

**WESTERN CAPE INVESTMENT AND TRADE PROMOTION
AGENCY LAW AMENDMENT ACT**

DRAFT BILL – draft 4

To amend the Western Cape Investment and Trade Promotion Agency Law, 1996; to provide for the amendment of the procedure in terms of which directors are nominated; to provide for the amendment of the powers and duties of directors; the funding provisions for the Agency; the repeal of the Western Cape Investment and Trade Agency constitution, and to provide for matters incidental thereto.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from the existing enactments

 Words underlined with solid line indicate insertions in existing enactments.

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

Amendment of preamble of Law 3 of 1996

1. The preamble of the Western Cape Investment and Trade Promotion Law, 1996 (Act 3 of 1996), (the principal Act) is amended by the substitution of 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 objects is best achieved in **[concert with other stakeholders in the economy]** partnership with the private sector and local government, 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 investment in and trade with the provincial economy, now therefore:”.

Amendment of section 1 of Law 3 of 1996

1. Section 1 of the principal Act is amended-

- (a) by 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 deletion of the definition of “constitution”;
- (d) 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;”;

- (e) by the deletion of the definition of “Legislature”;
- (f) by the substitution of the definition of “member” of the following definition:

“**member**’ means a natural or legal person as contemplated by section 6, belonging to one or more of the following categories:

- (a) foreign investors;
- (b) established and emerging exporters;
- (c) foreign importers;
- (d) empowerment; and **(category kept open for your consideration as instructed)**
- (e) service providers.

- (g) by the insertion before the definition of “Province” of the following definition:

“**Minister**’ means the provincial Minister of the
 Western Cape responsible for economic
 development;”;

- (h) by the amendment of the definition of “Province” of the following definition:

“**Province**’ means the province of the Western
 Cape **[and includes the Provincial
 Administration: Western Cape];**”;

- (i) 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);”;

- (j) by the deletion of the definition of “responsible Member”.

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

2. The principal Act is amended by the substitution for the word “Legislature”, wherever it occurs, of the words “Provincial Parliament”, the words “accounting officer”, wherever it occurs, for the words “accounting authority” and the words “responsible Member” wherever it occurs for the word Minister”.

Amendment of section 2 of Law 3 of 1996

3. Section 2 of the principle Act is amended by-



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

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

Amendment of section 3 of Law 3 of 1996

4. Section 3 of the principal Act is amended by-

(a) the substitution for section 3 of the principal Act of the following section:

“Appointment and composition of Board of directors

3. (1) The Minister, after consultation with the Standing Committee of the Provincial Parliament responsible for economic development, must appoint directors to the Board.

(2) The Standing Committee of the Provincial Parliament responsible for economic development, must communicate their proposals for the appointment and composition of the Board to the Minister within 14 days of

being consulted by the Minister, in absence whereof it would be deemed as if the Minister has consulted the Standing Committee and the Minister may appoint the Board.

(3) Directors to the Board 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) All nominees, including ex officio nominees, must have-

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

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

(6) The Board consists of no more than 13 directors, namely-

- (i) one director nominated by the Minister;
- (ii) one *ex officio* senior official nominated by the Minister;
- (ii) one director nominated by the executive Mayor of Cape Town;
- (iii) one *ex officio* senior official nominated by the executive Mayor of Cape Town;
- (iv) one director nominated by organised local government, as contemplated in terms of section 2(1) of the Organised Local Government Act, 1997 (Act 52 of 1997), representing category B or C municipalities;
- (v) no more than seven directors nominated by the public, of whom two directors must be nominated from amongst the members; and
- (vi) the chief executive officer appointed in terms of section 10 as *ex officio* director.

(b) by the insertion after subsection (3) of the following sections:

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

3A (1) Directors of the Board are appointed for a period determined at the time of their appointment, but not exceeding two years.

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

(3) A director of the Board is eligible for re-appointment, but may not serve more than three consecutive terms: Provided that the unexpired portion referred to in subsection (2) 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) is absent from three consecutive meetings of the Board without the 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 appointed in terms of subsections 3(6)(ii) and (iv), becomes an employee of any provincial

Government, 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 Access to Information Act, 2000 (Act 3 of 2000).”.

Substitution of section 4 of Law 3 of 1996

5. Section 4 of the principle Act is amended by the substitution of section 4 of the following section:

“The object of the Agency shall be –

(a) to promote investment in and trade 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 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

6. Section 5 of the principal Act is substituted by-

(a) the deletion of paragraph (i);

(b) the deletion of paragraph (k), and

(c) 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

7. The following section is substituted for section 6 of the principal Act:

“Membership

(1) The Agency may have members.



(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

8. The following section is substituted for section 7 of the principal Act:

“Meetings and decisions of Board

7. (1) The Board must meet at such times and at such places as the chairperson may determine, but the Board must meet at least once every three months.

(2) The chief executive officer 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.

(5) The Board must, after consultation with the Minister, elect 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) Ex officio members appointed in terms of sections 3(4)(ii) and (iv) have no voting rights, but have the right to enter into discussion of each and every matter before the Board.

(8) The decision of a majority of the directors, with voting rights that is present at a meeting of the Board constitutes a decision of the Board, and in an 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 deliberating 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) The Board may allow any member of a committee who is not a member of the Board to attend any meeting of the Board at which any matter relating to a function of that committee is dealt with and may allow such member to take part in the proceedings at such meeting without having the right to vote.

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

(12) Any member of the Board who contravenes the provisions of subsection (9) is guilty of an offence and on conviction is liable to a fine or imprisonment for a period not exceeding 12 months.

(13) 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

9. Section 8 is amended by the deletion of subsections (3) and (4).

Amendment of section 9 of Law 3 of 1996

10. Subsection (2) of section 9 is amended by the deletion of the phrase “(except the Province)” wherever it occurs.

Substitution of section 10 of Law 3 of 1996

11. The following section is substituted for section 10 of the principal Act:

“Chief executive officer

(1) The Board, in consultation with the Minister, and after following a public advertising process, must appoint a fit and proper person with knowledge 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 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/her appointment, perform the functions of the chief executive officer.”.

Substitution of section 11 of Law 3 of 1996

12. The following section is substituted for section 11 of the principal Act:

“Powers and functions of the 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 the Board meeting, a copy of the minutes thereof; and
- (g) ensure that the Agency comply and perform in terms of all contractual agreements and implement investment and trade marketing.”.

Substitution of section 12 of Law 3 of 1996

13. The following section is substituted for section 12 of the principal Act:

“Funding and financial control

- 12 (1) The funds of the Agency consists 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 Minister in terms of section 6(3); and
- (e) revenue raised from services rendered by the Agency, for as far as such services promotes the object 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 regulation 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) After consultation with the Auditor –General in terms of section 58(3) of the Public Finance Management Act, 1999, the Agency must appoint an external auditor in terms of section 58(1)(b) of the said Act, except if the Agency

informs the Auditor-General otherwise in writing with due regard to the provisions of section 59 of the Public Finance Management Act, 1999.

Substitution of section 13 of Law 3 of 1996

14. Section 13 of the principal Act is herewith repealed.

Amendment of section 14 of Law 3 of 1996

15. Section 14 of the principal Act is amended by the substitution for paragraph (d) of subsection (3) of the following paragraph:

“(d) indicate the amount of money, **[if any,]** received from the Province in terms of section **[12(1)(f)] 12(1)(a)** and any utilisation thereof in terms of conditions laid down by the accounting officer.”.

Substitution of section 15 of Law 3 of 1996

16. The following section is substituted for section 15 of the principal Act:

“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

17. The following section is substituted for section 16 of the principal Act:

“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 by 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

18. The following section is substituted for section 17 of the principal Act:

“Allowances of members of the 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 jointly by the Minister in concurrence with the Minister responsible for Finance.”.

Amendment of section 20 of Law 3 of 1996

19. Section 20 of the principal Act is amended by the substitution of the section of the following section:

“(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 are regarded as the duly appointed directors of the Board for the first 9 months after the amendment Act comes into operation.

(2) The interim Board of directors must within 30 days after the enactment of the Western Cape Investment and Trade Promotion Agency Law Amendment Act, 2004, pass a resolution, repealing the constitution of the Agency.

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

Insertion of section 21A in Law 3 of 1996

20. The following section is inserted in the principal Act, after section 21:

“Institutional coordination

21.A .(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-

- (a) joint strategic planning;
- (b) cooperative budgeting;
- (c) combined implementation of operations; and
- (b) joint monitoring and evaluation.

that will ensure alignment of their strategies and operations.”.

Short title and commencement

21. 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 *Government Gazette*.