

DEVELOPMENT BRIGADE CORPORATION ACT 32 OF 1992

[GOVERNMENT GAZETTE:30 DECEMBER 1992 No.563]

[DATE OF COMMENCEMENT:1 FEBRUARY 1993]

ACT

To provide for the establishment of the Development Brigade Corporation, a corporation with the object to engage in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons; to determine the power ,duties and functions of the Corporation and to provide for matters incidental thereto.

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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

1 Definitions

In this Act, unless the context otherwise indicates-

"Board" means the Board of directors referred to in section 5 (1);

"Corporation" means the Development Brigade Corporation established by section 2 (1);

"director" means a director of the Board appointed in terms of section 5 (2);

"general manager" means the general manager appointed in terms of section 13 (1); and

"Minister" means the Minister or Ministers designated by the President by proclamation in the *Gazette* .

2 establishment of corporation

(1) A body corporate to be known as the Development Brigade Corporation is hereby established.

(2) The Registrar of Companies shall enter the name of the Corporation in the registers kept by the Registrar in terms of the Companies Act, 1973 (Act 61 of 1973).

3 Objects of corporation

The objects of the Corporation shall be to engage in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons and such other persons as the Minister may determine by notice in the *Gazette* .

4 Powers of corporation

(1) For the purposes of achieving its objects the Corporation may-

(a) establish or acquire and carry on or participate in any business activity connected with agriculture, manufacturing, construction or water supply;

(b) offer or furnish training programmes, technical or other assistance, expert and specialised advice and information and guidance;

(c) buy, take on lease or otherwise acquire and sell, lease or otherwise dispose of or hypothecate or pledge or otherwise deal with any movable property or immovable property or any right in or over immovable property;

(d) take up, borrow, lend or invest money;

(e) establish reserve funds for such purposes as the Board may determine;

(f) open bank accounts, including saving accounts;

(g) make or accept donations;

(h) take part in the management, supervision and control of the business or operations of any company or business concern having the same or similar objects as the Corporation;

(i) establish or acquire an interest in companies, co-operative societies or partnerships or other associations of persons, whether corporate or unincorporate, or participate therein;

(j) provide capital or other means to any person;

(k) enter into any contract to perform any act or render any service;

(l) provide accommodation, recreational and other facilities to persons attending training and skills development programmes of the Corporation.

(2) The Corporation may further do anything which is conducive to the attainment of its objects even though it is not expressly mentioned in subsection (1), and the generality of this provision shall not be limited by the paragraphs of subsection (1).

5 Board of Corporation

(1) The affairs of the Corporation shall be managed and controlled by a Board of directors.

(2)The Board of directors shall consist of not less than five and not more than seven directors appointed by the Minister.

(3)Every appointment of a director shall be notified in the *Gazette* .

(4)The Minister shall designate one director as chairperson of the Board and the directors shall elect from amongst their number one other director as vice-chairperson of the Board.

(5)Whenever the chairperson of the Board is for any reason unable to perform his or her functions,the vice-chairperson of the Board shall act in his or her place.

6 Disqualification of directors

No person shall be appointed as director or as acting director if he or she-

(a)is not a Namibian citizen;

(b)is an unrehabilitated insolvent;

(c)has been convicted of an offence and sentenced to a term of imprisonment without the option of a fine.

7 Remuneration and allowances of directors

(1)A director who is not in the full-time employment of the State shall be paid from the funds of the Corporation such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance,may determine.

(2)The remuneration and allowances determined under subsection (1)may differ according to the office held by the director concerned or the functions performed by him or her.

8 Appointment of acting directors

(1)If a director is for any reason unable to perform his or her functions,the Board may appoint a person as acting director to act in the place of that director until he or she can resume his or her functions.

(2)An acting director shall have all the powers and perform all the duties of the director in whose place he or she acts.

(3)An acting director who is not in the full-time employment of the State or the Corporation shall be remunerated,as determined by the Board,out of the remuneration which is due to the director in whose place he or she acts or which would have become due to such director had he or she acted as director.

9 Period of office of directors

A director shall,subject to section 10,hold office for a period of three years but shall at the expiration of his or her term of office be eligible for re-appointment.

10 Vacation of office of directors and filling of vacancies

(1)A director shall vacate his or her office-

(a)if he or she becomes subject to a disqualification referred to in section 6;

(b)if he or she is detained as a mentally ill person according to the law;

(c) if he or she resigns by giving not less than one month's notice in writing to the Board; or

(d) if he or she has been absent from three consecutive meetings of the Board without the leave of the chairperson of the Board.

(2) Whenever the office of a director becomes vacant before the expiration of his or her period of office, the Minister shall, subject to section 6, appoint a person to fill the vacancy for the unexpired portion of the period of office of the person who ceased to be a director.

11 Meetings of Board

(1) The first meeting of the Board shall be held at such time and place as the chairperson of the Board may determine and, subject to subsection (2), subsequent meetings of the Board shall be held at such times and places as the Board may determine.

(2) The chairperson may at any time and shall, at the written request of at least three directors, convene a special meeting of the Board.

(3) The majority of the directors of the Board shall form a quorum for any meeting of the Board.

(4) Subject to subsection (5), the decision of a majority of the directors present at a meeting of the Board shall constitute a decision of the Board and, in the event of an equality of votes, the chairperson shall have a casting vote in addition to his or her deliberative vote.

(5) A resolution of the Board contained in writing and signed by all the directors of the Board shall be valid although not passed at a meeting of the Board.

(6) No decision of the Board or act performed under the authority of the Board shall be invalid by reason only of a vacancy on the Board or of the fact that a person disqualified from being appointed or remaining a director *bona fide* acted as a director when the decision was taken or the act was authorised.

(7) The Board shall cause minutes to be kept of the proceedings at its meetings.

(8) The procedure at meetings of the Board shall be determined by the Board.

12 Committees of Board

(1) The Board may from time to time establish committees consisting of directors or, with the approval of the Minister, directors and other persons, to advise the Board on any matter relating to the functions of the Corporation.

(2) If a committee consists of more than one person, the Board shall designate one of those persons as the chairperson thereof.

(3) A member of a committee who is not a director or is not in full-time employment of the State or the Corporation shall be paid from the funds of the Corporation such allowances as the Board, with the concurrence of the Minister of Finance, may determine.

13 Appointment of general manager and other employees

(1) The Board shall, subject to the approval of the Minister, appoint a person as general manager of the Corporation.

(2)The general manager shall be the chief executive officer of the Corporation and shall occupy himself or herself full-time with the affairs of the Corporation,and shall exercise such powers as the Board may entrust to him or her.

(3)The general manager shall attend all the meetings of the Board and be entitled to participate in the deliberations of the Board,but shall not have a vote.

(4)The Board may appoint such other employees as it considers necessary for the attainment of the objects of the Corporation.

(5)The Board may,subject to the approval of the Minister,granted in concurrence with the Minister of Finance,determine the remuneration and other conditions of service of the general manager and other employees,and their service benefits,including the provision or supply of medical aid benefits,housing facilities or benefits,and the provision for and payment of gratuities and pensions.

14 Delegation of powers

(1)The Board may delegate any of its powers to-

(a)a committee established under section 12 (1);

(b)the general manager.

(2)The general manager may,with the approval of the Board,delegate any power delegated to him or her under subsection (1)to an employee of the Corporation.

(3)The Board or general manager,as the case may be,shall not be divested of a power delegated under subsection (1)or (2)and the Board or general manager,as the case may be,may amend or set aside anything done in the exercise of such power under such delegation.

(4)The Board or general manager,as the case may be,may at any time withdraw the delegation of a power under subsection (1)or (2).

15 Duty of directors to disclose interest in certain contracts

(1)A director who is in any way,whether directly or indirectly,materially interested in a contract which has been or is to be entered into by the Corporation,or who becomes materially interested in any such contract after it has been entered into,shall disclose the nature of his or her interest at a meeting of the Board at the first opportunity at which it is possible for him or her to do so.

(2)A director referred to in subsection (1)shall not take part in the consideration or discussion of,or vote on any question before the Board which relates to a contract referred to in that subsection.

(3)Any disclosure of interest contemplated in subsection (1)shall be recorded in the minutes of the meeting of the Board at which such disclosure is made.

(4)A director who fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

16 Financing of Corporation

(1)The funds of the Corporation shall consist of-

(a)money appropriated by Parliament to finance the functions of the Corporation;

(b) money received by virtue of contracts and the services rendered by the Corporation;

(c) money borrowed by the Corporation;

(d) interest on investments by the Corporation;

(e) donations or contributions received by the Corporation from any person, institution, government or any other source;

(f) money received from any other source.

(2) The Corporation shall utilize its funds for defraying expenses in connection with the performance of its functions or the exercise of its powers,

(3) The Corporation shall utilize any money contemplated in subsection (1)(a) in accordance with the statement of its estimated income and expenditure referred to in subsection (4), as approved by the Minister: Provided that, subject to the provisions of subsection (2), the Corporation may-

(a) utilize any amount or portion of any amount required to be utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter;

(b) with the concurrence of the Minister, utilize any balance of the money remaining at the end of the Corporation's financial year in question, for any expenses in connection with its functions.

(4) The Board shall in each financial year, at a time determined by the Minister, submit a statement of the Corporation's estimated income and expenditure during the following financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance.

17 Financial year

The financial year of the Corporation shall end on 31 March in each year.

18 Auditing, furnishing of information and annual reports

(1) The Auditor-General shall audit the books and accounts of the Corporation and shall submit his or her report on the audit of those books and accounts to the Corporation.

(2) The Corporation shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the Corporation and shall as soon as practicable after the end of each financial year submit to the Minister in respect of that financial year, certified copies of-

(a) its audited financial statements and the report of the Auditor-General; and

(b) a report by the Board on the activities of the Corporation during that financial year.

19 Rendering of financial assistance and transfer of assets to Corporation

The Minister, in consultation with the Minister of Finance, may, subject to such conditions as the Minister may determine-

(a) out of moneys appropriated by the National Assembly for that purpose grant such financial assistance by way of a loan or donation to the Corporation;

(b) transfer or deliver to the Corporation such immovable and movable property of the State, as the Minister may consider necessary to assist it in the attainment of its objects.

20 Exemptions

Notwithstanding anything to the contrary contained in any law-

(a) the income of the Corporation shall be exempted from income tax;

(b) no transfer duty, office fees or other moneys shall be payable in respect of the acquisition of immovable property by the Corporation.

21 Restriction of liability

No director or person in the employment of the Corporation shall be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise or performance of a power or duty in terms of this Act.

22 Winding up of Corporation

The Corporation shall not be wound up except by or under the authority of an Act of Parliament.

23 Transfer of staff and funds

(1) Any person who, immediately before the commencement of this Act, was in the employment of the State additional to the fixed establishment of the Public Service for the purpose of the division known as the "Development Brigade" in the Ministry of Lands, Resettlement and Rehabilitation, shall, with effect from the date of commencement of this Act, be in the employment of the Corporation and be deemed to have been appointed as an employee of the Corporation by the Board in terms of section 13 (4).

(2)(a) The terms and conditions of any service contract, and all service privileges and benefits which applied to or in respect of a person contemplated in subsection (1) immediately before the commencement of this Act, shall remain applicable to him or her unchanged and any such service contract or service privileges and benefits shall be deemed to have been entered into with, or granted to, such person by the Corporation.

(b) Notwithstanding anything to the contrary contained in any other law, any person who by virtue of any condition of any service contract referred to in paragraph (a) became a member of the Medical Aid Scheme for public servants, and who was such a member immediately before the commencement of this Act, shall, until the date on which the initial period of his or her service contract expires, continue to be a member of the said Medical Aid Scheme as if he or she were an officer or employee in the Public Service.

(3) Any question that may arise as to whether or not an officer or employee in the Public Service is employed as contemplated in subsection (1), shall be decided by the Minister, in consultation with the Minister of Lands, Resettlement and Rehabilitation.

(4) In respect of the financial year ending on 31 March 1993 there shall be paid from the State Revenue Fund to the Corporation such amount, if any, as determined by the Minister of Lands, Resettlement and Rehabilitation and the Minister of Finance as representing the

unexpended portion of the amount which has been provided for in the vote of expenditure of the Ministry of Lands,Resettlement and Rehabilitation in respect of the said financial year for the purposes of the division referred to in subsection (1).

24 Short title and commencement

This Act shall be called the Development Brigade Corporation Act,1992,and shall come into operation on a date to be determined by the Minister by notice in the *Gazette* .