

# COMMONWEALTH DEVELOPMENT CORPORATION ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Miscellaneous*

#### *Section 16: Requirement to issue securities*

46. [Section 16](#) empowers the Secretary of State, following consultation with CDC and with the consent of the Treasury (see section 22(1)(h)), to direct the Corporation or one of the companies associated with it (see section 25) to issue securities to the Secretary of State (or a person nominated by him). This is only whilst the Corporation remains wholly Government-owned. Securities are defined in section 26(1) and may include, for example, shares and debentures. “A person nominated by the Secretary of State” could be a nominee (who acts on the Secretary’s behalf) or an independent third party, such as a bank. Section 19(2)(b) makes it clear that this is so by indicating that a person who holds securities by virtue of section 16 on the Secretary of State’s behalf is to hold and deal with them as the Secretary of State directs. By implication, therefore, an independent third party can also hold shares or securities by virtue of section 16.
47. [Subsection \(4\)](#) makes provision in relation to shares so issued, which is similar to section 6(2) (see explanation in paragraph 24 above).

#### *Section 17: Acquisition of securities*

48. [Section 17](#) empowers the Secretary of State (or a person nominated by the Secretary of State) with the consent of the Treasury (see section 22(1)(j)) to acquire securities of CDC or one of its subsidiaries. The purchase of these securities will be paid for from money provided by Parliament.
49. Unlike the previous section, this provides for the Secretary of State to buy the securities. It also applies, not just when CDC is wholly Government-owned, but at any time after that.
50. It is unlikely that the power will be used to buy securities in the open market (although it could be used that way). It is more likely to be used to provide additional funds to CDC, by buying debt securities issued on terms that provide a commercial rate of return to the Secretary of State. Unlike section 16, here the meaning of “a nominated person” is restricted, by virtue of section 19(2), to a person who must hold and deal with securities or rights as the Secretary of State directs, and does not include an independent third party.

#### *Section 18: Crown share-holding*

51. This section entrenches the Government involvement in CDC so that certain changes to the position can only take place with Parliamentary approval. Government involvement will have two main aspects. First, it is intended that the Government should hold at least

25% of the issued ordinary share capital of CDC. Second, the Government's special share, to consist of one special rights redeemable preference share of £1 in the capital of CDC, gives the Secretary of State certain rights under the articles of association of CDC in relation to the Government's role in the intended public/private partnership. For example, the articles of association will not allow the investment policy of CDC to be altered without the consent of the special shareholder. Section 18 will prevent the Secretary of State from reducing his shareholding below 25%, losing his special share, or varying any rights under the articles in relation to it, without Parliamentary approval.

52. *Subsection (1)* places a duty on the Secretary of State to ensure that the government holds (within the meaning of section 24) at least 25% of CDC's issued ordinary share capital and also ensures that the Government will continue to hold any special share (described in section 18(2)) in CDC.
53. If the Secretary of State wishes either to reduce the Crown shareholding in CDC below 25% or, for example, to require CDC to redeem the special share under the articles of association of CDC, he will have to seek Parliament's approval to do so (by making an order under section 18(5)): see paragraph 56 below.
54. *Subsection (3)* prevents the Secretary of State from consenting to any alteration of CDC'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 Parliament. This means that the Secretary of State would not be able to consent, without Parliamentary approval, to a change in the articles of association so that, for example, he gave up his right of veto as regards any alteration to the investment policy of CDC. The Secretary of State's duty under section 18(1) will continue notwithstanding any change to the articles under this subsection.
55. *Subsection (4)* makes it clear that the title of a third party relating to shares in CDC, would not be affected if, for example, the Crown's shareholding inadvertently fell below 25% as a result of a sale, for instance, to that third party.
56. *Subsection (5)* gives the Secretary of State powers to amend or repeal the section. The Secretary of State could return to Parliament therefore for approval to a restructuring of CDC or, for example, in relation to a change of policy as regards the extent of Government involvement in CDC so that, for instance, he was absolved from the duty to ensure that the Government maintained a 25% share-holding in the company.

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

57. **Section 19** stipulates that the proceeds of the sale of shares in CDC or income received by the Secretary of State (or a person nominated by the Secretary of State) from dividends or securities should be paid into the Consolidated Fund. It also provides that a person holding securities-
  - by virtue of section 6, under the initial share allotment, or
    - on behalf of the Secretary of State by virtue of a direction of his under section 16, or
  - acquired by virtue of section 17,shall deal with them as the Secretary of State may (with the consent of the Treasury) direct.

### ***Section 21: Trustee Investments Act 1961***

58. This is a technical provision which facilitates investment in CDC by the trustees of trust funds. The 1961 Act broadens the powers of trustees by allowing them to invest the funds for which they are responsible in a wider range of investments, including certain types of company shares. However, to help ensure that funds are not wasted by investment in loss-making or financially unsound businesses, the Act allows trustees to

invest only in companies with a proven "track-record" of paying dividends on shares over the five years prior to the investment the trustee wants to make. Since CDC is at present a statutory corporation with no shares, it has not had the opportunity to build up that track-record. Thus, this provision avoids the application of the limitation in the 1961 Act by deeming CDC to have paid the necessary dividends in past years.

### ***Section 22: Treasury Consent***

59. The purpose of this section is to ensure that the Secretary of State can act only with the approval of Treasury in taking certain financial steps during the period in which the Corporation is wholly Government-owned or in buying securities in CDC plc after the sale of shares. The actions which need the Treasury's consent are:
- making an order under section 1(3) to specify CDC's accounting reference date and provide for the allotment of shares;
  - varying the terms of a loan under the 1978 Act, under section 8(2);
  - making a loan out of the NLF under section 9;
  - determining the terms of a loan under section 9, the terms of a guarantee under section 10 or the terms on which sums paid by the Secretary of State under a guarantee will be repaid to him;
  - determining how to calculate the sterling equivalent of any sum (section 15);
  - giving a guarantee under section 10;
  - forgiving a debt owed to the Government, under section 14;
  - directing the issue of securities etc. under section 16;
  - acquiring securities etc. under section 17;
  - disposing of securities acquired under section 6, 16 or 17;
  - issuing a direction under section 19 to certain persons holding securities etc.

### ***Section 23: House of Commons disqualification***

60. Members of the present Board are disqualified from being Members of Parliament, or Members of the Northern Ireland Assembly. After registration, disqualification will only apply to any Directors of CDC appointed by the Secretary of State.

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

61. The effect of this section is to give CDC additional powers and duties to enable work in preparation for the establishment of the public/private partnership to be carried out between Royal Assent and CDC's registration (at which point CDC will have the usual powers of a plc). *Subsection (1)* gives CDC the power to do various matters related to the preparation of the Public/Private Partnership and *subsection (2)* places a duty on CDC to supply information or assistance to the Secretary of State on request.