

No. 27 of 2006

Fifth 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 (AMENDMENT)
BILL, 2006

Explanatory Note

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

The Bill seeks to amend the Home Mortgage Bank Act, Chap. 79:08 (hereinafter referred to as “the Act”) to address irregularities arising from amendments to the Act by Act No. 17 of 2005.

Clauses 1 and 2 would provide for the short title and interpretation.

Clause 3 would amend the Schedule and rename it “Schedule 1”.

Clause 4 would amend the Act by inserting Schedule 2.

Clause 5 would amend the Act to insert sections 5A and 5B which would make the Central Bank responsible for the supervision of certain financial activities of the Bank and give it the power to request information.

Clause 6 would amend section 11 to provide that the Board comprise a maximum of eleven members.

Clause 7 would provide that the directors be exempt from liability for their acts done in relation to the exercise of their functions save for their own wilful acts or defaults.

Clause 8 would amend the Act to insert sections 29A to 29F which would provide for various offences with respect to the Act and the regulations.

Clause 9 would renumber section 31A of Act No. 17 of 2005 as section 31B.

Clause 10 would provide that the Financial Institutions Act, 1993 and the Moneylenders’ Act, Chap. 84:04 shall not apply to the Bank.

Clause 11 would amend the Act to insert sections 34B and 34C. Section 34B would empower the Minister of Finance on the recommendation of the Central Bank, to amend the Schedules while section 34C would preserve the validity of transactions and rights of parties notwithstanding the commission of an offence.

Clause 12 would amend the Act by inserting section 35 which would empower the Minister of Finance, on the recommendation of the Central Bank, to make regulations subject to negative resolution of Parliament.

Clause 13 would provide that sections 1 to 7 and 9 to 13 are deemed to have come into effect from 25th July, 2005.

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AN ACT to amend the Home Mortgage Bank Act,
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[, 2006]

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

1. This Act may be cited as the Home Mortgage Bank Short title
(Amendment) Act, 2006.

Interpretation

2. In this Act—

Chap. 79:08

“the Act” means the Home Mortgage Bank Act;
and

“the Bank” means the Home Mortgage Bank.

Schedule amended

3. The Schedule to the Act is amended by deleting the word “Schedule” and substituting the words “Schedule 1”.

Schedule 2 inserted

4. The Act is amended by inserting after Schedule 1 the following Schedule:

“Schedule 2

Classes of financial activities of the Home Mortgage Bank which the Central Bank may supervise include the following:

<i>Class</i>	<i>Activities</i>
1. Merchant Bank	Floating and underwriting stocks, shares and bonds— Loans syndication Providing consultancy and investment management services and corporate advisory services Acceptance credit Project Development Lease financing Inter-bank financing
2. Mortgage Institution	Mortgage lending
3. Trust Company	Managing Trust Funds Performing duties of trustees, executor or administrator and attorney Administration of Pension Funds Mortgage lending

4. Collective Investment Funds Providing facilities for the participation by persons as beneficiaries under a trust or other scheme, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatever.”.

5. The Act is amended by inserting after section 5 the following new sections: Sections 5A, 5B inserted

“Central Bank responsible for supervision of financial activities Schedule 2

5A. (1) The Central Bank of Trinidad and Tobago shall be responsible for the supervision of the financial activities of the Bank as set out in Schedule 2.

(2) The Central Bank may exercise any of its powers and duties under this Act through any of its officers authorized in that behalf.

Power to request information

5B. (1) The Central Bank shall have the power to request information from the Bank for the purpose of ensuring that the Bank is conducting its business lawfully and in compliance with the Act.

(2) The Bank shall provide the Central Bank with information at such time and in such form as the Central Bank may require.”.

6. Section 11 of the Act is amended—

Section 11 amended

- (a) in subsection (1), by inserting before the word “eleven” the words “a maximum of”;
- (b) in paragraph (b), by inserting after the words “two executive officers” the words “who may be appointed by the Board”; and
- (c) in paragraph (c), by deleting the word “nine” and substituting the word “seven”.

Section 18A
inserted

7. The Act is amended by inserting after section 18 the following new section:

“Immunity
from
liability

18A. Directors of the Bank shall be exempt from liability for acts done in relation to the exercise of their functions as directors, except such acts as are done by their own wilful acts or default.”.

Sections 29A to
29F and 30
inserted

8. The Act is amended by inserting after section 28 the following heading and new sections:

“ PART IIA

OFFENCES

Offence to
suppress
information

29A. A person who—

- (a) without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with this Act or any regulations thereunder, or which he is liable to be so required to produce;
- (b) wilfully neglects or fails to furnish any information; or
- (c) knowingly furnishes false information,

is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years.

Fraud

29B. A person who perpetrates a fraud is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for five years.

Offence
where no
penalty
specified

29C. A person who fails to comply with any provision of this Act or regulations for which no penalty is specified is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.

Defence

29D. In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence by himself or by any person under his control.

Deceit, fraud
or profit

29E. In any proceedings for an offence under this Act or regulations where it is proved that the person charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine five times the amount stipulated in section 29C or imprisonment for ten years and this penalty shall be in addition to any other penalty under this Act.

Monetary
benefits

29F. Where a person has been convicted of an offence under this Act, the court may, where it is satisfied that as a result of the commission of the offence—

- (a) the convicted person acquired any monetary benefits; or
- (b) that monetary benefits accrued to the convicted person or to the spouse or other dependents of the convicted person,

order the convicted person, notwithstanding the maximum amount of any fine that

may be imposed under this Act, to pay an additional fine in an amount equal to the estimation of the court of the amount of the monetary benefit.

Liability of director, officer or agent of Bank

30. Where a person has committed an offence under this Act, any director, officer or agent of the Bank, who directed, authorized, consented to, acquiesced in or participated in the commission of the offence, is a party to and commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years;
- (b) on conviction on indictment, to a fine of two hundred thousand dollars and to imprisonment for five years,

whether or not the Bank or other body corporate has been prosecuted or convicted.”.

Section 31A of Act No. 17 of 2005 renumbered

9. Section 31A of the Home Mortgage Bank (Amendment) Act, 2005 is renumbered as section 31B.

Section 33 amended

10. Section 33 of the Act is amended by deleting subsection (1) and substituting the following subsection:

“Non-application of Act No. 18 of 1993 and Chap. 84:04

33. (1) The Financial Institutions Act, 1993 and the Moneylenders’ Act shall not apply to the Bank.”.

Section 34B and 34C inserted

11. The Act is amended by inserting after section 34A the following new sections:

“Amendment of schedules

34B. The Minister may, after receiving the recommendations of the Central Bank, from time to time amend the First and

Second Schedules by Order subject to negative resolution of Parliament.

Transactions valid, rights preserved 34C. No transaction shall be invalid and the rights of any party to the transaction shall not be affected by reason only of a contravention of the provisions of this Act or the commission of an offence.”.

12. The Act is amended by inserting after section 34C Section 35 Inserted the following new section:

“Regulations 35. The Minister of Finance shall, on the recommendation of the Central Bank, make regulations subject to negative resolution of Parliament, in respect of the operations of the Home Mortgage Bank and notwithstanding the generality of the foregoing may make regulations for—

- (a) treatment of assets and investments;
- (b) treatment of interest;
- (c) risk management;
- (d) reserve fund requirements;
- (e) new financial instruments;
- (f) cease and desist Orders issued by the Central Bank;
- (g) the criteria for determining the fit and proper requirements for directors, managers and shareholders; and
- (h) matters relating to inspection and examination of the Home Mortgage Bank.”.

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FIFTH 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.....