

NATIONAL DEVELOPMENT BANK (TRANSITION) ACT, 2014

No. 5



of 2014

ARRANGEMENT OF SECTIONS

SECTION

PART I – *Preliminary*

1. Short title and commencement
2. Interpretation

PART II – *Registration, conversion and financial interest*

3. Registration and continuation of bank
4. Conversion of financial interest
5. Employee Shares Ownership Plan
6. Tax exemptions
7. Licence

PART III – *Financial provisions*

8. Borrowing powers

PART IV – *Miscellaneous*

9. Transitional provisions
10. Reference to certain terms
11. Repeal of Cap. 74:05

An Act to provide for the registration of National Development Bank under the Companies Act; for its continued existence as if it had been incorporated under that Act and for matters incidental thereto.

Date of Assent: 23.01.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I— Preliminary

Short title and commencement

1. This Act may be cited as the National Development Bank (Transition) Act, 2014 and shall come into operation on such date as the Minister may, by Order, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

Cap. 74:05

“bank” means the National Development Bank established under the National Development Bank Act;

“Board” means the Board of the National Development Bank established under the National Development Bank Act;

Cap. 42:01

“Botswana Privatisation Asset Holding Proprietary (Limited)” means a company wholly owned by the Government of Botswana and established under the Companies Act whose objectives include to collect, receive and hold the portion of assets from privatised entities that are reserved for purposes of economic empowerment of the citizens of Botswana;

“Company” means the National Development Bank Limited as continued under section 3;

“conversion date” means the date on which the National Development Bank is registered as a company;

“Employee Shares Ownership Plan” means a plan established under section 5 for the benefit of staff of the bank who are citizens; and

“Registrar” means the Registrar of Companies appointed as such under the Companies Act.

PART II — *Registration, conversion and financial interest*

Registration and continuation of bank

3. (1) The bank shall apply to the Registrar in accordance with section 355 (4) of the Companies Act, to be registered as a public company limited by shares, and shall, upon registration, continue to exist as if it had been incorporated under that Act.

(2) For the purposes of subsection (1), the Minister shall designate the amount of share capital with which the Company shall be registered and shall divide the share capital according to the number of shares to be issued.

(3) The Minister shall sign the constitution or documents required to register the bank as a company.

(4) The Company shall use “National Development Bank Limited” as its company name and be legally designated as such for all purposes.

4. (1) As of the conversion date, the financial interest of the Government in the bank shall be converted into —

- (a) shares in the capital of the Company and loans against the Company;
- (b) shares in the capital of the Company; or
- (c) loans against the Company,

and held by the Minister, on behalf of the Republic of Botswana.

(2) As of the conversion date, the Minister may —

- (a) acquire, hold or dispose of the financial interest of the Government in the Company;
- (b) enter into any agreement or arrangement necessary or incidental to any activity referred to in paragraph (a);
- (c) where the Minister considers it appropriate, create and cause to be issued, more share capital in the Company which may consist of any class of shares as described by the Companies Act;
- (d) secure the subscription of other people to shares issued under paragraph (c);
- (e) issue or transfer such number of shares in the Company as the Minister considers appropriate, to the Botswana Privatisation Asset Holding Proprietary (Limited);
- (f) issue or transfer such number of shares in the Company as the Minister considers appropriate, to the Employee Shares Ownership Plan; and
- (g) exercise all the rights of the Government as a shareholder in the Company, and in writing, delegate to any other person, the exercise of such rights.

5. (1) The Company shall, as soon as is practicable after the conversion date, establish an Employee Shares Ownership Plan, for the staff of the bank who are citizens, on such terms as shall be determined by the Board and approved by the Minister.

(2) The Company shall reserve such percentage of its shares as the Minister may, by Order determine, for future allotment to the Employee Shares Ownership Plan.

(3) An offer of shares to the staff of the bank in terms of the Employee Shares Ownership Plan shall not, for purposes of the Companies Act, be deemed to be an offer made to the public.

6. (1) Subject to subsection (2), the Company shall not be exempt from any tax, duty, rate or levy imposed by the provisions of the Income Tax Act, Value Added Tax Act and the Customs and Excise Duty Act.

(2) Notwithstanding anything to the contrary contained in the Income Tax Act and the Transfer Duty Act, no transfer duty or any other tax shall be payable as at the conversion date in respect of —

- (a) the creation of the initial share capital under section 3 (2);
- (b) the issue of shares in the Company to the Minister;
- (c) the issue or transfer of shares or loans of the Company from the Government to any other person;

Conversion
of financial
interest

Employee
Shares
Ownership
Plan

Tax exemption
Cap. 52:01
Cap. 50:03
Cap. 50:01

Cap.53:01

- (d) the establishment of the Employee Shares Ownership Plan and the issue or transfer of shares in the Company to the Employee Shares Ownership Plan;
- (e) the transfer of assets from the Company to any other person; and
- (f) anything done in order to give effect to the conversion of the bank from a statutory corporation to a public company, or the registration of the Company's constitution.

Licence
Cap. 46:04

7. (1) The Company shall apply under the Banking Act for a licence authorising the Company to transact any banking business:

Provided that, from the conversion date, the Company shall continue to undertake the business for which the bank was doing before the conversion date, for a period of six months or until the issue of a banking licence under the Banking Act.

(2) The Company shall not be exempt from applying to any other relevant authority for a licence to engage in any activity specified in its constitution.

PART III – *Financial provisions*

Borrowing
powers

8. (1) The Company may, in order to discharge its functions and to meet its obligations, borrow money in accordance with its constitution and on such terms and in such sums as it may require.

(2) Any borrowing by the Company under subsection (1) shall be subject to the approval of the Board.

PART IV – *Miscellaneous*

Transitional
provisions

9. (1) Every contract or agreement, whether in writing or not, and every deed, bond or other instrument to which the bank was a party or which affected the bank and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Company were a party thereto or affected thereby instead of the bank.

(2) Any legal proceedings pending immediately before the date on which the Company is registered, to which the bank was a party shall be continued as if the Company had been party thereto instead of the bank.

(3) Any act lawfully performed by the bank before the conversion date shall continue to be valid and shall continue to be performed by the Company.

(4) All staff of the bank shall continue to be staff of the Company, and shall be subject to the conditions under which they were appointed as staff of the bank.

(5) Any inquiry or proceedings, whether of a disciplinary nature or otherwise, instituted or pending in respect of any staff of the bank before the conversion date shall be dealt with, inquired into and determined in accordance with the procedures in place before the conversion date concerning such inquiry or proceedings.

(6) The Employee Pension Fund shall remain in existence after the conversion date and every staff of the bank who was a member of the Fund immediately before the conversion date shall remain a member of the Fund in accordance with its trust deed and rules, and shall retain all benefits that are due to them in terms of the rules of the Fund.

(7) The Board of the bank shall, until otherwise determined by the Minister, and subject to the Memorandum and Articles of Association, or the documents detailing the constitution, as the case may be, of the Company, serve as Directors of the Company.

10. From the conversion date, any reference to “wholly-owned Government bank”, “statutory corporation” or any such similar reference in any Act shall not be deemed to be references to the Company.

Reference to
certain terms

11. The National Development Bank Act is hereby repealed on the conversion date.

Repeal of
Cap. 74:05

PASSED by the National Assembly this 12th day of December, 2013.

BARBARAN. DITHAPO,
Clerk of the National Assembly.