



**FREE STATE PROVINCE**

# **PROVINCIAL GAZETTE**

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# **PROVINSIALE KOERANT**

**PROVINSIE VRYSTAAT**

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**No. 65**

**BLOEMFONTEIN, 25 AUGUST 2006**

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<b>OFFICE OF THE PREMIER</b>	<b>KANTOOR VAN DIE PREMIER</b>
<b>No. 4</b>	<b>No. 4</b>
<b>25 August 2006</b>	<b>25 Augustus 2006</b>
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:-
<b>No. 4 of 2006 : Free State Development Corporation Amendment Act, 2006</b>	<b>No. 4 van 2006 : Wysigingswet op die Vrystaatse Ontwikkelingskorporasie, 2006</b>

**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 Free State Development Corporation Act, 1995, so as to make the Act subject to the Public Finance Management Act, 1999; redefine certain expressions; to amend the objects of the Corporation; to repeal the provisions in relation to the Companies Act, 1973; to align the powers of the Corporation and directors with the objects; to regulate the period of office of directors; to further regulate the removal of directors; to provide for the appointment of a deputy chairperson; to regulate anew the appointment of a Chief Executive Officer and vacation of office of the Chief Executive Officer; to amend certain provisions in relation to meetings and decisions; to delete obsolete provisions; to provide for disclosure of interest by directors; to provide for transitional arrangements and to provide for connected matters.

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

*(Afrikaans text assented and signed by the Premier.)*

**Amendment of section 1 of Act No. 6 of 1995**

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1. Section 1 of the Free State Development Corporation Act, 1995 as amended by the Free State Development Corporation Amendment Act, 1999 (hereinafter referred to as the "Principal Act") is hereby amended -

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- (a) by the deletion of the definition of "**Companies Act**";
- (b) by the substitution for the definition of "**Constitution**" of the following definition:

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" '**Constitution**' means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];";

- (c) by the deletion of the definition of "**managing director**";
- (d) by the insertion of the definition of "**Public Finance Management Act**" after the definition of "**law of the Province**":

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" '**Public Finance Management Act**' means the Public Finance Management Act, 1999 (Act No. 1 of 1999);";

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- (e) by the substitution for the definition of "**responsible Member**" of the following definition:

" '**responsible Member**' means the member of the Executive Council of the Province responsible for [**Finance and**] Economic Affairs";

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- (f) by the insertion of the definition of **“Small, Medium and Micro Enterprises”** after the definition of **“responsible Member”**:

“ ‘Small, Medium and Micro Enterprises’ bears the same meaning assigned to this expression in the National Small Enterprises Act, 1996 (Act No. 102 of 1996);”.

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#### Insertion of section 1A in Act No. 6 of 1995

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

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#### **“1A. Public Finance Management Act applicable**

This Act is subject to the Public Finance Management Act.”.

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#### Amendment of section 2 of Act No. 6 of 1995

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

#### Deletion of section 2A

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4. Section 2A of the Principal Act is deleted.

#### Substitution of section 3 of Act No. 6 of 1995

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5. Section 3 of the Principal Act is amended by the substitution for section 3 of the following section:

#### **“Main objects of the Corporation**

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3. The objects of the Corporation shall be [to perform or promote urban and rural development in the Province, with special emphasis on] the promotion and development of Small, Medium and Micro Enterprises [small business as referred to in the National Small Business Act, 1996 (Act No. 102 of 1996), with regard to any matter within the functional areas specified in Schedules 4 and 5 of the Constitution].”.

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#### Substitution of section 4 of Act No. 6 of 1995

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

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#### **“Capacity and powers of the Corporation**

4. [(1)] The Corporation shall have the capacity determined by the main objects stated in section 3 [and there shall be included in its capacity unlimited objects ancillary to the said main objects].

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- [(2) The Corporation shall have plenary powers, including the common powers stated in Schedule 2 in the Companies Act, to enable it to realise its main and ancillary objects.]”.

# Substitution of section 4A of Act No. 6 of 1995

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

## “Powers of board of directors

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- 4A. The [powers of the] board of directors shall have all the powers [be to endeavour] to achieve all the main [and ancillary] objects for which the Corporation is established [and to exercise all the plenary and common powers of the Corporation] and without detracting from the generality of this section the powers of the board shall include the following:

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- (a) to plan, finance, co-ordinate, promote, establish or carry on any business or undertaking in respect of the matters referred to in section 3 or to acquire or dispose of such business or undertaking or any portion thereof;

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- [(b) to plan, finance, co-ordinate, promote or carry out, or to assist in the planning, financing, co-ordinating, promoting or carrying out of any project or part thereof, for the economic development of the Province or its residents;]

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- (c) to grant or guarantee loans, provide capital or other means to any person, company, close corporation, co-operative society, partnership or other association of persons, whether corporate or not, for the purpose of achieving the Corporation’s objects;

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- (d) to take such securities as it may deem fit;

- (e) to raise loans or borrow money with the written consent of the responsible Member after consultation with the Member of the Executive Council responsible for finance [subject to conditions as may be determined by him or her];

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- (f) in the execution of its operations, to acquire, develop, rent, sell, lease, burden, or otherwise alienate or dispose of movable or immovable property, whether corporeal or incorporeal, including rights therein or thereto;

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- (g) to employ officers and employees under such conditions and to pay them such remuneration and benefits as it may determine;
- (h) to enter into and finance joint ventures or act as agent; 5
- (i) to furnish technical and other assistance and expert and specialised advice, information and guidance, in accordance with the approved budget to any person, company, close corporation, co-operative society, partnership or other association of persons, whether corporate or not; 10
- (j) to issue, negotiate, accept, endorse or discount debentures, bills of exchange and other negotiable instruments;
- [(k) to take deposits offered by any person or juristic person for investment and to hold such deposits on such conditions as may be agreed upon, and to arrange and to decide upon the investment and application thereof;] 15
- (l) to control, carry out, guarantee, underwrite, finance or bring about the issue of any loan or of any shares, stock or debentures, or to advance money for that purpose; 20
- (m) to apply the Corporation's funds or moneys to the establishment of a reserve fund, or to invest any funds or moneys not immediately required for its affairs; 25
- (n) to accept unconditional donations and moneys and with the prior written approval of the responsible Member, conditional donations and moneys; 30
- (o) in the execution of the Corporation's operations, to issue guarantees, or provide indemnities, or enter into any suretyship;
- (p) to act as director, manager, [executor, testamentary executor, administrator, liquidator, judicial manager, trustee] or agent of any concern, [estate, trust,] company, close corporation, person or juristic person, and to appoint any person or persons to act on the Corporation's behalf for such purpose; 35
- (q) to cause any company, close corporation or other juristic person that might be the Corporation's debtor or in which the Corporation has any interest, to be liquidated or placed under judicial management, or to cause the estate of any of the Corporation's debtors to be sequestrated; 40

- (r) to act as broker; 5
- (s) to plan, promote, undertake or finance the training of manpower in respect of the matters referred to in section 3; 10
- (t) to pay all expenses in connection with the Corporation's own administration; 15
- (u) to operate on existing banking accounts or accounts with other financial institutions, to open new accounts and operate thereon, and to close any account; 20
- (v) to establish, assist in establishing, acquire an interest in, or finance companies; 25
- (w) to adopt such measures as it may deem necessary or desirable in order to ensure that businesses of which the Corporation is the owner are managed and conducted, and that services are performed at such businesses in a manner which is, in its opinion, orderly, economical and effective; 25
- [(x) to exercise any other powers stated in Schedule 2 of the Companies Act which is necessary for the achievement of the Corporation's objects in consultation with the responsible Member.]”.

#### Amendment of section 5 of Act No. 6 of 1995

8. Section 5 of the Principal Act is amended by the substitution for section 5 of the following section: 30

#### “Board of directors of Corporation

5. (1) The affairs of the Corporation shall be managed and controlled by a board of directors which may exercise the powers of the Corporation and the board may delegate these powers and functions to the chairperson of the board or the deputy chairperson of the board, or an official [management or employees] of the Corporation. 35
- (2) The board of directors shall consist of not more than [16] 12 persons appointed by the responsible Member.” 40

**Amendment of section 6 of Act No. 6 of 1995**

9. Section 6 of the Principal Act is amended by the substitution for section 6 of the following section:

**“Period of office and remuneration of directors**

6. (1) A director shall be appointed for **[such period as the responsible Member may determine at the time of appointment.]** 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 5, be reappointed.
- (3) A director shall hold office upon such conditions (including the payment of remuneration and allowances) as the responsible Member may determine.”.

**Substitution of section 7(2) of Act No. 6 of 1995**

10. Section 7 of the Principal Act is amended by the substitution of subsection (2) of the following subsection:

- “(2) A director may **[on good cause shown at any time]** be removed from office by the responsible Member on account of misconduct, mismanagement of funds or for any adequate reason.”.

**Substitution of section 8 of Act No. 6 of 1995**

11. Section 8 of the Principal Act is amended by the substitution for section 8 of the following section:

**“Chairperson, deputy chairperson and acting chairperson**

8. (1) The responsible Member shall designate one of the directors as chairperson and another as deputy chairperson of the board of directors of the Corporation.
- (2) If the chairperson or deputy chairperson of the board of directors ceases to hold office as director or as chairperson of the board of directors, the responsible Member shall, subject to the provisions of subsection (1), designate a new chairperson or deputy chairperson.
- (3) Whenever the chairperson is absent or is unable to perform his or her functions as chairperson, the **[responsible Member may designate another director to]** deputy chairperson shall act as chairperson during the absence or incapacity of the chairperson.

- (4) **[Such director]** The deputy chairperson shall, while acting as chairperson, have all the powers and perform all the functions of the chairperson.”.

#### Substitution of section 9 of Act No. 6 of 1995

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12. Section 9 of the Principal Act is amended by the substitution for section 9 of the following section:

“ **[Managing director]** Chief Executive Officer

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- (1) The responsible Member, after consultation with the board, shall appoint **[one of the directors referred to in section 5(2) as managing director]** a Chief Executive Officer of the Corporation.
- (2) The **[managing director shall be the chief executive officer]** Chief Executive Officer of the Corporation **[and]** shall occupy himself or herself full-time with the affairs of the Corporation.
- (3) The **[managing director]** Chief Executive Officer shall hold office on such conditions (including the payment of remuneration and allowance) as the responsible Member~~],~~ **[after consultation with the board,]** may determine.
- (4) The Chief Executive Officer shall be an *ex officio* member of the board.
- (5) The Chief Executive Officer may be appointed for a period not exceeding five years.”.

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#### Substitution of section 10 of Act No. 6 of 1995

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13. Section 10 of the Principal Act is amended by the substitution for section 10 of the following section:

“10. Vacation of office by **[managing director]** Chief Executive Officer

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- (1) The **[managing director]** Chief Executive Officer of the Corporation shall vacate his or her office –
- [(a) if he or she ceases to be a director;]**
- [(b)] (a)if he or she resigns [as managing director];**
- [(c)] (b)if he or she is removed from office [under subsection (2)]**  
due to misconduct, mismanagement of funds or for any  
adequate reason.

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- [(2) The managing director may on good cause shown at any time be removed from office by the responsible Member, after consultation with the board.”.]

- [(3)] (2) If the [managing director] Chief Executive Officer ceases to hold office, the responsible Member shall, within a reasonable time and subject to the provisions of section 9(1), appoint [any other director as the managing director] a person as the Chief Executive Officer.”.

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#### Substitution of section 11 of Act No. 6 of 1995

14. Section 11 of the Principal Act is amended by the substitution for section 11 of the following section:

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#### “Meetings and decisions

11. (1) A meeting of the board of directors of the Corporation shall be held at a time and place to be determined by the chairperson of the board.
- (2) The chairperson of the board of directors, or the [person designated under section 8(3) to act as chairperson] deputy chairperson or any director acting as chairperson in their absence, as the case may be, and at least 50 percent of the other directors shall constitute a quorum for any meeting of the board.
- (3) The decision of the majority of the directors present at a meeting of the board, shall constitute a decision of the board of directors, and in the event of an equality of votes relating to any matter the chairperson of the board or [the person designated under section 8(3) to act as chairperson] the deputy chairperson or any director acting as chairperson in their absence, [of the board] as the case may be, shall have a casting vote in addition to his or her deliberative vote.
- (4) No decision taken by the board of directors or act performed under authority of the board of directors shall be invalid by reason only of a vacancy on the board or by reason of the fact that a person, who is not entitled to sit as a director, sat as a director at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the directors who were present at the time and entitled to sit as directors.”.

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**Insertion of section 11A in Act No. 6 of 1995**

15. The following section is inserted in the Principal Act after section 11:

**"Disclosure of interest by directors"**

- 11A. (1) The provisions of section 234, 235, 237(1), (4) and (5) of the Companies Act, 1973 (Act No. 61 of 1973), shall *mutatis mutandis* apply in respect of a director, and in such application, unless the context indicates otherwise, any reference therein to a company, a director or an officer of a company shall be construed as a reference to the Corporation, director or an officer of the Corporation, as the case may be.
- (2) Any declaration of interest made in terms of subsection (1) shall be recorded in the minutes of the meeting of the board at which the declaration was made."

**Deletion of section 17 of Act No. 6 of 1995**

16. Section 17 of the Principal Act is deleted.

**Deletion of section 20 of Act No. 6 of 1995**

17. Section 20 of the Principal Act is deleted.

**Deletion of section 21 of Act No. 6 of 1995**

18. Section 21 of the Principal Act is deleted.

**Transitional arrangements**

19. (1) On commencement of this Act, the board may take steps, in consultation with the responsible Member, to ensure that the business of the Corporation is aligned with the objects set out in section 3.
- (2) Anything done before the commencement of this Act under any provision of the Principal Act shall be deemed to have been done under a provision as amended by this Act.

**Short title**

20. This Act is called the Free State Development Corporation Amendment Act, 2006.