

Chapter 24:14

PREVIOUS CHAPTER**ZIMBABWE DEVELOPMENT BANK ACT**

Acts 7/1983, 38/1983, 29/1990, 12/1994.

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AN ACT to provide for the establishment, constitution, duties and powers of a Zimbabwe Development Bank to assist in and promote the economic development of Zimbabwe; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 1st May, 1984.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Zimbabwe Development Bank Act [Chapter 24:14].

2 Interpretation

In this Act—

“Bank” means the Zimbabwe Development Bank established in terms of section three;

“Board” means the board of directors referred to in section four;

“director” means a director of the Bank;

“fixed date” means the 1st May, 1984;

“institutional shareholders” means such national or international institutions or corporations as may be authorized by the Minister to be shareholders;

“Minister” means the Minister of Finance or any other Minister to whom the President may, from time to time, assign the administration of this Act.

PART II

ESTABLISHMENT AND ADMINISTRATION OF THE BANK

3 Establishment

There is hereby established the Zimbabwe Development Bank which shall be a body corporate and which shall be capable of suing and being sued and, subject to this Act, of doing or performing all such acts or things as a body corporate may by law do or perform.

4 Board of directors

(1) There shall be a board of directors of the Bank which shall, subject to such directions as to policy which may be given to it by the Minister, be responsible for the policy and administration of the affairs and business of the Bank.

(2) The Board shall consist of eleven members appointed, subject to this Act, by the Minister and the institutional shareholders in the following proportions—

(a) the Minister shall be entitled to appoint the same proportion of the total number of directors as the number of the Bank’s shares held by the State bears to the Bank’s total issued share capital; and

(b) the institutional shareholders shall be entitled to appoint the remaining directors in proportion to their holdings of the Bank’s shares.

(3) For the purposes of determining the number of directors to be appointed by the Minister and the institutional shareholders under subsection (2)—

(a) if the percentage of the Bank’s issued share capital held by the State is not a multiple of nine, it shall be rounded upwards to the next highest multiple of nine;

(b) institutional shareholders who hold less than—

(i) six per centum of the Bank’s issued shares, in the case of shareholders to whom shares were allotted on the fixed date; or

(ii) nine per centum of the Bank’s issued shares, in the case of shareholders other than those referred to in subparagraph (i);

shall not be entitled to appoint or vote in the appointment of a director:

Provided that two or more institutional shareholders may agree that their holdings of the Bank's shares shall be regarded as aggregated together for the purposes of this section.

(4) In appointing any person as a director, the Minister shall act after consultation with the President and in accordance with any directions the President may give him.

(5) The appointment of a director who—

(a) has been appointed by the Minister, may at any time be revoked by the Minister;

(b) has been appointed by the institutional shareholders, may at any time be revoked by the institutional shareholders.

(6) A director may at any time resign his office by giving not less than two months' written notice to the Board which shall immediately after receipt thereof submit a true copy of the notice to the Minister.

(7) No person shall be appointed to or continue to hold office on the Board—

(a) if he has in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside;

(b) if he has in any country been convicted of an offence involving fraud or dishonesty and has not received a free pardon.

(8) A director shall cease to hold office if he is absent from three consecutive meetings of the Board, of which he has had not less than the period of notice prescribed by regulations made in terms of section twenty-eight for each such meeting, without leave of the Board.

(9) Subject to subsection (7), a director who has resigned, retired or otherwise ceased to hold office shall be eligible for reappointment.

(10) Where the appointment of a director is revoked in terms of subsection (5) or where he resigns or ceases to hold office in terms of subsection (6) or (8)—

(a) the Minister, in the case of a director who was appointed by the Minister; or

(b) the institutional shareholder concerned, in the case of a director who was appointed by an institutional shareholder; shall appoint a director to hold office for the remainder of the first-mentioned director's terms of office.

(11) Directors shall be appointed at a meeting of shareholder of the Bank and, unless they have earlier resigned or ceased to hold office, they shall hold office for a period of three years:

Provided that, if on the expiry of his term of office a director has not been re-appointed and no other person has been appointed in his place, he shall continue in office for a period not exceeding six months pending his reappointment or the appointment of a successor.

(12) The chairman of the Board shall be appointed by the Minister from among those directors who have been appointed to the Board by the Minister.

(13) Directors shall be paid from the funds of the Bank such remuneration and allowances as the Board with the approval of the Minister may determine.

(14) The Minister shall, as soon as possible, give notice in the Gazette of the appointment or revocation or cessation of the appointment of a director, as the case may be.

5 Declaration of interest

(1) In this section—

“associate”, in relation to a director, means a person who is—

(a) related to the director within the third degree of affinity or consanguinity; or

(b) a partner, employee or employer of the director; or

(c) a debtor, mortgagor, creditor or mortgagee of, or otherwise has direct, material or commercial dealings with, the director or any body of persons, whether corporate or unincorporate, of which the director is a director or in which the director holds any office or position other than that of an auditor or in which the director holds a controlling interest.

(2) At the first meeting of the Board after a person has been appointed a director, such director shall declare to the Board the financial or other assistance, if any, being provided by the Bank to him or any of his associates.

(3) A director who is in any way, whether directly or indirectly, interested in any business or proposed business of the Bank shall at the meeting of the Board at which such business or proposed business is first taken into consideration disclose his interest.

(4) If a director becomes interested, whether directly or indirectly, in any business or proposed business of the Bank after it has been taken into consideration by the Board, he shall declare his interest to the Board at the first meeting of the Board which takes place after his interest arises.

(5) A general notice that a director is a member of any particular company or firm and is interested in all transactions by that company or firm shall not be sufficient disclosure for the purposes of this section and whenever any business or proposed business by the Bank with that company or firm is taken into consideration by the Board a declaration of interest in terms of this section shall be required.

6 Meetings of the Board

(1) The Board may meet together for the dispatch of business and may adjourn and otherwise regulate its meetings in accordance with regulations made for that purpose in terms of section twenty-eight.

(2) The quorum of the Board shall be prescribed by regulations made in terms of section twenty-eight.

(3) Any matter arising for decision at any meeting of the Board shall be decided by such majority of the members present as may be prescribed by regulations made in terms of section twenty-eight.

7 Committees

The Board may establish one or more committees comprising some or all of its members to carry out such functions as the Board may delegate to any such committee.

8 Managing director

(1) The managing director of the Bank shall be appointed by the shareholders from among the directors.

(2) The managing director shall be the chief executive officer of the Bank and shall perform such duties as may from time to time be determined by the Board with the approval of the Minister.

(3) The managing director shall be present at all Board meetings unless his presence at any meeting is excused by the chairman.

9 Staff of Bank

(1) The Board may employ on such terms and conditions as it may determine employees who are necessary for the conduct of the business of the Bank.

(2) The Board may delegate its powers referred to in subsection (1) to the managing director.

PART III
CAPITAL

10 Authorized capital

(1) Subject to subsection (2), the authorized share capital of the Bank shall be fifty million dollars divided into fifty thousand shares of one thousand dollars each.

(2) If authorized to do so by a resolution passed at a meeting of the Bank's shareholders, and with the approval of the Minister, the Board may by resolution increase the authorized share capital of the Bank.

(3) Where the Board has increased the authorized share capital of the bank in terms of subsection (2), the Minister shall cause the increase to be notified in the Gazette.

11 Issue of shares

Subject to section twelve, of the fifty thousand shares referred to in section ten—

(a) twenty thousand shares shall be issued on the fixed date;

(b) the remaining thirty thousand shares may be issued, in whole or in part, as and when the Board passes a resolution, which is approved by the Minister, that they be issued.

12 Allotment of shares

The shares of the Bank shall be allotted to the State and to institutional shareholders in a manner determined by the Minister.

13 Subscription

In respect of—

(a) the twenty thousand shares referred to in paragraph (a) of section eleven, thirty per centum of the nominal value thereof shall be called up on the fixed date, and the balance may be called up, in whole or in part, whenever the Board passes a resolution, which is approved by the Minister, that such balance be called up;

(b) the remaining thirty thousand shares referred to in paragraph (b) of section eleven, such shares may be called up, in whole or in part, whenever the Board passes a resolution, which is approved by the Minister that such shares be called up.

14 Prohibition of certain transactions re shares

(1) No institutional shareholder shall pledge or encumber in any manner whatsoever any of the Bank's shares held by him if the aggregate of the shares so pledged or encumbered exceeds five per centum of the Bank's issued share capital.

(2) Without the approval of the Minister, no institutional shareholder shall transfer or assign any of the bank's shares held by him to any other person if the aggregate of the shares transferred to that person exceed five per centum of the Bank's issued share capital.

15 Limitation of liability of shareholders

The liability of the Bank's shareholders shall be limited to the amount unpaid on the shares held by them.

PART IV

THE PURPOSES, POWERS AND FUNDS OF THE BANK

16 Purposes of Bank

The purposes of the Bank shall be

(a) to mobilize internal and external resources for economic development and to finance development projects in all sectors of the economy;

(b) to provide capital which is needed for the expansion or modernization of existing enterprises or the creation of new enterprises;

(c) to engage, alone or with other persons or institutions, in financing loans and bonds, whether medium or long term, guaranteeing loans, under-writing and other related activities.

17 Powers of Bank

- (1) For the purpose of achieving its objectives the Bank shall have power—
- (a) to lend or advance money to any person or organization proposing to establish or expand or modernize any undertaking in any sector of the economy;
 - (a1) to invest in development projects in all sectors of the economy;
 - (b) to guarantee where necessary an undertaking given in relation to the financing of development projects;
 - (c) to raise loans or borrow moneys subject to such limits as may be prescribed in shareholders regulations made in terms of section twenty-eight:

Provided that the approval of the Minister shall be required where such loans or moneys are to be guaranteed by the State; and

- (d) to seek other specialized credit facilities including Euro-dollar credits.
- (2) Subject to this Act, the Bank shall, for the better exercise of its functions, have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

18 Funds of Bank

The funds of the Bank shall consist of—

- (a) such sums of money as may be received by the Bank in terms of Part III;
- (b) such sums of money as the Bank may acquire by virtue of grants or raise by means of loans;
- (c) such sums of money as may be appropriated to the Bank by Act of Parliament;
- (d) such other sums of moneys as may accrue to the Bank in the course of its business.

19 Application of funds

The funds of the Bank shall be applied towards—

- (a) the payment of salaries, fees, remuneration, allowances and expenses due and payable to the directors and the employees of the Bank;
- (b) the repayment of sums raised by way of loan by the Bank and the payment of interest thereon;
- (c) providing finance in accordance with this Act;
- (d) the payment of rates, taxes, insurance premiums and other outgoings including the expenses of maintenance of buildings and other property whether movable or immovable which may become vested in the Bank;
- (e) the payment of such dividends as the Board may approve;
- (f) such capital expenditure as the Board may authorize;
- (g) such contributions to charitable or benevolent organizations as the Board may authorize;
- (h) all other expenses necessary for or incidental to the business of the Bank in terms of this Act.

20 Financing of projects by bank

(1) Not less than twenty-five per centum of the funds applied by the Bank towards providing finance in accordance with this Act shall be applied to financing small-scale and medium-scale enterprises.

(2) In determining whether or not any enterprise is small-scale or medium-scale for the purpose of subsection (1), the bank shall have regard to—

- (a) the general size of enterprises in the sector of the economy concerned; and
- (b) the general size of enterprises in the Zimbabwean economy as a whole; and

- (c) any directions which the Minister may give the bank in that regard.
- (3) The Bank shall finance only those projects which are economically viable, technically feasible and are likely to yield a financially acceptable return on its investment.
- (4) The Bank shall maintain a minimum holding of liquid assets as set out in subsection (6) which shall not be less than ten per centum of its liabilities to the public at the end of each calendar month.
- (5) The Bank shall maintain the minimum holding of liquid assets referred to in subsection (4) at the close of each day of the calendar month following that in which a statement is required to be submitted to the Minister in terms of subsection (4) of section twenty-nine.
- (6) For the purposes of computing the amount of the minimum holding of liquid assets referred to in subsection (4) the following shall qualify—
- (a) notes and coins in the currency of Zimbabwe;
 - (b) balances at the Reserve Bank of Zimbabwe;
 - (c) balances at any registered commercial bank and any registered accepting house in Zimbabwe;
 - (d) money at call with a registered accepting house or registered discount house;
 - (e) bills of exchange accepted and payable at any place in Zimbabwe and which have been accepted or endorsed by a registered commercial bank or accepting house;
 - (f) local registered securities which—
 - (i) are issued or guaranteed by the State or issued by a municipality; and
 - (ii) have a final maturity date of not more than six years;
 - (g) money deposited with the Treasury.

21 Procedure and requirements for financing by Bank

- (1) The terms and conditions of any loan granted and the details of any investment made by the Bank shall—
- (2) The terms and conditions of any loan granted by the Bank shall—
- (a) be contained in a written agreement or other document, as the case may be, to be signed by the beneficiary or his duly authorized representative;
 - (b) in the case of a loan, include provision—
 - (i) for repayment of principal and payment of interest, commitment fee and other charges; and
 - (ii) that the borrower shall draw the loan funds to meet payments on the relevant project only;
 - (c) include provision which will—
 - (i) enable the Bank to ensure that the proceeds of the loan or other investment are used solely for the purpose for which the loan was granted or the investment was made; and
 - (ii) require each beneficiary to maintain a proper accounting system;
 - (iii) give the Bank the right to inspect and supervise the operations relating to the project and to require each beneficiary to allow the Bank, through its agents or officers, to inspect the books and records of the beneficiary or to provide such information as the Bank may require at any time while the loan or any part thereof remains unpaid or the Bank retains its investment.
- (3) In fixing the terms and conditions of a loan or the details of an investment, the Board shall have regard, inter alia, to the financial requirements of the relevant project and to the financial position of the beneficiary.
- (4) The Board may require as a term of any loan that the borrower shall provide such

form of security as it may approve for the repayment of principal, the payment of interest, fees and charges, or the performance of other terms and conditions of the loan.

(5) The Board shall fix such rates of interest and such fees and charges as is likely to yield to the Bank a good and sound return on the amount of the loan.

22 Investment of funds

The Board may invest all or any part of the funds of the Bank not immediately required for the purposes mentioned in this Act in good and sound investment:

Provided that such funds shall be so invested that they are available within twelve months when required for the purposes mentioned in this Act.

23 Reserve funds and distribution of income

(1) The Board shall provide against any anticipated losses by establishing and maintaining a reserve fund to which shall be allocated at the end of each financial year of the Bank—

(a) not less than twenty-five per centum of the net income of the Bank for that year if the reserve fund does not exceed the paid-up share capital of the Bank;

(b) not less than twelve and a half per centum of the net income of the Bank for that year if the reserve fund exceeds the paid-up share capital of the Bank.

(2) The Board, with the approval of the Minister, shall determine annually what part of the net income of the Bank shall, after providing for the reserve fund, be allocated to surplus and what part (if any) shall be distributed to the shareholders.

(3) Any distribution to shareholders made under subsection (2) shall be in proportion to the number of shares held by each shareholder, and the payment shall be made in such manner as the Board shall determine.

PART V

ACCOUNTS AND AUDIT

24 Financial year

The Board shall determine the financial year of the Bank.

25 Accounts and audit

(1) The Board shall cause true and full accounts and records to be kept of all the transactions with which the Bank is concerned, and the books of account and records shall be kept at the principal place of business of the Bank.

(2) The accounts of the Bank for each financial year shall be audited by a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(3) The person referred to in subsection (2) shall be appointed by the Board with the approval of the Minister.

(4) For the purpose of audit, the auditor shall at all reasonable times have access to all books and records relating to the assets, liabilities, income and expenditure of the Bank.

26 Annual report

(1) The Board shall, not later than six months after the end of each financial year, submit to each shareholder a report of its operations, including the annual statement of its accounts for that year certified by the auditor.

(2) The Minister shall, not later than nine months after the end of the Bank's financial year, cause the annual statement of accounts and the report referred to in subsection (1) to be laid before Parliament, and shall cause the annual statement of accounts to be published in the Gazette.

27 Appropriation of profits

(1) The Bank may, in general meeting, declare dividends which dividends shall not exceed the amount recommended by the Board.

(2) From time to time interim dividends may be paid to the shareholders if the Board considers such dividends are justified by the profits of the Bank.

(3) No dividend shall be paid otherwise than out of profits.

(4) The Board may, before recommending any dividend, set aside out of the profits of the Bank such sums as it thinks proper as a reserve or reserves which shall at the discretion of the Board be applicable for any purposes to which the profits of the Bank may be properly applied and, pending such application, may at the discretion of the Board either be employed in the business of the Bank or be invested in such development-orientated enterprises as the Board may from time to time think fit.

PART VI

GENERAL

28 Shareholders regulations

(1) The shareholders may by resolution at a meeting of shareholders, make regulations providing for all matters which by this Act are required or permitted to be prescribed or which in their opinion are necessary or convenient to be provided for in order to carry out or to give effect to the provisions of the Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the management and operation of the Bank;

(b) the regulation of the proceedings of the Board;

(c) subject to section four, the appointment of directors by the institutional shareholders, including the calculation of their respective shareholdings for the purposes of such appointment;

(d) the appointment of alternate directors;

(e) the sanctions to be imposed on shareholders who fail to pay calls on their shares;

(f) the regulation of the proceedings of meetings of shareholders;

(g) all such other matters relating to the internal actions or proceedings of the Bank and the relations between the shareholders of the Bank, as may, in the opinion of the shareholders, be necessary or convenient for those purposes.

29 Information to be furnished to the Minister and Parliament

(1) As soon as practicable after the meeting of shareholders at which the balance sheet and accounts of the Bank are submitted has been held, the Board shall transmit to the Minister in respect of its last preceding financial year copies of—

(a) a balance sheet and profit and loss account showing separately the financial details in connection with any development undertaking established and conducted by the Bank and duly signed by the auditor of the Bank;

(b) the report, if any, of the Board submitted at the said meeting or, if no such report was submitted, a full report on the operations of the Bank, during the said financial year.

(2) The Minister shall lay copies of all such balance sheets, accounts and reports before Parliament on one of the fourteen days on which Parliament next sits after their receipt by him.

(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, the Board 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.

(4) The Board shall submit to the Minister statements pertaining to the liquidity position of the Bank as soon as possible at the end of each calendar month, but in any case within 21 days after the end of each month.

30 Application of Companies Act

(1) The President may, by statutory instrument, apply to the Bank any provision of

the Companies Act [Chapter 24:03] or any amendment thereof which is not inconsistent with this Act, with such modifications as he may think fit, and may withdraw or amend any such notice.

(2) Subject to subsection (1), the Companies Act [Chapter 24:03] or any other law relating to companies, shall not apply to the Bank.

31 Use of name by bank

(1) No association or company shall be registered under the Companies Act [Chapter 24:03] by a name, and no person shall, for the purposes of business, use any name, which includes in conjunction with the word "bank" or "banking" any of the words "National", "Zimbabwe", "Zimbabwean" or "State" unless it has permission from the Minister.

(2) If a company through inadvertence or otherwise, is registered, whether originally or by reason of a change of name, by a name which is in conflict with subsection (1), the Minister may, by notice in writing, direct the company to change its name and the company shall do so within a period of six weeks from the date of the direction or within such longer period as the Minister may allow.

32 Winding up of Bank

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

SCHEDULE (Section 17 (2))

POWERS OF BANK

1. To acquire premises necessary or convenient for the exercise of its functions and the performance of its duties and for that purpose to buy, take in exchange/hire or otherwise acquire immovable property and interests therein and rights thereover and concessions, grants, powers and privileges in respect thereof.

2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of its functions and the performance of its duties.

3. To maintain, alter or improve property acquired by it.

4. To mortgage or pledge any property or part thereof and to sell, exchange, lease, dispose of, turn to account or otherwise deal with any property or part thereof which is not required for the exercise of its functions or the performance of its duties for such consideration as it may determine.

5. To acquire, take possession of or dispose of any property in respect of which it has any interest by way of mortgage, pledge or otherwise.

6. To draw, make, accept, endorse, discount, execute and issue for the purposes of its functions or duties promissory notes, bills of exchange, bills of lading, securities and other negotiable or transferable instruments.

7. To insure against losses, damages, risks and liabilities which it may incur.

8. To make contracts and enter into suretyships or give guarantees in connection with the exercise of its functions or the performance of its duties and to modify or rescind such contracts or rescind such suretyships or guarantees.

9. With the approval of the Minister, to enter, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the exercise of its functions or the performance of its duties or any of them and to obtain from such government or authority rights, privileges and concessions which it thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.

10. To employ, upon such terms and conditions as the Board considers fit, such persons as may be necessary for conducting the affairs of the Bank and suspend or discharge any such persons.

11. To pay such remuneration and allowances and grant such leave of absence and to pay such bonuses and the like to its employees as the Board considers fit.

12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.

13. To purchase, take in exchange, hire or otherwise acquire land or dwellings for use or occupation by its employees.

14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken on lease or in exchange or otherwise acquired by the Bank.

15. To sell or let dwellings and land for residential purposes to its employees.

16. To make or guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.

17. To provide security in respect of loans such as are described in paragraph 16 by the deposit of securities, in which the Bank may invest such moneys as the Board considers necessary for the purpose.

18. To make loans to any employee of the Bank—

(a) for the purpose of purchasing vehicles, tools or other equipment to be used by him in carrying out its duties; or

(b) not exceeding three months' salary or wages payable to him, for any purpose on such security as the Board considers adequate.

19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research.

20. To do anything which by this Act is required or permitted to be done by the Bank.

21. Generally to do all such things as are calculated to facilitate or are incidental or conducive to the performance of the functions of the Bank or the exercise of its powers in terms of this Act or any other law.

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