

FREE STATE DEVELOPMENT CORPORATION ACT 6 OF 1995

[ASSENTED TO 12 SEPTEMBER 1995][DATE OF COMMENCEMENT: 15
SEPTEMBER 1995]

(English text signed by the Premier)

as amended by

Free State Development Corporation Amendment Act 9 of 1999
Free State Development Corporation Amendment Act 4 of 2006
Free State Development Corporation Amendment Act 5 of 2010

ACT

To provide for the establishment of a development corporation for the Province and for matters incidental thereto.

1 Definitions

In this Act, unless the context otherwise indicates-

"board of directors" means the board of directors of the Free State Development Corporation;

[Definition of "board of directors" inserted by sec 1(a) of Act 9 of 1999 wef 3 February 2000.]

"business"

[Definition of "business" deleted by sec 1 (1) of Act 5 of 2010 wef 8 June 2010.]

"Companies Act" . . .

[Definition of "Companies Act" inserted by sec 1(b) of Act 9 of 1999 wef 3 February 2000 and deleted by sec 1(a) of Act 4 of 2006 wef 25 August 2006.]

"Constitution" means the Constitution of the Republic of South Africa, 1996;

[Definition of "Constitution" substituted by sec 1(c) of Act 9 of 1999 wef 3 February 2000 and by sec 1(b) of Act 4 of 2006 wef 25 August 2006.]

"Corporation" means the Free State Development Corporation established by section 2;

"director" means a director of the Corporation;

"dissolved agency" means an agency established by or under a repealed Act;

[Definition of "dissolved agency" inserted by sec 1(2) of Act 5 of 2010 wef 8 June 2010.]

"dissolved corporation" means a corporation established by or under a repealed Act;

"enterprise" means the enterprise referred to in section 3(a);

[Definition of "enterprise" inserted by sec 1(3) of Act 5 of 2010 wef 8 June 2010.]

"law of the Province" means an Act passed by the Provincial Legislature or a law assigned for administration to a competent authority within the jurisdiction of the government of the Province under section 235 (8) of the Constitution;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act 1 of 1999);

[Definition of "Public Finance Management Act" inserted by sec 1(d) of Act 4 of 2006 wef 25 August 2006.]

"managing director" . . .

[Definition of "managing director" deleted by sec 1(c) of Act 4 of 2006 wef 25 August 2006.]

"repealed Act" means an act referred to in the Schedule;

"responsible Member" means the member of the Executive Council of the Province responsible for Economic Affairs;

[Definition of "responsible Member" substituted by sec 1(d) of Act 9 of 1999 wef 3 February 2000 and by sec 1(e) of Act 4 of 2006 wef 25 August 2006.]

"Small, Medium and Micro Enterprises" bears the same meaning assigned to this expression in the National Small Enterprises Act, 1996 (Act 102 of 1996);

[Definition of "Small, Medium and Micro Enterprises" inserted by sec 1(f) of Act 4 of 2006 wef 25 August 2006.]

"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.

[Definition of "to act as broker" added by sec 1(e) of Act 9 of 1999 wef 3 February 2000.]

1A Public Finance Management Act applicable

This Act is subject to the Public Finance Management Act.

[Sec 1A inserted by sec 2 of Act 4 of 2006 wef 25 August 2006.]

2 Establishment of Free State Development Corporation

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

(2)...

[Subsec (2) deleted by sec 3 of Act 4 of 2006 wef 25 August 2006.]

[Sec 2 substituted by sec 2 of Act 9 of 1999 wef 3 February 2000.]

2A ...

[Sec 2A inserted by sec 3 of Act 9 of 1999 wef 3 February 2000 and deleted by sec 4 of Act 4 of 2006 wef 25 August 2006.]

3 Main objects of the Corporation

The objects of the Corporation shall be –

- (a) the promotion and development of small, medium and micro enterprises;
- (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;
- (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
- (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.”

[Sec 3 substituted by Sec 2 of Act 5 of 2010 wef 8 June 2010.]

4 Capacity and powers of the Corporation

The Corporation shall have the capacity determined by the main objects stated in section 3.

[Sec 4 substituted by sec 5 of Act 9 of 1999 wef 3 February 2000 and by sec 6 of Act 4 of 2006 wef 25 August 2006.]

4A Powers of board of directors

The board of directors shall have all the powers to achieve all the main objects for which the Corporation is established 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;
- (c) [sic] 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 after consultation with the Member of the Executive Council responsible for finance;
- (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;
- (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;
- (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;
- (l) [sic] 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 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;
- (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;

- (p) to act as director, manager, or agent of any concern, company, close corporation, person or juristic person, and to appoint any person or persons to act on the Corporation's behalf for such purpose;
- (q) to institute, conduct or defend any legal matter;

[Para (q) substituted by sec 3(1) of Act 5 of 2010 wef 8 June 2010.]

- (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;
- (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;
- (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.
- (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;
- (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.”.

[Sec 4A inserted by sec 6 of Act 9 of 1999 wef 3 February 2000 and substituted by sec 7 of Act 4 of 2006 wef 25 August 2006.]

[Para (x) (y) and (z) inserted by sec 3 (2) of Act 5 of 2010 wef 8 June 2010.]

5 Board of directors of Corporation

- (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 of the Corporation.

- (2) The board of directors shall consist of not more than 12 persons appointed by the responsible Member.

[Sec 5 amended by sec 7 of Act 9 of 1999 wef 3 February 2000 and substituted by sec 8 of Act 4 of 2006 wef 25 August 2006.]

5A Procedure for appointment of board of directors

- (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.

[Sec 5A inserted by sec 4 of Act 5 of 2010 wef 8 June 2010.]

6 Period of office and remuneration of directors

- (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.
- (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, after consultation with the Member of the Executive Council responsible for Finance in line with the National Treasury Guidelines.

[Sec 6 amended by sec 8 of Act 9 of 1999 wef 3 February 2000 and substituted by sec 9 of Act 4 of 2006 wef 25 August 2006]

[Subsec (1) and (3) substituted by sec 5 of Act 5 of 2010 wef 8 June 2010.]

7 Vacation of office by directors and filling of vacancies

- (1) A director shall vacate his or her office-
 - (a) if his or her estate is sequestrated;
 - (b) if he or she becomes mentally ill as defined in the Mental Health Care Act, 2002 (Act No.17 of 2002);

- (c) if he or she is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) if he or she resigns as director;
- (e) if he or she is removed from office in terms of subsection (2);
- (f) upon his or her election as member of the National Assembly or National Council of Provinces or a Provincial Legislature or a Municipal Council;
- (g) upon the attainment of the age of 65 years.

[Para (b) and (f) amended by sec 6 of Act 5 of 2010 wef 8 June 2010.]

- (2) A director may be removed from office by the responsible Member on account of misconduct, mismanagement of funds or for any adequate reason.

[Subsec (2) substituted by sec 9 of Act 9 of 1999 wef 3 February 2000 and by sec 10 of Act 4 of 2006 wef 25 August 2006.]

- (3) If a director ceases to hold office, the responsible Member shall, subject to the provisions of section 5, appoint a person to fill the vacancy on the board of directors.

8 Chairperson, deputy chairperson and acting chairperson

- (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 deputy chairperson shall act as chairperson during the absence or incapacity of the chairperson.
- (4) The deputy chairperson shall, while acting as chairperson, have all the powers and perform all the functions of the chairperson.

[Sec 8 substituted by sec 11 of Act 4 of 2006 wef 25 August 2006.]

9 Chief Executive Officer

- (1) The responsible Member, after consultation with the board, shall appoint a Chief Executive Officer of the Corporation.
- (2) The Chief Executive Officer of the Corporation shall occupy himself or herself full-time with the affairs of the Corporation.

- (3) The Chief Executive Officer shall hold office on such conditions (including the payment of remuneration and allowance) as the responsible Member 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.

[Sec 9 amended by sec 10 of Act 9 of 1999 wef 3 February 2000 and substituted by sec 12 of Act 4 of 2006 wef 25 August 2006.]

9A Committees of the board of directors

- (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.
- (2) A committee shall consist of –
 - (a) such members of the board of directors as the board of directors may designate; or
 - (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.
- (3) The board of directors shall designate the chairperson of the committee.
- (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.
 - (b) Any delegated power or function so exercised or performed shall be deemed to have been exercised or performed by the board of directors.

[Sec 9A inserted by sec 7 of Act 5 of 2010 wef 8 June 2010.]

9B Co-opting of persons

- (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.
- (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.
- (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 Executive Council responsible for Finance.

[Sec 9B inserted by sec 8 of Act 5 of 2010 wef 8 June 2010.]

10 Vacation of office by Chief Executive Officer

- (1) The Chief Executive Officer of the Corporation shall vacate his or her office-
 - (a) if he or she resigns;
 - (b) if he or she is removed from office due to misconduct, mismanagement of funds or for any adequate reason.
- (2) If the 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 a person as the Chief Executive Officer.

[Sec 10 amended by sec 11 of Act 9 of 1999 wef 3 February 2000 and substituted by sec 13 of Act 4 of 2006 wef 25 August 2006.]

10A Appointment of company secretary

- (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.

[Sec 10A inserted by sec 9 of Act 5 of 2010 wef 8 June 2010.]

11 Meetings and decisions

- (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 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 deputy chairperson or any director acting as chairperson in their absence, 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 authorised, if 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.

[Sec 11 substituted by sec 14 of Act 4 of 2006 wef 25 August 2006.]

11A Disclosure of interest by directors

- (1) The provisions of section 234, 235, 237(1), (4) and (5) of the Companies Act, 1973 (Act 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.

[Sec 11A inserted by sec 15 of Act 4 of 2006 wef 25 August 2006.]

12 Minutes

- (1) The Corporation shall cause minutes of the proceedings at meetings of the board of directors to be entered in a minute-book kept for that purpose at the head office of the Corporation.
- (2) The minutes of any meeting of the board of directors purporting to be signed by the chairperson of the board or the person designated under section 8(3) to act as chairperson of the board, as the case may be, shall in any court of law be *prima facie* proof of the taking place of anything which, according to such minutes, took place at such meeting.
- (3) The responsible Member may at any time require a minute-book of the Corporation to be submitted to him or her for inspection.

13 Loans to directors

No loans 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.

[Sec 13 substituted by sec 12 of Act 9 of 1999 wef 3 February 2000.]

14 Insurance

The Corporation may provide insurance cover-

- (a) for a director in respect of bodily injury, disablement or death, or any other loss or damage, resulting solely and directly from the performance of his or her duties as a director; and

[Para (a) substituted by sec 13 of Act 9 of 1999 wef 3 February 2000.]

- (b) for the Corporation against any loss, damage, risk or liability which it may suffer or incur.

15 [sic] The Free State Investment Promotion Agency must be incorporated into the Corporation.

[Sec 15 repealed by sec 14 of Act 9 of 1999 wef 3 February 2000 and inserted by section 11 of Act 5 of 2010 wef 8 June 2010.]

16 ...

[Sec 16 deleted by sec 10 of Act 5 of 2010 wef 8 June 2010.]

17 ...

[Sec 17 deleted by sec 16 of Act 4 of 2006 wef 25 August 2006.]

18 Financial year of Corporation

The financial year of the Corporation shall terminate on 31 March in each year.

19 Audit

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

20 ...

[Sec 20 deleted by sec 17 of Act 4 of 2006 wef 25 August 2006.]

21 ...

[Sec 21 deleted by sec 18 of Act 4 of 2006 wef 25 August 2006.]

22 Appropriation of income and property of Corporation and profits

Save as expressly otherwise provided in this Act, the Corporation shall apply all its income and property and all its profits exclusively to the promotion and attainment of its objects, and no profits shall be distributed to any person.

23 Repeal of laws and saving

- (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 -
 - (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 Corporation, 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;

[Para (a) substituted by sec 15 of Act 9 of 1999 wef 3 February 2000 and amended by sec 12 (2) (a) Act 5 of 2010 wef 8 June 2010.]

- (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 Member may by notice in the *Provincial Gazette* regulate matters relating to the further transfer of an employee of the Corporation;

[Para (b) amended by sec 12 (2) (b) of Act 5 of 2010 wef 8 June 2010.]

- (c) any person who immediately before such commencement was director of a dissolved agency shall retire: Provided that the responsible Member may appoint such person as a director of the Corporation.

[Para (c) amended by sec 12 (2) (c) of Act 5 of 2010 wef 8 June 2010.]

- (3) Anything done before the commencement of this Act in terms of the provisions of a repealed Act -
 - (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;

[Para (a) amended by sec 12 (3) (a) of Act 5 of 2010 wef 8 June 2010.]

- (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;
- (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.

[Para (c) amended by sec 12 (3) (c) of Act 5 of 2010 wef 8 June 2010.]

(4)

[Subsec (4) repealed by sec 12 (3) of Act 5 of 2010 wef 8 June 2010]

- (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).

[Subsec 5 amended by sec 12 (4) of Act 5 of 2010 wef 8 June 2010]

23A Liquidation

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

[Sec 23A inserted by sec 16 of Act 9 of 1999 wef 3 February 2000.]

24 Short title and commencement

This Act shall be called the Free State Development Corporation Act, 1995.

SCHEDULE

Laws repealed [Sec 12(1) of Act 6 of 2010 wef 8 June 2010]

	Name and Year of Law	Extent of Repeal
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