

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 26 November 1964

Words inserted by the Committee of the Whole are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Marshall

DEVELOPMENT FINANCE CORPORATION

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A BILL INTITULED

**An Act to establish the Development Finance Corporation of
New Zealand and to define its functions and powers**

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

No. 118—2

Price 1s.

1. Short Title—This Act may be cited as the Development Finance Corporation Act 1964.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Board” means the Board of Directors of the Corporation: 5

“Corporation” means the Development Finance Corporation of New Zealand established under this Act:

“Director” means a director of the Corporation:

“Elected director” means a director elected by the shareholders of the Corporation in accordance with this Act: 10

“Industry” includes the provision of services:

“Minister” means the Minister of Industries and Commerce: 15

“Reserve Bank” means the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1933.

PART I

CONSTITUTION OF DEVELOPMENT FINANCE CORPORATION 20

3. Development Finance Corporation—(1) There is hereby established a Corporation to be called the Development Finance Corporation of New Zealand.

(2) The general conduct of the business of the Corporation shall be entrusted to a Board of Directors, constituted in accordance with Part II of this Act. 25

(3) The Head Office of the Corporation shall be in Wellington, and the Corporation may establish such branches as the Board thinks fit.

4. Capital of Corporation—(1) The original capital of the Corporation shall be two million pounds, in shares of ten shillings each, which shall be offered by the Board at par for public subscription or otherwise in New Zealand and shall be allotted by the Board in such amounts and on such terms and conditions as to payment as the Board determines: 35

Provided that the Board shall from time to time offer to the Reserve Bank such number of shares as will ensure that the Reserve Bank, if it accepts the offer, will hold thirty per cent of the share capital for the time being of the Corporation.

(2) The Board may from time to time by resolution recommend to the Minister that the share capital of the Corporation be increased and in any such case the Governor-General, on the recommendation of the Minister, may by Order in
5 Council increase the share capital of the Corporation to such amount as may be prescribed in the Order.

(3) The share capital of the Corporation shall not be increased otherwise than in accordance with subsection (2) of this section.

10 (4) The liability of every shareholder shall be limited to the amount (if any) for the time being unpaid on the shares held by him.

5. Time of incorporation—After the amount of one million pounds of the capital of the Corporation has been subscribed,
15 the Minister shall give public notice of the subscription in the *Gazette* and in such other manner as he thinks fit, and on a date to be specified by the Minister by the notice in the *Gazette* the shareholders of the Corporation shall become a
20 body corporate, with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

6. Functions of Corporation—(1) The general functions of
25 the Corporation shall be to provide finance for the establishment of new industries in New Zealand or for the development or extension of any industry for the time being carried on in New Zealand in cases where finance is not available on reasonable terms and conditions for any such purpose and to
30 encourage and promote investment in the industrial development of New Zealand by providing technical assistance and advice.

(2) Without limiting the generality of subsection (1) of this section, the Corporation shall have the following particular functions:

35 (a) To lend money, with or without security and on such terms and conditions as the Board thinks fit, to persons engaged or about to be or intending to be engaged in any industry in New Zealand in cases
40 where production from the industry is or will be of value to the economy generally, particularly those industries based on the extraction or processing of indigenous raw materials or which will otherwise benefit the balance of payments:

- (b) In special circumstances, to lend money for the purpose of assisting agricultural and pastoral production:
- (c) To provide such advisory and technical services as the Board considers desirable or expedient in the interests of the commercial community. 5
- (3) In the exercise of its functions the Corporation shall,—
- (a) Evaluate each proposal after having regard to the economic worth of the industry concerned, its usefulness to the New Zealand economy, the extent to which it will be owned or effectively controlled by persons domiciled in New Zealand, and the prospects of its becoming profitable within a reasonable time; and shall not necessarily have regard to the value of the security available in respect of any proposal: 10 15

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(aa) Encourage the establishment or expansion of industries in areas where the establishment or expansion will assist the development of those areas and benefit the economy as a whole: 20

- (b) Lend primarily for medium or long term periods and give particular attention to the needs of small and medium sized businesses:
- (c) Endeavour to conduct its activities so as to operate on a profitable basis. 25

7. Powers of Corporation—The Corporation shall have all such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions, and in particular it may from time to time do all or any of the following things— 30

- (a) Provide finance by purchasing or subscribing for shares, debentures, bonds, or other securities or by making loans, with or without security, or by acquiring any other interest: 35
- (b) Finance the purchase, sale, or hire of machinery, plant, equipment, materials, goods, and articles of every description by means of any arrangement whatsoever including, but without limiting the generality of the foregoing, the purchase and resale and hire thereof on such terms as the Board thinks fit; and discount hire-purchase or conditional sale agreements or hire agreements and lend money on the security of a mortgage or an assignment of any such agreement: 40 45

- 5 (c) Execute, make, draw, accept, endorse, discount, issue, and negotiate cheques, promissory notes, bills of exchange, bills of lading, bankers and other drafts, warrants, bonds, debentures, coupons, and other negotiable or transferable instruments and buy, sell, or otherwise deal in the same:
- (d) Underwrite or subunderwrite issues of securities, give and receive guarantees, or participate with others in any such activities:
- 10 (e) Participate, in the discretion of the Board, in the management of enterprises to whose finance it has contributed:
- (f) Organise, participate in, or act as agent for consortium arrangements for the assistance of industry:
- 15 (g) Act as agent for the Government, international financial organisations, and other financial institutions in the financing of industry:
- (h) Sell to the public or to other institutions, after consultation with the enterprise concerned, shares or loan investments held:
- 20 (i) Place funds not immediately required on deposit with any bank or authorised dealer in the short term money market or invest any such funds in Government or local authority securities:
- 25 (j) Take such steps as may be necessary to protect or recover its financial interest in any business:
- (k) Make such charges for the provision of its services as the Board thinks fit:
- 30 (l) Exercise such other powers as are conferred on it by this Act or otherwise.

8. Limitations on powers—(1) In the exercise of its powers the Corporation shall ordinarily provide financial assistance for industrial projects only when the Board is satisfied that any such assistance is not otherwise reasonably available, and in no case shall the Corporation provide the whole of the
35 finance for any project.

(2) The Corporation shall not provide financial assistance to any body the capital of which is wholly supplied by the New Zealand Government or to any local authority.

PART II

MANAGEMENT OF CORPORATION

9. Constitution of Board—(1) Subject to the provisions of this Act, there shall be a Board of Directors of the Corporation consisting of—

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- (a) The Governor of the Reserve Bank:
- (b) The Secretary to the Treasury:
- (c) The Secretary of Industries and Commerce:
- (d) Not less than five nor more than seven directors appointed or elected in accordance with this Act.

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(2) The first directors under paragraph (d) of subsection (1) of this section shall consist of six persons appointed by the Minister from a panel nominated by those persons whom the Minister is satisfied will subscribe for shares in the capital of the Corporation.

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(3) The directors appointed under subsection (2) of this section shall hold office until their successors are elected in accordance with this Act, and shall then retire from office.

10. Terms of office of elected directors—(1) Subject to the provisions of this Act, the elected directors shall be elected for a term of three years by the shareholders at a general meeting of the Corporation but may from time to time be re-elected.

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(2) A general meeting shall be held for the purpose of electing directors as soon as practicable after the date of the incorporation of the Corporation.

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(3) Notwithstanding anything to the contrary in this Act, every elected director, unless he sooner vacates his office under section 12 of this Act, shall continue in office until his successor comes into office.

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11. Retirement of first elected directors—With respect to the first elected directors, the following provisions shall apply:

- (a) Two of those directors shall retire at the expiration of one year from the date of their election, two shall retire at the expiration of two years from that date, and the remaining directors shall retire at the expiration of three years from that date:

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- (b) The directors so to retire at the end of one year shall be determined by agreement of all the elected directors, and the directors so to retire at the end of two years shall be determined by agreement of the elected directors then remaining; and, failing agreement on either occasion, the directors then to retire shall be determined by lot.

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12. Extraordinary vacancies—(1) Any elected director may at any time be removed from office by the Board, in accordance with its rules, for disability, insolvency, neglect of duty, or misconduct proved to the satisfaction of the Board, or may
5 at any time resign his office by writing addressed to the Chairman of the Board.

(2) If any elected director dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed an extraordinary vacancy.

10 (3) An extraordinary vacancy shall be filled in the manner in which the election to the vacant office was originally made.

(4) Every person elected to fill an extraordinary vacancy shall be elected for the residue of the term for which the vacating member was elected.

15 (5) The powers of the Board shall not be affected by any vacancy in the membership thereof.

13. Deputies of directors—(1) If any elected director is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, that director may appoint
20 a deputy, approved by the Board in that behalf, to act for him during his incapacity.

(2) Any deputy appointed under this section shall, while he acts as such, be deemed to be a director of the Corporation.

25 (3) No appointment of a deputy and no acts done by him as such, and no act done by the Board while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion of his appointment had not arisen or has ceased.

14. Chairman and Deputy Chairman—(1) The Board
30 shall from time to time elect one of its number to be Chairman of the Board and another to be Deputy Chairman to hold office, in each case, for such term as the Board determines:

35 Provided that neither the Chairman nor the Deputy Chairman shall hold office as such at any time when he is not a director.

40 (2) During any vacancy in the office of Chairman, or in the absence of the Chairman from any meeting of the Board, or in the event of the Chairman being incapacitated by illness or other cause from performing the duties of his office, the Deputy Chairman shall have and may exercise all the powers of the Chairman.

15. Meetings of the Board—(1) The first meeting of the Board shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Board shall be held at such times and places as the Board or the Chairman from time to time appoints. 5

(3) The Chairman of the Board may at any time call a special meeting of the Board and the Chairman shall call a special meeting whenever requested to do so in writing by any three directors. 10

(4) At all meetings of the Board not less than half the directors (including at least one non-elected member) shall form a quorum.

(5) The Chairman shall preside at all meetings of the Board at which he is present. In the absence from any meeting of the Chairman and the Deputy Chairman, the directors present shall appoint one of their number to be Chairman at that meeting. 15

(6) In the absence from any meeting of the Board of any director (other than an elected director), any officer of the Reserve Bank or, as the case may require, of the Department of the absent director, authorised in that behalf may attend the meeting in his stead, or during intervals between meetings do any act which the director may do, and while so attending or acting shall be deemed to be a director. 20 25

(7) At any meeting of the Board the chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(8) All questions arising at any meeting of the Board shall be decided by a majority of the valid votes recorded thereon. 30

(9) Subject to the provisions of this Act and of the rules of the Corporation, the Board may regulate its procedure in such manner as it thinks fit.

16. Committees—(1) The Board may from time to time, by resolution, appoint, discharge, alter, continue, or reconstitute committees consisting of such directors as may be resolved in that behalf. 35

(2) The Board may delegate to any committee appointed under this section such of its powers as it thinks fit.

(3) Subject to any general or special directions given or conditions attached by the Board, any powers so delegated may be exercised by the committee with the same effect as if those powers had been directly conferred by this Act and not by delegation. 40

(4) Every committee purporting to act under any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

5 (5) Every such delegation shall be revocable at will, and no such delegation shall prevent the performance or exercise of any power by the Board.

(6) Until any such delegation is revoked, it shall continue in force according to its tenor, notwithstanding any change
10 in the membership of the Board or of any committee.

(7) Subject to the rules of the Corporation, each committee may regulate its own proceedings in such manner as it thinks fit.

PART III

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FINANCIAL PROVISIONS

17. Borrowing powers—(1) The Corporation may from time to time borrow money in New Zealand or elsewhere and issue debentures and mortgage or charge any of its real or personal property:

20 Provided that if the repayment of any amount borrowed by the Corporation is guaranteed by the Minister of Finance under this Act, the loan shall be subject to such terms and conditions as the Minister of Finance thinks fit.

(2) The total amount borrowed under this section together
25 with any contingent liabilities of the Corporation by way of guarantee or indemnity shall not at any time exceed an amount equal to five times the authorised capital for the time being of the Corporation:

30 Provided that in calculating the total indebtedness of the Corporation for the purposes of this subsection, no account shall be taken of any contingent liability in respect of which the Minister of Finance has given a guarantee under this Act to the Corporation.

18. Advances to Corporation—(1) Subject to the provisions
35 of this Act, the Minister of Finance may from time to time, on behalf of Her Majesty the Queen—

(a) Advance money to the Corporation; and

(b) Give in respect of any advance made to the Corporation
40 by any other person any guarantee, indemnity, or security,—

on or subject to such terms and conditions as that Minister thinks fit.

(2) All money required to be paid by the Minister of Finance under this section shall, without further appropriation that this section, be paid out of the Consolidated Revenue Account or out of the National Development Loans Account. Where any payment under this section is made out of the National Development Loans Account, the authority of the Minister to borrow money under section 11 of the New Zealand Loans Act 1953 shall be deemed to be extended as if the money so paid had been transferred from the National Development Loans Account to another fund or account as mentioned in that section. 5 10

(3) The Minister of Finance may from time to time, on behalf of Her Majesty the Queen, enter into agreements with the Corporation for the purpose of giving full effect to the provisions of this section. 15

(4) In the exercise of his powers under this section, the Minister of Finance may from time to time advance to the Corporation on the security of debentures issued by the Corporation an amount not exceeding in the aggregate two million pounds. Any such advance shall be free of interest and shall not be repayable until the date when the amount in the Reserve Fund first reaches five hundred thousand pounds or the date ten years after the time when the advance was made, whichever date is the earlier. From that date any such advance shall be subject to such terms and conditions as to repayment and payment of interest as the Minister of Finance may determine after consultation with the Board. 20 25

(5) Notwithstanding the provisions of any enactment or rule of law, all other debentures issued by the Corporation, whenever issued, shall have priority as to repayment over any debentures issued by the Corporation for the purpose of securing a loan under subsection (4) of this section. 30

19. Guarantees—In any case where the Corporation borrows any money, whether by the issue of debentures or by way of overdraft or otherwise, the Minister of Finance may give such guarantees as he thinks fit in respect of the amounts borrowed by the Corporation: 35

Provided that no such guarantee shall be given if the total amount borrowed by the Corporation in respect of which any such guarantees are for the time being in force is in excess of three times the authorised capital for the time being of the Corporation. 40

20. **Trustee investment**—All bonds, debentures, and other securities issued by the Corporation shall, for the purposes of section 4 of the Trustee Act, be investments in which a trustee may invest trust funds if payment of all money
5 secured by any such securities is guaranteed by the Government of New Zealand.

21. **Disposition of profits**—(1) The Corporation shall establish a Reserve Fund into which shall be paid the annual surplus of the Corporation.

10 (2) The annual surplus shall consist of so much of the annual income of the Corporation as is not required for the payment of expenses, provision for bad and doubtful debts, depreciation of assets, and all such other matters as the Board considers proper.

15 (3) During the first two years after the date of the incorporation of the Corporation the whole of the annual surplus of the Corporation shall be paid into the Reserve Fund.

(4) During subsequent years provision may be made for the payment by the Corporation of a dividend of such amount
20 as the Board thinks fit:

Provided that if at the end of any financial year to which this subsection relates the amount in the Reserve Fund is less than five hundred thousand pounds, not less than twenty-five per cent of the annual surplus shall be paid to
25 the Reserve Fund and no dividend in excess of six per cent of the paid up share capital for the time being shall be paid in respect of that year:

Provided also that if at the end of any such financial year the Corporation is indebted to the Minister of Finance in
30 respect of any interest-free loan under subsection (4) of section 18 of this Act or receives any taxation concessions under subsection (1) of section 22 of this Act, the Governor-General may by Order in Council declare that the provisions of the foregoing proviso, with such variations or modifications (if
35 any) as may be prescribed in the Order, shall continue to have effect, and every such Order in Council shall have effect according to its tenor.

(5) Any amount in the Reserve Fund may from time to time be invested by the Corporation in such manner as the
40 Corporation is authorised to invest its capital or other funds belonging to the Corporation.

22. Taxation—(1) The Corporation shall be exempt from the payment of land tax and income tax until the end of the financial year after the date when the amount in the Reserve Fund first reaches five hundred thousand pounds or the date ten years after the incorporation of the Corporation, whichever date is the earlier. 5

(2) The Corporation shall be deemed to be a development project within the meaning of section 86A of the Land and Income Tax Act 1954.

23. Fees and travelling allowances—(1) The Corporation 10 may pay to the elected directors such remuneration by way of fees or otherwise as the Board from time to time determines:

Provided that during such time as the Corporation is indebted to the Minister of Finance in respect of any interest-free loan under subsection (4) of section 18 of this Act or receives taxation concessions under subsection (1) of section 22 of this Act, the total amount paid to directors under this subsection shall not exceed five thousand pounds in any year. 15

(2) There shall be paid from the funds of the Corporation 20 to the elected directors of the Board travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the directors were members of a Statutory Board within the meaning of that Act. 25

24. Annual report and accounts—(1) As soon as reasonably practicable after the end of each financial year the Board shall prepare a balance sheet and such other statements of account as are necessary to show fully the financial position of the Corporation and the financial results of its operations 30 during that year together with a report of its operations for the year.

(2) A copy of the report, and accounts and balance sheet certified by the auditors of the Corporation, shall be forwarded to the Minister and laid by him before Parliament 35 if then sitting, and, if not, within twenty-eight days after the commencement of the next ensuing session.

(3) The accounts of the Corporation shall be audited in the same manner as if the Corporation were a public company under the Companies Act 1955. 40

25. **Unauthorised expenditure**—The Board may, in any financial year, expend out of the funds of the Corporation for purposes not authorised by this or any other Act any sum or sums not amounting in the whole to more than five hundred pounds.

PART IV

GENERAL

26. **Meetings of shareholders**—(1) An ordinary general meeting of shareholders of the Corporation shall be convened by the Board once in every year.

(2) Every shareholder of the Corporation shall be entitled to vote at general meetings of the shareholders of the Corporation.

(3) Every such shareholder shall at any such meeting be entitled to one vote for every share of which he is the registered proprietor.

(4) Every shareholder shall be entitled to transfer his right of voting at any general meeting to any other shareholder as his proxy.

27. **Share register and transfer of shares**—(1) The shares of the Corporation shall be registered and transferable in the books of the Corporation.

(2) The Board shall be entitled, without assigning any reason, to decline to accept any person whomsoever as the transferee of any share.

28. **Rules of Corporation**—(1) The Board may from time to time prescribe rules for the conduct of the business of the Corporation and the rules shall be observed by the Board in its conduct of that business.

(2) The Board may from time to time amend or revoke any of such rules or make such additional rules as it thinks fit.

(3) All such rules and all amendments or additions to any such rules shall be approved by the shareholders of the Corporation expressed at a general meeting of shareholders.

29. **Appointment of staff**—(1) The Board may from time to time appoint a General Manager and such other officers and servants as it considers necessary for the efficient carrying out of the functions and powers of the Corporation under

this Act, and may, out of the funds of the Corporation, pay to any such officers and servants such salaries and allowances as the Board from time to time determines.

(2) The Board may, out of the funds of the Corporation and for the purpose of providing superannuation or retiring allowances for any of the officers or servants of the Corporation, subsidise the National Provident Fund or any other fund or scheme established with the approval of the Minister of Finance. 5

30. Contracts of Corporation—Part II of the First Schedule to the Public Bodies Contracts Act 1959 is hereby amended by inserting in its appropriate alphabetical order the following item: 10

“The Development Finance Corporation of New Zealand	1964, No. 00 The Development Finance Corporation Act 1964.”	15
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31. Directors not personally liable—No director shall be personally liable for any act or default done or made by the Board or by any director in good faith in the course of operations of the Board. 20

32. Disclosure of interests—(1) Any director of the Corporation who, otherwise than as such director, is directly or indirectly interested in any arrangement or agreement made or entered into, or proposed to be made or entered into by the Corporation shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board. 25

(2) A disclosure under this section shall be recorded in the minutes of the Board, and, except as otherwise provided by resolution of the Board, the director— 30

- (a) Shall not take part after the disclosure in any deliberation or decision of the Board relating to the arrangement or agreement; and
- (b) Shall be disregarded for the purpose of forming a quorum of the Board for any deliberation or decision. 35