

Chapter 24:12

PREVIOUS CHAPTER**SMALL ENTERPRISES DEVELOPMENT CORPORATION ACT**

Acts 16/1983, 17/1988, 24/1990, 3/1997, 22/2001.

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AN ACT to establish the Small Enterprises Development Corporation and to provide for the functions thereof; to provide for the constitution and functions of the Small Enterprises Development Board; to regulate the financial affairs of the Small Enterprises Development Corporation; and to provide for matters incidental to and connected with the foregoing.

[Date of commencement: 16th November, 1984.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Small Enterprises Development Corporation Act [Chapter 24:12].

2 Interpretation

In this Act—

“Board” means the Small Enterprises Development Board referred to in section four;

“co-operative” means—

(a) a co-operative company registered in terms of the Companies Act [Chapter 24:03]; or

(b) a co-operative society registered in terms of the Co-operative Societies Act [Chapter 24:05]; or

(c) any other association of persons which has as its object the promotion of the economic interests of its members in accordance with co-operative principles;

but does not include any such company, society or association which has as its main object the production or marketing of agricultural produce or livestock;

“Corporation” means the Small Enterprises Development Corporation established by section three;

“member” means the chairman or any other member of the Board referred to in subsection (1) of section five;

“Minister” means the Minister of Industry and Commerce or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“private shareholder” means a person, other than the State, to whom one or more shares are issued in terms of subsection (2) of section twenty-three B;

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

“small commercial or industrial enterprise” means an enterprise which complies with such criteria as may from time to time be fixed by the Minister after consultation with such other Ministers as he considers have responsibilities that are related to or connected with the functions of the Corporation.

PART I

SMALL ENTERPRISES DEVELOPMENT CORPORATION AND SMALL ENTERPRISES DEVELOPMENT BOARD

3 Establishment of Small Enterprises Development Corporation

There is hereby established a corporation, to be known as the Small Enterprises Development Corporation, which shall be a body corporate and shall, in the name of the Small Enterprises Development Corporation, be capable of suing and being sued and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

4 Establishment of Small Enterprises Development Board

The operations of the Corporation shall, subject to this Act, be controlled by a board, to be known as the Small Enterprises Development Board, constituted in terms of this Part.

5 Constitution of Board

(1) The Board shall consist of not fewer than five and not more than eleven members of whom—

(a) the Minister shall appoint not more than six, choosing them for their ability and experience in commerce or industry or for their suitability otherwise for appointment as members; and

(b) the private shareholders shall be entitled to elect the number specified in the first column of the Third Schedule corresponding to the percentage of the Corporation’s issued share capital for the time being held by the private shareholders, as specified opposite thereto in the second column of that Schedule.

(2) When appointing—

(a) all of the members referred to in paragraph (a) of subsection (1), the Minister shall consult the President and act in accordance with such directions as the President may give him.

(b) two of the members referred to in paragraph (a) of subsection (1), the Minister shall, in addition to the consultation referred to in paragraph (a) of this subsection, consult such other Ministers as he considers have responsibilities that are related to the functions of the Corporation.

(3) An election of members referred to in paragraph (b) of subsection (1) shall take place at an annual meeting of private shareholders held in terms of regulations made under section forty-four.

(4) Subject to subsection (5)—

(a) the Minister may appoint any person as an alternate to any member

referred to in paragraph (a) of subsection (1);

(b) the private shareholders may elect any person as an alternate to any member referred to in paragraph (b) of subsection (1); and such person—

(i) shall act as a member only when the member to whom he is alternate is for any reason unable to exercise his functions on the Board; and

(ii) when acting as a member, shall exercise the functions of the member to whom he is an alternate;

Provided that an alternate to the chairman or deputy chairman of the Board shall not exercise the functions of the chairman or deputy chairman, as the case may be.

(5) No person shall be appointed or elected as an alternate to a member in terms of subsection (4) unless he is qualified for appointment or election as a member in terms of this Act.

(6) In appointing a person as an alternate to a member in terms of subsection (4), the Minister shall be bound by the same requirements for appointment as are applicable, in terms of paragraph (a) of subsection (1) and of subsection (2), to the appointment of members.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

5A Chairman and deputy chairman of Board

(1) The Minister shall appoint one member as chairman of the Board and another member as deputy chairman of the Board, and the deputy chairman shall exercise the functions of the chairman during any period that the chairman is unable to do so.

(2) The general manager of the Corporation, if he is a member, shall not be appointed chairman or deputy chairman of the Board.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

6 Terms and conditions of office of members

(1) Unless he vacates his office earlier, a member shall hold office for a period of three years from the date of his appointment or election, as the case may be:

Provided that, if at the first election of members after the date of commencement of the Small Enterprises Development Corporation Amendment Act, 1996, the private shareholders elect two or more members, one such member, who shall be chosen by lot, shall hold office for two years from the date of his election.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed;

Provided that a member shall not hold office in terms of this subsection for a period exceeding six months.

(3) A member who resigns or retires shall be eligible for reappointment or re-election to the Board.

(4) Subject to this Act, an alternate member shall continue as such for so long as the member to whom he is alternate holds office.

(5) Members shall hold office on such terms and conditions as the Board, with the approval of the Minister, may fix.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

7 Disqualifications for appointment as member

No person shall be qualified for appointment or election as a member and no person shall be qualified to hold office as a member who—

[amended by Act No. 3 of 1997 with effect from 4th July, 1997]

(a) is not a citizen of Zimbabwe permanently resident in Zimbabwe; or

(b) has, or is married to a person who has, a financial interest in any

business, or is, or is married to a person who is, engaged in any activity connected with any business, if, in the opinion of the Minister, such financial interest or activity is likely to interfere with the impartial discharge by that person of his duties as a member; or

(c) has in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or

(d) has, within the period of five years immediately preceding the date of his proposed appointment, been sentenced in any country to a term of imprisonment of or exceeding six months imposed without the option of a fine and has not received a free pardon.

8 Vacation of office by member

(1) A member shall vacate his office and his office shall become vacant—

(a) after giving the Board such period of notice of intention to resign as may be fixed in his terms and conditions of service of, if no such period has been fixed, after the expiry of one month after the date he gives such notice or after the expiry of such other period of notice as he and the Board may agree; or

(b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section seven to hold office as a member; or

(d) if, in the case of a member elected by the private shareholders, his appointment is revoked in terms of regulations made under section forty-four; or

(e) if he is required in terms of section nine to vacate his office; or

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

9 Board may require member to vacate office

The Board, with the approval of the Minister, may require a member to vacate his office if the member—

(a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) has failed to comply with any term or condition of his office fixed in terms of subsection (2) of section six; or

(c) is mentally or physically incapable of efficiently exercising his functions as a member; or

(d) has been absent, without the Board's permission, from three consecutive meetings of the Board, of which he has been given not less than seven days' notice, and there was no just cause for his absence.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

10 Filling of vacancies on Board

On the death of, or vacation of office by a member referred to—

(a) in paragraph (a) of subsection (1) of section five, the Minister shall, subject to this Act, appoint a person to fill the vacancy for the unexpired period of the member's term of office;

(b) such allowances, if any, as the Board, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or of the committee concerned, as the case may be.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

11 Meetings and procedure of Board

(1) The Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit:

Provided that a meeting of the Board shall be held not less than three times in each financial year of the Corporation.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than two members, convene a special meeting of the Board, which meeting shall be convened for a date not less than seven days nor more than thirty days after receipt of such request.

(3) If at a meeting of the Board the chairman and the deputy chairman are both absent, the members present may elect one of their number to preside at that meeting as chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall, subject to section fourteen have one vote on each question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same force and effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

12 Committees of Board

(1) For the better exercise of its functions the Board Committees of may establish one or more committees in which may be vested and on which may be imposed such of the functions of the Board as the Board, with the consent of the Minister, may direct:

Provided that—

(i) the vesting or imposition of any such functions in a committee shall not divest the Board of such functions; and

(ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions.

(2) The procedure of a committee of the Board shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee of the Board.

(4) The Board—

(a) shall appoint to any committee established in terms of subsection (1) not less than one member of the Board, who shall be chairman of the committee;

(b) may appoint as members of any committee established in terms of subsection (1), on such terms and conditions as the Board may fix, persons who are not members of the Board.

13 Remuneration and expenses of members of Board and of committees

Members of the Board and of committee of the Board shall be paid from the funds of the Corporation—

(a) such remuneration, if any, as the Board, with the approval of the Minister, may from time to time fix for such members generally; and

(b) such allowances, if any, as the Board, with the approval of the Minister, may from time to time fix to meet any reasonable expenses incurred by such members in connection with the business of the Board or of the committee concerned,

as the case may be.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

14 Members to declare connection with companies and firms dealing with Corporation

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Corporation; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company, co-operative or association of persons applying or negotiating for a contract with the Corporation; or

(c) owns immovable property or a right in immovable property or a direct or indirect pecuniary interest in a company, co-operative or association of persons which results in his private interests coming or appearing to come into conflict with his duties as a member;

the member shall forthwith disclose the fact to the Board.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of, or vote on, any question before the Board which relates to any contract, right, immovable property or interest referred to in that subsection.

(3) The general manager appointed in terms of section twenty-two shall not take any part in the consideration or discussion of and, where he has been appointed a member, shall not vote on, any question before the Board which relates to the terms and conditions of his appointment as general manager.

15 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

(a) the Board consisted of fewer than the number of persons for which provision is made in subsection (1) of section five; or

(b) a disqualified person acted as a member at the time the decision was taken or the act was done or authorized.

16 Execution of contracts and instruments by Corporation

An agreement, contract or instrument approved by the Board may be entered into or executed on behalf of the Corporation by any person or persons generally or specially authorized by the Board for that purpose.

17 Minutes of proceedings of Board and committees

(1) The Board shall cause minutes of all proceedings and decisions taken at a meeting of the Board or of a committee of the Board to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Board or the committee concerned, as the case may be, shall be accepted for all purposes as prima facie evidence of the proceedings of and decisions taken at the meeting concerned.

PART III

FUNCTIONS OF CORPORATION

18 Functions of Corporation

Subject to this Act, the functions of the Corporation shall be—

(a) to encourage and assist in the establishment of co-operatives and small commercial or industrial enterprises;

(b) to provide assistance, whether in the form of financial assistance, management counselling and training, information, advice or otherwise, to co-operatives and small commercial or industrial enterprises;

(c) to advise the Minister on all matters connected with co-operatives and small commercial or industrial enterprises;

(d) to do all things which by this Act or any other enactment are required or permitted to be done by the Corporation.

19 Powers of Corporation

(1) Subject to this Act, the Corporation shall, for the better exercise of its functions, have the power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(2) In the performance of its functions in terms of this Act, the Corporation may deal differently with different persons, co-operatives and enterprises.

20 Principles to be observed by Corporation

The Corporation shall conduct its business on sound commercial lines, having regard to the national interest of Zimbabwe, and shall ensure that in each financial year its income is sufficient—

(a) to meet the expenditure of the Corporation properly chargeable to revenue in that year; and

(b) to enable the Corporation to make provision for any taxes, duties or rates for which it is liable; and

(c) to permit the redemption on due date of the Corporation's debentures and other loan capital; and

(d) to enable the Corporation to make such appropriations to its general reserve in terms of section twenty-seven as may be necessary or desirable.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

21 Reports of Corporation

(1) In addition to any annual report which the Corporation is required to submit to the Minister in terms of the Audit and Exchequer Act [Chapter 22:03], the Corporation—

(a) shall submit to the Minister such other reports as the Minister may require;

(b) may submit to the Minister such other reports as the Board may deem advisable;

in regard to the operations, undertakings and property of the Corporation.

(2) The Corporation shall give to the Minister such information relating to the operations, undertakings or property of the Corporation as the Minister may at any time require.

(3) The Minister may lay a report submitted to him by the Corporation in terms of subsection (1) before Parliament.

22 Appointment of general manager

(1) The Corporation—

(a) shall appoint, subject to this Act and on such terms and conditions as the Board thinks fit, a person approved by the Minister to be general manager of the Corporation in whom, subject to the control of the Board, shall be vested the management of the operations, undertakings and property of the Corporation;

(b) may, with the approval of the Minister, assign to the general manager of the Corporation such of the functions of the Corporation as the Board thinks fit.

(2) Members, other than the chairman and deputy chairman of the Board, shall be eligible to be appointed general manager of the Corporation, and if the general manager of the Corporation is not a member on his appointment as general manager, he shall be eligible to be appointed a member, other than chairman or deputy chairman of the Board, in terms of section five.

(3) Without the authority of the Minister, no person shall be appointed as general

manager of the Corporation if he is not a citizen of Zimbabwe permanently resident in Zimbabwe.

(4) The appointment of the general manager of the Corporation shall be terminated if he would be required in terms of paragraph (b) or (c) of section eight to vacate his office had the provisions of that section and of paragraphs (b) and (c) of section seven applied to him.

(5) Any assignment of functions in terms of paragraph (b) of subsection (1)—

(a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

(c) shall not preclude the exercise of the functions by the Board itself.

(6) Where the general manager of the Corporation is not a member, he shall have the right to attend meetings and take part in the proceedings of the Board as if he were a member but shall not have a vote on any question before the Board.

23 Minister may give Corporation directions in national interest

(1) The Minister, after consultation with the Board, may give to the Corporation such directions of a general character relating to the exercise by it of its functions as appear to the Minister to be requisite in the national interest.

(2) The Corporation shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

PART IIIA

ISSUE OF SHARES AND DEBENTURES BY CORPORATION

23A Authorised share capital of Corporation

(1) The authorised share capital of the Corporation shall be such number of shares of such value as shall be fixed by the Board, with the approval of the Minister and the Minister responsible for finance.

(2) With the approval of the Minister and the Minister responsible for finance, the Board may by resolution increase the authorised share capital of the Corporation.

(3) Where the Board has fixed or increased the authorised share capital of the Corporation in terms of this section, the Minister shall cause notice thereof to be published in the Gazette.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

23B Allotment, issue and transfer of shares of Corporation

(1) The Board shall allot such number of its shares to the State, subject to such terms and conditions, as are determined by the Minister and the Minister responsible for finance

(2) Subject to subsection (5), the remainder of the Corporation's shares may be issued to the State and additionally, or alternatively, to persons other than the State in such circumstances and subject to such terms and conditions as may be determined by the Board, with the approval of the Minister and the Minister responsible for finance.

(3) The terms and conditions under which the Corporation's shares are allotted or issued to the State may include terms and conditions—

(a) for payment to be made out of moneys appropriated for the purpose by Act of Parliament; or

(b) after consultation with the Board, for the value of all or any of the shares to be set off against loans previously granted to the Corporation by the State; or

(c) for all or any of the shares to be allotted or issued in consideration for the writing off of loans previously granted to the Corporation by the State; or

(d) for all or any of the shares to be allotted or issued in consideration for capital grants previously made to the Corporation by the State.

(4) Subject to subsection (5), the Corporation's shares may be transferred by the holders subject to such terms and conditions as may be prescribed or as may be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no new restrictions shall be imposed on the transferability of any share while that share is held by a person other than the State.

(5) At all times at least fifty-one per centum of the Corporation shall be limited to the amount, if any, unpaid on the share.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

23C Liability of shareholders

The liability of the holder of a share issued by the Corporation shall be limited to the amount, if any, unpaid on the shares.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

23D Issue of debentures

(1) The Corporation may issue debentures, which may be taken up in such circumstances and under such terms and conditions as the Minister and the Minister responsible for finance may determine.

(2) Debentures may be issued by the Corporation to the State in respect of any loan previously granted by the State to the Corporation.

(3) Subject to subsection (2), debentures taken up by the State shall be paid for out of moneys appropriated for the purpose by Act of Parliament.

(4) The Corporation's debentures may be transferred subject to such terms and conditions as may be determined by the Minister and the Minister responsible for finance in consultation with the Board:

Provided that no new restrictions shall be imposed on the transferability of any debenture while that debenture is held by a person other than the State.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

PART IV

FINANCIAL PROVISIONS RELATING TO CORPORATION

24 Capital of Corporation

The capital of the Corporation shall consist of—

(a) the share capital of the Corporation; and

(b) any other moneys or assets that may vest in or accrue to the Corporation as capital, whether in the course of its operations or otherwise.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

25 Revenues of Corporation

The revenues of the Corporation shall consist of any moneys, other than moneys referred to in section twenty-four, that may accrue to the Corporation, whether in the course of its operations or otherwise.

[substituted by Act No. 3 of 1997 with effect from 4th July, 1997]

25A Dividends

Where in a financial year the revenues of the Corporation are more than sufficient—

(a) to meet the expenditure of the Corporation properly chargeable to revenue in that year; and

(b) to enable the Corporation to make provision for any taxes, duties or rates for which it is liable; and

(c) to permit the redemption on due date of the Corporation's debentures and other loan capital; and

(d) to enable the Corporation to make such appropriations to its general reserve in terms of section twenty-seven as are necessary or desirable;

the Corporation shall pay out of the surplus such dividends to its shareholders as the

Board may determine in relation to that year.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

25B Investments and loans by Corporation

Moneys not immediately required by the Corporation may be invested in such manner as the Board may determine, subject to any directions given to the Board by the Minister acting on the advice of the Minister responsible for finance.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

26 Corporation to make certain charges to revenue account

(1) The Corporation shall charge to its revenue account all charges which, in the normal conduct of business, are regarded as proper to be charged to revenue account and, in so doing, shall make in each financial year proper provision for—

- (a) the depreciation or diminution in value of assets; and
- (b) the payment of interest on and all other charges and expenses incurred

in connection with loans and debentures; and

[amended by Act No. 3 of 1997 with effect from 4th July, 1997]

(c) the redemption of loans at due times to the extent that such redemption exceeds provision for depreciation.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be charged to revenue account as provided in subsection (1), the Corporation may, in each financial year, make provision for—

(a) meeting, in whole or in part, increases in the cost of replacing assets to an extent approved by the Minister after consultation with the Minister responsible for finance;

(b) making payments to an insurance fund established by the Corporation to meet, in whole or in part, such liabilities of the Corporation as the Minister may approve; and

(c) making payments to a pension fund to meet, in whole or in part, superannuation liabilities of the Corporation.

27 Establishment and operation of reserve fund

(1) The Corporation may establish a reserve fund to which, subject to this Part, may be appropriated from a surplus of income over expenditure at the end of its financial year such sums as the Board may approve.

(2) Subject to this Part, moneys in the reserve fund established in terms of subsection (1) may be used for such purposes as the Board may consider expedient for the proper exercise by the Corporation of its functions, including the development of its assets.

(3) The Board shall comply with any directions which the Minister may give in relation to the management of the reserve fund established in terms of subsection (1).

28 Meeting of deficiencies

(1) If in any financial year the income of the Corporation, together with any surplus income brought forward from a previous financial year, is insufficient to enable the Corporation to meet the charges and to make the provisions required by section twenty-six, the deficiency shall, unless the Minister otherwise directs, be met from the reserve fund established in terms of section twenty-seven.

(2) and (3)

[repealed by Act No. 3 of 1997 with effect from 4th July, 1997]

29 Financial year of Corporation

The financial year of the Corporation shall be the period of twelve months ending on the 30th June in each year or on such other date as may be prescribed.

30 Accounts of Corporation

(1) The Corporation shall keep proper accounts and other records relating thereto in respect of all its operations, undertakings and property, including such particular

accounts and records as the Minister may direct.

(2) The Corporation shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

31 Audit of accounts of Corporation

(1) The Corporation shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(2) The accounts of the Corporation kept in terms of subsection (1) of section thirty shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Board and the Minister on the statement of accounts prepared in terms of subsection (2) of section thirty and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view or the state of the financial affairs of the Corporation.

(4) In addition to the report referred to in subsection (3), the Minister may require the Board to obtain from the auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the operations, undertakings and property of the Corporation as the Minister may consider expedient.

(5) If, in the opinion of the auditors appointed in terms of subsection (1)—

(a) they have not obtained the information and explanations they require;

or

(b) any accounts and records relating thereto have not been properly kept by the Corporation; or

(c) the Corporation has not complied with the provisions of this Part;

the auditors shall include in the report made in terms of subsection (3) or (4), as the case may be, statements to that effect.

32 Powers of auditors

The auditors appointed in terms of subsection (1) of section thirty-one shall be entitled at all reasonable times to require to be produced to them all accounts and other records relating thereto kept by the Corporation or its agents and to require from any member or person employed by the Corporation or its agents such information and explanations as in their opinion are necessary for the purpose of their audit.

PART V

GENERAL

33 Exemption from liability of Corporation and members

No liability shall attach to the Corporation or to any member for any loss or damage sustained by any person as a result of the bona fide exercise or performance by the Corporation, the Board, a committee of the Board, the general manager of the Corporation or any employee or agent of the Corporation of any function of the Corporation, the general manager or the Board in terms of this Act or any other law:

Provided that this section shall not be construed so as to prevent any person from recovering, by action in a court of competent jurisdiction, compensation for any loss or damage sustained by him which was caused by negligence or breach of contract.

34 Indemnity of members and officers of Corporation

The Corporation shall indemnify every member of the Board or of a committee of the Board and the general manager and every auditor, employee or agent of the Corporation against any costs incurred by him in—

(a) defending any proceedings, whether civil or criminal, which arise out of his duties as member, general manager, auditor, employee or agent of the Corporation, as the case may be, and in which judgment is given in his favour or he is acquitted, as the case may be; and

(b) making any application to court on behalf of the Corporation.

35 Investigation into affairs of Corporation

(1) The Minister may at any time cause an investigation to be made into the affairs of the Corporation by one or more persons appointed by him in writing.

(2) Any person appointed in terms of subsection (1) shall have the same powers as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, mutatis mutandis, in relation to an investigation made in terms of subsection (1) and to any person summoned to give or giving evidence at that investigation.

36 Proceedings on failure of general manager, Board or Corporation to comply with Act

(1) If at any time the Minister is satisfied that the general manager of the Corporation, the Board or the Corporation has failed to comply with the provisions of this Act, he may, by notice in writing, require the general manager, the Board or the Corporation, as the case may be, to make good the default within a specified time.

(2) If the general manager, the Board or the Corporation fails to comply with a notice issued in terms of subsection (1), the Minister may apply to the High Court for an order compelling the general manager, the Board or the Corporation, as the case may be, to remedy the default and the High Court may make such order on the application as it thinks fit.

37 Notes of hand

(1) Any loan or financial assistance may be granted by the Corporation on the security of a note of hand if the loan or financial assistance is for a period not exceeding five years.

(2) Where a loan or financial assistance on the security of a note of hand is to be secured against any land or registered real right, the Corporation shall send a notice to the Registrar of Deeds setting forth—

(a) the amount granted or to be granted; and

(b) a description of the land or the right in question and the number and date of the title deed or other document evidencing title to such right; and

(c) the name of the owner of the land or right;

together with the title deed or other document held by the person to whom the loan or financial assistance is granted or to be granted or, if it is not possible to send such title deed or other document, a certificate to that effect from the Corporation.

(3) On receipt of a notice in terms of subsection (2), the Registrar of Deeds shall make an appropriate entry in respect of the land or right and such entry shall—

(a) constitute an hypothecation of the land or right, as the case may be; and

(b) rank from the date the entry is made by the Registrar of Deeds and for an amount stated therein, together with interest at the rate fixed by the Corporation current from time to time which is payable in relation to such loan or financial assistance.

(4) If the whole or any part of a loan or financial assistance granted on the security of a note of hand is repaid and the note of hand is not cancelled, the Corporation may grant further loans or financial assistance against that note:

Provided that—

(i) the total amount of any such further loans or financial assistance, together with any part of such previous loan or financial assistance which has not been repaid, shall not exceed the amount specified in the note; and

(ii) any such further loans or financial assistance, together with interest

thereon, shall be secured by the note as if it had formed part of the original loan or financial assistance.

(5) This section shall not be construed as precluding a loan or financial assistance from being secured against any land or registered real right by means of a mortgage bond.

38 Remedies of Corporation against defaulting debtor

(1) If—

(a) at any time any sum of money, whether principal or interest, due in respect of any loan or financial assistance granted by the Corporation is unpaid; or

(b) any loan or financial assistance or any part thereof—

(i) has not been used within a reasonable period for the purpose for which it was granted; or

(ii) has been used for a purpose other than that for which it was granted;

or

(iii) has not been carefully and economically expended;

or

(c) the security for any loan or financial assistance is declared executable by order of a competent court or is attached in pursuance of a judgment of a competent court; or

(d) it comes to the notice of the Corporation that any asset secured to the Corporation has been or is about to be—

(i) attached in pursuance of a judgment of a competent court; or

(ii) removed from the place where it is ordinarily kept; or

(iii) disposed of in any way without the written consent of the Corporation;

or

(e) the person to whom the loan or financial assistance was granted vacates, abandons, relinquishes possession of or is dispossessed of the security to which the loan or financial assistance relates; or

(f) there is a breach of any other condition of the loan or financial assistance granted;

the loan or financial assistance concerned or to which the security relates, together with any interest thereon, shall immediately become payable to the Corporation and the Corporation may sue for and recover the whole or any part of that loan or financial assistance, and whether or not it sues for the loan or financial assistance, it may refuse to pay any part of the loan or financial assistance which has been approved but not yet paid.

(2) In any case in which security is to be given, including any security by way of a notarial bond or note of hand, the Corporation may stipulate that it shall be a condition of the loan or financial assistance that if the loan or financial assistance becomes repayable in terms of subsection (1), the Corporation, in addition to the powers conferred by subsection (1), shall be entitled, subject to subsection (3), after a period of ten days has elapsed since the posting of a registered letter of demand addressed to the person to whom the loan or financial assistance was granted at his last known address or at the address given by him in his application for the loan or financial assistance, to enter upon and take possession of the whole or any part of the security concerned and dispose of such security in accordance with the Second Schedule.

(3) The Corporation shall be entitled to exercise the powers conferred upon it in accordance with any condition referred to in subsection (2) as soon as it has posted a registered letter of demand to the person to whom the loan or financial assistance was

granted in terms of that subsection where any event referred to in paragraph (c), (d) or (e) of subsection (1) occurs:

Provided that the Corporation shall not dispose of any security so seized until the period of ten days has elapsed since the posting of the registered letter of demand.

(4) Where any security for any loan or financial assistance has been declared executable or attached as mentioned in paragraph (c) of subsection (1), any demand in terms of subsection (2) shall have the effect of suspending the execution or attachment of the property and, if the Sheriff or messenger of court is in possession of the property, he shall forthwith deliver it to the Corporation:

Provided that this subsection shall not apply where the security has been so declared executable or attached at the instance of a person who held the property as pledgee or had a right of retention or such other security in respect of the property concerned

(5) Notwithstanding this section, the Corporation shall not, in the exercise of the powers conferred by this section—

(a) enter any premises—

(i) of the person to whom the loan or financial assistance was granted and the demand in terms of subsection (2) made without the consent of that person, unless such entry is necessary for the purpose of protecting or seizing any security referred to in subsection (2); or

(ii) of a person other than the person referred to in subparagraph (i), without the consent of that person;

(b) take possession of or dispose of any security referred to in subsection (2) which consists of—

(i) immovable property over which a duly registered mortgage bond in favour of some person other than the Corporation exists, without the written consent of the holder of such bond; or

(ii) movable property which some person other than the Corporation holds as pledgee or in respect of which he has a right of retention or other such security without the consent of such other person.

39 Leasing of movable property by Corporation

(1) Where the method of assistance rendered by the Corporation to any co-operative or small commercial or industrial enterprise is by leasing any movable property and—

(a) the property concerned has—

(i) been used for a purpose other than the purpose for which it was leased; or

(ii) not been carefully or economically utilized; or

(iii) been removed from the place where it is ordinarily kept without the written consent of the Corporation;

or

(b) the co-operative or small commercial or industrial enterprise abandons or in any way relinquishes possession of the property concerned; or

(c) there is a breach of any other condition of the lease;

the Corporation may sue for and recover the whole or any part of the rental owing to the Corporation by the co-operative or small commercial or industrial enterprise, as the case may be.

(2) In addition to the powers conferred by subsection (1), the Corporation shall be entitled to stipulate that it shall be a condition of the lease that if any of the events referred to in paragraphs (a), (b) or (c) of subsection (1) occurs, the Corporation may, upon giving ten days' notice to that effect, enter upon the premises of the co-operative or small commercial or industrial enterprise, as the case may be, and repossess the property concerned.

40 Cession of rights by co-operative

(1) A co-operative may, notwithstanding anything to the contrary contained in its memorandum, if any, and articles of association, regulations or by-laws, as security for any loan or financial assistance, cede to the Corporation all the rights and title to—

- (a) the amount of subscribed but unpaid capital; and
- (b) the amount of any debts owing to the co-operative.

(2) A cession in terms of subsection (1) shall be in such form as the Corporation may determine and, in the case of a cession referred to in paragraph (a) of subsection (1), shall be accompanied by a list, certified under the hand of the chairman and secretary of the co-operative or by any persons purporting to act in those capacities, showing as at the date of cession—

- (a) the names and addresses of all persons holding shares in the co-operative; and
- (b) the number of shares registered in the name of each such person and the amount paid up in respect thereof; and
- (c) the nominal value of such shares:

Provided that where a co-operative has previously furnished the Corporation with a list mentioned in this subsection, it shall not be necessary, at the option of the Corporation, on subsequent applications for a loan or financial assistance for the co-operative to furnish such list if it furnishes a list of any changes to the list previously furnished.

(3) A list furnished in terms of subsection (2) as read with any changes thereto furnished to the Corporation, shall be prima facie evidence that the persons mentioned therein are liable to pay the amount stated therein.

(4) The signing of a cession in terms of subsection (1) by the chairman and secretary of the co-operative or by any persons purporting to act in those capacities shall, notwithstanding anything to the contrary contained in any law or in the memorandum, if any, and articles of association, regulations or by-laws of the co-operative, bind the co-operative and, to the extent of any amount unpaid on their shares, its members also, and shall empower the Corporation—

- (a) to prohibit by written notice addressed to the secretary of the co-operative at the address as recorded in the books of the Corporation the transfer of any shares on which calls are still due; and
- (b) to call up and collect unpaid capital; and
- (c) to collect any amount due and owing by any person to the co-operative, to give valid receipts for the payment and to institute action to enforce payment thereof.

(5) If the Corporation has, in terms of paragraph (a) of subsection (4), prohibited the transfer of shares in a co-operative, any purported transfer without the written consent of the Corporation of a share in that co-operative while the co-operative owes the Corporation any money in respect of any loan or financial assistance granted to it, shall be void.

41 Special remedies in respect of co-operative

(1) If a co-operative which is indebted to the Corporation—

- (a) is dissolved for any reason whatsoever; or
- (b) is removed from the register kept by the registrar of such societies; or
- (c) so changes its character as no longer to be a co-operative; or
- (d) fails to observe the terms and conditions of the grant of the loan or financial assistance to which the debt relates; or
- (e) fails to pay any amount which becomes due and payable to the

Corporation;

the loan or financial assistance shall immediately become repayable to the Corporation and the Corporation may—

- (i) sue for and recover the whole or any part of the debt;
 - (ii) whether or not it sues for the debt, refuse to pay any part of the loan or financial assistance which has been approved but not yet paid;
 - (iii) where a cession has been made in terms of section forty, after giving seven days' notice by registered letter addressed to the secretary of the co-operative at the address recorded in the books of the Corporation, exercise in such order as it may determine any one or more of the powers conferred by subsection (4) of section forty.
- (2) Subsections (2), (3), (4) and (5) of section thirty-eight and the Second Schedule shall apply, mutatis mutandis, in relation to any loan or financial assistance granted or to be granted to a co-operative.

(3) If any person whose liability to pay any subscribed but unpaid capital has accrued in terms of the memorandum if any, and articles of association, regulations or by-laws of the co-operative fails upon written demand being made by the Corporation to pay such amount within fourteen days after the date of the demand, the Corporation may apply to a court for an order for the seizure and realization of so much of the immovable and movable property of that person as may appear to be necessary to make good such amount, together with the costs incurred by such seizure and realization:

Provided that—

- (i) the method of realizing the property of any person under the powers conferred by this subsection shall follow as nearly as possible the method prescribed for the realization of any security in terms of section thirty-eight as read with the Second Schedule;
- (ii) the Corporation, in having recourse to the remedies provided by this subsection, shall in every case realize all the movable property available before realizing immovable property.

(4) The persons liable to pay any subscribed but unpaid capital shall be the persons whose names appear on the list of shareholders furnished by the co-operative at the time of signing the cession referred to in subsection (3) of section forty as read with any changes thereto furnished to the Corporation, and any such person shall be liable to the extent stated in that list unless he satisfies the Corporation that his name should not have appeared on the list or that the amount specified on the list in relation to him is incorrect:

Provided that if any shares have, after the signing of such cession, been transferred with the written consent of the Corporation, then the transferee and not the person mentioned in the list shall be liable unless the transferee satisfies the Corporation that he should not be so liable.

(5) All amounts collected by the Corporation in terms of this section shall be applied to liquidate or reduce the debt of the co-operative to the Corporation, and upon liquidation thereof the cession shall be cancelled and returned, together with any surplus moneys, to the co-operative or its legal representative.

42 Offices of Corporation

(1) The head office of the Corporation shall be in Harare.

(2) The Board may, with the approval of the Minister, establish branch offices inside Zimbabwe in places outside Harare.

43 Offences and penalties

(1) Any person who—

- (a) being a member of the Board or of a committee of the Board or the

general manager or an employee or agent of the Corporation, receives, directly or indirectly, any fee or reward, other than is authorized in terms of this Act, from any person in respect of or in connection with any loan or assistance by the Corporation or an application therefor; or

(b) in respect of or in connection with any loan or assistance by the Corporation or an application therefor, gives or offers any fee or reward to any member of the Board or of a committee of the Board or to the general manager or employee or agent of the Corporation for the purpose of influencing or inducing him to act in conflict with his duty in terms of this Act; or

(c) acts as a valuator in connection with any property offered as security for a loan or assistance by the Corporation, if such person, or to his knowledge any other person related to him in the third or a closer degree of consanguinity, has any pecuniary or other interest in such matter, whether as a partner, creditor, debtor or otherwise; or

(d) in any application to the Corporation for a loan or assistance, or in respect of or in connection with any loan or assistance granted by the Corporation, alleges any fact that is substantially incorrect, knowing it to be incorrect or, with intent to defraud, fails to disclose any of his assets or liabilities; or

(e) being a member of the Board or of a committee of the Board or the general manager or an auditor, employee or agent of the Corporation, makes, verifies or transmits to the Minister any statement, account or report in terms of this Act, knowing any fact alleged in such statement, account or report to be incorrect; shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(2) Any person who—

(a) is or has been a member of the Board or a committee of the Board or the general manager or an employee or agent of the Corporation or who has attended any meeting of the Board or of a committee of the Board and who discloses, otherwise than in the course of his official duties or functions, any information regarding the transactions or affairs of any applicant for a loan or assistance by the Corporation; or

(b) is a member of the Board and who takes part in the consideration or discussion of, or votes on, any question in contravention of section fourteen; or

(c) fails without just cause to comply with a requirement of an auditor in terms of section thirty-two; shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

44 Regulations

(1) The Minister, after consultation with the Board, may make regulations prescribing anything which in terms of this Act is to be prescribed or which, in his opinion is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the form and manner in which any application shall be made to the Corporation;

(b) the appointment of inspectors and their functions, including powers of entry and search and powers to inspect records and documents.

(c) the reduction of the share capital of the Corporation;

- (d) meetings of private shareholders;
- (e) the election of members and alternate members to the Board by private shareholders and the revocation of the appointment of such members and alternate members;
- (f) the application, subject to such modifications as may be specified, of any of the provisions of the Companies Act [Chapter 24:03] in relation to—
 - (i) the election of members and alternate members to the Board and the revocation of their appointment; and
 - (ii) the Corporation's shares and debentures.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

(3) Regulations made in terms of subsection (1) may provide penalties for contraventions thereof but no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

(4) Regulations shall not be made for a purpose referred to in subparagraph (c) or subparagraph (ii) of paragraph (f) of subsection (2) without the approval of the Minister responsible for finance.

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

FIRST SCHEDULE (Section 19)

POWERS OF CORPORATION

1. To acquire premises necessary or convenient for the exercise of its functions and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights over the same and concessions, grants, rights, powers and privileges in respect thereof.

2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions.

3. To maintain, alter or improve property acquired by it.

4. To mortgage any assets or part of any assets and, to sell, exchange, lease, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as it may determine.

[amended by Act No. 3 of 1997 with effect from 4th July, 1997]

5. To make, draw, accept, endorse, discount and otherwise deal in bills of exchange, invoices and other documents and securities, whether transferable, negotiable or not.

6. To insure against losses, damages, risks and liabilities which it may incur.

7. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts, suretyships and guarantees.

8. To co-operate or enter into partnership or association with any person or association of persons carrying on or engaged in or about to carry on or engage in any business, enterprise or transaction capable of being conducted so as directly or indirectly to benefit the Corporation.

9. To lend or advance money to, or acquire an interest in, to provide, by underwriting or otherwise or to assist in the subscription of capital for co-operatives and small commercial or industrial enterprises.

9A. To enter into contracts of lease and hire, which shall be exempt from the provisions of the Hire-Purchase Act [Chapter 14:09];

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

10. To lend or advance money to any persons or association of persons who, in the opinion of the Board, are about to form a co-operative or engage in any

small commercial or industrial enterprise.

11. To provide or enter into agreements to provide management counselling to persons who, in the opinion of the Board, are engaged or are about to engage in any co-operative or small commercial or industrial enterprise.

12. To provide, or enter into agreements to provide, management training designed to meet the needs of co-operatives and small commercial or industrial enterprises.

13. To sponsor, support or organize conferences, seminars and meetings for the promotion of good management practices in the administration of co-operatives and small commercial or industrial enterprises.

14. To assist persons who in the opinion of the Board are engaged or may become engaged in co-operative or small commercial or industrial enterprises by preparing, compiling and distributing information relating to and providing advice on—

(a) techniques, methods and practices required for the successful administration of co-operatives and small commercial or industrial enterprises;

(b) such Government incentives and assistance programmes as are available to co-operatives and small commercial or industrial enterprises; and

(c) such financial services and other forms of assistance as are available to co-operatives and small commercial or industrial enterprises.

15. To promote, establish or acquire companies, co-operatives or other enterprises and, in connection with any such company, co-operative or enterprise—

(a) to manage it and act as secretary thereof; and

(b) to appoint any person to act on behalf of the Corporation as a director thereof or in any other capacity in relation thereto.

16. To raise or borrow or secure the payment of money or the performance of any obligation, in such manner and on such terms as may seem expedient.

17. To enter into, renew, cancel or abandon arrangements with any organization or authority, local or otherwise, that may seem conducive to the exercise of any or all of its functions and to obtain from such organization or authority rights, privileges and concessions which it thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

[amended by Act No. 3 of 1997 with effect from 4th July, 1997]

18. To establish and administer such funds and reserves, not specifically provided for in this Act, as the Board may consider appropriate or necessary for the proper exercise of the functions of the Corporation.

19. To employ, upon such terms and conditions as the Board thinks fit, such persons as may be necessary for conducting the affairs of the Corporation, and suspend or discharge any such persons.

20. With the approval of the Minister, to pay such remuneration and allowances to its employees as it thinks fit.

21. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.

22. To make or guarantee loans made to its employees or their spouses for the purchase of dwelling-houses or land for residential purposes, the construction of dwelling-houses and the improvement of dwelling-houses or land which are the property of its employees or their spouses.

[amended by Act No. 3 of 1997 with effect from 4th July, 1997]

23. To provide security in respect of loans such as are described in paragraph 22 by the deposit of securities, in which the Corporation may invest such moneys as the Board may think necessary for the purpose.

24. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees and in that connection to provide or assist other persons in providing facilities for training, education and research.

25. Generally to do all such things as are calculated to achieve or facilitate or which are incidental or conducive to the performance of the functions of the Corporation in terms of this Act or any other enactment.

SECOND SCHEDULE (Section 38 (2))

SALE OF SECURITIES

1. (1) Where any security or part thereof has been seized in terms of subsection (2) of section thirty-eight or delivered to the Corporation in terms of subsection (4) of that section and such security or part thereof is not subsequently released, the Corporation shall, as soon as possible but in any event within six months of such seizure, cause to be published in the Gazette and in a newspaper circulating in the area a notice describing the security and stating the date, hour, place and terms and conditions of the proposed sale of such security.

(2) On the date stated in the notice published in terms of subparagraph (1) the Corporation shall put up for sale the security described in that notice.

(3) A sale in terms of subparagraph (2) shall be by public auction and on the terms and conditions stated in the notice in terms of subparagraph (1):

Provided that, where the security seized is of an incorporeal or documentary nature, the sale thereof shall be in such manner as the Corporation considers just and reasonable in the circumstances.

(4) Where the Corporation sells any security referred to in subparagraph (1), it may bid for and purchase the whole or any part of the security offered for sale.

2. Where the security has been seized by the Corporation in terms of subsection (2) of section thirty-eight, such seizure shall, subject to this Schedule, have the same effect as an attachment made by the Sheriff or his deputy under a writ of execution issued by the High Court.

3. (1) When a security which consists of immovable property has been sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—

(a) firstly to the holders of any mortgage bonds, notes, statutory hypothecations and charges duly registered against such property in the Deeds Registry in accordance with the preference conferred upon such holders by such registrations upon production by such holders of evidence of the amounts owing thereunder:

Provided that no payment in terms of this subparagraph shall be made until at least seven days' notice thereof has been given to the person to whom the loan or financial assistance was granted and to any other person having a prima facie claim to such proceeds by registered letter posted to the last known place of address of the person to whom the loan or financial assistance was granted and such other persons;

(b) if, after satisfying the claims of all persons referred to in subparagraph (a), there remains a surplus and the property so sold has prior to the sale been declared executable or attached under the process of a competent court, such surplus shall be paid to the Sheriff or messenger of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of the court;

(c) if, after satisfying the claims of all persons referred to in

subparagraphs (a) and (b), if any, there remains a surplus, such surplus shall be paid to the debtor or his legal representative.

(2) If the person to whom the loan or financial assistance was granted or any other person who has a claim to the proceeds of the sale objects to the proposed distribution of moneys from such sale, the Corporation shall transmit to the Master of the High Court an account showing how the Corporation intends to dispose of those proceeds and such account shall lie open for inspection by any person claiming an interest in the proceeds at the office of the Master of the High Court for a period of not less than three weeks.

(3) The Corporation shall give due notice that an account referred to in subparagraph (2) is open for inspection by an advertisement in the Gazette and in a newspaper circulating in the area where the person to whom the loan or financial assistance was granted carries on his principal business and shall state in that notice the period during which and the place at which the account shall lie open for inspection.

(4) Any person interested in the proceeds of a sale held in terms of this Schedule may, at any time during the period that the account relating thereto is open for inspection, lodge with the Master of the High Court two copies, in writing, of any objections to the proposed distribution, giving his reasons, and the Master shall forward one of these copies to the Corporation.

(5) After the expiry of the period during which the account has lain open for inspection—

(a) the Master of the High Court shall consider the proposed distribution together with any objections duly lodged and any comments thereon by the Corporation and shall give such directions as he considers equitable in the circumstances; and

(b) the Corporation shall, after the expiration of the period referred to in subparagraph (6), dispose of the moneys in accordance with such directions:

Provided that if during that period an application to the High Court has been made in terms of subparagraph (6), the Corporation shall not dispose of the moneys until the application has been determined by the High Court or has been abandoned.

(6) Any person who is aggrieved by a direction of the Master of the High Court may, within thirty days after the Master has given the direction and after giving notice to the Corporation and to any person affected by the direction, apply by motion to the High Court for an order to set aside the direction and the High Court may make such order as it thinks fit.

(7) Where the Master of the High Court directs in terms of subparagraph (5) that any moneys should be distributed in a manner different from that specified in the account and the interests of a person who has not lodged an objection to the account are affected, the account as amended on the direction of the Master of the High Court shall lie open for a period of not less than three weeks and the Corporation shall give due notice thereof in accordance with the provisions of subparagraph (2) unless the person concerned consents, in writing, to the moneys being distributed without the necessity for the account lying open for inspection.

4. Where a security which consists of movable property is sold in terms of paragraph 1, the proceeds of the sale shall be applied in the following manner—

(a) firstly in satisfying the debt due to the Corporation by the person to whom the loan or financial assistance was granted;

(b) if after satisfying the debt referred to in subparagraph (a) there remains a surplus and the property has been declared executable or attached under the process of a competent court, the surplus shall be paid to the Sheriff or the messenger

of the court, as the case may be, who shall distribute such surplus in accordance with the appropriate rules of the court;

(c) if after satisfying the debt referred to in subparagraph (a), there remains a surplus and the property has not been declared executable or attached, the surplus shall be paid to the debtor or his legal representative:

Provided that, if the property had not been declared executable or attached any costs incurred by bona fide creditor in respect of the application for the execution or attachment of the property shall be paid before any moneys are appropriated towards satisfying the debt due to the Corporation by the person to whom the loan or financial assistance was granted.

THIRD SCHEDULE (Section 5 (1) (b))

[inserted by Act No. 3 of 1997 with effect from 4th July, 1997]

NUMBER OF MEMBERS OF BOARD THAT MAY BE ELECTED BY SHAREHOLDERS

Number of members Percentage of Corporation's Issued Share Capital Held by Private Shareholders

- 1 10 per centum or less
- 2 More than 10 per centum but not more than 20 per centum.
- 3 More than 20 per centum but not more than 30 per centum.
- 4 More than 30 per centum but not more than 40 per centum.
- 5 More than 40 per centum but not more than 50 per centum.

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