



PROVINSIE VRYSTAAT  
**PROVINSIALE KOERANT**

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**PROVINCIAL GAZETTE**

FREE STATE PROVINCE

*Uitgegee op Gesag*

*Published by Authority*

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No. 7

BLOEMFONTEIN, 3 FEBRUARIE 2000

BLOEMFONTEIN, 3 FEBRUARY 2000

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KANTOOR VAN DIE PREMIER

OFFICE OF THE PREMIER

No. 9 3 Februarie 2000

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Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

No. 9 van 1999: Wysigingswet op die Vrystaatse Ontwikkelingskorporasie, 1999

No. 9 of 1999: Free State Development Corporation Amendment Act, 1999

**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.

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## ACT

To amend the Free State Development Corporation Act, 1995, so as to define anew certain expressions and set out specifically the capacity and powers of the Corporation and the powers of the Board.

*(Afrikaans text signed by the Premier)*

*(Assented to 21 January 2000)*

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

### Amendment of section 1 of Act 6 of 1995

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1. Section 1 of the Free State Development Corporation Act, 1995 (hereinafter referred to as “the principal Act”), is amended –

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(a) by the insertion before the definition of “business” of the following definition:

“ ‘board of directors’ means the board of directors of the Free State Development Corporation;”;

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(b) by the insertion after the definition of “business” of the following definition:

“ ‘Companies Act’ means the Companies Act, 1973 (Act No 61 of 1973);”;

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(c) by the substitution for the definition of “Constitution” of the following definition:

“ ‘Constitution’ means the Constitution of the Republic of South Africa, [1993 (Act No 200 of 1993)] 1996 (Act No 108 of 1996);”;

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(d) 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 [and Tourism];” and

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(e) by the insertion after the definition of “responsible Member” of the following definition:

“ ‘to act as broker’ means the facilitation or otherwise advancement of development in line with the Corporation’s main and ancillary objects for which it was established.”

**Substitution of section 2 of Act 6 of 1995**

2. The following section is substituted for section 2 of the principal Act:

**“Establishment of Free State Development Corporation**

2. (1) A juristic person to be known as the Free State Development Corporation is hereby established.

(2) The provisions of the Companies Act, inclusive of Table B of Schedule 1, shall *mutatis mutandis* be applicable in all respects to the Corporation, unless its application is expressly or in the context of this Act limited: Provided that in such application any reference in the Companies Act to a company, a director or an officer of a company, shall, unless the context indicates otherwise, be construed as a reference to the Corporation, a director or an officer of the Corporation, as the case may be.”.

**Insertion of section 2A in Act 6 of 1995**

3. The following section is inserted in the principal Act after section 2:

**“Share capital of Corporation**

2A. (1) The share capital of the Corporation -

(a) shall be R 100-00, divided into 100 shares, each with a nominal value of R1-00; and

(b) may, from time to time and with the approval of the responsible Member, be increased or decreased.

(2) The Free State Provincial Government shall be the holder of all the shares in the Corporation and the Corporation shall issue appropriate share certificates in this regard to the Provincial Government.

(3) The rights attached to the shares shall be exercised by the responsible Member.”.

**Substitution of section 3 of Act 6 of 1995**

4. The following section is substituted for section 3 of the principal Act:

**“Main objects [Objects] of the Corporation**

3. The objects of the Corporation shall be [in accordance with a policy determined by the responsible Member or any direction given by him or her] to perform or promote urban and [or] rural development in the Province, with special emphasis on the promotion and development of 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 [Schedule 6] Schedules 4 and 5 of the Constitution.”.

**Substitution of section 4 of Act 6 of 1995**

5. The following section is substituted for section 4 of the principal Act:

**“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.

(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.”.

**Insertion of section 4A in Act 6 of 1995**

6. The following section is inserted in the principal Act after section 4:

**“Powers of board of directors**

4A. The powers of the board of directors shall 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:

(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;

(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;

(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;

(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 subject to conditions as determined by him or her;

(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;

- 5 (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;
- 10 (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;
- (j) to issue, negotiate, accept, endorse or discount debentures, bills of exchange and other negotiable instruments;
- 15 (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;
- 20 (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;
- (m) to apply the Corporations' 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;
- (o) in the execution of the Corporation's operations, to issue guarantees, or provide indemnities, or enter into any suretyship;
- 30 (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;

(s) to plan, promote, undertake or finance the training of manpower in respect of the matters referred to in section 3;

5 (t) to pay all expenses in connection with the Corporation's own administration;

(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;

10 (v) to establish, assist in establishing, acquire an interest in, or finance companies;

(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;

15 (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."

20 **Amendment of section 5 of Act 6 of 1995**

7. Section 5 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

25 "(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, the management or employees of the Corporation".

30 **Amendment of section 6 of Act 6 of 1995**

8. Section 6 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

35 "(3) A director shall hold office upon such conditions (including the payment of remuneration and allowances) as the responsible Member may [, **with the consent of the Member of the Executive Council responsible for Finance,**] determine."

**Amendment of section 7 of Act 6 of 1995**

9. Section 7 of the principal Act is amended by the substitution for 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.”.

**Amendment of section 9 of Act 6 of 1995**

10. Section 9 of the principal Act is amended –

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The responsible Member, after consultation with the board, shall appoint one of the directors referred to in section 5(2) as managing director of the Corporation.”; and

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

“(3) The managing director shall hold office upon such conditions (including the payment of remuneration and allowances) as the responsible Member, after consultation with the board, may [, **with the consent of the Member of the Executive Council responsible for Finance,**] determine.”.

**Amendment of section 10 of Act 6 of 1995**

11. Section 10 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(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.”.

**Substitution of section 13 of Act 6 of 1995**

12. The following section is substituted for section 13 of the principal Act:

“Loans to directors

13. No loan shall be made directly or indirectly out of the funds of the Corporation or any other funds administered by the Corporation to a director, without the prior written consent of the responsible Member.”.

**Amendment of section 14 of Act 6 of 1995**

- 5 13. Section 14 of the principal Act is amended by the substitution for paragraph (a) of the following paragraph:

“(a) for a director in respect of bodily injury, disablement or death, or any other loss or damage, resulting solely and directly from [an accident occurring in the course of] the performance of his or her duties as a director; and”.

10 **Repeal of section 15 of Act 6 of 1995**

14. Section 15 of the principal Act is repealed.

15 **Amendment of section 23 of Act 6 of 1995**

- 15 15. Section 23 of the principal Act is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

20 “(a) all assets, liabilities, rights and obligations of a dissolved corporation 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 Corporation, including the transfer thereof to any entity, person or body: Provided further that such administrative records and other documents of a dissolved corporation as may be determined by the responsible Member shall be transferred to the Corporation, or such entity, person or body.”

25 **Insertion of section 23A in Act 6 of 1995**

- 30 16. The following section is inserted in the principal Act after section 23:

**“Liquidation**

35 **23A. The Corporation shall not be liquidated or placed under judicial management unless the Executive Council of the Province has taken a special resolution to that effect.”.**

**Short title**

17. This Act shall be called the Free State Development Corporation Amendment Act, 1999.