

PROVINCE OF THE WESTERN CAPE

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**WESTERN CAPE  
SPECIAL ECONOMIC  
DEVELOPMENT INFRASTRUCTURE  
COMPANY BILL**

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*(As introduced)*

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(MINISTER OF ECONOMIC OPPORTUNITIES)

[B 3—2019]

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PROVINSIE WES-KAAP

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**WETSONTWERP OP DIE  
WES-KAAPSE MAATSKAPPY  
VIR SPESIALE EKONOMIESE-  
ONTWIKKELINGSINFRASTRUKTUUR**

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*(Soos ingedien)*

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(MINISTER VAN EKONOMIESE GELEENTHEDE)

[W 3—2019]

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IPHONDO LENTSHONA KOLONI

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**UMTHETHO OSAYILWAYO  
WENKAMPANI YESIBONELELO  
SOPHUHLISO LWEZOQOQOSHO  
OLUKHETHEKILEYO  
WENTSHONA KOLONI**

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*(Njengoko wazisiwe)*

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(UMPHATHISWA WAMATHUBA EZOQOQOSHO)

[B 3—2019]

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# BILL

To establish a juristic person known as the Western Cape Special Economic Development Infrastructure Company SOC Ltd; to authorise the shareholding of the Western Cape Government in the Company; to provide for the powers and duties of the Company; to provide for the management, governance, funding and financial control of the Company; and to provide for matters incidental thereto.

## PREAMBLE

**WHEREAS** the Western Cape Government is responsible for driving a number of special economic development infrastructure projects in the Province to stimulate and promote economic growth and employment creation;

**AND WHEREAS** the Western Cape Government holds different interests in a range of special economic development infrastructure projects;

**AND WHEREAS** there is a need for a juristic person to be created to hold and safeguard the Western Cape Government's interests in these special economic development infrastructure projects,

**BE IT THEREFORE ENACTED** by the Provincial Parliament of the Western Cape, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—
  - “**Board**” means the board of directors of the Company contemplated in section 6; 5
  - “**chairperson**” means the chairperson of the Board contemplated in section 6(2);
  - “**chief executive officer**” means the chief executive officer appointed in terms of section 10(1);
  - “**committee**” means a committee contemplated in section 8;
  - “**Companies Act**” means the Companies Act, 2008 (Act 71 of 2008); 10
  - “**Department**” means the provincial department responsible for economic development;
  - “**director**” means a member of the Board;
  - “**Province**” means the Province of the Western Cape, and “provincial” has a corresponding meaning; 15
  - “**Provincial Government**” means the Western Cape Government;
  - “**Provincial Minister**” means the member of the Provincial Cabinet responsible for economic development;
  - “**Provincial Minister responsible for finance**” means the member of the Provincial Cabinet responsible for finance; 20
  - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act 1 of 1999);
  - “**special economic development infrastructure**” means installations, structures, facilities, systems, activities, services and processes that make business activity possible in the Province, including skills development, trade and investment 25 promotion, advocacy and policy realignment, enterprise development, technology support and marketing, and innovation;
  - “**Special Economic Zones Act**” means the Special Economic Zones Act, 2014 (Act 16 of 2014);
  - “**subsidiary**” has the meaning determined in accordance with section 3 of the 30 Companies Act;

“**the Company**” means the Western Cape Special Economic Development Infrastructure Company SOC Ltd, a state-owned company, established in terms of section 2 and incorporated in terms of the Companies Act;  
“**this Act**” includes the regulations made under it.

## **Establishment and status of the Company** 5

**2.** (1) A juristic person to be known as the Western Cape Special Economic Development Infrastructure Company SOC Ltd is established as a provincial public entity.

- (2) The Company is subject to and regulated by—
- (a) this Act; 10
  - (b) the Public Finance Management Act;
  - (c) the Companies Act and the Company’s memorandum of incorporation in terms of the Companies Act; and
  - (d) the Special Economic Zones Act.

## **Shareholding** 15

**3.** The Provincial Government is authorised to become a shareholder in the Company and to perform any acts that a shareholder may in law perform.

## **Objects of the Company**

- 4.** The objects of the Company are to—
- (a) drive economic development and stimulate economic competitiveness through the development, operationalisation, governance and management of investments in multiple special economic development infrastructure in the Province; 20
  - (b) create subsidiaries on behalf of the Provincial Government, where required, to enable investment in the development and operation of special economic development infrastructure to attain the objectives of the Company; 25
  - (c) ensure alignment of investments in special economic development infrastructure with Provincial Government goals and objectives;
  - (d) apply for and manage funding for special economic development infrastructure; and 30
  - (e) optimise and consolidate efficiencies and coordination between different subsidiaries of the Company.

## **Powers and duties of the Company**

- 5.** (1) The Company has the powers and duties set out in subsection (2) and any other powers or duties delegated or assigned to it by or in terms of this Act or any other law. 35
- (2) In order to achieve the objects of this Act, the Company, through the Board, may—
- (a) hold assets, shares, or interests in investments, in special economic development infrastructure in the Province;
  - (b) apply for and manage funding for special economic development infrastructure; 40
  - (c) with the concurrence of the Provincial Minister and after consultation with the Provincial Minister responsible for finance, create subsidiaries where required, to enable investment in opportunities and projects pertaining to special economic development infrastructure;
  - (d) with the concurrence of the Provincial Minister, enter into shareholder compacts with the boards of subsidiaries and any other entity in which it holds an interest; 45
  - (e) lease, purchase or otherwise acquire, let, sell, exchange, alienate, mortgage, burden with a servitude or confer any real right in immovable property;
  - (f) hire, purchase or otherwise acquire, hire out, sell, exchange, alienate, pledge or confer any other real right in movable property; 50
  - (g) enter into agreements aimed at achieving the objects of the Company;
  - (h) negotiate or cooperate with any sphere of government or organ of state, or any board or person, in the Republic or elsewhere, with regard to any matter that is directly or indirectly aimed at achieving the objects of the Company; 55

- (i) open and administer offices that are necessary or expedient for the effective and proper performance of the Company's functions;
- (j) acquire insurance cover—
  - (i) for the Company against any loss, damage, risk or liability that it may suffer or incur; 5
  - (ii) for members of the Board and committees and employees of the Company in respect of bodily injury, disablement or death resulting solely and directly from an incident occurring when performing their functions as such members or employees;
  - (iii) for directors against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Companies Act; 10
- (k) open and conduct banking accounts at a bank as defined in the Banks Act, 1990 (Act 94 of 1990);
- (l) employ and terminate the employment of persons;
- (m) with the concurrence of the Provincial Minister and after consultation with the Provincial Minister responsible for finance, establish, manage and administer any pension or provident fund or medical scheme for the benefit of the employees of the Company, or have such fund or scheme administered by another person or body; 15
- (n) pay all expenses in connection with the administration of the Company; 20
- (o) establish, assist in establishing, finance, acquire, wind up, sell or dispose of any interest in any company or association of persons if to do so would further the objects of the Company; and
- (p) govern, manage and perform any function assigned to it in terms of the Special Economic Zones Act. 25

## **Board**

- 6. (1) The Board consists of the directors appointed or elected in accordance with the Company's memorandum of incorporation in terms of the Companies Act.
- (2) The Provincial Minister must designate the chairperson for the Board.
- (3) The Board must, from among its members, select a deputy chairperson for the Board. 30
- (4) The deputy chairperson must act as chairperson when the chairperson is absent or unable to act as chairperson.
- (5)(a) Subject to the Companies Act, the Provincial Minister may remove a director on good cause shown. 35
- (b) The Provincial Minister may not delegate his or her power to remove a director.

## **Powers and duties of the Board**

- 7. The Board—
  - (a) is responsible for the ethical and effective governance, management and control of the Company's business and affairs in terms of this Act and any other law; 40
  - (b) is the accounting authority of the Company and must fulfil the fiduciary responsibilities as provided for in the Public Finance Management Act and the Companies Act;
  - (c) must develop and give effect to the Company's corporate plan as envisaged in section 52 of the Public Finance Management Act; 45
  - (d) must appoint a company secretary in terms of the relevant provisions of the Companies Act;
  - (e) takes decisions on behalf of the Company and ensures that such decisions are implemented ethically and effectively; 50
  - (f) must notify the Provincial Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Company;
  - (g) must refer to the Provincial Minister any matter that may adversely affect the functioning of the Company; and 55
  - (h) must establish an effective and competitive staff recruitment, training and retention system to enable the competent performance of its responsibilities and functions.

## Committees

- 8.** (1) A committee contemplated in section 72 of the Companies Act must function in accordance with its terms of reference, determined by the Board.
- (2) A member of a committee holds office for a period not exceeding three years, determined by the Board or the Company, as may be required, at the time of the member's appointment. 5
- (3) If the office of a member of a committee becomes vacant, the Board or the Company, as may be required, may appoint a person as a member of that committee for the unexpired portion of the term of office of the vacating member or for a longer term, not exceeding three years, determined by the Board or the Company, as the case may be, at the time of the member's appointment. 10
- (4) A member of a committee whose term of office has expired is eligible for reappointment, but a person may not serve as a member of any committee for more than three terms, excluding any unexpired portion of a term referred to in subsection (6).
- (5) A committee must be chaired by a person designated by the Board or the Company, as the case may be. 15
- (6) The Board or the Company, where relevant, may at any time—
- (a) remove a member from a committee; or
  - (b) dissolve a committee.

## Conditions of appointment 20

- 9.** The Provincial Minister, with the concurrence of the Provincial Minister responsible for finance, must determine the remuneration and other terms and conditions of appointment of—
- (a) a director who is not in the employ of the national, provincial or local government, or a public or municipal entity; and 25
  - (b) a member of a committee who is not a director or employed by the national, provincial or local government, or a public or municipal entity.

## Chief executive officer

- 10.** (1) The Board must—
- (a) appoint a suitably qualified person as chief executive officer of the Company for a minimum of three years and a maximum of five years; and 30
  - (b) conclude a written performance agreement with the chief executive officer.
- (2) The chief executive officer is eligible for reappointment at the expiry of his or her term of office.
- (3) The Board may, subject to any applicable employment and labour legislation, terminate the employment of the chief executive officer. 35
- (4) If the chief executive officer is absent or for any reason unable to perform his or her functions, or when the office of the chief executive officer is vacant, 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). 40
- (5) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer.

## Powers and duties of chief executive officer

- 11.** (1) The chief executive officer—
- (a) is the head of the administration of the Company; 45
  - (b) manages the day-to-day affairs of the Company in accordance with the business and financial plans of the Company, subject to the control and directions of the Board; and
  - (c) is accountable to the Board.
- (2) In addition to the powers and duties delegated or assigned to the chief executive officer by the Board, the chief executive officer must— 50
- (a) develop and lead, with the involvement of the Board, the long-term strategy and vision for the Company;
  - (b) develop annual business and financial plans for the Company in accordance with the long-term strategy and vision contemplated in paragraph (a); 55

- (c) strive continually to achieve the Company's financial and operating goals and objectives;
- (d) assist the Board to ensure that the Company achieves its goals and performs its functions in terms of this Act and any other law;
- (e) ensure that the Company complies with this Act and all other applicable laws, including the Public Finance Management Act and the Companies Act; 5
- (f) implement the decisions of the Board;
- (g) ensure that proper minutes are kept at all meetings of the Board and the committees;
- (h) attend all meetings of the Board; 10
- (i) ensure adequate staffing of the Company to enable it to meet its strategic objectives;
- (j) report regularly to the shareholder and all stakeholders; and
- (k) foster a culture of corporate ethics and values within the Company.

#### **Conditions of service and appointment of employees of Company** 15

##### **12. The Board must—**

- (a) appoint the employees of the Company; and
- (b) with the concurrence of the Provincial Minister and the Provincial Minister responsible for finance determine the remuneration, other service benefits and conditions of service of the chief executive officer and the other employees of the Company. 20

#### **Funding and financial control**

##### **13. (1) The funds of the Company consist of—**

- (a) money appropriated by the Provincial Parliament, the National Parliament or the municipal council of the relevant municipality; 25
- (b) operating income derived from the business of the Company; and
- (c) money received by the Company from other sources.

(2) The Board must ensure compliance with the Companies Act and the Public Finance Management Act, in particular the provisions regarding financial management and control, the preparation and submission of annual budgets and corporate plans, the preparation of financial statements, audits and reporting. 30

(3) The Board must manage and apply the Company's funds in the manner and for the purposes the Board considers appropriate, and for this purpose the Board may—

- (a) establish legal or administrative structures that, in the opinion of the Board, are required; 35
- (b) establish a reserve fund; and
- (c) invest any funds or monies not immediately required for the Company's affairs, at the institutions and in the manner determined by the Board.

(4) The Board may, subject to the Public Finance Management Act, borrow money on behalf of the Company, but such money may not be used to defray the Company's operating expenses. 40

(5) The Company must retain its income, part of which may be utilised for the payment of operating expenses, as determined annually by the Board.

(6) The Company may not make any distribution, unless—

- (a) the Board, by resolution, has authorised the distribution; and 45
- (b) the Provincial Minister, with the concurrence of the Provincial Minister responsible for finance, has approved the distribution.

#### **Delegation or assignment of powers or duties**

**14. (1)** Subject to the limitations on reserved powers under the Companies Act and section 56 of the Public Finance Management Act, the Board may in writing delegate or assign any of its powers or duties to— 50

- (a) a director;
- (b) a committee; or
- (c) the chief executive officer,

who may, in writing, further delegate that power or assign that duty. 55

(2) A delegation or assignment of a power or duty under subsection (1) does not relieve the Board from responsibility nor does it preclude the exercise of that power or

the performance of that duty by the Board, a director, a committee or the chief executive officer, as the case may be.

(3) The Board, a director, a committee or the chief executive officer, as the case may be, may, in writing, amend or revoke any delegation or assignment and may, in writing, delegate or assign its powers or duties, subject to limitations, directions or conditions determined by the Board, a director, a committee or the chief executive officer, as the case may be. 5

(4) The Board may, in writing, amend or revoke any decision taken in terms of subsection (1), subject to any rights that may have accrued and with due consideration to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). 10

### **Regulations**

**15.** (1) The Provincial Minister may make regulations relating to any matter that he or she deems necessary or expedient to prescribe for the achievement of the objects of the Company and this Act.

(2) Regulations with financial implications must be made with the concurrence of the Provincial Minister responsible for finance. 15

### **Short title and commencement**

**16.** This Act is called the Western Cape Special Economic Development Infrastructure Company Act, 2019.

**MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE  
SPECIAL ECONOMIC DEVELOPMENT INFRASTRUCTURE  
COMPANY BILL**

**1. BACKGROUND**

The Western Cape Government (the WCG) is responsible for the creation of an enabling environment to promote sustainable economic activity and job creation within the Western Cape Province (the Province). Accordingly, the WCG has embarked on a number of special economic development infrastructure projects aimed at catalysing industry growth and economic competitiveness. These investments are made on the basis that such infrastructure acts as a facilitator of job opportunities, new capital investments, investor confidence and other inputs to production, thereby improving competitiveness and reducing business costs.

Economic development infrastructure projects usually have long lead times, are dependent on co-funding and require significant time after the investment before there is a direct dividend to the government. They are also often implemented across the different spheres of government or in partnership with private sector investors. These dynamics mean that the driver of catalytic projects requires thorough project development capabilities and the appropriate institutional structures for project management and ongoing investment management. Unless projects are driven through a dedicated coordinating body, there is the risk that investments will be made in an uncoordinated fashion, leading to suboptimal returns on investment.

One of the key economic development infrastructure projects that the WCG has embarked on is the Atlantis Special Economic Zone (ASEZ), which was designated by the Minister of Trade and Industry under the Special Economic Zones Act, 2014 (Act 16 of 2014)(the SEZ Act), by Government Notice 1130/2018, published in *Government Gazette* 41982 on 19 October 2018. The SEZ Act requires that once a Special Economic Zone (SEZ) has been designated, a provincial government business enterprise as contemplated in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999)(the PFMA), be established to manage the SEZ. In addition to the needs of the ASEZ, there are a number of other special economic development infrastructure projects that are in various stages of development and that will require the coordination and institutional capacity intended to be created by the Western Cape Special Economic Development Infrastructure Company SOC Ltd (the Company), as proposed by the Western Cape Special Economic Development Infrastructure Company Bill, 2019 (the Bill).

**2. PURPOSE OF THE BILL**

The Bill provides an enabling legislative platform for the Company to fulfil its mandate of developing and supporting economic development infrastructure projects, and of holding the WCG's interests and shares in such projects. The Bill regulates the operation of the Company and provides for its objectives, functions and governance and for matters incidental thereto.

**3. CONTENTS OF THE BILL**

**Clause 1** provides for the definitions in the Bill.

**Clause 2** provides for the establishment and status of the Company.

**Clause 3** authorises the WCG to become a shareholder in the Company and to perform any acts that a shareholder may in law perform.

**Clause 4** lists the objects of the Company.

**Clause 5** provides for the powers and duties of the Company.



**Clause 6** provides for the appointment of the Company's Board of directors, the removal of directors and the designation of the chairperson and deputy chairperson of the Board.

**Clause 7** provides for the powers and duties of the Board with regard to corporate governance, fiduciary responsibilities and accountability to the Provincial Minister responsible for economic development.

**Clause 8** provides for the regulation of committees.

**Clause 9** provides for the determination of the remuneration and other allowances for directors or members of a committee.

**Clause 10** provides for the appointment of a suitably qualified person as the chief executive officer of the Company, the period for which the chief executive officer may be appointed, the grounds on which the employment of the chief executive officer may be terminated as well as the appointment of an acting chief executive officer should the need arise.

**Clause 11** provides for the powers and duties of the chief executive officer.

**Clause 12** empowers the Board to appoint staff and provides for the determination of the remuneration, other service benefits and the conditions of service of the chief executive officer and other employees of the Company.

**Clause 13** sets out the revenue streams of the Company and the manner in which the Board must apply the Company's funds.

**Clause 14** sets out the Board's ability to delegate or assign powers and duties to a director, a committee or the chief executive officer, subject to the Companies Act and the PFMA. The clause further provides that delegation or assignment does not divest the Board, director, committee or the chief executive officer of the responsibility for the exercise of the power or the performance of the duty.

**Clause 15** empowers the Provincial Minister to make regulations for the achievement of the objects of the Company and the Act.

**Clause 16** provides for the short title and the commencement of the Act.

#### **4. CONSULTATION**

- 4.1 Cabinet of the WCG
- 4.2 Department of the Premier: Legal Services
- 4.3 Provincial Treasury
- 4.4 National Treasury
- 4.5 Wesgro
- 4.6 Department of Trade and Industry (DTI)
- 4.7 Department of Environmental Affairs and Development Planning
- 4.8 Department of Transport and Public Works
- 4.9 City of Cape Town (the City).

**5. FINANCIAL IMPLICATIONS**

- 5.1 The Department of Economic Development and Tourism (DEDAT) has engaged with the Provincial Treasury, the DTI and the City regarding the costs associated with the Company.
- 5.2 DEDAT obtained support for funding from Provincial Treasury through the Medium-Term Expenditure Committee process.
- 5.3 Feasibility studies were supported by the DTI, who will, in future, provide funding for bulk infrastructure and other structures through the SEZ Fund.
- 5.4 Support for bulk infrastructure and land was obtained from the City, which will provide ongoing investor support and municipal services in the area of Atlantis.

**6. LEGISLATIVE COMPETENCE**

The Provincial Minister responsible for economic development in the Province is satisfied that all the provisions in the Bill fall within the legislative competence of the Province.

# WETSONTWERP

Om 'n regs persoon in te stel wat bekend staan as die Wes-Kaapse Maatskappy vir Spesiale Ekonomiese ontwikkelingsinfrastruktuur MSB Bpk; om die aandeelbesit van die Wes-Kaapse Regering in die Maatskappy te magtig; om voorsiening te maak vir die bevoegdheid en pligte van die Maatskappy, om voorsiening te maak vir die bestuur, bestuurstoetsig, befondsing en finansiële beheer van die Maatskappy; en om voorsiening te maak vir aangeleentheid wat daarmee in verband staan.

## AANHEF

**NADEMAAL** die Wes-Kaapse Regering verantwoordelik is vir die aandryf van 'n aantal spesiale ekonomiese ontwikkelingsinfrastruktuur-projekte in die Provinsie om ekonomiese groei en werkskepping te stimuleer en te bevorder;

**EN NADEMAAL** die Wes-Kaapse Regering verskillende belange hou in 'n verskeidenheid spesiale ekonomiese ontwikkelingsinfrastruktuur-projekte;

**EN NADEMAAL** daar 'n behoefte is om 'n regs persoon te skep om die belange van die Wes-Kaapse Regering by hierdie spesiale ekonomiese ontwikkelingsinfrastruktuur-projekte te hou en te beveilig,

**WORD DAAR DERHALWE BEPAAL** deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

## Woordoms krywing

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—
  - “**Departement**” die provinsiale departement verantwoordelik vir ekonomiese ontwikkeling; 5
  - “**die Maatskappy**” die Wes-Kaapse Maatskappy vir Spesiale Ekonomiese ontwikkelingsinfrastruktuur MSB Bpk, 'n maatskappy in staatsbesit wat ingevolge artikel 2 van die Maatskappywet ingestel is en ingevolge daardie Wet geïnkorporeer is; 10
  - “**direkteur**” 'n lid van die Raad;
  - “**filiaal**” wat dit ooreenkomstig artikel 3 van die Maatskappywet beteken;
  - “**hierdie Wet**” ook die regulasies wat daarkragtens gemaak word;
  - “**hoof- uitvoerende beampte**” die hoof- uitvoerende beampte aangestel ingevolge artikel 10(1); 15
  - “**komitee**” 'n komitee beoog in artikel 8;
  - “**Maatskappywet**” die Maatskappywet, 2008 (Wet 71 van 2008);
  - “**Provinsiale Minister**” die lid van die Provinsiale Kabinet verantwoordelik vir ekonomiese ontwikkeling;
  - “**Provinsiale Minister verantwoordelik vir finansies**” die lid van die Provinsiale Kabinet verantwoordelik vir finansies; 20
  - “**Provinsiale Regering**” die Wes-Kaapse Regering;
  - “**Provinsie**” die Provinsie Wes-Kaap, en “provinsiale” het 'n ooreenstemmende betekenis;
  - “**Raad**” die raad van direkteure van die Maatskappy beoog in artikel 6; 25
  - “**spesiale ekonomiese ontwikkelingsinfrastruktuur**” aanlegte, strukture, fasiliteite, stelsels, aktiwiteite, dienste en prosesse wat sakebedrywigheid in die Provinsie moontlik maak, insluitende vaardigheidsontwikkeling, handel- en

beleggingsbevordering, voorspraak en die aanpassing van beleid, ondernemingsontwikkeling, tegnologiese ondersteuning en bemarking, en innovering;  
**“voorsitter”** die voorsitter van die Raad beoog in artikel 6(2);  
**“Wet op Openbare Finansiële Bestuur”** die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999); 5  
**“Wet op Spesiale Ekonomiese Sones”** die “Special Economic Zones Act, 2014” (Wet 16 van 2014).

### **Instelling en status van die Maatskappy**

2. (1) ’n Regspersoon wat bekend staan as die Wes-Kaapse Maatskappy vir Spesiale Ekonomiese ontwikkelingsinfrastruktuur MSB Bpk word as ’n provinsiale openbare instelling ingestel. 10

(2) Die Maatskappy is onderhewig aan en word gereguleer deur—

- (a) hierdie Wet;
- (b) die Wet op Openbare Finansiële Bestuur;
- (c) die Maatskappywet en die Maatskappy se akte van oprigting ingevolge die Maatskappywet; en 15
- (d) die Wet op Spesiale Ekonomiese Sones.

### **Aandelebesit**

3. Die Provinsiale Regering is gemagtig om ’n aandeelhouer in die Maatskappy te word en om enige handelinge te verrig wat ’n aandeelhouer regtens kan verrig. 20

### **Oogmerke van die Maatskappy**

4. Die oogmerke van die Maatskappy is om—

- (a) ekonomiese ontwikkeling aan te dryf en ekonomiese mededingendheid te stimuleer deur die ontwikkeling, operasionalisering, bestuurtoesig en bestuur van beleggings in verskeie spesiale ekonomiese ontwikkelingsinfrastruktuur in die Provinsie; 25
- (b) namens die Provinsiale Regering filiale te skep, waar nodig, om belegging moontlik te maak in die ontwikkeling en bedryf van spesiale ekonomiese ontwikkelingsinfrastruktuur om die doelwitte van die Maatskappy te bereik;
- (c) toe te sien dat beleggings in spesiale ekonomiese ontwikkelingsinfrastruktuur ooreenstem met mikpunte en doelwitte van die Provinsiale Regering; 30
- (d) aansoek te doen om befondsing en fondse te bestuur vir spesiale ekonomiese ontwikkelingsinfrastruktuur; en
- (e) doeltreffendhede en koördinasie tussen verskillende filiale van die Maatskappy te optimeer en te konsolideer. 35

### **Bevoegdhede en pligte van die Maatskappy**

5. (1) Die Maatskappy het die bevoegdhede en pligte uiteengesit in subartikel (2) en enige ander bevoegdhede of pligte wat aan hom gedelegeer of opgedra is by of ingevolge hierdie Wet of enige ander wet.

(2) Ten einde die oogmerke van hierdie Wet te bereik, kan die Maatskappy, deur die Raad— 40

- (a) bates, aandele, of belange in beleggings, in spesiale ekonomiese ontwikkelingsinfrastruktuur in die Provinsie hou;
- (b) aansoek doen om befondsing en fondse bestuur vir spesiale ekonomiese ontwikkelingsinfrastruktuur; 45
- (c) met die instemming van die Provinsiale Minister en ná oorleg met die Provinsiale Minister verantwoordelik vir finansies, filiale skep waar nodig om belegging in geleenthede en projekte rakende spesiale ekonomiese ontwikkelingsinfrastruktuur moontlik te maak;
- (d) met die instemming van die Provinsiale Minister, aandeelhouersooreenkomste aangaan met die rade van filiale en enige ander instelling waarin hy ’n belang hou; 50
- (e) enige saaklike reg in onroerende eiendom huur, koop of andersins verkry, verhuur, verkoop, verruil, vervreem, ’n verband daarop uitneem, dit met ’n serwituut belas of dit verleen; 55

- (f) enige saaklike reg in roerende eiendom huur, koop of andersins verkry, verhuur, verkoop, verruil, vervreem, in pand gee of verleen;
- (g) ooreenkomste aangaan wat ten doel het om die oogmerke van die Maatskappy te bereik;
- (h) met enige regeringsfeer of staatsorgaan, of enige raad of persoon, in die Republiek of elders, onderhandel of saamwerk ten opsigte van enige aangeleentheid wat direk of indirek daarop gemik is om die oogmerke van die Maatskappy te bereik; 5
- (i) kantore open en administreer wat nodig of dienstig is vir die doeltreffende en behoorlike verrigting van die Maatskappy se werksaamhede; 10
- (j) versekeringsdekking verkry—
- (i) vir die Maatskappy teen enige verlies, skade, risiko of aanspreeklikheid wat dit moontlik kan ly of opdoen;
- (ii) vir lede van die Raad en komitees en werknemers van die Maatskappy ten opsigte van liggaamlike besering, ongeskikraking of dood wat direk en alleenlik veroorsaak is deur 'n insident wat plaasgevind het terwyl die persoon sy of haar werksaamhede as sodanige lid of werknemer verrig het; 15
- (iii) vir direkteure teen enige aanspreeklikheid of uitgawes waarteen die Maatskappy toegelaat word ingevolge die Maatskappywet om 'n 20 direkteur te vrywaar;
- (k) bankrekening open en bedryf by 'n bank soos omskryf in die Bankwet, 1990 (Wet 94 van 1990);
- (l) persone in diens neem en hul indiensneming beëindig;
- (m) met die instemming van die Provinsiale Minister en ná oorleg met die Provinsiale Minister verantwoordelik vir finansies, enige pensioen- of voorsorgfonds of mediese skema ten bate van werknemers van die Maatskappy instel, bestuur en administreer of so 'n fonds of skema deur 'n ander persoon of liggaam laat administreer; 25
- (n) alle uitgawes in verband met die administrasie van die Maatskappy betaal; 30
- (o) enige belang in enige maatskappy of vereniging van persone instel, help instel, finansier, verkry, likwdeer, verkoop of oor beskik indien dit die oogmerke van die Maatskappy sal bevorder; en
- (p) enige werksaamheid wat ingevolge die Wet op Spesiale Ekonomiese Sones aan hom opgedra is, beheer, bestuur en verrig. 35

## Raad

6. (1) Die Raad bestaan uit die direkteure wat aangestel of verkies is ooreenkomstig die Maatskappy se akte van oprigting ingevolge die Maatskappywet.
- (2) Die Provinsiale Minister moet die voorsitter vir die Raad aanwys.
- (3) Die Raad moet uit sy lede 'n ondervoorsitter vir die Raad kies. 40
- (4) Die ondervoorsitter moet as voorsitter waarneem wanneer die voorsitter afwesig is of nie in staat is om as voorsitter op te tree nie.
- (5)(a) Behoudens die Maatskappywet kan die Provinsiale Minister 'n direkteur verwyder indien goeie gronde aangevoer word.
- (b) Die Provinsiale Minister mag nie sy of haar bevoegdheid om 'n direkteur te 45 verwyder, deleger nie.

## Bevoegdhede en pligte van Raad

### 7. Die Raad—

- (a) is verantwoordelik vir die etiese en doeltreffende bestuurstoelig, bestuur en beheer van die Maatskappy se besigheid en sake ingevolge hierdie Wet en enige ander wet; 50
- (b) is die rekenpligtige gesag van die Maatskappy en moet die fidusiêre verantwoordelikhede soos voor voorsiening gemaak in die Wet op Openbare Finansiële Bestuur en die Maatskappywet nakom;
- (c) moet die Maatskappy se korporatiewe plan soos beoog in artikel 52 van die Wet op Openbare Finansiële Bestuur ontwikkel en daaraan uitvoering gee; 55
- (d) moet 'n maatskappysekretaris ingevolge die tersaaklike bepalings van die Maatskappywet aanstel;

- (e) neem besluite namens die Maatskappy en verseker dat sodanige besluite eties en doeltreffend in werking gestel word;
- (f) moet die Provinsiale Minister onmiddellik in kennis stel van enige aangeleentheid wat die bereiking van die Maatskappy se oogmerke of finansiële mikpunte kan verhinder of wesenlik kan aantass; 5
- (g) moet enige aangeleentheid wat die funksionering van die Maatskappy nadelig kan raak, na die Provinsiale Minister verwys; en
- (h) moet 'n doeltreffende en mededingende personeelwerwing-, personeelopleiding- en personeelbehoudstelsel instel om die bekwame verrigting van sy verantwoordelikhede en werksaamhede moontlik te maak. 10

### Komitees

- 8.** (1) 'n Komitee beoog in artikel 72 van die Maatskappywet moet ooreenkomstig sy verwysingsvoorwaardes, bepaal deur die Raad, te werk gaan.
- (2) 'n Lid van 'n komitee beklee die amp vir 'n tydperk van hoogstens drie jaar, bepaal deur die Raad of die Maatskappy, soos nodig mag wees, wanneer die lid aangestel word. 15
- (3) Indien die amp van 'n lid van 'n komitee vakant raak, kan die Raad of die Maatskappy, soos nodig mag wees, 'n persoon aanstel as 'n lid van daardie komitee vir die onverstreke gedeelte van die ampstermyn van die uittredende lid of vir 'n langer termyn, van hoogstens drie jaar, bepaal deur die Raad of die Maatskappy, na gelang van die geval, wanneer die lid aangestel word. 20
- (4) 'n Lid van 'n komitee wie se ampstermyn verstryk het, kwalifiseer vir heraanstelling, maar 'n persoon mag nie as 'n lid van enige komitee dien vir meer as drie termyne nie, uitgesonderd enige onverstreke gedeelte van 'n termyn bedoel in subartikel (6). 25
- (5) 'n Komitee moet voorgesit word deur 'n persoon wat deur die Raad of die Maatskappy, na gelang van die geval, aangewys word.
- (6) Die Raad of die Maatskappy, waar van toepassing, kan te eniger tyd—
- (a) 'n lid uit 'n komitee verwyder; of
  - (b) 'n komitee ontbind. 30

### Voorwaardes van aanstelling

- 9.** Die Provinsiale Minister, met die instemming van die Provinsiale Minister verantwoordelik vir finansies, moet die vergoeding en ander aanstellingsbepalings en -voorwaardes van aanstelling bepaal van—
- (a) 'n direkteur wat nie in diens is van die nasionale, provinsiale of plaaslike regering of 'n openbare of munisipale instelling nie; en 35
  - (b) 'n lid van 'n komitee wat nie 'n direkteur is of in diens is van die nasionale, provinsiale of plaaslike regering of 'n openbare of munisipale instelling nie.

### Hoof- uitvoerende beampte

- 10.** (1) Die Raad moet— 40
- (a) 'n gepas gekwalifiseerde persoon aanstel as hoof- uitvoerende beampte van die Maatskappy vir minstens drie jaar en hoogstens vyf jaar; en
  - (b) 'n skriftelike prestasie-ooreenkoms met die hoof- uitvoerende beampte sluit.
- (2) Die hoof- uitvoerende beampte kwalifiseer vir heraanstelling by die verstryking van sy of haar ampstermyn. 45
- (3) Die Raad kan, behoudens enige toepaslike indiensnemings- en arbeidswetgewing, die indiensneming van die hoof- uitvoerende beampte beëindig.
- (4) Indien die hoof- uitvoerende beampte afwesig is of om enige rede nie in staat is om sy of haar werksaamhede te verrig nie, of wanneer die amp van die hoof- uitvoerende beampte vakant is, moet die Raad 'n ander persoon aanstel om as hoof- uitvoerende beampte waar te neem gedurende sodanige afwesigheid of onvermoë of totdat 'n nuwe hoof- uitvoerende beampte ingevolge subartikel (1) aangestel word. 50
- (5) 'n Waarnemende hoof- uitvoerende beampte moet, vir die duur van sy of haar aanstelling, die werksaamhede van die hoof- uitvoerende beampte verrig.

### Bevoegdheids en pligte van hoof- uitvoerende beampte

- 11.** (1) Die hoof- uitvoerende beampte—
- (a) is die hoof van die administrasie van die Maatskappy;
  - (b) bestuur die daaglikse sake van die Maatskappy ooreenkomstig die sake- en finansiële planne van die Maatskappy, behoudens die beheer en opdragte van die Raad; en
  - (c) is rekenpligtig aan die Raad.
- (2) Benewens die bevoegdheids en pligte wat die Raad aan die hoof- uitvoerende beampte delegeer of opdra, moet die hoof- uitvoerende beampte—
- (a) met die betrokkeheid van die Raad, die langtermynstrategie en visie vir die Maatskappy ontwikkel en lei;
  - (b) jaarlikse sake- en finansiële planne vir die Maatskappy ontwikkel ooreenkomstig die langtermynstrategie en visie beoog in paragraaf (a);
  - (c) voortdurend streef om die Maatskappy se finansiële en bedryfsmikpunte en -doelwitte te bereik;
  - (d) die Raad bystaan om te verseker dat die Maatskappy ingevolge hierdie Wet en enige ander wet sy mikpunte bereik en sy werksaamhede verrig;
  - (e) verseker dat die Maatskappy voldoen aan hierdie Wet en alle ander toepaslike wette, insluitende die Wet op Openbare Finansiële Bestuur en die Maatskappywet;
  - (f) die besluite van die Raad in werking stel;
  - (g) verseker dat notule behoorlik gehou word by alle vergaderings van die Raad en die komitees;
  - (h) alle vergaderings van die Raad bywoon;
  - (i) verseker dat die personeelvoorsiening van die Maatskappy voldoende is om sy strategiese doelwitte te bereik;
  - (j) gereeld aan die aandeelhouer en alle belanghebbendes verslag doen; en
  - (k) 'n kultuur van korporatiewe etiek en waardes in die Maatskappy kweek.

### Diensvoorwaardes en aanstelling van werknemers van die Maatskappy

- 12.** Die Raad moet—
- (a) die werknemers van die Maatskappy aanstel; en
  - (b) met die instemming van die Provinsiale Minister en die Provinsiale Minister verantwoordelik vir finansies, die vergoeding, ander diensvoordele en diensvoorwaardes van die hoof- uitvoerende beampte en die ander werknemers van die Maatskappy bepaal.

### Befondsing en finansiële beheer

- 13.** (1) Die fondse van die Maatskappy bestaan uit—
- (a) geld bewillig deur die Provinsiale Parlement, die Nasionale Parlement of die munisipale raad van die tersaaklike munisipaliteit;
  - (b) bedryfsinkomste afkomstig van die besigheid van die Maatskappy; en
  - (c) geld ontvang deur die Maatskappy uit ander bronne.
- (2) Die Raad moet voldoening aan die Maatskappywet en die Wet op Openbare Finansiële Bestuur verseker, veral die bepalings oor finansiële bestuur en beheer, die opstel en voorlegging van jaarlikse begrotings en korporatiewe planne, die opstel van finansiële state, oudits en verslagdoening.
- (3) Die Raad moet die Maatskappy se fondse bestuur en aanwend op die wyse en vir die doeleindes wat die Raad gepas ag, en vir hierdie doel kan die Raad—
- (a) regs- of administratiewe strukture instel wat, na die mening van die Raad, benodig word;
  - (b) 'n reserwefonds instel; en
  - (c) enige fondse of geld wat nie onmiddellik vir die Maatskappy se sake benodig word nie, belê by die instellings en op die wyse wat die Raad bepaal.
- (4) Die Raad kan, behoudens die Wet op Openbare Finansiële Bestuur, geld namens die Maatskappy leen, maar sodanige geld mag nie gebruik word om die Maatskappy se bedryfsuitgawes te dek nie.
- (5) Die Maatskappy moet sy inkomste behou, waarvan 'n gedeelte gebruik kan word vir die betaling van bedryfsuitgawes, soos jaarliks deur die Raad bepaal.

- (6) Die Maatskappy mag nie enige uitkering maak nie, tensy—
- (a) die Raad, by besluit, die uitkering goedgekeur het; en
  - (b) die Provinsiale Minister, met die instemming van die Provinsiale Minister verantwoordelik vir finansies, die uitkering goedgekeur het.

**Delegasie of opdrag van bevoegdhede of pligte** 5

**14.** (1) Behoudens die beperkings op voorbehou bevoegdhede kragtens die Maatskappywet en artikel 56 van die Wet op Openbare Finansiële Bestuur kan die Raad enige van sy bevoegdhede of pligte skriftelik deleger of opdra aan—

- (a) 'n direkteur;
- (b) 'n komitee; of
- (c) die hoof- uitvoerende beampte,

wat daardie bevoegdheid of plig skriftelik verder kan deleger of opdra.

(2) 'n Delegasie of opdrag van 'n bevoegdheid of plig kragtens subartikel (1) onthef nie die Raad van verantwoordelikheid en verhinder ook nie die Raad, 'n direkteur, 'n komitee of die hoof- uitvoerende beampte, na gelang van die geval, om daardie bevoegdheid uit te oefen of daardie plig te verrig nie.

(3) Die Raad, 'n direkteur, 'n komitee of die hoof- uitvoerende beampte, na gelang van die geval, kan enige delegasie of opdrag skriftelik wysig of intrek en kan enige van sy of haar bevoegdhede of pligte deleger of opdra, behoudens beperkings, voorskrifte of voorwaardes bepaal deur die Raad, 'n direkteur, 'n komitee of die hoof- uitvoerende beampte, na gelang van die geval.

(4) Die Raad kan enige besluit wat ingevolge subartikel (1) geneem is, skriftelik wysig of intrek, behoudens enige regte wat moontlik toegeval is en met behoorlike oorweging aan die “Promotion of Administrative Justice Act, 2000” (Wet 3 van 2000).

**Regulasies** 25

**15.** (1) Die Provinsiale Minister kan regulasies maak oor enige aangeleentheid wat hy of sy nodig of dienstig ag om voor te skryf vir die bereiking van die oogmerke van die Maatskappy en hierdie Wet.

(2) Regulasies met finansiële implikasies moet met die instemming van die Provinsiale Minister verantwoordelik vir finansies gemaak word.

**Kort titel en inwerkingtreding**

**16.** Hierdie Wet heet die Wet op die Wes-Kaapse Maatskappy vir Spesiale Ekonomieseontwikkelingsinfrastruktuur, 2019.



## **MEMORANDUM OOR DIE OOGMERKE VAN DIE WETSONTWERP OP DIE WES-KAAPSE MAATSKAPPY VIR SPESIALE EKONOMIESEONTWIKKELINGSINFRASTRUKTUUR**

### **1. AGTERGROND**

Die Wes-Kaapse Regering (WKR) is verantwoordelik vir die skepping van 'n bemagtigende omgewing in die Provinsie Wes-Kaap (die Provinsie) om volhoubare ekonomiese aktiwiteit en werkskepping te bevorder. Dienooreenkomstig het die WKR 'n aantal spesiale ekonomieseontwikkelingsinfrastruktuur-projekte aangepak wat daarop gemik is om nywerheids groei en ekonomiese mededingendheid te bevorder. Hierdie beleggings word gedoen op grond daarvan dat sodanige infrastruktuur as 'n fasiliteerder van werksgeleenthede, nuwe kapitaalbeleggings, beleggersvertroue en ander insette tot produksie dien, waardeur mededingendheid verbeter en besigheidskoste verlaag word.

Ekonomieseontwikkelingsinfrastruktuur-projekte het gewoonlik 'n lang lewertyd, is afhanklik van medebefondsing en vereis aansienlik baie tyd ná die belegging voordat daar 'n direkte dividend vir die regering is. Dit word dikwels ook oor die verskillende regeringsfere geïmplementeer of in vennootskap met privaat-sektorbeleggers. Hierdie dinamika beteken dat die aandrywer van katalitiese projekte deeglike projekontwikkelingsvermoë en die gepaste institusionele strukture vir projekbestuur en voortdurende beleggingsbestuur vereis. Tensy die projekte deur 'n toegewyde koördinerende liggaam aangedryf word, bestaan daar die risiko dat beleggings op 'n ongekoördineerde wyse gemaak sal word, wat tot suboptimale opbrengste uit beleggings sal lei.

Een van die sleuteleonomieseontwikkelingsinfrastruktuur-projekte wat die WKR aangepak het, is die Atlantis Spesiale Ekonomiese Sone (ASEZ), wat deur die Minister van Handel en Nywerheid kragtens die "Special Economic Zones Act, 2014" (Wet 16 van 2014)(die SEZ-wet), aangewys is by Goewermentskennisgewing 1130/2018, gepubliseer in *Staatskoerant* 41982 van 19 Oktober 2018. Die SEZ-wet vereis dat, wanneer 'n Spesiale Ekonomiese Sone (SEZ) aangewys is, 'n provinsiale regeringsbesigheidsonderneming soos beoog in artikel 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999)(die WOFB), ingestel word om die SEZ te bestuur. Benewens die behoeftes van die ASEZ is daar 'n aantal ander spesiale ekonomieseontwikkelingsinfrastruktuur-projekte wat in verskeie stadiums van ontwikkeling is en wat die koördinerende en institusionele kapasiteit benodig wat beoog word om geskep te word deur die Wes-Kaapse Maatskappy vir Spesiale Ekonomieseontwikkelingsinfrastruktuur MSB Bpk (die Maatskappy), soos voorgestel by die Wetsontwerp op die Wes-Kaapse Maatskappy vir Spesiale Ekonomieseontwikkelingsinfrastruktuur, 2019 (die Wetsontwerp).

### **2. OOGMERK VAN WETSONTWERP**

Die Wetsontwerp lewer 'n bemagtigende wetgewende platform vir die Maatskappy om sy mandaat te vervul, naamlik die ontwikkeling en ondersteuning van ekonomieseontwikkelingsinfrastruktuur-projekte en die hou van die WKR se belange en aandele in sodanige projekte. Die Wetsontwerp reguleer die werking van die Maatskappy en maak voorsiening vir oogmerke, werksaamhede en bestuurstoeging en vir aangeleenthede wat daarmee verband hou.

### **3. INHOUD VAN WETSONTWERP**

**Klousule 1** maak voorsiening vir die omskrywings in die Wetsontwerp.

**Klousule 2** maak voorsiening vir die instelling en status van die Maatskappy.

**Klousule 3** magtig die WKR om 'n aandeelhouer in die Maatskappy te word en om enige handeling te verrig wat 'n aandeelhouer regtens mag verrig.

**Klousule 4** lys die oogmerke van die Maatskappy.

**Klousule 5** maak voorsiening vir die bevoegdhe en pligte van die Maatskappy.

**Klousule 6** maak voorsiening vir die aanstelling van die Maatskappy se raad van direkteure, die verwydering van direkteure en die aanwysing van die voorsitter en ondervoorsitter van die Raad.

**Klousule 7** maak voorsiening vir die bevoegdhe en pligte van die Raad ten opsigte van korporatiewe bestuurtoesig, fidusiêre verantwoordelikhede en rekenpligtigheid teenoor die Provinsiale Minister verantwoordelik vir ekonomiese ontwikkeling.

**Klousule 8** maak voorsiening vir die regulering van komitees.

**Klousule 9** maak voorsiening vir die bepaling van die vergoeding en ander toelaes vir direkteure of lede van 'n komitee.

**Klousule 10** maak voorsiening vir die aanstelling van 'n gepas gekwalifiseerde persoon as die hoof- uitvoerende beampte van die Maatskappy, die tydperk waarvoor die hoof- uitvoerende beampte aangestel mag word, die gronde waarop die indiensneming van die hoof- uitvoerende beampte beëindig mag word asook die aanstelling van 'n waarnemende hoof- uitvoerende beampte sou dit nodig wees.

**Klousule 11** maak voorsiening vir die bevoegdhe en pligte van die hoof- uitvoerende beampte.

**Klousule 12** verleen aan die Raad die bevoegdheid om personeel aan te stel en maak voorsiening vir die bepaling van vergoeding, ander diensvoordele en die diensvoorwaardes van die hoof- uitvoerende beampte en ander werknemers van die Maatskappy.

**Klousule 13** sit die inkomstebronne van die Maatskappywet uiteen en die wyse waarop die Raad die Maatskappy se fondse moet aanwend.

**Klousule 14** sit die Raad se vermoë om, behoudens die Maatskappywet en die WOFB, bevoegdhe en pligte aan 'n direkteur, 'n komitee of die hoof- uitvoerende beampte te delegeer of op te dra. Die klousule bepaal verder dat delegasie of opdragte nie die Raad, direkteur, komitee of hoof- uitvoerende beampte onthef van die verantwoordelikheid om die bevoegdheid uit te oefen of die plig te verrig nie.

**Klousule 15** verleen aan die Provinsiale Minister die bevoegdheid om vir die bereiking van die oogmerke van die Maatskappy en die Wet regulasies te maak.

**Klousule 16** maak voorsiening vir die kort titel en inwerkingtrede van die Wet.

#### 4. OORLEGPLEGING

4.1 Kabinet van die WKR

4.2 Departement van die Premier: Regsdienste

4.3 Provinsiale Tesourie

4.4 Nasionale Tesourie

4.5 Wesgro

4.6 Departement van Handel en Nywerheid (DTI)

4.7 Departement van Omgewingsake en Ontwikkelingsbeplanning

4.8 Departement van Vervoer en Openbare Werke

4.9 Stad Kaapstad (die Stad).

## **5. FINANSIËLE IMPLIKASIES**

5.1 Die Departement van Ekonomiese Ontwikkeling en Toerisme (DEDAT) het met die Provinsiale Tesourie, die DTI en die Stad Kaapstad onderhandel oor die koste in verband met die Maatskappy.

5.2 DEDAT het ondersteuning vir befondsing van die Provinsiale Tesourie bekom deur die Mediumtermynbegrotingskomitee-proses.

5.3 Haalbaarheidstudies is ondersteun deur die DTI, wat in die toekoms befondsing sal verskaf vir grootmaatinfrastruktuur en ander strukture deur die SEZ-fonds.

5.4 Ondersteuning vir grootmaatinfrastruktuur en grond is van die Stad bekom, wat voortdurende beleggersteun en munisipale dienste in die gebied van Atlantis sal verskaf.

## **6. WETGEWENDE BEVOEGDHEID**

Die Provinsiale Minister verantwoordelik vir ekonomiese ontwikkeling in die Provinsie is oortuig dat alle bepalings in die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

# UMTHETHO OSAYILWAYO

Ukumisela umqondisimthetho oyakusebenza njengeNkampani eyi-SOC Ltd yeziBonelelo zoPhuhliso lwezoQoqosho oluKhethekileyo eNtshona Koloni; oza kuba sisiphathimandla samashishini kwiNkampani kaRhulumente waseNtshona Koloni; ukubonelela ngolawulo nemisebenzi yeNkampani; ukubonelela ngomagunya, urhulumento, ingxowamali kunye nolawulo lwezezimali zeNkampani; kwakunye nemicimbi enxulumene nayo ngoko.

## INTSHAYELELO

**NGOKO** uRhulumente waseNtshona Koloni unoxanduva lokuqhuba iiprojekthi ezizodwa zophuhliso lwezoqoqosho kwiPhondo ukwenzela ukuvusa nokukhuthaza uku-khula kogoqosho kunye nokudala amathuba omsebenzi;

**NGAPHEZU KOKO** uRhulumente waseNtshona Koloni unezinto zakhe anomdla owahlukeneyo kuzo kwiinkalo zeprojekthi ezizodwa lwezibonelelo zophuhliso;

**UKONGEZA KOKO** kukho imfuneko yokuba kubekho umntu osemthethweni ukuze abambe kwaye alondolozwe oko kungumdlala kuRhulumente waseNtshona Koloni kule projekthi yophuhliso lwezoqoqosho ezizodwa,

**NGAKO OKO KE KUWISWA UMTHETHO** yiPalamente yePhondo leNtshona Koloni, ngolu hlobo lulandelayo:—

## Iinkcazelo

1. Kulo Mthetho, ngaphandle kokuba umxholo ubonisa ngenye indlela—
  - “**IBhodi**” ithetha ibhodi yabalawuli benkampani, echazwe kwicandelo 6; 5
  - “**usihlalo**” uthetha uSihlalo weBhodi ekhankanywe kwicandelo lesi-6(2);
  - “**igosa eliphethe i-ofisii**” lithetha igosa elilawulayo eliphezulu eliqeshwe ngokwecandelo lesi- 10(1);
  - “**ikomiti**” ithetha ikomiti echazwe kwicandelo lesi-8;
  - “**uMthetho weNkampani**” uthetha uMthetho weNkampani, 2008 (uMthetho wama-71 ka-2008); 10
  - “**umlawuli**” uthetha ilungu leBhodi;
  - “**iSebe**” lithetha isebe lephondo elinoxanduva lophuhliso lwezoqoqosho;
  - “**iPhondo**” uthetha iPhondo laseNtshona Koloni kunye “nephondo” zinentingiselo efanayo; 15
  - “**uRhulumente wePhondo**” uthetha uRhulumente waseNtshona Koloni;
  - “**uMphathiswa wePhondo**” uthetha ilungu leKhabinethi yePhondo elinoxanduva lophuhliso lwezoqoqosho;
  - “**uMphathiswa wePhondo woxanduva lwezezimali**” uthetha ilungu leKhabinethi elinoxanduva lezemali; 20
  - “**uMthetho woLawulo lwezeMali zoLuntu**” uthetha uMthetho woLawulo lwezeMali zoLuntu, 1999 (uMthetho woku-1 ka-1999);
  - “**izibonelelo zophuhliso lwezoqoqosho olukhethekileyo**” zithetha ufakelo, izakhiwo, izibonelelo, iinkqubo, imisebenzi, iinkonzo kunye neendlela zokubanakho ukwenza umsebenzi wezoshishino kwiPhondo, kubandakanywa nophuhliso lwezakhono, urhwebo kunye nenkuthazo yotyalo-mali, uthethelelo nokulungelelaniswa komgaqo-nkqubo, uphuhliso lwamashishini, inkxaso kulwazi ngobugcisa nentengiso kwanasekuqaleni izinto ezintsha; 25

**“uMthetho weZiza zoQoqosho oluKhethekileyo”** uthetha uMthetho weZiza zoQoqosho oluKhethekileyo, 2014 (uMthetho we-16 ka-2014)

**“inkxaso”** inentsingiselo emiselwe ngokuhambelana necandelo 3 loMthetho weNkampani;

**“iNkampani”** ithetha iNkampani yeziBonelelo zoPhuhliso lwezoQoqosho oluKhethekileyo lwaseNtshona Koloni i-SOC Ltd, inkampani karhulumente, esungulwe ngokwecandelo lesi-2 kwaye ihlanganiswe ngokwemiqathango yoMthetho weNkampani; kwaye

**“lo Mthetho”** ubandakanya imigaqo eyenziwe phantsi kwawo.

## **Ukusekwa nesimo seNkampani** 10

2. (1) Umntu ongumqondisimthetho ozakuthathwa njengeNkampani yeziBonelelo zoPhuhliso oluKhethekileyo eNtshona Koloni i-SOC Ltd uzakubekwa njengequmrhu loluntu kwiphondo.

(2) INkampani ixhomekeke kwaye ilawulwa—

- (a) ngulo Mthetho; 15
- (b) nguMthetho woLawulo lwezeziMali zoLontu;
- (c) uMthetho weNkampani kunye nememorandam yobandakanyo ngokuhambelana noMthetho weNkampani; kunye
- (d) noMthetho weZiza zoQoqosho oluKhethekileyo.

## **Ubuninizabelo** 20

3. URhulumente wePhondo ugunyaziswe ukuba abe ngumninizabelo kwiNkampani kwaye enze nayiphi na into eyenziwa ngumninizabelo ekwenzeni umthetho.

## **Iinjongo zeNkampani**

4. Iinjongo zeNkampani kuku—

- (a) qhuba uphuhliso lwezoqoqosho kunye nokukhuthaza ukhuphiswano lwezoqoqosho ngokuphuhlisa, ukusebenza, urhulumente kunye nokulawulwa kotyalo-mali kwiziBonelelo zoPhuhliso lwezoQoqosho oluKhethekileyo kwiPhondo; 25
- (b) dala izibonelelo egameni likaRhulumente wePhondo, apho kuyimfuneko, ukwenza utyalomali kuphuhliso nasekusetyenzisweni kwesibonelelo sophuhliso olukhethekileyo lwezoqoqosho ukwenzela ukufikelela kwiinjongo zeNkampani; 30
- (c) qinisekisa ukulungelelaniswa kotyalomali kwiziseko zophuhliso loqoqosho olukhethekileyo ngeenjongo kwanokubhekiselele kuRhulumente wePhondo;
- (d) sebenzisa nokulawula ingxowamali yezibonelelo zophuhliso lwezoqoqosho olukhethekileyo; kunye 35
- (e) nokwandisa nokubethelela impumelelo kunye nokulungelelanisa phakathi kweenkxasomali ezahlukeneyo zeNkampani.

## **Ulawulo nemisebenzi yeNkampani**

5. (1) INkampani inolawulo nemisebenzi echazwe kwicandelwana lesi (2) kunye nawo naluphi na ulawulo okanye imisebenzi egunyaziswe okanye eyabelwe ukuba iyenze ngokoMthetho okanye nawuphi na omnye umthetho. 40

(2) Ukuze ifezekise iinjongo zalo Mthetho, iNkampani, ngokuncediswa yiBhodi inakho—

- (a) ukubamba impahla, izabelo okanye inzala kutyalomali lwezibonelelo zophuhliso lwezoqoqosho olukhethekileyo kwiPhondo; 45
- (b) ukwenza isicelo nokulawula ingxowamali yezibonelelo zophuhliso lwezoqoqosho olukhethekileyo;
- (c) ngokuvumelana noMphathiswa wephondo, kwaye emva kokubonisana noMphathiswa wePhondo onoxanduva lwezemali, ukudala iinkxasomali apho kuyimfuneko, ukunika utyalomali amathuba kunye neeprojekthi eziphathelile kwizibonelelo zophuhliso lwezoqoqosho olukhethekileyo; 50
- (d) ngokuvumelana noMphathiswa wePhondo, ukungena kwizivumelwano zezabelo ngokuncediswa ziibhodi nangamanye amaqumrhu apho kukho umdla khona; 55

- (e) ukuqesha, ukuthenga okanye ukufumana, ukuqeshisa, ukuthengisa, ukushintshiselana, ukuhlutha ubunini, ukuboleka, umthwalo onenkonzokanye ukunika naliphi na ilungelo lokwenene kwisakhiwo esingenakushenxiswa;
- (f) ukuqesha, ukuthenga okanye ukufumana, ukuqeshisa, ukuthengisa, ukutshintshiselana, ukuhlutha ubunini, ukuzibophele okanye ukunikezela ngalo naliphi na ilungelo lokwenene kwisakhiwo esinokushenxiswa; 5
- (g) ukungena kwizivumelwano ezijolise ekufezeni iinjongo zeNkampani;
- (h) ukuthethana okanye ukusebenzisana naso nasiphi na isigaba sikarhulumente okanye iqumrhu likarhulumente, okanye nayiphi na ibhodi okanye umntu, kwiRiphabliki okanye kwenye indawo, malunga nawo nawuphi na umbandela ojoliswe ngqo okanye ngokungathanga ngqo ukufezekisa iinjongo zeNkampani; 10
- (i) ukuvula kwaye ulawule ii-ofisi eziyimfuneko okanye ezifanelekileyo ukwenzela ukusebenza kakuhle nokwenza ngcono imisebenzi yeNkampani; 15
- (j) ukufumana i-inshorensi—
- (i) yeNkampani kuyo nayiphi na ilahleko, umonakalo, umngcipheko okanye uxanduva oluza kubayimbandezelo okanye olunokwenzeka;
- (ii) yamalungu eBhodi kunye neekomiti kwanabasebenzi beNkampani ngokubhekiselele ekulimaleni ngokomzimba, ukukhubazeka okanye ukufa okubangwa kuphela ngokungqamene nesehlo saxa besenza imisebenzi yabo njengamalungu okanye abasebenzi; 20
- (iii) yabalawuli kulo naliphi na uxanduva okanye iindleko zeNkampani ivunyelwe ukuhlawulela umlawuli ngokumalunga noMthetho weeNkampani; 25
- (k) yokuvula kwaye yokuqhuba ishishini lee-akhawunti ebhankini njengoko kuchazwe kuMthetho weeBhanki, 1990 (uMthetho wama-94 we-1990);
- (l) yokuqesha nokuphelisa ingqesho yabantu;
- (m) ngokuvumelana noMphathiswa wePhondo kwaye emva kokubonisana noMphathiswa wePhondo onoxanduva lwezemali, ukumisela, ukuphatha nokulawula nayiphi na ingxowa yomhlalaphantsi okanye inkxaso-mboleko okanye ubonelelo lonyango eyinzuzo yabasebenzi beNkampani, okanye unaloo mali okanye ulungiselelo olulawulwa ngomnye umntu okanye iqumrhu; 30
- (n) yokuhlawula zonke iindleko ezinxulumene nolawulo lweNkampani; 35
- (o) yokuseka, ukuncedisa ekumiseni, ezemali, ukufumana, ukuphetha, ukuthengisa okanye ukulahla impahla yayo nayiphi na inzala kuyo nayiphi na inkampani okanye umbutho wabantu ukuba ukwenza njalo kuya kubazinjongo zeNkampani; kunye
- (p) nokulawula, ukuphatha nokwenza nayiphi na imisebenzi eyabelwe yona nokwemiqathango yoMthetho weZiza zoQoqosho oluKhethekileyo. 40

## IBhodi

6. (1) IBhodi inamalungu abalawuli abamiselweyo okanye abakhethiweyo ngokuhambelana noyilo lwesivumelwano seNkampani sobandakayo oluphathelile noMthetho weeNkampani. 45
- (2) UMphathiswa wePhondo kufuneka akhethe uSihlalo weBhodi.
- (3) IBhodi kufuneka, kumalungu ayo, ikhethe isekela likasihlalo weBhodi.
- (4) Isekela-sihlalo kufuneka lisebenze njengosihlalo xa usihlalo engekho okanye engakwazi ukusebenza njengosihlalo.
- (5)(a) Ngokuxhomekeke kuMthetho weeNkampani, uMphathiswa wePhondo usenokususa umlawuli ngokwesizathu esibonisiweyo. 50
- (b) UMphathiswa wePhondo akanako ukudlulisela ulawulo lwakhe ukususa umlawuli.

## Ulawulo nemisebenzi yeBhodi

7. IBhodi— 55
- (a) inoxanduva lokurhulumenta, ukuphatha nokulawula ishishini leNkampani ngokusesikweni nakakuhle kwaye imicimbi malunga noMthetho kwakunye nawo nawuphi na umthetho;

- (b) iligunya lolawulo eliphendulayo leNkampani kwaye kufuneka lizalisekise iimfanelo njengoko kubonelelwe kuMthetho woLawulo lwezeMali zoLuntu kunye nakuMthetho weeNkampani;
- (c) kufuneka iphuhlise kwaye iphumelelise isicwangciso seNkampani njengoko bekuxeliwe ngexa langaphambili kwicandelo lama-52 loMthetho woLawulo lwezeMali zoLuntu; 5
- (d) kufuneka iqeshe unobhala wenkampani malunga nokuphathelele neemfuno zoMthetho weeNkampani;
- (e) ithatha izigqibo egameni leNkampani kwaye iqinisekise ukuba izigqibo ezinjalo ziphunyezwa ngokufanelekileyo nangempumelelo; 10
- (f) yazise uMphathiswa wePhondo ngokukhawuleza kwawo nawuphina umba onokuthi uthintele okanye onokuthi uchaphazele ukufezekiswa kweenjongo okanye olujoliswe kuko ngokwezemali yeNkampani;
- (g) kufuneka ibhekise kuMphathiswa wePhondo nawuphi na umba onoku-chaphazela kakubi ukusebenza kweNkampani; kwaye 15
- (h) kufuneka imisele ukhuphiswano lokuqeshwa kwabasebenzi olufanelekileyo, ukuqeqeshwa kunye nokugcinwa kwenkqubo yokwenziwa ngcono kweemfanelo kunye nemisebenzi.

### **IiKomiti**

- 8. (1) Ikomiti ecwangciswe kwicandelo lama-72 oMthetho weeNkampani kufuneka isebenze ngokuhambelana nemigqaliselo, emiselwe yiBhodi. 20
- (2) Ilungu lekomiti elibambe i-ofisi ixesha elingadlulanga kwiminyaka emithathu, ngokumiselwe yiBhodi okanye iNkampani, njengoko kungayimfuneko, ngexesha lokuqeshwa kwelungu.
- (3) Ukuba i-ofisi yelungu lekomiti ibanesithuba, iBhodi okanye iNkampani, njengoko kunoba yimfuneko, ingaqesha umntu njengelungu lalo komiti ngokwexesha lesahlulo sexesha elimisiweyo elingaphelelwayo le-ofisi yelungu elishiyayo okanye ixesha elide, elingadlulanga kwiminyaka emithathu, ngokumiselwe yiBhodi okanye yeNkampani, njengoko kungabanjalo mhlawumbi, ngexesha lokuqeshwa kwelungu. 25
- (4) Ilungu lekomiti elinxesha lalo elimisiweyo e-ofisini liphelelwe linakho ukuqeshwa kwakhona, kodwa umntu angasebenza njengelungu layo nayiphi na ikomiti ixesha elingaphezulu kwamaxesha amiselweyo amathathu, kungabandakanywanga naso nasiphina isahlulo sexesha elimisiweyo ngokubhekiselwe kwicandelwana lesi-(6). 30
- (5) Ikomiti kufuneka ibenosihlalo ongumntu ochongwe yiBhodi okanye yeNkampani, njengoko kungaba njalo. 35
- (6) IBhodi okanye iNkampani, apho kufanelekileyo, kungathi nangaliphi na ixesha—
  - (a) isuse ilungu ekomitini; okanye
  - (b) iyichithe ikomiti.

### **IiMeko zeNgqesho**

- 9. UMphathiswa wePhondo, ngokuvumelana noMphathiswa wePhondo onoxanduva lwezemali, kufuneka agqibe ngomvuzo kunye neminye imimiselo kwakunye neemeko zengqesho— 40
  - (a) umlawuli ongaqeshwanga nguzwelonke, liphondo okanye ngurhulumente wezekhaya, okanye iqumrhu loluntu okanye likamasipala; kunye
  - (b) nelungu lekomiti elingengomlawuli okanye elingaqashwanga nguzwelonke, liphondo okanye ngurhulumente wezekhaya, okanye iqumrhu loluntu okanye likamasipala. 45

### **IGosa eliphethe i-ofisi**

- 10. (1) IBhodi kufuneka—
  - (a) iqeshe umntu osifaneleyo isikhundla esinjengesegosa eliphethe i-ofisi yeNkampani ubuncinane kangangeminyaka emithathu kwaye kungadluli kwiminyaka emihlanu; kwaye 50
  - (b) kugqitywe negosa eliphethe i-ofisi ngesivumelwano esibhaliweyo sokusebenza.
- (2) IGosa eliphethe i-ofisi linelungelo lokuqesha kwakhona ngexesha lokuphela kwexesha lakhe elimiselweyo. 55

(3) Ibhodi inokuthi, ngokubhekiselele kuyo nayiphi na ingqesho efanelekileyo kunye nomthetho wabasebenzi, ukuphelisa umsebenzi wegosa eliphethe i-ofisi.

(4) Xa igosa eliphethe i-ofisi lingekho okanye nangaso nasiphi na isizathu sokungakwazi ukuyenza imisebenzi yalo, okanye xa isikhundla segosa eliphethayo singenamntu, iBhodi kufuneka iqeshe omnye umntu ukuze asebenze njengegosa eliphethe i-ofisi ngexesha lokungabikho okanye lokungakwazi ukusebenza okanye kude kuqeshwe igosa elitsha eliphethe i-ofisi ngokumalunga necandelwana loku-(1).

(5) Ibambela legosa eliphethe i-ofisi kufuneka, ngexesha lokuqeshwa kwalo, lenze imisebenzi yegosa eliphethe i-ofisi.

#### **Ulawulo nemisebenzi yegosa eliphethe i-ofisi** 10

**11.** (1) IGosa eliphethe i-ofisi—

- (a) liyintloko yolawulo lweNkampani;
- (b) lilawula imicimbi yemihla-ngemihla yeNkampani ngokuhambelana noshishino nezicwangciso zeNkampani, kuxhomekeke kulawulo kunye nesikhokelo seBhodi; kwaye 15
- (c) liphendula kwiBhodi.

(2) Ukongeza kumandla nakwimisebenzi egunyaziselwe neyabelwe lona yiBhodi, igosa eliphethe i-ofisi kufuneka—

- (a) liphuhlise kwaye likhokele, ngokuquka iBhodi, isicwangciso sexesha elide nombono weNkampani; 20
- (b) liphuhlise ushishino lonyaka kwaneqhingha lezemali zeNkampani ngokuhambelana nesicwangciso sexesha elide kunye nombono ochazwe kumhlathi (a);
- (c) liqhubeke lizama ukufezekisa iinjongo nokujoliswe kuko ngokwezemali nemisebenzi yeNkampani; 25
- (d) lincedisise iBhodi ekuqinisekiseni ukuba iNkampani iyazifezekisa iinjongo nasekwenzeni imisebenzi yayo ngokubhekiselele kuloMthetho kwaneminye imithetho;
- (e) liqinisekise ukuba imithetho yeNkampani iyathotyelwa kwaye yonke imithetho esetyenziswayo, kuquka noMthetho woLawulo lwezeMali zoLuntu kunye noMthetho weNkampani; 30
- (f) liphumeze izigqibo zeBhodi;
- (g) liqinisekise ukuba imizuzu eyiyo iyagcinwa kuzo zonke iintlanganiso zeBhodi kunye nezeekomiti.
- (h) lihlale zonke iintlanganiso zeBhodi; 35
- (i) liqinisekise ukuba kukho abasebenzi aboneleyo beNkampani ukukwazi ukufezekisa isicwangciso seenjongo zayo;
- (j) linike ingxelo rhoqo kubathathi-nxaxheba nabachaphazelekayo; kwaye
- (k) linyanzelise inkolelo yobambiswano olusesikweni kunye nentsingiselo kwiNkampani. 40

#### **Iimeko zenkonzo nengqesho yabasebenzi beNkampani**

**12.** IBhodi kufuneka—

- (a) iqeshe abasebenzi beNkampani; kwaye
- (b) ngokuvumelana noMphathiswa wePhondo nonguMphathiswa wePhondo onoxanduva lwezemali agqibe ngomvuzo, ezinye iinkonzo zezibonelelo kunye neemeko zenkonzo yegosa eliphethe i-ofisi kunye nabanye abasebenzi beNkampani. 45

#### **Ulawulo lwengxowamali kunye nezemali**

**13.** (1) INgxowamali yeNkampani iquka i—

- (a) mali eyabelwa iPalamente yePhondo, iPalamente kaZwelonke okanye ibhunga likamasipala olunyele oko; 50
- (b) ingeniso esebenzayo evela kumashishini eNkampani; kunye
- (c) imali esuka kweminye imithombo efunyenwe yiNkampani.

(2) IBhodi kufuneka iqinisekise ukuba uMthetho weNkampani *iCompanies Act* noMthetho woLawulo lwezeMali zoLuntu *iPublic Finance Management Act* 55 uyathotyelwa, ngakumbi izibonelelo ezimalunga nokuphathwa nokulawulwa kwemali,



amalungiselelo nokungeniswa kolwabiwo-mali lonyaka nezicwangciso zoshishino, amalungiselelo eengxelo zemali, uphicotho-mali nokunikwa kwengxelo.

(3) IBhodi kufuneka ilawule kwaye ifake ingxowamali yeNkampani ngendlela nangeenjongo iBhodi ecinge ngayo kakuhle, kwaye ngale njongo iBhodi—

- (a) ingaseka umthetho okanye izakhelo zolawulo zokuba, uluvo lweBhodi, ziyafuneka; 5
- (b) ingaseka ingxowa eselugcinweni; kunye
- (c) notyalo-mali lwayo nayiphi na imali engafuneki ngokungxamisekileyo kwimicimbi yeNkampani, kumaziko nakwindlela iBhodi egqibe ngayo.

(4) IBhodi ingaxhomekeka kuMthetho woLawulo lwezeMali zoLuntu, ukuboleka imali egameni leNkampani, kodwa imali enjalo ingangasetyenziselwa ukuhlawula iindleko zokusebenza kweNkampani. 10

(5) INkampani kufuneka igcine ingeniso yayo, enxalenye yayo engasetyenziswa kwintlawulo yeendleko zokusebenza, njengesigqibo seBhodi sonyaka.

(6) INkampani ayinakwenza naluphi na ulwabiwo, ngaphandle— 15

- (a) kweBhodi, ngokwesigqibo, inike igunya lolwabiwo; kwaye
- (b) UMphathiswa wePhondo, ngokuvumelana noMphathiswa wePhondo onoxanduva lwezemali, unike invume yolwabiwo.

### **Amagunya okanye ulwabiwo lolawulo okanye imisebenzi**

**14.** (1) Ngokuxhomekeka kwizithintelo zamagunya abekelwe bucala phantsi koMthetho weNkampani kunye necandelo lama-56 loMthetho woLawulo lwezeMali Zoluntu, iBhodi ingagunyazisa okanye yabele nalo naluphi na ulawulo lwayo okanye imisebenzi ngokubhalela—

- (a) umlawuli;
- (b) ikomiti; okanye 25
- (c) igosa eliphethe i-ofisi,

onokuba, ngokubhaliweyo, aqhubeke anikezele ngamagunya kolo lawulo okanye kolo lwabelo lomsebenzi.

(2) Ugunyaziso okanye isabelo solawulo okanye umsebenzi phantsi kwecandlwana (1) aliyi kuyikhupha iBhodi kuxanduva okanye ivumele ukusetyenziswa kolawulo okanye ukwenziwa kwaloo msebenzi yiBhodi, umlawuli, ikomiti okanye igosa eliphethe i-ofisi, njengokuba kunjalo. 30

(3) IBhodi, umlawuli, ikomiti okanye igosa eliphethe i-ofisi, njengokuba kunjalo, ngokubhaliweyo, ukulungiswa okanye ukurhoxisa naluphi na igunya okanye isabelo kwaye, ngokubhaliweyo, unikezele ngegunya okanye ulwabiwo lolawulo lwayo okanye imisebenzi, ngokuxhomekeke kwizithintelo, izikhokelo okanye iimeko ezimiselwe yiBhodi, umlawuli, ikomiti okanye igosa eliphethe i-ofisi, njengokuba kunjalo. 35

(4) IBhodi inokuthi, ngokubhaliweyo, iguqule okanye irhoxise nasiphi na isigqibo esithathwe ngokwecandlwana loku-(1), ngokubhekiselele kuwo nawaphi na amalungelo ongezelekileyo kwaye ngokuqwalaselwa ngokufanelekileyo kuMthetho woBulungisa oKhuthaza uLawulo, 2000 (uMthetho wesi-3 ka-2000). 40

### **Imigaqo**

**15.** (1) UMphathiswa wePhondo angabeka imigaqo ephathelele kuwo nawuphi na umcimbi awubona ubalulekile okanye ukulungele ukumiselwa ekufezekiseni iinjongo zeNkampani nezalo Mthetho. 45

(2) Imigaqo equka ezemali kufuneka yenziwe ngokwemvume yoMphathiswa wePhondo onoxanduva lwezemali.

### **Isihloko esifutshane kunye nesiqalo**

**16.** Lo Mthetho ubizwa ngokuba nguMthetho weNkampani yeSibonolelo soPhuhliso lwezoQoqosho oluKhethekileyo weNtshona Koloni, ka-2019.

**IMEMORANDAM YEENJONGO ZOMTHETHO OSAYILWAYO  
WENKAMPANI YESIBONELELO SOPHUHLISO LWEZOQOQOSHO  
OLUKHETHEKILEYO WENTSHONA KOLONI**

**1. INTSUKAPHI**

URhulumente weNtshona Koloni (WCG) unoxanduva elijongene nokudalwa kokusingqongileyo okuvumela ukwenziwa komsebenzi ukukhuthaza umsebenzi woqoqosho olugcinekayo nokudalwa kwemisebenzi kwiPhondo leNtshona Koloni (“iPhondo”). Ngoko ke, uRhulumente weNtshona Koloni uqalise iphulo leprojekthi eziliqela zezibonelelo zophuhliso lwezoqoqosho ezijolise ekuqiniseni ukukhula koshishino nokhuphiswano lwezoqoqosho. Olu tyalomali lwenziwa phantsi kokuba izibonelelo ezinjalo zisebenza njengezinto ezenza amathuba emisebenzi abe lula, utyalomali olutsha, ukuzithemba komtyalimali nokunye okungaba negalelo ekwenzeni imveliso, nto leyo ephucula ukhuphiswano nenciphisa iindleko zoshishino.

Iprojekthi zezibonelelo zophuhliso lwezoqoqosho ezidla ngokuqhuba ixesha elide zixhomekeka kwinkxasomali kwaye zifuna ixesha elaneleyo lotyalomali phambi kokuba urhulumente avune iziqhamo ezingqalileyo. Ezi projekthi zikwazalisekiswa kuzo zonke iikona zikarhulumente okanye zobambiswano nabatyalimali bamacandelo abucala. Oku kuthetha ukuba iiprojekthi ezihlanganisiweyo zifuna izakhono zokwenene zokukwazi ukuphuhlisa ngokunjalo nabalawuli abafanelekileyo bokulawula iiprojekthi nokuqhubeka ngolawulo lotyalomali. Ngaphandle kokuba ezi projekthi ziqhutywa liqumrhu elifanelekileyo, kukho umngcipheko wokuba utyalomali luza kwenziwa ngendlela engafanelekanga, nto leyo ekhokelela kutyalomali olunempumelelo encinci.

Enye yeeprojekthi zezibonelelo zophuhliso lwezoqoqosho ezingundoqo athe waziqalisa uRhulumente weNtshona Koloni kukumisela uMmandla wezoQoqosho oKhethekileyo e-Atlantis (i-ASEZ), owasungulwa nguMphathiswa woRhwebo noShishino phantsi komthetho *iSpecial Economic Zones Act* (uMthetho 16 ka-2014, ngeSaziso sikaRhulumente esingunombolo 1130/2018, esipapashwe *kwiGazethi kaRhulumente* engunombolo 41982 ngomhla we-19 kweyeDwarha 2018. Umthetho *iSpecial Economic Zones Act* ufuna kuthi nje kwakumiselwa uMmandla wezoQoqosho oKhethekileyo, kusungulwe ushishino lorhulumente wephondo njengoko kuchaziwe kwicandelo 1 lomthetho *iPublic Finance Management Act* (uMthetho 1 ka-1999) (i-PFMA) ukuze kulawulwe uMmandla wezoQoqosho oKhethekileyo. Ukongeza kwizidingo zoMmandla wezoQoqosho oKhethekileyo e-Atlanti (i-ASEZ), zikho nezinye iiprojekthi zezibonelelo zophuhliso lwezoqoqosho ezikhethekileyo ezikufuna ulungelelwaniso namandla eziko aza kwenziwa yiNkampani yeZibonelelo zoPhuhliso loQoqosho oluKhethekileyo yaseNtshona Koloni (*Western Cape Special Economic Development Infrastructure Company SOC Ltd*), (iNkampani), njengoko kundululiwe nguMthetho oSayilwayo weNkampani yeZibonelelo zoPhuhliso loQoqosho oluKhethekileyo yaseNtshona Koloni, ka-2019 (uMthetho oSayilwayo).

**2. INJONGO YOMTHETHO OSAYILWAYO**

UMthetho oSayilwayo ubonelela ngeqonga lomthetho obangela ukuba ikwazi ukusebenza iNkampani ukuze izalisekise egunyaziswe kona kokuphuhlisa nokuxhasa iiprojekthi zezibonelelo zophuhliso lwezoqoqosho, nokugcina umdla nezabelo zoRhulumente weNtshona Koloni kwezo projekthi. UMthetho oSayilwayo ulawula ukusebenza kweNkampani kwaye ubonelele ngeenjongo zayo, imisebenzi yayo ngokunjalo nangolawulo lwemiba nezehlo ezikhoyo.

**3. IZIQULATHO ZOMTHETHO OSAYILWAYO**

**Isolotya 1** libonelela ngenkcazelo yoMthetho oSayilwayo.

**Isolotya 2** libonelela ngosungulo nangobume beNkampani.

**Isoloty 3** ligunyazisa uRhulumente weNtshona Koloni ukuba abengumninzabelo kwiNkampani kwaye enze nantoni na evumelekileyo ngokomthetho ukuba ayenze.

**Isoloty 4** lidwelisa iinjongo zeNkampani.

**Isoloty 5** libonelela ngamagunya nangemisebenzi yeNkampani.

**Isoloty 6** libonelela ngokuqeshwa kwebhodi yabalawuli beNkampani, ngokususwa kwabalawuli kunye nangokubekwa kosihlalo kunye nesekele likasihlalo weBhodi.

**Isoloty 7** libonelela ngamagunya nangemisebenzi yeBhodi ngokubhekiselele kulawulo olumanyanisiweyo, uxanduva likanondyebo nokubek' uxanduva kuMphathiswa wePhondo ojongene nophuhliso loqoqosho.

**Isoloty 8** libonelela ngolawulo lweekomiti.

**Isoloty 9** libonelela ngokuzinikezela ngemivuzo nangezithabathaba ezifanelekileyo kubalawuli okanye kumalungu ekomiti.

**Isoloty 10** libonelela ngokuqeshwa komntu ofanelekileyo onezakhono nobuchule obukhatshwa sisiqinisekiso semfundo oza kuba ligosa lesigqeba eliyintloko yeNkampani, ixesha elinokuthi liqashwe ngalo igosa lesigqeba eliyintloko, izizathu ekunokuthi upheliswe phantsi kwazo umsebenzi wegosa lesigqeba eliyintloko, ngokunjalo nokuqeshwa kwebambela legosa lesigqeba eliyintloko xa kukho isidingo soko.

**Isoloty 11** libonelela ngamagunya nangemisebenzi egosa lesigqeba eliyintloko.

**Isoloty 12** lixhobisa iBhodi ngokuba iqashe abasebenzi ize ibonelele ngemivuzo efanelekileyo, ngezinye iinzuzo zenkonzo nangemimiselo yenkonzo yegosa lesigqeba eliyintloko nabanye abasebenzi beNkampani.

**Isoloty 13** ichaza imithombo yengeniso yeNkampani, nangendlela ekumele iBhodi iyisebenzise ngayo ingxowamali yeNkampani.

**Isoloty 14** ichaza amandla weBhodi wokukwazi ukugunyazisa okanye ukunik' amandla nemisebenzi umlawuli, ikomiti, okanye igosa lesigqeba eliyintloko, ngokuxhomekeke kuMthetho weNkampani nePFMA. Eli soloty liqhubeka ngokubonelela ngokuba olo gunyaziso okanye ukunik' amandla akuhluthi Bhodi, umlawuli, ikomiti okanye uxanduva ekusebenziseni Amandla okanye ukwenziwa komsebenzi.

**Isoloty 15** lixhobisa uMphathiswa wePhondo ukuba enze imigaqo yeenjongo zeNkampani noMthetho.

**Isoloty 16** libonelela ngesihloko esifutshane nangexesha lokuqala kokusebenza koMthetho.

#### **4. UKUBONISANA**

4.1 IKhabinethi yoRhulumente weNtshona Koloni

4.2 ISebe leNkulumbuso: IiNkonzo zezoMthetho

4.3 UNongxowa wePhondo

4.4 UNondyebo kaZwelonke

4.5 I-Wesgro

4.6 ISebe loRhwebo noShishino (i-DTI)

4.7 ISebe leMicimbi yokusiNgqongileyo noCwanciso loPhuhliso

4.8 ISebe lezoThutho neMisebenzi yoLuntu

4.9 ISixeko saseKapa (iSixeko).

## **5. UCHAPHAZELEKO LWEZEMALI**

5.1 ISebe loPhuhliso lwezoQoqosho noKhenketho (“DEDAT”) lihlangele noNongxowa wePhondo, iSebe loRhwebo noShishino kunye neSixeko saseKapa mayela neendleko ezinxulunyaniswa neNkampani.

5.2 I-DEDAT ifumene inkxaso yemali kuNongxowa wePhondo ngokusebenzisa inkqubo yeKomiti yeNkcitho yeSiqingatha sonyaka.

5.3 Uphononongo olubenokwamkelwa beluxhaswe yiDTI, ezakuthi kwixesha elizayo ibonelela ngenkxasomali kwizibonelelo ezininzi nezinye iinkqubo ngokusebenzisa iNgxowamali yoMmandla wezoQoqosho eKhethekileyo.

5.4 Inkxaso yezibonelelo ezininzi nomhlaba ifunyenwe kwiSixeko, nto leyo eza kuqhubeka ibonelela ngokunika inkxaso kubatyalimali nakwiinkonzo zikamasipala kwingingqi yase-Atlantis.

## **6. ISAKHONO SOWISO-MTHETHO**

UMphathiswa wePhondo ojongene nophuhliso lwezoqoqosho kwiPhondo wanelisekile kukuba yonke imiqathango yoMthetho oSayilwayo iyilandele yonke imithetho yePhondo.