



MONTSERRAT

## CHAPTER 15.06

# MONTSERRAT DEVELOPMENT FINANCE AND MARKETING CORPORATION ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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## CHAPTER 15.06

# MONTSERRAT DEVELOPMENT FINANCE AND MARKETING CORPORATION ACT

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## CHAPTER 15.06

### MONTSERAT DEVELOPMENT FINANCE AND MARKETING CORPORATION ACT

*(Acts 15 of 1971, 21 of 1973, 30 of 1975 and 9 of 2011)*

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A DEVELOPMENT FINANCE AND MARKETING CORPORATION IN MONTSERAT, AND FOR PURPOSES INCIDENTAL THERETO OR CONNECTED THEREWITH.

#### Commencement

*[1 May 1972]*

#### PART 1

#### PRELIMINARY

#### Short title

1. This Act may be cited as the Montserrat Development Finance and Marketing Corporation Act.

#### Interpretation

2. In this Act, unless the context otherwise requires—
- “**agriculture**” includes fisheries, forestry, horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock and the growing of vegetables, fruits and the like;
- “**Chairman**” and “**Deputy Chairman**” mean respectively the Chairman and Deputy Chairman of the Corporation;
- “**Corporation**” means the Montserrat Development Finance and Marketing Corporation established under and for the purposes of this Act;
- “**Financial Year**” means the period commencing on 1 July in any year and ending on 30 June in the following year; *(Inserted by Act 30 of 1975)*
- “**General Manager**” means the General Manager of the Corporation and includes any person appointed to act as General Manager;
- “**Industrial enterprise**” includes an enterprise in Montserrat in which is carried on the business of—
- (a) trading, the rendering of services, producing, manufacturing, processing, assembling, installing, overhauling, re-conditioning, altering, repairing, cleaning, packaging, transporting or warehousing goods;

- (b) prospecting or exploring for minerals, drilling, operating a mine or quarry, construction, engineering, technical surveys or scientific research;
- (c) operating a commercial transport service;
- (d) operating a hotel, motel, guest house or a similar institution serving the Tourist Industry;
- (e) supplying premises, machinery or equipment for any business mentioned in paragraph (a), (b), (c) or (d) hereof, whether on sale or under a lease, contract or other arrangement whereby title to the premises, machinery or equipment is retained by the suppliers;

*(Substituted by Act 21 of 1973)*

**“land”** includes industrial land and agricultural land, and also all buildings, factories, machinery and plant erected or installed and standing thereon or therein, and all live, dead or rolling stock belonging to the owner or occupier and used and operated in connection with such land; *(Substituted by Act 21 of 1973)*

**“Member of the Corporation”** includes the Chairman and Deputy Chairman;

**“Minister”** means the Member of the Cabinet to whom has been assigned for the time being responsibility for the subject or department of Agriculture; *(Amended by Act 9 of 2011)*

**“owner”** includes—

- (a) the owner of any land or building or of any boat, or of any vehicle or of any machinery;
- (b) the duly authorised attorney of such owner;
- (c) an executor or administrator of a deceased owner if authorised by will or by an order of the Court or otherwise by law to mortgage land;
- (d) a trustee appointed by deed or will or authorised by such deed or will or by an order of the Court or otherwise by law to mortgage land;
- (e) a receiver appointed by order of the Court or by a mortgagee;
- (f) a mortgagee in possession;
- (g) a lessee of land of which the unexpired term of the lease is not less than twenty years or where in any case or class of cases, the Corporation for any special reason shall so decide, fifteen years.

**“produce”** includes any industrial, agricultural, horticultural or forestry produce, any fruit, vegetable or other praedial produce, any farm animals, alive or slaughtered, the flesh of such animals, fish, poultry,

eggs or dairy produce, and any products manufactured from any such produce; (*Substituted by Act 21 of 1973*)

“**specified produce**” means any produce declared to be a specified produce under section 38.

## PART 2

### THE ESTABLISHMENT, CONSTITUTION AND FUNCTIONS OF THE CORPORATION

#### **Establishment and Constitution of the Corporation**

3. (1) There shall be established for the purposes of this Act a body corporate to be called the Montserrat Development Finance and Marketing Corporation.

(2) The Corporation shall have perpetual succession and shall be entitled to make contracts and to sue and be sued in its corporate name.

(3) The Corporation shall have a common seal which shall be officially and judicially noticed, and such seal shall be authenticated by the signatures of the Chairman and one other member of the Corporation.

(4) Until a seal is provided in accordance with the provisions of this section, a stamp bearing the words “**Montserrat Development Finance and Marketing Corporation**”, and authenticated as in subsection (3) may be used in place of such seal.

(5) The seal of the Corporation shall be kept in the custody of the General Manager.

#### **Membership of the Corporation**

4. (1) The Corporation shall consist of not less than five nor more than seven members, as the Governor may from time to time determine.

(2) The members of the Corporation shall be appointed by the Governor taking into account the functions of the Corporation, and shall include—

(a) two *ex officio* members of whom one shall be the Financial Secretary and one the Officer being in overall charge of the Government Agricultural Department;

(b) the General Manager of the Corporation appointed under section 14.

(3) The Governor shall appoint a chairman and a deputy chairman of the Corporation from among the members of the Corporation.

(4) A member of the Corporation other than an *ex officio* member, shall, subject to the provisions of subsections (6) and (7), hold office for

such period not exceeding three years, as the Governor may direct but any member of the Corporation shall be eligible for re-appointment.

(5) The Governor, acting in his discretion, may appoint any person to act temporarily in place of any member of the Corporation other than an *ex officio* member in the case of the absence or inability to act of such member.

(6) Any member of the Corporation other than an *ex officio* member may at any time resign his office by instrument in writing addressed to the Chairman who shall forthwith cause it to be forwarded to the Governor: Provided, however, that in the case of the Chairman, any such resignation shall be addressed directly to the Governor.

(7) The Governor, acting in his discretion may at any time revoke the appointment of any member of the Corporation other than an *ex officio* member if he thinks it expedient to do so.

(8) The appointment of any member of the Corporation and the termination of office of any person as a member whether by death, resignation, revocation, effluxion of time or otherwise shall be notified in the *Government Gazette*.

(9) No member of the Legislative Assembly shall be eligible for appointment as a member of the Corporation. (*Amended by Act 9 of 2011*)

### **Functions of the Corporation**

5. (1) It shall be the function of the Corporation to stimulate, facilitate and promote the development of agricultural and industrial enterprises and to mobilize resources, financial and otherwise outside and within Montserrat for such purposes. (*Amended by Act 21 of 1973*)

(2) Without prejudice to the generality of subsection (1) it shall be the function of the Corporation—

- (a) to make loans and advances in accordance with the provisions of this Act;
- (b) to secure the most advantageous arrangements for the purchase, handling, processing, transportation, storage and marketing of produce whether in or out of Montserrat;
- (c) to provide assistance, financial or otherwise, in accordance with the provisions hereinafter contained, to persons engaged in agricultural or industrial activities; and
- (d) to procure materials and supplies for agricultural and industrial enterprises in Montserrat.

(3) Subject to the provisions of this Act the Corporation shall have power for the purpose of the discharge of its functions under subsections (1) and (2)—

- (a) to carry on or to promote the carrying on by other bodies and persons of such activities, the carrying on of which appears to the Corporation to be requisite, advantageous, or convenient for and in connection with the discharge of their said functions;
- (b) to provide finance in the form of loans or by purchase of debentures or by participating in any share issue of any company carrying on an industrial enterprise in Montserrat;
- (c) to do anything and to enter into any transactions of any nature whatsoever, whether or not involving expenditure, borrowing, granting of loans and investment of money in accordance with the provisions of this Act in that behalf which in its opinion is calculated to facilitate the proper discharge of its functions or is incidental or conducive thereto.

### **Procedure and meetings**

**6. (1)** The Corporation shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of business.

**(2)** The Chairman may at any time call a special meeting of the Corporation and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any two members of the Corporation.

**(3)** The Chairman shall call a special meeting of the Corporation if directed by the Governor or the Minister to do so.

**(4)** The Chairman, or in his absence, the Deputy Chairman, shall preside at all meetings of the Corporation.

**(5)** The Chairman or in his absence, the Deputy Chairman and two other members of the Corporation shall form a quorum.

**(6)** The decisions of the Corporation shall be by a majority of votes and in addition to an original vote, in any case in which the voting is equal, the Chairman or Deputy Chairman presiding at the meeting shall have a casting vote.

**(7)** Minutes in proper form shall be kept by the Corporation and shall be confirmed by the Chairman or Deputy Chairman (as the case may be) as soon as practicable thereafter at a subsequent meeting.

**(8)** The Corporation may co-opt any one or more persons to attend any particular meeting of the Corporation for the purpose of assisting or advising the Corporation, but no such person shall have any right to vote.

**(9)** Subject to the provisions of this section the Corporation shall have the power to regulate its own proceedings.

### **Power to appoint Committee**

7. (1) The Corporation may appoint a committee of the Corporation to examine and report to it on any matter whatsoever arising out of or connected with any of its powers and duties under this Act.

(2) Any such committee of the Corporation shall consist of at least one member of the Corporation, together with such other persons, whether members of the Corporation or not, whose assistance or service the Corporation may desire.

(3) The Corporation may, by resolution, reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the Corporation may think fit.

### **Power to delegate**

8. Subject to the provisions of this Act the Corporation may delegate to the General Manager or any member or committee of the Corporation the power and authority to carry out on its behalf such duties as the Corporation may determine.

### **Declaration of interests of members of Corporation**

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

(2) The disclosure under subsection (1) shall be recorded in the Minutes of the Corporation and after the disclosure, the member making it shall, unless the Corporation otherwise direct, not be present at or take part in the deliberations or vote at any meeting of the Corporation during the time when such matter is being decided by the Corporation.

### **Protection of Corporation**

10. The validity of any act done or proceedings taken under this Act shall not be questioned on the ground—

- (a) of the existence of any vacancy in the membership of or of any defect in the constitution of the Corporation; or
- (b) of the contravention by a member of the Corporation of the provisions of section 9; or
- (c) of any omission, defect or irregularity not affecting the merits of the case.

### **Protection of members of Corporation**

11. No personal liability shall attach to any member of the Corporation in respect of anything done or suffered in good faith under the provisions of

this Act, and any sums of money, damages or costs, which may be recovered against any such member in respect of any act or thing done *bona fide* and for the purpose of carrying this Act into effect, shall be paid out of the funds and resources of the Corporation.

### **Execution and service of documents**

**12. (1)** All deeds, instruments, contracts, and other documents, other than those required by law to be under seal, shall be deemed to be duly executed or signed by or on behalf of the Corporation, if they are signed by the Chairman or General Manager and some other person duly authorised by the Corporation in that behalf.

**(2)** Service upon the Corporation of any notice, order or other document shall be executed by delivering the same or by sending it by registered post addressed to the General Manager at the head office of the Corporation.

### **Remuneration of members of Corporation**

**13.** The Corporation shall pay to each member of the Corporation, in respect of his office, such, if any, remuneration as the Governor may determine.

### **Appointment of General Manager**

**14. (1)** The General Manager shall be appointed by the Governor by instrument under his hand on the recommendation of the Corporation:

Provided that, in the case of the first General Manager, he shall be appointed by the Governor in his discretion.

**(2)** The General Manager shall be appointed for a period of three years upon such terms and conditions of service as may be decided by the Governor on the recommendation of the Corporation and shall be eligible for re-appointment:

Provided that, in the case of the first General Manager, he shall be appointed for such shorter period and upon such terms and conditions of service as the Governor may in his discretion decide.

**(3)** The Governor may, on the recommendation of the Corporation by instrument under his hand appoint any suitable qualified person to act temporarily in place of the General Manager during the absence of the General Manager through illness or inability or whatsoever cause arising.

### **Duties and powers of General Manager**

**15.** The General Manager shall be the chief executive officer of the Corporation and shall be entrusted with the day to day management, administration, direction and control of the business of the Corporation with authority to act in the conduct of the business of the Corporation in all matters which are not by this Act or by rules or regulations made

thereunder, specifically reserved to be done by the Corporation and shall be answerable to the Corporation for his acts and decisions.

### **Appointment of officers and servants**

**16. (1)** The Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit such officers, servants and agents as it may deem necessary for the proper carrying out of its functions under this Act:

Provided that, no salary in excess of the rate of \$6,000 per annum shall be assigned to a post without prior approval of the Governor.

**(2)** The Corporation shall within a period of three years of its establishment, provide for the establishment and maintenance of a Pension Scheme or Provident Fund for the benefit of the officers and servants of the Corporation.

**(3)** The Governor, acting in his discretion may approve the transfer and appointment of a public officer to the service of the Corporation and where such a transfer and appointment is approved, the Corporation shall pay to the Government such contribution as may be required by the Government to be paid in respect of the pension and gratuity of the officer transferred.

### **Corporation to conform with directions of Governor**

**17.** In the exercise of its powers and the discharge of its functions the Corporation shall conform with any general or special directions given to it by the Governor.

## PART 3

### CREDIT

### **Establishment of Credit Fund**

**18.** The Corporation shall establish a Credit Fund and all loans, advances and investments made by the Corporation under the provisions of this Part shall be made from the said Fund.

### **Resources of Credit Fund**

**19. (1)** The funds and resources of the Credit Fund shall consist of—

- (a)* such sums as may from time to time be provided for the purpose of the Fund by the Legislative Assembly; (*Amended by Act 9 of 2011*)
- (b)* all sums from time to time received by or falling due to the Corporation in respect of the repayment of any loan made by the Corporation from the Fund and the interest payable in respect of any such loan;



- (c) any property, mortgages, debentures or investments acquired by or vested in the Corporation for the purpose of the Fund, and monies earned or arising from any such property, mortgage, debentures or investments;
- (d) such sums as may be borrowed by the Corporation for the purpose of meeting any of its obligations or discharging any of its functions under this Part.

(2) The Corporation may, subject to such notice of withdrawal of not less than three months as may from time to time be prescribed by the Corporation, accept any sums deposited with it by bodies corporate, public bodies, Co-operative Societies or Associations and individuals and pay such interest thereon as it considers necessary to encourage such deposits.

### **Power to borrow or raise capital**

**20. (1)** The Corporation may, subject to the approval of the Governor acting on the advice of Cabinet, borrow, secure or raise money for the purpose of meeting any of its obligations or carrying out any of its functions under this Part. *(Amended by Act 9 of 2011)*

(2) With the approval of the Legislative Assembly, the Governor may guarantee, in such manner and upon such conditions as he may think fit, the repayments of the principal and interest of any authorised borrowings by the Corporation under this Part. *(Amended by Act 9 of 2011)*

(3) Where the Governor is satisfied that there has been default in the repayment of any principal monies or interest guaranteed under this section, he shall direct the repayment out of the General Revenue of Montserrat of the amounts in respect of which there has been such default.

(4) The Corporation shall make to the Accountant General, at such times and in such manner as the Governor may direct, payments of all or part of the amounts as may be so directed in or towards the repayment of sums issued in fulfilment of any guarantee given under this section:

Provided that, with the prior approval of the Legislative Assembly the Corporation may be permitted by the Governor not to make payment of the whole amount issued in fulfilment of such guarantee.

*(Amended by Act 9 of 2011)*

### **Applications of resources of Credit Fund**

**21.** The funds and resources of the Credit Fund shall be applied towards—

- (a) making loans, advances and investments in accordance with the provisions of this Part;
- (b) making contributions to the General Fund of the Corporation for purposes of—

- (i) the remuneration and allowances of the members of the Corporation and any Committee thereof;
  - (ii) the salaries, remuneration and other allowances of the officers, servants and agents of the Corporation, and payments of contributions, towards the maintenance of the Pension Scheme or Provident Fund authorised by this Act;
  - (iii) the acquisition of any land or the purchase or construction of any building used by the Corporation for the purpose of this Part;
  - (iv) the payment of the rent of premises used by the Corporation for the purpose of discharging its functions under this Part;
  - (v) the payment of rates, taxes, insurance premiums and other outgoings and expenses in connection with the land and buildings vested in the Corporation or over which it has power of disposition for the purposes of this Part;
  - (vi) the purchase of office equipment and furniture;
  - (vii) providing such sums as the Corporation may deem appropriate to set aside in respect of depreciation of the property of the Corporation;
  - (viii) the payment of all other expenses authorised by or incidental to the operations of the Corporation under this Part and of any other expenditure authorised by the Corporation;
- (c) defraying the following charges—
- (i) the payment of interest on any loans raised by the Corporation for the purposes of the Fund and on any sums deposited with the Corporation for the purposes of the Fund;
  - (ii) charges on sums allocated to the Corporation by the Government from loan funds;
  - (iii) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of making provision for the redemption of debenture stock or other security or for the repayment of other money borrowed for the purpose of this Part.

### **Corporation empowered to make loans, advances and investments**

**22.** It shall be lawful for the Corporation, out of the resources of the Credit Fund—

- (a) to make loans and advances to owners of land and to societies registered under the Co-operative Societies Act;
- (b) to make loans to any person cultivating land whether as lessee or tenant thereof;
- (c) to make loans to persons engaged in industrial enterprises; and
- (d) subject to the approval of the Legislative Assembly to take up share capital in a company formed or incorporated in Montserrat whose objectives are consistent with the purposes of this Act. (*Amended by Act 9 of 2011*)

### **Types of loans and purpose to which they may be applied**

**23. (1)** The Corporation shall normally make four types of loans, namely—

- (a) long term loans payable within fifteen years from the date of issue;
- (b) medium term loans payable within eight years from the date of issue;
- (c) short term loans payable within eighteen months from the date of issue; and
- (d) loans to Co-operative Societies.

**(2)** Long term loans may be granted for the following purposes, namely—

- (a) the purchase, development or improvement of land;
- (b) the erection of buildings;
- (c) the capital requirements of industrial enterprises; and
- (d) any other purpose that may be prescribed in accordance with the provisions of this Part.

**(3)** Medium term loans may be granted for the following purposes, namely—

- (a) the discharge of liabilities incurred in respect of the development, maintenance or improvement of land;
- (b) the purchase of livestock;
- (c) the purchase of tractors, ploughs, trucks and other agricultural machinery and equipment;
- (d) the purchase of boats, marine engines and fishing accessories;
- (e) the purchase of plant, machinery or equipment for use in industrial enterprises; and

(f) any other purpose that may be prescribed in accordance with the provisions of this Part.

(4) Short term loans may be granted for the financing of working capital for agricultural or industrial enterprises and for any purpose that may be prescribed in accordance with the provisions of this Part.

(5) Loans to Co-operative Societies shall be short term loans and may also be granted for the purpose of enabling Co-operative Societies to purchase the crops produced by their members.

### **To whom loans may be granted**

24. (1) Except where the loan is guaranteed by the Government, the Corporation may normally grant long term loans and medium term loans to owners only.

(2) The Corporation may normally grant short term loans for agricultural purposes to owners, and to persons cultivating land whether as lessees or tenants thereof and to Co-operative Societies, and for industrial purposes to owners and to persons engaged in operating industrial enterprises.

(3) The Corporation shall not grant any loan to any member of the Legislative Assembly or to any member or officer or servant of the Corporation.

(4) The Corporation shall not, however, except with the prior approval of the Governor acting on the advice of Cabinet make a loan to any individual or Corporate entity or take up share capital in an enterprise of an amount exceeding \$50,000. (*Amended by Act 9 of 2011*)

### **Interest payable on loans**

25. (1) The Corporation shall require interest to be paid quarterly in arrears on all loans granted by it on the outstanding balances of the principal as at the first day of each month from the date of issue to the date of full settlement.

(2) The rate of interest shall be determined from time to time by the Corporation.

(3) The rate of interest charged on loans to Co-operative Societies shall be at least 0.5% less than on similar loans granted to any other borrower.

### **Suspension of payment of principal**

26. The Corporation may postpone for any time not exceeding five years, the payment of any sum due to it for principal in respect of a long term loan made by it, upon such terms and conditions as it may deem necessary.

### **Security required by Corporation for loans**

**27. (1)** The Corporation shall only grant a long term loan where the security offered includes a mortgage on the land of the borrower, or, where the land is leased by the Government to the borrower, a Government guarantee of the loan. In addition the Corporation may require further security by—

- (a) assignment of the benefits of an insurance policy to the Corporation;
- (b) insurance on the life of the borrower;
- (c) a mortgage on other property; or
- (d) assignment to the Corporation of Government bonds or other securities.

**(2)** The Corporation may require as security for medium term loans and short term loans all or any of the following, namely—

- (a) a mortgage;
- (b) a bill of sale;
- (c) an insurance on the life of the borrower;
- (d) crop liens;
- (e) other sufficient and realisable security, including stocks, machinery, accounts receivable and negotiable contracts.

**(3)** In the case of short term loans to a Co-operative Society, any member of the Society to whom part of the loan has been distributed shall sign an agricultural financing contract with the Society and shall guarantee his loan with a first lien on the crop for which it has been obtained. This contract, together with a promissory note signed by the said member shall be endorsed by the Society in favour of the Corporation:

Provided that, the Co-operative Society shall not be absolved from its collective liability to repay the whole of the loan and interest due thereon to the Corporation.

### **Borrower to maintain insurance premiums**

**28.** Whenever the Corporation shall accept insurance on the life of a borrower as security for a loan, it shall be incumbent on such borrower to maintain the premium on such insurance until such time as the loan for which it is held as security is fully repaid.

### **Recall of misapplied loan**

**29.** Whenever it shall come to the notice of the Corporation that a loan has been applied to a purpose which is not in accordance with the purpose for which the loan was granted, or that any condition under which the loan was granted has not been fulfilled, the Corporation shall have the power to

recall the said loan or any part thereof and the borrower shall accordingly repay such loan or that part thereof together with any interest due on such loan or part thereof to the date of recall.

### **Investigation as to monies lent**

**30. (1)** The Corporation may authorise in writing any of its officers, any public officer or other person—

- (a) to carry out the field functions of investigation, appraising lands, chattels and produce and providing farm management services for the purpose of ensuring that a loan made for agricultural purposes is being applied for the purposes for which it was made;
- (b) to carry out the functions of inspection, valuation and appraising land, buildings, machinery, stocks and contracts for the purpose of ensuring that a loan made for the purposes of an industrial enterprise is being applied for the purposes for which it was made.

**(2)** Any person authorised under subsection (1) may at all reasonable times enter upon any land or enter any vehicle, boat or other property in respect of which a loan has been granted under the provisions of this Part and may value and inspect the same; and any person obstructing or causing to be obstructed such authorised person in making any such valuation or inspection whether by force, or by threats or in any other manner, shall be guilty of an offence and shall be liable on summary conviction therefor to a fine of \$250 or to imprisonment for a term of three months.

### **Enforcement of security**

**31. (1)** Where any property which is mortgaged as security for a loan under the provisions of this Part is sold for the purpose of the enforcement of the security, the Corporation may buy such property and may either manage or hold such property or sell or otherwise dispose of it as it may deem fit.

**(2)** Except as otherwise provided, every sale of land under this Part shall be by public auction subject to a reserve price to be fixed by the Corporation and shall be conducted in accordance with the practice in force for the collection of debts due to the Government of Montserrat.

### **Power to make Regulations**

**32.** The Corporation, with the approval of the Governor acting on the advice of Cabinet, may, subject to the provisions of this Part, make regulations with respect to the following matters—

- (a) prescribing the additional purposes for which loans may be made under this Part;

- (b) prescribing the limits within which loans may be made under this Part, including the limits within which loans for any prescribed purpose may be made;
- (c) prescribing the periods within which loans made under this Part shall be payable;
- (d) prescribing the forms to be used for the purposes of this Part, including forms of mortgage and memorandum of discharge or receipt, the form of notification of a charge against land in respect of which a loan is made under this Part and the form of agreement for repayment of a loan to be entered into by a Co-operative Society;
- (e) prescribing the fees to be paid in respect of any matter or thing to be done in connection with a loan under the provisions of this Part;
- (f) prescribing a scale of legal charges to be made in connection with mortgages to secure loans made under this Part;
- (g) prescribing the terms and conditions applicable to loans made to Co-operative Societies under this Part;
- (h) providing for any matters which are authorised by this Part to be prescribed;
- (i) generally for the purpose of carrying out the provisions of this Part.

*(Amended by Act 9 of 2011)*

## PART 4

### MARKETING

#### **Establishment of Marketing Fund**

**33.** The Corporation shall establish a Marketing Fund and all monies received and all expenditure incurred by the Corporation in the exercise of its powers under this Part other than expenditure required under this Act to be made from the General Fund of the Corporation shall be paid into or made from the said Marketing Fund.

#### **Resources of the Marketing Fund**

**34.** The funds and resources of the Marketing Fund shall consist of—

- (a) such sums as may from time to time be provided for the purpose of the Fund by the Legislative Assembly; *(Amended by Act 9 of 2011)*
- (b) such sums as may accrue to the Corporation as a result of its operations under this Part;

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- (c) such sums as may be borrowed by the Corporation, including short term borrowings from the banking system for the purpose of meeting any of its obligations or discharging its functions under this Part;
- (d) such other sums from any source as may be granted, loaned, paid, allocated to or vested in the Corporation in respect of any matter incidental to its powers and functions under this Part.

### **Power to borrow or raise capital**

**35. (1)** The Corporation may, subject to the approval of the Governor acting on the advice of Cabinet, borrow, secure or raise money for the purpose of meeting any of its obligations or discharging its functions under this Part. *(Amended by Act 9 of 2011)*

**(2)** With the approval of the Legislative Assembly, the Governor may guarantee, in such manner and upon such conditions as he may think fit, the repayments of the principal and interest of any authorised borrowings of the Corporation under this Part. *(Amended by Act 9 of 2011)*

**(3)** Where the Governor is satisfied that there has been default in the repayment of any principal monies or interest guaranteed under this section, he shall direct the repayment out of the General Revenue of Montserrat of the amounts in respect of which there has been such default.

**(4)** The Corporation shall make to the Accountant General, at such times and in such manner as the Governor may direct, payments of all or part of the amounts as may be so directed in or towards the repayment of sum issued in fulfilment of any guarantee given under this section:

Provided that, where the Corporation is not directed to make repayment of the whole of the amounts issued in fulfilment of such guarantee, the prior approval of the Legislative Assembly shall be obtained. *(Amended by Act 9 of 2011)*

**(5)** The Minister of Finance may, with the approval of the Legislative Assembly, by warrant under his hand authorise the Accountant General to make advances to the Corporation in such sums and on such terms as he may think fit for the purposes of this Part. *(Amended by Act 9 of 2011)*

**(6)** For the purpose of making approved advances under the provisions of subsection (5), the Minister of Finance may authorise advances out of the proceeds of any loan raised for the purpose or out of the Consolidated Revenue Fund of Montserrat.

**(7)** The Corporation may, with the approval of the Governor, borrow by way of bank overdraft such sums as the Corporation may require for meeting its obligations and discharging its functions under this Part.



### **Application of the resources of Marketing Fund**

**36. (1)** The funds and resources of the Marketing Fund shall be applied towards—

- (a) the purchase, handling, processing, transportation and marketing of produce;
- (b) purchase of stocks of fodder and feeding stuffs for livestock, seeds, fertilizers, insecticides and other agricultural production requisites;
- (c) the purchase and storage of any materials and supplies as may be required for the purposes of the Corporation;
- (d) making contributions to the General Fund of the Corporation for the purpose of—
  - (i) the remuneration and allowances of the members of the Corporation and any committee thereof;
  - (ii) the salaries, remuneration and other allowances of the officers, servants and agents of the Corporation and the payment of contributions towards the maintenance of the Pension Scheme or Provident Fund authorised by this Act;
  - (iii) the acquisition of any land or the purchase or construction of any building used by the Corporation for the purpose of this Part;
  - (iv) the payment of the rent of premises used by the Corporation for the purpose of discharging its functions under this Part;
  - (v) the payment of rates, taxes, insurance premiums and other outgoings and expenses in connection with the land and buildings vested in the Corporation or over which it has powers of disposition for the purposes of this Part;
  - (vi) the purchase of office equipment and furniture;
  - (vii) providing such sums as the Corporation may deem appropriate to set aside in respect of depreciation of the property of the Corporation;
  - (viii) the payment of all other expenses authorised by or incidental to the operations of the Corporation under this Part and of any other expenditure authorised by the Corporation.
- (e) defraying the following charges—
  - (i) the repayment of loans raised by the Corporation for the purposes of the Fund and the payment of interest thereon;

- (ii) the repayment of advances received by the Corporation from the Accountant General and the payment of interest thereon;
- (f) the purchase, maintenance and replacement of vehicles, plant and processing equipment for the purposes of the Corporation under this Part;
- (g) the creation of a reserve fund as the Corporation may, in its discretion, consider sufficient for the purposes of this Part.

(2) Monies standing to the credit of a reserve fund established under this Part may from time to time be invested in securities generally or specifically approved by the Governor acting on the advice of Cabinet for that purpose and the Corporation may from time to time and with like approval sell any or all of the securities.

*(Amended by Acts 21 of 1973 and 9 of 2011)*

### **Powers of the Corporation**

37. In the discharge of its functions under section 5(2)(b) the Corporation shall have powers under this Part—

- (a) to buy, sell, import and export any produce by wholesale or retail;
- (b) to handle, package, grade, process, store and market any produce;
- (c) to enter into contracts for purposes of its operations under paragraphs (a) and (b);
- (d) to promote and develop pricing policies for produce in accordance with the development objectives of the Government;
- (e) to trade and deal in fodder and feeding stuffs for livestock, seeds, fertilisers, insecticides, and other agricultural production requirements;
- (f) to purchase, transport, store, insure, handle and sell any packing material used in connection with produce;
- (g) to purchase, store and distribute on behalf of the Government, bulk imports of such commodities as the Government may request it to import;
- (h) to establish and operate facilities for the processing, packaging, storage and marketing of produce;
- (i) to do such other things as may be necessary for the effective carrying out of its functions under this Part.

### **Specified produce**

**38. (1)** The Governor acting on the advice of Cabinet may, upon the recommendation of the Corporation, by Order declare any produce to be a “**specified produce**” with effect from such date as may be stated in such Order. *(Amended by Act 9 of 2011)*

**(2)** Subject to such conditions as the Governor acting on the advice of Cabinet may from time to time determine, the Corporation shall be the sole purchaser, handler, processor, seller, importer and exporter of such specified produce. *(Amended by Act 9 of 2011)*

**(3)** No person or organisation other than the Corporation shall sell, import, export or otherwise deal in any specified produce except under licence granted by the Corporation:

Provided that, the provisions of this subsection shall not apply to any produce of Montserrat sold for local consumption.

**(4)** Any person contravening the provisions of subsection (3) shall be guilty of an offence and shall be liable on summary conviction to a fine of \$500 or to imprisonment for a term of three months, and on a second or subsequent conviction to a fine of \$1,000 or to a term of imprisonment of six months.

**(5)** Where a company is guilty of an offence under this section, every director, manager, agent and officer of the Company who is knowingly a party to the commission of the offence shall be guilty of a like offence and liable to the like penalties.

### **Appointment and licensing of Agents**

**39. (1)** If at any time the Corporation is satisfied that it would be in the interest of producers or the general public so to do, it may appoint agents and grant licences to such agents for the purpose of buying, selling, importing, exporting or processing any specified produce.

**(2)** The Corporation may in its discretion grant, renew or withhold such licences and may impose conditions upon the grant or renewal of such licences.

**(3)** The Corporation may in its absolute discretion cancel or suspend any such licences for a breach of any condition thereof, or for any other reason which it may deem fit and proper.

## **PART 5**

### **GENERAL FINANCIAL PROVISIONS**

#### **The establishment of General Fund**

**40.** The Corporation shall establish a General Fund for the purpose of meeting the general expenditure of the Corporation.

## Resources of General Fund

41. The funds and resources of the General Fund shall consist of—

- (a) such sums as may be provided for the purposes of the said Fund by the Legislative Assembly;
- (b) such sums as the Corporation may by resolution appropriate from the Credit Fund for the purposes set out in section 21(a), and from the Marketing Fund for the purposes set out in section 36(1)(d);
- (c) such property or other assets as may be acquired by or vested in the Corporation under this Part.

*(Amended by Act 9 of 2011)*

## Appropriations from the Credit Fund and the Marketing Fund

42. Appropriations from the Credit Fund and the Marketing Fund shall be fixed by the Corporation after considering the advice of the General Manager and of the Accountant of the Corporation on the fair and reasonable allocation of the cost of overheads, accounting and office services and other specified expenditure of the Corporation between the two said Funds.

## Application of resources of General Fund

43. The funds and resources of the General Fund shall be applied towards—

- (a) the remuneration and allowances of the members of the Corporation and any Committee thereof;
- (b) the salaries, remuneration, and other allowances of the officers, servants and agents of the Corporation and payment of contributions towards the maintenance of the Pension Scheme or Provident Fund established under and by the authority of this Act;
- (c) the acquisition of any land or the purchase or construction of any building used by the Corporation for the purpose of this Act;
- (d) the payment of the rent of premises used by the Corporation for the purpose of discharging its functions under this Act;
- (e) the payment of rates, taxes, insurance premiums and other outgoings in connection with the land and buildings vested in the Corporation or over which it has powers of disposition for the purposes of this Act;
- (f) the purchase of office equipment and furniture;

- (g) providing such sums as the Corporation may deem appropriate to set aside in respect of depreciation of the property of the Corporation;
- (h) the payment of all other expenses authorised by or incidental to the operations of the Corporation under this Act and of any other expenditure authorised by the Corporation.

### **Cash deposits and payments**

**44. (1)** All sums payable to the Corporation shall be collected and received for and on account of one of the several Funds of the Corporation and such sums shall be paid into a bank or banks approved by the Governor acting on the advice of Cabinet, except such sums as any officer of the Corporation may be authorised by the rules of the Corporation to retain in his hands to meet petty disbursements or immediate payments. (*Amended by Act 9 of 2011*)

**(2)** All payments out of the several Funds of the Corporation except petty disbursements not exceeding such sums as may be fixed by rules made by the Corporation shall be made by any officer authorised by the Corporation in accordance with such rules.

**(3)** Cheques against any banking account required to be kept and bills of exchange or orders for the payment of money shall be signed by the officer authorised by the Corporation in accordance with the rules of the Corporation and countersigned by the Chairman or any member of the Corporation appointed by resolution of the Corporation for the purpose; and a copy of any such resolution shall be certified by the Chairman and forwarded to the bank concerned.

### **Corporation may make Rules**

**45.** For the purpose of regulating and controlling its financial operations, the Corporation may, by resolution, make rules in respect of the following matters—

- (a) the manner in which and the officers by whom payments are to be made and to be approved;
- (b) the bank or banks into which the monies of the Corporation are to be paid, the title of any account with any such bank and the transfer of monies from one account to another;
- (c) the sum to be retained by the officer authorised by the rules of the Corporation to meet petty disbursements and immediate payments and the maximum sum that may be so disbursed for any one payment;
- (d) the method to be adopted in making payments out of the funds of the Corporation;
- (e) generally as to all matters necessary for the proper keeping and control of the accounts and finances of the Corporation.

## Accounts and audit

**46. (1)** The Corporation shall prepare annual estimates of income and expenditure and shall keep accounts of its transactions to the satisfaction of the Minister and the accounts shall be audited annually by an Auditor who shall be appointed by the Corporation each year with the approval of the Governor acting on the advice of Cabinet. *(Amended by Act 9 of 2011)*

**(2)** The members, officers and servants of the Corporation shall grant to the Auditor appointed to audit the accounts of the Corporation under the provisions of subsection (1), access to all books, documents, cash and securities of the Corporation and shall give to him on request all such information as may be within their knowledge in relation to the operations of the Corporation.

**(3)** Notwithstanding anything contained in subsection (1) the Governor may, in his discretion, at any time require the Government Auditor to examine and report on the accounts of the Corporation, and the Corporation shall provide the Government Auditor with all necessary and appropriate facilities for such examination.

**(4)** As soon as the accounts have been finally audited the General Manager shall send to the Minister a copy thereof together with a copy of any report thereon by the Auditor.

**(5)** The Corporation may with the prior approval of the Governor acting on the advice of Cabinet write off bad debts. *(Amended by Act 9 of 2011)*

## Reports

**47. (1)** The Corporation shall not later than three months from the end of each financial year submit to the Minister—

- (a)* a report dealing generally with the operations of the Corporation during the preceding financial year;
- (b)* a statement of the accounts of the Corporation audited in accordance with the provisions of section 46.

**(2)** A copy of the report together with a copy of the audited statement of accounts and a copy of the Auditor's report shall be laid before the Legislative Assembly within six weeks of receipt thereof by the Minister, who shall cause a copy of the audited statement accounts to be published in the *Government Gazette*.

*(Amended by Acts 30 of 1975 and 9 of 2011)*

PART 6

MISCELLANEOUS AND GENERAL

**Offences in respect of loans**

**48.** Any person who—

- (a) applies for a loan from the Corporation and who wilfully fails to disclose any material information within his knowledge or who wilfully makes any statement which he knows to be false or does not believe to be true; or
- (b) wilfully obtains a loan from the Corporation by means of any false representation; or
- (c) wilfully applies any loan made to him by the Corporation for any purpose other than the purpose for which the loan was made; or
- (d) having obtained a loan from the Corporation wilfully destroys or damages any security given in relation to any such loan,

shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine of \$500 or to imprisonment for a term of six months.

**Secrecy with regards to books, records, etc.**

**49. (1)** Except in so far as may be necessary for the due performance of its functions, every officer and servant of the Corporation shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of the Corporation that may come to his knowledge in the course of his duties.

**(2)** Any such officer or servant who communicates any such matter to any person other than a member of the Corporation or any officer of the Corporation authorised in that behalf by the General Manager, or suffers or permits any unauthorised person to have access to any books, papers or records relating to the Corporation shall be guilty of an offence against this Act and shall be liable, on summary conviction to a fine of \$500 or to imprisonment for a term of six months, or to both such fine and imprisonment.

**(3)** No member, officer or servant of the Corporation shall be required to produce in any Court any book or document or thing coming under his notice in the performance of his duties under this Act, except on the direction of the Court in so far as may be necessary for the purpose of carrying into effect the provisions of this Act.

**Offences in relation to statements, accounts, etc.**

**50.** Any member or officer of the Corporation or any Auditor who, knowing it to be false in any material particular—

- (a) verifies any statement, account or report of the Corporation;  
or
- (b) causes to be delivered or transmitted such statement, account or report;

shall be guilty of an offence against this Act and shall be liable, on indictment, to imprisonment for a term of five years.

### **Minutes receivable in evidence**

51. Any minutes made of meetings of the Corporation shall, if purporting to be duly signed by the Chairman or Deputy Chairman, be receivable in evidence in all legal proceedings without further proof and every meeting of the Corporation in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereat to have been duly qualified to act.

### **General penalty**

52. Any person guilty of an offence against this Act for which no special penalty is provided by this Act shall be liable on summary conviction to a fine of \$250 or in default of payment to imprisonment for a period of three months.

### **Exemption from Stamp Duty and other charges**

53. Notwithstanding the provisions of any law providing for the registration of documents or the payment of stamp duties, no certificate, receipt, instrument or other document issued by the Corporation or in favour of the Corporation shall be subject to stamp duty, registration fee or charge of a similar nature, nor shall the Corporation be liable for the payment of any search or inspection fee in any office.

### **Exemption from Income and Corporation Tax**

54. Notwithstanding anything contained in the Income and Corporation Tax Act, the Corporation shall be wholly exempt from the payment of Income Tax.

### **Exemption from Import Duty, etc.**

55. (1) All material, equipment, vehicles and stores required to be purchased by the Corporation for the purpose of carrying out its functions under the provisions of this Act and which are imported by the Corporation, or by an agent acting on behalf of the Corporation for the said purpose, shall be exempt from the payment of any import duty and consumption tax.

(2) Provisions under this section by which the Corporation is exempt from the payment of import duty and consumption tax shall not apply to any goods or produce imported by the Corporation for resale.



### **General Power to make Regulations**

**56. (1)** The Corporation may, subject to the approval of the Governor acting on the advice of Cabinet, make regulations generally for the purpose of carrying out the provisions of this Act. *(Amended by Act 9 of 2011)*

**(2)** Regulations made under this section may provide, for any infringement thereof or failure to comply therewith, a penalty not exceeding \$120 on summary conviction.

**(3)** All regulations made under this section shall be laid before the Legislative Assembly as soon as may be after they are made, and if within a period of thirty days beginning with the day on which such regulations are so laid before it, the Legislative Assembly resolves that the regulations be annulled, they shall thenceforth be null and void, but without prejudice to the validity of anything previously done under them or to the making of new regulations. *(Amended by Act 9 of 2011)*

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**SPECIFIED PRODUCE (HOT PEPPERS) ORDER**

*(S.R.O. 20/1979 and Act 9 of 2011)*

**Commencement**

*[15 June 1979]*

**Short title**

1. This Order may be cited as the Specified Produce (Hot Peppers) Order.

**Interpretation**

2. In this Order—

“**Corporation**” means the Montserrat Development Finance and Marketing Corporation established under the Act.

**Specified produce**

3. Hot Peppers (*Capsicum* S.P.P. *Solanaceae*) are hereby declared to be “specified produce” within the meaning of section 38 of the Montserrat Development Finance and Marketing Corporation Act.

**Corporation sole importer**

4. Subject to such conditions as the Governor acting on the advice of Cabinet may from time to time determine, the Corporation shall be the sole importer and exporter of and dealer in Hot Peppers. *(Amended by Act 9 of 2011)*

**Licence by Corporation**

5. No person or organisation other than the Corporation shall import or export or otherwise deal in Hot Peppers except under licence granted by the Corporation.

**Saving**

6. Nothing in this Order applies to any produce of Montserrat sold for local consumption.



