

THE JAMAICA MORTGAGE BANK ACT

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SCHEDULE

THE JAMAICA MORTGAGE BANK ACT

Acts
16 of 1973,
28 of 2003
S. 2.

[15th June, 1973.]

1. This Act may be cited as the Jamaica Mortgage Bank Act. Short title.

2. In this Act—

Interpre-
tation.

“the Bank” means the Jamaica Mortgage Bank established in accordance with this Act;

“the Board” means the Board of Directors of the Bank constituted in accordance with this Act;

“the chairman” means the chairman of the Board;

“debenture” includes debenture stock;

“director” means a director of the Bank;

“financial year” means the period of twelve months beginning on the first day of January in any year:

Provided that the period beginning on the fifteenth day of June, 1973, and ending on the thirty-first day of December next following shall be deemed to be a financial year;

“functions” includes powers and duties;

“secretary” means the secretary of the Bank;

“share” includes stock;

“shareholder” means a shareholder of the Bank.

3.—(1) There shall be established a body to be called the Jamaica Mortgage Bank, which shall be a body corporate to which the provisions of section 28 of the Interpretation Act, shall apply.

Establish-
ment of the
Jamaica
Mortgage
Bank.

which, in the opinion of the Bank, is necessary to ensure the proper performance of its functions.

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

- (a) guarantee loans made from private investment sources for building development;
- (b) sell investments of whatever kind belonging to the Bank as and when appropriate;
- (c) lend money on security to be used for the construction of premises for private residential purposes or of a commercial or industrial nature;
- (d) lend money on mortgage and carry out any other transactions involving mortgages;
- (e) furnish financial advice and provide or assist in obtaining managerial, technical and administrative services for persons engaged in building development in Jamaica.

6. Transactions relating to the following divisions of the Bank, namely— Divisions of the Bank.

- (a) the granting of mortgages by the Bank;
- (b) the buying and selling of mortgages;
- (c) mortgage insurance; and
- (d) such other divisions as the Minister may require, shall be distinguished so far as possible and shall be recorded and dealt with separately in the annual accounts and reports of the Bank.

7.—(1) Subject to the provisions of this section, the authorized capital of the Bank shall be twenty million dollars divided into twenty million shares of the par value of one dollar each. Capital of the Bank.

(2) The Government of Jamaica may subscribe for the said twenty million dollar shares or such other amount as the Minister may from time to time determine at par:

Provided that any person may, subject to regulations made pursuant to section 21, subscribe for and hold shares in the Bank.

(3) The Bank may, from time to time, with the approval of the Minister, vary the amount of the authorized capital of the Bank.

Ministerial
directions.

8.—(1) Subject to the provisions of this section, the Minister may, after consultation with the chairman, give the Board such directions of a general character as to the policy to be followed by the Bank in the exercise and performance of its functions as appear to the Minister to be necessary in the public interest, and the Board shall give effect to any such directions.

(2) The Bank shall furnish the Minister with such returns, accounts and other information, as he may require with respect to the property and activities of the Bank, and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

(3) The power of the Minister to give directions to the Board shall include power to give directions, whether of a general character or otherwise, as to the exercise by the Bank of its borrowing powers.

Borrowing
powers.

9.—(1) Subject to the provisions of this Act, the Bank may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The aggregate of the liabilities of the Bank outstanding at any one time, including direct liabilities such as bonds and debentures issued by the Bank and the contingent liabilities of the Bank in the form of guarantees given, shall not at any time without the prior approval of the Minister exceed seven times the aggregate amount of the paid-up capital and the reserve fund for which provision is made in section 13.

10.—(1) With the approval of the House of Representatives the Minister may guarantee, in such manner and on such conditions as he thinks fit, the repayment of the principal and the payment of interest on any authorized borrowings of the Bank.

Guarantee
by Minister
of borrow-
ings.

(2) Where the Minister is satisfied that there has been default in the repayment of any principal moneys or the payment of interest guaranteed under the provisions of this section he shall direct the payment out of the Consolidated Fund of the amount in respect of which there has been such default and such payment shall be a charge on the Consolidated Fund.

(3) Where any loan is guaranteed under the provisions of this section the Minister may, by order published in the *Gazette*, provide that any tax, duty or fee payable under the Income Tax Act, or the Stamp Duty Act or the Registration of Titles Act or any other enactment shall be remitted where such remission is, in the opinion of the Minister, necessary to give effect to any term upon which, or any condition subject to which, such loan was so guaranteed.

11. The Bank shall make to the Accountant-General at such times and in such manner as the Minister or other person designated by the Minister may direct payments of such amounts as may be so directed in or towards repayment of advances made to the Bank by Government and of any sums issued in fulfilment of any guarantee given under section 10, and payments of interest on what is outstanding for the time being in respect of such advances and of any sums so issued at such rate as the Minister may direct and different rates of interest may be directed as respects different advances and sums and as respects interest for different periods.

Repayment
of and
interest on
advances
and sums
issued to
meet
guarantee.

Securities.

12. The Bank—

- (a) may issue debentures or bonds for the purpose of exercising its borrowing powers under section 9;
- (b) shall establish a sinking fund for the redemption of debentures so created;
- (c) may postpone sinking fund contributions for such period or periods of time and subject to such conditions as may be approved by the Minister;
- (d) may make provision (whether or not by way of the setting up of a fund for the purpose) for meeting foreign exchange losses.

Reserve fund.

13. The Bank shall set aside in each calendar year out of the net profits (if any) of the Bank a minimum of twenty-five *per centum* of such profits towards a reserve fund to meet contingencies and for such other purposes as the Bank may think fit until the total amount standing to the credit of such reserve fund shall amount to a sum equal to its paid-up capital.

Accounts and audit.

14.—(1) The Bank shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with established accounting principles.

(2) The accounts and records shall be kept in such a manner as to secure the provision of separate information as respects each of the main divisions of the Bank, and to show as far as may be, the financial and operating results of each such division.

(3) The accounts of the Bank shall be audited by an auditor or auditors appointed annually by the Bank and approved by the Minister.

(4) So soon as the accounts of the Bank have been audited, the Bank shall send the statement of its accounts referred to in subsection (1) to the Minister together with a copy of any report made by the auditors on that statement or on the accounts of the Bank.

(5) The auditors' fees and any expenses of the audit shall be paid by the Bank.

(6) The Auditor-General shall be entitled, on the direction of the Minister, at all reasonable times to examine the accounts and other records in relation to the business of the Bank.

15.—(1) The Bank shall, not later than two months after the end of each financial year or such later time as the Minister may permit, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Bank during the preceding financial year, and containing such information relating to the proceedings and policy of the Bank as can be made public without detriment to the interests of the Bank.

Annual
report.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditors' report thereon to be laid on the Table of the House of Representatives and of the Senate.

(3) Copies of the Bank's report together with the annual statement of accounts and the auditors' report on that statement or on the accounts of the Bank shall be published in such manner as the Minister may direct and shall be made available to the public by the Bank at a reasonable price.

16.—(1) The Bank may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a general manager, a secretary and such officers, agents

General
manager,
secretary
and other
staff.

and servants as it deems necessary for the proper carrying out of its functions under this Act:

Provided that—

- (a) no salary exceeding eight thousand dollars per annum shall be assigned to any post without the prior approval of the Minister;
- (b) subject to any regulation made pursuant to section 21, no provision shall be made for the payment of any pension, gratuity or other retiring benefit to any employee of the Bank without the prior approval of the Minister.

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

Power to
delegate.

17.—(1) Subject to the provisions of this Act, the Bank may delegate to any director, employee or agent of the Bank the power to carry out on behalf of the Bank such function as the Bank may determine.

(2) Every delegation under this section shall be revocable by the Bank and no delegation shall prevent the exercise by the Bank of any function delegated.

Enforce-
ment of
securities.

18. Where any property mortgaged as security for a loan under the provisions of this Act is acquired by the Bank, the Bank may either manage and hold such property or carry on any business with or in relation to such property or sell or otherwise dispose of it as it may deem fit.

19.—(1) Notwithstanding that a loan granted or guaranteed by the Bank may not have been secured by a mortgage within the meaning of the Conveyancing Act, 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 same powers *mutatis mutandis* as a receiver appointed pursuant to the power conferred on a mortgagee by paragraph (d) of subsection (1) of section 22 of the Conveyancing Act.

Power to appoint a receiver, etc.

(2) A person appointed by the Bank to be a receiver pursuant either to the power conferred on a mortgagee by paragraph (d) of subsection (1) of section 22 of the Conveyancing Act or to the power conferred on the Bank by subsection (1) of this section shall, if the Bank so appoints, be also 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 so appointed had been appointed by the Court to be the receiver and manager of such business.

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

20. The Bank may act generally as agent for the Government where it can do so appropriately and consistently with its functions under this Act.

Power of Bank to act as agent for the Government.

21. The Minister may make regulations—

(a) in relation to the grant of pensions, gratuities and other benefits to employees of the Bank and their dependants, and to the dependants or estate of deceased employees of the Bank;

Power to make regulations.

- (b) regulating the acquisition and holding of shares in the Bank by persons and the rights of such persons including, but without prejudice to the generality of the foregoing, such matters as the keeping of registers of shareholders, the procedure for calls, forfeiture and surrender of shares in the event of default of payment, the transfer of shares, the capitalization of surpluses, the declaration and payment of dividends, the holding of meetings, proceedings at such meetings and voting rights; and
- (c) generally for the better carrying out of the objects and purposes of this Act.

Transitional. 22. Upon a day to be appointed by the Minister by order made with the consent of the Jamaica Mortgage Bank Limited (a company incorporated under the Companies Act) all such assets and liabilities of that company as may be specified in the order shall, by virtue of this section and without further assurance, be transferred to and vested in the Bank.

Transfer of employees of Jamaica Mortgage Bank Limited.

23. Every person employed by the said Jamaica Mortgage Bank Limited immediately prior to the 15th day of June, 1973, shall, with effect from that date, be deemed to be transferred to the Bank on the same terms and conditions as those on which he was employed immediately prior to that date.

Exemptions from tax, stamp duty, etc.

24.—(1) The Bank shall be exempt from income tax.

(2) Notwithstanding anything to the contrary contained in any law, any deed, agreement, instrument, insurance policy, writing or receipt relating to any loan made to the Bank under this Act shall be exempt from stamp duty, and recording and registration fees.

(3) There shall be exempt from taxation under the Transfer Tax Act, any transfer by the Bank of property belonging to it or of any right or interest created in, over or otherwise with respect to any such property.

25. From and after the 15th day of June, 1973, the functions of the Jamaica Development Bank in relation to the Mortgage Insurance Act, shall be carried out by the Bank; and references in that Act to the Development Finance Corporation shall (notwithstanding section 24 of the Jamaica Development Bank Act) be deemed to be references to the Bank.

Functions
under
Mortgage
Insurance
Act to
be carried
out by the
Bank.

SCHEDULE

(Section 3 (2))

- Board of Directors.** 1.—(1) There shall be a Board of Directors of the Bank which, subject to the provisions of this Act, shall be responsible for the policy and the general administration of the affairs of the Bank.
- (2) The Board shall consist of not less than five nor more than seven directors appointed by instrument in writing by the Minister from persons appearing to the Minister to have ability and experience in matters relating to housing, industry, commerce, finance, economics, engineering, accountancy or law.
- Temporary appointments.** 2. The Minister may appoint any person to act temporarily in the place of any director of the Bank in the case of the absence or inability to act of such director.
- Chairman.** 3.—(1) The Minister shall appoint one of the directors to be the chairman thereof.
- (2) The Minister shall appoint one of the directors to be the deputy chairman thereof.
- (3) In the case of the absence or inability to act of the chairman, the deputy chairman shall exercise the functions of the chairman.
- (4) In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman the remaining directors shall elect one of their number to act as chairman of that meeting.
- Tenure of office.** 4. Subject to the provisions of this Schedule, a director of the Bank shall hold office for such period not being less than three years nor more than five years as shall be specified in the instrument appointing him and shall be eligible for reappointment upon the expiration of his period of office.
- Resignation.** 5.—(1) Any director of the Bank other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and from the date of the receipt by the Minister of such instrument such director shall cease to be a director of the Bank.
- (2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.
- Removal of director.** 6. The Minister may at any time revoke the appointment of any director if he considers it expedient so to do and shall revoke the appointment of any director if a unanimous vote to that effect is passed by resolution of the other directors.
- Members of House of Representatives and Senate excluded.** 7. No person who is a member of the House of Representatives or the Senate shall be appointed a director of the Bank.

8. The names of all directors of the Bank as first constituted and every change in the composition thereof shall be published in the *Gazette*. Publication of composition of Bank.

9.—(1) The seal of the Bank shall be authenticated by the signatures of the chairman or one director of the Bank authorized to act in that behalf and the secretary. Authentication of seal and documents.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the chairman or any director authorized to act in that behalf or the secretary.

10.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board shall determine. Procedure and meetings.

(2) The chairman may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two directors of the Bank.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the deputy chairman or the person elected to act as chairman, in accordance with the provisions of sub-paragraph (4) of paragraph 3 shall preside at the meetings of the Board, and when so presiding the chairman, deputy chairman or the person elected as aforesaid to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Board shall be three including the chairman or the deputy chairman or the person elected to act as chairman as aforesaid.

(5) Subject to the provisions of this Schedule the Board may regulate their own proceedings.

(6) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the directors of the Bank or by any defect in the appointment of a director thereof.

11. There shall be paid to the chairman and other directors of the Bank such remuneration, if any (whether by way of salaries or travelling or other allowances) as the Minister may determine. Remuneration of directors.

12. The funds and resources of the Bank shall consist of such moneys and other property as may lawfully be paid to, or become vested in, the Bank in respect of any matter incidental to its functions. Funds and resources of the Bank.

13. Notwithstanding anything to the contrary no act done or proceeding taken under this Act by the Bank shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the case. Protection of Bank.

Protection
of directors
of Bank.

14.—(1) No director of the Bank shall be personally liable for any act or default of the Bank done or omitted to be done in good faith in the course of the operation of the Bank.

(2) Where any director of the Bank is exempt from liability by reason only of the provisions of this paragraph the Bank shall be liable to the extent that it would be if the said director were a servant or agent of the Bank.

Office of
chairman,
deputy
chairman or
director not
public
office.

15. The office of chairman, deputy chairman or director shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.