

## **COMMONWEALTH OF DOMINICA**

### **ARRANGEMENT OF SECTIONS**

#### **SECTION**

1. Short title.
2. Interpretation.
3. Principal objects of the Act.
4. Establishment, constitution etc of Committee.
5. Minister to appoint Manager.
6. Vesting of powers of Corporation in Manager.
7. Manager to have powers of a company liquidator.
8. Statement of affairs of the Corporation.
9. Manager to establish Company.
10. Manager to keep books and accounts.
11. Business done by the Manager to be ratified.
12. Manager to be trustee.
13. Establishment, constitution etc of Group.
14. Foundations.
15. Conservatory measures to be taken.
16. Reports of the Manager.
17. Remuneration.
18. Liabilities.
19. Duration.
20. Corporation Act amended.
21. Commencement.

#### **SCHEDULE**

**2002   DOMINICA BANANA MARKETING   ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

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**COMMONWEALTH OF DOMINICA**

ACT No. 18 of 2002

I assent



VERNON L. SHAW  
President

30<sup>th</sup> September, 2002

**AN ACT TO PROVIDE FOR THE DIVESTITURE  
AND RESTRUCTURING OF THE ASSETS  
AND LIABILITIES OF THE DOMINICA  
BANANA MARKETING CORPORATION AND  
FOR MATTERS RELATED THERETO.**

(Gazetted 3<sup>rd</sup> October, 2002).

BE IT ENACTED by the Parliament of the Commonwealth of  
Dominica as follows:

1. This Act may be cited as the -

Short title.

**DOMINICA BANANA MARKETING  
CORPORATION (DIVESTITURE AND  
RESTRUCTURING) ACT 2002.**

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

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Interpretation.

**2. (1) In this Act -**

“Banana Working Group” means the Committee set up by Cabinet to provide input to the Banana Study commissioned by the Minister;

“Chairman” means the Chairman of the Committee;

“Committee” means the Liquidation Committee established under section 4 of this Act;

“Company” means the Banana Holding Company Limited to be established by the Manager acting pursuant to section 9 of this Act;

“Contributories” means persons appearing on the books of the Corporation to be its contributories and “Contributory” shall be construed accordingly;

“Corporation” means the Dominica Banana Marketing Corporation established under the Corporation Act;

Ch.58.02.

“Corporation Act” means the Dominica Banana Marketing Corporation Act;

“Creditors” means persons appearing from the books of the Corporation to be its creditors and “Creditor” shall be construed accordingly;

“enactment” means an Act or Regulation or any provision of an Act or Regulation;

“foundations” includes, companies, organisations and institutions;

“Government” means the Government of Dominica;

“Group” means the Creditors Steering Group set up pursuant to section 13 of this Act;

“Manager” means the Special Manager appointed under section 5 of this Act;

“Minister” means the Minister responsible for Agriculture;

“WIBDECO” means the Windward Islands Banana Development and Exporting Company incorporated under “the Commercial Code (Companies)” of the State of St. Lucia, Chapter 244 of the St. Lucia Revised Ordinances 1959 - Certificate of Incorporation No.47 of 1994;

(2) A reference in any enactment, agreement or document to the Corporation, its officers or any of its organs is to be read and construed as a reference to the Special Manager appointed under section 5 of this Act.

**3.** The principal objects of this Act are to ensure -

Principal objects of the Act.

- (a) the winding up of the Corporation with all possible speed; and
- (b) the orderly divestiture of the business, assets and liabilities of the Corporation.

**4.** (1) There is hereby established a body called the Liquidation Committee-

Establishment, constitution etc. of Committee.

- (a) to assist the Manager in the exercise of the powers vested in him under the provisions of this Act; and
- (b) to supervise the Manager in the performance of his functions under this Act.

(2) The Committee may at all times in giving not less than 48 hours notice in writing to the Manager examine and inspect the books and financial records respecting the winding-up of the Corporation kept by the Manager.

(3) The provisions of the Schedule to this Act shall have effect with respect to the constitution and proceedings of the Committee.

Schedule.

**5.** (1) The Minister shall appoint a manager to be called the Special Manager who shall, subject to the provisions of this Act and with all possible speed but having regard to the interests of the Creditors and Contributories, give effect to the objects of this Act.

Minister to appoint Manager.

(2) The Manager shall be an individual or professional having the qualifications and general business experience required to successfully give effect to the objects of this Act.

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

---

(3) The Manager may, after consultation with the Committee, engage a solicitor or accountant or such other professionally qualified person as the case may be to assist him in the performance of his functions on such terms and conditions as the Minister may approve.

Vesting of powers of  
Corporation in  
Manager.

**6. (1) On the day the Manager is appointed -**

- (a) the powers and responsibilities which immediately before such day vested in the Board and the officers of the Corporation shall vest in the Manager;
- (b) all property of whatsoever description which immediately before such day belonged to the Corporation or held by trustees on its behalf shall vest in the Manager;
- (c) all rights, debts and liabilities which immediately before such day vested in, imposed or enforceable against the Corporation shall be transferred to the Manager and shall be discharged and satisfied by the Manager out of the property which would but for the operation of this Act have belonged to the Corporation or out of such resources of the Company as the case may be and the Corporation and each of its officers shall be discharged therefrom.

(2) On the day the Manager is appointed, the Manager may with the sanction of the Committee-

- (a) take into custody or under his control all the property of whatsoever description belonging to the Corporation or held by trustees on its behalf;
- (b) direct, bring or defend in his official name any action or other legal proceedings which relates to any property referred to in paragraph (a) or which is necessary to bring or defend for the

purpose of effectively winding up the Corporation or recovering its assets;

- (c) take such actions and give such undertakings as if he were duly authorised by the members at a General Meeting, or a special meeting, of the Corporation;
- (d) carry on, through the Company such business or part of the business of the Corporation as he considers necessary for the winding-up of the Corporation;
- (e) make any payment that is necessary or incidental to the performance of his functions.
- (f) do all such other things as may be necessary for winding up the Corporation and distributing its assets.
- (g) take such measures as he considers essential to foster the interests of the Banana Industry.

**7.** In addition to the powers mentioned in this Act and in particular section 6, the Manager shall have such powers as if he were the liquidator referred to in section 398 subsections (1) and (2) of the Companies Act 1994 as far as may be necessary to give effect to the objects of this Act.

Manager to have powers of a company liquidator.

**8. (1)** Within twenty-one days of the appointment of the Manager, or within such extended time as the Minister may for special reasons allow, the Manager shall make out and submit or cause to be made out and submitted a statement as to the affairs of the Corporation in such form as the Committee may advise, verified by affidavit and showing the particulars of the assets and liabilities, the names, residences and occupation of the Creditors, the securities held by them respectively, the date when the securities were respectively given and such further information as the Committee may advise.

Statement of affairs of the Corporation

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

---

(2) The statement may be made out, submitted and verified by persons who are or have been within the year immediately preceding the appointment of the Manager officers of the Corporation.

(3) A person who may be asked to furnish the statement to the Manager shall on request give such information concerning the affairs of the Corporation as the Manager may reasonably require and shall attend on the Manager when required to do so.

(4) A person making or concerned in making the statement and affidavit required pursuant to this section shall be allowed and shall be paid by the Manager out of the assets that would but for the operation of this Act have belonged to the Corporation such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Manager considers reasonable subject to review by the Committee.

(5) A person who, without reasonable excuse makes default in complying with the requirements of this section commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(6) Any person stating himself in writing to the Chairman to be a Creditor or a Contributory is entitled by himself or his agent at all reasonable times on payment of a fee of fifty dollars to inspect the statement submitted in pursuance of section 8, and to copy thereof or extract therefrom.

(7) A person untruthfully so stating himself to be a Creditor or a Contributory commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment to a term of six months.

Manager to establish  
Company.

**9.** (1) Subject to the provisions of this section, the Manager shall immediately upon his appointment proceed to establish a company with limited liability to be called the Banana Holding Company Limited and shall ensure its incorporation under the Companies Act 1994.



(2) The objects of the Company shall be to -

- (a) hold such property vested in the Manager under this Act, pending disposal, as are for the time being not directly required for the activities of the Corporation;
- (b) hold the financial participation of the Corporation in WIBDECO;
- (c) hold all other assets, tangible or intangible, including without limitation trade marks, know-how, software and other intellectual and industrial property rights; and
- (d) generally take such measures and undertake such actions as shall be necessary to enhance the development of the Banana Industry and contribute to the economic and social development of the agricultural sector in Dominica.

(3) The Company may issue such categories of Capital, Loan Stock, Debentures or such other financial instruments with their respective rights and privileges so as to ensure a stable financial base for successful equitable execution of the divestiture and restructuring activities under this Act.

(4) Without limiting the generality of subsection (3), the Company may issue -

- (a) Founders' Shares reserved for the Government or such state controlled entities as shall have contributed assets at an appraised value in the course of the divestiture and restructuring activities under this Act;
- (b) Redeemable Preference Shares to be issued in exchange for claims, reduction or deferrals of claims, or abandonment or deferrals of rights to dispositions of assets in the Corporation;

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

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- (c) Ordinary Shares to be issued in exchange for cash, securities or the appraised value in kind;
- (d) Ordinary and Convertible Loan Stocks to be issued in exchange for conversion of liabilities and claims against the Corporation transferred to the Manager; and
- (e) Debentures, whether secured or unsecured, to be issued in exchange for cash or the extinction in whole or in part of claims against the Corporation transferred to the Manager.

(5) The Company shall have a structure of share capital and loan stock reflecting the net assets held by and vested in it under the provisions of this Act together with the claims, preferential or otherwise, of such Creditors who may agree to participate in the divestiture and restructuring activities under this Act.

(6) In addition to the property, assets and capital structure of the Company set out in this section, the resources of the Company shall consist of -

- (a) such sums as may be appropriated by Parliament for payment to the Creditors and for payment of the costs, charges and expenses incurred in the winding up of the Corporation;
- (b) such sums as may be provided to the Company or the Government by foreign states, international organisations, multilateral or bilateral lending agencies, private individuals, foundations, corporations or other entities to further the objects of this Act.
- (c) proceeds of sales conducted pursuant to this Act and such other sums or property which may become payable to or vested in the Manager in respect of any matter incidental to his powers and duties under this Act.

(7) For the avoidance of doubt, the Company shall be -

- (a) the main vehicle for the divestiture of the assets and restructuring of the Corporation; and
- (b) managed and governed in accordance with the provisions of the Companies Act 1994.

**10.** (1) The Manager shall keep proper books of account and minute books respecting the winding-up of the Corporation and any Creditor or Contributory may, subject to the control of the Committee, inspect such books.

Manager to keep  
books and accounts.

(2) The books referred to in subsection (1) shall include -

- (a) Administrative records in which the Manager shall keep all minute of proceedings and resolutions of any meeting of the Creditors and a correct record of his administration of the affairs of the Corporation;
- (b) Financial records in which he must enter particulars of receipts and payments.

(3) The Manager when required shall give the Committee such information and such access and facilities for inspecting and examining the books and documents respecting the winding-up of the Corporation and generally such aid as may be requisite for enabling the Committee to perform its functions under this Act.

(4) If the members of the Committee are not satisfied with the contents of the financial records they may so inform the Minister giving the reasons for their dissatisfaction and request the Minister to cause any relevant account to be audited.

(5) If the Manager fails to keep proper books as required by this section or refuses to allow any inspection or examination permitted thereby he commits an offence and is liable on summary conviction to a fine of one thousand dollars.

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

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Business done by the  
Manager to be  
ratified.

**11.** (1) In the period between the date of the formation of the Company and the date of the issuance of its Certificate of Incorporation, any business relating to the Company shall be carried on by the Manager.

(2) Where any thing has been commenced or done by or under the authority of the Board established under the Corporation Act before the transfer of property, duties and powers under this Act, that thing may be continued and completed by or under the authority of the duties and powers so transferred.

(3) Where the business referred to in subsection (1) is made in consultation with the Committee, the Company shall immediately after incorporation ratify such business as if that business were negotiated directly by it.

Manager to be  
trustee.

**12.** In the period subsequent to the date of incorporation of the Company but before the designation or appointment of the officers of the Company, the Manager shall be empowered to act on behalf of such officers as their trustee or agent in all matters related to the furtherance of the objects of the Company.

Establishment,  
constitution etc of  
Group.

**13.** (1) Subject to the provisions of this section the Manager shall by Notice published in the *Gazette* convene and chair general meetings of the Creditors at such time and on such days as he may determine.

(2) Within twenty-one days of his appointment, the Manager shall by notice in writing to the Creditors convene a general meeting for the purpose of constituting a body to be called the Creditors' Steering Group.

(3) Each class of Creditors as defined by the Companies Act 1994 shall be entitled to nominate one representative each to form the Group and the Group shall comprise such representatives nominated by each class of Creditors.

(4) The members of the Group shall elect from among themselves a special chairperson who shall be responsible for the nomination of two Creditors as members of the Committee.

(5) The special chairperson shall convene meetings of the Group at such times and on such days as he may determine and he and two other members of the Group shall form a quorum.

(6) Subject to the provisions of this section, the Group shall have the power to regulate its own proceeding.

(7) The Group shall present to the Manager the views of the Creditors and act in relation to him in such manner as may be agreed from time to time.

(8) When the Manager is satisfied that the winding up of the Corporation is for practical purposes complete, he shall by notice in writing convene a final general meeting of the Creditors for the purpose of laying before that meeting the accounts and giving any necessary explanation thereof.

**14.** Notwithstanding anything contained in this Act or any other written law, the Manager shall use his best endeavours to assist in the establishment and incorporation of such foundations having any of the following objects - Foundations.

- (a) to act as a commercial interface on behalf of banana growers in Dominica as are entrusted or may be entrusted with the commercialization of export quality bananas under a regulated banana grower certification programme;
- (b) to facilitate the procurement on a competitive commercial basis of such inputs, supplies and services as shall be needed by banana growers for efficient and economic production of export quality bananas;
- (c) to provide support for all aspects of agricultural and other small business management and development and vocational training including but not limited to practical and theoretical training.

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

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Conservatory  
measures to be  
taken.

**15.** In the exercise of his powers to give effect to the objects of this Act, the Manager shall -

- (a) dispose of the property and assets vested in him at fairly conducted sales whether by public auction or private contract.
- (b) take all such conservatory measures as he considers necessary to preserve the estate or business of the Corporation or the interests of the Creditors and Contributories;

Reports of the  
Manager.

**16.** (1) Within four months of his appointment, or within such extended time as the Minister may for special reasons allow, the Manager shall prepare and submit a report respecting the Corporation (referred to as the Preliminary Report) to the Minister, the Committee and the Group.

(2) The contents of the Preliminary Report shall include -

- (a) the events leading to the appointment of the Manager;
- (b) the disposal or proposed disposal of the property and assets vested in the Manager;
- (c) the disposal or proposed disposal of property taken into custody by the Manager or under his control;
- (d) the principal and interests payable to the Creditors;
- (e) the amount (if any) likely to be available for the payment of the Creditors.

(3) Subject to subsection (4), the Manager shall prepare a report of the activities in respect of the winding up (referred to as the Winding-up Report) showing how the winding up has been conducted and the property of the Corporation has been disposed of and setting out the accounts of the winding up.

(4) The Winding-up Report shall be -

- (a) prepared in such form as the Committee may advise;
- (b) submitted, within fourteen days of the holding of the final general meeting of the Creditors, to the Committee and the Minister.

(5) The Minister shall as soon as possible after receiving the Winding-up Report lay a copy thereof before the House of Assembly.

**17.** The remuneration, salary, allowances and subject to the provisions of this Act the other terms and conditions of service of the Manager shall be determined by Order made by the Minister.

Remuneration.

**18.** The Manager and any person engaged or employed to assist him shall not be personally liable for any act or default of his or the person done or omitted to be done in good faith in the course of winding up of the Corporation.

Liabilities.

**19.** (1) This Act shall remain in force until the expiry of the period of twelve months beginning with its coming into force and it shall then expire unless continued in force by an Order made under subsection (2).

Duration.

(2) The Minister may by Order subject to affirmative resolution of the House published in the *Gazette* provide that all or any of the provisions of this Act shall continue in force for a period not exceeding six months from the coming into force of the Order.

**20.** The Corporation Act and the subsidiary legislation made thereunder in respect of the duties, powers, management, Board, funds and other property of the Corporation are to the extent to which they are affected by this Act amended to give effect to this Act.

Corporation Act amended.

**21.** This Act shall be deemed to have come into force on the 1<sup>st</sup> day of August 2002.

Commencement.

**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

---

(Section 4).

**SCHEDULE**

Constitution of the  
Committee.

**1.** (1) The Committee shall comprise seven members appointed by the Minister as follows:

- (a) one member representing the Ministry of Agriculture on the nomination of the Minister who shall be the Chairman;
- (b) one member representing the Attorney General on the nomination of the Attorney General;
- (c) one member representing the Ministry of Finance on the nomination of the Minister for Finance;
- (d) two members representing banana growers one on the nomination of the Banana Working Group and one on the nomination of the Dominica Banana Producers Limited; and
- (e) two members from the Creditors, one of whom shall be from the banking sector, on the nomination of the chairperson of the Group.

(2) Every member of the Committee shall -

- (a) be appointed by Instrument in writing published in the *Gazette*;
- (b) be paid the remuneration and allowances specified by the Minister.

Duration and  
termination of  
membership.

**2.** (1) A member of the Committee may hold office for such term as may be required for the winding-up of the Corporation.

(2) The Minister may at anytime after consultation with the nominating authority revoke the appointment of a member of the Committee appointed by virtue of clause 1 (1) (a), (b), (c) and (d) if he thinks it is expedient to do so.

(3) A member of the Committee other than the Chairman may resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman; and from the date of the receipt by the Minister of the instrument the member shall cease to be a member of the Committee.



**2002 DOMINICA BANANA MARKETING ACT 18**  
**CORPORATION (DIVESTITURE AND**  
**RESTRUCTURING)**

---

**279**

(4) The Chairman may at any time resign his office by instrument in writing addressed to the Minister; and the resignation shall take effect as from the date of acceptance by the Minister of the resignation.

**3.** The Chairman and four other members of the Committee shall form a quorum. Quorum.

**4.** Subject to the provisions of this Act, the Committee shall have the power to regulate its own proceedings. Regulate own procedure.

Passed in the House of Assembly this 11<sup>th</sup> day of September, 2002.

ALEX F. PHILLIP (MRS.)  
*Clerk of the House of Assembly*