

LAWS OF TRINIDAD AND TOBAGO

HOME MORTGAGE BANK ACT

CHAPTER 79:08

Act

12 of 1985

Amended by

10 of 1989

18 of 1993*

*By implication

Current Authorised Pages

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CHAPTER 79:08

HOME MORTGAGE BANK ACT

An Act to establish the Home Mortgage Bank, to define its powers and functions and to provide for matters incidental thereto. 12 of 1985.

[25TH APRIL 1985]

Commencement.

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

PRELIMINARY

2. In this Act—

Interpretation.

“the Bank” means the Home Mortgage Bank established under section 3;

“Board” means the Board of Directors of the Bank appointed and constituted under this Act;

“the Central Bank” means the Central Bank of Trinidad and Tobago;

“Class A shareholder” means the Central Bank;

“Class B shareholder” means the National Insurance Board and/or the First Citizens Bank;

“Class C shareholder” means—

(a) a commercial bank, other than the First Citizens Bank, licensed under the Financial Institutions Act to carry on the business of banking; or Ch. 79:09.

(b) a company licensed under the Financial Institutions Act to carry on the business of a financial institution; Ch. 79:09.

“Class D shareholder” means an insurance company registered under the Insurance Act to carry on insurance business; Ch. 84:01.

“Class E shareholder” means the International Finance Corporation;

“director” means a director of the Bank appointed under this Act;

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

“Minister” means the Minister responsible for the administration of finance;

“First Citizens Bank” means the First Citizens Bank Limited;

Ch. 32:01.

“National Insurance Board” means the Board of Management established under the National Insurance Act;

“Secretary” means a person appointed as such under section 25(1) or any person designated by the Board to perform the duties of Secretary.

PART I

ESTABLISHMENT, PURPOSES AND MANAGEMENT OF THE BANK

Establishment of Bank.

3. There is hereby established a bank to be known as the Home Mortgage Bank and the Bank is a body corporate.

Purposes of the Bank.

4. The purposes of the Bank are—

- (a) to develop and maintain a secondary mortgage market in Trinidad and Tobago;
- (b) to contribute to the mobilisation of long-term savings for investment in housing;
- (c) to support the development of a system of housing finance and provide leadership in the housing and home finance industry;
- (d) to promote the growth of the capital market.

Functions of the Bank.

5. For the attainment of its purposes the Bank—

- (a) may borrow money and mortgage or charge its undertaking, property or uncalled capital or any part thereof and issue bonds, debentures, debenture stock and other securities whether as security for any debt, liability or obligation of the bank or of any third party or otherwise;
- (b) may buy and sell mortgage loans on residential properties;

- (c) may appoint other institutions as its trustees on such terms and conditions as it may consider fit;
- (d) may secure the fulfilment of any contracts or engagements entered into by it, by mortgage or charge of all or any of its property or its unpaid capital for the time being in such a manner as it may consider fit;
- (e) may approve on the part of any shareholder on such terms and conditions as are agreed a transfer of all or any part of its shares but always subject to the provisions of this Act;
- (f) may institute, conduct, defend, compound or abandon any legal proceedings by or against it or its officers or otherwise concerning its affairs and also compound or allow time for payment or satisfaction of any debts due and of any claims or demands by or against it;
- (g) may make and give receipts, releases and other discharges for moneys payable to it and for claims made against it;
- (h) may invest any part of its moneys in securities (other than shares of the Bank), negotiate contracts and do such acts in the name and on behalf of the Bank as it may consider expedient for or in relation to any of its purposes;
- (i) may appoint persons to be its attorneys or agents with such powers (including power to delegate and to appear before all proper authorities and make all necessary declarations) to enable its operations and business to be validly carried on;
- (j) may do all such other things as are incidental to the attainment of its purposes.

6. (1) The Bank shall at all times have a fixed address in Trinidad and Tobago for the service of documents on the Bank and that address shall be registered with the Registrar General.

Address and
service of
documents.

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

Bank may establish branches, etc.

7. The Bank may establish branches and agencies and may appoint agents and correspondents in Trinidad and Tobago and elsewhere.

Protection of persons dealing with directors and agents.

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

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

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

Custody and use of seal.

9. (1) The directors shall provide for the safe custody of the seal of the Bank and the seal may be affixed to instruments pursuant to a resolution of the Board and in the presence of—

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

(2) The seal shall be attested by the signatures of—

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

(3) All documents other than those required by law to be under seal and all decisions of the Bank may be signified under the hand of the Chairman or the Deputy Chairman or the Secretary.

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

11. (1) Subject to subsection (2) the Board shall comprise seven directors as follows: Constitution of Board of Directors.

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

(2) Where the International Finance Corporation ceases to be a shareholder the Board shall comprise six directors as described at (a) to (d) of subsection (1).

12. (1) Save for the director appointed by the Class E shareholder, the members of the first Board shall be appointed by the Minister after consultation with the Class A, Class B, Class C and Class D shareholders respectively. Appointment and term of office of first Board of Directors.

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

(3) A director appointed by the Class E shareholder whether as a member of the first Board or otherwise holds office for the term specified in his instrument of appointment or until there is no longer a Class E shareholder whichever first happens.

13. (1) Subject to subsection (3) and to section 12(2) a director other than a director appointed by the Class E shareholder, holds office for three years or until a successor is appointed whichever first happens. Term of office of director.

(2) A vacancy in the Board shall be filled by the Class of shareholder entitled to fill that vacancy under section 11(1) but a person appointed to fill the unexpired term of office of a director may hold office only for such unexpired term, unless he is reappointed in accordance with this section.

(3) A retiring director is eligible for reappointment.

Alternate directors.

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

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

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

Disqualification.

15. A person is disqualified from being appointed a director where he—

Ch. 28:02.

(a) has been adjudged insolvent or has suspended payment to or compounded with his creditors;

(b) is mentally ill within the meaning of the Mental Health Act;

(c) is debarred from practising his profession on account of any act involving dishonesty;

(d) has been convicted of an offence and sentenced to a term of imprisonment in excess of six months;

(e) has been convicted of any offence involving dishonesty;

(f) is prohibited from being a director by reason of any order made under the relevant section of the Companies Act which corresponds to section 206 or 260 of the Companies Ordinance.

Ch. 81:01.

Ch. 31 No. 1.
[1950 Ed.]

Vacation of office of director.

16. (1) Where a director—

(a) dies or by writing under his hand addressed to the Chairman resigns; or

(b) becomes disqualified under section 15 from being a director,

his place on the Board thereupon becomes vacant.

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

Chairman and Deputy Chairman.

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

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

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

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

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

18. The appointment of any person as Chairman, Deputy Chairman, director or alternate director and the termination of any such appointment shall be notified by publication in the *Gazette*.

Appointment of directors to be notified in the *Gazette*.

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

Meetings of the Board.

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

(3) Where there is a Class E shareholder, five directors constitute a quorum but otherwise four directors constitute a quorum.

(4) A quorum shall include directors representing at least three different classes of shareholders.

20. (1) The Board may appoint an Executive Committee consisting of not less than three directors, drawn from three different classes of shareholders, and the General Manager, to supervise asset and liability management and examine and approve financial commitments in accordance with the Regulations and the policies established by the Board.

Executive Committee.

(2) The Executive Committee shall perform such other functions as are assigned to it by the Board.

(3) The Executive Committee shall elect one of their number, other than the General Manager, chairman and the person so elected shall have an original and a casting vote.

(4) The Executive Committee shall meet at least once each month.

PROCEDURE

Annual General Meeting.
Ch. 81.01.

21. (1) A general meeting of shareholders (hereinafter and for the purposes of the Companies Act called an “annual general meeting”) shall be called by the Board each year.

(2) Not less than fourteen days’ notice in writing of an annual general meeting shall be given to the Bank’s shareholders, directors and auditors; in addition notice of the meeting shall be published in at least one daily newspaper.

(3) Subject to subsection (4) the Chairman of the Board shall preside at annual general meetings and in his absence the Deputy Chairman shall preside.

(4) In the absence of both the Chairman and the Deputy Chairman of the Board, the directors present shall appoint a chairman from one of their number present.

(5) The quorum for an annual general meeting is one shareholder or proxy of each class so however that where there is no quorum the meeting stands adjourned to the same time on the same day of the week next following, whereupon the shareholders present shall form a quorum.

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

- (a) a comprehensive statement of its affairs including profit and loss accounts and balance sheets audited by a firm of chartered accountants;
- (b) particulars relating to the activities of the Bank during the previous year;

- (c) a recommendation relating to the payment or non-payment of dividends, appointments and remuneration of directors and auditors and any other matters which the Board considers necessary.

22. (1) The financial year of the Bank is to be determined by the Board. Financial year.

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

23. (1) The Board may at any time call a special general meeting of shareholders after giving not less than fourteen clear days notice of the meeting. Special General Meeting.

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

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

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

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

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

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

Staff of
the Bank.

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

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

PART II

SHARES

Capital
structure
of the
Bank.

26 (1) Subject to section 28, the authorised capital of the Bank is fifty million dollars divided into five hundred thousand shares of one hundred dollars each, in the following classes:

- (a) seventy-five thousand Class A shares which may be issued only to the Central Bank;
- (b) seventy-five thousand Class B shares which may be issued only to the National Insurance Board and the First Citizens Bank;
- (c) one hundred and fifty thousand Class C shares which may be issued only to commercial banks, other than the First Citizens Bank, and financial institutions;

- (d) one hundred and fifty thousand Class D shares which may be issued only to insurance companies;
- (e) fifty thousand Class E shares which may be issued only to the International Finance Corporation.

(2) The initial capital offered for subscription shall not exceed sixteen million dollars paid up by the several classes of shareholders in such proportions as may be agreed among the shareholders of each class as follows:

- (a) four million eight hundred thousand dollars by Class A and Class B shareholders;
- (b) four million eight hundred thousand dollars by Class C shareholders;
- (c) four million eight hundred thousand dollars by Class D shareholders; and
- (d) one million six hundred thousand dollars by the Class E shareholder.

27. The shares of the Bank are under the control of the directors who may deal with or dispose of them as they think fit subject to this Act. Directors to control shares.

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

(2) Increase of authorised capital may be effected only in general meeting upon the passing of an appropriate resolution.

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

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

(5) Where the Bank fails to give the Registrar notice of increase of authorised share capital as required by this section every

director is liable on summary conviction to a fine of one thousand dollars and to a further fine of one hundred dollars for each day that the offence continues after conviction.

(6) In this section “Registrar” means the Registrar referred to in section 4 of the Companies Act.

Ch. 81:01.

Transfer of shares.

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

(2) Class A shares are transferable to—

- (a) a Class B shareholder;
- (b) a Class C or Class D shareholder or to a company qualified to be a Class C or Class D shareholder.

(3) Class B shares are transferable to—

- (a) the Class A shareholder;
- (b) a Class C or Class D shareholder or to a company qualified to be a Class C or Class D shareholder.

(4) Class C shares are transferable only to Class C shareholders or to companies qualified to be Class C shareholders.

(5) Class D shares are transferable only to Class D shareholders or to companies qualified to be Class D shareholders.

(6) Class E shares are transferable to Class C or Class D shareholders or to other private sector investors and where these shares are transferred to other private sector investors, these investors become ordinary shareholders.

Details of transfer to be entered in register.

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

PART III

MISCELLANEOUS

Interest on bonds tax exempt.

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

(2) The Minister may by Order vary the maximum aggregate capital value of the bonds.

***31A.** (1) The upfront expenses incurred by the Bank in the issue of bonds shall be allowed as a deduction in computing the chargeable profits of the Bank for the purposes of the Corporation Tax Act, the Unemployment Levy Act and the National Recovery Impost.

Upfront
expenses
allowable
deduction.
[10 of 1989].
Ch. 75:02.
Ch. 75:03.
14 of 1987.

(2) In this section the expression “upfront expenses” means—

- (a) expenses incurred in—
- (i) preparing printing and vetting prospectuses;
 - (ii) preparing and printing application and subscription forms;
 - (iii) preparing and printing bond certificates;
 - (iv) artwork for bonds;
 - (v) advertising;
 - (vi) preparing debentures;
 - (vii) preparing Trust Deeds;
 - (viii) preparing affidavits;
 - (ix) preparing and vetting agency agreements;
 - (x) preparing and vetting subscription agreements;
 - (xi) searches;
 - (xii) preparing and filing company particulars;
 - (xiii) lodging of prospectus with the Registrar of Companies;
 - (xiv) stamp duty on debentures;
 - (xv) stationery; and
 - (xvi) postage;
- (b) underwriting fees;
- (c) bond managers fees;
- (d) investment fees; and
- (e) commissions payable to banks, trust companies and stockbrokers.

*This section shall be deemed to have come into effect on 1st January 1987.

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Chap. 79:08

Home Mortgage Bank

Exemption from stamp duty.

Ch. 76:01.

32. Instruments of transfer relating to the purchase or sale of the legal or beneficial interest in mortgages by the Bank in the normal course of its business are exempt from stamp duty imposed under the Stamp Duty Act.

Non-application of certain written laws. Ch. 79:09. Ch. 84:04.

33. (1) The Financial Institutions Act and the Moneylenders Act do not apply to the Bank.

(2) Notwithstanding subsection (1), the Bank may not engage in the business of banking within the meaning of the Financial Institutions Act.

Application of Companies Act. Ch. 81:01.

34. The Companies Act applies to the Bank, as if the Bank were a public company registered under that Act, with such modifications as are necessary or expedient but subject always to this Act.

Regulations.

35. The Minister may on the recommendation of the Board make Regulations generally for giving effect to this Act.

SUBSIDIARY LEGISLATION

HOME MORTGAGE BANK (VARIATION OF MAXIMUM CAPITAL VALUE OF BONDS) ORDER 126/1993.

made under section 31(2)

1. This Order may be cited as the Home Mortgage Bank (Variation of Maximum Capital Value of Bonds) Order. Citation.

2. The maximum aggregate capital value of bonds which the Bank may issue is varied from three hundred million dollars to six hundred million dollars. Maximum aggregate capital value of bonds varied.