

Western Cape, South Africa

Western Cape Special Economic Development Infrastructure Company Act, 2019

Act 3 of 2019

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Western Cape South Africa

Western Cape Special Economic Development Infrastructure Company Act, 2019 Act 3 of 2019

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(English text signed by the Premier)

ACT

To establish a juristic person known as the Western Cape Special Economic Development Infrastructure Company SOC Ltd; to authorise the shareholding of the Western Cape Government in the Company; to provide for the powers and duties of the Company; to provide for the management, governance, funding and financial control of the Company; and to provide for matters incidental thereto.

WHEREAS the Western Cape Government is responsible for driving a number of special economic development infrastructure projects in the Province to stimulate and promote economic growth and employment creation;

AND WHEREAS the Western Cape Government holds different interests in a range of special economic development infrastructure projects;

AND WHEREAS there is a need for a juristic person to be created to hold and safeguard the Western Cape Government's interests in these special economic development infrastructure projects,

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

1. Definitions

In this Act, unless the context indicates otherwise—

"**Board**" means the board of directors of the Company contemplated in [section 6](#);

"**chairperson**" means the chairperson of the Board contemplated in [section 6\(2\)](#);

"**chief executive officer**" means the chief executive officer appointed in terms of [section 10\(1\)](#);

"**committee**" means a committee contemplated in [section 8](#);

"**Companies Act**" means the Companies Act, 2008 ([Act 71 of 2008](#));

"**Department**" means the provincial department responsible for economic development;

"**director**" means a member of the Board;

"**Province**" means the Province of the Western Cape, and "provincial" has a corresponding meaning;

"**Provincial Government**" means the Western Cape Government;

"**Provincial Minister**" means the member of the Provincial Cabinet responsible for economic development;

"Provincial Minister responsible for finance" means the member of the Provincial Cabinet responsible for finance;

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

"special economic development infrastructure" means installations, structures, facilities, systems, activities, services and processes that make business activity possible in the Province, including skills development, trade and investment promotion, advocacy and policy realignment, enterprise development, technology support and marketing, and innovation;

"Special Economic Zones Act" means the Special Economic Zones Act, 2014 ([Act 16 of 2014](#));

"subsidiary" has the meaning determined in accordance with section 3 of the Companies Act;

"the Company" means the Western Cape Special Economic Development Infrastructure Company SOC Ltd, a state-owned company, established in terms of [section 2](#) and incorporated in terms of the Companies Act;

"this Act" includes the regulations made under it.

2. Establishment and status of the Company

- (1) A juristic person to be known as the Western Cape Special Economic Development Infrastructure Company SOC Ltd is established as a provincial public entity.
- (2) The Company is subject to and regulated by—
 - (a) this Act;
 - (b) the Public Finance Management Act;
 - (c) the Companies Act and the Company's memorandum of incorporation in terms of the Companies Act; and
 - (d) the Special Economic Zones Act.

3. Shareholding

The Provincial Government is authorised to become a shareholder in the Company and to perform any acts that a shareholder may in law perform.

4. Objects of the Company

The objects of the Company are to—

- (a) drive economic development and stimulate economic competitiveness through the development, operationalisation, governance and management of investments in multiple special economic development infrastructure in the Province;
- (b) create subsidiaries on behalf of the Provincial Government, where required, to enable investment in the development and operation of special economic development infrastructure to attain the objectives of the Company;
- (c) ensure alignment of investments in special economic development infrastructure with Provincial Government goals and objectives;
- (d) apply for and manage funding for special economic development infrastructure; and
- (e) optimise and consolidate efficiencies and coordination between different subsidiaries of the Company.

5. Powers and duties of the Company

- (1) The Company has the powers and duties set out in subsection (2) and any other powers or duties delegated or assigned to it by or in terms of this Act or any other law.
- (2) In order to achieve the objects of this Act, the Company, through the Board, may—
 - (a) hold assets, shares, or interests in investments, in special economic development infrastructure in the Province;
 - (b) apply for and manage funding for special economic development infrastructure;
 - (c) with the concurrence of the Provincial Minister and after consultation with the Provincial Minister responsible for finance, create subsidiaries where required, to enable investment in opportunities and projects pertaining to special economic development infrastructure;
 - (d) with the concurrence of the Provincial Minister, enter into shareholder compacts with the boards of subsidiaries and any other entity in which it holds an interest;
 - (e) lease, purchase or otherwise acquire, let, sell, exchange, alienate, mortgage, burden with a servitude or confer any real right in immovable property;
 - (f) hire, purchase or otherwise acquire, hire out, sell, exchange, alienate, pledge or confer any other real right in movable property;
 - (g) enter into agreements aimed at achieving the objects of the Company;
 - (h) negotiate or cooperate with any sphere of government or organ of state, or any board or person, in the Republic or elsewhere, with regard to any matter that is directly or indirectly aimed at achieving the objects of the Company;
 - (i) open and administer offices that are necessary or expedient for the effective and proper performance of the Company's functions;
 - (j) acquire insurance cover—
 - (i) for the Company against any loss, damage, risk or liability that it may suffer or incur;
 - (ii) for members of the Board and committees and employees of the Company in respect of bodily injury, disablement or death resulting solely and directly from an incident occurring when performing their functions as such members or employees;
 - (iii) for directors against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Companies Act;
 - (k) open and conduct banking accounts at a bank as defined in the Banks Act, 1990 ([Act 94 of 1990](#));
 - (l) employ and terminate the employment of persons;
 - (m) with the concurrence of the Provincial Minister and after consultation with the Provincial Minister responsible for finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the employees of the Company, or have such fund or scheme administered by another person or body;
 - (n) pay all expenses in connection with the administration of the Company;
 - (o) establish, assist in establishing, finance, acquire, wind up, sell or dispose of any interest in any company or association of persons if to do so would further the objects of the Company; and
 - (p) govern, manage and perform any function assigned to it in terms of the Special Economic Zones Act.

6. Board

- (1) The Board consists of a maximum of nine directors, appointed by the Provincial Minister.
- (2) The Provincial Minister must designate the chairperson for the Board.
- (3) The Board must, from among its members, select a deputy chairperson for the Board.
- (4) The deputy chairperson must act as chairperson when the chairperson is absent or unable to act as chairperson.
- (5)
 - (a) Subject to the Companies Act, the Provincial Minister may remove a director on good cause shown.
 - (b) The Provincial Minister may not delegate his or her power to remove a director.

7. Powers and duties of the Board

The Board—

- (a) is responsible for the ethical and effective governance, management and control of the Company's business and affairs in terms of this Act and any other law;
- (b) is the accounting authority of the Company and must fulfil the fiduciary responsibilities as provided for in the Public Finance Management Act and the Companies Act;
- (c) must develop and give effect to the Company's corporate plan as envisaged in section 52 of the Public Finance Management Act;
- (d) must appoint a company secretary in terms of the relevant provisions of the Companies Act;
- (e) takes decisions on behalf of the Company and ensures that such decisions are implemented ethically and effectively;
- (f) must notify the Provincial Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Company;
- (g) must refer to the Provincial Minister any matter that may adversely affect the functioning of the Company; and
- (h) must establish an effective and competitive staff recruitment, training and retention system to enable the competent performance of its responsibilities and functions.

8. Committees

- (1) A committee contemplated in section 72 of the Companies Act must function in accordance with its terms of reference, determined by the Board.
- (2) A member of a committee holds office for a period not exceeding three years, determined by the Board or the Company, as may be required, at the time of the member's appointment.
- (3) If the office of a member of a committee becomes vacant, the Board or the Company, as may be required, may appoint a person as a member of that committee for the unexpired portion of the term of office of the vacating member or for a longer term, not exceeding three years, determined by the Board or the Company, as the case may be, at the time of the member's appointment.
- (4) A member of a committee whose term of office has expired is eligible for reappointment, but a person may not serve as a member of any committee for more than three terms, excluding any unexpired portion of a term referred to in subsection (6).
- (5) A committee must be chaired by a person designated by the Board or the Company, as the case may be.

- (6) The Board or the Company, where relevant, may at any time—
 - (a) remove a member from a committee; or
 - (b) dissolve a committee.

9. Conditions of appointment

The Provincial Minister, with the concurrence of the Provincial Minister responsible for finance, must determine the remuneration and other terms and conditions of appointment of—

- (a) a director who is not in the employ of the national, provincial or local government, or a public or municipal entity; and
- (b) a member of a committee who is not a director or employed by the national, provincial or local government, or a public or municipal entity.

10. Chief executive officer

- (1) The Board must—
 - (a) appoint a suitably qualified person as chief executive officer of the Company for a minimum of three years and a maximum of five years; and
 - (b) conclude a written performance agreement with the chief executive officer.
- (2) The chief executive officer is eligible for reappointment at the expiry of his or her term of office.
- (3) The Board may, subject to any applicable employment and labour legislation, terminate the employment of the chief executive officer.
- (4) If the chief executive officer is absent or for any reason unable to perform his or her functions, or when the office of the chief executive officer is vacant, 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).
- (5) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer.

11. Powers and duties of chief executive officer

- (1) The chief executive officer—
 - (a) is the head of the administration of the Company;
 - (b) manages the day-to-day affairs of the Company in accordance with the business and financial plans of the Company, subject to the control and directions of the Board; and
 - (c) is accountable to the Board.
- (2) In addition to the powers and duties delegated or assigned to the chief executive officer by the Board, the chief executive officer must—
 - (a) develop and lead, with the involvement of the Board, the long-term strategy and vision for the Company;
 - (b) develop annual business and financial plans for the Company in accordance with the long-term strategy and vision contemplated in paragraph (a);
 - (c) strive continually to achieve the Company's financial and operating goals and objectives;
 - (d) assist the Board to ensure that the Company achieves its goals and performs its functions in terms of this Act and any other law;

- (e) ensure that the Company complies with this Act and all other applicable laws, including the Public Finance Management Act and the Companies Act;
- (f) implement the decisions of the Board;
- (g) ensure that proper minutes are kept at all meetings of the Board and the committees;
- (h) attend all meetings of the Board;
- (i) ensure adequate staffing of the Company to enable it to meet its strategic objectives;
- (j) report regularly to the shareholder and all stakeholders; and
- (k) foster a culture of corporate ethics and values within the Company.

12. Conditions of service and appointment of employees of Company

The Board must—

- (a) appoint the employees of the Company; and
- (b) with the concurrence of the Provincial Minister and the Provincial Minister responsible for finance determine the remuneration, other service benefits and conditions of service of the chief executive officer and the other employees of the Company.

13. Funding and financial control

- (1) The funds of the Company consist of—
 - (a) money appropriated by the Provincial Parliament, the National Parliament or the municipal council of the relevant municipality;
 - (b) operating income derived from the business of the Company; and
 - (c) money received by the Company from other sources.
- (2) The Board must ensure compliance with the Companies Act and the Public Finance Management Act, in particular the provisions regarding financial management and control, the preparation and submission of annual budgets and corporate plans, the preparation of financial statements, audits and reporting.
- (3) The Board must manage and apply the Company's funds in the manner and for the purposes the Board considers appropriate, and for this purpose the Board may—
 - (a) establish legal or administrative structures that, in the opinion of the Board, are required;
 - (b) establish a reserve fund; and
 - (c) invest any funds or monies not immediately required for the Company's affairs, at the institutions and in the manner determined by the Board.
- (4) The Board may, subject to the Public Finance Management Act, borrow money on behalf of the Company, but such money may not be used to defray the Company's operating expenses.
- (5) The Company must retain its income, part of which may be utilised for the payment of operating expenses, as determined annually by the Board.
- (6) The Company may not make any distribution, unless—
 - (a) the Board, by resolution, has authorised the distribution; and
 - (b) the Provincial Minister, with the concurrence of the Provincial Minister responsible for finance, has approved the distribution.

14. Delegation or assignment of powers or duties

- (1) Subject to the limitations on reserved powers under the Companies Act and section 56 of the Public Finance Management Act, the Board may in writing delegate or assign any of its powers or duties to —
 - (a) a director;
 - (b) a committee; or
 - (c) the chief executive officer,who may, in writing, further delegate that power or assign that duty.
- (2) A delegation or assignment of a power or duty under subsection (1) does not relieve the Board from responsibility nor does it preclude the exercise of that power or the performance of that duty by the Board, a director, a committee or the chief executive officer, as the case may be.
- (3) The Board, a director, a committee or the chief executive officer, as the case may be, may, in writing, amend or revoke any delegation or assignment and may, in writing, delegate or assign its powers or duties, subject to limitations, directions or conditions determined by the Board, a director, a committee or the chief executive officer, as the case may be.
- (4) The Board may, in writing, amend or revoke any decision taken in terms of subsection (1), subject to any rights that may have accrued and with due consideration to the Promotion of Administrative Justice Act, 2000 ([Act 3 of 2000](#)).

15. Regulations

- (1) The Provincial Minister may make regulations relating to any matter that he or she deems necessary or expedient to prescribe for the achievement of the objects of the Company and this Act.
- (2) Regulations with financial implications must be made with the concurrence of the Provincial Minister responsible for finance.

16. Short title and commencement

This Act is called the Western Cape Special Economic Development Infrastructure Company Act, 2019.