



# Commonwealth Development Corporation Act 1999

## 1999 CHAPTER 20

*Registration under the Companies Act 1985*

### **1 Initial steps by Secretary of State**

- (1) The Secretary of State may determine a day for the filing of documents by the Commonwealth Development Corporation.
- (2) Before the filing day the Secretary of State shall write to the Corporation—
  - (a) giving notice of the filing day,
  - (b) nominating persons to be the Corporation's directors on registration, and
  - (c) nominating a person to be its secretary on registration.
- (3) Before the filing day the Secretary of State shall make an order—
  - (a) specifying the Corporation's accounting reference date after registration, and
  - (b) providing for the allotment of shares on registration.
- (4) The Secretary of State shall consult the Corporation before—
  - (a) determining the filing day,
  - (b) making a nomination under subsection (2)(b) or (c), or
  - (c) making an order under subsection (3).
- (5) An order under subsection (3)(b) shall—
  - (a) nominate persons to whom shares are to be allotted (who may include the Secretary of State), and
  - (b) in the case of each person nominated, specify the number and nominal value of the shares to be allotted.
- (6) The aggregate nominal value of the shares to be allotted by virtue of an order under subsection (3)(b) shall not be less than the authorised minimum.
- (7) In this Act—

---

*Status: This is the original version (as it was originally enacted).*

---

“the Corporation” means the Commonwealth Development Corporation,  
“the filing day” means a day determined under subsection (1), and  
“registration” means registration of the Corporation’s memorandum and articles of association under the Companies Act 1985 by virtue of section 4 of this Act.

## **2 Filing of documents**

- (1) On the filing day the Corporation shall deliver the documents listed in Schedule 1 to the registrar of companies in England and Wales.
- (2) The memorandum and articles of association required by paragraphs 1 and 2 of Schedule 1 must be accompanied by a certificate of the Secretary of State that he approves them.
- (3) If the Corporation is unable to make the statement required by paragraph 6 of Schedule 1 on the filing day, the Corporation’s duty under subsection (1) shall lapse.
- (4) If the Corporation’s duty under subsection (1)—
  - (a) lapses under subsection (3), or
  - (b) is not discharged on the filing day,the Secretary of State may make a new determination under section 1(1).
- (5) For the purposes of Schedule 1, Part I of the Companies Act 1985 shall have effect with the modifications specified in Part I of Schedule 2 to this Act.

## **3 Appointing day for registration**

- (1) If the registrar receives documents from the Corporation purporting to discharge the duty under section 2(1) he shall as soon as possible notify the Secretary of State of that fact and state whether he is satisfied that the Corporation has discharged that duty.
- (2) The registrar shall send a copy of a statement under subsection (1) to the Corporation.
- (3) On receiving notice that the registrar is satisfied that the Corporation has discharged the duty under section 2(1) the Secretary of State shall make an order by statutory instrument appointing a day for registration.
- (4) On receiving notice that the registrar is not satisfied that the Corporation has discharged the duty under section 2(1) the Secretary of State may make a new determination under section 1(1).

## **4 Registration**

- (1) On and after the day appointed under section 3(3), section 12(2) of the Companies Act 1985 (requirement to retain and register memorandum and articles) shall apply in relation to the memorandum and articles of association delivered under section 2 of this Act as if—
  - (a) they had been delivered under section 10 of the Companies Act 1985 (documents to be delivered to the registrar), and
  - (b) the requirements of that Act in respect of registration and of matters precedent and incidental to it had been complied with.

- (2) The registrar of companies shall carry out his duty under section 12 of that Act to register the Corporation's memorandum and articles of association on the day appointed under section 3(3).
- (3) On registration of the Corporation's memorandum and articles of association the registrar shall give a certificate, signed by him or authenticated by his official seal—
  - (a) that the Corporation remains incorporated,
  - (b) that its memorandum and articles of association are registered under the Companies Act 1985, and
  - (c) that it is a public company limited by shares.
- (4) The registrar shall inform the Corporation as soon as possible that the certificate has been given.
- (5) The certificate is conclusive evidence—
  - (a) that the requirements of this Act and of the Companies Act 1985 in respect of registration and of matters precedent and incidental to it have been complied with,
  - (b) that the Corporation is a company authorised to be registered under that Act and is duly registered under that Act at and after the time of registration mentioned in the certificate, and
  - (c) that on and after registration the Corporation is a public company limited by shares.

## **5 Effect of registration**

- (1) In its application to the Corporation on and after registration, the Companies Act 1985 and other legislation relating to companies shall have effect with the modifications set out in Part II of Schedule 2 to this Act.
- (2) Subject to section 7 (and to section 8(2)(a), (4) and (5)) the Commonwealth Development Corporation Act 1978 shall cease to have effect on registration.
- (3) On and after registration the Corporation shall be known by the name contained in its memorandum of association (subject to section 28 of the Companies Act 1985).
- (4) The persons named in the statement required by paragraph 3 of Schedule 1 shall be deemed to have been appointed as the first directors and secretary of the Corporation on registration.

## **6 Initial allotment of shares**

- (1) Each person nominated in the order under section 1(3)(b) shall on registration acquire the unconditional right to be included in the Corporation's register of members in respect of the shares which the order specifies for allotment to him.
- (2) The shares—
  - (a) shall be issued as fully paid,
  - (b) shall be treated for the purposes of the Companies Act 1985 as having been paid up by virtue of payment of their nominal value in cash, and
  - (c) shall be treated for the purposes of the Corporation Tax Acts as if they had been issued wholly in consideration of a subscription of an amount equal to their nominal value.

- (3) Section 88 of the Companies Act 1985 (return as to allotments) shall not apply to an allotment by virtue of this section.

## **7 Repeal of 1978 Act: savings, &c**

- (1) Section 5(2) shall not apply to sections 1(1) (continued existence of Corporation) or 19 (short title, &c.) of the Commonwealth Development Corporation Act 1978; but this subsection is—
- (a) subject to section 5(3), and
  - (b) without prejudice to any provision under or by virtue of which the Corporation may be dissolved.
- (2) Section 6(1) and (2) of the 1978 Act (annual report) shall continue to have effect in relation to the last financial year which ends before registration.
- (3) Any restriction which applies by virtue of section 14 of the 1978 Act (reserve fund) to the fund mentioned in that section shall cease to have effect on registration.
- (4) Section 16 of the 1978 Act (accounts) shall continue to have effect in relation to the last financial year which ends before registration.

### *Financial assistance by Government*

## **8 Old loans, advances and guarantees**

- (1) This section applies to—
- (a) loans made under section 9(1A) of the Commonwealth Development Corporation Act 1978 (borrowing powers of Corporation),
  - (b) advances made under section 10 of that Act (advances by Secretary of State), and
  - (c) guarantees given under section 11 of that Act (guarantees by Treasury and Secretary of State).
- (2) Any determination or direction made before registration by the Secretary of State under section 9(1B) or 12 of the 1978 Act (payments in respect of loans, advances and guarantees)—
- (a) shall continue to have effect after registration notwithstanding section 5(2) of this Act, and
  - (b) in the case of directions under section 12, may after registration be varied by the Secretary of State with the consent of the Corporation.
- (3) The Secretary of State shall lay before each House of Parliament a statement of any payment required by virtue of subsection (2) which is not made as required.
- (4) Notwithstanding section 5(2), section 9(3A) of the 1978 Act (loans: accounts) shall continue to have effect in relation to a financial year during which any determination under section 9(1B) continues to have effect.
- (5) Section 5(2) shall not prevent any guarantee given under section 11(1) or (1A) of the 1978 Act from continuing to have effect after registration; and section 11(3), (3A) and (4) of the 1978 Act shall continue to have effect in relation to a guarantee given under section 11(1) or (1A).

## **9 New loans**

- (1) The Secretary of State may make loans of money provided under subsection (2) to—
  - (a) the Corporation, or
  - (b) a company associated with the Corporation,at any time while the Corporation is wholly owned by the Crown.
- (2) The Treasury may issue to the Secretary of State out of the National Loans Fund sums required for loans under this section.
- (3) Loans under this section shall be made on terms which require repayment to the Secretary of State—
  - (a) at such times,
  - (b) by such methods, and
  - (c) with interest paid at such rates and at such times,as the Secretary of State shall determine from time to time.
- (4) Sums received by the Secretary of State by virtue of subsection (3) shall be paid into the National Loans Fund.

## **10 New guarantees**

- (1) The Treasury may guarantee the discharge of any financial obligation incurred by the Corporation (before or after registration).
- (2) Subsection (1) does not apply to obligations in connection with sums borrowed from—
  - (a) the Secretary of State, or
  - (b) a company which is associated with the Corporation.
- (3) The Secretary of State may guarantee the discharge of any financial obligation incurred (before or after registration) by a company which is associated with the Corporation.
- (4) Subsection (3) does not apply to obligations in connection with sums borrowed from—
  - (a) the Corporation, or
  - (b) a company which is associated with the Corporation.
- (5) A guarantee under subsection (1) or (3) may be given only while the Corporation is wholly owned by the Crown (although it may continue to have effect when the Corporation is not wholly owned by the Crown).
- (6) A guarantee under subsection (1) or (3) may be given on such terms and in such manner as the Treasury or the Secretary of State may determine.
- (7) A guarantee under subsection (1) or (3) may not be given unless the Treasury or the Secretary of State has entered into arrangements under which the Corporation or an associated company will be liable to make payments (including payments of interest) in respect of sums issued in fulfilment of the guarantee.

## **11 Guarantees: supplemental**

- (1) Sums required by the Treasury for fulfilling a guarantee under section 10 shall be charged on and issued out of the Consolidated Fund.

- (2) Expenditure of the Secretary of State in fulfilling a guarantee under section 10 shall be paid out of money provided by Parliament.
- (3) Sums received by virtue of section 10(7) shall be paid into the Consolidated Fund.
- (4) As soon as practicable after giving a guarantee under section 10 the Treasury shall lay before each House of Parliament a statement of the guarantee.
- (5) If the Treasury issues a sum in fulfilment of a guarantee under section 10—
  - (a) it shall lay a statement relating to the sum before each House of Parliament as soon as practicable after the end of the financial year in which the sum was issued, and
  - (b) it shall lay a statement before each House of Parliament as soon as practicable after the end of any subsequent financial year in which there is an outstanding liability in relation to the obligation which is the subject of the guarantee.
- (6) As soon as practicable after—
  - (a) giving a guarantee under section 10, or
  - (b) issuing a sum in fulfilment of a guarantee under that section,the Secretary of State shall lay before each House of Parliament a statement of the guarantee or a statement relating to the sum.
- (7) The Treasury or the Secretary of State shall lay before each House of Parliament a statement of any payment required by virtue of section 10(7) which is not made as required.

## **12 Other assistance**

Section 1(9) of the Overseas Development and Co-operation Act 1980 (no assistance to be given to the Corporation) shall cease to have effect on registration.

## **13 Accounts**

- (1) The Secretary of State shall prepare in respect of each financial year, in such form as the Treasury may direct—
  - (a) an account of sums (if there are any) issued to him under section 9(2),
  - (b) an account of sums (if there are any) received by him by virtue of section 9(3), and
  - (c) an account of the disposal of the sums mentioned in paragraph (b).
- (2) An account under subsection (1) shall be sent to the Comptroller and Auditor General not later than the end of the November following the financial year to which it relates.
- (3) The Comptroller and Auditor General shall—
  - (a) examine, certify and report on each account, and
  - (b) lay copies of the account and of his report before each House of Parliament.

## **14 Waiver of payments**

- (1) This section applies while the Corporation is wholly owned by the Crown.
- (2) The Secretary of State may extinguish any liability of the Corporation or a company associated with the Corporation to pay a sum due—

- (a) pursuant to any direction under section 12 of the Commonwealth Development Corporation Act 1978 (payments in respect of advances and guarantees), or
- (b) by virtue of section 10(7) of this Act.

## **15 Limit on government assistance**

- (1) The Secretary of State shall exercise his powers under or by virtue of this Act so as to ensure that the Crown's assistance to the Corporation and its associated companies does not at any time exceed £1,500 million.
- (2) For the purposes of subsection (1) the Crown's assistance to the Corporation and its associated companies is the aggregate of—
  - (a) amounts outstanding in respect of the principal of loans under section 9(1A) of the Commonwealth Development Corporation Act 1978,
  - (b) amounts outstanding in respect of advances under section 10 of that Act,
  - (c) amounts outstanding in respect of the principal of loans under section 9 of this Act,
  - (d) liabilities extinguished under section 14, and
  - (e) sums paid by or on behalf of the Secretary of State in respect of the issue of securities under section 16 or the acquisition of securities or rights under section 17.
- (3) For the purposes of this section equivalents in sterling shall be calculated as determined by the Secretary of State.

### *Miscellaneous*

## **16 Requirement to issue securities**

- (1) This section applies while the Corporation is wholly owned by the Crown.
- (2) If the Corporation or a company associated with the Corporation is directed to do so by the Secretary of State, it shall issue such securities as are specified in the direction—
  - (a) to the Secretary of State, or
  - (b) if the direction so requires, to a person nominated by the Secretary of State.
- (3) Securities issued pursuant to a direction under subsection (2) shall be issued at such times, and on such terms, as may be specified in the direction.
- (4) A direction under subsection (2) requiring the issue of shares shall specify the nominal value of the shares to be issued; and the shares—
  - (a) shall be issued as fully paid,
  - (b) shall be treated for the purposes of the Companies Act 1985 as having been paid up by virtue of payment of their nominal value in cash, and
  - (c) shall be treated for the purposes of the Corporation Tax Acts as if they had been issued wholly in consideration of a subscription of an amount equal to their nominal value.
- (5) A debenture issued in accordance with a direction under subsection (2) shall be treated for the purposes of the Corporation Tax Acts as if it had been issued wholly in

consideration of a loan of an amount equal to the principal sum payable under the debenture.

- (6) The Secretary of State shall consult the Corporation before making a direction under subsection (2).

## **17 Acquisition of securities**

- (1) The Secretary of State may acquire or arrange for a nominated person to acquire—
- (a) securities of the Corporation or a company associated with the Corporation;
  - (b) rights to subscribe for such securities.
- (2) Expenditure of the Secretary of State under subsection (1) shall be paid out of money provided by Parliament.

## **18 Minimum Crown shareholding**

- (1) The Secretary of State shall ensure that the Crown—
- (a) holds at least 25 per cent of the Corporation's issued ordinary share capital, and
  - (b) continues to hold any special share provided for under the Corporation's articles of association.
- (2) For the purposes of this Act a special share is a share which can be held only by the Crown and which gives the shareholder the right to prevent certain events by withholding consent.
- (3) The Secretary of State shall not consent to any alteration of the Corporation's articles of association which requires his consent as special shareholder unless a statement of the intended consent has been laid before and approved by resolution of each House of Parliament.
- (4) Where a person enters into a transaction relating to shares issued by the Corporation—
- (a) he shall not be concerned to enquire whether the transaction results in a contravention of subsection (1), and
  - (b) his rights in relation to the shares shall not be questioned on the grounds of, or affected by, a contravention of subsection (1).
- (5) The Secretary of State may by order made by statutory instrument amend or repeal this section; but no order shall be made unless a draft has been laid before and approved by resolution of each House of Parliament.

## **19 Securities held by or for Crown**

- (1) Any dividends or other sums received by the Secretary of State or a nominee of his in right of, or on the disposal of, shares, other securities or rights—
- (a) held by virtue of section 6 or 16, or
  - (b) acquired in accordance with section 17,
- shall be paid into the Consolidated Fund.
- (2) A person who—
- (a) holds shares by virtue of section 6,



- (b) holds shares or securities by virtue of section 16 on the Secretary of State's behalf, or
  - (c) holds securities or rights acquired in accordance with section 17,
- shall hold and deal with them as the Secretary of State directs.

## **20 Tax**

Schedule 20 shall have effect.

## **21 Trustee Investments Act 1961**

- (1) The Corporation shall be deemed to have satisfied the requirement for the payment of dividends for the purpose of paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (manner of investment: companies which have not paid dividends) in any calendar year—
  - (a) before registration, or
  - (b) during all or part of which the Corporation was wholly owned by the Crown.
- (2) The first reference in subsection (1) to the Corporation includes a reference to a company which—
  - (a) is designated by an order under section 25(4) of this Act as a company associated with the Corporation, and
  - (b) is designated by that order for the purposes of this subsection.

## **22 Treasury consent**

- (1) Before taking any of the following actions the Secretary of State shall obtain the consent of the Treasury—
  - (a) making an order under section 1(3),
  - (b) varying a direction in accordance with section 8(2),
  - (c) making a loan under section 9(1),
  - (d) making a determination under section 9(3), 10(6) or 15(3),
  - (e) giving a guarantee under section 10(3),
  - (f) entering into arrangements under section 10(7),
  - (g) extinguishing a liability under section 14(2),
  - (h) giving a direction under section 16 or 19,
  - (i) arranging for a disposal of securities acquired by virtue of section 6, 16 or 17, or
  - (j) arranging for an acquisition of securities or rights under section 17.
- (2) The Treasury's consent—
  - (a) may be general or specific, and
  - (b) may be conditional or unconditional.

## **23 House of Commons Disqualification, &c**

- (1) The entries relating to the Corporation in Part II of Schedule 1 to the House of Commons Disqualification Act 1975 and Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) shall cease to have effect on registration.

- (2) In Part III of Schedule 1 to each of those Acts (other disqualifying offices) there shall be added at the appropriate place—

“Director of the Commonwealth Development Corporation nominated or appointed by the Secretary of State.”.

- (3) Subsection (2) comes into force on registration.

## **24 Powers and duties of Corporation before registration**

- (1) The following shall be inserted after section 2(3) of the Commonwealth Development Corporation Act 1978 (powers)—

“(3A) The Corporation shall have power to do anything which it considers necessary or expedient for the purposes of, or for purposes related to—

- (a) the provisions of the Commonwealth Development Corporation Act 1999,
- (b) the operation of the Corporation after registration, or
- (c) the listing, sale or issue of securities after registration by the Corporation or a company associated with it.

(3B) Expressions used in subsection (3A) and in the 1999 Act have the same meaning in that subsection as in that Act.”.

- (2) The following shall be added at the end of section 6 of the 1978 Act (annual report, information, &c.)—

“(4) The Corporation shall so far as is reasonably practicable comply with any request from the Secretary of State to provide him with information or assistance for a purpose related to—

- (a) the exercise of any function of the Secretary of State or the Treasury under this Act or the Commonwealth Development Corporation Act 1999, or
- (b) the listing, sale or issue of securities after registration by the Corporation or a company associated with it.

(5) Expressions used in subsection (4) and in the 1999 Act have the same meaning in that subsection as in that Act.”.

### *General*

## **25 Interpretation: companies and shares**

- (1) A company is wholly owned by the Crown for the purposes of this Act at any time when all its shares are held by the Crown.

- (2) For the purposes of this Act shares are held by the Crown if they are held—

- (a) by a Minister of the Crown or his nominee, or
- (b) by a company of which all the shares are held by the Crown.

- (3) The reference to a company in subsection (1) includes a reference to the Corporation on and after registration.

- (4) A company is associated with the Corporation for the purposes of this Act if—
- (a) it is designated for the purposes of this subsection by an order of the Secretary of State made by statutory instrument, and
  - (b) it is wholly owned by the Crown.
- (5) The Secretary of State may designate a company for the purposes of this subsection by order made by statutory instrument; and a company which has at any time been designated for the purposes of this subsection may not be designated for the purposes of subsection (4).

## 26 Interpretation: general

- (1) In this Act—
- (a) “securities” in relation to the Corporation or another company means shares (including stock), debentures, bonds and other securities, whether constituting a charge on the assets of the company or not,
  - (b) a reference to a company includes a reference to any body corporate, wherever incorporated,
  - (c) a reference to a nominee of a Minister of the Crown includes a reference to a person to whom section 19(2) applies, and
  - (d) a reference to a provision of the Commonwealth Development Corporation Act 1978 includes a reference to any relevant earlier enactment.
- (2) An expression listed in the Table has the same meaning in this Act as in the specified provision of the Companies Act 1985.

<i>Expression</i>	<i>Defining provision</i>
Allotment.	Section 738.
Authorised minimum.	Section 118(1).
Called-up share capital.	Section 737(1).
Net assets.	Section 264(2).
Paid up.	Section 738.
Registrar of companies.	Section 744.
Shadow director.	Section 741.
Undistributable reserves.	Section 264(3).

## 27 Repeals

The enactments listed in Schedule 4 shall on registration be repealed to the extent specified.

## 28 Short title and extent

- (1) This Act may be cited as the Commonwealth Development Corporation Act 1999.
- (2) This Act extends to Northern Ireland.