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## GENERAL NOTICE

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### NOTICE 656 OF 2012



### THE GAUTENG PROVINCIAL GOVERNMENT INTENDS TO INTRODUCE THE BLUE IQ AMENDMENT BILL, 2012 IN THE GAUTENG PROVINCIAL LEGISLATURE

The above mentioned Bill is hereby published in English in the Gauteng Provincial Extraordinary Gazette No 77 on 16 March 2012 for public comments and general information

The Bill seeks: To amend the Blue IQ Investment Holdings (Proprietary) Limited Act; so as to provide for the change of name of Blue IQ Holdings (Proprietary) Limited Act; to amend the objects of Blue IQ Holdings (Proprietary) Limited; to extend the scope of the identified projects of Blue IQ Holdings (Proprietary) Limited; to provide for the dissolution of the public entity Gauteng Economic Development Agency, and provide for its amalgamation with the Blue IQ Holdings (Proprietary) Limited; to amend the long and short title of the Blue IQ Investment Holdings (Proprietary) Limited Act; to provide for consequential amendments and transitional matters; and to provide for matters connected therewith.

People, who wish to comment on the Bill, may send their written comments to:

Office of the Secretary  
C/o Committee Coordinator (Ms Unathi Hani)  
Gauteng Provincial Legislature  
Private Bag X52  
Johannesburg  
2000  
Tel: (011) 498 5605  
Mobile: (082) 521 3428  
Fax: (011) 498 5719

**Comments must reach the above office on or before thursday,05 April 2012.**

Copies of the *Gazette* may be obtained from Government Printers, Publications Section, Vermeulen and Bosman Streets, Pretoria at R2.50 per copy

**GAUTENG PROVINCIAL GOVERNMENT**

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**BLUE IQ INVESTMENT HOLDINGS (PROPRIETARY) LIMITED  
AMENDMENT BILL, 2012**

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*(As introduced by the MEC for Economic Development)*

*(The English text is the official text of the Bill)*

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**[G002-2012 ]**

**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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**B I L L**

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**To amend the Blue IQ Investment Holdings (Proprietary) Limited Act; so as to provide for the change of name of Blue IQ Holdings (Proprietary) Limited Act; to amend the objects of Blue IQ Holdings (Proprietary) Limited; to extend the scope of the identified projects of Blue IQ Holdings (Proprietary) Limited; to provide for the dissolution of the public entity Gauteng Economic Development Agency, and provide for its amalgamation with the Blue IQ Holdings (Proprietary) Limited; to amend the long and short title of the Blue IQ Investment Holdings (Proprietary) Limited Act; to provide for consequential amendments and transitional matters; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Provincial Legislature of Gauteng as follows:-

**Amendment of Section 1 of Act No. 5 of 2003**

1. Section 1 of the Blue IQ Investment Holdings (Proprietary) Limited Act, 2003 (hereafter referred to as "the Principal Act), is hereby amended-

a) by the substitution for the definition of "Companies Act" of the following definition:

**"Companies Act"** means the Companies Act, [1973] 2008 (Act [61] No. 71 of [1973] 2008) but in relation to sections 2, 10B(1) and 10B(8) of this Act this definition means the Companies Act, 1973 (Act No. 61 of 1973);";

b) by the substitution for the definition of "Company" of the following definition:

**"Company"** means [Blue IQ Investment Holdings] Gauteng Growth and Development Agency (Proprietary) Limited as contemplated in Section 2 of this Act;" and

c) by the substitution for the definition of "identified projects" of the following definition:

**"identified projects"** means the following:

- (i) capital projects identified by the Gauteng Provincial Government - the Innovation Hub, Gauteng Automotive Cluster, Constitution Hill, Newtown Cultural Precinct; Gautrain Rapid Rail Link, City Deep Transport and Logistics Hub, Dinokeng, Cradle of Humankind World Heritage Site; Wadeville Alrode Industrial Corridor, Johannesburg International Airport Industrial Development Zone; Renewal of Kliptown, and includes

amendment of the scope of these projects and any future projects that are approved by the MEC;

- (ii) trade and investment promotion;
- (iii) land and development; and
- (iv) business enablement and contributing towards regulatory reform in the Province;”.

### **Amendment of Section 2 of Act No. 5 of 2003**

**2.** Section 2 of the Principal Act is hereby amended -

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

“(1) There is established a juristic person to be called [**Blue IQ Investment Holdings**] Gauteng Growth and Development Agency (Proprietary) Limited.”; and

b) by the substitution for subsection (2) of the following subsection:

“(2) The MEC is empowered to do all things necessary to have [**Blue IQ Investment Holdings**] Gauteng Growth and Development Agency (Proprietary) Limited incorporated and registered in terms of the Companies Act.”.

### **Amendment of Section 3 of Act No. 5 of 2003**

**3.** Section 3 of the Principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The objects of the Company are to -

- (i) enable economic development that is focused on creating sustainable jobs;
- (ii) drive growth in provincial growth domestic products and employment rates;
- (iii) strategically position the Province into a globally competitive city region;
- (iv) facilitate partnerships and create linkages across the Province in order to maximize service delivery outcomes; and
- (v) support the development of the key sectors of the economy in line with established economic and industrial policies of the Province.”.

#### **Insertion of section 3A in Act No. 5 of 2003**

4. The following section is inserted after section 3 of the Principal Act -

#### **“3A. Functions of the Company**

The functions of the Company are to -

- (a) undertake or invest in the identified projects; and
- (b) enable increased private sector investment.”.



**Amendment of Section 7 of Act No. 5 of 2003**

5. Section 7 of the Principal Act is hereby amended by the substitution for section 7 of the following section:

**"7. Funding**

- [(1)]** The funding of the Company comprises of –
- (a) money appropriated to it by the Provincial Legislature; **[and]**
  - (b) any other proceeds realized through the identified projects **[the commercial enterprises]**; and
  - (c) interest on investments."

**Amendment of Section 8 of Act No. 5 of 2003**

6. Section 8 of the Principal Act is hereby amended -

- a) by the substitution for subsection (2) of the following subsection:

"(2) The MEC must appoint the Board of Directors consisting of a minimum of 9 (nine) **[3 (three)]** and maximum of 12 (twelve) **[8 (eight)]** members."; and

- b) by the addition after subsection (3) of the following subsections:

"(4) The Board of Directors must consist of:

- (a) a non executive Chairperson;
- (b) a non executive Deputy Chairperson;

- (c) the CEO, who shall be an ex officio member of the Board of Directors;
  - (d) one member, who by virtue of his or her training is qualified and knowledgeable in law; and
  - (e) one member, who by virtue of his or her training and qualifications is knowledgeable in economic development and strategies.
- (5) The term of office of members of the Board of Directors is 3 (three) years.
- (6) Any person whose term of office as a member of the Board of Directors has expired is eligible for reappointment but no person may serve for more than two consecutive terms."

### **Insertion of sections 10A and 10B in Act No.5 of 2003**

**7.** The following sections are hereby inserted in the Principal Act after section 10

#### **"10A. Dissolution of Gauteng Economic Development Agency**

The Gauteng Economic Development Agency is hereby dissolved and the Company shall be the owner of the assets, rights obligations and liabilities of Gauteng Economic Development Agency with effect from the date on which these are transferred to the Company.

**10B. Transitional Provisions**

(1) In order to effect the transitional provisions contained in this section, representations must be made by the MEC to the Minister of Finance for the dissolution of the Gauteng Economic Development Agency as a section 21 company in terms of the Companies Act.

(2) With effect from a date to be determined by the MEC, by notice in the *Provincial Gazette* (hereinafter referred to as the transfer date), the MEC must:

- (a) after consultation with the Minister of Finance, transfer the assets, rights, obligations and liabilities of the Gauteng Economic Development Agency to the Company;
- (b) restructure and rationalise the structure of Blue IQ Holdings (Pty) Limited and the operations of the subsidiaries with a view to achieve alignment with the mandate in section 3A and efficiencies and cost effectiveness of the subsidiaries; and
- (c) subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), transfer the staff of Gauteng Economic Development Agency to the Company.

(3) A person transferred to the Company remains subject to any decisions, proceedings, rulings and directions applicable to the person prior to the transfer date.

(4) Any proceedings pending against a person contemplated in subsection (2)(c) immediately before the

transfer date must be disposed of as if that person had not been transferred.

(5) For purposes of the Income Tax Act (Act No. 58 of 1962) no change of employer must be regarded as having taken place when employment is taken up at the Company by the person contemplated in subsection (2)(c).

(6) The Board of the Gauteng Economic Development Agency and Blue IQ Investment Holdings (Proprietary) Limited shall cease to exist and the term of office of each member terminates at the commencement of this Act, whereafter the members of such a Board, shall not be entitled to receive any further remuneration or allowances by virtue of their appointment to that Board;

(7) The MEC must constitute the Board of Directors at the commencement of this Act.

(8) Application must be made to the Registrar of Companies to deregister the Gauteng Economic Development Agency as an association not for gain in terms of section 21 of the Companies Act."

### **Amendment of the Long Title of Act No. 5 of 2003**

8. The long title of the Principal Act is hereby amended by the substitution thereof of the following long title –

**"To provide for the establishment of a [holding] company known as [Blue IQ Investment Holdings] Gauteng Growth and Development Agency (Proprietary) Limited to manage identified projects [through various commercial**

**enterprises]; to determine its objectives; to provide for the holding of shares in the Company; to provide for the disposal of shares and interest in the commercial enterprises; to provide for funding of the Company; to provide for the management of the Company; to provide for the transfer of assets, liabilities and obligations to the Company; to provide for listing of the commercial enterprises; to provide for regulations; and to provide for matters connected therewith.”.**

### **Amendment of section 12 of Act No. 5 of 2003**

**9.** Section 12 of the Principal Act is hereby amended by the substitution thereof of the following section –

“This Act is called the **[Blue IQ Investment Holdings] Gauteng Growth and Development Agency (Proprietary) Limited Act, 2003.**”

### **Short title**

**10.** This Act is called the Blue IQ Investment Holdings (Proprietary) Limited Amendment Act, 2012

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## MEMORANDUM ON THE OBJECTS OF THE BLUE IQ INVESTMENT HOLDINGS (PROPRIETARY) LIMITED AMENDMENT BILL, 2012

### 1. BACKGROUND

The Medium-Term Strategic Framework of the Gauteng Provincial Government for the term 2009-2014 outlines the strategic priorities and programmes of the provincial government, amongst others, is to “*create decent work and build a growing, inclusive economy.*” In order to provide an enabling framework for the achievement of this strategic priority, the Gauteng Employment, Growth and Development Strategy (GEGDS) identifies five strategic pillars that will amongst others, curb the low economic growth rate in Gauteng and deal with the high and persistent rates of unemployment in the Gauteng Province.

Public entities such as Blue IQ Investment Holdings (Proprietary) Limited (Blue IQ) and Gauteng Economic Development Agency, have been and are still pivotal in the implementation of government priorities. However, an analysis into institutional functioning within Gauteng agencies, conducted during 2009 and 2010, reflected a number of weaknesses in both the governance arrangements and execution strategies of the entities as well as the inherent challenges in small agencies attracting and retaining the appropriate level of strategic capability. The process to restructure Blue IQ and the Gauteng Economic Development Agency presented both the strategic and operational opportunities to be explored through institutional streamlining and alignment.

The envisaged Gauteng Growth and Development Agency is proposed as an appropriate and effective institutional mechanism through which to achieve the required outcomes of the first two pillars of the GEGDS. Drawing on the combined capacity and sectoral specialties of Blue IQ and the Gauteng Economic Development Agency, the Gauteng Growth and Development Agency will aim to enhance capability while simultaneously addressing

existing shortcomings, providing a bold response to Gauteng's current growth and unemployment trajectory.

The Bill proposes amendments to the Blue IQ Investment Holdings (Proprietary) Limited Act, 2003 (Blue IQ Act) with a view to address some of the institutional reform challenges mentioned above and to refocus and create institutional capacity that will provide a platform for the achievement of government priority

## **2. OBJECTS OF THE BILL**

**To amend the Blue IQ Investment Holdings (Proprietary) Limited Act; so as to provide for the change of name of Blue IQ Holdings (Proprietary) Limited Act; to amend the objects of Blue IQ Holdings (Proprietary) Limited; to extend the scope of the identified projects of Blue IQ Holdings (Proprietary) Limited; to provide for the dissolution of the public entity Gauteng Economic Development Agency, and provide for its amalgamation with the Blue IQ Holdings (Proprietary) Limited; to amend the long and short title of the Blue IQ Investment Holdings (Proprietary) Limited Act; to provide for consequential amendments and transitional matters; and to provide for matters connected therewith.**

## **3. JOB CREATION IMPLICATIONS**

There are no job creation implications.

## **4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The drafting of the Bill will not have any organizational and personnel implications, due to the fact that the necessary systems and infrastructure have already been established.

## **5. FINANCIAL IMPLICATIONS**

The Bill does not impose any additional financial obligations for the Gauteng Department of Economic Development.

## **6. COMMUNICATION IMPLICATIONS**

The Bill has been submitted to the Premier for approval as an urgent Bill and will be submitted to the Speaker of the Legislature as an urgent measure. Further, considering the nature of the Bill and the proposed amendments, there would be no negative impact from non publication that would directly affect public interests.

## **7. CONSULTATION**

The Gauteng Department of Economic Development has consulted the Provincial Treasury and the boards of directors of the Gauteng Economic Development Agency and Blue IQ.

## **8. CONSTITUTIONAL AND LEGAL IMPLICATIONS**

The Bill is consistent with the Constitution

## **9. CLAUSE BY CLAUSE EXPLANATION OF THE BILL**

Clause 1 inserts and amends certain definitions to provide for the amendments proposed to the Blue IQ Act. The term “identified projects” is amended in order to extend the functions of Blue IQ which are limited to development projects (capital projects) to include the current functions of the Gauteng Economic Development Agency and further expand the functions which the Gauteng Growth and Development Agency is envisaged to perform to include:

- Business Enablement and Regulatory Reform



- Land and Development; and
- Trade and Investment Promotion.

Clause 2 seeks to amend the establishment of Blue IQ by establishing the Gauteng Growth and Development Agency.

Clause 3 seeks to amend the objects of the company by introducing the objectives of the Gauteng Growth and Development Agency.

Clause 4 seeks to insert a new section dealing with the functions of the company.

Clause 5 seeks to amend the limitation relating to funding the operations of Blue IQ from subsidiaries, to allow Gauteng Growth and Development Agency the ability to fund its operations through proceeds realised from projects which may not have been derived from its subsidiary.

Clause 6 seeks to introduce an increase in the number of board members; introducing the required skills mix within the board with a view to align the governance arrangements with the amended objectives of Gauteng Growth and Development Agency.

Clause 7 inserts sections 10A and 10B respectively to incorporate the dissolution of the Gauteng Economic Development Agency by operation of law and to provide for transitional arrangements that will enable a smooth transition of the Gauteng Economic Development Agency obligations, rights and employees into Blue IQ, and the restructuring of Blue IQ, specifically the subsidiaries in line with the proposed objectives of the Gauteng Growth and Development Agency.

Clause 8 provides for the amendment of the long title of the Blue IQ Act to provide for the establishment of the Gauteng Growth and Development Agency.

Clause 9 provides for the change of the short title of the Blue IQ Act

Clause 10 contains the short title of the Amendment Act.

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