

SAINT LUCIA

No. 12 of 2008

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART 2

ESTABLISHMENT

3. Establishment of the Bank
4. Nature of the Bank
5. Functions of the Bank
6. Power to appoint committees
7. Power to delegate

PART 3

BOARD OF DIRECTORS

8. Establishment and composition of Board
9. Term of office of directors
10. Eligibility for appointment to Board
11. Alternate directors
12. Chairperson and Deputy Chairperson
13. Publication of appointments
14. Disqualification from appointment
15. Resignation
16. Revocation
17. Vacation of office of directors
18. Disclosure of interest
19. Meetings of the Board

PART 4

SENIOR OFFICERS OF THE BANK

20. Appointment of Managing Director and other senior officers and staff
21. Appointment of legal and other advisers
22. Functions of the Managing Director and Deputy Manager
23. Functions of the Chief Financial Officer and Internal Auditor
24. Preservation of Secrecy of affairs of the Bank
25. Termination of appointment of Managing Director and other senior officers

PART 5

FUNDING OF THE BANK'S OPERATIONS

26. Funds and resources of the Bank
27. Borrowing by the Bank
28. Limitation on borrowing activities
29. Reserve fund
30. Accounts and audit
31. Appointment of auditors
32. Receipts and payments to or by the Bank and safekeeping of funds

PART 6

ADMINISTRATION OF FUNDS AND RESOURCES

33. Loans and Investments Committee
34. Investment of funds
35. Insurance
36. Inspection of property for purposes of loans
37. Examination as to application of money lent
38. Order of the Bank upon examination under section 37
39. Recall of loan misapplied

PART 7

SHARE CAPITAL

40. Capital
41. Increase of capital
42. Register of shareholders
43. Transfer of shares

PART 8

MISCELLANEOUS

- 44. Exemption from stamp duty, income and other taxes
- 45. Liability for misrepresentation and impropriety in use of assets of Corporation
- 46. Immunity of directors, officers and employees
- 47. Committee to monitor the Bank
- 48. Application of Banking Act
- 49. General penalty
- 50. Regulations

No. 12] Saint Lucia Development Bank Act [2008.

I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

August 6, 2008.

SAINT LUCIA

—————
No. 12 of 2008

AN ACT to provide for the establishment of a bank to be known as the
Saint Lucia Development Bank and for related matters.

[On Order]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and
with the advice and consent of the House of Assembly and the Senate of
Saint Lucia, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title and commencement

1.— (1) This Act may be cited as the Saint Lucia Development Bank Act 2008.

(2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act —

“agricultural enterprise” means the development and use of land for any purpose of husbandry, rearing and breeding of livestock and the growing, processing and marketing of vegetables, root crops, fruits and other farm products, and includes aquaculture, apiculture, fisheries, forestry and horticulture;

“banking business” means the business of receiving funds through-

- (a) the acceptance of monetary deposits which are repayable on demand or after notice or any similar operation;
- (b) the sale or placement of bonds, certificates, notes or other securities and the use of such funds, either in whole or in part, for loans or investment; and

includes any other activity recognized by the Central Bank as banking practice and which a financial institution may be additionally authorized to do;

“Bank” means the Saint Lucia Development Bank established under section 3;

“Board” means the Board of Directors of the Bank as constituted under section 8;

“Central Bank” means the Eastern Caribbean Central Bank established under article 3 of the Agreement establishing the Eastern Caribbean Central Bank made on the 5th day of July, 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Agreement Act, Cap.19.07;

“Chairperson” means the Chairperson of the Board;

“development enterprise” means any of the following:

- (a) an agricultural enterprise;
- (b) an educational enterprise;
- (c) a fishing enterprise;
- (d) an industrial enterprise;
- (e) a tourism enterprise;
- (f) a housing enterprise;
- (g) a service enterprise; or
- (h) any other enterprise declared to be a development enterprise by the Minister by Order published in the *Gazette*;

“development finance business” includes the provision of long-term financing and technical assistance to a development enterprise;

“director” means a member of the Board and includes the Chairperson and Deputy Chairperson;

“educational enterprise” includes an enterprise engaged in or established for the provision of vocational, social, physical or recreational training, organized lectures and seminars on a part-time or full-time basis in a formal or informal setting at a pre-school, infant, primary, secondary or tertiary level, and any undertaking by an individual or group in pursuit of technical, vocational or tertiary level training;

“financial year” means such period of twelve months ending on March 31, except that the first financial year shall be the period beginning with the commencement of business and ending on March 31 of the succeeding calendar year;

“fishing enterprise” includes an enterprise, engaged in deep sea fishing, artesian fisheries, aquaculture, fish culture, the storage, packaging and canning of fish and fish products and the purchase of boats, marine engines and equipment for fishing, fish processing and storage;

“Government” means the Government of Saint Lucia;

“house” includes a chattel;

“housing enterprise” includes an enterprise engaged in the construction, repair, improvement and financing of the

acquisition of dwelling houses and the development and sale of building land for the construction of dwelling houses;

“industrial enterprise” includes —

- (a) manufacturing, processing, assembling, installing, overhauling, reconditioning, altering, repairing, cleaning, packaging, canning, transporting or warehousing of goods;
- (b) any drilling, construction, engineering, technical survey and scientific research;
- (c) development, supply and distribution of alternative energy systems;
- (d) operating a mine or quarry;
- (e) operating a commercial transport service;
- (f) supplying premises, machinery or equipment for any activity or matter described in paragraphs (a), (b), (c) or (d);

“investment banking” includes the purchase of government securities and the sale of such securities to the public, underwriting, advising clients on mergers and acquisitions and risk bearing;

“land” includes messuages, tenements and corporeal hereditaments, or incorporeal hereditaments, and immovable property of every tenure or description, and any estate or interest therein;

“Managing Director” means the Managing Director of the Bank appointed under section 20 of this Act;

“Minister” means the Minister responsible for Finance;

“Organization of Eastern Caribbean States” means the Organization established by the Treaty signed on the 18th day of June 1981 at Basseterre, Saint Kitts the text of which is set out in the Schedule to the Organization of Eastern Caribbean States Act, Cap. 19.12;

“officer” includes the Managing Director and any employee of the Bank;

“owner” includes —

- (a) the owner of any land or any boat or of any vehicle or of any agricultural or industrial machinery;

- (b) the duly authorised attorney of the owner;
- (c) a personal representative of a deceased owner if authorised by will or by an order of the Court or otherwise by law to mortgage land;
- (d) a trustee appointed by deed or will if authorised by the deed or will or by an order of the Court or otherwise by law to mortgage land;
- (e) a receiver appointed by an order of the Court or by a mortgagee;
- (f) a mortgagee in possession;
- (g) a lessee of land of which the unexpired term of the lease is not less than twenty-five years or such lesser term as the Board in any case for any special reason shall determine;

“Secretary” means the person appointed by the Board as Secretary of the Bank and includes a person appointed by the Board to perform the duties of the Secretary of the Bank temporarily;

“service enterprise” includes any enterprise which is geared to meet a general need, and provides services such as computer technology, vehicle repair, equipment leasing, preventative maintenance, environmental protection, health, computing, finance, graphic arts, professional business starts and other related services;

“tourism enterprise” includes purchasing, developing and supplying of hotel and all other accommodation and facilities principally intended for visitors to Saint Lucia and production of craft work, the building and equipping of hotels, guest houses and restaurants and the provision of tourism related services.

PART 2 ESTABLISHMENT

Establishment of the Bank

3. There is hereby established for the purpose of this Act a body corporate called the Saint Lucia Development Bank.

Nature of the Bank

4.— (1) The Bank shall be a body corporate having perpetual succession and a common seal and shall in its corporate name be capable of entering into contracts, of suing and being sued, acquiring, holding, mortgaging, leasing and otherwise disposing of all kinds of movable or immovable property.

(2) Service upon the Bank of any notice, order or other document shall be executed by delivering or sending the same by registered post addressed to the Managing Director or Secretary of the Bank at the head office of the Bank.

(3) The Bank may have a head office in the city of Castries or in any location within Saint Lucia as the Board sees fit.

(4) The Bank may establish such sub-offices within Saint Lucia as it may deem desirable.

(5) The seal of the Bank shall be kept in the custody of the Secretary of the Bank and may be affixed to any instrument in the presence of any two directors or of one director and the Secretary of the Bank pursuant to a resolution of the Bank.

(6) The seal of the Bank shall be authenticated by the signature of any two directors or of one director and the Secretary of the Bank and such seal shall be officially and judicially noticed.

(7) All contracts, and other documents other than those required by law to be under seal, and all decisions made by the Bank, may be signed by the Chairperson or Deputy Chairperson and the Secretary of the Bank.

Functions of Bank

5.— (1) It shall be the function of the Bank to mobilise and provide finance for and promote and facilitate the expansion and strengthening of the economic development of Saint Lucia and foster the development of money and capital markets in Saint Lucia and Member States of the Organization of Eastern Caribbean States.

(2) In particular and without prejudice to the generality of subsection (1) the Bank shall have power —

- (a) to accept, on deposit, any funds or securities of whatever nature from the Government, from any public or statutory authority, co-operative or friendly society or any person or body whether within or outside Saint Lucia;
- (b) to make all payments duly authorised by any depositor with the Bank;
- (c) to make loans or advances or provide any form of credit to the Government or to any public or statutory body;
- (d) to make loans or advances or provide any form of credit or assistance to any development enterprise whether in the form of finance or expertise or technical or managerial advice or participation in the share capital or management thereof;
- (e) to make loans or advances or provide for any form of credit to any person, corporation, company, society or body whatsoever within or outside Saint Lucia;
- (f) to negotiate loans or advances or any form of credit with any person or body within or outside Saint Lucia for, or on behalf of the Government or any public, statutory or other body;
- (g) to provide finance to persons for courses of study on the published Government approved priority list or as otherwise approved by the Cabinet or Minister of Education;
- (h) to make loans for financing the construction, repair, improvement and acquisition of dwelling houses;
- (i) to promote and encourage development enterprises including the marketing of any produce or manufacture thereof;
- (j) to provide for the inspection or supervision of any development enterprise for which a loan has been granted;
- (k) to make arrangements with any person, body or authority for collections or deductions for the repayment of any loans, advances or credit;
- (l) to give any guarantee or indemnity to and enter into any arrangements with the Government, any public or statutory authority or any body corporate or other person whether within or outside Saint Lucia, in order to obtain any rights, concessions and privileges that may appear to the Bank to be conducive to any of its functions;

- (*m*) to undertake and formulate any studies which the Bank considers necessary for the performance of its functions or conducive to any of its functions;
- (*n*) to enter into any contract with, or act as agent or trustee for, or representative of, the Government or any person, agent or body within or outside Saint Lucia;
- (*o*) to engage in any investment banking business, development finance business or banking business;
- (*p*) to deposit sums with any bank or other financial institution;
- (*q*) to take or concur in taking all such steps and processes as may seem best calculated to uphold and support the credit of the Bank;
- (*r*) to underwrite new issues of stocks, shares, bonds, debentures and other securities and trade in similar instruments issued by Government, public or statutory authorities or public companies;
- (*s*) to promote or concur in the promotion by others, of such subsidiaries as it deems necessary for the more effective performance of its functions except that no such promotion shall be undertaken unless approved by Cabinet in writing;
- (*t*) to provide for all matters of administration and procedure in the exercise of its functions under this Act;
- (*u*) to do all such things or enter into such transactions or arrangements which in its opinion are necessary for the performance of any of its functions.

(3) The Bank shall operate in accordance with normal accepted development banking practice.

Power to appoint committee

6.— (1) The Bank may appoint a committee to examine and report to it on any matter arising out of or connected with any of its powers or functions under this Act.

(2) A committee appointed under subsection(1) shall consist of at least one director together with such other persons, whose assistance the Bank considers desirable.

(3) The Bank may, by resolution of the Board, decline to accept the report of a committee appointed under subsection (1) or adopt it either wholly or with modifications, additions or adaptations as the Bank may deem fit.

Power to delegate

7.— (1) Subject to the provisions of this Act, the Board may delegate to any director or committee of the Bank or to the Managing Director of the Bank the power and authority to carry out on its behalf such functions under this Act as the Board may determine.

(2) Every delegation under this section shall be in writing and shall be revocable by the Board but such a delegation shall not prevent the exercise by the Board of any delegated authority.

PART 3
BOARD OF DIRECTORS

Establishment and composition of Board

8.— (1) There shall be a Board of Directors of the Bank which, subject to the provisions of this Act, shall be responsible for the policy and general administration of the affairs of the Bank.

(2) Subject to section 11, where the Government of Saint Lucia owns one hundred percent of the issued shares of the Bank, the Board shall comprise —

- (a) one representative from the Ministry of Finance;
- (b) one representative from the private sector;
- (c) the Managing Director of the National Insurance Corporation or his or her alternate;
- (d) one representative nominated by the Minister from a Ministry other than the Ministry responsible for Finance including, from a productive sector such as, but without limitation to the Ministry responsible for Agriculture, Industry, Tourism or Trade;
- (e) the Managing Director of the Bank; and
- (f) such other individuals as may be appointed by the Minister including a representative from the labour and trade union sector;

but not more than six representatives shall be nominated under paragraph (f).

(3) Of the individuals appointed under subsection (2), not more than four shall be in the employment of the Government, Government agencies or statutory corporations.

(4) Subject to section 11, where the Government owns less than one hundred percent of the issued shares of the Bank, the other shareholders shall be entitled to appoint one director for each block of shares equivalent to ten percent of the total shares issued and the total number of directors appointed by the Government shall be reduced by a similar amount.

(5) The directors shall be paid such remuneration as shall be determined by the Board with the approval of Cabinet.

Term of office of directors

9.— (1) A director may be appointed to hold office for a term of not more than three years and not less than one year, so that no more than five directors' term of office expires within twelve consecutive months.

(2) A director shall be eligible for re-appointment.

(3) A director appointed to fill a vacancy shall hold office for the unexpired term of his or her predecessor.

Eligibility for appointment to Board

10. A person shall be eligible to be appointed as a director of the Bank if that person is of recognised standing, qualification, professional certification or experience in one or more of the following areas —

- (a) agriculture;
- (b) banking;
- (c) business or management;
- (d) economics;
- (e) development planning;
- (f) project planning;
- (g) finance, auditing or accounting;
- (h) law;
- (i) tourism;

- (j) engineering;
- (k) medicine;
- (l) marketing;
- (m) other related fields.

Alternate directors

11.— (1) Alternate directors may be appointed in the same manner as directors.

(2) A person appointed as an alternate director shall perform as a director in the absence of the director to whom he or she is alternate.

(3) The provisions of this Act shall apply to alternate directors in the same manner and to the same extent as it applies to directors.

Chairperson and Deputy Chairperson

12. The shareholders shall appoint a Chairperson and a Deputy Chairperson of the Board from among members of the Board appointed pursuant to section 8.

Publication of appointments

13. The appointment of any person as Chairperson, Deputy Chairperson, director or alternate director and the termination of any such appointment shall be published in the *Gazette* and at least one newspaper in at least weekly and general circulation in Saint Lucia.

Disqualification from appointment

14. A person shall be disqualified from being appointed or from continuing to hold office as a director where that person —

- (a) is a member of Parliament;
- (b) has been adjudged insolvent or has suspended payment to or made composition with his or her creditors;
- (c) has been duly certified by a medical practitioner to be of unsound mind;
- (d) is prevented from practising his or her profession on account of any act involving dishonesty;

- (e) has been convicted of a criminal offence and sentenced to a term of imprisonment or to death;
- (f) has been convicted of any offence involving dishonesty; or
- (g) is prohibited from being a director by reason of any order made under any law.

Resignation

15.— (1) The Chairperson or Deputy Chairperson may resign from the Board by writing under his or her hand addressed to the Minister and copied to the Secretary of the Board.

(2) A director appointed under section 8(2) or (4) may, at any time, resign from office by instrument in writing addressed to the authority that appointed him or her.

(3) A resignation under this section shall take effect on the date the instrument was received by the person or authority to whom it is addressed, or at any such time or on such date as may be specified in the instrument whichever is the later.

Revocation

16.— (1) Cabinet may at any time, in writing, revoke the appointment of a director appointed pursuant to section 8(2) if upon evidence, Cabinet is satisfied that the director —

- (a) is disqualified from being a director of the board pursuant to section 14;
- (b) is guilty of neglect of duty, misconduct or malfeasance;
- (c) has failed to act in the best interest of the Bank; or
- (d) is disqualified on grounds of national security.

(2) The shareholders other than the Government may at any time, in writing, revoke the appointment of a director appointed pursuant to section 8(4) if upon evidence the shareholders are satisfied that the director —

- (a) is disqualified from being a director of the board pursuant to section 14;
- (b) is guilty of neglect of duty, misconduct or malfeasance;

- (c) has failed to act in the best interest of the Bank; or
- (d) is disqualified on grounds of national security.

Vacation of office of directors

17. The office of a director is vacated where —

- (a) the director —
 - (i) dies;
 - (ii) resigns by writing under his or her hand addressed to the Chairperson or authority by whom the director was appointed;
 - (iii) is absent from three consecutive meetings of the Board without the leave of the Board;
 - (iv) becomes disqualified under section 14 from being a director; or
 - (v) is unable to discharge the functions thereof or for misbehaviour, serious neglect, or misconduct in office; or
- (b) the director's —
 - (i) appointment is revoked pursuant to section 16; or
 - (ii) appointment is not renewed at the expiry of the director's term of appointment.

Disclosure of interest

18.— (1) A director who is in any way interested, whether directly or indirectly, in a contract or proposed contract with the Bank or whose material interest in a company, partnership, undertaking or other business is likely to be affected by a decision of the Board, shall disclose the nature of his or her interest at the first meeting of the Board at which he or she is present or immediately after the relevant facts come to his or her knowledge.

(2) A disclosure under subsection (1) of this section shall be recorded in the minutes of the meeting and after the disclosure, the director making it shall not vote on the matter and, unless the Board otherwise directs, shall not be present or take part in the proceedings of any meeting at which the matter is being discussed or decided by the Board.

(3) A director shall be treated as having an indirect interest in a contract or proposed contract with the Bank in any matter with which the Bank is concerned if he or she is a director, shareholder, agent or employee of the company or undertaking that is a party to the contract or proposed contract with the Bank or where his or her spouse, parent, child, brother or sister or the parent, child, brother or sister of his spouse holds an interest in that company or undertaking.

(4) For the purpose of this section, a general notice given to the Board by a director to the effect that he or she is a member of or otherwise associated with a specified company or undertaking, shall be deemed to be a sufficient declaration of interest in relation to the contract so made.

Meetings of Board

19.— (1) The Board shall meet at least once in every three months and at such other times as may be necessary or expedient for the transaction of the business of the Bank and such meetings shall be held at such place and time and on such days as the Board may determine.

(2) The Chairperson may, at any time, summon a special meeting of the Board and shall, within seven days of the receipt by the Secretary of a request in writing addressed to him or her by any four directors, call a special meeting of the Board.

(3) If the Chairperson refuses to summon a special meeting of the Board upon request or neglects to convene the meeting as requested, a special meeting of the Board may be convened by the directors making the request.

(4) Subject to subsections (5) and (6), the Chairperson shall preside at all meetings of the Board.

(5) In the absence of the Chairperson, the Deputy Chairperson shall preside and perform the functions of the Chairperson of the meeting.

(6) In the absence of both the Chairperson and Deputy Chairperson, the directors present shall elect one of their number to preside and perform the functions of Chairperson of the meeting.

(7) A quorum for meetings of the Board shall be any six directors.

(8) The decision 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 Chairperson, Deputy Chairperson or other director presiding as Chairperson at the meeting shall have a casting vote.

(9) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairperson or the Deputy Chairperson, as the case may be, as soon as practicable thereafter either by circulating the same or at a subsequent meeting.

(10) 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, except that no such co-opted person shall have the right to vote.

PART 4
SENIOR OFFICERS OF THE BANK

Appointment of Managing Director and other senior officers and staff

20.— (1) The Board shall, after consultation with the Minister, appoint —

- (a) a person to be the Managing Director of the Bank;
- (b) a person to be the Chief Financial Officer of the Bank;

at such remuneration and on such terms and conditions as it may determine.

(2) The Board may appoint a Deputy Manager, an internal auditor and a Secretary, at such remuneration and on such terms and conditions as it may determine.

(3) In the event of the absence of both the Managing Director and Deputy Manager, the Board may appoint any person to act as Managing Director upon such terms and conditions as it may determine and any person so appointed may exercise all the powers and duties pertaining to the office of Managing Director under this Act.

(4) The Board may, on the recommendation of the Managing Director, appoint on such terms and conditions as it thinks fit, such officers and employees as may be required for the due and efficient performance by the Bank of its functions under this Act.

Appointment of legal and other advisers

21. The Board may appoint upon such terms and conditions as it considers fit, legal advisers or any other advisers or persons whom it considers necessary for the fulfillment of its functions under this Act.

Functions of the Managing Director and Deputy Manager

22.— (1) The Managing Director shall be responsible to the Board for —

- (a) the day to day management, administration, direction and control of the business of the Bank excluding matters which are by this Act or by Rules or Regulations made thereunder specially reserved to be done by the Board or the Bank; and
- (b) the provision of technical advice and guidance on matters of policy.

(2) The Managing Director shall with the approval of the Board, appoint and employ such officers, inspectors and agents as he or she may deem necessary for the proper carrying out of the functions of the Bank, at such remuneration and on such terms and conditions as determined by the Board.

Functions of Chief Financial Officer and Internal Auditor

23.— (1) The Chief Financial Officer shall administer and account for the management of the Bank's funds and their optimum utilisation within the policies and guidelines established by the Board and by or under this Act.

- (2) The Internal Auditor shall be responsible to the Board for —
- (a) monitoring all financial transactions of the Bank to assess compliance with the established policies of the Bank;
 - (b) reviewing the internal controls established by management; and
 - (c) assessing and reporting on areas of real or potential risk to the Bank;

and shall report and make recommendations on his or her findings to the Board.

Preservation of Secrecy of Affairs of the Bank

24.— (1) A person employed by the Bank or having any duty to perform under this Act shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Bank that may come to his or her knowledge in the course of his or her duties and shall, if so required by the Bank, make and subscribe a declaration of secrecy in the form prescribed before a Magistrate.

(2) A person shall not —

- (a) communicate any matter referred to in subsection (1) to any person other than a Director or any officer of the Bank authorised in that behalf by the Managing Director; or
- (b) permit any unauthorised person to have access to any books, papers or records relating to the Bank.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding one month.

Termination of appointment of Managing Director and other senior officers

25. The Board may, after consultation with the Minister, terminate the appointment of the Managing Director, Deputy Managing Director, Chief Financial Officer, Internal Auditor or Secretary for —

- (a) inability to exercise the functions of his or her office whether arising from infirmity of mind or body or from any other cause; or
- (b) breach of any of the terms or conditions of his or her appointment as stated in his or her contract of employment.

PART 5**FUNDING OF THE BANK'S OPERATIONS****Funds and resources of the Bank**

26. The funds and resources of the Bank shall consist of —

- (a) equity capital;
- (b) such sums as may from time to time be placed at its disposal by the Parliament;

- (c) such sums as may be allocated from time to time by the Bank by way of grant or otherwise;
- (d) all sums from time to time received by or falling due to the Bank in respect of repayment of any loan made by the Bank and the interest and other charges payable thereon;
- (e) monies earned or arising from any property investments, mortgages or debentures acquired by or vested in the Bank;
- (f) any property, mortgages, debentures or investments acquired by or vested in the Bank;
- (g) sums borrowed by the Bank for the purposes of meeting any of its obligations or discharging any of its functions;
- (h) funds deposited in the Bank by virtue of this Act or any other enactment; and
- (i) any other sums or property that may become payable to or vested in the Bank in respect of any matter pertaining to or incidental to its functions.

Borrowing by the Bank

27.— (1) Subject to the provisions of this Act, the Bank may borrow money for meeting any of its obligations and discharging any of its functions.

(2) The Bank may issue debentures or any other security for the purpose of securing any borrowing under this section.

(3) With the approval of the Parliament, the Government may guarantee in such manner and on such conditions as it may think fit, the repayment of principal and the payment of interest and other charges in respect of any borrowing by the Bank.

(4) Where the Minister is satisfied that there has been default in the repayment of any principal or the payment of any interest or other charges guaranteed under the provisions of this section, the Minister may with the approval of the Parliament, direct the payment out of the Consolidated Fund of the amount in respect of which there has been such default.

(5) The Bank shall make to the Accountant General payments including interest and other charges at such time and in such manner

as the Minister may direct towards repayment of the sums issued in default of any guarantee given under this section.

Limitation on borrowing activities

28. The aggregate of the liabilities of the Bank outstanding at any one time including bonds and debentures issued by the Bank, shall not at any time exceed seven times the amount of its paid up share capital and free reserves.

Reserve Fund

29. The Bank shall establish and maintain a reserve fund to which shall be allocated at the end of each financial year of the Bank, not less than twenty-five per cent of the net income of the Bank for that financial year whenever the total amount standing to the credit of such reserve fund is less than the paid-up capital of the Bank.

Accounts and audit

30. —(1) The Bank shall cause to be kept, proper books and accounts. The said accounts shall be audited annually by an auditor who shall be appointed each year by the Bank.

(2) The auditor appointed pursuant to subsection (1) shall prepare a report to be submitted with the annual audited statement of accounts within two months of the end of each financial year.

(3) The Bank shall, within three months of the end of the financial year, cause to be made and be submitted to the Minister —

- (a) a report dealing generally with the operations of the Bank;
- (b) a copy of the auditor's report;
- (c) a copy of the annual audited statement of accounts.

(4) The Minister shall, on receipt of the auditor's report and the audited statement of accounts, lay the same at the next sitting of Parliament and cause the same to be published in the *Gazette*.

Appointment of auditors

31. — (1) A person is eligible for appointment as auditor of the Bank only if he or she —

- (a) is a practising member of a recognised Accounting supervisory body as determined by the Board, and
- (b) is eligible for the appointment under the rules of that body.

(2) The directors and officers of the Bank shall give to the auditor of the Bank, access to all books, documents, cash and securities of the Bank and shall give to the auditor on request, all such information as may be within their knowledge in relation to the operation of the Bank.

Receipts and payments to or by the Bank and safe-keeping of funds

32.— (1) Receipts for sums paid to the Bank and all payments out of any funds deposited with the Bank may be signed by officers of the Bank authorised by resolution of the Board generally or specifically in that behalf.

(2) Cheques, withdrawals and orders for the payment of any monies against the Bank's own funds shall be signed and countersigned by any two directors or officers appointed by resolution of the Board for the purpose.

(3) The Bank shall make such provision for the safe-keeping of its funds as it deems necessary.

(4) Officers or employees of the Bank, may retain sums to meet petty disbursements or immediate payments under such provision as the Bank may deem necessary.

(5) Subject to the provisions of this Act, the Board shall have power to provide for all matters of administration and procedure with regard to the funds of the Bank.

PART 6

ADMINISTRATION OF FUNDS AND RESOURCES

Loans and Investments Committee

33.— (1) There shall be a Loans and Investments Committee which shall consist of the Managing Director who shall be the Chairperson, the Deputy Manager, if any, the Chief Financial Officer, two directors and heads of divisions within the Bank.

(2) The Managing Director or the Deputy Manager, one director and two other members of the Loans and Investments Committee shall form a quorum at any meeting of the Committee.

(3) The Loans and Investments Committee shall be responsible for —

- (a) the management of the loans and investments of the Bank within the policy guidelines approved by the Board; and
- (b) reviewing and making recommendations to the Board on the Bank's policies on loans and investments.

Investment of funds

34.— (1) The Bank may invest its funds in —

- (a) the purchase of shares, bonds, debentures and other securities; and
- (b) advancing loans or credit for development enterprises.

(2) The Board may prescribe further categories of investments.

(3) The Bank may invest in any other member territory of the Organization of the Eastern Caribbean States, provided that the total amount of such investment shall not exceed fifteen per cent of the Bank's total assets.

Insurance

35.— (1) Every borrower shall, unless otherwise agreed by the Bank, insure the buildings, chattels, and produce mortgaged to the Bank as security for a loan until repayment thereof, against loss or damage by fire, earthquake, hurricane or such other hazards as the Bank may envisage for such amount not being less than their full insurable value as the Bank may require, and shall assign and deliver to the Bank the policy or policies of insurance.

(2) The Bank may incorporate the premiums on such insurance in the repayment schedule of the borrower and arrange to insure the security provided by the borrower.

(3) The Bank may in circumstances where the borrower fails to renew his or her insurance policy, take steps to recover the premiums from the borrower including recall of the loan if necessary.

(4) Where the Bank accepts an insurance policy on the life of a borrower as security for a loan, it shall be incumbent on the borrower to pay the premium on the insurance until such time as the loan for which it is held as security has been fully paid and the Bank may also incorporate the premium in the payment schedule of the loan.

Inspection of property for purposes of loans

36.— (1) Subject to subsection (2), the Bank may authorise in writing any officer, inspector, servant, or agent appointed by the Bank, at all reasonable times on the production of such authorisation as determined by it to enter upon any premises for the purpose of inspecting or valuing any land, vehicle, boat or other property in respect of which a loan is to be granted or has been granted under the provisions of this Act.

(2) In the case of a dwelling house, an entry shall not be made therein without the consent of the owner or occupier thereof or unless the owner or occupier has been given at least twenty-four hours' notice of the Bank's intention to enter the same for the purposes aforesaid.

Examination as to application of money lent

37.— (1) Where the Bank has made or guaranteed a loan, 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 purpose 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, servants, agents or any other person to make the examination contemplated by paragraph (a) of subsection (1) and the person to whom the loan was made shall produce to such officer, servant or person all books, documents and other things necessary for the purpose of the examination.

(3) Any person to whom a loan was made who contravenes this section commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Order of the Bank upon examination under section 37

38. Where, upon any examination made under section 37, 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 purpose for which the loan was made, the Bank may order that such sum be, within the time mentioned in the order, applied to such purpose or, 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.

Recall of loan misapplied

39.— (1) Where any loan made by the Bank or any part of such loan has been misapplied, the Bank may, by notice in writing addressed to the person to whom the loan was made, 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 be realised.

(2) Any action taken by the Bank pursuant to subsection (1) shall be in addition to any other proceedings which may be taken by the Bank and shall in no way prejudice any proceedings which may be instituted under any other law in force in Saint Lucia.

PART 7
SHARE CAPITAL

Capital

40.— (1) The authorised share capital of the Bank shall be twenty million dollars divided into four million shares of a par value of five dollars each.

(2) The Government shall subscribe for and the Bank shall issue at least two million eight hundred shares in the Bank and the Government shall pay up in respect thereof a sum not less than twelve million dollars.

(3) Subject to the provisions of subsection (4), any person may, in accordance with regulations made pursuant to section 52, subscribe for and hold shares in the Bank.

(4) The Government of Saint Lucia shall hold not less than forty per cent of the Bank's issued share capital, provided that the Government may reduce its holding to twenty per cent of the Bank's issued share capital with the approval of Parliament.

(5) With the exception of the Government, no person or group of related persons shall hold more than twenty per cent of the share capital of the Bank.

Increase of capital

41. The authorised share capital may be increased by a resolution passed at a general meeting by shareholders holding at least fifty per cent of the issued and fully paid up share capital of the Bank.

Register of shareholders

42. The Bank shall maintain a Register of Shareholders in which particulars of shareholders and shares held by them shall be entered.

Transfer of shares

43.— (1) Subject to the provisions of subsection (2), shares in the Bank may be transferred in accordance with Regulations made pursuant to section 51.

(2) The Board shall enter into the Register of Shareholders the details of any transfer of shares made in accordance with subsection (1).

(3) Notwithstanding the provisions of subsection (2), the Board may refuse to transfer shares —

- (a) upon which the Bank has a lien;
- (b) where they have been expressly authorised to do so by a resolution of shareholders holding at least seventy-five per cent of the issued shares of the Bank.

PART 8 **MISCELLANEOUS**

Exemption from stamp duty, income and other taxes

44. Notwithstanding the provisions of any law in force in Saint Lucia, the Bank shall not be liable for the payment of any stamp duty, income tax, import duty, local taxes or any other duty or tax whatsoever.

Liability for misrepresentation and impropriety in use of assets of the Bank

45.— (1) A person shall not —

- (a) obtain a loan from the Bank by means of any false representation which he or she knows or believes to be false or does not believe to be true;
- (b) wilfully apply any loan or part thereof for any purpose other than the purpose for which the loan was made;
- (c) use or permit to be used, except with the consent in writing of the Bank, any land, building or erection on the security of which a loan has been made for any purpose other than the purpose for which the loan was made; or
- (d) obstruct or cause to be obstructed whether by force or threat or in any other manner any officer, inspector or agent in the exercise of his or her functions under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(3) Except for the purpose of the performance of his or her duties or the exercise of his or her functions or when lawfully required to do so by any court or under the provision of any law, a director or an officer shall not disclose to any person any information which he or she has acquired in the performance of his or her duties or the exercise of his or her functions.

(4) A person who contravenes the provisions of subsection (2) commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Immunity of directors, officers and employees

46.— (1) Personal liability shall not attach to any director, official or employee of the Bank in respect of anything done or omitted in good faith under this Act.

(2) Any sums of money, damages or costs which may be awarded against any director in respect of any act or thing done or omitted in good faith for the purpose of this Act, shall be paid out of the funds and resources of the Bank.

Committee to monitor the Bank

47. Cabinet may appoint a competent and independent body or Committee to monitor the compliance of the Bank with the provisions of this Act.

Application of Banking Act

48. Unless otherwise expressly stated in this Act, the provisions of the Banking Act 2006, No.34 shall apply to the Bank.

General penalty

49. A person who commits an offence against this Act for which no penalty is provided, is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months.

Regulations

50.— (1) The Minister may, with the approval of Cabinet, make Regulations on the recommendation of the Board, with respect to any of the following:

- (a) any additional purpose for which loans may be made under this Act;
- (b) any additional development enterprise for which loans may be made under this Act;
- (c) altering the description of or deleting any development enterprise mentioned in this Act;
- (d) the type or category of loan for any development enterprise or for any other purpose including the discharge of any prior encumbrances;
- (e) the maximum amount for which various categories of loans may be granted under this Act;
- (f) the maximum amount for which equity in any one institution may be taken under this Act;

- (g) methods of disbursements or of the securing of loans made under this Act;
- (h) the period within which any loan made under this Act shall be repayable;
- (i) prescribing the methods of inspection, assessment and valuation to be employed for the purpose of this Act;
- (j) the rate of interest, charges and premiums including risk premium to be charged on loans made under this Act;
- (k) the forms to be used for the purpose of this Act including any form for —
 - (i) applications for loans;
 - (ii) mortgages and memoranda of discharge or receipt;
 - (iii) any other method of taking security in respect of any loan made under this Act;
 - (iv) receipts of sums paid and discharges where the security taken for the loan is other than a mortgage;
 - (v) any reports or records to be kept or submitted by any borrower;
 - (vi) any other matter which the Bank considers necessary;
- (l) any fees to be paid in respect of any matter or thing to be done in connection with a loan under this Act;
- (m) prescribing books and accounts to be kept by the Bank and as to the audit thereof;
- (n) prescribing the terms and conditions applicable to loans made to a Co-operative Society under this Act;
- (o) a scale of legal charges to be made in connection with mortgages or any other form of security to be given in respect of loans made under this Act;
- (p) prescribing the methods of transfer and terms and conditions upon which shares of the Bank may be transferred;
- (q) any matters which are authorised by this Act to be prescribed;
- (r) any other matter which the Bank may deem expedient for the purpose of carrying out its functions under this Act;

No. 12] Saint Lucia Development Bank Act [2008.

(s) generally for the purpose of carrying out the provisions of this Act.

(2) Regulations made under this section may provide that any breach or contravention thereof shall be punishable summarily by a fine not exceeding five thousand dollars or by a term of imprisonment not exceeding three months or by both such fine and imprisonment.

Passed in the House of Assembly this 8th day of July, 2008.

SARAH FLOOD-BEAUBRUN,
Speaker of the House.

Passed in the Senate this 28th day of July, 2008.

ROSEMARIE HUSBANDS-MATHURIN,
President of the Senate.