

**LIMPOPO DEVELOPMENT CORPORATION ACT
NO. 5 OF 1994**

[ASSENTED TO 13 JANUARY, 1995]

[DATE OF COMMENCEMENT: 20 JANUARY, 1995]

(English text signed by the Premier)

as amended by

Limpopo Corporation Amendment Act, No. 4 of 1995

Provincial Notice No. 13 of 1996

GENERAL NOTE

In terms of s. 1 of Act No. 4 of 2005, the names "Northern Transvaal Province" and "Northern Province", wherever they occur, are substituted by the name "Limpopo".

ACT

To provide for the amalgamation and restructuring of existing development corporations and corporations; the establishment of a development corporation and other corporations in order to promote and carry out the economic development of the Province and its population in the agricultural, commercial, financial and industrial fields and mining; and to provide for matters incidental thereto.

1. Definitions.—In this Act, unless the context otherwise indicates—

"board" means the board of directors appointed under section 8;

"company" means a company registered under the Companies Act, 1973 (Act No. 16 of 1973);

"corporation" means a corporation established under section 5 (1);

"director" means a director of a board;

"development corporation" means a development corporation Limited referred to in section 2;

"Executive Council" means the Executive Council of the Province;

"financial year" means the period commencing on the first day of April in any year to the thirty-first day of March in the next ensuing year, both days inclusive;

"Member of the Executive Council" means the member of the Executive Council who is responsible for Economic Affairs, Commerce and Industry;

"minerals" include metals, precious stones, sand, clay, stone and gravel;

"officer" means a full-time employee of a development corporation Limited or any corporation;

"prescribed" means prescribed by regulation;

"Province" means the province of Limpopo or any part thereof; and

"this act" also means a regulation made under this Act.

2. Establishment of development corporation.—(1) The Member of the Executive Council shall by notice in the *Provincial Gazette* establish a development corporation under the name and with its head office as specified in such notice.

(2) The Registrar of Companies shall enter the name of such development corporation, in his or her registers.

(3) The development corporation established under subsection (1) shall be a juristic person with limited liability and with perpetual succession and shall be capable of suing and being sued in its own name and of performing all acts necessary for or incidental to the attainment of its objectives and the exercising of its powers.

3. Objectives of development corporation.—(1) Subject to the provisions of subsection (2) the objectives of the development corporation shall be, in consultation with the Executive Council, to encourage, plan, finance, co-ordinate, promote and carry out the development of the Province and its population, either directly or indirectly, in the fields of agriculture, commerce, industry, mining, training, tourism, public transport and other business undertakings, as well as in the fields of housing, economic and community development.

(2) A development corporation shall not in itself become an unfair competitor with the people it assists but it shall meet the real needs of the people of the Province.

4. Powers of development corporation.—(1) For the purpose of attaining its objectives, the development corporation shall in consultation with the Executive Council have the power—

- (a) to plan, establish, finance, co-ordinate and carry on industrial, commercial, financial, mining, agriculture, tourism, housing, public transport and other business undertakings or to acquire such undertakings and to sell or otherwise dispose of such undertakings or portion thereof or interest therein;
- (b) to initiate, plan, finance, co-ordinate, promote or carry out or to assist in the planning, financing, co-ordination, promotion or carrying out of projects which are intended to benefit and develop the Province and persons in such Province economically or which relate to the development or utilization of natural or other resource, which, in addition to the ordinary meaning thereof, shall include labour, land, minerals, water, wood, agriculture, fishing and aquatic products, housing, methods of transport and communication and methods for the development of electrical power;
- (c) to lend money and, on such conditions as the Member of the Executive Council may determine in consultation with the Member of the Executive Council who is responsible for Finance and Expenditure, to raise or borrow money;
- (d) to control, carry out, guarantee, underwrite, finance or bring about the issue of any loan or of any shares, stock or debentures, or to advance money for that purpose;
- (e) to provide capital or other means, and to furnish technical and other assistance and expert and specialised advice, information and guidance;
- (f) to apply its funds or moneys to the establishment of a reserve fund, or to invest any funds or moneys not immediately required for its affairs with any financial institution registered under the Banking Act, 1990 (Act No. 94 of 1990), approved by the Member of the Executive Council in consultation with the Member of the Executive Council who is responsible for Finance and Expenditure;

- (g) for the performance of its activities to purchase, hire or otherwise acquire land or buildings, to erect buildings on its land, to sell, let or otherwise dispose of or mortgage such land or buildings;
- (h) to accept donations and to receive any moneys offered to it;
- (i) to act as a broker;
- (j) to take control of and to operate on existing bank accounts, to open new accounts with any financial institution, to operate on such accounts and to transfer or close such accounts;
- (k) to pay all expenses in connection with its establishment and administration;
- (l) to plan, encourage, co-ordinate, undertake or finance the training of persons as employees, officers, managers or directors in the fields of industry, commerce, finance, mining and any other business undertakings;
- (m) to guarantee the contracts and obligations of any person or to become surety for their due fulfilment, and to enter into surety bonds or deeds of security;
- (n) to issue, negotiate, accept, endorse or discount debentures, bills of exchange and other negotiable instruments;
- (o) to purchase, hire, develop or hold or to subscribe to or otherwise acquire or take over moveable property of any kind, including any shares, stocks, debentures or securities or any interest in any business of or a mortgage over any property, and to let, sell or otherwise alienate it or pledge it or deal otherwise therewith;
- (p) by legal process to cause any company or juristic person in which it has any share or interest, to be liquidated or placed under judicial management, and to petition a competent court to sequestrate the estate of any of its debtors;
- (q) to act, where necessary, to protect its investments, or otherwise to act as director, manager, trustee, curator, executor or administrator of any business, estate, trust, company or other juristic person or persons or to designate a person or persons to act for any such purpose on its behalf;
- (r) to lend money with or without security to persons and in connection with the lending of money to take such security as it may deem fit, including special mortgage bonds over immovable property, notarial bonds over movable property, pledges of movable property, cessions of rights and in general any other form of cover or security;
- (s) to take deposits for investment and to hold such deposits on such conditions as may be agreed upon, and to arrange and to decide upon the investment and application thereof;
- (t) to act as agent or representative in connection with any matter of whatsoever nature or on behalf of a person in connection with all or any of its objectives or itself to appoint agents or representatives in connection with any of its objectives;

- (u) with the approval of the Member of the Executive Council and subject to such conditions as may be determined by him or her, to transfer any kind of movable or immovable property held by the development corporation or any interest in any such property to any corporation;
- (v) to exercise any other power which the Executive Council may consider necessary for the attainment of its objectives and which the Member of the Executive Council may confer upon it by proclamation in the *Provincial Gazette*;

and may, generally, do anything that is necessary for or conducive to the attainment of its objectives and the exercise of its powers, whether or not it relates to any matter expressly mentioned in this section.

(2) In exercising its powers, the development corporation shall follow any directives prescribed by the Member of the Executive Council in respect of priorities determined by the Executive Council.

5. Establishment, nature and registration of corporations.—(1) The Member of the Executive Council may in consultation with the Executive Council, by notice in the *Provincial Gazette* and from a date mentioned therein, establish one or more corporations in respect of—

- (a) any agricultural, financial, commercial, industrial, mining, housing, public transport, tourism or other business undertaking in the Province; or
- (b) any project mentioned in section 4 (1) (b).

(2) A corporation shall be known under the name and have its head office at the place mentioned in the notice by which it is established and shall be a juristic person with limited liability and perpetual succession and capable of suing and being sued in its own name and of performing all acts which are necessary for or incidental to the attainment of its objectives and the exercise of its powers.

(3) On the date fixed in terms of subsection (1), the Registrar of Companies shall enter the name of such corporation in his or her registers.

6. Obligations and powers of corporation.—(1) The objectives of any corporation shall be—

- (a) if it is established under section 5 (1) (a) to establish, plan, finance, co-ordinate, promote and carry on the undertaking concerned; and
- (b) if it is established under section 5 (1) (b), to inaugurate, plan, finance, co-ordinate, promote and carry out the project concerned.

(2) For the purpose of attaining its objectives, any corporation may exercise any of the powers and provisions referred to in this Act as the Member of the Executive Council may, in consultation with the member of the Executive Council under whose portfolio the activity for which such corporation was established, falls, from time to time, assign to him or her by notice in the *Provincial Gazette*, and shall have the power to pay all the expenses incurred in connection with its establishment.

7. Change of name and dissolution of the development corporation and corporations.—(1) The member of the Executive Council may, in consultation with the Executive Council, by notice in the *Provincial Gazette* from a date fixed in such notice—

- (a) in consultation with the development corporation or any corporation change the name under which the development corporation or such corporation is known;
- (b) in consultation with the development corporation or any corporation, dissolve the development corporation or such corporation,

and may regulate matters relating to the assets, liabilities, rights and obligations of such corporation or development corporation so dissolved.

(2) On the date so fixed, the Registrar of Companies shall enter the change of name or dissolution, as the case may be, in his or her registers.

8. Board of directors.—(1) Subject to the provisions of this Act, the affairs of the development corporation and of any corporation shall be managed and controlled, in each case, by a board of directors.

(2) The procedure for the appointment of persons as directors and the qualification of such persons to be appointed, in terms of subsection (1), shall be as prescribed by the Member of the Executive Council in consultation with the Executive Council.

(3) The Member of the Executive Council shall in consultation with the Executive Council—

- (a) determine the number of directors of the development corporation or any corporation;
- (b) designate a non-executive director as the chairperson of the board concerned; and
- (c) designate a non-executive director as vice-chairperson of the board concerned.

9. Disqualification of persons being director.—(1) A person shall be disqualified to be a director if such person—

- (a) is not a citizen of the Republic;
- (b) is a member or becomes a member of Parliament, any provincial legislature or is an officer of a local government or the civil service;
- (c) is an unrehabilitated insolvent;
- (d) is declared and certified to be mentally disordered under any Act;
- (e) is convicted of an offence of which dishonesty is an element; and sentenced to imprisonment of more than 12 months without the option of a fine;
- (f) resigns his or her office as director by letter of resignation under his or her hand, addressed and delivered to the Member of the Executive Council;
- (g) is dismissed from his or her office in terms of subsection (2); or
- (h) fails to comply with the provisions of section 13 (1).

(2) A director may be dismissed from his or her office at any time by the Member of the Executive Council in consultation with the Executive Council if he or she is of the opinion that sound reasons exist therefor and after such director has been given a fair hearing.

(3) A casual vacancy in a board arising from the death or vacation of office by a director, excluding a vacancy of managing director, shall be filled for the unexpired portion of the term of office of the director who is deceased or vacated his or her office, as the case may be, by a person appointed by the Member of the Executive Council in consultation with the board.

10. Terms and conditions of office of director.—(1) The term of office of a director of the development corporation and of any corporation, and of the chairperson and vice-chairperson of a board shall be 5 years.

(2) A director holds office on such conditions as to remuneration as the Executive Council may determine and on such other conditions as may be prescribed.

(3) If a director performs work other than in his or her capacity as director of the development corporation or any corporation, on behalf thereof, or holds a post in the employment thereof, he or she may, in addition to his or her remuneration as director, be paid the remuneration determined by the board or refunded his or her expenses.

11. Appointment of managing director.—(1) The Member of the Executive Council may, in consultation and on recommendation of the board, appoint or dismiss any person as managing director of the development corporation or any corporation subject to any conditions of service determined in terms of this Act.

(2) The managing director shall have the powers and discharge the duties assigned to him or her by the board concerned.

(3) If, for any reason, the managing director of the development corporation or any corporation is incapable to act as such during any period, the board concerned may, after consultation with the Member of the Executive Council, appoint any officer of the development corporation or such corporation to act as managing director for such period.

(4) While the officer so appointed, so acts, he or she shall have the powers and discharge the duties of the managing director.

12. Liability of directors for loss or damage.—No director shall be personally liable for any loss or damage which may occur in connection with the performance of his or her duties, unless the loss or damage was due to his or her misconduct, dishonesty, gross negligence or failure to comply with a provision of this Act.

13. Duty of director to disclose interest in certain contracts.—(1) A director of the development corporation who, in any manner, either directly or indirectly, has any material interest in any contract which was entered into or is to be entered into by the development corporation, or who obtains any material interest in such contract after it has been concluded, shall disclose his or her interest and full particulars thereof at the meeting of the board at which the conclusion of the contract is being considered or the first meeting of the board held thereafter at which it is possible for him or her to do so, and if such contract is discussed by the board at a meeting, such director shall retire from such meeting during the discussion and shall not take part in any vote in connection therewith.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to a director of any corporation who has or obtains a material interest in a contract concluded or to be concluded by such corporation.

(3) A declaration by which a director discloses an interest referred to in subsection (1), shall be recorded in the minutes of the meeting of the board at which such declaration is made.

14. Exercise of the powers by board and submission of matters by board to the Member of the Executive Council.—(1) The Member of the Executive Council may issue directions in regard to the exercise of the powers of the development corporation as set out in section 4, and, in consultation with the Member of the Executive Council under whose portfolio the activity for which any corporation has been established, falls, in regard to the exercise of the powers of such corporation, as set out in section 6 (2).

(2) The Member of the Executive Council may require the board concerned to submit to him or her any matter with regard to the powers of the development corporation or any corporation for his or her decision or such board may of its own accord, submit any matter to such member for his or her decision.

(3) In regard to any matter submitted to the Member of the Executive Council in terms of subsection (2)—

- (a) the Member of the Executive Council shall give his or her decision after considering the submission and after consultation with the board concerned; and
- (b) the Member of the Executive Council may lay down the conditions, either in general or in particular, which he or she deems fit,

and such decision given or condition laid down shall for all purposes be deemed to be a decision of or condition laid down by the development corporation or any corporation concerned, and no such decision or condition may be repealed or amended by the board concerned without the consent of the Member of the Executive Council.

15. Meetings of board.—(1) The first meeting of a board shall be held at the time and place determined by the Member of the Executive Council and subsequent meetings of such a board shall be held at the time and place determined by the board: Provided that a special meeting shall be called by the chairperson—

- (a) at his or her own initiative; or
- (b) at request of at least one quarter of the directors; or
- (c) on instruction of the Member of the Executive Council,

and after reasonable notice has been given of such meeting.

(2) The chairperson of a board presides at meetings thereof, and if the chairperson or vice-chairperson is absent from a meeting or for some reason incapable of presiding thereat, the directors present shall elect a chairperson from their ranks to act as chairperson at that meeting, and while he or she so acts, he or she shall have the powers and duties of the chairperson of the board.

(3) A quorum for a meeting of the board shall be half plus one of the total members of such board.

(4) A decision of a majority of the directors present at a meeting of the board, shall be the decision of such board: Provided that, in the case of an equality of votes, the chairperson of the board shall have a casting vote in addition to his or her deliberative vote.

(5) A written decision signed by the number of directors necessary to form a quorum in terms of subsection (3), has the same validity and legal force as a decision taken at a meeting which was properly called and constituted.

(6) No decision of a board or an act on the authority of the board, shall be invalid merely due to a vacancy in such board or because any person who is not entitled to take a seat as director, took a seat as a director when the decision was taken or the act was authorised, if such decision was taken or the act was authorised by the required majority of the directors who are then present and who were entitled to take seats as directors.

(7) A board causes a record to be kept of the proceedings of any meeting thereof and the Member of the Executive Council may, at any time, require that such record be submitted to him or her for perusal.

(8) A board may make rules in regard to the holding of and procedure at meetings thereof.

16. Delegation of powers of the board.—A board shall have the authority to delegate any of its powers to—

- (a) a committee of directors;
- (b) the chairperson;
- (c) a committee of directors and officers; or
- (d) the managing director.

17. Advisory Council.—(1) The Member of the Executive Council may, on request of the board of the development corporation or any corporation, appoint a advisory council for the development corporation or any corporation.

(2) Subject to subsection (3) the objectives, powers, conditions of service and functions of a advisory council, appointed in terms of subsection (1), shall be as prescribed by the Member of the Executive Council in consultation with the board.

(3) The advisory council appointed in terms of subsection (1) shall not have the power to represent the development corporation or any corporation in any respect whatsoever.

18. Share capital, shares and shareholders.—(1) Subject to the provisions of this section—

- (a) the share capital of the development corporation shall be the issued share capital thereof at the date upon which such development corporation is established;
- (b) the share capital of any corporation shall consist of the amount of money which the Member of the Executive Council in consultation with the Member of the Executive Council who is responsible for Finance and Expenditure, specifies in the notice referred to in section 5 (1).

(2) The share capital of the development corporation or any corporation—

- (a) shall be divided into ordinary shares of one rand each; and

(b)

may from time to time be increased or decreased by the Member of the Executive Council in consultation with the Member of the Executive Council who is responsible for Finance and Expenditure, after consultation with or at the request of the board concerned.

(3) Only the Provincial Government of the Province shall be capable of becoming a shareholder in the development corporation and only the Provincial Government of the Province and the development corporation shall be capable of becoming shareholders in any corporation.

(4) Shares in the development corporation or in any corporation shall be paid for from monies appropriated for that purpose by the Provincial Government and payment of such shares shall be effected at the times, in the manner and in the amounts as may be agreed upon between the Member of the Executive Council and the shareholders concerned and approved by the Executive Council.

(5) The liability of a shareholder in the development corporation or any corporation shall in any event be limited to the amount which remains unpaid on the shares held by such shareholder.

(6) All shares vested in a former self-governing territory or an independent state in any development corporation or any corporation under any Act repealed by this Act shall be deemed to be vested in the Provincial Government of the Province on the date of commencement of this Act.

19. Expenditure.—The expenditure incurred by or on behalf of the development corporation or any corporation, including the remuneration of its directors, shall be defrayed from the funds of the development corporation or any corporation, as the case may be.

20. Appropriation of income and property of development corporation and corporations, and dividends.—Save as explicitly otherwise provided for in this Act, all income and property and all profits of the development corporation or any corporation, shall be applied exclusively to the promotion and attainment of its objectives and no dividend shall be paid to any shareholder.

21. Appointment of tender committee.—(1) The board shall appoint a tender committee to procure supplies and services for the development corporation or any corporation (including the rent thereof) and to alienate movable property thereof and to lease immovable property thereof.

(2) The board shall determine the composition of the tender committee to be appointed in terms of subsection (1).

(3) No agreement for the procurement or alienation of supplies or services or property referred to in subsection (1) to the value of such an amount as may be determined from time to time by the board, shall be concluded without the approval of the tender committee first had and obtained.

22. Bookkeeping and audit.—(1) The Board shall in terms of the general accepted accounting principals and procedures and in accordance with the provisions of the Companies Act, 1973 (Act No. 16 of 1973), cause proper books and records in relation thereto, to be kept by the development corporation and any corporation.

(2) The accounts of the development corporation and any corporation shall be audited by a person who is a registered accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), as recommended by the board and approved by the Member of the Executive Council.

(3) The board shall appoint an audit committee for the development corporation and any corporation and the duties, powers and functions of such audit committee shall be as determined from time to time by the board.

23. Annual Report.—(1) Within six months after the end of a financial year, the board concerned submits to the Member of the Executive Council—

- (a) the balance sheet and a statement of income and expenditure which reflects a true and correct view of the state of affairs of the development corporation or any corporation, as the case may be, as at the end of the last preceding financial year;
- (b) a report signed by the auditor, stating that to the best of his or her knowledge and belief and on the information supplied to him or her, such balance sheet and statement of income and expenditure reflect a true statement of the assets and liabilities of the development corporation or any corporation, as the case may be, as at the end of the last preceding financial year, and of the income and expenditure for that period: Provided that, in the event of the auditor being unable to make such a report, or to make it without qualification, he or she shall set out in such report either the facts or circumstances which prevents him or her from making such a report, or the qualification itself; and
- (c) a report of the board concerning the operation of the development corporation or any corporation including the key performance areas and how the objectives of the development corporation or any corporation was attained, as the case may be, during the last preceding financial year.

(2) The Member of the Executive Council shall cause copies of the balance sheet, statement of income and expenditure and reports submitted to him or her in terms of subsection (1) to be tabled as soon as may be practicable in the Provincial Legislature.

24. Guarantees in connection with certain loans.—The Member of the Executive Council may, on such conditions as he or she may determine in consultation with the Member of the Executive Council who is responsible for Finance and Expenditure, guarantee the repayment of the capital sum of, and the repayment of interest on the costs incurred in connection with a loan taken up or to be taken up by the development corporation or any corporation.

25. Regulations.—(1) The Member of the Executive Council may make regulations pertaining to—

- (a) the conditions of service and the powers and duties of the chairperson and directors, and any benefits and fringe benefits;
- (b) the employment, remuneration, housing benefits, suspension, discharge and any fringe benefits pertaining to officers and employees;
- (c) the keeping of registers and records by the board;
- (d) the official seal of a board and the use thereof;
- (e) the preparation and submission of the balance sheet, statements and reports referred to in section 23 (1);

- (f) the service of notices;
- (g) the procedure relating to the submission of matters to him in terms of section 14 (2);
- (h) the procedure with regard to the invitation and allotment of tenders; and
- (i) such other matters as are necessary or useful to be prescribed for the attainment of the objectives of this Act, the generality of this provision not being limited by the provisions of the preceding paragraphs.

(2) Different regulations may be made for different corporations.

(3) Any regulations made under any Law repealed by this Act which are applicable to the development corporation or any corporation shall continue to apply until the Member of the Executive Council amends it or makes other regulations.

26. Repeal of Laws and savings.—(1) Subject to the provisions of this Act, the laws specified in the Schedule hereto are hereby repealed to the extent set out in the third column thereof.

(2) Any assets, liabilities and obligations of any development corporation or any corporation established under any law repealed by this Act shall, from the date on which the development corporation or any corporation is established under this Act, devolve upon such development corporation or corporation.

(3) Anybody employed by a development corporation or any corporation established under any law repealed by this Act shall, from the date of the establishment of the development corporation or any corporation in terms of this Act, be deemed to be employed by such development corporation or corporation.

(4) Anything done by or in respect of any development corporation or any corporation under any law repealed by this Act, shall be deemed to have been done under this Act by the development corporation or any corporation established under this Act.

(5) Any development corporation or corporation established under any Law repealed by this Act shall continue to exist with all its powers, functions and duties assigned to it in terms of such repealed Law until a development corporation or corporations are established in terms of sections 2 and 5 respectively under this Act.

[Sub-s. (5) inserted by s. 1 of Act No. 4 of 1995.]

27. Short title and commencement.—This Act shall be called the Limpopo Corporation Act, 1994, and shall be deemed to have come into operation on 20 January, 1995.

[S. 27 substituted by s. 2 of Act No. 4 of 1995.]

SCHEDULE

ACTS REPEALED [Section 26 (1)]

<i>No. and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 46 of 1968	Promotion of the Economic Development of National States Act, 1968	The whole, excluding sections 20 and 29.
Act No. 4 of 1976	Black Laws Amendment Act, 1976	Section 13.
Act No. 80 of	Promotion of the Economic Development of	Section 1, 2, 3, 10, 11 and

1977	National States Amendment Act, 1977	12.
Act No. 17 of 1981	Corporation Act, 1981 (Venda)	The whole.
Act No. 5 of 1984	Corporations Amendment Act, 1984 (Venda)	The whole.
Act No. 16 of 1984	Lebowa Corporation Act, 1984	The whole.
Act No. 83 of 1984	Laws on Corporation and Development Amendment Act, 1984	Sections 5, 6, 7, 8, 9, 10 and 11.
Act No. 10 of 1985	Gazankulu Corporation Act, 1985	The whole.
Act No. 105 of 1986	Laws on Development Aid Second Amendment Act, 1986	Section 1.
Act No. 53 of 1988	Development Aid Laws Amendment Act, 1988	Sections 4 and 5.