



FREE STATE PROVINCE

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OFFICE OF THE PREMIER	KANTOOR VAN DIE PREMIER
No. 3	No. 3
25 August 2006	25 Augustus 2006
It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-	Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-
No. 3 of 2006 : Investment Free State Agency Amendment Act, 2006	No. 3 van 2006 : Wysigingswet op die Vrystaat Investeringsagentskap, 2006

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Investment Free State Agency Act, 1998, so as to make the Act subject to the Public Finance Management Act, 1999; to redefine certain expressions; to remove the general provision that the Companies Act, 1973, is *mutatis mutandis* applicable; to amend the constitution of the Board; to streamline the functions of the Investment Free State Agency; to amend certain provisions in relation to meetings and decisions of the Investment Free State Agency; to amend the term of office and provisions relating to the conditions of service of the Chief Executive Officer; to determine a period for appointment of directors; to further regulate removal of directors; to amend the provisions in relation to funding; to delete unnecessary sections; to effect technical changes; and to provide for connected matters.

BE IT ENACTED by the Provincial Legislature of the Free State Province as follows:

(English text assented and signed by the Premier.)

Amendment of section 1 of Act No. 18 of 1998

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1. Section 1 of the Investment Free State Agency Act, 1998 (hereinafter referred to as the "Principal Act") is amended -

(a) by the deletion of the definition of "director"; 10

(b) by the deletion of the definition of "Free State";

(c) by the substitution for the definition of "Province" of the following definition:

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" 'Province' means the province of the Free State as referred to in section 103 of the Constitution of the Republic of South Africa, 1996 [and includes the Provincial Administration: Free State];".

Insertion of section 1A in Act No. 18 of 1998

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2. The following section is inserted in the Principal Act after section 1:

"1A. This Act is subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)."

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Amendment of section 2 of Act No. 18 of 1998

3. Section 2 of the Principal Act is amended by the deletion of subsection (2).

Substitution of section 3 of Act No. 18 of 1998

4. Section 3 of the Principal Act is amended by the substitution for subsection (2) of the following subsection:

- “(2) The Board of directors shall consist of not less than 4 and not more than 9 persons appointed by the responsible Member [with the approval of the executive council of the Province, and shall consist of at least -
- (a) two directors from the business sector;
 - (b) two directors from Organised Local Government;
 - (c) one director from an organisation representing the agriculture in the Province;
 - (d) one director from the tourism industry; and
 - (e) not more than three members who may be appointed on the initiative of the responsible Member].”.

Substitution of section 4 of Act No. 18 of 1998

5. Section 4 of the Principal Act is amended by the substitution for section 4 of the following section:

“Objects of Agency

4. The objects of the Agency shall be -

- (a) to promote investment in and trade with the [Free State] Province and to identify, analyse, publicise and market investment and trade opportunities in the [Free State] provincial economy, in such manner and by such means as the Board may from time to time deem appropriate, and
- (b) to undertake, at the request of the responsible Member or other stakeholders or agencies, activities for which the necessary resources can be raised and which, in the opinion of the Board, will contribute to the strengthening of the [Free State] provincial economy [and promote equitable participation in the economy by sectors of the community and regions of the Free State].”.

Amendment of section 5 of Act No. 18 of 1998**6. Section 5 of the Principal Act is amended by -**

- (1) the substitution for section 5 of the following section:

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“[Functions and powers] Powers of the Agency

- 5. For the purpose of attaining its objects the Agency shall have the power -**

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- (a) to pay all expenses in connection with its administration; 10
- (b) to employ [**officers**] staff and to pay to them such remuneration and benefits as may be determined by the Board, in consultation with the responsible member; 15
- (c) to open banking accounts; 20
- (d) to acquire, hire, sell, let, or mortgage movable or immovable property required for the implementation of the objects of the Agency; 20
- (e) to establish, assist in establishing, finance, dispose of or acquire any interest in any company or association of persons if to do so would further the objects of the Agency; 25
- [(f) to furnish technical and other assistance and expert and specialised advice, information and guidance to any business, company or association of persons who so request it from the Agency;] 30
- (g) to manage and apply funds [**allocated**] appropriated by the Province [or any other donor or provider of monies in such manner and for such purposes as may be required or determined by the Province or such other person and, failing any specific directions in this regard, in such manner and for such purposes as the Board may deem appropriate and for this purpose to establish such legal or administrative structures as may, in the opinion of the Board, be required]; 35
- [(h) to act as agent on behalf of the Province, any municipality or other sphere of government or any other person or body who, in the opinion of the Board, is a stakeholder in the economy of the Free State;] 40

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- [(i) with the approval of the responsible Member and subject to the provisions of the Constitution of the Republic of South Africa, (Act No 108 of 1996), to raise or borrow money on such terms as the Board may deem appropriate;] 5
- (j) [to solicit and accept donations and to receive any monies offered or due to the Agency;] to accept unconditional donations and moneys and with the prior written approval of the responsible Member, conditional donations and moneys; 10
- [(k) to act as director, manager, trustee, administrator, or agent of any business, estate, trust, company, person or juristic person if so appointed or to designate a person or persons to act for any such purpose on the Agency's behalf;] 15
- (l) to plan and implement any project or enterprise that would enhance investment in and trade with the Free State;] 15
- (m) [to apply its funds or monies to the establishment of a reserve fund, or] to invest any funds or monies not immediately required for its affairs at such institutions and in such a manner as the Board may determine; and 20
- (n) to exercise such other powers which, in the opinion of the responsible Member are necessary for the achievement of its objects and which the responsible Member, in consultation with the Board, may confer upon the Agency by notice in the *Provincial Gazette*.”; 25
- (2) the renumbering of the current paragraphs (g), (j), (m) and (n) to paragraphs (f), (g), (h) and (i), respectively. 30

Amendment of section 6 of Act No. 18 of 1998

7. Section 6 of the Principal Act is amended by -

- (a) the insertion of the following subsection (1) before the current subsection (1) and the renumbering of the current subsections (1), (2), (3), (4) and (5) to (2), (3), (4), (5) and (6), respectively: 35
- “(1) The responsible Member must determine the time and place of the first meeting to be held by a Board that is newly constituted.”; 40

- (b) the substitution for the current subsection (3) of the following subsection:

“[(3)] (4) [At least 50 percent of the directors, excluding the chairperson or deputy chairperson or in their absence, a person appointed under subsection (2)(b),] The majority of directors shall constitute a quorum for any meeting of the Board.”; 5

- (c) the deletion of the current subsection (5).

Amendment of section 7 of Act No. 18 of 1998

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8. The heading of section 7 of the Principal Act is amended by the substitution for the current heading of the following:

“Disclosure of interest [of] by directors [in certain contract]”. 15

Renumbering of sections

9. Sections 6 and 7 of the Principal Act are renumbered to sections 12 and 13, while sections 8, 9, 10, 11, 12 and 13 are renumbered to sections 6, 7, 8, 9, 10 and 11, respectively. 20

Substitution of section 9 of Act No. 18 of 1998

10. The current section 9 of the Principal Act is amended by the substitution for section 9 of the following subsection: 25

“Chief executive officer”

[9.] 7. (1) The [Board in consultation with the] responsible Member, after consultation with the Board, must appoint a person as the chief executive officer of the Agency[.] for a period not exceeding five years. 30

(2) A chief executive officer [shall] must hold office on such conditions (including the payment of remuneration and allowance) as determined by the [Board] responsible Member [and specified in the instrument of appointment]. 35

(3) The chief executive officer is an *ex officio* member of the Board.”.

Substitution of section 10 of Act No. 18 of 1998

11. The current section 10 of the Principal Act is amended by the substitution for section 10 of the following section:

“Vacation of office by the chief executive officer

- [10.] 8. (1) The chief executive officer of the Agency must vacate his or her office –
- (a) if he or she resigns;
- (b) if he or she is removed from office under subsection (2).
- (2) The chief executive officer of the Agency may be removed from office by the responsible Member, after consultation with the Board, on account of misconduct, mismanagement of funds or for any adequate reason.
- (3) If the chief executive officer ceases to hold office, the [Board of directors] responsible Member must, within reasonable time and subject to the provisions of section [9] 7(1), appoint another chief executive officer.”.

Deletion of section 11 of Act No. 18 of 1998

12. The current section 11 of the Principal Act is deleted.

Substitution of section 12 of Act No. 18 of 1998

13. The current section 12 of the Principal Act is amended by the substitution for section 12 of the following section:

“Term of office [of directors] and conditions of service of directors

- [12.] 10. (1) A director must be appointed for a period not exceeding three years.
- (2) Any person whose period of office as a director has expired, may, subject to the provisions of section 3, be reappointed.
- (3) A director [shall] must be appointed on such conditions (including the payment of remuneration and allowances) as the responsible Member may determine. [as specified in the instrument of appointment].”.

Substitution of section 13 of Act No. 18 of 1998

14. The current section 13 of the Principal Act is hereby amended by the substitution for section 13 of the following section:

“Vacation of office by directors and filling of vacancies

- [13.] 11.** (1) A director [shall] must vacate his or her office -
- (a) if his or her estate is sequestrated; 10
 - (b) if he or she becomes mentally ill as defined in the Mental Health Act, 1973 (Act No 18 of 1973);
 - (c) if he or she is convicted of a criminal offence and is sentenced to imprisonment without the option of a fine; 15
 - (d) if he or she [ceases to be] becomes an elected member of the municipal council; 20
 - (e) if he or she resigns as director;
 - (f) if he or she is removed from office in terms of subsection (2). 25
- (2) A director may[, **on good cause shown, at any time,**] be removed from office by the responsible Member [**with the concurrence of the Executive Council of the Province.**] on account of misconduct, mismanagement of funds or for any adequate reason. 30
- (3) If a director ceases to hold office, the responsible Member must, subject to the provisions of section 3(2), appoint a person to fill the vacancy on the Board.”.

Substitution of section 14 of Act No. 18 of 1998

15. Section 14 of the Principal Act is amended by the substitution for section 14 of the following section:

“Funding of Agency

14. [(1) The Agency shall be funded by means of -
- (a) income received from district councils and other local authorities and structures, whether in the form of grants or otherwise; 45

- (b) payments received from private sector in the form of grants or otherwise;
- (c) the charging of agency fees to the Government of the Republic of South Africa for services rendered on an agency basis; 5
- (d) the charging of agency fees to the Province for services rendered on an agency basis in terms of agreements with the Province, determined in consultation with the responsible Member; 10
- (e) the sale by the Agency of its services;
- (f) annual grants made by the Province; 15
- (g) grants made by other development agencies, foundations and donors, whether inside or outside the Republic of South Africa, and 20
- (h) income generated from any other source in accordance with the provisions of this Act.
- (2) Monies borrowed by the Agency shall not be used to defray the running expenses of the Agency.] 25
- (1) The Agency is funded by means of appropriation by the legislature.
- [(3)](2) The Agency shall under no circumstances distribute its profits to any person and shall be obliged to utilise all of its funds solely for the purpose of investment or the objects for which the Agency has been established.”. 30

Deletion of section 15 of Act No. 18 of 1998

- 16. Section 15 of the Principal Act is deleted. 35

Deletion of section 16 of Act No. 18 of 1998

- 17. Section 16 of the Principal Act is deleted. 40

Deletion of section 17 of Act No. 18 of 1998

- 18. Section 17 of the Principal Act is deleted.

Deletion of section 19 of Act No. 18 of 1998

19. Section 19 of the Principal Act is deleted.

Substitution of section 20 of Act No. 18 of 1998

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20. Section 20 of the Principal Act is amended by the substitution for section 20 of the following section:

“Regulations

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[20.] 16.

The responsible Member may, after consultation with the Board, [at the request of or in consultation with the Board, or of his or her own accord] make regulations on any matter which he or she may regard as necessary for the facilitation of the establishment of the Agency or the achievement of the objects of this Act.”.

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Deletion of section 21 of Act No. 18 of 1998

21. Section 21 of the Principal Act is deleted.

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Deletion of section 22 of Act No. 18 of 1998

22. Section 22 of the Principal Act is deleted.

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Renumbering of sections of Act No. 18 of 1998

23. Sections 18, 20 and 23 of the Principal Act are renumbered to sections 15, 16 and 17, respectively.

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Substitution of section 23 of Act No. 18 of 1998

24. Section 23 of the Principal Act is amended by the substitution for section 23 of the following section:

“Short title

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[23.] 17.

This Act [shall be] is called the Free State Investment [Free State] Promotion Agency Act, 1998.”.

General amendments

25. (1) The word “shall” is substituted in the Principal Act of the word “must” wherever it occurs, unless the context indicates otherwise. 5
- (2) The expression “Investment Free State Agency” is substituted in the Principal Act of the expression “Free State Investment Promotion Agency” wherever it occurs.
- (3) The word “board” is substituted in the Principal Act of the word “Board” wherever it occurs. 10

Short title

26. This Act is called the Investment Free State Agency Amendment Act, 2006.