*These notes refer to the Commonwealth Development Corporation Act 1999 (c.20) which received Royal Assent on 27 July 1999*

# COMMONWEALTH DEVELOPMENT CORPORATION ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Financial assistance by Government*

30. As explained above, the main purpose of the Act is to put CDC into a legal form which will provide a vehicle for the introduction of private capital, through the sale of shares and other forms of securities. The other aspect of Government involvement will be continuing Government financial assistance to CDC in the period before the sale of its shares to private investors and to enable CDC to restructure its balance sheet. However, there will be a period of Government ownership, during which provisions relating to the continuation of existing financial assistance are required.

#### *Section 8: Repayment of old loans etc.*

31. The Government's financial relationship with CDC is governed by the 1978 Act (which this Act will repeal on CDC's registration). The main purpose of section 8 is to maintain that relationship unaltered, pending financial restructuring.

32. Three provisions of the 1978 Act are mentioned in this section:

- Section 9 of the 1978 Act permits CDC to borrow money and allows the Secretary of State to lend money to CDC from the *National Loans Fund ("NLF")* (with the consent of the Treasury). This is the Government's fund for borrowing and lending. It is held at the Bank of England and operated by the Treasury. This has been of assistance to CDC especially for short-term borrowings. No borrowings by CDC from the NLF were outstanding at the time these explanatory notes were prepared.

- Section 10 of the 1978 Act empowers the Secretary of State (with the consent of the Treasury) to make financial "advances" to CDC in order to provide it with working capital. These are, in effect, loans which CDC repays over time on terms specified by the Secretary of State, with the Treasury's approval. At the time these explanatory notes were prepared, a cumulative total of some £755 million was outstanding. The advances have been interest-free since 1995.

- Section 11 allows the Government to give CDC or one of its subsidiaries a *guarantee*. A guarantee is an arrangement whereby the Government agrees with a third party (e.g. a bank or other lender) that if CDC or (as the case may be) a subsidiary of CDC defaults on its financial obligations (e.g. fails to keep up repayments on a loan, or to pay interest or any other charges) the Government will meet those obligations instead. The existence of a guarantee can give greater confidence to a lender that it will be repaid and so can help CDC to borrow at lower rates of interest, for example.

33. The effect of section 8 is that the terms of all funding provided to CDC under the powers of the 1978 Act can continue to apply, even after registration; and *subsection (2)*

*(b)* permits the Secretary of State after registration to vary the terms on which an advance or guarantee was provided, if CDC and (see section 22(1)(b)) the Treasury consent. *Subsection (4)* preserves the effect of provisions requiring the Secretary of State to render accounts of sums issued and received by him under the 1978 Act, and *subsection (5)* preserves the effect of guarantees given under the 1978 Act, and the effect of similar accounting provisions in relation to them.

### *Section 9: New loans to CDC*

34. Section 9 allows the Secretary of State to provide loans to CDC, by means of the NLF, while the Corporation remains wholly Government-owned: see *subsections (1)* and *(2)*.

35. Although the NLF is operated by the Treasury, loans made from it are routed via the Secretary of State's account at the Office of the Paymaster-General. Thus, NLF loans are made by the Secretary of State.

36. The terms of such loans are determined by the Secretary of State, with the consent of the Treasury: see *subsection (3)* and section 22(1)(d). *Subsection (4)* provides that when the Corporation repays the loan or pays interest on it to the Secretary of State he must pay the sums received back into the NLF.

### *Section 10: New guarantees*

37. Section 10 permits two kinds of guarantee (see paragraph 32 above), which are:

- those that may be given by the Treasury to CDC itself; and
- those that may be given by the Secretary of State with the consent of the Treasury (see section 22(1)(e)) to companies associated with CDC (as defined in section 25).

38. The Treasury is not permitted to guarantee sums borrowed by CDC from the Secretary of State or from a company associated with CDC (see *subsection (2)*), and the Secretary of State is not permitted to guarantee sums borrowed by a company associated with CDC from another such company or from CDC itself (*subsection (4)*). By *subsection (5)*, a guarantee may be given only when CDC is wholly owned by the Crown: that expression is defined in section 25. A guarantee cannot be given unless the Treasury or the Secretary of State (as the case may be) has entered into an agreement so that, if CDC or the associated company defaults on its obligations and the Government has to make payments to the person to whom it gave the guarantee, CDC or the associated company will be liable to repay the Government: see *subsection (7)*.

### *Section 11: Guarantees; Supplemental*

39. Section 11 contains provisions to supplement section 10. *Subsections (1)* to *(3)* are technical provisions concerning the sources from which sums needed to meet calls on guarantees are to be drawn (i.e. to pay the third party if CDC or its associated company defaults), and the destination of any sums received to repay the Government under the agreements made under section 10(7) (see above).

40. *Subsections (4)* to *(7)* place on the Treasury and the Secretary of State certain duties to give information to Parliament about guarantees. If the Treasury gives a guarantee it must lay a statement of the guarantee before each House as soon as is practicable after giving it: *subsection (4)*. Under *subsection (5)*, if the Treasury makes a payment under a guarantee, it must:

- lay a statement relating to the sum before Parliament as soon as practicable after the end of the financial year in which the payment was made (and in practice that statement will appear in the annual Supplementary Statements to the Consolidated Fund Accounts); and

- as soon as practicable after the end of any subsequent financial year in which an obligation guaranteed by the Treasury is still outstanding, the Treasury shall lay a statement relating to the sum owing before each House.

41. Under *subsection (6),* as soon as practicable after the Secretary of State has

- given a guarantee under section 10, or
- made a payment to fulfil a guarantee,

he shall lay a statement of the guarantee or the sum before each House. *Subsection (7)* requires the Secretary of State or the Treasury to lay a statement before each House if CDC or an associated company fails to make any payment required of it under an agreement made in accordance with section 10 (7).

### *Section 12: Other assistance*

42. The Secretary of State's principal general power to give developmental assistance is to be found in section 1(1) of the Overseas Development and Co-operation Act 1980. Section 1(9) of that Act presently provides that section 1(1) cannot be used to give assistance to CDC. Section 12 repeals that restriction, giving CDC, in legal terms, the same access to funding from the development assistance programme as other bodies. At present financial assistance to CDC is provided under the 1978 Act, and CDC is only funded from the development assistance programme in so far as the 1978 Act allows.

### *Section 13: Accounts*

43. Section 13 places a duty on the Secretary of State to produce accounts for each financial year on any loans made to CDC under section 9, and any sums received from it under that section. It also provides for those accounts to be examined each financial year (beginning 1 April) by the Comptroller and Auditor General, who is to lay copies of the accounts and his report before each House of Parliament.

### *Section 14: Waiver of payments*

44. This section enables the Secretary of State to waive the requirement for CDC to repay "advances" or to make payments in respect of sums issued to meet guarantees while CDC is wholly owned by Government. Registration in itself will not change CDC's financial relationship with Government. However, in the period after registration and while CDC remains wholly Government-owned some restructuring will take place, once CDC has assumed the legal structure of a public limited company. This section will assist in that financial restructuring. This power may in practice be used in conjunction with sections 16 and 17 of the Act, so that, as existing debt owed to the Government (see paragraph 32 above) is written off under this section, securities may be issued by CDC to the Secretary of State (or persons nominated by him) under those sections.

### *Section 15: Limit on Government assistance*

45. This section sets a limit of £1,500 million on the total amount of financial assistance by Government to CDC. The types of assistance that are to count as part of the total are listed in *subsection (2).* The existing limit set on borrowing, by the 1978 Act, is £1,100 million but can be raised to £1,500 million by order made by the Secretary of State with the consent of the Treasury.