

REPUBLIC OF SOUTH AFRICA

**DEVELOPMENT BANK OF
SOUTHERN AFRICA
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 37285 of 31 January 2014)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 2—2014]

ISBN 978-1-77597-189-4

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Development Bank of Southern Africa Act, 1997, so as to define certain expressions and to amend a definition; to delete an obsolete provision; to provide afresh for the regions in which the Bank may operate; to increase the authorised share capital of the Bank; to align a provision with the terminology in the Companies Act, 2008; to amend the provisions regarding the issuing of certificates for issued shares; to enable the Minister to increase the authorised share capital; to require the shareholders' approval for subscription by the shareholders to any portion of the balance of the authorised share capital on request of the board; to amend the power of the Minister to make regulations by amending the introductory provision, empowering the Minister to regulate the use of callable capital of the Bank to calculate the leverage ratio of the Bank, omitting the provision empowering the Minister to determine the region in which the Bank may operate and limiting the general regulation-making power to ensure constitutionality; to adjust the provision enabling the application to the Bank of any provision of the Companies Act, 2008, the Banks Act, 1990, and any other appropriate legislation; and to amend the Preamble; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 1997

1. Section 1 of the Development Bank of Southern Africa Act, 1997 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “Bank” of the following definition: 5
 “ **‘authorised share capital’** means the maximum amount of capital which the Bank is authorised to raise in terms of section 13(1);”;

(b) by the insertion after the definition of “board” of the following definitions: 10
 “ **‘callable capital’** means the authorised share capital less the issued share capital;
 ‘Companies Act’ means the Companies Act, 2008 (Act No. 71 of 2008);”;

- (c) by the insertion after the definition of “institutional shareholders” of the following definition:
 “**‘issued share capital’** means the portion of the authorised share capital which the Bank has issued;”; and
- (d) by the substitution for the definition of “region” of the following definition: 5
 “**‘region’** means [the national territory of the Republic of South Africa and the national territories of the countries as determined by regulation] the region contemplated in section 2A;”.

Amendment of section 2 of Act 13 of 1997

2. Section 2 of the principal Act is hereby amended by the deletion of subsection (2). 10

Insertion of section 2A in Act 13 of 1997

3. The following section is hereby inserted in the principal Act after section 2:

“Countries of operation of Bank

2A. (1) The Bank may promote the attainment of its objects referred to in section 3, and performs its powers referred to in section 4, in the region consisting of— 15

- (a) the national territory of the Republic of South Africa;
 (b) the national territories of the countries which are member states of the Southern African Development Community; and
 (c) the national territory of such other country on the African continent or an oceanic island on the African continent as the Minister may determine by regulation, subject to subsection (2). 20

(2) (a) The Minister must approve an annual plan for the activities of the Bank in a national territory of a country contemplated in subsection (1)(c). 25

(b) The Bank must submit the annual plan to the Minister in the form and on the date determined by the Minister.

(c) The Minister may amend the approved annual plan, if necessary, after consultation with the Bank.”.

Amendment of section 8 of Act 13 of 1997

4. Section 8 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 30

“(a) is ineligible or disqualified to act as a director of a board of a company [incorporated] as defined in [terms] section 1 of the Companies Act [1973 (Act No. 61 of 1973)];”.

Amendment of section 13 of Act 13 of 1997

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5. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to [the provisions of subsection] subsections (2A) and (5), the authorised share capital of the Bank shall be the amount of [five thousand million] twenty billion and two hundred million rand which shall be divided into [five hundred thousand] two million and twenty thousand ordinary shares [having a par value of ten thousand rand each].”; 40

- (b) by the substitution for subsection (2) of the following subsections:

“(2) Certificates in respect of the shares referred to in subsection (1) shall be issued as determined in the regulations to the Government of the Republic of South Africa as consideration for paid-up share capital and new certificates shall replace any certificates previously issued. 45

(2A) The Minister may, by notice in the *Gazette* and after consultation with the Board, increase the amount of the authorised share capital of the Bank and the number of ordinary shares.”; 50

- (c) by the substitution for subsection (3) of the following subsection:
 “(3) The shareholders shall subscribe to any portion of the balance of the authorised share capital [when] if—
(a) requested to do so by the board as provided in the regulations; and
(b) approved at a meeting of shareholders.”; and 5
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) The board may from time to time, with the approval of the shareholders previously given at a meeting of shareholders, increase the issued share capital of the Bank to such extent as it may deem expedient, by the creation and issue of ordinary or preference shares, or shares of such other class 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 which may be exercised by the holders thereof, in the case of preference shares, or that the holders thereof shall not be entitled to vote.”. 10 15

Substitution of section 17 of Act 13 of 1997

6. The following section is hereby substituted for section 17 of the principal Act:

“Regulations

- 17. (1) The Minister must make the regulations required by the Act.**
 (2) The Minister may, on his or her own initiative or at the request of the shareholders or the board, make the regulations [as to] permitted by the Act and regulations regarding— 20
 (a) the election of directors;
 (b) the conditions of appointment of directors and the circumstances in which a director shall vacate the office of director; 25
 (c) meetings of the board and the procedure thereat, including the minutes to be kept of such meetings;
 (d) the taking of decisions by shareholders and directors without holding a meeting;
 (e) the meetings of shareholders, the matters to be dealt with and the procedures to be followed thereat, including the minutes to be kept thereof; 30
 (f) the annual submission of a balance sheet and accounts to a meeting of shareholders;
 (g) the appointment of officers of the Bank; 35
[(h) the determination of the national territories which constitute the region;]
(hA) the use of callable capital of the Bank to calculate its leverage ratio; and
 (i) **[such other matters as are necessary or useful to be prescribed for the achievement of the objectives of] any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.”.** 40

Substitution of section 21 of Act 13 of 1997

7. The following section is hereby substituted for section 21 of the principal Act: 45

“Application to Bank of Companies Act and other legislation

- 21.** The Minister may, by notice in the *Gazette*, apply to the Bank any provision of—
 (a) the Companies Act;
 (b) the Banks Act, 1990 (Act No. 94 of 1990); or 50
 (c) any other appropriate legislation,
 in so far as such provision is not inconsistent with the provisions of this Act, with such modifications as the Minister may consider necessary and specify in that notice.”.

Substitution of Preamble to Act 13 of 1997

8. The following Preamble is hereby substituted for the Preamble to the principal Act:

“PREAMBLE

The Development Bank of Southern Africa was established in 1983 to perform an economic development function within the constitutional dispensation **[which]** then obtained. The transformation of the constitutional and economic dispensation of South Africa by virtue of the Constitution of the Republic of South Africa, **[1993 (Act No. 200 of 1993)]** 1996, and otherwise, necessitated the transformation of the role and function of the Development Bank of Southern Africa in order to promote economic development and growth **[in]** on the **[Southern African region]** African continent and its oceanic islands within an integrated financial development system which has as its aim the efficient deployment of scarce resources. On account of the aforesaid reasons it has now become desirable to reconstitute the Development Bank of Southern Africa in order to promote, facilitate and by funding to mobilise the socio-economic development **[in Southern Africa]**, while efficiency, fairness, transparency and responsibility are promoted at the same time.”.

Short title

9. This Act is called the Development Bank of Southern Africa Amendment Act, 2014.

**MEMORANDUM ON THE OBJECTS OF THE DEVELOPMENT
BANK OF SOUTHERN AFRICA AMENDMENT BILL, 2014**

1. BACKGROUND

The Development Bank of Southern Africa (“the Bank”) was established in 1983 to perform an economic development function within the constitutional dispensation then obtained. The transformation of the constitutional and economic dispensation of South Africa by virtue of the (*interim*) Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and the Constitution of the Republic of South Africa, 1996, and otherwise, necessitated the transformation of the role and function of the Bank in order to promote economic development and growth in the Southern African region within an integrated financial development system which has as its aim the efficient deployment of scarce resources. Through the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997) (“the Act”), the Bank was reconstituted in order to promote, facilitate and by funding to mobilise the socio-economic development in Southern Africa, while efficiency, fairness, transparency and responsibility are promoted at the same time.

2. MAIN OBJECTS OF BILL

- 2.1 The main objects of the Bill are to propose amendments to the Act in order to enable the extension of the operations of the Bank to certain national territories on the African continent and its oceanic islands, to increase the authorised share capital of the Bank and enable further increases, to provide for the application of certain legislation to the Bank and to adjust the regulation-making powers of the Minister.
- 2.2 Currently the Bank may operate in South Africa and the territories of all other Member States of the South African Development Community (SADC). Extending the Bank’s mandate will enable the Bank to participate in large scale infrastructure and other strategic projects on the African continent outside the SADC-region which have the potential to enhance trade and economic growth on the continent and support South Africa’s bi-national commissions and commitments to regional integration.

3. PROPOSED AMENDMENTS IN BILL

The Bill includes the following amendments:

- (a) Inserting definitions of “authorised share capital”, “callable capital”, “Companies Act” and “issued share capital”, and amending the definition of “region” (clause 1);
- (b) deleting an obsolete provision (clause 2);
- (c) inserting a specific provision in the Act on the countries in which the Bank may operate and enabling the extension of its operations to any national territory on the African continent and its oceanic islands and adjusting the regulation-making provision and the Preamble accordingly (clauses 3, 6 and 8);
- (d) aligning a provision with the terminology in the Companies Act, 2008 (Act No. 71 of 2008) (clause 4);
- (e) increasing the authorised share capital of the Bank, amending the provisions regarding the issuing of certificates for issued shares, enabling the Minister to increase the authorised share capital and requiring the shareholders’ approval for subscription by the shareholders to any portion of the balance of the authorised share capital on request of the board (clause 5);
- (f) amending the regulation-making provision of the Minister by adding to the introductory provision, omitting the provision dealing with the region in which the Bank may operate to be replaced by a specific provision, including a power to regulate the use of callable capital to calculate the leverage ratio of the Bank and limiting the general regulation-making power to ensure constitutionality (clause 6); and

- (g) adjusting the provision enabling the application to the Bank of any provision of the Companies Act, 2008, the Banks Act, 1990 (Act No. 94 of 1990), and other legislation (clause 7).

4. DEPARTMENTS OR BODIES CONSULTED

The Development Bank of Southern Africa was consulted. Following Cabinet's approval, the Bill was published for public comment for one month. The one comment received, did not require any amendments to the Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the National Treasury are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it does not contain a provision to which section 74 or 75 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.