

THE LOANS (CARIBBEAN DEVELOPMENT
BANK) ACT

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THE LOANS (CARIBBEAN DEVELOPMENT
BANK) ACT

Act
31 of 1973.

[17th July, 1973.]

1. This Act may be cited as the Loans (Caribbean Development Bank) Act. Short title.

2. In this Act—

Interpre-
tation.

“Bank” means the Caribbean Development Bank;

“company” means a company incorporated in Jamaica and carrying on business therein;

“Minister” means the Minister responsible for finance;

“statutory authority” means any body established directly by statute and exercising powers vested in such body by law for a public purpose.

3.—(1) Subject to the provisions of this Act, the Government may, in such manner and on such terms and subject to such conditions as may be agreed between the Government and the Bank, borrow from the Bank from time to time such sums as may be required by the Government. Power of
the
Government
to borrow
from the
Caribbean
Develop-
ment Bank.

(2) Any sums borrowed by the Government under the powers conferred by subsection (1) for the requirements of the Government shall be applied and are hereby appropriated to the purposes for which they were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied to such other purposes as may be approved by the Minister and the Bank.

(3) Any agreement between the Government and the Bank in respect of sums borrowed under the powers conferred by subsection (1) shall be made in the name of Jamaica and may be signed on behalf of Jamaica by the Minister or by any person authorized thereto in writing by the Minister.

(4) As soon as possible after the conclusion thereof a copy of any agreement concluded with the Bank in respect of any sum borrowed under the powers conferred by subsection (1) shall be laid by the Minister before the House of Representatives.

(5) Nothing in the provisions of this section shall affect or derogate from any other power to borrow money possessed by the Government.

(6) All amounts required for the repayment of any sums borrowed under the powers conferred by this section and all interest and other charges on such sums are hereby charged upon and shall be payable out of the Consolidated Fund and assets of Jamaica.

Power to
issue instru-
ments in-
cluding
bonds.

4.—(1) The Government may issue such bonds, promissory notes or other instruments on such terms and conditions as may be necessary for the purpose of giving effect to the terms of any agreement which may be entered into by it with the Bank in respect of any borrowing authorized by subsection (1) of section 3.

(2) Any such bond, promissory note or other instrument may be signed on behalf of the Government by the Minister or by any other person authorized thereto in writing by the Minister.

Borrowing
by statutory
authority
from the
Bank.

5.—(1) Subject to the provisions of this Act, a statutory authority may, in such manner and on such terms and subject to such conditions as may be agreed between the statutory authority and the Bank and with the approval in

writing first obtained of the Minister, borrow from the Bank from time to time such sums as may be required by the statutory authority.

(2) Notwithstanding anything to the contrary any agreement between the statutory authority and the Bank shall be valid and binding on the authority if signed on behalf of the authority by a person authorized thereto in writing under the seal of the statutory authority.

(3) The power to borrow conferred by this section on a statutory authority shall be in addition to any power to borrow conferred on such authority by or under any other statute.

(4) Notwithstanding anything to the contrary, a statutory authority may charge or mortgage all or any of its property (movable or immovable) undertaking or revenue to secure any sum owing to the Bank in respect of sums borrowed by it under the powers conferred by subsection (1).

(5) Notwithstanding anything to the contrary, a statutory authority may issue such bonds, promissory notes and other instruments on such terms and conditions as may be necessary for the purpose of giving effect to any agreement which may be entered into by it with the Bank in respect of any borrowing authorized by subsection (1).

6. Any sums borrowed by a statutory authority under the powers conferred by subsection (1) of section 5 shall be applied by the authority to the purposes for which the sums were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed :

Application
of loan
moneys by
statutory
authority.

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied by the statutory authority to such other purposes as may be approved by the Minister and the Bank.

Power of Government to guarantee loans by Bank to statutory authorities.

7.—(1) The Government may in such manner and on such terms and subject to such conditions as may be agreed between it and the Bank, notwithstanding anything to the contrary—

- (a) guarantee the discharge by a statutory authority of its obligations under any agreement which may be entered into by the statutory authority with the Bank in respect of any borrowing authorized by subsection (1) of section 5 or under any bond, promissory note or other instrument issued pursuant to any such agreement; and
- (b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) Any guarantee or undertaking given under this section shall be given in writing in the name of Jamaica and it and any endorsement on any bond, promissory note or other instrument of any guarantee given under this section may be signed on behalf of Jamaica by the Minister or by any person authorized thereto in writing by the Minister.

(3) As soon as possible after a guarantee or undertaking is given under this section, the Minister shall lay before the House of Representatives a statement of the guarantee or undertaking.

Power of Government to guarantee loans by Banks to companies.

8.—(1) Subject to subsection (5), the Government may in such manner and on such terms and subject to such conditions as may be agreed by it and the Bank, notwithstanding anything to the contrary—

- (a) guarantee the discharge by a company of the company's obligations under any agreement for borrowing from the Bank which may be entered into by the company with the Bank or under any

bond, promissory note or other instrument issued pursuant to any such agreement; and

- (b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) In connection with a guarantee or undertaking given under subsection (1) in respect of any borrowing by a company, the company shall pay to the Government as a commission such sum not exceeding one *per centum* of the amount borrowed as the Minister may determine and the Government may in addition either—

- (a) require and take from the company such securities as the Minister thinks fit for securing the repayment to the Government of any sums which the Government may at any time be called upon to pay pursuant to this section; or
- (b) enter into such other arrangements with the company as the Minister thinks fit for securing the repayment aforesaid.

(3) Any guarantee or undertaking given by the Government under subsection (1) shall be given in writing in the name of Jamaica and it and any endorsement on any bond, promissory note or other instrument issued pursuant to the agreement to which the guarantee or undertaking relates may be signed on behalf of Jamaica by the Minister or by any person authorized thereto in writing by the Minister.

(4) As soon as possible after a guarantee or undertaking is given under subsection (1), the Minister shall lay before the House of Representatives a statement of the guarantee or undertaking.

(5) A guarantee or undertaking shall not be given at any time under subsection (1) where—

- (a) the principal amount outstanding is at that time not less than the prescribed sum; or
- (b) if the guarantee or undertaking were given, the principal amount outstanding would at that time exceed the prescribed sum.

In this subsection—

“principal amount outstanding” means so much of the total of the principal amounts of the borrowings guaranteed by the Government pursuant to subsection (1) as has not been repaid;

“prescribed sum” means forty million dollars or such greater amount as the House of Representatives may from time to time, by resolution, approve.

(6) Where any agreement referred to in subsection (1) relates to a borrowing in a currency other than dollars then for the purposes of subsection (5)—

- (a) the amount of such borrowing shall be converted into dollars at a rate of exchange determined by the Minister to be, as near as is conveniently possible, equivalent to the average rate of exchange in respect of that currency for the month prior to the month in which the guarantee or undertaking in respect of that borrowing is given; and
- (b) the principal amount outstanding in respect thereof at any time shall be converted into dollars at the rate of exchange obtaining at that time in respect of that currency.

(7) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by subsection (1), that sum shall be charged on the Consolidated Fund of Jamaica and the Minister shall direct payment to issue out of the Consolidated Fund accordingly.

(8) If any sum is paid out of the Consolidated Fund pursuant to subsection (7), the Minister shall, as soon as

possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the company concerned, lay before the House of Representatives a statement relating thereto.

9. So long as the Government shall continue liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 7 in respect of any borrowing by a statutory authority the statutory authority shall not, except with the consent of the Minister, exercise any other power to borrow possessed by it.

Restriction on borrowing power of statutory authority so far as guarantee outstanding.

10.—(1) Where it is made to appear to the Minister that there is reasonable cause to believe—

Powers exercisable by Minister in event or prospect of default by statutory authority.

- (a) that a statutory authority is likely to fail or be unable to discharge any of its obligations under any agreement concluded by it with the Bank or under any bond, promissory note or other instrument issued pursuant to any such agreement; and
- (b) that the Government is or may become liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 7 in respect of such obligation, the Minister may by order give or authorize any other person to give such directions to the statutory authority as he or such other person may from time to time think necessary or desirable to ensure that satisfactory arrangements are made by the authority to enable it duly to discharge its obligations under such agreement, bond, promissory note or instrument or under this Act.

(2) The statutory authority shall, notwithstanding any provision contained in any other statute, comply with any directions given by or under any such order.

(3) Nothing in the provisions of this section shall affect or derogate from any other power conferred by law on the Minister or any public officer in respect of the statutory authority.

(4) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by section 7, that sum shall be charged on the Consolidated Fund of Jamaica and the Minister shall direct payment to issue out of the Consolidated Fund accordingly.

Statutory
authority
to repay to
Government
sums paid
under
guarantee.

11.—(1) If any sum is paid out of the Consolidated Fund in respect of any liability incurred by the Government under a guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 7 in respect of any borrowing by a statutory authority the statutory authority shall repay such sum (together with interest thereon at the same rate as that payable on the loan under the agreement by the statutory authority with the Bank) to the Consolidated Fund in such manner and at such time or by such instalments as the Minister may direct.

(2) If any sum is so paid out of the Consolidated Fund the Minister shall, as soon as possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the statutory authority concerned, lay before the House of Representatives a statement relating thereto.

Arbitration.

12. If any dispute between the Bank, on the one part, and the Government or a statutory authority or a company or all or any of them, on the other part, arises under any agreement concluded or guarantee or undertaking given in exercise of the powers conferred by this Act or under any bond, promissory note or other instrument issued pur-

suant to any such agreement it shall be determined by arbitration in the manner agreed between the parties.

13.—(1) Notwithstanding anything to the contrary—

- (a) any agreement concluded with the Bank in respect of any borrowing authorized by subsection (1) of section 3 or subsection (1) of section 5 and any bond, promissory note or other instrument issued pursuant to any such agreement and any guarantee or undertaking given in respect of any such agreement, bond, promissory note or instrument by the Government or a statutory authority; and
- (b) any guarantee or undertaking given by the Government pursuant to subsection (1) of section 8, shall be valid and enforceable and have full force and effect in Jamaica in accordance with their respective terms.

Implementa-
tion of
obligation
under the
agreement.

(2) Neither the Government nor any agency thereof nor any statutory authority nor the Bank of Jamaica shall, except as shall be otherwise agreed between the Minister and the Bank, create any lien on any of its assets as security for any external debt unless it is expressly provided that the lien will *ipso facto* equally and rateably secure the payment of the principal of and interest and other charges on any loan made by or any bonds, promissory notes or instruments issued pursuant to any loan made by the Bank to the Government or to a statutory authority or to a company.

(3) In subsection (2)—

“lien” includes mortgages, pledges, charges, privileges and priorities of any kind;

“external debt” means any debt payable in any medium other than currency which at the time in question is legal tender in Jamaica whether such debt is payable absolutely or at the option of the creditor in such other medium.

(4) Without prejudice to the generality of the provisions of subsection (1) the Minister may provide, by order published in the *Gazette*, that any tax, duty or fee payable under the Income Tax Act, or the Stamp Duty Act or the Registration of Titles Act or any other enactment shall be remitted where such remission is, in the opinion of the Minister, necessary to give full effect to any agreement, bond, promissory note, instrument, guarantee or undertaking under this Act.