business of builders, contractors, insurers, real estate managers and land agents; and
 - (i) carrying out periodic surveys for the information of the Minister into-
 - (i) the housing requirements of the Islands;
 - (ii) sources of funding for mortgage finance in the Islands; and
 - (iii) improved and less costly methods of house construction.

THIRD SCHEDULE

section 34

TRANSITIONAL PROVISIONS

Transfer of property, rights and liabilities

1. As at the 1st March, 2002-
 - (a) all lands and property of every kind vested immediately before that date in the Agricultural and Industrial Development Board and the Housing Development Corporation are transferred to and vested in the Bank in the same manner and for the same estate as previously held by such Board and Corporation;
 - (b) all rights, powers, privileges and advantages and all liabilities and other obligations to which immediately before that date the Agricultural and Industrial Development Board and the Housing Development Corporation are entitled or subject as the case may be are transferred to and conferred or imposed upon the Bank for the purpose of this Law.
2. Any reference in any deed, contract, hypothecation, obligation, security or other document to the Agricultural and Industrial Development Board and the Housing Development Corporation shall, from that date, be construed as a reference to the Bank.
3. Without limiting the generality of paragraph 1, all monies and other assets standing immediately prior to that date to the credit of the Agricultural and Industrial Development Board and the Housing Development Corporation in relation to any loans or loan agreements made by the Agricultural and Industrial Development Board and the Housing Development Corporation shall be deemed to be transferred to and are vested in the Bank, and the right to recover and receive all monies due to the Agricultural and Industrial Development Board and the Housing Development Corporation in connection with or in relation to the said loans and loan agreements immediately prior to that date or which would hereafter become due to the said bodies had this Law not come into operation shall be deemed to be transferred to and is hereby vested in the Bank.

Transfer of contracts of employment

4. Every person employed by the Agricultural and Industrial Development Board and the Housing Development Corporation before that date shall, with effect from that date, be deemed to be appointed to the Bank on the same terms and conditions as those on which that person was employed by the former Board

and Corporation respectively, and such person's employment shall be deemed for all purposes to be continuing uninterrupted employment.

Pension schemes

5. Any pension scheme maintained by the Agricultural and Industrial Development Board and the Housing Development Corporation immediately before that date shall be deemed to be a pension scheme provided by the Bank under section 5(4)(c) of this Law and shall continue to be maintained accordingly.

References in enactments and instruments

6. Any enactment or other instrument passed or made before that date shall have effect as if any reference to the Agricultural and Industrial Development Board and the Housing Development Corporation were a reference to the Bank.

Effect of repeals

7. Anything done by or in relation to the Agricultural and Industrial Development Board and the Housing Development Corporation and having effect immediately before that date shall, so far as is required for continuing its effect thereafter, be treated as if it had been done by or in relation to the Bank; and anything then in the process of being done by or in relation to the Agricultural and Industrial Development Board or the Housing Development Corporation (including any legal proceedings then pending to which either of those bodies are a party) may be continued by or in relation to the Bank.

Statutory Accounts

8. The period beginning with the 1st January preceding the date of the transfer referred to in paragraph 1 of this Schedule and ending with the day before the date of that transfer shall be the last financial year of the Agricultural and Industrial Development Board, and the period beginning with the 1st July preceding the date of the transfer referred to in paragraph 1 of this Schedule and ending with the day before the date of that transfer shall be the last financial year of the Housing Development Corporation.

Land Registration

9. (1) This paragraph applies where any registered land in the Islands is transferred under paragraph 1 of this Schedule.

(2) The transferee shall be entitled to be registered as proprietor in place of the transferor on an application made in that behalf to the Registrar of Lands.

(3) On an application under sub-paragraph (2), the transferee shall supply to the Registrar such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.

2004 Revision

(4) From the date of the transfer referred to in paragraph 1 of this Schedule, section 117(1) of the Registered Land Law (2004 Revision) shall apply in relation to any person registered in place of the transferor as it applies in relation to any person registered in place of a deceased proprietor, but with the omission of the words "Subject to any restriction on his power of disposing of the land, lease or charge contained in his appointment,".

Publication in consolidated and revised form authorised by the Governor in Cabinet this 6th day of July, 2004.

Carmena Watler
Clerk of Cabinet

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