
CHAPTER 254**THE BAHAMAS MORTGAGE CORPORATION**

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CHAPTER 254

THE BAHAMAS MORTGAGE CORPORATION

An Act providing for the establishment with a share capital of a body corporate to be known as The Bahamas Mortgage Corporation, for the functions of the Corporation and for matters ancillary thereto.

*1 cf 1983
29 cf 1992
44 cf 1992*

*[Assent 19th August, 1983]
[Commencement 31st October, 1983]*

1. This Act may be cited as The Bahamas Mortgage Corporation Act. Short title.
2. In this Act — Interpretation.
- “the Corporation” means The Bahamas Mortgage Corporation established pursuant to section 3;
- “financial year” means —
- (a) that period commencing with the establishment of the Corporation and ending on 30th June, 1984; and
 - (b) thereafter every period of twelve months beginning 1st July of each year;
- “Minister” means the Minister responsible for housing.
3. (1) There is established a corporation to be known as The Bahamas Mortgage Corporation. Establishment of the Corporation.
- (2) The provisions of the Schedule shall have effect with respect to the constitution and operation of the Corporation and otherwise in relation thereto. Schedule.
4. (1) Subject to the provisions of this section, the authorised share capital of the Corporation shall be five million dollars divided into fifty thousand shares valued at one hundred dollars each. Capital of the Corporation.
- (2) On the coming into operation of this Act, the Government of The Bahamas may subscribe to one million dollars of the authorised share capital and thereafter to such other amount as application therefor is made by the Government.

(3) The Corporation may with the approval of the House of Assembly increase the amount of the authorised share capital.

(4) The Corporation may with the approval of the Minister declare and pay out of profits dividends.

(5) Any moneys required by the Government for the discharge of its duties under this section shall be charged upon and paid out of the Consolidated Fund.

Function of the Corporation.

5. (1) It is the function of the Corporation —

- (a) to stimulate, encourage and promote the ownership of homes by individuals for their own occupancy by making available to them the necessary financial funding on such terms and conditions as the Corporation determines;
- (b) to encourage through the application of its financial resources the construction industry in the provision of new or improved accommodation for housing;
- (c) in co-operation with any other person to implement proposals by providing financial funding for the construction of housing units and projects;
- (d) to make loans to persons for enabling them in purchasing, building or rehabilitating, as the case may be, their respective residential premises;
- (e) to make loans to persons engaged in the construction of housing units or projects;
- (f) to mobilise funds for the purposes of granting mortgages.

(2) Subject to the provisions of this Act, the Corporation may, for the purpose of attaining or carrying out any of its functions, do any thing and enter into any transaction which, in the opinion of the Corporation, is necessary for the respective purpose.

Corporation's responsibility to the Minister.

6. (1) The Minister may give to the Corporation directions of a general or of a specific nature as to the policy to be followed by the Corporation in the carrying out or pursuit of its functions as appear to the Minister to be requisite in the public interest and the Corporation shall give effect to any such directions.

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

7. (1) Subject to the provisions of this Act, the Corporation may borrow sums required by it for meeting any of its obligations incurred in, or for, the carrying out of its functions and in that behalf but without prejudice to any other manner or form of issuing securities, the Corporation may issue bonds or debentures in such form as the Corporation, with the approval of the Minister, determines. Borrowing powers

(2) The power of the Corporation under subsection (1) to borrow shall be exercisable only with the approval of the Minister given with the consent of the Minister of Finance as to the amount, the sources of the borrowing and as to the terms on which the borrowing may be effected save where the borrowing is of an amount not in excess of one million dollars the consent of the Minister of Finance shall not be required under this subsection unless at the respective date the aggregate liability of the Corporation ensuing from borrowing without such consent is or would be in excess of that amount.

(3) An approval given in any respect for the purposes of subsection (2) may be either general or limited to a particular borrowing or otherwise.

8. (1) Subject to subsection (2), the Minister of Finance may, on behalf of the Government, at the request of the Minister guarantee in such manner and on such conditions as he thinks fit the repayment of the principal of, and the payment of interest and other charges on, any authorised borrowings of the Corporation. Guarantee of loan to the Corporation

(2) No guarantee shall be given for the purposes of this section unless prior approval thereof has been signified by the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act. Ch 359

(3) Where the Minister of Finance is satisfied that there has been default in the repayment of any moneys guaranteed under this section, he shall direct the payment out of the Consolidated Fund of the amount in respect of

which there has been such default and such payment shall be a charge on the consolidated Fund.

(4) Where any sum is issued from the Consolidated Fund for fulfilling a guarantee given under this section, the Minister of Finance shall, as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability under the guarantee is finally discharged, lay before each House of Parliament a statement relating to that sum.

Repayment by
the Corporation
of sums issued to
meet guarantees

9. (1) The Corporation shall make to the Minister of Finance at such times and in such manner as the Minister may, with the approval of the Minister of Finance, direct, payment of such amounts as may be so directed in or towards the repayment of 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 any sums so issued at such rate as may be so directed; and different rates of interest may be directed as respects different sums and as respects interests for different periods.

(2) The Minister shall lay before each House of Parliament a statement of any payment due from the Corporation under subsection (1) which is not duly paid as required thereunder.

Securities issued
by the
Corporation

10. In respect to the issue of any bonds or debentures pursuant to the authority conferred upon it by section 7, the Corporation —

- (a) shall establish a sinking fund for the redemption of any security so issued;
- (b) may postpone sinking fund contributions for such periods and subject to such conditions as may be approved by the Minister; and
- (c) may enter into arrangements with any person as regards the issuing and marketability of such bonds or debentures and the keeping of any records, or the carrying out of any of the services in relation thereto.

Funds and
resources of the
Corporation

11. The funds and resources of the Corporation shall consist of —

- (a) any moneys as from time to time are provided by Parliament;

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- (b) any moneys as from time to time accrue to the Corporation from the carrying out of its functions;
 - (c) any moneys as from time to time are borrowed or raised by or accruing to the Corporation pursuant to sections 4 and 7;
 - (d) any property, mortgages, debentures or investments acquired or vested in the Corporation; and
 - (e) any other moneys and property as from time to time may become payable to or vested in the Corporation in respect of any matter incidental to the carrying out of its functions.

12. (1) Subject to subsection (2), any moneys standing to the credit of the Corporation and not required for any current purpose or for the sinking fund's requirements (in this section referred to as "surplus funds") may from time to time either be carried to any reserve fund established under section 13 or be invested by the Corporation in securities approved by the Minister; and the Corporation may from time to time, with approval of the Minister, sell any or all of such securities. Surplus funds

(2) No surplus funds are to be carried to the reserve fund or invested in securities under subsection (1) without prior consultation with the Minister of Finance.

13. (1) The Corporation shall establish a reserve fund. Reserve fund

(2) Subject to section 12(2), the Corporation may determine the management of the reserve fund, the sum to be carried from time to time to the credit of the fund and the application of the reserve fund.

(3) No part of the reserve fund shall be applied otherwise than for the purposes of the Corporation.

(4) The power of the Minister to give directions to the Corporation pursuant to section 6 shall extend to the giving of directions to the Corporation as to any matter relating to the establishment or management of the reserve fund or the application of the reserve fund.

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

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

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

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

Annual report

15. (1) The Corporation shall, as soon as possible after the expiration of each financial year and in any event not later than the thirtieth day of October next or such other later date as may be approved by the Minister, submit to the Minister a report containing —

- (a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct; and
- (b) a statement of the account of the Corporation audited in accordance with section 14(3).

(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.

Conditions of
Loans granted by
the Corporation

16. (1) Loans made to persons by the Corporation in the carrying out of its functions may be made upon such terms and at such rates as the Corporation determines and varying terms and rates may be imposed by the Corporation having regard to the financial considerations of the particular loan and the public interest.

(2) The repayment of loans by the Corporation shall be secured by way of the execution in favour of the Corporation of a mortgage, charge or other legal instrument as the Corporation determines, and which shall be prepared by the Corporation at the expense of the borrower.

17. At any time after the approval of a loan and before the actual payment of the money the Corporation may where it is of the opinion that such approval was obtained by reason of a misrepresentation on the part of the borrower or that the circumstances under which that approval was given have materially altered, and without assigning any reason therefor, thereafter withhold payment of the whole or a portion of the money without incurring any liability for so doing.

Cancellation or modification of approval of loan

18. In any case where the Corporation has approved the granting of a loan by instalments and there remain instalments to be advanced, if —

Power of the Corporation to direct that any outstanding part of an approved loan be not paid

- (a) any sum of money whether principal or interest due in respect of any prior loan granted by the Corporation to the person to whom the advance should be made remains unpaid;
- (b) in the opinion of the Corporation any prior loan made by the Corporation has not been applied for the purpose for which it was made or has not been carefully or economically expended;
- (c) the borrower has become insolvent;
- (d) there has been a breach or non-observance of any conditions attached to the loan; or
- (e) in the opinion of the Corporation the sums already advanced were not applied to the purposes for which the loan was made within a reasonable time,

the Corporation, without prejudice to any other remedy, may refuse to advance any portion of the loan remaining outstanding.

19. The Corporation may —

- (a) postpone the payment of any sum due to it as principal or interest in respect of a loan granted by the Corporation upon such terms and conditions for the carrying out of the purposes for which such loan was made and for the ultimate repayment of such principal or payment of such interest as it may deem necessary;
- (b) from time to time extend the period for the repayment of any loan or compound any part thereof subject to such terms and conditions as it may deem fit;

Suspension of payment of principal and interest

- (c) write off any loan or any part thereof with the approval of the Minister upon the Minister being satisfied that all measures have been exhausted whereby the recovery thereof could be achieved.

Corporation to deal with acquired mortgaged property.

20. Where any property mortgaged as security for a loan under the provisions of the Act is sold for the purpose of the enforcement of the security, the Corporation may buy such property and may either manage and hold such property or carry on any business with or in relation to such property or lease, sell or otherwise dispose of it as may appear to the Corporation conducive to the carrying out of its functions.

Power to appoint a receiver etc.

Ch. 138.

21. (1) Notwithstanding that a loan granted by the Corporation may not have been secured by a mortgage within the meaning of the Conveyancing and Law of Property Act, the Corporation may if a borrower defaults in respect of a loan granted by the Corporation, appoint a receiver in respect of any enterprise 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 section 21(1)(c) of that Act.

Ch. 138.

(2) A person appointed by the Corporation to be a receiver pursuant either to the power conferred on a mortgagee by section 21(1)(c) of the Conveyancing and Law of Property Act or to the power conferred on the Corporation by subsection (1) shall, if the Corporation so appoints, be also the manager of the enterprise 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 Supreme Court to be the receiver and manager of that enterprise.

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

Examination as to application of loan.

22. (1) Where the Corporation has granted a loan, it may —

- (a) from time to time 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 financial statements to be submitted in such detail and at such times as the Corporation may determine by the person in receipt of the loan and such person shall comply with the requirement.

(2) The Corporation may authorise in writing any of its officers or any other person to make such examination and the person in receipt of the loan shall, if required by the person so authorised, produce to him all the relevant documents and other matters as are necessary for the examination.

(3) Any person who wilfully fails to comply with any requirement made pursuant to subsection (2) shall be guilty of an offence and liable on summary conviction to a fine of three hundred dollars and in addition thereto a penalty of one hundred dollars for each day on which such non-compliance continues subsequent to the conviction.

(4) Any proceedings in respect of an offence under this Act may be instituted at the instance of the Corporation and in addition to any other power conferred by any other law such proceedings may be conducted by any officer of the Corporation authorised by it for the purpose but no such proceedings shall be instituted without the consent of the Attorney-General.

23. (1) Where upon any examination made pursuant to section 22 it appears to the Corporation that any sum being the whole or any part of the loan has not been applied for the purposes for which the loan was granted, the Corporation may, without prejudice to any other remedy available to it, whether under the terms of the security issued in respect of the loan or not, direct that any such sum be, within the time specified in the directions, applied to such purposes or that the sum together with any interest due thereon on the date of the directions be repaid to the Corporation within the time so specified and any sum directed to be repaid shall thereupon become a debt due to the Corporation.

Direction for
repayment
following upon
examination

(2) In default of repayment of any sum pursuant to directions given under subsection (1) and without prejudice to any other rights conferred upon the Corporation by the terms of any instrument given as security for the respective loan or by any other law, the Corporation may proceed to realise that security.

Regulations

24. The Minister may make such regulations as he deems necessary for carrying out the provisions of this Act and, without limiting the generality of the foregoing, may make regulations providing for —

- (a) the form and issue of bonds and debentures by the Corporation;
- (b) the terms and conditions to which such bonds and debentures are subject;
- (c) the acquisition and holding of shares in the Corporation by persons including, but without prejudice to the generality of the foregoing, such matters as the keeping of registers of shareholders, the issuing of shares and the payment therefor by instalments, the procedure for calls, forfeiture and surrender of shares in the event of default of payment, the transfer of shares, the capitalisation of surpluses, the declaration and payment of dividends, the holding of meetings and voting rights;
- (d) the information to be furnished by applicants for loans by the Corporation and the procedure to be followed for securing such loans;
- (e) the terms and conditions subject to which loans are made by the Corporation.

Secrecy

25. (1) Except in so far as may be necessary for the due performance of his functions as a member, officer or employee of the Corporation or when lawfully required to do so by any court or under the provisions of any other law, such member, officer or employee shall preserve and aid in preserving secrecy with regard to all matters that may come to his knowledge in the course of the carrying out of his functions and which are related to the affairs of the Corporation or any customer or client of the Corporation or of any person who has any dealings with the Corporation.

(2) Any member, officer or employee of the Corporation who —

- (a) communicates in breach of subsection (1) any matter referred to in that subsection; or
- (b) suffers or permits any unauthorised person to have access to any records or documents relating to any customer or client thereof or other person

having dealings with the Corporation whereby such preservation of secrecy as provided for by subsection (1) is, or is likely to be, breached, shall be guilty of an offence and liable on summary conviction to a fine of two thousand dollars or to imprisonment for one year.

26. The Corporation shall be exempt from the imposition of any duties in respect of the issuing by it of shares, bonds or debentures. Exemption

SCHEDULE (Section 3(2))

PROVISIONS RELATING TO THE INCORPORATION AND OTHER RELATED MATTERS OF THE BAHAMAS MORTGAGE CORPORATION

A Body Corporate

1. (1) The Corporation is a body corporate having perpetual succession and a common seal, with power to purchase, lease or otherwise acquire and deal with and hold and dispose of land, investments, securities and other property of whatsoever kind. Incorporation

(2) The Corporation may sue and be sued in its corporate name and may for all purposes be described by such name, and without prejudice to Rules of Court made under the Supreme Court Act, service upon the Corporation of any document of whatsoever kind shall be made by delivering the document to or sending it by prepaid registered post addressed to the secretary of the Corporation at the head office of the Corporation.

2. (1) The seal of the Corporation shall be kept in the custody of any officer of the Corporation as the Corporation may approve, and may be affixed to instruments pursuant to a resolution of the Corporation and in the presence of the chairman or the deputy chairman and one other member. Seal, etc of the Corporation

(2) The seal of the Corporation shall be authenticated by the signature of the chairman or deputy chairman and another member, and the seal shall be officially and judicially noticed.

(3) All documents, other than those required by law to be under seal, made by, and all decisions of, the Corporation may be signified under the hand of the chairman or deputy chairman.

3. Subject to section 26, it is hereby declared that nothing in this Act exempts the Corporation from liability for any tax, duty, rate, levy or other charge whatsoever. Taxation

Chairman and Members

Membership.
29 *cf* 1992, s 2
and Sch

4. The Corporation consists of—

- (a) a Chairman appointed by the Governor-General and who shall hold office for such period as may be specified in the instrument of appointment unless the appointment is sooner revoked by the Governor-General;
- (b) a deputy chairman and such number of members being not less than three or more than seven as the Minister may from time to time determine.

Qualifications.

5. The deputy chairman and the other members (all hereinafter referred to as appointed members) shall be appointed by the Minister from amongst persons appearing to him to be qualified as having had experience in or having shown capacity in matters relating to housing, commerce, finance and industry.

Term of office.

6. An appointed member, subject to the provisions of paragraphs 8 and 9, shall hold office for such period, not exceeding three years, as the Minister may direct in the instrument appointing such member, but such member shall be eligible for reappointment.

Temporary members.

7. The Minister may by instrument in writing appoint some suitable person as a member of the Corporation to act temporarily in the place of any appointed member in the case of the absence or inability of that member to act.

Resignation.
29 *cf* 1992, s 2
and Sch

8. Any appointed member may at any time resign his office by instrument in writing addressed to the chairman who if he desires to resign may do so in writing to the Governor-General.

Removal.

9. The Minister by instrument in writing may at any time revoke the appointment of any appointed member if he thinks it expedient so to do.

Publication.

10. The appointment, removal, death or resignation of any appointed member shall be notified in the *Gazette*.

Remuneration.
29 *cf* 1992, s 2
and Sch

11. There shall be paid from the funds of the Corporation to the members of the Corporation such remuneration, if any, whether by way of honorarium, salary or fees, and such allowances, if any, as the Minister may determine.

Proceedings

Meetings.

12. (1) The Corporation 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 chairman may determine.

(2) The chairman, or in his absence the deputy chairman, shall preside at all meetings of the Corporation.

(3) The chairman, or in his absence the deputy chairman, and three other members of the Corporation shall form a quorum.

(4) The decisions of the Corporation are by a majority of votes and in addition to an original vote, in any case in which the voting is equal the chairman or the deputy chairman presiding at the meeting has a casting vote.

(5) Minutes in proper form of each meeting are to be kept by, the secretary or any officer the Corporation may appoint for the purpose, and confirmed by the Corporation at the next meeting and signed by the chairman or the deputy chairman as the case may be.

(6) The Corporation may invite any one or more persons to attend any particular meeting, of the Corporation for the purpose of assisting or advising the Corporation in any matter with which the Corporation is dealing, but that person has no right to vote.

(7) The validity of any proceedings of the Corporation shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(8) The managing director shall be entitled to attend any meeting of the Corporation, to take part in discussion of any matter other than such as may concern him personally, but shall not be entitled to vote.

44 *cf* 1992, s 2

13. Subject to the provisions of this Schedule, the Corporation has the power to regulate its own proceedings.

Regulation of proceedings.

Stc,f

14. The Corporation may appoint and employ on such terms and conditions as it thinks fit a managing director, secretary, other officers, servants or agents or otherwise engage the services of any person as it considers necessary for the proper carrying out of its functions.

Appointment of officers and servants.

15. (1) Except as provided in any contract of employment with the Corporation and subject to subparagraph (2) the Corporation may establish and implement a contributory or non-contributory superannuation scheme providing for the payment of pensions, gratuities or other like allowances to employees of the Corporation.

Pensions, etc

(2) The Corporation shall be an approved authority for the purposes of the Pensions Act and the Corporation may with the approval of the Minister grant to any employee to whom section 22 of that Act applies or his personal representative, as the case may be, in respect of that person's service with the Corporation a pension, gratuity or other like allowances as that for which he would have been eligible if his service with the Corporation had been other than for this section such public service.

Ch 43

(3) For the purposes of subparagraph (2) reference to the service of an employee of the Corporation includes any continuous period of service of that employee with the Government in a civil

capacity or with another approved authority immediately prior to his service with the Corporation but nothing in subparagraph (2) or this subparagraph shall be construed as rendering any period of that service eligible for more than one award of pension, gratuity or other like allowance.

(4) The funds of the Corporation shall be applied in the discharge of any expenditure incurred by the Corporation under this section.

Administration

Delegation to
members

16. Notwithstanding anything to the contrary in paragraph 2 of this Schedule, the Corporation may delegate to any two members of the Corporation the authority to execute any documents accepted by the Corporation as security for loans given by the Corporation and the seal of the Corporation required to be affixed to such documents may be affixed and authenticated as the case may be by those two members.

Protection of
members of the
Corporation

17. (1) Subject to subparagraph (2), no action, prosecution or other proceedings shall be brought or instituted personally against a member of the Corporation in respect of any act done *bona fide* in pursuance or execution or intended execution of his duties.

(2) Where a member is exempt from liability by reason only of subparagraph (1) the Corporation is liable to the extent that it would be if the member were a servant or agent of the Corporation, so, however, that if in any case the Corporation is not liable for any of the above-mentioned acts, then subparagraph (1) does not operate to exempt such member as therein stated.

(3) Nothing in subparagraph (1) shall affect any legal liability of the member of the Corporation or prejudice any remedies available to the Corporation in respect thereto against the member.

Securing
members
impartiality

18. (1) The Corporation shall not make an investment in or otherwise transact business with an enterprise in which a member of the Corporation is a partner, director or shareholder or is in any other way directly or indirectly interested unless the transaction is unanimously approved by the other members of the Corporation.

(2) A member of the Corporation who is directly or indirectly interested in a transaction proposed to be entered into by the Corporation —

- (a) shall disclose to the Corporation the nature of his interest; and
- (b) shall not take part in any deliberation or decision of the Corporation with respect to that transaction.

19. The Corporation may establish such number of offices throughout The Bahamas as it considers necessary for the purpose of the carrying out of its functions.