

FREE STATE PROVINCE

# PROVINCIAL GAZETTE

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# PROVINSIALE KOERANT

PROVINSIE VRYSTAAT

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OFFICE OF THE PREMIER	KANTOOR VAN DIE PREMIER
No. 5 8 June 2010	No. 5 8 Junie 2010
It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-	Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-
No. 5 of 2010 : Free State Development Corporation Amendment Act, 2010	No. 5 van 2010 : Wysigingswet op die Vrystaatse Ontwikkelingskorporasie, 2010

**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.

**ACT**

To amend the Free State Development Corporation Act, 1995, to make provision for the incorporation of the Free State Investment Promotion Agency; to repeal the Investment Free State Agency Act, 1998; to amend the objects of the corporation; to outline the procedure for appointment of board of directors; to provide for the appointment of committees of the board of directors; to provide for the co-option of persons to the board of directors; to provide for the appointment of a company secretary; to effect technical changes; and to provide for matters connected therewith.

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

*(Afrikaans text assented to and signed by the Premier.)*

**Amendment of section 1 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 5

1. Section 1 of the Free State Development Corporation Act, 1995 (Act No. 6 of 1995) (hereinafter referred to as the "Principal Act"), is amended by – 10

(1) the deletion of the definition of "**business**";

(2) the insertion after the definition of "**director**" of the following definition:

“ **‘dissolved agency’ means an agency established by or under a repealed Act;**” 15

(3) the insertion after the definition of "**dissolved corporation**" of the following definition: 20

“ **‘enterprise’ means the enterprise referred to in section 3(a);**”.

**Substitution of section 3 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 25

2. Section 3 of the Principal Act is amended by the substitution for section 3 of the following section:

**“Main objects of the Corporation**

## ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vetdruk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

\_\_\_ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

## WET

Om die Wet op die Vrystaat Ontwikkelingskorporasie, 1995 te wysig; om voorsiening te maak vir die inlywing van die Vrystaatse Beleggingsbevorderingsagentskap; om die Wet op die Vrystaatse Beleggingsbevorderingsagentskap, 1998, te herroep; om die oogmerke van die korporasie te wysig; om die prosedure vir die aanstelling van die direksie uit te stippel; om voorsiening te maak vir die aanstelling van komitees van die direksie; om voorsiening te maak vir koöptering van persone na die direksie; om voorsiening te maak vir die aanstelling van 'n maatskappy sekretaris; om tegniese veranderinge teweeg te bring; en om voorsiening te maak vir sake wat daarmee verband hou.

**WORD DAAR BEPAAL** deur die Provinsiale Wetgewer van die Provinsie Vrystaat, soos volg:-

*(Afrikaanse teks deur die Premier bekragtig en geteken.)*

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**Wysiging van artikel 1 van Wet No. 6 van 1995 soos gewysig deur Wet No. 9 van 1999 en Wet No. 4 van 2006**

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1. Artikel 1 van die Wet op die Vrystaat Ontwikkelingskorporasie, 1995 (Wet No. 6 van 1995) (hierna verwys as die "Hoofwet"), word gewysig deur

(1) die skapping van die omskrywing van "**besigheid**";

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(2) die volgende omskrywing in te voeg na die definisie van "**korporasie**":

**"'ontbonde agentskap' 'n agentskap wat deur of kragtens 'n herroepe Wet ingestel is;";**

20

(3) die invoeging van die volgende omskrywing na die omskrywing van "**ontbonde korporasie**":

**"'onderneming', die sakeonderneming verwys in artikel 3(a);".**

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**Vervanging van artikel 3 van Wet No. 6 van 1995 soos gewysig deur Wet No. 9 van 1999 en Wet No. 4 van 2006**

2. Artikel 3 van die Hoofwet word gewysig deur artikel 3 met die volgende artikel te vervang:

**"Hoofogmerke van die Korporasie**

3. The objects of the Corporation shall be –
- (a) the promotion and development of small, medium and micro enterprises; 5
  - (b) to assist Free State based small, medium and micro enterprises with funding by advancing loans;
  - (c) to assist Free State based small, medium and micro enterprises in financial distress; 10
  - (d) to initiate economic empowerment projects that would benefit the Free State;
  - (e) to promote investment in and trade with the Province and to identify, analyse, publicize and market investment and trade opportunities in the provincial economy, in such manner and by such means as the board of directors may from time to time deem appropriate; and 15
  - (f) to undertake, at the request of the responsible Member or other stakeholders or agencies, activities for which the necessary resources can be raised and which, in the opinion of the board of directors, will contribute to the strengthening of the provincial economy.” 20

**Amendment of section 4A of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 25

3. Section 4A of the Principal Act is amended by – 30
- (1) the substitution of paragraph (q) of the following paragraph: 30
    - “(q) to institute, conduct or defend any legal matter;” and
  - (2) the insertion of paragraphs (x), (y) and (z) after paragraph (w): 35
    - “(x) to exercise any other powers stated in Schedule 2 of the Companies Act, 1973 (Act No. 61 of 1973), which is necessary for the achievement of the Corporation’s objects in consultation with the responsible Member; 40
    - (y) to ensure adherence to corporate governance;
    - (z) to take deposits offered by any person or juristic person for investment and to hold such deposits on such conditions as may be agreed upon, and to arrange and to decide upon the investment and application thereof.” 45

3. Die oogmerke van die Korporasie is –

- 5
- (a) om klein, medium en mikro sakeondernemings te bevorder en ontwikkel;
- 10
- (b) om bystand te verleen aan klein, medium en mikro sakeondernemings wat in die Vrystaat gesetel is met befondsing deur lenings voor te skiet;
- (c) om bystand te verleen aan klein, medium en mikro sakeondernemings wat in die Vrystaat gesetel is wat in finansiële nood verkeer;
- 15
- (d) om projekte vir ekonomiese bemagtiging waarby die Vrystaat sal baat vind te inisieër;
- (e) om belegging en handel binne die Provinsie te bevorder en beleggings- en handelsgeleenthede in die Provinsie te identifiseer, ontleed en bekend te stel op so 'n wyse soos wat die direksie van tyd tot tyd toepaslik sal ag; en
- 20
- (f) om op versoek van die verantwoordelike Lid of ander belanghebbendes of agentskappe, aktiwiteit onderneem waarvoor die nodige hulpbronne verkry kan word en wat, na die mening van die direksie, sal bydra tot die versterking van die provinsiale ekonomie.”
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**Wysiging van artikel 4A van Wet No. 6 van 1995 soos gewysig deur Wet No. 9 van 1999 en Wet No. 4 van 2006**

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3. Artikel 4A van die Hoofwet word gewysig deur -

- (1) die vervanging van paragraaf (q) met die volgende paragraaf:

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“(q) om enige regsgeding in te stel, te voer en te verdedig.”; en

- (2) die invoeging van paragrawe (x), (y) en (z) na paragraaf (w):

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“(x) om enige bevoegdheid soos gestel in Bylae 2 van die Wet op Maatskappye, 1973 (Wet No. 61 van 1973), uit te oefen, wat nodig is vir die verwesenliking van die Agentskap se oogmerke, in oorleg met die verantwoordelike Lid;

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(y) om te sorg dat gehou word by korporatiewe bestuur;

(z) om deposito's te ontvang vir belegging wat aangebied word deur enige persoon of regspersoon op sodanige voorwaardes as wat ooreengekom is, en te reël en te besluit oor die belegging en toepassing daarvan.”

**Insertion of section 5A in Act No. 6 of 1995**

4. The following section is inserted in the Principal Act after section 5:

**“Procedure for appointment of board of directors** 5

- 5A. (1) The responsible Member, after consultation with the Executive Council must, subject to section 5, determine and appoint the members of the board of directors. 10
- (2) The responsible Member may appoint two directors as executive directors to the board of directors after fulfilling the requirements of subsection (1). 10
- (3) The responsible Member must invite interested parties by notice in the *Provincial Gazette* and other media to nominate candidates for his or her consideration.”. 15

**Amendment of section 6 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 20

5. Section 6 of the Principal Act is amended by the substitution of subsections (1) and (3) of the following subsections:

~~“(1) A director shall be appointed for a period not exceeding three years and such term may, on expiry, be extended for a maximum period of two years by the responsible Member, in consultation with the Executive Council.”;~~ 25

and

~~“(3) A director shall hold office upon such conditions (including the payment of remuneration and allowances) as the responsible Member may determine, after consultation with the Member of the Executive Council responsible for Finance and in line with the National Treasury Guidelines.”.~~ 30

**Amendment of section 7 of Act No. 6 of 1995 as amended by Act No. 9 of 1999 and Act No. 4 of 2006** 35

6. Section 7 of the Principal Act is amended by substitution of –

(1) paragraph (b) of subsection (1) of the following paragraph: 40

“(b) if he or she becomes mentally ill as defined in the Mental Health Care Act, [1973 (Act No. 18 of 1973)] 2002 (Act No. 17 of 2002).”;

(2) paragraph (f) of subsection (1) of the following paragraph: 45

“(f) upon his or her election as member of [Senate,] the National Assembly or National Council of Provinces or a Provincial Legislature or a [local authority] Municipal Council.”.

#### Invoeging van artikel 5A in Wet No. 6 van 1995

4. Die volgende artikel word in die Hoofwet na artikel 5 ingevoeg:

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#### “Prosedure by aanstelling van die direksie

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- 5A. (1) Die verantwoordelike Lid stel, na raadpleging met die Uitvoerende Raad, behoudens subartikel (5), die lede van die direksie aan.
- (2) Die verantwoordelike Lid kan twee direkteure op die direksie aanstel as uitvoerende direkteure nadat die vereistes van subartikel (1) nagekom is.
- (3) Die verantwoordelike Lid moet belanghebbende partye by wyse van kennisgewing in die *Provinsiale Koerant* en ander media versoek om kandidate te benoem om deur hom of haar oorweeg te word.”

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#### Wysiging van artikel 6 van Wet No. 6 van 1995 soos gewysig deur Wet No. 9 van 1999 en Wet No. 4 van 2006

5. Artikel 6 van die Hoofwet word gewysig deur subartikels (1) en (3) met die volgende subartikels te vervang:

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“(1) ‘n Direkteur word aangestel vir ‘n periode van hoogstens drie jaar en sodanige termyn kan, by verstryking, verleng word deur die verantwoordelike Lid, in oorleg met die Uitvoerende Raad, vir ‘n maksimum periode van twee jaar.”; en

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“(3) ‘n Direkteur beklee sy of haar amp op die voorwaardes (met inbegrip van die betaling van besoldiging en toelaes) wat die verantwoordelike Lid, in oorleg met die Lid van die Uitvoerende Raad verantwoordelik vir Finansies en ooreenkomstig die Riglyne van die Nasionale Tesourie, bepaal.”.

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#### Wysiging van artikel 7 van Wet No. 6 van 1995 soos gewysig deur Wet No. 9 van 1999 en Wet No. 4 van 2006

6. Artikel 7 van die Hoofwet word gewysig deur –

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- (1) paragraaf (b) van subartikel (1) met die volgende paragraaf te vervang:

“(b) indien hy of sy ‘n geestesongestelde soos omskryf in die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)] ‘Mental Health Care Act,’ 2002 (Wet No. 17 van 2002), word;”;

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- (2) paragraaf (f) van subartikel (1) met die volgende paragraaf te vervang:

“(f) by sy of haar verkiesing as lid van die [Senaat,] die Nasionale Vergadering of Nasionale Raad van Provinsies of ‘n Provinsiale Wetgewer of ‘n [plaaslike owerheid] Munisipale Raad;”.

**Insertion of section 9A of Act No. 6 of 1995**

7. The following section is inserted in the Principal Act after section 9:

<b><u>“Committees of the board of directors</u></b>		5
9A.	(1) The board of directors may from time to time appoint a committee to exercise the powers and perform the functions delegated or assigned to it by the board of directors.	10
	(2) A committee shall consist of –	
	(a) such members of the board of directors as the board of directors may designate; or	15
	(b) such members of the board of directors as the board of directors may designate and such other persons as the board of directors may co-opt in terms of section 9B.	
	(3) The board of directors shall designate the chairperson of the committee.	20
	(4) (a) A committee shall exercise its powers and perform its functions subject to the provisions of this Act and such directives of the board of directors as are not in conflict with such provisions.	25
	(b) Any delegated power or function so exercised or performed shall be deemed to have been exercised or performed by the <u>board of directors.</u> ”.	30

**Insertion of section 9B of Act No. 6 of 1995**

8. The following section is inserted in the Principal Act after section 9A:

<b><u>“Co-opting of persons</u></b>		35
9B.	(1) If the board of directors is of the opinion that a particular person is able to assist the board of directors in the consideration of a particular matter by the board of directors, the board of directors may co-opt that person for that purpose.	40
	(2) A person so co-opted shall not be entitled to vote at any meeting of the board of directors or a committee of the board of directors.	45
	(3) A person who is co-opted and not employed by government may, in respect of their services, be paid such remuneration and allowances from the funds of the board of directors as may be determined by the responsible Member, after consultation with the Member of the <u>Executive Council responsible for Finance.</u> ”.	50



**Invoeging van artikel 9A van Wet No. 6 van 1995**

7. Die volgende artikel word in die Hoofwet na artikel 9 ingevoeg:

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**“Komitees van die direksie**

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9A. (1) Die direksie kan van tyd tot tyd ‘n komitee aanstel om die bevoegdhede uit te oefen en die funksies uit te voer wat deur die direksie aan hom gedelegeer of toegewys is.

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(2) ‘n Komitee sal bestaan uit -

(a) sodanige Lede van die direksie soos wat die direksie mag aanwys; of

(b) sodanige lede van die direksie soos wat die direksie mag aanwys en sodanige ander persone as wat die direksie mag koöpteer ingevolge artikel 9B.

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(3) Die direksie moet die voorsitter van die komitee aanwys.

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(4) (a) ‘n Komitee moet sy bevoegdhede uitvoer en sy funksies verrig onderhewig aan die bepalings van hierdie Wet en sodanige voorskrifte van die direksie soos wat nie teenstrydig is met sodanige bepalings nie.

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(b) Enige sodanige bevoegdheid of funksie aldus uitgeoefen of verrig moet geag word as synde uitgeoefen of verrig is deur die direksie.”

**Invoeging van artikel 9B van Wet No. 6 van 1995**

8. Die volgende artikel word ingevoeg in die Hoofwet na artikel 9A:

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**“Koöptering van persone**

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9B. (1) Indien die direksie van mening is dat ‘n bepaalde persoon in staat is om die direksie by te staan in die oorweging van ‘n besondere aangeleentheid deur die direksie, kan die direksie daardie persoon vir daardie doel koöpteer.

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(2) ‘n Persoon wat so gekoöpteer is sal nie geregtig wees om te stem nie by enige vergadering van die direksie of ‘n komitee van die direksie.

(3) ‘n Persoon wat gekoöpteer en nie in diens van die regering is nie kan, ten opsigte van sy of haar dienste, sodanige vergoeding en toelaes betaal word uit die fondse van die direksie soos wat vasgestel is deur die verantwoordelike lid, ná raadpleging met die Lid van die Uitvoerende Raad verantwoordelik vir Finansies.”

**Insertion of section 10A of Act No. 6 of 1995**

9. The following section is inserted in the Principal Act after section 10:

**“Appointment of company secretary**

- |      |     |  |    |
|------|-----|--|----|
| 10A. | (1) | The board of directors shall appoint the company secretary.  | 5  |
|      | (2) | The company secretary shall hold office on such terms and conditions (including the payment of remuneration and allowances) as determined by the board of directors.             | 10 |
|      | (3) | The company secretary shall be responsible for all administrative work in connection with the performance of the duties or the exercise of the powers of the board of directors. | 15 |
|      | (4) | The company secretary has the responsibilities of a company secretary as prescribed by the <u>Companies Act, 1973.</u> ”.  |    |

**Deletion of section 16 of Act No. 6 of 1995**

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10. Section 16 of the Principal Act is deleted.

**Incorporation of the dissolved agency**

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11. The Free State Investment Promotion Agency must be incorporated into the Corporation.

**Repeal of laws and saving**

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12. (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 –

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- |     |  |    |
|-----|--|----|
| (a) | all assets, liabilities, rights and obligations of a dissolved agency shall vest in the Corporation: Provided that the responsible Member may by notice in the <i>Provincial Gazette</i> further regulate matters relating to <u>the assets, liabilities, rights and obligations of the Agency, including the transfer thereof to any entity, person or body: Provided further that such administrative records and other documents of a dissolved agency as may be determined by the responsible Member shall be transferred to the Corporation or such entity, person or body;</u> | 40 |
|-----|--|----|

**Invoeging van artikel 10A van Wet No. 6 van 1995**

9. Die volgende artikel word in die Hoofwet na artikel 10 ingevoeg:

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**“Aanstelling van maatskappy sekretaris**

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- 10A. (1) Die direksie moet ‘n maatskappy sekretaris aanstel.
- (2) Die maatskappy sekretaris moet sy of haar amp beklee op sodanige voorwaardes (met inbegrip van die betaling van vergoeding en toelaes) soos deur die direksie vasgestel.
- (3) Die maatskappy sekretaris moet verantwoordelik wees vir alle administratiewe werk in verband met die uitvoer van pligte of die uitoefening van die bevoegdhede van die direksie.
- (4) Die maatskappy sekretaris is soos voorgeskryf deur die Wet op Maatskappye, 1973.”

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**Skrapping van artikel 16 van Wet No. 6 van 1995**

10. Artikel 16 van die Hoofwet word geskrap.

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**Inkorporasie van die ontbonde agentskap**

11. Die Vrystaat Investeringsbevorderingsagentskap moet in die Korporasie geïnkorporeer word.

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**Herroeping van wette en voorbehoudsbepalings**

12. (1) Onderhewig aan die bepalinge van subartikels (2) en (3), word die wette waarna in die Bylae verwys word hiermee herroep.

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(2) Met die inwerkingtreding van hierdie Wet -

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- (a) moet alle bates, laste, regte en verpligtinge van ‘n ontbinde agentskap berus by die Korporasie: Met dien verstande dat die verantwoordelike Lid sake wat verband hou met bates, laste, regte en verpligtinge van die Agentskap, met inbegrip van die oordrag daarvan aan enige entiteit, persoon of liggaam, by wyse van kennisgewing in die *Provinsiale Koerant* verder kan reguleer: Met dien verstande ook dat sodanige administratiewe rekords en ander dokumente van ‘n ontbinde agentskap soos wat deur die verantwoordelike Lid vasgestel kan word oorgedra sal word aan die Korporasie of sodanige entiteit, persoon of liggaam;

45

- (b) any person who immediately before such commencement was an employee of a dissolved agency 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 Members may by notice in the *Provincial Gazette* regulate matters relating to the further transfer of an employee of the Corporation; 5
- (c) any person who immediately before such commencement was a director of a dissolved agency shall retire: Provided that the responsible Member may appoint such person as a director of the Corporation. 10
- (3) Anything done before the commencement of this Act in terms of the provisions of repealed Act – 15
- (a) by or on behalf of a dissolved agency 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; 20
- (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; 25
- (c) by or on behalf of a dissolved agency 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. 30
- (4) 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). 35

#### **Short title and commencement**

13. This Act is called the Free State Development Corporation Amendment Act, 2010.

- 5 (b) enige persoon wat onmiddellik voor sodanige inwerkingtreding 'n werknemer was van 'n ontbinde agentskap sal 'n werknemer word van die Korporasie: Met dien verstande dat die aanstelling van sodanige werknemer in 'n pos binne die Korporasie en die vasstelling waar sodanige werknemer gestasioneer sal wees, gedoen sal word deur die verantwoordelike Lid: Met dien verstande verder dat die verantwoordelike Lede by wyse van kennisgewing in die *Provinsiale Koerant* sake wat verband hou met die verdere oordrag van 'n werknemer van die Korporasie verder kan reguleer;
- 10 (c) enige persoon wat onmiddellik voor sodanige inwerkingtreding 'n direkteur van 'n ontbinde agentskap was moet uit diens tree: Met dien verstande dat die verantwoordelike Lid sodanige persoon as 'n direkteur van die Korporasie kan aanstel.
- 15 (3) Enigiets wat gedoen is voor die inwerkingtreding van hierdie Wet ingevolge die bepalings van herroepe Wet -
- 20 (a) deur of namens 'n ontbinde agentskap en wat gedoen kon word deur die verantwoordelike Lid ingevolge die bepalings van hierdie Wet, sal geag word asof dit gedoen is deur die verantwoordelike Lid ingevolge laasgenoemde bepalings;
- 25 (b) deur of namens die verantwoordelike Lid en wat deur hom of haar gedoen kon word ingevolge die bepalings van hierdie Wet, sal geag word asof dit gedoen is deur die verantwoordelike Lid ingevolge laasgenoemde bepalings;
- 30 (c) deur of namens 'n ontbinde agentskap en wat gedoen kon word deur die Korporasie ingevolge die bepalings van hierdie Wet, sal geag word asof dit gedoen is deur die Korporasie ingevolge laasgenoemde bepalings.
- 35 (4) Die betrokke Registrateur van Aktes moet so gou as wat moontlik is na die inwerkingtreding van hierdie Wet sodanige inskrywings of endossemente in of op enige relevante register, titelakte of ander dokument in sy of haar kantoor doen of wat by hom of haar ingedien is, soos wat hy of sy nodig mag ag ten einde uitvoering te gee aan die bepalings van subartikel (2)(a).

40 **Kort titel en inwerkingtreding**

13. Hierdie Wet heet die Wysigingswet op die Vrystaatse Ontwikkelingskorporasie, 2010.

**SCHEDULE****Laws repealed**

	<b>Name and Year of Law</b>	<b>Extent of Repeal</b>
1.	Investment Free State Agency Act, 1998 (Act No. 18 of 1998)	The whole
2.	Investment Free State Agency Amendment Act, 2006 (Act No. 3 of 2006)	The whole

**BYLAE****Wette wat herroep word**

	<b>Naam en jaar van Wet</b>	<b>Omvang van herroeping</b>
1.	Wet op die Vrystaat Investeringsagentskap, 1998 (Wet No. 18 van 1998)	In geheel
2.	Wysigingswet op die Vrystaat Investeringsagentskap, 2006 (Wet No. 3 van 2006)	In geheel