[L. S.]

I ASSENT,

N. D. MATTHEWS,
Governor.
30th December, 1974.

MONTSERRAT

NO. 23 OF 1974

AN ORDINANCE TO PROVIDE FOR THE RAISING OF LOANS FROM THE CARIBBEAN DEVELOPMENT BANK BY THE GOVERNMENT AND BY CERTAIN STATUTORY AUTHORITIES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat, and by the authority of the same as follows:–

Short title.

1. This Ordinance may be cited as the Loans (Caribbean Development Bank) Ordinance, 1974.

Interpretation

2. In this Ordinance –

"Bank" means the Caribbean Development Bank;

"Government" means the Government of Montserrat;

"Minister" means the Minister responsible for Finance;

"Statutory authority" means any body established directly by statute and exercising powers vested in such body by law for a public purpose.

Power of the Government to borrow from the Caribbean Development Bank

3(1) Subject to the provisions of this Ordinance, the Government may with the prior approval of a secretary of State in such manner and on such terms and conditions as may be agreed between the Government and the Bank borrow from the Bank from time to time such sums as may be required by the Government.

(2) Any sums borrowed by the Government under the powers conferred by subsection (1) for the requirements of the Government shall be applied and are hereby appropriated to the purposes for which they were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied to such other purposes as may be approved by the Minister and the Bank.

(3) Any agreement between the Government and the Bank in respect of sums borrowed under the powers conferred by subsection (1) shall be made in the name of the Government and may be signed on behalf of the Government by the Governor or by any Minister authorized thereto in writing by the Governor.

(4) As soon as possible after any agreement has been concluded with the Bank in respect of any sum borrowed under the powers conferred by subsection (1) of this section the Minister shall cause a copy thereof to be laid before the Legislative Council.

(5) Nothing in the provisions of this section shall affect or derogate from any other power to borrow money possessed by the Government.

Loans etc. to be charged on Consolidated Fund.

4(1) There are hereby charged on and shall be payable out of the Consolidated Fund without further appropriation than this Ordinance –

(a) all amounts required for the payment of any sums borrowed under the powers conferred by section 3 and all interest and other charges on any such sums;

(b) all amounts required for repayment to the Treasury of the United Kingdom, with interest at such rate as the said Treasury may fix, of any sum issued in pursuance of the Colonial Loans Act, 1949 (as amended) of the United Kingdom on account of any guarantee under that Act of any sums borrowed under the powers conferred by section 3.

Power to issue instruments including bonds.

5(1). The Government may issue such bonds, promissory notes or other instruments on such terms and conditions as may be necessary for the purpose of giving effect to the terms of any agreement which may be entered into by it with the Bank in respect of any borrowing authorized by subsection (1) of section 3.

(2) Any such bond, promissory note or other instrument may be signed on behalf of the Government by the

Minister or by any other person authorized thereto in writing by the Minister.

Borrowing by statutory authority from the Bank.

6(1) Subject to the provisions of this Ordinance, a statutory authority may in such manner and on such terms and subject to such conditions as may be agreed between the statutory authority and the Bank and with the approval in writing first obtained of the Minister borrow from the Bank from time to time such sums as may be required by the Statutory authority.

(2) Notwithstanding anything to the contrary any agreement between the statutory authority and the Bank shall be valid and binding on the authority if signed on behalf of the authority by a person authorized thereto in writing under the seal of the statutory authority.

(3) The power to borrow conferred by this section on a statutory authority shall be in addition to any power to borrow conferred on such authority by or under any other Act or Ordinance.

(4) Notwithstanding anything to the contrary, a statutory authority may charge or mortgage all or any of its property (movable or immovable), undertaking or revenue to secure any sum owing to the Bank in respect of sums borrowed by it under the powers conferred by subsection (1) of this section.

(5) Notwithstanding anything to the contrary, a statutory authority may issue such bonds, promissory notes and other instruments on such terms and conditions as may be necessary for the purpose of giving effect to any agreement which may be entered into by it with the Bank in respect of any borrowing authorized by subsection (1) of this section.

Application of loan moneys by statutory authority.

7. Any sums borrowed by a statutory authority under the powers conferred by subsection (1) of section 6 shall be applied by the authority to the purposes for which the sums were borrowed as specified in any agreement concluded with the Bank in respect of the sums so borrowed:

Provided that where any part of such sum cannot be applied to the purposes aforesaid such part may be applied by the statutory authority to such other purposes as may be approved by the Minister and the Bank.

Power of Government to guarantee loans by Bank to statutory authorities.

8(1) The Government may with the prior approval of a Secretary of State in such manner and on such terms and subject to such conditions as may be agreed between it and the Bank.

(a) guarantee the discharge by a statutory authority of its obligations under any agreement which may be entered into by the statutory authority with the Bank in respect of any borrowing authorized by subsection (1) of section 6 or under any bond, promissory note or other instrument issued pursuant to any such agreement; and

(b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) Any guarantee or undertaking givin under this section shall be given in writing in the name of the Government and it and any indorsement of any bond, promissory note or other instrument of any guarantee given under this section may be signed on behalf of the Government by the Minister or by any person authorized thereto in writing by the Minister.

(3) As soon as possible after a guarantee or undertaking is given under this section, the Minister shall cause to be laid before the Legislative Council a statement of the guarantee or undertaking.

Power of Government to guarantee loans by Bank to Companies.

9(1) Subject to subsection (5), the Government may with the prior approval of a Secretary of State in such manner and on such terms and subject to such conditions as may be agreed by it and the Bank, notwithstanding anything to the contrary –

(a) guarantee the discharge by a company of the company's obligations under any agreement for borrowing from the Bank which may be entered into by the company with the Bank or under any bond, promissory note or other instrument issued pursuant to any such agreement; and

(b) undertake such other obligations as may be agreed between the Government and the Bank in relation to or pursuant to any such agreement, bond, promissory note or instrument.

(2) In connection with a guarantee or undertaking

given under subsection (1) in respect of any borrowing by a company, the company shall pay to the Government as a commission such sum not exceeding 10 per centum of the amount borrowed as the Minister may determine and the Government may in addition either –

(a) require and take from the company such securities as the Minister thinks fit for securing the repayment to the Government of any sums which the Government may at any time be called upon to pay pursuant to this section; or

(b) enter into such other arrangements with the company as the Minister thinks fit for securing the repayment aforesaid.

(3) Any guarantee or undertaking given by the Government under subsection (1) shall be given in writing in the name of the Government and it and any endorsement on any bond, promissory note or other instrument issued pursuant to the agreement to which the guarantee or undertaking relates may be signed on behalf of the Government by the Minister or by any person authorized thereto in writing by the Minister.

(4) As soon as possible after a guarantee or undertaking is given subsection (1), the Minister shall lay before the Legislative Council a statement of the guarantee or undertaking.

(5) A guarantee or undertaking shall not be given at any time under subsection (1) where –

(a) the principal amount outstanding is at that time not less than the prescribed sum; or

(b) if the guarantee or undertaking were given, the the principal amount outstanding would at that time exceed the prescribed sum.

In this subsection –

"principal amount outstanding" means so much of the total of the principal amounts of the borrowings guaranteed by the Government pursuant to subsection (1) as has not been repaid;

"prescribed sum" means such sum as the Legislative Council may from time to time, by resolution, approve.

(6) Where any agreement referred to in subsection (1) relates to a borrowing in a currency other than East Caribbean Currency then for the purposes of subsection (5) –

(a) the amount of such borrowing shall be converted into East Caribbean Currency at a rate of exchange determined by the Minister to be, as near as is conveniently possible, equivalent to the average rate of exchange in respect of that currency for the month prior to the month in which the guarantee or undertaking in respect of that borrowing is given; and

(b) the principal amount outstanding in respect thereof at any time shall be converted into East Caribbean Currency at the rate of exchange obtaining at that time in respect of that currency.

(7) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by subsection (1), that sum shall be charged on the Consolidated Fund of Montserrat.

(8) If any sum is paid out of the Consolidated Fund pursuant to subsection (7), the Minister shall, as soon as possible after the end of each financial year beginning with that in which the sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the company concerned, lay before the Legislative Council a statement relating thereto.

Restriction on borrowing powers of statutory authority so far as guarantee outstanding.

10. So long as the Government shall continue liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 8 in respect of any borrowing by a statutory authority the statutory authority shall not, except with the consent of the Minister, exercise any other power to borrow possessed by it.

Powers exercisable by Minister in event or prospect of default by statutory authority.

11.(1) Where it is made to appear to the Minister that there is reasonable cause to believe –

(a) that a statutory authority is likely to fail or to be unable to discharge any of its obligations under any agreement concluded by it with the Bank or under any bond, promissory

note or other instrument issued pursuant to any such agreement; and

(b) that the Government is or may become liable under any guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 8 in respect of such obligation,

the Minister may by order give or authorize any other person to give such directions to the statutory authority as he or such other person may from time to time think necessary or desirable to ensure that satisfactory arrangements are made by the authority to enable it duly to discharge its obligations under such agreement, bond, promissory note or instrument or under this Ordinance.

(2) the statutory authority shall notwithstanding any provision contained in any other law comply with any directions given by or under any such order.

(3) Nothing in the provisions of this section shall affect or derogate from any other power conferred by law on the Minister or any public officer in respect of the statutory authority.

(4) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by section 8, that sum shall be charged on the Consolidated Fund of Montserrat and the Minister shall direct payment to issue out of the Consolidated Fund accordingly.

Statutory authority to repay to Government sums paid under guarantee.

12.(1) If any sum is paid out of the Consoldiated Fund in respect of any liability incurred by the Government under a guarantee or other undertaking given in exercise of the powers conferred by subsection (1) of section 8 in respect of any borrowing by a statutory authority the statutory authority shall repay such sum (together with interest thereon at the same rate as that payable on the loan under the agreement by the statutory authority with the Bank) to the Consolidated Fund in such manner and at such time or by such instalments as the Minister may direct.

(2) If any sum is so paid out of the Consolidated Fund the Minister shall as soon as possible after the end of each financial year beginning with that in which the

sum was paid and ending with that in which all liability in respect thereof and any interest payable thereon is finally discharged by the statutory authority concerned, cause to be laid before the Legislative Council a statement relating thereto.

Arbitration.

13. If any dispute between the Bank on the one part and the Government or a statutory authority or both on the other part arises under any agreement concluded or guarantee or undertaking given in exercise of the powers conferred by this Ordinance or under any bond, promissory note or other instrument issued pursuant to any such agreement it shall be determined by arbitration in the manner agreed between the parties.

Implementation of obligations under the agreement.

14.(1) Notwithstanding anything to the contrary, any agreement concluded with the Bank in respect of any borrowing authorized by subsection (1) of section 3 or subsection (1) of section 6 and any bond, promissory note or other instrument issued pursuant to any such agreement and any guarantee or undertaking given in respect of any such agreement, bond, promsisory note or instrument by the Government or a statutory authority shall be valid and enforceable and have full force and effect in Montserrat in accordance with their respective terms.

(2) Neither the Government nor any agency thereof nor any statutory authority shall, except as shall be otherwise agreed between the Minister and the Bank, create any lien on any of its assets as security for any external debt unless it is expressly provided that the lien will ipso facto equally and rateably secure the payment of the principal of and interest and other charges on any loan made by or any bonds, promissory notes or instruments issued pursuant to any loan made by the Bank to the Government or to a statutory authority.

(3) In subsection (2) of this section –

"lien" includes mortgages, pledges, charges, privileges and priorities of any kind;

"external debt" means any debt payable in any medium other than currency which at the time in question is legal tender in Montserrat whether such debt is payable absolutely or at the option of the creditor in such other medium.

(4) Without prejudice to the generality of the provisions of subsection (1) –

(a) the Governor in Council may provide, by order published in the Gazette, that any tax, duty or fee payable under the Income Tax Ordinance or the Stamp Act or the Title by Registration Act or any other enactment shall be remitted where such remission is, in the opinion of the Governor in Council, necessary to give full effect to any agreement, bond, promissory note, instrument, guarantee or undertaking under this Ordinance; No. 19 of 1967 Cap. 238 Cap. 257

(b) nothing in the provisions of the Exchange Control Ordinance shall apply to any transaction required to effect payment in any currency of any sum in accordance with the terms of any such agreement, bond, promissory note, instrument, guarantee or undertaking. Cap. 115

N. D. MATTHEWS
President.

Passed the Legislative Council this 20th day of December, 1974.

D. H. BRAMBLE,
Clerk of the Council.

THE MONTSERRAT PRINTERY Price 50¢