

# AUSTRALIAN OVERSEAS PROJECTS CORPORATION ACT 1978

## No. 105 of 1978

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# AUSTRALIAN OVERSEAS PROJECTS CORPORATION ACT 1978

No. 105 of 1978

An Act to establish an Australian Overseas Projects Corporation.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

1. This Act may be cited as the *Australian Overseas Projects Corporation Act 1978*.<sup>1</sup> Short title

2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement

3. (1) In this Act, unless the contrary intention appears— Interpretation

“acting Chairman” means an acting Chairman of the Board appointed under sub-section 19 (1);

“acting Deputy Chairman” means an acting Deputy Chairman of the Board appointed under sub-section 19 (2);

“acting Director” means an acting Chairman, an acting Deputy Chairman and an acting Director appointed under sub-section 19 (3);

“acting Managing Director” means an acting Managing Director of the Corporation appointed under sub-section 29 (1);

“appointed Director” means the Chairman, the Deputy Chairman or a Director referred to in paragraph 13 (1) (d);

“approved bank” means a trading bank within the meaning of sub-section 5 (1) of the *Banking Act 1959* or another bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

“Australian company” means a company incorporated or formed in Australia;

“Australian consortium” means—

(a) an association of persons at least one of which is an Australian private organization; or

(b) an association consisting of the Corporation and—

(i) an Australian private organization; or

(ii) 2 or more persons at least one of which is an Australian private organization;

“Australian private organization” means—

- (a) a person or partnership;
- (b) an Australian company; or
- (c) an Australian consortium, not being a consortium that includes the Corporation,

that carries on business in Australia;

“Board” means the Australian Overseas Projects Corporation Board established by section 11;

“Chairman” means the Chairman of the Board;

“Corporation” means the Australian Overseas Projects Corporation established by section 5;

“Deputy Chairman” means the Deputy Chairman of the Board;

“development project” means a project by way of—

- (a) the construction of works;
- (b) the design, supply or installation of equipment or facilities; or
- (c) the testing in the field of agricultural practices,

and includes any necessary preliminary studies, investigations or planning;

“Director” means a Director of the Corporation;

“Managing Director” means the Managing Director of the Corporation;

“overseas development project” means a development project that is to be carried out in a country other than Australia;

“private organization” means a person or partnership or a company, and includes a consortium of private organizations.

(2) For the purposes of this Act, the profits of the Corporation for a financial year are the amount (if any) remaining after deducting from the revenue received or receivable in respect of that financial year the expenditure and provision for expenditure properly chargeable against that revenue.

Objects of Act

4. The object of this Act is to assist Australian private organizations to compete for contracts for overseas development projects so as to encourage the export of Australian goods and services.

## PART II—AUSTRALIAN OVERSEAS PROJECTS CORPORATION

Establishment of Corporation

5. (1) There is established by this section a Corporation by the name of the Australian Overseas Projects Corporation.

(2) The Corporation—

- (a) is a body corporate;
- (b) shall have a seal;

- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

(3) The seal of the Corporation shall be kept in such custody as the Board directs and shall not be used except as authorized by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Corporation affixed to a document and shall presume that it was duly affixed.

6. (1) Subject to this Part, the functions of the Corporation are—

Functions of Corporation

- (a) to obtain and make available to Australian private organizations information with regard to the opportunities that exist, or may exist, from time to time, for Australian involvement in overseas development projects;
- (b) to assist Australian private organizations to negotiate with overseas Governments, authorities or organizations for the carrying out of overseas development projects by Australian private organizations or an Australian consortium that includes the Corporation;
- (c) to assist Australian private organizations to carry out overseas development projects; and
- (d) to agree to carry out the whole, or a part, of an overseas development project with a view to arranging for the necessary work in relation to the project to be carried out, on behalf of the Corporation, by Australian private organizations.

(2) In carrying out the functions set out in sub-section (1), the Corporation may—

- (a) provide an Australian private organization or an Australian consortium with technical or advisory services, whether supplied by the Corporation or on its behalf; and
- (b) at the request of an Australian private organization, join with that organization, or with that organization and other private organizations (whether Australian private organizations or not), in the formation of an Australian consortium for the purpose of carrying out the whole, or a part, of an overseas development project.

7. (1) Subject to sub-section (2), the Corporation shall not engage, whether as principal or agent, in the buying or selling of goods.

Corporation not to engage in trade

(2) The Corporation may—

- (a) buy goods for use by the Corporation within Australia and subsequently sell such goods; and

- (b) buy or sell goods to the extent that that buying or selling is incidental to the provision by the Corporation of a technical or advisory service to an Australian private organization or an Australian consortium.

Corporation  
not to  
compete  
against  
Australian  
private  
organizations

8. (1) Where the Corporation is aware that an Australian private organization is able and willing to carry out an overseas development project or a part of an overseas development project, the Corporation shall not, unless the Minister otherwise approves, take any action that would result in that project or that part of the project being carried out, in whole or in part, by the Corporation, whether acting as a principal or as an agent, or by an Australian consortium that includes the Corporation.

(2) Where an Australian private organization becomes aware that the Corporation—

- (a) is negotiating with another person or other persons with a view to the formation of an Australian consortium to carry out the whole, or a part, of an overseas development project; or
- (b) is negotiating with an overseas Government, authority or organization with a view to agreeing to carry out the whole or a part of an overseas development project in accordance with paragraph 6 (1) (d),

the Australian private organization may lodge with the Minister an objection to that action of the Corporation.

(3) Where an Australian private organization—

- (a) lodges an objection with the Minister under sub-section (2) relating to negotiations being carried on by the Corporation; and
- (b) satisfies the Minister that it is able and willing to carry out the project, or the part of the project, to which those negotiations relate,

the Minister may direct the Corporation to cease those negotiations.

(4) In considering whether to give a direction under sub-section (3), the Minister shall take into consideration—

- (a) the possible effect of the withdrawal of the Corporation from the negotiations to which the objection relates;
- (b) the reasons why the objection was made; and
- (c) any other relevant matter.

(5) The Corporation shall comply with a direction of the Minister under sub-section (3).

Corporation  
not to act as  
prime  
contractor  
except with  
approval

9. (1) The Corporation shall not agree to carry out the whole, or a part, of an overseas development project in accordance with paragraph 6 (1) (d) unless—

- (a) an Australian private organization that is able and willing to carry out, on behalf of the Corporation, some or all of the work to be carried out in relation to the project requests it to do so; and
- (b) the Minister approves its doing so.

(2) The Minister shall not give an approval for the purposes of subsection (1) with respect to an overseas development project unless he is satisfied that there is no Australian private organization able and willing to carry out the project, or the part of the project, concerned.

**10.** Subject to this Act, the Corporation has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, may— Powers of Corporation

- (a) arrange with the Commonwealth, a State or any other person for the provision of services to, or the performance of any other work for, the Corporation;
- (b) arrange with a person for the person, acting on behalf of the Corporation, to provide services to, or to perform any other work for, an Australian private organization or an Australian consortium that includes the Corporation; and
- (c) charge such fees as are fair and proper with respect to the provision of services, or the performance of any other work, by, or on behalf of, the Corporation.

### PART III—AUSTRALIAN OVERSEAS PROJECTS CORPORATION BOARD

**11.** There is established by this section an Australian Overseas Projects Corporation Board, which shall be constituted as provided by section 13. Establishment of Board

**12.** (1) The business and other affairs of the Corporation shall be conducted and controlled by the Board and, subject to section 14, the policy of the Corporation with respect to any matter shall be determined by the Board. Functions of Board

(2) All acts and things done in the name of, or on behalf of, the Corporation by the Board, or with the authority of the Board, shall be deemed to have been done by the Corporation.

**13.** (1) The Board shall consist of—

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) the Managing Director; and
- (d) 5 other Directors.

Membership of Board

(2) The Chairman, the Deputy Chairman and the Directors referred to in paragraph (1) (d) shall be appointed by the Governor-General and shall be so appointed as part-time Directors.

(3) At least 4 appointed Directors (of whom at least one is the Chairman or the Deputy Chairman) shall be persons who are engaged in private industry at the time of their appointment and appear to the Governor-General to be persons who have experience in matters related to development projects.

(4) At least one appointed Director shall be a person who is engaged in private industry at the time of his appointment and appears to the Governor-General to be a person who has experience in matters related to rural industry.

(5) An appointed Director shall hold office for such period, not exceeding 3 years, as the Governor-General specifies in his instrument of appointment.

(6) An appointed Director is eligible for re-appointment.

(7) The performance of the functions, or the exercise of the powers, of the Board is not affected by reason of there being a vacancy or vacancies in the membership of the Board.

Questions of  
policy

14. (1) The Board shall keep the Minister informed of the decisions of the Board with respect to matters of policy in relation to the performance of the functions of the Corporation.

(2) Before adopting a policy (including an altered policy) with respect to any matter relating to the performance of its functions, the Board shall submit the policy for the approval of the Minister, and the Board shall not adopt the policy without the approval of the Minister, or, except during such time as the Minister permits, continue to pursue the policy where the Minister, having approved the policy, subsequently withdraws his approval.

(3) If the Board fails to obtain the Minister's approval to a particular policy or the Minister withdraws his approval of a particular policy, the Board shall endeavour to reach agreement with the Minister as to the policy to be adopted by the Board with respect to the matter of policy concerned and, in the event of agreement not being reached within a time that the Minister considers reasonable, the Minister may, by writing signed by him, determine a policy to be adopted by the Board with respect to that matter, and the Board shall adopt that policy.

(4) Nothing in this section shall be construed—

(a) as requiring the approval of the Minister to the Corporation's entering into a particular contract or giving a particular guarantee; or



- (b) as empowering the Minister to determine that the Corporation shall or shall not enter into a particular contract or give a particular guarantee,

but the Corporation shall not enter into a particular contract, or give a particular guarantee, contrary to a policy approved or determined by the Minister under this section.

**15.** (1) The Board may, by resolution, either generally or as otherwise provided by the resolution, delegate to a person any of its powers under this Act, other than this power of delegation. Delegation  
by Board

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Board.

(3) A delegation of a power under this section—

- (a) may be revoked by resolution of the Board (whether or not constituted by the persons constituting the Board at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Board; and
- (c) continues in force notwithstanding a change in the membership of the Board.

(4) Section 34A of the *Acts Interpretation Act* 1901 applies in relation to a delegation under this section as if the Board were a person.

(5) A certificate signed by the Chairman stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

(6) A document purporting to be a certificate mentioned in subsection (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

**16.** (1) An appointed Director shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed. Remuner-  
ation and  
allowances

(2) An appointed Director shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

**17.** An appointed Director, or an acting Director, may resign his office by writing under his hand delivered to the Minister. Resignation

**18.** (1) The Governor-General may terminate the appointment of an appointed Director for misbehaviour or physical or mental incapacity. Termination  
of  
appointment

(2) If an appointed Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent, except with the permission of the Minister, from 3 consecutive meetings of the Board; or
- (c) fails to comply with his obligations under sub-section (3),

the Governor-General shall, by notice published in the *Gazette*, declare that the office of that Director is vacant, and thereupon the office shall be deemed to be vacant.

(3) An appointed Director, or an acting Director, who has a direct or indirect pecuniary interest in a matter considered or about to be considered by the Corporation, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, 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.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the Board and the Director or acting Director, as the case may be, shall not be present during any deliberation of the Board with respect to that matter.

Acting  
appointments

19. (1) Where there is a vacancy in the office of Chairman, or the Chairman is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Board, the Minister may appoint the Deputy Chairman or, subject to sub-section (4), another person to be acting Chairman of the Board until the filling of the vacancy or during the inability, as the case may be.

(2) Where there is a vacancy in the office of Deputy Chairman, or the Deputy Chairman is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Board, the Minister may, subject to sub-section (4), appoint a person to be acting Deputy Chairman until the filling of the vacancy or during the inability, as the case may be.

(3) Where there is a vacancy in the office of an appointed Director (other than the Chairman or Deputy Chairman), or an appointed Director (other than the Chairman or Deputy Chairman) is unable (whether on account of illness or otherwise) to attend meetings of the Board, the Minister may, subject to sub-section (4), appoint a person to be an acting Director in relation to the vacancy or in the place of the appointed Director until the filling of the vacancy or during the inability, as the case may be.

(4) A person may be appointed under this section as acting Chairman or as acting Deputy Chairman whether or not he is a member of the

Board, but the Managing Director or a person acting as Managing Director shall not be so appointed.

(5) For the purposes of this section—

- (a) there shall be deemed to be a vacancy in the office of Deputy Chairman at any time when the Deputy Chairman is acting Chairman; and
- (b) there shall be deemed to be a vacancy in the office of an appointed Director (other than the Chairman or Deputy Chairman) at any time when the person occupying that office is acting Chairman or acting Deputy Chairman.

(6) An acting Chairman, an acting Deputy Chairman or other acting Director appointed by reason of the office of Chairman, Deputy Chairman or other appointed Director, as the case may be, being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(7) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(8) The validity of a decision of the Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or an appointment under this section had ceased to have effect.

20. (1) The Board shall hold such meetings as are necessary for the performance of its functions. Meetings of Board

(2) The Chairman or, if the Chairman is unable (whether on account of illness or otherwise) to perform the functions of his office, the Deputy Chairman, may at any time convene a meeting of the Board.

(3) The Chairman or, if the Chairman is unavailable (whether on account of illness or otherwise) to perform the functions of his office, the Deputy Chairman, shall convene a meeting of the Board upon the receipt of a request in writing from not less than 3 Directors.

(4) The Chairman shall preside at all meetings of the Board at which he is present.

(5) If the Chairman is not present at a meeting of the Board, the Deputy Chairman shall, if present at the meeting, preside at the meeting.

(6) If neither the Chairman nor the Deputy Chairman is present at a meeting of the Board, the Directors present shall elect one of their number to preside at the meeting.

(7) At a meeting of the Board, 5 Directors constitute a quorum.

(8) Questions arising at a meeting of the Board shall be determined by a majority of the votes of the Directors present and voting.

(9) A Director presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) In this section—

- (a) a reference to the Chairman shall, if there is an acting Chairman, be read as a reference to the acting Chairman;
- (b) a reference to the Deputy Chairman shall, if there is an acting Deputy Chairman, be read as a reference to the acting Deputy Chairman; and
- (c) a reference to a Director shall be read as including a reference to an acting Director and to an acting Managing Director.

#### PART IV—MANAGING DIRECTOR AND STAFF

##### *Division 1—Managing Director*

Managing Director

**21.** There shall be a Managing Director of the Corporation.

Duty of Managing Director

**22.** The Managing Director shall, under the Board, manage the Corporation.

Appointment and term of office

**23.** (1) The Managing Director shall be appointed by the Governor-General.

(2) A person shall not be appointed as the Managing Director unless he appears to the Governor-General to be a person who has experience in matters related to development projects.

(3) A person appointed as Managing Director shall hold office for such period, not exceeding 5 years, as the Governor-General specifies in his instrument of appointment.

(4) A person appointed as Managing Director is eligible for re-appointment.

(5) A person who has attained the age of 65 years shall not be appointed or re-appointed as Managing Director and a person shall not be appointed or re-appointed as Managing Director for a period that extends beyond the date on which he will attain the age of 65 years.

(6) The Managing Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Managing Director not to engage in other work

**24.** The Managing Director shall not engage in paid employment outside the duties of his office except with the approval of the Minister.

**25.** (1) The Managing Director shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration and allowances

(2) The Managing Director shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

**26.** The Minister may grant leave of absence to the Managing Director on such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence

**27.** The Managing Director, or a person who is acting as Managing Director, may resign his office by writing under his hand delivered to the Minister. Resignation

**28.** (1) The Governor-General may terminate the appointment of the Managing Director for misbehaviour or physical or mental incapacity. Termination of appointment

(2) If the Managing Director—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) except with the approval of the Minister, engages in paid employment outside the duties of his office;
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or
- (d) in any way, otherwise than as a member of, and in common with the other members of, an incorporated company which consists of more than 25 persons and of which he is not a director, becomes interested in a contract entered into by or on behalf of the Corporation,

the Governor-General shall, by notice published in the *Gazette*, declare that the office of the Managing Director is vacant, and thereupon the office shall be deemed to be vacant.

**29.** (1) Where there is a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office, or the Managing Director is, or is expected to be, absent from duty or from Australia, the Minister may appoint another person (not being an appointed Director or an acting Director), to be acting Managing Director until the filling of the vacancy or during the absence, and, when a person is so acting as Managing Director, he shall have and may exercise Acting Managing Director

the powers and perform the functions of the Managing Director (including powers and functions delegated to the Managing Director under section 15) and may attend and vote at meetings of the Board as if he were the Managing Director.

(2) An acting Managing Director appointed by reason of the office of the Managing Director being vacant shall not continue in office after the expiration of 12 months after the occurrence of the vacancy.

(3) The Minister may—

- (a) determine the terms and conditions of appointment of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(4) The validity of an act or thing done by a person appointed, or purporting to have been appointed, under this section, including the attendance and voting of such a person at a meeting of the Board, shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment had not arisen or that the appointment had ceased to have effect.

Officers'  
Rights  
Declaration  
Act

30. Where the Managing Director was, immediately before his appointment or engagement, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act* 1928 applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act* 1928 applies as if this Act and this section had been specified in the Schedule to that Act.

#### *Division 2—Staff*

Employees

31. (1) The Corporation may engage such employees as the Board thinks necessary for the purposes of this Act.

(2) The terms and conditions of employment (in respect of matters not provided for by this Act) of persons engaged under this section are such as are, subject to the approval of the Public Service Board, determined by the Board.

Rights of  
public  
servants  
employed  
under this  
Act

32. Where an employee of the Corporation was, immediately before his engagement by the Corporation under section 31, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act* 1928 applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and

- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

### PART V—FINANCE

33. In the performance of its functions and in the conduct of its business, the Corporation shall act in accordance with sound commercial principles and shall pursue a policy directed towards securing, in each financial year, revenues sufficient—

Financial  
policy of  
Corporation

- (a) to meet the expenditure, and provision for expenditure, of the Corporation properly chargeable to revenue of that year, including provision in respect of income tax payable by the Corporation in relation to that financial year; and
- (b) to permit the payment to the Commonwealth of a reasonable return on the capital of the Corporation.

34. (1) The Minister for Finance shall, in accordance with this section, pay \$2,000,000 to the Corporation out of the Consolidated Revenue Fund, which is appropriated accordingly.

Capital of  
Corporation

(2) The Minister for Finance shall pay the amount specified in sub-section (1) to the Corporation in annual instalments of \$1,000,000 and shall pay the first such instalment as soon as practicable after the commencement of this Act.

- (3) The capital of the Corporation at any time is the sum of—
- (a) each instalment that has been paid to the Corporation under sub-section (2);
- (b) any amounts paid to the Corporation by the Minister for Finance out of moneys appropriated by the Parliament for the purpose of providing further capital for the Corporation; and
- (c) any amounts transferred from the General Reserve of the Corporation to the capital account of the Corporation in pursuance of directions given under sub-section (4),

less the sum of any amounts of capital repaid to the Commonwealth by the Corporation.

(4) The Minister may, from time to time, direct the Board to transfer a specified amount from the General Reserve of the Corporation to the capital account of the Corporation, and the Board shall comply with such a direction.

(5) In giving a direction under sub-section (4), the Minister shall have regard to any advice that the Board has furnished to him in relation to the financial affairs of the Corporation.

35. (1) Interest is not payable to the Commonwealth on the capital of the Corporation but the Corporation shall pay to the Commonwealth,

Payments to  
the  
Common-  
wealth

out of the profits of the Corporation for a financial year, such amount as the Minister determines.

(2) The capital of the Corporation is repayable to the Commonwealth at such times and in such amounts as the Minister determines.

(3) In making a determination under sub-section (1) or (2), the Minister shall have regard to any advice that the Board has furnished to him in relation to the financial affairs of the Corporation.

Surplus  
profits of the  
Corporation

36. (1) The profits of the Corporation for a financial year (other than any amount paid to the Commonwealth in accordance with a determination under sub-section 35 (1)) shall be applied in such manner as the Minister determines.

(2) In making a determination under sub-section (1), the Minister shall have regard to any advice that the Board has furnished to him in relation to the financial affairs of the Corporation.

Borrowing  
by the  
Corporation

37. (1) The Corporation may, with the approval of the Treasurer, borrow moneys that are from time to time necessary for the exercise of its powers or the performance of its duties or functions under this Act.

(2) The Minister for Finance may, on behalf of the Commonwealth, out of moneys appropriated by the Parliament for the purpose, lend to the Corporation, at such rate of interest and on such other terms and conditions as he determines, moneys that the Corporation is authorized to borrow under sub-section (1).

(3) The Corporation may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(4) The Treasurer may, on behalf of the Commonwealth, guarantee the repayment by the Corporation of amounts borrowed under this section otherwise than from the Commonwealth and the payment of interest on amounts so borrowed.

(5) The Corporation shall not borrow moneys except in accordance with this section.

Guarantee  
by the  
Common-  
wealth

38. The Commonwealth is responsible for the payment of all moneys due by the Corporation other than moneys due in respect of moneys borrowed under section 37, but nothing in this section authorizes a creditor or other person claiming against the Corporation to sue the Commonwealth in respect of his claim.

Bank  
accounts

39. (1) The Corporation may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.



(2) The Corporation shall pay all moneys of the Corporation, including moneys borrowed by the Corporation, into an account referred to in this section.

**40.** (1) Subject to sub-section (2), the moneys of the Corporation shall be applied only— Application of moneys

- (a) in payment or discharge of the costs, expenses and other obligations of the Corporation;
- (b) in payment of remuneration and allowances payable to any person appointed or employed under this Act; and
- (c) in making payments to the Commonwealth as provided by this Act.

(2) Moneys of the Corporation not immediately required for the purposes of the Corporation may be invested—

- (a) on deposit with an approved bank;
- (b) in securities of the Commonwealth; or
- (c) in any other manner approved by the Treasurer.

**41.** The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation. Proper accounts to be kept

**42.** (1) The Corporation shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Corporation of an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount. Contracts

(2) Sub-section (1) does not apply to contracts relating to overseas development projects entered into in the course of carrying out the functions of the Corporation.

**43.** The Corporation shall carry on its business so that its contingent liability in respect of transactions engaged in by it does not, at any time, exceed \$50,000,000 or, if a higher amount is prescribed, that higher amount. Maximum contingent liability

**44.** (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Corporation and records relating to assets of, or in the custody of, the Corporation and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing. Audit

(2) The Auditor-General may, in his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Corporation relating directly or indirectly to the receipt or payment of moneys by the Corporation or to the acquisition, receipt, custody or disposal of assets by the Corporation.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirements.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

Liability to  
taxation

**45.** (1) The Corporation is subject to taxation under the laws of the Commonwealth.

(2) Subject to sub-section (3), the Corporation is not subject to taxation under a law of a State or of a Territory.

(3) The regulations may provide that sub-section (2) does not apply in relation to taxation under a specified law of a State or Territory.

(4) The Corporation is not a public authority for the purposes of paragraph 23 (d) of the *Income Tax Assessment Act 1936*.

## PART VI—MISCELLANEOUS

Reports to  
Minister

**46.** The Board shall—

(a) from time to time inform the Minister concerning the general conduct of the operations of the Corporation; and

(b) furnish to the Minister such information relating to those operations, and such information relating to operations to be carried out in the future, as the Minister requires.

Annual  
report of  
Corporation

**47.** (1) The Board shall, as soon as practicable after each 30 June, prepare and furnish to the Minister, for presentation to the Parliament, a report of the operations of the Corporation during the year ended on

that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

(2) The report shall set out—

- (a) all directions given by the Minister to the Corporation under sub-section 8 (3) or 34 (4); and
- (b) all determinations made by the Minister under sub-section 14 (3), 35 (1), 35 (2) or 36 (1),

during the year to which the report relates.

(3) Before furnishing financial statements to the Minister, the Board shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records and show fairly the financial transactions and the state of affairs of the Corporation;
- (c) whether the receipt, expenditure, and investment of moneys, and the acquisition and disposal of assets, by the Corporation during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Minister shall cause a copy of the report and financial statements of the Corporation, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

**48.** Without prejudice to the duty of the Corporation to comply with the provisions of this Act and to observe the limits of its powers under this Act, a contract entered into, or a guarantee given, by the Corporation is not invalidated by reason of a provision of this Act not having been complied with by the Corporation in relation to the contract or guarantee or by reason of the contract or guarantee not being within those limits. Validity of contracts and guarantees

**49.** (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this Act, other than this power of delegation. Delegation by Minister

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

Regulations

**50.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**NOTE**

1. Act No. 105, 1978; assented to 30 August 1978.