

**EASTERN CAPE DEVELOPMENT CORPORATION ACT
NO. 2 OF 1997**

[ASSENTED TO 23 APRIL, 1997]

[DATE OF COMMENCEMENT: 2 MAY, 1997]

(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Provincial Notice No. 117 of 2000

ACT

To establish a development corporation for the Province of the Eastern Cape, to prescribe the objects and powers of the corporation; to make provision for its financing, control and management; and to provide for matters incidental thereto.

ARRANGEMENT OF SECTIONS

1.	Definitions
2.	Establishment of the Eastern Cape Development Corporation
3.	Objects of the corporation
4.	Powers of the corporation
5.	Policy of the corporation
6.	Take-over of certain interests
7.	Board of directors
8.	Alternate directors
9.	Disqualification as director or alternate director
10.	Impersonation of a director
11.	Tenure of directors
12.	Conditions of office of directors
13.	Meetings of the board
14.	Chief executive officer
15.	Share capital
16.	Limitation of liability of shareholder
17.	Expenditure
18.	Appropriation of profits
19.	Books of account and audits
20.	Annual financial statements
21.	Directors' report
22.	Direct or indirect benefits to directors and officers
23.	Articles of association
24.	Liquidation
25.	Registration and use of name
26.	Application of the Companies Act
27.	Transitional provisions
28.	Regulations and rules
29.	Short title
	Schedule

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

“**alternate director**” means an alternate director of the board referred to in section 8;

“**articles**” means the articles of association of the corporation referred to in section 23;

“**Auditor-General**” means the person appointed by the President in terms of section 193 (4) of the Constitution;

“board” means the board of directors of the development corporation constituted in terms of section 7;

“capital expenditure” means any payment for the procurement of new or existing tangible or intangible assets with a value higher than a prescribed value and with a normal life expectancy of more than one year, and includes —

- (a) payment for the acquisition of goods and services for the purpose of improving, prolonging the expected working life of, and rebuilding or reconstructing an existing fixed asset;
- (b) a capital transfer to another person or body;
- (c) the granting and payment of a money loan of which the proceeds will be used by the recipient of such a loan for capital expenditure;
- (d) any other expenditure which is from time to time classified by regulation as a capital expenditure;
- (e) the repayment of an outstanding loan which is due for redemption or conversion, provided that the proceeds of such conversion shall be used for the financing of expenditures contemplated in subparagraphs (a), (b), (c) and (d),

but includes a payment in connection with the normal maintenance of a capital asset intended to keep such asset in its original state of repair;

“Close Corporations Act” means the Close Corporations Act, 1984 (Act No. 69 of 1984);

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“Corporations Transitional Provisions Act” means the Corporations Transitional Provisions Act, 1995 (Eastern Cape) (Act No. 12 of 1995);

“current expenditure” means any payment which is not a capital expenditure;

“director” means a director of the board appointed in terms of section 7;

“Executive Council” means the Executive Council of the Province constituted in terms of section 125 of the Constitution;

“family member” means—

- (a) a husband or wife, any partner in a customary union according to indigenous law or any partner in a relationship where the parties live together in a manner resembling a marital partnership or a customary union; and
- (b) any person related to either one or both persons referred to in paragraph (a) within the second degree through a marriage, a customary union or a relationship referred to in paragraph (a) or the third degree of consanguinity;

“financial year” means the period from the first day of April in any year to the thirty-first day of March in the following year, both days inclusive;

“juristic person” means a company, close corporation or any other body with legal personality;

“Member” means the member of the Executive Council of the Province responsible for a particular department;

“Premier” means the Premier of the Province elected in terms of section 128 of the Constitution;

“prescribed” means prescribed by regulation under this Act;

“private shareholder” means a shareholder other than the Government of the Province;

“Province” means the Province of the Eastern Cape referred to in section 103 of the Constitution and **“Provincial”** shall have a corresponding meaning;

“Provincial Gazette” means the *Provincial Gazette* of the Province;

“Reporting by Public Entities Act” means the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992);

“responsible member” means the Member of the Executive Council responsible for Economic Affairs in the Province;

“the corporation” means the corporation established by section 2;

“this Act” includes any regulations made hereunder;

“undertaking” means any undertaking or venture or initiative undertaken by any person in connection with or in relation to or by means of any one or more of the fields of activity contemplated in section 3 and any other undertaking or venture or initiative whatsoever approved by the responsible Member.

2. Establishment of the Eastern Cape Development Corporation.—There is hereby established a juristic person to be called the Eastern Cape Development Corporation, which shall be capable of suing and being sued in its own name.

3. Objects of the corporation.—The objects of the corporation shall be to plan, finance, co-ordinate, market, promote and implement the development of the Province and all its people in the fields of industry, commerce, agriculture, transport and finance.

4. Powers of the corporation.—(1) For the attainment of its objects, the corporation shall, subject to the provisions of this Act, have power to—

- (a) establish, plan, finance, co-ordinate, promote and carry on any undertaking in any field of activity referred to in section 3, or to acquire any such undertaking or to sell or otherwise dispose of such undertaking: Provided that, subject to the provisions of paragraph (b), the corporation shall not form, acquire, sell or otherwise dispose of any undertaking registered in terms of the Companies Act or incorporated in terms of the Close Corporations Act without the prior written approval of the responsible Member;
- (b) purchase or otherwise acquire any—
 - (i) development corporation contemplated in the Corporations Transitional Provisions Act;
 - (ii) other existing corporations; and
 - (iii) parastatal organisations and affiliates, subsidiary companies and agencies of such development corporations and parastatal organisations which were established under the authority of such entities,

including the businesses or any assets and liabilities of such corporations, organisations, affiliates, subsidiary companies or agencies;

[Date of commencement of para. (b): 8 December, 2000.]

- (c) assist in the establishment or extension of any undertaking in the Province, or to effect the transfer to the Province of any undertaking situated outside the Province;
- (d) inaugurate, plan, finance, co-ordinate, market, promote or carry out, or assist in the inauguration, planning, financing, co-ordination, marketing, promotion or carrying out of projects which are intended to benefit and develop the Province and all its people or which relate to the exploitation, development or utilisation of natural resources, including human resources and communication resources;
- (e) lend money on such security and under such conditions 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;
- (f) by the issue of debentures or debenture stock or otherwise, raise loans or borrow money: Provided that the amount owing at any time in respect of loans raised or money borrowed shall not exceed one half of the issued capital of the corporation at that time without the prior approval of the shareholders at a meeting of shareholders and the prior written approval of the Executive Council;
- (g) control, carry out, guarantee, underwrite, finance or bring about the issue of any loan or of any shares, stock or debentures, or to advance any money for that purpose;
- (h) provide capital or other resources, and to furnish technical and other assistance and expert and specialised advice, information and guidance;
- (i) apply the funds or moneys of the corporation to the establishment of a reserve fund, or to invest any funds or money not immediately required for its affairs with any deposit-taking institution approved by the Auditor-General;
- (j) accept donations, subject to the prior written approval of the responsible Member;
- (k) plan, encourage, co-ordinate, undertake or finance the training of employees, officers, managers or directors of the corporation;
- (l) guarantee or become surety for the due fulfilment of the contracts and obligations of any industrial, agricultural, commercial, financial or other undertaking established by or with the assistance of the corporation and for that purpose to enter into surety bonds or deeds of security for and on behalf of such undertaking;
- (m) make, draw, issue, negotiate, accept, endorse or discount debentures, bills of exchange and other negotiable instruments;
- (n) manage, hold, develop, let, hire or buy, subscribe for or otherwise acquire or take over movable

property of any kind, including any shares, stocks, debentures and securities, or any interest in any business or a mortgage over any property, and to let, sell or otherwise alienate it or pledge or deal otherwise therewith: Provided that all such transactions shall be directly related to all the functions of the corporation contemplated in section 3;

- (o) by legal process cause any company, corporation or juristic person in which it has any share or interest to be liquidated or placed under judicial management and may for that purpose itself be appointed as liquidator or judicial manager, and to petition a competent court to sequester the estate of any of its debtors;
- (p) act, where necessary to protect its investments, as director, manager, trustee, curator, executor or administrator of any business, estate, trust, company, juristic person or persons, or to designate a person or persons to act on its behalf for any such purpose;
- (q) take deposits offered by any person 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, subject to the approval of the responsible Member, and in accordance with an exemption duly secured in terms of section 2 of the Banks Act, 1990 (Act No. 94 of 1990);
- (r) act as agent or representative in any matter whatsoever for or on behalf of a person in connection with all or any of its objects, or itself to appoint agents or representatives in connection with any of its objects;
- (s) transfer any kind of moveable or immovable property held by the corporation or any interest in such property;
- (t) exercise any other power which is necessary for or incidental to the exercise of any of the aforementioned powers or which the responsible Member may consider necessary for the attainment of the objects of the corporation and which he or she may confer upon it by notice in the *Provincial Gazette*.

(2) For the purposes of this Act, and subject to the provisions thereof, the corporation—

- (a) shall be liable for all expenses in connection with its establishment and administration;
- (b) may purchase, hire or otherwise acquire land or buildings, erect buildings and other structures on such land and sell, or otherwise dispose of a mortgage any such land or buildings;
- (c) shall open banking accounts at such institutions as may be approved by the Auditor-General;
- (d) may, subject to the approval of the Member responsible for Finance, employ persons and remunerate them and prescribe their conditions of service, including conditions relating to retirement, insurance and medical benefits, housing and accommodation, as well as conditions for the discipline, suspension, retrenchment and dismissal of such employees;
- (e) shall establish offices to serve particular geographic area determined in consultation with the responsible Member through which the business of the corporation shall be conducted, and such business shall extend to all areas of the Province;
- (f) may enter into agreements with any government, person or body, whether in the Republic or abroad, for the transfer or secondment of personnel.

(3) Subject to the provisions of the Provincial Exchequer Act, 1994 (Eastern Cape) (Act No. 1 of 1994) and section 218 of the Constitution, the responsible Member may guarantee in the name of the government of the Province the repayment of any capital, interest and charges relating to any loan negotiated or to be negotiated by the corporation.

5. Policy of the corporation.—(1) It shall be the duty of the corporation so to exercise its powers—

- (a) that every application or proposal dealt with by it is considered strictly on its economic merits, irrespective of all other considerations whatsoever;
- (b) that all matters relating to the raw materials necessary for carrying on the industry or undertaking or proposed industry or undertaking, 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 thereof are carefully reviewed;
- (c) that, generally, the activities of the corporation are directed towards guiding and assisting others in financing the establishment or development of industries or undertakings and that, so far as may be practicable, the corporation shall not be required to provide an unduly large proportion of the capital which is necessary for such establishment or development;
- (d) that all income, property and profits of the corporation shall be used for the promotion and attainment of its objects: Provided that dividends may be paid to the shareholders of the corporation.

(2) Notwithstanding the provisions of subsection (1) (a) the corporation may undertake tasks on behalf of government which are in the public interest and have little or no economic merit for the corporation if instructed to do so by the responsible Member, subject to it being adequately remunerated by the government of the Province

for fulfilling such tasks.

6. Take-over of certain interests.—(1) Notwithstanding anything contained in this Act—

- (a) where the corporation has with the consent of the responsible Member taken over an entity as provided in section 4 (1) (b) or the business or any of the assets or liabilities thereof the responsible Member may, if he or she considers it expedient in the public interest, with the concurrence of the Member responsible for finance, enter into an agreement with the corporation in terms of which the responsible Member may at any time take over or, if requested by the corporation to do so, shall take over, all or any of the interests of the corporation in such entity, business, assets or liabilities together with all the rights and obligations attaching to or arising from such entity, business, assets or liabilities against payment of compensation; or
- (b) where the corporation has at the request of the responsible Member agreed to render any assistance to or incur any obligation in connection with any undertaking, whether by taking up shares, or furnishing a loan, guarantee or indemnity or in any other matter, the responsible Member may, if he or she considers it expedient in the public interest, with the concurrence of the Member responsible for finance, enter into an agreement with the corporation in terms of which the responsible Member may at any time take over, or if
- (c) requested by the undertaking (including shares taken up in connection with that undertaking and any rights and obligations acquired or incurred in connection with it), together with all rights and obligations attaching to or arising from such interest against payment of compensation.

(2) The compensation contemplated in subsection (1) shall not exceed the sum of—

- (a) the purchase price paid by the corporation for any entity, business, assets, liabilities or shares;
- (b) the book value of any loan;
- (c) the amounts paid by the corporation in respect of any other right or obligation; and
- (d) any other cost and expenditure of the corporation in connection with such entity, business, assets, liabilities, shares, loan or other right or obligation.

[Date of commencement of s. 6 to be proclaimed.]

7. Board of directors.—(1) The operations of the corporation shall be managed and controlled by a board of directors, which may exercise all such powers of the corporation as are not by this Act, the articles of the corporation or the regulations, required to be exercised by the shareholders of the corporation at a meeting of shareholders.

(2) The board of directors shall consist of not less than five and not more than eighteen directors: Provided that if at any time the number of directors falls below five, the remaining directors holding office shall manage and control the affairs of the corporation for a period of not more than six calendar months.

(3) The responsible Member shall have the right to appoint not more than eleven directors, the Member responsible for finance shall have the right to appoint one director who shall be an officer in the service of his or her department and the private shareholders shall have the right to elect not more than three directors: Provided that, with the approval of the board and the responsible Member, the private shareholders may obtain the right to appoint an additional three directors.

(4) In appointing directors to the board, the responsible Member shall appoint—

- (a) five persons who collectively, possess knowledge, insight, experience and appropriate qualifications in the areas of business, economic development, financial administration, management and labour practice;
- (b) five persons whose appointment shall assist in making the board transparent and broadly representative of all the people of the Province; and
- (c) one person who is an officer in the service of his or her department.

(5) The responsible Member shall appoint one of the members appointed by him or her to be chairperson of the board.

(6) The directors may appoint one of their number to be deputy chairperson of the board.

(7) No decision taken by the board or act performed under the authority of the board shall be invalid by reason only of an interim vacancy on the board or of the fact that a person who was not entitled to sit as a member of the board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the board who were present at the time and entitled to sit as members.

8. Alternate directors.—(1) Each director may nominate an alternate director to act in his or her place on the occasions and in the circumstances and subject to the conditions set forth in the articles or regulations: Provided that the appointment of an alternate director to act in place of a director appointed by the responsible Member and the Member responsible for finance respectively and the appointment of an alternate director to act in place of a director appointed by the private shareholders shall be subject to the approval of the board.

(2) An alternate director, when acting in place of a director, shall in all respects have all the powers and discharge all the duties of that director: Provided that an alternate director appointed by the chairperson or deputy chairperson shall have only the powers and is charged only the duties of a director other than the chairperson or deputy chairperson.

9. Disqualification as director or alternate director.—No person shall be appointed, nominated or elected or remain as director or alternate director of the corporation if he or she is—

- (a) a member of Parliament, the Legislature of the Province, the Council of Traditional Leaders or the Provincial House of Traditional Leaders;
- (b) an office-bearer of any political party;
- (c) a person referred to in sections 218 or 219 of the Companies Act; or
- (d) a family member of the responsible Member or any other member of the Executive Council of the Province.

10. Impersonation of a director.—Any person who is not a director or who is disqualified from being appointed or acting as a director or alternate director of the corporation under section 9 and who purports to act as a director or alternate director or indirectly takes part in or is concerned in the management of the corporation, shall be guilty of an offence and liable on conviction to the penalties prescribed for a contravention of section 218 of the Companies Act.

11. Tenure of directors.—(1) Subject to the provisions of subsection (2), the articles and the regulations, the first board of directors appointed to the corporation shall continue as directors for a period of five years and thereafter a director shall hold office for a period of three years.

(2) At the fifth annual general meeting of the corporation two-thirds of the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if the number is not three or a multiple of three, the number nearest to one-third, shall retire from office.

(3) The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

(4) A retiring director shall be eligible for re-election.

12. Conditions of office of directors.—A director shall hold office as director upon such conditions as to remuneration as the responsible Member may determine after consultation with the Member responsible for finance and upon such other conditions as may be prescribed by the regulations or articles: Provided that any remuneration payable to any director, in respect of work done or office held by him or her other than his or her work as a director, shall likewise be determined after consultation with the board.

13. Meetings of the board.—(1) The chairperson shall preside at all meetings of the board at which he or she is present.

(2) At meetings of the board the chairperson shall have a deliberative vote, and, in addition, in the event of an equality of votes, a casting vote.

(3) The deputy chairperson (if one has been appointed) shall preside at any meeting of the board from which the chairperson is absent, and shall at any such meeting have all the powers and discharge all the duties of the chairperson, except that in the event of an equality of votes he or she shall not have a casting vote.

(4) Should both the chairperson and deputy chairperson (if one has been appointed) both be absent from any meeting of the board, the directors who are present at that meeting shall elect one of their number to preside thereat.

(5) Subject to the provisions of subsection (2) of this section, the decision of the majority of the directors present at a meeting of the board shall constitute the decision of the board.

(6) The majority of the members of the board shall constitute a quorum at any meeting of the board.

14. Chief executive officer.—(1) The board shall after consultation with the responsible Member appoint a person as chief executive officer of the corporation who shall exercise such powers and perform such duties as may be authorised or prescribed by the board.

(2) The chief executive officer shall be appointed on such conditions of service and at such remuneration and service benefits as the responsible Member in consultation with the board and the Member responsible for finance may determine: Provided that the chief executive officer shall not be present at such consultations.

(3) The chief executive officer shall be an *ex officio* member of the board in addition to the persons mentioned in section 7 but shall not be entitled to vote.

15. Share capital.—(1) Subject to the provisions of this section, the authorised share capital of the corporation shall be one thousand million shares of one cent each, which shall be divided into—

- (a) five hundred million ordinary shares of one cent each (hereinafter referred to as A shares); and
- (b) five hundred million ordinary shares of one cent each (hereinafter referred to as B shares).

(2) The Government of the Province shall initially take up one hundred A shares, which shall be paid for at nominal value in cash.

(3) Subject to the provisions of subsection (6), only the Government of the Province shall be entitled to hold A shares in the corporation: Provided that nothing shall prevent the said Government from acquiring B shares.

(4) Other shares in the corporation shall be paid for by the said Government from—

- (a) money to be appropriated by the Legislature of the Province for that purpose or by the transfer to the corporation of shares or assets and liabilities of current development corporations or parastatal organisations, affiliates, subsidiaries or agencies of such corporations or organisations, at a price to be agreed upon between the corporation and the Executive Council, or partly from money so appropriated and partly by the transfer of such shares or assets and liabilities at a price to be so agreed upon; and
- (b) money made available by the responsible Member as transfer payments out of the budget of the Department of Economic Affairs, Environment and Tourism.

(5) Payment for the shares of the corporation shall be made at such times and in such amounts as may after consultation be agreed between the responsible Member, the Member responsible for finance and the board.

(6) The A shares shall not be transferable by the Government of the Province otherwise than on the authority of an Act of the Legislature of the Province, but the responsible Member may, as and when he or she thinks fit, sell or otherwise dispose of all or any of the B shares.

(7) The A shares held by the government of the Province shall entitle the responsible Member to a number of votes which shall exceed by one the total number of votes which all the other shareholders of the corporation in the aggregate may be entitled to in respect of shares (including shares issued under subsection (9) held by them.

(8) The responsible Member shall, while the Government of the Province is the holder of shares in the corporation, appoint a representative or representatives to attend the meetings of shareholders and to vote thereat.

(9) Subject to the provisions of subsections (3) and (10), the board may from time to time, with the prior written approval of the responsible Member and the approval of the shareholders previously given by resolution at a meeting of shareholders, increase the share capital of the corporation to such extent as may seem to it to be expedient, by the creation and issue of ordinary or preference shares or such other class of shares 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 of the holders thereof, and, in the case of preference shares, the condition that the holders thereof shall not be entitled to vote.

(10) Notwithstanding anything contained in its articles of association, the directors of the corporation shall not have the power to allot or issue shares of the corporation without the prior written approval of the responsible Member and the prior approval of the corporation in a general meeting.

(11) None of the shares in any entity referred to in section 4 (1) (b) which have been transferred to the corporation by the Government of the Province shall be sold or otherwise disposed of by the corporation except in accordance with conditions determined from time to time by the responsible Member, or in accordance with the provisions of this Act.

(12) Transfer payments from the Department of Economic Affairs, Environment and Tourism which are used for the financing of capital expenditure, including the financing of the corporation's development programme, shall entitle the Government of the Province to further A or B shares of the corporation where the issued share capital of the corporation is so increased in accordance with the provisions of subsection (9).

(13) Any transfer payments or grants-in-aid which are to be used for current expenditure of the corporation

and any payments by the Provincial or National Government to the corporation for governmental services rendered by the corporation to that Government shall be recorded as income of the corporation and shall not entitle that Government to further shares in the corporation.

(14) Any director of the corporation who knowingly takes part in the allotment of any shares in contravention of subsection (10), shall be liable to compensate the corporation for any loss, damages or costs which the corporation may have sustained or incurred thereby.

16. Limitation of liability of shareholder.—The liability of any holder of shares in the corporation shall be limited to the amount of his or her shareholding.

17. Expenditure.—(1) The expenditure incurred by or on behalf of the board, including the remuneration of directors, shall be defrayed from the funds of the corporation.

(2) Only in exceptional circumstances may funds secured through transfer payments, other than payments for services rendered to Government, be applied to current expenditure, and all such cases shall be motivated on a monthly basis for prior approval by the Member responsible for finance in consultation with the Executive Council.

18. Appropriation of profits.—(1) No dividend in excess of twelve per cent per annum shall be declared by the board without the prior written approval of the responsible Member.

(2) In considering the declaration, amount and approval of a dividend, the board and the responsible Member shall consider—

- (a) the cash resources of the corporation;
- (b) the degree of solvency of the corporation;
- (c) the expected funding requirements of the corporation in forthcoming financial periods;
- (d) the requirements of the shareholders of the corporation;
- (e) the objects of the corporation;
- (f) the policy of the corporation; and
- (g) any other relevant factor.

19. Books of account and audits.—(1) The board shall cause proper accounting and related records to be kept in respect of all the affairs and business of the corporations, as well as such other books and documents as may be necessary for the purpose of maintaining an adequate record of such affairs and to explain its transactions and financial position, including those set out in section 284 of the Companies Act.

(2) The corporation shall cause internal audits to be conducted so as to promote—

- (a) the safeguarding and control of the assets of the corporation;
- (b) compliance with this Act and any other Act governing the activities of the corporation; and
- (c) the economical and efficient management of the resources of the corporation and the effective performances of its functions,

unless the responsible Member, on the recommendation of the board, is of the opinion that the benefits to be derived from such internal auditing to not justify the cost thereof.

(3) (a) The corporation shall appoint external auditors as auditors of the corporation and the provisions of sections 241, 269 to 283, 294, 300 and 301 of the Companies Act shall apply *mutatis mutandis* to such auditors: Provided that in addition to the persons mentioned in section 275 (1) of that Act, a family member of the persons mentioned in paragraphs (a) to (f) of that subsection shall also be ineligible to be appointed as an auditor of the corporation.

(b) Any reference in the sections of the Companies Act referred to in paragraph (a) to the Registrar and the Minister shall be construed as references to the responsible Member and the Premier, respectively.

(4) The report of the auditor shall in addition comply with the provisions of section 12 of the Reporting by Public Entities Act: Provided that any reference in that section to the Minister and Parliament shall be construed as a reference to the responsible Member and the Legislature of the Province, respectively.

(5) The responsible Member may make the provisions of section 13 of the Reporting by Public Entities Act applicable to the corporation by notice in the *Provincial Gazette*.

20. Annual financial statements.—(1) The provisions of sections 284 and 286 to 309 of the Companies Act, and where appropriate, Schedule 4 thereof shall apply *mutatis mutandis* to the corporation, provided that any reference to the Registrar shall be construed as a reference to the responsible Member.

(2) A detailed explanatory note to the financial statements shall be included therewith.

(3) The board shall within six months of the closing of its financial year submit the director's report referred to in section 21, the auditors' report referred to in section 19 (4) and the annual financial statements of the corporation for that year to the responsible Member.

(4) The responsible Member shall submit copies of the reports referred to in subsection (3) to the Legislature of the Province within one month after receipt thereof by him or her if the Legislature of the Province is then sitting or if the Legislature is not sitting, within one month after the commencement of its next sitting.

21. Directors' report.—(1) The corporation shall, as part of its annual financial statements, submit to the responsible Member a report by the board with respect to the state of affairs, the business and the financial position of the corporation and the degree to which its objects have been attained.

(2) The directors' report shall deal with the matters prescribed in Schedule 4 of the Companies Act in so far as these are applicable.

(3) The directors' report shall also—

- (a) set out the functions and objectives of the corporation as determined by law or otherwise;
- (b) state the extent to which the corporation has attained its objectives for the financial year concerned;
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources; and
- (d) indicate the amount of money, if any, received by way of transfer payments from the Department of Economic Affairs, Environment and Tourism, and the State and whether this is for services rendered or otherwise.

22. Direct or indirect benefits to directors and officers.—(1) No director or officer of the corporation shall directly or indirectly exact, accept, agree to accept or attempt to obtain for himself, herself or any other person any gift, reward or other consideration whatsoever (other than the remuneration and allowances to which he or she is entitled in terms of this Act or his or her employment agreement) for or on account of his or her services as a director or officer or his or her doing, or refraining from doing, or having done or refraining from having done anything in his or her capacity as director or officer of the corporation.

(2) A director or officer of the corporation shall disclose to the board any interest which he or she or his or her family member has whether directly or indirectly in any matter, transaction or contract entered into by or to be entered into by or involving the corporation from which he or she or his or her family member stands to obtain material gain and of which he or she is aware.

(3) The board shall inform the responsible Member of any contravention of subsection (1) and any disclosure in terms of subsection (2).

(4) Any director or officer who fails to comply with the provisions of this section shall be guilty of an offence and shall on conviction be liable to the penalties prescribed in section 4 (1) (e) of the Companies Act.

(5) The provisions of sections 234 to 240 inclusive of the Companies Act shall apply *mutatis mutandis* to the directors, officers and interests, disclosures and contracts referred to in subsection (2).

23. Articles of association.—(1) Subject to the provisions of this Act, the corporation shall have the articles of association set out in the Schedule.

(2) Subject to the provisions of this Act and the approval of the responsible Member, the corporation in general meeting may alter or add to the articles; and any alteration or addition made shall be as valid as if originally contained therein, and be subject in like manner to alteration: Provided that no such alteration or addition shall be of any force and effect until a notice to that effect is published by the responsible Member in the *Provincial Gazette*: Provided further that no provision in the articles may provide for compulsory loans to the corporation by shareholders thereof.

24. Liquidation.—(1) The corporation shall not be finally liquidated except by or under the authority of an Act of the Legislature of the Province.

(2) (a) The Premier may, by Proclamation in the *Provincial Gazette*, as from a date fixed by him or her, provisionally liquidate the corporation and may suspend or set aside such provisional liquidation.

(b) The Premier in such Proclamation—

- (i) shall regulate all matters arising from such provisional liquidation including assets, liabilities, rights and obligations of the corporation;
- (ii) may, in doing so, prescribe that certain provisions of the Companies Act and the Insolvency Act, 1936 (Act No. 24 of 1936) shall, with or without modification, apply to such provisional liquidation *mutatis mutandis*; and
- (iii) may assign the powers and functions exercised by officials and appointees under the Act referred to in subparagraph (ii) to any other persons whom he or she considers appropriate in the circumstances.

25. Registration and use of name.—(1) The Registrar of Companies shall enter the name of the corporation in his or her register.

(2) No person, company or other entity shall carry on any business, or be registered in terms of any law, under a name which is the same as that of the corporation, or so closely resembles it as to be calculated to deceive.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R5 000,00.

26. Application of the Companies Act.—(1) Subject to the provisions of this Act, the provisions of sections 1, 33, 35 to 39, 43, 44 (3), 50, 65, 67 to 72, 74 to 100, 102 to 133, 135 to 145, 146 to 168, 170 to 171, 176 to 189, 191 to 194, 197 to 200, 202 to 207, 210 to 212, 214 to 216, 218 to 220, 222, 225 to 228, 242 to 245, 247 to 268, 423 to 426, 440F and 441 of the Companies Act, as amended, shall apply *mutatis mutandis* to the corporation: Provided that any reference in that Act to the Registrar, the Minister and the Companies Registration Office shall be construed a reference to the responsible Member, the Premier and the office of the Permanent Secretary of the Department of Economic Affairs, Environment and Tourism respectively.

(2) The provisions of section 226 of the Companies Act shall for the purposes of this Act be construed as including a family member of a director or manager wheresoever the words director or manager occur in that section.

(3) Notwithstanding the provisions of section 228 of the Companies Act, the whole or greater part of the assets or undertaking of the corporation shall not be disposed of without, in addition, the written consent of the Premier.

27. Transitional provisions.—(1) No charge, tax, stamp duty, fees or other costs of any nature whatsoever are payable in respect of the issue or transfer of any of the shares, stock, securities, bills, promissory notes, debentures, debenture stock, bonds, annuities or negotiable certificates of deposit of the corporation.

(2) No levy, tax, transfer duty, stamp duty or any other charges or fees of any nature whatsoever shall be paid by the corporation or the development corporations, parastatal organisations, subsidiary companies, affiliates or agencies referred to in section 4 (1) (b) in respect of the transfer of the assets and liabilities of such entities to the corporation.

(3) In order to transfer the immovable property, real rights or bonds, assets and liabilities of the entities referred to in section 4 (1) (b) to the corporation, the Registrar of Deeds shall effect the entries notes and endorsements considered necessary in or on any relevant register, title deed or other document in his or her office or submitted to him or her.

(4) Any person in the employ of the corporation or the Department of Economic Affairs, Environment and Tourism may carry out any act in the relevant deeds registry, including the preparation, lodgement and execution of any transfer deed or document as may be required in terms of subsection (3) with regard to the registration of transfer of immovable property or real rights.

(5) No charges referred to in subsections (1) and (2) with respect to any entity acquired by the corporation nor any fees referred to in subsection (3) with regard to other entities shall be payable whilst the Government of the Province is the sole shareholder in the corporation.

(6) Subject to the provisions of section 6, where the corporation takes over the rights or obligations of an entity referred to in section 4 (1) (b) it shall be deemed, in any contract between that entity and a third party, that the said contract was entered into between the corporation and the third party *ab initio*.

28. Regulations and rules.—(1) The responsible Member may, after consultation with the board, make regulations not inconsistent with the provisions of this Act, in relation to—

- (a) the keeping of accounts;

- (b) the service of notices;
- (c) any matter which in terms of this Act is required or permitted to be prescribed; and
- (d) any other matter whatsoever which the responsible Member may consider necessary or useful to prescribe for the attainment of the objects of this Act.

(2) The board may from time to time make such rules as are deemed necessary for the efficient operation of the corporation which are not inconsistent with this Act.

29. Short title.—(1) This Act shall be called the Eastern Cape Development Corporation Act, 1997.

(2) The provisions of sections 4 (1) (b) and 6 of this Act shall come into operation on a date determined by the responsible Member by notice in the *Provincial Gazette*.

SCHEDULE

ARTICLES OF THE EASTERN CAPE DEVELOPMENT CORPORATION

Interpretation

1. In these articles, unless the context otherwise indicates—

“**the Act**” means the Eastern Cape Development Corporation Act, 1996;

“**the Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973); and

“**foreign committee**” means a committee appointed under article 52 of these articles.

Shares and Certificates of Shares

2. Subject to the provisions of the Act and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred or other special rights, or subject to such restrictions (whether in regard to dividend, voting, return of share capital or otherwise) as the corporation may from time to time determine, and the corporation may determine that any preference shares shall be issued on the condition that they are, or are at the option of the corporation, liable to be redeemed.

3. Every person whose name is entered in the register of members shall be entitled to one certificate for all the shares registered in his or her name, or to several certificates, each for a part of such shares. Every share certificate shall specify the number of shares in respect of which it is issued. Every original member shall be entitled to one share certificate free of charge but for every subsequent certificate the directors may make such charge as from time to time they may think fit: Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding twenty-five cents, and on such terms, if any, as to evidence and indemnity as the directors may think fit.

4. Share certificates shall be issued under the authority of the directors, or the foreign committee when authorised thereto by resolution of the directors, in such manner and form as the directors shall from time to time prescribe. If any shares are numbered all shares shall be numbered in numerical progression and each share certificate distinguished by its appropriate number and by such endorsement as may be required under section 95 (2) of the Companies Act.

5. A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof, and delivery of a certificate for a share to that person shall be a sufficient delivery to all joint holders of that share.

Variation of Rights

6. Subject to the provisions of the Act, if at any time the share capital is divided into different classes of shares the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, and the provisions of section 199 of the Companies Act shall *mutatis mutandis* apply to the said resolution and meeting as if the resolution were a special resolution. The provisions of these articles relating to general meetings shall apply *mutatis mutandis* to every such separate general meeting, but unless the corporation has only one member, the necessary quorum shall be two persons holding or representing by proxy at least one-third of all the issued shares of the class.

Register of Members

7. (a) The corporation shall maintain at its registered office a register of members of the corporation as provided in section 105 of the Companies Act. The register of members shall be open to inspection, as provided in section 113 of the Companies Act.

(b) The corporation may maintain a branch register under section 110 of the Companies Act and the provisions of paragraph (a) shall *mutatis mutandis* apply to such register.

Payment of Commission

8. (a) The corporation may pay a commission at a rate not exceeding ten per cent of the issue price of a share to any person in consideration of his or her subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares of the corporation or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any shares of the corporation.

(b) Such commission may be paid in cash or by the allotment of shares of the corporation.

(c) The corporation may, on any issue of shares, pay such brokerage as may be lawful.

Transfer and Transmission of Shares

9. The instrument of transfer of any share of the corporation, not being a security in terms of section 134 of the Companies Act, shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members in respect thereof.

10. Subject to such of the restrictions as may be applicable, any member may transfer all or any of his or her shares by instrument in writing in any usual or common form or any other form which the directors may approve.

11. The directors may suspend the registration of transfers during the fourteen days immediately preceding any general meeting of the corporation and at any other times, provided that the periods of suspension shall not in any one year exceed sixty days.

12. The directors may decline to recognize any instrument of transfer unless—

(a) a sum not exceeding twenty-five cents is paid to the corporation in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of transferor to make the transfer; and

(c) the share transfer duty thereon has been paid.

13. Every instrument of transfer shall be left at a transfer office of the corporation at which it is presented for registration, accompanied by a certificate of the shares to be transferred. Every power of attorney given by a shareholder authorizing the transfer of shares, shall, when lodged, produced or exhibited to the corporation or any of its proper officers, be deemed as between the corporation and the donor of the power to continue and remain in full force and effect, and the corporation may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the corporation's transfer offices as the power was lodged, produced, or exhibited as aforesaid. The corporation shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of that agent's authority be produced and lodged with the corporation.

14. The executor of the estate of a deceased sole holder of a share shall be the only person recognized by the corporation as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the executor of the deceased survivor shall be the only persons recognized by the corporation as having any title to the share.

15. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or instead of being registered himself or herself, to make such transfer of the share as the deceased or insolvent could have made, but the directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent before the death or insolvency.

16. The parent or guardian of a minor and the *curator bonis* of a lunatic member and any person becoming entitled to shares in consequence of the death or insolvency of any member or the marriage of any member or by any lawful means other than by transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which he or she proposes to act under this article, or of his or her title, as the directors think sufficient, transfer those shares to himself or herself or any other person subject to the articles as to transfer hereinbefore contained. This article is hereinafter referred to as the "transmission clause".

17. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he or she would be entitled if he or she were the registered holder of the share, except that he or she shall not, before being registered as a member in respect of the share be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the corporation.

18. A person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the corporation or the estate of a member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body corporate which is a member of the corporation shall be entered in the register of members of the corporation *nomine officii*, and shall thereafter, for all purposes, be deemed to be a member of the corporation.

Alteration of Capital

19. (a) The corporation may from time to time increase the share capital by such sum divided into shares of such amount as the resolution shall prescribe in accordance with the provisions of section 15 of the Act.

(b) New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original capital.

20. The corporation may, by special resolution—

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the Act;
- (c) cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;
- (d) reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised, and consent required, by law;
- (e) subject to the provisions of section 99 of the Companies Act, convert its issued preference shares into shares which can be redeemed.

General Meetings

21. The corporation shall hold its first annual general meeting within eighteen months after the date of its incorporation and shall thereafter in each year hold an annual general meeting: Provided that not more than fifteen months shall elapse between the date of one annual general meeting and that of the next and that an annual general meeting shall be held within six months after the expiration of the financial year of the corporation.

22. Other general meetings of the corporation may be held at any time.

23. Annual general meetings and other general meetings shall be held at such time and place as the directors shall appoint or at such time and place as is determined if the meetings are convened under section 179 (4), 181, 182 or 183 of the Companies Act.

Notice of General Meetings

24. An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty-one clear days' notice in writing and any other general meeting shall be called by not less than fourteen clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the corporation in general meeting, to such persons as are, under these articles, entitled to receive such notices from the corporation: Provided that a meeting of the corporation shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority holding not less than ninety-five per cent of the total voting rights of all the members.

Proceedings at General Meetings

25. The annual general meeting shall deal with and dispose of all matters prescribed by the Act as read with the Companies Act, including the sanctioning of a dividend, the consideration of the annual financial statements, the election of directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

26. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, two members present in person or by proxy, or whilst the Government of the Province of the Eastern Cape is the only shareholder, a nominee of the responsible Member, present in person or by proxy, shall be a quorum.

27. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day not earlier than seven days and not later than twenty-one days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person or by proxy shall be a quorum.

28. Where a meeting has been adjourned as aforesaid, the corporation shall, upon a date not later than three days after the adjournment, publish in a newspaper circulating in the province where the registered office of the corporation is situated, a notice stating—

- (a) the date, time and place to which the meeting has been adjourned;
- (b) the matter before the meeting when it was adjourned; and
- (c) the ground for the adjournment.

29. The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the corporation. If there is no such chairperson, or if at any meeting he or she is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall elect one of their number to be chairperson.

30. The chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be

transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 27 and 28 shall *mutatis mutandis* apply to such adjournment.

31. At any general meeting a resolution put to vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson, members referred to in section 198 (1) (b) of the Companies Act or a nominee of the responsible Member, and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the corporation, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

32. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

33. A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

Inspection of Minutes

34. The minutes kept of every general meeting and annual general meeting of the corporation under section 204 of the Companies Act, may be inspected and copied in terms of section 113 of the Companies Act.

Votes of Members

35. Subject to any rights or restrictions for the time being attached to any class or classes of shares, on a show of hands every member present in person and if a member is a body corporate, its representative, shall have one vote and on a poll every member present in person or by proxy shall be entitled to exercise the voting rights determined by section 195 of the Companies Act: Provided that the A shares held by the Government of the Province shall entitle the responsible Member or his or her nominee to a number of votes which shall exceed by one of the total number of votes which all the other shareholders of the corporation in the aggregate may be entitled to in respect of shares held by them.

36. In the case of joint holders the vote of the person whose name appears first in the register of members and who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

37. The parent or guardian of a minor, and the *curator bonis* of a lunatic member, and also any person entitled under the transmission clause to transfer any shares, may vote at any general meeting in respect thereof in the same manner as if he or she were the registered holder of those shares: Provided that forty-eight hours at least before the time of holding the meeting at which he or she proposes to vote he or she shall satisfy the directors that he or she is such parent, guardian or curator or that he or she is entitled under the transmission clause to transfer those shares, or that the directors have previously admitted his or her right to vote in respect of those shares. Co-executors of a deceased member in whose name shares stand in the register shall, for the purposes of this article, be deemed to be joint holders of those shares.

38. On a poll, votes may be given either personally or by proxy.

Proxies

39. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his or her agent duly authorized in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorized by the body corporate. A proxy need not be a member of the corporation. The holder of a general or special power of attorney, whether he or she is a member or not, given by a shareholder shall be entitled to attend meetings and to vote, if duly authorized under that power to attend and take part in the meetings.

40. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the corporation not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

41. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

"EASTERN CAPE DEVELOPMENT CORPORATION

I, _____ of _____
being a member of the Corporation hereby appoint

of
or failing him or her

of
or failing him or her

of

as my proxy to vote for me and on my behalf at the annual general or general meeting (as the case may be) of the Eastern Cape Development Corporation to be held on the day of and at any adjournment thereof as follows:

In favour of Against

Resolution to

Resolution to

Resolution to

(Indicate instruction to proxy by way of a cross in space provided above.)

Unless otherwise instructed, my proxy may vote as he or she thinks fit.

Signed this day of,

.....
Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his or her stead and such proxy need not also be a member of the corporation.)"

Directors

42. The number of the directors shall be as determined in the Act.

43. The remuneration of the directors shall from time to time be determined as prescribed in the Act.

44. A director may be remunerated in respect of work done or office held by him or her other than his or her work as director as determined in the Act.

Alternate Directors

45. Each director shall have the power to nominate any person possessing the necessary qualifications of a director, to act as alternate director in his or her place during his or her absence or inability to act as such director: Provided that the appointment of an alternate director to act in place of a director appointed by the responsible Member and the Member responsible for finance shall be subject to the approval of the responsible Member and the Member responsible for finance respectively, and the appointment of an alternate director in place of a director appointed by private shareholders shall be approved by the board, and on such appointment being made, the alternate director shall, in all respects except remuneration, be subject to the terms, qualifications and conditions existing in respect of the other directors of the corporation.

46. The alternate directors whilst acting in the stead of the directors who appointed them shall exercise and discharge all the powers, duties and functions of the directors they represent. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him or her ceases to be a director or gives notice to the secretary of the corporation that the alternate director representing him or her has ceased to do so, and in the event of the disqualification or resignation of any alternate director, during the absence or inability to act, of the director whom he represents, the vacancy so arising shall be filled by the responsible Member or Member responsible for finance in the case of an alternate director whose appointment was subject to their approval, who shall nominate a person to fill such vacancy, and the chairperson of the board who shall nominate a person to fill the vacancy, subject to the approval of the board, in the case of an alternate of a director nominated by private shareholders.

Power and Duties of Directors

47. The business of the corporation shall be managed by the directors who may pay all expenses incurred in promoting and incorporating the corporation, and may exercise all such powers of the corporation as are not by the Act, the applicable provisions of the Companies Act or by these articles, required to be exercised by the corporation in general meeting, subject to these articles, to the provisions of the Act, the applicable provisions of the Companies Act, regulations made in terms of the Act and to such rules, not inconsistent with the aforesaid articles or provisions, as may be prescribed by the corporation in general meeting, but no rule prescribed by the corporation in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been prescribed.

Borrowing Powers

48. Subject to the Provisions of the Act, the directors may exercise all the powers of the corporation to borrow

money and to mortgage or bind its undertaking and property or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the corporation or of any third party: Provided that the amount for the time being remaining undischarged in respect of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from the corporation's bankers in the ordinary course of business) shall not at any time, without the prior sanction of the corporation in general meeting and the prior written approval of the Executive Council, exceed one-half of the amount of the issued share capital plus the amount of the share premium account (if any) or of the stated capital.

Chief Executive Officer

49. The board shall after consultation with the responsible Member appoint a person as chief executive officer of the corporation who shall exercise such powers and perform such duties as may be authorised or prescribed by the board.

50. The directors may from time to time entrust to or confer upon a chief executive officer or manager, for the time being, such of the powers and authorities vested in them as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities of the directors and may from time to time revoke or vary all or any of such powers and authorities.

Minutes

51. The directors shall, in terms of section 204 of the Companies Act, cause minutes to be kept—

- (a) of all appointments of officers;
- (b) of names of directors present at every meeting of the corporation and of the directors; and
- (c) of all proceedings at all meetings of the corporation and of the directors.

Such minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Foreign Committees

52. Subject to the prior consent of the responsible Member the directors may from time to time appoint persons resident in a foreign country to be a foreign committee for the corporation in that country with such powers and duties as the directors may from time to time determine. The directors may from time to time establish branch registers of members and transfer offices in foreign countries, close them at any time and may appoint and remove agents for any purposes in any foreign country.

Disqualification of Directors

53. The office of director shall be vacated if the director—

- (a) ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Act or the Companies Act; or
- (b) without the consent of the corporation in general meeting holds any other office of profit under the corporation except that of managing director or manager; or
- (c) resigns his or her office by notice in writing to the corporation and the responsible Member; or
- (d) for more than six months is absent without permission of the directors from meetings of directors held during that period; or
- (e) if he or she or his or her family member is directly or indirectly interested in any matter, transaction or contract or proposed contract entered into by or to be entered into by or involving the corporation and he or she fails to declare his or her interest or the interest of his or her family member in such matter and the nature thereof in the manner required by the Act.

Rotation of Directors

54. At the fifth annual general meeting of the corporation two-thirds of the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office.

55. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

56. A retiring director shall be eligible for re-election.

57. Subject to the provisions of the Act, the corporation at the annual general meeting at which a director retires in the manner aforesaid or at any other general meeting, may fill the vacancy by electing a person thereto.

58. If at any meeting at which an election of directors ought to take place the offices of the retiring directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of articles 27 and 28 shall apply *mutatis mutandis* to such adjournment, and if at such adjourned meeting

the vacancies are not filled, the retiring directors or such of them as have not had their offices filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for re-election of any such director shall have been put to the meeting and negatived.

59. Casual vacancies which arise where the director concerned is appointed by the responsible Member or the Member responsible for finance shall be filled by the responsible Member and the Member responsible for finance respectively and unless the responsible Member or the Member responsible for finance determines otherwise, the director so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose stead he is appointed, was last appointed a director.

60. Unless the shareholders otherwise determine in general meeting any casual vacancy occurring on the board of directors in respect of a director appointed by the private shareholders may be filled by the directors but the director so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose stead he is appointed, was last elected a director.

Proceedings of Directors

61. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the event of an equality of votes, the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the directors.

62. Subject to the provisions of sections 234 to 240, inclusive, of the Companies Act, a director shall not vote in respect of any matter contemplated in section 22 of the Act in which he or she or his or her family member is interested, or any matter arising therefrom, and if he or she does so vote, his or her vote shall not be counted.

63. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three, be three and when the number of directors does not exceed three, shall be two.

64. The continuing directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these articles as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of convening a general meeting of the corporation, but for no other purpose.

65. If at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the directors present may elect one of their number to be chairperson of the meeting.

66. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the directors.

67. A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the members present may elect one of their number to be chairperson of the meeting.

68. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairperson shall have a second or casting vote.

69. All acts done by any meeting of the directors or a committee of directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a director.

Dividends and Reserve

70. The corporation in annual general meeting may declare dividends but no dividend shall exceed twelve per cent per annum without the prior written approval of the responsible Member.

71. No dividend shall be paid otherwise than out of profits, or bear interest against the corporation.

[Editorial Note: Articles 72 and 73 missing in original *Gazette*.]

74. Every dividend or other moneys payable in cash in respect of shares may be paid by cheque, warrant, coupon or otherwise as the directors may from time to time determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him or her personally, and the receipt or endorsement on the cheque or warrant of the person whose name appears in the register as the shareholder, or his or her duly authorized agent, or the surrender of any coupon shall be a good discharge to the corporation in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

75. The corporation shall not be responsible for the loss in transmission of any cheque, warrant, coupon or other document sent through the post to the registered address of any member, whether or not it was so sent at his or her request.

Accounting Records

76. The directors shall cause such accounting records as are prescribed by sections 19 and 20 of the Act to be

kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the corporation and to explain the transactions and financial position of the trade or business of the corporation.

77. The accounting records shall be kept at the registered office of the corporation or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.

78. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or rules the accounting records of the corporation or any of them shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the corporation except as conferred by the Act or authorized by the directors or by the corporation in general meeting: Provided that the responsible Member or his nominee shall have access to the accounting records of the corporation at all reasonable times.

Annual Financial Statements and Interim Reports

79. The directors shall from time to time, in accordance with the provisions of the Act and sections 286 and 288 of the Companies Act, cause to be prepared and laid before the corporation in general meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in those sections.

80. The directors shall, in accordance with section 303 of the Companies Act, prepare or cause to be prepared interim reports, a copy of which shall be sent to every member of the corporation and to the responsible Member.

81. A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the corporation in annual general meeting, shall not less than twenty-one days before the date of the meeting be sent to every member of, and every holder of debentures of, the corporation and to the responsible Member: Provided that this article shall not require a copy of those documents to be sent to any person of whose address the corporation is not aware or to more than one of the joint holders of any shares or debentures.

Audit

82. An auditor shall be appointed in accordance with section 19 of the Act.

Notices

83. A notice may be given by the corporation to any member either by advertisement or personally or by sending it by post in a prepaid letter addressed to such member at his or her registered address, or (if he or she has no registered address in the Republic) at the address (if any) within the Republic supplied by him or her to the corporation for the giving of notices to him or her. Any notice which may be given by advertisement shall be inserted in the *Gazette* and in such newspapers as the directors may from time to time determine.

84. Whenever a notice is to be given personally or sent by post, the notice may be given by the corporation to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

85. Whenever a notice is to be given personally or sent by post, the notice may be given by the corporation to the persons entitled to share in consequence of the death or insolvency of a member, or by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description, at the address (if any) in the Republic supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

86. Notice of every general meeting shall be given in any manner authorized—

- (a) to every member of the corporation except, in the case of notices to be given personally or sent by post, those members who (having no registered address within the Republic) have not supplied to the corporation an address within the Republic for the giving of notices to them;
- (b) to every person entitled to a share in consequence of the death or insolvency of a member who, but for his or her death or insolvency, would have been entitled to receive notice of the meeting;
- (c) to the auditor for the time being of the corporation; and
- (d) to the responsible Member.

No other person shall be entitled to receive notice of general meetings

87. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the *Gazette*, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

88. A notice given to any member shall be binding on all persons claiming on his or her death or on any transmission of his or her interests.

89. The signature to any notice given by the corporation may be written or printed, or partly written and partly printed.

90. When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

91. If the corporation has a seal, it shall not be affixed to any instrument except by the authority of a resolution of the directors, and shall be affixed in the manner and subject to such safeguards as the directors may from time to time determine.
