

SEAL No. 45



GUYANA.

ACT NO. 10 OF 1970.

GUYANA NATIONAL CO-OPERATIVE BANK ACT, 1970.

I assent:

Edward R. Bushell

Acting
Governor-General

20th February, 1970.

Arrangements of Sections.

PART I - PRELIMINARY

Section

1. Short title and commencement.
2. Interpretation.

PART II - ESTABLISHMENT, INCORPORATION AND
MANAGEMENT OF THE BANK

3. Establishment and incorporation of the Bank.
4. Objects of the Bank.
5. Board of Directors.
6. Power of Minister to give directions to the Bank.
7. Meetings of the Board.
8. Director to declare interest.
9. Employment of officers and employees of the Bank.
10. Appointment of public officers to the service of the Bank.
11. Special disqualifications for officers of the Bank.
12. Preservation of secrecy.
13. Meetings of shareholders of the Bank.

PART III - FINANCIAL PROVISIONS

14. Authorised share capital.
15. Issue of shares.
16. Share register and transfer of shares.
17. Borrowing powers of the Bank.
18. Power to make rules under this Part.
19. Financial year.
20. Annual Reports.
21. Audit.
22. Provision for training of officers and employees

PART IV - BUSINESS OF THE BANK

23. Authorised business of the Bank.

-
24. Categories of loans.
 25. General provisions relating to loans.
 26. Application of loan.
 27. Suspension of payment of principal and interest.
 28. Restriction on certain financial activities of the Bank.
 29. Power of the Bank to dispose of crops.
 30. Mortgages and charges to be prepared by the Bank.
 31. Examination as to application of moneys.
 32. Order of the Bank upon examination.
 33. Cancellation or modification of approval of loan.
 4. Power of the Bank to direct that any part outstanding of an approved loan be not paid.
 35. Offences in respect of loans.
 36. Fees to be taken in respect of mortgages.
 37. Reserve fund.
 38. Application of provisions of certain Ordinances to the Bank.

PART V - TRANSITIONAL AND GENERAL PROVISIONS

39. Offences.
40. Regulations.
41. Transitional provisions.
 - First Schedule.
 - Second Schedule.

AN ACT to provide for the establishment of the Guyana National Co-operative Bank and for matters connected therewith.

A.D. 1970.

Enacted by the Parliament of Guyana:-

PART I - PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Guyana National Co-operative Bank Act, 1970, and shall come into operation on 23rd February, 1970.

Interpretation.

2. In this Act, unless the context otherwise requires - "the Bank" means the Guyana National Co-operative Bank established by section 3;

"the Board" means the Board of Directors of the Bank;

"Manager" means the Manager of the Bank;

"the Minister" means the Minister responsible for finance;

"public service" has the meaning assigned to it by article 125 (1) of the Constitution of Guyana.

PART II - ESTABLISHMENT, INCORPORATION AND MANAGEMENT OF THE BANK

Establishment and incorporation of the Bank.

3. (1) There is established a Bank to be known as the Guyana National Co-operative Bank which shall be a body corporate having perpetual succession and a common seal.

(2) The Bank may sue and be sued in its corporate name and shall, subject to section 28, have power to acquire, hold, dispose of and otherwise deal with property of whatever kind and to do all such other things as are requisite, advantageous or convenient for or in connection with the performance of its functions under this Act.

- (3) The Bank shall have its principal place of business in the City of Georgetown or at such other place in Guyana as the Board may decide.
- (4) The Bank may establish branches in any place in Guyana or elsewhere as it considers necessary.
- (5) The Bank may appoint agents or correspondents within and outside Guyana.

4. The objects of the Bank shall be -

Objects of the Bank.

- (a) to encourage and foster the development of agriculture, commerce and industries for the benefit of registered co-operative societies;
- (b) to mobilise funds for the purpose of such development;
- (c) to promote the economic activities of registered trade unions and registered friendly societies; and
- (d) to exercise such other functions consistent with the functions of a bank carrying on banking business as may be approved by the Minister.

5. (1) The Bank shall be managed by a Board of ten Directors constituted as hereinafter provided in this section.

Board of Directors.

(2) The Board shall consist of the following persons-

- (a) five persons elected triennially by the shareholders of the Bank at the Annual General Meeting of the Bank;
- (b) four persons appointed by the Minister; and
- (c) the Manager.

- (3) The Directors shall elect one of their number (other than the Manager) to be the Chairman of the Board.
- (4) The Board shall appoint an officer of the Bank to perform the functions of the Secretary to the Board.
- (5) Subject to the provisions of this section, the term of office of every Director appointed by the Minister pursuant to paragraph (b) of subsection (2) shall be specified in the instrument appointing him and shall not exceed three years.
- (6) Any Director referred to in paragraph (a) or (b) of subsection (2) shall, on the expiration of his term of office, be eligible for re-election or re-appointment, as the case may be.
- (7) Where a Director referred to in paragraph (a) of subsection (2) is for any reason unable temporarily to perform the functions of his office the other remaining elected Directors may select a person to act in his place.
- (8) The Minister may appoint any person to act temporarily in the place of any Director referred to in paragraph (b) of subsection (1) in the case of the absence or inability to act of such Director.
- (9) Where a vacancy occurs in the office of a Director referred to in paragraph (a) of subsection (2) the other remaining elected Directors may select a person to act in his place until the election of a Director by the shareholders of the Bank at a general meeting of the Bank summoned for the purpose; and the Director so selected shall hold office for the unexpired portion of his predecessor's term of office.
- (10) Any Director appointed by the Minister may, by writing under his hand addressed to the Minis-

ter, resign his office; and any Director elected pursuant to paragraph (a) of subsection (2) may, by writing under his hand addressed to the Secretary to the Board resign his office.

- (11) The Chairman of the Board may, by writing under his hand addressed to the Secretary to the Board, resign his office as Chairman of the Board.
- (12) The Minister may revoke the appointment of any Director who:-
 - (a) has been adjudged or otherwise declared insolvent under any law in force in Guyana and has not been discharged; or
 - (b) is convicted of an offence involving dishonesty, fraud or turpitude;
 - (c) becomes totally or permanently incapable of performing his duties; or
 - (d) is guilty of gross misconduct in relation to the performance of his duties; or
 - (e) fails to make a disclosure as required by subsection (1) of section 8.
- (13) The Minister may revoke the appointment of a Director appointed by him if the Director absents himself from three consecutive meetings of the Board without leave of the Board.
- (14) The appointment, resignation, absence, removal from office, or death, of a Director shall be notified in the Gazette.
- (15) The remuneration and allowances payable to the Directors (other than the Manager) shall be determined, from time to time, by the share-

holders of the Bank at a general meeting of such shareholders.

Power of Minister to give directions to the Bank.

6. The Minister may give to the Bank directions of a general character as to the policy to be followed by the Bank in the exercise of its functions under this Act and the Bank shall give effect to any such directions.

Meetings of the Board.

7. (1) The Board shall meet at least once in every month.
- (2) The Chairman may at any time convene a meeting of the Board whenever he considers that the business of the Bank so requires.
- (3) The Chairman shall preside at all meetings of the Board; in the absence of the Chairman from any meeting of the Board the Directors present may elect one of their number to act as Chairman at such meeting.
- (4) Five Directors shall form a quorum at any meeting of the Board.
- (5) Decisions of the Board shall be adopted by a majority of the votes, provided that in any case in which the voting is equal, the Chairman shall have a second or casting vote.
- (6) The Chairman shall convene a special meeting of the Board within seven days of a request in writing addressed to him by at least five Directors.
- (7) Subject to subsection (4), the Board may act notwithstanding any vacancy in its membership and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Board shall not invalidate those proceedings.
- (8) Subject to the provisions of this section, the Board may regulate its own procedure.

8. (1) Any Director whose interest is likely to be affected whether directly or indirectly by a decision of the Board on any matter whatsoever shall disclose the nature of the interest at the first meeting of the Board at which he is present after the relevant facts have come to his knowledge.

Director to
declare interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Board, and after the disclosure, the Director making the disclosure shall, unless the Board otherwise directs, not be present, or take part in the deliberation or vote at any meeting during the time when such matter is being decided by the Board.

(3) For the purposes of this section, where the interest of parents, spouse or children of any Director is likely to be affected directly or indirectly by a decision of the Board on any matter, such interest shall be deemed to be the interest of that Director.

9. (1) There shall be a Manager, Assistant Manager and an Accountant of the Bank who shall, subject to subsection (3), be employed by the Bank on such terms and conditions as the Bank may think fit:

Employment of
officers and
employees of
the Bank.

Provided that the first Manager shall be appointed by the Minister on such terms and conditions as the Minister thinks fit and for such period not exceeding five years as may be designated in the instrument appointing him; but he shall be eligible for re-employment.

(2) Subject to subsection (3) of this section, the Bank may employ such other officers and employees as the Bank considers necessary for the proper conduct of the business of the Bank on such terms and conditions as the Bank thinks fit.

(3) No appointment shall be made to any office to which a salary in excess of seven thousand two hundred dollars per annum is assigned without the approval of the Minister.

- (4) The Manager shall be the chief executive officer of the Bank and, subject to the general policy decisions of the Board, shall be responsible for the administration of the business of the Bank.
- (5) The Board may authorise the Manager -
- (a) to represent the Bank in its relations with other institutions and with the Government;
 - (b) to sign individually or jointly with other persons contracts concluded by the Bank, securities issued by the Bank, reports, balance sheets and other financial statements.

Appointment of public officers to the service of the Bank.

No. 38 of 1957.

10. (1) Where an officer in the public service is seconded or temporarily transferred for duty to an office in the Bank from a pensionable office within the meaning of the Pensions (Consolidation) Ordinance 1957, section 6 of that Ordinance shall apply to him as if his service in the Bank were service in a civil capacity under the Government of Guyana.
- (2) Where, with the approval of the Public Service Commission, an officer in the public service has been transferred to any office in the Bank the provisions of regulation 21 of the Pensions Regulations (as contained in the schedule to the Pensions (Consolidation) Ordinance 1957) shall apply to him as if service with the Bank were other public service within the meaning of that Ordinance and the provisions of the said Ordinance shall apply to him as if his service with the Bank were other public service within the meaning of that Ordinance not being service under any of the Scheduled Governments as defined in regulation 2 of the said regulations, and regulation 21 of those regulations

shall apply accordingly to the person so transferred.

11. (1) The officers of the Bank shall owe their duty entirely to the Bank and shall not engage in any other paid employment, or professional or business activity, except as permitted under subsection (2).
- (2) Any officer of the Bank may, with the approval of the Minister -
- (a) serve on any committee or commission appointed by the Government to inquire into any matter affecting banking, or into any economic or financial matters relating to Guyana;
 - (b) serve on any international institution of which Guyana is a member;
 - (c) serve on the Board of any company, corporation or other body in which the Government or the Bank holds stock or shares or otherwise participates.
 - (d) serve on any other institution.
- (3) If any officer of the Bank contravenes the provisions of subsection (1) his appointment shall be liable to be terminated by the person who appointed him.

Special dis-
qualifications
for officers
of the Bank.

12. (1) Except for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do so by any court or under the provisions of any law, a Director or an officer or employee of the Bank, shall not disclose to any person any information which he has acquired in the performance of his duties or the exercise of his functions.

Preservation
of Secrecy.

- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months to both such fine and imprisonment.

Meetings of
shareholders of
the Bank.

13. (1) There shall be an Annual General Meeting of shareholders of the Bank convened by the Board not later than 30th April.

(2) The Chairman of the Board shall preside at the general meetings of the shareholders of the Bank, and in his absence the Directors mentioned in section 5 (2) (a) may elect one of their number to preside at the meeting.

(3) Subject to subsection (2) of section 14, every shareholder of the Bank shall be entitled to vote at general meetings of the shareholders of the Bank and no shareholder shall have more than one vote thereat.

(4) Subject to subsection (2) of section 14, the Board shall determine the manner in which a shareholder may vote at any general meeting.

(5) The Board may, with the approval of the Minister, make rules relating to the holding of the general meetings of shareholders of the Bank, the notices required for the holding of such meetings and the proceedings at such meetings.

PART III

FINANCIAL PROVISIONS

Authorised share
capital.

14. (1) The authorised share capital of the Bank shall be ten million dollars divided into one hundred thousand shares valued at one hundred dollars each.

(2) A shareholder may purchase shares in the Bank by instalments but shall only be entitled to vote at general meetings of shareholders of the Bank if the shareholder is the registered holder of at least one fully paid-up share.

(3) The issue of shares purchased by instalments shall be subject to such terms and conditions as may be determined by the Board.

- (4) The authorised share capital of the Bank may be increased by the Board, with the approval of the Minister.
15. The Board shall, as soon as practicable after the commencement of this Act, and thereafter, from time to time, offer shares in the Bank for sale to the Government, registered co-operatives societies, registered trade unions, registered friendly societies, public corporations established under the Public Corporations Ordinance, 1962 and such other corporate body as may be prescribed by the Minister.
16. (1) The shares of the Bank shall be registered and transferable in the books of the Bank.
- (2) The Board shall be entitled without assigning any reason to decline to accept the Government or any registered co-operative society, registered trade union, or registered friendly society, or public corporation or prescribed corporate body as the transferee of any share.
17. (1) The Bank may, on the recommendation of the Minister, borrow from the Government such sums as may be necessary for the conduct of its business.
- (2) Loans made by the Government under this section shall be on such terms and conditions and for such periods as the Minister may determine but shall not in any event be made for a period longer than thirty years and repayment shall commence not later than ten years from the date when the loan was made.
- (3) The Bank may, with the approval of the Minister, borrow otherwise than as provided by subsection (1), sums required by the Bank for the purpose of fulfilling any of its obligations or discharging any of its functions.
- Issue of shares.
- No. 23 of 1962.
- Share register and transfer of shares.
- Borrowing powers of the Bank.

Power to make rules under this Part.

18. The Board, with the approval of the Minister, may make rules -

- (a) regulating the rights of holders of shares and the variation of such rights;
- (b) relating to any lien on shares not fully paid;
- (c) prescribing the circumstances under which a call on shares may be made by the Board;
- (d) regulating the mode of transfer of shares;
- (e) specifying the circumstances in which shares may be forfeited and the procedure to be adopted for such forfeiture;
- (f) describing the method of conversion of shares into stocks;
- (g) regulating the alteration of its share capital;
- (h) prescribing the borrowing powers of the Bank;
- (i) describing the manner of declaring dividend and of creating reserves;
- (j) specifying the methods of keeping the accounts of the Bank and the mode of preparation of profit and loss accounts, balance sheet and reports; and
- (k) regulating the capitalisation of profits.

Financial year.

19. The financial year of the Bank shall be the same as the financial year of the Government and the accounts of the Bank shall be closed at the end of such financial year.

Annual reports.

20. Within three months after the end of each financial year the Bank shall submit to the Minister

a report on its operations throughout that year, together with the balance sheet and the profit and loss account as certified by the auditor who has audited the accounts of the Bank pursuant to section 21.

21. (1) The provisions of sections 18 and 19 of the Banking Ordinance, 1965 shall, in so far as they are not inapplicable thereto, apply to the Bank as they apply to a company licensed under the said Ordinance to carry on banking business in Guyana.

Audit.

(2) For the purposes of the application of section 18 of the Banking Ordinance 1965 by subsection (1), the Director of Audit shall be deemed to be an approved auditor within the meaning of subsection (4) of that section.

22. The Bank may provide out of its funds and make such arrangements for the training of any of its officers or employees or other persons as it may deem necessary for the efficient conduct of its business.

Provision for training of officers and employees.

PART IV

BUSINESS OF THE BANK

23. For the purpose of giving effect to its objects the Bank may, subject to this Act -

Authorised business of the Bank.

- (a) open accounts for and accept demand, savings, and time deposits from the public;
- (b) make or underwrite loans;
- (c) raise money for the financing of its operations by issuing securities;
- (d) act as agent for the Government;
- (e) assist generally in the development of the co-operative movement;
- (f) do such other things as are incidental to the attainment of its objects as specified in section 4.

Categories of
loans. 24.

- (1) Loans which the Bank may make shall be on such terms and conditions and for such periods as the Board may deem appropriate.
- (2) Subject to this Act and the regulations made thereunder -
 - (a) a short term loan shall be a loan for a period not exceeding eighteen months;
 - (b) a medium term loan shall be a loan for a period exceeding eighteen months but not exceeding ten years;
 - (c) a long term loan shall be a loan for a period exceeding ten years but not exceeding thirty years.

General provisions relating to loans. 25.

- (1) Every loan shall be within such limits as may be determined by the Board and shall be made subject to such security as to the Board may seem sufficient.
- (2) Every loan shall bear interest at such rate as may be determined by the Board.
- (3) Every loan, together with interest thereon, shall be repayable within such period as may be fixed by the Board.
- (4) It shall be a condition of every loan made by the Bank to a registered co-operative society, registered trade union or registered friendly society that the borrower holds paid-up shares in the Bank to an amount equal in value to at least five per cent of the loan.
- (5) Applications for loans from the Bank shall be made in such form as may be required by the Bank and shall be addressed to the Manager.
- (6) Subject to this Act and the rules and regulations made thereunder and to the power of the Board with the approval of the Minister to vary the amounts specified in this subsection -

(a) loans to the amount of \$1,500 each may be granted by the manager of any branch of the Bank;

(b) loans to the amount of \$10,000 each may be granted by the Manager at the principal place of business of the Bank.

(7) All loans applications shall be reported to the Board.

(8) The Bank may at any time accept payment of the whole or any part of the amount representing the principal of a loan and interest thereon, before the time when such payment is due, upon such terms and conditions as it may think fit.

26. (1) Subject to subsection (4) of section 25, no loan made by the Bank under this Act shall be applied otherwise than for such purposes as may be authorised by the Bank.

Application of
loan.

(2) If any loan made by the Bank under this Act or any part of such loan has been misapplied the Bank may -

(a) where such loan has been secured by mortgage, by notice in writing addressed to the mortgagor, recall the said loan or any part thereof and may require the loan or that part together with any interest due on such loan or part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the loan may thereupon be realised;

(b) where such loan has been secured otherwise than by way of mortgage, by notice addressed to the borrower, request the loan or any part thereof together with any interest due on such loan or part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such

specified date any security given for the purpose of the loan may thereupon be realised.

- (3) The provisions of subsection (2) shall be in addition to any other proceedings under any enactment.

Suspension of payment of principal and interest.

27. The Bank may -

- (a) postpone the payment of any sum due for principal and interest to it in respect of a loan made by the Bank upon such terms and conditions for the carrying out of the purposes for which such loan was made and for the ultimate repayment of such principal or payment of such interest as it may deem necessary;
- (b) from time to time extend the period for the repayment of any loan, or compound or release any loan or any part thereof subject to such terms and conditions as it may deem fit.

Restriction on certain financial activities of the Bank.

28. Sections 11, 12, 13 and 15 of the Banking Ordinance, 1965 shall apply to the Bank as they apply to a company licensed under the said Ordinance to carry on banking business in Guyana.

Power of Bank to dispose of crops.

29. (1) It shall be a condition in every agreement for any loan made by the Bank for the cultivation of crops and the expenses of reaping and making merchantable such crops, that all the crops and produce reaped or gathered from the land and the by-products thereof shall, until such advance has been repaid, be dealt with and disposed of as the Bank may direct, and, until so disposed of, shall be held by the person obtaining the loan in trust for the Bank. Any person to whom a loan has been made, who disposes of any such crops or produce or by-products except in the manner directed by the Bank or by this Act, shall be guilty of an offence and shall, on summary conviction thereof, be

liable to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding six months.

- (2) It shall be a condition in every such agreement that the Bank may enter agreement with any person for the disposal of any crop or produce or any by-products thereof belonging to any person to whom loans have been made under the provisions of this Act. The last-mentioned agreement shall provide for the sale without undue delay of such crop or produce and the immediate payment to the Bank of the proceeds of such sale or such part thereof as the Bank shall think fit to the credit of the last-mentioned person.
- (3) Any person so entrusted with the disposal of any crop or produce or by-products thereof of an any person obtaining a loan under the Provisions of this Act who shall fail to pay the proceeds of sale to the Bank as provided in subsection (2) shall be guilty of an offence and shall on summary conviction thereof, be liable to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.
- (4) The provisions of this section shall not apply to any padi reserved by agreement as rent in lieu of payment in cash of the annual rent by a tenant or affected by a specified condition under the provisions of the Rice Farmers (Security of Tenure) Ordinance 1956, which agreement or condition is in force at the date of the loan made by the Bank; and, subject to the foregoing provisions, the exercise by the Bank of any of its powers under this section shall not entitle a landlord to give his tenant notice to quit his rice land.

No. 31 of 1956.

30. (1) Every mortgage to secure a loan and every instrument or charge under the provisions of this Act shall be prepared by the Bank. The person to whom the loan is made shall pay the legal charges in connection therewith, and shall also pay all necessary disbursements.

Mortgages and charges to be prepared by the Bank.

- (2) Where a loan is granted under this Act and the repayment of the sum of money lent is secured by a charge in favour of the Bank, such charge shall be in accordance with the provisions of this Act on such movable property as the Bank may approve.
- (3) For the purpose of effecting the security referred to in subsection (2) for the loan and the interest payable thereon, it shall be lawful for a borrower obtaining a loan to create by instrument in writing in favour of the Bank a charge on movable property belonging to the borrower on the date of the charge.
- (4) The property affected by the charge under subsection (3) shall be such movable property specified in the instrument creating the charge as the Bank may approve.
- (5) The provisions contained in Part I of the first schedule to this Act shall apply to every instrument create under subsection (3).

First schedule.

Examination as to application of moneys.

31. (1) Where the Bank has made a loan of money under the provisions of this Act it may -
 - (a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purposes for which it is made;
 - (b) require financial statements in such detail as it may determine to be submitted by the person, body or authority in receipt of the loan quarterly or at shorter intervals at the discretion of the Bank and such borrower shall comply with such request.
- (2) The Bank may authorise in writing any of its officers or any other person to make such examination, and the borrower in receipt of the loan shall produce to such officer or person all the books, documents and other matters and things necessary for the purposes of the examination.

- (3) Any person who contravenes any of the provisions of paragraph (b) of the subsection (1) or any of the provisions of subsection (2), shall be guilty of an offence and shall, on summary conviction thereof, be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months.

32. Where upon any examination made under the provisions of section 31 it appears to this Bank that any sum being the whole or any part of the loan has not been applied for the purposes for which the loan was made the Bank may order that any such sum be, within the time mentioned in the order, applied to such purposes or that such sum together with any interest due thereon on the date of the order be repaid to the Bank within the time mentioned in the order, and any sum with the interest thereon so ordered to be repaid to the Bank shall thereupon become a debt due to the Bank.

Order of the
Bank upon
examination.

33. At any time after the approval of a loan and before the actual payment of the money the Bank may at its discretion and without assigning any reason therefor cancel or modify such approval and without payment of the whole or a portion of the money.

Cancellation
or modification
of approval of
loan.

34. In any case where the Bank has approved the making of a loan by instalments and any part of such loan has not yet been advanced if -

Power of the
Bank to direct
that any part
outstanding of
an approved
loan be not
paid.

- (a) any sum of money, whether principal or interest due in respect of any loan made under this Act remains unpaid; or
- (b) in the opinion of the Bank, any prior loan made under this Act has not been applied for the purpose for which it was made or has not been carefully and economically expended; or
- (c) the borrower has become insolvent or has been sentenced to a term of imprisonment without the option of the payment of a fine

or has assigned his estate for the benefit of creditors; or

- (d) there has been a breach or non-observance of any condition attached to the loan; or
- (e) in the opinion of the Bank, the sums already advanced were not applied to the purposes for which the loan was made within a reasonable time,

the Bank without prejudice to any other remedy, may refuse to advance any portion of the loan still outstanding.

Offences in respect of loans.

35. (1) Any person who -

- (a) obtains a loan from the Bank under the provisions of this Act by means of any false representation;
- (b) wilfully applies any loan made to him by the Bank under the provisions of this Act to any purpose other than the purpose for which the loan was made;
- (c) having obtained a loan from the Bank under the provisions of this Act, wilfully destroys any security given in relation to any such loan,

shall be guilty of an offence against this Act and shall, on summary conviction thereof, be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Fees to be taken in respect of mortgages. Cap. 32 Second Schedule.

36. (1) Anything contained in the Deeds Registry Ordinance, or in any Regulations made thereunder to the contrary notwithstanding, the fees to be taken by the Registrar of Deeds for the services set out in the second Schedule when rendered in respect of mortgages of any amount in favour of the Bank shall be those specified in Part I of the said Schedule.

- (2) The fees to be taken by the Registrar of Deeds for filing an instrument charging movable property in accordance with this Act shall be those set out in Part II of the second Schedule and notwithstanding anything in the Tax Ordinance or in any other enactment, the stamp duty payable on every such instrument shall be that set out in the said Part II.

Cap. 298.

37. (1) The Bank shall maintain a reserve fund and shall, out of the net surplus for each year and before any dividend is declared, transfer to that fund a sum equal to not less than twenty-five per cent of such surplus whenever the amount of the reserve fund is less than the paid-up capital of the Bank.

Reserve fund.

- (2) If the reserve fund is in any year insufficient to cover any net loss of the Bank recorded in its Profit and loss Account, an amount equivalent to the deficiency is hereby charged on the Consolidated Fund:

Provided that if in any succeeding year any net surplus accrues to the Bank there shall be paid in to the Consolidated Fund by the Bank, from time to time, such sum as may be agreed with the Minister together with interest thereon at such rate to be determined by him until the aforesaid amount is fully repaid.

- (3) For the purposes of this section, net surplus shall be determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit funds, provision for bad and doubtful debts, and such other contingencies and accounting provisions as are usually made by banks.

38. (1) Sections 17, 21, 22 and 25 of the Banking Ordinance, 1965, shall apply to the Bank as they apply to a company licensed under that Ordinance to carry on banking business,

Application of provisions of certain Ordinances to the Bank.

- (2) References to banks in sections 27, 36 to 43 (both sections inclusive) and in section 45 of the Bank of Guyana Ordinance, 1965, shall include references to the Bank,

No. 23 of 1965.

- (3) Save as otherwise provided in this Act, the Banking Ordinance 1965 shall not apply to the Bank.

PART V

TRANSITIONAL AND GENERAL PROVISIONS

Offences.

39. Any person who, being a Director or the Manager of the Bank -
- (a) fails to take all reasonable steps to secure compliance by the Bank with the requirements of this Act; or
 - (b) fails to take all reasonable steps to ensure the correctness of any statement submitted to the Bank of Guyana or published as required by this Act,

shall be guilty of an offence and shall on conviction on indictment be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand dollars or to both such imprisonment and fine.

Regulations.

40. The Minister may make regulations for the following purposes, that is to say -
- (a) providing for any matter which is required by this Act to be prescribed;
 - (b) generally for the purposes of carrying out the provisions of this Act.

Transitional provisions.

41. (1) Notwithstanding the provisions of subsection (1) of section 13, the first Annual General Meeting of shareholders of the Bank shall be held in 1971 not later than 30th April in that year.
- (2) Until such time as the Directors referred to in section 5 (2) (a) are elected at the Annual

General Meeting in 1971 the Minister may, after consultation with such bodies which in his opinion represent the interests of registered trade unions, registered co-operative societies and registered friendly societies, appoint the Directors for the purposes of the said provision and they shall be deemed to have ^{been} elected pursuant to the said provision;

Provided that where the office of a Director becomes vacant or a Director is unable temporarily to perform the functions of his office, the Minister may appoint some other person to fill the vacancy or to act temporarily in the place of the Director, as the case may be.

- (5) Until the remuneration and allowances payable to the Directors (other than the Manager) are determined by the shareholders of the Bank at a general meeting pursuant to section 5 (15), the said remuneration and allowances shall be determined by the Minister.

Section 30(5)

FIRST SCHEDULE

PART 1(PROVISIONS WHICH APPLY TO EVERY CHARGE CREATED UNDER
SUBSECTION (3) OF SECTION 30 OF THIS ACT)

Rights conferred
and obligations
imposed by a
charge on the
Bank.

1. A charge shall, so long as it continues in force, confer the following rights and impose the following obligations, on the Bank, that is to say:-

- (a) a right to take possession of the property subject to the charge upon the happening of any of the following events, that is to say-
 - (i) if the borrower shall fail to pay the Bank any money which shall for the time being be owing under the charge within four days after the same or any instalment thereof shall become due; or
 - (ii) if the borrower shall fail to discharge any of the obligations imposed upon him by any provision of this schedule; or
 - (iii) if the borrower shall become insolvent or make any arrangement or composition with his creditors; or
 - (iv) if any distress or execution be issued or levied against or upon any of the property of the borrower; or
 - (v) the death of the borrower; or
 - (vi) if the borrower does any act prohibited by this Act or any Regulations made thereunder;

- (b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the instrument, to sell the property either at auction or, if the instrument so provides, by private treaty, and either for a lump sum payment or any payment by instalments;
- (c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the discharge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the borrower.

2. A charge shall, so long as it continues in force, impose on the borrower the following obligations, that is to say:-

- (a) if required by the Bank to insure and keep insured, so long as the charge continues in force, the property subject to the charge for a sum of money not less than the value of the said property and to assign the policy of insurance to the Bank;
- (b) to keep in good and substantial repair and condition the buildings, erections, plant, machinery and other property and equipment subject to the charge;
- (c) not to sell or again encumber or charge any property subject to the charge, so long as the charge continues;
- (d) to pay punctually as the same shall become due and payable any land rent, rate or tax payable by him in respect of

Obligations imposed by a charge on a borrower.

the land on which the property stands, and upon demand in writing by the Bank to produce his last receipts for such rent, rate or tax;

- (e) not to have execution issued against his goods under any judgment at law;
- (f) not to remove, dismantle or in any way alter any buildings, erections, plant, machinery, equipment or other property subject to the charge without the prior consent in writing of the Bank.

Penalty for sale of security.

3. Every person who sells any property subject to the charge shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months.

Charge not to be defeated by sale, etc. of property subject to it.

4. A charge created under this Act shall not be liable to be defeated by any sale of, or by a subsequent charge of any nature created upon, the property specified in the instrument creating it and, upon the borrower committing an act of insolvency, the Bank shall be at liberty to take possession of the property subject to the charge and sell the same in accordance with sub-paragraph (b) of paragraph 1 of this Part of this schedule.

Charge not to be affected by Bills of Sale Ordinance Cap. 337.

5. A charge created under this Act shall have effect notwithstanding anything contained in the Bills of Sale Ordinance, and an instrument made under this Act shall not be deemed to be a bill of sale within the meaning of that Act.

Property charged not affected by order or disposition section of the Insolvency Ordinance. Cap. 43.

6. So long as a charge created under this Act continues in force, property subject to the charge shall not be property divisible amongst the borrower's creditors in case of his insolvency as being at the commencement of the insolvency in the possession, order or disposition of the insolvent in his trade or business by the consent and permission of the Bank, except that any surplus after the proceeds of sale of such property have been applied in or towards the discharge of the moneys and liabilities secured by the charge shall be payable by the Bank to the borrower's assignee in insolvency.

7. Every instrument creating a charge under this Act shall be signed by the borrower and attested by two witnesses, if the borrower can read and write the English language, and in case of a borrower who cannot read and write the English language, the instrument shall be made by affixing the borrower's mark thereto in the presence of two witnesses or a magistrate, a justice of the peace or a police officer who shall attest the same after reading over and explaining the contents thereof to the borrower.

Mode of executing instrument creating charge.

8. The instrument to create a charge shall be signed also by an officer duly authorised by the Bank and shall be filed by the Bank with the Registrar of Deeds appointed under the Deeds Registry Ordinance and the charge shall take effect as from the moment when it is so filed.

Filing of instrument in Deeds Registry. Cap. 32.

9. The instrument shall be accepted and filed by the Registrar of Deeds upon a certificate thereon by one of the witnesses to the signature of the borrower, or by the person or one of the persons in whose presence the borrower made his mark, to the effect that he knows the borrower and that the instrument was read over and explained by him to the borrower who appeared perfectly to understand the same and signed it or made his mark thereto.

Registrar to file instrument on certificate of witness, etc.

10. Every person who makes a false certificate for the purposes of the last preceding paragraph shall be guilty of an offence and shall on summary conviction thereof be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Penalty for false certificate.

11.(1) No person shall offer to the Bank as security for a loan applied for under this Act any property which is not the property of that person or which is already the subject of a charge created otherwise than in accordance with this Act, and every person shall on application for a loan disclose to the Bank the existence of any charge on the property offered as such security.

Penalty for fraudulent offer of security.

(2) Every person who contravenes this provision shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Form of instrument of charge.

12. An instrument to create a charge under this Act shall, subject to the provisions of paragraph 13, be in the form and terms set out in Part 11 of this schedule and may be made with such other lawful terms and conditions as the parties may think fit.

Notice of provisions of this schedule to form part of instrument of charge.

13. A copy of the foregoing provisions of this schedule shall be printed on every instrument of charge created under section 30 of this Act.

PART 11

Paragraph 12.

(INSTRUMENT CREATING CHARGE UNDER THIS ACT).

THIS INSTRUMENT is made the of..... 19 Between..... of (hereinafter called the borrower) of the one part and of (hereinafter called the Bank) of the other part:

1. In consideration of the sum of dollars now advanced to the borrower by the Bank, the borrower hereby charges all the movable property particulars whereof are hereinafter set forth with the payment to the Bank of the said sum of dollars and the costs of realisation and enforcement of of this security.

2. The loan secured by this charge and the interest thereon shall be repayable as follows:-

(Here fill in terms of repayment).

DESCRIPTION OF PROPERTY SUBJECT TO THIS CHARGE

(Here enumerate and describe so as to identify the movable property charged).

IN WITNESS WHEREOF the parties have signed this instrument at in the County of in Guyana in the presence of the following witnesses:-

.....
Borrower.

.....
for and on behalf of the Bank.

Witnesses to the signature or mark of borrower:

1.

2.

Section 36

SECOND SCHEDULE

PART 1

(FEES TO BE CHARGED IN RESPECT OF MORTGAGES EXECUTED BY THE BANK AND A BORROWER THEREFROM).

1. For preparing advertisement of mortgage and for publication thereof, for examination of title and certificate under rule 9 of the Deeds Registry Rules, for preparing gross for attending on execution, completion and registration, on a loan -

Exceeding	Not Exceeding	Fee
-	\$1,000	\$5.00
\$1,000	\$5,000	\$7.50
\$5,000	\$10,000	\$10.50
\$10,000	-	\$15.00

2. For cancellation of mortgage and for certificate under rule 9 of the Deeds Registry Rules, an inclusive fee of \$1.00

3. For original certificate as to title of judgment debtor to property proposed to be levied on and as to encumbrances thereon, including searches, in respect of any number of parcels of land, an inclusive fee of \$1.00

PART 11

(FEES AND STAMP DUTY PAYABLE ON INSTRUMENT).

- | | | | |
|---|--------|-----------|----------|
| 1. Filing every instrument of charge with the Registrar of Deeds | | ...\$1.00 | Cap. 32. |
| 2. Issuing certified copy of every instrument of charge for the use of the Bank | | ...\$.12 | |
| 3. Stamp duty on every instrument securing repayment of a loan | | ...\$.25 | |

Passed by the National Assembly on 18th February, 1970.

A. Avarin.
~~Clerk~~ Clerk of the National Assembly.

(Bill No. 8/1970.)