

DEVELOPMENT FINANCE CORPORATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Development Finance Corporation Act 1964.

Clause 1 relates to the Short Title.

Clause 2: Subclause (1) removes from section 6 (1) of the principal Act words that limit the Corporation to lending only in cases where finance is not available on reasonable terms and conditions elsewhere. The effect is that the Corporation will no longer be a lender of last resort.

Subclause (2) adds two new items to the list of the Corporation's functions. These are, to assist persons to set up or expand projects overseas that will benefit the New Zealand economy, and to participate and assist in the promotion, reorganisation, or rationalisation of any industry or group of industries with a view to increasing efficiency and productivity.

The amendment made by *subclause (3)* is consequential on the addition by *subclause (2)* of the new paragraph (d).

Clause 3: Under section 8 (1) of the principal Act the Corporation is ordinarily to provide financial assistance for industrial projects only when the Board is satisfied that such assistance is not otherwise reasonably available, and must not provide the whole of the finance for any project.

The effect of the new subsection (1) substituted by this clause is to remove the first of these two restrictions.

Clause 4, subclause (1): Under section 9 (1) (d) of the principal Act the number of elected directors is to be not less than 5 nor more than 7.

This subclause alters the maximum number to 10.

Subclause (2) provides for the appointment by the Board of the first additional directors. Any director so appointed will hold office in the first instance only until the next annual general meeting, and shall then be eligible for election.

Subclause (3) provides for the retirement by rotation of the additional directors in the same manner as that applying to the existing directors.

Clause 5: Subclause (1) inserts a new section requiring every elected director to hold at least 500 shares in the Corporation's capital.

Subclause (2): This provision will come into force on 1 January 1971.

Clause 6: The new section inserted by this clause allows the Board to appoint one of the elected directors to be managing director for such period and on such terms as the Board thinks fit. While he is managing director he is not subject to retirement by rotation, but his appointment is automatically terminated if he ceases to be a director. He may receive remuneration in addition to or instead of directors' fees, and will have such powers as are conferred on him by the Board.

Clause 7: At present, an extraordinary vacancy in the office of an elected director is filled by election.

This clause replaces that provision by a provision under which such a vacancy is to be filled by the appointment by the Board of a qualified person. The person so appointed will hold office until the next annual general meeting, and shall then be eligible for election.

Clause 8: At present, the total amount borrowed by the Corporation together with its contingent liabilities under any guarantee or indemnity must not exceed 5 times the Corporation's authorised capital.

The effect of the amendment made by this clause is that, instead of the above-mentioned ratio, the ratio will be that fixed from time to time by the Board and approved by the Minister of Finance.

Clause 9: At present, a guarantee in respect of any borrowing by the Corporation may be given by the Minister of Finance; but no such guarantee may be given if the total amount borrowed by the Corporation and for the time being guaranteed by the Minister exceeds 3 times the authorised capital of the Corporation.

This clause removes that restriction.

Clause 10: At present, the dividend payable by the Corporation to its shareholders is limited to 6 percent of paid up capital until the Reserve Fund reaches \$1 million, or while the Corporation is exempt from taxation or is indebted to the Minister of Finance in respect of any interest-free loan. (The Corporation is exempt from taxation until the Reserve Fund first reaches \$1 million or until 10 years after the incorporation of the Corporation, whichever date is the earlier.)

This clause does not alter the limitation on dividends while the Reserve Fund is less than \$1 million. It provides that the 6 percent limitation will continue to exist while the Corporation is exempt from taxation. When it ceases to be so exempt, then, unless the Minister otherwise agrees, the limitation will be 6 percent if the proportion of interest-free loans to the total of the Corporation's borrowings and share capital and reserves exceeds 15 percent, 7 percent if that proportion exceeds 5 percent and does not exceed 15 percent, and 8 percent if that proportion does not exceed 5 percent.

Clause 11: This clause amends the principal Act, as from its commencement, so as to make it clear that the Corporation is not a company for the purposes of the Companies Act 1955 or a moneylender for the purposes of the Money-lenders Act 1908.

Hon. Mr Shelton

**DEVELOPMENT FINANCE CORPORATION
AMENDMENT**

ANALYSIS

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A BILL INTITULED

**An Act to amend the Development Finance Corporation Act
1964**

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same,
as follows:

1. **Short Title**—This Act may be cited as the Development
Finance Corporation Amendment Act 1970, and shall be
read together with and deemed part of the Development
10 Finance Corporation Act 1964* (hereinafter referred to as
the principal Act).

2. **Functions of Corporation**—(1) Section 6 of the principal
Act is hereby amended by omitting from subsection (1) the
words “in cases where finance is not available on reasonable
15 terms and conditions for any such purpose”.

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(2) The said section 6 is hereby further amended by adding to subsection (2) the following paragraphs:

“(d) To assist persons to set up or expand development projects overseas that will benefit the New Zealand economy: 5

“(e) To participate and assist in the promotion, reorganisation, or rationalisation of any industry or group of industries with a view to increasing efficiency and productivity.”

(3) Subsection (1) of the said section 6 is hereby consequentially amended by omitting the words “in New Zealand”, where those words first occur. 10

3. Limitations on powers—Section 8 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 15

“(1) The Corporation shall not provide the whole of the finance for any project.”

4. Constitution of Board—(1) Section 9 of the principal Act is hereby amended by repealing paragraph (d) of subsection (1), and substituting the following paragraph: 20

“(d) Not less than 5 nor more than 10 directors elected in accordance with this Act.”

(2) The first additional directors under the said paragraph (d) (as substituted by subsection (1) of this section) shall be appointed by the Board. Any director so appointed shall in the first instance hold office only until the next following annual general meeting of the Corporation, and shall then be eligible for election in accordance with subsection (1) of section 10 of the principal Act. 25

(3) The following provisions shall apply in respect of the first additional directors elected at the meeting referred to in subsection (2) of this section: 30

(a) One of those directors shall retire at the expiration of 1 year from the date of their election, one shall retire at the expiration of 2 years from that date, and the remaining directors shall retire at the expiration of 3 years from that date: 35

(b) The director so to retire at the end of 1 year shall be determined by agreement of all of the said directors, and the director so to retire at the end of 2 years shall be determined by agreement of the remaining 40

directors; and, failing agreement on either occasion, the director then to retire shall be determined by lot:

- 5 (c) Every director so retiring shall be eligible for re-election in accordance with subsection (1) of section 10 of the principal Act.

5. Qualification of elected directors—(1) The principal Act is hereby amended by inserting, after section 9, the following section:

- 10 “9A. No person shall be qualified to be elected as a director, or to continue in office as an elected director, unless he holds at least 500 shares in the capital of the Corporation.”

(2) This section shall come into force on the 1st day of January 1971.

- 15 **6. Managing director**—The principal Act is hereby further amended by inserting, after section 11, the following section:

“11A. (1) The Board may from time to time appoint one of the elected directors to be the managing director of the Corporation for such period and on such terms as the Board
20 thinks fit.

“(2) Subject to the terms of any agreement entered into in any particular case, the Board may revoke any such appointment.

- 25 “(3) A director so appointed shall not, while holding office as managing director, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors.

“(4) The appointment of a managing director shall be automatically terminated if he ceases from any cause to be
30 a director.

“(5) The Corporation may pay to a managing director such remuneration by way of fees or otherwise as the Board from time to time determines, in addition to or instead of any remuneration paid to him as a director.

- 35 “(6) The Board may confer on a managing director any of the powers exercisable by it, on such terms and subject to such restrictions as it thinks fit, and may from time to time revoke, withdraw, or vary any power so conferred or any such terms or restrictions.”

- 40 **7. Extraordinary vacancies**—Section 12 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

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“(3) An extraordinary vacancy shall be filled by the appointment by the Board of a person qualified to be an elected director.

“(4) Any person appointed to fill an extraordinary vacancy shall hold office in the first instance only until the next following annual general meeting, and shall then be eligible for election in accordance with subsection (1) of section 10 of this Act. If at that meeting he is elected, or any person is elected in his place, he or that person shall hold office for the residue of the term for which the director who vacated office under subsection (2) of this section was elected.”

8. Borrowing powers—Section 17 of the principal Act is hereby amended by omitting from subsection (2) the words “an amount equal to five times the authorised capital for the time being of the Corporation”, and substituting the words “such amount in relation to the authorised capital for the time being of the Corporation as may from time to time be fixed by the Board with the approval of the Minister of Finance”.

9. Guarantees—Section 19 of the principal Act is hereby amended by repealing the proviso.

10. Disposition of profits—Section 21 of the principal Act is hereby amended by repealing the second proviso to subsection (4), and substituting the following proviso:

“Provided also that—

“(a) While the Corporation continues to be exempt from taxation under subsection (1) of section 22 of this Act, no dividend in excess of 6 percent of the paid up share capital for the time being shall be paid in respect of any such financial year:

“(b) After the Corporation ceases to be exempt from taxation as aforesaid, if at the end of any such financial year the Corporation is indebted to the Minister of Finance in respect of interest-free loans under subsection (4) of section 18 of this Act, then, unless the Minister of Industries and Commerce otherwise agrees, the following provisions shall apply in respect of that year:

“(i) No dividend in excess of 6 percent of the paid up share capital for the time being shall be paid if the proportion of the total of all such loans to the total of the Corporation’s borrowings and share capital and reserves exceeds 15 percent:

“(ii) A dividend not exceeding 7 percent of such paid up share capital may be paid if the said proportion exceeds 5 percent and does not exceed 15 percent:

5 “(iii) A dividend not exceeding 8 percent of such paid up share capital may be paid if the said proportion does not exceed 5 percent.”

11. Corporation not a company or a moneylender—The principal Act is hereby amended, as from its commencement,
10 by adding the following section:

“33. It is hereby declared that the Corporation is not—

“(a) A company within the meaning of any of the provisions of the Companies Act 1955:

15 “(b) A moneylender within the meaning of any of the provisions of the Moneylenders Act 1908.”