



LAWS OF KENYA

**INDUSTRIAL AND COMMERCIAL
DEVELOPMENT CORPORATION ACT**

CHAPTER 445

Revised Edition 2012 [1983]

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

CHAPTER 445

**INDUSTRIAL AND COMMERCIAL DEVELOPMENT
CORPORATION ACT**

ARRANGEMENT OF SECTIONS

Section

1. Short title.
 2. Interpretation.
 3. Establishment and functions of Corporation.
 4. Constitution of Corporation.
 5. Alternate directors.
 6. Remuneration.
 7. Management.
 8. Powers of corporation.
 9. Power of Minister to give directions.
 10. Borrowing powers.
 11. Powers of guarantee, etc.
 12. Advances or grants by Government
 13. Surplus funds.
 14. Meetings and proceedings.
 15. Accounts and report.
 16. Winding Up.
 17. Application of the Companies Act.
 18. Directors not to be personally liable.
 19. Regulations.
-

CHAPTER 445

**INDUSTRIAL AND COMMERCIAL DEVELOPMENT
CORPORATION ACT**

[Date of assent: 21st December, 1954.]

[Date of commencement: 15th February, 1955.]

An Act of Parliament to establish a corporation to be known as the Industrial and Commercial Development Corporation for facilitating the industrial and economic development of Kenya

[Act No. 63 of 1954, L.N. 2/1964, L.N. 374/1964, Act No. 7 of 1967.]

1. Short title

This Act may be cited as the Industrial and Commercial Development Corporation Act.

[Act No. 7 of 1967, s. 2.]

2. Interpretation

In this Act—

“**Corporation**” means the Industrial and Commercial Development Corporation established by section 3;

“**director**” means a person appointed as a director under section 4.

[Act No. 7 of 1967, s. 2.]

3. Establishment and functions of Corporation

(1) There is hereby established a corporation to be known as the Industrial and Commercial Development Corporation, for the purposes of facilitating the industrial and economic development of Kenya by the initiation, assistance or expansion or by aiding in the initiation, assistance or expansion of industrial, commercial or other undertakings or enterprises in Kenya or elsewhere.

(2) In the exercise of its functions under this Act, the Corporation shall have regard generally to the desirability of—

- (a) acting principally as an auxiliary finance organization and not as the sole source of the provision of finance in respect of any particular undertaking or enterprise;
- (b) exercising its powers of affording financial assistance, so far as possible and except where the Minister responsible for finance otherwise directs, by way of guarantee, loan or investment and not by way of grant or subsidy;
- (c) requiring early liquidation or repayment of any guarantee, loan or investment made by the Corporation, in order to ensure so far as possible that the liquid resources of the Corporation may be available for other purposes within the scope of the functions of the Corporation under this Act, and, in particular, to the desirability of ensuring that any such undertaking or enterprise will be of long-term

*Industrial and Commercial
Development Corporation*

(3) The Corporation shall be a body corporate with perpetual succession and a common seal, with power to hold land and to sue and be sued in its corporate name.

(4) The application of the seal of the Corporation shall be authenticated by the signatures of the chairman of the Corporation (or some other director authorized by the Corporation to authenticate the application of the seal thereof) and of another director.

(5) Every document purporting to be an instrument issued by the Corporation and to be sealed or to be signed on behalf of the Corporation shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown.

[Act No. 7 of 1967, s. 2.]

4. Constitution of Corporation

(1) The Corporation shall consist of a chairman and not less than five nor more than nine other directors, all of whom shall be appointed by the Minister from among persons appearing to him to have had experience and shown capacity in industry, trade or administration.

(2) Every director of the Corporation shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a director, be eligible for reappointment:

Provided that a director may at any time by notice in writing to the Minister resign his office.

(3) All appointments under this section shall be made by the Minister after consultation with the Corporation.

(4) The validity of any proceedings of the Corporation shall not be affected by any vacancy amongst the directors or by any defect in the appointment of a director.

(5) If the chairman of the Corporation ceases to be a director he shall also cease to be chairman.

(6) If the Minister is satisfied that any director—

- (a) has become bankrupt or has made an arrangement with his creditors;
or
- (b) is incapacitated by physical or mental illness; or
- (c) has been absent from meetings of the Corporation for a period longer than three consecutive months without the permission of the Corporation; or
- (d) is otherwise unable or unfit to discharge the functions of a director, or is unsuitable to continue as a director, the Minister may remove him from his office as a director.

5. Alternate directors

(1) Subject to the approval of the Minister, a director shall have power to appoint either another director or any person approved by the other directors, or by a majority of them, to act as an alternate director in his place during his absence or his inability to attend any meeting, and may at his discretion remove that alternate director:

Provided that no director or person shall at one and the same time act as alternate director in place of more than one director.

(2) An alternate director shall, whilst so acting (except as regards remuneration and the power to appoint an alternate director), be subject in all respects to the provisions of this Act relating to directors, and each alternate director shall, whilst so acting, exercise and discharge all the functions, powers and duties of his appointor in his appointor's absence.

(3) A director acting as alternate director shall have an additional vote for the director for whom he so acts.

(4) An alternate director shall cease to be an alternate director whenever his appointor ceases for any reason to be a director.

6. Remuneration

(1) The Corporation shall pay to the chairman and each director such remuneration and allowances as may from time to time be determined by the Corporation with the approval of the Minister.

(2) If any director or person is employed about the affairs of the Corporation otherwise than as a director, the Corporation may pay him such remuneration and allowances (in addition to the remuneration or allowances, if any, to which he may be entitled as a director), as the Corporation, with the approval of the Minister, may determine.

7. Management

The Corporation may appoint a general manager, and such managers, accountants, secretaries, managing agents and such other servants or agents as the Corporation may consider necessary for the proper discharge of its functions, on such terms and conditions as the Corporation may determine.

8. Powers of Corporation

Without prejudice to the generality of the provisions of section 3 the Corporation shall, subject to the approval, generally or specially, of the Minister and subject to such terms and conditions as he may impose in giving any such approval, have power—

- (a) to provide credit and finance by means of loans or the subscription of loan or share capital or otherwise for industrial, commercial or other undertakings or enterprises in Kenya or elsewhere;
- (b) to subscribe for, conditionally or unconditionally, to underwrite, issue on commission or otherwise, take, hold deal in and convert shares, stocks, obligations and securities of all kinds, and to enter into partnership, or into any arrangement for participating in undertakings, sharing profits, union of interest, reciprocal

*Industrial and Commercial
Development Corporation*

- (c) to advance, deposit or lend money, securities and property to or with such persons, partnerships or companies and on such terms as may seem expedient; to create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrants, coupons, debentures and other negotiable or transferable instruments;
- (d) subject to the provisions of section 11, to guarantee or become liable by way of suretyship or indemnity for the payment of money, or for the performance of any contracts or obligations, and generally to transact all kinds of guarantee, trust or agency business;
- (e) to purchase, take on lease, hire or otherwise acquire, and to sell, exchange, surrender, lease, mortgage, charge, convert, turn to account, dispose of and deal with, any movable or immovable property and rights of all kinds;
- (f) to purchase or otherwise acquire and carry on the whole or any part of the business, property, goodwill and assets of any person, partnership or company carrying on, or proposing to carry on, any business which the Corporation is authorized to carry on, or which can be conveniently carried on in connexion with that business or may seem calculated, directly or indirectly, to benefit the Corporation, or possessed of property suitable for the purposes of the Corporation, and, as part of the consideration for any of those acts or things or property acquired, to undertake all or any of the liabilities of that person, partnership or company, or to acquire an interest in, amalgamate with or enter into any arrangement for sharing profits or for co-operation or for limiting competition or for mutual assistance with any such person, partnership or company, and to give, issue or accept cash or any shares, stocks, obligations or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any shares, stocks, obligations or securities so received;
- (g) to sell, exchange, mortgage (with or without power of sale), assign, lease, sublet, improve, manage, develop, dispose of, turn to account, grant rights and privileges in respect of and generally otherwise deal with the whole or any part of the business, estates, property, rights or undertakings of the Corporation, upon any terms, either together or in portions, and as a going concern or otherwise, for such consideration, whether of cash, shares, stocks, obligations or securities, as the corporation may think fit;

- (h) to invest and deal with money upon such securities and in such manner as may from time to time be determined, and to place money on deposit or current account with any bank or building society;
- (i) subject to the provisions of section 10, to raise or borrow money, with or without security, and also to secure the payment of money by the issue of or upon debentures or debenture stock, perpetual, terminable or otherwise, or bonds, or other obligations charged or not charged upon, or by mortgage, charge, hypothecation, lien or pledge of the whole or any part of the undertaking, property, assets and rights of the Corporation, both present and future, and generally in such other manner and on such terms as may seem expedient, and to issue any of the Corporation's obligations or securities for such consideration and on such terms as may be thought fit; and also, by a similar mortgage, charge, hypothecation, lien or ledge, to secure and guarantee the performance by the Corporation of any obligation or liability it may undertake, and to redeem or pay off any such securities;
- (j) to act as the manager, agent or secretary of any undertaking and to nominate or appoint any person to act as director of, or in any other capacity in relation to any undertaking, and to act as the agent or representative of any undertaking, whether carrying on business in Kenya or elsewhere;
- (k) to do all or any of the above things as principals, managers, agents, contractors, trustees or otherwise, and either by or through trustees, agents, sub-contractors or otherwise, and either alone or in partnership or in conjunction with any other person, partnership or company, and to contract for the carrying on of any operation connected with the Corporation's business by any other person, partnership or company;
- (l) to do all such other things whether of an industrial, commercial or other nature as may be deemed to be incidental or conducive to the attainment of the above objects or any of them and to the exercise of the rights, powers and authorities given by this Act.

9. Power of Minister to give directions

The Corporation shall, in the exercise of its powers and in the performance of its duties under this Act or any other written law, act in accordance with any general or special directions that may be given to it by the Minister.

[Act No. 7 of 1967, s. 3.]

10. Borrowing powers

(1) The borrowing powers of the Corporation shall be exercisable only with the approval of the Minister responsible for finance as to amount, the sources of the borrowing and the terms and conditions on which the borrowing may be effected.

(2) Any approval given for the purposes of this section may be either general or limited to a particular borrowing or otherwise, and may be either conditional or unconditional.

(3) A person lending money to the Corporation shall not be bound to inquire whether the borrowing of money is within the power of the Corporation or be concerned to see to the application thereof or be answerable for any loss or misapplication thereof.

11. Powers of guarantee, etc.

The power of the Corporation to guarantee, or become liable by way of suretyship or indemnity for, the payment of money, or the performance of any contracts or obligations, shall be limited to the extent that the aggregate amount remaining undischarged under all liabilities by way of guarantee, suretyship or indemnity assumed by the Corporation shall not at any time exceed the value, as determined by the Minister responsible for finance from time to time, of the assets of the Corporation available for meeting that aggregate amount.

12. Advances or grants by Government

To enable the Corporation to exercise its powers or to fulfil any of its obligations, the Minister responsible for finance may, with the consent of the National Assembly, make advances or grants to the Corporation.

[L.N. 374/1964.]

13. Surplus funds

The Minister responsible for finance may, from time to time, after consultation with the Minister, direct the Corporation to pay into the Consolidated Fund any money held by the Corporation and deemed by the Minister responsible for finance to be surplus to its existing or anticipated requirements.

14. Meetings and proceedings

(1) The quorum necessary for the transaction of business of the Corporation shall, except where regulations made under this Act otherwise provide, be four.

(2) The chairman of a meeting shall in the case of equality of votes have a second or casting vote.

(3) The directors shall cause minutes of all proceedings at their meetings, and of all proceedings at meetings of every committee that may be appointed by them, to be entered in books kept for that purpose.

(4) The books containing the minutes of such proceedings shall remain the property of the Corporation and shall be kept at such place as the directors think fit, and shall at all times be made available to the Minister and to all persons authorized by him in that behalf.

(5) Subject to the provisions of this Act and of any regulations made thereunder, the Corporation shall regulate its own procedure.

15. Accounts and reports

(1) The directors shall cause to be kept proper books of account and such other records as are necessary to give a true and fair view of the state of the Corporation's affairs and to explain its transactions, and those books of account and other records shall be kept at such place as the directors think fit, and shall at all times be made available to the Minister and to all persons authorized by him in that behalf.

(2) The directors shall as soon as practicable after the end of each financial year of the Corporation cause to be prepared a statement of accounts in such form as the Minister may, with the approval of the Minister responsible for finance, direct.

(3) The accounts of the Corporation shall be audited annually by an auditor or auditors appointed by the Minister.

(4) The directors shall as soon as practicable after the end of each financial year of the Corporation make an annual report to the Minister dealing generally with the operations of the Corporation during that year.

(5) The accounts and annual report shall within six months after completion of each financial year of the Corporation be laid before the National Assembly by the Minister.

[L.N.374/1964.]

16. Winding up

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

17. Application of the Companies Act

The Minister may from time to time, by order published in the *Gazette*, apply to the Corporation any provision of the Companies Act not being inconsistent with the provisions of this Act, and where any such order is made that provision shall apply to the Corporation as it applies to a company within the meaning of the Companies Act (Cap. 486).

18. Directors not to be personally liable

No director or officer of the Corporation shall be personally liable for any act or thing done or omitted to be done by him as such in good faith and without negligence in the course of the operations of the Corporation.

19. Regulations

The Minister may, after consultation with the directors, make such regulations as he may consider necessary or desirable for the proper conduct of the business of the Corporation including, without prejudice to the generality of the foregoing, regulations with regard to any of the following matters—

- (a) the convening of the meetings of the Corporation, directors and committees, and the procedure to be followed thereat;
 - (b) the appointment or establishment of committees of the directors, and the co-opting of persons other than directors to such committees; and
 - (c) the provision of a common seal and the custody and use thereof.
-

