

PARLIAMENT OF CEYLON

4th Session 1955



Development Finance Corporation of Ceylon Act, No. 35 of 1955

Date of Assent : October 4, 1955

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L. D.—O. 6/55.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE
DEVELOPMENT FINANCE CORPORATION OF CEYLON AND
FOR MATTERS CONNECTED THEREWITH.

[Date of Assent: October 4, 1955]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Development Finance Corporation of Ceylon Act, No. 35 of 1955.

Short title.

2. (1) There shall be established, in accordance with the provisions of this Act, a corporation (hereinafter referred to as the "Corporation") which—

Establishment
of the
Corporation.

(a) shall, until there are shareholders of the Corporation, consist of the Directors for the time being of the Corporation, and shall, when there are such shareholders, consist of the Directors and the shareholders for the time being of the Corporation, and

(b) shall be called the Development Finance Corporation of Ceylon.

(2) The head office of the Corporation shall be in Colombo. Such branch offices of the Corporation as the Board of Directors may consider necessary may be established in places in Ceylon other than Colombo.

3. The Corporation shall in the name assigned to it by section 2 be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

The Corporation
to be a body
corporate

4. The purposes of the Corporation shall be—

(a) to assist in the establishment, expansion and modernization of private industrial and agricultural enterprises in Ceylon, and

(b) to encourage and promote the participation of private capital, both internal and external, in such enterprises,

Purposes
of the
Corporation.

Powers of the
Corporation.

5. In carrying out its purposes, the Corporation may exercise all or any of the following powers:—

- (i) provide finance in the form of long-term or medium-term loans with or without security, or by purchasing or subscribing for shares or other securities, or by acquiring any other interest;
- (ii) underwrite new issues of stocks, shares, bonds, debentures and other securities;
- (iii) guarantee loans from other private investment sources;
- (iv) make funds available for re-investment by selling any investments of the Corporation when and as appropriate;
- (v) borrow funds for the purposes of the business of the Corporation from sources either in Ceylon or abroad and give security for any loans obtained;
- (vi) furnish managerial, technical and administrative advice and assist in obtaining managerial, technical and administrative services to private industrial and agricultural enterprises in Ceylon;
- (vii) invest idle funds and reserves of the Corporation in appropriate securities;
- (viii) acquire, hold, take or give on lease or hire, mortgage, pledge and sell or otherwise dispose of any immovable or movable property;
- (ix) accept, before the date on which it is due, any payment in respect of a loan granted by the Corporation;
- (x) open deposit accounts with any bank;
- (xi) draw, accept, or endorse bills of exchange for the purposes of the business of the Corporation;
- (xii) give any guarantee or indemnity to, and enter into any arrangements with, the Government, any local authority, or any body corporate or other person, in order to obtain any rights, concessions and privileges that may seem to the Corporation to be conducive to any object of the Corporation;
- (xiii) make appropriate provision for the welfare of employees or ex-employees of the Corporation and of their dependants; and
- (xiv) do all such other things as are incident or conducive to the attainment of its purposes.

6. The liability of any shareholder shall be limited to the amount, if any, unpaid on his shares.

Liability of
shareholders.

7. (1) The authorised share capital of the Corporation shall be eight million rupees divided into eighty thousand ordinary shares of one hundred rupees each.

Authorised
share capital.

(2) The Corporation shall offer the shares referred to in sub-section (1) to the public for subscription at such time or times, in such amount or amounts and in such manner as the Corporation may determine, and shall allot such shares.

8. The Corporation shall not transact any business until at least sixty thousand of the shares referred to in section 7 have been fully subscribed and allotted.

Commencement
of business.

9. (1) The general supervision, control and administration of the affairs and business of the Corporation shall be vested in a Board of Directors constituted in accordance with section 10.

Management of
affairs and
business of the
Corporation.

(2) The Board of Directors may exercise all the powers and do all the acts which may be exercised or done by the Corporation.

(3) The Board of Directors may utilise the funds of the Corporation for the purpose of defraying any expenditure incurred in the management of the affairs of the Corporation, the transaction of the business of the Corporation, the remuneration of the Directors and employees of the Corporation, and the exercise of the powers and the performance of the duties of such Board under this Act.

(4) It shall be the duty of the Board of Directors to ensure that every application dealt with on behalf of the Corporation is considered strictly on its financial and economic merits irrespective of all other considerations.

(5) The Board of Directors shall take all such measures as may be necessary to ensure that any financial assistance rendered by the Corporation to any private industrial or agricultural enterprise is utilised for the purpose for which it is given.

(6) The Corporation shall not make an investment in or otherwise transact business with an enterprise in which a Director of the Corporation is a partner,

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director or shareholder, or is in any other way directly or indirectly interested, unless the transaction is unanimously approved by the other Directors of the Corporation.

(7) The Board of Directors shall appoint a General Manager of the Corporation, and he shall, subject to the direction of the Board of Directors, be the chief executive officer of the Corporation.

Board of
Directors.

10. (1) The Board of Directors shall be constituted in accordance with the provisions of this section.

(2) So long as there is outstanding any loan made by the Government to the Corporation pursuant to the provisions of this Act, the Minister of Finance, acting in consultation with the Minister of Industries, Housing and Social Services, shall be entitled from time to time to appoint one person as a Director (hereinafter called the "Government Director") of the Corporation, to remove such person from office and, on a vacancy being caused in such office whether by resignation, death, removal or otherwise, to appoint a Director to fill the vacancy. The Government Director shall not be liable to retire by rotation or be removed from office except by the Minister of Finance as aforesaid and shall not be bound to hold any qualification shares. Subject as aforesaid the Government Director shall be entitled to the same rights and privileges and be subject to the same obligations as any other Director of the Corporation, except that, if the Government Director is a public servant, he shall not be entitled to any remuneration as such Director.

(3) The following shall be *ex-officio* Directors of the Corporation without the right to vote:—

(a) The holder for the time being of the office of Director of the Ceylon Institute of Scientific and Industrial Research.

(b) The holder for the time being of the office of General Manager of the Corporation.

The *ex-officio* members shall not be required to hold any qualification shares.

(4) There shall be not less than four and not more than six other directors (hereinafter referred to as "Shareholder Directors"). The Minister of Finance shall appoint the initial Shareholder Directors. At

the end of each financial year of the Corporation after the Corporation is entitled to transact business, one of the initial Shareholder Directors so appointed shall retire. The Director who shall so retire shall be determined by the drawing of lots. Any successor to an initial Shareholder Director who retires pursuant to this sub-section or whose office becomes vacant for any other cause, and any new Shareholder Director shall be elected and hold office in accordance with the regulations of the Corporation made under section 11. An initial Shareholder Director shall be eligible to be elected to succeed himself if qualified to be elected under sub-section (5). A majority of the Shareholder Directors shall at all times be citizens of Ceylon.

(5) A person shall be qualified to be elected and hold office as a Shareholder Director if and so long as he—

- (a) has, or is an officer, director or partner of a company or partnership which has, shares of the par value of not less than five thousand rupees in the capital of the Corporation,
- (b) is not a Senator or a Member of Parliament or a member of a local authority,
- (c) is not a paid employee of the Corporation,
- (d) is not a person who, having been declared an insolvent or a bankrupt under any law in force in Ceylon or in any other country, is an undischarged insolvent or bankrupt,
- (e) is not found or declared to be of unsound mind under any law in force in Ceylon or in any other country, and
- (f) is not serving a sentence of imprisonment imposed by any court in Ceylon or in any other country:

Provided, however, that the initial Shareholder Directors shall not be required to have the qualification specified in paragraph (a) of this sub-section until two months have elapsed after the first issue of shares.

(6) The members of the Board of Directors shall elect one of the Shareholder Directors to be the Chairman of the Board of Directors.

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Regulations
of the
Corporation.

11. (1) The Board of Directors shall forthwith after the commencement of this Act make regulations dealing with those matters not provided for by this Act which, in the case of a company formed under the Companies Ordinance, No. 51 of 1938, would be dealt with in the Articles of Association.

(2) Subject to the provisions of this Act, the shareholders may by special resolution amend or rescind any regulation made under sub-section (1) or add any fresh regulation to the regulations so made.

In this sub-section, the expression "special resolution" means a resolution passed by a majority of not less than three-fourths of such shareholders as, being entitled so to do, vote in person or by proxy at a meeting of the shareholders of which not less than twenty-one days' notice has been duly given to the shareholders specifying the resolution intended to be proposed at that meeting.

(3) The regulations made under this section shall be the regulations of the Corporation in regard to the matters to which they relate.

(4) The regulations of the Corporation shall have the force of law.

Application of
the provisions
of the
Companies
Ordinance,
No. 51 of
1938, to the
Corporation.

12. The provisions of the Companies Ordinance, No. 51 of 1938, shall, *mutatis mutandis*, apply to the Corporation in regard to any matter for which there is no provision in this Act or in any regulation of the Corporation:

Provided, however, that the Corporation shall not be required to be registered under such Ordinance nor shall the Registrar of Companies have any power with respect to the Corporation.

Borrowing
from the
Government.

13. (1) For the purposes of its business the Corporation may borrow from the Government, and the Government may lend to the Corporation from the Consolidated Fund of Ceylon without charging any interest, the sum of sixteen million rupees. Any loan made under this sub-section shall be repayable to the Government by the Corporation in fifteen equal annual instalments the first of which shall be due in the sixteenth year succeeding the year in which such loan is granted by the Government, but the Corporation shall have the right to prepay all or any part of any such loan at any time. Every sum in repayment of such loan shall be paid to the Secretary to the Treasury who shall credit it to the Consolidated Fund of Ceylon.

(2) So long as there is outstanding any loan made by the Government to the Corporation under sub-section (1),—

(a) the Corporation shall set aside in each year in a Special Reserve Fund a sum equal to not less than twenty *per centum* of the net profits of the Corporation as shown in the Corporation's financial statement for that year, until the amount so set aside equals the amount of the Government loan then outstanding, and

(b) the Corporation shall not in any year declare or pay dividends in excess of twelve *per centum* on the share capital of the Corporation.

(3) Amounts set aside in the Special Reserve Fund under sub-section (2) shall not be used for the business of the Corporation but may be invested in accordance with the provisions of this Act.

(4) If, while there is outstanding any loan made by the Government to the Corporation under sub-section (1), the liabilities of the Corporation (excluding paid-up share capital) exceed the assets of the Corporation by thirty *per centum* or more of the aggregate of the paid-up share capital of the Corporation and the amount of the Government loan at the time outstanding, all as determined by the auditors of the Corporation, the Government shall have the right in its discretion to request the shareholders to replenish the capital and, if the capital is not replenished, to require liquidation of the Corporation.

(5) In the event of the liquidation of the Corporation, no payment shall be made in respect of any debt to the Crown incurred by the Corporation in pursuance of this section until the amount of the paid up share capital of the Corporation is distributed among the shareholders in accordance with the Capital contributed to the Corporation on their shares.

14. (1) The Government is hereby authorised to guarantee, on such terms and conditions as the Government may determine, loans raised by the Corporation from the International Bank for Reconstruction and Development. The loans authorised to be guaranteed under this sub-section may be denominated in foreign currency. No guarantee shall be given under this sub-section if the aggregate amount of all

Borrowing
from the
International
Bank for
Reconstruction
and
Development.

loans guaranteed under this sub-section exceeds, or as a result of the loan to be guaranteed would exceed, the equivalent of twenty-four million rupees at the rate of exchange prevailing at the date of the loan agreement to which such guarantee would apply.

(2) All sums payable by the Government under any guarantee given under sub-section (1) are hereby charged on the Consolidated Fund of Ceylon.

(3) All sums payable by the Corporation in respect of principal, interest and other charges on any loan to the Corporation from the International Bank for Reconstruction and Development or by the Government under any guarantee given under sub-section (1) shall, notwithstanding anything to the contrary in any law of Ceylon, be paid—

(a) without deduction for, and free from, any taxes, duties or fees now or hereafter imposed by or under any law of Ceylon, and

(b) free from all restrictions now or hereafter imposed by or under any law of Ceylon:

Provided, however, that the preceding provisions of this sub-section shall not apply to any taxes, duties, fees or restrictions upon payments under any bond or promissory note to a holder thereof other than the International Bank for Reconstruction and Development when such bond or promissory note is beneficially owned by an individual or a corporation resident in Ceylon.

(4) For the purposes of sub-section (3), the question whether an individual or a corporation is or is not resident in Ceylon shall be determined in accordance with the provisions of section 33 of the Income Tax Ordinance.

(5) Every Guarantee Agreement between the Government and the International Bank for Reconstruction and Development pursuant to this Act and every guarantee given by the Government pursuant to any such Guarantee Agreement shall, notwithstanding anything to the contrary in any law of Ceylon, be valid and enforceable in accordance with their respective terms.

(6) In the case of any loan made to the Corporation by the International Bank for Reconstruction and Development and guaranteed by the Government, the Government shall bear any loss, and be entitled to

any profit, resulting from any revaluation of the Ceylon rupee in relation to the currency or currencies in which that loan is expressed.

The amount of every such loss is hereby charged on the Consolidated Fund of Ceylon.

15. The Board of Directors shall cause the accounts of the Corporation to be kept in such form and manner as may be determined by such Board.

Accounts.

16. (1) The accounts of the Corporation shall be audited by two qualified auditors annually appointed at a meeting of the shareholders of the Corporation.

Audit.

(2) The shareholders shall determine the remuneration of the auditors of the Corporation.

(3) Each auditor of the Corporation shall be supplied with a copy of the annual balance-sheet of the Corporation, and it shall be his duty to examine such balance-sheet together with the accounts and vouchers relating thereto. He shall at all reasonable times have access to the books, accounts and vouchers of the Corporation and shall be entitled to require from the Directors and officers of the Corporation such information and explanations as may be necessary for the performance of his duties.

(4) Each auditor of the Corporation may, if he so desires, make a continuous audit of the accounts of the Corporation.

(5) Each auditor of the Corporation shall make a written report upon the annual balance-sheet and accounts of the Corporation and shall in such report state whether he has or has not obtained all the information and explanations required by him and whether, in his opinion such accounts are properly drawn up so as to exhibit a true and correct view of the Corporation's Affairs according to the best of his information and the explanations given to him and as shown by the books of the Corporation.

(6) The report of each auditor of the Corporation shall be transmitted by him to the Board of Directors.

(7) The Board of Directors shall cause a copy of the report of each auditor of the Corporation together with a copy of the balance-sheet and profit and loss account to which such report refers to be transmitted to each shareholder and to the Minister of Finance.

Duty to
maintain
secrecy.

17. (1) Every Director, employee or auditor of the Corporation shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting all transactions of the Corporation and all matters relating to such transactions, and shall by such declaration pledge himself not to reveal any such transaction or matter except—

- (a) when required so to do by the Board of Directors, a court of law, or the person to whom that transaction or matter relates,
- (b) in the performance of his duties, and
- (c) in order to comply with any of the provisions of this Act or any other law.

(2) Every Director, employee or auditor of the Corporation shall decline to answer any question concerning the business of the Corporation if he cannot answer the question without infringing his pledge of secrecy under sub-section (1).

Interpretation.

18. In this Act unless the context otherwise requires—

“ agricultural enterprise ” means a large scale agricultural or live-stock enterprise operated on a commercial basis;

“ Board of Directors ” means the Board of Directors of the Corporation;

“ local authority ” means a Municipal Council, an Urban Council, a Town Council, a Village Committee, the Gal Oya Development Board, or any other authority having administrative powers over any area; and

“ shareholder ” means a shareholder of the Corporation.