

VIRGIN ISLANDS

THE DEVELOPMENT FUND BOARD ACT, 2009

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I Assent

(Sgd.) V. INEZ ARCHIBALD,
Acting Governor.

27th March, 2009

VIRGIN ISLANDS

No. 6 of 2009

AN ACT to establish The Development Fund Board and matters related thereto.

[Gazetted 2nd April , 2009]

Enacted by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

1. This Act may be cited as the Development Fund Board Act, 2009 and shall come into force on such date as the Minister may, by Proclamation published in the *Gazette*, appoint.

Short title and commencement.

2. In this Act, unless the context otherwise requires,

Interpretation.

“AAA rating” means credit rating by Standard & Poors or Moody credit rating;

“Agreement” means an agreement entered into by the Board with the Bank;

“Bank” means a commercial bank nominated and appointed under this Act;

“Board” means the Development Fund Board established under section

3;

No. 3 of 2004

“Development Bank” has the meaning assigned to it under the Development Bank of the Virgin Islands (Transfer of Assets and Liabilities) Act;

“Committee” means any committee established by the Board under section 11;

“financial year” means the financial year of the Government of the Virgin Islands;

“Minister” means the Minister responsible for finance;

“property” includes monies, funds, property or any other thing that may be interpreted as such.

PART II ESTABLISHMENT, COMPOSITION AND APPOINTMENT OF MEMBERS OF THE BOARD

Establishment of the Development Fund Board.

3. There is established a Board to be known as the Development Fund Board (in this Act referred to as “the Board”) which shall be a body corporate with perpetual succession and a common seal.

Composition of the Board.

4. The Board shall consist of seven members who shall be appointed in accordance with the provisions of section 5.

Appointment of members of the Board.

5. (1) The Minister shall with the approval of the Cabinet, appoint in writing seven persons to be members of the Board, one of whom shall be the Financial Secretary, who shall be an *ex officio* member.

(2) A member of the Board appointed under subsection (1) shall hold office for a period of three years and shall be eligible for re-appointment.

(3) An appointment or termination of membership of a member of the Board shall be published in the *Gazette*.

(4) The Board may invite any person to attend any of its meetings in order to explain any matter to it before it takes any decision.

(5) The Board shall, subject to the provisions of this Act or any regulations made thereunder, have the power to provide for all matters of administration and procedure with the approval of the Minister.

6.(1) The Minister shall designate one of the members of the Board as Chairman who shall preside over all the meetings of the Board. Appointment of the Chairman.

(2) The Chairman, in consultation with the Minister, shall appoint a Vice-Chairman from among the membership.

(3) In the absence of the Chairman and the Vice-Chairman to officiate at a meeting, members present may appoint a member from their number to chair the meeting and the member appointed shall have all the powers of the Chairman.

7. Four members of the Board present at a meeting shall form a quorum and any decision adopted at the meeting shall be binding on the Board. Quorum.

8. (1) The Minister may, in the absence of a member, appoint an alternate for the member appointed under section 5(1) to perform such functions as were performed by that substantive member. Appointment of alternate members of the Board.

(2) Notwithstanding subsection (1), where a member of the Board is by illness or otherwise unable to perform his or her functions designated by the Board, the Minister may, without declaring the office vacant, appoint an alternate member on such terms and conditions as the Minister determines.

(3) An alternate member, while acting in the absence of a member to complete a term of the member of the Board, shall be deemed to be a member of the Board and shall enjoy all the powers, rights and privileges attached to the office of a member.

(4) A member of the Board whose term has expired may, unless he or she sooner vacates office as member, continue in office until his or her successor is appointed.

(5) The Board shall be deemed to be properly constituted notwithstanding any vacancy in its membership or defect in the appointment of a member.

**PART III
REMUNERATION OF MEMBERS, TERMINATION
OF MEMBERSHIP AND COMMITTEES**

9. The Board may pay a member of the Board an allowance as the Minister, acting on the advice of Cabinet, may determine. Remuneration of members of the Board.

10. The office of a member of the Board may become vacant if Termination of membership.

(a) a member dies;

- (b) a member's term of office expires;
- (c) a member, by a notice in writing to the Minister, resigns his or her office;
- (d) a member ceases to be employed by the department or the institution from which he or she is appointed; or
- (e) he or she is removed by the Minister where the member
 - (i) is unable to discharge his or her functions because of physical or mental illness;
 - (ii) is absent from three consecutive meetings of the Board without reasonable excuse, or without the permission of the Chairman, as the case may be, and that member was given notice of the meetings;
 - (iii) is guilty of misconduct incompatible with his or her position as member;
 - (iv) fails to carry out the duties imposed on him or her under this Act;
 - (v) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty;
 - (vi) is declared bankrupt under the laws of the Virgin Islands or any other country; or
 - (vii) refuses to disclose information as may be required under this Act.

Establishment of committees.

11.(1) The Board may, after consulting the Minister, establish a financial committee or other committees as the Board may determine.

(2) A committee established by the Board under this section shall assist the Board with

- (a) recommending a reputable commercial bank to be nominated or appointed by the Board under this Act;
- (b) carrying out research on matters relating to investment and the development of the Virgin Islands;

- (c) carrying out research on any matters that will lead to the improvement of the economy of the Virgin Islands;
- (d) monitoring the performance of the commercial bank nominated or appointed under this Act in relation to the assets of the Board that have been deposited with the Bank;
- (e) advising the Board on matters of policy pertaining to development, management and regulation; or
- (f) the performance of any other duties as the Board may from time to time assign.

12. (1) The Minister shall appoint a Secretary for the Board.

Appointment of Secretary to the Board.

(2) The Secretary shall keep a record of the Board's proceedings and issue correspondences as directed by the Board, and perform such other duties as the Board may direct.

**PART IV
FUNCTIONS AND POWERS OF THE BOARD, APPOINTMENT OF A
COMMERCIAL BANK, ETC**

13. (1) The functions of the Board shall be

Functions of the Board.

- (a) the financial management of property received by it from the Government of the Virgin Islands or any other source for the purposes of the development of the economy of the Virgin Islands;
- (b) to monitor the dealings of the Bank in relation to any property invested with the Bank under this Act;
- (c) to invest, in a lawful manner and maintain an account with the Bank;
- (d) to perform such other duties as the Minister may from time to time determine in accordance with this Act; and
- (e) generally to carry out the purposes of this Act and any regulations made thereunder.

(2) The Board shall submit to the Minister not later than the 1st of March in each year, any information as the Minister may from time to time determine.

(3) The Board shall, after consulting the Minister, submit such information to the Bank as the Bank may from time to time request.

(4) The information referred to in subsection (2) shall be in relation to the commercial and investment dealings of the Board with the Bank.

(5) The Board shall deposit with the Bank, such property as the Board may, with the approval of the Minister, determine.

Powers of the Board.

14. The powers of the Board shall be

- (a) to receive any property from the Government of the Virgin Islands or any other source;
- (b) to manage any property that may come into its possession for purposes of development and investment, from the Government of the Virgin Islands or any other source;
- (c) to nominate, for the approval of the Minister, a bank of good repute in the Virgin Islands for purposes of investing with it and to enter into any agreement with the said bank; and
- (d) to generally exercise such powers as may be necessary or expedient for the better carrying out of its functions under this Act or regulations made thereunder.

Nominated bank.
No. 12 of 2001

15. A bank appointed under section 14 (c) shall

- (a) be licensed as a commercial bank in the Virgin Islands;
- (b) be regulated by the Financial Services Commission established under section 3 of the Financial Services Commission Act; and
- (c) have its overseas assets, if any, held by a financial institution with a AAA credit rating or any equivalent rating.

Agreement with the Bank.

16. (1) The Board may enter into an agreement with the Bank for a period of five years.

(2) The Bank may terminate the agreement entered into with the Board by giving not less than six months written notice or such other notice as agreed by the Board and Bank.

(3) Upon giving a notice of termination referred to under subsection (2), the Bank shall prepare all reports as necessary for submission to the Board.

17. The Board may, in writing, terminate any agreement entered into with the Bank where the Board is satisfied that Termination of agreement.

- (a) the Bank is not performing in terms of the agreement entered into with the Board;
- (b) the Bank is no longer licenced with the Financial Services Commission; or
- (c) the overseas financial institution which holds the assets of the Bank has lost its AAA credit rating status or other equivalent rating status.

18. (1) The Bank shall The role of the Bank.

- (a) receive property deposited or invested with it by the Board;
- (b) deposit property received from the Board into an interest bearing account;
- (c) invest property furnished to it under this Act into a commercial activity as the Board may, from time to time direct;
- (d) grant a loan for a development project to a person approved by the Board in accordance with regulatory standards; and
- (e) file a quarterly financial report with the Board.

(2) A report filed under section 18(1)(e) shall have attached to it any other financial accounts and statements necessary for that quarter.

(3) The Board may request any information from the Bank, as the Board thinks fit.

19. (1) The Bank shall retain any financial report or any other report it prepared and submitted to the Board under this Act for a period of ten years following the date on which the report was submitted to the Board. Retention of reports by the Bank.

(2) A Bank which fails to deliver any report to the Board under this Act commits an offence.

(3) Any property invested with the Bank under this Act, together with any interest earned thereon by the Bank, shall be the property of the Virgin Islands as well as any property or any other investment which the Bank bought or made with the moneys or funds invested with it by the Board.

PART VI ACCOUNTS AND AUDITS

Quarterly reports
by the Board.

20.(1) The Board shall submit a quarterly report to the Minister, and the report shall disclose any commercial, financial and operational dealings the Board made with the Bank or any other information as the Minister may direct.

Annual reports
by the Board.

21. The Minister shall, with the approval of Cabinet, lay on the Table of the House of Assembly the annual report of the Board within three months at the end of each financial year.

Estimates of the
Board.

22. The Board shall, as soon as possible after the 1st of July each year, or such extension of time as the Minister may permit, submit, for the approval of the Minister and the House of Assembly, the estimates of its probable revenue and expenditure for the twelve months commencing on the 1st day of January.

Keeping of
proper accounts
by the Board.

23. The Board shall keep proper accounts in a form as the Minister may prescribe and shall submit its accounts from time to time to the Minister, and when so required by the Minister.

Funding of the
Board.

24. The Minister shall approve, on a yearly basis, funding to be made to the Board.

PART VII MISCELLANEOUS PROVISIONS

Insurance by the
Bank.

25.(1) The Bank shall enter into a valid contract of insurance with a reputable insurance company locally or overseas to protect any property invested with it by the Board.

(2) The Bank shall submit any information on any insurance contract taken under this Act to the Board.

Offences.

26. A person who commits an offence under this Act or contravenes any provision of this Act is liable, on summary conviction, to a fine not exceeding

thirty thousand dollars or to imprisonment for a term not exceeding ten years, or to both.

27. The Board may, subject to the approval of the Minister, make Regulations. regulations providing for any matter which under this Act is to be provided for by regulations, or which otherwise is necessary or expedient for the carrying into effect the provisions of this Act.

28. For the avoidance of doubt, this Act shall be interpreted in accordance with the British Virgin Islands Business Companies Act, 2004 (No. 16 of 2004), the Banks and Trust Companies Act, 1990 (No. 9 of 1990), the Financial Services Commission Act, 2001 (No. 12 of 2001), the Proceeds of Criminal Conduct Act, 1997 (No.5 of 1997), the Financial Investigation Agency Act, 2003 (No. 19 of 2003), and all other laws of the Virgin Islands.

Passed by the House of Assembly this 22nd day of January, 2009.

(Sgd.) ROY HARRIGAN,
Speaker.

(Sgd.) JOANN HODGE,
Acting Deputy Clerk of the House of Assembly.