

CHAPTER 74:05
NATIONAL DEVELOPMENT BANK
ARRANGEMENT OF SECTIONS
PART I
Preliminary

SECTION

1. Short title
2. Interpretation

PART II

The National Development Bank and its Functions

3. Establishment of the National Development Bank
4. Business of the bank
5. General duties of the bank
6. Power of the bank to act as agent
7. Additional powers and duties of the bank
8. Powers of Minister and annual report

PART III

Financial Provisions

9. Funds of the bank
10. Payment of interest on unrecallable capital
11. Provisions as to moneys provided from loan funds
12. Borrowing powers of the bank
13. Issue of national development bonds
14. Special funds
15. Balancing of revenue account, and surplus revenue
16. Restriction on underwriting
17. Reserve fund
18. Investments
19. Accounts and audit

PART IV

General Provisions as to Loans made by the Bank

20. Applications and securities
21. Provisions relating to loans
22. Loans secured on life assurance policies
23. Examination as to application of moneys lent
24. Order of bank upon such examination
25. Appointment and powers of valuers and inspectors
26. Cancellation or modification of approval of loan
27. Power of bank to direct that any part outstanding of an approved loan be not paid
28. Misapplication of loan secured by mortgage or otherwise

PART V

Miscellaneous

29. Offences in respect of financial assistance
30. False statements
31. Information obtained as a member of the board, etc., to be secret and confidential
32. Fiat of Director of Public Prosecutions
33. Minutes receivable in evidence
34. Liability of bank to taxes, etc.

PART VI
Transitional

35. Transfer of assets and liabilities of Agricultural Loan Fund to the bank
36. Minister to secure transfer

First Schedule
Second Schedule - Issue, Control, Management and Repayment of National
Development Bonds
Third Schedule

Law 13, 1963,
HMC Order 1, 1963,
L.N. 28, 1965,
Law 41, 1966,
L.N. 84, 1966,
Act 9, 1967,
Act 30, 1973,
S.I. 51, 1977,
S.I. 89, 1978,
Act 6, 1982,
Act 14, 1984,
S.I. 110, 1989,
Act 14, 2005,
S.I. 58, 2007.

An Act to provide for the establishment and administration of a National Development Bank, the powers, duties and functions of the bank, and for matters incidental thereto.

[Date of Commencement: 1st May, 1964]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the National Development Bank Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"**agriculture**" includes fisheries, forestry, horticulture and the use of land for any purpose of husbandry, and "**agricultural**" shall be construed accordingly;

"**bank**" means the National Development Bank established under section 3;

"**board**" means the board established under the First Schedule;

"**chairman**" means the chairman of the board;

"**deputy chairman**" means the deputy chairman of the board;

"**financial year**" means a period of 12 months ending on 31st day of March;

"**general manager**" means the general manager of the bank appointed under paragraph 5 of the First Schedule and includes an acting general manager so appointed;

"**hire-purchase agreement**" and "**instalment sale agreement**" have the same meaning respectively as they have in the Hire-Purchase Act;

"**husbandry**" includes the keeping or breeding of livestock, poultry or bees and the growing of fruit, vegetables and the like;

"**officer**", in relation to the bank, includes the general manager and secretary;

"**secretary**" means the secretary of the bank appointed in terms of the First Schedule;

"**staff**", in relation to the bank, means the officers and servants thereof;

"**year**" means financial year.

(2) Any reference in this Act to the bank shall, where the context so requires, include a reference to the board.

PART II

The National Development Bank and its Functions (ss 3-8)

3. Establishment of the National Development Bank

(1) There is hereby established a bank, to be known as the National Development Bank, for the purpose of promoting the economic development of Botswana in accordance with the provisions of this Act.

(2) The bank shall be a body corporate capable, under the said name, of suing and of being sued, and with power, subject to the provisions of this Act, of doing anything and entering into any transaction (whether or not involving expenditure or the acquisition or alienation of property) which bodies corporate may by law do and enter into, which is incidental or conducive to the carrying on of its business under this Act.

(3) The provisions of the First Schedule shall have effect with respect to the bank.

4. Business of the bank

(1) The business of the bank shall, subject to the provisions of this Act, be to provide financial assistance, for the purpose for which it is established, to new or existing undertakings to which this section applies by means of-

- (a) the granting of loans;
- (b) the selling of goods, and the taking over of sellers' rights, under hire purchase or instalment sale agreements; and
- (c) with the approval of the Minister, the taking up of share and loan capital and the underwriting of issues of shares and debentures.

(2) This section applies to any undertaking falling within one or more of the following classes, that is to say-

- (a) agricultural undertakings;
- (b) industrial undertakings;
- (c) undertakings for the working or getting of minerals;
- (d) undertakings for providing, maintaining or improving the supply of water or electricity, and other utilities, whether of a public or private nature;
- (e) undertakings for providing, maintaining or improving transport facilities or transport services;
- (f) undertakings for the provision or improvement of houses or other dwellings;
- (g) undertakings for the promotion of tourism and for the keeping of hotels;
- (h) undertakings for the utilization of the wild animal life of Botswana;
- (i) undertakings for purchasing, processing, storing or marketing any products of one or more enterprises falling within any of the foregoing paragraphs;
- (j) undertakings for the sale of goods, whether retail or wholesale, or for the distribution of goods;
- (k) undertakings for the carrying out of building, engineering or other operations in, on, over or under land;
- (l) undertakings comprising the service industries;
- (m) the provision, assistance or promotion of human development;
- (n) the lease, purchase or hiring of motor vehicles or plant machinery.

(3) Notwithstanding anything in subsection (1), the bank shall not provide financial assistance for buildings or works for the public service of Botswana, except where the same may arise from and be incidental to assistance provided for any building or engineering contractor.

(4) If it appears to the Minister to be expedient to add to the classes of undertaking specified in subsection (2), the Minister may by order published in the *Gazette* direct that that subsection shall have effect with the addition of such one or more classes of undertaking as

may be specified in the order.

5. General duties of the bank

The bank shall ensure that its business is conducted in the manner best suited for the efficient and economical utilization of its funds, and best calculated to achieve the purpose for which it is established.

6. Power of the bank to act as agent

(1) The bank may act as agent for the administration of funds (not being funds of the bank referred to in Part III) on behalf of such persons, organizations or administrations as may from time to time be approved by the Minister.

(2) Any funds administered by the bank in accordance with the provisions of subsection (1) shall not be deemed to be part of the funds of the bank referred to in Part III but they shall be administered, paid and applied in accordance with directions from time to time given by the Minister or such persons, organizations or administrations, as the case may be.

7. Additional powers and duties of the bank

(1) In addition to any other powers and duties conferred by this Act, the bank may-

- (a) accept money, documents or valuables from any person for safe custody;
- (b) in connection with any loan or guarantee given by the bank, manage, operate or control any property, enterprise or undertaking on behalf of any person;
- (c) operate any savings scheme or any combined life assurance and savings scheme approved by the board; and
- (d) make or give guarantee approved by the board on behalf of any person.

(2) The bank may do anything necessary, incidental or subsidiary to the exercise of the powers mentioned in subsection (1) including the charging of fees.

8. Powers of Minister and annual report

(1) The Minister may, after consultation with the board, give to the bank 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 bank shall give effect to any such directions.

(2) The bank shall not later than six months from the end of each financial year submit to the Minister a report containing-

- (a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct;
- (b) a statement of the accounts of the bank audited in accordance with the provisions of section 19;
- (c) a statement of every direction given by the Minister under this section and under section 17 and paragraph 3 of the Second Schedule during the preceding financial year; and
- (d) a statement of all bad debts written off in terms of section 19(3) during the preceding year, and the reason in each case why the debt is deemed irrecoverable.

(3) The Minister shall cause a copy of the report together with a copy of the auditor's report to be laid before the National Assembly and the bank shall publish the same in such manner as the Minister shall specify.

PART III

Financial Provisions (ss 9-19)

9. Funds of the bank

(1) The funds of the bank shall consist of unrecallable capital, loan funds, a fund established under section 14, such moneys as may be applied by the bank as capital in terms of section 15(2), and such other moneys as may from time to time be received by or fall due to the bank in respect of its business or any matter incidental to its business.

(2) The unrecallable capital of the bank shall consist of-

- (a) such moneys as the Government may from time to time pay to the bank as part of its

funds out of moneys provided by law from the public funds (other than loan funds) for such purpose;

- (b) the fund vested in the bank in terms of section 35;
- (c) the fund established under section 11 of the State Land Act; and
- (d) such moneys as the bank may from time to time accept by way of donation or bequest to the bank other than moneys required to be paid into a special fund established under section 14.

(3) The loan funds of the bank shall consist of-

- (a) such moneys as the Government may from time to time pay to the bank as part of its funds out of moneys provided by law from the proceeds of any loan raised by the Government;
- (b) such moneys as may from time to time be borrowed by the bank in terms of section 12; and
- (c) such moneys as may from time to time be raised by the bank by the issue of national development bonds in terms of section 13.

(4) The loan funds of the bank shall at no time exceed in aggregate the sum of P30 000 000 or such other sum as may from time to time be approved by resolution of the National Assembly.

10. Payment of interest on unrecallable capital

(1) Subject to subsection (2), the bank shall pay dividends to the Government on its unrecallable capital, other than moneys referred to in section 9(2)(d).

(2) The Minister may, from time to time, by order fix a minimum dividend rate in respect of dividends payable in accordance with this section or waive payment to the Government of such dividends for any period he thinks fit.

11. Provisions as to moneys provided from loan funds

Where any moneys are paid to the bank as part of its funds out of moneys provided by law from the proceeds of any loan raised by the Government, the bank shall repay such moneys in such manner and at such times, and shall pay interest thereon to the Government at such times and at such rates, as the Minister may determine at the time at which such moneys are paid, and such moneys shall be applied by the bank only for such purposes as may be specified in the written law under which the loan was raised.

12. Borrowing powers of the bank

(1) Subject to the provisions of section 9(4), and to the provisions of this section, the bank may borrow sums required by it for meeting any of its obligations or for the purpose of its business.

(2) The power of the bank to borrow shall be exercisable only with the approval of the Minister as to the amount, the nature and sources of the borrowing and as to the terms on which the borrowing may be effected.

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

(4) The Government may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, and the payment of the interest and other charges on, any borrowings of the bank under this section, and any sums required for the fulfilling of any such guarantee shall be charged on and paid out of the revenues and public funds of Botswana, and such expenditure thereof is hereby declared to be statutory expenditure.

(5) As soon as possible after any guarantee is given under subsection (4), the Minister shall lay a statement of such guarantee before the National Assembly.

(6) A person lending money to the bank shall not be bound to inquire whether the borrowing of such money is within the power of the bank.

13. Issue of national development bonds

(1) Subject to the provisions of section 9(4), the bank may, with the approval of the Minister, issue national development bonds.

(2) The provisions of the Second Schedule shall have effect with respect to national development bonds.

14. Special funds

(1) The bank may from time to time accept moneys by way of donation or bequest subject to a condition that they shall be applied to any specific purpose or used in a specified manner, and if the bank so accepts any such moneys it shall establish a special fund and pay those moneys into that fund.

(2) The bank shall apply the moneys of a fund established under subsection (1) for the purposes, and in the manner, specified by the person who gave or bequeathed the moneys.

(3) The bank shall not accept a donation or bequest in terms of subsection (1) which is required to be applied for a purpose, or in a manner inconsistent with the purpose, for which the bank is established under section 3.

15. Balancing of revenue account, and surplus revenue

(1) It shall be the duty of the bank so to carry on its business as to secure that its revenues are sufficient to meet all sums properly chargeable to its revenue account (including, without prejudice to the generality of that expression, provision in respect of its obligations under sections 10, 11, 12 and 17, and the First and Second Schedules), taking one year with another.

(2) Any excess of the revenues of the bank for any financial year thereof over the sums properly chargeable to its revenue account for that year (including as aforesaid) shall be applied by the bank for such purposes as it may determine with the approval of the Minister.

16. Restriction on underwriting

Except with the prior approval of the Minister, the bank shall not underwrite an issue of shares or debentures if, on the date on which it is proposed to underwrite such issue, the moneys which the bank may be called upon to pay under the same when added to the sums which it may be called upon to pay under all other contracts for underwriting the issue of shares and debentures then outstanding shall exceed such sum as the Minister may from time to time direct by order published in the *Gazette*.

17. Reserve fund

(1) The bank shall establish a reserve fund.

(2) The management of the said fund, the sums to be carried from time to time to the credit thereof, and the application thereof, shall be as the bank may determine:

Provided that-

- (i) no part of the said fund shall be applied otherwise than for the purposes of the bank; and
- (ii) the power of the Minister to give directions to the bank shall extend to the giving to it of directions as to any matter relating to the establishment or management of the said fund, the carrying of sums to the credit thereof, or the application thereof, notwithstanding that the directions may be of a specific character.

18. Investments

Moneys standing to the credit of the bank may from time to time be invested in securities approved either generally or specifically by the Minister, and the bank may, from time to time, with the like approval sell any or all of such securities.

19. Accounts and audit

(1) The bank 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 bank shall grant to the auditor appointed to audit the accounts of the bank under the provisions of subsection (1) access to all books, documents, cash and securities of the bank and the general manager, all other members of the board, and all officers, servants and agents of the bank shall give to such auditor on request all such information as may be within their

knowledge in relation to the affairs of the bank.

(3) The bank may write off bad debts.

PART IV

General Provisions as to Loans made by the Bank (ss 20-28)

20. Applications and securities

No loan shall be made by the bank to any person or body except upon a written application in the form prescribed by the board which shall indicate the purpose for which the loan is required and until the bond or other security, if any, required by the bank in respect of such loan has been registered or otherwise completed as by law required.

21. Provisions relating to loans

(1) In the case of every loan the bank shall determine-

- (a) the limit of such loan;
- (b) the security required;
- (c) the period of repayment of the loan together with the interest thereon; and
- (d) the rate of interest to be charged:

Provided that no loan shall earn interest at a rate lower than the minimum rate declared under the provisions of subsection (2) and in force at the time the loan is made.

(2) The Minister may, by order published in the *Gazette*, declare a minimum rate of interest for the purposes of subsection (1).

22. Loans secured on life assurance policies

(1) For the purposes of this section, the expression "policy of life assurance" or "policy" means any instrument by which the payment of moneys by or out of the funds of an assurance company, on the happening of any contingency depending on the duration of human life, is assured or secured; and the expression "assurance company" means every corporation, association, society or company now or hereafter carrying on the business of assuring lives or survivorships either alone or in conjunction with any other object or objects.

(2) Every loan, the security of which is a policy of life assurance, shall be secured by deed of assignment which shall be in a form to be approved by the board.

(3) In the event of the borrower failing to repay any loan or part thereof made under the provisions of this section, together with the interest thereon, then the bank shall be at liberty to sue at law in the name of the borrower for the recovery of such moneys from the assurance company liable under the policy for moneys thereby assured or secured:

Provided that-

- (i) no assignment of a policy of life assurance shall confer on the bank any right to sue for the amount of such policy, or the moneys assured or secured thereby, until a written notice of the date and purport of such assignment is given to the assurance company liable under such policy at their principal place of business for the time being in Botswana and the date on which such notice is received shall regulate the priority of all claims under any assignment and a payment *bona fide* made in respect of such policy by the assurance company before the date on which such notice is received shall be valid against the bank as if this Act had not been passed;
- (ii) every assurance company to which notice is duly given to the assignment of any policy under which it is liable shall, upon request in writing by the bank and upon payment in each case of a fee not exceeding P1, deliver an acknowledgement in writing under the hand of the manager, secretary, treasurer or other principal officer of the assurance company in Botswana of their receipt of such notice; and every such written acknowledgement, if signed by the manager, secretary, treasurer or other principal officer in Botswana of the assurance company whose acknowledgement the same purports to be, shall be conclusive evidence as against such assurance company of its having duly received the notice to which such acknowledgement relates.

23. Examination as to application of moneys lent

- (1) Where the bank has made a loan of money under the provisions of this Act it may-
- (a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purposes for which it was made; or
 - (b) require financial statements in such detail as it may determine to be submitted by the person or body in receipt of the loan bi-annually or at shorter intervals at the discretion of the bank, and such person or body shall comply with such request.

(2) The bank may authorize in writing any of its staff or agents or any other person to make such examination, and the person or body in receipt of the loan shall produce to such person all the books, documents and other matters and things necessary for the purposes of the examination.

(3) Any person who contravenes any of the provisions of subsection (1)(b) or any of the provisions of subsection (2) shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

24. Order of bank upon such examination

Where upon any examination made under the provisions of section 23 it appears to the bank that any sum being the whole or any part of the loan has not been applied for the purposes for which the loan was made the bank may order that any such sum be, within the time mentioned in the order, applied to such purposes 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.

25. Appointment and powers of valuers and inspectors

(1) Where the bank has made a loan under the provisions of this Act on the security of any corporeal property or has under the provisions of this Act sold or acquired the seller's rights under a hire-purchase or instalment sale agreement any corporeal property it may from time to time value or inspect or cause to be valued or inspected such property, and may authorize in writing any of its staff or agents or any other person to make such valuation or inspection.

(2) Any valuer or inspector appointed under this section may, at all reasonable times value and inspect the property concerned and enter upon any lands or premises necessary for such purpose; and any person who obstructs any valuer or inspector in making such valuation or inspection shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

26. Cancellation or modification of approval of loan

At any time after the approval of a loan and before the actual payment of the money the bank may at its discretion and without assigning any reason therefor cancel or modify such approval and withhold payment of the whole or a portion of the money.

27. Power of bank to direct that any part outstanding of an approved loan be not paid

In any case where the bank has approved the making of a loan by instalments and any part of such loan has not yet been advanced if-

- (a) any sum of money, whether principal or interest, due in respect of any loan made under this Act remains unpaid;
- (b) in the opinion of the bank, any prior loan made under this Act has not been applied for the purpose for which it was made or has not been carefully and economically expended;
- (c) the borrower has become insolvent or has been sentenced to a term of imprisonment without the option of a payment of a fine or has assigned his estate for the benefit of creditors;
- (d) there has been a breach or non-observance of any condition attached to the loan; or
- (e) in the opinion of the bank, the sums already advanced were not applied to the purposes for which the loan was made within reasonable time,

the bank, without prejudice to any other remedy, may refuse to advance any portion of the loan

still outstanding.

28. Misapplication of loan secured by mortgage or otherwise

(1) No loan or part thereof made under the provisions of this Act shall be applied otherwise than for such purposes as may be authorized by the bank.

(2) If any loan made under the provisions of this Act or any part of such loan has been misapplied the bank may-

- (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 purposes of the loan may thereupon be realized; or
- (b) where such loan has been secured otherwise than by way of mortgage, by notice addressed to the borrower, request 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.

PART V

Miscellaneous (ss 29-34)

29. Offences in respect of financial assistance

(1) Any person who-

- (a) obtains financial assistance from the bank under the provisions of this Act by means of any false representations;
- (b) wilfully applies any loan made to him by the bank under the provisions of this Act to any purpose other than the purpose for which the loan was made; or
- (c) having obtained any financial assistance from the bank under the provisions of this Act, wilfully destroys any security given in relation to such financial assistance,

shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both.

(2) In any criminal proceedings in respect of an offence under subsection (1)(b) 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.

30. False statements

Any applicant for financial assistance who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true, shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding 12 months, or to both.

31. Information obtained as a member of the board, etc., to be secret and confidential

(1) The general manager, every member of the board, every other officer, and every servant and agent of the bank-

- (a) shall regard and deal with as secret and confidential all information, documents and matters which or knowledge of which he may obtain by reason of his position, which relates to any of the business of the bank; and
- (b) shall not make use of any documents, matters or information which or knowledge of which he may obtain by reason of his position, for the benefit of himself or any other person, or otherwise than for the purposes of his duties,

and shall make and subscribe an oath or affirmation before a commissioner of oaths or justice of the peace to such effect.

(2) Where any person contravenes any of the provisions of this section, he shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

32. Fiat of Director of Public Prosecutions

Proceedings for offences arising out of the provisions of this Act or in connection with any financial assistance given hereunder shall not be instituted without the consent in writing of the Director of Public Prosecutions.

33. Minutes receivable in evidence

Any minutes made of meetings of the board shall, if duly signed by the chairman, or deputy chairman, be receivable in evidence in all legal proceedings without further proof.

34. Liability of bank to taxes, etc.

It is hereby declared that nothing in this Act exempts the bank from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.

PART VI

Transitional (ss 35-36)

35. Transfer of assets and liabilities of Agricultural Loan Fund to the bank

(1) On the commencement of this Act, the provisions of the Third Schedule shall have effect for the transfer of the assets and liabilities vested in the Government on account of the Agricultural Loan Fund and for such other matters as are contained therein, and all officers of the public service of Botswana who, immediately before the commencement of this Act, had any functions in respect of such fund shall do all such acts as may be necessary or desirable for the more effectual vesting of such assets and liabilities in the bank.

(2) For the purposes of this Part, "Agricultural Loan Fund" means the fund established under the repealed Loan Proclamation (Cap. 139, 1959 ed.).

36. Minister to secure transfer

The Minister may by order published in the *Gazette* provide for any matter which appears to him to be necessary or expedient for the purpose of securing the effective transfer of the assets and liabilities vested in the bank in terms of the Third Schedule, and, without prejudice to the generality of the foregoing, may appoint any person to do any act or sign any document for and on behalf of the Government whereby such assets may be transferred to the bank.

FIRST SCHEDULE

(section 3(3))

A. The Board (paras 1-4)

1. Establishment and functions of the board

(1) There is hereby established a board of the bank, consisting of such number of members, not being less than four, as the Minister may from time to time determine.

(2) Subject to the provisions of this Act, the operations of the bank shall be controlled by the board.

2. Appointment of members of the board

(1) The members of the board shall be appointed by the Minister by instrument in writing from amongst persons appearing to him to be qualified by reason of their experience of and capacity in, matters relating to agriculture, industry, trade, finance, or administration to undertake the duties appertaining to members of the board.

(2) A person shall be disqualified from being appointed or being a member of the board if he is a Member of the National Assembly.

(3) A member of the board shall, subject to the provisions of subparagraphs (4) and (5), hold office for such period, not exceeding three years, as the Minister may direct in the instrument appointing such member, but such member shall be eligible for reappointment.

(4) The Minister may appoint any person appearing to him to have the qualifications necessary for appointment under the provisions of subparagraph (1) as a member of the board to act temporarily in the place of any member of the board during any absence or incapacity of such member.

(5) Any member of the board, other than a member who is an officer of the public service of Botswana, may, by writing under his hand addressed to the Minister, resign from the board.

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

(7) The Minister may grant leave of absence to any member of the board.

(8) The appointment, removal, death, or resignation of any member of the board shall be published by the Minister in the *Gazette*.

3. Chairman and deputy chairman of the board

The Minister shall from time to time appoint from among the members of the board a chairman and a deputy chairman thereof, and shall publish or cause to be published every such appointment in the *Gazette*.

4. Remuneration of members of the board

The bank shall pay to each member of the board (other than any member of the board who is an officer of the public service of Botswana), in respect of his office as such, such remuneration and allowances (if any) as the Minister may from time to time determine.

B. Staff (paras 5-8)

5. General manager

(1) The Minister shall appoint a suitable person to be a general manager of the bank and the person so appointed shall be employed by the bank at such remuneration and on such terms and conditions as the Minister may determine.

(2) The general manager shall be the chief executive officer of the bank.

(3) The board may, during any absence or incapacity of the general manager, appoint an officer of the bank to act as general manager:

Provided that if such absence or incapacity lasts or is expected to last for more than six weeks, the board shall report the fact to the Minister, and the Minister may appoint such officer or any other person to act as general manager.

(4) An acting general manager shall, while so acting, exercise all the powers and discharge all the duties which under this Act or any other written law are exercisable or to be performed by the general manager.

(5) A person shall be disqualified from being appointed or being the general manager or acting general manager of the bank if he is a Member of the National Assembly.

6. Officers, servants and agents

(1) The board shall appoint a secretary and may appoint such other officers, servants and agents as it considers necessary for the proper carrying out of the provisions of this Act on such terms and conditions as it thinks fit:

Provided that the appointments of agents shall be subject to the approval of the Minister.

(2) A person shall be disqualified from being appointed or being an officer or servant of the bank under this paragraph if he is a Member of the National Assembly.

7. Payment of pensions, etc.

No provision shall be made by the bank for the payment of any pension, gratuities or other like benefits to any officer, servant or agent thereof without the prior approval of the Minister.

8. Secondment of public servants

(1) The Minister, at the request of the board and with the consent of the person concerned, may second to the employment of the bank any member of the public service of Botswana.

(2) Where an officer of the public service who holds a pensionable office within the meaning of the Pensions Act is so seconded, the bank shall pay to the Government of Botswana an annual pension contribution at such rate percent of the officer's annual emoluments from the bank as may, from time to time, be approved by the Minister, and the service of such person while in the employment of the bank shall be deemed to be service under the Government of Botswana for the purposes of the Pensions Act.

(3) The Minister may, and shall at the request of the board, at any time terminate any secondment in terms of this paragraph.

C. Procedural (paras 9-16)

9. Procedure and meetings of the board

(1) The board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the chairman 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 three members of the board.

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

(4) The chairman, or in his absence the deputy chairman, and two other members of the board shall

form a quorum for the transaction of business at a meeting.

(5) The decisions of the board shall be by a majority of votes; and in any case in which the voting is equal the chairman or the deputy chairman presiding shall have an original and a casting vote.

(6) Proper minutes of each meeting shall be kept by the secretary and shall be confirmed by the chairman or the deputy chairman (as the case may be) 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 on any matter for the purpose of assisting or advising the board, but such co-opted person shall not have the right to vote.

10. Regulations

The board, with the approval of the Minister, may, subject to the express provisions of this Act, make regulations-

- (a) governing the proceedings of the board or any committee thereof and the manner and transaction of its business;
- (b) prescribing the circumstances in which members of the board may receive travelling and subsistence allowances and fixing the rates of such allowances;
- (c) imposing fees in such cases as may be determined by the bank;
- (d) generally for the exercise of its powers and duties under the provisions of this Act.

11. Local loans committees

The board may establish local loans committees in such parts of Botswana as it thinks fit, for the purpose of advising the board as to the exercise of its functions in relation to applications from such areas and of performing such other functions in relation to the granting and recovery of loans for agricultural purposes and otherwise as the board may direct.

12. Power to delegate

(1) The board may delegate to any member or committee of the members of the board or members of the bank staff authority to carry out on its behalf such duties as the board may determine:

Provided that the board shall only delegate authority to carry on the business of the bank in relation to the provision of financial assistance subject to the following conditions-

- (a) that such authority shall be delegated to not less than three persons (hereinafter in this paragraph referred to as "authorized persons") consisting of a committee of the members of the board and members of the bank staff, of whom two of such authorized persons shall be members of the bank staff; and
- (b) that such authorized persons shall have power to provide assistance to any person or body subject to such limits as shall be imposed by the board.

(2) Any such delegation may be revoked by the board at any time and no such delegation shall prevent the exercise of such authority by the board.

(3) Authority so delegated shall be exercised in accordance with such general or special instructions as the board may from time to time give to such member or committee.

13. Execution of documents

(1) Subject to the provisions of subparagraph (2), all deeds, instruments, contracts and other documents requiring to be executed by the bank shall be deemed to be duly executed-

- (a) if signed by the chairman or the deputy chairman and the secretary; or
- (b) if signed, whether within or outside Botswana, by a person or persons authorized by resolution of the board so to sign:

Provided that in such case an extract of such resolution, certified by the chairman or the deputy chairman and the secretary shall be attached to and form part of the document.

(2) Any cheque, bill of exchange or order for the payment of money requiring to be executed by the bank shall be deemed to be duly executed if signed by a person or persons authorized by resolution of the board so to sign.

14. Restriction on power of bank to hold land

(1) It shall not be lawful for the bank to hold land other than-

- (a) such land as is required for its business premises or the housing of its staff; and
- (b) such land as is acquired as the result of foreclosure or otherwise on account of debt.

(2) All land acquired by the bank in accordance with subparagraph (1)(b) shall be disposed of at the earliest favourable opportunity upon such terms and conditions as the bank may determine.

(3) It shall not be lawful for a member of the board or of the staff of the bank to buy or acquire directly or indirectly any land disposed of in accordance with subparagraph (2) or any interest therein.

(4) Nothing in this paragraph shall preclude the acquisition and holding by the bank of any land for its business premises of a greater extent than that required for such premises, or the lease of any part thereof, if some part of such land is required and retained for its business premises.

15. Disclosure by member of board of interest in transaction with bank, and disqualification

(1) It shall be the duty of a member of the board who is in any way, directly or indirectly, interested in an application to the bank for financial assistance under the provisions of this Act, or in a contract or proposed contract with the bank, to declare the nature of his interest at a meeting of the board.

(2) Subject to the provisions of this paragraph, such declaration shall be made-

- (a) in the case of an application for financial assistance made or a contract proposed by or to the board, at the meeting of the board at which the question of granting or refusing the application or entering into the contract is first taken into consideration;
- (b) in the case of an application for financial assistance made or contract proposed to a member or committee of members of the board, in terms of paragraph 11 or 12 respectively, at a meeting of the board held before such application or proposal is made; or
- (c) in any other case, at the earliest meeting of the board held after such member became so interested.

(3) For the purposes of this paragraph, a general notice given to the other members of the board by a member to the effect that he is also a member of a specified company or firm and is to be regarded as interested in any application for financial assistance from the bank or in any contract which may, after the date of the notice, be made by or with that company or firm, shall be deemed to be a sufficient declaration of interest in relation to any application or contract so made:

Provided that no such notice shall be of effect unless it is either given at a meeting of the board or the member of the board concerned takes reasonable steps to secure that it is brought up and read at the next meeting of the board after it is given.

(4) No member of the board shall sit or take part in proceedings or vote on the decision of any application to the bank for financial assistance in which he is interested, or in respect of any contract or arrangement in which he is interested, whether directly or indirectly, and if he votes his vote shall not be counted nor is he to be counted in the quorum present at the meeting.

(5) Any member of the board who contravenes any of the provisions of this paragraph shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding three months, or to both.

16. Protection of bank

No act done or proceeding taken under this Act shall be questioned on the ground-

- (a) of the existence of any vacancy in the membership of, or any defect in the constitution of, the board;
- (b) of the contravention by a member of the board of the provisions of paragraph 15; or
- (c) of any omission, defect or irregularity not affecting the merits of the case.

SECOND SCHEDULE

ISSUE, CONTROL, MANAGEMENT AND REPAYMENT OF NATIONAL DEVELOPMENT BONDS

(section 13)

1. Issue of national development bonds

(1) The Minister in authorizing an issue of national development bonds shall fix the denominations, price of issue and period of currency thereof.

(2) Every national development bond-

- (a) shall have on its face the amount thereof and the date of maturity;
- (b) shall be issued at a discount;
- (c) shall be repaid at its face value upon maturity, which shall be at such date, not more than 10 years from the date of issue, as the Minister may fix for that particular issue.

(3) If the Minister fixes for a particular issue of national development bonds a date of maturity which is less than 10 years from the date of issue the Minister may, in respect of each complete month in the period commencing on the date of maturity and ending on the tenth anniversary of the date of issue,

during which any national development bond of that particular issue is unredeemed, authorize the payment to the holder of that bond of interest, at a rate fixed by the Minister, on an amount equal to the face value of that bond on maturity.

(4) The Minister may provide that as a condition of any particular issue of national development bonds the interest thereon shall be exempt from income tax, present and future, payable or chargeable under any law of Botswana. The interest on national development bonds issued with such a condition shall, notwithstanding anything contained in the Income Tax Act, be so exempt.

2. Minister may impose conditions

(1) The Minister may impose conditions not inconsistent with this Schedule as to all or any of the following matters-

- (a) the conditions on which any issue of national development bonds may be withdrawn prior to the date of maturity;
- (b) the conditions on which a National Development Bond may be surrendered prior to the date of maturity;
- (c) the aggregate face value of national development bonds of any issue which may be held by any person;
- (d) such other conditions as he may deem to be expedient.

(2) The Minister may fix a higher face value under subparagraph (1)(c) for persons or institutions or trusts whose receipts and accruals are exempt from income tax.

3. Functions of bank

(1) The control, management, issue and repayment of national development bonds shall be vested in and entrusted to the bank which shall, in relation to such matters, act in accordance with any directions of the Minister, notwithstanding that the directions may be of a specific character.

(2) National development bonds shall be available for purchase by the public at such places as the bank may arrange.

4. Repayment of national development bonds

(1) When any application for the repayment of any national development bond is made, the bank shall forthwith effect such repayment in accordance with the conditions, if any, imposed in terms of paragraph 2.

(2) If at any time the assets of the bank are insufficient to meet its liabilities in relation to the repayment of national development bonds, the amount of the deficiency shall be charged upon and paid out of the revenues and public funds of Botswana, and such expenditure thereof is hereby declared to be statutory expenditure.

5. Unredeemed national development bonds

If, after the expiration of 15 years from the date upon which any issue of national development bonds has been withdrawn, there are any national development bonds unredeemed, the bank shall pay the amount due in respect of such unredeemed national development bonds to the general revenues of Botswana, and the accounts of that particular issue shall then be closed.

THIRD SCHEDULE

(section 35)

A. Transfer of the Assets and Liabilities of the Government on account of the Agricultural Loan Fund (paras 1-6)

1. Transfer of assets and liabilities

On the date of commencement of this Act, all the assets and liabilities of the Government on account of the Agricultural Loan Fund shall pass by succession to the bank and the bank shall have all powers necessary to take possession of, recover and deal with such assets and discharge such liabilities.

2. Delivery of movables

On the date referred to in paragraph 1 the Accountant-General shall deliver to the bank, or as the bank may order, all movable property vested in the Government on account of the Agricultural Loan Fund and all books, papers, documents, minutes, receipts and ledgers appertaining thereto.

3. Agreements

Every agreement, whether in writing or not, other than an agreement for personal services, and every deed or bond, to which the Government was a party on account of the Agricultural Loan Fund or which affected the Government in that behalf, and whether or not of such nature that rights, liabilities and obligations thereunder could be assigned, shall have effect from the date of commencement of this Act as

if-

- (a) the bank were a party thereto or affected thereby instead of the Government; and
- (b) for any reference (however worded and whether expressed or implied or not) to the Government there were substituted in respect of any thing to be done on or after the date of commencement of this Act a reference to the bank.

4. Legal proceedings

Any proceedings pending immediately before the date of commencement of this Act to which the Government was a party on account of any transaction arising out of the operation of the Agricultural Loan Fund shall be continued as if the bank were a party thereto in lieu of the Government.

5. Completion of acts

Where any thing has been commenced by or under the authority of the Government prior to the date of commencement of this Act and such thing is within the powers of the bank or was done in relation to any of the matters transferred by this Schedule from the Government to the bank, such thing may be carried on and completed by, or under the authority of, the bank.

6. Minister for the time being responsible for finance may give certificates

Where any question arises as to whether an asset or liability, or any personal property or book, paper, document, minute, receipt or ledger, or any agreement, deed or bond, or any transaction is on account of or appertains to the Agricultural Loan Fund, the matter shall be referred to the Minister for the time being responsible for finance, and the Minister for the time being responsible for finance shall certify under his hand whether or not the same was on account of, or appertained to, the Agricultural Loan Fund, and where the Minister for the time being responsible for finance gives such certificate no court shall inquire further into such question.

B. Provisions relating to Assets and Liabilities Transferred (paras 7-9)

7. Implied covenants

The covenants and conditions which prior to the date of commencement of this Act were implied, under the Agricultural Loan Proclamation, on the part of the mortgagee in favour of the Government in any mortgage bond to secure an advance under that Proclamation shall continue to be implied after the date of commencement of this Act on the part of the mortgagee in favour of the bank in any mortgage bond which, under the provisions of this Schedule and Part VI of the Act, has effect as if the bank were a party thereto, notwithstanding the repeal of the Agricultural Loan Proclamation.

8. Conditions

(1) Where any transaction, deed, instrument, contract or document which adheres for the benefit of the bank was, prior to the date of commencement of this Act, subject to any statutory conditions under the Agricultural Loan Proclamation, then in respect of any period commencing on or after the coming into operation of this Act, such transaction, deed, instrument, contract or document shall, notwithstanding the repeal of the Agricultural Loan Proclamation, continue subject to such conditions as if they were expressly set out therein, or the same were expressly subject thereto.

(2) Where under any provision of the Agricultural Loan Proclamation, the Government or any party to any transaction, deed, instrument, contract or document with the Government in terms of the Proclamation was entitled to do any act, the bank or such party to every transaction, deed, instrument, contract or document which has effect as if the bank were a party thereto by reason of the provisions of this Schedule or Part VI of this Act shall, notwithstanding the repeal of the Agricultural Loan Proclamation, in respect of any period commencing on or after the coming into operation of this Act, be deemed to be entitled to do such act as if such provision was an express term of such transaction, deed, instrument, contract or document.

DISCLAIMER

Copyright (c) Botswana Government

The data on this CD-ROM is copyright under the Berne Convention.

Please note that you may be required, in terms of copyright or other laws, to obtain permission before reproducing any part of this database. Permission to reproduce the contents of this database may be sought from the Attorney-General Government Enclave Gaborone - Private

Bag 009 Gaborone Botswana.

Disclaimer

Blackhall Publishing hereby disclaims any and all guarantees and warranties on the software described herein or on the documentation of this software, and specifically disclaims any implied warranties of the merchantability or fitness of the software or documentation for any particular purpose. This software and manual are sold on an 'as is' basis; any user of this software or manual uses it at his or her own risk.

Further, Blackhall Publishing reserves the right to revise this publication and to make changes from time to time in the software and in the content of this publication without obligation of Blackhall Publishing to notify any person of such revision or changes. No guarantee is made that further versions of the software or manual will be compatible with any other versions.

Further, although every care is taken to ensure the accuracy of this publication and disc, supplements, updates and replacement material, the authors, editors, publishers and printers do not accept any responsibility for any act, omission, loss, damage or the consequences thereof occasioned by the reliance by any person upon the contents hereof.