

DEVELOPMENT CORPORATION LAWS

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During the last fifteen years, most of the English-speaking countries of Africa have established statutory corporations to facilitate economic development. There exist a great variety of such corporations with many specific purposes, such as agricultural development, construction of housing, and promotion of tourism. Although some of these corporations operate only in particular geographic sections of a country, this study is concerned with laws establishing corporations for development purposes in the whole country or a significant part of it. The following laws fall into this category:¹

Uganda Development Corporation Ordinance, No. 1, 1952

Amended: Ordinance no. 27, 1955

Legal Notice no. 39, 1963

(Kenya) Industrial Development Ordinance, 1954;

Cap. 517

Amended: Act no. 7, 1967

(Nigeria) Industrial Loans (Lagos and Federation) Ordinance, 1956; Cap. 88

Amended: Act no. 59, 1961

Western Nigeria Development Corporation Law, 1959;

Cap. 128

Industrial Bank of Sudan Act, No. 32, 1961

Amended: Provisional Order no. 1, 1964

Tanganyika Development Corporation Act, 1962; Cap. 468

Amended: Act no. 69, 1964

Act no. 16, 1966

(Ghana) National Investment Bank Act, 1963; Act 163

Amended: NLCD 121, 1967

NLCD 236, 1968

¹Reference to sections of these laws are enclosed within parentheses.

Eastern Nigeria Development Corporation Law, No. 7,
1963²

(Botswana) National Development Bank Law, No. 13,
1963

Amended: Act no. 11, 1967

Malawi Development Corporation Ordinance, No. 13,
1964

Amended: Ordinance no. 22, 1964

Act no. 35, 1965

Act no. 10, 1966

These laws differ from one another in details, so that at first reading they may appear dissimilar. As might be expected, the three Nigerian laws and those of the East African countries are more alike than are the laws from other areas. In general, all these laws provide for the establishment of the corporation--its purpose, functions, administrative procedures, responsibilities, and funding.

I. Title

As can be seen from the list above, the titles of the laws vary, and in checking indices it is often necessary to know the exact name of the corporation. In the case of Tanzania, e.g., the title has been changed to National Development Corporation Act, 1962 (amendment, 1964). And Kenya's corporation has been renamed the Industrial and Commercial Development Corporation (amendment, 1967).

II. Interpretation

This appears as the second section in all laws, except Ghana's where it is last (30). Although no two laws are exactly the same, in most cases this section specifies the meaning of such terms as "Corporation," "Board," "Minister," "financial year," "local authority," and so on. Ghana provides a fairly typical example:

²The Eastern Region Development Corporation was actually established by Law No. 12, 1954. The 1963 law consolidates, amends, and repeals the 1954 law.

"Bank" means the National Investment Bank established by Section 1 of this Act;

"Board" means the Board of directors of the Bank established under section 11 of this Act;

"financial year" means the period of twelve months ending on the thirty-first day of December of each year;

"Managing Director" means the Managing Director of the Bank appointed under section 16 of this Act, or as the case may be, the person appointed under subsection (2) of that section;

"Minister" means the Minister responsible for Finance;

"property" means movable or immovable property;

"public sector" includes State-owned enterprises and joint State and foreign private enterprises. (30)

III. Establishment

The law of Sudan provides a typical example of the manner in which such corporations are established:

There is hereby established, in accordance with the provision of this Act, a Bank to be known as the "Industrial Bank of Sudan." It shall be a body corporate, shall have perpetual succession and a common seal, and may sue and be sued in its own name. (3:1)

All but one of the laws contain this reference to a body corporate with perpetual succession and a common seal, capable of suing and being sued. The exception is Botswana, which sets up a

. . . body corporate capable, under the said name, of suing and of being sued, and with power, subject to the provisions of this law, of doing anything and entering into any transaction . . . which bodies corporate may by law do and enter into. . . . (3:2)

The establishment clause appears in the third section of every law except Uganda (3, 7) and Western Nigeria (3, 4). In many laws, incorporation includes specific powers to acquire and dispose of land or movable and immovable property (Uganda [7], Kenya [3:3], Western Nigeria [4], Tanzania [3:1c], Ghana [1:3], Eastern Nigeria [3:3], Botswana [3:2], Malawi [3]). Ghana (3:3) and Eastern Nigeria (3:3) mention the power to enter into contracts. Uganda (7), Botswana (3:2), and Malawi (3) provide that the corporation may "perform each other acts as bodies corporate may by law perform" (Uganda).

IV. Purposes

Most of the laws include a rather broad statement of the purpose of the corporation, followed by a more specific list of its functions. Since the wording of each law is different, giving a somewhat different emphasis to the purposes, it is useful to quote them all:

Western Nigeria: ". . . to foster the economic development of the Region . . ." (8).

Botswana: ". . . promoting the economic development of the Territory . . ." (3:1).

Tanzania: ". . . to facilitate and promote the economic development of Tanganyika" (4:1, amended 1964).

Nigeria: the Federal Loans Board may make loans for ". . . projects designed to further the economic development of the Federal territory of Lagos or its environs or the economic development of the Federation of Nigeria . . ." (9, amended 1961).

Uganda: ". . . to facilitate the industrial and economic development of the Protectorate . . ." (4:1)

Kenya: ". . . facilitating the industrial and economic development of Kenya . . ." (3:1).

Ghana: ". . . assisting industrial, commercial, agricultural and other enterprises in general . . ." (3:1).

Malawi: ". . . to develop the agricultural, commercial, industrial and mineral resources and the economy of Nyasaland" (10:1).

Eastern Nigeria: ". . . securing the investigation and formulation of projects for developing the resources of Eastern Nigeria with a view to the expansion of production of foodstuffs and raw materials and for other agricultural, industrial and commercial development" (3:1).

Sudan: ". . . to assist in the establishment, expansion and modernization of private, industrial enterprises in the Sudan and to encourage and promote the participation of private capital both internal and external, in such enterprises . . ." (4:1).

V. Functions

The delineation of functions indicates how active a role the corporation is intended to play in economic development. This is one of the most complicated areas of the laws, in length and scope as well as in wording and actual provisions. The most significant differences are found in the provisions concerning operations (physical vs. strictly financial) and in the degree of independence allowed.

The Nigerian law provides the smallest scope of operations, since the Federal Loans Board is empowered to make loans only for approved projects, and cannot initiate projects on its own (9:1). Although the Board "may make purchases of plant, equipment or materials or acquire land or erect buildings or carry out any other works on behalf of the applicant for a loan, . . ." the costs of such operations are treated as a loan (9:2). Furthermore, the law includes detailed regulations regarding the amount and kind of loans which the Board may make, and the procedures for granting them (10-18).

The laws of Sudan, Ghana, and Botswana restrict the operations of their corporations to the financial sphere. Significantly, these three laws use the name "bank" rather than "corporation." The main financial functions are in the areas of loans, guarantees, investments, and underwriting.

The Industrial Bank of Sudan functions by:

- (a) providing financing in the form of loans of any description and by share participation;
- (b) making funds available for re-investment by revolving investments and by causing the transfer of shares and securities;
- (c) furnishing managerial, technical and administrative advice and assisting in obtaining services for private industrial enterprises in the Sudan;
- (d) sponsoring and underwriting any issue or conversion of all forms of shares and securities;
- (e) guaranteeing and counter-guaranteeing loans and obligations; and

- (f) co-operating with the appropriate Government Institutions in conducting research, investigating appraising and promoting new projects in the Sudan which are fit for private enterprise, and enlisting private capital both in the Sudan and abroad to finance such projects. (4:1)

Ghana's National Investment Bank also has the function of granting loans (3:3) and of "seeking to bring together investment opportunities, internal and external capital, and experienced management" (3:1d). A special function of this Bank is in "counselling and encouraging small Ghanaian business concerns" (3:1c). In contrast to Sudan, the Ghanaian law provides that the Bank "may operate in all sectors of the national economy including the public, the co-operative and the private sector" (3:2) and sets out certain regulations regarding funds and lending procedures for the various sectors [3:4-10).

The function of the National Development Bank of Botswana includes the granting of loans, the taking up of share and loan capital, the underwriting of issues of shares and debentures, as well as "the selling of goods, and the taking over of sellers' rights, under hire purchase or instalment sale agreements" (4:1). There are eleven categories of enterprises which qualify for such assistance (4:2); these undertakings seem to cover all forms of economic activity in Botswana. The law includes this caution: "The bank shall ensure that its business is conducted in the manner best suited for the efficient and economical utilization of its funds, and best calculated to achieve the purpose for which it is established" (5). In addition, it is the duty of the Bank "so to carry on its business as to secure that its revenues are not less than sufficient to meet all sums properly chargeable to its revenue account, . . . taking one year with another" (12:1).

The remaining laws provide for both financial assistance and actual physical operation. Those which offer the widest scope of activity in the briefest statements are the laws of Tanzania and Eastern Nigeria. Tanzania's National Development Corporation may

. . . do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with its business

activities in that behalf either alone or in association with any other person or body (including the Government and any local authority) or as managing agents or otherwise on behalf of such other person or body, and may facilitate and promote the participation of other persons and bodies in the economic development of Tanganyika. (4:3, amended 1964)

The law does provide that nothing in the above statement "shall authorize the disregard by the corporation of any enactment or rule of law" (4:4), and it offers the guideline that:

. . . the Corporation shall have regard to the economic and commercial merits of any undertaking it promotes, finances, manages or assists and the economic position and potentialities of Tanganyika as a whole, and the Corporation shall use its best endeavours to secure that its business as a whole is carried on at a net profit, taking one year with another. (4:2, amended 1964)

The law of Eastern Nigeria describes the corporation's functions in greater detail (3:4-5), and grants it the power to carry on all "requisite, advantageous or convenient" activities, including technical education and training, the establishment or promotion of other bodies, and the granting of financial assistance by lending or investing money. There is no stipulation as to the legality, profitability, or economic merits of the corporation's undertakings.

The laws of Western Nigeria, and Malawi provide that the corporations may formulate projects. In Western Nigeria, the corporation may formulate proposals which after government approval can become approved projects which the corporation may assist or operate (8-9). The Malawi Development Corporation has broad functions which are elaborated at some length (10:2-3). The corporation may "investigate and formulate projects" and then carry on any "requisite, advantageous or convenient" activities in connection with those projects, including establishment or promotion of other bodies and training "persons belonging to Nyasaland." But the corporation may be required by the Minister to prepare a program showing how it proposes to carry out a particular project (10:4).

The Industrial Development Ordinance of Kenya allows the corporation wide functions of promoting development "by the initiation, assistance or expansion, or by aiding in the initiation, assistance or expansion, of industrial, commercial or other undertakings or enterprises in Kenya or elsewhere" (3:1). But the exercise of these functions is restricted by the provision that:

- . . . the Corporation shall have regard generally to the desirability of--
- (a) acting principally as an auxiliary finance organization and not as the sole source of the provision of finance in respect of any particular undertaking or enterprise as aforesaid;
 - (b) exercising its powers of affording financial assistance, so far as possible and except where the Minister for Finance otherwise directs, by way of guarantee, loan or investment and not by way of grant or subsidy;
 - (c) requiring early liquidation or repayment of any guarantee, loan or investment made by the Corporation, in order to ensure so far as possible that the liquid resources of the Corporation may be available for other purposes within the scope of the functions of the Corporation. . . . (3:2)

The law of Uganda, on the other hand, does not mention formulation or initiation of projects. It provides only that the corporation may:

- . . . promote and assist in the financing, management, or establishment of--
- (a) new undertakings;
 - (b) schemes for the better organisation and modernisation of and the more efficient carrying out of any undertaking; and
 - (c) the conduct of research into the industrial and mineral potentialities of the Protectorate.

(4:1)

The corporation does not have authority for compulsory acquisition of any interests (4:4).

Kenya and Uganda, as well as Tanzania, provide for the consideration of external economies in investment decisions. The Tanzanian statement (4:2, amended 1964) is quoted above (p. 8). The Uganda law has a similar provision:

. . . the corporation shall have due regard to the economic and commercial merits of any undertaking it promotes, assists, finances, or manages, but may take into consideration in considering such economic and commercial merits, the economic merits of any other undertaking in which it has an interest or the economic merits of the Protectorate as a whole. (4:3)

The Kenya law contains the most liberal provision, i.e. that a corporation undertaking should "be of long-term value in relation to the development of Kenya, whether or not it is likely to prove self-supporting or to furnish direct profits either immediately or in the future" (3:2).

VI. Powers

Many of these countries include a substantial section on the legal powers of the corporation, in addition to its functions: Uganda, Kenya, Western Nigeria, Sudan, Malawi. Usually such sections indicate in great detail what the business of the corporation shall be; in some cases (e.g. Sudan, Malawi), this section is a repetition and expansion of the functions already listed. In those laws which do not have two separate sections, the section on either "functions," "powers," or "business" often contains the same provisions which are spread out in section in the other laws. Sometimes, as in the Tanzanian law, the functions are described in very broad terms without detailing specific powers. The distinction between functions and powers is often made on a quite arbitrary basis.

Again, in regard to powers, no two laws are the same, but there are many provisions which commonly appear, including those which grant the corporation power to:

- (1) Establish or operate any undertaking or make direct expenditure towards the implementation of a project: Western Nigeria (10:2h), Malawi (11:1a, 12:1a).
- (2) Lend money for the purposes of a project: Uganda (5:1b), Kenya (8a), Western Nigeria (10:2c), Sudan (4:2a), Ghana (4a), Malawi (11:1b). In Uganda, the corporation is enjoined to ensure "so far as possible" that its loan is not "unduly in excess" of loans by other interested persons (5:5). Some laws include several provisions for regulation of loans. These are discussed below.

(3) Acquire an interest in, or subscribe to share capital of, undertakings: Uganda (5:1b), Kenya (8a), Western Nigeria (10:2c), Sudan (4:2c), Ghana (4:a), Malawi (11:1c). Again in Uganda, the corporation should not make an investment "unduly in excess" of investments by other interested persons (5:5); and the corporation investment must have Government authorisation (5:2).

(4) Underwrite issues of securities: Uganda (5:1b), Kenya (8b), Western Nigeria (10:2c), Sudan (4:2d), Ghana (4k), Botswana (4:1c). In Botswana, the extent of underwriting is limited to an amount ultimately determined by the government (13).

(5) Guarantee the payment of money or the performance of any contract by an undertaking: Uganda (5:1f), Kenya (8d), Western Nigeria (10:2d), Sudan (4:2b), Ghana (4b). In Kenya, the guarantee is limited to an amount ultimately determined by the Minister for Finance (10).

(6) Undertake research into the mineral, industrial and agricultural potentialities of the country (Uganda, 5:1j) or into the economic and technical feasibility of projects (Ghana, 4n), and carry out investigations necessary for formulation of proposals (Western Nigeria, 10:2a) or for investment and improvement of assets and funds (Sudan, 4:2e).

(7) Provide technical assistance by statistical data and investment advice (Sudan, 4:2e); or by managerial, technical and administrative advice (Ghana, 4e); or by advice and plant and machinery (Western Nigeria, 10:2g; Malawi, 11:1c-d).

(8) Deal in immovable or movable property: Uganda (5:1d), Kenya (8e), Nigeria (20), Western Nigeria (10:2i), Sudan (4:2f), Ghana (4g), Malawi (12:1g). In Botswana, the bank may only hold land "required for its business premises or the housing of its staff"; any other land which it acquires must be "disposed of at the earliest favourable opportunity" (15:1-2). In Malawi, the sale of immovable property must have Ministerial approval (12:1g). As mentioned above (p. 3), some of these countries, along with Tanzania, Eastern Nigeria, and Botswana, include with incorporation the power to deal in property.

(9) Make, draw, accept, or endorse negotiable instruments: Uganda (5:1e), Kenya (8c), Western Nigeria

(10:2 1), Sudan (4:2g), Ghana (4j).

(10) Enter into contracts: Uganda (5:1), Kenya (8k), Nigeria (21:1). Ghana and Eastern Nigeria include this power with incorporation (above, pp. 3-4).

(11) Act as manager, agent or associate: Uganda (5:1i), Kenya (8j-k), Western Nigeria (10:2f), Ghana (4o).

(12) Appoint directors or agents for undertakings: Uganda (5:1i), Kenya (8:j-k), Western Nigeria (10:2e, 11), Ghana (4o), Malawi (13), Eastern Nigeria (8). In Eastern Nigeria, the appointment of agents is subject to the Premier's approval (8).

(13) Delegate routine administration, within specified limits, to the chairman or some other person designated by majority vote of the directors: Western Nigeria (6), Eastern Nigeria (7), Tanzania (Sched:6b), Botswana (Sched 1:13).

(14) Issue debentures or debenture stock: Uganda (5:1g), Kenya (8i), Ghana (9:1), Botswana (11).

(15) Borrow money: Uganda (5:1h), Kenya (9), Western Nigeria (15), Sudan (4:2g), Ghana (9), Tanzania (7, amended 1964), Eastern Nigeria (12), Malawi (15), Botswana (10). All the laws, except those of Uganda and Sudan, impose specific conditions on this borrowing power, often requiring ministerial approval.

(16) Invest in securities: Uganda (11:4), Kenya (8h), Nigeria (19), Ghana (4f), Western Nigeria (17), Eastern Nigeria (19), Malawi (17), Botswana (15). All the laws except Kenya and Ghana impose conditions on this investment power, usually entailing ministerial or other official approval.

(17) Engage staff and, usually, provide for their welfare by provident and pension fund schemes: Uganda (5:1k), Kenya (7), Eastern Nigeria (13), Nigeria (6), Western Nigeria (22-23), Sudan (4:2i), Tanzania (11-12), Ghana (4m), Malawi (6, amended 1965; 8; 12:1j-o), Botswana (Sched 1:6-7).

(18) Perform any act necessary, incidental, or conducive to the attainment of the corporation's objectives: Uganda (5:1), Kenya (8:1), Western Nigeria (10:1), Sudan (4:2), Malawi (12:1p).

The 1967 amendment to the Kenya law inserted the constraint:

The Industrial and Commercial Development Corporation shall, in the exercise of its powers and in the performance of its duties under this Act or any other written law, act in accordance with any general or special directions that may be given to it by the Minister. (8A)

And the Western Nigeria law cautions that nothing in its provision (10:1) "shall be construed as authorising the disregard by the Corporation of any enactment or rule of Law" (10:3). But this permission to "perform any act, . . ." in general, grants to these corporations as broad a range of power as the briefer statements of function in the laws of Tanzania and Eastern Nigeria (above, p. 8), the only constraint being that imposed by the statement of the corporation's objectives or purposes.

VII. Regulation of Loans

Four of these corporate laws (Malawi, Nigeria, Eastern Nigeria, Botswana) have sections which deal specifically with the regulation of loans granted by the corporations. Malawi has the briefest statement of such provisions:

Where the Corporation has made a loan under the provisions of this Ordinance on the security of any corporeal property or has under the provisions of this Ordinance sold or acquired the seller's rights under a hire purchase or instalment sale agreement on any corporeal property, it may from time to time value or inspect or cause to be valued or inspected such property and may authorize in writing any of its staff or agents or any other person to make such valuation or inspection. (24:1)

Obstruction of an inspector constitutes an offense in Malawi which is liable to punishment by fine or imprisonment or both (24:2).

The other three countries include more elaborate provisions. Nigeria, for example, requires various kinds of government approval for loans of different amounts (9-10). The Nigerian law gives the Board the power to set interest rates and to determine the terms and conditions of repayment (12). It also provides that:

When the Board has made a loan of money, the Board may from time to time make or cause to be made such examination as may be necessary to ensure that the loan is being or has been applied to the purposes for which it was made.

The Board may appoint any of its officers, or any other person authorised in writing by the Board, to make such examination, and the person who received the loan shall produce to such officer or person all the relevant books, documents and other matters and things necessary for the purposes of the examination. (14)

Where, upon any examination made under the provisions of section 14, it appears to the Board that any sum being the whole or any part of the loan made by the Board, has not been applied for the purposes for which the loan was made, the Board may order that such sum be repaid to the Board within the time mentioned in the order, and any sum so ordered to be repaid to the Board shall thereupon become a debt due to the Board. (15)

If in the opinion of the Board a loan made under the provisions of this Ordinance has been misapplied, the Board may, in addition to or in lieu of any other proceedings, where such loan has been secured by mortgage or otherwise, by notice in writing addressed to the borrower recall the said loan or that part to be repaid on the date specified in the notice, and any security given for the purpose of the loan may be realized accordingly. (16)

Finally, this law sets penalties of fine and imprisonment for offenses such as false statements, failure to disclose material information, bribery by applicants, or acceptance of bribes by Board members (17-18).

The Eastern Nigerian Law also gives the corporation power to set terms and conditions of loans and repayment. It contains three sections on the examination of the application of money and the actions in case of misapplication:

(1) Where the Corporation has made an advance or afforded other credit facilities under this Law, it may, from time to time, make or cause to be made such inquiry as may be

necessary to ensure that the advance or other credit facilities are being applied for the purposes for which they were made or given.

(2) The Corporation may appoint any of its employees or any other person in writing to make the inquiry and the person to whom the advance was made or to whom credit facilities were given shall produce to that employee or other person all the relevant books, documents and other matters or things necessary for the purposes of the inquiry. (23)

(1) Where upon an inquiry made under section 23 it appears to the Corporation that any sum of money being the whole or part of the advance or of any credit facility granted by the Corporation has not been applied for the purposes for which the advance was made or the credit facility was granted, the Corporation may order that the sum of money be, within the time mentioned in the order, applied to those purposes or that the sum of money be repaid to the Corporation within the time mentioned in the order.

(2) A sum of money ordered to be repaid to the Corporation under subsection (1) shall become a debt due to the Corporation. (24)

(1) Where an advance made under this Law has been misapplied, the following provisions shall have effect--

(a) where the advance has been secured by mortgage the Corporation may, by notice in writing addressed to the mortgagor, recall the advance or part thereof or require the advance or part thereof to be paid not later than a date specified in the notice; and may proceed to foreclose on the mortgage;

(b) where the advance has been secured otherwise than by way of mortgage the Corporation may by notice in writing addressed to the borrower recall the advance or part thereof or require the advance or part thereof to be paid not later than a certain date; and may proceed to realize any security given for the purposes of the advance.

(2) The provisions set out in subsection (1) shall be in addition to any other legal remedies; and in any criminal proceedings in respect of the misapplication of an advance or other credit facility the onus of proving that

he acted in good faith and without knowledge that he was not entitled so to apply the advance or other credit facility or part thereof shall lie on the person charged with the misapplication. (25)

The law of Botswana incorporates features of all its predecessors. Like the Nigerian laws, it has sections on the examination of the application of funds and on repayment in case of misapplication, but it adds a requirement for bi-annual (or more frequent) financial statements from the borrower, and makes offenders liable to fine and imprisonment (18-19). The section on inspection of security and penalty for obstruction (20) reproduces the provisions of the Malawi law. Two original sections (21-22) provide for cancellation of loans in whole or in part for various reasons. The Botswana law also has a section very similar to the two later Nigerian laws on action in case of the misapplication of a secured loan (23). The two last sections give a more elaborate statement of liabilities in offenses connected with the requesting or using of financial assistance from the bank (24-25).

VIII. The Public Interest

Almost all these laws include the general restriction that corporation activities must conform to the public interest. (The exceptions are Kenya and Ghana.) The Uganda law states this very simply:

The Minister may give to the Corporation such directions as to the exercise and performance by the Corporation of its functions under this Ordinance as appear to the Minister to be requisite in the public interest, and the Corporation shall give effect to any such directions. (6, amended 1963)

The laws of Sudan (5), Botswana (6:1), and Malawi (10:5) are similar. The Nigerian law contains an additional provision:

The Minister may, after consultation with the Board, give it directions of a general character as to the exercise and performance of its functions under this Ordinance.

The Board shall furnish the Minister with such information and returns relating to the activities or proposed activities of the Board as the Minister may from time to time require. (29)

The Western Nigerian law has a statement similar to that of Nigeria, but adds that the minister may give "specific directions for the purposes of remedying any defect which may be disclosed in the arrangements of the Corporation . . ." and also may "give directions prohibiting or limiting any expenditure proposed to be made by the Corporation which appears to the Minister to be excessive or unnecessary" (12).

Eastern Nigeria provides for general and specific ministerial directions, including discontinuance or restriction of any corporation activities, and for furnishing of information by the corporation (9).

The law of Tanzania did provide for the ministerial direction of the corporation (5), but, as amended in 1964, retains only section (5:4), which requires that the corporation furnish to the President information on its property and activities.

IX. Administration

All the laws provide for the administration of the corporation by a Board of Directors. In the cases of Uganda (8:1-5), Kenya (4:1), Western Nigeria (5:1), Eastern Nigeria (4:1), Tanzania (Sched 1:1-2) and Malawi (4, amended 1965), the board consists of a chairman and several other members, ranging from three to eleven or more in number, all of whom are appointed by the Minister or Premier. But in Uganda "if at any time the shares in the Corporation held by persons other than the Government equal twenty-five per cent of the shares, then the private shareholders shall appoint not less than two directors" (8:3). The Uganda and Kenya laws further specify that the directors must be chosen by reason of their experience and ability in business or administration.

The other four laws are more particular, in varying degrees, about the composition of the board. Usually this is part of an effort to coordinate overall economic policy in the country by bringing into the corporation officials and other persons who will have an interest in its activities. Thus, Botswana specifies that the Director of Agriculture shall be included (Sched 1; 1:1), and Ghana includes the head of the Ministry of Finance and at

least two shareholders of the bank (11:2, amended 1968). Also in Ghana, the directors must be residents of Ghana and a majority of the directors must be Ghanaian citizens (11:6-7, amended 1968). Both Ghana (11:4, amended 1968) and Botswana (Sched 1; 2:2) provide that directors be experienced in financial affairs or business or administration. The Board of the Industrial Bank of Sudan includes representatives from the Ministry of Finance and Economics, the Ministry of Commerce, Industry, and Supply, and the Bank of Sudan (8:2c). The Federal Loans Board in Nigeria includes two public servants, an officer of the Lagos Executive Development Board, representatives of the Lagos Chamber of Commerce and the Lagos Town Council, and not more than five other members who are not public servants (4:1).

The laws have various provisions for procedural matters. The attached chart refers to relevant sections of each law. In general, such sections state the term of office of corporation members, which may be given as two or three years, or left to be specified by the minister or other appointing officer. Members are usually eligible for reappointment, and they may resign at any time by giving notice in writing. Most laws provide that a member will be disqualified for office under certain conditions. The law of Eastern Nigeria is a typical example:

Notwithstanding anything contained in the Instrument by which a member is appointed, the Premier may revoke the appointment if he is satisfied that the member--

- (a) has been absent from three consecutive meetings of the Corporation without the permission of the Chairman;
- (b) has become bankrupt or made an arrangement with his creditors; or
- (c) has been convicted by a court in any part of the Commonwealth of an offence involving fraud or stealing;
- (d) is incapacitated by physical or mental illness; or
- (e) is otherwise unable or unfit to discharge the functions of a member. (5:2)

Most laws provide that members shall receive remuneration at a rate determined by the corporation or, more often, by the Minister. Some state that a Director must disclose

any interest that he has in any matter which comes before the board. A few laws provide that no liability shall attach to a member for anything done in good faith in performance of his duties for the corporation. Three laws have provisions about conflict of interest with regard to membership in both the corporation and the Legislature. The law of Malawi says that no corporation member shall be a member of the Parliament of Malawi (4:1); similarly, Botswana provides that a person be disqualified from being a member of the bank so long as he is an unofficial member of the Legislative Council (Sched 1; 2:3). On the other hand, the law of Uganda reads:

No person shall, by reason of the fact that he has been appointed a member of the Board, whether he is receiving a salary or not from the corporation, be rendered incapable of being appointed, or of sitting and voting, as a member of the Legislative Council.
(8:8)

The laws have several provisions for board meetings, including their frequency, what constitutes a quorum, and decisions by majority vote with the chairman casting a vote in case of a tie. There are provisions for the appointment of alternates or replacements and for co-opting persons to be members at meetings in order to obtain advice on particular matters. Most laws state that the validity of corporation procedures shall not be affected by a vacancy in the membership or a defect in the appointment of any member. And, finally, there are provisions for the corporation to employ staff and to make regulations or standing orders for the proper conduct of its business. See the table at the conclusion of the article.

X. Resources

In addition to granting borrowing powers as already mentioned, all of the laws make some provision for the funding of the corporation. These fall into three main categories: government grants and loans; resources transferred from previously existing government programs; and capital raised by the issue of shares. Many governments combine two methods of financing.

The Kenya law gives the briefest statement on funding:
To enable the Corporation to exercise its powers

or to fulfill any of its obligations, the Minister for Finance may, with the consent of the Legislative Council, make advances or grants to the Corporation.
(11)

The corporations in Tanzania, Malawi, and Eastern Nigeria also operate on grants or loans from governmental bodies. The law of Tanzania provides that:

- (1) Where any moneys are paid to the Corporation as part of its funds out of moneys provided by Parliament for the purpose, the President may require the Corporation to pay interest thereon to the Government and, where the President so requires, the Corporation shall pay interest thereon at such times and at such rates as the President may determine at the time when such moneys are paid to the Corporation:

Provided that the President may waive the payment of interest under this subsection for any period which he thinks fit.

- (2) The Government may, with the approval signified by resolution of the National Assembly, raise moneys, either within or outside Tanganyika, specifically for the purposes of the Corporation, and all moneys so raised shall be charged on and issued out of the Consolidated Fund, and when paid to the Corporation shall form part of its funds.
- (3) The President shall determine the manner and time or repayment of any moneys paid to the Corporation which have been raised by the Government under subsection (2), and the times and rate at which interest shall be paid thereon, and the Corporation shall make repayment and pay interest in accordance therewith:

Provided that the President shall not determine a rate of interest lower than that at which such moneys were raised by the Government. . . .

- (4) The President may, on such conditions as he shall determine and without further appropriation than this Act, deliver and grant to the Corporation as part of its assets, materials, machinery, vehicles, tools, and other things received by the Government under any agreement or scheme for technical assistance (6, amended 1964).

The law of Malawi does not concern itself with details of repayment. It simply provides that:

The funds, assets and resources of the Corporation shall consist of--

- (a) such sums or property as may from time to time be loaned or granted to the Corporation--
 - (i) by the Farmers Marketing Board;
 - (ii) by a local authority or group of local authorities;
 - (iii) by the Government pursuant to any powers vested in it in that behalf by means of an appropriation ordinance or otherwise;
 - (iv) subject to the specific approval of the Minister, by a government or person not mentioned above or by an international organization. (14)

The law of Eastern Nigeria provides just grants and investments, so that there is no need for repayment:

The funds and resources of the Corporation are made up as follows--

- (a) any sum which may from time to time be granted by or invested in the Corporation by a Statutory Corporation;
- (b) any sum which may be appropriated from time to time to the Corporation by the Eastern Nigeria Legislature . . .
- (c) any sum which may from time to time be granted by or invested in the Corporation by the Eastern Nigeria Marketing Board. . . . (10)

The laws of Western Nigeria, Nigeria and Botswana provide for a transfer of resources from existing government bodies to the new corporation. Thus the Western Nigerian Development Corporation takes over the assets and liabilities of the Western Region Production Development Board:

- (1) All property, real or personal, vested in the Board immediately before the appointed day shall, as from the appointed day, vest in the Corporation by virtue of this Law and without further assurance, and, as from the appointed day, the Corporation shall have all rights and be subject to all liabilities which the Board had or to which the Board was subject immediately before the appointed day.

- (2) Every agreement to which the Board was a party shall have effect as from the appointed day as if--
- (a) the Corporation had been a party to the agreement
 - (b) for any reference to the Board there were substituted, as respects anything failing to be done on or after the appointed day, a reference to the Corporation.
- (3) Where by operation of any of the foregoing provisions of this section any right or liability becomes a right or liability of the Corporation, the Corporation and all other persons shall, as from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal procedures) for ascertaining, perfecting or enforcing that right or liability as they would have had if it had been at all times a right or liability of the Corporation, and any legal proceedings pending on the appointed day by or against the Board shall be continued against the Corporation. (13)

The Western Nigerian Corporation also receives "such sums as may, from time to time, be advanced by way of loan or granted to the Corporation by the Government of the Region pursuant to any powers vested in the Government in that behalf . . ." (14b).

The law of Nigeria provides for a transfer of that part of the assets and liabilities of the Colony Development Board which "can more conveniently be related to the area of the Federal Territory of Lagos, as distinct from the area of the Colony excluding such Federal Territory . . ." (8:2). In addition, the Federal Loans Board receives "such moneys as may be appropriated from time to time to the Board by any vote or resolution of the House of Representatives . . ." (7a).

The law of Botswana contains the most complicated financial provisions, but it does eventually break down to:

- (1) a transfer of "the assets and liabilities vested in the Government on account of the Agricultural Loan Fund . . ." (30; more details in 31-32 and Sched 3);
- (2) "unrecallable capital" in the form of "such moneys

as the Government may from time to time pay to the bank as part of its funds out of moneys provided by law from the public funds (other than loan funds) for such purpose . . ." (7:2a); (3) "Loan funds" consisting of any money borrowed from any source as well as "such moneys as the Government may from time to time pay to the bank as part of its funds out of moneys provided by law from the proceeds of any loan raised by the Government" and "such moneys as may from time to time be raised by the bank by the issue of National Development Bonds . . ." (7:3). These bonds are issued to the public under government supervision (11; Sched 2).

The National Development Bonds in Botswana come close to being an independent source of capital for the corporation, but they still represent borrowed money. The remaining three laws--Uganda, Sudan, Ghana--provide for some public participation in share capital of the corporation.

The Uganda law gives the corporation the first right to acquire the government interest in three undertakings (4:2; Sched). The rest of the resources are made up of share capital:

11. (1) Subject to the provisions of this section the share capital of the Corporation shall be £ 5 million ordinary shares divided into units of £ 100 which shall be taken up by the Government.
- (2) The shares in the Corporation shall be paid from moneys to be appropriated by Legislative Council for that purpose.
- (3) Payment for the shares in the Corporation shall be made at such times and in such amounts as may after consultation be agreed by the Financial Secretary and the Board:

Provided that the Minister may appoint a day by which the total amount shall be paid . . .

- (4) Without the prior approval of the Legislative Council signified by resolution the Government shall not transfer shares of a nominal value of more than £ 2 million.
- (5) The Governor may after consultation with the Executive Council transfer shares to the

nominal value of £ 1 million to an African Local Government or Governments and may transfer shares to the nominal value of a further £ 1 million to any person, whether an African Local Government or not. Any such transfer should be subject to such terms and conditions as the Governor in Council shall approve, and such terms and conditions may make provisions for the payment of a fixed rate of interest on any of the shares so transferred.

- (6) Subject to the provisions of subsections (2) and (3) of section 5 of this Ordinance [approval of Governor and Legislative Council], the Board may from time to time with the approval of the shareholders previously given at a meeting of shareholders increase the share capital of the Corporation to such an extent as it may seem to it to be expedient by the creation and issue of ordinary or preference shares or such other class of shares as it may determine, which shares may be issued upon such terms and conditions as the Board may, with the approval of the Governor in Council, determine, including conditions as to voting rights of the holders thereof, and in the case of preference shares, the condition that the holders thereof shall not be entitled to vote.

12. The liability of any holder of shares in the Corporation shall be limited to the amount unpaid on the shares held by him.

Sudan provides for more direct public participation from the start:

- (1) The authorised capital of the Bank shall be £S. 3,000,000 divided into 3,000,000 shares having a par value of £S. 1 each.
- (2) Shares may be subscribed to by the Government, Government Boards and Organizations and by the public.
- (3) Subject to the enactment of legislation regulating the rights and obligations of shareholders, the Bank may offer all or any part of its

authorized but unissued share capital for public participation at such time or times as the Government and the Board may deem desirable and conducive to successful public participation.

- (4) The Government shall subscribe to 500,000 shares of the capital stock of the Bank, payment therefor of £S. 500,000 to be made at such time or times as the Minister and the Board may agree.
- (6)

In addition, the government agrees to give the bank a long term, interest-free loan of £S. 500,000 (7).

The National Investment Bank of Ghana has only share capital as its initial source of funds:

- (1) Subject to the provisions of this section, the Bank shall have a share capital of twenty-four million cedis divided into ten million shares of a par value of two cedis and forty pesewas each, of which seventy-five per centum shall be taken up by the Government and the remaining twenty-five per centum shall be issued to the public at such times, in such amounts and in such manner as the Board may, subject to the said provisions, determine. (5:1, amended 1967)

The law goes on, like the law of Sudan, to provide for immediate subscription of a certain amount, as well as later increases in the share capital of the bank (5). Like Uganda, the Sudan law states that shareholders have limited liability (7).

Although it may have worked out differently in practice, it seems that these last three laws intended to give more independence to the corporations than did the other laws. The corporations in Uganda, Sudan, and Ghana began with a specified capital sum with no obligation of repayment attached. The corporations in Western Nigeria, Nigeria, and Botswana received the assets of other bodies, but they also inherited the liabilities. The other corporations, which depend on legislative appropriations, are more subject to transitory political conditions, and therefore less able to plan their activities on the basis of a long term economic rationality.

There are a few more financial provisions which should be mentioned. Several laws mention other general resources for the corporations. For example, the funds and resources of the Western Nigerian Development Corporation include:

- (c) all property and investments acquired by or vested in the Corporation and all money earned or arising therefrom;
- (d) all sums from time to time received by or falling due to the Corporation in respect of the repayment of any loan made by the Corporation or the interest repayable in respect thereof;
- (e) all other sums or property which may, in any manner whatsoever, be paid or payable to, or vested in, the Corporation. (14)

The laws of Nigeria, Eastern Nigeria, and Malawi contain provisions almost identical to these.

Section 6 in the Tanzanian law, on corporation repayment of government loans, has been quoted above (p. 23). The law of Botswana has similar directions (8-9), while the Western Nigerian law provides that:

- (1) The Corporation shall, if so required by the Minister, issue to the Government a debenture or debentures of a total nominal value equivalent to the sums advanced to the Board by the Government as unsecured loans that are outstanding immediately before the appointed day,
- (2) If the Government makes an advance to the Corporation at any time in accordance with the provisions of this Law, the Corporation shall, if so required by the Minister, issue to the Government a debenture or debentures of a nominal value equivalent to the sum advanced.
- (3) Debentures issued in accordance with the provisions of this section shall bear interest at such rate (if any) and from such date as the Minister may specify. (16)

The three corporations with share capital all pay dividends on the shares, subject to certain restrictions regarding the financial condition of the corporation (Uganda, 15; Sudan, 19:2; Ghana, 6, amended 1967).

The laws of Uganda (14), Nigeria (25), Eastern Nigeria (11), and Malawi (18:1) contain various statements

allowing the corporation to use its own funds for necessary expenses, such as remuneration of members and payment of salaries.

Finally, several laws give directions for the disposition of surplus funds. In Kenya (12) and Nigeria (31), surplus revenue returns to general government funds at the direction of the minister. In other countries, the laws rule that the corporation shall establish a reserve fund. Tanzania (8), Botswana (14), and Malawi (18:2) simply provide that the corporation shall pay annually into the fund an amount approved by the minister. Ghana (8) and Sudan (17-19) have more elaborate arrangements. For example, Sudan states that:

At the end of each financial year of the Bank there shall be allocated to the General Reserve Fund:

- (a) 25 per cent of the net profits until the fund amounts to 50 per cent of the paid up share capital.
- (b) thereafter 15 per cent of the net profits until the fund amounts to 100 per cent of such capital. (19:1)

XI. Accounts and Audit

All such development laws provide that the directors of the corporation shall keep proper books of accounts and other records. (The relevant sections of the laws are listed in the attached chart.) In addition, each corporation must prepare an annual statement of accounts in such a form as the minister may direct. This statement must be audited by an auditor approved by the minister. Several laws (Nigeria, 27; Western Nigeria, 21; Eastern Nigeria, 15; Botswana, 16:3; and Malawi, 23) state that the corporation may, with the approval of the minister, write off bad debts. All of these countries, except Ghana and Malawi, provide that the directors of such corporations must make an annual report to the minister on corporate operations, and all except Sudan direct that the minister shall, within a specified time, lay on the table of the legislature copies of the annual report and statement of accounts. The law of Uganda (19), Kenya (15), and Ghana (22) mention that the corporation can be dissolved only under authority of an Ordinance or Act. The law of Nigeria directs that:

Where the Board ceases for any reason to exercise its functions under this Ordinance, whether by reason of the repeal of this Ordinance or otherwise, the funds of the Board shall be disposed of in such manner as the House of Representatives may by resolution direct. (30)

XII. Other Matters

Two other significant provisions appear in a few of the laws. One of these relates the development corporation to general company law. Uganda, for example, states that:

- (1) The Governor in Council may from time to time by notice in the Gazette apply to the Corporation any provision or provisions of the Companies Ordinance or any Ordinance amending or replacing such Ordinance which is not inconsistent with the provisions of this Ordinance, with such modifications as he may think fit to make.
- (2) Subject to the provisions of subsection (1) of this section none of the provisions of the Companies Ordinance, or any amendment thereof, or any other law relating to corporations shall apply to the Corporation. (20)

This law had already provided that "upon the establishment of the Corporation the Registrar of Companies shall register it in the register of companies established under the Companies Ordinance" (3:2) and that the corporate books-of-account should be kept "in the same manner as a Company incorporated under the Companies Ordinance" (17:1).

The law of Kenya simply states that:

The Minister may from time to time, by order published in the Gazette, apply to the Corporation any provision of the Companies Ordinance not being inconsistent with the provisions of this Ordinance, and where any such order is made such provision shall apply to the Corporation as it applies to a company within the meaning of the Companies Ordinance. (16)

Ghana, on the other hand, rules that "the provisions of the Companies Ordinance (Cap. 193) or any statutory modification thereof shall not apply to the Bank" (27).

Other provisions have to do with taxation of the corporations. The Nigerian law provides that:

Stamp duties, and registration fees under the provisions of the Land Registration Ordinance, shall not be payable in the Federal Territory of Lagos in respect of a mortgage or other document securing a loan made by the Board or a document discharging any such mortgage or security. (23)

The law of Ghana provides (10:6-8) that moneys payable by the bank to any lender will be free from taxes, duties, or fees, unless the payment is for a bond or promissory note beneficially owned by a resident of Ghana. Thus the bank's foreign monetary transactions are tax-free. Also (26), the bank itself is exempt from income taxes as long as its general reserve fund is less in amount than twice the paid up capital of the bank.

Botswana, however, has a stricter fiscal outlook:

It is hereby declared that nothing in this Law exempts the bank from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local. (29)

Table for IX. Administration

		Appointment and Period of Office	Resignation
Uganda	8-10	9:1*	
Kenya	4-6	4:2	4:2
Nigeria	4-5, Sched	Sched:1	Sched:2
Western Nigeria	5-7, Sched	Sched:1-2	Sched:3
Sudan	8-13	8:3, 12-13	
Tanzania	3:2, Sched	Sched:1:3	Sched:1:4
Ghana	11*-16	13:1-2*, 13:6, 16	13:3*
Eastern Nigeria	4-6	5:1	5:3
Botswana	3:3, Sched 1	Sched 1:2:4	Sched 1:2:6
Malawi	4-9	4:4-5*	5:1

*means the section has been amended.

Table (continued)

	Disqualifi- cation	Remunera- tion	Director's Interest in Under- takings	Member of Legisla- ture
Uganda		9:2		8:8
Kenya	4:6	6		
Nigeria	Sched:3	4:3		
Western Nigeria	Sched:4	18		
Sudan	23	11	10	
Tanzania	Sched:2	Sched:7		
Ghana	12*		14:4a	
Eastern Nigeria	5:2	11b		
Botswana	Sched 1:2:7	Sched 1:4	Sched 1:16	Sched 1:2:3
Malawi	4:3*, 5:2			4:1*

Table (continued)

	Director's Liability for Actions	Meetings	Alternates and Replacements	Co-option of Members
Uganda	8:7	10*, 13		
Kenya	17	13	5	
Nigeria		Sched:8	Sched:5	Sched:6
Western Nigeria		Sched:7-9	Sched:5	Sched:6
Sudan	21	9	8:4*	
Tanzania		Sched:4, 8	Sched:3	
Ghana		15*	13:4-5	
Eastern Nigeria		6		6:4
Botswana		Sched 1:9	Sched 1:2:5	Sched 1:9:7
Malawi		Sched:3, 5-6	5:3, Sched:1-2	Sched:4

Table (continued)

	Validity of Proceedings	Staff	Regulations and Standing Orders
Uganda	8:6		16
Kenya	4:4	7	18
Nigeria	Sched:4	6	Sched:9
Western Nigeria	5:2	22:1	Sched:10
Sudan			24
Tanzania	Sched:5	Sched:10-11, 13	Sched:9
Ghana			29
Eastern Nigeria	4:2	13	6:5
Botswana	Sched 1:17	Sched 1:5-6	Sched 1:10
Malawi		6*	Sched:7