

3 NOVEMBER 2001 - Act on the establishment of the Belgian Investment Company for Developing Countries and amending the Act of 21 December 1998 establishing the Belgian Development Agency in the form of a public law company.

CHAPTER I - General provision.

Article 1. This Act governs a matter referred to in Article 78 of the Constitution.

CHAPTER II - Establishment of the Belgian Investment Company for Developing Countries.

Art. 2. The Belgian State and the Belgian Corporation for International Investment NV/S.A. may jointly establish the Belgian Investment Company for Developing Countries, in short BIO. BIO is incorporated in the form of a “*société anonyme*”/”*naamloze vennootschap*” (public limited liability company).

The Belgian State and the Belgian Corporation for International Investment NV/S.A. may participate in the capital of BIO and provide it with any other form of financing. Companies with specific experience in the field of foreign investment or companies with a specific experience in financing local entrepreneurship or in the field of social economy in developing countries as well as organisations and companies whose object includes funding of local entrepreneurship in developing countries may also participate in the capital of BIO or provide it with other forms of financing.

With regard to the establishment of BIO, the Belgian State is represented by the member of government responsible for Development Cooperation. The same member of government also represents the Belgian State at the General Meeting.

Art. 2bis. § 1. The Board of Directors is composed of twelve members, including the Chairman.

§ 2. The Board of Directors includes an equal number of French and Dutch speaking members.

§ 2. No more than two thirds of the members of the Board of Directors may be of the same gender.

§ 3. The members of the Board of Directors are appointed on the recommendation of the Minister responsible for Development Cooperation, by means of a royal decree, issued after deliberation by the Council of Ministers, on the basis of their knowledge of international cooperation or management.

§ 4. A representative of the Directorate of Development Cooperation and Humanitarian Aid of the Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, appointed by the Minister responsible for Development Cooperation, shall be invited to attend meetings of the Board of Directors. That representative does not have a right to vote.

Art. 3. § 1. BIO's corporate object is to invest, directly or indirectly, in the development of micro, small and medium-sized enterprises (MSMEs) and enterprises of the social economy

located in developing countries to foster economic and social development of these countries, while at the same time ensuring an adequate return. BIO's corporate object also includes investing in energy projects and projects that contribute to combating climate change in developing countries and in companies whose object is to provide basic services to people in developing countries.

These interventions should result, directly or indirectly, in sustainable productive employment, respecting fundamental social rights as defined in the International Labour Organization's fundamental conventions.

BIO may also take participations in development and investment funds geared exclusively towards developing countries, provided that the object of such funds is compatible with BIO's corporate object.

For this purpose, BIO may, at market conditions, take participations in the capital of companies and grant loans and similar forms of financing.

Inter alia, BIO is authorised to:

- jointly incorporate foreign companies;
- participate directly in the capital of foreign companies;
- grant subordinated loans;
- grant medium-term and long-term loans;
- grant subsidies to finance programmes that support the development of companies in BIO's portfolio or companies that are eligible to benefit from BIO financing otherwise that through a subsidy. These subsidies will be granted on the basis of an agreement between BIO and the recipient and subject to specific criteria, in particular regarding the recipients:

i) companies in BIO's portfolio. The company in BIO's portfolio is a company that has received financing from BIO, in any form whatsoever other than a subsidy.

ii) intermediate structures focusing solely on local enterprises, more specifically commercial or cooperative investment banks, micro-finance companies and institutions, investment companies and funds, leasing companies and guarantee and insurance companies located in developing countries that finance the activities and investments of local micro, small and medium-sized enterprises.

iii) micro, small and medium-sized enterprises in developing countries that satisfy the following criteria:

a) the value of the MSME's total assets does not exceed 43 million euros;

b) the MSME's turnover does not exceed 50 million euros.

The financing from BIO shall not exceed 50% of the cost of the assistance.

The amount of the subsidy may not exceed 100,000 euros per project.

The subsidy agreement includes a description of activities, the terms of the financing, reporting requirements including justification of the utilisation of the funds, the conditions for repayment of the subsidy if the recipient defaults and BIO's options for performing audits.

BIO justifies the utilisation of these subsidies by sending an annual report to the Minister responsible for Development Cooperation containing the following information:

- an activity report;
- a financial balance sheet;
- an assessment of the results obtained;
- any potential changes to the strategy that has been adopted, that are contemplated in accordance with the management contract.

Not eligible for interventions by BIO (incorporating companies, participations, loans or subsidies) are investment companies and funds and enterprises:

- that are set up in any State referred to in Article 307, § 1, paragraph 5, a) or b), of the 1992 Income Tax Code.

- that are set up in a state, other than that where the ultimate beneficiary of BIO's intervention

has its registered office, that is included on the list of States that decline to negotiate and sign an agreement for the automatic exchange of tax and banking information with Belgium as from 2015, in accordance with the standards set by the Organisation for Economic Cooperation and Development (OECD). This list is set out in a Royal Decree issued after deliberation by the Council of Ministers.

§ 2. BIO's interventions focus exclusively on enterprises in developing countries in the following categories, as defined by the OECD's Development Cooperation Committee:

- (i) the least developed countries;
- (ii) low income countries
- (iii) lower middle income countries
- (iv) upper middle income countries.

BIO shall conduct a proactive policy as regards gender equality in order to achieve, in the field of direct and indirect loans granted, a fair allocation both in respect of the number and the capital freed up.

§ 3. To the extent it does not have the required expertise itself, BIO may call upon a third party that has the recognised financial know-how for preparation of investment decisions and the monitoring of their implementation.

Art. 4. BIO is a public limited liability company ("*société anonyme*" / "*naamloze vennootschap*") governed by the Companies Code, subject to any derogation therefrom in this Act.

BIO's articles of association and the amendments thereto are resolved upon by the General Meeting. The draft deliberations of the General Meeting are sent to the government commissioners at least fifteen days prior to the meeting.

Art. 4bis. § 1. The special terms and conditions according to which BIO implements its corporate object are set out in a management contract between the Belgian State and BIO.

§ 2. The management contract deals with at least the following subjects:

- 1) the policy framework;
- 2) BIO's missions and values;
- 3) the strategic priorities of BIO's investment policy as regards regional, sector and thematic concentration, specific rules for investment and criteria for granting financing;
- 4) the terms and conditions of BIO financing, both through contribution to own funds as well as subsidies, chargeable to the general budget of expenses of the Federal State;
- 5) the specific and measurable objectives to be achieved by BIO;
- 6) the specific rules for cooperation and development of synergies between BIO and other parties involved in Belgian Development Cooperation;
- 7) the procedures and objective parameters for the annual assessment of the management agreement;
- 8) the financial sanctions in the event a party does not comply with its obligations under the management agreement;
- 9) the obligations with regard to internal audit.

§ 3. Any explicit condition subsequent in the management agreement is considered unenforceable.

Article 1184 of the Belgian Civil Code does not apply to the management agreement. The party with regard to whom an obligation set out in the management contract is not honoured may only oblige the other party to honour the obligation and, as the case may be, request indemnities, without prejudice to the application of any sanction provided for in the management agreement.

[Art. 4ter.](#) § 1. When negotiating and entering into the management agreement, the Federal State is represented by the Minister responsible for Development Cooperation.
§ 2. When negotiating the management agreement, BIO is represented in accordance with the law and the articles of association. The management agreement is submitted to the competent body of BIO that decides in accordance with the law and the articles of association.
§ 3. The management agreement shall only enter into force after it has been approved by the King, by means of a decree issued after deliberation by the Council of Ministers, on the date specified in the decree.

[Art. 4quater.](#) § 1. The management agreement is assessed yearly and, if required, amended in accordance with the amendments in the legislation applicable to BIO and the developments in the sector in which BIO evolves, in accordance with an objective procedure and objective parameters set out in the management agreement.
§ 2. Any other amendment to the management agreement other than as referred to in § 1 proposed by one or both parties shall be made in accordance with Article 4ter.

[Art. 4quinquies.](#) § 1. The management agreement is entered into for a term of five years.
§ 2. BIO shall submit a draft of a new management agreement to the Minister responsible for Development Cooperation ultimately six months before the expiry of management agreement.

If no new management agreement has been entered into force upon expiry of the management agreement, the management agreement is automatically extended until such time as a new management agreement enters into force. Notice of such extension is published in the Belgian Official Gazette by the Minister responsible for Development Cooperation.

If no new management agreement has entered into force one year after the extension referred to in paragraph 2, the King may, by means of a Decree issued after deliberation by the Council of Ministers, establish provisional rules regarding the matters referred to in Article 4ter, §2. These provisional rules shall be considered as a new management agreement and shall apply until such time a new management agreement, entered into in accordance with Article 4ter, enters into force.

[Art. 4sexies.](#) The Decrees approving a management agreement or amendments thereto, and Decrees determining provisional rules, are published in the Belgian Official Gazette.
The provisions of the management agreement are published in the Annexes to the Royal Decree, except for those that are subject to a confidentiality undertaking by or pursuant to the law or the publication of which would be contrary to public order.

[Art. 5.](#) BIO comes under the supervision of the members of government responsible for Development Cooperation and for the Budget. These members of government may object to any decision that is contrary to the laws, the decrees, the articles of association or the general public interest. This control is performed by two government commissioners. Each of the two members of government appoints one government commissioner. A substitute is appointed for each government commissioner in the event they are unable to perform their duties. In that case, the substitutes have the same powers as the government commissioners. The two government commissioners are entitled to take note of all resolutions taken by the General Meeting, the Board of Directors and, and as the case may be, the body responsible for day-to-day management, in order to be able to make the requisite audits and to be furnished with all useful information for this purpose. If they deem it useful, they attend meetings of the General Meeting, the Board of Directors and the body responsible for day-to-day

management. They attend with an advisory vote. The agendas of these meetings are sent to them in due time.

The government commissioners suspend any decision that they consider to be contrary to laws, decrees, the articles of association or the general public interest. The government commissioner appointed by the member of government responsible for Development Cooperation also ensures that all investment decisions are in accordance with the criteria set out by the Development Cooperation Committee of the Organisation for Economic Cooperation and Development referred to in Article 32 of the Act of 19 March 2013 on the Belgian Development Cooperation. The government commissioners have five business days as from the moment they become aware of a decision to suspend that decision. In the event of suspension, the government commissioners shall notify their respective members of government thereof within the same period of five business days.

The member of government concerned has ten calendar days as from the time he/she becomes aware of the suspension by the government commissioner, to annul the suspended decision. In the event the member of government concerned does not annul the decision or does not take a decision within this period of, the decision may be implemented.

Subject to providing its motivation, the Board of Directors may invoke extreme urgency. In that case, the government commissioners only have two business days from the time they become aware of the decision to submit the matter to their respective members of government. In that case, the period of time referred to in the previous paragraph is shortened to two business days.

The government commissioners' remuneration is set by the member of government responsible for Development Cooperation. It is borne by the company.

[Art. 5bis](#). § 1. Two auditors shall conduct the audit of the financial situation, the annual accounts and the regularity of the transactions included in the annual accounts, from the point of view of the law and the articles of association of BIO.

§ 2. The Court of Audit appoints one of its members as auditor. The Board of Directors appoints the other auditor amongst the members, a natural or legal person, of the Belgian Institute of Company Auditors.

§ 3. The auditors are appointed for a period of three years that is renewable.

[Art. 6](#). BIO may subscribe to private loans on the national or international capital market. The King may grant state guarantees for these loans.

[Art. 7](#). BIO issues an annual report that is communicated to the House of Representatives by the member of government responsible for Development Cooperation. The member of government responsible for Development Cooperation may add to this report such notes as he/she deems fit.

[Art. 8](#). BIO's actions are in line with the general objective of the Belgian Development Cooperation, in particular sustainable human development, as referred to in Article 3 of the Act of 19 March 2013 on the Belgian Development Cooperation.

§ 2. Furthermore, BIO's interventions must satisfy the criteria set by the Development Cooperation Committee of the Organisation for Economic Cooperation and Development as referred to in Article 32 of the Act of 19 March 2013 on the Belgian Development Cooperation, i.e. relevance, effectiveness, efficiency, viability, impact and sustainability.

[Art. 9](#). § 1. The Belgian State shall ensure non-capital contributions to BIO by subscribing to

profit shares that shall be called development certificates.

§ 2. Write-downs, capital losses and/or any other potential losses of a financial year are charged directly to the profit shares and thus without any amendment of the articles of association. In addition, these profit shares are unavailable in the same way as capital. These profit shares thus benefit from the same tax treatment as contributions in capital.

[Art. 10.](#) § 3. In Article 161, 1, of the Code of registration, mortgage and registry fees, the words 'deeds issued in the name of or in favour of the public limited liability company ("*naamloze vennootschap*" / "*société anonyme*") BIO' are inserted after the words 'voluntary deeds issued in the name of or in favour of the public limited liability company ("*naamloze vennootschap*" / "*société anonyme*") A.S.T.R.I.D..

CHAPTER III - Amendment of the Act of 21 December 1998 on the establishment of the "Belgian Development Agency" in the form of a public law company.

[Art. 11.](#) In Article 2, 17°, of the Act of 21 December 1998 on the establishment of the Belgian Development Agency in the form of a public law company, the following words are deleted: "participations in the risk capital of companies or development banks".

[Art. 12.](#) The following words are added to Article 5, §2, 4° of the same Act: "in particular technical assistance and the transfer of knowledge".

[Art. 13.](#) The following paragraph is added to Article 7 of the same Act: "The BTC will be assigned tasks by the Belgian Investment Company for Developing Countries, in short BIO, as stipulated in Article 3, §3, of the Act on the establishment of the Belgian Investment Company for Developing Countries".

[Art. 14.](#) The following paragraph is added to Article 9, §1, of the same Act: " BTC may not, however, take any participations that fall within the scope of the mission of BIO as determined by law and the articles of association".

CHAPTER IV - Entry into force.

[Art. 15.](#) This Act enters into force on the date of its publication in the Belgian Official Gazette.

We hereby promulgate this Act, and order that it shall bear the seal of the State and be published in the Belgian Official Gazette.

Done in Brussels on 3 November 2001.

ALBERT

By the King:

The Minister of Foreign Affairs,

L. MICHEL

The Minister of Telecommunications and Public Enterprises and Participating Interests, responsible for Small Businesses,

R. DAEMS

The Secretary of State for Development Cooperation,

E. BOUTMANS