

South Africa

## Development Bank of Southern Africa Act, 1997

Act 13 of 1997

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## Development Bank of Southern Africa Act, 1997

### Contents

1. Interpretation .....	1
2. Continued existence as juristic person of Development Bank of Southern Africa Limited .....	2
2A. Countries of operation of Bank .....	2
3. Objects of Bank .....	3
4. Powers of Bank .....	3
5. Management of affairs of Bank .....	4
6. Shareholder meetings .....	4
7. Board of Directors .....	4
8. Disqualification of directors .....	5
9. Tenure and conditions of office of directors .....	5
10. Committees of board .....	5
11. Meetings .....	5
12. Chief executive officer .....	6
13. Share capital .....	6
14. Expenditure .....	7
15. Dividends .....	7
16. Accounts and audit .....	7
17. Regulations .....	7
18. Transitional arrangements .....	8
19. Winding up of Bank .....	8
20. Use of name of Bank .....	8
21. Application to Bank of Companies Act and other legislation .....	8
22. Short title .....	8

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# Development Bank of Southern Africa Act, 1997

## Act 13 of 1997

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**Assented to on 23 April 1997**

**Commenced on 25 April 1997**

*[This is the version of this document from 20 January 2015.]*

*[Amended by [Development Bank of Southern Africa Amendment Act, 2014 \(Act 41 of 2014\)](#) on 20 January 2015]*

(English text signed by the President.)

## ACT

**To provide for the continued existence, and reconstitution of the juristic person known as the Development Bank of Southern Africa as a development finance institution with the primary purpose to promote economic development and growth, human resource development and institutional capacity building by mobilising financial and other resources from the national or international private and public sectors for sustainable development projects and programmes; and to provide for matters connected therewith.**

### PREAMBLE

The Development Bank of Southern Africa 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 [Constitution of the Republic of South Africa, 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 on the 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, while efficiency, fairness, transparency and responsibility are promoted at the same time.

*[preamble substituted by section 9 of [Act 41 of 2014](#)]*

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

### 1. Interpretation

In this Act, unless the context otherwise indicates—

“**authorised share capital**” means the maximum amount of capital which the Bank is authorised to raise in terms of section [13\(1\)](#);

*[definition of “authorised share capital” inserted by section 1(a) of [Act 41 of 2014](#)]*

“**Bank**” means the Development Bank of Southern Africa Limited, reconstituted and incorporated as provided for by section [2](#);

“**board**” means the board of directors of the Bank mentioned in section [7](#);

“**callable capital**” means the authorised share capital less the issued share capital;

*[definition of “callable capital” inserted by section 1(b) of [Act 41 of 2014](#)]*

**“Companies Act”** means the Companies Act, 2008 ([Act No. 71 of 2008](#));

*[definition of “Companies Act” inserted by section 1(b) of [Act 41 of 2014](#)]*

**“DBSA (1983)”** means the Development Bank of Southern Africa, which was established in 1983 by treaty;

**“effective date”** means the date on which this Act comes into operation;

**“institutional shareholders”** means the holders of shares in the Bank, excluding the Government of the Republic and any individual, but including national, international or multilateral institutions;

**“issued share capital”** means the portion of the authorised share capital which the Bank has issued;

*[definition of “issued share capital” inserted by section 1(c) of [Act 41 of 2014](#)]*

**“Minister”** means the Minister of Finance or the Minister who for the time being acts in his or her stead;

**“region”** means the region contemplated in section 2A;

*[definition of “region” substituted by section 1(d) of [Act 41 of 2014](#)]*

**“regulation”** means any regulation made in terms of section 17;

**“shares”** means the shares referred to in section 13;

**“this Act”** includes the regulations.

## 2. Continued existence as juristic person of Development Bank of Southern Africa Limited

(1) The institution which immediately before the effective date existed as DBSA (1983) shall continue to exist as a juristic person by the name the “Development Bank of Southern Africa Limited”, and shall have the powers, functions and duties provided for in this Act, which shall be exercised, performed and carried out by the Bank subject to the provisions of this Act.

(2) *[subsection (2) deleted by section 2 of [Act 41 of 2014](#)]*

### 2A. Countries of operation of Bank

- (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—
- (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).
- (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).
  - (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.

*[section 2A inserted by section 3 of [Act 41 of 2014](#)]*

### 3. Objects of Bank

- (1) The main objects of the Bank shall be the promotion of economic development and growth, human resources development, institutional capacity building, and the support of development projects and programmes in the region by—
  - (a) mobilising financial and other resources from the private and public sectors, national or international, on a wholesale basis, as determined in the regulations;
  - (b) appraising, planning and monitoring the implementation of development projects and programmes;
  - (c) facilitating the participation of the private sector and community organisations in development projects and programmes;
  - (d) providing technical assistance, particularly in respect of human resource development and training with regard to the identification, preparation, evaluation, financing, implementation and management of development projects and programmes;
  - (e) funding or mobilising wholesale funding, as determined in the regulations, for initiatives to minimise or mitigate the environmental impact of development projects or programmes.
- (2) Ancillary objects of the Bank shall be—
  - (a) to assist other international, national, regional and provincial initiatives in order to achieve an integrated finance system for development; and
  - (b) to assist other institutions in the national or international public and private sectors with the management of specific funds,in order that the developmental requirements of the region may be met.

### 4. Powers of Bank

For the purpose of attaining its objects, the Bank shall have the power—

- (a) to appraise, approve or mobilise wholesale funding, as determined in the regulations, for, and to monitor the implementation of, development projects and programmes;
- (b) to lend or advance money to any person or private or public body engaged in or proposing to engage in development projects and programmes in the region; to acquire an interest in it or to provide capital for it, or by underwriting or otherwise, to assist in the acquisition of capital for it;
- (c) to hold, manage, develop, let, hire, buy, subscribe to, or otherwise acquire, or to sell or otherwise dispose of, hypothecate or otherwise deal in immovable or movable property, including stocks, shares, bonds, debentures and securities of, or any other interest in, any company, and if necessary to act as trustee for debenture holders;
- (d) to make, draw, accept or endorse negotiable instruments;
- (e) to guarantee any undertaking given in relation to the financing of any person, private or public body, or the performance of any contract by any person, private or public body, or to indemnify any person, public or private body in respect of the costs attaching to legal proceedings or in respect of any loss or damage, arising from—
  - (i) the financing of such person or private or public body; or
  - (ii) the entering into of any contract by such person, private or public body;
- (f) to receive grants and donations, issue debentures or debenture stock or otherwise to raise wholesale loans, as determined in the regulations, or borrow money, provided the amount owing at any time in respect of loans raised or moneys borrowed shall not, without the approval of the

shareholders of the Bank, previously given at a meeting of those shareholders, at any time exceed the limitations set by regulation;

- (g) to act as an agent or trustee, manager or secretary of any person, national or international private or public body, and to appoint any person to act on behalf of the Bank as a director or in any other capacity in relation to such person, private or public body, irrespective of whether or not such person carries on business within the region or elsewhere;
- (h) to establish, within the region or elsewhere, any juristic person capable of exercising, performing or carrying out such powers, functions and duties as may or shall be exercised, performed or carried out by the Bank in terms of this Act, and to open offices within the region and elsewhere;
- (i) to provide technical and other assistance and to give advice, information and guidance,

and, generally, to enter into any contract or perform any act, whether within the Republic, region or elsewhere, which may promote the attainment of any of the objects of the Bank, or which is designed to directly or indirectly enhance the value of the services which the Bank can render in relation to the development of the region.

## 5. Management of affairs of Bank

- (1) Subject to the provisions of this Act—
  - (a) the shareholders shall exercise the overall authority but may delegate to the board all their powers, except the power to—
    - (i) issue or transfer shares;
    - (ii) appoint directors, as provided in section 7; and
    - (iii) approve the payment of dividends;
  - (b) the board shall control the business of the Bank and shall direct the operations of the Bank and may exercise all such powers of the Bank as are not in terms of this Act required to be exercised by the shareholders of the Bank at a meeting of shareholders; and
  - (c) the chief executive officer shall be the executive officer and legal representative of the Bank and shall be responsible for the management of the operations of the Bank.
- (2) The powers of the board may be delegated to the chief executive officer who in turn may delegate such powers to the staff, committees or other structures of the Bank.

## 6. Shareholder meetings

- (1) A shareholder shall have the right to attend a meeting of the shareholders, or to appoint a representative to attend such a meeting in the place of that shareholder.
- (2) A shareholder shall have such number of votes with regard to any matter as may be determined in the regulations.
- (3) While the Government of the Republic is the sole shareholder of shares in the Bank any resolution signed by the representative of the Government shall be deemed to be a resolution taken at a duly constituted meeting of shareholders.

## 7. Board of Directors

- (1) The Board of Directors of the Bank shall consist of not fewer than ten and not more than fifteen directors: Provided that if at any time the number of directors holding office at any time falls below ten, the remaining directors shall manage the affairs of the Bank, until the vacancy or vacancies can be filled by the appointments by the Minister or the relevant shareholders, as the case may be.

- (2) The directors of the Bank shall be appointed, in the manner determined in the regulations, by the Minister and the shareholders, as follows:
  - (a) The Minister shall be entitled to appoint the same proportion of the total number of directors as the number of shares held by the Government bears to the total number of shares issued; and
  - (b) the institutional or other shareholders shall be entitled to appoint the remaining number of directors, each in proportion to its holding in shares.
- (3) Directors shall be appointed on the grounds of their ability and experience in relation to socio-economic development, development finance, business, finance, banking and administration, including in any sphere of government.

*[subsection (3) substituted by section 4 of [Act 41 of 2014](#)]*
- (4) The chief executive officer, any executive manager or member of the staff of the Bank may be appointed as a director.
- (5) The board shall, with the consent of the shareholders, elect one of its number as the chairperson of the board. The person so elected shall act as chairperson for as long as the board determines.
- (6) No decision or act of the board, or act performed under the authority of the board, shall be invalid by reason only of the fact that a person who participated in the proceedings at the meetings in question was elected as a director by the institutional shareholders without the provisions of the regulations having been observed.

## 8. Disqualification of directors

No person shall be a director of the board if he or she—

- (a) is ineligible or disqualified to act as a director of a board of a company as defined in section 1 of the Companies Act;

*[paragraph (a) substituted by section 5 of [Act 41 of 2014](#)]*
- (b) is a member of any legislature or of an executive council in the Republic, or of a similar governmental institution in the region.

## 9. Tenure and conditions of office of directors

- (1) A director shall hold office for a period of three years, but shall be eligible for reappointment.
- (2) A director shall receive such service benefits, including the reimbursement of expenses in connection with travelling and subsistence, as may be prescribed by regulation.

## 10. Committees of board

- (1) The board may establish such committees, consisting of directors, as it deems advisable.
- (2) The board shall determine the functions of the committees and the procedure to be followed when the chairpersons of such committees are elected.
- (3) Any person with expert knowledge of a function of a committee may be co-opted by such committee.

## 11. Meetings

- (1) (a) The Minister, in the case of a shareholders' meeting, and, in the case of a board meeting, the chairperson, shall preside at the meeting in question.

- (b) In the case of a board meeting, and provided a quorum is present, the members present may elect an acting chairperson to preside at that meeting, if the chairperson is not present. The acting chairperson shall at such meeting have all the powers and carry out all the duties of the chairperson.
- (2) The Minister and the chairperson shall in the event of an equality of votes have a casting vote.
- (3) The quorum for a meeting of shareholders shall be a majority of the shareholders, and the quorum for a meeting of the board shall be five directors.
- (4) Subject to the provisions of subsection (2), the decision of—
  - (a) a majority of the shareholders shall be the decision of the shareholders; and
  - (b) the majority of the directors present at a meeting of the board shall be the decision of the board.
- (5) The meetings referred to in this section shall be held and the business thereat shall be disposed of in accordance with the provisions of the regulations.

## 12. Chief executive officer

- (1) The appointment of the chief executive officer shall be made by the shareholders, unless the authority to appoint the chief executive officer has been delegated to the board.
- (2) If for any reason the chief executive officer is unable to act as chief executive officer for a period longer than two months, the board may appoint an acting chief executive officer to act during such inability, and the person so appointed shall, while so acting, have all the powers and shall carry out all the duties of the chief executive officer.
- (3) If the chief executive officer has resigned, died or has been permanently disabled and is unable to act as such, the board shall appoint an acting chief executive officer to act as chief executive officer until the successor assumes office, and the person who has been so appointed shall, while so acting, have all the powers and shall carry out all the duties of the chief executive officer.

## 13. Share capital

- (1) Subject to subsections (2A) and (5), the authorised share capital of the Bank shall be the amount of twenty billion and two hundred million rand which shall be divided into two million and twenty thousand ordinary shares.  
*[subsection (1) substituted by section 6(a) of [Act 41 of 2014](#)]*
- (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.  
*[subsection (2) substituted by section 6(b) of [Act 41 of 2014](#)]*
- (2A) The Minister may, after consultation with the board and by notice in the *Gazette*, adjust the amount of the authorised share capital of the Bank and the number of ordinary shares.  
*[subsection (2A) inserted by section 6(b) of [Act 41 of 2014](#)]*
- (3) The shareholders shall subscribe to any portion of the balance of the authorised share capital if—
  - (a) requested to do so by the board as provided in the regulations; and
  - (b) approved at a meeting of shareholders.*[subsection (3) substituted by section 6(c) of [Act 41 of 2014](#)]*



- (4) The issued shares may be transferred by the Government of the Republic to any institutional shareholder.
- (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.

*[subsection (5) substituted by section 6(d) of [Act 41 of 2014](#)]*

- (6) An institutional shareholder shall not pledge or encumber any of the Bank's shares held by it if the aggregate of the shares so pledged or encumbered exceeds five per cent of the Bank's issued share capital.
- (7) An institutional shareholder shall not transfer or assign any of its shares in the Bank to any other person if the aggregate of the shares which are transferred to such other person exceeds five per cent of the Bank's issued share capital.

#### **14. Expenditure**

Expenditure incurred by or on behalf of the board, including any amount owing in respect of the remuneration of the directors and personnel of the Bank, shall be defrayed from the funds of the Bank.

#### **15. Dividends**

The declaration of dividends shall be authorised by the board and shall be approved by the shareholders.

#### **16. Accounts and audit**

- (1) The board shall cause proper books of account to be kept, and shall also cause to be kept all necessary books and records in relation thereto.
- (2) An annual report on the financial status and the achievement of the objects of the Bank shall be published by the board.
- (3) The books of account of the Bank shall be audited by a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 ([Act No. 80 of 1991](#)).

#### **17. Regulations**

- (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 permitted by the Act and regulations regarding—
  - (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;
  - (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;
  - (f) the annual submission of a balance sheet and accounts to a meeting of shareholders;

- (g) the appointment of officers of the Bank;
- (h) *[paragraph (h) omitted by section 7 of [Act 41 of 2014](#)]*
- (hA) the use of callable capital of the Bank to calculate its leverage ratio; and
- (i) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

*[section 17 substituted by section 7 of [Act 41 of 2014](#)]*

## 18. Transitional arrangements

Notwithstanding anything to the contrary contained in section 7—

- (a) the shareholders of the Bank shall not later than six months after the effective date hold a meeting for the purpose of appointing a new board of directors of the Bank;
- (b) unless a director is reappointed at the meeting referred to in paragraph (a), every director of DBSA (1983) shall cease to hold his or her office six months after the effective date or upon the appointment of a successor at that meeting, whichever occurs earlier,

and the provisions of section 11 shall apply *mutatis mutandis* to the convening and conduct of that meeting of shareholders and the appointment of directors at that meeting.

## 19. Winding up of Bank

The Bank shall not be wound up except in terms of an Act of Parliament.

## 20. Use of name of Bank

No person, association, corporation or other statutory body or company shall carry on business or be registered under an Act of Parliament, with a name identical to that of the Bank, or so nearly resembling the name of the Bank as to deceive.

## 21. Application to Bank of Companies Act and other legislation

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
- (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.

*[section 21 substituted by section 8 of [Act 41 of 2014](#)]*

## 22. Short title

This Act shall be called the Development Bank of Southern Africa Act, 1997.