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BRIEFING PAPER

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Commonwealth Development Corporation Bill 2016-17: Progress of the Bill

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Summary

The *Commonwealth Development Corporation Bill 2016-17* was introduced on 16 November 2016 and received its Second Reading on 29 November 2016. This Briefing Paper summarises the progress of the Bill; it complements Briefing Paper 7809 *Commonwealth Development Corporation Bill 2016-17* that was prepared before the Bill's Second Reading debate.

CDC Group plc (henceforth "CDC") is a public limited private equity company owned entirely by the Department for International Development (DFID) that invests in businesses in developing countries to support the private sector and foster development. The financial assistance that the Government provides to CDC recently reached its legislated limit of £1.5 billion, so the Bill provides for an increase of this limit to £6 billion, with the potential for this to be extended further to £12 billion by statutory instrument.

On 29 November the Bill passed its second reading in the Commons without a vote, and while the Bill received support in the debate, some concerns were raised. These ranged from past excessive executive pay, CDC's failure to focus sufficiently on poverty-reduction, its reduced levels of investment in agriculture and infrastructure, its routing of investments through tax havens and the fact that a decision to increase the organisation's capital would preceding the publication of its investment strategy for 2017-21.

There were two sittings at Commons committee stage, both taking place on 6 December 2016. There was a third sitting planned for 8 December 2016 but this did not take place.

The debate at the Committee stage focused on the two main provisions of the Bill. It first focused on the amount of the initial increase (to £6 billion), with amendments to change this discussed and withdrawn or negatived on division. The debate then turned to the provision that would enable the Government to further increase the limit to £12 billion by statutory instrument. A number of new clauses were proposed that would place conditions on this further increase relating to reporting on CDC's performance, adherence to DFID's partnership principles and the geographical and sectoral focus of CDC's investments. These new clauses were subsequently withdrawn with one negatived on division.

No amendments or new clauses were carried and the Bill is going into report stage without amendment.

1. Introduction

CDC Group plc (henceforth "CDC") is a public limited private equity company owned entirely by the Department for International Development (DFID). CDC is a major component of the support that DFID provides to the private sector in developing countries, and its remit is to invest in private enterprises (typically enterprises which struggle to attract investment from elsewhere). CDC is a profit-making company, but 100% of its profits are reinvested.

The *Commonwealth Development Corporation Bill 2016-17* was presented to Parliament on Wednesday 16 November 2016 and on 29 November the Bill passed its second reading in the Commons without a vote.

The purpose of the Bill is to adjust the limit on the amount of Government assistance that can be extended to CDC. It proposes amendments to the *Commonwealth Development Corporation Act 1999* which enabled the conversion of CDC from a statutory corporation into a public limited company. Section 15 of the 1999 Act stipulated that **at no time can the Government's financial assistance to CDC exceed £1.5 billion**.[1]

In August 2016, the Government's total assistance reached the £1.5 billion cap as set out in the 1999 Act. New legislation is required if the Government wishes to further increase investment in CDC Group. The Commonwealth Development Corporation Bill 2016-17 proposes **quadrupling the limit from £1.5 billion to £6 billion.**

The Bill also makes provisions for further increases in the assistance limit. The Secretary of State may, by statutory instrument, increase the limit up to **a maximum of £12 billion**.

Such a statutory instrument containing regulations under this section would require a draft of the instrument to be laid before the House of Commons and approved by a resolution.

The Delegated Powers Memorandum explains that DFID plans to increase the limit periodically when further financial support is needed and within the parameters of future Spending Rounds.

1.1 National Audit Office (NAO) Report

On 28 November 2016, the day before the Bill's Second Reading, the NAO published a report entitled *Department for International Development: investing through CDC*.

The main findings of the report included a number of positive points including:

- CDC had successfully adapted its strategy to reflect the findings of the NAO's previous report (2008), including revising CDC's

[1] The definition of financial assistance is outlined in Chapter 2 of the Commonwealth Development Corporation Act 1999

remuneration framework to curb excessive pay and increasing its focus on the poorest countries

- CDC has exceeded the targets agreed with DFID relating to financial performance and development impact
- CDC has taken positive steps in the way it is organised and improved its management of cash balances and its procedures for recording allegations of fraud and corruption

However, the NAO report also noted areas for improvement. These include:

- DFID's governance arrangements of CDC may create confusion about the involvement of DFID and other government departments in investment decisions
- CDC should do more to measure the development impact of its investments
- DFID should review financial performance and development targets set for CDC
- CDC should continue working on its practices to capture and record allegations of corruption

2. Second reading

On 29 November the Bill passed its second reading in the Commons without a vote – but this did not mean that members participating in the debate had no concerns about it.

Commending the Bill to the House, Priti Patel, the Secretary of State for International Development, said:

> There are currently only a few investors in the world with the skills and risk appetite to create jobs and opportunities in the most difficult frontier markets. CDC is one of those investors. CDC uses its expertise and capital to support over 1,200 businesses in more than 70 developing countries to grow and create jobs. It is a great British success story that has a long history of creating jobs in the developing world.
>
> In the past, legitimate concerns were raised about some aspects of the CDC's performance. That is why, in recent years, the CDC has modernised and transformed its approach. In 2010, DFID undertook a public consultation and an extensive review of the CDC, and began moving the CDC in a new direction, including by bringing in a new board and chair and hiring a new chief executive. Under its new leadership, the CDC has transformed itself.[2]

James Duddridge, a former FCO minister, argued that

> this is not a radical piece of legislation. Decisions have not been made to spend the full £6 billion straight away, but if the Department did commit to spend right up to that limit and fund it each year up to 2020, it would still represent only 8% of the Secretary of State's budget, so 92% of aid would be spent in a more traditional way. This is a progressive move, not a radical change.[3]

Andrew Mitchell, who when Secretary of State for Development oversaw the reform of the CDC, said:

> This is an extremely good Bill […] I do not think it is I do not think it is fanciful to believe that in 50 years' time, the CDC rather than DFID will be seen as the embodiment of the UK's strong support and success in helping the world's poorest and most excluded people. The flow of CDC-type investments made by the developed world in the poor world is now overtaking, in quantum, the level of aid. I believe that the work the CDC is carrying out should command everyone's support from the far left of the Labour party to the development-sceptic press.[4]

Shadow Secretary of State for International Development Kate Osamor offered the Bill a qualified welcome on behalf of Labour:

> We will always welcome any measures that aim to improve the quality of life of those less fortunate than ourselves. This Bill, with the right safeguards, could achieve that. The job of Opposition Members, and of the whole House, is to ensure that some of the previous excesses and failures of the Commonwealth Development Corporation are not repeated. I say that as a friend

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2 HC Deb 29 November 2016 c1428-9
3 HC Deb 29 November 2016 c1432
4 HC Deb 29 November 2016 cc1437, 1439

> of the CDC. It was the post-war Labour Government of Clement Attlee who created the forerunner of the CDC. Much of the work of the CDC is vital, and we should of course work to strengthen its ability to support businesses and create jobs around the world.[5]

However, she went on to raise a number of issues. The subjects ranged from past excessive executive pay, the CDC's failure to focus sufficiently on poverty-reduction, its reduced levels of investment in agriculture and infrastructure, its routing of investments through tax havens and the fact that a decision to increase the organisation's capital would preceding the publication of its investment strategy for 2017-21. She also asked for an assurance that the CDC "would not be sold off or privatised during this Parliament."[6]

She also made a proposal which several speakers from other political parties subsequently endorsed: that a provision should be added to the Bill enabling the Independent Commission on Aid Impact (ICAI) to scrutinise the work of the CDC.[7]

While supporting the concept of development finance, Patrick Grady of the SNP suggested an amendment to the Bill which would make it explicit that the main duty of the CDC should be poverty-reduction.[8] He also asked where the figures for the new funding caps had come from, asking whether it might not be more sensible to express the caps through a formula made them a proportion of the total aid budget.[9]

Tom Brake of the Liberal Democrats referred to continuing concerns that the CDC "is not in fact targeting the poorest countries".[10]

The most forthright critic of the Bill during the debate was Labour's Stephen Doughty. His main concern was that recent changes to the reporting of aid spending that he believed would in future allow

> the total money DFID puts into the CDC counting as aid, regardless of which country or sector it ends up in, let alone whether it resulted in a net flow of resources to the poorest countries.
>
> Why does this matter and how does it relate to the Bill? It matters because it would allow the Secretary of State to classify the entirety of future capital increases to the CDC as ODA or aid, potentially diverting, and effectively privatising, up to £12 billion of our future aid via the CDC, yet continuing to count it towards the 0.7% target. This is particularly important, given the different focuses and priorities of the CDC.[11]

He went on to raise concerns about "the lack of transparency when it comes to documentation and the ability to scrutinize CDC's spending, not least through its use of tax havens."[12] He also asked (as did several

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5 HC Deb 29 November 2016 c1433
6 HC Deb 29 November 2016 c1437
7 HC Deb 29 November 2016 c1436
8 HC Deb 29 November 2016 c1442-3. Mr Grady referred to a development finance initiative that the Scottish Government has recently launched.
9 HC Deb 29 November 2016 c1444-5
10 HC Deb 29 November 2016 c1426
11 HC Deb 29 November 2016 c1448
12 HC Deb 29 November 2016 c1450

others): "where is the robust business case for such a large increase of billions of pounds of taxpayer spending?"[13]

Minister of State for International Development Rory Stewart wrapped up the debate for the Government. He ended:

> It is one of the only DFIs in the world to be spending so much in conflict-affected states. It is accountable directly to DFID, which owns 100% of its shares. The examples of its performance today can be seen in DRC; in places such as Burundi, where off-grid power would not be built without CDC; and in its investment in energy through Global in Africa.
>
> In conclusion, we should take pride in this institution; it is a very great British institution. In its historic evolution it has gone from a past where it was dominated in the 1950s by ex-military officers interested in building rafts and going into jungles to its current leadership under Diana Noble, a chief executive who exemplifies much of the best in development thinking and some of most progressive intuition in the British Government. She ensures that we are delivering in Pakistan gender-based programming that affects workers' rights and that we have an institution that is today highly relevant and that faces and solves some of the greatest development challenges in this century.[14]

Numerous supporters of the Bill referred to positive statements about the performance of the CDC since 2012 to be found in the NAO report published on the day before the second reading (see section 1.1 above).[15] But those with criticisms were also able to draw on some of the conclusions reached by the NAO in the report.[16]

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13 HC Deb 29 November 2016 c1451
14 HC Deb 29 November 2016 c1478
15 See, for example, Fiona Bruce MP at HC Deb 29 November 2016 c1427
16 See, for example, Alan Brown MP at HC Deb 29 November 2016 c1459-60

3. Committee stage[17]

There were two sittings at Commons committee stage, both taking place on 6 December 2016. There was a third sitting planned for 8 December 2016 but this did not take place. No amendments or new clauses were carried and the Bill is going into report stage without amendment.

The committee stage debate on the individual clauses and parts of the Bill are discussed in the following sections.

3.1 Amount of the limit on government assistance

Stephen Doughty moved an amendment (Amendment 6) proposing that the limit be increased to £3 billion instead of £6 billion. Mr Doughty said:

> I do not believe that the case has been made for that expenditure. There may be a case for increasing capital for the CDC, and I am sure we will hear many of those arguments today, but I have certainly not seen the case to justify the expenditure of a potential extra £4.5 billion over this spending round, as implied by the Minister's earlier comments and the contents of the explanatory notes to the Bill, nor do I see the rationale for potentially expanding that sum to £12 billion.[18]

The point was also raised by Imran Hussain that in its lifetime, CDC had received total funding of £1.5 billion, and that the proposals in the Bill amount to a "significant increase".[19]

In the first sitting of the day, the Minister of State for the Department for International Development, Rory Stewart, discussed the reasoning behind the proposed limit:

> …the figure was arrived at after a discussion with CDC about the maximum possible amount it could realistically require over the period, which takes into account its staff resources, the demand in the developing world and its past spend. If you look at CDC's last round, it put about £1.2 billion through in a year, of which £735 million was a recapitalisation from the Government.[20]

The Minister also assured Members of the Committee that:

> …no money will be given to CDC until a full strategy is developed and published, which can be debated in the House—that is a strategy coming in December—and no money will go to CDC until a full business case is written in huge detail, which will be prepared in the summer of 2017.

Following the debate, this amendment was withdrawn by Mr Doughty.

Separate amendments (amendments 3 and 4) were proposed by Patrick Grady which would have increased the limit to the smaller of £6 billion

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17 The members of the Commons Public Bill Committee are listed in the Appendix
18 PBC Deb 6 December 2016 c36
19 PBC Deb 6 December 2016 c43
20 PBC Deb 6 December 2016 c9

or 5% of official development assistance (ODA). Mr Grady said that the amendments:

> try to relate the amount of investment in the CDC more clearly to the overall amount of official development assistance the Government are likely to have at their disposal over a spending review period of the lifetime of a Parliament.[21]

However, while Minister Stewart said that the Government had looked at including a proportional target in the Bill, it was rejected for two reasons. Firstly, the increased limit in the Bill is designed to create capital that is invested and reinvested over time whereas an ODA allocation is an annual allocation and an annual spend. Secondly, the amendment as drafted would include the amount already invested which would mean a lower amount of new support to CDC.[22]

Amendment 3 was negatived on division (Division no. 1: Ayes 2, Noes 9). Clause 1 was ordered to stand part of the Bill.

3.2 Further increase in spending limit by statutory instrument

A number of new clauses were proposed to place conditions on the increasing the CDC spending limit under the delegated powers of the Bill.

Reviews of CDC's strategic focus

Two new clauses (NC1 and NC2) were proposed by Patrick Grady (SNP) and Philip Boswell (SNP). They required that a review be laid before the House of Commons on the extent to which the increase in the limit on assistance to the CDC is likely to contribute to:

a. Poverty reduction (NC1); and

b. The achievement of the Sustainable Development Goals (SDGs) (NC2).

Mr Grady stated that: "If Parliament is to be asked to increase the funding cap, it should have information at its disposal to help it make that decision."[23] Minister Stewart again committed to presenting CDC's new five year strategy in December for Members to "interrogate".[24] He also added:

> We believe that the appropriate place to determine spending decisions and exactly how strategy works is through the normal departmental process. […] We have procedures and processes to do that, which do not happen through primary legislation. […] In 2015 we passed a law that we would spend 0.7% on overseas development assistance as defined by the OECD. The money we are giving is governed by that legislation, which commits us legally to make sure that that money is driven precisely in the directions that the hon. Member has raised.[25]

21 PBC Deb 6 December 2016 c46
22 PBC Deb 6 December 2016 c50
23 PBC Deb 6 December 2016 c61
24 PBC Deb 6 December 2016 c63
25 PBC Deb 6 December 2016 c63

NC1 was withdrawn after debate.

NC2 was debated with NC10 from Stephen Doughty, Kate Osamor and Imran Hussain, which also proposed that increasing the limit be contingent on contributions to progress towards the Sustainable Development Goals.

Minister Stewart said that: "This is an example of a clause where we strongly agree that SDGs are central to what the CDC should be doing."[26] However, in response to Stephen Doughty's assertion that CDC's ability to invest in fossil fuels are at odds with the global goals,[27] Minister Stewart said that:

> I do not think it would be responsible for economic development in Africa to put us into a position where we cannot invest at all in any conventional energy source.[28]

Following the debate, NC2 was withdrawn.

NC8 proposed that new CDC investments only be directed to entities which agree to adhere to the DFID partnership principles.[29] Stephen Doughty expressed concerns about restrictions and guidance:

> to ensure that the activities of CDC, its investment vehicles and, crucially, its partners in some investments do not undermine human rights and other standards we might expect to be maintained in a bilateral or other investment that the Department might make.[30]

While Minister Stewart said that the Government could not support the clause for "technical reasons", he added that the "basic theme behind the new clause, however, is correct, and we shall deal with that through internal processes."[31]

NC8 was withdrawn after debate.

NC9 proposed that any increase in the limit would have to be preceded by the laying before the House of Commons of an annual report for the preceding financial year giving information on investment activities and remuneration and a detailed business case for the proposed additional investment.

With respect to CDC transparency, Minister Stewart said:

> "We have an online searchable database in which is contained all the remuneration, every investment decision and every fund, including the name, description, location and sector. The annual reports and accounts are now published with that information. We are pushing—he will see this in the new strategy coming forward—for even more transparency."[32]

NC9 was subsequently withdrawn.

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26 PBC Deb 6 December 2016 c67
27 PBC Deb 6 December 2016 c67
28 PBC Deb 6 December 2016 cc67-68
29 NC3-10 were proposed by Stephen Doughty (Labour/Co-op), Kate Osamor (Lab/Co-op) and Imran Hussain (Lab)
30 PBC Deb 6 December 2016 c87
31 PBC Deb 6 December 2016 c87
32 PBC Deb 6 December 2016 c90

Geographic/sectoral focus of CDC investments

Several new clauses were proposed that would limit the geographical focus of CDC's investments.

NC3 proposed that any new investment arising from any increase in the limit on government assistance be limited to countries where the UK maintains a bilateral aid programme at the time.

NC4 proposed that CDC investments be limited to a set of eligible countries.

NC5 proposed that any new investment arising from any increase in the limit on government assistance be limited to least developed countries and other low income countries as determined by the World Bank's classification of world economies.

The new clauses above were taken together.

Stephen Doughty argued for these amendments, saying:

> We all need to take care to ensure that we are robustly focusing our aid, our effort and our limited taxpayer funding on the poorest and on the countries that align most closely with our existing development programmes, where we have an added advantage.[33]

In response to these clauses and supporting comments, Minister Stewart raised three points. Firstly, that there were some "technical problems" with the proposals. Secondly, that there is a conceptual difference between the work of CDC and the bilateral programmes at DFID. Thirdly, that specifying in primary legislation a specific list of countries where CDC would and would not operate places a restrictive bind on CDC that prohibits it from responding quickly to changing events in the world.[34]

NC3 was withdrawn after debate.

NC7 proposed that any new CDC investment in the for-profit education sector, the for-profit health sector, real estate or mineral extraction be prohibited. Stephen Doughty said:

> There seems, however, to have been a very heavy focus on the financial services sector and very little on anything else, whether industry, healthcare, education or other sectors. Of the investment in education and healthcare, for example, as we saw from the example of India, a significant proportion seems to be going to the for-profit sector. I do not want to reiterate statistics that we heard earlier, but that seems to me to be of great concern. It does not seem to be in line with DFID's previous objectives of expanding free healthcare and investing in health systems.[35]

Minister Stewart responded by saying : "With regards to the new clause under consideration, we would oppose the idea of limiting in the Bill the sectors in which someone could invest, because sectors are very country-specific."[36]

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33 PBC Deb 6 December 2016 c73
34 PBC Deb 6 December 2016 cc74-75
35 PBC Deb 6 December 2016 cc82-83
36 PBC Deb 6 December 2016 c84

NC7 was subsequently withdrawn.

Use of 'tax havens'

NC6 proposed that new CDC investment be prohibited from going to an investment vehicle or company which uses or seems likely to use 'tax havens'.

In relation to CDC's use of offshore financial centres (OFCs), Diana Noble, Chief Executive of CDC, said:

> We use OFCs for two important reasons. One is for legal certainty; the other is to pool capital in neutral places. Let me explain both of those. CDC's mission is to invest and grow businesses in some of the poorest companies in the world. Unfortunately, many of those places do not have legal systems that allow us to invest with certainty that, if there is a dispute, we will be able to get our money back […] we have a very important mission to pool capital from other investors to come in alongside us into difficult countries. […] Those investors, who are already cautious about the countries in which the investments are being made, have a lower risk tolerance than CDC does, for legal certainty; so they insist on a safe jurisdiction.[37]

However, Stephen Doughty raised concerns:

> Whether or not there is avoidance or malfeasance going on with the CDC portion of these investments, the indirect effects in terms of payments being made to fund managers and financial services businesses in the Cayman Islands and others that may be engaged in other activities is significant. Transparency is also significant, in terms of being able to assess and properly scrutinise the information available.[38]

NC6 was negatived on division (Division no. 2: Ayes 5, Noes 8).

[37] PBC Deb 6 December 2016 cc5-6
[38] PBC Deb 6 December 2016 c81

4. Appendix: Members of the Public Bill Committee

Chairs: Joan Ryan, Gary Streeter

Philip Boswell (Coatbridge, Chryston and Bellshill) (SNP)

Fiona Bruce (Congleton) (Con)

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op)

James Duddridge (Rochford and Southend East) (Con)

Chris Elmore (Ogmore) (Lab/Co-op)

Richard Fuller (Bedford) (Con)

Patrick Grady (Glasgow North) (SNP)

Richard Graham (Gloucester) (Con)

Andrew Griffiths (Lord Commissioner of Her Majesty's Treasury)

Imran Hussain (Bradford East) (Lab)

Jeremy Lefroy (Stafford) (Con)

Alison McGovern (Wirral South) (Lab)

Kate Osamor (Edmonton) (Lab/Co-op)

Paul Scully (Sutton and Cheam) (Con)

Rory Stewart (Minister of State, Department for International Development)

Kelly Tolhurst (Rochester and Strood) (Con)

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