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NOTICE 4712 OF 2000

REPUBLIC OF SOUTH AFRICA

INDUSTRIAL DEVELOPMENT AMENDMENT BILL

(As introduced)

(Minister of Trade and Industry

[B-2001]

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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.

BILL

To amend the Industrial Development Act, 1940, so as to adjust the objects of the Industrial Development Corporation of South Africa, Limited to enable the Corporation to assist in the implementation of its shareholders' economic and industrial policies and to expand its activities beyond the borders of the Republic of South Africa for the benefit of the Southern African region specifically and the rest of Africa generally; to provide for the sub-delegation of Board powers in facilitating day to day business of the Corporation; to repeal obsolete provisions; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 22 of 1944

1. Section **3** of the Industrial Development Act, 1940 (hereinafter referred to as the principal Act), is hereby amended -

(a) by the substitution for paragraph (b) of the following paragraph:

"(b) to facilitate, promote, guide and assist in the financing of-

(i) new industries and industrial undertakings and similar economic undertakings; and

(ii) schemes for the expansion, better organization and modernization of and the more efficient carrying out of operations in existing industries and industrial or other similar economic undertakings;

to the end that the economic requirements of the Republic maybe met and industrial development within the Republic, the Southern African Development Communities and the rest of Africa maybe planned, expedited and conducted on sound business principles".

(b) by the addition of the following paragraphs:

"(c) to foster enterpreneurship, especially in the area of small and medium enterprises and to promote the economic empowerment of the historically disadvantaged communities and persons;

(d) to commit to investment in employment-creating activities in underdeveloped areas;

(e) to leverage foreign direct investment in South Africa, the Southern African Development Community and the rest of Africa through the use of its international network and presence; and

(f) to encourage the creation of new knowledge based industries and services and the establishment and growth of the new technology-based firms;

(g) to enhance corporate governance and to achieve business excellence.

Amendment of Section 4 of Act 22 of 1940

2. Section 4 of the principal Act is hereby amended -

a) by the substitution for paragraphs (a), (b) and (f) of the following paragraphs:

"a) to promote or assist in the promotion of companies for conducting industrial operations in the Republic, the Southern African Development Communities and the rest of Africa;

b) to lend or advance money to any company or other person engaged in or proposing to establish or to expand or modernize any **[industry or industrial undertaking]** activity referred to in section 3, or, in the case of any such company, to acquire an interest in it or to provide, or by underwriting or otherwise to assist in the subscription of, capital for it,

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 by the Coloration and its wholly owned financing subsidiaries 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]** one hundred percent of the issued capital and reserves of the corporation and its wholly owned financing subsidiaries at that time,".

b) by the addition of the following paragraphs:

"(j) to implement procurement and outsourcing policies and programmes that encourage economic empowerment;

(k) to consider investment proposals in large beneficiation projects such that the viability of mid-and downstream manufacturing activities is ensured.

(l) to develop and appraise large investment projects in securing foreign partners to co-invest in such projects;

(m) to promote viable strategic investment projects in spatial development initiatives and industrial development zones as part of the governments' industrial and integrated rural development strategies; and

(n) to provide venture capital finance and services, and to assist South African exporters and importers of capital mods and services through ext nded credit facilities at favorable interest rates.

(c) by the substitution of the words following upon paragraph (i) of the following words:

"and, generally, to enter into any contract and perform any act, whether within the Republic or elsewhere, which may be necessary for or incidental or conducive to 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 or similar economic activities within the Republic, the Southern African Development Communities and the rest of Africa".

Amendment of section 5 of Act 22 of 1940

3. Section 5 of the principal Act is hereby amended -

(a) by the substitution for paragraphs (b) and (c)of the following paragraphs:

"(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,]** activities or proposed activities referred to in section 3, 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 and services thereof are carefully reviewed; and

c) that, generally, the activities of the corporation referred to in paragraph (b) of section three are directed towards guiding and assisting others in financing the establishment or development of industries or industrial or similar economic undertakings and that, so far as maybe practicable, the corporation shall not be required to provide an unduly large proportion of the capital which is necessary for such establishment or development." and

b) by the repeal of section 5 quat".

Substitution of section 8 of Act 22 of 1940

4. The following section is hereby substituted for section 8 of the principal Act: -

"8) Members of legislature **or executive council not to be directors. -** No person shall be appointed, nominated or elected or remain a director or alternate director who is an elected member of any national or provincial legislature or of an executive council in the Republic".

Amendment of section 11 of Act 22 of 1940

5. Section 11 of the principal Act is hereby amended by the substitution for subsections (1) and **(2)** of the following subsections:

"(1) The **[chairman or any other director]** chairperson shall be a non executive director and may not 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, and the managing director may in turn

delegate such powers to and authorise performance of such duties by the staff, committees or other structures of the coloration".

Amendment of section 12 of Act 22 of 1940

6. Section 12 of the principal Act is hereb y amended -

1. by the deletion of paragraph (a) of subsection (3); and

2. by the deletion of subsection (10).

Repeal of section 13 of Act 22 of 1940

7, Section 13 of the principal Act is hereby repealed.

Substitution of section 16 of Act 22 of 1940

8. The following section is hereby substituted for section" 16 of the principal Act:

" Declaration of dividends

16. Dividends mav from time to time be declared by the board with the consent of the Minister".

Amendment of section 18 of Act 22 of 1940

9. Section 18 of the principal Act is hereby amended by the deletion of paragraph (h).

Amendment of section 19 of Act 22 of 1940

10. Section 19 of the principal Act is hereby amended by the substitution for subsectio (2) of the following subsection:

"2) The Minister shall lay copies of all such balance sheets, accounts, reports or addresses **'[upon the Tables of both Houses of]** before Parliament within fourteen days after their receipt by him or her, 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".

Substitution of section 21 of Act 22 of 1940

11. The following section is hereby substituted for section21 of the principal Act: -

"21. Use of name of corporation -

No association or company shall carry on business under or be

registered under the Companies Act, [1926] 1973, as amended from time to time, by a name or shortened title identical with that of the corporation, or so nearly resembling the name or shortened title 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.

Amendment of section 22 of Act 22 of 1940

12. Section 22 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections

"(l) The Minister may by notice in the Gazette apply to the corporation any provision of the Companies Act, [1926 **(Act No.** 46 **of 1926)]** 1973 (Act No 61 of 1973), or any amendment thereof, which is not inconsistent with the provisions of this Act, with such modifications as he or she may think fit, and may withdraw or amend any such notice.

(2) Subject to the provisions of subsection (l), none of the provisions of the

Companies Act, [1926] 1973, or any amendment thereof, or of any other law relating to companies, shall apply to the corporation,

Substitution of words in Act 22 of 1940

13. The principal Act is hereby amended by the substitution for the words "he", "him" "his" and "chairman", wherever they occur, of the words "he or she", "him or her", "his or her" and "chairperson" respectively,

Short title and commencement

14. This Act shall be called the Industrial Development Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE INDUSTRIAL DEVELOPMENT AMENDMENT BILL, 2001

The need has arisen to adjust the objects of the Industrial Development Corporation of South Africa Limited (IDC) to enable the Corporation to assist in the implementation of its shareholders' economic and industrial policies and to expand its activities beyond the borders of the Republic of South Africa for the benefit of the Southern African region specifically and the rest of Africa generally. (clause 1 and 2)

The bill endeavors to focus and extend the scope of the activities of the IDC in line with the trade and industrial policy of government with special reference to the promotion of enterpreneurial activity by the IDC in the area of small and medium enterprises. (Clause l(b) and 2 (b)). It is proposed that the IDC be explicitly entrusted to promote economic empowerment of the historically disadvantaged communities and peoples. (Clause 1 (b))

The bill also provides for the sub-delegation of Board powers in facilitating day to day business of the IDC (clause 5) and for the repeal of obsolete provisions. (Clause 3 (b), 6, 7 and 12),

All discriminatory and /or gender insensitive references are redressed (Clause 13).