

THE LOANS TO SMALL BUSINESSES ACT

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THE LOANS TO SMALL BUSINESSES ACT

Laws
6 of 1956,
59 of 1958,
33 of 1960,
17 of 1961.
Act
6 of 1979.

[16th February, 1956.]

1. This Act may be cited as the Loans to Small Short title.
Businesses Act.

2. In this Act—

Interpreta-
tion.

“Board” means the Board established by this Act;

“business” means an enterprise of an industrial, com- 33/1960
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mercial, manufacturing or servicing character;

“chairman” means the chairman of the Board;

“member” means a member of the Board and includes
the chairman;

“Minister” means the Minister responsible for industry.

Establishment and Functions of the Board

3.—(1) There shall be established for the purposes of this Establish-
ment and
constitution
of the
Board.
Act a body to be called the Small Businesses Loan Board.

(2) The Board shall consist of such number of
members, not being less than three or more than seven, as
the Minister may from time to time determine.

(3) The members of the Board shall be appointed by
the Minister by instrument in writing and shall hold office
for such period not exceeding two years as the Minister may
direct in such instrument.

(4) Every member shall be eligible for reappointment.

(5) The Minister shall appoint from amongst the
members of the Board the chairman of the Board and, in

the case of the absence or inability of the chairman to act, an acting chairman of the Board :

Provided that a person who holds an office of emolument under the Crown shall not be appointed to be the chairman or acting chairman of the Board.

(6) A person shall be disqualified from being appointed or being a member of the Board so long as he is a member of the House of Representatives or a member of the Senate.

(7) The Minister may appoint any person appearing to him to have the necessary qualifications as a member of the Board to act temporarily in the place of any member of the Board other than the chairman in the case of the absence or inability to act of such member.

(8) Any member of the Board, other than the chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman and upon the date of the receipt by the chairman of such instrument such member shall cease to be a member of the Board.

(9) The chairman may at any time resign his 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.

(10) The Minister may at any time revoke the appointment of any member of the Board if he thinks it expedient so to do.

(11) The appointment, resignation, revocation of appointment or death of any member of the Board shall be notified in the *Gazette*.

4.—(1) The Board shall be a body corporate having perpetual succession and a common seal, with power to hold land and other property of whatever kind. Incorporation.

(2) The seal of the Board shall be kept in the custody of the chairman or of the secretary of the Board and may be affixed to instruments pursuant to a resolution of the Board and in the presence of the chairman, one other member and the secretary.

(3) The seal of the Board shall be authenticated by the signatures of the chairman and the secretary of the Board and such seal shall be officially and judicially noticed.

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

(5) The Board may sue and be sued in its corporate name and may for all purposes be described by such name, and service upon the Board of any notice, order or other document shall be executed by delivering it to, or by sending it by registered post addressed to, the secretary of the Board at the office of the Board.

5.—(1) It shall be the duty of the Board to assist persons in establishing, carrying on or expanding small businesses by granting loans and other forms of financial assistance to such persons. Functions of the Board.

(2) For the purpose of the discharge of its duty under subsection (1) the Board shall, subject to subsection 6, have power to— 6/1979
S 2(a).

(a) grant loans, not exceeding the prescribed amount in respect of any one business, on such terms as to security, rate of interest, repayment of principal and other similar matters as the Board may think fit;

- (b) guarantee loans, not exceeding the prescribed amount, where the purpose of a loan is one for which the Board would have power to make a loan under this Act;
- (c) purchase, for the purpose of reselling or letting on hire or hire purchase to persons establishing or carrying on businesses to which this Act applies, equipment, plant, tools and other articles necessary for establishing or carrying on such businesses;
- (d) give financial assistance to Co-operative Societies registered under the Co-operative Societies Act for the purpose of enabling such Societies to perform the same functions in regard to the businesses to which this Act applies as the Board is required by this Act to perform.

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(3) In addition to any powers possessed by the Board in virtue of this or any other enactment, the Board shall have power, subject to the provisions of this Act and of any regulations made thereunder, to do anything and to enter into any transaction which, in the opinion of the Board, is necessary to ensure the proper discharge of its functions.

(4) In granting financial assistance under this Act the Board shall have regard to the availability of financial assistance from other sources and shall not, as a general rule, itself grant financial assistance under this Act if such assistance is available from other sources on terms and conditions which are not less favourable than the Board itself would impose.

(5) No financial assistance shall be granted by the Board for the sole purpose of enabling goods to be purchased in order that they may be re-sold in the same condition as that in which they were purchased but, not-

withstanding anything in this Act contained, the Board may grant a loan to a person engaged in retail trade if the purpose of the loan is to enable such a trader to acquire premises in which to establish a business or to improve the premises in which he is carrying on his business or to enable such a trader to acquire or to improve equipment or plant necessary for the purpose of establishing or carrying on his business. ^{33/1960}
S. 2.

(6) From and after the 13th day of March, 1979, the Board shall, prior to performing any of the functions specified in subsection (1) or the powers specified in subsections (2) and (3), obtain the approval of the Minister. ^{6/1979}
S. 2(b).

(7) Subject to subsection (8) the Board shall transfer to the Corporation such assets and liabilities of the Board as the Minister may direct, so, however, that in the case of a transfer of liquid assets, the Minister shall, prior to giving any such direction, consult with the Minister responsible for finance.

(8) The Corporation may, pursuant to a direction given under subsection (7), apply in writing to the Minister for an order vesting in the Corporation such assets as may be specified in the application, and the Minister may, if he thinks fit, make an order vesting the assets so specified in the Corporation, and thereupon the assets shall so vest without further conveyance, assignment or assurance.

(9) Nothing contained in subsection (8) shall be construed as in any way restricting or prohibiting the Board from executing such formal and separate conveyance, assignment or assurance as the Corporation may, for the purpose of giving effect to subsection (7), require.

(10) The Board shall be exempt from stamp duty on all instruments executed by it or on its behalf pursuant to a direction given under subsection (7).

(11) From and after the 13th day of March, 1979 the Corporation shall, in relation to the assets and liabilities transferred to it pursuant to subsection (7)—

- (a) have and exercise the like duties and powers;
- (b) be vested with and assume the like rights, immunities, privileges and other advantages; and
- (c) have and discharge the like liabilities and obligations,

as the Board prior thereto, in relation to those assets and liabilities, had and exercised or was entitled or otherwise subject to, as the case may be.

(12) In this section—

“Corporation” means the Small Enterprises Development Corporation a company incorporated on the 11th day of November, 1977, under the Companies Act;

“liquid assets” means credit cash balances, shares, insurance policies, savings certificates, deposit receipts, treasury bills and such other assets as the Minister may determine.

Procedure
and
meetings.

6.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such place and time and on such days as the Board may determine.

(2) The chairman may at any time call a special meeting of the Board and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any member of the Board.

(3) The chairman, or in his absence another member appointed by the members present at the meeting, shall preside at the meeting of the Board.

(4) The powers of the Board may be exercised at a meeting at which at least half the members are present.

(5) The decisions of the Board shall be 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 other member presiding at the meeting shall have a casting vote.

(6) Minutes in proper form of each meeting shall be kept by the secretary and shall be confirmed by the chairman or other member presiding at the meeting as soon as practicable thereafter at a subsequent meeting.

(7) The Board may co-opt any one or more persons to attend any particular meeting of the Board for the purpose of assisting or advising the Board, but no such co-opted person shall have any right to vote.

(8) Subject to the provisions of this section, the Board shall have power to regulate its own proceedings.

7. Subject to the provisions of this Act, the Board may delegate to any member the power and authority to carry out on its behalf such duties as the Board may determine.

Power to delegate.

8.—(1) There shall be a secretary to the Board who shall be appointed by the Board.

Appointment of officers and servants.

(2) The remuneration and terms and conditions of employment of the secretary shall be such as the Board may determine.

(3) The Board shall appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers (other than the secretary) and such servants as it deems necessary for the proper carrying out of the provisions of this Act.

9. No act done or proceeding taken under this Act shall be questioned on the ground—

Protection of the Board.

(a) of the existence of any vacancy in the membership of, or any defect in the constitution of, the Board; or

- (b) of any omission, defect or irregularity not affecting the merits of the case.

Protection
of members
of the
Board.

10.—(1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

(2) Where any member of the Board is exempt from liability by reason only of the provisions of this section the Board shall be liable to the extent that it would be if the member was a servant or agent of the Board.

Remunera-
tion of
members.

11. The Board shall pay to the chairman and other members of the Board such remuneration and allowances, if any, as the Minister may determine.

Financial

Funds and
resources of
the Board.

12.—(1) The funds and resources of the Board shall consist of—

- (a) such sums as may be provided annually for the purpose in the Estimates of Revenue and Expenditure of the Island;
- (b) such sums as may be allocated from time to time to the Board from loan funds;
- (c) all sums from time to time received by or falling due to the Board in respect of the repayment of any loan made by the Board and the interest payable in respect of any such loan;
- (d) moneys earned or arising from any property, investments, mortgages and debentures acquired by or vested in the Board;
- (e) any property, mortgages, debentures, or investments acquired by or vested in the Board;

- (f) sums borrowed by the Board for the purpose of meeting any of its obligations or discharging any of its functions;
- (g) all other sums or property which may in any manner become payable to or vested in the Board in respect of any matter incidental to its powers and duties.

(2) For the purposes of this section, the expression "loan funds" means such sums as may be made available from time to time to the Government by way of loan.

(3) The expenses of the Board shall be a charge upon the funds and resources of the Board and shall be met out of such funds and resources in accordance with such estimates of expenditure as may, subject to the provisions of this Act, be approved by the Minister.

13.—(1) The Board may, with the approval of the Minister, from time to time borrow such sums of money as are required by the Board for meeting any of its obligations or discharging any of its functions :

Borrowing powers.

Provided that the sums so borrowed shall not exceed in the aggregate the total of the assets of the Board.

(2) If the Board thinks it necessary to borrow a sum of money which will, together with the aggregate then outstanding of sums of money previously borrowed, exceed the total of the assets of the Board, the Board shall not, except with the prior approval of the Minister, borrow such a sum of money.

14. Moneys standing to the credit of the Board may from time to time be invested in securities approved either generally or specifically by the Minister after consultation with the Minister responsible for finance, and the Board may, from time to time with the like approval, sell any or all of such securities.

Investments.

Examination
as to appli-
cation of
money lent.

15.—(1) Where the Board has made or guaranteed a loan of money under the provisions of 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 Board as the Board may require and such person shall comply with the requirements of the Board.

(2) The Board may authorize 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 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 the provisions of this section shall be guilty of an offence against this Act.

Order of
Board upon
an examina-
tion under
section 15.

16. Where upon any examination made under the provisions of section 15 it appears to the Board that any sum, being either the whole or any part of the loan made or guaranteed by the Board, 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 Board, that such sum, together with any interest due thereon on the date of the order, be repaid to the Board within the time mentioned in the order, and any sum with the interest thereon so ordered to be repaid to the Board shall thereupon become a debt due to the Board.

17.—(1) If any loan made under the provisions of this Act or any part of such loan has been misapplied the Board may—

Misappli-
cation of
loan secured
by mortgage
or otherwise.

- (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 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 realized;
- (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 realized.

(2) The provisions of subsection (1) shall be in addition to any other proceedings under any law.

18. Where any property mortgaged as security for a loan under the provisions of this Act is sold for the purpose of the enforcement of the security the Board may buy such property and may either manage and hold such property or sell or otherwise dispose of it as it may deem fit.

Enforce-
ment of
securities.

19.—(1) Notwithstanding that a loan granted by the Board may not have been secured by a mortgage within the meaning of the Conveyancing Act, the Board may, if a borrower defaults in respect of a loan granted by the Board, appoint a receiver in respect of the business in

Power to
appoint a
receiver, etc.

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 (d) of subsection 1 of section 22 of the Conveyancing Act.

(2) A person appointed by the Board to be a receiver pursuant either to the power conferred on a mortgagee by paragraph (d) of subsection (1) of section 22 of the Conveyancing Act or to the power conferred on the Board by subsection (1) shall, if the Board so appoint, 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 Board to be a receiver or a receiver and manager shall be deemed to be an officer of the Court.

Accounts
and audit.

20.—(1) The Board shall keep accounts of its transactions to the satisfaction of the Minister and such accounts shall be audited annually by an auditor appointed by the Minister.

(2) The members, officers and servants of the Board shall grant to the auditor appointed to audit the accounts of the Board under the provisions of subsection (1) access to all books, documents, cash and securities, of the Board and shall give to him on request all such information as may be within their knowledge in relation to the operation of the Board.

Report.

21.—(1) The Board shall not later than six months from the end of each calendar year submit to the Minister a report containing—

(a) an account of its transactions throughout the preceding calendar year (including particulars

as to bad debts written off) in such detail as the Minister may direct; and

- (b) a statement of the accounts of the Board audited in accordance with the provisions of section 20.

(2) A copy of the report together with a copy of the auditor's report shall be printed and laid on the Table of the Senate and House of Representatives and published in the *Gazette*.

22. Any person who—

Offences.

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

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shall be guilty of an offence against this Act.

23. Proceedings for offences against this Act shall not be instituted without the consent in writing of the Director of Public Prosecutions.

Director of Public Prosecutions' fiat.

24. In any proceedings in respect of an offence under paragraph (b) of section 22 the onus of proving that he acted in good faith and without knowledge that he was not entitled so to apply the loan or any part thereof shall be upon the person charged.

Burden of proof.

Minutes receivable in evidence.

25. Minutes made of meetings of the Board shall, if duly signed by the chairman or member presiding at the meeting, be receivable in evidence in all legal proceedings without further proof and every meeting of the Board in respect of which minutes have been so signed shall be deemed to have been duly convened and held and all the members present thereat to have been duly qualified to act.

Punishment of offences.

26. Any person guilty of an offence against this Act shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or in default of payment thereof to imprisonment with or without hard labour for a term not exceeding six months.

Policy directions.

27. The Minister may, after consultation with the chairman, give to the Board directions of a general character as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to him to concern the public interest, and the Board shall give effect to any such directions.

Regulations.

28. The Minister may make regulations—

- (a) in regard to any matter which this Act requires to be prescribed;
- (b) generally for the better carrying out of the objects and purposes of this Act.

Exemption from stamp duties, etc., in respect of loans not exceeding \$600.
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29. Notwithstanding anything contained in any other enactment, any instrument relating to the grant, guarantee, assignment, discharge, entry of satisfaction or release by the Board of a loan not exceeding \$600 or any mortgage or charge in respect thereof shall be exempt from the payment of stamp duties, registration and recording fees.