

No. 22, 1940.]

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.

(Signed by the Governor-General in English.)
(Assented to 15th May, 1940.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Interpretation.

1. 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 Commerce and Industries, or any other Minister of State to whom the Governor-General has assigned the administration of this Act, or any other Minister of State acting on behalf of any such Minister ;
- “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 Governor-General while the Government of the Union is a holder of B shares or any other ordinary shares other than A shares ;
- “regulations” means the regulations made under section *eighteen*.

Constitution and registration of Industrial Development Corporation of South Africa, Limited.

2. (1) Upon a date to be fixed by the Governor-General by proclamation in the *Gazette*, there shall be constituted a body corporate to be called the Industrial Development Corporation of South Africa, Limited.

(2) Upon the date so fixed, the Registrar of Companies shall enter the name of the corporation in his registers.

Objects of corporation.

3. The objects of the corporation shall be to facilitate, promote, guide and assist in, the financing of—

- (a)** new industries and industrial undertakings ; and
- (b)** schemes for the expansion, better organization and modernization of and the more efficient carrying out of operations in existing industries and industrial undertakings,

to the end that industrial development within the Union may be planned, expedited and conducted on sound business principles.

Powers of corporation.

4. 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 Union ;
- (b)** to lend or advance money to, to acquire an interest in, or to provide, or by underwriting or otherwise to assist in the subscription of, capital for, any company engaged in or proposing to establish or to expand or modernize any such industry or industrial undertaking as is referred to in section *three* ;
- (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 ;
- (d)** to make, draw, accept or endorse negotiable instruments ;
- (e)** to guarantee any undertaking given in relation to the financing of any company or the performance of any contract by any company ;
- (f)** by the issue of debentures or debenture stock or otherwise to raise loans or borrow moneys, provided that the amount owing at any time 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 of the issued capital of the corporation at that time ;

(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 Union or elsewhere ;

(h) to procure the registration of the corporation outside the Union,

and, generally, to enter into any contract and perform any act, whether within the Union 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 within the Union.

General lines along which corporation's powers should be exercised.

5. 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 industry or industrial undertaking, or the proposed industry or industrial undertaking, 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 thereof are carefully reviewed ; and

(c) that, generally, the activities of the corporation are directed towards guiding and assisting others in financing the establishment or development of industries or industrial 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.

Board of directors.

6. (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 four and not more than seven directors : Provided that if at any time the number of directors holding office falls below four, the remaining directors shall manage and control the affairs of the corporation.

(3) The Governor-General shall have the right to appoint not more than four directors, and the private shareholders shall have the right to elect not more than three directors.

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

(5) The Governor-General shall appoint one of the directors appointed by him to be chairman of the board.

(6) The directors may appoint one of their number to be deputy chairman 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.

Alternate directors.

7. (1) Each director may nominate an alternate director to act in his 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 Governor-General 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.

(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 chairman shall have only the powers and discharge only the duties of a director other than the chairman.

Members of Parliament and provincial councillors 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.

Tenure and conditions of office of directors.

9. (1) A director shall, subject to the regulations, hold office for a period of three years: Provided that the Governor-General 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 appointment as managing director.

(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 other than his work as or office of director, shall be determined by the board.

Meetings of board.

10. (1) The chairman shall preside at all meetings of the board at which he is present.

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

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

(4) Should the chairman and the deputy chairman (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.

Managing directors.

11. (1) The chairman or any other director may 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.

(3) The first managing director (if one is appointed) shall be appointed by the Governor-General, and all subsequent appointments (if any) as managing director shall be made by the board, subject to the approval of the Minister.

(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.

Share capital.

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

(a) five hundred thousand ordinary shares of one pound each (hereinafter referred to as A shares); and

(b) four million five hundred thousand ordinary shares of one pound each (hereinafter referred to as B shares).

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

(3) The shares in the corporation shall be paid for by the Government of the Union from moneys to be appropriated by Parliament for that purpose or by the transfer to the corporation of B shares in the South African Iron and Steel Industrial Corporation, Limited, at a price to be agreed upon between the corporation and the Minister of Finance, or partly from moneys so appropriated and partly by the transfer of such shares at a price to be so agreed upon.

(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: Provided that the total amount shall be paid not later than the thirty-first day of March, 1943.

(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 Governor-General may, as and when he thinks fit, sell or otherwise dispose of all or any of the B shares.

(7) The A shares held by the Government shall entitle the Governor-General 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.

(8) The Governor-General 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.

(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) None of the B shares in the South African Iron and Steel Industrial Corporation, Limited, that may have been transferred to the corporation under sub-section (3), shall be sold or otherwise disposed of by the corporation except in accordance with conditions determined from time to time by the Governor-General.

Limitation of liability of shareholders.

13. The liability of any holder of shares in the corporation shall be limited to the amount unpaid on the shares held by him.

Meeting of shareholders at which only one shareholder is present.

14. 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 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 of the Union is the holder of all the B shares.

Expenditure.

15. 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.

Appropriation of profits.

16. No dividend in excess of eight per cent. per annum shall be declared by the board without the approval previously given by the Governor-General.

Accounts and audit.

17. (1) The board shall cause proper books of account to be kept, and also all necessary books and records in relation thereto.

(2) The accounts 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.

Regulations.

18. 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 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) the provision of an official seal or seals and the use thereof within the Union or elsewhere;
 - (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.

Information to be furnished to the Minister and to Parliament.

19. (1) As soon as practicable after the meeting of shareholders at which the balance sheet and accounts 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) a balance sheet and profit and loss account duly certified by the auditors appointed under section *seventeen*; and
- (b) the report (if any) of the board submitted, and the address (if any) of the chairman 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.

(2) The Minister shall lay copies of all such balance sheets, accounts, reports or addresses upon the Tables of both Houses of Parliament within fourteen days after their receipt by him, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(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 information a copy of the minutes of that meeting or a copy of that decision, as the case may be.

Winding up of corporation.

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

Use of name of corporation.

21. No association or company shall carry on business under or be registered under the Companies Act, 1926, as amended from time to time, by a name identical with that of the corporation, or so nearly resembling the name 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.

Application of Companies Act.

22. (1) The Governor-General may by proclamation in the *Gazette* apply to the corporation any provision of the Companies Act, 1926 (Act No. 46 of 1926), 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 proclamation.

(2) Subject to the provisions of sub-section (1), none of the provisions of the Companies Act, 1926, or any amendment thereof, or of any other law relating to companies, shall apply to the corporation.

Short title.

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