

Statutory Instruments of Anguilla: 14/2016

Gazette Dated: 22<sup>nd</sup> April, 2016

EASTERN CARIBBEAN CENTRAL BANK AGREEMENT ACT, R.S.A. c. E5

**EASTERN CARIBBEAN CENTRAL BANK AGREEMENT (AMENDMENT OF SCHEDULE)  
ORDER, 2016****ORDER**

The Governor, in exercise of the powers conferred on her under section 4(1) of the Eastern Caribbean Central Bank Agreement Act, R.S.A.c.E5, makes this order—

**Interpretation**

1. In this Order, “Agreement” means the Agreement establishing the Eastern Caribbean Central Bank, done at Port of Spain, Trinidad and Tobago on the 5<sup>th</sup> day of July 1983, the text of which is set out in the Schedule to the Eastern Caribbean Central Bank Act, R.S.A.c.E5.

**Amendment of Article 3**

2. Article 3 of the Agreement is amended by deleting paragraph (2) and substituting the following paragraph—

“(2) The Bank shall be a body corporate having perpetual succession and a common seal and shall have power to—

- (a) enter into contracts and incur obligations;
- (b) sue and, subject to Article 50 paragraph 2 of this Agreement, be sued in its own name;
- (c) acquire, hold, mortgage and dispose of property whether movable or immovable;
- (d) borrow funds in territories of the Participating Governments or elsewhere, issuing such evidences of indebtedness as may be appropriate;
- (e) regulate banking business on behalf of and in collaboration with Participating Governments;
- (f) regulate and have general oversight of payment and settlement systems, purchased payment facilities and netting contracts or arrangements;
- (g) exercise all powers specifically granted by the provisions of this Agreement to the Bank, and do all such things as shall be necessary to carry out the powers so granted;
- (h) generally, undertake the duties and responsibilities assigned to it by any other law.”.

**Amendment of Article 5B**

3. Article 5B of the Agreement is amended by deleting paragraph (1) and substituting the following paragraph—

“(1) Where the Bank is of the opinion—

- (a) that the interests of depositors or creditors of a financial institution are threatened;
- (b) that a financial institution is likely to become unable to meet its obligations or is about to suspend or has suspended payment to its creditors or depositors; or
- (c) that a financial institution is not maintaining high standards of financial probity or sound business practices;

the Bank shall, in addition to any other powers conferred on it by any other law and notwithstanding the provisions of any other law to the contrary, have power—

- (i) to, such extent as it thinks fit, assume control of and carry on the affairs of the financial institution and, if necessary, to take over the property and undertaking of the financial institution and in so doing apply the provisions under Part 9 and sections 185, 186 and 187 of the Banking Act;
- (ii) to take all steps it considers necessary to protect the interests, and to preserve the rights of depositors of the financial institution;
- (iii) to restructure the business or undertaking of the financial institution or to reconstruct its capital base;
- (iv) to provide such financial assistance to the financial institution as it considers necessary to prevent the collapse of the financial institution;
- (v) to acquire or sell or otherwise deal with the property, assets and undertaking of or any shareholding in the financial institution, at a price to be determined by an independent valuer;
- (vi) to appoint such persons and to establish such companies or corporations as it considers necessary to assist in the performance of the functions conferred by sub-paragraphs (i) to (v) and the provisions of Article 50 shall apply to such persons, companies or corporations.”.

**Amendment of Article 5(C)**

4. Article 5C of the Agreement is amended by deleting paragraph (7) and renumbering the subsequent paragraphs accordingly.

**Insertion of a new Article 5G**

5. The Agreement is amended by inserting after Article 5F the following new Article—

“5G(1) In any court proceedings under this Agreement, the Court shall take into consideration the public interest.

(2) In considering the public interest, the Court shall have regard to—

- (a) the critical importance of financial stability to the public interest;

(b) the importance of permitting the Central Bank to discharge its functions in an expeditious and efficient manner in the interest of maintaining financial stability.

(3) Any action under this Agreement by the Central Bank, official administrator or receiver that is the subject of any court proceedings shall be allowed to continue unrestricted notwithstanding the challenge or review before the Court.

(4) Subject to paragraph (4) of Article 5E, where the Court is satisfied in any proceedings under this Agreement that—

(a) a remedy in damages is available to the person who seeks relief; and

(b) it would be just in all the circumstances, having regard to the public interest, to limit relief to an award of damages,

the Court shall limit relief in such proceedings to an award of damages.”.

#### **Amendment of Article 6**

6. Article 6 of the Agreement is amended by deleting paragraphs (3), (4) and (5) and substituting the following paragraphs—

“(3) If and so long as the General Reserve is less than five percent of the Bank’s demand liabilities at the end of a financial year in which net profits were earned the Bank shall allocate to the General Reserve such amount of net profits as will make that reserve equal to five percent of those liabilities: Provided however that in the event that net profits are depleted and there remains a deficiency in the General Reserve the Participating Governments shall make such further allocation as may be necessary to make the reserve equal to five percent of those liabilities. With the written agreement of each of the Participating Governments further allocations may be made to increase the General Reserve beyond five percent but not more than ten percent of the Bank’s demand liabilities.

(4) After allocations have been made to the General Reserve in accordance with the provisions of paragraph (3) of this Article and after any allocations have been made by or with the approval of the Council in accordance with Article 24 (5), 29, and 42 (4) of this Agreement any net profits or losses remaining referred to in Annex I to this Agreement as the distributable profits or losses of the Bank—

(a) in the case of profits, shall be paid to the Participating Governments,

(b) in the case of losses, shall be apportioned to the Participating Governments,

in accordance with the formula for profit and loss sharing provided for in Annex I to this Agreement.

(5) Where in any financial year losses have been apportioned to the Participating Governments under paragraph (4), each Participating Government shall provide the funds to the Bank to cover the losses within nine months of the end of that financial year.

(6) Any change in the formula for profit and loss distribution under paragraph (4) of this Article shall apply only after each Participating Government gives its approval in writing to the Bank.”.

**Amendment of Article 7**

7. Article 7 of the Agreement is amended by deleting paragraph (1) and substituting the following paragraph—

“(1) There shall be established a Monetary Council which shall consist of a Minister for Finance appointed by each Participating Government in such manner as it may determine. Each such Minister shall designate an Alternate who shall be a Minister, to serve on the Council in his absence.”.

**Amendment of Article 9**

8. Article 9 of the Agreement is amended by deleting paragraphs (2) and (3) and substituting the following paragraphs—

“(2) The Directors shall be appointed for terms of three years and shall be eligible for re-appointment.

(3) The Governor and the Deputy Governor shall be appointed by the Council for a period of five years and shall be eligible for re-appointment. They shall be persons of recognized standing and experience in one or more of the areas listed in paragraph (1).”.

**Amendment of Article 11**

9. Article 11 of the Agreement is amended by deleting paragraph (4).

**Amendment of Article 33**

10. Article 33 of the Agreement is amended by deleting paragraph (4) and substituting the following paragraph—

“(4) The Bank may impose on any financial institution that fails to maintain required reserves in accordance with paragraphs (2) and (3) of this Article a charge at a rate of eleven point five percent on the amount of the deficiency for so long as the deficiency continues. Such charge shall be payable to the Bank on such date as may be prescribed by the Bank and may be recovered by deduction from any balance of the financial institution held by the Bank.”.

**Amendment of Article 35**

11. Article 35 of the Agreement is amended by deleting paragraphs (4) and (5) and substituting the following paragraph and renumbering the subsequent paragraph accordingly—

“(4) All statements and returns submitted by a financial institution under sub-paragraph (b) or (c) of paragraph (2) hereof and any data or information submitted by a financial institution under those provisions or under paragraph (1), shall be regarded by the Bank as secret provided that—

(a) the Bank may—

- (i) provide international financial institutions, foreign banking supervisors and any other local or foreign authorities responsible for the supervision or regulation of a licensed financial institution, or for maintaining the integrity of the financial system with such statements, returns, data and information; and

- (ii) provide access, to any officer of a foreign authority responsible for the supervision or regulation of licensed financial institutions in order to assess the safety and soundness of a foreign financial institution;

on a reciprocal basis and subject to an agreement for confidentiality and a Memorandum of Understanding;

- (b) the Bank may publish statements on the assets and liabilities of each financial institution furnished under sub-paragraph (a) of paragraph (2) but no information in respect of the affairs of a particular customer of a financial institution shall be so published.”.

#### **Amendment of Article 40**

12. Article 40 of the Agreement is amended in paragraph (1) by deleting sub-paragraph (b) and substituting the following sub-paragraph—

“(b) purchase, sell, discount and rediscount treasury bills, issued by any of the Participating Governments, payable in Eastern Caribbean Dollars, forming part of a public issue, and maturing within ninety-one days of the date of their acquisition by the Bank; but the holding of treasury bills of any one Government at any one time, shall not exceed ten percent of the average actual recurrent revenue of that Government as determined by the Bank over the three preceding financial years;”.

#### **Amendment of Article 50**

13. Article 50 of the Agreement is amended by inserting immediately after paragraph (8) the following paragraph -

- “(9) The Bank shall indemnify and keep indemnified the Governor, the Deputy Governor, the appointed Directors, officers and employees of the Bank from and against any and all loss, damage or liability (whether criminal or civil) suffered including any legal fees and costs incurred, arising in connection with the performance of his duties or the exercise of his functions.”

#### **Repeal and substitution of Annex I**

14. Annex I to the Agreement is repealed and substituted with the following—

“ANNEX I TO THE AGREEMENT ESTABLISHING THE EASTERN CARIBBEAN CENTRAL BANK

### **FORMULA FOR SHARING OF THE PROFITS OR LOSSES OF THE BANK**

- (1) The distributable profits or losses of the Bank shall be distributed among the Participating Governments according to the formula set forth below.

- (2) The Bank in respect of each financial year shall determine the share of its distributable profits or losses attributable to returns or losses on investments of its external reserves used as backing for the currency as well as the distributable profits or losses attributable to revenue or loss on other earning activities of the Bank.
- (3) The share of distributable profits or losses attributable to returns or losses on investment of its external assets shall be distributed between the Member States in proportion to the respective amount of currency in circulation in each Member State. In order to facilitate the determination from time to time of the currency in circulation in all Member States, the Bank in its preparation of any new issue of currency notes to be put into circulation at the date of commencement of this Agreement, shall order that such notes be coded in such a manner as to permit the issue of notes only of a particular code to a Member State, and any subsequent determination of the currency in circulation in that State shall take account of redemptions of notes of the particular code issued to a Member State, notwithstanding that such notes may have been redeemed from elsewhere.
- (4) The share of distributable profits or losses attributable to revenue or loss on other earning activities of the Bank shall be distributable on the basis of the imputed equity interest of each Member State, which shall be the proportion of profits or losses provided for under the formula in operation in 1969 adjusted to take account of the ratios determined under paragraph (3) of this Annex, but so as to ensure that the aggregate of all proportions is one.”.

**Citation**

15. This Order may be cited as the—

Eastern Caribbean Central Bank Agreement (Amendment of Schedule) Order, 2016.

Made by Her Excellency the Governor on this 22<sup>nd</sup> day of April, 2016



Christina Scott

**GOVERNOR OF ANGUILLA**