

## CHAPTER 574

## MALTA DEVELOPMENT BANK ACT

*AN ACT to make provision for the establishment of the Malta Development Bank and the determination of its functions and powers and to provide for matters ancillary or incidental thereto.*

24th November, 2017\*

*ACT XXI of 2017, as amended by Legal Notices [355 of 2017](#) and Act [VII of 2019](#).*

## ARRANGEMENT OF ACT

		Articles
Part I	Preliminary	1 - 2
Part II	Establishment and Conduct of Affairs of Bank	3 - 36
Part III	Supervisory Board	37 - 41
Part IV	General	42 - 44
First Schedule	Initial Subscriptions to the Authorised Share Capital of the Malta Development Bank	
Second Schedule	Malta Development Bank Supervisory Board Regulations	

## Part I

## Preliminary

1. The short title of this Act is the Malta Development Bank Act. Short title.
2. In this Act, unless the context otherwise requires: Interpretation.

"applicant" means a person who applies to the Bank for financing, or any other service;

"Bank" means the Malta Development Bank established under article 3;

"Board" means the Board of Directors of the Bank established under article 20;

"body corporate" means a body of persons having a legal personality distinct from that of its shareholders;

"bye-laws" means the bye-laws made in terms of article 22(2)(j);

"Central Bank" means the Central Bank of Malta as defined by the [Central Bank of Malta Act](#); Cap. 204.

"Chairperson" means the Chairperson of the Board appointed in

\*See Legal Notice [340 of 2017](#).

accordance with article 21(2)(a);

Cap. 386.  
Cap. 168.

"company" means a company formed and registered under Part V of the [Companies Act](#) or the [Commercial Partnerships Ordinance](#);

"Chief Executive Officer" means the administrative head of the Bank appointed in accordance with article 21(9);

"credit institution" has the same meaning assigned to it in point (1) of Article 4(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder (CRR);

"debt obligation" means a bond, debenture, note, investment certificate or other evidence of indebtedness or a guarantee of a corporation, whether secured or unsecured;

"*de minimis* Regulation" refers to Commission Regulation (EU) No. 1407/2013 of 18 December 2013 on the application of articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid;

S.L. 371.09.

"Depositor Compensation Scheme" means the scheme established by regulation 4 of the [Depositor Compensation Scheme Regulations](#);

"Director" means a member of the Board appointed in accordance with article 21;

"emergency" means a *force majeure* circumstance or a situation where, as a result of a serious shortfall in income and/or liquidity suffered by the Bank or of severe disruption in the financial markets, there is a material adverse effect on the safety and soundness of the Bank;

"enterprise" means an organised economic activity carried on by one or more persons;

"equity" means ordinary, common or preference shares, warrants, options or debt which, with the passage of time or, as a result of financial or other conditions, may be converted into equity at either the issuer or holder's option;

"European Commission" means the European Commission established by article 13 of the Treaty;

"European Economic Area" means the area defined by Article 1 of the Agreement on the European Economic Area;

"European Investment Bank" means the bank established by Article 308 of the Treaty on the Functioning of the European Union;

the "European Union" means the European Union as referred to in the Treaty;

Cap. 376.

"financial institution" has the same meaning assigned to it by article 2 of the [Financial Institutions Act](#), and includes any branch in Malta of an institution not incorporated in Malta;

"General Block Exemption Regulation" refers to Commission Regulation (EC) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of articles 107 and 108 of the Treaty;

"Government" means the Government of the Republic of Malta;

"interested person" means:

- (a) the spouse, common-law partner, child, brother, sister or parent of a Director,
- (b) the spouse or the common-law partner of a child, brother, sister or parent of a Director, or
- (c) the parent, sister or brother of the spouse, or of the common-law partner, of a Director;

"Malta Council for Economic and Social Development" means the advisory body established by article 3 of the [Malta Council for Economic and Social Development Act](#);

Cap. 431.

"Minister" means the Minister responsible for the Bank;

"National Audit Office" means the National Audit Office set up by article 108 of the Constitution of Malta and enacted by the [Auditor General and National Audit Office Act](#);

Cap. 396.

"person" includes a trust, a partnership, an association of natural persons, corporations, public organisations and public entities;

"politically exposed person" shall have the same meaning assigned to it by regulation 2 of the [Prevention of Money Laundering and Funding of Terrorism Regulations](#);

S.L. 373.01.

"project" means an investment in an economic activity undertaken by one or more persons or undertakings;

"resolution" means a resolution of the Board made in terms of article 22(2)(j);

"securities" means the shares of any class or series of shares, warrants, options or the debt obligations of a corporation and includes certificates evidencing those shares or debt obligations;

"shareholders" means the owners of the shares of the Bank in terms of article 10(2);

"subsidiary" has the same meaning assigned to it by article 2 of the [Banking Act](#); and

Cap. 371.

"the Treaty" shall have the same meaning assigned to it by article 2 of the [European Union Act](#).

Cap. 460.

## Part II

### Establishment and Conduct of Affairs of Bank

3. (1) There shall be a Bank to be called the Malta Development Bank. The Bank may use the designation "MDB" in commercial and legal contracts.

Legal status.

(2) The head office of the Bank shall be in Malta.

(3) The Bank shall be a body corporate having a distinct legal personality and be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any property for the purpose of its functions, of suing and of being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act.

Purpose.

4. (1) The purpose of the Bank is to support entrepreneurship and socio-economic development in Malta by providing promotional investment and financing, financial and advisory services, and by issuing securities or otherwise raising funds or capital in support of those services.

(2) In carrying out its activities, the Bank shall give particular consideration to:

- (a) the needs of small and medium-sized enterprises, through State Aid measures that are compatible under the General Block Exemption Regulation (GBER) or through finance measures in line with the *de minimis* Regulation; and
- (b) large infrastructural projects that contribute to important regional or national development.

(3) The Bank shall, in general, act as a wholesale intermediary in coordination with and via commercial banks, private investors and other private financial intermediaries, be they aided or non-aided within a pre-defined remit based on *ex-ante* defined market failures in accordance with article 6(7).

(4) The Bank may undertake direct lending provided it does not crowd out viable financing from commercial banks, private investors and other private financial intermediaries.

(5) The Bank may also provide financing on market terms and achieve returns equivalent to those reached on the market by comparable benchmarks, provided that in conducting such non-aided activity, the Bank will not compete with commercial providers but will address gaps or failures in the financial infrastructure.

Guarantee of the Government.

5. (1) The Government shall, subject to the provisions of sub-article (2), guarantee:

- (a) up to one hundred (100) *per centum* of all obligations of the Bank in respect of the aggregate of loans extended to, and debt securities issued by, the Bank, forward transactions or options entered into by the Bank, and other credits extended to the Bank as well as credits extended by licensed credit and financial institutions or other publicly owned entities to third parties to the extent that the said transactions, options or credits are expressly guaranteed by the Bank; and
- (b) up to one hundred (100) *per centum* of loans, facilities or guarantees issued by the Bank in the ordinary course of business as further specified under the Memorandum of Understanding referred to in sub-

article (2).

(2) The Government and the Bank shall enter into a Memorandum of Understanding setting out the amount in euro and/or the percentage mentioned in sub-article (1), of the guarantee to be provided to the Bank. The Government's guarantee shall be unconditional, irrevocable and at first demand. The amount referred to in this sub-article shall be communicated to the Bank on the first working day of each first, sixth and subsequent years at five-year intervals, but shall always be such that amounts guaranteed in previous periods and in respect of which the Bank has outstanding obligations be covered.

6. (1) The Bank may:

- (a) make loans to;
- (b) invest in; and/or
- (c) give guarantees,

Specific powers of  
the Bank.

in relation to any person, except a politically exposed person.

(2) The loans, investments and guarantees may be made or given only where, in the opinion of the Board or any committee listed in article 22(2)(d) or officer of the Bank designated by the Board:

- (a) the person is engaged, or is about to engage, in an enterprise or project in or for the benefit of Malta;
- (b) the amount invested, or to be invested, in the enterprise or project by persons other than the Bank and the character of the enterprise or project are such that the Bank may reasonably expect that those persons will have a continuing commitment to the enterprise or project causing it to willingly meet its obligations in a timely manner; and
- (c) the enterprise or project may reasonably be expected to succeed in providing goods and services in a sound and viable manner as well as generating sufficient cash flow to make timely payment of its obligations to its creditors and other stakeholders.

(3) In any circumstances in which the Bank may make a loan or investment to a person, or give a guarantee in relation to a person, under this article, the Bank may:

- (a) purchase or otherwise acquire real or personal property or immovable or movables including accounts receivable; and
- (b) subject to any right of redemption that may exist, hold, lease to the person or subsequently sell, dispose of or otherwise deal in the said property.

(4) The Bank may:

- (a) acquire and hold senior or subordinated security or a security interest or a right in a security, of any kind and in any form for the due discharge of obligations

- under a loan, investment, guarantee or agreement that it makes or gives;
- (b) surrender a security, security interest or right in a security and acquire and hold, in exchange, security or a security interest or a right in a security, of any kind and in any form;
  - (c) realise a security, security interest or right in a security made, acquired or held by it on the loan, investment, guarantee or agreement; and
  - (d) exchange, lease, sell, assign, convey or otherwise dispose of a loan, investment, guarantee, agreement, security, security interest or right in a security.
- (5) The Bank may acquire and deal with as its own any loan, investment or guarantee made or given by another person if:
- (a) the loan, investment or guarantee would meet the Bank's eligibility criteria in sub-article (2); or
  - (b) it is part of a block of loans, investments or guarantees the majority of which meet those criteria.
- (6) In applying sub-article (1), the Bank may:
- (a) finance enterprises, businesses and projects of all sorts, but particularly those that contribute to a high quality, dynamic, productive and innovative economy;
  - (b) provide suitable access capital to small and medium-sized enterprises, the professions, and business start-ups;
  - (c) finance projects by cooperatives, social enterprises and housing projects, particularly where they involve urban renewal;
  - (d) fund important regional or national infrastructural projects, particularly those that enhance Malta's competitiveness;
  - (e) grant loans and other forms of financing for the purpose of project or projects to authorities, agencies, corporations, special purpose vehicles, and other entities established under public law;
  - (f) grant other financings in the interest of the Maltese and European economy, such as projects in the interest of the European Union that are co-financed by the European Investment Bank or similar multilateral financing institutions;
  - (g) provide financial and project advisory services;
  - (h) carry out other operations to the extent that there is a direct relationship between such operations and the performance of its functions described hereinabove; and
  - (i) guarantee, whether as primary or secondary obligor, in whole or in part, loans for economic development participated in by the Bank.

(7) In applying sub-articles (1) and (6), the Bank shall limit its activities to the provision of:

- (a) aided financing authorised under –
  - (i) the General Block Exemption Regulation;
  - (ii) approved aid schemes;
  - (iii) approved aid under specific guidelines issued by the European Commission; and
  - (iv) EU financial instruments funded from EU funds, where the Bank will act as a vehicle to channel and manage EU funds, or as co-investor;
- (b) aid that fulfils the conditions of the *de minimis* Regulation at the level of the final beneficiaries;
- (c) financing on market terms to eligible final beneficiaries covered by the General Block Exemption Regulation, where all the conditions of the relevant articles of the General Block Exemption Regulation are complied with, except the requirements relating to aid intensities or maximum aid amounts, subject that, in the cases of infrastructure projects, participation by private investors shall be at least fifty (50) *per centum pari passu* with the Government;
- (d) financing of participation in EU financial instruments on market terms;
- (e) provide such other financing subject to prior approval by the European Commission.

(8) The Bank may raise both short-term and long-term funding by borrowing on a bilateral basis, and issue:

- (a) certificates of deposit;
- (b) fixed or floating rate certificates; and
- (c) other securities,

in Malta and elsewhere.

7. The Bank is not permitted to take retail deposits from the public. The Bank will not offer deposits covered by the Depositor Compensation Scheme.

Restriction.

8. (1) The Bank may offer financing under article 6(1) directly on its own or in syndication with other financial institutions where it is determined that -

Conduct of business.

- (a) the financial market is failing to provide adequate financing to certain lines of business, categories of clients, or types of enterprises that meet the Bank's social and economic mission, or
- (b) such financing, though provided by the market, is not appropriate to reach its purpose further to article 4:  
Provided that, in general, the Bank's direct financing on its own shall -
  - (i) not exceed 25 *per centum* of its overall lending,

and

- (ii) be provided under schemes tailored for the lines of business, categories of business, or types of enterprises concerned.

(2) The Bank's loans will generally be directly or indirectly secured by customary banking security or other security acceptable to the Bank. In taking collateral, the Bank is relying on such assets as a second form of repayment in the event the project's primary cash flow is weakened.

Independence and autonomy of the Bank.

**9.** The Bank, its Chairperson, directors, officers and staff shall exercise their mandate under this Act independently and in an autonomous manner, and shall not seek nor receive instructions from any authority, public or otherwise, or from any other institution.

Authorised share capital.  
Amended by:  
VII.2019.68.

**10.** (1) The initial authorised share capital of the Bank shall be two hundred million euro (€200,000,000), divided into two million (2,000,000) shares having a par value of one hundred euro (€100) each.

(2) Subject to the authorisation of the Minister for Finance;

(a) the Government or any institution and, or entity that is directly or indirectly wholly owned by Government shall subscribe to one hundred (100) *per centum* of the authorised and issued share capital;

(b) the Government or any institution and, or entity that is directly or indirectly wholly owned by Government may subscribe to up to thirty (30) *per centum* of the authorised and paid-up capital in the form of moveable and, or immoveable property that is free and clear of all encumbrances, hypothecs or other attachments; and

(c) the Bank shall receive from the Government or the institution and, or entity that is directly or indirectly wholly owned by Government a general warranty of title against claims from all persons, as well as covenants of a right to sell and of peaceful possession. The value of any immoveable property transferred to the Bank shall be audited by the National Audit Office.

(3) (a) The authorised and issued capital shall be determined by the shareholders from time to time. The initial subscription to the authorised share capital shall be done in accordance with the First Schedule to this Act;

(b) The paid-up capital of the Bank shall be determined by the Board from time to time and shall be paid in by the shareholders in installments as determined by the Board with two months' notice.

(4) The capital paid in and any institution and, or entity that is directly or indirectly wholly owned by Government, and any



institution and, or entity that is directly or indirectly wholly owned by Government, as of the coming into force of this Act and subsequently as provided in this Act is vested in the Bank as its paid-in capital and is converted into common shares of the Bank.

**11.** For the purposes of this Act, the term "ordinary capital resources" of the Bank shall include funds raised by the following:

Ordinary capital resources.

- (a) issued and paid-up capital of the Bank subscribed pursuant to article 10;
- (b) debt securities issued by the Bank;
- (c) borrowings of the Bank by virtue of powers conferred by article 18;
- (d) repayment of loans or guarantees made or returned to the Bank; and
- (e) income from any other funds received by the Bank.

**12.** The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth in this Act.

Use of resources.

**13.** (1) The total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations in favour of a single individual or a group of connected clients shall not at any time exceed twenty-five (25) *per centum* of the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources, exclusive of other reserves not available for ordinary operations.

Limitations on ordinary operations.

(2) In the case of funds invested in equity capital out of the ordinary capital resources of the Bank, the total amount invested shall not exceed ten (10) *per centum* of the aggregate amount of the unimpaired paid-in capital stock of the Bank together with the reserves and surplus included in its ordinary capital resources, exclusive of the reserves not available for ordinary operations.

(3) The amount of any equity investment shall not exceed such percentage of the equity capital of the enterprise or company concerned as the Board shall in each specific case determine to be appropriate. The Bank shall not seek to obtain by such an investment a controlling interest in the enterprise or company concerned, except where necessary to safeguard the investment of the Bank.

(4) Any equity financing shall be made only after the Board, by a vote of a majority of the total number of Directors, shall have determined that the Bank is in a position to participate. The Board shall approve such equity investment on a case-by-case basis.

**14.** The operations of the Bank shall be conducted in accordance with good commercial and economic practice and the following principles shall, *inter alia*, be followed:

Operating principles.

- (a) before a financing is granted, the applicant shall have submitted an adequate loan proposal and the Chief Executive Officer shall have presented to the Board a written report regarding the proposal, together with his recommendations, on the basis of a staff study;

- (b) in considering an application for a loan or guarantee, the Bank shall pay due regard to the ability of the borrower to obtain financing or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors;
- (c) in making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations willingly under the loan contract;
- (d) in making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall be such as are, in the opinion of the Bank, appropriate for the loan concerned;
- (e) in guaranteeing a loan made by other investors, or in underwriting the sale of securities, the Bank shall receive suitable compensation for its risk;
- (f) in the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures in connection with the project as they are actually incurred;
- (g) the Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency;
- (h) the Bank shall seek to maintain reasonable diversification in its investments in equity capital; it shall not assume responsibility for managing any company or enterprise in which it has an investment, except where necessary to safeguard its investments; and
- (i) the Bank shall be guided by sound banking principles in its operations.

Terms and conditions for direct loans and guarantees.

**15.** In the case of direct loans made or participated in or loans guaranteed by the Bank, the contract shall establish, in conformity with the operating principles set forth in article 14 and subject to the other provisions of this Act, the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other charges, maturities, and dates of payment in respect of the loan, or the fees and other charges in respect of the guarantee, respectively. Guarantees by the Bank will be issued only with a fixed term of maturity and shall provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and the borrower's guarantor, if any, the Bank offers to purchase, at or below par and interest accrued (or part thereof) to a date designated in the offer, the bonds or other obligations guaranteed.

Commission and fees.

**16.** (1) The Bank shall charge, in addition to interest, such commissions and fees on credits, services or other facilities made available or participated in as part of its ordinary operations.

(2) In guaranteeing a loan as part of its ordinary operations, the Bank shall charge a guarantee fee, at a rate determined by the Board, payable periodically on the face amount of the guarantee outstanding.

(3) Other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations shall be determined by the Board.

**17.** (1) In cases of default on loans made, participated in or guaranteed by the Bank in its ordinary operations, the Bank shall take such action as it deems appropriate with respect to modifying the terms of the loan, including but not limited to the application of pre-agreed financial penalties.

Methods of meeting liabilities of the Bank.

(2) Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Bank in its ordinary operations, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it, chargeable to its ordinary capital resources, the Bank may call an appropriate amount of the uncalled subscribed callable capital pursuant to article 10 and, if the Bank deems that additional capital resources are required for its operations beyond the subscribed and uncalled capital, it will recommend such capital increase for the consideration of its shareholders, provided that any increase in capital shall be subject to prior consultation with the European Commission.

**18.** Without prejudice to the powers specified elsewhere in this Act, the Bank shall also have the power to:

General powers.

- (a) borrow funds in Malta or elsewhere, and in this connection to furnish such collateral or other security for such purpose as the Bank shall determine;
- (b) buy and sell securities the Bank has issued or guaranteed or in which it has invested;
- (c) guarantee securities in which it has invested in order to facilitate their sale;
- (d) underwrite, or participate in the underwriting of, securities issued by any company or enterprise for purposes consistent with the objective of the Bank and in line with the provisions of article 6(7);
- (e) invest funds, not needed in its operations, in marketable securities;
- (f) enter into any transaction for the purpose of reducing risk in the financial management of the Bank, including any financial instrument or agreement whose objective is the management of financial risks, such as interest rate or currency exchange agreements, options, forward futures contracts, securitisation arrangements, and other similar agreements;
- (g) pledge or hypothecate any of its assets as security for any debt obligations issued by the Bank or as security for the due performance of its obligations under any agreement;
- (h) provide technical advice and assistance which serve its

- purpose and come within its functions, and where expenditures incurred in furnishing such services are not reimbursable, charge the net income of the Bank therewith; in the first five (5) years of its operations, the Bank may use up to two (2) *per centum* of its paid-in capital for furnishing such services on a non-reimbursable basis; and
- (i) exercise such other powers and establish such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Act.
- Use of currencies. **19.** The Bank may hold any of the following:
- (a) gold or convertible currencies;
- (b) currencies obtained by the Bank pursuant to articles 11 and 16.
- Structure. **20.** The Bank shall have a Board of Directors, a Chairperson, a Chief Executive Officer and such other officers and staff as may be considered necessary.
- Composition of Board of Directors. **21.** (1) The Bank shall have a Board of Directors of seven members.
- (2) The Board of Directors shall be appointed as follows:
- (a) a Chairperson, who shall be a person of high competence in the economic or financial sector, appointed by the Minister after consultation with the Opposition;
- (b) four Directors, who shall be persons of high competence in the economic or financial sectors, appointed by the Minister; and
- (c) two independent Directors from the non-government sector, who shall be appointed by the Minister on the recommendation of the Malta Council for Economic and Social Development, but not being members of that Council.
- (3) No individual is eligible to be appointed or to continue as a Director or Chairperson if the individual is:
- (a) a Member of the House of Representatives; or
- (b) employed in the public service; or
- (c) is a director or officer of another credit institution; or
- (d) has been adjudged bankrupt under the law of any country.
- (4) The Directors, except for the Chairperson and the independent Directors appointed in accordance with sub-article (2)(c), shall hold office for a term of five (5) years and may be re-appointed for a period of three (3) years, but may be removed for cause pursuant to sub-article (7).
- (5) The Chairperson shall hold office for a period of six (6) years and may be re-appointed, but shall not serve for more than ten (10) years and may be removed for cause pursuant to sub-article

(7).

(6) The independent Directors shall hold office for a period of six (6) years and may be re-appointed for three (3) years, but may be removed for cause pursuant to sub-article (7).

(7) Conduct worthy of removal may include but is not limited to the person concerned becoming of unsound mind, being convicted of any crime punishable by imprisonment, or being declared bankrupt during his term of office, breach of confidence, breach of fiduciary duties, undisclosed conflicts of interest, serious breaches of the Bank's Code of Ethics, or in the case of a Director appointed pursuant to sub-article (2)(c) if the Minister, on the advice of the Supervisory Board, as defined in article 37, is of the opinion that he no longer qualifies as an independent Director.

(8) The Chairperson and the Directors are entitled to be paid by the Bank the remuneration fixed by the Minister for their time to attend meetings of the Board and to perform their duties under this Act.

(9) The Directors shall appoint a Chief Executive Officer for such period and on such terms and conditions as they deem fit, and subject to any agreement entered into in any particular case, may revoke such appointment. The Chief Executive Officer shall attend meetings of the Board if asked by the Chairperson, except when the Board discusses his conditions of service, his performance, the revocation of his appointment or any disciplinary procedures affecting him, and shall not have a vote.

**22.** (1) All the powers of the Bank shall be vested in the Board.

Powers of Board of Directors.

(2) The Board shall be responsible for the direction of the general operations as well as the administration of the affairs and the business of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Act:

- (a) take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, furnishing of technical assistance and other operations of the Bank;
- (b) authorise the conclusion of agreements for co-operation with international organisations;
- (c) determine the salary and other terms of the contract of service of the Chief Executive Officer;
- (d) establish a Risk Committee, an Audit Committee, an Ethics and Governance Committee, and a Remuneration Committee and such other committees as the Board considers advisable, and determine their composition, authority, duties and the tenure of their members. These Committees, which may be presided by one or more Directors as the Board shall decide, shall give non-binding opinions to the Board so as to facilitate the decision-making procedure. The Committees may be presided by one or more Directors as the Board shall decide, provided that in the event that any of the Committees is presided by one Director, that Director shall

- be an independent Director;
- (e) delegate power to act in all matters that are not by this Act or any bye-law or resolution specifically reserved to be done by the Board:
    - (i) to such person or committee;
    - (ii) by such means (including by power of attorney);
    - (iii) to such an extent;
    - (iv) in relation to such matters or territories; and
    - (v) on such terms and conditions;
  - (f) authorize further delegation of the directors' powers by any person to whom they are delegated, and may revoke any delegation in whole or part, or alter its terms and conditions;
  - (g) approve the budget of the Bank;
  - (h) approve, after reviewing the auditor's report, the general balance sheet and the statement of profit and loss of the Bank;
  - (i) determine the reserves and the distribution of the net profits of the Bank;
  - (j) make, by resolution, bye-laws to regulate the business and affairs of the Bank;
  - (k) accept deposits as security for the due performance of any arrangement or agreement with the Bank;
  - (l) determine and charge interest and any other form of compensation for services provided by the Bank in the exercise of its powers under this Act;
  - (m) procure the incorporation, dissolution or amalgamation of subsidiaries and acquire or dispose of any shares in them;
  - (n) acquire and dispose of any interest or right in an entity by any means;
  - (o) acquire, hold, exchange, lease, sell or otherwise dispose of any interest or right in real or personal property or immoveables or moveables and retain and use the proceeds of disposition; and
  - (p) exercise such other powers as are necessary for the proper performance of the Bank's business under this Act.

Procedure of Board  
of Directors.

**23.** (1) The Board shall meet when convened by the Chairperson on his own initiative or at the request of one of its members, provided that it shall meet not less than six times per year and shall decide, on each occasion, the date of its next meeting.

(2) Any member of the Committees referred to in article 22(2)(d) may be invited to attend the meetings of the Board.

(3) Notice of meetings of the Board must be issued not less than seven (7) working days before the date set for each meeting.

(4) To the extent possible, the members of the Board must be

in possession of the agenda and related documents not less than five (5) working days before the meeting. The Bank may employ electronic means to transmit the documentation.

(5) Each Director may require the inclusion of items on the agenda for a meeting of the Board, provided that he conveys his requirement in writing to the Chairperson not less than three (3) working days before the meeting.

(6) The time limits laid down in sub-articles (3) to (5), both inclusive, may be waived, if all the Directors consent or, exceptionally in the event of an emergency, by the Chairperson.

(7) The quorum at any meeting of the Board shall be four Directors, one of whom shall be an independent Director.

(8) Save as otherwise provided elsewhere, decisions of the Board shall be taken by a majority of the Directors.

(9) The Board may, where necessary, adopt decisions by tacit approval, provided that this occurs at a meeting attended by at least one of the independent Directors. A decision by tacit procedure shall be deemed to have been adopted within two weeks from notification thereof and shall be attached to the minutes of the Board meeting immediately succeeding the meeting where the decision has been taken:

Provided that the decision shall not be adopted if during the two weeks from notification thereof, four Directors have indicated that they do not agree with that decision:

Provided further that each Director may require the tacit procedure to be interrupted.

(10) Each Director may receive written authorisation from not more than one of his colleagues to act as his proxy at a meeting of the Board and to vote in his stead.

(11) Minutes shall be kept of the meetings of the Board. They shall be signed by the Chairperson of the meeting and the Chairperson presiding over the meeting during which they are approved as well as by the secretary of the meeting.

**24.** The appointment or replacement of the secretary and the conditions of holding office shall be determined by the Board. The secretary shall be responsible for:

The Secretary.

- (a) preparing the agenda for, and taking minutes of, board meetings;
- (b) ensuring that proper notice be given of all meetings;
- (c) maintaining statutory books;
- (d) monitoring changes in relevant legislation and the regulatory environment;
- (e) paying dividends and administering changes in shares and transfers thereof; and
- (f) such other duties as he may be required to perform by the Board.

**25.** (1)The Chairperson shall preside every meeting of the

The Chairperson.

Board, or if there is no such chairperson, or if he shall not be present within twenty (20) minutes from the time appointed for the commencement of the meeting, or is unwilling to act, the Directors present shall elect one of their number, to be chairperson of the meeting.

(2) The legal and judicial representation of the Bank shall be vested in the Chairperson or, without prejudice to the powers of the Chairperson, in any person or persons deputed and authorised for this purpose by the Board.

Prohibition of political activity.

**26.** (1) The Bank shall not accept loans or assistance that may in any way prejudice, limit, deflect or otherwise alter its purpose or functions.

(2) The Bank, its Chairperson, officers and staff shall not participate in any political activities and shall not be influenced by any political party in their decisions. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

(3) The Bank shall not make any financial contribution directly or indirectly to any political party.

Allocation of income.

**27.** (1) The Board shall determine annually what part of the income of the Bank shall be allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the shareholders.

(2) Payments shall be made in such manner as the Board shall determine.

Temporary suspension of operations.

**28.** In an emergency, the Board may temporarily suspend operations in respect of new loans and guarantees, pending an opportunity for further consideration and action by the Board.

Termination of operations.

**29.** (1) The shareholders may terminate the Bank's operations on advice of the Board or on their own initiative.

(2) After such termination, the Bank shall forthwith cease all activities, except those incidental to the orderly realisation, conservation and preservation of its assets and settlement of its obligations.

(3) The Minister, acting on the advice of the Supervisory Board, shall appoint liquidators and give them instructions for carrying out the liquidation.

Liability of shareholders and payment of claims.

**30.** (1) In the event of termination of the operations of the Bank, the liability of all shareholders for uncalled subscriptions to the share capital of the Bank shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

(2) All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank or unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board shall make such arrangements as are necessary, in its judgment, to ensure a *pro rata* distribution among holders of direct and contingent claims. Holders



of equivalent claims shall, as far as possible, be paid concurrently.

**31.** No distribution of assets shall be made to the shareholders on account of their subscriptions to the share capital of the Bank until all liabilities to creditors have been discharged or provided for. Moreover, such distribution must be approved by the Board by a vote of two-thirds of the total number of Directors.

Distribution of assets.

**32.** The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation under the [Income Tax Act](#) and duty on documents and transfers under any law for the time being in force.

Exemption from taxation.  
Cap. 123.

**33.** (1) The annual financial statements, the management report, and the consolidated financial statements must be prepared, audited, and disclosed in accordance with any applicable regulations referred to in article 35.

Annual report and consolidated financial statements.

(2) Directors will approve the annual financial statements within three months from the end of a financial year.

(3) The financial year is the calendar year.

(4) The Annual Report and Consolidated Financial Statements shall be tabled in the House of Representatives not later than four months after the end of the Bank's financial year, shall be published in the media as determined by the Board and on the Bank's website, and copies shall be made available by the Secretary when requested by the public.

**34.** The Minister will ensure that the Bank complies with the Laws of Malta, the Bank's bye-laws, and other regulations.

Legal supervision.

**35.** (1) The Minister shall have the power to determine by regulation that the Bank shall be required to conform *mutatis mutandis* with certain banking supervisory laws and regulations, in whole or in part, in order to safeguard the conduct of proper business operations by the Bank.

Applicable regulations and directives.

(2) Regulations under sub-article (1) may also introduce provisions concerning disclosure, reporting and submission duties of the Bank to the competent authorities, as well as information, inquiry and auditing rights of the Auditor General.

**36.** (1) Directors are entitled to be paid by the Bank reasonable travel and living expenses incurred in connection with the performance of their duties under this Act while absent from their habitual place of residence.

Miscellaneous provisions.

(2) Officers, employees, advisors and consultants are entitled to be paid by the Bank the remuneration, expenses and benefits that the Bank may determine.

(3) The Bank shall not grant a loan, investment or guarantee to a Director or officer of the Bank.

(4) (a) An applicant for any of the Bank's financings or services, as defined in article 2, must disclose in writing to the Bank whether the applicant is an interested person, as defined in article 2 or, if the applicant is a company or body corporate, whether a shareholder, director or officer of the company or body corporate, is an interested person or a Director or officer of the

Bank.

- (b) A Director must not be present at a meeting of the Board when the Board is considering an application, or a vote on a resolution relating to it, if the applicant is -
- (i) a person related to the Director as described in the definition "interested person", or
  - (ii) a company or body corporate of which the Director, or a person referred to in sub-paragraph (i), is a partner, shareholder, director or officer.

### Part III

#### Supervisory Board

The Supervisory Board.

**37.** (1) The Minister shall appoint a Supervisory Board that oversees the policy pursued by management and its implementation, reviews the general state of affairs of the Bank either on request or on its own initiative and issues directives including directives relating to the prudential conduct, capital adequacy and risk strategy of the Bank.

(2) In performing its duties, the Supervisory Board shall act in accordance with the interests of the Bank and those of its stakeholders (including the Bank's shareholders, employees, customers and suppliers).

(3) The Supervisory Board shall draw up its own rules of procedure, which rules shall be approved by the Minister, and shall also have the power to regulate its meetings.

Powers of the Supervisory Board.

**38.** (1) The Supervisory Board shall have no executive powers whatsoever over the Bank, its officers, management and employees.

(2) Within the framework of its monitoring, advisory, and regulatory activities, the Supervisory Board shall have the power to request from the Bank any information it deems necessary for performing its tasks, and the Bank shall ensure to keep the Supervisory Board informed on a regular basis, and in a timely and comprehensive manner, on the course of the business, developments in individual business segments and capital adequacy.

(3) The Supervisory Board shall have the right to:

- (a) request, and have access to, any documents, minutes and, or data it requires in performing its duties;
- (b) request the internal and, or external auditors to carry out special *ad hoc* investigations or risk assessments; and
- (c) recommend to the shareholders the removal of Directors.

(4) The Supervisory Board shall receive from the Board monthly management accounts, and advance copies of the annual financial statements and the auditor's report. The Supervisory Board shall receive a written and verbal presentation by the Board of Directors on the Bank's performance and situation, as well as any risks and issues, twice a year.

39. (1) The responsibilities of the Supervisory Board shall include the supervision of, among others:

Responsibilities of  
the Supervisory  
Board.

- (a) the development, alignment and execution of the Bank's business strategy;
- (b) the realisation of the Bank's strategic and financial targets;
- (c) the capital adequacy of the Bank;
- (d) the Bank's risk bearing capacity and risk strategy as quantified in the Bank's risk model as approved by the Supervisory Board;
- (e) the structure and management of the Bank's internal risk management and control systems;
- (f) the Bank's financial reporting process;
- (g) corporate social responsibility aspects which are relevant to the Bank;
- (h) the management of the Bank's relationship with its shareholders;
- (i) the Bank's compliance with legislation and regulations;
- (j) the corporate governance structure of the Bank;
- (k) the remuneration policy of the Bank; and
- (l) reported conflicts of interest or breaches of the Code of Ethics applicable to the Board and the staff of the Bank.

(2) The Supervisory Board shall submit its analysis, observations and recommendations to the Board and to the Minister in writing and as often as it determines, and shall require written submissions from the Board if and when its recommendations are not implemented.

(3) (a) The Supervisory Board shall give the Board general instructions and directives in respect of prudential conduct, capital adequacy, and risk policies of the Bank, including the risks inherent in its business activities for the purpose of the effective prudential supervision of the Bank in accordance with articles 35 and 41, and the Bank's Board shall comply with such instructions and directives.

(b) If the Supervisory Board is not satisfied that its instructions and directives are being complied with, it shall refer the matter to the Minister so that the Minister may issue any regulations that may be necessary to ensure such compliance in accordance with article 41(1).

(4) The Supervisory Board shall prepare an annual report on its functioning and activities and submit it to the Minister and the Bank.

Members of the Supervisory Board.

**40.** (1) The Supervisory Board shall consist of a maximum of six (6) members, of whom one shall be an officer of the Malta Financial Services Authority, one of the Central Bank of Malta, one of the Ministry of Finance, one of the ministry responsible for the Bank from time to time, and two independent professionals with banking and, or regulatory experience. The Chairman of the Supervisory Board shall be appointed by the Minister from amongst the independent professionals, after consultation with the Opposition.

(2) Each member of the Supervisory Board shall be appointed for a maximum period of five (5) years, or for a shorter period as may be determined by the Minister and may only be removed by the Minister. Members of the Board cannot serve on the Supervisory Board. Ex-members of the Board cannot serve on the Supervisory Board before three (3) years have elapsed since their last day of service at the Board.

(3) The members of the Supervisory Board shall comply with the Code of Conduct applicable to the Board.

(4) The remuneration of the members of the Supervisory Board shall be fixed by the Minister and shall be paid by the Ministry. The Bank must refund the Ministry for the supervisory costs incurred.

(5) Any costs for staff or other support services required by the Supervisory Board shall be borne by the Bank.

Regulations by the Minister.

**41.** (1) Without prejudice to the autonomy of the Bank, the Minister may make regulations to enhance the prudential regulation of the Bank.

(2) The Minister may, by regulations, amend the First, Second and Third Schedules of the Second Schedule (Malta Development Bank Supervisory Board Regulations).

#### Part IV

#### General

Review.  
Renumbered by:  
VII.2019.70.

**42.** Five years after this Act comes into force, and every five years thereafter, the Minister must undertake a review of the provisions and operation of this Act, including the conclusions of any State Aid reviews conducted during the period, and submit it to Parliament within six months from the conclusion of the review.

Privileged information.  
Renumbered by:  
VII.2019.70.

**43.** (1) Subject to the provisions of sub-article (2), all information obtained by the Bank in relation to its customers is privileged and a Director, officer, employee or agent or mandatory of, or advisor or consultant, to the Bank must not knowingly communicate, disclose or make available the information, or permit it to be communicated, disclosed or made available, except if it is already in the public domain.

(2) Privileged information may be communicated, disclosed or made available:

- (a) for the purpose of the administration and enforcement of this Act and legal proceedings related to it;
- (b) for the purpose of prosecuting an offence under this Act or any other Act of Parliament; and
- (c) with the written consent of the person to whom the information relates.

---

#### First Schedule

##### Initial Subscriptions to the Authorised Share Capital of the Malta Development Bank

The Government of Malta shall subscribe an initial capital of sixty million euro (€60,000,000).

---

#### Second Schedule

##### Malta Development Bank Supervisory Board Regulations

BY VIRTUE of the powers vested in the Minister in terms of article 41 of the Malta Development Bank Act, the Minister responsible for the Malta Development Bank has made the following regulations.

1. The title of these regulations is the Malta Development Bank Supervisory Board Regulations. Citation.
2. In these regulations, unless the context otherwise requires: Interpretation.
  - "Act" means Malta Development Bank Act;
  - "Bank" means the Malta Development Bank established under article 3 of the Act;
  - "Board" means the Supervisory Board as established by article 37 of the Act;
  - "Board of Directors" means the Board of Directors of the Bank established under article 20 of the Act;
  - "Chairperson" means the Chairperson of the Supervisory Board appointed in accordance with article 40(1) of the Act;
  - "Chief Executive Officer" means the administrative head of the Bank appointed in accordance with article 21(9) of the Act;
  - "meeting" means a meeting of the Board held in accordance with regulation 7; and

Responsibilities of  
the Supervisory  
Board.

"member" means a member of the Supervisory Board appointed in accordance with article 40 of the Act.

3. (1) The Supervisory Board is responsible for overseeing the policy pursued by the Bank's management, the implementation of this policy and the general state of affairs of the Bank, and advising the Board of Directors regarding the conduct of business, either on request or on its own initiative.

(2) In performing its duties the Board shall act in accordance with the interests of the Bank and the business connected with it, taking into consideration the interests of the Bank's stakeholders (including the Bank's shareholders, employees, customers and suppliers). In addition, the Board shall take its supervision responsibility with respect to the environmental, social and governance aspects relevant to the Bank. The Board is responsible for the quality of its own performance.

(3) In pursuance of its responsibilities in accordance with article 39 of the Act, the Board shall regularly examine and submit its recommendations to the Bank's Board of Directors and the Minister as it deems appropriate in respect of:

- (a) the Bank's monthly management accounts and its rolling six-monthly projections;
- (b) the appropriateness of the Bank's growth or its growth strategies, its management effectiveness, changes in asset quality, levels of risk concentration, capital adequacy, effectiveness of the Bank's policies, procedures, and internal controls, timelines in the identification of prospective losses and the creation of loss provisions, charge-offs, and recognition of securities impairment, the quality of liquidity management and interest rate risk exposure;
- (c) the effectiveness of management systems and processes addressing Credit Risk, Interest Rate Risk, Operational Risk, Liquidity Risk, Price Risk, Compliance Risk, Strategic Risk, Reputation Risk, and Political Risk as defined in Schedule 1;
- (d) the internal risk model adopted by the Bank and approved by the Board on an annual basis;
- (e) the regular updates of Key Measures of Business Performance as defined in Schedule 2;
- (f) the effectiveness of controls and internal audit procedures addressing the risk inherent in major policy areas as defined in Schedule 3.

(4) The Board shall review the Bank's financial performance measures in the context of similar ratios in the European banking industry and, in particular, in similar institutions as the Bank.

(5) The Board shall specify the minimum requirements that the Bank must meet at all times, so that the Bank may -

- (a) conduct its business in a prudent manner by having the appropriate financial and non-financial resources,

- (b) be considered fit and proper to conduct such business, and
- (c) be effectively supervised by the Board.

For the purposes of this sub-regulation -

- (i) the requirements referred to in paragraph (a) shall specify, amongst others, that -
  1. the Bank's assets must be appropriate given its liabilities,
  2. the liquidity of the Bank's resources must be appropriate given its liabilities and when they fall due or may fall due,
  3. the Bank must value its assets and liabilities appropriately,
  4. the Bank must have resources to identify, monitor, measure and take action to remove or reduce risks to the safety and soundness of the Bank,
  5. the Bank must have resources to identify, monitor, measure and take action to remove or reduce risks to the accuracy of the Bank's valuation of its assets and liabilities,
  6. the effectiveness with which the Bank's business is managed must meet a reasonable standard of effectiveness, and
  7. the Bank's non-financial resources must be sufficient to enable the Bank to comply with any requirements imposed by the Minister in accordance with regulations 34 and 35;
- (ii) in determining whether the Bank is satisfying the requirements in paragraph (i), the Board shall consider -
  1. the nature (including the complexity) of the activities that the Bank carries on or seeks to carry on,
  2. the nature and scale of the business carried on or to be carried on,
  3. the risks to the continuity of the services provided or to be provided by the Bank,
  4. the effect that the carrying on of the business carried on or to be carried on by the Bank might be expected to have on the stability of the financial system in Malta, and
  5. the effect that the Bank's failure might be expected to have on the stability of the financial system in Malta;
- (iii) in determining whether the Bank is a fit and proper person with respect to the prudential objective specified in paragraph (b), the Board shall consider whether -
  1. the Bank has complied with and is

- complying with its obligations under articles 6, 8, and 14 of the Act and regulation 5,
2. whether the persons who manage the Bank's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (iv) in determining whether the Bank can be effectively supervised as specified in paragraph (c), the Board shall consider -
1. the nature (including the complexity) of the Bank's activities,
  2. the complexity of any products that the Bank will provide,
  3. the way in which its business is organised, and
  4. if the Bank has close links with another person such that the nature of such links is likely to prevent the effective supervision of the Bank.

(6) The Board may be assisted by experts as it deems necessary in any of the above described duties.

Information from  
the Board of  
Directors.

4. (1) The Board is entitled to obtain all information from the Board of Directors, its officers and the Bank's external advisors required to enable it to carry out its duties properly. The Bank shall provide the necessary means for this purpose. The Board may require that certain officers and external advisors attend its meetings. In exercising their duties, the Board and its committees may obtain advice and assistance from its own external advisors if deemed necessary at the expense of the Bank.

(2) The Board is entitled to request that on a timely basis the Bank provides it with information (if possible in writing) on all facts and developments concerning the Bank which the Board may need in order to function as required and to properly carry out its duties.

Chairperson and  
Secretary.  
*Amended by:  
L.N. 355 of 2017.*

5. (1) The Chairperson of the Board shall be appointed by the Minister from amongst the independent professionals after consultation with the Opposition.

(2) The Chairperson shall be responsible for the proper functioning of the Board and its committees. He shall chair the meetings and determine the agenda for the meetings and shall act on behalf of the Board as the main contact for the Board of Directors on all matters related to the responsibilities of the Board.

(3) The Chairperson's responsibilities shall include among others:

- (a) ensuring the adequate and timely submission of information to the members as necessary for the proper performance of their duties;
- (b) co-ordination of the Board's decision-making process



and ensuring that there is sufficient time for consultation, consideration and decision-making by the Board;

- (c) steering, and procuring the adequate performance of, any of the committees of the Board;
- (d) maintaining close and frequent contact with the Board of Directors and ensuring that the results thereof are communicated to the other members in a timely and prudent manner; and
- (e) deciding on reported potential conflicts of interest or breaches of the Code of Ethics as referred to in article 39(1)(l) of the Act.

(4) If the Chairperson is prevented or is unavailable for any meetings of the Board, the Chairperson's tasks shall be performed and his powers exercised by a chairperson selected by the members present.

(5) The Board may be assisted by a Secretary, who is appointed by the Board and may be removed by it.

(6) The responsibilities of the Secretary are to:

- (a) assist the Chairperson in the logistics of the meetings (convocation, agenda, minutes, information, evaluation, meeting schedule);
- (b) follow up on action items resulting from the meetings;
- (c) support any committees and/or experts of the Board, as required.

6. Any committees appointed by the Board shall consist, in the majority, of members, but may include experts appointed *ad hoc*. The full Board remains responsible for all decisions.

Committees of the Board.

7. (1) The Board shall meet at least six times per year in accordance with an annual meeting schedule or whenever the Chairperson, one or more of its members, or the Board of Directors requests a meeting. Meetings will generally be held at the offices of the Bank, but may also take place elsewhere or by telephone or video conference, provided that all participants can hear each other simultaneously.

Meetings of the Board.

(2) Members of the Board who are frequently absent during meetings of the Board will be asked to explain their absence. Frequent absences shall be reported in the Board's report and may eventually lead to resignation.

(3) The Board may invite the Chairperson or Chief Executive Officer or chairpersons of any of the Committees listed in article 22(2)(d) of the Act to attend sittings of the Board to provide further information required by it or to discuss issues relating to its duties under article 39(1) of the Act and regulation 3.

(4) Minutes of the meeting shall be prepared by the Secretary. They shall be adopted in the next meeting. The minutes shall be signed by the Chairperson and the Secretary, and shall be distributed to all Board members as soon as practically possible.

Resolutions of the Board.

8. (1) The Board can only validly adopt resolutions in a meeting at which at least the majority of its members are present, it being understood that members who have a conflict of interest shall not be taken into account when calculating this quorum.

(2) The Board may also adopt resolutions outside a meeting, provided the resolution in question has been submitted to all of its members and none of them has objected to this form of decision-taking. In such case the Secretary will record in writing such resolution of the Board and have this document signed by two Board members.

(3) Resolutions of the Board can only validly be adopted in or outside a meeting of the Board if a majority of the Board members has voted in favour of the resolution. If all members are present, either in person or by telephone or video conference, and agree thereto, the Board may resolve on issues not on the agenda. In case there is a tie vote, the Chairperson shall have a casting vote.

(4) A declaration signed by the Secretary that a resolution has been adopted serves as evidence to third parties of that resolution.

Conflicts of interest.

9. (1) Members must avoid undisclosed actual or potential conflicts of interest with the Bank. A member with an actual or potential conflict of interest shall disclose the conflict to the Board and not participate in the discussions and, or decision-taking process on items concerning such a conflict of interest. Such transaction, if approved, must be concluded on terms that are at least customary for arm's length transactions in the sector concerned. The Chairperson shall see that any transactions where a conflict of interest of members occurred be included in its Annual Report.

(2) A member of the Board shall in any event have a conflict of interest with the Bank if:

- (a) he has a personal financial interest in a bank, other financial institution or intermediary with which the Bank has entered or intends to offer a financing programme or scheme or enter into a transaction;
- (b) he has a material amount of securities or risk exposure in an economic sector, companies or activities in a related industry, or directly in enterprises or projects with which the Bank has entered or intends to enter into a business relationship;
- (c) he has a relationship under family law (wife/husband, registered partner or other life companion, foster child and relatives by blood or marriage up to the second degree) with a member of the board of directors of a bank, enterprise or project with which the Bank intends to enter into a material transaction;
- (d) he is a member of the board of directors of, or hold similar office with, a bank, enterprise or project with which the Bank intends to enter into a transaction;
- (e) the Chairperson at his sole discretion shall have ruled such conflict of interest exists or is deemed to exist.

(3) The member concerned shall immediately report any potential conflict of interest to the Chairperson and to the other members. A member with whom such (potential) conflict of interest exists must provide all information relevant to the conflict of interest, including information relating to the persons with whom he has a relationship under family law, to the Chairperson. In all circumstances other than the ones listed in sub-regulation (2)(c) and (d), the Chairperson will determine as to whether or not a reported (potential) conflict of interest qualifies as a conflict of interest pursuant to which sub-regulation (1) shall apply.

10. Each member shall, during his membership of the Board and afterwards, refrain from disclosing in any manner to any individual any information of a confidential nature concerning the Bank or subsidiaries, which has become known to the member as a result of his position in the Board and of which he knows or should know to be of a confidential nature, unless required by applicable law. A member is allowed to disclose the above information to members of the Board of Directors and Board.

Confidentiality.

11. Any amendments to these regulations and any bye-laws drawn up by the Board shall only come into effect subject to approval by the Minister.

Amendments and  
bye-laws.

---

#### Schedule 1

##### Risks to Bank

Credit risk. The risk arises any time Bank funds are extended, committed, invested, or otherwise exposed through actual or implied contractual agreements, whether reflected on or off the balance sheet.

Interest rate risk. The risk to earnings or capital arising from movements in interest rates.

Liquidity risk. The risk to earnings or capital arising from the Bank's inability to meet its obligations when they come due without incurring unacceptable losses.

Price risk. The risk to earnings or capital arising from changes in the value of either trading portfolios or other obligations that are entered into as part of distributing risk.

Operational risk. The risk to earnings or capital arising from inadequate or failed internal processes or systems, the misconduct or errors of people, and adverse external events.

Compliance risk. The risk to earnings or capital arising from violations of, or non-conformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards.

Strategic risk. The risk to earnings, capital, or enterprise value arising from adverse business decisions, improper implementation of decisions, or lack of responsiveness to industry changes.

Reputation risk. The risk to earnings, capital, or enterprise value arising from negative public opinion.

Political risk. The risk to earnings or capital arising from domestic or international political decisions, events, or conditions will significantly undermine the profitability of a business actor or the expected value of a given economic action.

---

## Schedule 2

### Key Measures of Business Performance

Return on average assets (ROAA). A ratio that is significantly above banks in similar markets offering similar products can be one indicator that the Bank is taking above average risk.

Return on equity (ROE). From the shareholder's perspective, the higher the ROE the better. From the Board's perspective, however, the Bank should not seek an attractive ROE that is based on inadequate capital or unwarranted risk.

Net interest margin (NIM). This ratio reflects the traditional business of banking, that is, the results of the Bank's efforts to buy funds and reinvest them profitably.

Net non-interest expense to average assets. This ratio indicates the impact of all non-interest expenses (such as personnel or other costs) on the Bank's earnings and can provide a measure of the Bank's efficiency in generating earnings.

Leverage ratio. Confidence in the Bank's condition is a critical factor in its ability to support further business. A well-managed bank typically operates with more capital than the minimum requirement. The Board should be alert to any declines in the ratio, should determine the cause and recommend necessary action to ensure that adequate capital is maintained.

Non-performing loans to total loans. A high level of non-performing loans may suggest poor underwriting practices or inadequate monitoring of changes in borrowers' financial conditions.

Net losses to average total loans. This ratio is another indicator of asset quality. The Board should determine the cause of the increased losses and recommend appropriate corrective actions.

---

## Schedule 3

---

### Major Policy Areas

#### LOAN PORTFOLIO MANAGEMENT

The Board of Directors should oversee loan portfolio management to control risks and maintain profitable lending operations.

#### LOAN POLICY

The Bank's loan policy should address loan portfolio composition and should have standards for individual credit decisions. Risk tolerances and limits should be specified.

#### LOAN REVIEW PROGRAMME

In addition to the general loan policy, the Board should direct the Board of Directors to establish an internal loan review programme that is independent of the lending function. This programme, which is essential to managing credit risk, should monitor asset quality, adherence to established loan policy and credit standards, and compliance with laws and regulations.

#### ALLOWANCE FOR LOAN LOSSES (ALL)

The Board must ensure that the Bank has a programme for developing, maintaining, and documenting a comprehensive, systematic, and consistently applied process for determining the amounts of the ALL and the provision for loan losses.

#### LOAN PORTFOLIO MANAGEMENT - AREAS OF CONCERN

When considering the Bank's lending activities, the Board of Directors should scrutinize the following practices or conditions:

Failure to have systems that properly monitor compliance with legal lending limits. Violating lending limits can lead to excessive concentrations of risk, and may present an opportunity for abuse of the Bank's resources.

Failure to institute adequate loan administration systems. An inadequate system to administer its loans may lead to unnecessary losses.

Over-reliance on collateral or character to support credit decisions. Undue reliance on factors other than cash flow or other repayment capacity to support credit decisions may increase its illiquid loans and its level of credit risk and may expose the Bank to loss.

Uncontrolled asset growth or increased market share. The Board of Directors should be alert to any activity that could indicate that loan officers are relaxing credit standards. Such practices may result in increases in illiquid assets and unwarranted losses to the bank.

Generation of large volumes of loans for resale to others. If the

bank plans to generate a large volume of loans to sell to others to increase income, the Board of Directors should ensure that the Bank's systems and controls are capable of handling the volume.

#### ASSET/LIABILITY MANAGEMENT

The asset/liability management policy provides the framework for bank management to carry out the Board of Directors' objectives for the composition of on- and off-balance sheet positions.

Excessive growth objectives. A bank with excessive growth objectives may engage in activities that unduly increase its exposure to various risks. Excessive growth also may lead to undue leverage and capital inadequate to support the bank's activities.

Heavy dependence on volatile liabilities. Excessive holdings of volatile liabilities, such as large certificates of deposit and other interest rate sensitive and credit risk sensitive funding sources may pose problems to the Bank.

Exposure to a significant number of products with embedded options. Holding significant amounts of assets, liabilities, or off-balance sheet products with embedded options can expose the Bank to unwarranted interest rate and liquidity risks.

Gaps between asset and liability maturities or between rate-sensitive assets and liabilities at various maturity time frames. Excessive gaps resulting from differences in the re-pricing dates of assets and liabilities leave the Bank vulnerable to impaired earnings and liquidity concerns if interest rates do not move according to projections.

Asset/liability expansion, both on- or off-balance sheet, without an accompanying increase in capital support. Engaging in excessive leverage activities may have a bearing on capital requirements. Inadequate capital also may make the Bank unable to fund or absorb potential exposures.

Failure to diversify assets or funding sources. Concentrations of assets or funding sources can expose the Bank to risks including credit, interest rate, liquidity, and reputation.

Inadequate controls over securitized asset programmes. If the Bank uses securitized assets to fund banking activities, it improves the marketability of its assets and enhances liquidity. To control risks associated with such programmes, however, management should monitor how sales of its high-quality assets affect the strength of the remaining portfolio.

Lack of expertise or control over off-balance sheet derivative activities or other complex investment or risk management transactions. The Board of Directors should be aware of potential risks and ensure that adequate risk monitoring and control procedures are in place before the Bank uses the products. The Board of Directors and management should understand the role such leverage transactions play within the Bank's overall business strategies.

INVESTMENT ACTIVITIES

Investments should generate quality earnings, allow a bank to diversify its asset base, and provide liquidity. The Board of Directors must ensure the Management's investment activities comply with the policy it adopts.

INVESTMENT ACTIVITIES - AREAS OF CONCERN

When considering investment activities, the Board of Directors should scrutinize the following practices or conditions:

Failure to select securities dealers carefully.

Efforts to obtain higher yields without regard for other portfolio objectives.

Purchase of low-quality investments to obtain higher yields.

Purchase of structured securities without appropriate due diligence.

Failure to adequately diversify investments.

Failure to consider pledging requirements in investment decisions.

Failure to institute adequate internal controls for investment and trading activities.

Failure to ensure the investment portfolio complies with current accounting standards.

---