

CHAPTER 63

DEVELOPMENT BANK OF SEYCHELLES DECREE

(1st February, 1978)

ARRANGEMENT OF SECTIONS

Dec. 21 of 1977.
Dec. 12 of 1978.
Act 4 of 1989.
Act 2 of 1990.
Act 6 of 1990.

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SCHEDULE ; OPERATING PRINCIPLES

PART I. PRELIMINARY

1. This Decree may be cited as the Development Bank of Seychelles Decree. Short title.

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

“Acting Managing Director” means the person appointed under section 25 to act as Managing Director;

“Bank” means the Development Bank of Seychelles established by section 9;

“Board” means the Board of the Development Bank of Seychelles established by section 9;

“ex-officio member” means a member of the Board being the Managing Director or a person who holds a public office;

“financial year” means —

(a) the period beginning with the commencement of this Decree and ending on the 31st December next following; and

(b) thereafter, the period of twelve months beginning on the 1st January in any year;

“industry” means any description of economic activity in relation to or for the purpose of, facilitating, promoting or developing —

(a) natural resources (including agriculture, animal husbandry, building, fishing and forestry);

(b) tourism;

(c) transport;

(d) manufacturing, processing, assembling, installing, overhauling, reconditioning, repairing, cleaning, packaging, transporting or warehousing of goods;

(e) minning or quarrying;

(f) the generation, supply and distribution of electricity;

(g) the supply and distribution of water; or

(h) housing and building construction;

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

“regulations” means the regulations made under section 38.

PART II. ESTABLISHMENT PURPOSE AND FUNCTIONS OF DEVELOPMENT BANK OF SEYCHELLES

Establishment of
Bank.

3.(1) There is hereby established a development bank by the name of the Development Bank of Seychelles.

(2) The Bank —

(a) is a body corporate, with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold or dispose of immovable and movable property, and

(d) may sue or be sued in its corporate name.

(3) All courts and persons acting judicially shall take judicial notice of the common seal of the Bank affixed to a document and shall presume that it was duly affixed.

Purposes of
Bank.

(4) The purposes for which the Bank may exercise its functions are —

(a) the assistance of the economy of Seychelles or any part of Seychelles;

(b) to further the aims of any development plan for Seychelles by financing any of the projects of such a plan; and

(c) the promotion in any part of Seychelles of industrial efficiency.

(5) The functions of the Bank are —

(a) to establish, maintain, develop or re-organize, or to

assist in or promote the establishment, maintenance, development or reorganization of any industry;

- (b) to establish, maintain or develop, or to assist in or promote the establishment, maintenance or development of, money or capital markets in Seychelles; and
- (c) to co-operate with other institutions and organizations, whether public or private, national or international, which wish to further any of the purposes referred to in section 4.

6.(1) The Bank has power to do, in Seychelles or elsewhere, either alone or jointly with any person or institution, all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions under this Decree. Powers of Bank.

(2) Without limiting the generality of subsection (1), the Bank has power, for or in connection with the performance of its functions —

- (a) to acquire, hold, and dispose of securities;
- (b) to underwrite issues of securities;
- (c) to form bodies corporate;
- (d) to form partnerships with other persons;
- (e) to grant loans;
- (f) to guarantee obligations (arising out of loans or otherwise) incurred by other persons;
- (g) to acquire and dispose of land, premises, plant, machinery and equipment;
- (h) to make land, premises, plant, machinery and equipment available for use by other persons;
- (i) to provide services in relation to finance, management, administration or organization of industry;

- (j) to draw, accept or endorse bills of exchange;
- (k) to open and maintain an account or accounts with banks in Seychelles or elsewhere;
- (l) to provide transport, accommodation and amenities for officers and employees of the Bank and their families;
- (m) to administer any Fund in accordance with section 40(6); and
- (n) to do anything incidental to any of its powers.

(3) In this section, "securities" includes stock, shares, bonds and debentures.

(4) When any property is mortgaged as security for a loan under this Decree by the Bank, the Bank may either manage, hold, sell or otherwise dispose of such property, or carry on business with such property, as it deems fit.

Operating
principles.

7. The Schedule applies with respect to the performance by the Bank of its functions under this Decree.

Directions by
President.

8.(1) The President may give to the Bank directions (not inconsistent with this Decree) of a general nature with respect to the performance of a function or the exercise of a power by the Bank under this Decree, and the bank shall comply with any such direction.

(2) The President shall consult with the Bank before giving a direction under subsection (1)

(3) A direction given under subsection (1) may be varied or revoked by a subsequent direction so given.

PART III. BOARD OF DEVELOPMENT BANK OF SEYCHELLES

The Board.

9.(1) The Bank shall be governed by a board to be known as the Board of the Development Bank of Seychelles.

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

10.(1) The Board shall consist of —

(a) the Managing Director; and

(b) not more than ten or less than five other members.

Constitution of
Board.
2/4/1989.

(2) The members of the Board referred to in subsection (1) (b) shall be appointed by the President.

(3) If the appointment of an Acting Managing Director is in force under section 25, the Acting Managing Director may attend meetings of the Board and, for the purposes of those meetings, shall be deemed to be a member of the Board.

(4) An act or decision of the Board is not invalid by reason only of a defect or irregularity in connection with the appointment of a member of the Board.

(5) Subject to this Decree, a member of the Board appointed under subsection (1) (b) —

(a) not being a person who holds a public office, holds office for the period (not being greater than three years) specified in the instrument of his appointment; or

(b) being a person who holds a public office, holds office until removed under section 14(2) or until he ceases to hold a public office, whichever is the earlier.

11.(1) A person who has attained the age of seventy years is not eligible to be appointed as a member of the Board.

Eligibility for
appointment as
member of Board.

(2) A person shall not be appointed as a member of the Board for a period beyond the date on which he will attain the age of seventy years.

12.(1) The President shall appoint a member of the Board (other than the Managing Director) to be —

(a) the Chairman of the Board;

Chairman and
Deputy Chair-
man of the
Board.

(b) the Deputy Chairman of the Board.

(2) The member of the Board appointed as Chairman or Deputy Chairman of the Board holds office as such until the expiration of his term of office as a member that is current at the time of his appointment, but ceases to be the Chairman or the Deputy Chairman if he ceases to be a member of the Board, and may resign his office as Chairman or Deputy Chairman by writing under his hand delivered to the President.

(3) A person is eligible to be re-appointed as Chairman or Deputy Chairman of the Board.

Resignation of
members.

13. A member of the Board, other than an ex-officio member, may resign his office by writing under his hand delivered to the President.

Dismissal of
members.

14.(1) The President may remove a member, other than an ex-officio member, from office on the ground of misbehaviour or physical or mental incapacity

(2) The President may remove at any time a member who holds office in the public service.

Allowances.

15.(1) Subject to subsection (2), a member of the Board shall be paid such fees and allowances as are prescribed.

(2) Different fees and allowances may be prescribed for members of different classes (identified in the regulations), and it may be provided in the regulations that fees or allowances shall not be paid in prescribed circumstances or to members of certain classes, so identified.

Leave of absence.

16. The Board may grant leave of absence to a member of the Board upon such terms and conditions as the Board determines.

Vacation of
office.

17. If a member of the Board, other than an ex-officio member —

- (a) becomes bankrupt or makes an arrangement with creditors;
- (b) is absent without leave of the Board from three consecutive meetings of the Board; or

- (c) without reasonable excuse fails to comply with his obligations under section 18,

the President shall remove him from office.

18.(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board or in any other matter whatsoever 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.

Disclosure of interests.

- (2) The member of the Board shall not —

(a) in the case of any such contract, take part in any deliberation or decision of the Board with respect to the contract; and

(b) in the case of any other matter, take part in any deliberation or decision of the Board with respect to the matter if the Board decides that the interest in question might prejudicially affect the member's consideration of the matter.

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

(4) A member of the Board need not attend in person at a meeting of the Board in order to make a disclosure which he is required to make under this section, if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration at such a meeting.

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

Meetings of Board.

(2) The Chairman, or if he is not available, the Deputy Chairman, of the Board —

- (a) may convene meetings of the Board, and shall comply with any resolution of the Board with respect to the convening of meetings; and
- (b) shall, on receipt of a written request signed by not less than three members, convene a meeting of the Board.

(3) If neither the Chairman nor the Deputy Chairman of the Board is available, the Managing Director may convene a meeting of the Board.

(4) The Chairman or, if he is not present, the Deputy Chairman of the Board shall preside at meetings of the Board.

(5) At a meeting of the Board at which neither the Chairman nor the Deputy Chairman of the Board is present, the members present shall appoint one of their number to preside.

(6) The quorum at a meeting of the Board is four.

(7) Except as provided in paragraph 9 of the Schedule, questions arising at a meeting of the Board shall be determined by a majority of the votes of the members present.

(8) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) The arrangements relating to meeting of the Board not provided for by this section shall be such as are determined by the Board.

(10) The Board shall cause to be kept in such manner and form as the Board determines full and accurate minutes of proceedings at its meetings.

PART IV. - THE MANAGING DIRECTOR AND STAFF

Managing
Director of Bank.

20.(1) There shall be a Managing Director of the Bank who shall be appointed by the President.

(2) The Managing Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Decree as are determined by the President.

21. The Managing Director shall be appointed for a period not exceeding five years, but is eligible for re-appointment. Tenure of office.

22. Subject to the general direction of the Board, the Managing Director shall manage the affairs of the Bank. Functions of Managing Director.

23. The Managing Director may resign his office by writing under his hand delivered to the President. Resignation.

24.(1) If the Managing Director — Vacation of office of Managing Director.

(a) becomes bankrupt or makes an arrangement with his creditors;

(b) is absent from duty, except on leave granted by the Board, for fourteen consecutive days or for twenty-eight days in any twelve months; or

(c) without reasonable excuse, fails to comply with his obligations under section 18,

the President shall remove him from office.

(2) The President may remove the Managing Director from office for misbehaviour or physical or mental incapacity.

25.(1) The President may appoint a person to act as the Managing Director — Acting Managing Director.

(a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Managing Director is, or is about to be, absent from duty or from Seychelles or is, for any reason, unable to perform the functions of his office.

(2) The President may —

- (a) subject to this Decree on the recommendation of the Board, determine the terms and conditions of appointment of an Acting Managing Director; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting as the Managing Director in accordance with subsection (1) (b) and the office of Managing Director becomes vacant while that person is so acting, that person may continue to so act until the President otherwise directs or the vacancy is filled.

(4) The appointment of an Acting Managing Director ceases to have effect if he resigns the appointment by writing under his hand delivered to the President.

(5) While the appointment of an Acting Managing Director remains in force he has, and may exercise, all the powers and shall perform all the functions of the Managing Director.

(6) The validity of anything done by an Acting Managing Director shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

Eligibility for
appointment.

26.(1) A person who has attained the age of seventy years shall not be appointed as the Managing Director or as an Acting Managing Director.

(2) A person shall not be appointed as the Managing Director or as an Acting Managing Director for a period that extends beyond the date on which he will attain the age of seventy years.

Employment of
staff of Bank.

27. The Bank may employ such persons as are necessary for the purposes of this Decree.

Terms and
conditions of
employment of
staff.

28.(1) The terms and conditions of employment (in respect of matters not provided for by this Decree) of persons employed under section 27 are as determined by the Board.

(2) In subsection (1), "terms and conditions" include conditions with respect to the duration of employment or with respect to dismissal from employment.

29. For the purpose of this Decree the Bank may, with the approval of the President and on such terms as may be arranged, make use of the services of any person who holds a public office.

Use of services of public officers.

PART V. - FINANCIAL MATTERS

30.(1) The original authorised share capital of the Bank is 40 million rupees.

Authorised share capital.

(2) The authorised share capital of the Bank may, with the approval of the Minister, be increased from time to time by the Bank.

(3) The original authorised share capital shall be divided into 400,000 shares each having a par value of 100 rupees.

(4) The amount of any increase in the authorized share capital of the Bank shall be divided into such number of shares having such par value as the Bank determines.

31.(1) A subscription to shares of the authorised share capital of the Bank —

Subscription to shares.

(a) may, subject to the direction of the Minister as to the number of shares to be subscribed, be made by the Government; and

(b) may, subject to the regulations, be made by any person or institution, whether in or outside Seychelles.

(2) Provision may be made in the regulations with respect to the payment of amounts subscribed, the manner and place of payment and calls; but the Bank may give directions with respect to any such matter if no provision with respect to that matter is made in the regulations.

(3) Shares of the authorized capital of the Bank shall not be pledged or encumbered in any manner whatsoever and they are not transferable except to the Bank.

(4) The liability of members on shares is limited to the unpaid portion of the issue price of the shares.

(5) No member shall be liable, by reason only of membership in the Bank, for obligations of the Bank.

Borrowing by
Bank

32.(1) Subject to this Decree, the Bank may, with the approval of the President, given either unconditionally or subject to conditions, borrow in or outside Seychelles moneys for the purpose of the performance of its functions under this Decree.

(2) The President may, from time to time, fix limits on the power of the Bank under subsection (1) to borrow, or limit the methods by which the Bank may borrow outside Seychelles.

(3) The President, may, out of public moneys, make advances to the Bank of such amounts and on such terms as the President determines.

(4) The Bank shall not borrow otherwise than in accordance with this section.

(5) The President may, on behalf of the Government, guarantee the payment of amounts borrowed in accordance with subsection (1) and the payment of interest on amounts so borrowed.

(6) Any sum required for fulfilling a guarantee under subsection (5) shall be charged on and issued out of the Consolidated Fund.

(7) The Bank shall make to the Government, at such times and in such manner as the President may direct, payments of such amounts as may be so directed in or towards the repayment of advances made pursuant to subsection (3) or of any sums issued in fulfilment of a guarantee given under subsection (5), or of interest on any such advances or sums at the rate directed by the President who is hereby authorized to direct the payment of the same on different rates of interest on different advances or sums or in respect of interest for different periods.

(8) The Bank may exercise its power to borrow under this section by the issue of bonds or debentures, or in any other manner which the Bank considers appropriate in the circumstances of any particular case.

(9) The Bank may, when it considers it necessary to do so, establish and operate sinking funds or other special funds for purposes of, or in relation to, any loan borrowed by the Bank under this section.

33.(1) Subject to subsection (2), moneys of the Bank may be applied by the Bank —

Application of
moneys.
2/6/1990.

- (a) in payment or discharge of the costs, expenses and other obligations of the Bank;
 - (b) to implement the purposes of the Bank; and
 - (c) to give effect to any provision of this Decree,
- but not otherwise.

(2) When moneys obtained by the Bank are to be used for a particular purpose or project they shall be used only for that purpose or project.

(3) The Bank shall set aside in a reserve fund in each financial year out of the net income of the Bank (as determined by the Bank) for that year the prescribed amount to meet contingencies and for such other purposes (other than making a distribution to members of the Bank) as the Bank may think fit.

(4) In subsection (3), "prescribed amount" means —

- (a) such percentage, being not less than 25 per centum of the net income for a financial year approved by the Minister; or
- (b) if the amount so determined would increase the amount standing to the credit of the reserve fund to a sum in excess of the sum represented by the paid up shares of the authorized share capital of the Bank, the lesser percentage (if any) which would not so increase the amount standing to the credit of the reserve fund.

*Section 32(5) of this Decree is subject to the provisions of section 29 of the Public Finances (Control and Management) Act, (Cap. 188).

(5) The Bank shall determine annually what part of the net income of the Bank may be distributed to members.

(6) Any distribution to members made pursuant to subsection (5) shall be in proportion to the number of shares held by each member.

Financial
limitation.
3/D12/1978.
2/4/1989.

34. The aggregate of the liabilities of the Bank outstanding at any one time (including direct liabilities in respect of bonds and debentures issued by the Bank and the contingent liabilities of the Bank in the form of guarantees given, or underwriting agreements entered into, by it) shall not at any time exceed three times the aggregate amount of the paid-up shares of the authorized share capital of the Bank, earned surplus and free reserves of the Bank, except with the approval of the Minister responsible for Finance.

Accounts and
audit.
2/4/1989.
2/2/1990.

35.(1) The Bank shall keep proper accounts and proper records in relation to the accounts and shall prepare in respect of each financial year a statement of accounts in such form as the Minister responsible for Finance may direct, being in a form which shall comply with the best commercial standards.

(2) The accounts and statement of accounts of the Bank shall be audited by an auditor or auditors appointed annually by the Bank and approved by the Minister responsible for Finance.

(3) As soon as the accounts and statement of accounts of the Bank of any financial year have been audited under subsection (2), the Bank shall send to the Minister responsible for Finance a copy of the statement together with a copy of any report made by the auditor on that statement or on the accounts of the Bank.

(4) The auditor's fees and expenses shall be paid by the Bank.

(5) The Auditor-General may, at all reasonable times, examine the accounts and other records of the Bank in relation to the business of the Bank when directed by the Minister responsible for Finance to do so.

PART VI. - MISCELLANEOUS

36.(1) The Bank shall make to the Minister responsible for Finance as soon as possible after the end of each financial year a report dealing with the operations of the Bank during that year.

Annual report.
2/4/1989.

(2) A report for a financial year shall refer to any direction given by the President under section 8 to the Bank in that year.

37. The Bank may, on such terms as may be agreed, act as agent for the Government, or for any statutory corporation when authorized by the Minister responsible for Finance to do so, in connection with any matter or for any purpose whether or not the matter or purpose is withing the purposes or functions of the Bank.

Bank as agent.
2/4/1989.

38. The President may make regulations prescribing all matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree and, in particular, providing for —

Regulations.

- (a) the establishment and operation by the Bank of funds (including reserve funds) and accounts;
- (b) the administration of any Fund to which a vesting order under section 40 relates;
- (c) the maintenance of secrecy, the avoidance of bribery and the creation of offences in relation thereto;
- (d) the protection of the Bank and its staff, and members of the Board, from legal proceedings in such circumstances as may be prescribed.
- (e) the acquisition and holding of shares in the Bank, rights, procedures and restrictions in relation thereto, the declaration and payment of dividends and the holdings of meetings and the procedure to be followed at meetings; or
- (f) the amendment of the Schedule.

Exemptions.
24 1989.

39.(1) The Bank is not subject to taxation under any law.

Cap. 79.

(2) The Bank is exempted from registration under the Financial Institutions Act.

Vesting Orders.

40.(1) The President may make a vesting order with respect to any Fund administered by the Government or a statutory authority and, subject to subsection (4), the order shall have effect according to its tenor.

(2) A vesting order may provide for the transfer to the Bank of the capital, assets, rights, liabilities or incumbrances of a Fund identified in the order.

(3) A vesting order may include such provisions as the President considers necessary or expedient to safeguard any capital or assets of the Fund to which the order relates.

(4) The President shall cause to be published in the Gazette any vesting order made by him and the vesting order shall have effect on the date on which it is so published.

(5) Where the Fund to which a vesting order relates is established by or under a Decree the vesting order and any regulations made pursuant to section 38(b) shall have effect notwithstanding anything to the contrary in the Decree.

(6) Where a vesting order has effect under subsection (4) -

- (a) the capital, assets, rights, liabilities or incumbrances of the Fund with respect to which the order is made are transferred to the Bank by virtue of this section and without further assurance; and
- (b) the Bank shall administer the Fund in accordance with this Decree, the vesting order and the regulations.

SCHEDULE

(Section 7)

Dec. 12/1978.

OPERATING PRINCIPLES

1. The Bank shall be guided by accepted banking principles in its operations and shall finance only economically sound and technically feasible projects.
2. The Bank shall endeavour to maintain a reasonable diversification in its investment.
3. The Bank shall not grant a loan or guarantee an obligation unless a written application has been made to the Bank to do so and a written report on the desirability of doing so has been prepared for the Bank.
4. In granting a loan the Bank shall ensure that the rate of interest and other charges, and the Schedule for repayment of principle, are appropriate for the loan.
5. The Bank shall charge a suitable fee or commission for its risk in guaranteeing an obligation.
6. In the case of a direct loan granted by the Bank, the Bank shall permit the borrower to draw the loan funds only to meet payments in connection with projects as they fall due.
7. The Bank shall endeavour to ensure that the proceeds of a loan granted or guaranteed by the Bank are applied only for the purposes of the loan and with due attention to considerations of economy and efficiency.
8. The Bank shall ensure that every loan agreement entered into by it shall enable the Bank to exercise all necessary powers of entry, inspection and supervision of operations in connection with the project and shall further enable the Bank to require the borrower to provide information and to allow inspection of its books and records during such time as any part of the loan remains outstanding.
9. The Bank shall not grant a loan to a member of the Board or otherwise transact business with an enterprise in which a member of the Board is a member, director or shareholder, or is in any way directly or indirectly interested, except where the loan or transaction is approved of by all the other members of the Board.
10. The Bank shall not lend money to an individual who is not a citizen of

Seychelles or to a company of which more than fifty-one per centum of the equity capital is held by individuals who are not citizen of Seychelles or to a subsidiary of such a company, except with the approval of the President.

11.(1) The bank shall not acquire any of the share capital of a body corporate if its acquisition would entitle the Board to exercise or control the exercise of 30 per centum or more of the votes at any general meeting of the body corporate.

(2) Sub-paragraph (1) shall not restrict the acquisition of share capital of a body corporate—

- (a) where, in the opinion of the Bank, it is necessary to acquire it to guard any investment of the Bank; or
- (b) which gives a right to vote exercisable only in restricted circumstances.

12. The Bank shall not acquire any of the share capital of a body corporate if the value of the consideration for its acquisition together with the value of any considerations paid for share capital of that body corporate previously acquired, would exceed the sum represented by 10 per centum of the amount of the paid-up shares of the authorized share capital of the Bank.

13. The Bank's total commitment to any single enterprise in any term whatsoever shall not exceed the sum represented by 15 per centum of the amount of the paid-up shares of the authorized share capital of the Bank, except with the approval of the Principal Secretary of the Ministry responsible for Finance.

14. Loans granted by the Bank shall be made only in rupees.

*NOTE: The right of receipt and recovery of moneys due to the Agricultural loans Board established by the Agricultural Loans Board Act repealed by the Agricultural Loans Board Dissolution Act, 1985 (Act 7 of 1985) was transferred to the Development Bank by section 6 of the Agricultural Loans Board Dissolution Act, 1985.

NO SUBSIDIARY LEGISLATION
