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**CHAPTER 35****EMERGENCY RELIEF GUARANTEE FUND****ARRANGEMENT OF SECTIONS**

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## CHAPTER 35

### EMERGENCY RELIEF GUARANTEE FUND

**An Act to establish an Emergency Relief Guarantee Fund to allow the Government to guarantee loans for the relief of persons who have suffered hardship and loss as a result of a disaster and for purposes connected thereto.** *44 of 1999*

*[Assent 8th November, 1999]  
[Commencement 11th November, 1999]*

1. This Act may be cited as the Emergency Relief Guarantee Fund Act, 1999. Short title.

2. In this Act — Interpretation.

“approved lender” means —

- (a) Bahamas Development Bank;
- (b) Bank of The Bahamas Ltd;
- (c) Barclays Bank PLC;
- (d) Barclays Finance Corporation (Bahamas) Ltd;
- (e) British American Bank (1993) Ltd;
- (f) CIBC Bahamas Ltd;
- (g) Citibank N.A.;
- (h) Commonwealth Bank Ltd;
- (i) Finance Corporation of Bahamas Ltd;
- (j) Royal Bank of Canada;
- (k) Scotiabank (Bahamas) Ltd;
- (l) Workers Bank Limited; or
- (m) any other financial institution, insurance company or credit union approved by the Minister;

“disaster” means any natural disaster or any other exigency declared by the Minister of Finance under the Tariff Act by Notice in the *Gazette*; Ch. 295.

“Fund” means the Emergency Relief Fund established under section 8;

“guaranteed loan” means a loan guaranteed by the Minister under section 4;

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“Minister” means the Minister responsible for disaster preparedness or such other Minister as may be appointed by the Prime Minister.

Minister to be a corporation sole.

**3.** (1) The Minister shall, as respects the functions assigned to him by or under this Act, be a corporation sole, with power to acquire, hold, lease, and dispose of property, to enter into contracts, to sue and be sued and to do all things necessary for the purposes of this Act and all property transferred to the Minister by this Act or any other Act or which otherwise becomes vested in him shall be held by him in trust for Her Majesty in right of Her Government of The Bahamas for the purposes of this Act.

(2) Upon and by virtue of the appointment of any person to be the Minister charged with the responsibility for the administration of this Act, the benefit and burden of all deeds, contracts, securities and things in action vested in his predecessor at the time of his predecessor ceasing to hold office shall be transferred to and vested in and enure to the person so appointed in the same manner as if he had been contracted with instead of his predecessor and as if his name had been inserted in all such deeds, contracts or securities instead of the name of his predecessor.

Powers of Minister to guarantee loans.

**4.** (1) The Minister may in such manner and on such terms and subject to such conditions as may be agreed between him and an approved lender —

- (a) guarantee the discharge by a borrower of his obligations under any agreement (in this Act referred to as a “guaranteed loan”) which may be entered into by the borrower with an approved lender in respect of any borrowing or under any deed, agreement, promissory note or other instrument issued pursuant to any such agreement; and
- (b) assume such other obligation as may be agreed between the Minister and an approved lender in relation to or pursuant to any such deed, agreement, promissory note or other instrument.

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(2) Section 17 of the Financial Administration and Audit Act shall not apply to any guarantee made by the Minister under subsection (1). Ch. 359.

(3) The Minister may by Order published in the *Gazette* specify a financial institution, an insurance company or a credit union as an approved lender for the purposes of this Act.

5. Every application made under this Act by an approved lender for a guaranteed loan shall be made to the Minister within nine months immediately following the disaster. Application for guaranteed loan.

6. (1) Subject to subsections (6) and (7) a loan may be guaranteed under this Act if all of the following conditions are satisfied that is to say — Conditions for the grant of a guaranteed loan.

- (a) the applicant is unable to meet the eligibility requirements for obtaining a loan but the approved lender is of the opinion that such applicant is capable of making the payments of the loan;
- (b) the loan is made to a person who is not less than eighteen years of age;
- (c) the purpose of such loan is to repair or replace occupied residential property, furnishings and appliances damaged or destroyed by any disaster or to replace or repair businesses damaged by any disaster including rental accommodations, fishing boats, engines, farm buildings, farm equipment, citrus or fruit trees, vegetable crop, livestock, restaurants, processing plants and other commercial enterprises;
- (d) the loan does not in the case of a residential property exceed fifty thousand dollars or in the case of a business does not exceed seventy-five thousand dollars;
- (e) the loan is made on terms that all money borrowed under the loan shall in the case of residential property be repaid within a period of twenty years from the date of the loan or in the case of a business be repaid within a period of ten years from the date of the loan; and

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(f) the applicant has provided to the approved lender satisfactory estimates for completion of any works in respect of paragraph (c); such estimates to be approved by the Administrator of the district in which the work will be carried out and in the case of works in New Providence, by the Director of Public Works.

(2) Where the purpose of a loan is for the repair or replacement of residential property, the owner shall satisfy the approved lender that the owner occupied such property immediately prior to the disaster and that such owner intends to occupy that property as soon as it has been repaired or replaced.

(3) Where the purpose of a loan is for the repair or replacement of any business, the owner of such business shall satisfy the approved lender that he operated such business immediately prior to the disaster and that he intends to operate such business as soon as it has been repaired or replaced.

(4) The Minister may require that there is a valid policy of insurance on the life of the borrower with an insurance company registered under the Insurance Act for such an amount as is sufficient to cover the full amount of the loan or require the borrower to take out a mortgage redemption policy with an insurance company registered under the Insurance Act and to maintain the policy by regular payment of premiums and assign the benefits of the policy to the approved lender and deposits it with the approved lender.

Ch. 346.

Ch. 346.

(5) Where a borrower does not qualify for a policy of insurance, the Minister may waive the requirement referred to in subsection (4).

(6) The Minister may require that every premises which is a security for a loan guaranteed under this Act shall be insured and kept insured by the approved borrower against all risks as may be prescribed by the Minister for the purposes of this Act.

(7) Notwithstanding subsection (1)(a), where an applicant is able to meet the eligibility requirements for obtaining a loan and satisfies all the other conditions of this section he may be granted a guaranteed loan under this Act.

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(8) The approved lender may with the approval of the Minister grant a guaranteed loan to an applicant with a first legal mortgage.

7. The rate of interest chargeable by an approved lender and payable by a borrower on any guaranteed loan under this Act shall —

Special interest rate.

- (a) in the case of residential property be at a rate not exceeding the prime rate; and
- (b) in the case of any other property be at a rate not exceeding the prime rate plus one per centum.

8. (1) For the purposes of this Act the Minister shall establish a fund to be known as the Emergency Relief Fund into which the Minister shall cause to be paid the sum of one million dollars and all payments required to be made by the Government pursuant to this Act shall be paid out of the Fund.

Emergency Relief Fund.

(2) The Fund shall consist of —

- (a) two per cent of every loan guaranteed under this Act; and
- (b) such money as may be provided from time to time out of the Consolidated Fund of The Bahamas.

(3) Whenever any sum is paid out of the Consolidated Fund under subsection (2), the Minister shall prepare a statement and lay it before the House of Assembly.

(4) Without prejudice to the provisions of subsection (2), where the Fund at the end of any financial year exceeds ten percent of the total amount of guaranteed loans in force, the Minister shall apply the surplus towards repaying to the Consolidated Fund all sums paid therefrom into the Emergency Relief Fund in accordance with subsection (3).

(5) The Minister may from time to time invest any of the liquid assets of the Fund in commercial bank deposits and securities which are obligations of the Government, as well as securities approved by the Governor-General.

(6) No payments shall be made out of the Fund except such payments as are authorized to be made by this Act.

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Authorised limits on guaranteed loans for residential property and businesses.

**9.** (1) The aggregate amount of all borrowings in respect of all residential property guaranteed by the Government under this Act shall not exceed twenty million dollars or such greater sum as may from time to time be specified by resolution of the House of Assembly.

(2) The aggregate amount of all borrowings in respect of business ventures that are guaranteed by the Government under this Act shall not exceed ten million dollars or such greater sum as may from time to time be specified by resolution of the House of Assembly.

Accounts and audit.

**10.** (1) The Minister shall keep proper accounts and other records in relation to this Act and shall prepare annually a statement of accounts in a form satisfactory to the Minister of Finance which shall conform with established accounting principles.

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

(3) Nothing in this Act shall prevent the Auditor-General from carrying out any functions of auditing or reporting on the accounts of the Minister at the request of the Minister and for that purpose the Auditor-General shall be entitled to have access to all books, records, returns and reports relating to such accounts.

Annual report.

**11.** (1) The Minister shall, not later than four months after the expiration of each year and in any event not later than the thirtieth day of March next or such other later date as may be approved by the Minister, submit to the Minister of Finance a report containing —

- (a) an account of his transactions throughout the preceding financial year in such detail as the Minister of Finance may direct; and
- (b) a statement of the accounts of the Minister audited in accordance with section 10(2).

(2) The Minister shall cause a copy of the report together with a copy of the auditor's report to be laid before both Houses of Parliament and such reports shall be published in one newspaper published and circulating in The Bahamas.



**12.** If any sum is paid out of the Fund in section 8 in respect of any liability incurred by the Minister under a guarantee or other undertaking given in exercise of the powers conferred by section 4, the borrower shall repay such sum (together with interest thereon at such rate as the Minister may prescribe) to the Fund, in such manner and at such time as the Minister may direct.

Borrower to repay to Government sums paid from the Fund.

**13.** An approved lender shall submit quarterly reports to the Minister commencing at the end of the calendar quarter which first occurs following the disbursement of any guaranteed loan, in such form as may be prescribed and otherwise required under this Act, listing all guaranteed loans administered by it and which are in arrears at the end of that quarter and advising the Minister of the steps taken to recover such arrears.

Quarterly reports by approved lender.

**14.** (1) An approved lender, who is the creditor in respect of a guaranteed loan shall notify the Minister where default has occurred in respect of the loan.

Settlement of guaranteed loan.

(2) The approved lender shall make all reasonable efforts to recover the loan and if such efforts have failed the Minister shall within a period not exceeding two months following the receipt in writing of the claim under the guarantee pay to the approved lender all sums owing in respect of the guaranteed loan and the approved lender shall transfer to the Minister or his nominee, all rights to and in respect of the guaranteed loan.

(3) The payment by the Minister to an approved lender in respect of a guaranteed loan shall discharge the Government from all liability to the approved lender in respect of the guaranteed loan.

(4) In this section “default” means where payments due under the loan have been outstanding for a period of three months or more or where a business ceases to operate.

**15.** If any person, in giving any information, making any application or claim for the purposes of this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, that person shall be liable on summary conviction to a fine not exceeding three thousand dollars.

Offences in respect of guarantee.

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Regulations.

**16.** The Minister may make regulations for the purpose of giving effect to this Act, and in particular for prescribing anything by this Act required to be prescribed.

Exemption from  
customs duty.

Ch. 295,  
*Act 14 of 1997.*

**17.** Notwithstanding anything to the contrary in the Tariff Act and the Family Islands Development Encouragement Act (now lapsed), the Minister of Finance may by Order in the case of a disaster declare that such building materials as may be specified in that Order and imported into those islands referred to in that Order for use in construction in those islands shall be exempt from customs duty and such exemption shall be for a period not exceeding twelve months from the date of the Order.

Exemption from  
stamp duty.

Ch. 370.

**18.** Instruments or transactions relating to any loan guaranteed under this Act shall be exempt from the payment of stamp duty under the Stamp Act.

Registration of  
documents.

**19.** (1) All agreements, promissory notes or other instruments including equitable mortgages used for the purpose of this Act shall be endorsed by the approved lender with the words “Emergency Relief Guaranteed Loan” and shall be recorded in the Registry of Records.

Ch. 187.

(2) No fees required under the Registration of Records Act shall be chargeable in respect of the recording or the issue of any agreement, promissory note or other instrument including an equitable mortgage used in connection with or relating to any loan guaranteed under this Act.

Preparation of  
deeds, etc.

Ch. 64.

**20.** Notwithstanding section 22 of the Legal Profession Act, 1992 it shall be lawful for an officer of an approved lender to draw up or prepare any agreement, promissory note or other instrument including an equitable mortgage for the purpose of this Act.

Exemption from  
legal fees.

**21.** (1) An approved lender shall not be required to retain the services of an attorney-at-law in respect of any documents used in connection with or relating to any loan guaranteed under this Act.

(2) A borrower under this Act shall not be required to pay any legal fees for the preparation of any documents used in connection with or relating to any loan guaranteed under this Act.

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**22.** (1) An applicant shall before a loan is granted for the purpose of this Act provide to the approved lender a statement, from the Administrator of the district on which the property or business is situated, confirming that the damage relating to any residential property or business was caused by a disaster declared by the Minister under this Act and that such property was occupied by the applicant or that such business was operated by the applicant immediately prior to the time of the disaster and this statement shall be sufficient for the purpose of subsections (2) and (3) of section 6.

Statement of  
Administrator.

(2) In the event of a disaster in the island of New Providence the statement referred to in subsection (1) shall be prepared by the Director of Public Works.

**23.** (1) Notwithstanding any other law to the contrary an applicant in the islands specified by an Order under subsection (3) for a guaranteed loan under this Act who does not possess documentary title in respect of the property upon which his premises is situated may be granted a guaranteed loan.

No documentary  
title to property.

(2) The applicant under subsection (1) shall be required to sign a promissory note containing the terms and conditions of the loan.

(3) The Minister may by Order designate the islands to which subsection (1) shall apply.

(4) The approved lender shall in the case of those islands specified in the Order referred to in subsection (3) require an affidavit of the applicant sworn before the Administrator of the district on which the property is situated attesting to how the applicant came into possession of the property and the period of time the residence of the applicant was constructed thereon.