

No. 35, 1934.]

## PRIVATE ACT

To amend The South African Association Incorporation Act 1906 (Cape) as amended by The South African Association Incorporation Act (1906) (Cape) Amendment (Private) Act, 1925.

Preamble

WHEREAS The South African Association (hereinafter referred to as the Association) was incorporated in the first instance by Ordinance No. 6 of 1836 (Cape) and is at present incorporated by Act No. 21 of 1906 (Cape) as amended by Act No. 11 of 1925 :

AND WHEREAS at a general meeting of shareholders of the Association held on the second June, 1933, the directors were authorized by resolution duly passed to introduce a bill to amend the said Act as amended in divers ways approved at the said meeting and in such other ways as the directors might consider desirable and in the interests of the Association :

AND WHEREAS it is expedient in the interests of the Association and of persons dealing with it to amend the said Act as amended so as to extend the powers of the Association and its directors and to provide for the more efficient carrying on of the business of the Association ; and in particular to enlarge the area within which the Association may carry on business and the power of the Association to establish agencies and invest moneys ; to empower the shareholders of the Association to make provision for increasing the capital stock of the Association and for subdividing the shares into which it is divided and for deciding upon the maximum number of shares which may be held by any shareholder ; to empower the directors of the Association to dispose of the share or shares of shareholders who may become insolvent or assign their estates ; to repeal the provision that notice of a proposed transfer of shares should be given to shareholders ; to make fresh provisions regarding meetings of shareholders of the Association, the quorum necessary for the despatch of business, the use of proxies, the method of voting thereat and the procedure thereat ; to regulate anew the qualifications or disqualifications of directors of the Association and the holding of qualification shares and the vacation of office by such directors and the filling of vacancies in the office of directors ; to make fresh provisions regarding the amalgamation of the Association with other institutions carrying on business of a like nature and the acquisition by the Association of the business of such institutions ; to provide for the replacement of defaced, lost or destroyed share certificates ; to give to the Association enlarged powers to act as agents for insurance companies or societies and to nominate its officers for appointment as executors, administrators, curators, trustees, assignees and liquidators and to acquire, mortgage or sell immovable property, and to enter into bonds of security and suretyships and to furnish indemnities ; and to empower the Association to make provision for a pension fund or pension scheme for the benefit of its officials and staff :

BE IT THEREFORE ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows :—

Interpretation of terms.

1. In this Act the expression " principal Act " means " The South African Association Incorporation Act, 1906 " (Cape) (Act No. 21 of 1906) and the expression " amending Act " means " The South African Association Incorporation Act, 1906 (Cape) Amendment (Private) Act, 1925 " (Act No. 11 of 1925).

Substitution of new section for section 4 of Act No. 21 of 1906

2. Section *four* of the principal Act is hereby repealed and the following section is substituted therefor :

Area of business of the Association. " 4. The said Association shall be entitled to carry on its business, and to establish, continue, maintain, carry on and discontinue agencies for the more convenient dispatch of such business, in the Union and in such other part or parts of Africa south of the Equator as may be determined by the shareholders at a meeting duly convened ;

- and may frame, alter and amend bye-laws regulating the carrying on of business at such agencies; the head office of the said Association remaining situate at Cape Town."
- Amendment of section 7 of Act No. 21 of 1906.
3. Section *seven* of the principal Act is hereby amended by the deletion of all the words after the word "trust" where it occurs therein for the first time, and the substitution therefor of the following:
- "(1) In the purchase of or advance on the stocks, funds or debentures of the Government of the United Kingdom or of the Union, or any of the Provinces thereof, or of any of the former Colonies or territories now or at any future time forming part of the Union, or of any British Dominion, or of any British State, Colony, Territory or Possession in Africa south of the Equator, or of the Mandated Territory of South West Africa, or in the purchase of or advance upon Union Treasury Bills.
- (2) In loans to municipalities, divisional councils, school boards and village management boards in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa or in the purchase of or advances upon, the stocks, debentures, securities or mortgages thereof.
- (3) In the purchase of or advances upon securities the capital and interest whereof are guaranteed by the Government of the United Kingdom, or of the Union, or of any British Dominion.
- (4) Upon first mortgage of immovable property in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa.
- (5) In the purchase of stock, shares or debentures of or in loans to statutory corporations of a public or semi-public character carrying on business in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa.
- (6) In advances against pledges of mortgage bonds over immovable property in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa: Provided that any such advances shall not exceed two-thirds of the value of the immovable property hypothecated under such mortgage bonds, nor the amount of the debt secured by the pledged mortgage bonds.
- (7) In the purchase of immovable or other property, life policies or other securities when necessary for the protection of the interests of the trust or person on whose behalf or in whose interests the moneys are being administered."
- Amendment of section 9 of Act No. 21 of 1906.
4. Section *nine* of the principal Act is hereby amended by the deletion of the following words: "this Colony or any other British Colony, Possession or Territory in South Africa" and the substitution therefor of the following words: "the Union or any British Dominion, State, Colony or Territory in Africa south of the Equator, or the Mandated Territory of South West Africa".
- Amendment of section 13 of Act No. 21 of 1906.
5. Section *thirteen* of the principal Act is hereby amended by—
- (a) the deletion of the words "Supreme Court" and the substitution therefor of the words "Court having jurisdiction"; and
- (b) the insertion after the word "Master" wherever it occurs of the words "or Assistant Master".
- Repeal of section 3 of Act No. 11 of 1925 and insertion of new section 16 in Act No. 21 of 1906.
6. Section *three* of the amending Act is hereby repealed and the following new section is hereby inserted after section *fifteen* of the principal Act:
- Power to increase capital stock, to subdivide shares and to decide on the maximum number of shares to be held by any one person.
- "16. (1) The provisions of section *fifteen* of this Act as amended by Act No. 11 of 1925 and the provisions of section *one* of the last mentioned Act notwithstanding, it shall be lawful for the shareholders from time to time by resolution passed at any Meeting—
- (a) to increase the capital stock of the said Association to such amount as may be determined by creating such number of additional shares as may be determined at such meeting; and/or
- (b) to subdivide the shares into which the capital stock is for the time being divided, to such extent and in such manner as shall be determined at such meeting; and/or

- (c) to decide upon the maximum number of shares—  
not being less than three—which may be held  
by any one person: Provided that—
- (i) until the shareholders shall have decided  
otherwise the maximum number of shares  
which may be held by any one person  
shall be three;
  - (ii) any shareholder who at the commence-  
ment of the South African Association  
Further Amendment (Private) Act, 1934, is  
entitled to hold shares in excess of three  
by virtue of the subdivision of shares in  
section *one* of Act No. 11 of 1925 may  
continue to hold such shares, but shall not  
be capable of acquiring any further shares  
unless and until the maximum number  
of shares which may be held by any one  
person in accordance with this section  
exceeds the number of shares held by him;
  - (iii) it shall in any event not be competent  
at any time by resolution as aforesaid  
to deprive any shareholder of the right  
to hold any shares which he lawfully  
held immediately prior to the passing  
of such resolution or any shares into  
which the shares so held by him may  
be subdivided.

(2) No resolution shall be passed in terms of  
sub-section (1) of this section unless notice thereof  
shall have been given by the said Association by  
advertisement in both the official languages of  
the Union in the *Gazette* and in at least two news-  
papers circulating in the Union not less than  
fourteen days before the day appointed for the  
holding of such meeting.

(3) Any additional shares issued by virtue of  
this section shall be subject to the provisions of  
any law governing the said Association, and the  
holders thereof shall enjoy the same privileges  
and be subject to the same liabilities as any other  
shareholder."

Amendment of  
section 18 of Act  
No. 21 of 1906.

7. Section *eighteen* of the principal Act is hereby amended  
by the deletion of the words "at a meeting of the said  
directors held not less than ten days after notice in writing  
of the proposed transfer shall have been given to the share-  
holders".

Substitution of  
new section for  
section 19 of Act  
No. 21 of 1906.

8. Section *nineteen* of the principal Act is hereby repealed  
and the following new section substituted therefor:

Disposal of  
shares of  
shareholders  
who have  
become  
insolvent  
or have  
assigned  
their  
estates.

"19. The share or shares of any shareholder  
who shall either in his private or partnership  
estate become insolvent, or whether under the  
provisions of any statute or otherwise, make an  
assignment to his creditors, or any of them, shall  
be delivered to the General Manager and Secretary  
of the Association in trust, and the directors of  
the Association shall be entitled to sell the said  
share or shares as they shall think fit, after having  
duly advertised in both the official languages their  
intention to sell the said share or shares in two  
newspapers circulating in Cape Town and in such  
other newspaper as may be agreed upon between  
the trustee or assignee and the said General Manager  
and Secretary of the Association, or, failing agree-  
ment, as may be determined by the Master or  
Assistant Master having jurisdiction and the  
nett proceeds thereof, after deduction of com-  
mission and expenses, shall be paid to the trustee  
or assignee as the case may be of such shareholder  
and such share or shares shall be transferred in  
the manner prescribed in the last preceding section."

Repeal of section  
22 of Act No.  
21 of 1906.

9. Section *twenty-two* of the principal Act is hereby repealed.

Amendment of  
section 25 of Act  
No. 21 of 1906.

10. Section *twenty-five* of the principal Act is hereby  
amended by the deletion of the words "general meeting" and  
the substitution therefor of the words "meeting of share-  
holders".

Substitution of  
new section for  
section 26 of Act  
No. 21 of 1906.

11. Section *twenty-six* of the principal Act is hereby  
repealed and the following new section substituted therefor:

Procedure at  
meetings of  
shareholders.

"26. (1) No meeting of shareholders shall be  
duly constituted or shall be competent to enter  
upon any question or business unless a quorum of

ten shareholders shall be present: Provided that if within thirty minutes of the time appointed for any meeting a quorum be not present the meeting if convened upon the requisition of shareholders shall be dissolved, and in any other case shall stand adjourned to the same day and hour in the next week at the same place (unless such day be a public holiday when it shall stand adjourned to the next business day following such public holiday) and the shareholders then present shall form a quorum (notwithstanding that their number may be less than ten) and may transact the business for which the meeting was called.

(2) Voting at all meetings of shareholders shall be either by a show of hands or by poll, and on all questions irrespective of the manner of voting the majority shall bind the minority unless otherwise provided by these presents.

(3) Unless otherwise summarily determined by the meeting on a show of hands every question submitted to a meeting shall be decided in the first instance by a show of hands.

(4) In case the voting shall in the first instance have been by a show of hands, forthwith upon the chairman's declaration as to the result of such voting the shareholders holding or representing by proxy at least one-fourth of the shares represented at the meeting may demand a poll.

(5) Unless a poll is duly demanded, a declaration by the chairman at a meeting of shareholders that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority, and an entry to that effect in the minute book of the Association shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(6) If a meeting determines that the voting on any question shall be by poll or if a poll is demanded as aforesaid, it shall be taken in such manner and at such place and time as the chairman of the meeting directs, and either immediately or after an interval or an adjournment not exceeding ten days. The chairman shall appoint scrutineers to declare the result of the poll, and the result of the poll which shall be recorded in the minutes and certified by the chairman shall be deemed to be the resolution of the meeting at which the poll was demanded.

(7) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on a question of adjournment shall be taken at the meeting without adjournment.

(8) The demand for a poll may be withdrawn before the adjournment of the meeting at which it has been demanded.

(9) The right to demand a poll shall be open as aforesaid and available at any meeting of shareholders held under this Act."

Substitution of new section for section 28 of Act No. 21 of 1906.

12. Section *twenty-eight* of the principal Act is hereby repealed and the following new section substituted therefor:

Voting at meetings of shareholders. "28. (1) Voting at all meetings of shareholders shall be regulated by the following provisions:—

(a) On a show of hands every shareholder present in person shall have one vote.

(b) In case of a poll every shareholder present in person or by proxy shall have one vote for each share held by him: Provided that no shareholder shall be allowed to vote by proxy unless he resides at a distance of twenty-five miles or more from the place of the meeting.

(2) Subject to the provisions of paragraph (b) of sub-section (1) of this section votes may be given either personally or by proxy, but no person shall be appointed a proxy who is not a shareholder and qualified to vote. The instrument appointing

a proxy shall be in writing under the hand of the appointer or his attorney, save that the holder of a general power of attorney from a shareholder or power of substitution thereunder whereby he is authorized to attend or vote at meetings of shareholders in any company shall if he himself be a shareholder in the Association be entitled to attend and vote on behalf of his principal.

(3) The instrument appointing a proxy and the authority (if any) under which it is signed and any general power of attorney and power of substitution (if any) under which the mandatory being himself a shareholder proposes to vote for his principal, or a copy of any such power duly certified to the satisfaction of the chairman of the meeting shall be deposited at the office of the Association not less than forty-eight hours before the time for holding the meeting at which the person named in such instrument of proxy or general power of attorney or power of substitution proposes to vote. Any general power of attorney and general power of substitution thereunder so deposited shall be returned to the mandatory after the termination of the meeting in connection with which it is deposited if a certified copy or copies thereof be filed with the Association but any special power of attorney or of substitution so deposited shall be retained by the Association.

(4) Anything to the contrary herein contained notwithstanding the executor of any deceased shareholder, the trustee or assignee of any shareholder whose estate shall have been sequestrated as insolvent or assigned whether under statute or otherwise, or the curator of any shareholder who shall be under any legal disability shall be allowed to vote by proxy through any other shareholder qualified to vote, the preceding provisions of this section to apply *mutatis mutandis* to such instrument of proxy and the authority under which it is given.

(5) No shareholder shall be entitled to hold more than five proxies."

Amendment of section 30 of Act No. 21 of 1906.

13. Section *thirty* of the principal Act is hereby amended by the addition at the end thereof of the following:

"provided further that it shall be competent for the shareholders by resolution passed at a meeting duly convened—

- (a) to increase the number of directors to such number as the shareholders may determine;
- (b) to provide for the appointment of alternate directors to act in place of directors who may be unable to act on account of absence or illness, but so that no person shall be appointed as an alternate director who is not qualified to be appointed as a director".

Amendment of section 31 of Act No. 21 of 1906.

14. Section *thirty-one* of the principal Act is hereby amended by the deletion therefrom of the word "special" and the substitution therefor of the word "annual".

Amendment of section 32 of Act No. 21 of 1906.

15. Section *thirty-two* of the principal Act is hereby amended by the deletion of the words "thirtieth day of April" and the substitution therefor of the words "date of the annual meeting in June or July"; by the deletion where it occurs thereafter of the word "General" and the substitution therefor of the word "Annual" and by the deletion of the word "April" and the substitution therefor of the words "June or July".

Repeal of section 33 of Act No. 21 of 1906 and of section 4 of Act No. 11 of 1925, and substitution of new section in Act No. 21 of 1906.

16. Section *thirty-three* of the principal Act and section *four* of the amending Act are hereby repealed and the following new section is substituted for section *thirty-three* of the principal Act:

Qualifications and disqualifications of directors.

"33. (1) No person shall be capable of being nominated, appointed or of continuing to hold office as a director of the Association unless he is or remains the holder of three shares therein (the said three shares being hereinafter in this Act referred to as "qualification shares"); and every director shall forthwith after his election deposit with the General Manager and Secretary at the head office of the Association, his certificate or certificates for the number of shares aforesaid in the Association, to be held during such director's term of office, and any director not depositing such

shares upon request made in writing by the General Manager and Secretary or withdrawing or receiving the same shall be disqualified from office as a director and shall *ipso facto* vacate his office.

(2) No person shall be capable of being nominated, appointed or of continuing to hold office as a director of the Association who holds any office of profit under the Government of the Union or under any Provincial Administration, or who is an unrehabilitated insolvent; nor shall any two shareholders, carrying on business as co-partners in any firm or who are related to each other, or one of whom is related to any co-partner of the other in any firm, in or within the second degree of consanguinity or affinity both be capable of being nominated, appointed and/or of continuing to be directors of the Association: Provided that if any director enter into partnership with any other director or with anyone related to another director in or within the second degree of consanguinity or affinity or become related in or within the second degree of affinity to another director during their respective tenures of office that one of them who has been later elected as a director, or re-elected as a director (as the case may be) shall vacate his office unless the other of them resigns forthwith."

Amendment of section 36 of Act No. 21 of 1906.

17. Section *thirty-six* of the principal Act is hereby amended by the deletion of the words "the aforesaid Port Elizabeth agency, or received by the said" where they occur in the last sentence of the said section, and the substitution therefor of the words "any agency, or received by any".

Amendment of section 35 of Act No. 21 of 1906.

18. Section *thirty-five* of the principal Act is hereby amended by the addition at the end thereof of the following:

"provided that should the shareholders resolve at a meeting duly convened to increase the number of directors to more than five, it shall be competent for the said shareholders to increase the quorum of directors to such number as the said shareholders may determine".

Amendment of section 37 of Act No. 21 of 1906.

19. Section *thirty-seven* of the principal Act is hereby amended—

- (a) by the deletion of the word "share" wherever it occurs therein and the substitution therefor of the words "qualification shares or any of them";
- (b) by the deletion of the words "four consecutive months" and the substitution therefor of the words "one month";
- (c) by the deletion of the word "shareholders" where it first occurs and the substitution therefor of the word "directors";
- (d) by the deletion of the words "so as to cease to be a shareholder".

Amendment of section 39 of Act No. 21 of 1906.

20. Section *thirty-nine* of the principal Act is hereby amended—

- (a) by the insertion of the words "in person or by proxy" after the words "the shareholders present", and
- (b) by the deletion at the end of the said section of the words "provided further that no director shall be allowed to resign or be capable of resigning until the shareholders at some general or special meeting shall have consented thereto".

Amendment of section 40 of Act No. 21 of 1906.

21. Section *forty* of the principal Act is hereby amended by the deletion of all the words after the word "following" and the substitution therefor of the following:

"(1) In the purchase of or advance on the stocks, funds or debentures of the Government of the United Kingdom or of the Union, or any of the Provinces thereof, or of any of the former colonies or territories now or at any future time forming part of the Union, or of any British Dominion, or of any British State, Colony, Territory or Possession in Africa south of the Equator, or of the Mandated Territory of South West Africa, or in the purchase of or advance upon Union Treasury Bills.

(2) In loans to municipalities, divisional councils, school boards and village management boards in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa, or in the purchase of or advances upon the stocks, debentures, securities or mortgages thereof.

(3) In the purchase of or advances upon securities the capital and interest whereof are guaranteed by the Govern-

ment of the United Kingdom or of the Union or of any British Dominion.

(4) Upon first mortgage of immovable property in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa.

(5) In the purchase of stock, shares or debentures of or in loans to approved incorporated bodies or associations carrying on business in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa.

(6) In the purchase of immovable or other property, life policies or other securities when necessary or desirable in furtherance of the interests of the said Association.

(7) On deposit or current account, with or without interest, in any bank, joint stock company or society or association carrying on business in the United Kingdom or in the Union or in any British Dominion, State, Colony, Territory or Possession in Africa south of the Equator, or in the Mandated Territory of South West Africa.

(8) In advances upon pledge of inheritances in estates being administered by the said Association, or of life policies in approved life insurance companies or societies.

(9) In advances upon such other security as the directors may deem good and sufficient: Provided that no advances upon such other security shall exceed one-half of the fair market value thereof as ascertained and that no advance shall be made upon mining scrip.

(10) In manner prescribed in section *nine* of this Act: Provided that funds referred to in sections *seven* and *eleven* of this Act shall not be so invested unless such investment is authorized by the persons appointing the Association or by the provisions of section *seven* of this Act."

Amendment of section 42 of Act No. 21 of 1906.

22. Section *forty-two* of the principal Act is hereby amended by the deletion of the words "a special" and the substitution therefor of the words "an annual".

Amendment of section 44 of Act No. 21 of 1906.

23. Section *forty-four* of the principal Act is hereby amended by the deletion therefrom of the word "general" wherever it occurs therein.

Amendment of section 45 of Act No. 21 of 1906.

24. Section *forty-five* of the principal Act is hereby amended—

(a) by the deletion of the word "general" where it occurs therein for the first and second time before the word "meeting" and the substitution therefor of the word "annual";

(b) by the deletion of the word "April" and the substitution therefor of the words "June or July";

(c) by the deletion of the words "in general" wherever they occur therein and the substitution therefor of the words "at the annual";

Amendment of section 46 of Act No. 21 of 1906.

25. Section *forty-six* of the principal Act is hereby amended by the deletion of the words "the said Port Elizabeth" and the substitution therefor of the word "any".

Amendment of section 48 of Act No. 21 of 1906.

26. Section *forty-eight* of the principal Act is hereby amended by the deletion of the word "general".

Amendment of section 52 of Act No. 21 of 1906.

27. Section *fifty-two* of the principal Act is hereby amended by the deletion of the word "general" wherever it occurs therein immediately before the word "meeting".

Substitution of new section for section 53 of Act No. 21 of 1906.

28. Section *fifty-three* of the principal Act is hereby repealed and the following new section substituted therefor:

Insurance agency. "53. The said Association may act as agents of any insurance company or society for the purpose of insuring against any loss and risk whatsoever, and shall for this purpose keep a separate book of accounts, showing the commissions earned by them as agents of such company or society."

Amendment of section 55 of Act No. 21 of 1906.

29. Section *fifty-five* of the principal Act is hereby amended by the deletion of all words after the words "provided that" and the substitution therefor of the following: "no such amalgamation or acquisition shall be valid unless three-fourths of the shareholders present and voting at such meeting in person approve of the same, or, in case the voting be by poll in accordance with section *twenty-six* of this Act, unless three-fourths of the votes of shareholders present in person or by proxy and voting at such meeting by poll signify approval of the same."

Insertion of new sections in Act No. 21 of 1906

30. The principal Act is hereby amended by the insertion after section *fifty-six* of the following new sections (the existing section *fifty-seven* becoming section *fifty-nine*):

Replacement of defaced, lost or destroyed share certificates.

"57. If any share certificate be worn out or defaced, then upon production thereof to the directors they may order the same to be cancelled, and may issue a new certificate in lieu thereof, and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the directors, and on such indemnity as the directors deem adequate being given and compliance with any law relating to lost or destroyed certificates, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

Additional powers of Association.

58. The said Association shall—

- (a) be entitled to furnish any Master or Assistant Master of a Court with the necessary bond of security or suretyship for the due administration of any estate or moneys entrusted to it or to its directors or officials;
- (b) indemnify any director who shall sign or may have signed as surety in connection with the due administration of any such estate or moneys;
- (c) be entitled to nominate any officer of the Association for appointment as executor, administrator, curator, trustee, assignee or liquidator under the provisions of any law, and to accept liability for the acts as such executor, administrator, curator, trustee, assignee or liquidator of any officer so nominated;
- (d) have power to purchase and hold immovable property in its own name for any purpose and to mortgage and sell such immovable property; and
- (e) be entitled to establish and support or aid in the establishment and support of and to contribute towards any pension scheme or pension fund which may have been established or which may be established for the benefit of the officials and staff of the said Association."

Short title.

31. This Act may be cited as the South African Association Further Amendment (Private) Act, 1934.