

**INDUSTRIAL DEVELOPMENT CORPORATION ACT
NO. 22 OF 1940**

[ASSENTED TO 15 MAY, 1940]

[DATE OF COMMENCEMENT: 20 MAY, 1940]

(Signed by the Governor-General in English)

as amended by

Industrial Development Amendment Act, No. 27 of 1942

Industrial Development Amendment Act, No. 40 of 1951

Industrial Development Amendment Act, No. 67 of 1961

Industrial Development Amendment Act, No. 52 of 1964

Industrial Development Amendment Act, No. 89 of 1965

Industrial Development Amendment Act, No. 45 of 1966

Finance Act, No. 88 of 1972

[with effect from 28 June, 1972—see title FINANCE]

Second General Law Amendment Act, No. 94 of 1974

[with effect from 20 November, 1974—see title GENERAL LAW AMENDMENT ACTS]

Industrial Development Amendment Act, No. 47 of 1975

Finance Act, No. 102 of 1976

[with effect from 9 July, 1976—see title FINANCE]

Finance Act, No. 21 of 1980

[with effect from 31 March, 1980—see title FINANCE]

Industrial Development Amendment Act, No. 96 of 1980

Industrial Development Amendment Act, No. 53 of 1984

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]

Industrial Development Amendment Act, No. 9 of 1995

General Law Amendment Act, No. 49 of 1996

[with effect from 4 October 1996—see title GENERAL LAW AMENDMENT ACTS]

Industrial Development Amendment Act, No. 49 of 2001

GENERAL NOTE

In terms of section 16 of Act No. 49 of 2001, the words "he", "him", "his" and "chairman" wherever they occur, are substituted with the words "he or she", "him or her", "his or her" and "chairperson", respectively.

ACT

To constitute a corporation the object of which shall be to promote the establishment of new industries and industrial undertakings and the development of existing industries and industrial undertakings, and to provide for other incidental matters.

1. Interpretation.—In this Act—

“board” means the board of directors mentioned in section *six*;

“company” means any association of persons, whether incorporated or unincorporated;

“corporation” means the Industrial Development Corporation of South Africa, Limited, mentioned in section *two*;

“Minister” means the Minister of Trade and Industry;

[Definition of “Minister” substituted by s. 1 of Act No. 67 of 1961, by s. 1 of Act No. 53 of 1984 and by s. 1 of Act No. 9 of 1995.]

“private shareholders” means the holders of B shares and the holders of any other ordinary shares in the corporation other than A shares, and includes the Minister while the Government is a holder of B shares or any other ordinary shares other than A shares;

[Definition of “private shareholders” amended by s. 1 (a) of Act No. 52 of 1964 and by s. 46 of Act No. 97 of 1986.]

“regulations” means the regulations made under section *eighteen*;

“Republic”

[Definition of “Republic” added by s. 1 (b) of Act No. 52 of 1964 and deleted by s. 1 of Act No. 49 of 1996.]

2. Constitution and registration of Industrial Development Corporation of South Africa, Limited.—(1) There shall be a body corporate to be called the Industrial Development Corporation of South Africa, Limited.

[Sub-s. (1) amended by s. 2 (a) of Act No. 52 of 1964.]

(2) The Registrar of Companies shall enter the name of the corporation in his or her registers.

[Sub-s. (2) amended by s. 2 (b) of Act No. 52 of 1964.]

3. Objects of corporation.—The objects of the corporation shall be—

(a) with the approval of the Minister to establish and conduct any industrial undertaking;

[Para. (a) amended by s. 46 of Act No. 97 of 1986.]

(b) to facilitate, promote, guide and assist in the financing of—

(i) new industries and industrial, or ancillary or related economic, undertakings; and

(ii) schemes for the expansion, better organization and modernization of and the more efficient carrying out of operations in existing industries and industrial, or ancillary or related economic, undertakings,

to the end that the economic requirements of the Republic may be met and industrial development within the Republic, the Southern African region and the rest of Africa may be planned, expedited and conducted on sound business principles;

[Para. (b) substituted by s. 1 (a) of Act No. 49 of 2001.]

(c) to promote the economic empowerment of the historically disadvantaged communities and persons;

[Para. (c) added by s. 1 (b) of Act No. 49 of 2001.]

(d) to foster the development of small and medium enterprises and co-operatives;

[Para. (d) added by s. 1 (b) of Act No. 49 of 2001.]

- (e) to promote employment-creating activities, particularly in underdeveloped areas;

[Para. (e) added by s. 1 (b) of Act No. 49 of 2001.]

- (f) to leverage foreign direct investment in South Africa, the Southern African region and the rest of Africa through the use of its international network and presence;

[Para. (f) added by s. 1 (b) of Act No. 49 of 2001.]

- (g) to encourage the creation of new knowledge-based industries and services and the establishment and growth of new technology-based firms; and

[Para. (g) added by s. 1 (b) of Act No. 49 of 2001.]

- (h) to enhance corporate governance so as to achieve business excellence.

[S. 3 substituted by s. 1 of Act No. 27 of 1942. Para. (h) added by s. 1 (b) of Act No. 49 of 2001.]

3bis.

[S. 3bis inserted by s. 1 of Act No. 96 of 1980 and repealed by s. 2 of Act No. 9 of 1995.]

4. Powers of corporation.—For the purpose of attaining its objects, the corporation shall have power—

- (a) to promote or assist in the promotion of companies for conducting industrial operations in the Republic, the Southern African region and the rest of Africa;

[Para. (a) substituted by s. 2 (a) of Act No. 49 of 2001.]

- (b) to lend or advance money to any company or other person engaged in or proposing to establish or to expand or modernize any activity referred to in section 3, or, in the case of any such company, to acquire an interest in it or to provide or, by underwriting or otherwise, to assist in the subscription of capital for it;

[Para. (b) substituted by s. 2 (a) of Act No. 53 of 1984 and by s. 2 (a) of Act No. 49 of 2001.]

- (c) to hold, manage, develop, let or hire, or buy, subscribe for or otherwise acquire, or sell or otherwise dispose of, or hypothecate or otherwise deal in, immovable or movable property of any sort, including stocks, shares, bonds, debentures and securities of, and any interest in, any company and where necessary, to act as trustee for debenture holders;

[Para. (c) amended by s. 2 of Act No. 67 of 1961.]

- (d) to make, draw, accept or endorse negotiable instruments;

- (e) to guarantee any undertaking given in relation to the financing of any company or other person, or the performance of any contract by any company or other person, or to indemnify any company or other person in respect of the costs attaching to suits, or in respect of any loss or damage, arising from—

- (i) the financing by such company or other person of any other company or other person; or

- (ii) the entering into any contract by such company or other person;

[Para. (e) substituted by s. 1 of Act No. 47 of 1975 and amended by s. 2 (b) of Act No. 53 of 1984.]

- (f) by the issue of debentures or debenture stock or otherwise, and in accordance with the procedures laid down by the Public Finance Management Act, 1999 (Act No. 1 of 1999), to raise loans or borrow moneys: Provided that the amount owing at any time by the corporation and its wholly-owned financing subsidiaries in respect of loans raised or moneys borrowed shall not, without the approval

of the shareholders previously given at a meeting of shareholders, exceed 100 per cent of the issued capital and reserves of the corporation and its wholly-owned financing subsidiaries at that time;

[Para. (f) substituted by s. 2 (b) of Act No. 49 of 2001.]

- (g) to act as the manager or secretary of any company, and to appoint any person to act on behalf of the corporation as a director of or in any other capacity in relation to any company, and to act as the agent or representative of other companies, whether carrying on business in the Republic or elsewhere;
- (h) to procure the registration of the corporation in any country or territory;
[Para. (h) amended by s. 3 of Act No. 52 of 1964.]
- (i) to furnish technical and other assistance and expert and specialized advice, information and guidance,

and, generally, to enter into any contract and perform any act, whether within the Republic or elsewhere, which may be necessary for or incidental or conducive to the attainment of any of the objects of the corporation, or which are calculated directly or indirectly to enhance the value of the services which the corporation can render towards industrial development or ancillary or related economic activities within the Republic, the Southern African region and the rest of Africa.

[Para. (i) inserted by s. 2 of Act No. 96 of 1980, substituted by s. 3 of Act No. 9 of 1995 and amended by s. 2 (d) of Act No. 49 of 2001.]

- (j) to implement procurement and outsourcing policies and programmes that encourage economic empowerment;
[Para. (j) added by s. 2 (c) of Act No. 49 of 2001.]
- (k) to consider investment proposals in large beneficiation projects such that the viability of mid- and downstream manufacturing activities is ensured;
[Para. (k) added by s. 2 (c) of Act No. 49 of 2001.]
- (l) to develop and appraise large investment projects in securing foreign partners to co-invest in such projects;
[Para. (l) added by s. 2 (c) of Act No. 49 of 2001.]
- (m) to promote viable strategic investment projects in spatial development initiatives and industrial development zones as part of the government's industrial and integrated rural development strategies;
[Para. (m) added by s. 2 (c) of Act No. 49 of 2001.]
- (n) to provide venture capital finance and services;
[Para. (n) added by s. 2 (c) of Act No. 49 of 2001.]
- (o) to assist South African exporters and importers of capital goods and services through extended credit facilities,
[Para. (o) added by s. 2 (c) of Act No. 49 of 2001.]

5. General lines along which corporation's powers should be exercised.—It shall be the duty of the corporation so to exercise its powers—

- (a) that every application or proposal dealt with by it is considered strictly on its economic merits, irrespective of all other considerations whatsoever;
- (b) that all matters relating to the raw materials necessary for carrying on the activities contemplated in section 3, to the labour supply available for the carrying on thereof, to the rates of wages proposed to be paid and to the markets available for the disposal of the products and services thereof are carefully reviewed; and

[Para. (b) substituted by s. 3 of Act No. 49 of 2001.]

- (c) that, generally, the activities of the corporation referred to in paragraph (b) of section 3 are directed towards guiding and assisting others in financing the establishment or development of industries or industrial, or ancillary or related economic, undertakings and that, so far as may be practicable, the corporation shall not be required to provide an unduly large proportion of the capital which is necessary for such establishment or development.

[Para. (c) amended by s. 2 of Act No. 27 of 1942 and substituted by s. 3 of Act No. 49 of 2001.]

5bis.

[S. 5bis. inserted by s. 1 of Act No. 40 of 1951, substituted by s. 1 of Act No. 89 of 1965, amended by s. 22 of Act No. 94 of 1974, and by s. 2 of Act No. 47 of 1975, and repealed by s. 3 (1) of Act No. 21 of 1980.]

5ter. Taking over of certain interests by Minister in terms of agreement with corporation.—(1) Where the corporation has at the request of the Minister agreed to render any assistance to or incur any obligation in connection with an industrial undertaking, whether by taking up shares or furnishing a loan, guarantee or indemnity or in any other manner, the Minister may, if he or she considers it expedient in the public interest and notwithstanding anything to the contrary in this Act contained, with the concurrence of the Minister of Finance enter into an agreement with the corporation in terms of which the Minister may at any time take over, or, if requested by the corporation to do so, shall take over, all the interests of the corporation in that industrial undertaking (including any shares taken up in connection with that industrial undertaking and any rights and obligations acquired or incurred in connection with it), together with all rights and obligations attaching to or arising from such interests, against payment of compensation which shall not exceed the sum of the purchase price paid by the corporation for any shares, the book value of any loan, the amounts paid by the corporation in respect of any other right or obligation and the cost and expenditure of the corporation in connection with such shares, loan or other right or obligation.

(2) Any such agreement as is contemplated in subsection (1) which has been entered into before the commencement of this section, shall be deemed to have been entered into by virtue of the powers conferred by that subsection.

[S. 5ter inserted by s. 11 of Act No. 88 of 1972.]

5quat.

[S. 5quat inserted by s. 3 of Act No. 96 of 1980 and repealed by s. 4 of Act No. 49 of 2001.]

5quin.

[S. 5quin inserted by s. 3 of Act No. 53 of 1984 and repealed by s. 4 of Act No. 9 of 1995.]

6. Board of directors.—(1) The operations of the corporation shall be managed and controlled by a board of directors, which may exercise all such powers of the corporation as are not by this Act or the regulations required to be exercised by the shareholders of the corporation at a meeting of shareholders.

(2) The board of directors shall consist of not less than five and not more than 15 directors: Provided that if at any time the number of directors holding office falls below five, the remaining directors shall manage and control the affairs of the corporation.

[Sub-s. (2) amended by s. 3 (a) of Act No. 67 of 1961 and substituted by s. 5 of Act No. 9 of 1995.]

(3) The Minister shall have the right to appoint not more than eight directors, and the private shareholders shall have the right to elect not more than seven directors.

[Sub-s. (3) amended by s. 3 (b) of Act No. 67 of 1961 and by s. 46 of Act No. 97 of 1986 and substituted by s. 5 of Act No. 9 of 1995.]

(4) The Minister shall choose all directors appointed by him or her their ability and experience in business or administration, and their suitability otherwise for appointment as directors.

[Sub-s. (4) amended by s. 46 of Act No. 97 of 1986.]

(5) The Minister shall appoint one of the directors appointed by him or her chairperson of the board.

[Sub-s. (5) amended by s. 46 of Act No. 97 of 1986.]

(6) The directors may appoint one of their number to be deputy chairperson of the board.

(7) No decision or act of the board, or act done under the authority of the board, shall be invalid by reason only of the fact that a person with respect to whose election as a director by the private shareholders the provisions of the regulations had not been observed sat or acted as a member of the board at the time that decision was taken or that act was done or authorized.

7. Alternate directors.—(1) Each director may nominate an alternate director to act in his or her place on the occasions and in the circumstances and subject to the conditions set forth in the regulations: Provided that the appointment of an alternate director to act in the place of a director appointed by the Minister shall be subject to the approval of the Minister, and the appointment of an alternate director to act in the place of a director elected by the private shareholders shall be subject to the approval of the board.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.]

(2) An alternate director, when acting in the place of a director, shall in all respects have all the powers and discharge all the duties of that director: Provided that an alternate director appointed by the chairperson shall have only the powers and discharge only the duties of a director other than the chairperson.

8. Members of Parliament, provincial legislature or municipal council not to be directors.—No person shall be appointed, nominated or elected or remain a director or alternate director who is a member of Parliament, any provincial legislature or any municipal council.

[S. 8 substituted by s. 5 of Act No. 49 of 2001.]

9. Tenure and conditions of office of directors.—(1) A director shall, subject to the regulations, hold office for a period of three years: Provided that the Minister may direct that the term of office of a director who has been appointed as managing director shall be five years, reckoned from the date of his or her appointment as managing director.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.]

(2) A director shall hold office as director upon such conditions as to remuneration as the Minister may determine and upon such other conditions as may be prescribed by the regulations: Provided that the remuneration payable to any director, in respect of any work done or office held by him or her than his or her work as or office of director, shall be determined by the board.

10. Meetings of board.—(1) The chairperson shall preside at all meetings of the board at which he or she is present.

(2) At meetings of the board, the chairperson shall have a deliberative vote, and, in addition, in the event of an equality of votes, a casting vote.

(3) The deputy chairperson (if one has been appointed) shall preside at any meeting of the board from which the chairperson is absent, and shall at any such meeting have all the powers and discharge all the duties of the chairperson, except that in the event of an equality of votes he or she shall not have a casting vote.

(4) Should the chairperson and the deputy chairperson (if one has been appointed) both be absent from any meeting of the board, the directors who are present at that meeting shall elect one of their number to preside thereat.

(5) Subject to the provisions of sub-section (2) of this section, the decision of the majority of the directors present at a meeting of the board shall constitute the decision of the board.

11. Managing directors.—(1) The chairperson shall be a non-executive director and may not be appointed as managing director of the corporation.

[Sub-s. (1) substituted by s. 6 of Act No. 49 of 2001.]

(2) The managing director shall exercise such powers and perform such duties as may be authorized or prescribed by the board, and may delegate such powers to and authorize performance of such duties by the staff committees or other structures of the corporation.

[Sub-s. (2) substituted by s. 6 of Act No. 49 of 2001.]

(3) All appointments (if any) as managing director shall be made by the board, subject to the approval of the Minister.

[Sub-s. (3) amended by s. 4 of Act No. 52 of 1964.]

(4) If for any reason the managing director (if one has been appointed) is unable to act as such, the board may, subject to the approval of the Minister, appoint another of its members to act as managing director during such inability, and the person so appointed shall, while so acting, have all the powers and discharge all the duties of the managing director.

12. Share capital.—(1) Subject to the provisions of this section, the share capital of the corporation shall be ten million rand, which shall be divided into—

(a) one million ordinary shares of one rand each (hereinafter referred to as A shares); and

(b) nine million ordinary shares of one rand each (hereinafter referred to as B shares).

[Sub-s. (1) substituted by s. 1 of Act No. 45 of 1966.]

(2) The whole of the A and B shares shall be taken up by the Government.

[Sub-s. (2) amended by s. 5 (a) of Act No. 52 of 1964.]

(3) The shares in the corporation shall be paid for by the Government from—

(a)

[Para. (a) deleted by s. 7 (a) of Act No. 49 of 2001.]

(b) moneys made available by the Minister in terms of section 3 of the Finance Act, 1975 (Act No. 72 of 1975).

[Sub-s. (3) amended by s. 5 (a) of Act No. 52 of 1964 and substituted by s. 15 of Act No. 102 of 1976.]

(4) Payment for the shares in the corporation shall be made at such times and in such amounts as may after consultation be agreed between the Minister of Finance and the board.

[Sub-s. (4) amended by s. 3 of Act No. 27 of 1942 and by s. 5 (b) of Act No. 52 of 1964.]

(5) Any portion of the share capital which consists of money and which is not required by the board for the immediate purposes of the corporation may be invested by the board with the Public Debt Commissioners for the benefit of the corporation or in such other way as the Minister may approve.

(6) The A shares shall not be transferable by the Government otherwise than by the authority of an Act of Parliament; but the Minister may, as and when he or she thinks fit, sell or otherwise dispose of all or any of the B shares.

[Sub-s. (6) amended by s. 46 of Act No. 97 of 1986.]

(7) The A shares held by the Government shall entitle the Minister to a number of votes which shall exceed by one the total number of votes which all the other shareholders of the corporation in the aggregate may be entitled to in respect of the shares (including shares issued under sub-section (9)) held by them.

[Sub-s. (7) amended by s. 46 of Act No. 97 of 1986.]

(8) The Minister shall, while the Government is the holder of shares in the corporation, appoint a representative or representatives to attend the meetings of shareholders and to vote thereat.

[Sub-s. (8) amended by s. 46 of Act No. 97 of 1986.]

(9) The board may from time to time, with the approval of shareholders previously given at a meeting of shareholders, increase the share capital of the corporation to such extent as 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 determine including conditions as to the 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.

(10)

[Sub-s. (10) amended by s. 46 of Act No. 97 of 1986 and deleted by s. 7 (b) of Act No. 49 of 2001.]

13.

[S. 13 repealed by s. 8 of Act No. 49 of 2001.]

14. Meeting of shareholders at which only one shareholder is present.—If at the time and place appointed for a meeting of shareholders only one shareholder is present in person or represented by proxy, a resolution signed by that shareholder or his or her proxy shall be deemed to be a resolution of shareholders taken at a meeting of shareholders: Provided that this section shall have effect only while the Government is the holder of all the B shares.

[S. 14 amended by s. 6 of Act No. 52 of 1964.]

15. Expenditure.—The expenditure incurred by or on behalf of the board of directors, including the remuneration of directors, shall be defrayed from the funds of the corporation.

16. Declaration of dividends.—Dividends may from time to time be declared by the board with the approval of the Minister.

[S. 16 amended by s. 46 of Act No. 97 of 1986 and substituted by s. 9 of Act No. 49 of 2001.]

17. Financial statements and audit.—(1) The board shall cause proper financial statements to be kept, and also all necessary books and records in relation thereto.

(2) The financial statements of the corporation shall be audited by two persons who publicly carry on the profession of accountants and auditors, to be appointed annually by the board, one of them upon the nomination of the Minister, and the other upon nomination by the private shareholders.

[S. 17 substituted by s. 10 of Act No. 49 of 2001.]

18. Regulations.—The shareholders of the corporation may by resolution at a meeting of shareholders make regulations as to—

- (a) the election of directors and the nomination of auditors by the private shareholders;
- (b) the conditions (other than those relating to remuneration) of appointment of directors and alternate directors and the circumstances in which a director or an alternate director shall vacate his or her office;
- (c) the occasions when, the circumstances in, and the conditions under which an alternate director may act in the place of a director;

- (d) meetings of the board and the procedure thereat, including the quorum necessary therefor and the minutes to be kept thereof;
- (e) the taking of decisions by directors without holding a meeting of the board;
- (f) meetings of shareholders, the matters to be dealt with thereat, and the procedure thereat, including the quorum necessary therefor and the minutes to be kept thereof;
- (g) the submission annually of a balance sheet and accounts to a meeting of shareholders;
- (h)

[Para. (h) deleted by s. 11 of Act No. 49 of 2001.]

- (i) such other matters as are necessary or useful to be prescribed for carrying out the purposes of this Act.

Such a resolution shall not become effective until it has been signed by the Minister.

19. Information to be furnished to the Minister and to Parliament.—(1) As soon as practicable after the meeting of shareholders at which the financial statements of the corporation are submitted has been held, the corporation shall transmit to the Minister in respect of its last preceding financial year copies of—

- (a) financial statements showing separately the financial details in connection with any industrial undertaking established and conducted by the corporation under section 3 (a) and duly certified by the auditors appointed under section 17; and
- (b) the report (if any) of the board submitted, and the address (if any) of the chairperson of the board delivered, at the said meeting, or if no such report was submitted or address delivered, a full report on the operations of the corporation during the said financial year.

[Sub-s. (1) amended by s. 4 of Act No. 27 of 1942 and substituted by s. 12 of Act No. 49 of 2001.]

(2) The Minister shall table copies of all such financial statements, reports or addresses in Parliament within 14 days after their receipt by him or her, if Parliament is sitting, or, if Parliament is not sitting, within 14 days after the commencement of the next ensuing sitting of Parliament.

[Sub-s. (2) substituted by s. 12 of Act No. 49 of 2001.]

(3) As soon as practicable after the close of any meeting of the board, or after a decision has been taken by the directors in accordance with a regulation made under paragraph (e) of section *eighteen*, the corporation shall transmit to the Minister for his or her information a copy of the minutes of that meeting or a copy of that decision, as the case may be.

20. Winding up of corporation.—The corporation shall not be wound up except by or under the authority of an Act by Parliament.

21. Use of name of corporation.—No association or company shall carry on business under or be registered under the Companies Act, 1973 (Act No. 61 of 1973), as amended from time to time, by a name or shortened title identical with that of the corporation, or so nearly resembling the name or shortened title of the corporation as to be calculated to deceive: Provided that this section shall not prohibit any company from carrying on business under, or remaining registered by, the name by which it was registered under the said Act at the commencement of this Act.

[S. 21 substituted by s. 13 of Act No. 49 of 2001.]

22. Application of Companies Act.—(1) The Minister may by notice in the *Gazette* apply to the corporation any provision of the Companies Act, 1973 (Act No. 61 of 1973), or any amendment thereof, which is not inconsistent with the provisions of this Act.

(2) Subject to the provisions of subsection (1), none of the provisions of the Companies Act, 1973 (Act No. 61 of 1973), or any amendment thereof, or of any other law relating to companies, shall apply to the corporation.

[S. 22 amended by ss. 46 and 47 of Act No. 97 of 1986 and substituted by s. 14 of Act No. 49 of 2001.]

23. Short title.—This Act shall be called the Industrial Development Corporation Act, 1940.

[S. 23 substituted by s. 15 of Act No. 49 of 2001.]
