



**BERMUDA
1980 : 33**

**BERMUDA SMALL BUSINESS DEVELOPMENT
CORPORATION ACT 1980**

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**BERMUDA SMALL BUSINESS DEVELOPMENT CORPORATION
ACT 1980**

SCHEDULE I
The Board of Directors

SCHEDULE II
Contributions to the Initial
Capital of the Corporation

[30 May 1980]

[preamble and words of enactment omitted]

PART I

Short title

1 This Act may be cited as the Bermuda Small Business Development Corporation Act 1980.

Interpretation

2 In this Act—

"appointed day" means the day appointed pursuant to section 26;

"appointed director" means a director appointed to the Board under paragraph 1(a) of Schedule I;

"the Board" means the Board established by section 6;

"capital of the Corporation" means—

(a) elsewhere than in section 13(4), the aggregate of the amounts paid to the Corporation under section 11(2), and section 11(3)(a) and (b);

(b) in section 13(4), that aggregate reduced by the aggregate amount of the loans made by the Corporation and outstanding at the time in question;

"the Chairman" and "the Vice-chairman" mean respectively the Chairman and the Vice-chairman of the Board;

"the Corporation" means the Bermuda Small Business Development Corporation;

"director" means a person on the Board, including the Chairman and the Vice-chairman and, where an alternate is acting for the director to whom he is the alternate, that alternate;

"financial year" means, in relation to the Corporation, the period of twelve months ending on the 31st day of December, or such other day as the Corporation may select in substitution for that day;

"loan" includes part of a loan;

“Minister” means the Minister of Finance;

“small business” means a Bermudian-owned and owner-operated business enterprise with —

- (a) gross annual sales of less than one million dollars; or
- (b) an annual payroll of less than five hundred thousand dollars.

[Section 2 amended by BR 83/2001 effective 21 December 2001; “Minister” substituted, and “small business” inserted, by 2006:3 s.2 effective 1 July 2006]

PART II

Establishment of the Corporation

3 (1) There is hereby established a body to be called "the Bermuda Small Business Development Corporation", which shall perform the functions assigned to it by this Act.

(2) The Corporation shall be a body corporate, with perpetual succession and a common seal, and may sue and be sued in its aforesaid name.

(3) The Corporation shall not be regarded as the servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown; and its property shall not be regarded as property of, or property held on behalf of, the Crown.

(4) The Corporation shall not be exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local.

Functions of the Corporation

4 (1) The functions of the Corporation are, subject to subsections (2) and (3) —

- (a) the granting of loans or other forms of financial assistance, to assist persons in establishing, carrying on or expanding small businesses;
- (b) the provision of technical advice or assistance to persons who are seeking or who are granted financial assistance; and
- (c) the maintenance of a Register of Small Businesses.

(2) In exercising its function to grant financial assistance in relation to any business, the Corporation shall have regard to the availability to that business of financial assistance from other sources.

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(3) The Corporation shall not as a general rule grant financial assistance in relation to any business if in the opinion of the Corporation adequate financial assistance is available to that business from other sources on reasonable terms.

[Section 4 subsection (1) substituted by 2006:3 s.3 effective 1 July 2006]

Powers of the Corporation

5 (1) Subject to this section, the Corporation shall have power to do, in Bermuda or elsewhere, all things necessary or convenient to be done in or in connexion with the performance of its functions.

(2) Without prejudice to the generality of subsection (1), the power of the Corporation referred to in that subsection shall include power—

- (a) to borrow money subject to section 12;
- (b) to lend money or guarantee loans subject to section 13;
- (c) to acquire, hold and dispose of personal and, subject to section 17, real, property;
- (d) to do anything incidental to any of its powers.

PART III

Management of the Corporation

6 (1) There shall be a Board of Directors of the Corporation who, subject to this Act, shall be responsible to devise and execute the policy of the Corporation and to administer and manage its affairs and business.

(2) Schedule 1 shall have effect with respect to the Board.

Appointment of staff

7 (1) Subject to section 8, the Board may appoint such officers and engage such employees as they think necessary for the purposes of this Act.

(2) Subject as aforesaid, the terms and conditions of employment of persons appointed or engaged shall be as determined by the Board.

General Manager

8 (1) There shall be a General Manager of the Corporation who shall, subject to the concurrence of the Minister, be appointed by the Board on such terms and conditions, and for such period, as the Board may determine.

(2) The General Manager shall be the principal executive officer of the Board and, as respects any person dealing with the Corporation or the Board through the General Manager, shall be deemed to have had delegated to him the full power of the Board to administer and manage the Corporation's day-to-day affairs and business.

(3) The Board shall not dismiss the General Manager without the Minister's concurrence.

Employment of public officers

9 (1) The Governor, acting on the advice of the Minister, may, subject to such conditions as the Governor, so acting, may impose, approve of the appointment of any public officer by way of secondment to employment with the Corporation.

(2) Any public officer seconded under subsection (1) to employment with the Corporation shall, in relation to pension, gratuity or other allowance and the rights and obligations of a public officer, be treated as continuing in a public office notwithstanding the secondment.

(3) The Government may require the Corporation to pay, and the Corporation shall have power to pay, to the Government such contribution as the Government may determine is required to be made by the Corporation to the Government's pension liability in respect of an officer seconded under subsection (1).

(4) The Governor, acting on the advice of the Minister, may authorize any public officer to exercise without secondment under subsection (1) any function or class of function under the control of the Corporation; and for the purpose of the exercise of any such function any public officer so authorized shall be deemed to be in the employment of the Corporation.

Restriction on disclosure of information

10 (1) No information to which this section applies shall be disclosed by any person who is or has been a director, officer or employee of the Corporation except —

- (a) to the Minister or any other director, officer or employee of the Corporation or, so far as may be necessary for the proper discharge of the functions of the Corporation, to other persons;
- (b) for the purposes of any criminal, civil or disciplinary proceedings; or
- (c) in the form of a summary or other general statement made by the Corporation which does not identify the person from whom the information was received or to whom it relates.

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(2) A person (not being in fact an officer or employee of the Corporation) who has authority under section 15(2) to conduct an examination referred to in section 15(1)(a) shall be deemed to be an employee of the Corporation for the purposes of this section.

(3) This section applies to information in the possession of the Corporation revealing the identity, or any part of the financial or other business affairs, of any person who has applied for, or been granted, assistance by the Corporation under this Act.

(4) Any person who discloses information in contravention of this section commits an offence against this Act.

PART IV

Funds and resources of the Corporation

11 (1) The funds and resources of the Corporation shall consist of the sums and other property provided for by this section.

(2) On 20 January 1981 there shall be paid to the Corporation by the persons specified in the first column of Schedule II the amounts respectively specified in the second column of that Schedule (being amounts which those persons have agreed so to pay), as the initial capital of the Corporation.

(3) In addition to the initial capital of the Corporation the funds and resources of the Corporation shall consist of—

- (a) such further sums as may be provided by the Legislature as additional capital for the Corporation;
- (b) any sum paid by any other person to the Corporation as capital under this paragraph;
- (c) investment income; and
- (d) any other sum or any property paid to or vested in the Corporation lawfully.

[Section 11 subsection (3) paragraphs (c) and (d) substituted for (c) by 2006:3 s.4 effective 1 July 2006]

Power to borrow

12 (1) The power conferred by section 5(2)(a) on the Corporation to borrow money shall be exercisable in accordance with this section.

(2) Subject to this section, the Corporation may borrow sums required by the Corporation for meeting any of its obligations or otherwise discharging its functions.

(3) The Corporation shall not borrow except with the Minister's prior approval, which may be either general or limited to a particular borrowing, and unconditional or subject to conditions.

(4) *[repealed]*

(5) The amount at any time borrowed by the Corporation shall not exceed one-half the capital of the Corporation.

(6) *[deleted by 1982:13]*

[Section 12 subsection (4) repealed by 2006:3 s.5 effective 1 July 2006]

Power to lend and guarantee

13 (1) The power conferred by section 5(2)(b) on the Corporation to lend money or guarantee loans shall be exercisable in accordance with this section.

(2) Subject to this section, the Corporation shall in the exercise of its functions have power out of its funds and resources to lend money to any person, or to guarantee a loan made by a third party to any person, on such terms and conditions as the Corporation may deem fit.

(3) The amount at any time lent by the Corporation shall not exceed one-half the capital of the Corporation.

(4) The amount at any time guaranteed by the Corporation shall not exceed six times the capital of the Corporation.

(5) The amount at any time lent or guaranteed by the Corporation, or committed by the Corporation by way of loans and guarantees taken together, for the benefit of any one business shall not exceed \$200,000.00 or fifteen per centum of the capital of the Corporation, whichever is greater.

(6) The Corporation shall not lend, or guarantee a loan made, for the purposes of any business that is owned or controlled by the Government, or that is not conducted for the profit of an individual or individuals.

- (7) The Corporation shall not lend, or guarantee a loan made—
- (a) to a person not resident in Bermuda; or
 - (b) so as to assist a business not being carried on within Bermuda,

at the time the loan or guarantee is made.

(8) In lending money or guaranteeing any loan under this section the Corporation may charge interest, credit charges or fees not

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exceeding or otherwise contravening any legal limit or restriction for the time being generally in force.

(9) [*spent*]

[Section 13 subsections (4) and (5) amended by 2006:3 s.6 effective 1 July 2006]

Application of moneys

14 (1) Subject to this section, moneys of the Corporation shall not be applied otherwise than—

(a) in paying expenses or charges or discharging obligations, incurred or assumed by the Corporation in the performance of its functions under this Act; or

(b) in making any other payment that the Corporation is required or authorized by law to make.

(2) The Corporation may from time to time invest any moneys of the Corporation that are not immediately needed for the performance of its functions in investments approved either generally or specifically by the Minister, and the Corporation may from time to time with the like approval realize any such investments.

(3) [*repealed*]

[Section 14 subsection (3) repealed by 2006:3 s.7 effective 1 July 2006]

PART V

Examination as to application of money lent

15 (1) The Board may from time to time—

(a) cause to be made such examination as they consider necessary to ensure that any money lent by the Corporation, or the subject of a guarantee by the Corporation (either of which is hereafter in this Act referred to as a "loan"), has been or is being applied for the purposes for which it was made available; and

(b) require the person to whom the loan was made (hereafter in this Act referred to as "the borrower") to give to the Board whether periodically or not such information as the Board may reasonably require.

(2) The Board may authorize in writing any officer or employee of the Corporation, or any other person, to conduct an examination instituted by the Board under subsection (1)(a).

(3) A borrower of whom the Board make a requirement under subsection (1)(b), or who is required by a person authorized as mentioned in subsection (2) to produce to that person any book, document, matter or thing necessary for the purposes of an examination that that person is conducting, commits an offence against this Act if he fails to comply with the requirement.

Misapplication of loans

16 If any loan has been misapplied, the Board may (but subject, where the liability of the Corporation in the case in question is by way of guarantee only, to the consent of any person, other than the borrower, affected) by notice in writing addressed to the borrower require that the loan, together with any interest, charge or fee due on the date of the notice, shall be repaid on a date to be specified in the notice; and in default of payment in accordance with the terms of the notice—

- (a) the loan and any interest, charge or fee then outstanding shall become a debt due and payable forthwith; and
- (b) any security given for the purpose of the loan maybe realized forthwith,

notwithstanding that any contract or agreement otherwise binding on the Corporation or any other person in relation to the loan may provide for the loan to be repaid on some different date.

Powers affecting property

17 (1) Where any real or personal property that is mortgaged as security for a loan is sold for the purpose of enforcing the security, the Corporation shall, subject to this section, have power to purchase the property.

(2) The Corporation shall have power to hold and manage property purchased by it under subsection (1), but shall be bound to convert any such property into money as soon as may be.

(3) Apart from its powers under subsections (1) and (2), the Corporation shall have power to acquire, hold and manage land under a lease or tenancy as office accommodation, but shall not have power to acquire or hold land for any other purpose.

Accounts and audit and Corporation's reports

18 (1) The Corporation shall keep proper accounts and proper records in relation to the accounts, and shall prepare in respect of each financial year a statement of its accounts in such form as the Minister may direct.

(2) The Corporation shall send to the Minister and to the Auditor before the expiry of the period of 6 months beginning on the last

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day of any financial year a copy of the statement of its accounts for that year.

(3) The Auditor shall examine, certify and report on every statement of accounts received by him under subsection (2), and shall submit a copy of the statement and of his report thereon to the Minister.

(4) Every director, officer or employee of the Corporation, upon request made of him by or on behalf of the Auditor, shall give to the Auditor access to—

(a) all books, documents, cash and securities or other property in his possession or under his power belonging to the Corporation; and

(b) all information within his knowledge concerning the operations of the Corporation.

(5) The Corporation shall make to the Minister as soon as may be after the end of each financial year a report dealing with the operations of the Corporation during that year.

Reports to the Legislature

19 The Minister shall lay before each House of the Legislature a copy of every statement of accounts and every report received by him under section 18.

Policy directions

20 The Minister may, after consultation with the Chairman, give to the Board general directions as to the policy to be followed by the Corporation in the exercise of the Corporation's functions; and the Board shall comply with any such directions.

[Section 20 amended by 2006:3 s.8 effective 1 July 2006]

Special voting rights of capital contributors on certain questions

21 (1) On any question to which this section applies a decision shall not be made by the Government or the Minister or the Corporation except in conformity with this section.

(2) Any such question shall be decided by not less than 75% of the votes of all the contributors.

(3) On any such question each contributor shall have a single vote.

(4) The questions to which this section applies are—

(a) any question of so establishing or altering the proportion which the maximum amount of money that the Corporation may guarantee bears to the capital of the

Corporation as to cause it to exceed the proportion established by section 13(4);

(b) any question of winding up the Corporation.

(5) In this section—

"contributor" means, in relation to the Government's contribution, the Government and, in relation to any other contribution to the capital of the Corporation, the person who made that contribution;

"the Government's contribution" means the aggregate of the amounts paid by the Government under subsection (2), and provided by the Legislature under section 11(3)(a).

Offences

22 Any person who—

(a) obtains financial assistance from the Corporation by means of any statement which he knows to be false or does not believe to be true; or

(b) wilfully applies any money obtained by him from the Corporation to a purpose other than that for which the money was made available; or

(c) wilfully or by reason of his gross negligence damages or destroys any security given in relation to any money lent, or any loan guaranteed by, the Corporation,

commits an offence against this Act.

(2) In any proceedings for an offence under subsection (1)(b) it shall be for the person charged to prove that he acted in good faith and did not know that he was not entitled to apply the money obtained by him from the Corporation in the way he applied it.

Director of Public Prosecution's fiat

23 Proceedings for an offence against this Act shall not be commenced without the consent in writing of the Director of Public Prosecutions.

[Section 23 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Punishment of offences

24 (1) Offences against this Act shall be tried summarily.

(2) A person who commits an offence against this Act shall be liable to the penalties set out in this section.

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(3) Punishment: a fine of \$1,000 and in default of payment imprisonment for 6 months.

Protection of directors

25 (1) No action or suit, prosecution or other proceeding shall be instituted against any director personally in respect of any act or omission bona fide done or made by him in execution or intended execution of any function of the Corporation under this Act.

(2) Where a director is exempt from liability for an act or omission by reason only of subsection (1), the Corporation shall be liable for the act or omission to the extent that it would be if the director were the Corporation's servant or agent.

Commencement

26 [omitted]

[The Act was brought into operation 20 January 1981]

SCHEDULE I (Section 6(2))

The Board of Directors

1 The Board shall consist of not more than twelve directors being

- (a) ten persons appointed by instrument in writing by the Minister, of whom one shall be appointed Chairperson and one, Vice Chairperson;
- (b) the Permanent Secretary to the Minister responsible for Works and Engineering or his alternate (*ex-officio*); and
- (c) the Financial Secretary or his alternate (*ex-officio*).

2 The Minister shall—

- (a) satisfy himself, before he appoints a person to be a director under sub-paragraph (a) of paragraph 1, that that person will have no such financial or other interest as is likely to affect prejudicially the performance of his functions as a director; and
- (b) satisfy himself from time to time with respect to each appointed director that he has no such interest;

and any appointed director and any person whom the Minister proposes to appoint as a director shall, whenever required by the Minister to do so, furnish the Minister with such information as the Minister may specify with a view to carrying out his duty under this paragraph.

3 Subject to the following provisions of this Schedule, an appointed director shall hold and vacate his office in accordance with the terms of the instrument appointing him.

4 A meeting of the Board may not be held unless five directors are present and not fewer than three of them are appointed directors.

5 There shall preside at any meeting of the Board—

- (a) the Chairman; or
- (b) in the Chairman's absence, the Vice-chairman; or
- (c) in the absence of both the Chairman and the Vice-chairman, such director as those present may elect for that meeting.

6 (1) The Chairman may at any time, and shall, at the request in writing of the Minister or of any two directors, convene a special meeting of the Board.

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(2) A notice convening a special meeting of the Board shall state the purpose for which the special meeting is being convened.

7 (1) A director who is in any way directly or indirectly interested in any matter which falls to be considered by the Board shall disclose the nature of his interest at a meeting of the Board, and the disclosure shall be recorded in the minutes of the meeting.

(2) The director shall not take part in any deliberation or decision with respect to the matter if the Board decide that the interest in question might prejudicially affect the director's consideration of the matter.

(3) For the purposes of this paragraph, a notice given by a director at a meeting to the effect that he is a member of a specified body corporate or firm and is to be regarded as interested in any matter concerning that body or firm which falls to be considered after the date of the notice shall be sufficient disclosure of his interest.

8 (1) Any question proposed for a decision by the Board shall be determined by a majority of the votes of the directors present and voting at a meeting of the Board.

(2) Each director present at a meeting shall have one vote on a question proposed for decision by the Board.

9 (1) The affixing of the Corporation's seal shall be authenticated by the signatures of any two directors.

(2) A document purporting to be duly executed under the seal of the Corporation shall be received in evidence, and shall be deemed to be so executed unless the contrary is proved.

(3) Any transaction may be entered into on behalf of the Board, and any instrument, not being an instrument required to be executed under seal, may be executed on behalf of the Board, by any person generally or specially authorized for the purpose by the Board.

10 The validity of any act or proceeding of the Board shall not be affected by any vacancy among the directors, or by any defect in the appointment of a director, or by any failure to comply with any requirement of paragraph 7.

11 The Corporation shall be deemed to be a Government authority listed in Part II of the First Schedule to the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

12 An appointed director may resign his office by giving to the Minister a signed notice in writing of his resignation at any time.

13 The Minister may in such manner as he thinks fit declare vacant the office of any appointed director if he is satisfied that the director—

- (a) has failed without sufficient cause to attend three consecutive meetings of the Board; or
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) is incapacitated by physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a director.

14 A person appointed to fill a vacancy left by a director who did not complete his term of office shall hold office for the unexpired portion of that director's term and no longer, but an appointment to such a vacancy need not be made where the unexpired portion of the term is less than three months.

15 The Board shall meet not fewer than eight times in a financial year.

16 Subject to this Act, the Board shall meet for the despatch of business, and otherwise regulate their affairs, as they think fit.

[Schedule 1 paragraph 1 substituted by 2006:3 s.9 effective 1 July 2006]

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SCHEDULE II

(Section 11(2))

Contributions to the Initial Capital of the Corporation

Contributor	Amount Contributed in dollars
The Bermuda Government	250,000
The Bank of Bermuda Ltd.	100,000
The Bank of N. T. Butterfield & Son Ltd.	100,000
The Bermuda National Bank Ltd.	30,000
The Bermuda Provident Bank Ltd.	20,000

COMPARATIVE TABLE

THE SMALL BUSINESS DEVELOPMENT CORPORATION BILL 1980

In this Table—

"Australia" =	the Australian Industry Development Corporation Act 1970 - 1973;
"Jamaica" =	the Loans to Small Businesses Act 1956 (of Jamaica);
"U.K." =	the Co-operative Development Agency Act 1978 (U.K.).

Provision	Source and Remarks
1	Common form
2	--
3(1), (2)	New
(3),(4)	U.K., s.1(4), (5)
4	New
5(1), (2)(d)	Australia, s.7(1), (2)(k)
(2)(a) to (c)	New
6	New
7	New
8	New

Laws of Bermuda

9	New
10(1), (4)	Common form adapted
(2), (3)	New
11	New
12	New
13	New
14(1)	New
(2)	Jamaica, s.14 modified
(3)	Common form
15	Jamaica, s.15 modified
16	Jamaica, s.17 modified
17	Jamaica, s.18 modified
18	U.K., ss.5 and 6 modified
19	Common form
20	Common form
21	New
22	New
23	Common form
24	Common form
25	Jamaica, s.9 modified
26	Common form
Schedule I	U.K., Schedule 1 adapted
Schedule II	--

[Amended by:

1982 : 13
1999 : 8
BR 83/2001
2006 : 3
BR 56/2006]