

LESOTHO NATIONAL DEVELOPMENT CORPORATION

ORDER 1990

Arrangement of Sections

Part I - Preliminary

Section

1. Short title and commencement
2. Interpretation

Part II - The Lesotho National Development Corporation and its purpose, powers and duties

3. Continuation of existence of the Corporation
4. Purpose of the Corporation
5. Duties and powers of the Corporation
6. Additional power of Corporation for safeguarding investments and property
7. Powers of Corporation in respect of employees

Part III - The Composition and procedure of The Board of Directors of the Lesotho National Development Corporation

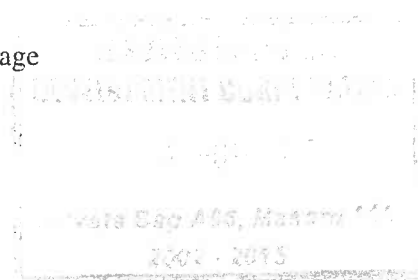
8. The Board of Directors of the Corporation
9. Meetings of the Board of Directors

Part IV - Financial Provisions

10. Shares and share capital
11. Funds, assets and resources of the Corporation
12. Expenditure of the Corporation
13. Limitation of borrowing powers of the Corporation
14. Appropriation of income, property and profits
15. Reserves of the Corporation
16. Accounts
17. Audit
18. Powers of Auditor-General
19. Information to be furnished to Government and Legislature

Part V - Supplementary Provisions

20. Liability of shareholders
21. Liability of Directors for loss or damage
22. Use of name of the Corporation
23. Application of Company law
24. Liquidation of the Corporation
25. Regulations
26. Repeals and Savings



ORDER NO. 13 OF 1990

Lesotho National Development Corporation Order, 1990**ORDER**

To consolidate and amend the law relating to the Lesotho National Development Corporation and to provide for matters connected therewith.

Enacted by the Military Council.

Part I - Preliminary**Citation and Commencement**

1. This Order may be cited as the Lesotho National Development Corporation Order 1990, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette.

Interpretation

2. In this Order, unless the context otherwise requires,
“Board” means the Board of Directors of the Corporation constituted under section 8;

“Corporation” means the Lesotho National Development Corporation which is continued in existence by section 3;

“Financial Year” means the financial year of the Corporation beginning on the 1st day of April and ending on the 31st day of March in each year;

“International organisation” means any international organisation recognised as such by the Minister for the purposes of this Order;

“Minister” means the Minister of Trade and Industry;

“Natural Resource” has the ordinary meaning of that expression and includes minerals, metals, precious stones, any substance in or under land of a kind ordinarily worked for the removal by underground or surface working, land, water, wood, agriculture, fish and fish products, labour, power and methods and means of transport and communication;

“Purpose of the Corporation” means the purpose prescribed by section 4;

“Regulation” means a regulation made under section 25.

**Part II - Continuation of Existence of the Corporation,
its purpose, powers and duties**

Continuation of existence of the Corporation

3. (1) There shall continue to be a body to be known as the Lesotho National Development Corporation.
- (2) The corporation is a body corporate is a body with perpetual succession and is capable of suing and of being sued in its own name and of performing all such acts as are necessary for or incidental to the attainment of the purpose of the Corporation and the performance of the duties imposed on it and powers conferred on it by this Order or the regulations.

Purpose of the Corporation

4. (1) The purpose of the Corporation, is to initiate, promote and facilitate the development of manufacturing and processing industries, mining and commerce in a manner calculated to raise the level of income and employment in Lesotho:

Provide that the Corporation may in exercise of its powers under section 5(1) (s), engaged in prospecting or mining or permit any other person to exercise any rights of prospecting or mining held by the Corporation.

- (2) In carrying out its purpose, the Corporation shall prepare a programme or programmes showing how it proposes to act in that behalf.
- (3) The Government may, after consultation with the Corporation, give to the Corporation general guidelines as to the policy to be applied in carrying out the purposes of the Corporation and the Corporation shall give effect to those guidelines. Every decision of the Corporation made in accordance with those guidelines is deemed for all purposes to be a decision of the Corporation.

- (4) The Corporation and the Ministries, departments and other agencies of the Government shall, in consultation forthwith, and thereafter, from time to time, devise uniform procedures for effective collaboration throughout Lesotho in pursuance of the provisions of this section, and the Head of Government may affirm those procedures with or without variation.

Duties and powers of the Corporation

5. (1) The Corporation is hereby given the duty and the power to carry out the purpose specified in section 4 subject to the provisions of that section, and more particularly has in respect of that purpose, the duty and the power to do all or any of the things specified in this section, either by itself or by or in association with other bodies or persons, or as managing agent or otherwise on behalf of other bodies or persons; namely,
- (a) to investigate, formulate, initiate and carry out projects, undertakings and enterprises to exploit, develop or utilise a natural resource in order to develop Lesotho economically, or to assist therein;
 - (b) to appoint advisory or other committees to investigate and report back on or otherwise deal with any matters falling within the Corporation's objects;
 - (c) to investigate, formulate, initiate and carry out projects, undertakings and enterprises for the promotion or expansion of new or existing projects, undertakings or enterprises in order to develop Lesotho economically in respect of the following matters, or to assist therein,
 - (i) manufacturing, mining and agricultural industry, including cottage or village-type industries;
 - (ii) commercial enterprises;
 - (iii) the generation, supply and distribution of electric power, including hydro-electric generation;
 - (iv) the conservation, supply and distribution of

-
- water;
 - (v) transport;
 - (vi) tourism, including hotels, resorts and the like;
- (d) to raise, lend or borrow money, or to make advances with or without interest, and with or without security to any company, firm or person, and in particular, lend and advance money to companies, firms or persons owning or engaging in any business similar or related to that of the Corporation or to customers and others having dealings with the Corporation and to guarantee payment of cash or performance of contracts by any such company, firm or person on any terms as may be agreed upon and to issue debentures, bills of exchange and other negotiable or transferable instruments;
- (e) to promote, assist or finance any project, enterprise or undertaking in order to develop Lesotho economically, by the following means,
- (i) by direct expenditure on or towards the implementation of the project or undertaking or any of the objects of the project or undertaking;
 - (ii) by making loans or grants for the purposes of the project or undertaking;
 - (iii) by investing any moneys belonging to the Corporation in any project, undertaking or enterprise;
 - (iv) by providing technical, advisory or managerial assistance and services;
 - (v) by providing plant or machinery for the purposes of any project, undertaking or enterprise;
- (f) to construct, establish, acquire, maintain, manage or operate any project, enterprise or undertaking related to

purpose of the Corporation;

- (g) to enter into such contracts as may be necessary for carrying out the purpose of the Corporation;
- (h) to insure with any company or person against any loss, damage, risk and liability that it may incur;
- (i) to purchase or sell any materials or stores used in carrying out of the purposes of the Corporation;
- (j) to manufacture and sell any product in furtherance of the purposes of the Corporation;
- (k) to construct or cause to be constructed any work, house, office, building, structure or the like as it may deem necessary or expedient for carrying out the purposes of the Corporation;
- (l) to sell, exchange, lease, dispose of, turn to account or otherwise deal with any of its assets or any part thereof whether movable or immovable for such consideration as it may think fit;
- (m) to hypothecate any of its property whether movable or immovable;
- (n) to assist any international organisation or any government, corporation, company, co-operative society, partnership or person with capital or credit by means of investment in stocks, shares, bonds, debentures or stock or with other moneys or with any other resource for carrying out any project or undertaking the main purpose of which is compatible with the purpose of the Corporation;
- (o) to appoint advisers and agents, and to employ officers and employees;
- (p) to purchase, take on lease or in exchange or otherwise acquire dwelling houses for occupation by persons in

the Corporation's employment;

- (q) to acquire rights in land in accordance with the law of Lesotho relating to land, and to construct thereon dwelling houses for occupation by persons in the Corporation's employ;
- (r) to transfer on agreed terms, to persons in the Corporation's employ the rights of the Corporation in dwelling houses in accordance with the law in Lesotho relating to land;

Amendment No. 43 of 1967

- (s) to apply for, and acquire minerals titles under the Mining Rights Act 1967, to prospect or mine for any minerals under any mineral title so acquired, or to grant to any other person permission to exercise the Corporation's rights under any such mineral title and to prospect or mine accordingly subject to the conditions of that title and of the permission;
- (t) generally to acquire, own, possess or hire, movable and immovable property or rights in or to any such property;
- (u) by legal process to cause any corporation, company, co-operative society or partnership in which it has a share or interest, to be liquidated or placed under judicial management and for that purpose the Corporation may itself be appointed as liquidator or judicial manager;
- (v) to assume and accept cession and transfer of all rights and obligations entered into by and between the Head of Government and third persons on behalf of the Corporation prior to its establishment;
- (w) to accept donations and receive any moneys offered or due to the Corporation;
- (x) to act as broker;

- (y) to open, operate and close banking accounts;
- (z) to write of bad debts;
- (aa) generally to do anything that is necessary for or conducive to the attainment of the purpose of the Corporation, even though that thing is not expressly include among things that the Corporation may do under this section.
- (2) If anything may be done by the Corporation under this section, and that thing may also be done by a Ministry, department or other agency of the Government, the Government may, in particular cases or in general, determine whether that thing is to be done by the Corporation or by that Ministry, department or other or other agency, or jointly on such conditions as may be determined by the Government.
- (3) The Corporation may entrust to and confer upon any person or international organisation as agent of the Corporation any of the duties and powers of the Corporation upon such terms and conditions as the Corporation may fix, but so that the Corporation's own purpose, duties and powers are not excluded. The Corporation may revoke, withdraw, alter or vary any all of such powers. An agent under this subsection shall receive such remuneration, whether by way of salary, fee, commission or participation in profits or partly in one way and partly in another as may be agreed between the agent and the Corporation. Nothing in the preceding provisions of this subsection shall affect the rights of any person to whom any permission has been granted under subsection (1) (s).
- (4) The conditions under which any permission is granted by the Corporation to any person under subsection (1) (s) shall be contained in a writ-ten contract between the Corporation and that person.

Additional power of the Corporation by safeguarding investments and property

- 6. (1) If the Corporation considers it necessary to have additional

power for safeguarding an investment made by it, it may act as director, manager, trustee, curator, executor or administrator of any business, estate, trust or fund or may designate any person as such on behalf of the Corporation.

- (2) If the Corporation has made a loan under the provisions of this Order on the security of any corporeal property or has under the provisions of this Order sold or acquired the seller's rights under a hire purchase or instalment sale agreement to any corporeal property, the Corporation may, from time to time, value or inspect that property, or cause it to be valued or inspected, and for that purpose, may, in writing, authorise any of its officers, employees or agents or any other person to make that valuation or inspection.
- (3) A person authorised under subsection (2) to value or inspect corporeal property may, at all reasonable times, value and inspect that property and enter upon any land or premises if it is necessary for that purpose.
- (4) A person who hinders or obstructs a person who has been so authorised, in the course of his duty to inspect or value that property, commits an offence and is liable on conviction to a fine of M1000 or imprisonment for a period of 6 months.

Powers of the Corporation in respect of employees

7. (1) The Corporation may, in respect of its officers and employees, prescribe the general conditions of service and disciplinary measures and may remunerate, discharge or suspend them temporarily, and indemnify them in respect of any harm, damage, or loss suffered by them in the course of the performance of their duties.
- (2) The Corporation may cause any member, officer, agent or servant of the Corporation to enter into a fidelity bond.
- (3) The Corporation may establish and maintain pension, superannuation, provident and other funds as it may consider desirable for the provision of payments or other allowances on death, sickness, injury, superannuation, resignation or retirement or dis-

charge of its officers and servants.

- (4) The Corporation may make rules providing for the payment of moneys out of the revenue of the Corporation to such funds and providing for the contribution of moneys, to such funds by the officers and employees of the Corporation and may contract with an insurance company, or other body for the maintenance of such funds.

**Part III - The Composition and Procedure
of the Board of Directors of the Lesotho National Development
Corporation**

The Board of Directors of the Corporation

8. (1) The affairs of the Corporation are managed and controlled by a Board of Directors who may exercise all the powers and who shall perform all the duties of the Corporation subject to the provisions of this Order and the regulations.
 - (2) The Board of Directors consists of 9 Directors.
 - (3) The Directors of the Corporation are,
 - (a) the Minister of Trade and Industry, who shall be chairman of the Board;
 - (b) the Minister of Finance and Planning;
 - (c) the Minister of Agriculture;
 - (d) six other members who shall be appointed by the Minister by notice in the Gazette, one of whom shall represent the Lesotho Chamber of Commerce and Industry.
 - (4) A Director appointed under subsection (3) (d) holds office for 2 years from the date of his appointment unless he sooner resigns or his appointment is terminated by the Minister under subsection (7).
-

-
- (5) A Director appointed under subsection (3) (d) is eligible for reappointment at the conclusion of this term of office.
 - (6) A Director appointed under subsection (3) (d) may, at any time, by writing under his hand addressed to the Minister, resign his office of Director.
 - (7) A Director appointed under subsection (3) (d) shall vacate his office of Director,
 - (a) if he, or the person nominated by him in terms of subsection (12) has been absent from 3 consecutive meetings of the Board without the permission of the chairman; or
 - (b) if he is, in the the opinion of the Minister, unable or unfit to discharge the functions of a director, and that Director has been instructed in writing by the Minister to vacate that office.
 - (8) If a Director has been instructed to vacate his office under subsection (7) (b) or if a Director has resigned his office under subsection (6), the office of that Director is vacant and the Minister shall, by notice in the Gazette, fill that office by a new appointment in accordance with subsection (3) (d). A person appointed under this subsection holds office as Director for the unexpired portion of the term of office of the former Director to whose office he has been appointed.
 - (9) The Minister may, on the advice of the Board, designate one of the directors appointed under subsection (3) (d) to be Managing Director and may, in like manner, terminate that designation.
 - (10) The Managing Director exercises such powers and performs such duties as may be authorised by the Board.
 - (11) If, for any reason, the managing Director is unable to act as such, the Minister may, on the advice of the Board, fill that office by an acting appointment during that inability, and the Director so appointed, while so acting, has all the powers and performs all the duties of the Managing Director.

- (12) If, for any reason, a Director appointed under subsection (3) (d) or subsection (8) is unable to attend a meeting of the Board, he may, subject to the approval of the Chairman, nominate some other person to attend in his stead and any person so nominated shall, for the purposes of the meeting for which he is nominated, have all the powers and perform all the duties of the Director so nominating him:

Provided that no nomination under this subsection shall be of any force or effect if the Director concerned vacates his office for any of the reasons contained in subsection (7) or upon the expiry of his term of office in terms of subsection (4).

Meetings of the Board of Directors

9. (1) The Chairman presides at all meetings of the Board at which he is present.
- (2) At meetings of the Board, if the Directors are not unanimous in their opinion on a question, that question is resolved by a majority of votes of the Directors present and voting. Each Director has a deliberative vote and the chairman has, in addition, in the event of an equality of votes, a casting vote.
- (3) If the Chairman is absent from a meeting of the Board, the Directors present shall elect one of their number to preside in his place and the Director so elected has all the powers and performs all the duties of the chairman, except that in the event of an equality of votes he has no casting votes.
- (4) If the Board requires advice on a particular matter the Board may invite a person to attend a meeting or meetings of the Board to give that advice, and that person while present has all the rights and privileges of a Director save that he does not vote or otherwise participate in the actual decision of the Board on a question.
- (5) At a meeting of the Board, 5 members, one of whom shall be a Government Minister, constitute a quorum.
- (6) In respect of matters that are not provided for in this Order or the regulations, the Board may provide in a manner that is not inconsistent with this Order and the regulations for;
-

-
- (a) the proper conduct of the business of general meetings and of meetings of the Board;
 - (b) the procedure of a committee;
 - (c) the management and administration of the Corporation generally;
 - (d) the method of entering into contracts and their execution;
 - (e) the execution of documents by an agent; and
 - (f) the signing of cheques and similar instruments.

Part IV - Financial Provisions

Shares and share capital

- 10. (1) The authorised share capital of the Corporation is M20,000,000 divided into 20,000,000 shares of one loti each.
- (2) The Board may increase or reduce the capital of the Corporation, consolidate or divide the same, convert the fully paid up shares into stock, or may issue any part of the Corporation's capital, original or increased, with or without any preference, priority or special privilege.
- (3) Sixty per cent of the issued shares shall be held by the Government.
- (4) The Board may, from time to time offer the balance of 40% shares to any person, corporation or public body on such terms and conditions as the Board may determine.

Funds, assets and resources of the Corporation

- 11. (1) The funds, assets and resources of the Corporation consist of:
 - (a) the share capital of the Corporation;
-

- (b) all moneys or property that may from time to time be donated, lent or granted to the Corporation,
 - (i) by the Government or by a Ministry, department or other agency of the Government, pursuant to any powers lawfully vested in it by an Appropriation enactment or otherwise; and
 - (ii) by another government or by a person or by an international organisation;
 - (c) all property and investments acquired by or vested in the Corporation and all moneys earned or arising therefrom;
 - (d) all sums from time to time received or falling due to the Corporation in respect of the repayment of any loan or advance made by the Corporation or the interest payable in respect of any such loan or advance;
 - (e) moneys raised or borrowed by the Corporation in accordance with section 5(1) (d);
 - (f) all other moneys or property that may in any manner become payable to or vested in the Corporation in respect of any matter incidental to its purpose, powers and duties.
- (2) Unless the Board shall otherwise resolve, all moneys received by the Corporation shall be paid into a bank licenced or registered under any law for the time being in force in Lesotho, and shall be credited to such of the corporation's accounts as may be appropriate.
- (3) The Corporation may invest all or any of its moneys not required for the performance of its purpose, powers and duties,
- (a) in the purchase of any security issued, or in any deposit account maintained by the Government of Lesotho or by any government of a country approved by the Government of Lesotho;
-

-
- (b) in any security in which a trustee may invest under the provision of any law in force in Lesotho;
 - (c) in deposits in any bank or building society;
 - (d) in any other securities approved either generally or specifically by the Minister of Finance and Planning in writing, and the Corporation may, from time to time, in like manner vary such investments.

Expenditure of the Corporation

- 12. (1) The expenditure incurred by or on behalf of the Corporation, including the expenses of Directors and the costs and expenses of audit, is defrayed out of the funds of the Corporation, but no Director save for a Managing Director is entitled to the payment of remuneration other than reasonable expenses out of the funds of the Corporation.
- (2) The Corporation shall so manage its affairs, that taking one year with another, its revenues shall be sufficient to meet its expenditures as current account.

Limitation of borrowing powers of the Corporation of Act No. 22 of 1975

- 13. Subject to the Loans (Statutory Bodies) Act, 1975, the amount owing by the Corporation at any time in respect of loans negotiated and moneys raised shall not exceed 4 times of the amount then obtained by adding the amount paid up on shares in the Corporation.

Appropriation of income, property and profits

- 14. (1) All income and property of the Corporation, from whatever source they may be acquired, are applied exclusively to the promotion of the purpose of the Corporation.
 - (2) The dividends of the Corporation shall be appropriated as resolved by the Board who shall have taken into full account repayment of any debts, amortization of losses, future capital requirements and future expansion plans of the Corporation.
-

Reserves of the Corporation

15. The Corporation may establish general and other reserves, and may credit to those reserves such appropriations as may be authorised in the annual estimates of the Corporation.

Accounts

16. The Corporation shall cause proper books of accounts to be kept, as well as all necessary books and records in connection therewith.

Audit

17. The auditor-General or a person authorised by him shall examine and audit the books of accounts of the Corporation which, for the purpose the Audit (Statutory Bodies) Act 1973, shall be deemed to be a statutory body under that Act.

Powers of Auditor-General

18. (1) The Auditor-General may,
- (a) by writing under his hand, require the production of all books, deeds, contracts, vouchers, receipts and other documents relating to the accounts or investment of the corporation that he may deem necessary for the purpose of the audit;
 - (b) by notice in writing, summon all such persons as may appear to him to have knowledge of the affairs of the Corporation, to appear before him personally at the offices of the Corporation at a time to be fixed in that notice, for examination in connection with any document or matter relating to the audit.
- (2) Subject to subsections (3) and (4), a person to whom subsection (1) applies, who, without just cause, the proof whereof shall lie upon him,
- (a) fails or refuses to produce any document that he has been duly required to produce by the Auditor-General;

-
- (b) fails or refuses to comply with a notice summoning him to appear before the Auditor-General;
 - (c) refuses to be examined by the Auditor-General after having appeared before him on a notice summoning him to appear or otherwise;
 - (d) refuses to answer questions pertaining to the audit that are put to him by the Auditor-General after that person has appeared before him on a notice summoning him to appear or otherwise; or
 - (e) having appeared before the Auditor-General on a notice summoning him to appear or otherwise, makes any statement pertaining to the audit that he knows or believes to be false or that he does not know or believe to be true.

commits an offence and is liable on conviction to a fine of M1000 or to imprisonment for a period of 6 months.

- (3) Every person summoned to attend to give evidence or to produce any paper, book, record or document before the Auditor-General is entitled in respect of such evidence or the disclosure of any communication, or the production of any such paper, book, record or document, to the same right or privilege as before a court of law.
- (4) A conviction under this section shall not exempt, or be taken to exempt, the person convicted from the liability to do or perform the act, matter or thing required of him, except as provided in subsection (3).

Information to be furnished to Government and Legislature

- 19. (1) As soon as practicable after the end of the financial year of the Corporation as specified in section 2, the Corporation shall submit to the Government.
 - (a) a balance sheet and profit and loss account that truly and correctly reflects the state of the affairs of the Corporation at the end of the last preceding financial year;

- (b) a report signed by the Auditor-General and containing a statement that to the best of his knowledge and belief and on information supplied to him, the balance sheet and profit and loss account reflects a true statement of the assets and liabilities of the Corporation at the end of the last preceding financial year of the profit and loss for the period covered, or, if he is unable to make such a statement or to make it without qualification, containing particulars of the facts or circumstances that prevent him from making that statement, or an indication of that qualification, as the case may be; and
 - (c) a report of the Corporation concerning the business of the Corporation during the last preceding financial year.
- (2) The Minister responsible for finance and Planning shall submit copies of the balance sheet, profit and loss account and reports referred to in subsection (1) to the Legislature within 1 month after the receipt thereof by him.

Part V - Supplementary Provisions

Liability of shareholders

20. The liability of the shareholders in the Corporation is limited to the amount unpaid on the shares held by the shareholders.

Liability of Directors for loss or damage

21. A Director of the Corporation is not personally liable for any loss or damage that may occur in or in connection with the performance of his duties, unless that loss or damage is due to his wilful misconduct, dishonesty, gross negligence or failure or refusal to comply with any provision of this Order or the regulations.

Use of name of Corporation

22. No person and no company shall carry on business or be registered under the law relating to companies or partnerships, under a name that is the

same as that of the Corporation or so nearly resembles it as to be calculated to deceive.

Application of company law

23. (1) Subject to the provisions of subsection (2), no provision of a statute law in force in Lesotho relating to companies apply to the Corporation.
- (2) The Minister may, by notice in the Gazette, declare that any provision of a statute law in force in Lesotho relating to companies, that is not inconsistent with the provisions of this Order, applies to the Corporation with such modifications as he may specify in that notice, and may revoke or amend that notice. For so long as that notice remains in force, that provision of the law relating to companies applies to the Corporation subject to any modification in the notice and to any amendment of the notice.

Liquidation of the Corporation

24. The Corporation shall not be liquidated except by or under the authority of an enactment made by the Legislature.

Regulations

25. The Minister may, by notice in the Gazette, make regulations for carrying into effect the provisions, purposes and principles of this Order.

Repeals and Savings of Act No. 20 of 1967

26. (1) The Lesotho National Development Corporation Act 1967 is repealed.
- (2) Notwithstanding subsection (1), any transactions made, directions given or appointments made and other acts lawfully made or done, and any agreements lawfully entered into, under a provision of the enactment repealed by subsection (1) and in force immediately before the commencement of this Order, shall be deemed to have been made, given, done or entered into under a corresponding provision of this Order and shall continue to have

effect accordingly.

Given under my hand at Maseru this 3rd day of September, 1990

Major-General Justin Metsing Lekhanya
Chairman of the Military Council and Council of Ministers
