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KANTOOR VAN DIE PREMIER
VAN DIE PROVINSIE
WES-KAAP

P.N. 48/2004

12 March 2004

It is hereby notified that the Premier of the Province of Western Cape has assented to the following Act which is hereby published for general information:—

No. 1 of 2004: Western Cape Tourism Act, 2004.

P.K. 48/2004

12 Maart 2004

Hierby word bekend gemaak dat die Premier van die Provinsie Wes-Kaap die onderstaande Wet wat hierby ter algemene inligting gepubliseer word, bekragtig het:—

Nr. 1 van 2004: Wes-Kaapse Wet op Toerisme, 2004.

*(English text signed by the Premier)
(Assented to 11 March 2004)*

ACT

To provide for the establishment of the Destination Marketing Organisation; to provide for its composition, powers and functions; to provide for the promotion of tourism and the related economic development of the Western Cape; to repeal the Western Cape Tourism Act, 1997; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Western Cape Provincial Government (“the Government”) is committed to the economic development of the Province of the Western Cape (“the Province”) for the benefit of all its people;

AND WHEREAS the Government recognises that economic development in the Province can best be assisted by maximising the opportunities created by tourism, investment and export promotion and related events;

AND WHEREAS the Government accepts its responsibility to develop, transform and regulate the tourism industry for the benefit of all the people of the Province;

AND WHEREAS the Government recognises tourism as a key to unlocking the economic potential of the Province and its people, and acknowledges the need for revised institutional arrangements in respect of tourism in the Province;

AND WHEREAS the Government recognises that municipalities have the legislative and executive authority in respect of, and the right to administer, local tourism;

AND WHEREAS the Government and municipalities in the Province have a shared vision to establish a single destination marketing organisation and are jointly committed to the growth of tourism and major events;

AND WHEREAS the Government recognises its responsibility for the economic development of the Province and the facilitation of the growth and transformation of the provincial economy to reflect the interests of all the people of the Province;

AND WHEREAS the Government, in a spirit of cooperative governance and in partnership with local and national government and the private sector, has a shared vision to establish a single destination marketing organisation and is committed to the growth of tourism;

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

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CHAPTER 1

INTERPRETATION 15

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**Board**” means the governing body of the DMO, appointed in terms of section 4;
 - “**chairperson**” means the chairperson of the Board, appointed to serve as chairperson in terms of this Act; 20
 - “**chief executive officer**” means the chief executive officer appointed in terms of section 15;
 - “**City**” or “**the City**” means the City of Cape Town;
 - “**committee**” means a committee of the Board, established in terms of section 8;
 - “**DMO**” means the Destination Marketing Organisation established in terms of section 2; 25
 - “**executive Mayor**” means the executive Mayor of the City as defined in the Structures Act, any successor- in- title, or any duly appointed nominee;
 - “**members of the Board**” means members of the Board contemplated by section 4; 30
 - “**Minister**” means the provincial Minister of the Western Cape responsible for Tourism or his or her nominee, acting in all instances in consultation with the executive Mayor, except for sections 4(5)(a) and 4(5)(e);
 - “**Minister responsible for Finance**” means the provincial Minister of the Western Cape responsible for Finance; 35
 - “**municipality**” means any municipality in the Province established in terms of the Structures Act;
 - “**organised local government**” means an organisation recognised in terms of section 2(1) of the Organised Local Government Act, 1997 (Act 52 of 1997), to represent local government in the Province; 40
 - “**prescribe**” means prescribe by regulation;
 - “**Province**” means the Province of the Western Cape;
 - “**Provincial Parliament**” means the Provincial Parliament of the Province referred to in section 105 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996); 45
 - “**Structures Act**” means the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);
 - “**the Company**” means the Cape Town Tourism and Events Company (an association incorporated under section 21) (Registration Number 2003/0044604/08); 50
 - “**this Act**” includes any regulation made under this Act.

CHAPTER 2

ESTABLISHMENT OF DESTINATION MARKETING ORGANISATION

Establishment of Destination Marketing Organisation (DMO)

2. (1) There is established a juristic person known as the Destination Marketing Organisation, which is capable of suing and being sued in its own name and of performing all such acts as are necessary for the performance of its functions and the carrying out of its duties, and which is governed by a Board that must report to the Provincial Parliament of the Western Cape. 5

(2) The Board may, after complying with the prescribed consultation process, determine a trading name for the DMO. 10

Objectives of DMO

3. Without infringing on the rights of municipalities regarding local tourism, the DMO must develop and promote the Province as a tourist destination and in order to do so must pursue the following objectives:

- (a) the managing, planning and directing of the marketing activities of all sectors of the Province's tourism industry, namely meetings, incentives, conventions, exhibitions, events and leisure marketing, and visitor and support services; 15
- (b) the development of new tourism products and destinations throughout the Province;
- (c) cooperation with other bodies involved in the marketing of the film industry, and of trade and investment in the Province; 20
- (d) providing a vehicle which facilitates public and private sector cooperation, participation, decision-making and funding in the context of the Province's tourism as a whole;
- (e) aligning marketing activities in all sectors of tourism in the Province, in collaboration with existing entities; 25
- (f) facilitating the pursuit of transformation and empowerment goals within all sectors of the Province's tourism industry;
- (g) fostering relations and entering into agreements with organisations of all kinds, both public and private, for the purpose of promoting the objectives of the DMO; and 30
- (h) fostering close cooperation between the public and private sectors in the pursuit of tourism growth for the benefit of all the people of the Province.

Appointment and composition of Board

4. (1) Subject to subsection (2), the Minister, after consultation with the Standing Committee of the Provincial Parliament responsible for tourism and with organised local government, must appoint the members of the Board. 35

(2) Despite the provisions of section 6(1)(f), on the date on which this Act comes into operation all the members of the Board of Directors of the Company are regarded as duly appointed members of the Board for the first 12 months of the existence of the DMO. 40

(3) Members of the Board may only be appointed after the Minister, by notice in the *Provincial Gazette* and in such other media as the Minister may consider appropriate, has invited all interested parties to submit, within the period mentioned in the notice, names of persons who in the opinion of such interested parties have competence in, or knowledge of the tourism industry or marketing and management expertise or strategic leadership qualifications in the field of organisational transformation, and are fit and proper persons to be so appointed, stating the grounds upon which such opinion is based. 45

(4) The Minister must give due consideration to the need for the Board to reflect broadly the demographic and geographic composition of the Province. 50

(5) The Board consists of no more than 15 members, namely—

- (a) one member nominated by the Minister acting alone;
- (b) one member nominated by the executive Mayor;

- (c) two members nominated by organised local government, one representing category B municipalities and one representing category C municipalities;
 - (d) no more than eight members nominated by the public in accordance with the process set out in subsection (3);
 - (e) one *ex officio* senior official nominated by the Minister; 5
 - (f) one *ex officio* senior official nominated by the executive Mayor; and
 - (g) the chief executive officer *ex officio*.
- (6) The Minister, after consultation with organised local government, must designate a chairperson and a vice-chairperson for the Board from among the members of the Board. 10

Term of office of members of Board, and filling of vacancies

5. (1) Members of the Board are appointed for a period determined at the time of their appointment but not exceeding two years.
- (2) If for any reason the office of a member of the Board becomes vacant, the Minister, after consultation with organised local government, may appoint a person from the category of persons from which such member was originally appointed or nominated as a member of the Board for the unexpired portion of the term of office in accordance with section 4. 15
- (3) A member of the Board is eligible for re-appointment, but may not serve more than three consecutive terms: Provided that the following periods must not be taken into account in calculating the number of terms served: 20
- (a) the 12-month-period referred to in section 4(2); and
 - (b) any unexpired portion referred to in subsection (2).

Termination of membership of Board

6. (1) The office of a member of the Board becomes vacant if the member— 25
- (a) is declared insolvent or of unsound mind by a competent court;
 - (b) is removed from office in terms of subsection (2);
 - (c) is convicted of an offence and sentenced to imprisonment without the option of a fine, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined; 30
 - (d) is absent from three consecutive meetings of the Board without the consent of the chairperson;
 - (e) submits his or her written resignation to the chairperson;
 - (f) becomes a member of Parliament, a Provincial Legislature, the council of a municipality or the national Cabinet or the Western Cape Provincial Cabinet; 35
- or
- (g) with the exception of *ex officio* Board members referred to in section 4(5)(e) and (f), becomes an employee of the Province or a municipality.
- (2) The Minister, after consultation with organised local government, may remove a member of the Board on the ground of misconduct, incapacity or incompetence with due consideration to the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). 40

Meetings and decisions of Board

7. (1) The first meeting of the Board must be held at a time and place determined by the Minister. Thereafter the Board must meet at such times and places as the chairperson may determine, but the Board must meet at least once every three months. 45
- (2) The chief executive officer must within seven days of the receipt of a written request signed by at least three members of the Board convene a special general meeting of the Board.
- (3) The notice whereby a special general meeting of the Board is convened must state the business of that meeting, and no other business may be transacted at the special general meeting. 50
- (4) The quorum for a meeting of the Board is the majority of all its members.

(5) The vice-chairperson must act as chairperson of the Board when the chairperson is absent or unable to act as chairperson, and when both the chairperson and the vice-chairperson are absent or unable to act as chairperson, the members present at such meeting must, by majority vote, elect one of their number to preside at such meeting.

(6) The decision of a majority of the members present at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote. 5

(7) A decision taken by the Board at a time when there was a vacancy on the Board, when any person who was not entitled to sit as a member of the Board sat as such a member, is not invalid if— 10

(a) the decision was taken by a majority of all the members of the Board; and

(b) the members comprising that majority were entitled to sit as members.

(8) The Board may allow any member of a committee who is not a member of the Board to attend any meeting of the Board at which any matter relating to a function of that committee is dealt with and may allow such member to take part in the proceedings at such meeting without having the right to vote. 15

(9) When the Board is in session, a member may not take part in the discussion of, or participate in the making of a decision on, any matter in which that member or that member's spouse, partner, immediate relative or employer has any personal and direct or indirect pecuniary interest: Provided that the Board may require that any member who has declared such interest must recuse himself or herself from the proceedings regarding such matter. 20

(10) Any member of the Board who contravenes the provisions of subsection (9) is guilty of an offence and on conviction is liable to a fine or imprisonment for a period not exceeding 12 months. 25

(11) The minutes of Board meetings must be signed by the person who presides at the next meeting of the Board.

(12) The Board must allow the Minister and the executive Mayor or their duly appointed nominees to attend any meeting of the Board and to participate in the proceedings at such meeting without having the right to vote. 30

(13) *Ex officio* members of the Board appointed in terms of section 4(5)(e), (f) and (g) may participate in the proceedings of any meeting of the Board without having the right to vote.

CHAPTER 3 35

ESTABLISHMENT OF COMMITTEES

Appointment and composition of committees

8. (1) (a) The Board, after consultation with the Minister, may establish committees to assist the Board with the exercise of its powers, the performance of its functions and the carrying out of its duties. 40

(b) Any committees appointed by the Board of Directors of the Company are, on the date on which this Act comes into operation, regarded as committees appointed in terms of this section but only for the succeeding 12 months.

(2) The Board may establish committees comprising persons with expertise in the fields of, but not limited to— 45

(a) meetings, incentives, conventions and exhibitions;

(b) events;

(c) leisure;

(d) new tourism product development;

(e) visitors information services; 50

(f) finance; and

(g) human resources.

(3) Committees must function subject to the terms of reference determined by the Board.

(4) A committee consists of the number of members determined by the Board, but not more than 15 members, and every committee must have as a member one member of every other committee listed in subsection (2)(a) to (e). 55

(5) A committee must be chaired by a member of the Board or a duly appointed nominee.

(6) The Board may at any time dissolve a committee.

Term of office of members of committees, and filling of vacancies

9. (1) A member of a committee holds office for such period, not exceeding two years, 5
as is determined at the time of his or her appointment.

(2) If for any reason the office of a member of a committee becomes vacant, the Board may appoint a person as a member of the committee for the unexpired portion of the term.

(3) A member of a committee whose term of office has expired is eligible for 10
reappointment, but may not serve more than three terms as a member of a committee: Provided that the unexpired portion referred to subsection (2) may not be taken into account in calculating the number of terms served.

Termination of membership of committee

10. The provisions of section 6(1) apply, with the necessary changes, to the 15
termination of the office of a member of a committee.

CHAPTER 4

DELEGATIONS AND REMUNERATION

Delegation of powers, functions and duties

11. (1) The Board may delegate in writing any power, function or duty assigned to the 20
Board or conferred or imposed upon it in terms of this Act to any member of the Board, to any committee, or to the chief executive officer, who in turn may further delegate such power, function or duty.

(2) The delegation of a power, function or duty under subsection (1) does not preclude the exercise of that power, the performance of that function or the carrying out of that 25
duty by the Board.

(3) The Board may at any time amend or revoke any delegation under subsection (1), and may delegate its powers, functions or duties subject to any limitations, directions or conditions which the Board may decide.

(4) The Board may review and amend any decision taken in terms of a delegation 30
contemplated by subsection (1), subject to any rights that may have accrued and with due consideration to the provisions of the Promotion of Administrative Justice Act, 2000.

Allowances of members of Board

12. A member of the Board and a member of a committee must be appointed on such 35
terms and conditions and may be paid such allowances and be reimbursed for such expenses out of the funds of the Board as are determined jointly by the Minister in concurrence with the Minister responsible for Finance.

Remuneration and other service benefits of employees of Board

13. The Board, in consultation with the Minister and the Minister responsible for 40
Finance may—

- (a) determine and pay to its employees remuneration, allowances, bonuses, subsidies and pensions and other service benefits; and
- (b) determine and pay gratuities to its employees and former employees, and to the dependants of its employees and former employees, in the case of death or 45
injury of such employees which occurred in the course of their employment.

CHAPTER 5

POWERS AND DUTIES OF BOARD

Powers and duties of Board

- 14.** (1) In order to achieve its objectives the Board may—
- (a) in consultation with the Minister and the Minister responsible for Finance, 5
lease, purchase or otherwise acquire, let, sell, exchange or alienate, mortgage,
burden with a servitude or confer any real right in, immovable property;
 - (b) hire, purchase or acquire, hire out, sell, exchange or alienate, pledge or confer
any other real right in movable property;
 - (c) negotiate or cooperate with any government, provincial administration or 10
local government, or any other board or person, in the Republic or elsewhere,
with regard to any matter which is directly or indirectly aimed at the
achievement of the objectives of the Board;
 - (d) enter into agreements with a similar body, within the Republic or elsewhere, 15
for the promotion of tourism in the respective areas for which the Board and
that body have been established, and for that purpose the Board, or a member
or members of the Board, may undertake journeys inside and outside the
Republic;
 - (e) in consultation with the Minister, open and administer offices which may be 20
necessary or advisable for the effective and proper exercise of its powers, the
performance of its functions and the carrying out of its duties;
 - (f) acquire insurance cover—
 - (i) for itself against any loss, damage, risk or liability which it may suffer or 25
incur; and
 - (ii) for the members of the Board and committees and employees in respect
of bodily injury, disablement or death resulting solely and directly from
an accident occurring when performing their duties as such members or
employees;
 - (g) open and conduct banking accounts at a bank as defined in the Banks Act, 30
1990 (Act 94 of 1990);
 - (h) draw up, make, publish and sell or make available free of charge books,
guides, maps, publications, photographs, films, videos and similar matter
intended to inform persons, in the Republic or elsewhere, of tourist attractions
and services in the Province;
 - (i) gather, evaluate and process information relating to tourism in the Province, 35
and make such information available to persons who are engaged in the
tourism industry;
 - (j) give marketing advice and guidance to persons who are engaged in the
tourism industry in the Province;
 - (k) with a view to the effective marketing of, and the provision of information 40
relating to, any service, facility or product offered in connection with tourism,
determine, publish and regulate the use of such distinguishing signs and
wording as the Board may deem fit;
 - (l) employ and terminate the employment of persons;
 - (m) in consultation with the Minister and the Minister responsible for Finance, 45
establish, manage and administer any pension or provident fund or medical
scheme for the benefit of the DMO's employees, or have such fund or scheme
administered by another person or body;
 - (n) negotiate and cooperate with any educational institution regarding the
institution, continuation or expansion of courses for the training of persons for 50
careers in the tourism industry;
 - (o) recommend incentive schemes and grading, classification and accreditation
systems and administer such schemes and systems;
 - (p) approve the use of trading names by the DMO for specific tourism marketing 55
projects; and
 - (q) perform any other acts which may contribute towards the achievement of the
objectives of the Board.

- (2) In order to achieve its objectives the Board must—
- (a) work with the provincial government and municipalities to implement the tourism development and marketing strategies of the Province and municipalities;
 - (b) integrate transformation objectives into the operational activities of the Board; 5
 - (c) work with other national and provincial public entities, particularly those tasked with trade and investment promotion; and
 - (d) work with sector-specific bodies such as those in the wine and film industries in the promotion of provincial attractions. 10

CHAPTER 6

CHIEF EXECUTIVE OFFICER

Chief executive officer

15. (1) Subject to subsection (5), the Board, in consultation with the Minister and after following a public advertising process, must appoint a fit and proper person with knowledge and experience of management, marketing and tourism as the chief executive officer of the DMO. 15

(2) The chief executive officer must be appointed in terms of a fixed-term, performance-linked contract, for a period not exceeding five years, and may be reappointed after expiry of that period. 20

(3) If the chief executive officer is absent or for any reason unable to perform his or her functions, or whenever there is a vacancy in the office of the chief executive officer, the Board must appoint another person to act as chief executive officer of the DMO during such absence or inability or until a chief executive officer has been appointed in terms of subsection (1). 25

(4) An acting chief executive officer must, for the duration of his or her appointment, perform the functions of the chief executive officer.

(5) Notwithstanding the provisions of subsection (1), the chief executive officer of the Company, as on the date on which this Act comes into operation is deemed to be the duly appointed chief executive officer of the DMO for the unexpired term of the chief executive officer's employment agreement with the Company. 30

Powers and functions of chief executive officer

16. In addition to the powers, functions and duties conferred upon the chief executive officer by the provisions of this Act or by the Board, the chief executive officer must—

- (a) ensure that the DMO performs its functions in terms of this Act; 35
- (b) be in charge of the other employees of the Board;
- (c) be accountable to the Board;
- (d) ensure that proper minutes are kept at meetings of the Board and committees;
- (e) attend meetings of the Board; and
- (f) submit to the Minister and the executive Mayor and any other officials nominated by the Province and the City, within 14 days of a Board meeting, a copy of the minutes thereof. 40

CHAPTER 7

FUNDING AND FINANCIAL CONTROL

Funding and financial control 45

- 17.** (1) The funds of the DMO consist of—
- (a) money appropriated by the Provincial Parliament for that purpose;
 - (b) money that may be appropriated by the council of a municipality for that purpose; and
 - (c) money donated to the DMO by any person or institution. 50

(2) Acceptance by the DMO of money contemplated by subsection (1)(b) or (c) is subject to any applicable provisions of the Public Finance Management Act, 1999 (Act 1 of 1999), and any regulations in terms thereof.

(3) The Board's financial control, accountability and responsibility and its duties to report are regulated by the Public Finance Management Act, 1999, and any regulations or directives issued in terms of that Act. 5

(4) The Board must submit to any municipality which provides funds for the DMO and any other municipality which so requests, the reports or statements referred to in section 55(1)(d) of the Public Finance Management Act, 1999 within the period referred to in that section. 10

(5) The annual financial statements of the DMO must be audited by the Auditor-General, except if the DMO appoints as an auditor a person referred to in section 58(1)(b), read with section 58(2) and (3), of the Public Finance Management Act, 1999.

CHAPTER 8

15

INSTITUTIONAL COORDINATION

Institutional coordination

18. (1) The Board must cooperate with and participate in any institutions for the promotion of investment, trade, the film industry and other related sectors, in order to promote inter-institutional cooperation with reference to- 20

- (a) joint planning;
- (b) cooperative budgeting;
- (c) joint monitoring and evaluation, and
- (d) joint reporting,

which will ensure alignment of their strategies and operations. 25

(2) The DMO, the Province and any municipality involved in the functions of the DMO must ensure that there is full compliance with the cooperative governance provisions of section 41(1)(h) of the Constitution of the Republic of South Africa, 1996.

CHAPTER 9

LOCAL TOURISM ASSOCIATIONS AND VISITOR INFORMATION NETWORKS

30

Accreditation of local tourism associations

19. (1) The DMO may—

- (a) accredit a local tourism association or any similar tourism organisation established or recognised by a municipality; and 35
- (b) formulate and prescribe accreditation criteria for the accreditation of a local tourism association or any similar tourism organisation.

(2) Any tourism organisation or tourism bureau formerly accredited in terms of the Western Cape Tourism Act, 1997 that is not accredited by the DMO in terms of section 19, will not be audited by the Auditor-General. 40

Register of accredited local tourism organisations

20. The DMO must keep a register of all accredited local tourism organisations or any similar organisations established or recognised by a municipality.

Establishment of Visitor Information Network

21. The DMO may establish and accredit a Visitor Information Network, based on patterns and demands, in accordance with the criteria determined by the Board. 45

CHAPTER 10

TRANSITIONAL AND GENERAL PROVISIONS

The Western Cape Tourism Board

22. (1) The Western Cape Tourism Board, established in terms of the Western Cape Tourism Act, 1997 (Act 3 of 1997) (hereafter referred to as the Western Cape Tourism Board) is dissolved. 5

(2) The DMO is the successor-in-law of the Western Cape Tourism Board.

(3) With effect from the date on which this Act comes into operation—

(a) the assets, liabilities and records of the Western Cape Tourism Board are transferred to the DMO; 10

(b) staff employed by the Western Cape Tourism Board are transferred to the DMO in accordance with the Labour Relations Act, 1995 (Act 66 of 1995).

The Company

23. (1) With effect from the date on which this Act comes into operation, and subject to the approval of the members of the Company first being obtained, the staff, assets, liabilities and records of the Company are transferred from the Company to the DMO, and the DMO becomes the successor-in-law of the Company. 15

(2) The staff of the Company are transferred in accordance with the Labour Relations Act, 1995.

Regulations 20

24. The Minister, after consulting organised local government, may make regulations relating to any matter which may be dealt with by the Minister in terms of this Act, and any matter deemed necessary by the Minister for the achievement of the objects of the DMO and this Act: Provided that regulations with financial implications must be made in consultation with the Minister responsible for Finance. 25

Repeal of Act 3 of 1997

25. The Western Cape Tourism Act, 1997 (Act 3 of 1997) is repealed.

Short title and commencement

26. This Act is called the Western Cape Tourism Act, 2004, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*. 30