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PROVINCIAL NOTICES

No. 31

22 August 2008

PROVINCE OF THE EASTERN CAPE

OFFICE OF THE PREMIER

EASTERN CAPE GENERAL LAW AMENDMENT BILL, 2008

The above mentioned Bill is hereby published for public comment in terms of the rule 147 of the Standing Rules of the Legislature.

Members of the public are invited to submit their comments to the **Director General , Office of the Premier, Private Bag X 0047, Bisho, 5604** within 14 days from the date of publication hereof.

PROVINCE OF THE EASTERN CAPE

OFFICE OF THE PREMIER

EASTERN CAPE GENERAL LAW AMENDMENT BILL, 2008

As introduced

(BY THE PREMIER OF THE PROVINCE OF THE EASTERN CAPE)

LD1

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.**

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BILL

To amend the Eastern Cape General Law Amendment Act, 2003 (Act No. 11 of 2003) so as to remove the Fort Cox College Decree from the schedule of the repealed legislation and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape, as follows:-

SUBSTITUTION OF SCHEDULE TO THE GENERAL LAW AMENDMENT ACT

1. The schedule to the General law Amendment Act, 2003 (Act No. 11 of 2003) is hereby substituted by the schedule hereto.

SHORT TITLE

2. This Act is called the Eastern Cape General Law Amendment Act, 2008.

SCHEDULE A

Number and year of Act	Short title	Extent of amendment or repeal law
(a) Act No.21 of 1986 (Ciskei)	Animal Diseases Act, 1986	Repealed as a whole
(b) Act No.6 of 1965 (Transkei)	Transkeian Animal Husbandry Improvement Account Act, 1965	Repealed as a whole
(c) Act No.3 of 1968 (Transkei)	Transkei Artificial Insemination of Animals Act, 1968	Repealed as a whole
(d) Act No.28 of 1978 (Transkei)	Animal Disease and Parasites Act, 1978	Repealed as a whole
(e) Act No. 10 of 1989	Historical Monuments Act, 1989	Repealed as a whole
(f) Decree No. of 1989 (Transkei)	Transkei Sports Council Decree, 1989	Repealed as a whole
(g) Decree No.8 of 1989 (Transkei)	Transkei Sports and Educational Aid Trust Decree, 1989	Repealed as a whole
(h) Act No. 91 of 1983	Promotion of Local Government Affairs Act. 1983	Repealed as a whole
(i) Act No.109 of 1985	Regional Services Councils Act, 1985	Repealed as a whole
(j) Ordinance No.6 of 1963 (Cape Provincial Administration)	Local Authorities (Development according to Community) Ordinance, 1963	Repealed as a whole
(k) Ordinance No.16 of 1964 (Cape Provincial Administration)	Prescription (Local Authorities Ordinance, 1964	Repealed as a whole
(l) Ordinance No11 of 1968 (Cape Provincial Administration)	East Griqualand Divisional Council Ordinance, 1968	Repealed as a whole
(m) Ordinance No. 10 of 1974 (Cape Provincial Administration)	Division of Kaffraria Establishment Ordinance,	Repealed as a whole
(n) Ordinance No.1of	Commissions Ordinance,	Repealed as a whole

LD1

1945 (Cape Provincial Administration)	1945	
(o) Act No.127 of 1991	Local Authority Affairs Amendment Act, 1991	Repealed as a whole
Number and year of Act	Short title	Extent of amendment or repeal law
(p) Act No. 94 of 1987	Local Councils Act (House of Assembly), 1987	Repealed as a whole
(q) Act No.17 of 1983 (Transkei)	Local Tourism (Board) Act, 1983	Repealed as a whole
(r) Act No. 20 of 1983	Promotion of Tourism Act, 1983	Repealed as a whole
(s) Act No.104 of 1981	Technical Colleges Act, 1981	Repealed as a whole
(t) Ordinance No.4 of 1924	Graaf-Reinet College Ordinance, 1921	Repealed as a whole
[(u) Decree No.5 of 1991	Fort Cox College, 1991	Repealed as a whole]
[(v)] (u) Act No.18 of 1981 (Transkei)	Animal Slaughter, meat and animal Products Hygiene Act, 1981	Repealed as a whole
[(w)] (v) Ordinance No.11 of 1941	City of Port Elizabeth Trackless Tram (Private) Ordinance, 1941	Repealed as a whole

EXPLANATORY MEMORANDUM ON THE EASTERN CAPE GENERAL LAW AMENDMENT BILL, 2003

PART 1

(GENERAL PRINCIPLES)

POLICY CONTEXT

The Provincial Legislature in 2003 passed the General Law Amendment Act, 2003 (Act No.11of 2003) . The purpose of the Act was to repeal and amend obsolete legislation which had been inherited from the former Republics of Transkei and Ciskei as well Cape Provincial Administration.

The Fort College Decree, 1991 (Decree No. 5 of 1991) was listed in the schedule to the Act as one of the legislation which would be repealed. The said listing was based on the understanding that the College would be deemed to be a Further Education and Training College in terms of the Further Education and Training Colleges Act, 1998 (Act No. 98 of 1998).

However subsequent to the passing of the legislation, the Department of Education revised it's view on the deeming of the College as a Further Education and Training College and elected not to the FET approach.

We were then faced with the unintended consequence of repealing a legislation and that would have created a lacuna in the administration of the College. The publication of the General Law Amendment Act was delayed pending final resolution of the matter.

LD1

The Bill is intended to deal with the anomaly in that it amends the General Law Amendment Act by removing the Decree from the list of laws repealed consequently bringing back to life the Decree.

CONSTITUTIONAL IMPACT

The Bill falls within both Schedule 4 and Schedule 5 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), as the Acts to be repealed fall within both Schedule 4 and Schedule 5.

PART 2

(Clause by Clause Analysis)

CLAUSE 1 - provides for substitution of schedule

CLAUSE 2 - sets out the short title

No. 32

22 August 2008

PROVINCE OF THE EASTERN CAPE

OFFICE OF THE PREMIER

PUBLICATION OF WHITE PAPER ON ASGISA EC (PTY) LTD

It is hereby made known that the Premier of the Province of the Eastern Cape has made a policy on ASGISA EC (Pty) (Ltd), which is hereby published for general information.

OFFICE OF THE PREMIER



**WHITE PAPER ON
ASGISA EASTERN CAPE (PTY) LTD**

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Definitions

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

“ASGISA” means accelerated and shared growth initiative of South Africa;

“Board” means the Board of the company constituted in terms of paragraph 12,

“Companies Act” means the Companies Act, 1973 (Act No 61 of 1973);

“Company “ means the company contemplated in paragraph 5;

“Constitution” means Constitution of the Republic of South Africa , 1996 (Act No. 108 of 1996);

“Department” means the Office of the Premier;

“financial year” means the period from 1 April in any year to 31 March in the next year;

“Gazette” means the Provincial Gazette;

“House” means the House of Traditional Leaders (Eastern Cape) established in terms of section 2 of the House of Traditional Leaders Act (Eastern Cape), 1995 (Act No. 1 of 1995);

“Legislature” means the Legislature of the Province;

“MDI” means the Mzimvubu Development Initiative;

“MDZ” means the area which includes but not limited to the entire, Alfred Nzo , O R Tambo, parts of, Ukhahlamba, Chris Hani, and Amathole District Municipalities

“member” means a member of the Board;

“PFMA” means the Public Finance Management Act, 1999 (Act No. 1 of 1999) ;

“Premier” means the Premier of the Province as elected in terms of section 128 of the Constitution; and

“Province” means the Province of the Eastern Cape established by section 103 of the Constitution;

INTRODUCTION

2. In 2006, National Government identified a set of critical objectives to increase GDP growth and to halve poverty and unemployment by 2014. Central to that initiative, the *Accelerated and Shared Growth Initiative for South Africa (ASGISA)* was established by the Office of the Presidency as a *national shared growth initiative*.

ASGISA is based on six priority areas that should be addressed in a structured process to realise its objectives:

- Macro-Economic Issues related to national economic fundamentals;
- Investment in Infrastructure Programmes;
- Industrial and Sector Investment Strategies;
- Skills and Education Development;
- Second Economy Interventions; and
- Governance and State Capacity/Public Administration Issues.

In response to the national government call for each provincial government perform certain functions and duties in relation to the (ASGISA) the Province Eastern Cape developed a comprehensive list of high impact and catalytic programmes aimed at accelerating economic growth and development of the Province.

The Mzimvubu Basin Development and the forestry and timber expansion programme were identified as principal programmes in support of AsgiSA. These identified programmes are aligned to the Eastern Cape’s Provincial Growth and Development Plan (PGDP) which is the provincial overarching development

framework.

Recognising capacity constraints and the desire to ensure high impact, speed, agility, effective and efficient delivery of service the Eastern Cape Provincial Government identified the need to establish a Special Purpose Vehicle (SPV) that will be tasked with the responsibility to drive the implementation of the principal programmes.

ASGISA Eastern Cape (Pty) Limited (ASGISA EC) was established and registered as a private company in terms of the Companies Act in 2007 as the appropriate SPV to discharge the obligations of the Provincial Government in relation to conceptualizing and implementation of Mzimvubu Basin Initiative and the forestry and timber expansion programme.

BACKGROUND AND CONTEXTUAL FOUNDATION OF ASGISA EC

3.

3.1 The Eastern Cape Provincial Growth and Development Plan (PDGP) serves as the overarching enabling framework within which all growth and development initiatives in the province should be pursued. The PGDP makes the following important observations about constraints to growth in the province:

- Uneven development and spatial imbalances
- Pervasive poverty (dependency and poverty trap)
- Lack of (and skewed) skills base
- Sub-optimal growth in east of the Province (dominance of public sector)
- Unequal terms of trade (high external account and sub-optimal local beneficiation)
- High unemployment
- Complex regulatory bottlenecks (particularly relating to land);

- Sub-optimal impact of existing agrarian and rural development initiatives;
- Significant infrastructure backlogs (lack of enabling infrastructure and logistics for economic development);
- Sub-optimal resources at provincial and local level for investments requirements;
- State capacity (planning, implementation, project development, partnership facilitation, monitoring); and
- Absence of viable growth coalitions.

Most of these challenges stem historically from the severe structural poverty faced by much of the Province and the high inequality between poor, densely populated labour reserves and relatively affluent, sparsely populated commercial agricultural areas as well as well-serviced urban centres and under-serviced townships and informal settlements.

3.2 The PGDP identifies the following as its targets:

- Economic growth rate of 5-8% per annum.
- Reduction of unemployment by 50% by 2014.
- Reduction of poverty by 50% by 2014.
- Food self-sufficiency of the Province by 2014.
- Clean water and elimination of sanitation backlogs by 2010.
- Halt the spread of HIV and AIDS.

3.3. The provincial government recognized that in order to achieve these targets a new approach and impetus to economic growth and development is required.

3.4 AsgiSA is the base upon which ASGISA EC is founded plans to improve skills, remove logistical bottlenecks and increase economic participation.

AsgiSA is an implementation programme, around the following themes:

- Infrastructure Programmes
- Sector investment (or industrial) strategies
- Skills and education issues
- Second economy interventions
- Macro-economic issues
- Public Administration issues

AsgiSA aims to accelerate measures in place to ensure that growth reduces poverty and inequality in the country, through calling on the state to play a more active role in correcting market failures and accelerating economic transformation. In order to pick up levels of economic growth, AsgiSA aims to remove a number of obstacles to growth, including:

- Reducing the cost and ease of doing business;
- Reducing barriers to entry through targeting pro-poor growth sectors and through a range of 2nd economy interventions including the provision of support packages and use of state procurement to enable partnerships in major investments;
- Reducing the cost and efficiency of logistics capability in the industrial development zones, and access linkages to the rural economy;
- De-bottlenecking regulatory barriers through address EIA obstacles and identifying red tape issues in municipalities;

- Addressing out skills deficit through a targeted skills plan, and the establishment of JIPSA to prioritize and co-ordinate skills development; and
- Beefing up the capacity of the state to facilitate economic planning and development.

3.5 ASGISA EC's activities are also guided by the 2014 Millennium Development Goals and the five South African government's People's Contract Principles, namely:

- (a) Reduce poverty by half through economic development, comprehensive social security, land reform and improved household and community assets.
- (b) Provide the skills required by the economy, build capacity and provide resources across society to encourage self employment with an education system that is geared fro productive work, good citizenship and a caring society.
- (c) Reduce unemployment by half through new jobs, skill development, assistance to small businesses, opportunities for self-employment and sustainable community livelihoods (including large-scale multi year public works programmes).
- (d) Massively reduce cases of tuberculosis, diabetes, malnutrition, and maternal deaths; turn the ride against HIV/AIDS; working with the rest of the southern Africa, strive to eliminate malaria; and improve services to achieve a better national health profile and reduce preventable causes of death, including violent crime and road accidents. To these ends, ensure that each South African

household has access to clean running water by 2009 and to electricity by 2012.

- (e) Position South Africa strategically as a force in global relation, with vibrant and balanced trade and other relations with the countries of the South and the North, and in an Africa that is growing, prospering and benefiting all Africans, especially the poor.

3.6 The Eastern Cape Industrial Development Strategy (ECIDS), whose basis is the national Regional Industrial Development Strategy and the PGDP also captures the rationale for the establishment of ASGISA EC when it argues that:

'After ten years of democracy the structure of the Eastern Cape economy has not shifted significantly. After three years of implementing the PGDP (Provincial growth and development plan) there is still too little real engagement between the public and private sectors and the objectives of economic transformation are largely based on fairly broad strategies for agrarian transformation, diversifying the manufacturing sector and overcoming the structural constraints associated with the legacy of apartheid.

However, we need to formalize an agenda for economic transformation and industrial development by developing a programmatic response through which to tackle the challenges of economic growth and employment creation facing the province. It is increasingly obvious that this cannot be done without engaging the private sector, targeting growth and labour absorptive sector engagements, and building greater co-ordination capacity within government and between government, labour and the private sector'.

3.7 The District Growth and Development Summit Agreements (DGS) adopted by the various district municipalities in the Eastern Cape Province also provide a useful guide to ASGISA EC. Despite commitment by various parties

who were signatories in the agreements there is little progress in the implementation of the identified priority programme in particular around economic growth and development. The parties to the DGSs all recognize the need for accelerated and shared growth in their respective municipalities and need to build the capacity of the developmental State to implement successful and sustainable programmes.

It is envisaged that the ASGISA EC and its projects must be mainstreamed and must find expression in the Municipal Integrated Development Plans (IDP's).

3.8 The Development paradigm that has led to the establishment of ASGISA EC rests on seven pillars, namely;

- (a) **Agriculture and agro-processing** aimed at managing 1 million livestock units and putting 40 000 ha under irrigated cultivation and 346 000 ha under dry-land cultivation, focusing both on food and industrial crops for agro-processing and bio-fuel production;

- (b) **Water storage** aimed at using 640 million m³ for forestry, agricultural, livestock watering, domestic and industrial use within the MDZ and surrounding areas;

- (c) **Hydro-power and alternative energy** aimed at generation 1500 MW of clean, renewable energy;

- (d) **Tourism Development** linking eco-tourism on the Wild Coast with the adventure hotspots of the Southern Drakensberg through a branded tourism corridor that includes Mandela's Birthplace and the Mandela Museum in Mthatha;

(e) Forestry Development through new afforestation, the improved management of existing forests, and the development of downstream manufacturing opportunities in the timber industry;

(f) Addressing unsustainable human settlement patterns in the MDZ through the urban and economic renewal of rural towns; and

(g) Mining aimed at tapping at the mining potential within the MDZ.

The Executive Council of the Province must determine the geographic implementation or operation of ASGISA EC projects and may extend the territorial operation of ASGISA EC.

3.9 It is clear from the above analysis that there is a need to build the capacity of the state to accelerate the implementation of programmes with the potential to unlock the potential of the Eastern Cape. In particular, the PGDP identifies the rural hinterlands as the most negatively affected by lack of investment and consequent underdevelopment, unemployment and poverty. The lack of investment and poor co-ordinated interventions continues to occur despite the enormous comparative advantages the Eastern Cape Province boasts of in agriculture, forestry and tourism.

The PGDP recognizes that within the Eastern Cape Province the Eastern part of the province is the hardest hit by lack of underdevelopment, poverty and unemployment. To respond to the challenges the region faces more focused and deliberate interventions are needed.

In the implementation of ASGISA EC related projects, it must be ensured that such projects give rise to coherent, consistent and sustainable economic development drive in the Eastern part of the Province. The existing and functional local structures within the relevant Municipalities may be used to

ensure that the company is accessible to the people of the area where it will be operational.

The Province in its Department of Roads and Transport recognizes that the revival of rail transportation as a way of support to economic development is an option to pursue.

In the formulation of the SPV, the use of a proprietary limited company was considered as best option to support the pace at which the Province has to respond to the challenges already outlined for the following reasons:

- Flexibility.
- Quick decision making.
- The ability to operate outside departmental constraints.
- Timeline within which a company may be registered.

One of the core values on which ASGISA EC is embedded, is partnerships. During the implementation phase of ASGISA EC related projects, various partnerships are envisaged. For example, partnerships between Government and communities or partnerships between communities and the private sector or partnerships between Government, communities and the private sector. In any of these partnerships, Government must ensure that the interests of the communities are protected. The partnerships and participation of communities is critical to ensure success of ASGISA EC interventions.

Integration and Co-ordination as a core value also necessitates that there should be alignment of ASGISA EC related projects and Local Economic Development (LED) in the relevant Municipalities.

REGULATORY FRAMEWORK

4. The company will deal with facilitation and project management of economic development interventions in the Province and that falls within the

ambit of Schedule 4 of the Constitution which provides for functional areas of concurrent national and provincial legislative competence.

OBJECTIVE OF THE POLICY

5. The policy is intended to provide for a legislative framework to recognize the establishment of the company as a duly established company in terms of the Companies Act and to further provide for governance structure as well as powers and functions.

VALUES AND PRINCIPLES

6. This Policy is underpinned by, but not limited to, the following values and principles which will guide the functioning and responsibilities of the company.

- (a) Integration and Co-ordination
- (b) Partnerships
- (c) Honesty and Integrity
- (d) Consultation and communication
- (e) Shared and Accelerated Growth
- (f) Optimising local economic benefits
- (g) People centred development

ARTICLES AND MEMORANDUM OF ASSOCIATION

7. The memorandum of association and articles of association must be consistent with the policy and where there is a conflict the provisions of the policy must prevail. Any proposed amendments to the memorandum and articles of association must be submitted to the Legislature for consideration.

OBJECTS OF THE COMPANY

8. The objects of the company are *inter alia*, to co-ordinate and facilitate the implementation of high impact and catalytic economic development interventions

in the Province in a specific geographic area defined as the Mzimvubu Development Zone and in other areas as may be determined by the Executive Council.

POWERS

9. In addition to the powers and duties of the company contained in the memorandum and articles of association, and the Shareholder's Compact, the company must have the powers of a company contemplated in section 36 of the Companies Act.

SHAREHOLDING IN THE COMPANY

10. The Company is wholly owned by the Government of the Province. Consequently -

- o The right to transfer its shares is restricted; and
- o Any invitation to the public to subscribe for any shares or debentures of the Company is prohibited.

The Government of the Province therefore has full control over the company and it will exercise the control through the Board.

GOVERNANCE

11 The governance structure and accounting authority is a Board which must be appointed by the Premier, in consultation with the Executive Council.

"Government", in its Office of the Premier as Executive Authority, has full power and control in relation to the appointment of the Accounting Authority of the Company.

Governance of the company must be strengthened by ensuring that a Board Charter, Shareholder's Compact, and Board Committees are established and functional.

The company will be listed as a Public Entity in terms of the Public Finance Management Act and as such the governance and accounting responsibilities of Accounting Authorities in terms of that Act will be applicable.

QUALIFICATION FOR MEMBERSHIP TO THE BOARD

12. The Board shall consist of not more than 15 members to be appointed by the Premier, in consultation with the Executive Council, from the following categories:

- (a) a traditional leader who is a member of the House of Traditional Leaders;
- (b) relevant government departments or agencies (national / provincial);
- (c) South African Local Government Association (SALGA),
- (d) Civil Society Organisations
- (e) the Chief Executive Officer who must be an *ex officio* member, without voting powers.
- (f) members must possess knowledge, insight, experience, appropriate qualifications and general understanding of the core business of the Company.

The Board must be representative of the people of the region where ASGISA EC will operate, sectors which will be the focus areas of ASGISA EC and must broadly reflect demographic and geographic composition of the Province. The Board must be also biased towards marginalised members of the society

PROCEDURE FOR APPOINTMENT

13. The members of the Board must be appointed by the Premier in consultation with the Executive Council through an open invitation for applications by interested persons for consideration by him or her for membership. Such invitation must be published in at least two newspapers having a wide circulation in the Province.

TERM OF OFFICE, VACANCIES AND DISQUALIFICATION FROM THE BOARD

14. A member of the Board shall hold office for a period of 3 years but is eligible for re- appointment for one additional term of office. In order to ensure continuity, at least 40 % of members of the Board may be re- elected. A vacancy in the Board occurs if a member -

- (a) dies; or
- (b) without has served his or her term of office; or
- (c) is prohibited from being a director by virtue of any provision of the Companies Act, or
- (d) is absent for more than three consecutive meetings of the Board without prior written permission of the chairperson; or
- (e) resigns from office in writing to the company and the registrar or is removed from office, or
- (f) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare his interest in terms of the Act.

A person is disqualified from being a member of the Board if a person is a member of –

- (a) a Municipal Council except for a member contemplated in paragraph 12.

- (ii) a Provincial Legislature;
- (iii) Parliament; or
- (iv) a House of Traditional Leaders except for a member contemplated in paragraph 12

TERMINATION OF TERM OF OFFICE OF BOARD AND REPLACEMENT OF THE BOARD

15. The Premier may, in consultation with the Executive Council, anytime if he or she considers it to be in the public interest or the proper administration of the policy, subject to the provisions of the Promotion of Administrative Justice Act, 2000, simultaneously terminate the term of office of members of the Board and replace such members.

TERMS AND CONDITIONS

16. The remuneration of members of the Board must be determined by the Premier in consultation with the MEC for Finance.

EXPENDITURE

17. The expenditure incurred by or on behalf of the company, including expenditure relating to members of the Board must be defrayed from the funds of the company.

ANNUAL REPORTS AND FINANCIAL STATEMENT

18. The company must be listed as a Schedule 3 public entity and the provisions of the Public Finance Management Act, 1999 in respect to reporting and financial accountability of the Board, must apply.

DISSOLUTION

19. The company may not be dissolved except by or under the authority of an Act of the Provincial Legislature.

CHANGE OF NAME

20. The Executive Council may after consultation with interested parties to change the name under which the company is known.

PROHIBITION OF USE OF NAME OF THE COMPANY

21. No person, company or association of persons shall carry on business under a name which is the same as or so closely resembles that of the company that is calculated to or is reasonably likely to deceive

CONCLUSION

22. In order to ensure that the overall objective of of Asgisa Ec which is accelerated and shared growth is achieved, monitoring and coordination of government programmes must improve significantly.

The provisions of the White Paper augment the Memorandum and Articles of Association, the Board Charter and the Shareholder's compact in ensuring that the are proper accounting functions and responsibilities entrusted to the Board.