THE INDUSTRIAL DEVELOPMENT BANK (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2003

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THE INDUSTRIAL DEVELOPMENT BANK (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 2003

ACT NO. 53 OF 2003

[30*th December*, 2003.]

An Act to provide for the transfer and vesting of the undertaking of the Industrial Development Bank of India to, and in, the Company to be formed and registered as a Company under the Companies Act, 1956 to carry on banking business and for matters connected therewith or incidental thereto and also to repeal the Industrial Development Bank of India Act, 1964.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003.

(*2*) It shall come into force on such date[1] as the Central Government may, by notification, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "appointed day" means such date as the Central Government may, by notification, appoint under section 3;

(*b*) "Company" means the Industrial Development Bank of India Limited to be formed and registered under the Companies Act, 1956 (1 of 1956);

(*c*) "Development Bank" means the Industrial Development Bank of India established under sub-section (*1*) of section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(*d*) "notification" means a notification published in the Official Gazette;

(*e*) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934).

CHAPTER II

TRANSFER AND VESTING OF THE UNDERTAKING OF DEVELOPMENT BANK IN COMPANY

3. Undertaking of Development Bank to vest in Company.—(*1*) On such date as the Central Government may, by notification, appoint, there shall be transferred to, and vest in, the Company, the undertaking of Development Bank.

(*2*) Notwithstanding anything contained in the Banking Regulation Act, 1949 (10 of 1949), the Company referred to in sub-section (*1*) shall be deemed to be a banking company within the meaning of clause (*c*) of section 5 of the Banking Regulation Act, 1949 and as such shall carry on banking business in accordance with the provisions of that Act, [2]***:

Provided that such Company shall not be required to—

(*a*) obtain licence under section 22 of the Banking Regulation Act, 1949 (10 of 1949);

(*b*) maintain for a period of five years from the appointed day the percentage of assets required to be maintained under section 24 of the said Act.

[3][Provided further that the provisions of clause (*a*) to the proviso, shall cease to be applicable immediately after the commencement of Part XIII of the Finance Act, 2021 (13 of 2021), and from such

1. 2nd July, 2004, *vide* notification No. S.O. 769(E) dated 2nd July, 2004, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).
2. The words "in addition to the business which may be carried on and transacted by the Development Bank" omitted by Act 13 of 2021, s. 165 (w.e.f. 01-04-2021).
3. The proviso ins by s. 165, *ibid*. (w.e.f. 01-04-2021).

commencement, the Company shall be deemed to have obtained licence under section 22 of the Banking Regulation Act, 1949 (10 of 1949).]

(*3*) The provisions of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, to the extent they are not repugnant to any provision of this Act, apply to such Company.

(*4*) Notwithstanding anything contained in the Banking Regulation Act,1949 (10 of 1949), the Central Government may, in consultation with the Reserve Bank of India, by notification, direct that any of the provisions of that Act specified in the notification—

(*a*) shall not apply to the Company; or

(*b*) shall apply to the Company, only with such exceptions, modifications and the adaptations as may be specified in the notification.

(*5*) A copy of every notification proposed to be issued under sub-section (*4*), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

4. General effect of transfer and vesting of undertaking.—(*1*) The Central Government, being the shareholder of the Development Bank and every other shareholder of the Development Bank immediately before the appointed day shall be deemed to be registered on and from the appointed day as a shareholder of the Company to the extent of the face value of the shares held by such shareholder.

(*2*) The undertaking of the Development Bank which is transferred to, and which vest in, the Company under section 3 shall be deemed to include all business, assets, rights, powers, authorities and privileges and all properties, movable and immovable, real and personal, corporeal and incorporeal, in possession or reservation, present or contingent of whatever nature and wheresoever situate including lands, buildings, vehicles, cash balances, deposits, foreign currencies, disclosed and undisclosed reserves, reserve fund, special reserve fund, benevolent reserve fund, any other fund, stocks, investments, shares, bonds, debentures, security, management of any industrial concern, loans, advances and guarantees given to any person or industrial concern, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed day in the ownership, possession or power of the Development Bank in relation to its undertaking, within or without India, all books of account, registers, records and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind within or without India then subsisting of the Development Bank in relation to its respective undertaking.

(*3*) All contracts, deeds, bonds, guarantees, powers of attorney, other instruments and working arrangements subsisting immediately before the appointed day and affecting the Development Bank shall cease to have effect or to be enforceable against the Development Bank and shall be of as full force and effect against or in favour of the Company in which the undertaking of the Development Bank has vested by virtue of this Act and enforceable as fully and effectually as if instead of the Development Bank, the Company had been named therein or had been a party thereto.

(*4*) Any proceeding or cause of action pending or existing immediately before the appointed day by or against the Development Bank in relation to its undertaking may, as from the appointed day, be continued and enforced by or against the Company in which the undertaking of the Development Bank has vested by virtue of this Act as it might have been enforced by or against the Development Bank if this Act had not been enacted and shall cease to be enforceable by or against the Development Bank.

5. Provisions in respect of officers and other employees of Development Bank.—(*1*) Every officer or other employee of the Development Bank (except a director of the Board or the chairman and managing director or any whole-time director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the Company by virtue of this Act, become, as from the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme,

medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company and shall continue to do so as an officer or, as the case may be, other employee of the Company or until the expiry of a period of six months from the appointed day, if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period.

(*2*) Where an officer or other employee of the Development Bank opts under sub-section (*1*) not to be in employment or service of the company, such officer or other employee shall be deemed to have resigned.

(*3*) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee of the Development Bank to the Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(*4*) The officers and other employees who have retired before the appointed day from the service of the Development Bank and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the Company.

(*5*) The trust of the provident fund or the gratuity fund of the Development Bank and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the Company as was being done hitherto in the Development Bank and any tax exemption granted to the provident fund or the gratuity fund or pension fund would continue to be applied to the Company.

(*6*) Notwithstanding anything contained in this Act or in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force or in the regulations of the Development Bank, no director of the Board, chairman and managing director or any whole-time director or any other person entitled to manage the whole or substantial part of the business and affairs of the Development Bank shall be entitled to any compensation against the Development Bank or the Company for the loss of office or for the premature termination of any contract of management entered into by him with the Development Bank.

CHAPTER III

MISCELLANEOUS

6. Concession, etc., to be deemed to have been granted to Company.—With effect from the appointed day, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the Development Bank, in connection with the affairs and business of the Development Bank under any law for the time being in force shall be deemed to have been granted to the Company.

7. Tax exemption or benefit to continue to have effect.—(*1*) Where any exemption from, or any assessment with respect to, any tax has been granted or made or any benefit by way of set off or carry forward of any unabsorbed depreciation or investment allowance or other allowance or loss has been extended or is available to the Development Bank under the Income-tax Act, 1961 (43 of 1961), such exemption, assessment or benefit shall continue to have effect in relation to the Company.

(*2*) Where any payment made by the Development Bank is exempted from deduction of tax at source under any provision of the Income-tax Act, 1961 (43 of 1961), such exemption will continue to be available as if the provisions of the said Act made applicable to the Development Bank were operative in relation to the Company.

(*3*) The transfer and vesting of the undertaking of the Development Bank or any part thereof in terms of section 3 shall not be construed as a transfer within the meaning of the Income-tax Act, 1961 (43 of 1961) or any other law for the time being in force.

8. Guarantee to be operative.—Any guarantee given for or in favour of the Development Bank with respect to any loan, lease, finance or other assistance shall continue to be operative in relation to the Company.

9. Shares, bonds and debentures to be deemed to be approved securities.—Notwithstanding anything contained in any other law for the time being in force, the shares, bonds and debentures of the Company shall be deemed to be approved securities for the purposes of the Indian Trusts Act, 1882 (2 of 1882) and the Insurance Act, 1938 (4 of1938).

10. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

11. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

12. Amendment to certain enactments.—The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

13. Substitution in Acts, rules, regulations or notifications by Company in place of Development Bank.—In every Act, rule, regulation or notification in force on the appointed day,—

(*a*) for the words "Industrial Development Bank of India", wherever they occur, the words "Industrial Development Bank of India Limited referred to in clause (*b*) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted;

(*b*) for the words "Development Bank", wherever they occur, the words "Industrial Development Bank of India Limited referred to in clause (*b*) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted;

(*c*) for the words and figures "the Development Bank means the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964)", the words, brackets, letter and figures "the Industrial Development Bank of India Limited referred to in clause (*b*) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted;

(*d*) for the words and figures "the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964)", the words, brackets, letter and figures "the Industrial Development Bank of India Limited referred to in clause (*b*) of section 2 of the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003" shall be substituted.

14. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

15. Repeal and saving of Act 18 of 1964.—(*1*) On the appointed day, the Industrial Development Bank of India Act, 1964, shall stand repealed.

(*2*) Notwithstanding the repeal of the Industrial Development Bank of India Act, 1964, the provisions of section 30A of the Act so repealed will continue to be applicable in respect of the arrangement entered into by the Development Bank with an industrial concern up to the appointed day and the Company will be entitled to act upon and enforce the same as fully and effectually as if this Act has not been enacted.

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THE SCHEDULE

(*See* section 12)

AMENDMENTS TO CERTAIN ENACTMENTS

PART I

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

AMENDMENTS

1. In section 2, clause (*bvii*) shall be omitted.

2. In section 17,—

(*a*) in sub-sections (*4G*) and (*4H*), the words "the Development Bank or" shall be omitted;

(*b*) in sub-sections (*4-I*), (*8A*) and (*12B*), the words "the Development Bank" shall be omitted.

3. In section 42, in sub-section (*1*), in the *Explanation*, in clause (*c*), in sub-clause (*ii*), the words "or from the Development Bank" shall be omitted.

4. In section 45-I, in clause (*bb*), in sub-clause (*iv*), the item (*a*) shall be omitted.

5. In section 46C, in sub-section (*2*), clauses (*a*) and (*b*) shall be omitted.

PART II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

(10 OF 1949)

AMENDMENTS

1. In section 5, clause (*ffa*) shall be omitted.

2. In section 34A, in sub-section (*3*), the words "the Development Bank" shall be omitted.

3. In section 36AD, in sub-section (*3*), the words "the Development Bank," shall be omitted.

PART III

AMENDMENT TO THE INDUSTRIAL DISPUTES ACT, 1947

(14 OF 1947)

AMENDMENT

In section 2, in clause (*bb*), the words "the Industrial Development Bank of India" shall be omitted.

PART IV

AMENDMENTS TO THE SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA ACT, 1989

(39 OF 1989)

AMENDMENTS

In section 2,—

(*a*) for clause (*h*), the following clause shall be substituted, namely:—

'(*h*) "industrial concern in the small scale sector" means any concern engaged or to be engaged in,—

(*i*) the manufacture, preservation or processing of goods;

(*ii*) shipping;

(*iii*) mining including development of mines;

(*iv*) the hotel industry;

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(*v*) the transport of passengers or goods by road or by water or by air or by ropeway or by lift;

(*vi*) the generation, storage or distribution of electricity or any other form of energy;

(*vii*) the maintenance, repair, testing or servicing of machinery or equipment of any description or vehicles or vessels or motor boats or trailers or tractors;

(*viii*) assembling, repairing or packing any article with the aid of machinery or power;

(*ix*) the setting up of, or development of, an industrial area or an industrial estate;

(*x*) fishing or providing shore facilities for fishing or maintenance thereof;

(*xi*) providing special or technical knowledge or other services for the promotion of industrial growth;

(*xii*) providing engineering, technical, financial, management, marketing or other services or facilities for industry;

(*xiii*) service industry such as altering, ornamenting, polishing, finishing, oiling, washing, cleaning or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;

(*xiv*) providing medical, health or other allied services;

(*xv*) providing services relating to information technology, telecommunication or electronics;

(*xvi*) leasing, sub-leasing or giving on hire-purchase of industrial plants, equipments, machinery or other assets including vehicles, ships and aircraft;

(*xvii*) such other activity as the Central Government may, having regard to the objects of this Act, by notification, specify in this behalf; or

(*xviii*) the research and development of any concept, technology, design, process or product whether in relation to any of the matters aforesaid, including any activities specified under sub-clause (*xvii*), or any other matter and which is regarded as a small-scale undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Explanation.—The expression "processing of goods" includes any art or process for producing, preparing or making an article by subjecting any material to a manual, mechanical, chemical, electrical or any other like operation.';

(*b*) after clause (*la*), the following clauses shall be inserted, namely:—

'(*lb*) "Reserve Bank" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (2 of 1934);

(*lc*) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);';

(*c*) clause (*q*) shall be omitted.

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