ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER E3

EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 7/2015, in force 22 April 2016
Act 5/2016, in force 18 April 2016
R.A. 125/2021, in force 11 October, 2019
R.A. 126/2021, in force 11 December, 2020
R.A. 30/2022, in force 16 November 2018

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EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION ACT

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SCHEDULE: Eastern Caribbean Asset Management Corporation Agreement

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EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION ACT

Interpretation

1. In this Act unless the context otherwise requires—

"Agreement" means the Agreement establishing the Eastern Caribbean Asset Management Corporation, signed on 24th February 2015, the text of which is set out in Schedule 1;
(Act 5/2016, s. 2)

"Article" means the Articles of the Agreement;

"Board" means the Board of Directors of the Corporation appointed and constituted under Article 64;

"Company" means the Resolution Trust Corporation Limited established under the Companies Act of St. Kitts and Nevis and registered as an external company under the Laws of Antigua and Barbuda;

"Corporation" means the Eastern Caribbean Asset Management Corporation established under Article 3;

"Minister" means the Minister responsible for Finance.

Agreement to have force of law

2. Subject to this Act, the Agreement has the force of law in Anguilla.

Financial provisions for giving effect to the Agreement

3. All monies required to be paid by the Government of Anguilla for the purpose of meeting the obligations of Anguilla under the Agreement shall be a charge on the Consolidated Fund.

Exemptions

4. **(**1) The following Acts do not apply to the Corporation—

(a) Banking Act; and

(b) Stamp Duty Act.

(2) The enforcement of any security including a charge or mortgage (whether legal or equitable) acquired by the Corporation is not subject to the Registered Land Act or any other Act of Anguilla.
(Act 5/2016, s. 3)

Inconsistency with other legislation

5. In the event of any inconsistency between this Act and the operation of any other Act of Anguilla, this Act prevails to the extent of the inconsistency.
(Act 5/2016, s. 4)

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Transfer of assets and liabilities

6. (1) On 29 March 2016 all the assets and liabilities of the Company, together with all its rights and obligations that are consistent with the Agreement, are deemed to have been transferred to and vested in the Corporation.

(2) A reference in any deed, contract, bond or security or other document subsisting immediately before the commencement of this Act against or in favour of the Company shall have full force and effect against or in favour of the Corporation and is enforceable as fully and effectually as if, instead of the Company or any person acting on behalf of the Company, the Corporation had been named as a party.

Offences committed by a company

7. (1) Where a company is charged with an offence under this Act, every person who at the time of the commission of the offence is a director or officer of the company may be charged jointly in the same proceedings with the company.

(2) Where a director or officer of the company is charged jointly with the company in the same proceedings, it is a defence if he proves that the offence was committed without his knowledge and that he has exercised all such diligence as he ought to have exercised, having regard to all the circumstances.

(3) Any person who would be liable under this Act to any penalty for anything done or omitted if the thing had been done or omitted by him personally is liable to the same penalty if the thing had been done or omitted by his agent, unless he proves that he took all reasonable precautions to prevent the doing or omission of the thing.

(4) In this section, "director" and "officer" have the meanings assigned to them in the Business Companies Act.

Penalties

8. (1) Any person who contravenes Article 31 or 32 commits an offence and is liable on conviction to a fine of $250,000 or to imprisonment for a term of 3 years or to both.

(2) Any person who contravenes Article 34 or submits or causes to be submitted any information that is materially false or misleading commits an offence and on conviction is liable to a fine of $250,000 or to imprisonment for a term of 3 years or to both.

(3) Any person who contravenes—

(a) Article 35;

(b) Article 36(1) or (2);

(c) Article 37(1);

(d) Article 38;

(e) Article 40; or

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(f) Article 46(1),

commits an offence and is liable on conviction to a fine of $250,000 or to imprisonment for a term of 3 years or to both.

(4) Any person who contravenes Article 97 commits an offence and is liable on conviction to a fine of $200,000 or to imprisonment for a term of 3 years or to both.

Amendment of Schedule

9. (1) Where an amendment to the Agreement becomes effective in accordance with Article 102, the Minister may, by Order, amend the Schedule accordingly.

(2) Where the Schedule is amended pursuant to this section, any reference to the Agreement in this Act or any other instrument shall, unless the context otherwise requires, be construed as a reference to the Agreement so amended.

Regulations and Rules

10. (1) The Minister may, upon the recommendation of the Board, make Regulations and Rules to give effect to the Agreement.

(2) Regulations and Rules made pursuant to subsection (1) are subject to negative resolution of the House of Assembly and shall be published in the *Gazette*.

Sunset and Savings

11. (1) Where there is a termination under Articles 90 or 91, this Act shall cease to have the force of law.

(2) Where this Act ceases to have the force of law pursuant to subsection (1)—

(a) any prior rights of any person acting upon or accruing under the authority granted by the Agreement shall subsist; and

(b) any transaction or agreement which is expressly or by implication intended to come into force or continue in force, or be consummated on or after the date on which this Act ceases to have force of law shall not be affected by the Act ceasing to have the force of law.

Citation

12. This Act may be cited as the Eastern Caribbean Asset Management Corporation Act, Revised Statutes of Anguilla, Chapter E3.

———————

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SCHEDULE

(Section 1)

EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION AGREEMENT

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AGREEMENT ESTABLISHING THE EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION

PREAMBLE

The Participating Governments**:**

Desirous of strengthening the financial system in the Currency Union:

Committed to maintaining stability in the financial system of the Currency Union:

Committed also to reducing the non-performing assets in the banking system:

Desirous also of facilitating the availability of credit in the financial system of the Currency Union:

HAVE AGREED as follows:

PART I

PRELIMINARY

Title

1. This Agreement shall be cited as the Eastern Caribbean Asset Management Corporation Agreement.

Interpretation

2. In this Agreement, unless the context suggests otherwise—

"approved financial institution" means any financial institution approved by Council under Article 9;

"asset" includes—

(a) a credit facility;

(b) any security relating to a credit facility;

(c) every other right arising directly or indirectly in connection with a credit facility;

(d) every other asset including but not limited to property owned by an approved financial institution; and

(e) an interest in an asset referred to in any of paragraphs (a) to (d);

"Audit Committee" means the Audit Committee appointed under Article 81;

"Board" means the Board of Directors of the Corporation appointed and constituted under Article 64;

"Central Bank" means the Eastern Caribbean Central Bank established under Article 3 of the Eastern Caribbean Central Bank Agreement;

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"charge" includes—

(a) a mortgage, charge, floating charge, lien, pledge, hypothecation or other security interest or encumbrance or collateral in or over any property;

(b) an assignment by way of security; and

(c) an undertaking or agreement by any person (including an attorney-at-law or solicitor) to give or create a security interest in property;

"Corporation" means the Eastern Caribbean Asset Management Corporation established under Article 3;

"Currency Union" refers collectively to the member countries and territories of Anguilla, Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines which use the Eastern Caribbean currency as their official currency;

"director" means a director of the Corporation appointed under this Agreement;

"Executive Committee" means the Executive Committee appointed under Article 80;

"member territory" means a country or territory of a Participating Government;

"Monetary Council" means the Monetary Council established under Article 7 of the Eastern Caribbean Central Bank Agreement;

"Participating Government" means a government which is a party to this Agreement;

"property" means real or personal property that is owned by an approved financial institution or is the subject of the security for a credit facility;

"relevant authority" means a regulatory or governmental authority.

PART II

ESTABLISHMENT, PURPOSES AND GENERAL POWERS

Establishment

3. (1) There shall be established a body to be known as the Eastern Caribbean Asset Management Corporation which shall be a body corporate having full legal personality.

(2) The establishment of the Corporation shall take effect in accordance with Article 105 of this Agreement.

Place of office and establishment of branches

4. (1) The Corporation shall have its principal office in one of the member territories as the Monetary Council may by majority vote determine.

(2) The Corporation may establish branches or agencies and may appoint agents and correspondents in any member territory.

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Address and service of documents

5. (1) The Corporation shall at all times have a fixed address for the service of documents on the Corporation in one of the member territories.

(2) All documents to be served on the Corporation may be served by leaving the same at or by sending the same by registered post to the address of the Corporation under paragraph (1).

Purposes

6. The purpose of the Corporation is to—

(a) carry on the business of asset management including acquiring the whole or any part of, dealing with, managing, and disposing of assets or liabilities of approved financial institutions in an expeditious manner;

(b) act as the receiver of a financial institution whenever appointed by the Central Bank under the Eastern Caribbean Central Bank Agreement or the Banking Act.

General Powers

7. (1) For the attainment of its purposes the Corporation may—

(a) carry out, manage or enter into any activity in relation to assets or liabilities acquired or managed by it;

(b) secure the payment of money in any manner, including on the assets of the Corporation or any particular property and rights, present or future, of the Corporation;

(c) enforce and accept any security, guarantee, indemnity or surety;

(d) draw, accept and negotiate negotiable instruments;

(e) borrow on any terms and conditions that the Corporation thinks fit;

(f) participate in any enforcement, restructuring, reorganization, scheme of arrangement or other compromise;

(g) form a subsidiary for the purpose of performing any of its functions;

(h) give security for any debt, obligation or liability of the Corporation;

(i) provide credit facilities to facilitate the restructuring of managed or acquired assets on such terms and conditions as the Corporation thinks fit;

(j) establish a trust or participate in a trust as trustee or beneficiary;

(k) issue, re-issue, borrow, lend, or transfer debt securities or notes including, but not limited to equity and debt instruments;

(l) purchase, acquire, sell or manage, by agreement, assets of an approved financial institution, investments, property and undertakings, and realize any assets through recovery, sale or by any other means for such consideration and on such terms as the Corporation thinks fit;

(m) vest property in any other person on behalf of, or for the benefit of, the Corporation with or without declaring a trust in the Corporation's favour;

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(n) discharge any debt, obligation or liability;

(o) institute, conduct, defend, settle, compound or abandon any legal proceedings, by or against any person or its officer, concerning the affairs of any such person and also compound or allow time for payment or satisfaction of any debts due and of any claims or demands by or against any person;

(p) compromise any claim;

(q) appoint persons to be its attorneys or agents with such powers including power to delegate and to appear before all proper authorities and make all necessary declarations, to enable its operations and business to be validly carried on;

(r) appoint or act as any receiver, receiver-manager, or liquidator in respect of any security held by the Corporation or a financial institution;

(s) invest its funds as the Corporation thinks fit;

(t) create special purpose vehicles in discharge of its functions;

(u) appoint any institution or institutions as its trustees on such terms and conditions as the Corporation may determine;

(v) enter into contracts and incur obligations, including contracts of insurance, and insure or self-insure, in relation to any of its activities and property;

(w) enter into partnership or into any arrangement for sharing of funding or profits, amalgamation, union or interests, co-operation, joint venture, reciprocal or otherwise with any person, partnership or corporation where such partnership or arrangement may seem conducive to the Corporation's purposes;

(x) undertake any development for the purpose of realising the full value of any asset;

(y) carry on any business that the Corporation considers can be conveniently carried on in connection with any of its functions or is calculated directly or indirectly to enhance the value of or facilitate the realisation of or render profitable any of the Corporation's property or rights, or assets under its management;

(z) do all such other things as the Corporation considers incidental to, conducive to, or expedient for the attainment of the purposes under Article 6.

(2) The powers conferred on the Corporation under paragraph (1) shall be in addition to and not in derogation of any of the rights, powers or privileges conferred on the Corporation by this Agreement or any other law.

(3) The Corporation may exercise any of its powers under paragraph (1)—

(a) alone or in conjunction with others; or

(b) by or through an agent, contractor or trustee,

as approved by the Board from time to time.

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PART III

ACQUISITION OF ASSETS FROM APPROVED FINANCIAL INSTITUTIONS

Interpretation

8. In this Part, unless the contrary intention appears—

a reference to "the Corporation" shall be construed as a reference to either the Corporation or a subsidiary established by the Corporation to acquire an asset;

"acquirer" means any person to whom the Corporation disposes or transfers an asset under Part III;

"seller" means an approved financial institution from whom the Corporation acquires an asset.

Approved financial institution

9. (1) The Monetary Council on the recommendation of the Central Bank may determine classes of financial institution as approved financial institutions based on the following criteria—

(a) the financial institution is licensed under the Banking Act; or

(b) the financial institution is a savings institution that undertakes deposit taking and provides loans;

and is systemically important.

(2) For the purposes of paragraph (1), "systemically important" means a financial institution that—

(a) is interconnected to the rest of the financial system in the Currency Union and its failure will cause significant disruption to the financial system in the Currency Union; or

(b) provides financial services that is non-substitutable.

(3) The list of approved financial institutions shall be published by notice in the official *Gazette* in each member territory.

Acquisition of Assets

10. (1) The Corporation may with the consent of the seller—

(a) acquire any asset through vesting pursuant to this Part; or

(b) acquire any asset through other means pursuant to the provisions of other applicable law other than those set forth in this Part.

(2) The seller of the asset shall disclose to the Corporation in writing prior to the vesting date or such other acquisition date all specific claims within his knowledge relating to the asset.

(3) The criteria for the selection of assets to be acquired from approved financial institutions shall be determined by the Board, and shall be consistent with the purposes of the Corporation and in particular the resources available to the Corporation.

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(4) Without prejudice to the generality of paragraph (5), the Corporation may, in deciding whether to acquire an asset from an approved financial institution, take into account—

(a) whether any security that is part of the asset is adequate;

(b) whether any security that is part of the asset has been perfected;

(c) the value of that security;

(d) whether the relevant credit facility documentation is defective or incomplete;

(e) whether the approved financial institution or any other person has engaged in conduct concerning the asset that is or could be prejudicial to the position of the Corporation;

(f) whether the approved financial institution has complied with its contractual and legal obligations and its obligations in relation to the asset;

(g) the quality of the title to any property held as security that is part of the asset;

(h) any applicable legal, regulatory, or planning requirement that has or has not been complied with in relation to land held as security that is part of the asset;

(i) any other matter that the Corporation considers relevant.

(5) The Corporation may, from time to time, specify the terms and conditions that are to apply generally to the acquisition of assets.

(6) The acquisition of assets under this Article shall be limited to a period of fifty-one months from the date of commencement of business by the Corporation.

(R.A. 126/2021, s. 2)

(7) The Corporation may establish an entity or nominate its subsidiary, if any, as the entity to acquire any asset of an approved financial institution.

Power of Vesting and Transfer

11. (1) Where the Corporation acquires an asset or disposes of an asset, the asset shall, on and from the vesting date or as the case may be transfer date, vest in the Corporation or be transferred by the Corporation to an acquirer.

(2) A vesting or transfer under paragraph (1) shall have effect according to the provisions of this Agreement, and notwithstanding any other law, shall be binding on any person affected in the manner provided in this Agreement.

(3) The Corporation shall, on and from the vesting date or as the case may be transfer date, acquire or dispose all the present and future rights, estates and interests in, and disclosed obligations with respect to, such asset, freed from any encumbrance or claims except for registered interests prevailing as at the vesting or transfer date and disclosed claims.

(4) Without prejudice to paragraphs (1), (2) or (3), in relation to an asset vested in the Corporation or transferred by the Corporation to an acquirer—

(a) each obligor with respect to such asset shall be deemed to have released and discharged the seller from the disclosed obligations with respect to the asset;

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(b) each obligor and each other person having any right, title or interest in the asset shall be deemed to have consented to and accepted the assumption by the Corporation or acquirer as the case may be of all of the disclosed obligations with respect to the asset;

(c) an existing instrument, whether in the form of a deed, will or otherwise, or order of any court, under or by virtue of which the seller or the Corporation has title or ownership of or rights to such asset, shall be construed and shall have effect as if for any reference to the seller or Corporation there were substituted a reference to the Corporation or the acquirer;

(d) an existing agreement in relation to such asset to which the seller or Corporation was a party shall have effect in so far as it is applicable to the disclosed obligations, disclosed claims and registered interest as if the Corporation or acquirer had been party to the agreement instead of the seller or Corporation;

(e) an existing mandate, power of attorney, authority, undertaking or consent in relation to the asset which was given to the seller or Corporation, either alone or jointly with another person, shall be deemed to have effect, as if given to the Corporation or acquirer either alone or jointly with the other person, as the case may be;

(f) a negotiable instrument or order for payment of money in relation to the asset which was given to the seller or Corporation before the vesting or transfer date, shall have the same effect on and from the vesting date or transfer date, as if it had been given to the Corporation or the acquirer;

(g) where the custody of any goods, things or documents in relation to such asset is held by the seller or the Corporation as bailee immediately before the vesting or transfer date, such goods, things or documents shall be deemed to have passed to the Corporation or acquirer and the rights and disclosed obligations of the seller or Corporation under any contract of bailment relating to any such asset shall be transferred to the Corporation or acquirer free of any claim save for disclosed claims;

(h) if such asset is security held immediately before the vesting date by the seller, or transfer date by the Corporation, or by a nominee of or trustee for the seller or Corporation, as security for the payment or discharge of any liability of any person, the security shall be held by the Corporation, or by the acquirer, or as the case may be, shall be held by that nominee or trustee as the nominee of, or trustee for the Corporation or acquirer, with the same priority and security as the seller or Corporation, and to the extent of that liability, shall be available as security for the payment or discharge of that liability or if applicable future liabilities, and advances;

(i) the Corporation or acquirer shall have the rights, powers, and remedies for ascertaining, protecting or enforcing the rights, titles, interests or obligations in respect of any legal or other proceedings or applications to any authority pending immediately before the vesting date or transfer date by or against the seller or Corporation, and resisting any disclosed claims or registered interests as if they had at all times been the rights, titles, interest and obligations of the Corporation or acquirer;

(j) a judgment or award obtained by the seller or Corporation in relation to such asset and not fully satisfied before the vesting or transfer date shall be enforceable by the Corporation or the acquirer as the case may be;

(k) where the interest rate under any agreement in respect of an asset acquired or disposed by the Corporation is no longer determinable as provided in the agreement, the interest rate payable under such agreement shall be the interest rate as the Corporation or acquirer may agree with the obligor of the agreement or on the prevailing market rate.

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(5) Without prejudice to paragraphs (1), (2), (3) or (4), a vesting or transfer of any asset in or by the Corporation shall not—

(a) be regarded as placing the Corporation, the seller or any person deriving title from the Corporation or any other person in breach of, or default under, any contract, or in breach of confidence;

(b) be regarded as giving rise to a right for any person to—

(i) terminate, cancel or modify an agreement,

(ii) enforce or accelerate the performance of an obligation, or

(iii) require the performance of an obligation not otherwise arising for performance;

(c) be regarded as placing the seller, the Corporation, acquirer or any other person in breach of any law or agreement prohibiting, restricting, requiring any consent for or regulating the assignment, sale, disposition or transfer of any asset or disclosure of information except that a vesting or transfer of such asset by the Corporation shall be subject to the approval of the relevant authority having jurisdiction over such disposition;

(d) release a surety from an obligation;

(e) invalidate or discharge a contract or security;

(f) be regarded as being void or voidable by reason of the application of any law;

(g) be regarded as terminating, cancelling or varying any rights, privileges, exemptions (including any tax exemptions) or priorities to which the seller was entitled and which by virtue of this Article has vested in the Corporation.

(6) Without prejudice to the generality of paragraphs (1), (2), (3), (4) or (5), in any proceeding brought by or against the Corporation in respect of any asset vested in the Corporation pursuant to this Article, no person shall raise as a claim or defence to such proceedings any of the following matters, unless such claim is a disclosed claim—

(a) that person has had or would have had a set-off or counterclaim against the seller or any other person;

(b) any person had a prior interest, whether legal or equitable, in the asset;

(c) any person was a party to or privy to any fraud, duress, coercion, undue influence, or misrepresentation;

(d) there was a mistake of law or fact;

(e) any agreement to which the asset relates was in furtherance of an illegal purpose or that any consideration given or received was unlawful or that the object of the agreement which constitutes or is one of the constituents of the asset is unlawful;

(f) there was a total failure of, or no consideration, or there was a partial failure of consideration;

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(g) the person who executed or is deemed to have executed or who is a party to any document of title for the asset or written contract which evidences, gives rise to or secures the asset did not understand the document;

(h) the person who executed or is deemed to have executed or who is a party to any document of title for the asset or written contract which evidences, gives rise to or secures the asset did not have the capacity or the authority to do the same; and

(i) there is an error in any statement of account issued by the seller or any other person in respect of any debt to which the asset relates.

(7) (a) A person who is precluded from making a claim against the Corporation or is precluded from raising a defence against the Corporation under paragraph (6) shall be entitled to seek compensation against the seller in respect of such claim.

(b) Where the High Court is satisfied that the person referred to in sub-paragraph (a) has a claim against the seller including any prior equitable interest in the asset which that person could have raised or claimed but is precluded by paragraph (6), that person shall be entitled to such compensation from the seller in respect of such claim as the High Court considers fair and reasonable.

(8) Subject to paragraph (9), a vesting or as the case may be transfer certificate executed under the seal of the Corporation stating that an asset has been vested in the Corporation or transferred by the Corporation, shall be conclusive evidence of such vesting or transfer as of the vesting or transfer date.

(9) Within thirty days of the vesting or transfer date, the Corporation shall cause the publication of the vesting or transfer certificate in the *Gazette* of the member territory where such transfer or vesting took place.

(10) (a) Within ninety days of the publication of the vesting or transfer certificate under paragraph (9), any third party with a legal or equitable interest in an asset may file a written claim with the Corporation.

(b) The Corporation shall assess all claims filed under sub-paragraph (a) and may adjust the price paid for the acquisition of the asset under this Part.

(11) A vesting or transfer certificate may be issued by the Corporation in the form set out in Annex I, after the vesting or transfer date.

(12) The Corporation may issue a new vesting or transfer certificate to replace any vesting or transfer certificate it previously issued in order to rectify any omission or error in the vesting or transfer certificate.

(13) Any replacement vesting or transfer certificate issued under paragraph (12) shall be conclusive evidence of such vesting or transfer as of the vesting or transfer date specified in the replacement vesting or transfer certificate and the replacement certificate shall be published within thirty days of issuance in the *Gazette* of the member territory where such vesting or transfer took place.

(14) Any act done by the Corporation, seller, acquirer, receiver or any other person in reliance on a vesting or transfer certificate previously issued shall not be affected by any omission or error rectified in a replacement vesting or transfer certificate.

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Registrars to give effect to vesting and transfer certificate

12. (1) Notwithstanding the provisions of any other law, every Registrar of Lands, Registrar of the High Courts, the Registrar of Companies, other Registrars and any person maintaining a register or record of ownership, interest or security, as the case may be, shall, on receipt of the form in Annex II—

(a) with the vesting or transfer certificate attached to it; and

(b) showing the identity of the person or asset affected by the vesting or transfer,

without the need for payment by the Corporation of any fees, duties including stamp duties, or taxes, or further application or filing of any further documents, do all things and make all entries in any register or record kept by that person as may be necessary to give effect to the vesting or transfer of the asset to which the vesting or transfer certificate relates.

(2) A registrar or person who maintains a register or record mentioned under this Article shall not be liable to any person in respect of the making of any notation on the register document of title or any other entry in the register or record in reliance on the vesting or transfer certificate.

Disposition by the Corporation

13. (1) The Corporation may, in accordance with the provisions of this Article, dispose of any asset whether vested or not in the Corporation and any property over which the Corporation has a security whether as a chargee, mortgagee, assignee, lienholder or otherwise.

(2) Subject to the approval of any relevant authority having jurisdiction over the disposition of an asset by the Corporation such disposition shall have the effect of an acquisition of an asset by the Corporation as if that acquirer were the Corporation under Article 11.

(3) A disposition of an asset by the Corporation to an acquirer shall have the effect of transferring the Corporation's present and future rights, title and interest in, and disclosed obligations with respect to, such asset, free of any encumbrance or claim except for registered interests prevailing as at the date specified in the transfer certificate as the date of disposition and disclosed claims.

Effects of acquisition or management of assets

14. (1) No cause of action lies or is maintainable against the Corporation by reason solely of the acquisition or management of an asset by the Corporation.

(2) Where the Corporation acquires or manages an asset, the Corporation may direct the approved financial institution to—

(a) deliver to the Corporation all its books and records in relation to the asset concerned and any documents of title that it holds for any property that is subject to a security that is part of the asset; and

(b) provide any information or explanation that the Corporation requires in relation to those books, records and documents.

(3) Within sixty days after the acquisition or management of an asset from an approved financial institution, the Corporation shall make reasonable efforts to notify at the last known address of each debtor, associated debtor, guarantor or surety in relation to the credit facility concerned of—

(a) the acquisition of the asset by the Corporation; or

(b) the management of the asset by the Corporation.

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(4) Notwithstanding paragraph (3), the Corporation is not liable for any failure or delay to notify such person, and any acquisition or management of the asset is deemed valid.

PART IV

MANAGEMENT OF ASSETS

Interpretation

15. In this Part, unless the context otherwise requires—

"affected person" means—

(a) any company owing a duty or liability under a credit facility to the Corporation or any subsidiary of the Corporation, whether present, future, vested or contingent;

(b) any subsidiary of the company referred to in paragraph (a);

(c) any company which has provided security for the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present, future, vested or contingent; or

(d) any company where at least twenty per cent of its share capital has been charged, pledged or mortgaged by any person to secure the performance of or discharge of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether present, future, vested or contingent;

"officer" in relation to the affected person includes a receiver, receiver-manager, liquidator and director as defined in the law related to companies;

"primary affected person" means any company referred to in paragraph (a) of the definition of "affected person";

"secured creditor" means a person who holds as security for a liability of an affected person—

(a) a charge, over the land belonging to the affected person, duly registered under the law relating to land;

(b) a charge on the undertaking or property of the affected person registered under the law relating to companies;

(c) an assignment by an affected person of its rights under an agreement to purchase land or a parcel of a building where the document of title to the land or the title to the parcel of a building has not been issued at the time of the assignment;

(d) the document of title to any land or any lease belonging to the affected person and in respect of which a caveat has been duly entered in accordance with the provisions of the law relating to land;

(e) a charge, mortgage, pledge or lien over marketable securities or cash belonging to the affected person and which, is registered under the law relating to companies.

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Establishment and functions of the Oversight Committee

16. (1) There is hereby established the Oversight Committee whose functions shall be—

(a) to approve the appointment of a special administrator under Article 21;

(b) to approve the appointment of an independent advisor in the manner set out under Article 28;

(c) to approve the recommendations made by the Corporation for the extension or termination of any moratorium in effect pursuant to Article 40; and

(d) to approve the termination of the—

(i) appointment of a special administrator, or

(ii) the administration of an affected person,

on the recommendation of the Corporation.

(2) The Oversight Committee shall be appointed by the Monetary Council on the recommendation of the Participating Governments and shall be constituted as follows—

(a) a representative of the Ministry of Finance of a member territory;

(b) a representative of the Attorney General of a member territory;

(c) a representative of the Central Bank.

(3) No act or proceeding of the Oversight Committee shall be invalid because of—

(a) any vacancy in the membership, or any defect in the constitution, of the Oversight Committee;

(b) any contravention by any member of the Oversight Committee of Article 97; or

(c) any omission, defect or irregularity in the proceedings of the Oversight Committee.

(4) The decision of the Oversight Committee shall be final and binding.

Application by affected person for appointment of special administrator

17. Subject to Article 19, the Board of Directors or the majority of the members of an affected person may apply to the Corporation and the Corporation may recommend to the Oversight Committee the appointment of a special administrator of the affected person.

Recommendation by Corporation for appointment of special administrator

18. Subject to Article 19, the Corporation may, on its own motion, recommend to the Oversight Committee the appointment of a special administrator of any affected person.

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Criteria for appointment of special administrator

19. The Corporation may recommend the appointment of a special administrator under Article 17 or 18 if the Corporation is satisfied that it would serve the public interest to do so or if the Corporation is satisfied that—

(a) the primary affected person—

(i) is unable to pay its debts as they fall due, or

(ii) is unable to fulfil its obligations to its creditors;

(b) the survival of the primary affected person and the whole or any part of its assets as a going concern may be achieved;

(c) a more advantageous realisation of the primary affected person's assets may be achieved than on a winding up; or

(d) the appointment may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the Corporation or any subsidiary of the Corporation, whether future, present, vested or contingent.

Qualifications of special administrator

20. (1) A person shall not qualify to be appointed as a special administrator unless that person—

(a) is a natural person;

(b) has consented in writing to his appointment and has not withdrawn his consent as at the date of his appointment; and

(c) has no interest in the affected person.

(2) The following persons shall be qualified to be appointed as a special administrator—

(a) a company auditor who has the requisite experience approved under the law relating to companies;

(b) a person who has, in the opinion of the Corporation, the requisite experience in any of the following areas—

(i) finance,

(ii) accounting,

(iii) asset management,

(iv) banking,

(v) investment, or

(vi) other related disciplines; or

(c) a person who is, in the opinion of the Corporation, capable of performing the duties of a special administrator.

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(3) The following persons shall not be qualified to be appointed as a special administrator or independent advisor—

(a) a corporation;

(b) an undischarged bankrupt;

(c) a mortgagee of any property of the affected person;

(d) an auditor of the affected person; or

(e) an officer of the affected person.

Appointment of special administrator

21. (1) The Corporation may, pursuant to Articles 17 and 18 on the approval of the Oversight Committee, appoint the special administrator.

(2) The Corporation may at any time after the appointment of the special administrator under paragraph (1)—

(a) appoint an additional special administrator; or

(b) appoint a new special administrator to replace any existing special administrator,

on the approval of the Oversight Committee.

(3) Any decision of the Corporation under this Article and Articles 17, 18 and 19 shall be final and binding.

(4) The special administrator shall report to the Oversight Committee and the Corporation on terms to be agreed no less than every six months.

Circumstances where special administrator cannot be appointed

22. (1) A special administrator shall not be appointed in respect of an affected person—

(a) if the affected person is being wound up by the court and the winding up order is still subsisting;

(b) if the affected person is—

(i) a financial institution licensed under the law relating to banking,

(ii) an approved financial institution under this Agreement,

(iii) an entity licensed or registered under the law relating to insurance or the law relating to securities, or

(iv) a credit union registered under the law relating to cooperative societies.

(2) Notwithstanding paragraph (1), a special administrator may be appointed where the approval of the relevant authority is obtained.

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Duration of administration

23. (1) The special administrator shall be appointed for a period not exceeding two years.

(2) The administration of the affected person by the special administrator shall commence from the date of appointment of the special administrator and shall continue until the appointment is terminated by the Corporation with the approval of the Oversight Committee.

(3) Where the special administrator's appointment is terminated under this Article, he shall be discharged from all duties and liabilities in respect of his administration or otherwise in relation to his conduct as a special administrator.

(4) Nothing in this Article shall prevent an action or other proceedings by any party for loss or damage due to the willful misconduct or gross negligence of the special administrator.

Notification of appointment of special administrator

24. (1) Where a special administrator has been appointed under Article 17 or 18, the special administrator shall within—

(a) two days of the appointment give written notice to the affected person;

(b) seven days of the appointment give written notice to the Registrar of Companies; and

(c) seven days after the appointment cause a notice of the special administrator's appointment to be published in the *Gazette* and at least one local newspaper in each member territory.

(2) Where a special administrator has been appointed every communication, contract and document including an invoice and negotiable instrument, issued by or on behalf of the affected person or the special administrator, in relation to the affected person, shall contain the words "special administrator appointed".

(3) A contravention of this Article shall not affect the validity of the acts of the special administrator in the administration of the affected person.

Effect of appointment of special administrator

25. The appointment of a special administrator under Article 17 or 18 shall not—

(a) be regarded as placing the special administrator, the affected person or any other person in breach of or in default under any contract, or in breach of confidence;

(b) be regarded as giving rise to a right to any person to—

(i) terminate, cancel or modify an agreement,

(ii) enforce or accelerate the performance of an obligation, or

(iii) require the performance of an obligation not otherwise arising for performance;

(c) be regarded as placing the special administrator, the affected person or any other person in breach of any law or agreement prohibiting, restricting or regulating the assignment, sale, disposition or transfer of any asset or disclosure of information;

(d) release a surety from an obligation;

(e) invalidate or discharge a contract or security;

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(f) be regarded as terminating, cancelling or varying any right, privilege, exemption (including any tax exemption) or priorities in relation to an asset;

(g) be regarded as placing the Corporation, the Oversight Committee or the special administrator in breach of any law.

General powers and duties of special administrator

26. (1) The special administrator shall have the powers specified in Annex III.

(2) Without prejudice to Articles 34, 36 and 39, the special administrator shall, on his appointment, take into his custody or under his control all the assets to which the affected person is or appears to be entitled and shall manage the assets and affairs of the affected person.

Special administrator as affected person's agent

27. The special administrator shall, in the administration of the affected person, be deemed to be acting as the agent of the affected person.

Appointment of independent advisor

28. Where a special administrator is appointed under Article 17 or 18, the Oversight Committee on the recommendation of the Corporation may approve and appoint an independent advisor.

Qualifications of independent advisor

29. No person shall be appointed as an independent advisor unless in the opinion of the Corporation—

(a) the person is capable of performing the duties of an advisor;

(b) the person has consented in writing to the appointment and has not withdrawn its consent as at the date of its appointment; and

(c) the person is—

(i) an investment bank,

(ii) a firm of accountants, or

(iii) a person who, in the opinion of the Corporation, has the requisite experience or is capable and is not excluded under paragraph (3) of Article 20 of performing the duties of an independent advisor.

Two or more special administrators

30. Where two or more persons are appointed as the special administrators of an affected person—

(a) the functions or the powers of the special administrator may be performed or exercised by any one of them or by both or all of them jointly;

(b) a reference to the special administrator in this Agreement shall be a reference to whichever one of the persons appointed, as the case may be.

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Officers of affected person to perform or exercise function with written approval

31. (1) No person, including the Board of Directors of the affected person, other than the special administrator shall perform or exercise or purport to perform or exercise a function as an officer of the affected person, except with the prior written approval of the special administrator.

(2) For the purpose of paragraph (1) the special administrator shall be entitled to exercise all the functions of the Board of Directors of the affected person.

Dealings with affected person's assets

32. If an affected person or any person purports to enter on behalf of the affected person, a transaction or dealing with any asset of the affected person, the transaction or dealing shall be void unless—

(a) it is a transaction or dealing entered into by the special administrator; or

(b) the prior written consent of the special administrator was obtained for the transaction or dealing.

Damages for wrongful dealing

33. (1) Where a court finds a person has contravened Article 32 and the court is satisfied that the affected person or another person has suffered loss or damage, it may grant damages to the person.

(2) Notwithstanding paragraph (1) the special administrator may commence civil proceedings against any person to recover the asset of the affected person or compensation in lieu of recovery.

Obligations of officer of affected person

34. (1) An officer or employee of the affected person shall within seven days after the appointment of the special administrator—

(a) deliver to the special administrator all books and accounts of the affected person in the possession of the officer or employee; and

(b) if the officer or employee knows the location of other books and accounts relating to the affected person, inform the special administrator of the location of those books and accounts.

(2) An officer or employee of an affected person shall report, take directions and give such other assistance as the special administrator may reasonably require.

Investigation of affairs

35. (1) The special administrator may require any of the persons specified in paragraph (2), within twenty-one days or such extended time as the special administrator may grant, to verify and submit to the special administrator a statement as to the affairs of the affected person in a form determined by the special administrator.

(2) The special administrator may require the following persons to verify and submit the statement of affairs referred to in paragraph (1)—

(a) persons who are or have been officers of the affected person;

(b) persons who have taken part in the formation of the affected person at any time within two years prior to the appointment of the special administrator; or

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(c) persons who are in the affected person's employment or have been in the affected person's employment within two years before the appointment of the special administrator who, in the opinion of the special administrator, have knowledge of the information required.

(2) The special administrator may at any time release a person from any obligation imposed on him under paragraph (1).

(3) The special administrator shall, on completion of his functions and duties under this Agreement, return to the affected person any books, statements, documents or anything referred to under paragraph (1) of Articles 34 and Articles 36 and 37.

Special administrator's rights to the books of the affected person

36. (1) No person is entitled, as against the special administrator—

(a) to retain possession of the books and accounts of the affected person; or

(b) to claim or enforce a lien on the books of the affected person.

(2) The special administrator may give notice to a person and such person shall deliver to the special administrator the books and accounts so specified in the notice that are in his possession.

(3) Paragraphs (1) and (2) shall not apply in relation to any books and accounts—

(a) to which a secured creditor of the affected person is entitled to possession otherwise than because of a lien; or

(b) of the affected person impounded by the relevant authority;

but the special administrator shall be entitled to inspect and make copies of such books.

Special administrator's rights to assets of the affected person

37. (1) The special administrator may require any person who has in his possession or control assets or books and accounts to which the affected person appears to be entitled to deliver, convey, surrender or transfer the assets or books and accounts to the special administrator forthwith or within such period as the special administrator may direct.

(2) The special administrator may seize in good faith, any property which is not property of the affected person if at the time of the seizure there are reasonable grounds to believe that the property—

(a) is the subject of a fraudulent transfer; or

(b) has otherwise been disposed of in an attempt to conceal or disguise it so as to avoid seizure by the special administrator;

and he shall be immune from liability to any person in respect of any loss or damage resulting from the seizure.

(2) Where there are no longer any reasonable grounds for seizure under paragraph (2) the special administrator shall return the property to the person from whom it was seized.

Effect of obstructing or hindering the special administrator

38. No person shall obstruct or hinder the exercise of any duty, right or power by a special administrator.

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Disclaimer

39. (1) Subject to paragraph (3), where any part of the asset of the affected person consists of—

(a) any interest in land which is burdened with onerous covenants;

(b) shares in corporations;

(c) unprofitable contracts; or

(d) any other asset that is not saleable, or not readily saleable;

the special administrator may within twelve months after he becomes aware of any of the above-mentioned assets, disclaim any such asset.

(2) The rights of any person affected by the special administrator pursuant to the exercise of his power to disclaim under paragraph (1) shall be dealt with in the manner set out in the proposal made pursuant to Article 44 and any compensation to such person shall rank as an unsecured debt.

(3) The special administrator may not exercise his power under paragraph (1) to disclaim any market contract.

(4) For the purpose of paragraph (3), a "market contract" means a contract subject to the rules of a clearing agency entered into by the clearing agency with a participant under a novation which is both in accordance with those rules and for the purpose of the clearing and settlement of transactions in securities effected on, or subject to the rules of a securities exchange.

Moratorium during special administrator

40. (1) Subject to paragraph (6), on the appointment of the special administrator, a moratorium shall take effect during which—

(a) no person shall take steps to bring any petition for the winding up of the affected person without the prior leave of the court unless the court directs otherwise;

(b) no resolution may be passed or order made for the winding up of the affected person;

(c) no receiver, receiver-manager or liquidator, except any receiver, receiver-manager or liquidator appointed by the relevant authority in respect of any of the persons referred to in paragraph 1(b) of Article 22, may be appointed, or if appointed, his appointment shall immediately cease and he shall vacate his office;

(d) no steps may be taken—

(i) to create, perfect or enforce any security over any asset of the affected person,

(ii) to enforce a judgment over any asset of the affected person without the prior leave of the court unless the court directs otherwise,

(iii) to re-possess any asset in the possession, custody or control of the affected person, or

(iv) to set off any debt owing to the affected person in respect of any claim against the affected person;

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(e) no proceedings and no execution or other legal process may be commenced or continued with, and no distress may be levied, against the affected person or its assets without the prior leave of the court unless the court directs otherwise; and

(f) no proceedings and no execution or other legal process may be commenced, or continued with, against any person providing a guarantee or acting as a guarantor for the liability of the affected person in respect of that liability without the prior leave of the court unless the court directs otherwise.

(2) The duration of the moratorium provided for in paragraph (1) shall be for a period of twelve months commencing from the date of the appointment of the special administrator and may be terminated at any time by the Corporation with the approval of the Oversight Committee.

(3) The Oversight Committee may extend the moratorium for a further period of up to twelve months to complete the implementation of the proposal approved under Article 46 or 48, or for exceptional circumstance, as the case may be.

(4) If the period of the moratorium is extended pursuant to paragraph (3), a notice of the extension shall be published in the *Gazette* and in at least one local newspaper of wide circulation in each member territory.

(5) Nothing in this Article shall prevent any civil or criminal proceedings from being instituted or continued by any relevant authority under any written law against the affected person.

(6) Any decision of the Corporation under this Article shall be final and binding.

Vacation of office of receiver

41. (1) Any receiver, receiver-manager, or liquidator who vacates his office pursuant to paragraph (1) (c) of Article 40 shall immediately hand over all the assets and books and accounts of the affected person to the special administrator.

(2) All sums properly incurred in respect of the costs, expenses and remuneration of such receiver, receiver-manager, or liquidator, as the case may be, shall be charged on and paid out of the realised proceeds of the affected person in the manner set out in the proposal.

Undue preference

42. Without prejudice to Article 43 the special administrator shall exercise the powers of the liquidator in relation to the avoidance of undue preference and fraudulent transfers under the law relating to companies.

Recovery of cash considerations from assets acquired or sold before the appointment of special administrator

43. (1) Where any asset has been acquired by the affected person for a cash consideration within a period of two years before the appointment of a special administrator under this Agreement—

(a) from a person who was at the time of the acquisition a director of the affected person; or

(b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the affected person;

the special administrator may recover from the person or company from which the asset was acquired any amount by which the cash consideration for the acquisition exceeded the value of the asset at the time of its acquisition.

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(2) Where any asset has been sold by the affected person for a cash consideration within a period of two years before the appointment of a special administrator under this Agreement—

(a) to a person who was at the time of the sale a director of the affected person; or

(b) to a company of which, at the time of the sale, a person was a director who was also a director of the affected person;

the special administrator may recover from the person or company to which the asset was sold any amount by which the value of the asset at the time of sale exceeded the cash consideration.

(3) For the purposes of this Article—

"cash consideration", in relation to an acquisition or sale by the affected person, means consideration for the acquisition or sale payable otherwise than by the issue of shares in the affected person;

"director" has the meaning assigned to it in the law relating to companies;

"value of the asset" includes the value of any goodwill or profits which might have been made from the asset for similar cash consideration.

Special administrator to prepare proposal

44. (1) The special administrator shall as soon as reasonably practicable from the date of his appointment prepare and submit to the Corporation a proposal setting forth the special administrator's plan with respect to the affected person.

(2) The proposal of the special administrator or any modification to the proposal under Article 48 may include any provision as the special administrator thinks fit.

(3) Without prejudice to the generality of the foregoing, the proposal may include provision for—

(a) a compromise or arrangement between the affected person and its creditors or any class of them or between the affected person and its members or any class of them or between the affected person and its debtors or any class of them;

(b) the alteration or reduction of all or part of the share capital of the affected person;

(c) the sale of all or part of the undertaking or property of the affected person;

(d) the transfer to a company of the whole or any part of the undertaking, property or liabilities of the affected person;

(e) the transfer to any company of all or part of the shares, or all the shares of a particular class, in the affected person;

(f) the continuation by or against the company referred to in paragraph (d) of any legal proceedings pending by or against the affected person;

(g) the dissolution without winding up of the affected person;

(h) any other provision necessary to ensure that the special administrator's proposal or plan or any compromise, arrangement, reconstruction or amalgamation with respect to the affected person shall be fully and effectively carried out.

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(4) Upon receiving the proposal from the special administrator the Corporation shall submit the proposal to the independent advisor.

(5) The independent advisor shall review the reasonableness of the proposal taking into consideration the interests of the unsecured creditors, secured creditors and members of the affected person and shall provide his report to the Corporation within thirty days of receipt of the proposal.

Consideration and approval of proposal

45. (1) The Corporation shall consider the proposal submitted by the special administrator.

(2) The Corporation may approve the proposal for implementation once the Corporation has received the proposal together with the independent advisor's report.

Secured creditors meeting

46. (1) The special administrator shall, after the approval of the proposal by the Corporation, send by prepaid registered post to the last known address of the affected person and each of the secured creditors of the affected person known to the special administrator—

(a) a copy of the proposal;

(b) a copy of the report of the independent advisor;

(c) where the Corporation considers appropriate, a memorandum from the Corporation setting out such matters which in the view of the Corporation should be taken into account by the secured creditors in considering the proposal; and

(d) a notice of meeting of secured creditors for the purpose set out in this Article.

(2) The special administrator shall convene a meeting of secured creditors of the affected person no later than thirty days after issuance of the notice to the secured creditors under paragraph (1).

(3) The meeting of secured creditors of the affected person convened under paragraph (2) shall decide whether to approve or reject the proposal.

(4) Where—

(a) a majority in value of the secured creditors, present and voting, either in person or by proxy, at the meeting approves the proposal; or

(b) there are no secured creditors of the affected person known to the special administrator and the Corporation approves the proposal under paragraph (2) of Article 45;

the proposal, including the proposal as it may subsequently be modified, shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.

(5) For the purpose of paragraph (4) (a), a resolution to approve the proposal with any modification shall be deemed to be a rejection of the proposal.

(6) Notwithstanding any law—

(a) the approval or the implementation of a proposal under paragraph (4), including the proposal as it may subsequently be modified under Article 48, shall not release or discharge any

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security provided by any person to secure any duty or liability owed by the affected person to any creditor of the affected person; and

(b) each such security and any such duty or liability of the person providing the security shall remain valid and enforceable against that person notwithstanding the approval or implementation of the proposal, including the proposal as it may subsequently be modified under Article 48, or any compromise, arrangement, reconstruction or amalgamation in connection with the affected person.

(7) The failure to notify any secured creditor of the affected person of the meeting of the secured creditors shall not invalidate the meeting convened under paragraph (2) nor the validity of the resolution passed at that meeting.

(8) For the avoidance of doubt, if the Corporation is a secured creditor of the affected person, the Corporation shall be entitled to attend and vote at a meeting of secured creditors of the affected person convened by the special administrator.

Implementation of proposal

47. (1) Subject to Articles 46, 48 and 49, the special administrator shall implement the proposal in accordance with its terms.

(2) The special administrator shall—

(a) within fourteen days from the date of the approval of the proposal by the secured creditors of the affected person under Article 46;

(b) where there are no secured creditors known to the special administrator, within fourteen days from the date of the approval of the proposal by the Corporation under paragraph (2) of Article 45; or

(c) within fourteen days from the date of the approval of the proposal under paragraph (6) of Article 48;

cause to be published in the *Gazette* and at least one local newspaper of wide circulation in each member territory, the approval of the proposal and the time and place for any creditor of the affected person to examine the details of the proposal.

(3) Notwithstanding the provisions of any law or contract—

(a) a proposal approved or modified under this Agreement may be implemented; and

(b) the special administrator shall have the power to implement and do all things necessary to fully and effectively carry out and give effect to the proposal or any part of the proposal without the need for any notice to or approval or consent of any member or creditor of the affected person or any other person affected by the proposal, or approval of or confirmation by a court; and

(c) any such notice, approval, consent or confirmation (whether required under any law or contract or otherwise) shall be deemed to have been duly given or obtained, as the case may be.

(4) Where any part of the assets of the affected person is subject to the rights of the secured creditors or any other person and a proposal has been approved under this Agreement, the special administrator shall be entitled to deal with such asset in the manner set out in the proposal.

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(5) The special administrator shall apply all proceeds realised in the implementation of the proposal in the manner set out in the proposal.

(6) Where a special administrator transfers property or liabilities pursuant to a proposal, then that property shall be transferred to and vested in, and those liabilities shall be transferred to and become the liabilities of, the transferee, free in the case of any particular property if the proposal so directs, from any charge, caveat or other encumbrance.

(7) Notwithstanding anything to the contrary in any law, the Corporation or any related company as defined in the law relating to companies or subsidiary of the Corporation may acquire any property of, or marketable securities issued by, the affected person.

(8) Notwithstanding anything to the contrary in any law, the special administrator shall have the power to do all things necessary to give effect to and to implement the proposal approved in accordance with Articles 44 to 46 or modified in accordance with Article 48.

Modifications to the proposal

48. (1) The special administrator may at any time after—

(a) the approval of the proposal by the secured creditors of the affected person under Article 46; or

(b) where there are no secured creditors known to the special administrator, the approval of the proposal by the Corporation under paragraph (2) of Article 45;

propose modifications to the proposal.

(2) The independent advisor appointed in relation to the affected person shall review the reasonableness of the proposed modifications and shall determine the necessity to convene a meeting of the secured creditors to approve the proposed modifications.

(3) The decision of the independent advisor under paragraph (2) shall be binding on the special administrator, the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the modified proposal.

(4) Where the independent advisor thinks that it is necessary to convene a meeting of the secured creditors to consider the proposed modifications, the special administrator shall within thirty days from the receipt of the report of the independent advisor on the proposed modifications or such extended period as may be granted by the Corporation, convene a meeting.

(5) The special administrator shall, prior to the meeting convened under paragraph (4) send by prepaid registered post to the last known address of the affected person and each of the secured creditors of the affected person known to the special administrator—

(a) a copy of the proposed modifications;

(b) a copy of the report of the independent advisor on the proposed modifications;

(c) where the Corporation determines it is appropriate, a memorandum from the Corporation setting out such matters which in the view of the Corporation should be taken into account by the secured creditors in considering the proposed modifications; and

(d) a notice of the meeting of secured creditors for the proposed modifications set out in this Article.

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(6) The meeting of the secured creditors of the affected person to consider the proposed modifications shall be convened and conducted in the manner set out in Article 46.

(7) If the independent advisor thinks that it is not necessary to convene a meeting of the secured creditors within the period specified in paragraph (4), the special administrator may implement the proposed modifications which shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the modifications.

(8) Without prejudice to Article 49, compliance with any approval condition imposed by a relevant authority shall not be construed as a modification to the proposal for the purposes of this Article.

Conditions for regulatory approval

49. (1) Where—

(a) the approval of any relevant authority is required to implement the proposal; or

(b) the approval of any relevant authority is required to implement any proposed modifications to the proposal;

and approval conditions are imposed by the relevant authority, the Corporation may, notwithstanding that the secured creditors of the affected person have agreed to the proposal under Article 46 or 48, direct the special administrator to abandon the proposal or otherwise discontinue the implementation of the proposal if the Corporation thinks that such approval conditions are not in the interest of the affected person.

(2) The decision of the Corporation under paragraph (1) shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.

Rejection or discontinuance of proposal

50. Where the Corporation directs the special administrator to abandon the proposal or otherwise discontinue the implementation of the proposal under Article 49 or the proposal is not approved under Article 46 or 48, the Corporation may consider other options to deal with the management and disposition of the assets of the affected person and may—

(a) request the special administrator to submit a new proposal;

(b) remove the moratorium imposed under Article 40; or

(c) appoint a replacement special administrator.

Report of misconduct

51. If an investigation into the affairs of an affected person by the special administrator reveals any fraud, misfeasance or other misconduct in connection with the promotion or formation of the affected person or in the management of an affected person or its affairs, or where there has been any misappropriation or wrongful retention of any asset which belongs to an affected person, the special administrator shall report such fraud, misfeasance or misconduct to the relevant authority or enforcement body.

Validity of transaction

52. Any payment made, transaction entered into, or any other act or thing done in good faith by, or with the consent of the special administrator, is valid for the purposes of this Agreement and shall not be void or voidable nor be considered as an undue preference in the winding up of the affected person.

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Extension of time limits

53. Where—

(a) for any purpose an act is required to be done within a particular period or before a particular time under the provision of any law or any agreement; and

(b) this Part prevents the act from being done within that period or before that time;

the period is deemed to be extended or the time is deemed to be deferred for the duration of the period that such act is prevented by this Part from being done.

Appraisal methodology for initial transfer of assets

54. (1) The Corporation may, for the purpose of determining the values for the initial transfer of assets to the Corporation under this Agreement, adopt such guidelines or rules as it considers necessary for efficiency or consistency.

(2) The Corporation shall acquire assets at market value and the market value shall be determined by an independent expert appraisal based on representative samples of assets that are eligible for acquisition and on recent appraisal values as the case may be.

(3) For the purposes of determining the appraisal value mentioned in paragraph (2), the Corporation shall use internationally acceptable accounting methodologies.

(4) The long-term economic value of an asset shall be calculated on the basis of the net present value methodology.

(5) Any appraisal done for the purposes of this Article shall be valid for a period of twenty-four months.

(6) The market value beyond the twenty-four month period in paragraph (5) shall be determined by a new independent expert appraisal using the same methodology as outlined in paragraphs (2) to (4) which is valid for a period of twenty-four months.

(7) The market value referred to in paragraphs (2) and (6) shall be adjusted by the Corporation using the following criteria—

(a) market conditions;

(b) cost of holding the asset;

(c) cost of marketing;

(d) prospect of sale or divesture of the assets;

(e) estimated period to sell the asset;

(f) likelihood of perfecting the interest in the collateral.

Power to discharge prior charge

55. Where an acquired or managed asset is secured by a charge including a charge that is a collateral security, but the charge is a second or subsequent charge, the Corporation may redeem or discharge any one or more of the prior charges in accordance with its terms.

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Power of entry to protect value or condition of land or buildings

56. (1) Where an acquired asset or managed asset is secured by a charge over land including a charge that is a collateral security, and any one or more of the following paragraphs applies:

(a) the land or any building or structure on it has been abandoned;

(b) the land is or has become overgrown;

(c) the land or any building or structure on it is or has become infested with vermin;

(d) any building or structure on the land has fallen, or there is a serious risk of the building or structure falling, into disrepair;

the land or any building or structure on it is at risk from trespassers or vandalism,

then the Corporation may serve notice on the owner and any occupier of the land, to—

(i) fence or otherwise secure the boundary of the land,

(ii) clear the land of overgrown vegetation,

(iii) clear or treat the land or any building or structure on it in a manner designed to remove vermin,

(iv) repair or make secure any building or structure on the land.

(2) If the owner or any occupier fails to comply with the notice within thirty days after service of the notice, the Corporation may apply to the High Court for an order (referred to as an "entry and maintenance order") authorising it to enter upon the land or any building, or structure on it for any one or more of the purposes stated in the notice.

(3) The Corporation shall serve a copy of an application under paragraph (2) on every person it knows to have an interest in the land.

(4) The High Court may make an order in accordance with an application under paragraph (2) and if it does so shall specify the period, being not greater than six months beginning on the date of the order, for which the order shall have effect.

(5) If the Corporation enters on the land or a building or structure under the authority of an entry and maintenance order, the Corporation shall not be taken to be a mortgagee in possession of the land or any building or structure on it.

(6) Any cost, expense or liability that the Corporation incurs pursuant to this Article—

(a) is a debt due under the asset concerned; and

(b) is recoverable from the debtor, associated debtor, guarantor, or surety concerned;

and the repayment of any such cost, expense or liability stands secured against the land.

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Collection of rents and profits

57. The Corporation may itself, or in accordance with its powers as a chargee appoint a receiver to, collect rents and profits of property, and is not obliged to sell such property at any particular time at all, but is accountable for all profits and other monetary benefits arising directly from the possession of the property.

Sale of asset by private treaty or agreement, or tender

58. (1) Notwithstanding any enactment or law to the contrary or any expression in any deed or agreement, where the Corporation acquires or manages an asset secured by a charge over property (including a charge that is a collateral security) the Corporation is hereby empowered to exercise a power of sale over the charged property, where—

(a) interest or principal under the charge is in arrears and unpaid for three months after becoming due and the Corporation has sent a notice to the last known address;

(b) there has been a breach of some provision contained in the charge agreement or deed, or law relating to land and on the part of the chargor, or of some person concurring in making the charge, to be observed or performed, other than and besides a covenant for payment of the charge money or interest;

(c) notice requiring payment of the interest and principal of the charge within one month, has been served on the chargor or two or more chargors, guarantor or surety at the last known address;

(d) the chargor, guarantor or surety has failed to comply with the notice in sub-paragraph (c) within the stipulated one month.

(2) The Corporation may sell any asset the Corporation acquires or manages including a charged property or any part thereof by private treaty or agreement, tender or public auction.

(3) The Corporation may buy at public auction and may resell by public auction without being answerable for any loss occasioned thereby.

(4) The sale under paragraph (2) shall be based on the appraised value of the property determined by an appraiser which shall be valid for twenty-four months prior to the sale date.

(5) Subject to paragraph (6), notwithstanding anything to the contrary in any law, the Corporation or a subsidiary of the Corporation may, without having to pay any deposit, acquire any property disposed of under paragraph (2) and be entitled to set off the purchase price against the liability owed to any one or more of the following—

(a) the Corporation;

(b) any subsidiary of the Corporation.

(6) The price of any property acquired under paragraph (5)—

(a) in the case of private treaty or agreement shall be not less than the forced sale value of the property; and

(b) in the case of auction shall be not less than the reserved price set by the Corporation.

(7) The Corporation's rights under paragraphs (1) and (5)—

(a) may be exercised without the need for any approval, confirmation or order of court;

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(b) are cumulative and not exclusive of any other right or remedy provided by law or contract;

(c) may be exercised concurrently with any right or remedy provided by law or contract.

Application of proceeds of sale

59. Subject to the underlying agreement of the charge, any monies received by the Corporation, arising from the sale, after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into the High Court of a sum to meet the prior encumbrance, shall be held by the Corporation in trust to be applied by the Corporation, in the following order—

(a) first, payment of all costs, charges and expenses properly incurred by it as incident to the sale or any attempted sale;

(b) second, other money, if any, due under the charge; and

(c) third, the residue of the money so received shall be paid to the person entitled to the charged property, or authorised to give receipts for the proceeds of the sale thereof.

Title of purchaser where the Corporation sells acquired asset

60. (1) Where the Corporation exercises the power of sale conferred by this Agreement, the title of the purchaser shall not be impeachable on the ground, that—

(a) no case has arisen to authorise the sale;

(b) due notice was not given;

(c) the charge was made before or after the commencement of this Agreement; or

(d) the power was otherwise improperly or irregularly exercised.

(2) A purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised.

Remedies in damages for improper or irregular exercise of power

61. Notwithstanding paragraphs (1) and (2) of Article 58, any person injured by an unauthorised, improper, or irregular exercise of the power of sale conferred under this Agreement, shall be entitled to pursue a remedy in damages against the Corporation.

PART V

INSTITUTIONAL ARRANGEMENTS

Custody and use of Common Seal

62. (1) Subject to Article 63 the Corporation shall have a Common Seal.

(2) The directors shall provide for the safe custody of the Common Seal of the Corporation.

(3) The Common Seal of the Corporation shall be affixed to instruments pursuant to a resolution of the Board and by and in the presence of—

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(a) the chairman or, in his absence the deputy chairman; and

(b) one other director or the secretary.

(4) All documents made by the Corporation other than those required by law to be under seal and all decisions of the Corporation may be signified under the hand of the chairman, the deputy chairman or the secretary.

Official Seal

63. (1) The Corporation shall have an Official Seal, which shall be a facsimile of its Common Seal, for use in any member territory other than where the principal office of the Corporation is situated, with the addition on its face of the name of every member territory where it is to be used.

(2) The Official Seal when duly affixed to a document has the same effect as the Common Seal of the Corporation.

(3) The Corporation may by writing under its Common Seal, authorise any person appointed for the purpose in a member territory to affix the Official Seal to any deed or other document to which the Corporation is a party in that member territory.

(4) The person affixing the Official Seal shall certify in writing the date on which and the place at which it is affixed.

Establishment and composition of the Board of Directors

64. There is hereby established the Board of Directors which shall comprise of—

(a) one director appointed by each Participating Government; and

(b) the chief executive officer appointed under Article 73 who shall be an ex-officio member.

(2) The directors who shall be appointed to the Board under paragraph (1)(a) shall be persons of recognised standing and experience in one or more of the following areas—

(a) finance;

(b) accounting;

(c) asset management;

(d) banking;

(e) investment;

(f) economics;

(g) auditing;

(h) corporate or business law; or

(i) other related disciplines.

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Functions of the Board

65. The Board shall—

(a) ensure that the functions of the Corporation are performed effectively and efficiently;

(b) set the strategic objectives and targets of the Corporation through the preparation of a two year strategy plan which fully describes the activities of the Corporation and which shall be updated semi-annually;

(c) ensure that appropriate systems and procedures are in place to achieve the Corporation's strategic objectives and targets and to take all reasonable steps available to it to achieve those targets and objectives;

(d) adopt and review business plans and strategic plan of the Corporation;

(e) establish and review the system and procedures of control and risk management that are adequate for the nature and scale of the business of the Corporation;

(f) adopt policies for clear organizational arrangements for delegating authority and responsibility;

(g) adopt adequate internal practices and procedures that promote ethical and professional standards in the Corporation;

(h) adopt and review the system of internal controls to ensure that the business of the Corporation is conducted in a prudent manner in accordance with policies and strategies established by it; and

(i) such other functions conferred upon it by the Monetary Council or any other provision of this Agreement.

Term of office of Directors

66. (1) A director may hold office for a term not exceeding three years and is eligible for re-appointment for a further term not exceeding three years.

(2) A director appointed to fill a vacancy holds office for the unexpired term of his predecessor.

Alternate Directors

67. (1) The Participating Governments shall appoint alternate directors in the same manner as the appointment of directors.

(2) A person appointed as an alternate director shall perform as a director in the absence of the director to whom he is alternate.

(3) The provisions of this Agreement as they apply to directors apply also to alternate directors.

Disqualification

68. A person is disqualified from being appointed or from holding office as a director where he—

(a) has been adjudged insolvent or has suspended payment to or compounded with his creditors;

(b) has been or is a director or manager of a corporation or financial institution which has been wound up by a court, or was placed in receivership or official administration;

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(c) has been a director or manager of, or directly or indirectly concerned in the management of a financial institution which has been taken control of by the Central Bank pursuant to its emergency powers under the Eastern Caribbean Central Bank Agreement;

(d) has been a director or manager of, or directly or indirectly concerned in the management of a financial institution, the licence of which has been revoked, unless such revocation was due to the voluntary winding up, or its amalgamation with another financial institution or corporation;

(e) is of unsound mind as certified by a competent medical practitioner;

(f) is debarred from practising his profession;

(g) has been convicted of a criminal offence and sentenced to a term of imprisonment or payment of a fine or both;

(h) has been convicted of any offence involving dishonesty;

(i) ceases to be a director by virtue of any provision of this Agreement; or

(j) is prohibited from being a director by reason of any order made under any law.

Vacancy of Office of Directors

69. (1) Where a director—

(a) dies;

(b) by writing under his hand addressed to the chairman resigns;

(c) becomes disqualified under Article 68 from being a director;

(d) is absent for three consecutive Board meetings without special leave of absence from the directors, and the directors resolve that the office be vacated; or

(e) is found by two-thirds of all of the members of the Board to be unable to discharge the functions whether arising from infirmity of mind or body or any other cause or for misbehaviour, serious neglect, or misconduct in office;

his place on the Board becomes vacant.

(2) The chairman may resign from the Board by writing under his hand addressed to the secretary of the Board.

(3) A vacancy in the Board shall be filled by the Participating Government which nominated the director to be replaced.

Chairman and Deputy Chairman

70. (1) The Monetary Council shall appoint the chairman and deputy chairman of the Board from among the members.

(2) Subject to paragraphs (3) and (4) the chairman shall preside at all meetings of the Board and shall have an original and a casting vote.

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(3) In the absence of the chairman, the deputy chairman shall preside and perform the functions of chairman of the meeting.

(4) In the absence of both the chairman and the deputy chairman, the directors present shall elect one of their numbers to preside and perform the functions of chairman of the meeting.

Appointment of directors to be Gazetted

71. The appointment of any person as the chairman, the deputy chairman, director or alternate director and the termination of any such appointment shall be published in the *Official Gazette* in the member territory where the principal office of the Corporation is located.

Management of the Corporation

72. The powers of the Corporation are vested in the Board, which subject to Article 73 shall be responsible for the policy and general administration of the Corporation.

Chief Executive Officer

73. (1) The Board may appoint a chief executive officer of the Corporation at such remuneration and on such terms and conditions as the Board may determine.

(2) The chief executive officer shall be responsible to the Board for—

(a) the day to day administration of the affairs of the Corporation;

(b) developing policy and procedures including but not limited to the strategic and business plans;

(c) the provision of technical advice and guidance on matters of policy;

(d) the performance of such functions as the Board may delegate to him;

the submission of annual and other reports to the Board.

Staff of the Corporation

74. The Board may appoint on such terms and conditions as it thinks fit such officers as may be required for the due and efficient performance by the Corporation of its functions under this Agreement.

Internal auditor

75. The Board may appoint an internal auditor on such terms and conditions as the Board may determine.

Directors to declare interest

76. (1) A director who is in any way interested, whether directly or indirectly—

(a) in a contract or proposed contract with the Corporation; or

(b) whose material interest in a corporation, partnership, undertaking or other business is likely to be affected by a decision of the Board;

shall, immediately after the relevant facts come to his knowledge, disclose the nature of his interest to the Board in writing.

(2) A director who makes a disclosure under paragraph (1) shall cause the disclosure to be brought up and read at the next meeting of the Board following the disclosure and shall cause it to be recorded in the

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minutes of the meeting and the director making it shall not vote on the matter and shall not be present or take part in the part of the proceedings of any meeting at which the matter is being discussed or decided by the Board.

(3) A director shall be treated as having an indirect interest in a contract or proposed contract with the Corporation in any matter with which the Corporation is concerned if he is a director, shareholder, agent or employee of the corporation or undertaking that is a party to the contract or proposed contract with the Corporation or where his relative holds an interest in that corporation or undertaking.

(4) For the purpose of this Article, a general notice given to the Board by a director to the effect that he is a member of or otherwise associated with a specified corporation or undertaking and is to be regarded as interested in any contract which may after the date of the notice, be made with that corporation or undertaking shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(5) Every director and key officers determined by the Board shall report in writing his financial interest on an annual basis to the Board.

(6) For the purposes of this Article, "relative" means "spouse or former spouse, son, daughter, step-son, step-daughter, brother, sister, aunt, uncle or child of aunt or uncle or any person related by marriage, father, mother, any lineal ascendant and descendant of the individual or spouse of the individual".

Protection of persons dealing with directors and agents

77. (1) A person who deals with the directors or the chief executive officer of the Corporation shall not be affected by any irregularity of procedure in connection with the authorisation of the transaction by a general meeting or other meeting of the Corporation, or by the directors or any committee of directors, or by the non - fulfillment of any condition imposed by this Agreement in connection with the transaction.

(2) A person who deals with another person who is held out by the directors as having authority to act on the Corporation's behalf in connection with any transaction may treat the Corporation as bound by the acts of that other person done within his apparent authority even though he has not been authorised by the Corporation to do those acts on its behalf so long as that person has no knowledge whether actual or constructive, that another person has not been so authorised by the Corporation.

(3) This Article does not entitle any person to recover a debt from the Corporation or to enforce an obligation or liability against it or to treat any obligation as binding on it, if in connection with the same matter that person is guilty of a fraud upon the Corporation or has participated or acquiesced in a fraud committed on the Corporation.

Appointment of advisors

78. The Board may appoint one or more advisors with experience in asset management from time to time.

Appointment of committees

79. (1) The Board may appoint committees that would be required to examine and report to the Board on any matter whatsoever arising out of or connected with any of its functions.

(2) Subject to Articles 80 and 81, a committee shall consist of at least two members of the Board, one of whom shall be the chairperson, together with not more than five other persons who may or may not be members of the Board.

(3) The Board shall determine the quorum and procedure and terms of reference to be followed by any committee constituted pursuant to this Article.

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Executive Committee

80. (1) The Board shall appoint an Executive Committee of the Board consisting of not less than three directors, 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 policies established by the Board. The chief executive officer and the chief financial officer are ex-officio members with no voting rights on the Executive Committee.

(2) The Executive Committee shall perform such other functions as are assigned to it by the Board.

(3) The Executive Committee shall elect one of their numbers, other than the ex-officio members, as chairman and the person so elected shall have an original and a casting vote.

(4) The Executive Committee shall meet at least once in each month.

Audit Committee

81. (1) The Board shall establish an Audit Committee of the Board comprising four members of the Board of Directors, one of whom shall be the chairman who shall have an original vote and a casting vote.

(2) The Audit Committee shall—

(a) assure that the Corporation's internal controls are adequate to identify, measure, control, and monitor the financial reporting, business process, and compliance and legal risks of the Corporation;

(b) review performance of management and of the Corporation against agreed work programmes, administrative budgets and performance standards and benchmarks set by the Board;

(c) oversee the independent external auditor; and

(d) oversee the internal auditing function, including any independent firms management wishes to engage to provide auditing services.

(3) The Audit Committee shall report quarterly to the Board.

(4) The Audit Committee shall also prepare an annual report to present to the Board.

External Auditor and annual accounts

82. (1) The Board shall appoint an external auditor for the purpose of auditing the accounts and books of the Corporation.

(2) The accounts of all transactions of the Corporation for a financial year shall be audited by the external auditor.

(3) The Corporation shall follow internationally accepted accounting standards.

(4) As part of each annual audit of the Corporation, the Board shall instruct the auditor to conduct a full operational audit of the Corporation to determine if the Corporation is operating in full compliance with this Agreement, its approved policies and procedures including the goals laid out in its strategic and business plans.

(5) The external auditor shall also audit the performance of the Board and include its finding in the audit report.

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(6) The external auditor shall present the audited report to the Board within three months of the end of the financial year.

(7) The Board shall present the audited report to the next meeting of the Monetary Council.

(8) (a) The Minister of Finance shall lay before the House of Assembly in each member territory the audited annual report at the next meeting of the House of Assembly following the Monetary Council meeting in which the audited annual report was presented.

(b) The annual audited report shall be accompanied by an explanatory memorandum from the Corporation.

Financial year

83. The financial year of the Corporation shall begin on the first day of April and end on the thirty-first day of March in the following year and the first financial year of the Corporation may begin on a day after the first day of April and end on the thirty-first day of March next following.

Secretary

84. (1) The Board shall appoint a secretary for such term at such remuneration and upon such conditions as it may think fit and any secretary so appointed may be removed by them.

(2) The Board may appoint one or more assistant or deputy secretaries.

PART VI

MEETINGS AND REPORTS

Meetings of the Board

85. (1) The Board shall meet not less than once every three months.

(2) The chairman may at any time summon a special meeting of the Board and shall summon such a meeting within seven days of the receipt of a request for that purpose addressed to him by any three directors.

(3) A simple majority of directors shall constitute a quorum.

(4) Unless otherwise specified, decisions of the Board shall be made by a majority of the votes of the members present and the chairman shall have an original and a casting vote.

(5) (a) Notwithstanding the provisions of paragraph (4), decisions may also be made by the Board otherwise than in a meeting convened, by the circulation of the relevant papers among members of the Board, and such members of the Board may signify their approval or disapproval.

(b) Members of the Board may signify their opinion on the matter or question in writing, by electronic mail, facsimile or by telephone.

(c) If in any such case a difference of opinion arises among the members of the Board or any member of the Board so requires, the matter or question shall be reserved for discussion at a meeting of the Board.

(6) Decisions made under paragraph (5) shall be brought up for noting at the next meeting of the Board.

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(7) A decision by resolution under paragraph (5) shall be valid when signed by all the directors entitled to vote on that resolution at a meeting of the directors.

(8) (a) The Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time.

(b) A member of the Board who participates in such a meeting is taken for all purposes to have been present at the meeting.

(9) The Board may regulate its own procedure at meetings.

(10) At the end of each meeting the Board shall issue a statement on its deliberations and decisions.

Minutes

86. (1) The secretary shall cause minutes to be made in books kept for the purpose of—

(a) all appointment of officers made by the directors;

(b) the names of directors present at each meeting of the directors and of any committee of directors; and

(c) all resolutions and proceedings at all meetings of the Corporation, directors and committees.

(2) A copy of every resolution referred to under paragraph (7) of Article 85 shall be kept with the minutes of the proceedings of the directors.

Quarterly reports

87. (1) The Corporation shall prepare and lay a quarterly report of its activities and accounts before the Monetary Council or any other sub-committee of the Monetary Council that the Monetary Council so directs within thirty days of the end of the quarter.

(2) The Monetary Council or any other sub-committee of the Monetary Council under paragraph (1) shall assess the extent to which the Corporation has made progress towards achieving its purposes articulated under this Agreement.

(3) The Monetary Council or any other sub-committee of the Monetary Council under paragraph (1) shall forward to the Minister of Finance in each member territory a copy of each quarterly report, such reports to be published in the *Official Gazette*, website or a newspaper of wide circulation.

(4) A quarterly report under this Article may be in a form determined by the Monetary Council, and shall include any information that the Monetary Council or any sub-committee under paragraph (1) requires.

Other reports

88. (1) The Monetary Council or any other sub-committee of the Monetary Council under paragraph (1) of Article 87 may require the Corporation to report to them at any time on any matter relating to its functions, including but not limited to the progress with regard to the achievement of the Corporation's purposes.

(2) The Corporation shall promptly comply with a requirement under paragraph (1).

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PART VII

PROGRESS, REVIEWS AND TERMINATION OF CORPORATION

Assessment of progress

89. (1) The Monetary Council shall cause an independent review to be conducted annually to—

(a) assess the extent to which the Corporation has made progress towards achieving its overall objectives; and

(b) decide whether continuation of the Corporation's operations is necessary having regard to the purposes of the Corporation.

(2) For the purposes of this review, the Monetary Council shall appoint a team of independent evaluators.

Decision to terminate on assessment

90. (1) Where the Monetary Council makes a decision to terminate under paragraph (1)(b) of Article 89, the Monetary Council shall direct a meeting of the Participating Governments to pass a resolution to terminate the Corporation and the Agreement.

(2) Upon passage of the resolution under paragraph (1), the Corporation shall forthwith cease all activities, except those, incident to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

Effect of termination

91. (1) On the eighth anniversary of the Corporation, the Monetary Council shall undertake a review to determine whether the Corporation has fulfilled its purposes and—

(a) terminate the Corporation; or

(b) extend the Corporation for a term not exceeding five years.

(R.A. 126/2021, s. 2)

(2) Where a decision is taken under paragraph 1(a) to terminate, Article 90 shall apply.

(3) Where a decision is taken under paragraph 1(b) to extend, a final review shall be undertaken in the penultimate year of the extended period and the Corporation shall terminate in the final year and Article 90 shall apply.

Final Review

92. (1) No distribution of the assets of the Corporation shall be made to Participating Governments until all liabilities to creditors have been discharged or provided for and until the Monetary Council has made provision for the distribution of the assets.

(2) Any net assets of the Corporation remaining, after the settlement under paragraph (1), shall be distributed to Participating Governments in accordance with their equity interest in the Corporation.

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PART VIII

FINANCING

Capital structure of the Corporation

93. (1) Subject to Article 94, the authorised capital of the Corporation is one hundred million dollars divided into ten thousand shares of $10,000.00 each with the power of the Corporation to increase or reduce the said capital and issue any part of its capital, original or increased with or without preference priority or special privilege or subject to any postponement of rights to any conditions or restrictions, and so that unless the conditions of issue shall otherwise expressly declare further issue of shares whether declared to be preference or otherwise shall be subject to the power herein contained.

(2) The initial capital of the Corporation shall be forty million dollars.

(3) The Corporation may issue callable capital not exceeding eight thousand shares of $10,000.00 each to Participating Governments.

(4) At the end of each quarter the Corporation shall ensure that the minimum capital is greater than two percent of total assets.

(5) Where the minimum capital falls to two per cent or below, the Monetary Council shall direct the Participating Governments to restore the capital to the minimum requirement specified in paragraph (4).

(6) The Monetary Council shall determine the terms and conditions upon which calls may be made upon Participating Governments in respect of any moneys unpaid on their shares.

Increase of authorised capital

94. (1) The Corporation may increase its authorised share capital by the creation of new shares as may be considered expedient by the Participating Governments.

(2) An increase of authorised capital may be effected by Participating Governments upon the passing of an appropriate resolution.

Allotment of shares

95. Shares of the Corporation shall be allotted to the Participating Governments in proportion to their respective contribution to the share capital.

Bonds

96. (1) The Board may, on the advice of the Monetary Council, and subject to such terms and conditions as determined by the Monetary Council, issue bonds as guaranteed by one or more of the Participating Governments.

(R.A. 30/2022, s. 2)

(2) The aggregate of all government guaranteed bonds issued by the Corporation shall not exceed 8 times the Corporation's initial capital.

(R.A. 30/2022, s. 2)

(3) Any issuance of government guaranteed bonds above eight times the Corporation's initial capital shall be accompanied by the infusion of new capital equal to twelve point five percent of the subsequent new bond issue.

(4) Any interest on a bond issued under paragraph (1) shall be exempt from all duties and taxes.

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PART IX

MISCELLANEOUS

Obligation of secrecy

97. No member of the Board, Oversight Committee, officer, employee or agent of the Corporation, special administrator, independent advisor or person attending any meeting of the Board shall disclose any information which has been obtained by him in the course of his duties or in the course of such meeting and which is not published in pursuance of this Agreement except—

(a) for any of the purposes of this Agreement;

(b) for the purpose of any civil or criminal proceedings under any written law;

(c) in respect of any information available to the public; or

(d) where otherwise authorised by the Board.

Indemnity by affected person

98. (1) The Corporation, special administrator and any other person are entitled to be indemnified out of the affected person's property for—

(a) in the case of the special administrator, his costs, expenses and remuneration as approved by the Corporation;

(b) in the case of the Corporation, the repayment of any credit facility provided by the Corporation to the special administrator or the affected person during the administration of the affected person;

(c) in the case of any other person, the repayment of any credit facility provided by that person to the special administrator or the affected person during the administration of the affected person with the approval of the Corporation.

(2) Notwithstanding any other law, a right of indemnity under paragraph (1) shall have priority over the assets of the affected person and shall be paid in priority to all other secured and unsecured debts.

Immunities

99. (1) To enable the Corporation to fulfill its purposes with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Corporation in the territory of each Participating Government.

(2) The Corporation, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

(3) Property and assets of the Corporation shall be immune from search, requisition, acquisition or any other form of seizure.

(4) The appointed directors, chief executive officer, officers and employees of the Corporation—

(a) shall be immune from legal process, and be held harmless and indemnified by the Corporation for legal cost, with respect to acts performed or omissions made by them in their official capacity in good faith except when the Corporation waives this immunity, or where such acts

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or omissions are as a consequence of fraud, gross negligence or willful recklessness on the part of such director, chief executive officer, officer or employee;

(b) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations;

(c) shall be granted the same treatment in respect of travelling facilities as is accorded by Participating Governments to representatives, officials and employees of comparable rank of other Participating Governments;

(d) the Corporation, its assets, property, income and its business shall be immune from all taxation, levies, and from all customs duties in respect of goods acquired by, or services rendered to it for its own use. The Corporation shall also be immune from liability for the collection or payment of any tax, levy, or duty;

(e) no tax shall be levied on or in respect of salaries and emoluments, including pensions and gratuities, paid by the Corporation to the appointed directors, chief executive officer, officers and employees of the Corporation;

(f) no taxation of any kind shall be levied on any obligation or security issued by the Corporation, including any dividend or interest thereon, by whomsoever held.

Disputes

100. (1) Any dispute between the Participating Governments or between the Corporation and a Participating Government concerning this Agreement shall be submitted to arbitration by a tribunal of arbitrators appointed pursuant to paragraph (2) of this Article.

(2) (a) If the dispute is between only two parties, each party shall be entitled to appoint one arbitrator, and the two parties shall together appoint a third arbitrator, who shall be the chairman of the tribunal;

(b) If the dispute is between three or more parties, each party shall be entitled to appoint one arbitrator and all the parties shall together appoint an additional arbitrator, who shall be the chairman of the tribunal.

(3) If, within thirty days of receipt of the request for arbitration, any party has not appointed an arbitrator or if within thirty days of the appointment of the arbitrators the parties have not appointed the third arbitrator or, as the case may be, the additional arbitrator, any party to the dispute may request the Chief Justice of the Eastern Caribbean Supreme Court, or such other person or authority as may be determined by the Monetary Council to make the required appointment.

(4) The procedure of the tribunal shall be fixed by the arbitrators, but the chairman of the tribunal shall have full power to settle all questions of procedure in any case of disagreement.

(5) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties.

(6) The chairman of the tribunal shall be entitled to vote, and in the event of a tie, the chairman shall have a casting vote.

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PART X

FINAL PROVISIONS

Regulations and Rules

101. The Board may, on the approval of the Monetary Council, make recommendations to the Minister of Finance to make Regulations and Rules to give effect to the Agreement.

Amendments

102. Amendments to the Agreement may be proposed to the Monetary Council by the Board and shall be effective when it is agreed to by all the Participating Governments.

Signatories

103. This Agreement shall be open for signature by any Participating Government of the Currency Union.

Ratification

104. (1) This Agreement shall be subject to ratification by the signatory Participating Governments in accordance with their respective constitutional procedures.

(2) Instruments of ratification shall be deposited with the Director General of the Organisation of the Eastern Caribbean States who shall transmit certified copies to each Participating Government.

Entry into force

105. This Agreement shall enter into force upon the deposit of five instruments of ratification and the undertaking of the Participating Governments to take all steps necessary for the implementation of this Agreement.

Accession

106. (1) After its entry into force, any member country or territory of the Currency Union that is not a signatory may accede to this Agreement.

(2) Instruments of accession shall be deposited with the Director General of the Organisation of the Eastern Caribbean States who shall transmit certified copies to each Participating Government notifying them of the dates of the deposit of the instruments of accession.

Reservations

107. No reservations may be entered in respect of any provision of this Agreement.

IN WITNESS WHEREOF the representatives of the Participating Governments being duly authorised in their behalf, have agreed this Agreement.

DONE AT BASSETERRE, Saint Christopher and Nevis 24 February 2015.

Signed by:

For the Government of Anguilla

Signed by: G Browne

For the Government of Antigua and Barbuda

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Signed by: Roosevelt Skerrit

For the Government of the Commonwealth of Dominica

Signed by: Keith Mitchel

For the Government of Grenada

Signed by: Donaldson Romeo

For the Government of Montserrat

Signed by: Timothy Harris

For the Government of Saint Christopher and Nevis

Signed by: Kenny D Anthony

For the Government of Saint Lucia

Signed by: Ralph E Gonsalves

For the Government of Saint Vincent and the Grenadines

(Act 5/2016, s. 6)

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ANNEX I

FORM 1

ANGUILLA

Eastern Caribbean Asset Management Corporation Agreement (Act No….. of ……..)

VESTING CERTIFICATE

Article 11

WHEREAS by agreement made on the [ ] day of [ ] 20 …. (hereinafter "the Agreement"), the EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION (hereinafter "the Corporation") agreed to purchase from […….]

(hereinafter "the Seller") the asset described in the Schedule (hereinafter "the asset");

AND WHEREAS pursuant to Article [11] of Eastern Caribbean Asset Management Corporation Agreement, the Corporation is authorized to issue a vesting certificate to vest in the Corporation the asset of the Seller which is intended to be acquired and vested by the Agreement;

NOW THEREFORE, the asset is by virtue of this certificate and Article [11] of Eastern Caribbean Asset Management Corporation Agreement and without further assurance acquired by and vested in the Corporation to the intent that the Corporation shall succeed to the asset as is contemplated by the Agreement.

Dated this ……. day of …… 20….

.....……
Signature and Seal of
Eastern Caribbean Asset
Management Corporation

SCHEDULE
[Description of Asset(s)]

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FORM 2

ANGUILLA

Eastern Caribbean Asset Management Corporation Agreement (Act No….. of ……..)

TRANSFER CERTIFICATE

Article 11

WHEREAS by agreement/private treaty/tender/public auction made on the [ ] day of [ ] 20…. the EASTERN CARIBBEAN ASSET MANAGEMENT CORPORATION (hereinafter "the Corporation') agrees to sell/sold to [ ] (hereinafter "the Acquirer") the asset(s) described in the Schedule (hereinafter "the asset(s)");

AND WHEREAS pursuant to Article [11] of Eastern Caribbean Asset Management Corporation Agreement, the Corporation is authorized to issue a transfer certificate to transfer and vest in the Acquirer the asset(s) which are intended to be transferred and disposed of by the Corporation;

NOW THEREFORE, the asset is by virtue of this certificate and Article [11] of the Eastern Caribbean Asset Management Corporation Agreement and without further assurance transferred to and vested in the Acquirer to the intent that the Acquirer shall succeed to the asset(s).

Dated this ……. day of …… 20….

……..……
Signature and Seal by or on behalf of Eastern Caribbean Asset Management Corporation

SCHEDULE
[Description of Asset(s)]

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ANNEX II

FORM 3

ANGUILLA

Eastern Caribbean Asset Management Corporation Agreement (Act No….. of …….)

REQUEST TO REGISTRAR FOR REGISTERING OF INTEREST

Article 12

To the Registrar for…….....

WHEREAS the asset described in the Schedule attached (hereinafter "the asset") was sold by private treaty/agreement/tender/public auction to…….....in consideration of the sum of $.....

NOW THEREFORE *I/We, *Eastern Caribbean Asset Management Corporation/Acquirer of ……......, hereby apply pursuant to Article [12] of Eastern Caribbean Asset Management Corporation for the doing, noting and registering all that is necessary in the premises by the Registrar in respect of the assets.

…….....
Signature and Seal by or on behalf of Eastern Caribbean Asset Management Corporation/Acquirer

SCHEDULE
[Description of Asset(s)]

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ANNEX III

POWERS OF THE SPECIAL ADMINISTRATOR

The special administrator may—

(a) do all things (including the carrying out of works) as may be necessary for the management and realisation of the assets and affairs of the affected person;

(b) remove or suspend from office any director of the affected person or appoint other persons to act as directors of the affected person notwithstanding the Memorandum and Articles of Association of the affected person or any other law;

(c) appoint any person as a director of the affected person, whether to fill a vacancy or otherwise;

(d) take possession of, collect and get in the assets of the affected person and for that purpose, to take such proceedings as may seem to him expedient;

(e) sell or otherwise dispose of the assets of the affected person by public auction or private contract;

(f) raise or borrow money and grant security over the assets of the affected person;

(g) appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions;

(h) bring or defend any action or other legal proceedings in the name and on behalf of the affected person;

(i) refer to arbitration any question affecting the affected person;

(j) effect and maintain insurances in respect of the assets of the affected person;

(k) do all acts to execute in the name and on behalf of the affected person any deed, receipt or other document;

(l) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the affected person;

(m) appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent;

(n) power to employ and dismiss employees of the affected person;

(o) carry on the business of the affected person;

(p) establish subsidiaries of the affected person;

(q) transfer to subsidiaries of the affected person the whole or any part of the assets of the affected person;

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(r) grant or accept a surrender of a lease or tenancy of the assets of the affected person, and to take a lease or tenancy of any asset required or convenient for the assets of the affected person;

(s) make any arrangement or compromise on behalf of the affected person;

(t) call up any uncalled capital of the affected person;

(u) rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the affected person and to receive dividends, and to accede to trust deeds for the creditors of any such person;

(v) present or defend a petition for the winding up of the affected person;

(w) change the location of the affected person's registered office;

(x) perform any function and exercise any power, that the affected person or any of its directors or officers could perform or exercise if a special administrator had not been appointed;

(y) make any payment which is necessary or incidental to the performance of his functions; and

(z) do all other things incidental to the exercise of the foregoing powers.

———————

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