

REPUBLIC OF SOUTH AFRICA

DRAFT – 12/12/2013

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. of)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B - 2014]

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 insert new definitions and amend a definition; to delete an obsolete provision; to insert a provision on the countries in which the Bank may operate and enable the extension of its operations to any national territory on the African continent and its oceanic islands; 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 regulation-making provision by amending the introductory provision, including a power to regulate the use of callable capital to calculate the leverage ratio of the Bank, omitting the provision determining the region in which the Bank may operate since to be replaced by a specific provision 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 other legislation; 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:

“**authorised share capital**’ means the maximum amount of capital which the Bank is authorised to raise as referred to in section 13(1);”;

(b) by the insertion after the definition of “board” of the following definitions:

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

‘**Companies Act**’ means the Companies Act, 2008 (Act No. 71 of 2008);”;

and

(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 as contemplated in section 13(2);”; and

(d) by the substitution for the definition of “region” of the following:

“**region**’ means [the national territory of the Republic of South Africa and the national territories of the countries as determined by regulation] the region as 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).

Insertion of section 2A in Act 13 of 1997

3. The following section is hereby inserted 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 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 any other country on the African continent or an oceanic island on the African continent determined by regulation and 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 determined, as contemplated in subsection (1)(c), to be a territory in which the Bank may operate.

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

(c) If considered necessary, the Minister may amend the approved annual plan.”.

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:

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

Amendment of section 13 of Act 13 of 1997

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].**”;

(c) 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.

(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.”;

(d) 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.”;

(e) by the insertion in subsection (5) before the expression “share capital” of the word “issued”.

Amendment of section 17 of Act 13 of 1997

6. Section 17 of the principal Act is hereby amended—

(a) by substitution for the words preceding paragraph (a) of the following:

“The Minister must make regulations required by this Act and may, on his or her own initiative or at the request of the shareholders or the board, make regulations permitted by this Act, and matters **[as to] regarding-**”;

(b) by the deletion of paragraph (h);

(c) by the insertion of the following paragraph after paragraph (h):

(hA) the use of callable capital of the Bank to calculate its leverage ratio;”;

(d) by substitution for paragraph (i) of the following paragraph:

“(i) any ancillary or incidental administrative or procedural matter that is necessary to give effect to this Act.”

Amendment of section 21 of Act 13 of 1997

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

“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

(c) any legislation as may be appropriate,

in so far as such provision is not inconsistent with the provisions of this Act, with such modifications as the Minister considers necessary and specifies in that notice.”.

Substitution of Preamble to Act 13 of 1997

8. The following is 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]** African **[region]** 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 DRAFT 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 which then obtained. The transformation of the constitutional and economic dispensation of South Africa by virtue of the Constitutions of 1993 and 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, 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 DRAFT BILL

- 2.1 The main objects of the draft Bill are to propose amendments to the Development Bank of Southern Africa Act, 1997 (“the Act”), to enable the extension of the operations of the Bank to any national territory 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.
- 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 THE DRAFT BILL

The draft Bill includes the following amendments:

- (a) Inserting definitions of authorised share capital, callable capital, Companies Act and issued share capital, and amending a 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 enable the extension of its operations to any national territory on the African continent and its oceanic islands and adjust the regulation-making provision and the Preamble accordingly (clauses 3, 6(b) and 8);
- (d) aligning a provision with the terminology in the Companies Act, 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 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, and other legislation (clause 7).

4. DEPARTMENTS OR BODIES CONSULTED

The Development Bank of Southern Africa was consulted.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The National Treasury and the State Law Advisers 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.