



ST. HELENA

**A BILL
FOR
AN ORDINANCE
to provide for the establishment of the Bank of St.Helena**

Enacted by the Governor of St Helena and its Dependencies with the advice and consent of the Legislative Council of St Helena.

Short title and commencement

1. The Ordinance may be cited as the Bank of St.Helena Ordinance, 2003 and shall come into force on such day as the Governor may appoint by notice in the *Gazette*.

Interpretation

2. In this Ordinance unless the context otherwise requires–

“Banking Directive” means a Directive issued by the Competent Authority;

“Board” means the Board of Directors referred to in section 4;

“business of banking” has the meaning assigned to it by section 2 of the Banking Ordinance 2003;

“Chairman” means the person appointed to be Chairman of the Board under section 4(1);

“Competent Authority” means the Competent Authority established in accordance with the provisions of the Banking Ordinance 2003;

“Governor” means the Governor acting in his discretion;

“Manager” means the Manager of the Bank appointed under section 6;

“Savings Bank” means the Savings Bank established under the provisions of the Savings Bank Ordinance Cap. 111;

“the Bank” means the Bank of St.Helena established by section 3.

Establishment of the Bank of St.Helena

3. (1) There is hereby established a body corporate to be called the Bank of St.Helena with perpetual succession.

(2) The Bank shall have an official seal for the safe custody of which the Manager shall be responsible.

(3) The Bank shall establish a head office in St. Helena, and service of any document on the Bank may be made by delivering the same to the Bank at its head office or by sending it by registered post addressed to the Manager at the head office of the Bank.

Board of Directors

4. (1) A Board of Directors consisting of up to 5 Directors shall manage the affairs of the Bank. The Governor shall appoint a Director to be Chairman of the Board.

(2) All Directors shall be appointed by the Governor, after consulting the Competent Authority, by notice in the *Gazette*. The Directors shall be appointed for a term not exceeding 2 years.

(3) A Director may at any time resign his office in writing signed by him and sent to the Chairman and the Governor.

(4) The Governor may at any time by notice in the *Gazette* revoke the appointment of a Director for neglect of duty or misconduct or if such Director is for reasons of disability unable to perform the functions of his office.

(5) A Director shall cease to hold office if–

- (a) he resigns in accordance with subsection (3); or
- (b) his appointment is revoked by the Governor in accordance with subsection (4); or
- (c) he is absent from 3 consecutive meetings of the Board without the leave of the Chairman; or
- (d) he is disqualified in accordance with section 32 of the Banking Ordinance.

(6) If a vacancy arises for a Director by virtue of–

- (a) a resignation under subsection (3); or
- (b) a disqualification from being able to act as a Director under subsection (5),

the Governor may by notice in the *Gazette* appoint a Director to fill the vacancy, for a period of not more than 1 year.

Objects of the Bank

5. (1) It shall be the objects of the Bank to engage in the business of banking within St. Helena and its Dependencies.

(2) The Bank shall not engage in any other activity other than that set out in subsection (1) above.

Appointment of a Manager

6. (1) The Governor shall, in consultation with the Board, appoint a person to be the Manager of the Bank.

(2) The Manager shall be employed by the Bank and shall be remunerated by the Bank on terms and conditions agreed between the Manager and the Board.

(3) The Manager shall have the day-to-day management responsibility for running the Bank and shall present a written report of the performance of the Bank to the Board from time to time in a format determined by the Board.

(4) Reports shall be presented by the Manager to the Board at such times as the Board may require being not less than 4 times in any 12 month period.

(5) The Manager shall be entitled to participate at meetings of the Board

Employment of officers

7. (1) The Manager, with the approval of the Board, may engage such officers as may be necessary for the execution of this Ordinance.

(2) Any officer engaged under subsection (1) shall be employed on such terms and conditions as may be decided by the Board.

Powers of the Bank

8. (1) Subject to the acquisition of a licence under the Banking Ordinance, the Bank shall have all the powers necessary to enable it to carry out the business of banking.

(2) In particular the Bank has the power—

(a) to hold property of any kind, real or personal;

(b) subject to the provisions of this Ordinance, to do all such things as are necessary or convenient for the purpose of achieving the objects of the Bank and performing the

duties and functions conferred or imposed upon the Bank by this Ordinance or any other law;

- (c) to acquire, hold, operate with and dispose of any type of property, whether locally or by import, and whether in St. Helena or elsewhere; and
- (d) to make contracts in its own name, and to sue or to be sued in that name.

(4) Nothing in this section authorises the Bank to enter into any financial commitment that is not within the Bank's own financial resources without having first obtained the approval of the Board.

Names of depositors, etc., not to be disclosed

9. (1) No person appointed to carry this Ordinance into effect shall disclose the name of any depositor or the amount which may have been deposited or withdrawn by any depositor except in due course of law, or to such person or persons as may be appointed to assist in carrying this Ordinance into operation.

(2) Any person contravening the provisions of this section shall on summary conviction be liable to a fine not exceeding £500.

Accounts and Audit

10. (1) The Bank shall, in such manner as shall be specified by Competent Authority, keep accounts of its transactions.

(2) The Bank shall have its accounts audited annually by a person approved by the Competent Authority.

(3) The Bank shall, not later than four months from the closing of its financial year, publish a copy of its audited financial statements in accordance with section 30 of the Banking Ordinance.

Annual Report

11. The Bank shall within 12 months after the 31st day of March in any year submit to the Governor—

- (a) a report on its activities during the year preceding that 31st March; and
- (b) a statement of the accounts of the Bank audited in accordance with section 11(2).

Policy and management of Bank

12. (1) The Board, together with the Manager, shall set the policy of the Bank. Such policy shall be consistent with any Banking Directives that have been issued to the Bank.

(2) In managing the affairs of the Bank the Board must act in accordance with the principles of good banking practice and in accordance with the provisions of the Banking Ordinance and any Banking Directives issued by the Competent Authority from time to time.

(3) Should the Manager become aware of any failure to comply with either the Banking Ordinance or any Banking Directives he shall report such failure to the Board as soon as is reasonably practicable

(4) Upon receiving a report from the Manager in accordance with subsection (3) of this section the Board shall convene a meeting and decide what action needs to be taken to remedy the failure. If remedial action is decided it must be taken at the earliest possible opportunity.

(5) The Board shall notify the Competent Authority of any failure that has been brought to its attention under subsection (3) of this section.

Meetings of the Board

13. (1) Meetings of the Board shall be called by the Chairman.

(2) Meetings shall be held at least once in every three-month period.

(3) The Chairman shall call a meeting of the Board if he receives a written request to do so signed by at least 2 Directors.

(4) A written request under subsection (3) shall state the business to be transacted at the meeting.

(5) At a meeting of the Board—

(a) the Chairman shall preside but if he is absent a Director elected by the other Directors present shall preside; and

(b) three Directors shall form a quorum; and

(c) questions shall be determined by vote with the person presiding having an original vote and if the votes are equal a casting vote; and

(d) minutes of the proceedings shall be kept; and

(e) the Board is otherwise entitled to regulate its own proceedings.

Disclosure of interests by Directors

14. (1) A Director who, whether directly or indirectly, has an interest in a matter before the Board shall declare the nature of his interest at the first meeting of the Board at which it is possible for him to do so.

(2) A Director shall not be present at a meeting of the Board when any business with the Bank in which he has an interest, whether directly or indirectly, is being considered.

(3) A Director who fails to comply with subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding £10,000.

Salaries, Expenses and Surplus

15. (1) All salaries and other expenses incurred in the execution of this Ordinance shall be met from moneys in the Bank.

(2) For the purposes of this Ordinance “expenses” shall mean the cost of any work or service done by or in connection with the Bank, including such sum on account of administrative and other overhead expenses as may reasonably assigned to that work or service.

(3) If in any year the revenue of the Bank shall be more than sufficient to defray the interest due to depositors and all expenses incurred under this Ordinance, the surplus shall remain the property of the Bank.

Protection of Bank and Board

16. Nothing done by the Bank or by the Board shall be invalid because at the time it was done—

- (a) a vacancy existed in the membership of the Board; or
- (b) a Director contravened or was contravening section 14.

Indemnity for member and others acting *bona fide*

17. No matter or thing done and no contract entered into by the Bank and no matter or thing done by any member of the Board or officer or other person acting under the direction of the Board shall, if the matter or thing done or the contract entered into was *bona fide* for the purpose of carrying out the objects of this Ordinance, subject them or any of them personally to any action, liability, claim or demand whatsoever; any expense incurred by the Board member, officer or any person acting under the direction of the Board shall be borne and repaid out of the funds of the Bank.

Regulations

19. The Governor in Council may make regulations necessary or convenient for the purposes of this Ordinance.

Transfer of Bank property

- 20. (1)** On such day as the Governor appoints by notice in the Gazette—
- (a) all personal property of the Crown being used at the Savings Bank shall vest in and become the property of the Bank by virtue of this section without further transfer or assurance; and
 - (b) any funds standing to the credit of the Savings Bank in any public account immediately before the day so appointed vests in the Bank by virtue of this section and becomes the funds of the Bank without further appropriation; and
 - (c) any liability of the Government or Crown resulting from the activities of the Savings Bank existing immediately before the day so appointed becomes a liability of the Bank by virtue of this section without further assignment, consent or notice and accordingly—
 - (i) may be enforced against the Bank; and
 - (ii) ceases to be a liability of the Government or Crown that can be enforced against the Government or Crown.
- (2)** Any dispute as to—
- (a) the property vested in the Bank by virtue of subsection (1)(a); or
 - (b) the funds to be taken to be funds of the Bank by virtue of subsection (1)(b); or
 - (c) the liabilities transferred to the Bank by virtue of subsection (1)(c),
- shall be determined by the Governor whose decision shall be final.

EXPLANATORY NOTE

(This note does not form part of the Bill)

To enable the current Government Savings Bank to begin operating as a commercial entity it is necessary to replace the Savings Bank Ordinance Cap. 111 with a separate piece of legislation that will give the Bank a completely different legal status.

The main purpose therefore of this Bill is to create the Bank of St. Helena and to give it corporate status.

On a day to be appointed by the Governor, all personal property of the Crown being used at the Savings Bank, any funds standing to the credit of the Savings Bank and any liability of the Government or Crown resulting from the activities of the Savings Bank will be transferred to the Bank of St.Helena. Following the day of such transfer the St.Helena Government Savings Bank will cease to exist.