



ST. CHRISTOPHER AND NEVIS

CHAPTER 21.05

DEVELOPMENT BANK OF SAINT KITTS AND NEVIS ACT

Revised Edition

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DEVELOPMENT BANK OF SAINT KITTS AND NEVIS ACT

Act 1 of 1981 ... in force 22nd May 1981

Amended by: Act 2 of 1983

Act 12 of 1983

Act 10 of 1984

Act 8 of 1986

Act 9 of 1986

Page
3

CHAPTER 21.05
DEVELOPMENT BANK OF SAINT KITTS AND NEVIS ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ESTABLISHMENT, FUNCTIONS AND RESPONSIBILITIES OF THE BANK

3. Establishment of Development Bank
4. Duty of the Bank
5. General powers of the Bank

PART III

FINANCE

6. Capital
7. Borrowing powers and limitations on borrowing and lending
8. Guarantee of borrowings by the Minister
9. Repayment of and interest on advances and sums issued to meet guarantee
10. Securities
11. Examination as to application of money lent
12. Order of Bank upon an examination under section 11
13. Misapplication of loan secured by mortgage or otherwise
14. Reserve fund
15. Accounts and audit
16. Annual report
17. Appointment of manager

PART IV

GENERAL

18. Appointment of other staff
19. Power to delegate
20. Enforcement of securities
21. Charge on property and priority of loan
22. Appointment of receiver
23. Minutes receivable in evidence
24. Power of Minister to issue general directions
25. Power to make regulations
26. Offences
27. Burden of proof
28. Punishment of offences

PART V

TRANSITIONAL

29. Transfer of assets and liabilities
30. Special provision in respect of certain accounts transferred to Bank by section 29 of Principal Act

SCHEDULE

CHAPTER 21.05

DEVELOPMENT BANK OF SAINT KITTS AND NEVIS ACT

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A BANK TO BE KNOWN AS THE DEVELOPMENT BANK OF SAINT KITTS AND NEVIS IN ORDER TO PROVIDE FINANCIAL ASSISTANCE TO DEVELOPMENT ENTERPRISES IN THE STATE; AND TO MAKE PROVISION FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Development Bank of Saint Kitts and Nevis.

Interpretation.

2. For the purposes of this Act, the expression—

“Bank” means the Development Bank of Saint Kitts and Nevis established in accordance with this Act, and the word “Saint Kitts” may be written “St. Kitts” or “Saint Kitts”;

(Amended by Act 10 of 1984)

“Chairperson” means the Chairperson of the Bank;

“debenture” includes debenture stock;

“development enterprise” means any enterprise or class of enterprise which may from time to time be approved as a development enterprise by the Minister for the purposes of this Act;

“functions” includes powers and duties;

“Minister” means the Minister responsible for Finance.

PART II

ESTABLISHMENT, FUNCTIONS AND RESPONSIBILITIES OF THE BANK

Establishment of Development Bank.

3. (1) There shall be established for the purposes of this Act a body corporate called the Development Bank of Saint Kitts and Nevis which shall be a body corporate with perpetual succession and a common seal with power to purchase, take, hold and dispose of land and other property of whatever kind, to enter into contracts, to sue and be sued in the said name and to do all things necessary for the purposes of this Act.

(Amended by Act 2 of 1983)

- (2) The provisions contained in the Schedule shall have effect as to the constitution, operation and expenses of the Bank and otherwise in relation thereto.

(3) The seal of the Bank shall be authenticated in the manner prescribed in the Schedule and shall be judicially and officially noticed.

Duty of the Bank.

4. Subject to the provisions of this Act, it shall be the duty of the Bank—
- (a) to facilitate and encourage savings and investment;
 - (b) to establish and maintain development enterprises and to assist persons in establishing, carrying on or expanding development enterprises by granting loans and other forms of financial assistance to such persons;
 - (c) to assist persons in establishing, carrying on or expanding small manufacturing businesses and small retail businesses by granting loans and other forms of financial assistance to such persons;
 - (d) to assist persons in constructing, extending, altering, improving or repairing dwelling houses on lands owned or leased to them by granting loans to such persons;
(Inserted by Act 2 of 1983)
 - (e) to assist persons in pursuing courses in higher technical or vocational education approved by the Government by granting loans to such persons.
(Inserted by Act 2 of 1983)

General powers of the Bank.

5. Subject to this Act, the Bank shall have power to do anything or to enter into any transaction (whether or not involving expenditure, guaranteeing of loans or investing of money in accordance with the provisions of this Act in that regard, the acquisition of any property or rights or, subject to section 24, the disposal of any property or rights) which in its opinion is calculated to facilitate the proper discharge of its functions or is incidental or conducive thereto and in particular, but without limiting the generality of the foregoing, may—

- (a) provide financial assistance by way of loans, the purchase of debentures, the participation in any share issue or by guaranteeing loans from other investment sources to persons wishing to establish, extend or modernise any development enterprise;
- (b) borrow money, accept grants of financial assistance, make investments and generally procure funds for the purposes of its functions;
- (c) assist in the creation, expansion and modernisation of any development enterprise;
- (d) invest moneys standing to the credit of the Bank in such manner, as the Bank may from time to time think proper;
- (e) encourage and promote the use and participation of capital, both local and overseas, in any development enterprise;
- (f) act as agent for the sale and purchase of any stocks, shares or securities or for any other monetary or mercantile transaction;
- (g) negotiate or pay in advance coupons and interest on public loans or securities;
- (h) contract for public and private loans and negotiate and issue the same;

- (i) act as agents for any government or other authority and for public and private bodies and persons;
- (j) promote, effect, induce, guarantee, underwrite, participate in, manage and carry out any issue of government, municipal or other loans or of shares, stock or debentures of any company, corporation or association and lend money for the purposes of any such issue;
- (k) furnish financial advice and provide or assist in obtaining managerial, technical and administrative services for development enterprises in the State;
- (l) carry on all such activities as may appear to the Bank requisite, advantageous or convenient for or in connection with the discharge of its functions.

PART III

FINANCE

Capital.

6. (1) Subject to the provisions of this section, the authorised capital of the Bank shall be twenty million dollars divided into 20 thousand shares of the par value of one thousand dollars each.

(2) The Government of the State may subscribe for the said twenty thousand shares or such amount as the Minister may from time to time determine at par; but any person may, subject to regulations made pursuant to section 25 subscribe for and hold shares in the Bank.

(3) The Bank may, from time to time, with the approval of the National Assembly, vary the amount of the authorised capital of the Bank.

Borrowing powers and limitations on borrowing and lending.

7. (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 or underwriting agreements entered into by it, shall not at any time, without the written approval of the Minister, exceed seven times the amount of its paid-up share capital and free reserves.

(3) The aggregate of the liabilities of any one person to the Bank shall not at any time, without the written approval of the Minister, exceed five hundred thousand dollars.

(Substituted by Act 2 of 1983)

Guarantee of borrowings by the Minister.

8. (1) With the approval of the National Assembly, the Minister may on behalf of the Government of the State guarantee in such manner and on such conditions as the Minister may think fit, the payment of the principal and of interest on any authorised borrowings of the Bank.

(2) Where the Minister is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under the provisions of this section, the Minister shall direct the repayment out of the General revenue and assets of the State of the amount in respect of which there has been such default.

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

9. 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 the Government and any sums issued in fulfilment of any guarantee given under section 8, 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.

Securities.

10. (1) With the approval of the Minister, the Bank may issue debentures or bonds for the purpose of exercising its borrowing powers under section 7, but the aggregate amount of such debentures and bonds outstanding at any time shall not exceed such amount as the Minister may from time to time determine.

(2) Subject to the approval of the Minister, debentures or bonds issued under this section may be issued either at par or at premium or discount and either with or without any special or qualified rights as to participation in the profits or capital of the Bank or any department thereof or as to redemption or as to conversion into debentures or bonds of a different class or redeemable at a different date or dates or into shares in the capital of the Bank.

Examination as to application of money lent.

11. (1) Where the Bank has made or guaranteed a loan of money under this Act, it may, from time to time—

- (a) make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purposes for which it was made;
- (b) require the person to whom the loan was made to give either immediately or periodically such information to the Bank as the Bank may require and such person shall comply with the requirements of the Bank.

(2) The Bank may authorise in writing any of its officers or servants or any other person to make the examination contemplated by subsection (1), and the person who has received the loan shall produce to such officer, servant or person all books, documents and other matters and things necessary for the purposes of the examination.

(3) Any person in receipt of a loan who contravenes this section is guilty of an offence against this Act.

Order of Bank upon an examination under section 11.

12. Where upon any examination made under section 11 it appears to the Bank that any sum, being either the whole or any part of the loan made or guaranteed by the Bank, has not been applied to the purposes for which the loan was made, it may

order that such sum be, within the time mentioned in the order, applied to such purposes or, if the loan was made by the Bank that such sum, together with any interest due thereon on the date of the order, be repaid to the Bank within the time mentioned in the order, and any sum with the interest thereon so ordered to be repaid to the Bank shall thereupon become a debt due to the Bank.

Misapplication of loan secured by mortgage or otherwise.

13. (1) Where any loan made under this Act or any part of such loan has been misapplied, the Bank may—

- (a) where such loan has been secured by mortgage, by notice in writing addressed to the mortgagor, recall the said loan or any part thereof and may require the loan or that part thereof on the date of the notice to be repaid on a date to be specified in the notice, and in default of payment on such specified date any security given for the purpose of the loan may thereupon be realised;
- (b) where such loan has been secured otherwise than by way of mortgage, by notice addressed to the borrower, require the loan or any part thereof together with any interest due on such loan or part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the purpose of the loan may thereupon be realised.

(2) Subsection (1) shall be in addition to any other proceedings under any Act.

Reserve fund.

14. The Bank shall set aside in each year out of the net profits (if any) of the Bank a minimum of twenty five per cent 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.

15. (1) The Bank shall keep proper accounts and other records in relation to the business of the Bank and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with the best commercial standards.

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

(3) So soon as the accounts of the Bank have been audited, the Bank shall send the statement of their accounts referred to in subsection (1) to the Minister for transmission to the Cabinet together with a copy of any report made by the auditor on that statement or on the accounts of the Bank.

(4) The auditor's fees and any expenses of the audit shall be paid by the Bank.

(5) The Director of Audit shall be entitled at all reasonable times to examine the accounts and other records in relation to the business of the Bank and to make such report thereon to the National Assembly as, in his or her discretion, he or she considers should be made.

Annual report.

16. (1) The Bank shall, not later than two months after the end of each financial year, 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.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be laid on the table of the National Assembly.

(3) Copies of the Bank's report together with the annual statement of accounts and the auditor's 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.

Appointment of manager.

17. (1) The Minister may from time to time appoint, on such terms and conditions as the Minister may determine, a Manager of the Bank.

(2) The Manager shall be the chief executive of the Bank and shall be responsible to the Bank for—

- (a) the day to day administration of the affairs of the Bank; and
- (b) the provision of technical advice and guidance in matters of policy.

PART IV

GENERAL

Appointment of other staff.

18. The Bank shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit a Secretary and such other officers, agents and servants as it deems necessary for the proper carrying out of this Act.

(Amended by Act 2 of 1983)

Power to delegate.

19. Subject to this Act, the Bank may delegate to any director or employee of the Bank the power to carry out on behalf of the Bank such duties as the Bank may determine.

Enforcement of securities.

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

Charge on property and priority of loan.

21. (1) Where a loan is made by the Bank on the security of a mortgage of or other charge upon any property, whether with or without any other security, the property, from and after the date of such mortgage or other charge, shall be charged with the payment of such loan and interest as in the mortgage or other charge

mentioned, in priority, save so far as otherwise specified in the mortgage or other charge, to every other debt, mortgage or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been made in good faith before the loan made by the Bank and which has been secured by a duly registered mortgage of or other charge upon the property executed in favour of a person who is entitled as *bona fide* creditor to the repayment thereof with interest.

(2) The Bank shall forward to the Registrar the particulars of any property or other security (including the name of the mortgagor or charger) charged with the payment of any loan made by the Bank under this Act and the Registrar shall enter such particulars in a book to be kept in the Office of the Registrar of the High Court and called the Development Bank Loan Book.

Appointment of receiver.

22. (1) Notwithstanding that a loan granted by the Bank may not have been secured by a mortgage within the meaning of the Conveyancing and Law of Property Act, Cap. 10.04, the Bank may, if a borrower makes default in respect of a loan granted by the Bank appoint a receiver in respect of the business in connection with which the loan was granted, 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 (c) of subsection (1) of section 39 of the Conveyancing and Law of Property Act.

(2) A person appointed by the Bank to be a receiver pursuant either to the power conferred on a mortgagee by paragraph (c) of subsection (1) of section 39 of the Conveyancing and Law of Property 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 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.

Minutes receivable in evidence.

23. Minutes made of meetings of the Bank shall, if duly signed by the Chairperson or other person presiding at the meeting, be receivable in evidence in all legal proceedings without further proof, and every meeting of the Bank in respect of which minutes have been so signed shall be deemed to have been duly convened and held and all the directors present thereat to have been duly qualified to act.

Power of Minister to issue general directions.

24. (1) Subject to this section, the Minister may, after consultation with the Chairperson, give to the Bank such directions of a general character as to the policy to be followed by the Bank in the exercise and performance of their functions as appear to the Minister to be necessary in the interests of the State.

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

(3) Notwithstanding that the type of directions specified in this subsection may not be of a general character, the power of the Minister to give directions to the Bank shall include power to give directions as to—

- (a) the disposal of capital assets;
- (b) the application of the proceeds of such disposal; and
- (c) the exercise by the Bank of its borrowing powers.

Power to make regulations.

25. The Minister may make regulations—

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

Offences.

26. Any person who—

- (a) obtains financial assistance from the Bank under this Act by means of any false representation;
- (b) wilfully applies any loan made to him or her by the Bank or guaranteed by the Bank under this Act to any purpose other than the purpose for which the loan was made;
- (c) having obtained a loan from the Bank or the guarantee by the Bank of a loan under this Act, wilfully destroys any security given in relation to any such loan or guarantee,

commits an offence against this Act.

Burden of proof.

27. In any proceedings in respect of an offence under paragraph (b) of section 26, the onus of proving that he or she acted in good faith and without knowledge that he or she was not entitled so to apply the loan or any part thereof shall be upon the person charged.

(Amended by Act 2 of 1983)

Punishment of offences.

28. A person found guilty of an offence against this Act for which no special penalty is provided by this Act is liable, on summary conviction, to a fine of four thousand dollars or in default of payment thereof to imprisonment for twelve months, or to both such fine and such imprisonment.

(Amended by Act 9 of 1986)

PART V

TRANSITIONAL

Transfer of assets and liabilities.

29. (1) Upon the commencement of this Act—

- (a) all land and other property of every kind vested immediately before the commencement of this Act in the Development and Finance Corporation established under the Development and Finance Corporation Act, No. 8 of 1968; and
- (b) all rights, privileges and advantages and all liabilities and other obligations to which immediately before the commencement of this Act the Development and Finance Corporation is entitled or subject are hereby transferred and assigned to or conferred upon the Bank for the purposes of this Act.

(2) All loans made by the Development and Finance Corporation and still due and owing at the commencement of this Act shall be deemed to have been made by the Bank and all the rights, powers and privileges vested in or exercisable by the Development and Finance Corporation in connection with any such loans are hereby transferred and assigned to and shall be exercisable by the Bank.

(3) All rights, privileges and advantages and all liabilities and other obligations to which the Development and Finance Corporation is entitled or subject under the provisions of loans agreements between the Caribbean Development Bank or the Government are hereby transferred and assigned to or conferred upon the Bank.

***Special provision in respect of certain accounts transferred to Bank by section 29 of Principal Act.**

30. (1) The Bank shall keep its accounts in respect of loans to which this section applies separate from its accounts in respect of its other business.

(2) This section applies to any loan made by or to the Development and Finance Corporation established by the Development and Finance Corporation Act, No. 8 of 1968 and still due to or owing by the Development and Finance Corporation at the commencement of this Act where it is determined by agreement between the Government and the Caribbean Development Bank that the amounts due to or owing by the Bank in respect of such loans are not to be treated as part of the assets or liabilities of the Bank.

(3) The accounts kept by the Bank in respect of loans to which this section applies shall not form part of the accounts of the Bank for the purposes of audit under sub-section (2) of section 15 of this Act.

(4) Any principal or interest repaid to or recovered by the Bank in respect of any loan to which this section applies, shall be treated as part of the Government's equity contribution to the Bank.

(Inserted by Act 2 of 1983)

* Note: The Development and Finance Corporation Act, No. 8 of 1968 was repealed by Act 1 of 1981.

SCHEDULE*(Section 3(2))***Appointment of directors.**

1. There shall be a Board of Directors consisting of such number of persons, not being less than three nor more than seven, as the Minister may from time to time determine. The directors shall be appointed by the Minister by instrument in writing.

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 from the State or inability to act of such Director.

Chairperson and deputy chairperson.

3. (1) The Minister shall appoint one of the directors of the Bank to be the Chairperson thereof.

(2) The Minister shall appoint one of the directors of the Bank to be the Deputy Chairperson thereof.

Absence of Chairperson.

4. In the case of the absence or inability to act at any meeting of both the Chairperson and the deputy Chairperson, the remaining directors of the Bank shall elect one of their number to act as Chairperson at that meeting.

Tenure of office.

5. Subject to the right to resign his or her office, and to the right of the Minister to revoke his or her appointment at any time, a director of the Bank shall hold office for a period of three years and shall be eligible for re-appointment upon the expiration of his or her period of office.

Resignation.

6. (1) Any director of the Bank, other than the Chairperson, may at any time resign his or her office by instrument in writing addressed to the Minister and transmitted through the Chairperson and from the date of receipt by the Minister of such instrument, such director shall cease to be a director of the Bank.

(2) The Chairperson may at any time resign his or her 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.

Revocation of appointments.

7. The Minister may at any time by instrument in writing revoke the appointment of any director.

Leave of absence.

8. The Minister may grant to any director of the Bank leave of absence in respect of his duties as a director of the Bank.

Publication of appointments, etc.

9. The names of all the directors of the Bank as first constituted and every change in the composition of the Board of Directors, whether through appointments, resignations or revocations, shall be published in the *Gazette*.

Seal.

10. (1) The seal of the Bank shall be – authenticated by the signature of the Chairperson or one director of the Bank authorised to act in that behalf and the Secretary of the Bank.

(Amended by Act 2 of 1983)

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

Meetings of the Board of Directors.

11. (1) The directors 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 Bank shall determine.

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

(3) The Chairperson or, in the case of the absence or inability to act of the Chairperson, the deputy chairperson or the person elected to act as Chairperson in accordance with the provisions of paragraph 4 of this Schedule shall preside at the meetings of the Bank and when so presiding, the Chairperson, deputy chairperson or the person elected as aforesaid to act as Chairperson, as the case may be, shall have an original vote and in addition thereto and in the case of an equality of votes he or she shall have casting vote.

(4) The quorum for a meeting of the directors of the Bank shall be such number as the Minister may from time to time determine but in any case shall not be less than three directors including the Chairperson or the deputy chairperson or the person elected to act as Chairperson as aforesaid, and the decisions of directors shall be by a majority of votes.

(5) Minutes in proper form of each meeting of the directors of the Bank shall be kept and shall be confirmed as soon as practicable thereafter at a subsequent meeting.

(6) Subject to the provisions of this Schedule, the Bank may regulate its own proceedings.

Disclosure of interest by directors.

12. (1) It shall be the duty of every director of the Bank who is in any way, whether directly or indirectly, interested in an application to the Bank for a loan or in a contract or proposed contract with the Bank, to declare the nature of his or her interest at the first meeting of the directors at which it is practicable for him or her to do so.

(2) A director of the Bank shall not vote in respect of any application to the Bank for a loan or in respect of any contract or proposed contract with the Bank in which he or she is in any way interested, whether directly or indirectly.

Saving of validity of proceedings.

13. The validity of any proceedings of the Bank shall not be affected by any vacancy amongst the directors thereof, or by any defect in the appointment of a director thereof or by reason of the non-disclosure or the participation in any proceedings of a director who is directly or indirectly interested therein as aforesaid.

Remuneration of directors.

14. (1) There shall be paid to the Chairperson and other directors of the Bank such remuneration, whether by way of salaries or travelling or other allowances, as the Minister may from time to time determine.

(2) For the avoidance of doubt, it is hereby declared that notwithstanding anything to the contrary in any other law contained, a person shall not be deemed to be the holder of a public office for any of the purposes of subsection (5) of section 26 of the Constitution of Saint Christopher and Nevis or of the National Assembly Elections Act, Cap. 2.01 by reason only that such person is Chairperson, deputy chairperson or director of the Bank or receives any remuneration in respect thereof.

Protection of directors.

15. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any director of the Bank in respect of any act done *bonâ fide* in pursuance or intended execution of this Act.

(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 was a servant or agent of the Bank.

Service.

16. Any summons, notice or other document required or authorised to be served upon the Bank under this Act or any other Act may, unless in any case there is express provision to the contrary, be served by delivering the same to the Chairperson or Secretary of the Bank or by sending it by registered post addressed to the Secretary of the Bank at the principal office of the Bank.
