

DISTRIBUTED BY VERITAS

**VERITAS MAKES EVERY EFFORT TO ENSURE THE PROVISION OF RELIABLE INFORMATION,
BUT CANNOT TAKE LEGAL RESPONSIBILITY FOR INFORMATION SUPPLIED.**

Act No. 11 of 2005
Published in the Government *Gazette* on Friday 24th March, 2006
Commencement: 24th March, 2006.

ACT

To amend the Zimbabwe Development Bank Act [*Chapter 24:14*], section 10 of the Capital Gains Tax Act [*Chapter 23:01*] and the Income Tax Act [*Chapter 23:06*]; and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may be cited as the Zimbabwe Development Bank Amendment Act, 2005.

2 Amendment of section 1 of Cap. 24:14

Section 1 (“Short title”) of the Zimbabwe Development Bank Act [*Chapter 24:14*] (hereinafter called “the principal Act”) is amended by the deletion of “Zimbabwe Development Bank” and the substitution of “Infrastructure Development Bank of Zimbabwe”.

3. Amendment of section 2 of Cap. 24:14

Section 2 (“Interpretation”) of the principal Act is amended—

- (a) by the repeal of the definition of “Bank” and the substitution of—

““Bank” means the Infrastructure Development Bank of Zimbabwe referred to in section *three*;”;
- (b) by the insertion of the following definition—

““chief executive officer” means the chief executive officer of the Bank appointed in terms of section *eight*;”;
- (c) by the repeal of the definition of “fixed date”;

4 Amendment of section 3 of Cap. 24:14

Section 3 (“Establishment”) of the principal Act is amended by the deletion of “Zimbabwe Development Bank” and the substitution of “Infrastructure Development Bank of Zimbabwe”.

5 Amendment of section 4 of Cap. 24:14

Section 4 (“Board of Directors”) of the principal Act is amended—

- (a) in subsection (1) by the deletion of “as to policy which may be given to it by the Minister” and the substitution of “any policy directions that may be given to it by the Minister in terms of section *nine A*”;
- (b) in subsection (2) by the deletion of “eleven members” and the substitution of “not fewer than twelve and not more than fifteen directors, as may be determined from time to time by the shareholders, who shall be”;
- (c) by the repeal of subsections (3) and (4) and the substitution of the following subsections—

“(3) For the purposes of determining the directors to be appointed by institutional shareholders, any such shareholder who holds less than—

- (a) one twelfth of the Bank's issued share capital, where the Board consists of twelve directors; or
- (b) one-thirteenth of the Bank's issued share capital, where the Board consists of thirteen directors; or
- (c) one-fourteenth of the Bank's issued share capital, where the Board consists of fourteen directors; or
- (d) one-fifteenth of the Bank's issued share capital, where the Board consists of fifteen directors;

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 shareholdings are to be regarded as aggregated together for the purposes of this section.

(4) When appointing directors, the Minister and the institutional shareholders shall ensure that at any time a majority of the directors are non-executive directors.

(4a) The Minister shall appoint directors for their knowledge of or experience in socio-economic development, development finance, business, banking or administration or for their professional qualifications, and in making any such appointment he shall consult the President and act in accordance with any directions the President may give him.”;

(d) in subsection (7) by the repeal of paragraph (b) and the substitution of—

“(b) if under the law of any country—

- (i) he has been convicted of an offence involving fraud or dishonesty; or
- (ii) he has been convicted of any offence and sentenced to a term of imprisonment exceeding six months, imposed otherwise than as an alternative to or in default of payment of a fine, and has not received a free pardon; or
- (iii) a competent court has removed him from an office of trust on account of misconduct.”;

(e) in subsection (12) by the insertion after “Minister” where it occurs for the second time of “and who are non-executive directors”.

6 New section inserted in Cap. 24:14

The principal Act is amended by the insertion after section 4 of the following section—

"4A Responsibilities of Board

“Without derogation from subsection (1) of section *four*, the Board shall be responsible for—

- (a) formulating policies to ensure the efficient achievement of the Bank's objectives; and
- (b) supervising all the activities engaged in by the Bank; and
- (c) ensuring that the Bank has adequate control systems to monitor and manage risk; and
- (d) ensuring efficient and economic use of the Bank's resources; and
- (e) formulating and enforcing rules of corporate governance and ethical practice for observance by the Bank's directors and staff.”.

7 New sections substituted for section 7 of Cap. 24:14

Section 7 (“Committees”) of the principal Act is repealed and the following sections are substituted—

7 Committees of Board

“(1) For the better exercise of its functions, the Board may establish one or more committees in which it may vest such of its functions as it thinks fit:

Provided that the vesting of a function in a committee shall not prevent the Board from itself exercising that function, and the Board may amend or rescind any decision of the committee in the exercise of that function.

(2) Subject to section *twenty-five A*, the Board may appoint persons who are not directors to any of its committees.

(3) The procedure of each committee shall be as fixed from time to time by the Board.

(4) Subsections (7) to (9) of section *four* and section *five* shall apply, with any necessary changes, to members of committees as they apply to directors.

7A Validity of decisions and acts of Board and committees

(1) No decision made or act done by or under the authority of the Board or a committee of the Board shall be invalid solely because there were one or more vacancies on the Board or committee when the decision was taken or the act was done or authorised, as the case may be.

(2) The acts and decisions of a director or a member of a committee shall be valid despite any defect that may afterwards be discovered in his or her appointment or qualification.”.

8 New section substituted for section 8 of Cap. 24:14

Section 8 (“Managing director”) of the principal Act is repealed and the following is substituted—

8 Chief executive officer

“(1) Subject to this section, the shareholders shall appoint, on such terms and conditions as they may fix, a person to be the chief executive officer and legal representative of the Bank, and whenever the office of chief executive officer is vacant the shareholders shall without delay fill the vacancy.

(2) A person shall not be qualified to be appointed or to hold office as chief executive officer if he or she would not be qualified to be appointed or to hold office as a director.

(3) The term of office of the chief executive officer shall be five years, and on the expiry of that term he or she shall be eligible for re-appointment:

Provided that this subsection shall not be construed as preventing the retirement, resignation or dismissal of the chief executive officer in accordance with his or her conditions of service.

(4) Subject to the supervision of the Board, the chief executive officer shall be responsible for managing the Bank’s staff, activities, funds and property and for exercising any other functions that the Board may assign to him or her.

(5) Any assignment of functions in terms of subsection (4)—

- (a) may be made generally or specially and subject to such conditions, restrictions, reservations and exceptions as the Board may determine;
- (b) may be revoked by the Board at any time;
- (c) shall not preclude the Board itself from exercising the functions.

(6) The chief executive officer shall be present at all meetings of the Board unless his or her presence at any meeting is excused by the chairperson of the Board.”.

9 Amendment of section 9 of Cap. 24:14

Section 9 (“Staff of Bank”) of the principal Act is amended in subsection (2) by the deletion of “managing director” and the substitution of “chief executive officer”.

10 New section inserted in Cap. 24:14

Part II of the principal Act is amended by the insertion after section 9 of the following section—

9A Policy directions of Minister

“(1) Subject to subsection (2), the Minister may give the Board general directions regarding the policy it is to observe in the exercise of its functions, and the Board shall take all necessary steps to comply with every such direction.

(2) Before giving a direction in terms of subsection (1), the Minister shall inform the Board, in writing, of the proposed direction, and the Board shall, within thirty days or within such further period as the Minister may allow, submit to the Minister, in writing, its views on the proposal.

(3) The Board shall ensure that the terms of every direction given to it in terms of subsection (1), and any views the Board has expressed on the direction in terms of subsection (2), are set out in the Board’s annual report.”.

11 New sections substituted for sections 10 and 11 of Cap. 24:14

Sections 10 (“Authorised capital”) and 11 (“Issue of shares”) of the principal Act are repealed and the following are substituted—

10 Authorised share capital

“(1) Subject to subsection (2), the authorised share capital of the Bank shall be fifteen trillion dollars divided into fifteen million shares of one million dollars each.

(2) If authorised 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—

- (a) increase the authorised share capital of the Bank;
- (b) consolidate or divide all or any part of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock and reconvert such stock into paid-up shares of any denomination;
- (d) subdivide all or any of its shares into shares of smaller amount:

Provided that the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(3) Where the Board has taken any action referred to in subsection (2), the Minister shall cause notice of the action to be published in the *Gazette*.

11 Issue of shares

The unissued shares of the Bank may be issued whenever the Board passes a resolution, which is approved by the Minister, that they should be issued.”.

12 New section substituted for section 13 of Cap. 24:14

Section 13 of the principal Act is repealed and the following is substituted—

13 Calls on shares

“With the approval of the Minister, the Board may pass a resolution that the Bank should call up the whole or part of any amount unpaid on the Bank’s issued shares, and thereupon the Bank may make a call on the shareholders concerned in accordance with that resolution.”.

13 Amendment of section 14 of Cap. 24:14

Section 14 (“Prohibition of certain transactions *re* shares”) of the principal Act is amended by the insertion after subsection (2) of the following subsections—

“(3) No institutional shareholder shall sell or otherwise transfer any of the Bank’s shares to another person without first offering those shares for sale or transfer, on the same terms and conditions, to each of the other shareholders.

(4) Any transaction carried out in contravention of subsection (1), (2) or (3) shall be void.”.

14 New section substituted for section 16 of Cap. 24:14

Section 16 (“Purposes of Bank”) of the principal Act is repealed and the following is substituted—

16 Objectives of Bank

“The objectives of the Bank shall be—

- (a) to promote economic development and growth, and to improve the living standards of Zimbabweans, through the development of infrastructure including, but not limited to, roads, dams, water reticulation, housing, sewerage, technology, amenities and utilities;
- (b) to develop institutional capacity in undertakings and enterprises of all kinds in Zimbabwe;
- (c) to support development projects and programmes in all sectors of the Zimbabwean economy;

through all or any of the following means—

- (i) providing capital for the expansion or modernisation of existing infrastructure, undertakings and enterprises or the creation or development of new infrastructure, undertakings and enterprises;
- (ii) mobilising internal and external resources from the public and private sectors;
- (iii) facilitating the participation of the private sector and community organisations in development projects and programmes;
- (iv) appraising, planning and monitoring the implementation of development projects and programmes;
- (v) providing technical assistance with regard to the identification, preparation, evaluation, financing, implementation and management of development projects and programmes;

whether by itself or in co-operation with international, regional or national organisations or bodies.”.

15 Amendment of section 17 of Cap. 24:14

Section 17 (“Powers of Bank”) of the principal Act is amended in subsection (1)—

- (a) in paragraph (a) by the deletion of “undertaking” and the substitution of “infrastructure, undertaking or enterprise”;
- (b) by the insertion after paragraph (a1) of the following paragraph—
 - “(a2) to lend or advance money on the security of a mortgage or hypothecation to enable or facilitate the construction of housing, buildings and other infrastructure;”
- (c) in paragraph (c) by the insertion after “moneys” of “, whether in Zimbabwean or any other currency”.

16 Amendment of section 20 of Cap. 24:14

Section 20 (“Financing of projects by Bank”) of the principal Act is amended by the repeal of subsections (1) and (2).

17 Amendment of section 21 of Cap. 24:14

Section 21 (“Procedure and requirements for financing by Bank”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(1) The Board shall not provide finance for any undertaking, enterprise, project or programme unless the Board has first considered—

- (a) a written proposal or prospectus relating to the undertaking, enterprise, project or programme; and

- (b) the chief executive officer's comments on the undertaking, enterprise, project or programme and on the desirability or otherwise of the Bank providing finance for it; and
- (c) the extent and value of any security provided or offered by or on behalf of the beneficiary of the finance.”.

18 Amendment of section 23 of Cap. 24:14

Section 23 (“Reserve funds and distribution of income”) of the principal Act is amended—

- (a) by the repeal of subsections (1) and (2) and the substitution of the following subsection—
 - “(1) The Board shall determine annually what part of the net income of the Bank, after providing for any reserves, should be allocated to surplus and what part, if any, should be distributed to the shareholders.”;
- (b) in subsection (3) by the deletion of “subsection (2)” and the substitution of “subsection (1)”.

19 New sections substituted for section 25 of Cap. 24:14

Section 25 (“Accounts and audit”) of the principal Act is repealed and the following sections are substituted—

25 Accounts of Bank

“(1) The Board shall keep proper accounts and other records relating thereto giving, in accordance with sound accounting practices applicable to banking institutions, a true and fair view of the Bank's operations and financial position.

(2) The Bank's books of account and other records referred to in subsection (1) shall be kept at the head office of the Bank and shall at all times be open to inspection by any director.

25A Audit committee

- (1) The Board shall appoint an audit committee consisting of—
 - (a) a chairperson, who shall be a non-executive director; and
 - (b) at least two other persons, who need not be directors:

Provided that a majority of the members of the audit committee shall be non-executive directors.

- (2) The chief executive officer shall not be a member of the Bank's audit committee.
- (3) The functions of the Bank's audit committee shall be—
 - (a) to establish appropriate accounting procedures and accounting controls in respect of the Bank's business, and to ensure compliance with those procedures; and
 - (b) to assist the Board to evaluate the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing processes applied in the day-to-day management of the Bank's business; and
 - (c) to introduce such measures as, in the audit committee's opinion, may enhance the objectivity of financial statements and reports prepared with reference to the Bank's business.

(4) The Bank's audit committee shall meet as often as may be necessary to carry out its functions.

(5) Decisions of the Bank's audit committee shall be decided by a majority vote of the members present:

Provided that no member shall abstain from any vote to be taken.

(6) A member of the Bank's audit committee who votes against any resolution passed by a majority of its members shall without delay provide the Board with a written statement of his or her reasons for voting against the resolution.

(7) Subject to this section, the procedure to be adopted by the Bank's audit committee shall be as prescribed in regulations made in terms of section *twenty-eight* or, in relation to any matter that is not so prescribed, as may be fixed by the Board.

25B Audit of accounts

(1) 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*] and who is appointed by shareholders.

(2) Except with the Minister's approval, the Bank shall not appoint the same person or partnership as the Bank's auditor for a continuous period of more than five years in any eight-year period.

(3) The Bank's auditor shall be responsible for—

- (a) auditing the Bank's accounts and reporting on them to the Board and the Bank's audit committee; and
- (b) planning and carrying out audit procedures designed to detect irregularities and illegal acts in the conduct of the Bank's business; and
- (c) communicating to the Bank's audit committee any evidence he or she may have uncovered indicating that irregularities or illegal acts have been committed in the course of the Bank's business, whether or not they may have led to material misstatements in the Bank's accounts or records.

(4) In every report referred to in paragraph (a) of subsection (3), the auditor shall state whether the accounts of the Bank are drawn up in accordance with sound accounting practices applicable to banking institutions.

(5) The Bank's auditor shall comply with his or her obligations under subsections (3) and (4) notwithstanding any duty of confidentiality to the contrary, and he or she shall not be held liable in any proceedings arising out of his or her compliance with any such obligation unless it is proved that he or she acted in bad faith.

(6) The Bank's auditor shall—

- (a) have a right of access at all reasonable times to such of the Bank's books, accounts, vouchers and securities; and
- (b) be entitled to require such information and explanations from any director, officer, employee or agent of the Bank;

as the auditor considers are needed to perform his or her duties as an auditor.

(7) Any person who fails without just cause—

- (a) to permit an auditor the access referred to in paragraph (a) of subsection (6); or
- (b) to comply with a requirement in terms of paragraph (b) of subsection (6);

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”.

20 Amendment of section 29 of Cap. 24:14

Section 29 (“Information to be furnished to the Minister and Parliament”) of the principal Act is amended by the repeal of subsection (3).

21 Amendment of section 30 of Cap. 24:14

Section 30 (“Application of Companies Act”) of the principal Act is amended in subsection (1) by the deletion of “President” and the substitution of “Minister, after consultation with the Board.”.

22 Amendment of section 31 of Cap. 24:14

Section 31 (“Use of name by bank”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(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—

- (a) includes in conjunction with the word “bank” or “banking” any of the words “infrastructure”, “development”, “Zimbabwe” or “Zimbabwean”; or
- (b) in the opinion of the Registrar of Companies, so nearly resembles the name of the Bank as to be likely to deceive;

unless the Minister has in writing permitted the association or company to use that name.”.

23 Amendment of Schedule to Cap. 24:14

The Schedule (“Powers of Bank”) to the principal Act is amended—

- (a) by the repeal of paragraph 16 and the substitution of—
 - “16. To make or guarantee loans to its employees or their spouses in accordance with remuneration policies approved by the Board.”;
- (b) by the repeal of paragraph 18.

24 Amendment of section 10 of Cap. 23:01

Section 10 (“Exemptions from capital gains tax”) of the Capital Gains Tax Act [*Chapter 23:01*] is amended in paragraph (e) by the deletion of “Zimbabwe Development Bank” and the substitution of “Infrastructure Development Bank of Zimbabwe”.

25 Amendment of Cap. 23:06

The Income Tax Act [*Chapter 23:06*] is amended—

- (a) in the Third Schedule in paragraph 10 by the deletion from subparagraph (g) of subparagraph (1) of “Zimbabwe Development Bank” wherever it occurs and the substitution of “Infrastructure Development Bank of Zimbabwe”;
- (b) in the Ninth Schedule in subparagraph (1) of paragraph 1, in the definition of “dividend”, by the deletion from paragraph (f) of “Zimbabwe Development Bank” wherever it occurs and the substitution of “Infrastructure Development Bank of Zimbabwe”;
- (c) in the Twenty-first Schedule in subparagraph (1) of paragraph 1, in the definition of “financial institution”, by the deletion from paragraph (d) of “Zimbabwe Development Bank” wherever it occurs and the substitution of “Infrastructure Development Bank of Zimbabwe”;
- (d) in the Thirtieth Schedule in subparagraph (1) of paragraph 1, in the definition of “financial institution”, by the deletion from paragraph (e) of “Zimbabwe Development Bank” wherever it occurs and the substitution of “Infrastructure Development Bank of Zimbabwe”.

26 Transitional provisions

- (1) In this section, “Bank” has the meaning given to it in section 2 of the principal Act.
- (2) The change of the Bank’s name effected by section *four* of this Act shall not affect any right or obligation of the Bank, and—
 - (a) legal proceedings brought by or against the Bank in the name of the Zimbabwe Development Bank may be continued in the name of the Infrastructure Development Bank of Zimbabwe;
 - (b) references to the Zimbabwe Development Bank in any document shall be construed as references to the Infrastructure Development Bank of Zimbabwe.
- (3) It shall not be necessary for a Registrar of Deeds to make an endorsement in his registers, or upon any deed or document which is recorded in his registers, for the purpose of altering any reference to the Zimbabwe Development Bank to a reference to the Infrastructure Development Bank of Zimbabwe, but a Registrar of Deeds, if so requested in writing by the Bank, shall make the appropriate endorsement, free of charge, to any particular deed, document or register.

(4) Anything which, before the date of commencement of this Act, was decided or done by or on behalf of the Bank under the name of the Infrastructure Development Bank of Zimbabwe shall be valid and effective after that date as if this Act had been in operation when it was decided or done.

(5) The person who, immediately before the date of commencement of this Act, was performing the functions of chief executive officer of the Bank shall, on and after that date, be the chief executive officer of the Bank as if he had been appointed by the Bank's shareholders in terms of section 8 of the principal Act as amended by this Act, and his term of office shall be deemed to have commenced when the Minister appointed him as chief executive officer.

(6) As soon as practicable after the date of commencement of this Act, the Bank shall—

- (a) cancel its issued shares and replace them with shares of the nominal value specified in subsection (1) of section 10 of the principal Act as amended by this Act; and
- (b) issue to each of the Bank's shareholders new shares in an amount equal to the nominal value of the shareholder's previous shareholding.