

PROVINCE OF WESTERN CAPE

Provincial Gazette Extraordinary

6258

Friday, 29 April 2005

Registered at the Post Office as a Newspaper

OFFICE OF THE PREMIER
OF THE PROVINCE OF
WESTERN CAPE

P.N. 158/2005

29 April 2005

It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act which is hereby published for general information:—

No. 1 of 2005: Western Cape Investment and Trade Promotion Agency Law Amendment Act, 2005.

PROVINSIE WES-KAAP

Buitengewone Provinsiale Koerant

6258

Vrydag, 29 April 2005

As 'n Nuusblad by die Poskantoor Geregistreer

KANTOOR VAN DIE PREMIER
VAN DIE PROVINSIE
WES-KAAP

P.K. 158/2005

29 April 2005

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

Nr. 1 van 2005: Wysigingswet op die Wet op die Wes-Kaapse Investerings- en Handelsbevorderingsagentskap, 2005.

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.

(English text signed by the Premier)
(Assented to 28 April 2005)

ACT

To amend the Western Cape Investment and Trade Promotion Agency Law, 1996; to replace the words "Law", "Legislature", "accounting officer" and "responsible Member", wherever they appear, with the words "Act", "Provincial Parliament", "accounting authority" and "Minister" and to effect certain changes to the text arising from such substitution; to insert new definitions of "accounting authority", "chief executive officer", "committee", "executive Mayor", "locate", "major funder", "Minister", "Minister responsible for Finance" and "Provincial Parliament"; to delete the definitions of "accounting officer", "constitution", "Legislature", "responsible Member" and "Western Cape"; to provide for the amendment of the preamble; to provide for the procedure in terms of which directors are nominated; to provide for the amendment of the powers and duties of directors; to provide for the funding of the Agency; to provide for the repeal of the Western Cape Investment and Trade Agency constitution, and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Parliament of the Western Cape as follows:—

Amendment of preamble to Law 3 of 1996

1. The preamble of the Western Cape Investment and Trade Promotion Law, 1996 (Law 3 of 1996) (the principal Law), is amended by the substitution for the preamble of the following preamble:

"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] objects is best achieved in [concert with other stakeholders in the economy, the] partnership with the private sector and local government, and whereas government is desirous of establishing by provincial statute, [an independent Agency] a provincial public entity [directed by the major economic stakeholders in the province] to promote environmentally sustainable and socially responsible investment in and trade [with] within the provincial economy, now therefore:".

Amendment of section 1 of Law 3 of 1996

2. Section 1 of the principal Law is amended—
- (a) by the insertion before the definition of “accounting officer” of the following definition:
 “‘accounting authority’ means the Board appointed in terms of section 3;”;
 - (b) by the deletion of the definition of “accounting officer”;
 - (c) by the insertion after the definition of “Board” of the following definitions:
 “‘chief executive officer’ means the chief executive officer appointed in terms of section 10;” and
 “‘committee’ means a committee of the Board, established in terms of section 8;”;
 - (d) by the deletion of the definition of “constitution”;
 - (e) by the insertion after the definition of “director” of the following definition:
 “‘executive Mayor’ means the executive Mayor of the City of Cape Town as defined in the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998), any successor in title, or any duly appointed nominee;”;
 - (f) by the deletion of the definition of “Legislature”;
 - (g) by the insertion before the definition of “member” of the following definition:
 “‘locate’ with regard to a member, means to have a head office or an established branch within the Province;”;
 - (h) by the insertion before the definition of “member” of the following definition:
 “‘major funder’ means any funder who contributes 10% or more of the amount budgeted for a specific financial year to be appropriated by the Provincial Parliament, as contemplated in section 12(1)(b) and (c);”;
 - (i) by the substitution for the definition of “member” of the following definition:
 “‘member’ means an enterprise including, but not limited to, any traders, professional persons, companies, business ventures, trusts or close corporations, located in the Province, that is of a continuing nature, carried on for the purpose of deriving a profit and which can contribute to the promotion of investment and trade in the Province, but does not include any government enterprise;”;
 - (j) by the insertion before the definition of “Province” of the following definitions:
 “‘Minister’ means the provincial Minister of the Western Cape responsible for Economic Development;” and
 “‘Minister responsible for Finance’ means the provincial Minister of the Western Cape responsible for Finance;”;
 - (k) by the amendment of the definition of “Province”, as follows:
 “‘Province’ means the province of the Western Cape [and includes the Provincial Administration: Western Cape];”;
 - (l) by the insertion after the definition of “Province” of the following definition:
 “‘Provincial Parliament’ means the Western Cape Provincial Parliament as provided for in section 9 of the Constitution of the Western Cape, 1997 (Act 1 of 1998);”;
 - (m) by the deletion of the definitions of “responsible Member” and “Western Cape”.

Substitution for the words “Law”, “Legislature”, “accounting officer” and “responsible Member” of the words “Act”, “Provincial Parliament”, “accounting authority” and “Minister” in Law 3 of 1996

3. The principal Law is amended by the substitution for the words “Law”, “Legislature”, “accounting officer” and “responsible Member”, wherever they occur, of the words “Act”, “Provincial Parliament”, “accounting authority” and “Minister”.

Amendment of section 2 of Law 3 of 1996

4. Section 2 of the principal Law is amended—

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

“(1) The Western Cape Investment and Trade Promotion Agency is [hereby] established as a provincial public entity which is governed by a Board that must report to the Provincial Government.”; and

(b) by the deletion of subsections (4) and (5).

Substitution of section 3 of Law 3 of 1996

5. The following section is substituted for section 3 of the principal Law:

“Appointment and composition of Board of Directors

3. (1) The Minister, in consultation with the executive Mayor and after consultation with major funders must, subject to subsection (5), appoint the directors of the Board.

(2) The Board consists of no more than 15 directors, namely—

- (a) one senior official nominated by the Minister, ex officio;
- (b) one senior official nominated by the executive Mayor, ex officio;
- (c) subject to subsection (3), no more than ten directors appointed by the Minister;
- (d) subject to subsection (4), no more than two directors nominated from amongst the members; and
- (e) the chief executive officer appointed in terms of section 10, as a director ex officio.

(3) Directors of the Board contemplated in subsection (2)(c) may only be appointed after the Minister, by notice in the *Provincial Gazette* and in such other media as the Minister may consider appropriate, has invited all interested parties to submit, within the prescribed period mentioned in the notice, the names of persons who in the opinion of such interested parties must serve on the Board of Directors, stating the grounds upon which such opinion is based.

(4) (a) Directors of the Board contemplated in subsection (2)(d), may only be appointed by the Minister after an internal election process conforming to such directions as may be issued by the Board from time to time, has been followed.

(b) The Directors of the Board referred to in paragraph (a) must, in addition to meeting the criteria contemplated by subsection (5), occupy a leadership position and have proven leadership abilities.

(5) Any director, including an ex officio director, must—

- (a) have knowledge of trade and investment;
- (b) have experience in the promotion of trade and investment;
- (c) be able to contribute to the integrated and coordinated marketing of the Province's business image;
- (d) reside permanently in the Province; and
- (e) be a fit and proper person.

(6) The Minister must give due consideration to the need for the Board to reflect broadly the demographic composition of the Province.”

Insertion of sections 3A and 3B in Law 3 of 1996

6. The following sections are inserted after section 3 of the principal Law:

“Term of office of directors of Board, and filling of vacancies

3A. (1) Directors of the Board contemplated in section 3(2)(a), (b) and (c) are appointed for a period determined at the time of their appointment, but not exceeding two years.

(2) Directors of the Board contemplated in section 3(2)(d) are appointed for a two year period.

(3) If for any reason the office of a director of the Board becomes vacant, the Minister may appoint a person from the categories indicated in section 3(2), from which such director was originally appointed or nominated as a director of the Board, for the unexpired portion of the term of office in accordance with section 3.

(4) A director of the Board is eligible for reappointment, but may not serve more than three consecutive terms: Provided that the unexpired portion referred to in subsection (3) may not be taken into consideration.

"Termination of office of director of Board

3B. (1) The office of a director of the Board becomes vacant if the director—

- (a) is declared insolvent or of unsound mind by a competent court;
- (b) is removed from office in terms of subsection (2);
- (c) is convicted of an offence and sentenced to imprisonment without the option of a fine, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined;
- (d) has been absent from three consecutive meetings of the Board without the prior consent of the chairperson;
- (e) submits his or her resignation to the Minister through the chief executive officer of the Board;
- (f) becomes a member of Parliament, a provincial legislature, the council of a municipality or the national cabinet or a provincial cabinet or executive council; or
- (g) except for ex-officio members contemplated in section 3(2)(a) and (b), becomes an employee of any provincial government, the government of the Province, the national government of the Republic of South Africa or a municipality.

(2) The Minister may remove a director of the Board on grounds of misconduct, incapacity or incompetence with due consideration to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000)."

Amendment of section 4 of Law 3 of 1996

7. Section 4 of the principal Law is amended as follows:

"Objects of Agency

4. The objects of the Agency shall be—

- (a) to promote investment in and trade within the Province [with the Western Cape and to identify, analyse, publicise and market 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] Minister, [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] Province's economy [and/or promote equitable participation in the economy by sectors of the community and/or regions of the Western Cape]."

Amendment of section 5 of Law 3 of 1996

8. Section 5 of the principal law is amended—

- (a) By the substitution for all the introductory words of the following: "[For the purpose of attaining its objects the Agency shall have the power—] In order to achieve its objects the Agency through its Board is entitled—";

- (b) in paragraph (e), by the addition of the following:
"and not result in unfair competition with private sector service delivery";
- (c) by the substitution for paragraph (f) of the following paragraph:
"(f) to furnish [technical and other] trade and investment marketing assistance and expert and specialised advice, information and guidance to any business, company or association of persons who so request it from the Agency and/or would assist the Agency in achieving its Objects;";
- (d) by the substitution for paragraph (h) of the following paragraph:
"(h) to act as a trade and investment promotion 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;";
- (e) by the substitution for paragraph (j) of the following paragraph:
"(j) to solicit and accept donations and to receive any monies offered or due to the Agency for the sole purpose of promoting trade and investment in the Western Cape;";
- (f) by the deletion of paragraph (k), and
- (g) by the substitution for paragraph (m) of the following paragraph:
"(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".

Substitution of section 6 of Law 3 of 1996

9. The following section is substituted for section 6 of the principal Law:

Membership

6. (1) (a) The Agency may have members.
 (b) The Agency may refuse an application for membership or terminate a member's membership only after compliance with all the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).
 (c) Subject to paragraph (b), if a member fails to pay the required membership fee within the time frames specified by the Agency, the Agency may terminate that member's membership.
 (2) The Board must maintain a register containing the particulars of members.
 (3) The Board may from time to time approve the levying of membership fees, payable at such time and set at such amount as the Board may decide.
 (4) The Board must call a meeting of all the members at least once every financial year."

Substitution of section 7 of Law 3 of 1996

10. The following section is substituted for section 7 of the principal Law:

"Meetings and decisions of Board

7. (1) The Board must meet at least once every two months at such times and at such places as determined by the Chairperson.
 (2) The chairperson must, within seven days of the receipt of a written request signed by at least three directors of the Board, convene a special general meeting of the Board.
 (3) The notice whereby a special general meeting of the Board is convened must state the business of that meeting, and no other business may be transacted at the special general meeting.
 (4) The quorum for a meeting of the Board is the majority of all its directors with voting rights.

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(5) The Board, after consultation with the Minister and the executive Mayor, must appoint a chairperson and a vice-chairperson for the Board from amongst the members of the Board.

(6) The vice-chairperson must act as chairperson of the Board when the chairperson is absent or unable to act as chairperson, and when both the chairperson and the vice-chairperson are absent or unable to act as chairperson, the directors present at such meeting must elect from amongst themselves by majority vote a person to preside at such meeting.

(7) (a) Ex-officio members appointed in terms of section 3(5)(a), (b) and (e) have no voting rights, but have the right to enter into discussion of all the matters before the Board.

(b) The Board may allow any member of a committee who is not a director to attend any meeting of the Board at which any matter relating to the functions of the committee concerned is dealt with, and may allow that member to take part in the proceedings of the meeting, but that member does not have any right to vote on any matter discussed or resolved at the meeting.

(8) The decision of a majority of the directors with voting rights present at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(9) A decision taken by the Board at a time when there was a vacancy on the Board, when any person who was not entitled to sit as a member of the Board sat as such a member, is not invalid if—

(a) the decision was taken by a majority of all the members of the Board; and

(b) the members comprising that majority were entitled to sit as members.

(10) When the Board is in session, a director may not take part in the discussion of, or participate in the making of a decision on, any matter in which that director's spouse, partner, immediate relative or employer has any personal and direct or indirect financial interest: Provided that the Board may require that any director who has declared such interest must recuse himself or herself from the proceedings regarding such matter.

(11) Any director of the Board who contravenes the provisions of subsection (10) is guilty of an offence and on conviction is liable to a fine or imprisonment for a period not exceeding 12 months.

(12) The minutes of Board meetings must be signed by the person who presides at the next meeting of the Board."

Amendment of section 8 of Law 3 of 1996

11. Section 8 of the principal Law is amended by the substitution for subsections (2) and (3) of the following subsections, and the addition of subsection (4):

"(2) (a) The Board may establish committees to assist the Board with the exercise of its powers, the performance of its functions and the carrying out of its duties.

(b) Despite the provisions of paragraph (a), committees in office immediately before the date of commencement of the Western Cape Investment and Trade Promotion Agency Law Amendment Act, 2004 are regarded as duly established committees for up to the first nine months after the Amendment Act comes into operation.

(3) (a) Subject to paragraphs (b) and (c), the Board may establish a committee to deal with—

- (i) human resource management;
- (ii) budget and finance matters;
- (iii) trade promotion; or
- (iv) investment promotion;

provided that the members of those committees must have expertise in the relevant areas.

(b) A committee contemplated in paragraph (a)(i) or (ii) must not consist of more than three members, all of whom must be directors.

(c) A committee contemplated in paragraph (a)(iii) or (iv) must not consist of more than ten members, one of whom must be a director and the rest of the members as contemplated in section 6.

(4) Every committee contemplated in subsection (3)(c) must have as a member, one member of every other committee."

Amendment of section 9 of Law 3 of 1996

12. Subsection (2) of section 9 of the principal Law is amended by the deletion of the expression "(except the Province)" wherever it occurs in that subsection.

Substitution of section 10 of Law 3 of 1996

13. The following section is substituted for section 10 of the principal Law:

"Chief executive officer

10. (1) The Board, in consultation with the Minister and the executive Mayor and after following a public advertising process, must appoint a fit and proper person with knowledge of and experience in investment and trade promotion as the chief executive officer of the Board.

(2) The chief executive officer must be appointed in terms of a fixed-term, performance-linked contract for a period not exceeding five years, and may be reappointed once after expiry of that period.

(3) If the chief executive officer is absent or for any reason unable to perform his or her functions, or whenever there is a vacancy in the office of the chief executive officer, the Board must appoint another person to act as chief executive officer during such absence or inability or until a new chief executive officer has been appointed in terms of subsection (1).

(4) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer."

Substitution of section 11 of Law 3 of 1996

14. The following section is substituted for section 11 of the principal Law:

"Powers and functions of chief executive officer

11. In addition to the powers, functions and duties conferred upon or delegated to the chief executive officer by the provisions of this Act or by the Board, the chief executive officer must—

- (a) ensure that the Agency performs its functions in terms of this Act;
- (b) be in charge of the other employees of the Board;
- (c) be accountable to the Board;
- (d) ensure that proper minutes are kept at meetings of the Board and members;
- (e) attend meetings of the Board;
- (f) submit to the Minister and any other officials nominated by the Province, within 14 days of a Board meeting, a copy of the minutes thereof; and
- (g) ensure that the Agency complies with and performs in terms of all contractual agreements and implements investment and trade marketing policies."

Substitution of section 12 of Law 3 of 1996

15. The following section is substituted for section 12 of the principal Law:

"Funding and financial control"

12. (1) The funds of the Agency consist of—
- (a) money appropriated by the Provincial Parliament for that purpose;
 - (b) money that may be appropriated by the council of a municipality for that purpose;
 - (c) money donated to the Agency by any person or institution;
 - (d) membership fees as prescribed by the Board in terms of section 6(3); and
 - (e) revenue raised from services rendered by the Agency, for as far as such services promote the objects of the Agency as indicated in section 4.
- (2) Acceptance by the Agency of money contemplated in subsection (1)(b) or (c) is subject to any applicable provisions of the Public Finance Management Act, 1999 (Act 1 of 1999), and any regulations or directives issued in terms of that Act.
- (3) The Agency's financial control, accountability and responsibility and its duties to report are regulated by the Public Finance Management Act, 1999 and any regulations or directives issued in terms of that Act.
- (4) The annual financial statements of the Agency must be audited by the Auditor-General.
- (5) The Board must submit to any municipality which provides funds for the Agency and any other municipality which so requests, the reports or statements referred to in section 55(1)(d) of the Public Finance Management Act, 1999."

Repeal of section 13 of Law 3 of 1996

16. Section 13 of the principal Law is repealed.

Repeal of section 14 of Law 3 of 1996

17. Section 14 of the principal Law is repealed.

Substitution of section 15 of Law 3 of 1996

18. The following section is substituted for section 15 of the principal Law:

"Internal Audit"

15. The Agency must ensure and maintain a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with the provisions of the Public Finance Management Act, 1999 and any regulations or directives issued in terms of that Act."

Substitution of section 16 of Law 3 of 1996

19. The following section is substituted for section 16 of the principal Law:

"Delegation of powers, functions and duties"

16. (1) The Board may delegate in writing any power, function or duty assigned to the Board or conferred or imposed upon it in terms of this Act to any director of the Board, or to the chief executive officer, who in turn may further delegate such power, function or duty.

(2) The delegation of a power, function or duty under subsection (1) does not preclude the exercise of that power, the performance of that function or the carrying out of that duty by the Board.

(3) The Board may at any time amend or revoke any delegation under subsection (1), and may delegate its powers, functions or duties subject to any limitations, directions or conditions which the Board may decide.

(4) The Board may review and amend any decision taken in terms of a delegation contemplated in subsection (1), subject to any rights that may have accrued and with due consideration to the provisions of the Promotion of Administrative Justice Act, 2000."

Substitution of section 17 of Law 3 of 1996

20. The following section is substituted for section 17 of the principal Law:

"Allowances of members of Board

17. A director of the Board must be appointed on such terms and conditions and may be paid such allowances and be reimbursed for such expenses out of the funds of the Agency as are determined by the Minister, in concurrence with the Minister responsible for Finance."

Amendment of section 18 of Law 3 of 1996

21. Section 18 of the principal Law is amended as follows:

"Regulations

18. The [responsible Member] Minister in consultation with the executive Mayor may [at the request of or in consultation with the Board, or the interim Board contemplated in section (1), or of his or her own accord], after consultation with the Board or Interim Board, 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] Act, except financial regulations which may only be made in concurrence with the [Member of the Executive Council] Minister responsible for Finance."

Amendment of section 19 of Law 3 of 1996

22. Section 19 of the principal Law is amended as follows:

"Indemnity

19. Subject to the provisions of the Public Finance Management Act, 1999, 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."

Substitution of section 20 of Law 3 of 1996

23. The following section is substituted for section 20 of the principal Law:

"Interim measures

20. (1) Despite the provisions of section 3, the Board of Directors appointed before the date of enactment of the Western Cape Investment and Trade Promotion Agency Law Amendment Act, 2004 ("the Amendment Act") are regarded as the duly appointed directors of the Board for the first nine months after the Amendment Act comes into operation, or alternatively until the Board dissolves in terms of subsection (3) within this nine month period. 5

(2) The Interim Board of Directors must within 30 days after the enactment of the Amendment Act pass a resolution, repealing the constitution of the Agency. 10

(3) The Interim Board must dissolve on the date the directors appointed in terms of section 3 take office." 15

Insertion of section 21A in Law 3 of 1996

24. The following section is inserted in the principal Law after section 21:

"Institutional coordination

21A. (1) The Agency must cooperate with and participate in any Provincial institutions for the promotion of tourism and other related sectors in order to promote inter-institutional cooperation with reference to— 20

- (a) joint strategic planning;
 - (b) cooperative budgeting;
 - (c) shared promotional and marketing activity; and
 - (d) joint monitoring and evaluation,
- that will ensure alignment of their strategies and operations." 25

Short title and commencement

25. This Act is called the Western Cape Investment and Trade Promotion Agency Law Amendment Act, 2004, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*. 30