

**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, to make provision for the incorporation of the Free State Investment Promotion Agency; to repeal the Investment Free State Agency Act, 1998; to amend the objects of the corporation; to outline the procedure for appointment of board of directors; to provide for the appointment of committees of the board of directors; to provide for the co-option of persons to the board of directors; to provide for the appointment of a company secretary; to effect technical changes; and to provide for matters connected therewith.

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

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

**Amendment of section 1 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 5

1. Section 1 of the Free State Development Corporation Act, 1995 (Act No. 6 of 1995) (hereinafter referred to as the "Principal Act"), is amended by – 10

(1) the deletion of the definition of "**business**";

(2) the insertion after the definition of "**director**" of the following definition:

“ 'dissolved agency' means an agency established by or under a repealed Act;” 15

(3) the insertion after the definition of "**dissolved corporation**" of the following definition: 20

“ 'enterprise' means the enterprise referred to in section 3(a);”.

**Substitution of section 3 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 25

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

“Main objects of the Corporation\_\_\_\_\_”

3. The objects of the Corporation shall be –
- (a) the promotion and development of small, medium and micro enterprises; 5
  - (b) to assist Free State based small, medium and micro enterprises with funding by advancing loans;
  - (c) to assist Free State based small, medium and micro enterprises in financial distress; 10
  - (d) to initiate economic empowerment projects that would benefit the Free State;
  - (e) to promote investment in and trade with the Province and to identify, analyse, publicize and market investment and trade opportunities in the provincial economy, in such manner and by such means as the board of directors may from time to time deem appropriate; and 15
  - (f) 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 of directors, will contribute to the strengthening of the provincial economy.” 20

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**Amendment of section 4A of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006**

3. Section 4A of the Principal Act is amended by – 30
- (1) the substitution of paragraph (q) of the following paragraph:
    - “(q) to institute, conduct or defend any legal matter;”;
  - (2) the insertion of paragraphs (x), (y) and (z) after paragraph (w): 35
    - “(x) to exercise any other powers stated in Schedule 2 of the Companies Act, 1973 (Act No. 61 of 1973), which is necessary for the achievement of the Corporation’s objects in consultation with the responsible Member; 40
    - (y) to ensure adherence to corporate governance;
    - (z) 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.” 45

### Insertion of section 5A in Act No. 6 of 1995

4. The following section is inserted in the Principal Act after section 5:

**“Procedure for appointment of board of directors**

- 5A.** (1) The responsible Member, after consultation with the Executive Council must, subject to section 5, determine and appoint the members of the board of directors.
- (2) The responsible Member may appoint two directors as executive directors to the board of directors after fulfilling the requirements of subsection (1).
- (3) The responsible Member must invite interested parties by notice in the *Provincial Gazette* and other media to nominate candidates for his or her consideration.”.

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### Amendment of section 6 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006

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5. Section 6 of the Principal Act is amended by the substitution of subsections (1) and (3) of the following subsections:

“(1) A director shall be appointed for a period not exceeding three years and such term may, on expiry, be extended for a maximum period of two years by the responsible Member, in consultation with the Executive Council.”;  
and

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“(3) A director shall hold office upon such conditions (including the payment of remuneration and allowances) as the responsible Member may determine, after consultation with the Member of the Executive Council responsible for Finance and in line with the National Treasury Guidelines.”.

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### Amendment of section 7 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006

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6. Section 7 of the Principal Act is amended by substitution of –

(1) paragraph (b) of subsection (1) of the following paragraph:

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“(b) if he or she becomes mentally ill as defined in the Mental Health Care Act, [1973 (Act No. 18 of 1973)] 2002 (Act No. 17 of 2002);”;

(2) paragraph (f) of subsection (1) of the following paragraph:

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“(f) upon his or her election as member of [Senate,] the National Assembly or National Council of Provinces or a Provincial Legislature or a [local authority] Municipal Council;”.

### Insertion of section 9A of Act No. 6 of 1995

7. The following section is inserted in the Principal Act after section 9:

#### “Committees of the board of directors

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| <b>9A.</b> | (1) The board of directors may from time to time appoint a committee to exercise the powers and perform the functions delegated or assigned to it by the board of directors.                             | 5  |
|            | (2) A committee shall consist of –   | 10 |
|            | (a) such members of the board of directors as the board of directors may designate; or   | 15 |
|            | (b) such members of the board of directors as the board of directors may designate and such other persons as the board of directors may co-opt in terms of section 9B.                                   | 15 |
|            | (3) The board of directors shall designate the chairperson of the committee.   | 20 |
|            | (4) (a) A committee shall exercise its powers and perform its functions subject to the provisions of this Act and such directives of the board of directors as are not in conflict with such provisions. | 25 |
|            | (b) Any delegated power or function so exercised or performed shall be deemed to have been exercised or performed by the <u>board of directors.</u> ”.   | 30 |

### Insertion of section 9B of Act No. 6 of 1995

8. The following section is inserted in the Principal Act after section 9A:

#### “Co-opting of persons

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| <b>9B.</b> | (1) If the board of directors is of the opinion that a particular person is able to assist the board of directors in the consideration of a particular matter by the board of directors, the board of directors may co-opt that person for that purpose.  | 35 |
|            | (2) A person so co-opted shall not be entitled to vote at any meeting of the board of directors or a committee of the board of directors.   | 40 |
|            | (3) A person who is co-opted and not employed by government may, in respect of their services, be paid such remuneration and allowances from the funds of the board of directors as may be determined by the responsible Member, after consultation with the Member of the <u>Executive Council responsible for Finance.</u> ”. | 45 |
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### Insertion of section 10A of Act No. 6 of 1995

9. The following section is inserted in the Principal Act after section 10:

**“Appointment of company secretary**

- 10A.** (1) The board of directors shall appoint the company secretary.
- (2) The company secretary shall hold office on such terms and conditions (including the payment of remuneration and allowances) as determined by the board of directors.
- (3) The company secretary shall be responsible for all administrative work in connection with the performance of the duties or the exercise of the powers of the board of directors.
- (4) The company secretary has the responsibilities of a company secretary as prescribed by the Companies Act, 1973.”

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### Deletion of section 16 of Act No. 6 of 1995

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10. Section 16 of the Principal Act is deleted.

### Incorporation of the dissolved agency

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11. The Free State Investment Promotion Agency must be incorporated into the Corporation.

### Repeal of laws and saving

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12. (1) Subject to the provisions of subsections (2) and (3), the laws referred to in the Schedule are hereby repealed.

(2) At the commencement of this Act –

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- (a) all assets, liabilities, rights and obligations of a dissolved agency shall vest in the Corporation: Provided that the responsible Member may by notice in the *Provincial Gazette* further regulate matters relating to the assets, liabilities, rights and obligations of the Agency, including the transfer thereof to any entity, person or body: Provided further that such administrative records and other documents of a dissolved agency as may be determined by the responsible Member shall be transferred to the Corporation or such entity, person or body;

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- (b) any person who immediately before such commencement was an employee of a dissolved agency shall become an employee of the Corporation: Provided that the appointment of such an employee to a post within the Corporation and the determination of the location where such an employee will be stationed shall be done by the responsible Member: Provided further that the responsible Members may by notice in the *Provincial Gazette* regulate matters relating to the further transfer of an employee of the Corporation; 5
- (c) any person who immediately before such commencement was a director of a dissolved agency shall retire: Provided that the responsible Member may appoint such person as a director of the Corporation. 10
- (3) Anything done before the commencement of this Act in terms of the provisions of repealed Act – 15
- (a) by or on behalf of a dissolved agency and which could have been done by the responsible Member in terms of the provisions of this Act, shall be deemed to have been done by the responsible Member in terms of the latter provisions; 20
- (b) by or on behalf of the responsible Member and which could have been done by him or her in terms of the provisions of this Act, shall be deemed to have been done by the responsible Member in terms of the latter provisions; 25
- (c) by or on behalf of a dissolved agency and which could have been done by the Corporation in terms of the provisions of this Act, shall be deemed to have been done by the Corporation in terms of the latter provisions. 30
- (4) The Registrar of Deeds concerned shall as soon as may be practicable after the commencement of this Act make such entries or endorsements in or on any relevant register, title deed or other document in his or her office or submitted to him or her, as he or she may deem necessary in order to give effect to the provisions of subsection (2)(a). 35

### Short title and commencement

13. This Act is called the Free State Development Corporation Amendment Act, 2010. 40

## SCHEDULE

### Laws repealed

<b>Name and Year of Law</b>	<b>Extent of Repeal</b>
1. Investment Free State Agency Act, 1998 (Act No. 18 of 1998)	The whole
2. Investment Free State Agency Amendment Act, 2006 (Act No. 3 of 2006)	The whole