

LAW

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

Whereas the government of the province of the Western Cape 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 independent Agency directed by the major economic stakeholders in the province to promote investment in and trade with the provincial economy, now therefore,

BE IT ENACTED by the Provincial Legislature of the province of the Western Cape, as follows:

Definitions

1. In this Law, unless the context otherwise indicates –

“accounting officer” means the Director-general of the Provincial Administration: Western Cape;

“Agency” means the Western Cape Investment and Trade Promotion Agency established in terms of section 2;

“Board” means the governing body of directors of the Agency appointed in terms of section 3;

“constitution” means the constitution of the Agency;

“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;

“Legislature” means the Provincial Legislature of the Western Cape;

“member” means the Province, any company, local authority, organisation or other Agency on the terms and conditions as set out in the constitution;

“Province” means the province of Western Cape and includes the Provincial Administration; Western Cape;

“responsible Member” means the member of the Executive Council responsible for the economic for the economic affairs of the province;

“this Law” includes the Regulations, and

“Western Cape” means the province of the Western Cape.

Establishment of Agency

2. (1) The Western Cape Investment and Trade Promotion Agency is hereby established.

(2) The Agency shall be a juristic person with limited liability, capable of suing and being sued in its own name and of performing all such acts as are necessary for or incidental to the attainment of its objects and the exercise of its powers in terms of this Law and no member or director of the Agency shall be liable for any debts or losses of the Agency.

(3) The Agency shall, with respect to its objects as set out in section 4, be the sole provider of services to the Province; provided that should the responsible Member wish to obtain similar or related services for the Province from another body or institution, he or she shall, after informing the Board of his or her intention, do so in consultation with the Executive Council of the Province.

(4) The Association for the Promotion of the Western Cape’s Economic Growth, an association incorporated under section 21 of the Companies Act, 1973 (Act 61 of 1973), also known as Wesgro, shall be deregistered by the Registrar of Companies as soon as is practicable after the enactment of this Law.

(5) After the establishment of the Agency, but prior to deregistration of the Association referred to in subsection (4), the assets of the Association remaining after the discharge of all its liabilities shall by resolution of its members be given or transferred to the Agency for no consideration in terms of the memorandum of association of such Association.

Constitution of Board

3. (1) The Board shall consist of the following directors:

- (a) a total of four directors to be nominated by the responsible Member;
 - (b) a total of three directors to be nominated and elected by the private sector members of the Agency;
 - (c) a total of four directors to be nominated by the Business Chambers in the Western Cape;
 - (d) a total of four to be nominated by organised labour in the Western Cape;
 - (e) a total of three to be nominated by the Cape Metropolitan Council;
 - (f) one director to be nominated by each of the local authority substructures to be establish in respect of the Cape metropolitan area;
 - (g) two directors each to be nominated from each of the areas covered by the services councils or such similar bodies as may be established in respect of regions situated outside the Cape metropolitan area, and
 - (h) two directors to be nominated by organisations which represent agriculture in the Province,
- (2) The Agency shall provide in its constitution for a balanced gender representation on its Board.
- (3) The Board may, in its discretion, co-opt such additional directors, not exceeding four, as it may consider necessary from time to time, but in the fashion contemplated in the constitution and in consultation with the responsible Member.
- (4) The process for the inviting of nominations referred to in subsections (1) and (2) and the procedure to be followed for the appointment of the directors to the Board shall be set out in the constitution of the Agency.
- (5) Each director shall have the power to nominate any person, who need not be a member of the Agency, to act as alternate director in his or her place during his or her absence or inability to act as such on the Board.
- (6) The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and perform all the powers, duties and functions of the directors they represent. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him or her ceases to be a director or gives notice to the chairperson that the alternate director representing him or her has ceased to do so.
- (7) No director shall be entitled to be paid any remuneration for his or her services as such; provided that the Board may, in its discretion, reimburse any director in respect of any reasonable and bona fide expenses incurred by such director in or about the performance of his or her duties as director.

Objects of the Agency

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

Powers of 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;
 - (b) to employ officers and employees and to pay to them such remuneration and benefits as may be determined by the Board;
 - (c) to open banking accounts;
 - (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;
 - (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;
 - (g) to manage and apply funds allocated by the Province or any other donor or provider of monies in such fashion 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;
 - (h) to act as agent on behalf of the Province, any local authority or other tier of government or any other person or body who, in the opinion of the Board, is a stakeholder in the economy of the Western Cape;

- (i) to raise or borrow money on such terms as the Board may deem appropriate;
- (j) to solicit and accept donations and to receive any monies offered or due to the Agency;
- (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 and trade in the Western Cape;
- (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*.

Membership

6. (1) The Agency shall have members who shall be appointed in accordance with the further provisions hereof or as is provided for in the constitution, and the Board shall maintain a register containing particulars of such members in such fashion as is prescribed in the constitution.

(2) The responsible Member or his or her nominee as representative of the Province, and those persons and bodies who at the date of enactment of this Law are members of the Association referred to in section 2(3) shall be the first members of the Agency.

(3) The Board may increase the membership of the agency by inviting such members of the private or public sectors in the Western Cape as it may determine or as prescribed in the constitution to become members of the Agency on such terms and conditions as determined by it or as prescribed in the constitution.

(4) Any person wishing to become a member of the Agency may, notwithstanding the provisions of subsection (3), make application to the Board in writing in such form as membership and, if so requested by an applicant may, at the discretion of the Board provide the said applicant with reasons for its decision.

(5) The Board may from time to time in its discretion appoint such persons as it may deem fit as honorary members of the Agency and such honorary members shall not be liable to pay annual subscriptions.

(6) The Board may from time to time classify the members of the Agency into such categories of membership with such rights, privileges and obligations as it may determine.

Meetings of members and Board

7. (1) Annual general and other meetings of members and of the Board, shall be held in such fashion and at such times as set out in the constitution.

(2) Every member of the Agency shall at any meeting of the Agency have one vote and the vote of the majority shall be binding on the Agency.

Powers and duties of directors

8. (1) The business of the Agency shall, subject to subsection (2), be managed by the Board, which shall be entitled to exercise all such powers of the Agency as are necessary for the attainment of the objects of the Agency.

(2) The directors shall, as soon, as is practicable after the constitution of the Board, elect from their number an executive committee which shall –

- (a) as far as possible be representative of the various interest groups comprising the board;
- (b) comprise such number of directors, not exceeding ten, as may be determined by the Board;
- (c) carry out such duties and enjoy such powers as may be determined by the Board and delegated by the Board to it from time to time, and
- (d) notwithstanding the fact that the chief executive officer appointed in terms of section 10(1) may not be a director of the Agency, include such chief executive officer together with any executive directors appointed in terms of section 10(2) in addition to the directors contemplated in paragraph (b).

(3) The Board may further delegate any of its powers to its other committees consisting of such members as it may deem necessary and any committee so formed shall, in the exercise of the powers so delegated-

- (a) conform to any rule that may be imposed on it by the Board, and

- (b) be entitled, with the approval of the Board, to co-opt additional members, who shall not be required to be members of the Agency.

Director's Interests

9. (1) No director shall directly or indirectly become involved in any contract with the Agency or share in the profits or losses of any contract with the Agency or in any other manner obtain a financial interest in any of the businesses of the Agency without the prior approval of the Board.

(2) If the spouse of a director, his or her partner, the partner of his or her spouse, his or her employer (except the Province) or the employer of his or her spouse (except the Province) becomes directly or indirectly involved in any contract with the Agency or directly or indirectly shares in the profits or losses of any contract with the Agency or in any other manner obtains a financial interest in the business of the Agency, such director shall disclose to the Board the nature and extent of such interest.

(3) A director who is in any way materially interested in any contract which has been or is about to be entered into by the Agency or who thereafter becomes materially interested in any such contract shall declare his or her interest and full particulars thereof at the first meeting of the Board at which it is possible for him or her to do so and he or she shall withdraw in the event of such contract being discussed by the Board during any meeting of the Board and he or she shall not participate in any voting in connection therewith.

(4) A declaration of interest in terms of subsection (3) shall be recorded in the minutes of the meeting of the Board at which such declaration is made.

Managing and executive directors

10. (1) The Board may from time to time appoint a managing director or a chief executive officer for such term and at such remuneration (whether by way of salary or commission or partly in one way and partly in another) as it may deem necessary and may revoke such appointment subject to the terms of any agreement entered into in any particular case.

(2) The Board may further appoint one or more executive directors on such terms as it may deem appropriate and may revoke any such appointment subject to the terms of any agreement entered into in any particular case.

(3) The Board may from time to time delegate to or confer upon a managing director or chief executive, for a prescribed period, such of the powers and duties vested in it as may deem necessary.

Period of appointment of directors

11. (1) Directors of the Board shall hold office-

- (a) in the case of any managing or executive director, for the period agreed upon in terms of his or her appointment, and
- (b) in the case of all other directors, for such term and upon such conditions as are determined in the constitution.

(2) A retiring director shall be eligible for re-election.

(3) Any vacancy occurring on the Board may be filled by the Board; provided that any director so appointed shall be appointed for the remaining term of office of the director in whose place he or she is appointed.

Funding of Agency

12. (1) The Agency shall be funded by means of -

- (a) income received from metropolitan and district or regional services councils and other local authorities and structures, whether in the form of membership fees or otherwise;
- (b) payments received from private sector members in the form of membership fees;
- (c) the charging of agency fees to the Government of the Republic of South Africa for services rendered on an agency basis
- (d) the charging of agency fees to the Province for services rendered on an agency basis in terms of agreements with branches of the province determined in consultation with the responsible Member;
- (e) the sale by the Agency of its services;
- (f) 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
- (h) income generated from any other source in accordance with the provisions of this law.

- (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.

Accounting Records and Financial Statements

- 13.** (1) The Board shall appoint auditors and cause such accounting records as are prescribed by section 284 of the Companies Act, 1973 (Act 61 of 1973), to be kept.
- (2) The accounting records shall be kept at such place or places as the Board may deem necessary and shall always be open to inspection by the directors.
- (3) Annual financial statements shall be prepared and audited by the auditors within 120 days of the end of each financial year of the Agency and shall consist of-
- (a) a balance sheet dealing with the state of affairs of the Agency;
 - (b) an income statement;
 - (c) a cash-flow statement;
 - (d) notes to the financial statements;
 - (e) a directors' report contemplated in section 14, and
 - (f) such other statements as may be prescribed by regulation.
- (4) The annual financial statement mentioned in subsection (3) shall be accompanied by a report of the auditors as contemplated in section 16.
- (5) The annual financial statements mentioned in subsection (3) shall, in conformity with generally accepted accounting practice, fairly present the state of affairs of the Agency and its business as at the end of the financial year concerned and the surplus or deficit of the Agency for such year and shall for that purpose be in accordance with and include at least the matters prescribed by Schedule 4 of the Companies Act, 1973, in so far as they are applicable.
- (6) The annual financial statements of the Agency shall by means of figures and a descriptive report explain any other matters and information material to the affairs of the Agency.
- (7) (a) The responsible Member shall lay the annual financial statements, submitted to him upon the Table in the Legislature within 14 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.
- (c) If the responsible Member, with the concurrence of the member of the Executive Council responsible for Finance, 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.

Directors' Report

- 14.** (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, 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.
- (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.
- (3) The directors' report shall also-
- (a) set out the functions and objectives of the Agency as determined by law or otherwise;
 - (b) state the extent to which the Agency has achieved its set objects for the financial year concerned;
 - (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.

Internal Audit

- 15.** The Agency shall cause internal audits to be conducted so as to promote-
- (a) the safeguarding and control of its assets;

- (b) compliance with this Law or any other law, and
 - (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.

Auditor's Reports

16. (1) An auditor appointed by the Board shall perform his or his duties in terms of the provisions of section 20 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991) and section 300 of the Companies Act, 1973 (Act 61 of 1973).

(2) An auditor's report shall be prepared and addressed to the responsible Member and shall state separately in respect of each of the following matters whether in the auditor's opinion-

- (a) the annual financial statements fairly represent the financial position and the results achieved by the Agency in accordance with generally accepted accounting practice applied on a basis consistent with that of the preceding year;
- (b) the information furnished in terms of sections 13 and 14 fairly stated in all material respects and, if applicable, on a basis consistent with that of the preceding year;
- (c) the transactions of the Agency that had come to the auditor's notice in the course of his or her examination were made in accordance with the applicable laws and instructions, and
- (d) the transactions that had come to his or her attention during auditing were in all material respects in accordance with the mandatory functions of the Agency determined by law or otherwise.

(3) The auditor shall report to the responsible Member and the Auditor-General the results of any audit carried out under this Law.

(4) The auditor shall draw attention to any other matters falling within the scope of the auditor's examination which, in his opinion, should in the public interest be brought to the notice of the Legislature.

(5) The Auditor General shall review all Auditor's reports and conduct such further investigations he or she may deem appropriate and thereafter submit his or her own report to be tabled in the Legislature.

Periodic performance evaluation

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

Regulations

18. The responsible Member may at the request of or in consultation with the Board, or the interim Board contemplated in section 20(1), 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 Law, except financial regulations which may only be made in concurrence with the Member of the Executive Council responsible for Finance.

Indemnity

19. No director, manager, secretary or other officer, employee or consultant 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.

Interim Measures

20. (1) The Board of Directors of the Association referred to in section 2(3) shall for the interim period between the date of enactment of this Law and the date of constitution of the Board in terms of section 3 also function as the Board of the Agency.

(2) During the interim period it shall be one of the functions of the interim Board to draw up and adopt a constitution for the Agency, which constitution shall provide, inter alia, for-

- (a) the procedure to be adopted in inviting nominations for appointment to the Board;

- (b) all other matters pertaining to the appointment of directors, including the election of a chairperson and deputy chairperson and such other office-bearers as may be required by the constitution;
- (c) the appointment or election of members of the Agency and all matters relating to such membership, including the payment of subscriptions, administrative aspects and the termination of membership;
- (d) the holding of meetings of members and of the Board and all matters incidental thereto;
- (e) the keeping of accounting records by the Agency;
- (f) the establishment, composition and functions of the executive committee;
- (g) the amendment of the said constitution, and
- (h) any other matter necessary for or incidental to the performance of the functions of the Agency.

(3) The Interim Board shall dissolve on the date the directors appointed in terms of section 3 take office, whereafter the duly appointed Board shall function as the Board of the Agency.

Termination of activities

21. 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 at a meeting of members held at or before the time of such dissolution and, failing any such determination, by the responsible Member-

Short title

22. This Law shall be called the Western Cape Investment and Trade Promotion Agency Law, 1996.