

**JOINT /SELECT
COMMITTEE REPORTS OF
LEGISLATIVE ASSEMBLY -
1948**

**The Industrial Finance
Corporation Bill**

List of Reports of Select Committees presented to
the Constituent Assembly of India (Legislative)
in 1948.

S. No.	Short title of the Bill.	Date of presentation.	Date of publication.
1.	The Minimum Wages Bill./	28.1.48.	7.2.48.
2.	The Industrial Finance Corporation Bill.	28.1.48.	7.2.48.
3.	The Dock Workers (Regulation of Employment) Bill.	28.1.48.	7.2.48.
4.	The Pharmacy Bill.	28.1.48.	7.2.48.
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12.	The Provincial Insolvency (Amendment) Bill.	16.3.48.	20.3.48.
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15.	The Estate Duty Bill. (PRELIMINARY REPORT)	9.8.48.	14.8.48.
	The Factories Bill./	9.8.48.	21.8.48.

S. No.	Short title of the Bill.	Date of presentation.	Date of publication.
17.	The Hindu Code.	12.8.48.	21.8.48.
18.	The Income-tax and Business Profits Tax (Amdt.) Bill.	13.8.48.	21.8.48.
19.	The Indian Railways (Second Amendment) Bill.	24.8.48.	11.9.48.
20.	The Mines and Minerals (Regulation and Development) Bill.	25.8.48.	11.9.48.
21.	The Central Silk Board Bill.	26.8.48.	11.9.48.

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

REPORT OF THE SELECT COMMITTEE ON THE INDUSTRIAL FINANCE CORPORATION BILL.

We, the undersigned, members of the Select Committee to which the Bill to establish the Industrial Finance Corporation of India was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 2.—We considered that the Corporation should encourage industrial concerns which are public limited companies. We have accordingly amended the definition of "industrial concern". It means a public limited company incorporated by an Act of the Legislature or under any law for the time being in force and registered in India and engaged in industries.

Clause 4:

Sub-clause (1).—The authorised share capital has been increased to ten crores of rupees and divided into 20,000 fully paid up shares of Rs. 5,000 each of which shares for five crores of rupees are to be issued in the first instance and the balance from time to time with the sanction of the Central Government to the same groups of allottees and in the same manner and proportion as in the case of the first issue.

Sub-clause (3).—We are of opinion that co-operative banks should also be permitted to participate in the undertaking and have accordingly amended this sub-clause by reserving one thousand shares for them. The allotment of all shares is to be made in the manner prescribed by regulations.

Sub-clause (5).—We consider it proper to leave it to the option of the Central Government and the Reserve Bank and not to make it obligatory on them to dispose of the shares remaining unallotted subscribed by them. We have accordingly altered "shall" into "may".

Sub-clause (6).—We have introduced this new sub-clause for the allotment of the balance of the shares to be issued at a subsequent date to the same groups of allottees and in the same proportion and manner as in the case of the first issue.

Clause 5.—We consider it proper to leave it open to the Central Government to fix the minimum rate of dividend to be guaranteed by it, at the time of issuing the shares instead of fixing such rate by the Act. We have accordingly amended this clause.

Clause 6.—We have retained sub-clause (1) and added new sub-clauses (2), (3), (4) and (5) which lay down the broad principles to be followed by the Board in discharging its functions and provide that the Board shall be guided by the Central Government on questions of policy and that in case of dispute as to whether any question is or is not a question of policy, the decision of the Central Government shall be final. The Central Government is given the power to supersede the Board on the latter's failure to carry out the principles of policy laid down by the Central Government. Sub-clauses (2) and (3) have been omitted from this clause and numbered as separate clauses following.

Clause 10.—This is clause 7(1) in the original Bill. The number of Directors is so fixed as to maintain an even balance between the Government and the other shareholders. Sub-clause (2) is omitted and sub-clauses (3), (4) and (5) have been separately grouped in clause 11.

Clause 11, (1).—We consider it necessary to fix the term of office of elected Directors for four years only and to provide for their rotation. This result has been achieved by providing that one out of the two Directors representing each of the three separate groups of shareholders entitled to elect a Director shall retire at the end of two years after the first election and that the Directors to retire shall be determined by lot. We have also provided that a Director shall not be eligible for election beyond two full consecutive terms after rotation has begun.

Clause 12 is a new clause laying down the disqualifications of a Director.

Clause 13 is a new clause laying down that a Director shall cease to hold office if he has been absent from three consecutive meetings of the Board without leave of absence.

Clause 14 is also a new clause providing for appointment of staff and experts.

Clause 17.—This is original clause 10. It is amended to provide for the election of a chairman of the Board or the Executive Committee by the Board or the Executive Committee failing authorisation.

Clause 18.—This is original clause 11 renumbered 18. We are of opinion that the head office of the Corporation should be in Delhi and that one of the branch offices should be in Kanpur. The clause has been accordingly amended.

Clause 20.—We have added this new clause to provide for the Corporation investing its funds in the securities of the Central or Provincial Government.

Clause 21 is original clause 13.

Sub-clause (1).—We consider that the total amount of bonds and debentures to be issued by the Corporation should be raised to five times the amount of the paid up share capital and the reserve fund of the Corporation. We have amended this sub-clause accordingly.

Sub-clause (2).—The Central Government is given power to fix the rate of interest to be guaranteed by it on bonds and debentures at the time they are issued. We have amended the sub-clause accordingly.

Clause 22.—This is original clause 14. We consider that the minimum term of the deposits to be accepted by the Corporation should be five and not ten years and have accordingly amended the clause.

Clause 23 is original clause 15. We think that the guarantee should be confined to loans floated in public markets which are repayable within a period not exceeding 25 years. We have accordingly amended the clause.

Clause 25.—This is original clause 17 renumbered 25. We have in this clause provided that where a loan is advanced by the Corporation to an industrial concern, subject to the condition that the Corporation shall appoint a Director on the Board of the industrial concern to protect the interests of the Corporation, the condition for the appointment of a Director shall be valid notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in any other law for the time being in force.

Clause 27, (2).—This is original clause 19 renumbered 27. Sub-clause (2) has been amended to provide for the repayment of the loans in the currency in which they are made or its equivalent in Indian currency at the rate of exchange prevailing at the time of repayment.

Clause 28. which is original clause 20, has been amended to include the right to take over the management of an industrial concern on a breach of the agreement by it.

Clause 29.—This is original clause 21.

Sub-clause (c).—We consider that the right of the Corporation to call in the loan or advance should accrue on a reasonable apprehension being felt that the industrial concern may not be able to pay its debts or that liquidation proceedings may be commenced against it and not on the actual commencement of liquidation proceedings.

Sub-clause (f).—We also consider it necessary to make it clear that such right should accrue also if machinery or other equipment, whether forming part of the security or not, were removed without replacement. We have accordingly amended sub-clauses (c) and (f).

Clause 30.—This is original clause 22 and has been amended so as to make available reliefs by way of attachment and sale of the property, *ad interim* injunction and transfer of management of the industrial concern to the Corporation. It sets out in detail the procedure.

Clause 32:

Sub-clause (2).— We have amended the proviso to sub-clause (2) so as to fix the dividend at a rate not exceeding the rate guaranteed by the Central Government under clause 5.

Clause 34.—This is original clause 26 renumbered 34. We are of opinion that the auditor should be appointed by the Central Government at such remuneration as it may fix. Sub-Clause (1) has been accordingly amended.

Clause 39.—We consider it necessary that the Corporation should pay income-tax and super-tax as if it were a company under the Indian Companies Act. We have accordingly substituted this clause for the original clause 31.

Clause 40 is original clause 32 renumbered 40. We have added sub-clause (3) to provide that no Court shall take cognizance of an offence under the Act except on the complaint of an officer of the Corporation duly authorised by the Board in this behalf.

Clause 41.—We have introduced this new clause to enable the Central Government to frame rules which are to prevail over regulations made by the Board under clause 42, if there is any conflict between the two.

Clause 42 is original clause 33 renumbered 42. We have added sub-clauses (l), (m) and (n) to provide for rules being made for disclosure of interest of a Director in any industrial concern for taking over management of industrial concerns on breach of agreements and for appointment of *ad hoc* committees for technical and other advice for purposes of this Act.

2. The Bill was published in Part V of the *Gazette of India*, dated the 9th November, 1946.

3. We think that the Bill has not been so altered as to require circulation under Standing Order 41(5), and we recommend that it be passed as now amended.

B. R. AMBEDKAR.
R. K. SHANMUKHAM CHETTY.
T. A. RAMALINGAM CHETTIYAR.
HOSSAIN IMAM.
B. PATTABHI SITARAMAYYA.
S. K. PATIL.
B. DAS.
*K. T. SHAH.
JASPAT ROY KAPOOR.
M. ANANTHASAYANAM AYYANGAR.
RAM SAHAI.
*D. CHAMAN LALL.

NEW DELHI;
The 28th January, 1948.

*Subject to a Minute of Dissent.

MINUTE OF DISSENT

This Bill seeks to establish what is essentially a Public Utility Statutory Corporation. Such a Corporation, I hold it to be a matter of principle, should be owned, controlled and managed by the State. I have already indicated my main reason for holding this view, viz. that, for all intents and purposes, this is a Public Utility Corporation, a key enterprise, on the success, soundness, and efficiency of which will depend, in a large measure, the industrial progress and economic development of the country. The supreme control over it must, accordingly, vest in the Central Government of the country, not simply in virtue of its sovereign authority, which affects every other corporation and individual in the land; but in right of ownership.

2. To secure full proprietary rights over this Corporation the initial capital must be provided by the State. If the principle is accepted, there is no reason to doubt that the Government of India will be able to find such capital, at whatever figure it may be fixed. If, however, the Central Government is considered by itself not sufficiently sound in financial resources or credit; or if for any reason of public policy, it is considered undesirable for the Central Government by itself to provide all the initial capital, the Provinces and States forming part of the Union of India, can also be quite properly and easily attracted to invest in the shares, bonds and/or debentures issued by this Corporation. The entire capital, whether fixed or circulating, should, in other words, be found by the State, whether exclusively by the Central Government, or jointly with the Provincial and State Governments.

3. The capital as well as the return thereon, being guaranteed under this Bill by the States it is but fair the State should also receive all the benefit of the activities and operations of the Corporation. Under Clause 13, moreover, the Central Government will also guarantee the bonds and debentures issued by the Corporation, both as to the repayment of the capital as well as in regard to the payment of interest at a given rate. Whether or not the Corporation is a success, commercially considered, its proprietors or secured creditors need have no anxiety as to the safety of their investment and the certainty of the return thereon. If the State is charged with all these obligations, it is but fair and proper that it should also have a right to enjoy all the benefits that may result from the activities and operations of the enterprise.

4. There are, moreover, differences in the degree of industrial development, as between the several Provinces and States of India. These differences are not all due to the relative superiority or deficiency in the natural resources of any given region, so much as to the comparative lack of enterprise, business experience, or technical skill in some units as compared to others. It is, however, not in the interests of the country as a whole that some parts which are relatively better developed should continue to maintain their lead, while other parts, which, for no lack of natural resources, are lagging behind and have remained undeveloped, should continue to remain so. Such a result could only be avoided, if the ownership as well as control and management of the proposed Corporation is vested in the State.

5. The margin of powers and authority residing in the Central Government, in virtue of its being a sovereign body, will, in my opinion, not suffice, to achieve the full objective of an even simultaneous all round development of the country in the fullest measure, if the majority of the share capital is held by private concerns in the Corporation. The powers of day-to-day management and general direction of the Corporation are entrusted, under the Bill, to a Board of Directors. But half or more of the Directors will represent the private shareholders of the Corporation; and these will be, unconsciously, far more alive to the demands of the regions and enterprises they are familiar with, or which in their eyes have already proved successful, than those which are

relatively unfamiliar to them. In a fully State-owned Corporation all directors would be nominees of Government; and consequently representative of all parts of the country; and of all interests therein. Under such a regime there would be a far better chance of even all round development of the country simultaneously in all parts.

6. Yet another consideration in support of the view that the ownership, control and management of such a vital institution for providing an indispensable public utility to the entire industrial field in the country is to be found in the necessity of conducting our industrial development in accordance with a preconcerted national plan. The task of the country's rapid and intensive development on all sides at the same time will be very much facilitated and expedited, if the progress is sought to be achieved by a co-ordinated plan. If the national plan is scientifically prepared and comprehensive in its application, it will necessarily contain arrangements for the selection, location, expansion, and protection of particular industries deemed important enough to form part of the plan. The relative priority as between several industries, services and utilities, or as between the competing claims of several regions, will also have been properly provided for in such plan. In either case of financing an enterprise, because it is necessary for the proper development of given regions, or because it is considered likely to yield a commercial profit at an early date, its capital finance will have to be provided by the Corporation. And the financier will have every assurance of the success of an enterprise, which is part of the national plan, to found, protect, safeguard, or encourage. Government would be morally pledged by the very fact of its inclusion in the plan to support it in every way. This success, however, would be attained at some cost to, or sacrifice by, the community collectively, whether in the shape of paying higher prices because of protective fiscal duties, or bearing other forms of taxation needed to provide bounties, subsidies or other means of effective and adequate assistance to a growing industry, or to an industry considered vital in the collective interests of the nation, or which is threatened with extinction by foreign competition. If then the community bears the burden of ensuring success for all such enterprises, which may be financed by this Corporation, sheer justice demands that the State, guaranteeing the principal and interest on the capital invested in that body, should also enjoy the full benefit resulting from its activities.

7. It is an inevitable corollary of this reasoning that no guarantee of any sort would be necessary, if the State provides all the funds required for the successful development of any region or industry, which is comprised in the all round national plan. —Guarantees are needed only when there is lack of confidence, or reasonable apprehension that, even if the venture is a success, the benefit of that venture may not be available in full to those primarily concerned in financing it. There can be no question of lack of confidence when the State provides all the capital. The obligation to guarantee, moreover, indirectly puts a limit upon the size of the capital resources available for such development and that would needlessly restrict the pace as well as the extent of our national development.

8. On this view, I am unable to agree to the provisions of the Bill, which preclude the Corporation from subscribing to or holding any part of the share capital of an industrial concern financed by it; or even keeping shares in such a concern which lie on its hands because of its underwriting the issue for more than seven years. The provisions of clause 15(d) required the Corporation to dispose of those shares, bonds or debentures which lie on its hands in the event of any part of the underwritten or guaranteed issue not being taken up by the public, "as early as practicable, and in any case within a period of seven years". Such a provision would needlessly handicap the Corporation, limit its serviceability, and neutralise any chance of its making a surplus for itself

from the successful operations of any industrial concern for which it has provided capital in the hour of that concern's need. For, if it be known to the market that a considerable holder of shares, bonds or debentures in a promising concern is bound to dispose of it within a limited period, it is not at all unlikely that the shrewd operators on the Stock Exchange will bide their time till the psychological moment arrives, when the Corporation must compulsorily unload its holding, and take up the scrip at whatever price they choose to offer.

9. A remedy against such an eventuality and needless loss to the Corporation may be found in authorising it to time and arrange its shares, bonds or debentures sales (or purchases) in such a way as to defeat such manoeuvres of speculators. But that would involve the Corporation into entering the market frequently for buying as well as selling, which it is wholly undesirable to permit. Lacking unavoidably in such a safeguard, the Corporation's safety lies only in the right and authority to hold shares in the concerns it finances as long as it deems necessary in the interests of the concern of the Corporation, and of the country.

10. It may be argued that such a policy may lead to a large amount of the capital of the Corporation being locked up in and its credit pledged to concerns which take time to make a profit. This apprehension would be unfounded if the State provides all the capital required, and the Corporation finances only such concerns or enterprises as are included in the national plan with their appropriate degree of priority. To guard more effectually against that contingency, I would make the initial capital of the Corporation much larger than the figure provided for in the Bill. More important, however than the initial paid up capital is the working capital made up of the loans, bonds or debentures issued by the Corporation, or guaranteed by it or the deposits it holds. The bonds and debentures of the Corporation would be guaranteed by Government; and as such they would provide as high a security as could be found. On the amount to be issued by way of such bonds etc., there should be no limit imposed by law, though discretion must be left to Government (or the Board) to impose their own restrictions on themselves. If, as I suggest, no limit is imposed upon the amount the Corporation would issue in the aggregate in this manner,—except such as may be necessary in the opinion of the Board on account of the sufficiency of security required; not only would there be no lack of funds available for financing promising concerns: it might incidentally help to solve the problem of inflation by withdrawing otherwise idle money from the hands of the people. No limit should likewise be imposed on the deposits—for fairly long term—the Corporation attracts.

11. I am accordingly opposed to all those provisions of the Bill, which make the Corporation a semi-public institution; but at the same time place unduly rigid limits upon its capital resources, and which preclude it from having permanent proprietary interest in part at least in the concerns it finances.

K. T. SHAH

D. CHAMAN LAL

NEW DELHI;
The 28th January, 1948.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or sidelined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A
BILL

to establish the Industrial Finance Corporation of India.

WHEREAS it is expedient to establish an Industrial Finance Corporation for the purpose of making medium and long-term credits more readily available to industrial concerns in * India, particularly in circumstances where normal banking accommodation is inappropriate or recourse to capital issue methods is impracticable;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act may be called the Industrial Finance Corporation Act, 1948.

(2) It extends to all the Provinces of India and shall extend to such acceding States as shall by their Instrument of Accession accept the subject-matter of the Act as a matter with respect to which the Dominion Legislature may make laws for such States.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. **Interpretation.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) "Board" means the Board of Directors of the Corporation;

(b) "Corporation" means the Industrial Finance Corporation of India established by this Act;

(c) "industrial concern" means any public limited company or co-operative society incorporated by an Act of the Legislature or under any law for the time being in force and registered in India and engaged in the manufacture or processing of goods, mining or the generation or distribution of electricity;

(d) "prescribed" means prescribed by rules or regulations made under this Act;

(e) "Reserve Bank" means the Reserve Bank of India;

(f) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934);

(g) "underwriting" means contracting, with or without conditions, to subscribe for stock, shares, bonds or debentures of an industrial concern with a view to the resale of the whole or any part of the amount thereof.

3. **Establishment and incorporation of Corporation.**—(1) A Corporation to be called the Industrial Finance Corporation of India shall be established for the purposes of this Act.

(2) The Corporation shall be a body corporate by the name of the Industrial Finance Corporation of India, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable, and shall by the said name sue and be sued.

4. Share capital and shareholders.—(1) The authorised capital of the Corporation shall be ten crores of rupees divided into twenty thousand fully paid up shares of five thousand rupees each of which ten thousand shares of five crores of rupees shall be issued in the first instance and the remaining shares may be issued with the sanction of the Central Government from time to time as and when the Corporation may deem fit.

(2) Of the capital issued in the first instance, the Central Government and the Reserve Bank shall each subscribe for two thousand shares of the Corporation.

(3) On application made before such date as may be notified by the Central Government in the official Gazette in this behalf, scheduled banks may subscribe for two thousand five hundred shares, and insurance companies, investment trusts and other like financial institutions for two thousand five hundred shares, and co-operative banks for one thousand shares of the Corporation.

(4) The allotment of shares to the applicants mentioned in sub-section (3) shall be made by the Board in accordance with the regulations made in this behalf.

(5) If any shares referred to in sub-section (3) remain unallotted, they shall be subscribed for by the Central Government and the Reserve Bank in such proportion as may be agreed on between them:

Provided that the Central Government and the Reserve Bank may **** dispose of the shares subscribed for by them in pursuance of this sub-section to any scheduled bank, insurance company, investment trust or other like financial institution or any co-operative bank to which shares of the Corporation may be transferred under sub-section (6).

(6) Allotments of shares on the issue of the remaining shares shall also be made by the Board to the applications mentioned in sub-section (3) in the same proportion and in accordance with the regulations made in this behalf, and the provisions of sub-section (5) shall apply to the shares remaining unallotted on such allotment.

(7) Shares of the Corporation shall not be transferable except to the Central Government, the Reserve Bank, any scheduled bank, any insurance company, any investment trust or any other like financial institution or any co-operative bank in accordance with the regulations made in this behalf.

5. Guarantee by Central Government.—The shares of the Corporation shall be guaranteed by the Central Government as to the repayment of the principal and the payment of the annual dividend at such minimum rate as may be fixed by the Central Government by notification published in the official Gazette at the time of issuing the shares.

6. Management.—(1) The general superintendence and direction of the affairs and business of the Corporation shall be entrusted to a Board of Directors which, with the assistance of an Executive Committee and a Managing Director, may exercise all powers and do all acts and things which may be exercised or done by the Corporation.

(2) The Board in discharging its functions shall act on business principles due regard being had by it to the interests of industry, commerce and the general public.

(3) In the discharge of its said functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the Central Government.

(4) If any dispute arises under this sub-section between the Central Government and the Board as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

(5) If the Board fails to carry out the principles of policy laid down by the Central Government, the Central Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up. The decision of the Central Government as to the grounds for superseding the Board shall not be questioned in any Court of law.

7. Powers of Executive Committee.—Subject to such general or special directions as the Board may from time to time give, the Executive Committee shall be competent to deal with any matter within the competence of the Board:

Provided that the minutes of every meeting of the Executive Committee shall be laid before the Board at its next following meeting.

8. Advisory Committee.—The Corporation may from time to time appoint one or more Advisory Committee or Committees for the purpose of securing the efficient discharge of the functions of the Corporation and in particular for the purpose of securing that those functions are exercised with due regard to the circumstances and requirements of particular areas.

9. Managing Director.—The Managing Director—

(a) shall devote his whole time to the affairs of the Corporation;

(b) shall perform such duties as the Board may, by regulations, entrust or delegate to him;

(c) shall hold office for four years and shall be eligible for re-appointment;

(d) shall receive such salary and allowances as the Board, with the approval of the Central Government, may determine.

10. Board of Directors.—The Board of Directors shall consist of the following, namely:—

(a) three Directors nominated by the Central Government;

(b) two Directors nominated by the Central Board of the Reserve Bank;

(c) two Directors elected in the prescribed manner by the scheduled banks who are shareholders of the Corporation;

(d) two Directors elected in the prescribed manner by the shareholders of the Corporation, other than the Central Government, the Reserve Bank, the scheduled banks and co-operative banks;

(e) two Directors elected in the prescribed manner by the co-operative banks who are shareholders of the Corporation;

(f) one Managing Director appointed by the Central Government after consideration of the recommendation—

(i) in the case of the first appointment, of the Central Board of the Reserve Bank;

(ii) in the case of subsequent appointments, of the Board:

Provided that on the first constitution of the Board the Directors referred to in clauses (c), (d) and (e) shall be nominated by the Central Government to represent the classes of shareholders respectively specified in the said clauses, and Directors nominated under this proviso shall for the purposes of this Act be deemed to be elected Directors:

Provided further that all Directors of the Board first constituted shall retire at the end of the first year.

11. Term of office and retirement of Directors.—(1) An elected Director shall hold office for four years:

Provided that one out of the two Directors elected to represent the shareholders referred to in each of the clauses (c), (d) and (e) of sub-section (1) of section 10 shall retire at the end of two years after the first election; the directors so to retire shall be determined by lot:

Provided further that in no case shall a Director be required to vacate his office until his successor has been nominated or elected, as the case may be:

Provided further that a Director shall be eligible for re-election for not more than two full consecutive terms after the rotation of Directors has begun.

(2) A casual vacancy in the office of a Director shall be filled by election or nomination, as the case may be, and the Director elected or nominated to fill a casual vacancy shall hold office for the unexpired portion of the term of his predecessor:

Provided that no casual vacancy occurring within three months of the date of the expiry of the normal term of office of a Director need be filled under this sub-section.

(3) Directors, other than the Managing Director and not being servants of the Crown, shall be paid such fees for attending meetings of the Board, and if they are members thereof, of the Executive Committee, as may be prescribed.

(4) No act or proceeding of the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board.

12. Disqualification.—No person will be a Director who—

(a) is a salaried official of the Corporation other than a Managing Director;

(b) is, or at any time has been, adjudicated insolvent or has suspended payment or has compounded with his creditors; or

(c) is found to be a lunatic or becomes of unsound mind; or

(d) is or has been convicted of any offence involving moral turpitude.

13. Director's absence from three consecutive meetings.—A person shall cease to be a Director if he absents himself from three consecutive meetings of the Board without leave of absence.

14. Appointment of officers, advisers, etc.—The Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions.

15. Chairman of the Board.—(1) The Chairman of the Board shall be one of the Directors (not being the Managing Director) nominated in this behalf by the Central Government after considering, except in the case of the nomination of the first Chairman, the recommendation of the Board:

Provided that the nomination of the Chairman for any year (other than the first year) shall be made only after the vacancies in the office of Directors occurring by efflux of time in that year have been filled by nomination or election, as the case may be.

(2) The Chairman shall hold office for two years or until his successor is nominated:

Provided that a Chairman shall, so long as he remains a Director, be eligible for renomination as Chairman.

16. Executive Committee.—(1) The Executive Committee shall consist of the Managing Director (who shall be Chairman of the Committee), two Directors elected by the nominated Directors and two Directors elected by the elected Directors.

(2) A Director elected to be a member of the Executive Committee shall hold office as such for the rest of his term of office as Director for which he is so elected.

17. Meetings of Board and Committee.—(1) Meetings of the Board and of the Executive Committee shall be held at such times and at such places as may be prescribed:

Provided that until regulations have been made in this behalf such meetings shall be convened by the Managing Director.

(2) To constitute a quorum at a meeting of—

(a) the Board, not less than five Directors shall be present, of whom not less than two shall be nominated Directors and at least one an elected Director;

(b) the Executive Committee, not less than three members shall be present, of whom at least one shall be a nominated Director and one an elected Director.

(3) At a meeting of the Board or of the Executive Committee, each Director or member of the Committee, as the case may be, shall have one vote, and in the event of an equality of votes, the Chairman shall have a second or casting vote.

(4) No Director shall vote on any matter concerning an industrial concern in which he is directly or indirectly interested.

(5) If for any reason the Chairman is unable to be present at a meeting—

(a) of the Board, a Director (other than the Managing Director) authorised by the Chairman in writing in this behalf shall preside at that meeting and in default of such authorisation the Board may elect a Chairman to preside at that meeting;

(b) of the Executive Committee, a member authorised in writing by the Managing Director shall preside at that meeting and in default of such authorisation the Executive Committee may elect a Chairman to preside at that meeting.

18. Offices and agencies.—The Corporation shall establish its head office in Delhi and offices in Bombay, Calcutta, Kanpur and Madras, and may, with the previous sanction of the Central Government, establish offices or agencies in other places in * India.

19. Deposit Accounts.—The Corporation may open Deposit Accounts with the Reserve Bank or with any agency of the Reserve Bank other than a Government treasury.

20. Investment of funds.—The Corporation may invest its funds in the securities of the Central Government or any Provincial Government.

21. Borrowing powers.—(1) The Corporation may issue and sell bonds and debentures carrying interest for the purposes of raising its working capital:

Provided that the total amount of bonds and debentures issued and outstanding and of the contingent liabilities of the Corporation in the form of guarantees given by it or underwriting agreements entered into by it shall not at any time exceed five times the amount of the paid up share capital and the reserve fund of the Corporation.

(2) Bonds and debentures of the Corporation shall be guaranteed by the Central Government as to the repayment of principal and the payment of interest at such rate as may be fixed by the Central Government on the recommendation of the Board at the time the bonds and debentures are issued.

22. Deposits with the Corporation.—The Corporation may accept deposits from the public repayable after the expiry of a period which shall not be less than five years from the date of the making of the deposit, and on such other terms as it thinks fit:

Provided that the total amount of such deposits shall not at any time exceed ten crores of rupees.

23. Business which the Corporation may transact.—(1) The Corporation shall, subject to the provisions of this Act, be authorised to carry on and transact the following kinds of business, namely:—

(a) guaranteeing on such terms and conditions as may be agreed loans raised by industrial concerns * * * * which—

(i) are repayable within a period not exceeding twenty-five years, and

(ii) are floated in the public market;

(b) underwriting the issue of stock, shares, bonds or debentures by industrial concerns;

(c) receiving in consideration of the services mentioned in clauses (a) and (b) such commission as may be agreed upon;

(d) retaining as part of its assets any stock, shares, bonds or debentures which it may have to take up in fulfilment of its underwriting liabilities, so however that it disposes of the stock, shares, bonds or debentures so acquired as early as practicable and in any case within a period of seven years from the date of such acquisition;

(e) granting loans or advances to, or subscribing to debentures of, industrial concerns, repayable within a period not exceeding twenty-five years from the date on which they are granted or subscribed to, as the case may be; and

(f) generally, the doing of all such matters and things as may be incidental or consequential upon the exercise of its powers or the discharge of its duties under this Act.

(2) No accommodation shall be given under sub-clauses (a) and (e), unless it is secured by a sufficient pledge, mortgage, hypothecation or assignment of Government or other securities, stocks, shares or secured debentures, bullion, movable or immovable property or other tangible assets.

24. Limit of accommodation.—The Corporation shall not enter into any arrangement under clauses (a) and (e) of sub-section (1) of section 23 with a single industrial concern for an amount equivalent in the aggregate to more than ten per cent. of the paid-up share capital of the Corporation.

25. Power to impose conditions for accommodation.—(1) In entering into any arrangement under section 23 with an industrial concern, the Corporation may impose such conditions as it may think necessary or expedient for protecting the interests of the Corporation, and securing that the accommodation granted by it is put to the best use by the industrial concern.

(2) Where one of the conditions imposed is that a Director shall be appointed on the Board of Directors of the industrial concern to protect the interests of the Corporation, such condition shall be valid notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or any other law for the time being in force.

26. Prohibited business.—The Corporation shall not—

(a) accept deposits except as provided by this Act;

(b) subscribe directly to the shares or stock of any company having limited liability:

Provided that nothing in clause (b) shall affect the right of the Corporation to acquire any shares, bonds or debentures of a company having limited liability in fulfilment of any underwriting agreement entered into by the Corporation.

27. Loans in foreign currency.—(1) The Corporation may, for the purpose of making loans or advances to industrial concerns requiring to be financed in foreign currency, borrow, with the previous consent of the Central Government, such currency through the International Bank for Reconstruction and Development or otherwise, and may pledge, mortgage, hypothecate or assign to the said Bank or other foreign lender all or any part of the security taken by the Corporation from the industrial concerns for the loans or advances granted in foreign currency.

(2) All loans and advances made to industrial concerns in foreign currency shall be repaid in the currency in which they are made or its equivalent in Indian currency at the rate of exchange prevailing at the time of repayment.

28. Rights of Corporation in case of default.—(1) Where any industrial concern which is under a liability to the Corporation under an agreement makes any default in repayment or otherwise fails to comply with the terms of its agreement with the Corporation, the Corporation shall have the right to take over the management of the concern, as well as the right to sell and realise the property pledged, mortgaged, hypothecated or assigned to the Corporation.

(2) Any transfer of property made by the Corporation in exercise of its powers of sale and realization under sub-section (1) shall vest in the transferee all rights in or to the property transferred as if the sale had been made by the owner of the property.

(3) The Corporation shall have the same rights and powers with respect to goods manufactured or produced from goods forming part of security held by it, as it had with respect to the original goods.

(4) Where the Corporation takes over the management of a concern under the provisions of sub-section (1), it shall be deemed to be the owner of such concern for purposes of suits by or against such concern and shall sue and be sued in the name of the owner of the concern.

29. Power to call for repayment before agreed period.—Notwithstanding any agreement to the contrary, the Corporation may by notice require any industrial concern, to which it has granted any loan or advance, forthwith to discharge in full its liabilities to the Corporation—

(a) if it appears to the Board that false or misleading information in any material particular was given in the application for the loan or advance;

(b) if the industrial concern has failed to comply with the terms of its contract with the Corporation in the matter of the loan or advance;

(c) if there is a reasonable apprehension that the industrial concern is unable to pay its debts or that proceedings for liquidation may be commenced in respect * * thereof;

(d) if the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance is not * * insured and kept insured by the industrial concern to the satisfaction of the Corporation; or depreciates in value, in the opinion of the Board, by more than twenty per cent., and further security to the satisfaction of the Board is not given;

(e) if, without the permission of the Board, machinery or other equipment, whether forming part of the security or otherwise, is removed from the premises of the industrial concern without being replaced;

(f) if for any reason it is necessary in the opinion of the Board to protect in interests of the Corporation.

30. Special provisions for enforcement of claims by the Corporation.—(1)

Where by reason of the breach of any condition of an agreement between the Corporation and an industrial concern the Corporation becomes entitled to call for the immediate payment of any loan or advance granted by it, before the due date, and the industrial concern fails to repay such loan or advance, any officer of the Corporation generally or especially authorised by the Board in this behalf may apply to the District Judge within the local limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:—

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Corporation as security for the loan or advance, or

(b) for transferring the management of the industrial concern to the Corporation, or

(c) for an *ad interim* injunction where there is apprehension of the machinery or the equipment being removed from the premises of the industrial concern without the permission of the Board.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Corporation, the ground on which it is made and such other particulars as may be prescribed.

(3) When the application is for the reliefs mentioned in sub-clauses (a) and (c) of sub-section (1) the District Judge shall pass an *ad interim* order attaching the security or so much of the property of the industrial concern as would on being sold realise in his estimation an amount equivalent in value to the outstanding liability of the industrial concern to the Corporation together with the costs of the proceedings taken under this section with or without an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or equipment.

(4) Where the application is for the relief mentioned in sub-clause (b) of sub-section (1) the District Judge shall grant an *ad interim* injunction restraining the industrial concern from transferring or removing its machinery or equipment and issue a notice calling upon the industrial concern to show cause on a date to be specified in the notice why the management of the industrial concern should not be transferred to the Corporation.

(5) Before passing any order under sub-section (3) or sub-section (4), the District Judge may, if he thinks fit, examine the officer making the application.

(6) At the same time as he passes an order under sub-section (3), the District Judge shall issue to the industrial concern a notice accompanied by copies of the order, the application and the evidence, if any, recorded by him, calling upon it to show cause on a date to be specified in the notice why the *ad interim* order of attachment should not be made absolute or the injunction confirmed.

(7) If no cause is shown on or before the date specified in the notice under sub-sections (4) and (6), the District Judge shall forthwith make the *ad interim* order absolute and direct the sale of the attached property or transfer the management of the industrial concern to the Corporation or confirm the injunction.

(8) If cause is shown the District Judge shall proceed to investigate the claim of the Corporation and the provisions of the Code of Civil Procedure (V of 1908), shall as far as practicable apply to such proceedings.

(9) On an investigation made under sub-section (8) the District Judge shall pass an order—

(a) confirming the order of attachment and directing the sale of the attached property, or

(b) varying the order of attachment so as to release a portion of the property from attachment and directing the sale of the remainder of the attached property, or

(c) releasing the property from attachment, if he is satisfied that it is not necessary in the interests of the Corporation, or

(d) confirming or dissolving the injunction, or

(e) transferring the management of the industrial concern to the Corporation or rejecting the claim made in this behalf:

Provided that when making any order under clause (c), the District Judge may make such further orders as he thinks necessary to protect the interests of the Corporation, and may apportion the costs of the proceedings in such manner as he thinks fit.

Provided further that unless the Corporation intimates to the District Judge that it will not appeal against any order releasing any property from attachment, such order shall not be given effect to until the expiry of the period fixed under sub-section (11) within which an appeal may be preferred, or if an appeal is preferred, unless the High Court otherwise directs, until the appeal is disposed of.

(10) An order of attachment or sale of property under this section shall be carried into effect as far as may be practicable in the manner provided in the Code of Civil Procedure (V of 1908) for the attachment or sale of property in execution of a decree, as if the Corporation were the decree-holder.

(11) Any party aggrieved by an order under sub-section (7) or sub-section (9) may, within thirty days from the date of the order, appeal to the High Court, and upon such appeal, the High Court may after hearing the parties pass such orders as it thinks proper.

(12) Nothing in this section shall be construed, where proceedings for liquidation in respect of the industrial concern have commenced before an application is made under sub-section (1) as giving to the Corporation any preference over the other creditors of the industrial concern not conferred on it by any other law.

(13) The functions of a District Judge under this section shall, in a Presidency-town, be exercised by the Chief Judge of the Small Cause Court.

31. Act XVIII of 1891 to apply to the books of the Corporation.—The Corporation shall be deemed to be a bank for the purposes of the Banker's Books Evidence Act, 1891 (XVIII of 1891).

32. Disposal of profits.—(1) The Corporation shall establish a reserve fund.

(2) After making provision for bad and doubtful debts, depreciation of assets and all other matters which are usually provided for by bankers, the Corporation may out of its net annual profits declare a dividend:

Provided that for so long as the reserve fund is less than the share capital of the Corporation and until there has been repaid to the Central Government such sums, if any, as that Government may have paid under the guarantee given in pursuance of section 5 or under any guarantee given in pursuance of sub-section (2) of section 21, the rate of such dividend shall not exceed the rate guaranteed by the Central Government under section 5:

Provided further that under no circumstances shall any such dividend exceed the rate of five per cent. per annum and if in respect of any financial year after the reserve fund becomes equal to the share capital of the Corporation there is, after declaring a dividend at that rate any surplus in the net profits, such surplus shall be paid to the Central Government.

33. General meetings.—(1) A general meeting (hereinafter*** referred to as the annual general meeting) shall be held annually at a place in India where there is an office of the Corporation within two months from the date on which the annual accounts of the Corporation are closed; and a general meeting may be convened by the Board at any other time.

(2) The shareholders present at the annual general meeting shall be entitled to discuss the annual accounts, the report of the Board on the working of the Corporation throughout the year and the auditors' report on the annual balance-sheet and accounts.

34. Audit.—(1) The affairs of the Corporation shall be audited by not less than two auditors qualified under section 144 of the Indian Companies Act, 1913 (VII of 1913), to act as auditors of companies who shall be appointed by the Central Government on such remuneration as the Central Government may fix, and such remuneration shall be paid by the Corporation.

* * * * *

(2) Every auditor shall be supplied with a copy of the annual balance-sheet of the Corporation, and it shall be his duty to examine it together with the accounts and vouchers relating thereto; and every auditor shall have a list delivered to him of all books kept by the Corporation, and shall at all reasonable times have access to the books, accounts and other documents of the Corporation, and may in relation to such accounts examine any Director or officer of the Corporation.

(3) The auditors shall make a report to the shareholders upon the annual balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of that state of the affairs of the Corporation, and in case they have called for any explanation or information from the Board whether it has been given and whether it is satisfactory.

(4) The Central Government may at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Corporation, and may at any time enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted or direct that any other examination be made by the auditors if in its opinion the public interest requires.

35. Returns.—(1) The Corporation shall furnish a statement in the prescribed form of its assets and liabilities as at the close of business on the last Friday of each month, or if that day is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), as at the close of business on the preceding working day, to all shareholders within ten days from the date to which the statement relates.

(2) The Corporation shall furnish in the prescribed form to the Central Government and to the Reserve Bank at least once in every year or as frequently as the Central Government or the Reserve Bank may require a classification of its loans and investments and of loans guaranteed by it and underwriting agreements entered into by it.

(3) The Corporation shall furnish to the Central Government and the Reserve Bank within two months of the close of the financial year a statement in the prescribed form of its assets and liabilities as at the close of that year together with a profit and loss account for the year and a report of the working of the Corporation during the year, and copies of the said statement, account and report shall be published in the *Gazette of India* and shall be laid before the Central Legislature.

36. Liquidation of Corporation.—No provision of law relating*** to the winding up of companies or corporations shall apply to the Corporation, and the Corporation shall not be placed in liquidation save by order of the Central Government and in such manner as it may direct.

37. Indemnity of Directors.—(1) Every Director shall be indemnified by the Corporation against all losses and expenses incurred by him in or about the discharge of his duties, except such as happen from his own wilful act or default.

(2) A Director shall not be responsible for any other Director or for any officer or servant of the Corporation or for any loss or expense happening to the Corporation by the insufficiency or deficiency of value of, or title to, any property or security acquired or taken on behalf of the Corporation, or by the wrongful act of any person under obligation to the Corporation, or by anything done in the execution of the duties of his office or in relation thereto, or otherwise than for his own wilful act or default.

38. Declaration of fidelity and secrecy.—Every Director, auditor, officer or servant of the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

39. Provision relating to Income-tax and super-tax.—For the purposes of the Indian Income-tax Act, 1922 (XI of 1922), the Corporation shall be deemed to be a company within the meaning of that Act and shall be liable to income-tax and super-tax accordingly on its income, profits and gains:

Provided that any sum paid by the Central Government under the guarantee given in pursuance of section 5 or under any guarantee given in pursuance of sub-section (2) of section 21 shall not be treated as the income, profits and gains of the Corporation, and any interest on debentures or bonds paid by the Corporation (sum shall out of such) not be treated as expenditure incurred by it.

Provided further that in the case of any shareholder, such portion of a dividend as has been paid out of any such sum advanced by the Central Government, shall be deemed to be his income from "interest on securities", declared to be income-tax free within the meaning of section 8 of the said Act.

40. Offences.—(1) Whoever in any bill of lading, warehouse receipt or other instrument given to the Corporation whereby security is given or is purported to be given to the Corporation for any accommodation granted by it under this Act wilfully makes any false statement, or knowingly permits any false statement to be made, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

(2) Whoever without the consent in writing of the Corporation uses the name of the Corporation in any prospectus or advertisement shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) No Court shall take cognizance of any offence punishable under this Act otherwise than on a complaint in writing signed by an officer of the Corporation authorised by the Board in this behalf.

41. Power of Central Government to make rules.—The Central Government may from time to time make rules in respect of matters concerning the Corporation, and where there is any inconsistency between the rules and the regulations made under this Act the rules shall prevail.

42. Power of Board to make regulations.—(1) The Board may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the holding and conduct of elections under this Act, including the final decision of doubts or disputes regarding the validity of elections;

(b) the manner in which and the conditions subject to which the first allotment of shares of the Corporation shall be made;

(c) the manner in which and the conditions subject to which the shares of the Corporation may be held and transferred, and generally all matters relating to the rights and duties of shareholders;

(d) the manner in which general meetings shall be convened, the procedure to be followed thereat and the manner in which voting rights may be exercised;

(e) the calling of meetings of the Board and of the Executive Committee, fees for attending meetings thereof and the conduct of business thereat;

(f) the manner and terms of issue and redemption of bonds and debentures by the Corporation;

(g) the conditions which the Corporation may impose in granting loans or advances;

(h) the manner and conditions subject to which the Corporation may borrow in foreign currency from foreign lenders;

(i) the forms of returns and statements required under this Act;

(j) the duties and conduct of officers and servants and agents of the Corporation;

(k) any other matter which is to be or may be prescribed;

(l) the disclosure of interest, direct or indirect, of a Director in any industrial concern;

(m) taking over the management of and managing an industrial concern committing a breach of its agreement with the Corporation;

(n) appointment of *ad hoc* committees for technical and other advice for purposes of this Act;

(o) generally, the efficient conduct of the affairs of the Corporation.

(3) All regulations made under this section shall be published in the *Gazette of India* and shall come into force on such publication and shall also be laid on the table of the Legislature.

THE SCHEDULE

(See section 38)

Declaration of Fidelity and Secrecy

I,....., do declare that I will faithfully, truly and to the best of my judgment, skill and ability, execute and perform the duties required of me as a Director, officer, employee or auditor (as the case may be) of the Industrial Finance Corporation of India and which properly relate to any office or position in the said Corporation held by me.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Corporation nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to the business of the Corporation.

Signature.....

Signed before me

Signature.....

Designation.....

Date.....

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)**Report of the Select Committee on the Bill to establish the
Industrial Finance Corporation of India**

(As amended by the Select Committee)