

ACT

Act No. 25 of 1999

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## CHAPTER 125B

### **GRENADA BANANA INDUSTRY (REHABILITATION TRUST) ACT**

An Act to authorise the Minister responsible for Agriculture to execute the trust deed by virtue of which a trust to administer funds provided by the European Commission and other sources for the rehabilitation of the banana industry in Grenada will be established.

[Act No. 25 of 1999.]

[26th November, 1999.]

#### 1. Short title

This Act may be cited as the Grenada Banana Industry (Rehabilitation Trust) Act.

#### 2. Interpretation

In this Act—

“Stabex Funds” means funds provided by the European Commission for the purpose of rehabilitating the banana industry and which funds will be administered under a Trust as referred to in this Act;

“Stabex Funds” means funds provided by the European Commission for the purpose of rehabilitating the banana industry and which funds will be administered under a Trust as referred to in this Act;

#### 3. Statement of purpose

The purpose of this Act is to seek the approval of Parliament for the execution of the Trust Deed by virtue of which a Trust will be created to administer and manage and distribute Stabex Funds and similar funding provided by the European Commission and other sources and shall be given such large and liberal constructions so as to ensure the attainment of its purpose.

#### 4. Authorisation to execute trust deed

The Minister responsible for Agriculture is hereby authorised, on behalf of the Government of Grenada, to execute the trust deed for the establishment of the Trust.

## 5. Proper law

The trust deed shall be governed by and construed in accordance with the Laws of Grenada.

### Schedule

#### GRENADA BANANA INDUSTRY (REHABILITATION TRUST) ACT

##### *Trust Deed*

[Section 2.]

Grenada

This Trust Deed (Deed) is made, effective this

day of

1999, between the Government of Grenada (GOG), acting through the Minister responsible for Agriculture (MOA) of the One Part and the persons who have signed below as Trustees (the Trustees), the Other Part and endorsed by the Delegation of the European Commission for Barbados and the Eastern Caribbean (the EC Delegation), acting on behalf of the European Commission.

Whereas GOG is the recipient from time to time of Stabex Funds, and similar funding.

And whereas GOG and the EC Delegation desire that such funds be paid into a Trust, the Trust to be established on behalf of qualified Fund applicants and participants in the Grenada banana industry (Beneficiaries).

And whereas it has been found appropriate to provide for the oversight and the direction of the management of the Trust through the appointment of a Board of Trustees (Board) which will be accountable to the EC Delegation and the MOA on behalf of the Beneficiaries.

All for the purpose of funding the implementation of the banana industry Production Recovery Plan in Grenada in accordance with the desire of the EC Delegation and GOG.

And whereas the Trustees have accepted to serve and have consented to be bound by the conditions and undertakings of this Deed.

Now therefore this deed witnesses as follows—

1.

##### Definitions

In this Deed, the following words and expressions have the following meanings—

“EC Delegation” means the persons who from time to time represent the European Commission with respect to the Trust;

“GCIC” means the Grenada Chamber of Industry and Commerce;

“Minister” MOA means the Minister responsible for agriculture;

“NAO” means the National Authorising Officer of the European Development Fund;

“PRP” means the Windward Islands Banana Industry Production Recovery Plan, Grenada Addendum;

“Stabex Committee” means the Committee established by the NAO for the implementation of the frameworks of Mutual Obligations drawn up for Stabex allocations as per transfer year;

“Stabex Funds” means funds reserved for stabilisation of exports under the Lome Conventions;

“Steering Committee” means the executive management committee appointed by the Board pursuant to this Deed;

“This Deed” means this document and any annexes, extension, renewals or amendments thereto;

“Trustee(s)” means any person(s) appointed under Article 3 of this Deed to act as a Trustee having accepted so to act under its terms and conditions and any person who succeeds any such person in that capacity.

2.

The name of the Trust

The name of the Trust is “The Grenada Banana Industry Trust”.

3.

(1)

Appointment of the Trustees and categories thereof

The MOA shall appoint the first Board of Trustees each of whom is named and joined as a party to this Deed as the first Board and such Trustees accept to take up office as such acting individually but primarily as a Board and they hereby agree to join in this Deed and to be bound by its purposes and undertakings and by the fiduciary duties imposed on them by Article 8. The MOA shall call the first Meeting of the Board.

(2)

The Board shall consist of nine (9) Trustees.

(3)

The Board shall be represented at all time by members from among the ranks of the following institutions and constituencies—

A

—

One from the Ministry of Agriculture;

B

—

One from the Ministry of Finance;

C

—

Two from active certified banana farmers producing for export;

D

—

One from the GCIC;

E

—

One from a financial institution;

F

—

One from the Grenada Banana Co-operative Society, the Marketing Board or similar banana export organisation;

G

—

The NAO or his or her representative;

H

—  
One from the EC Delegation.

The institutions and constituencies sponsoring Trustee positions on the Board shall have the right to replace their designated Trustees at such time as they see fit or as may become necessary.

(4)

The first Board shall serve for a period of one (1) year from the effective date of this Deed. Thereafter, the Trustees shall elect successor Trustees and shall fill vacancies on the Board as they see fit subject to the By-Laws provided for hereunder except that for members representing categories C and F in (3) above, incumbents in such categories shall be replaced by new Trustees each from the same category, every two (2) years.

(5)

The Trustees shall meet as often as necessary to conduct their business but at least once every three (3) months.

(6)

The Board shall have the power to appoint sub-committees in the interests of the efficient and effective operation of the Trust pursuant to the Trust By-Laws and to assign sub-committees specific duties and responsibilities, the performance of which must be formally reported to the Board.

(7)

As soon as possible after the effective date hereof, the Board shall create By-Laws not inconsistent with the provisions of this Deed to establish its governance, such By-Laws to be endorsed by the MOA and the EC Delegation.

(8)

The Board shall present to the MOA and the EC Delegation audited financial statements and an annual report each year within three (3) months of the end of its financial year.

4.

Transfer of Funds and obligations to the Trust

(1)

From time to time after the effective date of this Deed the NAO shall transfer to the Trust, Stabex Funds and similar fundings to be used for the promotion of projects designed for use by Beneficiaries to implement the PRP. These and any other funds which may be received by the Trust from time to time shall be known as the Trust Fund (Fund).

(2)

The transfer and operating procedures for the Fund shall be provided in writing to the Trust by the EC Delegation.

5.

Purpose and work of the Trust

(1)

The purpose of the Trust is to implement the PRP through the Fund by—

(a)

Encouraging, assisting and supporting the development of sound farm practices and services in the production of bananas through restoring confidence in Grenada's banana industry;

(b)

Determining the merits of applications for project loans by potential Beneficiaries;

(c)

Providing funding support for qualified Beneficiaries with sound projects having credible potential for sustainability;

(d)

Providing for technical assistance, information and training services to the projects of qualified Beneficiaries using current technology and organisational and management systems;

(e)

Ensuring that all relevant information derived from the work of the Trust is made available to interested parties in the private sector and in the farming communities;

(f)

Promoting understanding of the PRP and the nature and significance of the work of the Trust;

(g)

Performing any activities incidental to the above activities.

(2)

There shall not be any distribution of profits or other income of the Trust to the Trustees or to officers or employers of the Trust other than reimbursement for reasonable and necessary expenses or attendance fees previously authorised by the Board.

(3)

In executing this Deed, the MOA confirms that the Trust and the Fund and the income and transactions of both are and shall remain fully exempt from all national and local taxes.

(4)

The office of a Trustee shall be vacated upon the death of a Trustee or in any of the following circumstances—

(a)

Upon the tender by a Trustee of a written resignation which shall take effect only upon his or her replacement as set forth above;

(b)

Upon a Trustee missing three (3) consecutive Board meetings or five Board meetings or thirty per cent (30%) of all meetings held in one year, without

adequate excuse in the judgement of the Board;  
(c)

Upon a Trustee becoming bankrupt or making an arrangement or composition with his or her creditors;  
(d)

Upon a Trustee being convicted of a crime involving dishonesty or of a felony;  
(e)

Upon a Trustee being declared by any competent court to be of unsound mind or to be incapable of managing his or her affairs;  
(f)

Upon a Trustee being removed by any competent court from any office of trust because of misconduct;  
(g)

Upon a Trustee ceasing to represent the institution or constituency under whose auspices he or she was appointed or elected;  
(h)

If at least seven Trustees shall at any time, consider any member of the Board to be incapable of or willfully disinclined toward properly discharging his or her duties as a Trustee, the Board may by resolution, forthwith terminate the incumbency of any such Trustee and in such a case, it shall be terminated.  
(5)

The term left unexpired by the removal of a Trustee shall be promptly filled by the Board.

6.

#### Powers of the Trust and the Board

(1)

The Trust shall be overseen and directed by the Board.  
(2)

The Board shall approve or deny all applications for money out of the Fund and shall have the power to authorise the Trust to enter into any transactions which will achieve the purpose of the Trust and to engage in the following acts without limitation.

(a)

To receive money and assets to build and to manage the Fund for the benefit of the Beneficiaries.

(b)

To ascertain the wishes of the EC Delegation and the (GOG) in light of the purpose and best interests of the Trust and to consider the views of financial institutions and of organisations and individuals representing banana growers, processors, distributors and marketers in its decisions on applications for monies out of the Fund.

(c)

To borrow money secured by Trust assets and to require guarantees and or collateral to secure obligations to the Trust.

(d)

To employ staff, appoint accountants, advisers or consultants and to procure the assistance of short term technical services or such other support as the Board considers necessary or appropriate on such terms as it considers reasonable in light of the purpose of the Trust and prevailing circumstances.

(e)

To procure insurance coverage in appropriate amounts to insure against all manner of risks to its assets and its liability risks which may be encountered in connection with its activities.

(f)

To operate bank or other accounts with reputable financial institutions in the name of the Trust or the Fund.

(g)

To enter contracts, to sue and be sued in any court and to appoint attorneys or other agents to whom it may grant limited powers to act in specific transactions.

(h)

To compromise, settle, abandon, appeal or arbitrate any claim, suit, judgement or dispute to which the Trust is a party or which may threaten the Trust.

(i)

To execute or authorise the execution of all instruments and documents and to do all things as may be necessary or appropriate to enable any lawful transaction to be effected or registered on behalf of the Trust.

7.

#### The Steering Committee

(1)

The Board shall appoint a Steering Committee, which shall be composed of seven (7) members. The Steering Committee shall be responsible for the day to day management and administration of the Trust in accordance with internal operating rules and By-Laws which shall promptly be established by the Board to set up the Trust's governance. The Steering Committee's prime task shall be to facilitate and evaluate applications for monies out of the Fund and to recommend to the Board the action to be taken on such applications.

The Steering Committee shall be composed of the PRP Manager, the Credit Manager from the PRP's technical assistance team, two (2) representatives of farmers organisations, one (1) representative of a financial institution (different from the one represented on the Board from Category C), one (1) representative from a local firm of chartered accountants and one (1) representative from a community organisation which provides services to the banana industry.

(2)

At least once every two (2) months, the Steering Committee shall report to the

Board upon the progress of its management of the affairs of the Trust and on the Trust's condition and upon any other aspects of the activities of the Trust which the Trustees may from time to time require.

8.

Fiduciary duties of each Trustee and each member of the Steering Committee  
Each Trustee and each member of the Steering Committee hereby acknowledges that each is possessed of high duties of care, prudence, loyalty and independence toward the Trust and the Fund, toward all Beneficiaries and potential Beneficiaries. accountable to the GOG and the EC Delegation. This special duty obliges each Trustee and Steering Committee member to immediately disclose to the Board all real or apparent conflicts interests; to abstain from voting where such conflict of interest exists and to put the Trust and its Beneficiaries above his or her own interests at all times.

9.

#### Termination of Trust

This Trust shall terminate when the GOG and the EC Delegation decide that its function is no longer required. Such termination decision shall be communicated to the Board in writing, termination to be effective sixty (60) days after actual receipt of such writing. In case of such termination all contracts and undertakings in force at the time of receipt by the Trust of such writing shall be wound down, renegotiated, if necessary and completed as soon as possible thereafter, in no case to extend beyond one year from the date of such receipt unless mutually authorised by the GOG and the EC Delegation. In case of such termination all monies in the Fund at the time of the termination decision, not earmarked for approved applications shall be transferred back to the European Development Fund through the NAO or, as the case may be, to other source providers.

10.

#### No assignment or delegation

No party to this Trust Deed or any Trustees or member of the Steering Committee may assign his or her rights nor delegate any duties conferred or imposed hereunder.

The parties have executed this trust deed this

of  
, 1999.

Ministry of Agriculture for the Government of  
Grenada

Trustees

Witness

Witness

Witness

Witness

Witness

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Witness