

Free State, South Africa

Free State Development Corporation Act, 1995

Act 6 of 1995

Legislation as at 15 September 1995

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Free State South Africa

Free State Development Corporation Act, 1995 Act 6 of 1995

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(English text signed by the Premier.)

ACT

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

BE IT ENACTED by the Provincial Legislature of the Free State Province, as follows:-

1. Definitions

In this Act, unless the context otherwise indicates—

"**business**" means a business incidental to the objects of the Corporation set out in section 3;

"**Constitution**" means the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993);

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

"**director**" means a director of the Corporation;

"**dissolved corporation**" means a corporation established by or under a repealed Act;

"**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;

"**managing director**" means the managing director of the Corporation;

"**repealed Act**" means an act referred to in the Schedule;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 and Tourism.

2. Establishment of Free State Development Corporation

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

3. Objects of Corporation

The objects of the Corporation shall be, in accordance with a policy determined by the responsible Member or any direction given by him or her, to perform or promote urban or rural development in the Province with regard to any matter within the functional areas specified in Schedule 6 of the Constitution.

4. Functions and powers of Corporation

The functions of the Corporation shall be to endeavour to achieve, with all the means at its disposal, the objects for which it is established and for the purpose of achieving those objects the Corporation may, subject to the provisions of this Act and any law of the Province-

- (a)
 - (i) acquire or hire movable or immovable property;
 - (ii) hypothecate, let, sell or otherwise dispose of movable or immovable property of the Corporation;
- (b) cause the work incidental to the performance of its functions and the exercise of its powers to be performed by-
 - (i) persons employed by it on conditions determined by it;
 - (ii) persons with whom it has entered into contracts for the performance of any particular act or particular work or the rendering of particular services;
- (c) with the prior written approval of the responsible Member and the Member of the Executive Council responsible for Finance, and subject to section 157 of the Constitution, raise and guarantee loans;
- (d) with the approval of the responsible Member accept money and property which is given to the Corporation by way of donation, award or otherwise;
- (e) with the approval of the responsible Member open accounts with banking institutions;
- (f) adopt such measures as it may deem necessary or desirable in order to ensure that businesses of which it 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;
- (g) with the approval of the responsible Member, collaborate with anyone in the performance of any act which the Corporation is by law permitted to perform;
- (h) generally, with the approval of the responsible Member and in accordance with his or her directions, do such things which will contribute towards the attainment of its objects.

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.
- (2) The board of directors shall consist of not more than 16 persons appointed by the responsible Member.

6. Period of office and remuneration of directors

- (1) A director shall be appointed for such period as the responsible Member may determine at the time of appointment.
- (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, with the consent of the Member of the Executive Council responsible for Finance, determine.

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 Act, 1973 (Act No 18 of 1973);
 - (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 Senate, the National Assembly or a Provincial Legislature or a local authority;
 - (g) upon the attainment of the age of 65 years.
- (2) A director may at any time be removed from office by the responsible Member.
- (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 and acting chairperson

- (1) The responsible Member shall designate one of the directors as chairperson of the board of directors of the Corporation.
- (2) If the 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.
- (3) Whenever the chairperson is absent or is unable to perform his or her functions as chairperson, the responsible Member may designate another director to act as chairperson during the absence or incapacity of the chairperson.
- (4) Such director shall, while acting as chairperson, have all the powers and perform all the functions of the chairperson.

9. Managing director

- (1) The responsible Member shall appoint one of the directors referred to in section 5(2) as managing director of the Corporation.
- (2) The managing director shall be the chief executive officer of the Corporation and shall occupy himself or herself full-time with the affairs of the Corporation.
- (3) The managing director shall hold office on such conditions (including the payment of remuneration and allowances) as the responsible Member may, with the consent of the Member of the Executive Council responsible for Finance, determine.

10. Vacation of office by managing director

- (1) The managing director of the Corporation shall vacate his or her office-
- (a) if he or she ceases to be a director;
 - (b) if he or she resigns as managing director;
 - (c) if he or she is removed from office under subsection (2).
- (2) The managing director may at any time be removed from office by the responsible Member.
- (3) If the managing director ceases to hold office, the responsible Member shall, within a reasonable time and subject to the provisions of section 9(1), appoint any other director as the managing director.

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 person designated under section 8 (3) to act as chairperson, 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 person designated under section 8 (3) to act as chairperson of the board, 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 authorized, if the decision was taken or the act was authorized by the requisite majority of the directors who were present at the time and entitled to sit as directors.

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. Interest of director in certain contract to be disclosed

- (1) The provisions of sections 234, 235, 237 (1), (4) and (5) of the Companies Act, 1973 (Act No 61 of 1973), shall *mutatis mutandis* apply in respect of a director, and in such application, unless the context indicates otherwise, any reference therein to a company, a director or an officer of a company shall be construed as a reference to the Corporation, a 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 of directors at which the declaration was made.

14. Insurance

The Corporation may provide insurance cover-

- (a) for a director in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance of his or her duties as a director; and
- (b) for the Corporation against any loss, damage, risk or liability which it may suffer or incur.

15. Acquisition or hire of business by Corporation

- (1) The Corporation may acquire or hire any business in the Province.

- (2) Any agreement for the acquisition or hire of a business referred to in subsection (1) shall not be binding on any party thereto unless the agreement has been confirmed by the responsible Member after consultation with the Member of the Executive Council responsible for Finance.

16. Bookkeeping

- (1) The Corporation shall keep such account books as are necessary to represent fairly the state of affairs and business of the Corporation and to explain the transactions and financial position of the business of the Corporation, including-
- (a) records showing the assets and liabilities of the Corporation;
 - (b) a register of fixed assets showing the respective dates of acquisitions and the cost thereof, depreciation, if any, the respective dates of any alienations and the compensation received in respect thereof;
 - (c) books containing daily entries in sufficient detail of all cash received and paid out and of the matters in respect of which receipts and payments take place;
 - (d) where the business of the Corporation has involved dealings in goods, records of all goods sold and purchased and records showing the goods and the buyers and the sellers thereof in sufficient detail to enable the nature of those goods and those buyers and sellers to be identified; and
 - (e) statements of an annual stocktaking.
- (2) In order to be able to comply with the provisions of section 17 (2), the Corporation shall keep separate records, books and statements (except the register contemplated in subsection (1)(b)) in respect of the different businesses of which it is the owner.
- (3) The records referred to in subsections (1) and (2) may be kept either by making entries in bound books or by recording the matters in question in any other manner, and where such records are not kept by making entries in bound books, adequate precautions shall be taken for guarding against falsification and for the detection thereof.

17. Annual financial statements

- (1) The Corporation shall in respect of every financial year of the Corporation cause annual financial statements to be made out and shall submit such statements, after having been audited as contemplated in section 19, to the responsible Member within six months after the end of the financial year in question, together with a copy of the report on the audit in question.
- (2) The annual financial statements referred to in subsection (1) shall consist of-
- (a) a balance sheet dealing separately with the state of affairs of each business of the Corporation;
 - (b) a consolidated balance sheet dealing collectively with the state of all the affairs of the Corporation;
 - (c) an income statement dealing separately with the profit or loss of each business of the Corporation;
 - (d) a consolidated income statement dealing with the profit or loss of the Corporation;
 - (e) the Auditor-General's report in respect of the annual audit in question.
- (3) The annual financial statements of the Corporation shall, in accordance with generally accepted accounting practice, represent fairly the state of affairs of the Corporation and its business as at the end of the financial year in question and the profit or loss of the Corporation for that financial year, and shall for that purpose, to the extent required by the responsible Member, be in accordance with

the appropriate requirements prescribed in respect of the annual financial statements of companies in Schedule 4 of the Companies Act, 1973 (Act No 61 of 1973).

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. Annual report

The Corporation shall within six months after the end of its financial year submit to the responsible Member a report on its activities during that financial year.

21. Tabling of annual financial statements and annual report

Annual financial statements submitted to the responsible Member in terms of section 17 and the annual report submitted to him or her in terms of section 20, shall be laid upon the Table by the responsible Member in the Provincial Legislature within fourteen days after receipt thereof, if the Provincial Legislature is then in ordinary session, or, if the Provincial Legislature is not then in session, within fourteen days after commencement of its first ensuing session.

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 corporation 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: Provided further that such administrative records and other documents of a dissolved corporation as may be determined by the responsible Member shall be transferred to the Corporation;
 - (b) any person who immediately before such commencement was an employee of a dissolved corporation 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;
 - (c) any person who immediately before such commencement was a director of a dissolved corporation shall retire: Provided that the responsible Member may appoint such person as a director of the Corporation.

- (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 corporation 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;
 - (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 corporation 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.
- (4) The responsible Member may if he or she deems it fit pay an amount *ex gratia* to any person who in terms of the provisions of subsection (2) (b) becomes an employee of the Corporation and whose services are terminated by the Corporation as a result of the reorganization of its staff, if the responsible Member is of the opinion that such reorganization is the direct result of the repeal of the provisions of a repealed Act, and the enactment of the provisions of this Act.
- (5) 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), and no transfer duty, stamp duty, office fee or other charge shall be payable in respect of any transfer in terms of subsection (2) (a) or in respect of any such entry or endorsement.

24. Short title and commencement

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

Schedule

Laws repealed

Title, no. and year of law

1. Qwaqwa Corporations Act, 1984 (Act No 11 of 1984)
2. Qwaqwa Corporations Amendment Act, 1988 (Act No 16 of 1988)
3. Qwaqwa Corporations Amendment Act, 1989 (Act No 16 of 1989)
4. Bophuthatswana National Development Corporation Ltd Act, 1993 (Act No 37 of 1993)