

REPUBLIC OF SOUTH AFRICA

INDUSTRIAL DEVELOPMENT AMENDMENT BILL

(As amended by the Portfolio Committee on Trade and Industry)
(The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B 32B—2001]

ISBN 0 621 31017 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 Industrial Development Act, 1940, so as to adjust and add to the objects and powers of the Industrial Development Corporation of South Africa, Limited; to extend the activities of the corporation beyond the borders of the Republic for the benefit of the Southern African region specifically and the rest of Africa generally; to empower the managing director to delegate his or her powers to other structures of the corporation; and to repeal obsolete provisions; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 22 of 1940, as substituted by section 1 of Act 27 of 1942 and amended by section 46 of Act 97 of 1986

1. Section 3 of the Industrial Development Act, 1940 (Act No. 22 of 1940) 5
(hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of the word “and” at the end of paragraph (a) and the substitution for paragraph (b) of the following paragraph:

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

(i) new industries and industrial, or ancillary or related economic, 10
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, under- 15
takings,

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;”; and

(b) by the addition of the following paragraphs: 20

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

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

(e) to promote employment-creating activities, particularly in underdevel- 25
oped areas;

(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;

- (g) to encourage the creation of new knowledge-based industries and services and the establishment and growth of new technology-based firms; and
- (h) to enhance corporate governance so as to achieve business excellence.”.

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Amendment of section 4 of Act 22 of 1940, as amended by section 2 of Act 67 of 1961, section 3 of Act 52 of 1964, section 1 of Act 47 of 1975, section 2 of Act 96 of 1980, section 2 of Act 53 of 1984 and section 3 of Act 9 of 1995

2. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(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;
 - (b) to lend or advance money to any company or other person engaged in or proposing to establish or to expand or modernize any **[industry or industrial undertaking]** 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;”;
- (b) by the substitution for paragraph (f) of the following paragraph:
 - “(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] : 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 [three-fourths] 100 per cent of the issued capital and reserves of the corporation and its wholly-owned financing subsidiaries at that time;”;
- (c) by the addition of the following paragraphs:
 - “(j) to implement procurement and outsourcing policies and programmes that encourage economic empowerment;
 - (k) to consider investment proposals in large beneficiation projects such that the viability of mid- and downstream manufacturing activities is ensured;
 - (l) to develop and appraise large investment projects in securing foreign partners to co-invest in such projects;
 - (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;
 - (n) to provide venture capital finance and services;
 - (o) to assist South African exporters and importers of capital goods and services through extended credit facilities,”; and
- (d) by the substitution for the words following upon paragraph (i) of the following words:
 - “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.”.

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Amendment of section 5 of Act 22 of 1940, as amended by section 2 of Act 27 of 1942

3. Section 5 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs, respectively:

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- “(b) that all matters relating to the raw materials necessary for carrying on the **[industry or industrial undertaking, or the proposed industry or industrial undertaking]** 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 5
- (c) that, generally, the activities of the corporation referred to in paragraph (b) of section **[three]** 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.”. 10

Repeal of section 5quat of Act 22 of 1940

4. Section 5quat of the principal Act is hereby repealed.

Substitution of section 8 of Act 22 of 1940

5. The following section is hereby substituted for section 8 of the principal Act:

“Members of Parliament, provincial legislature or municipal council not to be directors

8. No person shall be appointed, nominated or elected or remain a director or alternate director who is a **[senator or a member of the House of Assembly or a provincial councillor]** member of Parliament, any provincial legislature or any municipal council.”. 20

Amendment of section 11 of Act 22 of 1940, as amended by section 4 of Act 52 of 1964

6. Section 11 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 25

“(1) The **[chairman or any other director]** chairperson shall be a non-executive director and may not be appointed as managing director of the corporation.

(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.”. 30

Amendment of section 12 of Act 22 of 1940, as amended by section 3 of Act 27 of 1942, section 5 of Act 52 of 1964, section 1 of Act 45 of 1966, section 15 of Act 102 of 1976 and section 46 of Act 97 of 1986

7. Section 12 of the principal Act is hereby amended—
 (a) by the deletion of paragraph (a) of subsection (3); and
 (b) by the deletion of subsection (10).

Repeal of section 13 of Act 22 of 1940

8. Section 13 of the principal Act is hereby repealed.

Substitution of section 16 of Act 22 of 1940, as amended by section 46 of Act 97 of 1986

9. The following section is hereby substituted for section 16 of the principal Act.

“Declaration of dividends

16. Dividends may from time to time be declared by the board with the approval of the Minister.”. 45

Amendment of section 18 of Act 22 of 1940

10. Section 18 of the principal Act is hereby amended by the deletion of paragraph (h).

Amendment of section 19 of Act 22 of 1940, as amended by section 4 of Act 27 of 1942

11. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) The Minister shall **[lay]** table copies of all such **[balance sheets, accounts]** financial statements, reports or addresses **[upon the Tables of both Houses of]** in Parliament within **[fourteen]** 14 days after their receipt by him or her, if Parliament is then **[in ordinary session]** sitting, or, if Parliament is not then **[in ordinary session]** sitting, within **[fourteen]** 14 days after the commencement of **[its]** the next ensuing **[ordinary session]** sitting of Parliament.”. 10

Substitution of section 21 of Act 22 of 1940

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

“Use of name of corporation 15

21. No association or company shall carry on business under or be registered under the Companies Act, **[1926]** 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.”. 20

Substitution of section 22 of Act 22 of 1940, as amended by sections 46 and 47 of Act 97 of 1986 25

13. The following section is hereby substituted for section 22 of the principal Act:

“Application of Companies Act

22. (1) The Minister may by notice in the *Gazette* apply to the corporation any provision of the Companies Act, **[1926 (Act No. 46 of 1926)]** 1973 (Act No. 61 of 1973), or any amendment thereof, which is not inconsistent with the provisions of this Act, **[with such modifications as he may think fit, and may withdraw or amend any such notice]**. 30

(2) Subject to the provisions of subsection (1), none of the provisions of the Companies Act, **[1926]** 1973 (Act No. 61 of 1973), or any amendment thereof, or of any other law relating to companies, shall apply to the corporation.”. 35

Substitution of section 23 of Act 22 of 1940

14. The following section is hereby substituted for section 23 of the principal Act:

“Short title

23. This Act shall be called the Industrial Development Corporation Act, 1940.”. 40

Substitution of certain words in Act 22 of 1940

15. The principal Act is hereby amended by the substitution for the words “he”, “him”, “his” and “chairman”, wherever they occur, of the words “he or she”, “him or her”, “his or her” and “chairperson”, respectively. 45

Short title

16. This Act is called the Industrial Development Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE INDUSTRIAL DEVELOPMENT AMENDMENT BILL, 2001

The need has arisen to adjust the objects of the Industrial Development Corporation of South Africa Limited (IDC) to enable the Corporation to assist in the implementation of its shareholders' economic and industrial policies, and to extend its activities beyond the borders of the Republic of South Africa for the benefit of the Southern African region, specifically, and the rest of Africa, generally.

The Bill endeavours to focus and extend the scope of the activities of the IDC in line with the trade and industrial policy of the Government with special reference to the promotion of entrepreneurial activities by the IDC in the area of small and medium enterprises. It is proposed that the IDC be explicitly empowered to promote the economic empowerment of historically disadvantaged communities and persons.

The Bill seeks to empower the managing director to delegate his or her powers to staff committees of the Corporation and to repeal obsolete provisions. The deletion of discriminatory or gender insensitive references is also proposed. The Bill lastly seeks to change the short title of the Industrial Development Act, 1940 (Act No. 22 of 1940), to the "Industrial Development Corporation Act, 1940".

Financial implications for State

None.

Consultation

The IDC was consulted on the Bill.

Parliamentary procedure

The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 applies.

Printed by Creda Communications

ISBN 0 621 31017 4