



ST. CHRISTOPHER AND NEVIS

CHAPTER 20.26

ST. KITTS INVESTMENT PROMOTION AGENCY ACT

Revised Edition

showing the law as at 31 December 2009

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ST. KITTS INVESTMENT PROMOTION AGENCY ACT

Act 24 of 2007 ... in force 19th December 2007

Page

3

CHAPTER 20.26

ST. KITTS INVESTMENT PROMOTION AGENCY ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

THE AGENCY

3. Establishment of the Agency
4. Functions of the Agency
5. Common Seal

PART III

GOVERNING BODY

6. Board of Directors
7. Appointment of Board Members to be published in the *Gazette*
8. Duties of Members of the Board
9. Tenure
10. Resignation of a member of the Board
11. Conflict of Interest
12. Removal or exclusion of disability etc.
13. Removal of a member of the Board

PART IV

STAFF OF AGENCY

14. Chief Executive Officer
15. Staff

PART V

FUNDS OF THE AGENCY

16. Funds and resources of the Agency
17. Borrowing power of the Agency
18. Application of the funds of the Agency
19. Accounts and audit
20. Agency to submit regular reports

PART VI

MISCELLANEOUS

21. Limitation of liability
22. Protection of the Agency

- 23. Regulations
- 24. Amendment of Schedule
- 25. Applicability to Nevis
 - SCHEDULE I: Duties of Members
 - SCHEDULE II: Meetings of the Board

CHAPTER 20.26

ST. KITTS INVESTMENT PROMOTION AGENCY ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A STATUTORY BODY TO BE KNOWN AS THE ST KITTS INVESTMENT PROMOTION AGENCY TO PROMOTE AND FACILITATE INVESTMENT IN ST KITTS AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the St. Kitts Investment Promotion Agency Act.

Interpretation.

2. In this Act—

“Agency” means the St. Kitts Investment Promotion Agency established under section 3;

“Board” means the Board of Directors of the Agency established under section 6;

“investment” means the direct investment of foreign or domestic capital to establish a new business enterprise or expand an existing one in St. Kitts;

“investor” means a natural or legal person who makes a lawful direct investment involving a commitment of capital in St. Kitts;

“Minister” means the Minister responsible for Finance;

PART II

THE AGENCY

Establishment of the Agency.

3. (1) There is established a body to be called the St. Kitts Investment Promotion Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal and may—

- (a) acquire, hold, mortgage and dispose of personal and real property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) do all such things as are necessary for the purposes of its functions under this Act.

Functions of the Agency.

4. (1) The Agency shall advise the Government on the implementation of policies and programs to attract investment within St. Kitts, and to promote the increased export of goods and services from St. Kitts.

(2) Without prejudice to the generality of subsection (1), the Agency shall—

- (a) implement programs and activities to promote St. Kitts as a desirable jurisdiction in which to invest;
- (b) collect, compile and disseminate information on available investment opportunities in St. Kitts;
- (c) collect and analyze data related to the flow of investment in St. Kitts;
- (d) provide information to potential investors on matters relating to investment;
- (e) establish procedures consistent with this Act to process applications for investment projects efficiently;
- (f) assist investors and prospective investors in obtaining licenses, permits, certificates or the relevant clearance, as the case may be, needed for the commencement, operation and expansion of business;
- (g) liaise with government agencies, departments and authorities to identify and secure suitable land that may be required by investors and prospective investors to implement projects;
- (h) provide local and foreign investors and prospective investors with information on potential joint venture partnership;
- (i) undertake activities to foster linkages between local and foreign investors, in coordination with agencies or departments that support small business, as necessary;
- (j) issue recommendations for income tax exemptions in line with the relevant laws governing investment incentives;
- (k) provide such other assistance as may be needed by an investor for the realization of his investment; and
- (l) do all such other things as may be necessary or incidental to the discharge of the functions conferred by the Act.

Common Seal.

5. (1) The common seal of the Agency shall be affixed to all deeds, documents and other instruments requiring the common seal of the Agency only after a resolution of the Board in each case authorizing such action.

(2) The common seal of the Agency shall be authenticated by the signature of the Chairman or in his absence, the Secretary of the Agency.

PART III
GOVERNING BODY

Board of Directors.

6. (1) For the purpose of carrying out the functions, management and control of the affairs of the Agency, there is established a Board of Directors for the Agency.

(2) The Board shall be comprised of—

- (a) two representatives of the ministry responsible for finance, one being the Financial Secretary, the other being a person to be nominated by the Minister of Finance;
- (b) a representative of the ministry responsible for tourism who shall be nominated by the Minister of Tourism;
- (c) a representative of the ministry responsible for industry who shall be nominated by the Minister of Industry;
- (d) a representative of the ministry responsible for agriculture who shall be nominated by the Minister of Agriculture;
- (e) a representative of the Chamber of Industry and Commerce who shall be nominated by the Chamber;
- (f) a representative of the Hotel and Tourism Association who shall be nominated by the Association;
- (g) two persons representing the private sector, one of whom shall be nominated from the small business sector by relevant small businesses or an alliance or association thereof and the other being a representative of foreign investors nominated from amongst foreign investors in St. Kitts;
- (h) a representative from the trade unions to be nominated jointly by all active trade unions; and
- (i) the Chief Executive Officer, who shall serve as an *ex-officio* member of the Board.

(3) The members of the Board referred to in (2) shall—

- (a) be appointed by the Minister, with the approval of the Cabinet, and shall be appointed on such terms and conditions as may be specified in their instruments of appointment;
- (b) hold office for a period not exceeding two years but shall be eligible for re-appointment.

(4) The Minister shall appoint one of the members of the Board.

(5) The Chairman of the Agency shall be—

- (a) a high level official in the public sector or a person responsible for advising the public sector on matters of finance and commerce;
- (b) credible as a leader among senior leaders and policymakers of the Government;
- (c) knowledgeable about the role of investment and its impact on the local economy; and

- (d) knowledgeable about ensuring the highest impact and externalities into the local economy from private investment.
- (6) The Board may appoint a Corporate Secretary to the Agency.
- (7) The Board shall convene meetings in accordance with the provisions set out in Schedule II.

Appointment of Board Members to be published in the *Gazette*.

7. (1) The Minister shall cause the names of the members of the Board and any subsequent changes thereto to be published in the *Gazette*.

(2) Members of the Board shall be paid a remuneration and allowances as determined by a special committee established by the Minister, and the functions and methodology of that committee shall be outlined in Regulations created under this Act.

Duties of Members of the Board.

8. The members of the Board shall perform the following duties which are more particularly described in the Schedule hereto—

- (a) general duties;
- (b) planning and governance duties;
- (c) policy management duties;
- (d) financial management duties;
- (e) personnel management duties; and
- (f) public relations duties.

Tenure.

9. The persons appointed to the Board under this Act who are not *ex officio* members shall be appointed in writing by the Minister for the term of two years and may at the expiration of such term be reappointed by him for a further term not exceeding two years in accordance with the nomination of the Minister or organisation responsible for doing so.

Resignation of a member of the Board.

10. A member of the Board who is not an *ex officio* member may resign his office at any time by letter addressed to the Chairman, and the resignation shall take effect from the date that the letter is received by the Chairman.

Conflict of Interest.

11. (1) If a member of the Board has any pecuniary interest, whether direct or indirect, in any investment project in respect of which an application for—

- (a) an investment certificate has been made;
- (b) any contract, proposed contract, license; or
- (c) other matter,

and is present at a meeting of the Board at which the application, contract, proposed contract, license or other matter is the subject of consideration, the member shall, as soon as practicable after the commencement of that meeting, disclose his interest in

the matter and shall not take part in the consideration or discussion of the application, contract, proposed contract, license or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) If any person fails to comply with the provisions of subsection (1) he commits an offence and shall be liable—

- (a) on summary conviction to a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding two years, or both; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding five years, or both,

unless he proves that he did not know that the application, contract, proposed contract, license or other matter in which he had a pecuniary interest, was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board.

(4) No act or proceeding of the Board shall be questioned on the ground that a Member of the Board has contravened this section.

(5) For the purposes of subsection (1), a member of the Board shall be treated as having an indirect pecuniary interest in an application, contract, proposed contract, license or other matter if—

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the application or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the application or other matter under consideration; or
- (c) he, or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in an application, or in any other matter under consideration.

(6) Subsection (1) does not apply to membership of or employment under any public body.

(7) In the case of a married person the interest of one spouse shall be deemed to be also the interest of the other.

Removal or exclusion of disability etc.

12. (1) If the number of members of the Board who are excluded from participation in the meeting by virtue of section 11 is so great that it impedes the ability of the Board to transact business, then the Minister may appoint a person to act as a member of the Board for any specified period.

(2) Nothing in section 11 shall preclude any member of the Board from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Minister for the exercise of the powers conferred by subsection (1).

(3) Where a member of the Board has an indirect pecuniary interest in an application, contract, proposed contract, license or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of shares of any class in which he has a beneficial interest does not exceed one thousandth of the total value of the issued share capital of that class, section 11 shall not prohibit him from taking part in the consideration or discussion of the application, contract, proposed contract, license or other matter or from voting on any question with respect to it.

Removal of a member of the Board.

13. The Minister may remove a member of the Board from office on being satisfied that the member—

- (a) is unable, owing to physical or mental impairment, to exercise his functions;
- (b) has been guilty of misconduct which, in the opinion of the Minister, is likely to bring the Agency into disrepute;
- (c) is convicted of an offence involving dishonestly or immorality;
- (d) fails within one year without reasonable excuse to attend and participate in three successive meetings of the Board;
- (e) fails to disclose a personal interest in an investment project which is being or has been considered by the Board.

PART IV

STAFF OF AGENCY

Chief Executive Officer.

14. (1) The Minister shall appoint a Chief Executive Officer of the Agency on such terms and conditions as the Minister may determine, subject to the provisions of this Act.

(2) The Chief Executive Officer shall have such qualifications as may be specified, in particular the standing, knowledge and experience, either professional or academic, in international business, commerce, economics, law, tourism, banking, finance or real estate.

(3) The Chief Executive Officer shall be the administrative head of the Agency and shall perform the duties assigned to him under this Act and such other duties as the Board may determine.

(4) The Chief Executive Officer may resign from office at any time by giving three months' written notice to the Minister which notice shall be copied to the Chairman of the Board.

(5) The Chief Executive Officer shall, subject to the general direction of the Board, be responsible for the management and administration of the Agency and for—

- (a) the development and preparation of appropriate plans for the promotion of suitable investment strategies in St. Kitts;

- (b) the organisation and direction of the officers, employees and staff of the Agency and for their administration and control;
 - (c) monitoring the progress of any investment enterprise in respect of which an investment approval has been issued under this Act.
- (6) The Chief Executive Officer may be removed from office by the Minister on the recommendation of the Board in the event of—
- (a) misconduct in or in connection with his office or duties;
 - (b) failure or inability through physical, mental or emotional impairment to perform his duties under this Act; or
 - (c) conviction by a court of competent jurisdiction of a criminal offence involving dishonesty or immorality or of any other crime which in the opinion of the Board is likely to bring the Agency into disrepute.
- (7) The Chief Executive Officer shall not be dismissed under the provision of subsection (6) until the period for lodging an appeal against the conviction has expired, without such an appeal being lodged.

Staff.

15. (1) The Agency may employ such employees as are required for the proper discharge of its functions under this Act.
- (2) The Governor General may, on the recommendation of the Public Service Commission, second or transfer any officer in the public service to any office in the Agency subject to such conditions as he may approve.
- (3) The Agency may employ the services of consultants or qualified professionals to assist it in the performance of its functions under this Act.

PART V

FUNDS OF THE AGENCY

Funds and resources of the Agency.

16. (1) The funds and resources of the Agency shall consist of—
- (a) monies appropriated by Parliament for the purposes of the Agency;
 - (b) monies received through services rendered;
 - (c) monies borrowed and property paid or provided to the Agency by way of grants, fees, subsidies, donations, gifts, charges, rent, interest and other monies derived from the investment of the Agency's funds;
 - (d) any monies derived from the disposal of or dealing with real or personal property held by the Agency;
 - (e) monies borrowed under this Act or derived from financial accommodation extended to the Agency under this Act; and
 - (f) all other monies lawfully received by or made available to the Agency.
- (2) The Agency shall have an autonomous annual budget, executed according to the Agency regulations without being restricted to provisions relating to the budgets of public administrations and authorities.

Borrowing powers of the Agency.

17. (1) Subject to subsection (2), the Agency may borrow money required by it for the purpose of carrying out its functions under this Act.

(2) Money shall not be borrowed under this section unless the Minister approves in writing the amount to be borrowed, the source of the borrowing and the terms on which the borrowing is to be made.

Application of the funds of the Agency.

18. (1) The funds of the Agency shall be applied towards—

- (a) the performance of its functions under this Act;
- (b) the payment of salaries, wages, fees, allowances, gratuities and other similar benefits of the employees of the Agency; and
- (c) the costs of administration of the Agency offices;
- (d) any other expenses incurred in the form of property mortgage and interest paid on mortgage.

Accounts and audit.

19. (1) The Agency shall keep proper books of accounts and other books or records in which shall be recorded all financial transactions of the Agency.

(2) The Agency shall prepare within two months of the Agency's financial year end the financial statement for that financial year.

(3) The accounts of the Agency shall be prepared according to accepted international accounting standards and shall be audited annually by the Director of Audit or by such person as the Director of Audit may appoint.

(4) The Board, the Director and all employees of the Agency shall afford the Director of Audit or other auditor appointed by the Director of Audit, access to all books, documents, cash and securities of the Agency and, on request, shall give the Director of Audit or other auditor appointed by the Director of Audit any information within his knowledge.

Agency to submit regular reports.

20. (1) The Agency shall send a quarterly written report of its activities to the Minister on the first day of April, July, October and January in each year.

(2) On the first day of January in each year the Agency shall send an annual written report to the Minister of Finance summarizing the previous four reports and containing the outlook for the following year and such advice in accordance with section 4 as it considers appropriate.

PART VI**MISCELLANEOUS****Limitation of liability.**

21. (1) A person or body to whom this section applies shall not be liable in damages for anything done or omitted to be done in the performance or purported

performance of any functions of the Agency conferred by or under this Act or any other enactment, or any other functions conferred by or under this Act, unless it is shown that the act or omission was in bad faith.

(2) This section applies to—

- (a) the Minister or any person who is, or is acting as, an officer, employee or agent of the Minister, or performing any function on behalf of the Minister;
- (b) the Agency or any person who is, or is acting as, an officer, employee or agent of the Agency or performing any function on behalf of the Agency; and
- (c) the Board, or any member of the Board, or any person who is, or is acting as, an officer, employee or agent of the Board or performing any function on behalf of the Board.

Protection of the Agency.

22. No act done or proceeding taken under this Act shall be questioned on the grounds of the existence of any vacancy in the membership of the Board nor on the ground of any omission, defect or irregularity not affecting the merits of that act or proceeding.

Regulations.

23. The Minister may make Regulations for the purpose of giving effect to the provisions of this Act.

Amendment of Schedule.

24. The Minister may, after consultation with the Board, amend by Order, the provisions of the Schedule.

Applicability to Nevis.

25. This Act shall not apply to the island of Nevis.

SCHEDULE I

(s. 8)

DUTIES OF MEMBERS

General Duties.

1. The general duties of the members of the Board shall include—
 - (a) providing their skills, interests and talents to the Agency;
 - (b) committing to fulfilling the needs of the investors;
 - (c) ensuring the financial stability and integrity of the organisation by accessing funds through fund-raising activities, lobbying for government assistance or via other funding entities and by managing those funds responsibly;
 - (d) committing such time and energy to the agency as needed to effectively fulfill their duties as members;
 - (e) attending all Board meetings during which time the members shall be expected to be punctual, informed on agenda items, contribute in a concise, clear and carefully thought-out manner, and carefully consider the positions of their colleagues and assist in constructive decision making and strive to secure consensus.

Planning and Program Governance Duties.

2. The planning and program governance duties shall include—
 - (a) determining goals and objectives for the Agency;
 - (b) ensuring that a course of direction is set for the future of the Agency, whether dealing with the Agency's mission or one of its specific projects;

Policy Management Duties.

3. The policy management duties shall include—
 - (a) establishing and updating the constitution and bylaws for the Agency;
 - (b) defining roles and responsibilities of Board members, committees and staff;
 - (c) defining organisational structure and reporting relationships;
 - (d) establishing policies relating to finances, personnel, programs, reporting protocols and public relations; and
 - (e) preparing and updating the policy manual.

Financial Management Duties.

4. The financial management duties shall include—
 - (a) establishing and approving the budget and committing to securing the required revenues;
 - (b) receiving and approving regular financial statements showing, current and budget figures;

- (c) being responsible for sound financial management;
- (d) being knowledgeable about the organisation's financial affairs.

Personnel Management Duties.

5. The personnel management duties shall include—
- (a) the drafting of policies to clarify roles, responsibilities and functions to hold Board members and staff accountable;
 - (b) assisting in recruiting and electing a Chief Executive Officer upon the request of the Minister;
 - (c) supervising, and evaluating the performance of the Chief Executive Officer.

Public Relations Duties.

6. The public relations duties shall include—
- (a) developing a communications strategy to keep the stakeholders informed and supportive;
 - (b) ensuring that stakeholders who speak on behalf of the agency play a strong role in representing the agency.
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SCHEDULE II

(s. 6.(7))

MEETINGS OF THE BOARD.

1. (1) The Board shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of its business.

(2) The quorum at meetings of the Board shall be six.

(3) Each member of the Board shall be entitled to one vote except for the Chief Executive Officer who shall not have voting rights.

(4) The decisions of the Board shall be by a majority of votes, and in the event the votes are equal, the Chairman presiding at the meeting shall have an additional casting vote.

(5) The Minister may appoint a person to act temporarily in the place of any member of the Board who may be temporarily absent or unable to act.

(6) The Chairman may invite a Minister or his nominee to attend meetings of the Board for the purpose of consultation in respect of a proposed investment on which the advice of that Ministry is considered essential or which might have a significant impact on a sector of the economy, the responsibility for which falls under the Minister's portfolio.

(7) The Chairman shall invite the Chairman of the Agency or other body responsible for the promotion of investment in the island of Nevis or its nominee, to attend meetings of the Board for consultation in respect of any proposed investment that involves the island of Nevis.

(8) The Board may invite persons who are professionals to attend at a meeting of the Board where a particular area of expertise is required.

(9) The Board may regulate its own procedure in respect of meetings.

(10) Minutes of each meeting of the Board shall be recorded by the Secretary and shall be confirmed by the Board at its next meeting and signed by the Chairman.

(11) The Chairman may, at any time, call a special meeting of the Board within seven days of a requisition for that purpose addressed to him by any three members.

(12) The Board may, establish committees for the proper execution of the functions of the Agency.
