



# Scottish National Investment Bank Act 2020

2020 asp 3

## PART 1

### ESTABLISHMENT OF THE BANK

#### CHAPTER 2

##### THE BANK'S ARTICLES OF ASSOCIATION ON ESTABLISHMENT

### **2 The Bank's vision**

The articles of association must state that the Bank's vision is to provide finance and act to catalyse private investment to achieve a step change in growth for the Scottish economy by powering innovation and accelerating the move to a net-zero emissions, high-tech, connected, globally-competitive and inclusive economy.

### **3 The Bank's objects**

- (1) The articles of association must state that the Bank's main object is giving financial assistance to commercial activities for the purpose of promoting or sustaining economic development or employment in Scotland.
- (2) The articles of association must state that the Bank has the following ancillary objects—
  - (a) investing in inclusive and sustainable economic growth,
  - (b) investing to promote social wellbeing,
  - (c) investing to promote environmental wellbeing, and in particular—
    - (i) support the transitions required to meet the net-zero emissions target (as defined in section A1 of the Climate Change (Scotland) Act 2009),
    - (ii) support the proposals and policies regarding circular economy initiatives set out in the latest climate change action plan to be laid before the Scottish Parliament under section 35 of that Act,

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- (iii) promote biodiversity,
- (d) promoting the just transition principles (as defined in section 35C of the Climate Change (Scotland) Act 2009),
- (e) promoting and developing the activities of enterprises, where lack of financial investment is holding back economically viable commercial activity,
- (f) promoting and developing the activities of small and medium-sized enterprises,
- (g) promoting and developing the activities of enterprises which—
  - (i) promote fair work (construed in accordance with section 23), and
  - (ii) pay their employees a living wage (construed in accordance with section 15(7) of the Procurement Reform (Scotland) Act 2014),
- (h) creating and shaping markets through the provision of patient capital,
- (i) contributing to the achievement of the Scottish Government’s economic, social and environmental policy objectives,
- (j) advancing equality and non-discrimination.

#### **4 Ethical investment standards**

The articles of association must provide that the Bank’s board is responsible for the Bank—

- (a) having ethical investment standards which align with the Bank’s main object and ancillary objects as set out in its articles of association and its strategic missions, and
- (b) having in place processes to ensure that the Bank’s investment decisions are taken in accordance with those standards.

#### **5 Balanced scorecard**

- (1) The articles of association must provide that the Bank must prepare and update a document (“the balanced scorecard”) to assist its preparation of reports under this Act.
- (2) The articles of association must provide that, in preparing and updating the balanced scorecard, the Bank is to have regard to—
  - (a) the economic impact of the performance of its investments over time,
  - (b) the social impact of the performance of its investments over time,
  - (c) the environmental impact of the performance of its investments over time,
  - (d) any other impact (financial or non-financial) of the performance of its investments over time as the articles may provide.

#### **6 General powers**

- (1) The articles of association must provide that the Bank may do anything for the purpose of its objects and specifically mention—
  - (a) giving financial assistance—
    - (i) on any terms and conditions, and
    - (ii) by any description of investment, lending or guarantee, and
  - (b) forming and acting through subsidiaries.
- (2) The articles of association must also mention the following as examples of the form which financial assistance given by the Bank may take—

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- (a) investment by the Bank (alone or with others) through the acquisition of loan or share capital in any company,
  - (b) investment by the Bank (alone or with others) through the acquisition of any—
    - (i) undertaking, or
    - (ii) assets,
  - (c) a loan (secured or unsecured, and with or without interest),
  - (d) insurance or a guarantee to meet any contingency (including default on payment of a loan or any other failure to fulfil a contractual obligation).
- (3) For the avoidance of doubt, the articles of association may provide that the Bank may give financial assistance to a third sector body (as defined in section 37 of the Community Justice (Scotland) Act 2016).

## **7 Borrowing powers**

The articles of association must include a prohibition on the Bank borrowing from anyone other than the Scottish Ministers.

## **8 Ownership**

The articles of association must preclude—

- (a) shares in the Bank from being allotted to anyone other than the Scottish Ministers,
- (b) the Scottish Ministers from transferring their shares in the Bank.

## **9 Directors: appointment**

- (1) The articles of association must provide that—
- (a) the Bank is to have between 9 and 13 directors,
  - (b) there must be at least 2 executive directors (one of whom must be designated in the articles as chief executive and the other as chief financial officer),
  - (c) there may not be more than 4 executive directors,
  - (d) at least two thirds of the directors must be non-executive directors.
- (2) The articles of association must provide that all of the Bank’s directors are to be appointed by the Scottish Ministers.
- (3) The articles of association must provide that the chair of the Bank’s board is to be one of the non-executive directors appointed to the office of chair by the Scottish Ministers.

## **10 Directors: tenure**

- (1) The articles of association must provide that—
- (a) the period of a non-executive director’s appointment is to be a period, not exceeding 5 years, specified by the Scottish Ministers when making the appointment,
  - (b) a person may be appointed to the office of non-executive director more than once,
  - (c) no person may hold the office of non-executive director for a cumulative period exceeding 8 years.

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- (2) The articles of association must provide that a person ceases to hold the office of director as soon as—
- (a) the person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law,
  - (b) the person becomes insolvent, meaning—
    - (i) the person's estate has been sequestrated,
    - (ii) the person has granted a trust deed for, or entered into a composition contract with, creditors,
    - (iii) the person has been adjudged bankrupt,
    - (iv) a voluntary arrangement proposed by the person has been approved,
    - (v) the person's application for a debt payment programme has been approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002,
    - (vi) the person has become subject to any order or arrangement analogous to any of those described in sub-paragraphs (i) to (v) anywhere in the world,
  - (c) a registered medical practitioner who is treating the person gives a written opinion to the Bank stating that the person has become physically or mentally incapable of acting as a director and may remain so for more than 3 months,
  - (d) notification is received by the Bank from the person that the person is resigning from office, and such resignation has taken effect in accordance with its terms.

## **11 Remuneration**

The articles of association must provide that the remuneration of the Bank's directors and staff is to be determined by the directors, subject to any direction from the Scottish Ministers.

## **12 Committees**

- (1) The articles of association must enable the Bank's directors to set up, and delegate functions to, committees and sub-committees.
- (2) The articles of association must require—
- (a) that the Bank have—
    - (i) an audit committee, and
    - (ii) a risk committee, and
  - (b) that each of those committees is chaired by a non-executive director.
- (3) The articles of association must state that—
- (a) the audit committee has the function of providing independent review and oversight of the company's financial reporting processes, internal controls and independent auditors,
  - (b) the risk committee has the function of reviewing the Bank's risk-management systems.

## **13 Gender equality strategy**

- (1) The articles of association must provide that—

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- (a) the Bank is to prepare, and from time to time update, a gender equality strategy,
  - (b) in doing those things the Bank is to consult persons with experience in or knowledge of the formulation, implementation and evaluation of policies intended to tackle gender inequality,
  - (c) the Bank is to make its gender equality strategy publicly available,
  - (d) the Bank's gender equality strategy may be in any form that the Bank considers appropriate and (in particular) may be part of another document.
- (2) The articles of association must provide that the Bank's gender equality strategy is to set out—
- (a) what the Bank is committed to doing to advance gender equality in Scotland (in particular through its investing and staffing practices),
  - (b) what information the Bank intends to collect for the purpose of carrying out the evaluations required by section 20(1).

#### **14 Entrenched provisions**

The articles of association must provide that those provisions of the articles which are framed in accordance with this Chapter may be amended or repealed only in accordance with section 31.