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No. 37 of 2004

**Third Session Eighth Parliament Republic of
Trinidad and Tobago**

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Home Mortgage Bank Act,
Chap. 79:08

THE HOME MORTGAGE BANK BILL, 2004

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Home Mortgage Bank Act, Chap. 79:08 ("the Act") to ungrade the structure and operating efficiency of the Home Mortgage Bank established under the Act.

Clauses 1 and 2 would provide for the short title and the interpretation of the words "the Act" respectively.

Clause 3 would delete and replace in section 2 of the Act certain definitions specified in the clause.

Clause 4 would insert in section 4(a) and (c) the words specified in the clause.

Clause 5 would amend section 5 of the Act, by deleting and substituting the words specified in the clause and by inserting a new paragraph "(j)" which would enable the Bank to perform the necessary functions and undertake the services and activities required to promote and develop its purposes and objectives under the Act.

Clause 6 would delete and substitute the words "General Manager" for the words "Chief Executive Officer".

Clause 7 would repeal section 9 of the Act and substitute a new section 9 which would provide greater detail concerning the Bank's seal.

Clause 8 would repeal and substitute section 11 of the Act to increase the number of persons appointed to the Board by the Governor of the Central Bank and where he fails to make such appointment as specified in section 8(a) of the Act, the shareholders would be allowed to make the necessary appointments under section 8(c).

Clause 9 would delete sections 12 and 13 and substitute a new section 12 that deals with the tenure of directors and persons acting in the absence of directors.

Clauses 10 and 11 would delete and substitute in section 14 and 15 respectively the words specified in the clause.

Clause 12 would amend section 17 of the Act, to permit the Board to appoint a Chairman and Deputy Chairman and to determine the duration of the appointment of persons holding those offices.

Clause 13 would amend section 19 of the Act which would provide for the quorum of Board meetings. A meeting of the Board of directors as provided in this clause can be summoned at anytime at the request of any director or the Secretary to the Board and notice of that meeting has to be served not less than three days prior to the meeting.

Clause 14 would amend section 20 of the Act to permit the Board to appoint an Executive Committee to supervise the asset and liability management of the Bank and to examine and approve financial commitments in accordance with regulations and policies established by the Board.

Clause 15 would repeal section 21 of the Act and substitute a new section 21 which would provide for the holding of annual meetings of shareholders. the procedures to be followed at an annual general meeting of shareholders under the new section 21 would be determined in accordance with the guidelines set out in the Schedule to the Bill.

Clause 16 would amend section 23 by deleting and substituting the words specified in the clause.

Clause 17 would amend section 25(1) of the Act to allow the Board to appoint a Chief Executive Office and a Chief Financial Officer on such terms and conditions as it thinks fit.

Clause 18 would amend the Act by deleting sections 26, 27, 28, 29, and 30 and replacing them with new sections 25, 26 and 27. These sections would provide for the issue, transfer and other matters relating to shares.

Clause 19 would amend the Act by inserting a new section 31A. This section would allow the Bank to pay to any person nominated by a bond holder or holder of other securities of the Bank, the amounts due, subject to any right, title or interest of any other person.

Clause 20 would amend section 33 of the Act by restricting the applicability of the Banking Act, 1993, and the Financial Institution Act, 1993, to the operations of the Bank. The Bank would be permitted however, to engage in the business of banking within the meaning of the Financial Institutions Act, 1993.

Clause 21 would amend section 34 by deleting and substituting the words specified in the clause.

Clause 22 would amend the Act by inserting a new section 34A. This new section would allow the directors to make the necessary By-law No. 1 for the Bank. This by-law would be approved and adopted at a special meeting of the Bank and any new by-law or amendments or revocation thereto are to be made and adopted by the directors.

The Schedule would contain the procedure to be followed at the annual general meeting.

BILL

AN ACT to amend the Home Mortgage Bank Act,
Chap. 79:08

[, 2004]

WHEREAS the Home Mortgage Bank (“the Bank”) ^{Preamble}
was established by the Home Mortgage Bank Act, 1985
 (“the Act”) to carry out the purposes stated in section 4
of the Act:

And whereas the shareholders have by unanimous resolution of the Bank adopted proposals required for structural change to enable the Bank to function more effectively in a modern and dynamic business environment and have requested Government to amend the Home Mortgage Bank Act to give effect to these proposals and other relevant changes:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:—

Short title **1.** This Act may be cited as The Home Mortgage Bank (Amendment) Act, 2004.

Interpretation
Chap. 79:08 **2.** In this Act, “the Act” means The Home Mortgage Bank Act.

Section 2 amended **3.** Section 2 of the Act is amended by deleting the following terms and their conditions:

“ “Class A Shareholder”;
“Class B Shareholder”;
“Class C Shareholder”;
“Class D Shareholder”;
“Class E Shareholder”;
“the International Financial Corporation”;
“National Commercial Bank”; and
“National Insurance Board”,”

and substituting in alphabetical sequence, the following:

“ “Chief Executive Officer” means the person appointed from time to time under section 24(1) of the Act as the Chief Executive Officer of the Bank;
“Chief Financial Officer” means the person appointed from time to time under section 24(1) of the Act as the Chief Financial Officer of the Bank;”.

4. Section 4 of the Act is amended—

Section 4 amended

- (a) in paragraph (a), by inserting the words “a mortgage market” immediately after the words “to develop”; and
- (b) in paragraph (c), by inserting the words “real property and” after the words “system of”.

5. Section 5 of the Act is amended—

Section 5 amended

- (a) in paragraph (a), by inserting the word “or” immediately after the word “undertaking” in line two and by deleting the words “or uncalled capital” occurring after the words “property or” in line two;
- (b) in paragraph (b), by inserting the words “its property including its” immediately after the word “sell”;
- (c) in paragraph (d), by deleting the words “its unpaid capital” and substituting the word “undertaking”;
- (d) by deleting paragraph (e);
- (e) by inserting a new paragraph (j), as follows:—
 - “(j) may perform such functions and undertake such services and activities as are required in order to develop, support and promote its purposes including the purchase, acquisition of leases or real property”; and
- (f) by re-lettering paragraph (j) as paragraph (k), and inserting the words “and the exercise of its powers” at the end thereof.

6. Section 8 of the Act is amended by deleting the words “General Manager” occurring in line one and substituting the words “Chief Executive Officer”.

Section 8 amended

Section 9 repealed
and substituted

7. Section 9 of the Act is repealed and substituted as follows:

“The Seal

9. (1) The directors shall provide for the safe custody of the seal of the Bank which may be affixed to instruments pursuant to a resolution of the Board and in the presence of—

- (a) the chairman or, in his absence, the deputy chairman and the secretary, or in his absence any assistant secretary;
- (b) any two directors; or
- (c) one director and the secretary or in his absence any assistant secretary.

(2) The seal shall be attested by the signature of—

- (a) the chairman or, in his absence, the deputy chairman and the secretary or, in his absence any assistant secretary;
- (b) any two directors; or
- (c) any director and the secretary or in his absence any assistant secretary.

(3) All documents other than those required by law to be under seal and all decisions of the Bank may be signified under the hand of the chairman, the deputy chairman, any director or the secretary.” .

Sections 11 repealed
and substituted

8. Section 11 of the Act is repealed and substituted as follows:

“The Board

11. (1) The Board shall comprise eleven directors as follows:

- (a) two Directors who may be appointed by the Governor of the Central Bank (whether or not it owns shares in the Bank);

- (b) a minimum of two executive officers one of whom shall be the Chief Executive Officer; and
- (c) a minimum of five and a maximum of nine directors appointed by the shareholders.

(2) In the event that the Governor of the Central Bank does not appoint either or both of the two directors pursuant to subsection (1)(a), the shareholders shall be entitled to appoint two additional directors pursuant to subsection (1)(c), save however, that the number of directors of the Bank shall not exceed eleven.”.

9. Sections 12 and 13 of the Act are repealed and substituted as follows:

Sections 12 and 13
repealed and
substituted

“Term of office of directors and vacancies 12. (1) Every director shall hold office from the date on which he is appointed to the date of the third annual meeting of the shareholders following his appointment.

(2) A vacancy in the Board shall be filled in the same manner that the appointments are made under section 11, but a person appointed to fill the unexpired term of office of a director may hold office only for such unexpired term, unless he is reappointed in accordance with this section.

(3) A retiring director is eligible for reappointment”.

10. Section 14 of the Act is amended in subsection (1), Section 14 amended by inserting the words “by ordinary resolution” immediately after the words “the Bank may” occurring in line one.

Section 15 amended **11.** Section 15 of the Act is amended by deleting the words “206 or 260 of the Companies Ordinance” occurring in paragraph *(f)* and substituting the words “69 of the Companies Act”.

Section 17 amended **12.** Section 17 of the Act is amended by deleting subsection (2) and substituting the following subsection:

“ (2) The Board shall appoint a chairman and a deputy chairman and determine the period for which they shall respectively hold office.”.

Section 19 amended **13.** Section 19 of the Act is amended—

(a) by deleting subsections (3) and (4) and substituting the following subsections:

“ (3) Three directors or such greater number determined by them shall form a quorum for the transaction of business and notwithstanding any vacancy among the directors, a quorum at a meeting properly convened, may exercise all the powers of the directors.

(4) A director may and at the request of any director, the Secretary shall, at any time convene a meeting of the Board and notice of any such meeting shall specify the purpose of, or the business to be transacted at the meeting.

(5) Notice of any such meeting shall be served not less than three (3) days (exclusive of the day on which the notice is delivered or sent but inclusive of the day on which notice is given) before the meeting is to take place.

(6) It shall not be necessary to give notice of a meeting of the directors to a newly elected or appointed director for a meeting held immediately following

the election of directors by the shareholders or the appointment to fill a vacancy among the directors.”; and

- (b) by renumbering subsection (4) as subsection (7).

14. Section 20 of the Act is amended—

Section 20 amended

- (a) by deleting subsection (1) and substituting the following subsection—

“ (1) The Board may appoint an Executive Committee consisting of not less than four directors, including the Chief Executive Officer and the Chief Financial Officer to supervise asset and liability management and examine and approve financial commitments in accordance with the regulations and the policies established by the Board;” and

- (b) by deleting in subsection (3), the words “General Manager” occurring after the words “other than the” and substituting the words “Chief Executive Officer or the Chief Financial Officer”.

15. Section 21 of the Act is repealed and substituted as follows:

Section 21 repealed and substituted

“Annual meeting of shareholders

21. (1) Subject to the provisions of section 109 of the Companies Act, the annual meeting of the shareholders shall be held on such day in each year at such time and at such place within Trinidad and Tobago as the directors may by resolution determine, or, if all the shareholders entitled to vote at such meeting so agree, outside of Trinidad and Tobago.

Schedule

(2) The procedure to be followed at the Annual General Meeting is contained in the Schedule hereto.”

Section 23 amended

16. Section 23 of the Act is amended—

- (a) in subsection (1), by deleting the word “general” in line one, and the word “fourteen” in line two and substituting the words “twenty-one”;
- (b) in subsection (2), by deleting the word “equity” occurring immediately after the word “per-cent” in line one and substituting the words “of the issued shares”; and
- (c) deleting the word “general” in line two.

Section 25 amended

17. Section 25 of the Act is amended by deleting subsection (1) and substituting the following subsection:

“ (1) The Board may appoint on such terms and conditions as it thinks fit, the Chief Executive Officer, a Chief Financial Officer and such other officers and employees as may be required for the due and efficient performance of its functions under this Act.”.

Sections 26 to 30 repealed and substituted

18. Sections 26, 27, 28, 29 and 30 of the Act are repealed and the following sections are inserted after the heading “PART II SHARES”:

“Class of shares 26. The Bank is authorized to issue one class of designated ordinary share in an unlimited number.

No restrictions 27. There are no restrictions on share ownership or share transfers.

No rights of pre-emption 28. (1) There shall be no rights of pre-emption in respect of the shares.

(2) Subject to the regulations of the competent authorities governing the issue and allotment of shares listed on the Trinidad and Tobago Stock Exchange or any other self-regulatory organization (as defined in the Securities Industries Act,

1995), the shares of the Bank shall be under the control of the directors who may from time to time allot or otherwise dispose of all or any of the same to such persons on such terms and conditions as the directors shall think fit.

(3) The directors may decline to make any allotment of shares to any person without assigning any reason for the decision.”.

19. The Act is amended by inserting after section 31, Section 31A inserted a new section as follows:

“ 31A. (1) Where a person who holds bonds or other securities issued by the Bank, has nominated any person to receive any moneys in respect of the bonds or other securities held by him, such moneys shall, upon the death of that person and subject to any right, title or other interest of any other person and to any charge, encumbrance, tax or duty of any nature payable in respect of the said bonds or other securities, be payable to the nominee.

(2) Payment by the Bank under subsection (1), shall be a full discharge of the Bank from all liabilities in respect of those bonds or other securities.”.

20. Section 33 of the Act is amended—

Section 33 amended

(a) by deleting subsection (1), and substituting the following subsection:

Act No.18
of 1993
Chap. 84:04 33(1). The Financial Institutions Act, 1993 and the Money Lenders Act, do not apply to the Bank.”.

(b) in subsection (2), by deleting the words “Banking Act” and substituting the words “Financial Institutions Act”.

Section 34 amended **21.** Section 34 of the Act is amended by deleting the word “Ordinance” occurring in lines 1 and 3 and substituting the word “Act”.

Section 34A inserted **22.** The Act is amended by inserting after section 34 the following new section:

“ 34A. (1) The directors of the Bank shall make By-law No. 1 of the Bank for approval and adoption at the special meeting of the Bank approving the same and upon such adoption, By-law No. 1 shall immediately come into effect and not require any further confirmation thereafter by the shareholders of the Bank.

(2) All new By-laws and all amendments or any revocation or repeal, By-law No. 1 or any part thereof or of any subsequent By-laws, shall be made or adopted by the Directors subject to section 66 of the Companies Act.”.

Section 35 repealed **23.** Section 35 of the Act is repealed.

SCHEDULE

(Section 21)

PROCEDURE FOR ANNUAL GENERAL MEETING

1. The directors shall, on the requisition of the holders of not less than five per cent of the issued shares of the Bank that carry a right to vote, forthwith convene a meeting of shareholders, and in the case of such a requisition the following provisions shall be applicable:

(a) the requisition shall state the business to be transacted at the meeting and shall be signed by the relevant shareholders and sent to each director and deposited at the registered address of the Bank and may consist of several documents in like form each signed by one or more of the relevant shareholders;

- (b) if the directors do not, within twenty-one (21) days from the date of the requisition being so deposited, proceed to convene a meeting, the relevant shareholders or any of them may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit;
- (c) unless section 133(3) of the Companies Act applies, the directors shall be deemed not to have duly convened the meeting if they do not give such notice as is required by the Companies Act within twenty-one days from the deposit of the requisition;
- (d) any meeting convened under this paragraph by the relevant shareholders, shall be called as nearly as possible in the manner in which meetings are to be called pursuant to Divisions 5 and 6 of Part III of the Companies Act;
- (e) a requisition by joint holders of shares shall be signed by all such holders.

2. A printed, written or typewritten notice stating the date, hour and place of a meeting shall be given by serving such notice on each shareholder entitled to vote at such meeting, on each director and on the auditor of the Bank, not less than ten days, or in the case of an annual or a meeting to pass a special resolution, not less than twenty-one days (in each case exclusive of the day on which the notice is delivered or sent and of the day for which notice is given) and in any case not more than fifty days before the date of the meeting.

3. A notice of a meeting at which special business is to be transacted shall state—

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- (b) the text of any special resolution to be submitted to the meeting.

4. Subject to section 110(2) of the Companies Act, the directors may fix in advance a date as the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders, but such record date shall not precede by more than sixty days or by less than fourteen days, the date on which the meeting is to be held.

5. If no record date is fixed, the record date for the determination of the shareholders entitled to receive notice of a meeting of the shareholders shall be—

- (a) at the close of business on the business day immediately preceding the day on which the meeting is held; and
- (b) if no notice is given, the day on which the meeting is held, the Secretary or in his absence any Assistant Secretary shall comply with the requirements of section 112 of the Companies Act in respect of record dates.

6. A shareholder, the duly appointed proxy of a shareholder and any other person entitled to attend a meeting of shareholders, may, in any manner, waive notice of a meeting of shareholders or the time for the giving of any such notice or any irregularity in any such meeting, which waiver may be validly given either before or after the meeting to which such waiver relates.

7. The accidental omission to give notice of any meeting of any irregularity in the notice of any meeting or the non-receipt of any notice by any shareholder, director or the auditor of the Bank shall not invalidate any resolution passed or any proceedings taken at any meeting of the shareholders.

8. Attendance of any such person at a meeting of shareholders shall constitute a waiver of notice of the meeting except where such person attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

9. Every question submitted to any meeting of shareholders, shall be decided in the first instance by a show of hands, unless a person entitled to vote at the meeting has demanded a ballot (either before or immediately after any vote by show of hands), and, in the case of an equality of votes the chairman of the meeting shall, on a show of hands and upon a ballot, have a second or casting vote in addition to any votes to which he may be otherwise entitled and—

- (a) at every meeting at which he is entitled to vote, every shareholder, proxy holder or individual authorized to represent a shareholder which is a body corporate, who is present in person shall have one vote on a show of hands.
- (b) upon a ballot at which he is entitled to vote, every shareholder, proxy holder or individual as aforesaid, shall have one vote for every share held by the shareholder; and

- (c) at any meeting unless a ballot is demanded, a declaration by the chairman of the meeting that a resolution has been carried unanimously, or by a particular majority, or lost, or not carried by a particular majority shall be conclusive evidence of the fact.

10. When the chairman, or deputy chairman is absent, the persons who are present and entitled to vote shall choose another director present to be chairman of the meeting, but if no director is present or all the directors present decline to take the chair, the persons who are present and entitled to vote shall choose one of the members to be chairman of the meeting.

11. A ballot may be demanded either before or immediately after any vote, by a show of hands but before the declaration of the chairman of the meeting under paragraph 9(b) above—

- (a) by the chairman of the meeting;
- (b) by at least three shareholders present in person or by proxy; or
- (c) by any shareholder or shareholders present in person or by proxy and representing not less than one tenth of the total voting right of all the shareholders having the right to vote at the meeting.

12. If at any meeting a ballot is demanded on the election of a Chairman or on the question of adjournment, it shall be taken forthwith without adjournment on any other question or as to the election of directors, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment, as the chairman of the meeting directs.

13. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded.

14. A demand for a ballot may be withdrawn.

15. If two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares, but if two or more of those persons who are present in person or by proxy vote, they must vote together as one, on the shares jointly held by them, or not at all.

16. Votes at a meeting of shareholders may be cast either personally or by an individual authorized by a resolution of the directors or governing body of any corporation to represent it at meetings of shareholders of the bank.

17. (1) Every shareholder including a shareholder that is a body corporate entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxy-holder or proxy-holders or one or more alternate proxy-holders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed by the shareholder or his attorney authorized in writing or, if appointer is a body corporate, either under seal, or under the hand of an officer or attorney duly authorized, and is valid only at the meeting in respect of which it is given or any adjournment thereof.

(3) It is not necessary for a person appointed by proxy to be a shareholder.

(4) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notary certified or office copy of that power or authority shall be deposited at the registered address of the Bank or at such other place within Trinidad and Tobago as is specified for that purpose in the notice of meeting not exceeding forty-eight hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote and in default the instrument of proxy shall not be treated as valid.

(5) The Bank shall concurrently with the giving of notice of a meeting of shareholders, send a form of proxy in the form prescribed in the Companies Act to each shareholder who is entitled to receive notice of the meeting.

(6) The Bank shall send with every solicitation of a proxy a management proxy circular with the notice of the meeting and shall concurrently send a copy to the Commission.

18. The chairman of any meeting may with the consent of the meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the same from time to time to a fixed time and place and no notice of such adjournment other than by announcement at such meeting need be given to the shareholders unless the meeting is adjourned by one or more adjournments for an aggregate of thirty (30) days or more, in which case the notice of the adjourned meeting shall be given as for an original meeting.

19. Any business that might have been brought before or dealt with at the original meeting in accordance with the notice calling the same, may be brought before or dealt with at any adjourned meeting for which no notice is required.

20. A quorum for the transaction of business at any meeting of the shareholders shall be present if the holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy or by a representative of a shareholder which is a body corporate, irrespective of the number of persons actually present at the meeting.

21. If a quorum is present at the opening of any meeting of the shareholders, the shareholders present or represented as aforesaid may proceed with the business of the meeting notwithstanding a quorum is not present without thirty minutes of the time fixed for a meeting of shareholders, the persons present or represented as aforesaid and entitled to vote may adjourn the meeting for a fixed time and place but may not transact any other business.

22. Notwithstanding any of the foregoing provisions of this paragraph, a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of the shareholders is, subject to section 132 of the Companies Act, as valid as if it had been passed at a meeting of shareholders.

Passed in the House of Representatives this
day of 2004.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of ,
2004.

President of the Senate

I confirm the above.

Acting Clerk of the Senate

No. 37 of 2004

THIRD SESSION
EIGHTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Home Mortgage Bank
Act, Chap. 79:08

Received and read the

First time

Second time

Third time
