

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

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## THE PRESIDENCY

No. 19    20 January 2015

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**Act No. 41 of 2014: Development Bank of Southern Africa Amendment Act, 2014**



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**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.

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*(English text signed by the President)*  
*(Assented to 16 January 2015)*

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# ACT

To amend the Development Bank of Southern Africa Act, 1997, so as to define certain expressions and to amend a definition; to delete an obsolete provision; to provide afresh for the regions in which the Bank may operate; to increase the authorised share capital of the Bank; to align a provision with the terminology in the Companies Act, 2008; to amend the grounds for appointment as a director on the board of the Bank; to amend the provisions regarding the issuing of certificates for issued shares; to enable the Minister to adjust 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 power of the Minister to make regulations by amending the introductory provision, empowering the Minister to regulate the use of callable capital of the Bank to calculate the leverage ratio of the Bank, omitting the provision empowering the Minister to determine the region in which the Bank may operate 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 any other appropriate legislation; and to amend the Preamble; and to provide for matters connected therewith.

**B**E 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: 5  
“**‘authorised share capital’** means the maximum amount of capital which the Bank is authorised to raise in terms of section 13(1);”;
- (b) by the insertion after the definition of “board” of the following definitions: 10  
“**‘callable capital’** means the authorised share capital less the issued share capital;  
**‘Companies Act’** means the Companies Act, 2008 (Act No. 71 of 2008);”;

- (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;” and
- (d) by the substitution for the definition of “region” of the following definition: 5  
“**‘region’** means [the national territory of the Republic of South Africa and the national territories of the countries as determined by regulation] the region 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). 10

**Insertion of section 2A in Act 13 of 1997**

3. The following section is hereby inserted in the principal Act 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 in section 4, in the region consisting of— 15
- (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). 20
- (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). 25
- (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.”.

**Amendment of section 7 of Act 13 of 1997**

4. Section 7 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 30
- “(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.”.

**Amendment of section 8 of Act 13 of 1997** 35

5. Section 8 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 40
- “(a) is ineligible or disqualified to act as a director of a board of a company [incorporated] as defined in [terms] section 1 of the Companies Act [, 1973 (Act No. 61 of 1973)];”.

**Amendment of section 13 of Act 13 of 1997**

6. Section 13 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 45
- “(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].**”;

- (b) 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. 5
- “(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.” 10
- (c) 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 15
- (b) approved at a meeting of shareholders.”; and
- (d) by the substitution for subsection (5) of the following subsection:
- “(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.” 20 25

#### **Substitution of section 17 of Act 13 of 1997**

7. The following section is hereby substituted for section 17 of the principal Act:

##### **“Regulations**

- 17. (1) The Minister must make the regulations required by the Act.** 30
- (2) The Minister may, on his or her own initiative or at the request of the shareholders or the board, make the regulations [as to] 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; 35
- (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; 40
- (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; 45
- (g) the appointment of officers of the Bank;
- [(h) the determination of the national territories which constitute the region]**
- (hA) the use of callable capital of the Bank to calculate its leverage ratio; and** 50
- (i) [such other matters as are necessary or useful to be prescribed for the achievement of the objectives of] any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.”**

**Substitution of section 21 of Act 13 of 1997**

8. 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— 5  
(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, 10  
with such modifications as the Minister may consider necessary and specify  
in that notice.” 10

**Substitution of Preamble to Act 13 of 1997**

9. The following Preamble is hereby substituted for the Preamble to the principal Act:

**“PREAMBLE**

The Development Bank of Southern Africa was established in 1983 to 15  
perform an economic development function within the constitutional  
dispensation [which] then obtained. The transformation of the constitu-  
tional and economic dispensation of South Africa by virtue of the  
Constitution of the Republic of South Africa, [1993 (Act No. 200 of 20  
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 region] African continent and its oceanic islands within an  
integrated financial development system which has as its aim the efficient 25  
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 30  
time.”.

**Short title**

10. This Act is called the Development Bank of Southern Africa Amendment Act, 2014.