



FREE STATE PROVINCE

# PROVINCIAL GAZETTE

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OFFICE OF THE PREMIER

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KANTOOR VAN DIE PREMIER

No. 18

16 October 1998

No. 18

16 Oktober 1998

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. 18 of 1998: Investment Free State Agency Act, 1998

No. 18 van 1998: Wet op die Vrystaat Investeringsagentskap, 1998

# ACT

To provide for the establishment, appointment, powers and functions of the Free State Investment Agency in order to promote and support the economic growth and development of the province, and for matters incidental thereto.

## PREAMBLE

WHEREAS the government of the province of the Free State holds responsibility for the promotion of trade and investment in the province, and whereas it believes that the promotion of these objectives is best achieved in concert with other stakeholders in the economy, the government is desirous of establishing by provincial statute, an investment Agency directed by the major economic stakeholders in the province to promote investment in and trade with the provincial economy,

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

*(English text signed by the Premier.)*  
*(Assented to 7 October 1998)*

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## Definitions

1. In this Law, unless the context otherwise indicates 10
  - “Agency” means the Investment Free State Agency established in terms of section 2;
  - “Board” means the governing body of directors of the Agency contemplated in terms of section 3; 15
  - “director” means a person appointed to the Board;
  - “financial year” means the period extending from 1 April in any year to 31 March in the next succeeding year; 20
  - “Free State” means the Free State province;
  - “legislature” means the Free State Provincial Legislature; 25
  - “Province” means the province of Free State and includes the Provincial Administration: Free State;
  - “responsible Member” means the member of the Executive Council responsible for the economic affairs of the province; and 30
  - “this Act” includes the Regulations.

### Establishment of Agency

2. (1) A juristic person to be known as the Investment Free State Agency is hereby established. 5
- (2) The provisions of the Companies Act, 1973 (Act No 61 of 1973) shall *mutatis mutandis* be applicable in all respects to the Agency, unless its application is expressly or impliedly limited: Provided that in such application any reference in the Companies Act to a company, director or an officer of a company, unless the context indicates otherwise, shall be construed as a reference to the Agency, a director or an officer of the Agency as the case may be. 10

### Constitution of Board

3. (1) The affairs of the Agency shall be managed by a board of directors, which may exercise the powers of the Agency. 15
- (2) The board of directors shall consist of 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 - 20
- (a) two directors from the business sector;
  - (b) two directors from Organised Local Government; 25
  - (c) one director from an organisation representing the agriculture in the Province;
  - (d) one director from the tourism industry; and 30
  - (e) not more than three members who may be appointed on the initiative of the responsible Member. 35

### Objects of Agency

4. The objects of the Agency shall be - 35
- (a) to promote investment in and trade with the Free State and to identify, analyse, publicise and market investment and trade opportunities in the Free State economy, in such manner and by such means as the Board may from time to time deem appropriate, and 40
  - (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 economy and promote equitable participation in the economy by sectors of the community and regions of the Free State. 45

## Functions and powers of the Agency

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

- (a) to pay all expenses in connection with its administration; 5
- (b) to employ officers and to pay to them such remuneration and benefits as may be determined by the Board, in consultation with the responsible member;
- (c) to open banking accounts; 10
- (d) to acquire, hire, sell, let, or mortgage movable or immovable property required for the implementation of the objects of the Agency;
- (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; 15
- (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; 20
- (g) to manage and apply funds allocated 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; 25
- (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; 30
- (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; 35
- (j) to solicit and accept donations and to receive any monies offered or due to the Agency; 40
- (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;
- (l) to plan and implement any project or enterprise that would enhance investment in and trade with the Free State; 45

- (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
- (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*. 5

**Meetings and decisions** 10

- 6. (1) A meeting of the board must be held at a time and place to be determined by the chairperson of the board.
- (2) (a) The chairperson of the board or the deputy chairperson in the absence of the chairperson or as requested by the chairperson shall act as chairperson, as the case may be; 15
- (b) in the absence of both the chairperson and deputy chairperson the directors present may appoint one of the directors present to preside at the meeting of the board. 20
- (3) At least 50 percent of the directors, excluding the chairperson or deputy chairperson or in their absence, a person appointed under subsection (2)(b), shall constitute a quorum for any meeting of the board. 25
- (4) The decision of the majority of the directors present at a meeting of the board, shall be a decision of the board, and in the event of an equality of votes relating to any matter the chairperson of the board or the person acting as such, as the case may be, shall have a casting vote in addition to his or her deliberative vote. 30
- (5) No decision taken by the board or act performed under authority of the board 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, was present at the time when the decision was taken or the act was authorised by the requisite majority of the directors who were present at the time and entitled to sit as directors. 35

**Disclosure of interest of director in certain contract**

- 7. (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 Agency, director or an officer of the Agency, as the case may be. 40
- (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. 45

### **Chairperson and deputy chairperson**

8. (1) The responsible Member must appoint one of the directors as the chairperson and another as a deputy chairperson of the board. 5
- (2) If the chairperson of the board ceases to hold office as director or as chairperson of the board, the responsible Member must, subject to the provisions of subsection (1), appoint a new chairperson. 10
- (3) Whenever the chairperson is absent or is unable to perform his or her functions as chairperson, the deputy chairperson will act as chairperson during the absence or incapacity of the chairperson. 10

### **Chief executive officer**

9. (1) The board in consultation with the responsible Member must appoint a person as the chief executive officer of the Agency. 15
- (2) A chief executive officer shall hold office on such conditions as determined by the board and specified in the instrument of appointment. 20

### **Vacation of office by the chief executive officer**

10. If the chief executive officer ceases to hold office, the board of directors must, within reasonable time and subject to the provisions of section 9(1), appoint another chief executive officer. 25

### **Accounting officer**

11. The chief executive officer shall be the accounting officer of the Agency and as such - 30
- (a) be charged with the responsibilities of accounting for State and any other money received or paid out for or on account of the Agency; and
- (b) cause the necessary accounting and other related records to be kept. 35

### **Term of office of directors**

12. A director shall be appointed on such conditions as specified in the instrument of appointment. 40

### **Vacation of office by directors and filling of vacancies**

13. (1) A director shall vacate his or her office - 45
- (a) if his or her estate is sequestrated;

- (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; 5
  - (d) if he or she ceases to be an elected member of the municipal council;
  - (e) if he or she resigns as director; 10
  - (f) if he or she is removed from office in terms of subsection (2).
- (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. 15
- (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.

**Funding of Agency** 20

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; 25
  - (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; 30
  - (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; 35
  - (e) the sale by the Agency of its services;
  - (f) annual grants made by the Province;
  - (g) grants made by other development agencies, foundations and donors, whether inside or outside the Republic of South Africa, and 40
  - (h) income generated from any other source in accordance with the provisions of this Act. 45
- (2) Monies borrowed by the Agency shall not be used to defray the running expenses of the Agency.

- (3) 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.

**Annual Financial Statements**

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15. (1) The Board shall in respect of every financial year of the Agency cause annual financial statements to be made out and shall submit such statements, after having been audited as contemplated in section 18, to the responsible Member within six months after the end of the financial year in question, together with a copy of the report on the audit in question. 10
- (2) The annual financial statements referred to in subsection (1) shall consist of -
- (a) a balance sheet dealing separately with the state of affairs of each business of the Agency; 15
  - (b) a consolidated balance sheet dealing collectively with the state of all the affairs of the Agency; 20
  - (c) an income statement dealing separately with the profit or loss of each business of the Agency; 25
  - (d) a consolidated income statement dealing with the profit or loss of the Agency; 25
  - (e) the Auditor-General's report in respect of the annual audit in question.
- (3) The annual financial statements of the Agency shall, in accordance with generally accepted accounting practice, represent fairly the state of affairs of the Agency and its business as at the end of the financial year in question and the profit or loss of the Agency for that financial year, and shall for that purpose, to the extent required by the responsible Member, be in accordance with the appropriate requirements prescribed in respect of the annual financial statements of companies in Schedule 4 of the Companies Act, 1973 (Act No 61 of 1973). 30 35
- (4) (a) The responsible Member shall lay the annual financial statements, submitted to him or her upon the Table in the Legislature within 30 days after receipt thereof, if the Legislature is then in session or, if the legislature is not then in session, within 14 days after the commencement of its next ensuing session. 40
- (b) If the responsible Member is of the opinion that the disclosure of any statement or report contemplated in this section may be contrary to the public interest, a summary, approved by the responsible Member, of the statements contemplated in paragraph (a), shall be tabled in the Legislature instead of the said statements. 45



### Directors' Report

16. (1) Within a period of four months after the end of every financial year of the Agency, the Board shall submit to the responsible Member, to be tabled in the Legislature and to all members of the Agency and to all other bodies which contribute to the capital or operating revenue of the Agency, as part of its annual financial statements, a report by its Board with respect to the state of affairs, the business and the financial position of the Agency and the degree to which its objects have been attained. 5
- (2) The directors' report shall deal with the matters prescribed in Schedule 4 of the Companies Act, 1973, in so far as these are applicable. 10
- (3) The directors' report shall also - 15
- (a) set out the functions and objectives of the Agency as determined by law or otherwise; 15
- (b) state the extent to which the Agency has achieved its set objectives for the financial year concerned; 20
- (c) contain relevant performance information regarding the economic, efficient and effective utilisation of resources; and
- (d) indicate the amount of money, if any, received from the Province in terms of section 12(1)(f) and any utilisation thereof in terms of the conditions laid down by the accounting officer. 25

### Internal Audit

17. The Agency shall cause internal audits to be conducted so as to promote - 30
- (a) the safeguarding and control of its assets;
- (b) compliance with this Act or any other law; and 35
- (c) the economical and efficient management of the resources of the Agency and the effective performance of the functions of the Agency, unless the responsible Member, on the recommendation of the Board, is of the opinion that the benefits to be derived from internal auditing do not justify the cost thereof. 40

### Audit

18. The account books, statements of accounts and annual financial statements of the Agency shall be audited annually by the Auditor-General. 45

### **Periodic performance evaluation**

19. The Agency shall within two years of the enactment of this Act, and every two-year period thereafter, prepare a review of the Free State economic performance and of industrial policy as it relates to the performance of the Free State's economy. The responsible Member shall table this report in the Legislature. 5

### **Regulations**

20. The responsible Member may 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. 10

### **Indemnity**

21. No director, manager, secretary or other officer or employee of the Agency, including the auditor of the Agency, shall be liable by reason of any act or omission done in respect of duties discharged in good faith by him or her in any said capacity. 15

### **Termination of activities**

22. Upon the passing of any legislation in terms of which the activities of the Agency are terminated and the Agency is to be wound up, the assets of the Agency remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions having objects similar to those of the Agency to be determined by the members of the Agency in consultation with the responsible Member, at a meeting held at or before the time of such dissolution and, failing any such determination, by the responsible Member. 25

### **Short title**

23. This Act shall be called the Investment Free State Agency Act, 1998. 30